

**PETITION TO INCLUDE
THE ISLANDS AND PROTECTED AREAS
OF THE GULF OF CALIFORNIA
ON THE LIST OF WORLD HERITAGE IN DANGER**

May 13, 2015



On behalf of:
Center for Biological Diversity
Animal Welfare Institute

NOTICE OF PETITION

To:

The World Heritage Committee
c/o The Secretariat, World Heritage Centre
United Nations Educational, Scientific, and Cultural Organization
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The Petitioners listed below formally request that the World Heritage Committee request assistance for and list the Islands and Protected Areas of the Gulf of California on the List of World Heritage in Danger pursuant to its authority under Article 11, paragraph 4 of the Convention Concerning the Protection of the World Cultural and Natural Heritage (“World Heritage Convention”).

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EXECUTIVE SUMMARY

Pursuant to the World Heritage Convention, the Islands and Protected Areas of the Gulf of California located in northwestern Mexico was inscribed on the World Heritage List in 2005 to protect the area's "extraordinary" "diversity of terrestrial and marine life."¹ The World Heritage Committee identified two endangered species in particular that were part of the property's "Outstanding Universal Value" ("OUV") – the critically endangered vaquita, which is a small porpoise endemic only to the upper Gulf of California, and the critically endangered totoaba, a large marine fish also restricted to the region.²

Both the vaquita and the totoaba face the same urgent and growing threat: rampant gillnet fishing within and just outside the Islands and Protected Areas of the Gulf of California World Heritage property. In fact, in July of 2014, scientists announced that *only 97 individual vaquita remain*, down from 200 individuals in 2012.³ The primary threat to the vaquita's existence is bycatch, or entanglement, in gillnet fishing gear. This includes gillnets set for shrimp and finfish in the Gulf and also illegal gillnets set to catch endangered totoaba.⁴ Scientists predict that the vaquita will be extinct, "possibly by 2018" if fishery bycatch "is not eliminated immediately."⁵

The totoaba is also critically endangered and is facing a resurgent and growing demand for its swim bladder. Totoaba swim bladders are used in China to make a soup that is considered a delicacy and is believed to boost fertility and improve skin.⁶ In 2014, totoaba swim bladders reportedly sold for up to \$14,000 USD each, and Mexican drug cartels have been implicated in the increasingly lucrative trade. This demand for swim bladders has triggered a "large increase in illegal fishing pressure" on the totoaba.⁷

Under the World Heritage Convention, the World Heritage Committee may list a World Heritage property as "in Danger" if it is "threatened by serious and specific dangers."⁸ These threats may include "[a] serious decline in the population of the endangered species . . . of Outstanding Universal Value [OUV] for which the property was legally established to protect."⁹ As detailed in this Petition, the Islands and Protected Areas of the Gulf of California property and its OUV, including the property's vaquita and totoaba populations, now face serious and specific dangers, as both species are threatened with extinction if gillnet fishing inside and adjacent to the World

¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226 ("World Heritage Convention"); WHC-05/29.COM/22, Paris, 9 Sept. 2005, at 117.

² WHC-13/37.COM/8E, Paris, 17 May 2013, at 49 (Draft Statement of Outstanding Universal Value); Decision 37 COM 8E, WHC-13/37.COM/20 Paris, 5 July 2013 (adopting Draft OUV).

³ CIRVA (International Committee for the Recovery of the Vaquita). 2014. *Report of the Fifth Meeting of the International Committee for the Recovery of the Vaquita*. Ensenada, Baja California, México, 8-10 July 2014, Unpublished Report, 38pp., at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *See id.* at 5.

⁷ *Id.* at 15.

⁸ World Heritage Convention, at Art. 11(4).

⁹ UNESCO World Heritage Committee, *Operational Guidelines for the Implementation of the World Heritage Convention*, WHC 13/01 (July 2013) ("WHC Operational Guidelines"), at IV(B)(180)(a).

Heritage property's boundaries continues. While Mexico has begun implementing new measures to protect the vaquita and reduce totoaba poaching, serious threats remain.

Accordingly, and as detailed below, Petitioners formally request that the World Heritage Committee list the Islands and Protected Areas of the Gulf of California property as "World Heritage in Danger" pursuant to Article 11 of the World Heritage Convention and request assistance to remedy the threats to this World Heritage property. Listing the property as "in Danger" would bring worldwide attention to the plight of the vaquita and the totoaba, as well as the degraded integrity of the Islands and Protected Areas of the Gulf of California property. Additionally, an "in Danger" listing could stimulate critical funding and other assistance for Mexico, both through the World Heritage Convention and from third parties, as Mexico works to protect the area and its incredibly valuable but increasingly threatened wildlife.

PETITION

I. LEGAL BACKGROUND

A. The World Heritage Convention

The Convention for the Protection of the World Cultural and Natural Heritage (“the World Heritage Convention”), signed in 1972, is the primary legal instrument for preserving the world’s most important and irreplaceable natural and historic sites. The Convention recognizes that natural and cultural heritage “are increasingly threatened with destruction” and this “deterioration . . . constitutes a harmful impoverishment of the heritage of all the nations of the world.”¹⁰ Accordingly, the Convention establishes a system whereby “the international community as a whole . . . participate[s]” in the “collective protection of the cultural and natural heritage of outstanding universal value.”¹¹ There are currently 191 Parties to the World Heritage Convention, including Mexico.

The Convention protects both cultural and natural heritage. “[N]atural heritage” includes: (1) “precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation,” (2) “physical and biological formations . . . which are of outstanding universal value,” and (3) “natural sites . . . of outstanding universal value from the point of view of sciences, conservation or natural beauty.”¹²

To implement the treaty, the Convention establishes the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, referred to as “the World Heritage Committee.”¹³ The Committee is composed of 21 State Parties, or members, who typically serve six year terms.¹⁴

Based on Parties’ submissions of properties within their jurisdiction that constitute natural or cultural heritage, the Committee establishes a “World Heritage List.”¹⁵ Listed properties must have “outstanding universal value” (“OUV”), which means “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.”¹⁶ At the time of listing, the Committee must adopt a Statement of Outstanding Universal Value, “which will be the key reference for the future effective protection and management of the property.”¹⁷

¹⁰ World Heritage Convention, at Preamble.

¹¹ *Id.*; WHC Operational Guidelines, at I(B)(4).

¹² World Heritage Convention, at Art. 2.

¹³ *Id.* at Art. 8.

¹⁴ WHC *Operational Guidelines*, at I(E)(19), (21).

¹⁵ World Heritage Convention, at Art. 3; 11(1), (2).

¹⁶ *Id.* at Art. 11(2); WHC *Operational Guidelines*, at II(A)(49); II(D)(77) (listing criteria for OUV, including properties that “contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation,” “contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance,” and are “outstanding examples representing significant on-going ecological and biological processes”).

¹⁷ WHC *Operational Guidelines*, at II(A)(51).

Once listed, Parties may request international assistance through the World Heritage Convention to conserve a property and its OUV, including through financial and research assistance, equipment, training, and provision of experts and skilled labor.¹⁸ Under the Convention, Parties commit to protect and manage World Heritage properties to “ensure that their Outstanding Universal Value . . . are sustained or enhanced over time.”¹⁹ Specifically, “each State Party . . . shall endeavor, in so far as possible, . . . to take the appropriate legal, scientific, technical, administration and financial measures necessary for the . . . protection, conservation . . . and rehabilitation of [its] heritage” and to develop “operating methods [to] make the State capable of counteracting the dangers that threaten” its heritage.²⁰ This includes adopting “[l]egislative and regulatory measures” and “assur[ing] the full and effective implementation of such measures.”²¹ Further, *all* Parties to the Convention “undertake . . . to give their help” in protecting and conserving other nations’ heritage.²²

B. The List of World Heritage “in Danger”

In addition to assisting in the protection of World Heritage properties, the World Heritage Committee “shall establish . . . [a] list of World Heritage in Danger.”²³ The list includes properties for “which major operations are necessary” for the property’s conservation “and for which assistance has been requested under this Convention.”²⁴ These properties must be “threatened by serious and specific dangers,” including but not limited to “disappearance caused by accelerated deterioration” or “destruction caused by changes in the use . . . of the [property].”²⁵ If a property deteriorates “to the point where it has irretrievably lost those characteristics which determined its inscription on the List,” the property may be deleted.²⁶

The World Heritage Committee’s Operational Guidelines for the Implementation of the World Heritage Convention provide further guidance. For natural properties, a property may be listed as “in Danger” if:

- (a) The property faces an “Ascertained Danger,” meaning it “is faced with specific and proven imminent danger, such as:
 - (i) A serious decline in the population of the endangered species or the other species of OUV for which the property was legally established to protect, either by natural factors such as disease or by man-made factors such as poaching;
 - (ii) Severe deterioration of the natural beauty or scientific value of the property...;” or

¹⁸ World Heritage Convention, at Art. 13.

¹⁹ WHC *Operational Guidelines*, at II(F)(96); World Heritage Convention, at Art. 4 (each Party has a duty to ensure “protection, conservation, . . . and transmission to future generations of” the heritage in its territory).

²⁰ World Heritage Convention, at Art. 5(d), (c).

²¹ WHC *Operational Guidelines*, at II(F)(98).

²² World Heritage Convention, at Art. 6(2).

²³ *Id.* at Art. 11(4).

²⁴ *Id.* Under the World Heritage Committee’s Operational Guidelines, the request for assistance may be made “by any Committee member or the Secretariat.” WHC *Operational Guidelines*, at IV(B)(177)(d).

²⁵ World Heritage Convention, at Art. 11(4).

²⁶ WHC *Operational Guidelines*, at IV(A)(176)(d); IV(C).

- (b) The property faces a “Potential Danger,” meaning it “is faced with major threats which could have deleterious effects on its inherent characteristics. Such threats are, for example: . . .
 - (iv) the management plan or management system [protecting the property and its OUV] is lacking or inadequate, or not fully implemented.”²⁷

When considering whether to list a property as “in Danger,” the World Heritage Committee “shall request” that its Secretariat “ascertain . . . the present condition of the property” and its threats, and the Committee may send a monitoring mission to evaluate the property.²⁸ The Committee must then adopt a “programme for corrective measures.”²⁹ If listed as “in Danger,” the Committee “shall allocate a specific, significant portion” of available funds to assist the property.³⁰

C. Authority to Submit Petition

The World Heritage Committee has clear authority to consider and act upon this Petition. Article 13(7) of the World Heritage Convention provides that “[t]he Committee shall co-operate with . . . non-governmental organizations having objectives similar to those of this Convention.”³¹ Moreover, the same provision provides that “[f]or the implementation of its programmes and projects, the Committee may call on . . . public and private bodies and individuals.”³² Thus, the Convention specifically supports dialogue between the World Heritage Committee and non-governmental organizations (“NGOs”). The *travaux préparatoires* lends further credence to this interpretation. A report to the drafters’ working group states that the World Heritage Committee “shall have complete freedom to consult public or private organizations or individuals, either in the course of its meetings or apart from them.”³³

Furthermore, in the absence of any language prescribing a specific “in Danger” listing procedure, Paragraph 194 of the Operational Guidelines is illuminating. It articulates a procedure for removing a site from the “in Danger” list based on information received by the Committee. Paragraph 194 reads: “When the Secretariat receives such information from a source other than the State Party concerned, it will as far as possible” consult with the relevant State Party.³⁴ This suggests that the Committee is to be receptive to information and petitions from NGOs or any other non-State Party. Indeed, the Committee has undoubtedly benefited from the contributions of non-State actors, including the International Union for Conservation of Nature (“IUCN”) and the World Commission on Protected Areas, as well as NGOs participating as observers. Given these provisions, Petitioners assert that the Committee is well within its authority to accept this Petition, to give ample consideration to its content, and to act accordingly in response.

²⁷ *Id.* at IV(B)(180)(a), (b).

²⁸ *Id.* at IV(B)(184).

²⁹ *Id.* at IV(B)(183).

³⁰ *Id.* at IV(B)(189).

³¹ World Heritage Convention, at Art. 13(7).

³² *Id.*

³³ Meyer, Robert L. 1976. *Travaux préparatoires* for the UNESCO World Heritage Commission. *EARTH LAW JOURNAL* 2.

³⁴ WHC *Operational Guidelines*, at IV(C)(194).

II. FACTUAL BACKGROUND

A. The Islands and Protected Areas of the Gulf of California World Heritage Property

In 2004, pursuant to the World Heritage Convention, Mexico nominated the Islands and Protected Areas of the Gulf of California for inscription on the World Heritage List.³⁵ In 2005, the IUCN evaluated the nomination and recommended inscription,³⁶ and, at its September 2005 meeting, the World Heritage Committee officially listed the property.³⁷

The Islands and Protected Areas of the Gulf of California World Heritage property encompasses approximately 1.8 million hectares of terrestrial and marine areas in Mexico's Gulf of California.³⁸ The property includes 244 islands and islets, as well as coastal areas along a 270 km area stretching from the Colorado River Delta to the tip of the Baja California Peninsula.³⁹ The property is comprised of nine areas that were already protected under Mexican law at the time of inscription, including the Upper Gulf of California and Colorado River Delta Biosphere Reserve, which was designated in 1993.⁴⁰

According to the IUCN's 2005 evaluation of the property, due to the area's unique geological and oceanographic characteristics, the Gulf of California has "immense marine productivity, considered one of the highest in the planet's oceans."⁴¹ Described by Jacques Cousteau as "the world's aquarium," the Gulf sustains "a wealth of ecosystems and populations of numerous species" of sea birds, algae, fish, and marine mammals, including 31 distinct marine mammal species, representing 39 percent of the world's total marine mammal species.⁴² Prominent among these species is the vaquita, which at the time of inscription was considered "one of the world's . . . rarest marine mammals."⁴³

Supported by the IUCN's recommendation, the World Heritage Committee inscribed the Islands and Protected Areas of the Gulf of California property on the World Heritage List.⁴⁴ While the Committee did not, at the time, adopt a Statement of Outstanding Universal Value for the property, the Committee noted the listing was based on: (1) the property's "unique example" of "bridge islands," "oceanic islands," and "oceanic processes," (2) the property's "striking natural beauty," and (3) importantly, the property's "extraordinary" "diversity of terrestrial and marine life," which is a "high priority for biodiversity conservation."⁴⁵

³⁵ See National Commission of Protected Natural Areas, *Serial Nomination Format for The Islands and Protected Areas of the Gulf of California, Mexico* (Apr. 2004).

³⁶ See IUCN, *Islands & Protected Areas of the Gulf of California, Mexico Technical Evaluation* (Apr. 2005).

³⁷ Decision 29 COM 8B.9, WHC-05/29.COM/22 Paris, 9 Sept. 2005, at 117.

³⁸ WHC-13/37.COM/8E, Paris, 17 May 2013, 8E: Draft Adoption of Retrospective Statements of Outstanding Universal Value, at 48.

³⁹ *Id.*

⁴⁰ IUCN, *Gulf of California Evaluation*, at 55.

⁴¹ *Id.* at 56.

⁴² *Id.* at 57, 56.

⁴³ *Id.* at 57.

⁴⁴ WHC-05/29.COM/22, Paris, 9 Sept. 2005, at 117.

⁴⁵ *Id.* (also noting the property "contains 39% of the world's total number of marine mammal[] species").

In 2013, the World Heritage Committee adopted Retrospective Statements of Outstanding Universal Value for several World Heritage properties, including the Islands and Protected Areas of the Gulf of California.⁴⁶ The Committee found the property meets several OUV criteria, including containing “stunning landscape beauty,” unique “oceanic processes” allowing for “phenomenal marine productivity,” and a “diversity of terrestrial and marine life” that “is extraordinary and constitutes a global priority for biodiversity conservation.”⁴⁷ Particularly, the Committee identified the property’s numerous marine mammal species, including “the critically endangered Gulf Porpoise or ‘Vaquita,’” as well as numerous fish species, including “the critically endangered . . . Totoaba.”⁴⁸

In assessing the integrity and management of the identified OUVs on the Islands and Protected Areas of the Gulf of California property, the Committee noted that “[t]he biggest, ongoing impact on the marine conservation values stems from artisanal, industrial and sport fishing. Fisheries and shrimp trawling play an important role in the local economy but put ever more pressure on the resources. Management responses are needed to ensure that harvesting levels are adapted to the productivity in the entire Gulf.”⁴⁹

B. Current Threats to the Islands and Protected Areas of the Gulf of California

Since the Islands and Protected Areas of the Gulf of California World Heritage property was inscribed in 2005, the property and its outstanding “diversity of . . . marine life” have faced serious decline.⁵⁰ New scientific information demonstrates that two of the key endangered OUV species for which the property was listed are now critically threatened by ongoing fishing and historically ineffective management.

Particularly, the vaquita – the world’s most endangered cetacean, which is found only in the Gulf of California – had declined to just 97 individuals as of July 2014, with fewer than 25 reproductively mature females, and as of the date of this Petition, has likely declined to fewer than 90 animals. The biggest threat to the vaquita is the use of certain types of fishing gear, as well as illegal fishing for the critically endangered totoaba – a fish species also identified in the property’s OUVs that is now in high demand as a delicacy in China. As described below, the vaquita faces total extinction if drastic protective measures are not taken immediately, while the ongoing and illegal totoaba trade threatens the totoaba’s continued existence as well.

⁴⁶ Decision WHC-13/37.COM/20 Paris, 5 July 2013 (retroactively adopting OUVs for the property); WHC-13/37.COM/8E, Paris, 17 May 2013 (providing draft OUVs for the property, which were adopted in full in Committee Decision WHC-13/37.COM/20).

⁴⁷ *Id.* at 48, 49 (finding the Area meets the WHC Operational Guidelines OUV Criterion (vii) for “areas of exceptional beauty,” Criterion (ix) for “representing significant on-going ecological and biological processes), and Criterion (x) for “contain[ing] the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of [OUV]”); WHC *Operational Guidelines*, at II(D)(77) (listing criteria).

⁴⁸ WHC-13/37.COM/8E, Paris, 17 May 2013, at 49.

⁴⁹ *Id.* at 50.

⁵⁰ *Id.* at 49.

1. The Critically Imperiled Vaquita

In adopting the Retrospective OUVs for the Islands and Protected Areas of the Gulf of California World Heritage property, the World Heritage Committee specifically acknowledged the area's conservation value for protecting the “the critically endangered Gulf Porpoise or ‘Vaquita.’”⁵¹ Sporting conspicuous black patches around its eyes and mouth, the vaquita (*Phocoena sinus*) is the world's smallest cetacean at just five feet (1.5 m) in length. The species occurs exclusively in an approximately 4,000 km²-area within and just outside the Islands and Protected Areas of the Gulf of California World Heritage property, which is the smallest geographical range of any cetacean.⁵²

The vaquita is the world's most endangered cetacean species. It is listed as “critically endangered” by the IUCN and in danger of extinction under Mexican wildlife law.⁵³ To address the vaquita's continued decline, 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), comprised of eminent marine mammal scientists from around the world. Following its most recent meeting in July 2014, CIRVA published an alarming report, finding that, despite over two decades of conservation action, *only 97 individual vaquita remained* – down from 200 in just 2012.⁵⁴ CIRVA estimated the vaquita population was dropping precipitously by 18.5% per year.⁵⁵ Previous estimates of vaquita numbers included 567 animals in the late 1990s and 245 in 2008.⁵⁶

The primary threat to the vaquita is unintentional entanglement or “bycatch” in gillnet fishing gear. Scientists have long-recognized that gillnet fishing in the northern Gulf, including gillnets set to catch shrimp, sharks, and other finfish, poses a threat to vaquita from bycatch.⁵⁷ As early as 1999, CIRVA specifically recommended that “gillnets and large industrial shrimp trawlers” be banned throughout the vaquita's range.⁵⁸ At each subsequent CIRVA meeting in 2004, 2012, and 2014, the group reiterated the threat caused by shrimp and finfish gillnet gear and again recommended a complete closure of gillnet fishing to protect the vaquita.⁵⁹

⁵¹ *Id.*

⁵² Rojas-Bracho, L., Reeves, R.R., & Jaramillo-Legorreta, A. 2006. Conservation of the vaquita *Phocoena sinus*. MAMMAL REV. 36:179-216.

⁵³ 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>; NOM-059-ECOL, D.O.F. 16 de Mayo 1994.

⁵⁴ CIRVA (2014), at 9.

⁵⁵ *Id.* at 2, 8.

⁵⁶ Jaramillo-Legorreta, A.M., Rojas-Bracho, L., Gerrodette, T., 1999. A new abundance estimate for vaquitas: first step for recovery. MARINE MAMMAL SCIENCE 15, 957–973.

⁵⁷ CIRVA (2014) at 2, 8.; *see also* 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; Barlow, J., L. Rojas-Bracho, C. Muñoz-Piña, & S. Mesnick. 2010. Conservation of the vaquita (*Phocoena sinus*) in the northern Gulf of California, Mexico. In: R.Q. Grafton, et al. (eds.), Handbook of marine fisheries conservation and management, pp. 205-214. Oxford University Press, New York; Rojas-Bracho et al. (2008).

⁵⁸ *See Report of the Second Meeting of the International Committee for the Recovery of the Vaquita (CIRVA)*, Ensenada, Baja California, México, 7–11 February 1999, at 2-17.

⁵⁹ *Report of the Third Meeting of the International Committee for the Recovery of the Vaquita (CIRVA)*, Ensenada, Baja California, México 18–24 January 2004; *Report of the Fourth Meeting of the International Committee for the Recovery of the Vaquita (CIRVA)*, Ensenada, Baja California, México February 20–23, 2012; CIRVA (2014).

Following its 2014 meeting, CIRVA recognized that, in addition to shrimp and finfish gillnet fishing, “[t]he recent increase in the rate of decline” in vaquita also can be attributed “to increased illegal gillnet fishing for totoaba,” an endangered fish that shares the vaquita’s habitat.⁶⁰ As detailed further below, Mexican authorities have documented a recent resurgence in totoaba fishing and trade, driven by Chinese demand for the fish’s swim bladder. CIRVA warned that the vaquita is now “in imminent danger of extinction” and that it “*will be extinct, possibly by 2018*” if vaquita bycatch in both the shrimp and finfish gillnet fisheries and the illegal totoaba fishery “is not eliminated immediately.”⁶¹

2. The Endangered Totoaba

In adopting the Retrospective OUVs for the Islands and Protected Areas of the Gulf of California World Heritage property, the World Heritage Committee specifically acknowledged the property’s conservation value for protecting the “the critically endangered . . . Totoaba.”⁶² The totoaba or Mexican seabass (*Totoaba macdonaldi*) is a large, schooling marine fish in the drum or croaker family that is found exclusively in the Upper Gulf of California, in a range that overlaps with the vaquita.⁶³ The fish can grow up to 6 feet (2 m) in length and weigh 220 lbs (100 kg). Individual totoaba can live up to 25 years and do not reach sexual maturity until they are six or seven years old.⁶⁴ Like other K-selected species, these characteristics contribute to the population’s slow growth and variability in recruitment and make the totoaba highly susceptible to decline even if subjected to only moderate fishing pressure.⁶⁵

As detailed below, in addition to the totoaba’s discrete distribution and degraded spawning and nursery areas, the totoaba has long been considered endangered due to past over-exploitation, the high mortality of juvenile fish in shrimp trawl nets, and the increasing threat from illegal fishing for its swim-bladder.⁶⁶ The totoaba is currently listed as “critically endangered” by the IUCN and in danger of extinction under Mexican wildlife law.⁶⁷

⁶⁰ CIRVA (2014), at 3, 10.

⁶¹ *Id.* at 2.

⁶² WHC-13/37.COM/8E, Paris, 17 May 2013, at 49.

⁶³ 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.

⁶⁴ *Id.*

⁶⁵ Márquez-Farías, F. & F.J. Rosales-Juárez. 2013. Intrinsic rebound potential of the endangered (*Totoaba macdonaldi*) population, endemic to the Gulf of California. FISHERIES RESEARCH 147, 150-153; Musick, J.A. 1999. Ecology and conservation of long-lived marine animals. Management of long-lived marine resources: a comparison of feedback-control management procedures. In: Musick, J.A. (Ed.), Life in the Slow Lane: Ecology and Conservation of Long-lived Marine Animals. American Fisheries Society Symposium 23. Bethesda, Maryland, pp. 1–10; Punt, A.E. & A.D.M. Smith. 1999. Management of long-lived marine resources: a comparison of feedback-control management procedures. In: Musick, J.A.(Ed.), Life in the Slow Lane: Ecology and Conservation of Long-lived Marine Animals. American Fisheries Society Symposium 23. Bethesda, Maryland, pp. 243–265.

⁶⁶ Cisneros-Mata, et al. (1995); Márquez-Farías, et al. (2013); Rosales-Juárez, F.J., E. Ramírez-González. 1987. Estado actual sobre el conocimiento de la Totoaba (*Cynoscion macdonaldi* Gilbert 1980). Secretaría de Pesca, México, D.F., 42 p.; Cisneros-Mata, M.A., L.W. Botsford, J.F. Quinn. 1997. Projecting viability of *Totoabamacdonaldi*, a population with unknown age-dependent variability. ECOL. APPL. 7, 968–980.

⁶⁷ Findley, L. 2010. *Totoaba macdonaldi*. The IUCN Red List of Threatened Species. Version 2014.2. <www.iucnredlist.org>; NOM-059-ECOL, D.O.F. 16 de Mayo 1994.

a. Historic Over-Exploitation of Totoaba

The totoaba was once considered a valuable market species. Early in the 20th century, spawning totoaba in the upper Gulf were so ubiquitous that fishermen could reportedly spear them from small boats.⁶⁸ The totoaba fishery escalated in the 1920s as a result of an agreement between Mexico and the United States to develop a market for the whole totoaba fish.⁶⁹ Between 1934 and 1945, the totoaba fishery was one of the most important in the Gulf with total annual landings exceeding 2,000 metric tons.⁷⁰ The fishery peaked at 2,300 metric tons in 1942 and declined drastically to 60 metric tons by 1975.⁷¹ As a result of the fishery's removal of nearly the entire biomass of totoaba, the Mexican government imposed a permanent ban on totoaba fishing in 1975.⁷²

b. Juvenile Mortality in Shrimp Trawl Nets

Ongoing bycatch of juvenile totoaba in shrimp nets also threatens the species. In the mid-1950s, two decades after the upper Gulf of California shrimp fishery originated, the fishery had already been declared a major threat to totoaba.⁷³ In the mid-1980s, it was estimated that 120,300 juvenile totoaba died each year as bycatch in the shrimp fishery.⁷⁴ In 1990, an estimated 92 percent of young-of-the-year totoabas were killed in bycatch.⁷⁵ More recently, it has been roughly estimated that a single sweep of a shrimping boat per unit area results in the annual mortality of 11,000 to 60,000 juvenile totoaba.⁷⁶ With up to four passes of shrimp nets, on average, per square meter per fishing season,⁷⁷ mortality of juvenile totoaba in the Upper Gulf of California and Colorado River Delta Biosphere Reserve is likely much larger than any previous estimate.⁷⁸

⁶⁸ Berdegue, A.J. 1955. La pesqueria de la totoaba (*Cynoscion macdonaldi*) en San Felipe, Baja California. Rev. Soc. Mex. Hist. Nat. 16(1-4):45-78.

⁶⁹ Craig, J.A. 1926. A new fishery in Mexico. California Fish and Game 12(4):166-169.

⁷⁰ Rosales-Juárez, et al. (1987).

⁷¹ Cisneros-Mata, et al. (1995); Márquez-Farías, et al. (2013).

⁷³ Cisneros-Mata, et al. (1995).

⁷³ Cisneros-Mata, et al. (1995).

⁷⁴ *Id.*; Barrera-Guevara, J. C. 1990. The conservation of *Totoaba macdonaldi* (Gilbert); Ortiz de Montellano, G. P. 1987. Impacto de la pesca de arrastre sobre la población juvenil de *Totoaba macdonaldi*. Reporte técnico No. 7. Centro de Investigación y Desarrollo de Sonora, Hermosillo, Sonora, Mexico. (Pisces: Sciaenidae), in the Gulf of California, Mexico. J. FISH. BIOL. 37(suppl. AI:201-202).

⁷⁵ Barrera Guevara (1990).

⁷⁶ Bobadilla, M., Alvarez-Borrego, S., Avila-Foucat, S., Lara-Valencia, F., and Espejel, I. 2011. Evolution of environmental policy instruments implemented for the protection of totoaba and the vaquita porpoise in the Upper Gulf of California. ENVIRONMENTAL SCIENCE & POLICY 14; 998-1007.

⁷⁷ García-Caudillo, J.M., M.A. Cisneros-Mata, A. Balmori-Ramírez. 2000. Performance of a bycatch reduction device in the shrimp fishery of the Gulf of California, México. BIOL. CONSERV. 92, 199–205; Pérez-Mellado, J., L.T. Findley. 1985. Evaluación de la ictiofauna acompañante del camarón capturado en las costas de Sonora y norte de Sinaloa, México. In: Yañez Arancibia, A. (Ed.), Recursos potenciales de México: La pesca Acompañante del Camarón. Programa Universitario de Alimentos, ICMYL-UNAM, INP. Universidad Nacional Autónoma de México, México, D.F., pp. 201–254.

⁷⁸ Bobadilla, et al. (2011).

c. Trade in Totoaba Swim Bladders

In addition to historic over-exploitation of totoaba for filets and juvenile bycatch, totoaba are increasingly threatened by illegal fishing for the fish's bladder. In the early 1900s, a market for totoaba developed in China, after it was discovered that the totoaba's swim bladder resembled the bladder of the bahaba, a now-imperiled Chinese fish.⁷⁹ The dried swim bladder or "buche" is a highly valued ingredient in Chinese soup, as the bladders are believed to boost fertility and improve skin.⁸⁰ Despite the Mexican government's 1975 ban on totoaba fishing, due to the value of totoaba swim bladders, totoaba poaching became commonplace in the Gulf by fishermen using gillnets. In 1979, it was estimated that 70 metric tons of illegal totoaba were taken by fishermen of El Golfo de Santa Clara.⁸¹ A 1985 survey revealed take of 161.7 metric tons or 6,218 adult totoaba each year in the mid-1980s.⁸²

By late 2012, it became clear that the illegal totoaba trade had grown sharply due to renewed Chinese demand for the fish's swim bladder.⁸³ The dried totoaba bladders can now reportedly sell for \$5,000 to \$14,000 USD each in China, and a single bowl of buche soup can purportedly fetch \$25,000.⁸⁴ Dubbed "aquatic cocaine," Mexican drug cartels have been implicated in the totoaba trade, which was estimated to be worth \$2.25 million in 2013.⁸⁵

While data on current levels of totoaba poaching are not available largely due to the illegal nature of the fishery,⁸⁶ at its 2014 meeting, CIRVA recognized an "increased demand in Chinese markets for the swim bladder," which triggered a "large increase in illegal fishing pressure" on the totoaba.⁸⁷ CIRVA noted with particular alarm that "[t]housands of swim bladders are dried and

⁷⁹ 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).

⁸⁰ See CITES AC 17, Inf. 6 (2001); CIRVA (2014), at 5; Gwynn Guilford, *China is Plundering the Planet's Seas*, *ATLANTIC* (Apr. 30, 2013). Available at: <http://www.theatlantic.com/china/archive/2013/04/china-is-plundering-the-planets-seas/275437/> (last visited May 8, 2015).

⁸¹ Rosales-Juárez, et al. (1987).

⁸² Cisneros-Mata, et al. (1995).

⁸³ CIRVA (2014), at 12.

⁸⁴ See News Release: Office of the United States Attorney, Southern District of California, *Massive Trade in Endangered Species Uncovered; U.S. Attorney Charges 7 with Smuggling Swim Bladders of Endangered Fish Worth Millions on Black Market; Officials See Trend* (Apr. 24, 2013). Available at:

<https://www.google.com/search?q=MASSIVE+TRADE+IN+ENDANGERED+SPECIES+UNCOVERED&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a&channel=sb> (last visited May 8, 2015); Associated Press & Zoe Szathmary, *It's aquatic cocaine: Mexican smugglers are now selling FISH BLADDERS for thousands of dollars*, *DAILYMAIL* (Aug. 19, 2014). Available at: <http://www.dailymail.co.uk/news/article-2719960/Its-aquatic-cocaine-Mexican-smugglers-selling-FISH-BLADDERS-used-thousands-dollars.html#ixzz3E5TnwUds> (last visited May 8, 2015).

⁸⁵ *Id.*; Rodrigo Diaz, *Crimen Organizado opera tráfico ilegal de buche de totoaba*, *MEXICALIDIGITAL.MX* (Aug. 4, 2014). Available at: <http://mexicalidigital.mx/2014/operacion-crimen-organizado-trafico-ilegal-de-buche-de-totoaba-19992.html> (in Spanish) (last visited May 8, 2015).

⁸⁶ Pedrín-Osuna, O., J.H. Córdova-Murueta, M. Delgado-Marchena, 2001. Crecimiento y mortalidad de la totoaba, *Totoaba macdonaldi*, del Alto Golfo de California. *Ciencia Pesquera* (15), 131–140.

⁸⁷ CIRVA (2014), 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) (last visited May 8, 2015).

smuggled out of Mexico, often through the United States . . . Fishermen receive up to \$8,500 for each kilogram of totoaba swim bladder, equivalent to half a year’s income from legal fishing activities.”⁸⁸ CIRVA concluded that “[p]ast at-sea enforcement efforts have failed and illegal fishing has increased in recent years . . . especially for . . . the totoaba.”⁸⁹ Because “[t]he fates of the totoaba and the vaquita have been closely linked,” CIRVA recommended that “all available enforcement tools, both within and outside Mexico, be applied to stopping illegal fishing, especially the capture of totoabas and the trade in their products.”⁹⁰

3. Management of Vaquita and Totoaba in the Islands and Protected Areas of the Gulf of California World Heritage Property

Mexico has acknowledged the grave threats faced by both the vaquita and totoaba within the Islands and Protected Areas of the Gulf of California World Heritage property.⁹¹ As described and summarized in Table 1 below, over the past several decades, Mexico has imposed several management regimes to protect both the vaquita and the totoaba. Unfortunately, neither these actions nor the millions spent to implement them has halted the species’ continuing, perilous decline. And although just last month, Mexico proposed new gillnet fishing restrictions and stepped up enforcement efforts, scientists have criticized these measures as insufficient, and Mexico’s long history of unsuccessful fishery management and enforcement raises serious concerns about its present plan and commitments.

a. Mexico’s Past Efforts to Protect the Vaquita and End Totoaba Fishing

Mexico began regulating fishing in the Gulf to protect the totoaba in 1949, instituting a temporary ban on totoaba fishing in 1955.⁹² By 1975, catch had plummeted, forcing Mexico to completely ban totoaba fishing and also prompting a ban on international trade of the fish under the CITES treaty.⁹³ Yet illegal totoaba fishing continued, even as scientists began to recognize the vaquita’s increasingly threatened status and the two species’ intertwined fate.

In 1993, Mexico declared the Biosphere Reserve of the Upper Gulf of California and Delta of the Colorado River to protect the northern Gulf and its wildlife, including the vaquita and totoaba.⁹⁴ The Biosphere Reserve was one of the nine protected areas later incorporated into the Islands and Protected Areas of the Gulf of California property when it was inscribed on the World Heritage List.⁹⁵ Upon designating the Biosphere Reserve, Mexico claimed it was “enforcing the closure of all commercial fisheries in the reserve” and that “[a]ll ‘totoaba-type nets’” had been

⁸⁸ CIRVA (2014), at 5.

⁸⁹ *Id.* at 2.

⁹⁰ *Id.* at 10, 15.

⁹¹ *Id.*; see also IWC, *Joint Statement by Mexico and the United States on the Plight of the Vaquita*, IWC/65/26 Rev1 (Sept. 17, 2014) (acknowledging vaquita’s predicted extinction and stating that both countries “believe that immediate steps are needed to prevent the extinction of the vaquita, such as halting the entanglement of vaquita in gillnet fisheries such as the fishery for the endangered totoaba”).

⁹² Bobadilla, et al. (2011).

⁹³ Flanagan C.A. & J.R. Hendrickson. 1976. Observation on the commercial fishery and reproductive biology of the totoaba *Cynocion macdonaldi*, in the northern Gulf of California. FISH. BULL. 74(3):531-544; Cisneros-Mata, et al. (1995).

⁹⁴ Rojas-Bracho et al. (2006), at 202.

⁹⁵ IUCN Gulf of California Evaluation, at 2.

confiscated.⁹⁶ However, it quickly became apparent that “these official statements did not reflect the true situation in the region, and instead, “[c]ommercial fishing with a variety of gill nets and trawl nets continued without interruption both inside and outside the Biosphere Reserve.”⁹⁷ Scientists have concluded that Mexico’s protective efforts were “ineffectual” and “half-hearted, at best.”⁹⁸

At its 1999 meeting, CIRVA confirmed that gillnet fishing within the Biosphere Reserve had continued and concluded that “protection of vaquita from bycatch has probably not been significantly affected by the current boundary of the Reserve.”⁹⁹ CIRVA formally recommended that “gillnets and large industrial shrimp trawlers” be fully banned in the Biosphere Reserve to protect the vaquita and that the Reserve boundary be expanded south to encompass the vaquita’s entire habitat.¹⁰⁰

By CIRVA’s next meeting in 2004, CIRVA noted that large-mesh gillnets had been banned in the Biosphere Reserve in 2002 but, despite the ban, “the numbers of pangas [i.e., small fishing boats] ha[d] more than doubled since 1993,” and vaquita bycatch continued.¹⁰¹ CIRVA again recommended a full ban on gillnet fishing in the vaquita’s habitat.¹⁰²

In 2005, in response to CIRVA’s recommendations, Mexico established a new wildlife refuge area for the vaquita, which spanned habitat both within and outside of the Biosphere Reserve and the Islands and Protected Areas of the Gulf of California World Heritage property.¹⁰³ Mexico banned large mesh gillnets throughout the Refuge Area and also banned all gillnets in two core vaquita areas within the Refuge.¹⁰⁴ But again, enforcement was inadequate, and the new “Refuge Area remained essentially unmanaged until 2008.”¹⁰⁵

In 2008, Mexico instituted a new program called “PACE-Vaquita,” under which Mexico intended to initially ban all gillnets in the Refuge Area and eventually ban gillnets throughout the vaquita’s entire habitat by 2012.¹⁰⁶ The PACE-Vaquita program also included strategies to replace prohibited gear through “buy-outs” in which fishermen would convert to different economic activities, “switch-outs” in which gillnets would be replaced with alternative gear, and “rent-outs” in which fishermen were compensated for not fishing.¹⁰⁷

⁹⁶ Rojas-Bracho et al. (2006), at 195.

⁹⁷ *Id.*

⁹⁸ Rojas-Bracho et al. (2013), at 78.

⁹⁹ *See* CIRVA (2012), at 2-8.

¹⁰⁰ *Id.* at 2-15.

¹⁰¹ CIRVA (2004), at 3-10. *See also* CIRVA (2012), at 1 (noting that “[b]etween 1997 and 2004, not only was no progress made towards protecting vaquitas, but the population decline accelerated”).

¹⁰² CIRVA (2004), at 3-10.

¹⁰³ Rojas-Bracho et al. (2006), at 204; Rojas-Bracho et al. (2013); DOF (2005) Acuerdo mediante el cual se establece el área de refugio para la protección de la vaquita (*Phocoena sinus*). Diario Oficial de la Federación (DOF) México, 8 de septiembre del 2005, Primera Sección, Mexico City.

¹⁰⁴ Rojas-Bracho et al. (2013); DOF (2005) Programa de protección de la vaquita dentro del área de refugio ubicada en la porción occidental del Alto Golfo de California. Diario Oficial de la Federación (DOF) México, 29 de diciembre del 2005, Primera Sección, Mexico City.

¹⁰⁵ Rojas-Bracho et al. (2013), at 84.

¹⁰⁶ *Id.* at 80; SEMARNAT, *Species Conservation Action Plan for the Vaquita: An Integrated Strategy of Management and Sustainable Use of Marine and Coastal Resources in the Upper Gulf of California* (Feb. 2008).

¹⁰⁷ Rojas-Bracho et al. (2013), at 80.

Mexico expended significant funds in implementing the PACE-Vaquita program and while Mexican enforcement authorities initially made a “strong effort” to enforce the new ban, “that effort . . . waned,” and the number of boats fishing illegally in the Refuge again reached 2007 levels by 2011.¹⁰⁸ At its 2012 meeting, CIRVA stated that the PACE-Vaquita program “reduced, but did not eliminate, un-permitted fishing” and found the vaquita’s decline had continued.¹⁰⁹ Accordingly, CIRVA again reiterated that “[a]ll gillnets and other entangling nets need to be removed from the entire range of the vaquita.”¹¹⁰ CIRVA repeated that recommendation in 2014 but requested “emergency regulations” to enact the closure.¹¹¹

Like Mexico’s efforts to protect the vaquita, efforts to fully restore the totoaba population, including the 1975 ban on fishing, have been unsuccessful. The IUCN currently considers the species to be “critically endangered” based on fisheries data available through 1975, which showed a more than 95% decline in the population over three generation lengths (60 years).¹¹² The IUCN concluded that, despite conservation measures, “intensive fishing pressure and habitat degradation” continue to threaten the species.¹¹³ Further, Mexico’s actions have largely focused on the protection of adults instead of juveniles to avoid interfering with shrimp fishing.¹¹⁴

Table 1: A summary of actions taken by the Mexican government to protect the totoaba and vaquita¹¹⁵

| Year | Instrument | Specific Objective |
|------|--|---|
| 1949 | Temporary ban on shark fishing | Reduce bycatch of totoaba |
| 1955 | Temporary ban and fishing regulations for totoaba and cabaicucho and specifications for shark fishing nets | Conserve fisheries to obtain a maximum sustained production and rehabilitate the area |
| 1974 | Reserve area for nursery grounds and increment of stocks of all fish species | Increment the stocks of commercial species including totoaba |
| 1975 | Total and permanent ban of totoaba fishing from the mouth of the Colorado River to the Fuerte River on the east coast and from the mouth of the Colorado River to Bahia Concepcion on the west coast | Preserve the totoaba for the benefit of fisherman cooperatives |
| 1993 | Biosphere reserve in the Upper Gulf of California and Colorado River Delta and Mexican Official Norm 012-PESC-1993 | Protect the region’s ecosystems, reduce mortality of the vaquita, establish a regulatory framework to protect the vaquita and totoaba |

¹⁰⁸ *Id.*

¹⁰⁹ CIRVA (2012), at 1.

¹¹⁰ *Id.* at 2.

¹¹¹ CIRVA (2014), at 2.

¹¹² Findley, L. 2010. *Totoaba macdonaldi*. The IUCN Red List of Threatened Species. Version 2014.3. <www.iucnredlist.org>. Downloaded on 17 February 2015.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Table recreated from Bobadilla, et al. (2011).

| | | |
|-----------|---|--|
| 1994 | Mexican Official Norm NOM-059-ECOL-1994 | List the vaquita and totoaba as species in danger of becoming extinct |
| 2002 | Emergency Mexican Official Norm NOM-EM-139-ECOL-2002 | Protection of marine and coastal ecosystems in the Upper Gulf, as well as species that inhabit them, including the vaquita and totoaba |
| 2005-2009 | Economic compensation fund for fishing with gillnets and the promotion of alternatives to fishing in the Upper Gulf of California | Cessation of gillnet fishing and to convert fishermen into other economic activities |

b. Mexico’s 2015 Vaquita Protection Regulations and Enforcement Actions

Recognizing that its past conservation efforts had failed to stem the vaquita’s decline and facing a potential embargo on its wildlife exports to the United States,¹¹⁶ on April 10, 2015, the Mexican government published new vaquita management measures.¹¹⁷ The regulations include: a two-year suspension on the use of gillnets for shrimp/finfish fishing in the Upper Gulf of California (with the exception of allowing gillnet use during the corvino fishing season from February 1 to April 30); expansion of the vaquita refuge from 126 hectares to 1,300,000 hectares to ensure that the plan covers the species’ full range; a financial compensation program for fishermen and others that may be affected by the prohibition; and an enhanced inspection and surveillance law enforcement effort to be undertaken by the Mexican Navy, Procuraduría Federal de Protección al Ambiente (“PROFEPA”), and the National Commission of Aquaculture and Fishing (“CONAPESCA”).

Unfortunately, the new rules are not sufficient to ensure the long-term protection and conservation of the vaquita. In January 2015, CIRVA provided an analysis of Mexico’s proposed vaquita rules, which were later adopted largely unchanged.¹¹⁸ While CIRVA acknowledged that Mexico was taking major steps to address the vaquita crisis, including the gillnet ban, CIRVA was critical of many of the rule’s components, concluding that the measures were not adequate to achieve the objective of protecting the vaquita. CIRVA’s criticisms include:

- The failure of the regulations to ban the possession and transportation of gillnets both on land and on the sea. CIRVA encouraged the government to enact a rule allowing it to

¹¹⁶ See Center for Biological Diversity, *Petition for Certification of Mexico pursuant to the Pelly Amendment for Trade in Violation of the Convention on International Trade in Endangered Species* (Sept. 29, 2014). Available at: http://www.biologicaldiversity.org/species/mammals/vaquita/pdfs/Totoaba_Pelly_Petition_9_29_14.pdf.

¹¹⁷ 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; <http://jornadabc.mx/tijuana/11-04-2015/sigue-pesca-en-san-felipe-pese-veda-para-protger-la-vaquita-marina>.

¹¹⁸ Opinion on the Regulatory Impact Review (MIR of Moderate Impact) and the Agreement by which Fishing by Means of Gillnets, Cimbras and/or Longlines is Suspended in the Northern Gulf of California (Dossier 12/1657/231214), Prepared by the Comité Internacional para la Recuperación de la Vaquita (CIRVA) (Jan. 2015).

maintain control of gillnets at least from May 1 to January 31 (outside the corvino fishing season) to prevent the illegal use of gillnets;

- The need for surveillance efforts to involve multiple technologies in addition to the new observer vessels contained in the rules;
- The fact that the two year ban is entirely inadequate to achieve vaquita recovery;
- The government must emphasize the development and use of alternative fishing gears and train fishermen to use alternative fishing gears or to provide training in alternative livelihoods in order to reduce future fishing-related threats to the vaquita; and
- Questions regarding the scientific credibility of the proposed measures to assess the success of the gillnet prohibition. Any study of vaquita abundance would lack sufficient statistical significance to detect an increase in the population during the two-year ban on gillnets even if the incidental take of vaquita were reduced to zero. For any monitoring program to be credible and realistic it must: (A) be undertaken for at least five years, (B) be implemented by the same experienced international experts who have designed and implemented the acoustic monitoring program to date, and (C) employ scientists with substantial experience in estimating the abundance of vaquita and other cryptic species.

The strategy has also been criticized for lacking sufficient mechanisms to ensure enforcement. Despite the proposed use of the Mexican Navy and other law enforcement agencies to enforce the plan, there are increasing doubts regarding Mexico's political will and sustained commitment to providing the funding and personnel required to fully enforce the gillnet ban and combat illegal fishing throughout such an extensive area. Further, Mexico has acknowledged the resurgent "totoaba trade is a serious problem with considerable financial backing."¹¹⁹ And while there have been several successful totoaba interdictions and arrests in recent months,¹²⁰ Mexico has also acknowledged that, at least until recently, "[n]ot all agencies" in Mexico were "able to deal with this complex illegal fishery and trade problem (e.g. able to quickly identify legal versus illegal fish products)."¹²¹ Additionally, as recently as December 2014, the IUCN reported that 90 pangas were documented in a single day within the previously-designated vaquita Refuge Area, with 17 boats actively gillnetting based on aerial photographs,¹²² demonstrating Mexico's very recent enforcement failures.

III. REQUEST TO LIST MEXICO'S ISLANDS AND PROTECTED AREAS OF THE GULF OF CALIFORNIA WORLD HERITAGE PROPERTY AS "IN DANGER"

Petitioners hereby formally request that the World Heritage Committee list the Islands and Protected Areas of the Gulf of California as "World Heritage in Danger" pursuant to Article 11,

¹¹⁹ CIRVA (2014), at 12; *see also Profepa fortalece combate contra tráfico y comercio ilícito del pez Totoaba*, SINEMBARGO (Jan. 19, 2014) (describing new enforcement efforts). Available at: <http://www.sinembargo.mx/19-01-2014/878084> (last visited Jan. 30, 2015).

¹²⁰ *See, e.g., Asegura Profepa 385 piezas de buche de totoaba en el AICM*, GRUPOFORMULA (Nov. 27, 2014) (describing totoaba bust at Mexico City International Airport of 385 dried totoaba bladders destined to China). Available at: <http://www.radioformula.com.mx/notas.asp?Idn=459147&idFC=2014> (last visited Jan. 28, 2015).

¹²¹ CIRVA (2014), at 12.

¹²² Gill Braulik, *New evidence that Mexican authorities are not adequately enforcing fishing regulations to protect vaquitas* (Dec. 7, 2014). Available at: <http://www.iucn-csg.org/index.php/2014/12/07/new-evidence-that-mexican-authorities-are-not-adequately-enforcing-fishing-regulations-to-protect-vaquitas> (last visited Jan. 29, 2014).

Paragraph 4 of the World Heritage Convention and request assistance to remedy the threats to this property.¹²³ The Islands and Protected Areas of the Gulf of California property was inscribed in part to protect the area's diverse and at-risk marine wildlife, and the now critically endangered vaquita and totoaba were both specifically identified as part of the property's OUVs.¹²⁴

However, as described below, the property and its OUVs face “serious and specific dangers” from gillnet fishing that will cause the vaquita's extinction and further threaten the totoaba's existence.¹²⁵ Additionally, the current management system for the vaquita and totoaba is not adequate.¹²⁶ Mexico's several decades-long efforts to save the vaquita and deter totoaba fishing have failed to stem the species' declines, and even Mexico's most recent initiatives have been criticized as inadequate. Further, even with Mexico's full commitment to addressing the problem, saving the vaquita will be expensive and time-consuming and could benefit from international attention and assistance. Clearly, “major operations are necessary” for the property and the species' conservation.¹²⁷ Accordingly, the Islands and Protected Areas of the Gulf of California property qualifies for “in Danger” listing.

A. Legal Standard for an “in Danger” Listing

As detailed above, under the World Heritage Convention, a World Heritage property may be listed as “in Danger” if it is “threatened by serious and specific dangers.”¹²⁸ The World Heritage Committee's Operational Guidelines provide further instruction, stating that a property may be listed if:

- (a) The property faces an “Ascertained Danger,” meaning it “is faced with specific and proven imminent danger, such as:
 - (i) A serious decline in the population of the endangered species or the other species of Outstanding Universal Value for which the property was legally established to protect, either by natural factors such as disease or by man-made factors such as poaching;
- (b) The property faces a “Potential Danger,” meaning it “is faced with major threats which could have deleterious effects on its inherent characteristics. Such threats are, for example: . . .
 - (iv) the management plan or management system [protecting the property and its OUV] is lacking or inadequate, or not fully implemented.”¹²⁹

Finally, “major operations” must be “necessary” to conserve the property from its threats.¹³⁰

¹²³ World Heritage Convention, at Art. 11(4).

¹²⁴ WHC-13/37.COM/8E, Paris, 17 May 2013.

¹²⁵ World Heritage Convention, at Art. 11(4); WHC *Operational Guidelines*, at IV(B)(177).

¹²⁶ *Id.*

¹²⁷ World Heritage Convention, at Art. 11(4).

¹²⁸ *Id.*

¹²⁹ WHC *Operational Guidelines*, at IV(B)(180).

¹³⁰ World Heritage Convention, at Art. 11(4).

B. The World Heritage Property and Two of Its OUV Species, the Vaquita and the Totoaba, Are “Threatened by Serious and Specific Dangers”

When the Islands and Protected Areas of the Gulf of California property was listed as World Heritage in 2005, the inscription was based, in part, on the property’s “extraordinary” “diversity of terrestrial and marine life,” which is a “high priority for biodiversity conservation,” particularly for “marine mammal species.”¹³¹ When the Committee adopted the Retrospective Statement of OUV for the property in 2013, the Committee stated the property met World Heritage criteria because it “contain[s] the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value.”¹³² Particularly, the OUV Statement identifies “the critically endangered Gulf Porpoise or ‘Vaquita’” and “the critically endangered . . . Totoaba” as part of the property’s OUV.¹³³

1. The Vaquita and the Totoaba Face “Serious Danger” in the Form of “Serious Decline”

As detailed in Sections II(B)(1) and (2) above, both the vaquita and the totoaba are “threatened by serious and specific dangers.”¹³⁴ The vaquita is “critically endangered” and as of July 2014, *only 97 individual vaquita remained*.¹³⁵ Scientists agree that the vaquita’s primary threat is entanglement in gillnet fishing gear in Gulf, both from shrimp and finfish gillnets and illegal gillnets set for totoaba.¹³⁶ CIRVA predicted that the vaquita will be extinct “possibly by 2018” if vaquita bycatch “is not eliminated immediately.”¹³⁷ Although Mexico has made numerous efforts in the past to manage fishing to protect vaquita both inside and outside the World Heritage property, those efforts were not successful.¹³⁸ And Mexico’s recently announced gillnet ban and expansion of the vaquita refuge have been criticized by scientists and wildlife law enforcement experts as inadequate.

Similarly, the totoaba is “critically endangered” and is in increasingly high demand for its swim bladder as a Chinese delicacy.¹³⁹ The escalating demand for its swim bladder has triggered a “large increase in illegal fishing pressure” on the totoaba.¹⁴⁰ Bladders can reportedly sell for up to \$14,000 USD each, and drug cartels have been implicated in the increasingly lucrative totoaba trade.¹⁴¹

Under the World Heritage Committee’s Operational Guidelines, a property faces an “Ascertained Danger” and thus meets the World Heritage Convention’s standard for “in Danger” listing if there is a “serious decline in the population of the endangered species . . . of Outstanding

¹³¹ WHC-05/29.COM/22, Paris, 9 Sept. 2005, at 117.

¹³² WHC-13/37.COM/8E, Paris, 17 May 2013 (finding the property met World Heritage Criterion (x)); WHC *Operational Guidelines*, at II(D)(77) (listing criteria).

¹³³ WHC-13/37.COM/8E, Paris, 17 May 2013, at 49.

¹³⁴ World Heritage Convention, at Art. 11(4).

¹³⁵ CIRVA (2014), at 9.

¹³⁶ *Id.*

¹³⁷ *Id.* at 2.

¹³⁸ *Id.*

¹³⁹ *Id.*; Findley (2010).

¹⁴⁰ CIRVA (2014), at 15, 2.

¹⁴¹ See Associated Press & Zoe Szathmary, *It’s aquatic cocaine: Mexican smugglers are now selling FISH BLADDERS for thousands of dollars*, DAILYMAIL (Aug. 19, 2014).

Universal Value for which the property was legally established to protect.”¹⁴² As demonstrated above, both the vaquita and the totoaba, which are OUV species, have suffered serious decline and face extinction if gillnet fishing in the Islands and Protected Areas of the Gulf of California property is not stemmed immediately. Accordingly, the Islands and Protected Areas of the Gulf of California property qualifies for listing as World Heritage in Danger.

2. The Management System for Vaquita and Totoaba Is “Not Adequate”

Additionally, a World Heritage property is “threatened by serious and specific dangers” under the World Heritage Convention if it is “faced with major threats which could have deleterious effects on its inherent characteristics.”¹⁴³ These threats include having a “management system” that “is lacking or inadequate, or not fully implemented” to protect the property and its OUV.¹⁴⁴

As detailed above in Section II(B)(3), since at least 1975, Mexico has made numerous attempts to protect the totoaba and vaquita within the World Heritage area and the broader Gulf of California.¹⁴⁵ Despite these often expensive efforts, the vaquita’s precipitous decline continues, and the recently renewed totoaba trade has put the vaquita at an even higher risk of imminent extinction,¹⁴⁶ while also further imperiling the totoaba. Scientists have implored Mexico to take “emergency” action to fully ban all gillnet fishing within the vaquita’s range and ensure such a ban is effectively enforced.¹⁴⁷

While Mexico has now adopted measures to at least temporarily ban gillnet fishing in the vaquita’s range,¹⁴⁸ Mexico’s long history of ineffective vaquita and totoaba management suggests the new measures and their implementation require close evaluation and review. Evidence from as recently as December 2014 indicates that enforcement of the previous gillnet ban was grossly inadequate.¹⁴⁹ Additionally, while Mexico has attempted to increase its enforcement efforts, CIRVA has recommended additional enforcement capacity.¹⁵⁰ In total, Mexico’s “management system” for protecting the vaquita and totoaba – two of the designated OUVs identified for the Islands and Protected Areas of the Gulf of California property – “is lacking,” “inadequate,” and may “not [be] fully implemented.”¹⁵¹ Accordingly, the property is “threatened by serious and specific dangers” and qualifies for listing as World Heritage in Danger.¹⁵²

¹⁴² WHC *Operational Guidelines*, at IV(B)(177). Additionally, the Operational Guidelines state that a property faces a “serious danger” if there has been “[s]evere deterioration of the natural beauty or scientific value of the property.” *Id.* If the vaquita and totoaba become extinct, a central part of the property’s natural beauty and conservation and research value will disappear. *Id.*

¹⁴³ World Heritage Convention, at Art. 11(4); WHC *Operational Guidelines*, at IV(B)(177).

¹⁴⁴ *Id.* at IV(B)(180).

¹⁴⁵ Rojas-Bracho et al. (2013).

¹⁴⁶ CIRVA (2014), at 2.

¹⁴⁷ *Id.*

¹⁴⁸ SAGARPA, Acuerdo por el que suspende la pesca mediante el uso de redes de enmalle, cimbras, y/o palangres en el Norte del Golfo de California (Dec. 23, 2014).

¹⁴⁹ Gill Braulik, *New evidence that Mexican authorities are not adequately enforcing fishing regulations to protect vaquitas* (Dec. 7, 2014).

¹⁵⁰ CIRVA Opinion (2015).

¹⁵¹ WHC *Operational Guidelines*, at IV(B)(177).

¹⁵² World Heritage Convention, at Art. 11(4).

C. “Major Operations” Are Necessary to Conserve the World Heritage Property

Finally, “major operations” are “necessary” to conserve the Islands and Protected Areas of the Gulf of California property and its OUVs from the serious threats presented above.¹⁵³ Scientists, including those with CIRVA, have rung the alarm bell and demanded immediate, “emergency” action to save the vaquita from extinction and an end to the ongoing totoaba trade, calling for international coordination, especially with the United States and China.¹⁵⁴ And while Mexico has responded with a plan, even with a full commitment to action and substantial funds for implementation and enforcement, the challenges faced by Mexico and the two species are enormous, particularly as drug cartels are now a factor in the species’ declines. Mexico has recognized that additional enforcement measures are possible, acknowledging, for example, that it does not have a “scheme in place” for the use of a global positioning system on all pangas.¹⁵⁵ Further, Mexico has indicated that it proposed only a two-year ban on gillnet fishing for economic reasons and that the ban could be extended “if the necessary economic resources could be counted on.”¹⁵⁶

The vaquita, the totoaba, and the Islands and Protected Areas of the Gulf of California property itself would all gain from the Committee’s adoption of a “programme for corrective measures,” specifically laying out what fishery management measures must be implemented.¹⁵⁷ The programme could specify additional training (including on genetic and visual identification of totoaba swim bladders) that is needed for enforcement officers both on-the-water to combat illegal fishing and at the borders of Mexico, the United States, and China to stop the illegal totoaba trade.¹⁵⁸ The Committee could assist in coordinating that training, including supporting enforcement workshops. The Committee could offer essential funds to Mexico as it implements and enforces protective measures, as Mexico’s efforts to meaningfully protect the Islands and Protected Areas of the Gulf of California property and, in particular, the endangered vaquita and totoaba species will require substantial expenditure.¹⁵⁹

Finally, we believe sending the Secretariat and Committee Chair on a monitoring mission to “ascertain . . . the present condition of the property” and its threats would bring valuable attention to the issues and provide additional and needed information regarding the implementation and enforcement of existing protective measures.¹⁶⁰ “Major operations” are clearly “necessary” to conserve the Islands and Protected Areas of the Gulf of California property and its endangered vaquita and totoaba OUVs from the serious threat of extinction.

¹⁵³ World Heritage Convention, at Art. 11(4).

¹⁵⁴ CIRVA (2014), at 2 and 5.

¹⁵⁵ Ampliaciones y Correcciones a la MIR no. 34164 Del Proyecto “Acuerdo por el que suspende la pesca mediante el uso de redes de enmalle, cimbras, y/o palangres en el Norte del Golfo de California.” Available at: [34349.177.59.6.20150205 ANEXO a Of.DGOPA.01244.050215 \(3\).docx](https://www.dgopa.gob.mx/portal/34349.177.59.6.20150205_ANEXO_a_Of.DGOPA.01244.050215_(3).docx)

¹⁵⁶ *Id.*

¹⁵⁷ WHC *Operational Guidelines*, at IV(B)(183).

¹⁵⁸ See World Heritage Convention, at Art. 13 (listing assistance that may be provided under the Convention).

¹⁵⁹ *Id.* at IV(B)(189).

¹⁶⁰ *Id.* at IV(B)(184).

IV. CONCLUSION

As detailed above, Petitioners formally request that the World Heritage Committee request assistance for and list the Islands and Protected Areas of the Gulf of California as “World Heritage in Danger” pursuant to the World Heritage Convention.¹⁶¹ The Islands and Protected Areas of the Gulf of California property was inscribed in part to protect both the critically endangered vaquita and totoaba, which are specifically identified as part of the property’s OUV.¹⁶² However, the property and its OUVs face “serious and specific dangers” from legal and illegal gillnet fishing that will cause the vaquita’s extinction and further threatens the totoaba’s existence without “major operations” to eliminate these threats.¹⁶³

We ask that the Committee act quickly to review this Petition, in hopes that it may warrant substantial discussion at the Committee’s next session to be held in Bonn, Germany in June of this year. If you have any questions regarding this Petition or would like additional information, please contact the authors of this petition.

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¹⁶¹ World Heritage Convention, at Art. 11(4).

¹⁶² WHC-13/37.COM/8E, Paris, 17 May 2013.

¹⁶³ World Heritage Convention, at Art. 11(4); WHC *Operational Guidelines*, at IV(B)(177) (listing “in Danger” criteria).

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