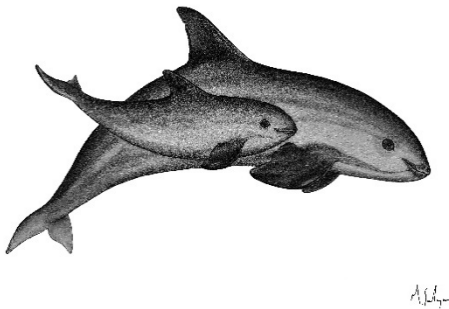


SUBMISSION ON ENFORCEMENT MATTERS

**to the Commission on Environmental Cooperation
pursuant to Article 24.27 of the
United States-Mexico-Canada Agreement**

**MEXICO'S FAILURE TO ENFORCE ITS ENVIRONMENTAL LAWS
FOR THE CRITICALLY ENDANGERED VAQUITA PORPOISE**



**Center for Biological Diversity
Animal Welfare Institute
Natural Resources Defense Council
Environmental Investigation Agency**

August 11, 2021

Executive Summary

Pursuant to Article 24.27 of the United States-Mexico-Canada Agreement (“USMCA”), the Center for Biological Diversity, Animal Welfare Institute, Natural Resources Defense Council, and Environmental Investigation Agency (“Submitters”) provide the following Submission on Enforcement Matters (“Submission” or “SEM”) to the Secretariat of the Commission for Environmental Cooperation (“CEC”).

As detailed herein, the Mexican government is failing to effectively enforce several environmental laws and as a result has caused the near-extinction of the vaquita porpoise. Only approximately 10 vaquita remain. The vaquita population has been declining precipitously for decades due to bycatch in gillnets set to catch shrimp and fish, including totoaba, a large, endangered fish that is threatened by illegal fishing for international markets.

In an effort to address the vaquita’s decline, Mexican law generally prohibits the use of gillnets within the vaquita’s Upper Gulf of California habitat and bans the catch and commercial export of totoaba. Totoaba is also protected under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), which bans the commercial, international trade in the species. The USMCA Parties have already recognized the vaquita is a “species of common conservation concern,” and in 2008, the CEC developed a Conservation Action Plan for the species, which recommended the complete removal of gillnets from vaquita habitat.¹

Yet despite these bans, plans, and decades of promises by the Mexican government to reduce vaquita bycatch, Mexico has failed to fully implement and enforce its laws banning deadly gillnets and otherwise regulating fishing to protect the vaquita. Indeed, the most recent data reveal massive violations of these laws: the International Union for Conservation of Nature (“IUCN”) Cetacean Specialist Group (“IUCN CSG”) reported that in November 2020, 1,185 boats were documented in the vaquita’s habitat, nearly all gillnetting illegally.² IUCN CSG noted that “illegal fishing remains at high levels and takes place day and night.”³ If the Mexican government does not immediately rectify its enforcement failures, the vaquita’s extinction may be imminent, as its population is dangerously low.

For these reasons, we request the CEC Secretariat develop a factual record on this issue, as contemplated by Article 24.28 of the USMCA, on an expedited basis. A factual record is needed to clarify the issues, as the Mexican government continues to argue that its enforcement is adequate, despite the evidence to the contrary, and to help the Parties and larger international community develop a more effective strategy for saving the vaquita.

I. Procedural Requirements

This Submission meets the procedural requirements of Article 24.27. Specifically:

- Each Submitter is a “person of a Party,” as defined by the USMCA. Each is a non-profit, 501(c)(3) corporation “organized under applicable law” of the United States.⁴ Ex. A.

- Submitters assert that Mexico is failing to effectively enforce its “environmental laws,” as defined by the USMCA (“a statute or regulation of a Party...including any that implements the Party’s obligations under a multilateral environmental agreement”).⁵ Specifically:
 - o Mexico is failing to enforce its federal regulations governing fishing within vaquita habitat, including several *Acuerdos* published in Mexico’s Official Gazette of the Federation (“DOF”) that prohibit gillnet use and capture of totoaba.⁶ The purpose of these regulations is to protect and conserve wildlife, including the endangered vaquita and totoaba.
 - o Mexico is failing to enforce its domestic legislation that implements CITES, a treaty aimed at protecting endangered species. Specifically, Mexico’s General Wildlife Law requires that the import and export of species included under CITES “will be carried out in accordance with the Convention.”⁷
- The Mexican government’s long-standing enforcement failures have been communicated by Submitters in writing on numerous occasions, as documented in Exhibit B.
- Submitters are harmed by Mexico’s failures to enforce its laws and the consequent decline of the vaquita. Submitters are non-profit organizations whose missions include protecting wildlife. *See Ex. A.*
- Submitters have pursued private remedies under Mexican law. For example, in 2017, the Center for Biological Diversity filed a formal administrative complaint (“denuncia popular”), documenting the failure of the Procuraduría Federal de Protección al Ambiente (“PROFEPA”), Mexico’s environmental enforcement agency, to enforce laws prohibiting fishing within the vaquita’s habitat without an Environmental Impact Authorization. The Center received no substantive response. *See Ex. C.*
- Further study of this issue will advance the USMCA. As noted above, the Parties have recognized the vaquita is a “species of common conservation concern,” and the CEC prepared a North American Conservation Action Plan (“NACAP”) for the vaquita in 2008. Yet Mexico has failed to meet the recommendations of this Plan, including ensuring the “[i]mmediate removal of all gill nets . . . from areas where vaquitas are known to occur.”⁸ The Parties and the CEC have demonstrated long-standing concern, involvement, and expertise in this matter, and the development of a factual record will both clarify issues and help formulate recommendations to save this species.

II. Background and History

A. Endangered Vaquita and Totoaba

The vaquita (*Phocoena sinus*) is the world’s smallest and most endangered cetacean.⁹ With a rounded head and black patches around its eyes and mouth, the vaquita measures just five

feet in length. The porpoise occurs in only one place on Earth, a small, 1,500-square-mile area in Mexico's Upper Gulf of California near the town of San Felipe.¹⁰

The vaquita has likely been in decline since its identification by scientists in the 1950s, and that decline has only one cause: entanglement in gillnets set for shrimp, curvina, sierra, and totoaba.¹¹ The vaquita's more recent decline has been precipitous from around 570 animals in 1999 to likely 10 animals today,¹² a 98% decline in over 20 years. IUCN considers the vaquita "critically endangered."¹³

The totoaba (*Totoaba macdonaldi*) is a large, schooling marine fish in the croaker family (*Sciaenidae*) that exclusively inhabits Mexico's northern and central Gulf of California,¹⁴ overlapping with the vaquita's habitat. The fish can grow up to two meters in length and live up to 25 years with late sexual maturity, a life history that makes it vulnerable to exploitation.¹⁵ Totoaba migrate to the vaquita's Upper Gulf of California habitat to spawn between January and April each year.¹⁶ IUCN considers the totoaba "critically endangered."¹⁷

Despite the species' conservation status, totoaba are fished illegally for their swim bladders, which are dried and smuggled abroad, primarily to China, where the product is sought for its supposed health benefits and investment value.¹⁸ The dried bladder, referred to as "maw" or "buche," can be sold on the black market for extraordinary prices, reaching \$46,000 per kg¹⁹ to even \$100,000 per kg by some reports.²⁰ Totoaba are caught using illegal gillnets, which entangle and kill vaquita.

To save the vaquita from extinction, numerous scientists and international bodies have urged Mexico to remove *all* gillnets from vaquita habitat. The international scientific advisory group on vaquita, the Comité Internacional para la Recuperación de la Vaquita ("CIRVA"), has on numerous occasions called on Mexico to "*eliminate all gillnet fishing*" in the vaquita's habitat.²¹ The UNESCO World Heritage Committee has urged Mexico to ensure vaquita habitat "remains completely gillnet-free."²² The Parties to CITES have urged Mexico to "maintain the Vaquita Refuge area as a net-free zone."²³ This June, the International Whaling Commission's ("IWC") Scientific Committee "urgent[ly]" recommended that Mexico "remove gillnets from the species' range immediately."²⁴ And the CEC itself recommended the "immediate removal of all gill nets" in its 2008 vaquita NACAP.²⁵

B. The Vaquita and Totoaba's Decline and Mexico's History of Enforcement Failures

The Mexican government has a long and troubling history of failing to enforce vaquita and totoaba protections. Totoaba, once abundant, were overfished throughout the 1900s, and following drastic population decline, Mexico banned the capture of totoaba in 1975.²⁶ In 1976, the totoaba was included in Appendix I of CITES, banning international, commercial trade in the species.²⁷

Despite Mexico's ban on totoaba fishing and CITES' ban on totoaba trade, both activities have continued. Due to "the geographic isolation" of the area, "[p]oaching of adult totoaba in the upper Gulf [remained] a common practice," and in 1979, an estimated 70 metric tons of totoaba

were poached from just one fishing port.²⁸ There were reportedly 30 fishermen poaching totoaba in 1985, taking an estimated 161.7 metric tons each year.²⁹

By the 1990s, scientists began raising concerns regarding the vaquita's decline due to entanglement. In 1990, the IWC Scientific Committee specifically recommended that "further action be taken to stop of the major cause of [vaquita] entanglement by fully enforcing the closure of the totoaba fishery."³⁰

In response, in 1993, Mexico declared the Upper Gulf a Biosphere Reserve and claimed the government was "enforcing the closure of all commercial fisheries in the reserve."³¹ Yet vaquita scientists concluded these efforts were "ineffectual" and "half-hearted, at best,"³² and "[c]ommercial fishing with a variety of gill nets . . . continued without interruption both inside and outside the Biosphere Reserve."³³

In 2005, Mexico established a refuge area for the vaquita and attempted to ban certain gillnets.³⁴ But again, enforcement was lax, as the new "Refuge Area remained essentially unmanaged until 2008," when a new program was instituted officially banning all gillnets in the area.³⁵ Initially, Mexican authorities made a "strong effort" to enforce the new ban, but "that effort . . . waned," and illegal fishing continued.³⁶

In 2013, in yet another effort to restrict gillnet fishing, Mexico formally banned the use of the *chinchorro* gillnet used to catch shrimp in the Upper Gulf.³⁷ By 2014, CIRVA reported that only 97 vaquita remained, despite Mexico's two decades of regulation, numerous bans, and multiple protective areas.³⁸ CIRVA stated that Mexico's "at-sea enforcement efforts ha[d] failed, and illegal fishing ha[d] increased . . . throughout the range of the vaquita."³⁹

In 2015, Mexico instituted a temporary, two-year ban on most gillnets within vaquita habitat.⁴⁰ Almost immediately, it became clear the ban and its enforcement were ineffective, as the vaquita population plummeted to only around 30 animals by November 2016.⁴¹ CIRVA concluded that "illegal fishing [wa]s still common" and that "enforcement efforts to date have been insufficient."⁴²

In July 2017, under immense international pressure, Mexico finally made its gillnet ban in the Upper Gulf permanent.⁴³ However, "[h]igh levels of illegal fishing continue[d]" in 2018,⁴⁴ and by early 2019, CIRVA concluded that "only about 10 vaquitas remained alive."⁴⁵

In March 2020, after years of working with and urging Mexico to reduce vaquita bycatch, the U.S. government banned import of seafood products from Mexican fisheries operating in the vaquita's Upper Gulf habitat.⁴⁶ Specifically, the U.S. Marine Mammal Protection Act requires the U.S. government to ban import of any fish caught with gear that "incidental[ly] kill[s]" marine mammals "in excess of U.S. standards."⁴⁷ The United States concluded that, among other failures, the Government of Mexico "failed to fully implement and enforce its existing laws and regulatory regime including the . . . gillnet ban, the provisions which prohibit fishing in the vaquita refuge, and inspection of fishing vessels leaving and arriving to port."⁴⁸

C. Mexico’s 2020 Vaquita Regulations and Totoaba Bans

In response to the U.S. ban, in September 2020, Mexico issued new regulations governing fishing in vaquita habitat.⁴⁹ The 2020 regulations have the potential to offer totoaba and vaquita important protections from fishing activities; however as detailed below, the Mexican government has failed to fully implement and enforce the new rules or its long-standing ban on totoaba fishing and trade.

Among the provisions, the regulations prohibit the use and possession of gillnets in the designated marine area, demarcated by the dashed line in Figure 1 below.⁵⁰ The regulations also prohibit the transport of gillnets within 10 kilometers of the marine area; prohibit manufacturing, owning, and sales of gillnets in towns around the marine area; and require fishermen to surrender gillnets to authorities within 60 days.⁵¹ The regulations further require vessel monitoring systems and inspections upon departure and arrival.⁵²

The regulations also designate a small “Zero Tolerance Area” – an area in which “[f]ishing activities of any kind, with any type of vessel . . . are permanently and totally prohibited” and transit of any unauthorized vessels is also prohibited.⁵³ The regulations commit authorities to surveillance in the area “24-hours a day surveillance throughout the year . . . to provide real-time response capabilities to avoid any case of violation.” Lastly, the regulations promise an “Application Plan” to address inspection and surveillance and “triggers” to address non-compliance.⁵⁴

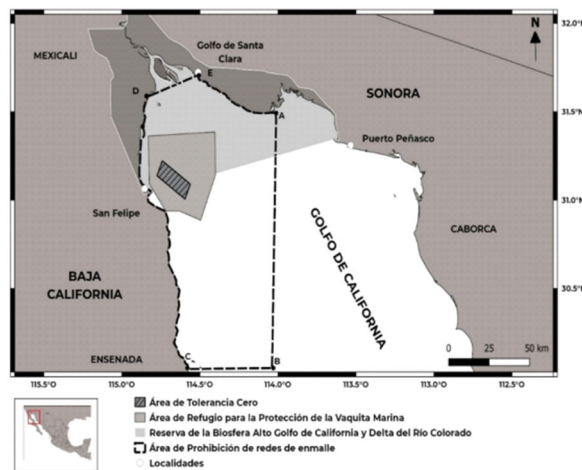


Figure 1. Management areas in the Upper Gulf of California.

In addition to the fishing regulations described above, Mexican law continues to ban both the capture and international trade of totoaba. The Mexican government’s 1975 general ban on totoaba fishing remains in place.⁵⁵ Totoaba also remains listed on CITES Appendix I,⁵⁶ and the treaty strictly bans all international, commercial trade (including export) in Appendix-I species.⁵⁷ Moreover, Mexican domestic law requires compliance with CITES. Article 55 of the General Wildlife Law states that “[t]he . . . export . . . of specimens, parts and derivatives of wild species included in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, will be carried out in accordance with that Convention, as provided in the present Law and the provisions derived from them.” Article 56 further affirms that “the import, export and re-

export of biological material of species included in the appendices of CITES will be subject to the provisions of said Convention.”⁵⁸ Accordingly, the trade and export of totoaba is banned both under CITES and Mexican domestic law.

III. Argument: The Mexican Government Has Failed to Implement and Enforce its Fishery Regulations in the Upper Gulf.

The Mexican government failed to both fully implement its new 2020 vaquita regulations and has utterly failed to enforce the gillnet ban, fishing regulations, and totoaba trade prohibitions in recent years. As such, the Mexican government is “failing to effectively enforce its environmental laws” under the USMCA and is driving the vaquita extinct. This grave situation warrants the development of a factual record by the CEC to clarify the issues so that Mexico and the international community can develop a new, ambitious strategy to finally save the vaquita.

A. Failure to Fully Implement Its 2020 Regulations

The Mexican government has failed to implement key provisions of its 2020 vaquita protection regulation and is therefore failing to enforce its environmental laws governing fishing in the vaquita habitat.

1. Insufficient Application Plan

As noted above, the Mexican government’s September 2020 regulations required agencies to issue an “Application Plan” within 30 days of the regulation’s publication, i.e., by October 24, 2020.⁵⁹ The Application Plan must specify “inspection and surveillance actions” and “actions for the recovery, disposal and recycling . . . of illegal” or lost gear.

To date, the Mexican government has not issued a plan that meets these requirements. The plan issued by the government in January 2021, nearly three months late, is vague and primarily delineates which agencies are charged with which functions related to the vaquita.⁶⁰ While such clarification was needed, many of the duties are vague and lack timeframes (e.g., directing agencies to “hold . . . meetings” and “participate . . . in inspection and monitoring”).

Moreover, the plan entirely fails to address “actions for the recovery, disposal and recycling . . . of illegal” or lost gear, as required by the 2020 regulations.⁶¹ This is a critical failure: from January to August 2021, net removal was not occurring in the vaquita habitat because required contracts had not been signed by the government.⁶² Numerous entities have recognized the importance of continued net removal: CIRVA has requested that the government “[f]ully fund and expand net removal efforts to maintain the area as a net-free zone;”⁶³ the World Heritage Committee has urged Mexico “to ensure that illegal net retrieval programmes are continued;”⁶⁴ and CITES urged Mexico to “intensify efforts and to secure resources to expand gillnet removal efforts.”⁶⁵ Mexico has failed to effectively implement and thus enforce this key regulatory requirement.

2. New “Trigger” Plan Demonstrates Lack of Enforcement and Violates the 2020 Regulations

To incentivize compliance with fishing closures and the gillnet ban, the September 2020 regulations also require that relevant agencies “develop . . . triggering factors” or “quantitative measures . . . which if exceeded will result in predetermined actions by authorities, such as prohibitions on fishing, closures of areas or similar responses” by October 24, 2020.⁶⁶ However, Mexico’s “trigger” plan – issued in July 2021, eight months late – blatantly fails to comport with the 2020 regulations’ requirement that authorities ensure full and adequate enforcement in the Zero Tolerance Area.⁶⁷

Under the plan, unless authorities observe 20 unauthorized vessels operating within the Zero Tolerance Area (“ZTA”) in a day, the government *will apply only 60%* of the human and material enforcement resources available in the area.⁶⁸ If 20 to 49 unauthorized vessels are observed, authorities will apply 80% of resources; 100% of available enforcement resources will not be applied until over 50 illegal vessels are observed. If more than 65 boats are observed (or if 60-65 boats are observed more than 3 days within a month), a week-long closure applies to an area 3nm around the ZTA. If more than 65 boats are observed on multiple days in a month, the resulting closure expands in both width and duration.⁶⁹ Similarly, the regulations specify lengths of gillnets, which, if found, would trigger enforcement resources and closures.⁷⁰

The trigger plan violates the 2020 regulations. Article 13 of the regulation states that the Zero Tolerance Area will be patrolled and surveilled “in a way as to provide real-time response capabilities to avoid *any case of violation*” of the regulation.⁷¹ Thus the regulations clearly require the government to commit sufficient enforcement resources to ensure *zero* violations, i.e., show “zero” tolerance for illegal activity in the area. In contrast, the trigger plan blatantly acknowledges that Mexican authorities will not commit all available enforcement resources *until 50 illegal vessels* are observed in the Zero Tolerance Area.

Scientists have repeatedly stated that, for the vaquita to survive, Mexico must “*eliminate all gillnet fishing*” in the vaquita’s remaining habitat, particularly in the ZTA.⁷² According to CIRVA, the scientific expert group who originally recommended the ZTA, the Area is intended to be one in which:

the Government of Mexico . . . [will] fully mobilize its enforcement assets to *eliminate* illegal fishing in the area where the last few vaquita remain . . . In this Zero Tolerance Area, . . . the goal is to remove any illegal net within hours of its deployment.⁷³

The Mexican government itself has recognized the Zero Tolerance Area is one in which fishing and vessel transit “are permanently *and totally* prohibited.”⁷⁴ Yet the Mexican government’s new “trigger” plan clearly contemplates allowing numerous, serious, and substantial violations to occur before applying full enforcement capacity in the small ZTA, instead of eliminating gillnet use (i.e., having “zero tolerance”) in the area – dashing the vaquita’s last and best hope.

The government also fails to state the total amount of enforcement resources available, so it is unclear how many inspectors, enforcement personnel, boats, and drones would be committed at 100%, much less 60% enforcement. Moreover, as detailed below, because the Mexican government has failed to enforce the ZTA, it is impossible to conclude that authorities will effectively enforce an *expanded* closure area, beyond the ZTA, if triggered.

3. Gillnet surrender

The 2020 regulations also require all permit holders, captains, and fishermen to deliver any gillnets to the Comisión Nacional de Acuacultura y Pesca (“CONAPESCA”) office closest to where their vessel is registered by November 2020,⁷⁵ as the regulations ban possession of such gillnets near vaquita habitat. In response to a public information request for how many nets it had received, CONAPESCA stated that it had no responsive information as of February 3, 2021,⁷⁶ suggesting no nets had been turned in.

B. Failure to Enforce Fishing and Trade Bans

In addition to failing to implement its 2020 regulation and consistent with its pattern over the last 30 years, the Mexican government has failed to enforce its ban on gillnet fishing, as well as the long-standing ban on totoaba fishing and trade. These gross enforcement failures neuter critical conservation protections and are driving the vaquita extinct. Below, we discuss enforcement failures in the last four years, since Mexico issued its permanent ban on gillnets in the vaquita habitat in 2017.

Despite much fanfare over Mexico’s announcement that it would permanently ban gillnets in vaquita habitat in 2017, Mexico has failed to enforce that ban. In its December 2017 report, CIRVA concluded once again that “[h]igh levels of illegal fishing continue[d].”⁷⁷ Net removal teams retrieved 396 illegal nets in the vaquita’s habitat in 2017, the majority set to catch totoaba. CIRVA concluded “new gillnets [were] still routinely set in the vaquita habitat;” that “[e]nforcement thus far ha[d] failed to prevent illegal fishing;” and that “illegal fishing activities, particularly the setting of large-mesh gillnets for totoaba, continue[d] at alarming levels.”⁷⁸

By early 2019, CIRVA concluded that “only about 10 vaquitas remained alive.”⁷⁹ CIRVA reported that, in 2018, 659 pieces of fishing gear were removed from the vaquita’s habitat; 67% of the gear was actively fishing for totoaba. CIRVA concluded that “high levels of illegal fishing for totoaba” had continued and that “illegal fishing is growing” in the area due to “continued failure of enforcement efforts.” The group concluded that “[e]nforcement efforts have been *completely ineffective* in reducing the illegal totoaba fishery in the Upper Gulf.”⁸⁰

In April 2019, a Mexican newspaper and television channel, *Excelsior*, a respected Mexican media organization, produced a three-part exposé on the vaquita and illegal fishing in the Upper Gulf, shown nationally across Mexico and published in a major newspaper.⁸¹ The *Excelsior* team interviewed and documented fishermen setting illegal gillnets for both shrimp and totoaba in broad daylight. The reporting was corroborated by a factual witness, who submitted a declaration describing the illegal activities to a U.S. federal court.⁸²

In October 2019, vaquita researchers reported observing 87 boats in a single day within the Zero Tolerance Area, as well as the use of gillnets 1km long.⁸³ In December 2019, the Sea Shepherd Conservation Society (“SSCS”) reported sighting around 80 small boats setting and retrieving illegal gillnets in vaquita habitat in a single day.⁸⁴ Yet more illegal gillnets were retrieved in early 2020. IUCN reported 50 active totoaba nets retrieved in January and February alone, many in the Zero Tolerance Area.⁸⁵ SSCS provided nearly real-time notification of these illegal activities to Mexican fishery authorities and other government officials in the course of their net retrieval and monitoring efforts.⁸⁶

In September 2020, Mexico issued its new vaquita regulations. Yet immediately, Mexico failed to enforce the restrictions. The head of the fishermen’s federation in San Felipe, Lorenzo Garcia, stated that shrimpers used prohibited gillnets the very day after the regulations were announced.⁸⁷

In December 2020, the IUCN CSG published data demonstrating that “illegal fishing remains at high levels and *takes place day and night*.”⁸⁸ The IUCN CSG provided three maps documenting illegal fishing activities from October to December 2020 (*see* Figure 2, also attached as Exhibit D). The maps depict hundreds of pangas—most fishing with gillnets—within the Zero Tolerance Area, where both gillnetting and transit of any vessels are strictly prohibited. A total of 1,185 pangas were counted in November 2020 alone, with nearly all these pangas actively gillnetting.⁸⁹ Based on these data, the IUCN CSG concluded that “[i]llegal fishing remains uncontrolled.”⁹⁰ In July 2021, the World Heritage Committee agreed with this assessment, expressing its “utmost concern . . . that illegal fishing of totoaba has continued in the Upper Gulf.”⁹¹

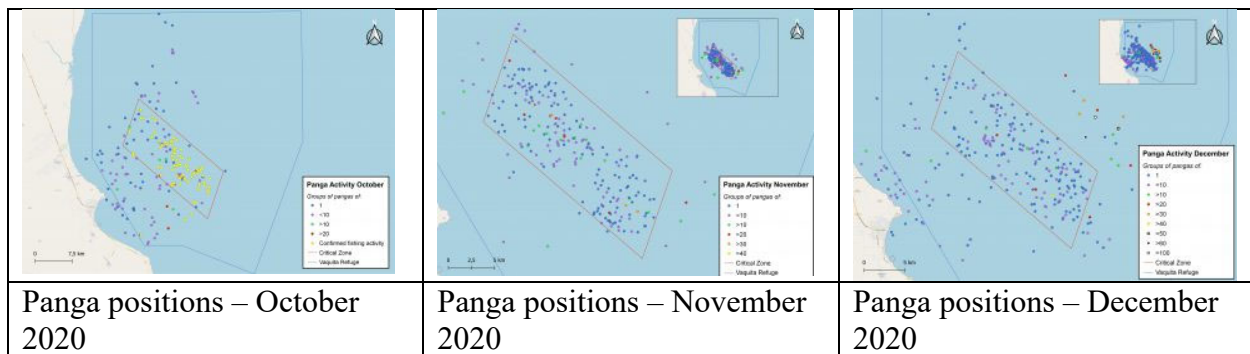


Figure 2. Each colored dot represents the approximate number of pangas observed. Red line is the Zero Tolerance Area.

Since the beginning of 2021, there has been little information reported about illegal activity because the primary non-profit organizations collecting nets and documenting illegal activity in the vaquita’s habitat have been unable to operate. Museo Ballena, a Mexican NGO conducting net removals, only received permission from the Mexican government in August 2021,⁹² and as of the date of this petition, we are not aware of permission for SSCS to operate. These entities contributed substantially both to removing deadly nets from the vaquita’s habitat but also reporting illegal fishing and net placement. The lack of recent, publicly available information documenting illegal activity does not suggest illegal activity has declined.

Local fishermen acknowledge and are gravely harmed by the lack of enforcement. In a February 2021 meeting with government officials, Mr. Ramón Franco, a San Felipe fishermen representative, noted that “everyone sees how in broad daylight illegals operate in total impunity.”⁹³ Carlos Tirado, a Golfo de Santa Clara fishing cooperative leader, asked, “[w]hen will there be a real strategy from the federal government and industry to find a solution, because as of today, February 26th, it does not exist?”⁹⁴ Tirado also noted that, the government had failed to provide alternatives to the communities.⁹⁵ On August 9, 2021, a major fishermen cooperative sent a letter to officials, stating that “the surveillance and supervision capacity to bring order to our fisheries is practically nil,” resulting in unfair competition to legal fishermen and “multiple social, environmental and economic conflicts.”⁹⁶

Lack of enforcement has also led to violence in the area. In December 2020, several fishermen attacked two SSCS vessels patrolling inside the ZTA, launching lead weights and Molotov cocktails at the crew and military officials onboard and colliding with the SSCS vessel.⁹⁷ The vessel’s bow caught fire. Tragically, one fisherman died from his injuries several days after the incident. Onshore, other assailants set fire to a SSCS truck.⁹⁸

According to *Excelsior*, government reports on the 2020 Upper Gulf shrimp season reveal a lack of resources, planning, logistics, and knowledge among senior enforcement officials, leading to “[lo]s nullos resultados” or zero results in vaquita protection or in combatting illegal totoaba trafficking.⁹⁹ Specifically, PROFEPA’s low budget is used inappropriately and for improvised actions that yield no results. As an example, *Excelsior* reports that in late 2020, despite adding 19 federal inspectors to support local authorities, no small vessels were available for their use “because there was not enough money for fuel.” *Excelsior* further reported that there were no towboats or four-wheeled drive vehicles available to conduct beach patrols, no accommodations for enforcement officials to stay overnight, and no office space.¹⁰⁰

In June 2021, *Excelsior* reported that videos showed unmarked, illegal fishing pangas departing from a dock in San Felipe, while authorities from a number of Mexican agencies, including CONAPESCA, PROFEPA and the Secretaría de Marina, were aware of their departure but failed to stop them or inspect their catches upon return.¹⁰¹ The budgets for wildlife and natural area protection agencies have been slashed by President Obrador’s government, with the overall budget for Secretaría del Medio Ambiente y Recursos Naturales dropping by 28% from 2018 to 2021.¹⁰²

Moreover, in addition to the documented use of totoaba gillnets, authorities in Mexico and China continue to discover illegal, international trade in totoaba bladders. For example, in 2018, Chinese authorities “confiscated 444 kg of swim bladders harvested from totoaba.”¹⁰³ The Environmental Investigation Agency (“EIA”) tracked reported seizures in Mexico from January 2018 to July 2019, and documented 2,000 bladders seized, plus 100kg of bladders for which the number of bladders were not specified.¹⁰⁴ During a five-month period between 2019 and 2020, 18 authorities opened investigations involving the seizure of 797 totoaba bladders.¹⁰⁵ In July 2021 – just last month – authorities in Hong Kong seized 39 totoaba bladders, with an estimated value over US\$423,000. While seizures by Mexican authorities demonstrate some enforcement effort, they also demonstrate continued illegal trade in violation of both CITES and Mexican domestic law, particularly as the busts likely represent a small part of the total trade.

IV. Conclusion

As described above, the Mexican government is failing to fully implement and enforce its fisheries regulations and its ban on totoaba export. As result, only approximately 10 vaquita remain, and the species could become extinct soon if Mexican authorities do not finally stop illegal activity and setting of gillnets in the vaquita habitat, as the CEC itself recommended in 2008.¹⁰⁶

Accordingly, Mexico is “failing to effectively enforce its environmental laws,” as defined by Article 24.27 of the USMCA. We request the CEC Secretariat develop a factual record on this issue, as contemplated by Article 24.28, on an expedited basis. A factual record is needed to clarify the issues, as the Mexican government continues to argue in several international fora and to the U.S. government that it is engaging in adequate enforcement, despite overwhelming evidence to the contrary. A factual record will also assist the Parties and potentially the CEC to develop a strong vaquita conservation strategy, to support Mexico in improving enforcement and complying with its own laws.

We urge the CEC to act with urgency: the spring totoaba season has ended but the fall shrimp season will begin in late August or early September. If the CEC takes the full time allowed under the SEM process to determine whether a response from Mexico and a factual record are warranted, the vaquita could be driven to extinction before those decisions are made.

Finally, we thank you for your time, effort, and interest in this important conservation issue. Following this submission, we will send a thumb drive containing electronic copies of all documents cited herein for your convenience. Please contact us anytime if you have any questions.

Sincerely,

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¹ CEC (2008). *Phocoena sinus* – North American Conservation Action Plan.

<http://www3.cec.org/islandora/en/item/1136-vaquita-north-american-conservation-action-plan>.

² IUCN Cetacean Specialist Group (Jan. 26, 2021). Vaquita update October through December 2020. <https://iucn-csg.org/vaquita-update-october-through-december-2020/>.

³ *Id.*

⁴ USMCA Art. 24.271; 1.513.

⁵ *Id.*, Art. 24.1.

⁶ DOF (Apr. 10, 2015). Agreement that suspends commercial fishing through the use of gillnets, Northern Gulf of California. http://www.dof.gob.mx/nota_detalle.php?codigo=5388486&fecha=10/04/2015 (“2015 Gillnet Acuerdo”); DOF (June 30, 2017). Agreement prohibits the use of ground networks for commercial fishing in waters for federal jurisdiction of the north of the Gulf of California.

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http://www.dof.gob.mx/nota_detalle.php?codigo=4786520&fecha=01/08/1975 (“1975 Totoaba Ban”).

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⁵¹ *Id.*, Art. 2(II), (III); 10.

⁵² *Id.*, Art. 6–9.

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- ⁷⁵ *Id.*, Art. 10.
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