

Via First-Class and Electronic Mail

August 11, 2021

Ms. Kelly K. Milton
Assistant U.S. Trade Representative
for Environment and Natural Resources and
Chair of the Interagency Environment Committee
for Monitoring and Enforcement of the USMCA
600 17th Street NW
Washington, DC 20508
USMCAenvironment@ustr.eop.gov

Re: Request USMCA Consultation with Mexico on Its Vaquita and Totoaba Enforcement Failures

Dear Ms. Milton and Members of the Interagency Environment Committee for Monitoring and Enforcement,

On behalf of the Center for Biological Diversity, Animal Welfare Institute, Environmental Investigation Agency, and Natural Resources Defense Council, we write to ask that the Interagency Environment Committee for Monitoring and Enforcement (“IECME”) of the United States-Mexico-Canada Agreement (“USMCA”) request formal consultation with Mexico under Article 24.29 through the U.S. Trade Representative. In support of this request, we have attached our Submission on Enforcement Matters (“Submission”) tendered today to the Commission on Environmental Cooperation (“CEC”). The Submission documents the Mexican government’s ongoing failure to effectively enforce its environmental laws, including its fishing and trade regulations, which has caused the near-extinction of the vaquita, a porpoise with only approximately 10 animals remaining on Earth.

As you know, under the new legislation implementing the USMCA, the IECME is authorized to “request the Trade Representative to . . . request consultations under . . . article 24.29 of the USMCA.”¹ As part of the USMCA’s environmental dispute and enforcement mechanism, Article 24.29 states the United States “may request consultations with any other Party” regarding any matter “arising under” the USMCA’s Environment Chapter.² The United States must identify the matter and state the legal basis for the request, and the Parties are directed to consult regarding the issues within 30 days in an effort to resolve the issue.³

If the Parties are unable to satisfactorily resolve the issue through consultation, the matter may be elevated to the Environmental Committee and more senior officials and may eventually be brought before a formal dispute resolution panel.⁴ If the panel finds the Party has “failed to

¹ 19 U.S.C. § 4714(1)(A).

² USMCA, Art. 24.29(2).

³ *Id.* Art 24.29(2), (4).

⁴ *Id.* Art. 24.30-24.32.

carry out its obligations” under the USMCA, the United States may suspend benefits under the treaty and issue trade sanctions.⁵

By agreeing to the USMCA, the Mexican government committed to comply with numerous environmental legal requirements, which the government is now violating in its failure to enforce fishing and trade laws. Among several obligations, the Parties to the USMCA have agreed that:

- “[N]o Party shall fail to effectively enforce its environmental laws;”⁶
- The Parties “shall . . . implement laws, regulations, and all other measures necessary to fulfill its . . . obligations” under environmental treaties, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”);⁷
- Each Party “shall seek to operate a fisheries management system” designed to “reduce bycatch of non-target species, including through . . . regulation of, and implementation of measures associated with, fish gear . . . results in bycatch;”⁸
- Each Party “shall promote the long-term conservation of . . . marine mammals through the implementation and effective enforcement of conservation and management measures,” including “measures to avoid, mitigate, or reduce bycatch of non-target species in fisheries;”⁹ and
- Each Party “shall take measures to combat . . . the trade of wild fauna and flora that . . . were taken or traded in violation that Party’s law” and “take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk.”¹⁰

As extensively documented in our CEC Submission, the Mexican government has violated each of the obligations identified above. Indeed, despite regulations banning gillnet fishing in the vaquita’s habitat, observers documented 1,185 boats in that habitat in November 2020, and nearly all were gillnetting illegally.¹¹ The International Union for Conservation of Nature Cetacean Specialist Group stated that “illegal fishing remains at high levels and takes place day and night” within the vaquita’s habitat.¹² Mexico’s failure to enforce its laws governing fishing in the vaquita habitat and totoaba trade are consistent, ongoing, and recurring.

⁵ *Id.* Art. 31.18, 31.19.

⁶ *Id.* Art. 24.4(1).

⁷ *Id.* Art. 24.8(4).

⁸ *Id.* Art. 24.18(1).

⁹ *Id.* Art. 24.19(1).

¹⁰ *Id.* Art. 24.22(4), (3).

¹¹ IUCN Cetacean Specialist Group, Vaquita update October through December 2020. Available at: <https://iucn-csg.org/vaquita-update-october-through-december-2020/>.

¹² *Id.*

Accordingly, we formally petition the IECME initiate USMCA enforcement procedures by “request[ing] the Trade Representative to . . . request consultations under . . . article 24.29 of the USMCA.”¹³ Because the vaquita may be extinct this year if the Mexican government continues to allow illegal fishing and gillnets in the vaquita’s habitat, we ask that the IECME urge the Trade Representative to initiate consultations immediately.

If the Trade Representative initiates consultation, we further ask that you notify us of that development. We are aware the U.S. and Mexican governments have long been in discussions regarding the vaquita issue and that the United States, including through the National Marine Fisheries Service, has taken strong positions in regard to Mexico’s vaquita conservation failures. Accordingly, if the Trade Representative has already initiated formal consultation under the USMCA, we ask that you inform us.

We thank you for your time and attention to this important conservation issue. We welcome the opportunity to discuss this issue or the USMCA compliance process more generally at any time. As a courtesy, following this request, we will send a drive containing electronic versions of all references cited in our CEC Submission.

Sincerely,



Sarah Uhlemann
International Program Director and
Senior Attorney
Center for Biological Diversity
2400 NW 80th Street, #146
Seattle, WA 98117
(206) 327-2344
suhlemann@biologicaldiversity.org

Alex Olivera
Senior Scientist
Center for Biological Diversity
Álvaro Obregón 460
Centro, La Paz, BCS 23000, México
+52 612 104-0604
aolivera@biologicaldiversity.org

Kate O’Connell
Marine Wildlife Consultant
DJ Schubert
Wildlife Biologist
Animal Welfare Institute
900 Pennsylvania Avenue SE
Washington, DC 20003
(202) 337-2332
dj@awionline.org
kate.oconnell@balaena.org

Zak Smith
Senior Attorney & Director, International
Wildlife Conservation
Natural Resources Defense Council
317 E Mendenhall Street, Suite D
Bozeman, MT 59715
(406) 556-9305
zsmith@nrdc.org

Danielle Fest Grabiell
Counsel and Wildlife Team Lead
Environmental Investigation Agency (EIA)

¹³ 19 U.S.C. § 4714(1)(A).

P.O. Box 53343
Washington, DC 20009
(202) 441-8371
dgrabiel@eia-global.org