

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



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MEXICO'S FAILURE TO EFFECTIVELY ENFORCE TOTOABA TRADE PROHIBITIONS
VIOLATES CITES AND IS CAUSING EXTINCTION OF THE VAQUITA PORPOISE

This document is submitted by the Secretariat on behalf of the Center for Biological Diversity, NRDC, Animal Welfare Institute and Environmental Investigation Agency in relation to agenda item 62.2.*

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Mexico's Failure to Effectively Enforce Totoaba Trade Prohibitions Violates CITES and Is Causing Extinction of the Vaquita Porpoise

At CoP17, the Parties adopted Decisions 17.145 to 17.151 on totoaba (*Totoaba macdonaldi*), an Appendix I critically endangered fish species endemic to Mexico. Despite the CITES ban on international trade in totoaba and efforts made by Mexico to combat the illegal take of totoaba and trade in its parts, experts concluded in June 2018 that illegal totoaba fishing “remains at a very high level,”¹ to supply the international trade and mostly-Chinese market. The illegal totoaba trade is also driving the vaquita, a critically endangered and Appendix I listed porpoise, to extinction as vaquita die after becoming entangled in gillnets set for totoaba. As few as 15 vaquita may remain and, if current rates of decline continue, the vaquita will be extinct by 2021 – before CoP19.

Urgent action by the Standing Committee at SC70 and by the Parties at CoP18 is necessary to improve this dire conservation situation. Having carefully reviewed the submissions of the governments of Mexico, the United States, and China to Dec. 17.148 (SC69 Doc. 65.2 and SC70 Doc. 62.2) and Mexico's long history of violating CITES by failing to halt illegal totoaba trade, ***the suspension of commercial trade with Mexico in all CITES-listed specimens*** and other actions must be urgently approved and implemented. Such proposed sanctions, while admittedly a serious action, are essential to prevent the extinction of the vaquita by compelling Mexico to aggressively halt the illegal totoaba trade and illegal fishing that supports it.

BACKGROUND AND HISTORY

A. Species' Description and Life History

The totoaba (*Totoaba macdonaldi*) is a large, schooling marine fish in the drum or croaker family (Sciaenidae) found exclusively in Mexico's northern and central Gulf of California.² The fish can grow up to two meters in length and weigh 100kg. Individuals can live up to 25 years and do not reach sexual maturity until age six or seven, a life history that makes it vulnerable to exploitation.³ Totoaba migrate to the Upper Gulf of California to spawn between January and

¹ IUCN-SSG, Cetacean Specialist Group. Totoaba season ends with 400 active totoaba gillnets removed (June 13, 2018). Available at: <http://www.iucn-csg.org/index.php/2018/06/13/totoaba-season-ends-with-400-active-totoaba-gillnets-removed>.

² Cisneros-Mata, M.A., G. Montemayor-López, & M.J. Román-Rodríguez. 1995. Life history and conservation of *Totoaba macdonaldi*, *Conserv. Biol.* 9(4):806-814.

³ *Id.*



April each year before migrating south.⁴ The totoaba was included on Appendix I of CITES in 1976 and is also deemed “critically endangered” by the IUCN.⁵ The vaquita (*Phocoena sinus*) is the world’s most critically endangered marine mammal. Grey with black patches around its eyes and mouth, the vaquita measures just five feet in length, making it the

smallest cetacean. The vaquita occurs only in a 4,000 km²-area in the Upper Gulf of California,⁶ overlapping with the totoaba’s winter/spring spawning habitat. The vaquita’s only threat is entanglement in gillnets, particularly gillnets set illegally to catch totoaba.⁷ The IUCN considers the vaquita “critically endangered,” and it was included on CITES Appendix I in 1979.⁸

B. Mexico’s History of Failed Regulation of the Totoaba Trade and Vaquita Decline

Commercial exploitation of totoaba began in the early 1900s after it was discovered that the totoaba’s swim bladder resembled the swim bladder of the Chinese bahaba (*Bahaba taipingensis*), a now-imperiled Chinese fish used for a delicacy soup, and later expanded to include a market for flesh.⁹ Due to overfishing, Mexico closed the fishery in 1975,¹⁰ and the species’ inclusion on CITES Appendix I in 1976 banned its international commercial trade.¹¹

Despite these bans, both fishing and trade of totoaba continued. As noted in Cisneros-Mata (1995), due to “the geographic isolation” of the area, “[p]oaching of adult totoaba in the upper Gulf was a common practice” after the area’s closure.¹² In 1979, an estimated 70 metric tons of totoaba were poached from a single fishing port.¹³ There were reportedly 30 fishermen poaching totoaba in 1985, taking in an estimated 6,218 adult totoaba each year.¹⁴ By 1990, the International Whaling Commission (“IWC”) Scientific Committee recognized the illegal totoaba

⁴ *Id.*

⁵ CITES, at Appendix I; Findley, L. 2010. *Totoaba macdonaldi*. The IUCN Red List of Threatened Species. Version 2014.2. <www.iucnredlist.org>.

⁶ Rojas-Bracho, L., Reeves, R.R., & Jaramillo-Legorreta, A. 2006. Conservation of the vaquita *Phocoena sinus*. *Mammal Rev.* 36:179-216.

⁷ Rojas-Bracho, L. & R.R. Reeves. 2013. Vaquitas and Gillnets: Mexico’s ultimate cetacean conservation challenge. *Endang. Species Res.* 21:77-87 (2013). DOI: 10.3354/esr00501; Rojas-Bracho, L., Reeves, R.R., Jaramillo-Legorreta, A. & Taylor, B.L. 2008. *Phocoena sinus*. The IUCN Red List of Threatened Species. Version 2014.2. <www.iucnredlist.org>.

⁸ Rojas-Bracho (2008); CITES, at Appendix I.

⁹ Bahre, C.J., L. Bourillon, & J. Torre. 2000. The Seri and commercial totoaba fishing (1930-1965). *JOURNAL OF THE SOUTHWEST.* Vol. 42, No. 3 (Autumn 2000); Cisneros-Mata et al. (1995); 44 Fed. Reg. 29,478 (May 21, 1979).

¹⁰ *Id.*

¹¹ CITES, at Appendix I.

¹² Cisneros-Mata et al. (1995).

¹³ *Id.*

¹⁴ *Id.*

fishery was causing the vaquita's entanglement and recommended that Mexico "fully enforc[e] the closure of the totoaba fishery."¹⁵

In 1993, Mexico declared a biosphere reserve in the Upper Gulf of California to protect both species.¹⁶ Mexico claimed that it was "enforcing the closure of all commercial fisheries in the reserve" and "[a]ll 'totoaba-type nets'" were confiscated.¹⁷ However, it quickly became apparent that "these official statements did not reflect the true situation in the region." Instead "[c]ommercial fishing with a variety of gill nets and trawl nets continued without interruption both inside and outside the Biosphere Reserve."¹⁸

In 1996, the Mexican government established the Comité Internacional para la Recuperación de la Vaquita ("CIRVA," or the International Committee for the Recovery of the Vaquita), a group that includes the world's pre-eminent vaquita experts. In 1999, after finding the vaquita population had fallen to just 570 animals, CIRVA "strongly" recommended that Mexico "[e]liminate all gillnets" in the biosphere to reduce entanglement.¹⁹

Six years later, in 2005, Mexico established a refuge area for the vaquita, again attempting to ban certain gillnets.²⁰ But again, enforcement was lax, as the new "Refuge Area remained essentially unmanaged until 2008,"²¹ when the vaquita population fell to 220,²² and a new program was instituted, officially banning all gillnets in the area.²³ Mexican enforcement authorities initially made a "strong effort" to enforce the new ban, but "that effort . . . waned," and the number of boats fishing illegally in the refuge reached 2007 levels by 2011.²⁴

By late 2012, it became obvious that the totoaba trade had grown sharply.²⁵ In 2014, scientists reported an "increased demand in Chinese markets for the swim bladder," which triggered a "large increase in illegal fishing pressure" on totoaba.²⁶ At the same time, CIRVA announced that, despite Mexico's two-decades of regulation, only 97 vaquita remained and that Mexico's "at-sea enforcement efforts ha[d] failed, and illegal fishing ha[d] increased . . . throughout the

¹⁵ International Whaling Commission Scientific Committee, June 10, 1990. Rep. Intl. Whal. Commn., 42 (1991), at 79.

¹⁶ Rojas-Bracho et al. (2006).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ CIRVA. 1999. Report of the Second Meeting of the International Committee for the Recovery of the Vaquita (CIRVA) Ensenada, Baja California, México. 7–11 February 1999.

²⁰ Rojas-Bracho et al. (2013).

²¹ *Id.*

²² CIRVA. 2012. Report of the Fourth Meeting of the International Committee for the Recovery of the Vaquita (CIRVA), Ensenada, Baja California, México, 20–23 February 2012.

²³ Rojas-Bracho et al. (2013).

²⁴ *Id.*

²⁵ CIRVA. 2014. Report of the Fifth Meeting of the Comité Internacional Para la Recuperación de la Vaquita (CIRVA-5), Ensenada, Baja California, México, July 8-10, 2014.

²⁶ *Id.* at 15, 2 (describing the "resurgent" totoaba fishery); see also Dongguan Zhang, *China's demand for swim bladders, gills, and shark fins catastrophic to ocean's resources*, EPOCH TIMES (May 20, 2013) (noting black market in totoaba bladders is "raging" in China). Available at: <http://www.epochtimes.com/gb/13/5/20/n3874902.htm> (in Chinese).

range of the vaquita.” CIRVA urgently warned that the vaquita was “in imminent danger of extinction” if vaquita bycatch was “not eliminated immediately.”²⁷

By 2015, the vaquita population was estimated to have dropped to just 60 animals.²⁸ In April 2015, the Mexican government enacted a temporary two-year ban on most gillnet fishing in the Upper Gulf of California, supported by a plan for enhanced inspection and enforcement effort led by the Mexican Navy and other agencies.²⁹

Yet those efforts also proved ineffective. In 2016, the Mexican Navy and the Sea Shepherd Conservation Society reported “extensive evidence of totoaba poaching and, between January and May [2016], retrieved 42 illegal gillnets” from vaquita habitat, including “freshly set” nets.³⁰ Sea Shepherd also filmed poachers hauling totoaba nets and “found fishing camps on remote beaches” in the area.³¹ That spring, three vaquita were found dead due to entanglement in gillnet gear. Accordingly, CIRVA concluded that the evidence was “clearly demonstrating the inadequacy of the enforcement effort” by Mexico.³² By November 2016, the vaquita population had plummeted to only around 30 animals, representing a *49 percent population decline in a single year*.³³

In 2017, Mexico made the gillnet ban regulation permanent. However, that spring, five more vaquita were found dead, with three deaths confirmed due to entanglement.³⁴ Sea Shepherd reported it had “retrieved 150 *active* totoaba nets and observed a considerable amount of illegal fishing activity” between December 2016 and April 2017.³⁵ In April 2017, CIRVA concluded that “[i]llegal fishing activity for totoaba has continued at a very high level and poachers are operating openly both day and night in the Upper Gulf.”³⁶

In December 2017, CIRVA issued its most recent report. CIRVA concluded *once again* that “[h]igh levels of illegal fishing continue,” based on more recent net retrieval sweeps that again found active totoaba gillnets in the vaquita refuge.³⁷ CIRVA also determined that the vaquita’s decline “continued unabated” in 2017,³⁸ and thus, despite Mexico’s most recent regulatory

²⁷ *Id.*

²⁸ CIRVA. 2016. Seventh Meeting of the Comité Internacional para la Recuperación de la Vaquita, Ensenada, BC, Mexico, May 10-13, 2016 (CIRVA-7).

²⁹ Mexico’s Official Gazette: Acuerdo por el que se suspende temporalmente la pesca comercial mediante el uso de redes de enmalle, cimbras y/o palangres operadas con embarcaciones menores, en el Norte del Golfo de California. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5388486&fecha=10/04/2015&print=true.

³⁰ CIRVA 7 Report.

³¹ *Id.*

³² *Id.*

³³ CIRVA. 2016. Eighth Meeting of the Comité Internacional para la Recuperación de la Vaquita (CIRVA-8), La Jolla, CA, Nov. 29-30.

³⁴ CIRVA. 2017. Ninth Meeting of the Comité Internacional para la Recuperación de la Vaquita (CIRVA-9) La Jolla, CA. 25-26 April 2017.

³⁵ *Id.*

³⁶ *Id.*

³⁷ CIRVA. 2017. Report of the Tenth Meeting of the Comité Internacional para la Recuperación de la Vaquita (CIRVA), La Jolla, CA, Dec. 11-12, 2017.

³⁸ *Id.*

efforts, the vaquita population dropped *another 50 percent* in 2017 to potentially around *just 15 animals*. The expert group made the sobering conclusion that, “[u]nless this decline can be stopped by eliminating mortality in illegal gillnets, *the vaquita will be extinct in a few years.*”³⁹ In fact, if decline continues at current rates (i.e., 49 percent decline per year), **the vaquita will be extinct by 2021.**

In response to the CIRVA report, in April 2018, Mexico extended the boundaries of the vaquita refuge. However, continued net retrieval efforts found 400 more *active* nets from December 2017 to May 2018, and one vaquita was found dead due to entanglement,⁴⁰ leading the IUCN Cetacean Specialist Group to conclude that “illegal fishing remains at a very high level.”

While the totoaba is still considered “critically endangered” by IUCN and Mexican regulations, a February 2018 report from Mexico’s National Institute of Fisheries and Aquaculture (“INAPESCA”) provides a long-awaited totoaba population evaluation. The report concluded that, while the population had increased in the past decades, the totoaba’s main threat is now illegal fishing in the Upper Gulf from January to June during the breeding season, which has been prevalent in the last 4 to 5 years. The report’s conservative estimates indicate that at least 21,000 totoaba were caught illegally in 2017 and that level of capture “is not sustainable,” because the population is now decreasing.”⁴¹

The ongoing illegal totoaba fishing and trade is reflected in the number of totoaba maws being seized by Mexican enforcement authorities. Since July 2017, over 1,170 totoaba maws have been seized at airports or from vehicles in Mexico. This includes confiscations of 104 maws in December 2017⁴² and 375 maws in July 2017⁴³ seized at the Tijuana airport, and an illegal shipment of 355⁴⁴ maws seized at the Mexico City airport in April 2018. In addition, in February 2018, 87 totoaba maws were seized from a sedan on the highway between Ensenada and Tijuana.⁴⁵ Another 229 maws were seized in Mexicali on May 4, 2018 from a vehicle.⁴⁶ While

³⁹ *Id.*

⁴⁰ IUCN-SSG, Cetacean Specialist Group. Totoaba season ends with 400 active totoaba gillnets removed (June 13, 2018). Available at: <http://www.iucn-csg.org/index.php/2018/06/13/totoaba-season-ends-with-400-active-totoaba-gillnets-removed>.

⁴¹ INAPESCA. Evaluación de la población de totoaba en el Golfo de California (Assessment of the Totoaba Population in the Gulf of California) (Feb. 2018), available at: Annex 4 of SC70.62.2

⁴² El Debate. 2017. Profepa y policía federal aseguran 104 filetes de totoaba. December 28, 2017. Available at <https://www.debate.com.mx/mexico/Profepa-y-Policia-Federal-aseguran-104-filetes-de-totoaba-20171228-0244.html>

⁴³ Excelsior. 2017. Revela Profepa decomisa de 375 buches de totoaba, en Tijuana. July 8, 2017. Available at <http://www.excelsior.com.mx/nacional/2017/07/08/1174469> The flight had originated in Mexico City.

⁴⁴ Profepa. 2018. Juez de control vincula a proceso a ciudadano chino que intentaba transportar buches de totoaba a otro país, con fines de venta. Comunicado April 24, 2018. The initial report of 417 totoaba swim bladders being seized was subsequently corrected; 355 of the maws were identified as totoaba. This led to confusion in the media, with two seizures of 417 and 355 maws being reported. The Profepa report is available at

<https://www.gob.mx/profepa/prensa/juez-de-control-vincula-a-proceso-a-ciudadano-chino-que-intentaba-transportar-buches-de-totoaba-a-otro-pais-con-fines-de-venta-profepa>

⁴⁵ Profepa. 2018. Video of the seizure available at <https://www.youtube.com/watch?v=7hW18ZPgKIQ> and La Cronica. 2018. Profepa decomisa 87 vejigas de totoaba en Tijuana. February 26, 2018. Available at <http://www.lacronica.com/EdicionEnLinea/Notas/Noticias/26022018/1312851-Profepa-decomisa-87-vejigas-de-totoaba-en-Tijuana.ht>

such seizures are commendable, they demonstrate ongoing high levels of trade and a failure of enforcement efforts to stop illegal totoaba fishing in the Upper Gulf.

Investigations by the Environmental Investigation Agency (EIA) and other NGOs have revealed the involvement of criminal syndicates at both ends of the trade. EIA has submitted detailed information on individuals and groups in Mexico that are central to the trade to Mexican enforcement officials, however there is no evidence of any action being taken.

C. International Totoaba Trade

The illegal totoaba fishing is driven by the international demand for totoaba swim bladders, in particular in China. EIA investigations have revealed the sale of totoaba maws in China and Hong Kong and the smuggling of maws from the Gulf of California to China through multiple routes, often via the US and Hong Kong.

In April-May 2015, an EIA survey of 23 fish maw retailers in Hong Kong and Guangzhou, China found over 800 maws claimed to be from totoaba openly for sale at six markets in Guangzhou's Qingping market by vendors who knew the sale was illegal but who reported that smuggling maws from Hong Kong was easy, with no routine inspections of fish maw shipments by authorities.^{47,48} In a subsequent visit to the Qingping and Yide Road markets in Guangzhou in November-December 2015, totoaba maws were not being openly sold – apparently due to previous inspections – but five of nine vendors interviewed admitted to holding back totoaba maws with three vendors willing to sell maws to the investigators while the other two were holding on to their totoaba maws hoping for a price increase.⁴⁹ A follow-up investigation in June 2016 identified Shantou, China, as the centre of the trade for totoaba maws, with illegal maws openly on sale in several shops and markets.⁵⁰ One retailer in Shantou told EIA that it had 700

⁴⁶ Algo que informar. 2018. Policía de Baja California decomisa 229 buches de Totoaba en vehículo que circulaba en Mexicali. May 6, 2018. Available at <http://www.algoqueinformar.com/policia-baja-california-decomisa-229-buches-totoaba-vehiculo-circulaba-mexicali>; see also Comunicado 464/18. Vinculan a proceso en Baja California a un hombre por la probable comisión de un delito contra la biodiversidad. Available at: <https://www.gob.mx/pgr/es/prensa/comunicado-464-18-vinculan-a-proceso-en-baja-california-a-un-hombre-por-la-probable-comision-de-un-delito-contra-la-biodiversidad?idiom=es&hootPostID=ebe1ca2a8896191f374ab6c7438149d0>

⁴⁷ Environmental Investigation Agency. DUAL EXTINCTION: The illegal trade in the endangered totoaba and its impact on the critically endangered vaquita. January 2016. Briefing to the 66th Standing Committee of CITES. Available at: <https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/EIA-Dual-Extinction-mr.pdf>.

⁴⁸ Environmental Investigation Agency. COLLATERAL DAMAGE: How illegal trade in totoaba swim bladders is driving the vaquita to extinction. September 2016. Available at: <https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/EIA-Collateral-Damage-FINAL-mr.pdf>.

⁴⁹ Environmental Investigation Agency. COLLATERAL DAMAGE: How illegal trade in totoaba swim bladders is driving the vaquita to extinction. September 2016. Available at: <https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/EIA-Collateral-Damage-FINAL-mr.pdf>.

⁵⁰ *Id.*

totoaba maws in stock in June 2016.⁵¹ Follow up investigations by the Elephant Action League (EAL) demonstrate that despite China undertaking a law enforcement campaign, Shantou continues to be a key centre for totoaba trade, with enforcement efforts merely driving the sales behind closed doors.⁵² Other key trading cities are Haimen, Nan’ao Island as well as Hong Kong and Guangzhou.⁵³

Online auction and e-commerce sites identified as selling totoaba maws included Tencent QQ, Alibaba, Taobao, and an arts and antiques selling site Artron.net.⁵⁴ EIA monitored online activities in 2017 and showed that “illegal trade of totoaba in China has continued unabated since EIA last reported on it in September 2016.”⁵⁵ An open auction on Artron.net of a maw labelled as ‘South American money fish’ (the trade name often used to describe totoaba) occurred as recently as July 2018.⁵⁶

Despite the ongoing high level of totoaba trade, there are few published seizures or prosecutions outside Mexico.⁵⁷ Those seizures that have occurred indicate that multiple countries are being used as transit points for smuggled totoaba, including the USA, Vietnam, Japan, South Korea,

On Jan 21st 2018, 28kg of suspected totoaba maw with a market value of about \$4.5 million was seized at Hong Kong International Airport. Two men, aged 30 and 32, were intercepted by customs officers having arrived at Hong Kong from Hermosillo, Mexico via Monterrey, Mexico and Seoul, South Korea.⁵⁸ On 25th April 2018, Mexican federal police and Mexican Federal Prosecutor of Environmental Protection (Profepa) arrested a Chinese citizen with two suitcases containing 417 totoaba swim bladders. He was about to board a commercial flight to Tokyo, Japan, where he would make a connection to his final destination of Guangzhou, China.⁵⁹

⁵¹ Environmental Investigation Agency. FACING EXTINCTION Survival of the Vaquita Depends on Eliminating the Illegal Trade in Totoaba. November 2017. Available at: https://eia-international.org/wp-content/uploads/EIA_Ocean_report_briefing_Vaquita_Final.pdf.

⁵² Elephant Action League (EAL). OPERATION FAKE GOLD. The Totoaba Supply Chain – From Mexico’s Totoaba Cartels to China’s Totoaba Maw Wholesalers – An illegal Trade Killing the Vaquita. <https://elephantleague.org/wp-content/uploads/2018/07/EAL-Operation-Fake-Gold-Final.pdf>

⁵³ *Id.*

⁵⁴ Environmental Investigation Agency. COLLATERAL DAMAGE: How illegal trade in totoaba swim bladders is driving the vaquita to extinction. September 2016. Available at: <https://drive.google.com/viewerng/viewer?url=https://eia-international.org/wp-content/uploads/EIA-Collateral-Damage-FINAL-mr.pdf>.

⁵⁵ Environmental Investigation Agency. FACING EXTINCTION Survival of the Vaquita Depends on Eliminating the Illegal Trade in Totoaba. November 2017. Available at: https://eia-international.org/wp-content/uploads/EIA_Ocean_report_briefing_Vaquita_Final.pdf.

⁵⁶ <http://auction.artron.net/paimai-art5130212019/>

⁵⁷ See regularly updated map showing illegal trade seizures: <https://eia-international.org/illegal-trade-seizures-totoaba/>

⁵⁸ 7th Space, 2018. Hong Kong customs seizes suspected totoaba fish maws. Available at <http://7thspace.com/headlines/539597/hong-kong-customs-seizes-suspected-totoaba-fish-maws.html>

⁵⁹ Excelsior, 2018. Cae chino con 417 buches de totoaba en el AICM; el segundo en una semana. Available at <http://www.excelsior.com.mx/nacional/cae-chino-con-417-buches-de-totoaba-en-el-aicm-el-segundo-en-una-semana/1234864>

On 8th August 2018, in the only known published China mainland seizure, it was reported that the Fangchenggang City Procuratorate in the Guangxi province of China arrested a father and son for the smuggling of 434 totoaba maws from Mexico via Vietnam, destined for Guangzhou, China. The suspects were involved in the smuggling of a total of 2,621 swim bladders from Mexico, with an estimate vale of RMB 150 million.⁶⁰

Most recently, on 22nd September 2018 an express parcel containing 1.9kg of totoaba maws worth an estimated \$300,000 was seized at Hong Kong international airport. The parcel had been posted from Los Angeles.⁶¹

II. Actions under CITES:

The totoaba was included on Appendix I of CITES in 1976, and the vaquita was included on Appendix I in 1979.⁶² At AC17 in 2001, Mexico submitted an Inf. Doc. reviewing the totoaba's status and recommended the species remain on Appendix I, in part due to the ongoing, international black market and high prices for totoaba bladders.⁶³ Subsequently, as noted previously, the Parties adopted Decisions 17.145 to 17.151 at CoP17 in 2016. Of note:

Decision 17.147 directed range, transit, or consumer states to “engage in awareness raising activities about the endangerment of totoaba and its grave implications for vaquita,” to “eliminate supply of and demand for totoaba,” and “increase law enforcement measures to prevent and address illegal fishing and trade.”

Decision 17.148 directed range, transit, or consumer states to submit information at SC69 and SC70 regarding, *inter alia*, seizures, arrests, and prosecutions related to illegal totoaba fishing and trade, as well as actions to raise awareness about these decisions.

Decision 17.149 directed the Secretariat to commission a report to be submitted to Standing Committee “on the current status of totoaba and vaquita, and ongoing conservation efforts, information on illegal trade and markets, and recommendations to guarantee the recovery of totoaba and vaquita and combat illegal trade.”

Decision 17.150 directed the Standing Committee to evaluate the information submitted and “make recommendations for any additional actions.”

Prior to SC69, Mexico, China, and the United States submitted information regarding totoaba seizures, enforcement actions, and trilateral efforts, pursuant to Dec. 17.148.⁶⁴ At SC69, Mexico

⁶⁰ JQ News, 2018. Guangxi father and son smuggling endangered fish maw are arrested. Available at: https://www.jqknews.com/news/53975-The_amount_involved_in_the_case_is_180_million_Guangxi_father_and_son_smuggling_endangered_fish_maw_a_re_arrested.html

⁶¹ Government of Hong Kong SAR Press Release. Hong Kong Customs seizes suspected totoaba fish maws <http://www.info.gov.hk/gia/general/201809/24/P2018092400563.htm>

⁶² Rojas-Bracho (2008); CITES, at Appendix I.

⁶³ CITES AC 17, Inf. 6 (2001).

⁶⁴ See SC69 Doc. 65.1.

was encouraged to host a high level mission and to include the CITES Secretary-General to address totoaba and vaquita. Mexico subsequently announced that it would host such a mission and that it would extend an invitation to the Secretary-General “in the near future.”⁶⁵

Prior to SC70, Mexico and the Secretariat jointly submitted SC70 Doc. 62.1, which reports on implementation of Decision 17.149. Doc. 62.1 notes that the “high level mission” did not occur, but that the Secretariat had received funding from Switzerland to proceed with the desk-based study called for in Dec. 17.150 and proposes an outline. Mexico submitted SC70 Doc. 62.2, which summarizes its enforcement actions and new regulatory measures, including an extension of the vaquita refuge, as directed by Dec. 17.148. It also included information about its awareness raising activities associated with this issue consistent with Dec. 17.147. SC70 Doc. 62.2 did not include any new information from the United States or China in regard to Dec. 17.147 or 17.148.

Totoaba Captive Breeding Proposal

Separately, on May 30, 2018, the Secretariat announced that the Mexican government applied to register Earth Ocean Farms as a captive breeding operation for trade in totoaba, pursuant to Res. Conf. 12.10. CITES Notification 2018/054. The facility appears to seek to trade in both totoaba filets and bladders.

At least two Parties have reportedly submitted objections to the application, pursuant to Res. Conf. 12.10 (Rev. CoP15). In its objection, the United States identified a number of concerns with the registration of Earth Ocean Farms as a totoaba captive breeding facility thereby permitting the legal, commercial, trade in totoaba, including:⁶⁶

- Permitting a legal trade in a species subject to “ongoing uncontrolled illegal harvest and trade ... will undermine the survival of the species in the wild;”
- A legal trade in totoaba will “increase incentives for illegal harvest and trade of wild-caught fish” and “could provide a means for laundering of illegally caught and stockpiled swim bladders;”
- Whether “labels with QR code” will be “used to distinguish dried swim bladders of captive-bred specimens in trade and whether there are safeguards in place to ensure that labels cannot be copied and used to trade specimens harvested illegally from the wild” and if CITES enforcement authorities have the tools to read the labels;
- How the genetic markers proposed for use in captive bred totoaba will be able to distinguish between totoaba released into the wild and harvested illegally and captive bred totoaba products legally in trade;
- The need for additional information on Mexico's inspection and monitoring procedures, in particular with regard to detecting unauthorized specimens held at or exported by Earth Ocean Farms;

⁶⁵ SC69 Summary Record.

⁶⁶ The objection letter submitted to the CITES Secretariat was obtained from the US Fish and Wildlife Service via a request under the US Freedom of Information Act.

- The need for additional information is needed to establish how the Earth Ocean Farms operation will contribute to the conservation of totoaba in the wild in the absence of any recent population data or totoaba stock assessments.

The application is currently under review by the Animals Committee (AC) intersessionally. The Secretariat will then forward any comments by AC members to Mexico, and if the issues are not resolved or the application withdrawn, the application will be submitted to the Standing Committee for consideration at SC71.

RECOMMENDATIONS FOR SC70:

Accordingly, having carefully reviewed the submission of Mexico to SC70 (SC70 Doc. 62.2), its long history of failing to comply with and enforce the CITES ban on commercial trade in totoaba, and considering the imminent extinction of the vaquita if Mexico does not act immediately to stop illegal totoaba fishing and end totoaba exports, the following recommendations should be considered:

(1) The Standing Committee should recommend suspension of commercial trade with Mexico in specimens from all CITES-listed species for consideration at COP18.

As the Parties are aware, commercial trade in Appendix I species is banned unless otherwise exempted by the Convention.⁶⁷ CITES further requires that each Party “shall take appropriate measures to enforce the provisions of [CITES] and to prohibit trade in specimens in violation thereof.”⁶⁸

As demonstrated above, despite decades of promises, the Mexican government has failed to effectively halt totoaba fishing or, in collaboration with transit and consumer countries particularly China and the United States to end the international trade in totoaba parts. During just the past two years (October 2016 to September 2018) since approval of the Decisions providing the Standing Committee with oversight of the Mexican government’s actions, at least 5 vaquita have been confirmed dead due to entanglement⁶⁹ and 550 active (i.e. freshly set) totoaba nets have been found in the water. The illegal totoaba trade is ongoing. In August 2018, Profepa (Procuraduría Federal de Protección al Ambiente) seized 21 totoaba swim bladders in Mexico City’s International Airport, with the package destined for China⁷⁰ adding to the over 1,150 bladders seized since July 2017.

While the Mexican government’s efforts and resources expended on this issue are noteworthy and commendable, illegal totoaba fishing continues virtually unabated in order to supply international demand for its swim bladders. CITES is meant to regulate trade, not good

⁶⁷ CITES at Art. (1)-(3).

⁶⁸ *Id.* at Art. VIII(1).

⁶⁹ In addition to the four deaths noted above, another vaquita was killed during the attempted captivity effort in fall 2017. See IUCN Cetacean Specialist Group. Necropsies: <http://www.iucn-csg.org/index.php/downloads/>

⁷⁰ Profepa asegura 21 buches de totoaba en el AICM. Noticieros Televisa. <https://noticieros.televisa.com/ultimas-noticias/policia-federal-asegura-80-iguanas-vivas-en-aeropuerto-de-tijuana/> Accessed September 19, 2018.

intentions. There is no time left: the Mexican government must immediately and fully comply with CITES ban on commercial totoaba trade or the vaquita will go extinct. The CITES Parties may never before have faced a compliance problem with such severe and permanent consequences if the Convention continues to be violated.

A call for sanctions cannot be delayed. If current rates of decline continue, the vaquita will likely be extinct *before CoP19*. Accordingly, in order for the CITES Parties' actions to be meaningful for the vaquita, sanctions must be agreed to at CoP18.⁷¹ The recommended sanctions, given the longstanding failure of Mexico to stop the international trade in illicit totoaba maws and the urgency of the situation, must include a ban on all international trade in all CITES listed species to or from Mexico.

In order to avoid the imposition of sanctions, the Standing Committee should direct Mexico to fully comply with the following actions and to report on its efforts to do so for consideration at SC71 and CoP18:

- Fully implement all recommendations made by CIRVA in its 10th report including, but not limited to;
 - All Mexican enforcement agencies increase their efforts on land and in water immediately and continue this enhanced enforcement program for the duration of the period of illegal totoaba fishing ... to eliminate all setting of gillnets in the range of the vaquita.
 - Promulgate emergency regulations immediately to strengthen the current gillnet ban and enhance enforcement and prosecution by:
 - eliminating all fishing permits for transient fishermen and limiting fishing access to only those fishermen who can demonstrate residency in the fishing villages;
 - confiscating any vessel that does not have the appropriate vessel identification, permits, and the required vessel monitoring system;
 - requiring vessel inspection for each fishing trip at the point of departure and landing;
 - prohibiting the sale or possession of gillnets on land and at sea within the area of the current gillnet ban and on adjacent lands within a specified distance of the coastline;
 - requiring that all gillnets be surrendered or confiscated and destroyed;
 - eliminating the exemptions for all gillnet fisheries, including the curvina and sierra fisheries;
 - Within the exclusion zone, the Government of Mexico should:
 - prohibit all fishing and navigation;
 - increase enforcement presence to a level which is able to respond to any report of illegal activities within 30 minutes.
 - increase and focus net removal efforts are within in the exclusion zone.

⁷¹ Dec. 17.146-148, requiring reporting by Mexico on its totoaba enforcement efforts over two years, provides Mexico the notice and time for remedial measures, as outlined in Res. Conf. 14.3 on Compliance Matters.

- negotiate the appropriate transit corridors to allow legal fishing to continue outside the exclusion zone.
 - Efforts to remove gillnets from vaquita habitat be continued and enhanced and the numbers and locations of new nets recovered be published monthly;
 - The number of inspections, interdictions, arrests, sentences, and other enforcement actions be published monthly, together with information on observed levels of illegal activities obtained from intelligence operations, for example from drones;
 - Successful prosecution and subsequent penalties be sufficient to deter illegal fishing;
 - Development of gillnet-free fisheries be enhanced and linkages to incentivize the conversion of the fleet to gillnet-free operations be strengthened.
- Fully fund and expand the net removal program to rid the Upper Gulf of all nets and to establish a long-term monitoring program to maintain the area as a net free zone;
- Strengthen existing laws to: prohibit the sale, possession, and manufacture of gillnets in the Upper Gulf (on land and water); facilitate the apprehension and prosecution of persons accused of violating Mexico’s wildlife, corruption, conspiracy, and wildlife trade laws; and significantly increase penalties (including mandatory prison sentences, fines, and seizure of property) for those convicted of violating relevant Mexican laws to ensure that such penalties have a deterrent effect;
- Augment and strengthen law enforcement capacity, including by providing sufficient personnel, equipment (i.e., weaponry, drones, satellite technology, full access to transparent, real time vessel monitoring data) in the Upper Gulf (on land and water) to obtain 24/7/365 coverage of all ports and open water throughout the newly expanded vaquita refuge and “exclusion zone” to ensure compliance with all relevant wildlife, fishing, and wildlife trade laws;
- Cease any plans to downlist the totoaba from Appendix I of CITES;
- Establish a long-term monitoring program, including the use of skilled observers, cameras and acoustic devices, to monitor the status and recovery of the vaquita population.
- Demonstrate that net retrieval programs for January to April 2019 detect fewer than five active nets, or otherwise demonstrate a significant (>90 percent) reduction in active nets from the same period in 2018.

(2) The Standing Committee should direct Mexico and the Secretariat to coordinate a high-level mission in January/February 2019.

In SC70 Doc. 62.2, the Mexican government and the Secretariat report that they are discussing scheduling a mission with the Secretariat’s staff for fall (September) 2018. However, despite the urgency of this matter, the mission may be more productive if held in December 2018 or January/February 2019, during the totoaba season, so the Secretariat’s staff may witness and evaluate active enforcement. Additionally, the Mexican President-elect, Andrés Manuel López Obrador, will take office in early December. Conducting the mission after Mr. Obrador assumes office will provide the opportunity to meet with the incoming Administration, to emphasize the

urgent need to address the threats to the totoaba and vaquita, and to evaluate ongoing and new conservation commitments.

(3) The Standing Committee should move forward with the desk-based study; however, recommendations should not await the study's completion.

Switzerland is commended for providing funds to carry out the study directed under Decision 17.149. In the absence of further funding, the SC should revise the study's proposed outline provided in Annex 2 to SC70 Doc. 62.1 to prioritize the more critical components: totoaba population status, analysis of illegal trade and markets, and conservation recommendations. Further, the Secretariat must ensure that other totoaba transit and consumer countries, including South Korea⁷² (based upon recent seizure reports in January and April 2018), Japan⁷³ and Vietnam⁷⁴ are included in the report.

The Secretariat intends for the study to be completed for consideration at SC71, a single-day meeting scheduled just prior to COP18. This gives little time for the Parties and the SC to review, formulate, or agree on recommendations. Much of the critical information to be covered by the study is already available based on CIRVA reports, Parties' submissions, NGO reports (including those of the EIA), and the scientific literature. Thus the Standing Committee is strongly and urgently asked to make recommendations, including recommendations for sanctions, which can be reviewed and revised as needed upon review of the study at SC71.

(4) The Standing Committee should take note of Mexico's application to register a totoaba captive breeding facility.

This application is premature, incomplete, and should be withdrawn. It is inappropriate to sanction legal trade in an Appendix I species when illegal trade in that species is rampant. Authorizing a legal market for totoaba bladders would open a new supply line that would destigmatize and legitimize bladder use, directly contravening the instruction in Dec.17.147 that Parties "*eliminate supply of and demand for totoaba.*" A legal market also complicates already challenging law enforcement, potentially providing cover for the black market.

(5) The Standing Committee should direct China, the United States, and other totoaba transit and consumer countries to take urgent and comprehensive actions to aid Mexico in achieving compliance with the Convention.

⁷² 7th Space, 2018. Hong Kong Customs seizes suspected Totoaba fish maws. Available at http://7thspace.com/headlines/539597/hong_kong_customs_seizes_suspected_totoaba_fish_maws.html; Excelsior, 2018. Chinese citizen found with 208 totoaba maws at the International Airport of Mexico City. Available at <http://www.excelsior.com.mx/nacional/cae-chino-con-408-buches-de-totoaba-en-el-aicm/1234126>

⁷³ Excelsior, 2018. Cae chino con 417 buches de totoaba en el AICM; el segundo en una semana. Available at <http://www.excelsior.com.mx/nacional/cae-chino-con-417-buches-de-totoaba-en-el-aicm-el-segundo-en-una-semana/1234864>

⁷⁴ JQ News, 2018. Guangxi father and son smuggling endangered fish maw are arrested. Available at: https://www.jqknews.com/news/53975-The_amount_involved_in_the_case_is_180_million_Guangxi_father_and_son_smuggling_endangered_fish_maw_a_re_arrested.html

Regrettably, the United States, China, and other totoaba transit and consumer countries have failed to comply with the CITES Decisions related to totoaba by failing to report to SC70 their activities under Decisions 17.146 and 17.148. As both the United States and China provided information consistent with these decisions to SC69, their lack of reporting to SC70 is particularly troubling and prevents the SC from determining actions that they have taken to address their role in the illegal totoaba trade. Consequently, the United States, China, and other totoaba transit and consumer countries must be directed to:

- Increase law enforcement efforts to identify those parties illegally possessing, selling, or trading totoaba or its parts and products by: increasing inspections of shipments at all border or other ports (ship, air); by engaging in unannounced inspections of markets, vendors, shops, or restaurants that may possess or sell totoaba maws; and sharing relevant intelligence about persons, criminal syndicates, smuggling techniques, and trade routes with enforcement agencies;
- Urgently report to the Secretariat the information required under Decision 17.148 including the number and quantity of seizures of illegal totoaba products, arrests of those engaged in the illegal fishing and trade, and the results of any prosecutions. The Secretariat should distribute this information to all Parties and observers via a notification;
- Fully fund and expand public outreach and demand reduction campaigns to educate market and shop owners, vendors, and consumers and potential consumers of totoaba maws about the totoaba, vaquita, relevant national and international laws prohibiting possession, sale, and trade in totoaba and its parts and products, and the legal consequences of violating the law;
- Assist Mexico in its efforts to stop the illegal fishing and trade of totoaba through financial, law enforcement, and other means of support;
- Report to SC71 on actions taken to satisfy these recommendations.

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