



Via Electronic Mail

February 28, 2020

Ms. Yvonne Higuero, Secretary-General
Mr. Tom De Meulenaer, Chief, Scientific Services
Mr. Ben Janse van Rensburg, Chief, Enforcement Support
Convention on International Trade in Endangered
Species of Wild Fauna and Flora
International Environment House
11 Chemin des Anémones
CH-1219 Châtelaine, Geneva
Switzerland

Re: Information in Response to Notification 2019/061 on Totoaba (*Totoaba macdonaldi*)

Dear Secretary-General Higuero, Mr. De Meulenaar, and Mr. van Rensburg:

On behalf of the Center for Biological Diversity, Animal Welfare Institute, Environmental Investigation Agency, and Natural Resources Defense Council, we write to provide you with updated information regarding conservation and trade in totoaba and Mexico's compliance with CITES Decision 18.293. See CITES Notification 2019/061.

Decision 18.293 urges Mexico to (among other actions):

- a) take immediate and effective actions by 1 November 2019 in response to the threats to totoaba and vaquita posed by illegal trade by:
 - i) deploying governmental authorities with legal powers of seizure and arrest, together with the Navy, to effectively prevent fishers and vessels from entering the Vaquita Refuge area, and invite the Secretariat to assess the effectiveness and impact of these measures before the end of 2019;
 - ii) collecting and analysing information on organized crime groups involved in the illegal trade in totoaba, convening multi-disciplinary investigative teams to work in close collaboration with local authorities in key areas of concern, and undertaking intelligence-driven operations and investigations for addressing illegal trade in totoaba;

iv) establishing and operationalizing, together with relevant Parties, the trilateral enforcement contact group called for in the outcomes of the 2017 “Trilateral Meeting China/United States/Mexico On The Combat Against Illegal Traffic Of Totoaba Fish (*Totoaba macdonaldi*) August 23-25, Ensenada, Mexico”;

b) intensify efforts and to secure resources to expand gillnet removal efforts to maintain the Vaquita Refuge area as a net-free zone, and take all necessary measures to protect net removal teams and destroy confiscated nets;

The CITES Secretariat has not yet made publicly available any information provided by Mexico on or before November 1 to satisfy Decision 18.293(a). However, we are aware of Mexico’s submission of a State of Conservation Report (SOC Report) to the World Heritage Centre, which contains multiple annexes that may reflect what it had submitted to the CITES Secretariat.¹ From Mexico’s SOC Report, it is clear that enforcement action, particularly given the near extinction of the vaquita porpoise, is lacking. Based on Mexico’s own data, its enforcement efforts to combat the illegal fishing of totoaba and possession and/or trade in totoaba swim bladders has been dismal. For example, while we welcome information that the Mexican Navy (and collaborators) recovered 23,252 meters of illegal and abandoned nets in 2018 along with another 362 nets (43,490 meters) between January 1 and December 31, 2019,² the fact that so many nets continue to be found in the Upper Gulf is clear evidence that enforcement actions to prevent illegal fishing are woefully inadequate.

Equally alarming is evidence of significant vessel incursions in the vaquita refuge as documented via the vessel tracking systems required to be installed in all fishing vessels. For Golfo Santa Clara, Mexico tracked 8,685 vessel trips from Golfo Santa Clara between December 1, 2019 to November 1, 2019 with 1,239 (14.3 percent) at night and 210 (2.4 percent) illegally entering the vaquita refuge. For San Felipe, however, within the same time frame there were 7,012 vessel trips documented with 1,342 (19.1percent) occurring at night and 3,918 (a stunning 55.9 percent) entering the vaquita refuge.³ Even vessels registered to the Cucapá, an indigenous group, were documented entering the vaquita refuge.⁴ Mexico also reported that 189 vessel tracking systems appeared to have been removed or tampered with.⁵ We note with concern that this data only applies to legally registered vessels with vessel monitoring systems, and thus is an understatement of total vessel traffic and illegal fishing within the refuge.

Despite such high numbers of incursion into the vaquita refuge and direct evidence (see below for more information) of dozens of fishermen illegally fishing for totoaba during daylight hours and in full view of Mexican enforcement officials, the number of arrests and prosecutions is abysmal. Indeed, as Mexico concedes, during 2019 there have been a total of 19 investigation files open with five being prosecuted and five concluded by “conditional suspension” requiring

¹ State of Conservation Report – Islands and Protected Areas of the Gulf of California. Available at: <https://whc.unesco.org/en/documents/180672>

² SOC Report at 15.

³ See Annex A to SOC Report at 7.

⁴ *Id.*

⁵ *Id.*

the payment of a fee to cover damage caused and/or for “environmental compensation.”⁶ The status of the remaining nine investigations is unknown as is information about the penalties imposed on those who were successfully prosecuted. There is no chance that the vaquita population will recover and there is significant potential for the totoaba population to decline without an urgent and transformative change in Mexico’s enforcement of its suite of laws available to combat illegal fishing and trade.

Consequently, far from demonstrating compliance with Decision 18.293, Mexico has failed to even remotely satisfy the concerns of CITES Parties who unanimously adopted Decisions 18.292-18.295 at the 18th Conference of the Parties. Trade sanctions are clearly required to compel Mexico to fully and aggressively enforce its laws to protect the totoaba and vaquita.

The threats to the vaquita and the need to urgently address them have been repeatedly emphasized in other international fora, including by the International Committee for the Recovery of the Vaquita (CIRVA),⁷ the International Whaling Commission (IWC)⁸ and its Scientific Committee,⁹ the International Union for Conservation Nature (IUCN),¹⁰ the World Heritage Convention (WHC),¹¹ and the Society for Marine Mammalogy.¹² For the totoaba, while its population is numerically far more robust compared to the vaquita, the level of illegal offtake was determined to be unsustainable in 2017¹³ and has likely escalated since then.

In addition to the evidence presented above, recent events demonstrate Mexico’s lack of effectiveness and willingness in halting illegal fishing within vaquita habitat and the urgent need for trade sanctions.

(1) Continued, Blatant, and Unchecked Illegal Gillnet Fishing

On October 17, 2019, Sea Shepherd Conservation Society documented 80 pangas (small boats) illegally setting gillnets within the small “Zero Tolerance Area,” within the Vaquita Refuge¹⁴ – an area identified by CIRVA inside which the few remaining vaquita survive and where fishing must not occur. The fishermen were targeting shrimp, chano, and curvina with illegal gillnets in broad daylight. The action was purportedly taken by fishermen to protest the Mexican

⁶ SOC Report at 14

⁷ Report of the Eleventh meeting of the Comité Internacional para la Recuperación de la Vaquita (CIRVA). Southwest Fisheries Science Center (SWFSC) in La Jolla, CA, USA February 19-21, 2019. <http://www.iucn-csg.org/wp-content/uploads/2019/03/CIRVA-11-Final-Report-6-March.pdf/>

⁸ IWC. 2018. Summary of Main Outcomes, Decisions and Required Actions from the 67th Meeting of the IWC

⁹ Report of the 2019 meeting of the IWC scientific committee. <https://archive.iwc.int/pages/search.php?search=%21collection73>

¹⁰ <https://iucn-csg.org/vaquita/>

¹¹ World Heritage Centre Decision 43 COM 7B.26 Islands and Protected Areas of the Gulf of California. Available at: <https://whc.unesco.org/en/decisions/7490/>

¹² Presidential Letter Concerning the Vaquita and Gulf of California World Heritage Site. <https://www.marinemammalscience.org/letters/vaquita-and-gulf-of-california-world-heritage-site/>

¹³ INAPESCA. 2018. Evaluación de la Población de Totoaba (*Totoaba macdonaldi*) en el Golfo de California. Informe Final. 98pp (INAPESCA Report).

¹⁴ <https://seashepherd.org/2019/10/23/expedition-sights-endangered-vaquita-porpoise-and-rampant-fishing-inside-biosphere-reserve/>

government's decision to end subsidy payments, intended to compensate for the ban on gillnet fishing.

Several weeks later, on December 9, 2019, Sea Shepherd Conservation Society reported sighting another 70 pangas setting and retrieving illegal gillnets near the zero tolerance area (see photos below).¹⁵ Sea Shepherd estimates that around 500 totoaba were illegally taken that day. While Mexican authorities arrived and initially made arrests and seized fishing vessels and gear, the violators and their property were subsequently released due to purported threats from local residents including potential cartel members, and no gillnets were confiscated.¹⁶ In the SOC Report, Mexico provides a chilling summary of this particular incident:

At 2:00 p.m., a land based inspection was carried out, with inspectors from PROFEPA, SEMAR, CONAPESCA and GENDARMERÍA to the North of San Felipe traveling in coordination with SEMAR staff (4), GENDARMERÍA (4), CONAPESCA (3) and PROFEPA to respond to a complaint by Sea Shepherd about the departure of smaller vessels with totoaba and nets waiting to leave at different points.... at 7.32 p.m., a chase began in the town of San Felipe BC A pick-up vehicle that was towing a smaller vessel, with possession of a totoabera net, got out of control by releasing the trailer hitting two vehicles parked at the corner of Mar Bermejo and Calz. Chetumal. The offenders got off the boat trying to escape, the Federal Police GENDARMERÍA managed to stop them, at that time people started to mutinously verbally assault all the authorities and threatened to burn the security units, for this reason and to avoid the confrontation all of the confiscated items were given back to the alleged perpetrator of the crime and all of the authorities returned to the Naval Station of San Felipe.¹⁷

Overall, as far as we are aware, none of the fishermen involved in either incident ultimately faced charges and instead were allowed to violate the law with complete impunity.¹⁸

A week later, on December 17, Mexican authorities attempted to destroy an illegal boat ramp that had been in use for years even after Mexico's adopted regulation identifying specific ports or boat ramps that were to be used for embarkation and disembarkation. Using a generator, jackhammers, and while guarded by armed soldiers, efforts to destroy the ramp were interrupted and stopped by angry residents who accosted the authorities and stole the generator and jackhammers.¹⁹

¹⁵ Expedition Sights Endangered Vaquita Porpoise and Rampant Fishing Inside Biosphere Reserve (Oct. 23, 2019): <https://seashepherd.org/2019/10/23/expedition-sights-endangered-vaquita-porpoise-andrampant-fishing-inside-biosphere-reserve/>

¹⁶ <https://www.eluniversal.com.mx/opinion/carlos-loret-de-mola/otro-caso-como-culiacan-el-ejercito-solto-los-detenidos>; <https://lasillarota.com/especialeslr/el-cartel-del-mar-asi-captura-la-totoaba-en-bc-con-total-impunidad-totoaba-buche-pesca-caza/344557>; <https://www.elimparcial.com/tijuana/columnas/Abundancia-de-totoaba-abundancia-de-delitos-20191215-0006.html>

¹⁷ See Annex C to SOC Report at 25.

¹⁸ More recently, on February 9, 2020, the Sea Shepherd Conservation Society reported being fired upon by fishermen in four pangas found inside the Vaquita Refuge. <https://seashepherd.org/2020/02/09/shots-fired-at-sea-shepherd-ship-inside-vaquita-refuge/>

¹⁹ <https://www.tribunadesanluis.com.mx/república/pescadores-de-san-felipe-apedrean-a-marinos-que-intentaban-tirar-rampa-4601555.html>

These are not isolated incidents but were highlighted for their egregiousness. Illegal gillnet fishing is routinely observed in the zero tolerance area with virtually no evidence of enforcement. Even fishermen are clamoring for increased enforcement as the level of illegal fishing activities hinder their ability to engage in legal fishing. For example, Carlos Tirado, leader of the Golfo Sta. Clara fishing cooperative said, “We are between a rock and a hard place: between organized crime and the problems derived from illegal activities in the area, and pressure towards the commercial fishing sector by the government. Those most affected are our fishing organizations that stick to the rules. Those who most benefit are the illegal fishers.”²⁰



Fig. 1: Totoaba Poachers in the Vaquita refuge area. December 2019. *Photo: Sea Shepherd Conservation Society*

(2) Continued Failure to Increase Enforcement Personnel in the Region

While Mexico has been commended, including by the undersigned organizations, for its efforts to find and remove illegal fishing gear from the Upper Gulf, CITES, CIRVA, the WHC/IUCN, IWC, and others have repeatedly encouraged it to strengthen its enforcement and surveillance activities to ensure that vaquita habitat remains gillnet free. Yet despite the Mexican government’s promise to send 600 federal agents, including soldiers and national guard

²⁰ <https://news.mongabay.com/2019/10/rampant-fishing-continues-as-vaquita-numbers-dwindle/>

members, to the Upper Gulf of California region to help combat illegal activities and violence, recent media reports indicate that to date only a small number have arrived.²¹

(3) Massive Budget Cuts for Wildlife, Fisheries, and Protected Area Agencies within Mexico

Mexico's Lopez Obrador administration has drastically cut the budget for agencies responsible for the conservation, management, and protection of the vaquita and its habitat, undermining needed conservation efforts. The administration's 2020 budget proposal reduces funding for SEMARNAT (the Mexican environmental ministry) by 20 percent compared to 2018 and funding for PROFEPA (the environmental enforcement agency) by 50 percent compared with 2018.²²

(4) No Viable Alternative Fishing Gear Approved

In March 2019, the Mexican government ended its economic compensation program, providing funds to compensate fishermen who can no longer deploy gillnets.²³ Yet no viable alternative fishing gear has been approved and permitted by the Mexican government. While we welcome the data in the SOC Report about the number of suripera nets provided to fishermen,²⁴ the shrimp season has already passed, the suripera nets were not employed in place of traditional gear, and Mexico is not offering an incentive to encourage their use.

Legal fishermen in the Upper Gulf lack support from the government. In a proposal sent to President Lopez Obrador last November, fishermen stated that: "We have bottomed out, the vaquita is dying, the legal fishing and our communities are in crisis, and insecurity and disorder continue to grow. Legal fishing is not the problem, let's agree to change the tide."²⁵ The fishermen requested support to start trials with alternative fishing gears. However, they have not received this requested support to date.

(5) Mexico's Captive Breeding Registration Application for Earth Ocean Farms

At the 71st meeting of the CITES Standing Committee it was agreed that a decision on Mexico's application for a captive breeding registration for Earth Ocean Farms to permit its commercial, international trade in captive-bred totoaba would be delayed until SC73 in October 2020. During the debate, some parties expressed concerns "relating to monitoring, traceability, effects on the demand for totoaba products, and the potential impacts of exporting captive bred individuals on

²¹ El Gobierno promete 600 federales, llegan unos cuantos. *El Universal* (Nov. 19, 2019): <https://www.eluniversal.com.mx/opinion/carlos-loret-de-mola/el-gobierno-promete-600-federales-lleganunos-cuantos>

²² 2020 expenses budget project for the Mexican federation: https://www.ppef.hacienda.gob.mx/work/models/PPEF2020/paquete/egresos/Proyecto_Decreto.pdf; Mexican federation spending budget for 2018:

https://www.dof.gob.mx/nota_detalle.php?codigo=5506080&fecha=29/11/2017

²³ <https://noticieros.televisa.com/ultimas-noticias/vaquita-marina-amlo-estrategia-refrito-molesta-pescadores/>

²⁴ SOC Report at 9.

²⁵ <https://www.excelsior.com.mx/nacional/pescadores-presentan-propuesta-ante-crisis-en-habitat-de-la-vaquita-marina/1350278>

wild populations, and agreed that it would be imprudent to make a decision before the results of the Secretariat's high level mission and the study analysing the potential impact of legal trade in totoaba could be considered in detail."²⁶ Considering the indisputable evidence that Mexico still cannot adequately enforce its own laws to suppress or eradicate illegal totoaba fishing and trade and that the above-referenced study to evaluate the impacts of a legal trade in totoaba has not been completed, there is no new or compelling justification to warrant approval of this application.²⁷ At a minimum, the Secretariat if not able to recommend rejection of this application, should recommend that the Standing Committee delay any action on this matter until Mexico is able to effectively enforce its own laws and the totoaba trade study is completed.

There is no urgency requiring action on this application as Earth Ocean Farms (EOF) produces captive-bred red snapper. The snapper have now reached marketable size, and EOF has begun a robust export of red snapper products to the United States. According to Mexican export data, EOF exported 45 shipments of red snapper weighing 78,000 kg customs valued at \$670,000 to the United States from January 22, 2019 to December 30, 2019 (the most recent date for which information is available).²⁸

(6) Mexico's National Human Rights Commission Complaint Against Relevant Mexican Agencies

On July 31, 2018 Mexican NGOs filed a complaint with Mexico's National Human Rights Commission (CNDH) claiming that various federal authorities had committed human rights violations for failing to fully comply with legal measures and provisions for the protection, conservation and recovery of the endangered vaquita in the Upper Gulf of California. On October 11, 2019, Mexico's National Commission of Human Rights (CNDH) published its 140 page report (Recommendation 93/2019) finding that four federal agencies involved in the vaquita's management (SEMARNAT, SADER, PROFEPA and CONAPESCA) did not act in a timely manner or employ maximal available resources, with "sufficient evidence to conclude" that "personnel assigned to [those agencies] incurred alleged conduct that could be investigated in terms of the Federal Law on Responsibilities of Administrative Public Servants and the General Law of Administrative Responsibilities." Specifically, the CNDH report found that agencies breached legal provisions to protect, conserve and recover the vaquita, totoaba and other endemic species of the Upper Gulf of California and Colorado River Delta Biosphere Reserve. CNDH thus filed a complaint with the four agencies and recommended the agencies conduct internal investigations in collaboration with the CNDH to determine if any individual officials are culpable. A copy of the report was also provided to the Federal Attorney General's office to determine if any individual officials in these agencies violated the law and to investigate

²⁶ CITES SC71 Summary Record at 14. Available at: <https://cites.org/sites/default/files/eng/com/sc/71/exsum/E-SC71-SR.pdf>

²⁷ Additional deficiencies in the application are contained in "Conservation Concerns re: Mexico's Totoaba Captive-Breeding Registration for Earth Ocean Farms (SC71 Doc. 17)" prepared by the Animal Welfare Institute, Center for Biological Diversity, and Natural Resources Defense Council and submitted to the CITES Secretariat prior to CITES SC71.

²⁸ Data retrieved from Panjiva, a subscription – based website with import and export details on commercial shipments worldwide. Information accessed on February 20, 2020. EOF showcased its red snapper at the North American Seafood Expo in March 2019, see <https://www.undercurrentnews.com/2019/03/18/open-blue-adds-earth-ocean-farms-pacific-snapper-to-product-line/>

illegal fishing and totoaba trafficking in the Upper Gulf of California. The Commission also raised safety concerns for environmental groups working to protect and conserve the vaquita and totoaba.

(7) Vaquita – and Hope – Remain

During surveys conducted between August and mid-October 2018, three pairs of vaquita were spotted.²⁹ However, during the most recent vaquita expeditions, conducted by Mexican and international scientists in 2019, six likely distinct vaquita were observed in the surveys conducted in August and September while, in October, six different vaquita were seen in two groups along with three pairs of mothers with calves.³⁰ These sightings demonstrate that vaquita remain, as does Mexico’s moral and legal obligation to save the species. Furthermore, as noted by Taylor et al. (2019), vaquita may reproduce annually which would increase the species potential to recover from its current low numbers.³¹ The last vaquita found dead in the Upper Gulf was reported in February 2019.³²

Conclusion

In sum, despite decades of promises, the Mexican government has not effectively taken action to halt illegal fishing in the vaquita habitat. The current administration has weakened enforcement and surveillance and drastically cut the budget for agencies that are essential to the vaquita’s management and recovery. Further discussion, deliberations, or more studies will not suddenly transition Mexico into an enforcement juggernaut or save the vaquita from extinction; trade sanctions are required.

We welcome the opportunity to discuss this matter with you and your staff or answer any questions you may have. We look forward to seeing you at the upcoming meeting this summer.

Sincerely,



Alejandro Olivera
Mexico Representative



DJ Schubert
Wildlife Biologist

²⁹ <https://iucn-csg.org/vaquitas-with-calves-seen-in-september-2018-field-effort/>

³⁰ <https://news.mongabay.com/2019/11/vaquita-mothers-calves-spotted-expeditions-endangered-mexico/>;
<https://www.sandiegouniontribune.com/news/environment/story/2019-11-22/scientists-spot-critically-endangered-vaquita-porpoises-with-babies>

³¹ Taylor, B.L., Wells, R.S., Olson, P.A., Brownell, R.L., Jr., Gulland, F.M.D., Read, A.J., Valverde-Esparza, F.J., Ortiz-García, O.H., Ruiz-Sabio, D., Jaramillo-Legorreta, A.M., Nieto-Garcia, E., Cardenas-Hinojosa, G. and Rojas-Bracho, L. (2019). Likely annual calving in the vaquita, *Phocoena sinus*: A new hope?. *Marine Mammal Science*, 35: 1603-1612. doi:10.1111/mms.12595

³² <https://iucn-csg.org/dead-vaquita-found-in-totoaba-net/>

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