



THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

February 10, 2022

Secretary Tatiana Clouthier

Ministry of Economia
Av. Insurgentes Sur 1940, Florida, 01030
Mexico City, Mexico

Dear Secretary Clouthier:

The United States requests environment consultations with the Government of Mexico pursuant to Article 24.29 of the United States–Mexico–Canada Agreement (USMCA). Article 24.29.2 of the USMCA entitles a Party to “request consultations with any other Party ... regarding any matter arising under this Chapter”. Specifically, the matter on which we wish to consult with Mexico concerns its obligations in the Environment Chapter of the USMCA and its laws, regulations, and other measures as they relate to the protection of the critically endangered vaquita (*Phocoena sinus*), the prevention of illegal fishing, and trafficking of totoaba (*Totoaba macdonaldi*).

Mexico has adopted environmental laws designed to prevent illegal fishing in the Upper Gulf of California, to prevent trafficking of protected species such as the totoaba, and to protect and conserve the vaquita.¹ However, recent reports and observations by stakeholders indicate that, despite Mexico’s adoption of these environmental laws, hundreds of vessels continue to fish illegally in the Zero Tolerance Area (ZTA) that Mexico has established and in which fishing activities of any kind, with any type of vessel, as well as any transit or navigation by any vessel, are prohibited without a special authorization. One report identified 117 vessels in the ZTA on November 3, 2021. As described in a public submission made to the Secretariat of the Commission for Environmental Cooperation in August 2021, the International Union for Conservation of Nature Cetacean Specialist Group (IUCN CSG) reported that in November 2020, 1,185 boats were documented in the vaquita’s habitat, nearly all gillnetting illegally, and IUCN CSG further noted that “illegal fishing remains at high levels and takes place day and night.”

Additionally, published reports also indicate that illegal take and trade of totoaba persists despite the legal prohibition enacted by Mexico. An article from January 2021 noted that authorities

¹ See Annex A, attached to this letter.

detected a 350-meter-long illegally-set gillnet containing 13 totoaba, seven of which were dead. Other articles note recent seizures of totoaba in the supply chain in September 2020, April 2021, August 2021, and October 2021. In July 2021, the World Heritage Committee expressed its “utmost concern . . . that illegal fishing of totoaba has continued in the Upper Gulf.”

The information described above raises serious concerns and questions about the effectiveness of Mexico’s enforcement of its environmental laws and Mexico’s compliance with its obligations in the Environment Chapter of the USMCA. Relevant USMCA provisions include, for example:

- Article 24.4.1 (Enforcement of Environmental Laws), which provides that “[n]o Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force” of the USMCA;
- Article 24.8.4 (Multilateral Environmental Agreements), which provides, *inter alia*, that “[e]ach Party shall adopt, maintain, and implement laws, regulations, and other measures necessary to fulfill its obligations under [specified] multilateral environmental agreements”, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- Article 24.18.1 (Sustainable Fisheries Management), which provides, *inter alia*, that each Party “shall seek to operate a fisheries management system that regulates marine wild capture fishing”;
- Article 24.19.1 (Conservation of Marine Species), which provides, *inter alia*, that “[e]ach Party shall promote the long-term conservation of sharks, sea turtles, seabirds, and marine mammals through the implementation and effective enforcement of conservation and management measures”;
- Article 24.21 (Illegal, Unreported, and Unregulated (IUU) Fishing), which provides, *inter alia*, that the Parties “recognize the importance of concerted international action to address IUU fishing as reflected in regional and international instruments and shall endeavor to improve cooperation internationally”, and further obligates the Parties to implement, support, maintain, develop, and cooperate on a number of measures and actions that relate to addressing IUU fishing; and
- Article 24.22.4 (Conservation and Trade), which provides, *inter alia*, that “each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence, were taken or traded in violation of that Party’s law or another applicable law”, and “[t]hese measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade”.

Article 24.29.4 of the USMCA provides that “consulting Parties shall enter into consultations promptly, and no later than 30 days after the date of receipt” of a request for consultations unless the requesting and responding Parties agree otherwise. We look forward to receiving your reply to the present request so that we may set a mutually convenient date for consultations, and we

look forward to continuing to work closely with Mexico on matters arising under the Environment Chapter of the USMCA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Tai', with a stylized flourish at the end.

Ambassador Katherine Tai

cc:

Mr. Alejandro Bonilla Muñoz, Director encargado de la Dirección General de Disciplinas de Comercio Internacional, Secretaría de Economía

Mr. Doug Forsyth, Director General for Market Access, Global Affairs Canada

Attachment: Annex A

Annex A

The United States understands that Mexico has adopted, *inter alia*, the following laws, agreements, and corresponding regulations (“environmental laws”) that are designed to prevent illegal fishing in the Upper Gulf of California, to prevent trafficking of protected species such as the totoaba, and to protect and conserve the vaquita:

- The September 2020 Agreement² and its corresponding implementation and enforcement instruments published in 2021,^{3,4} which establish, *inter alia*, a Zero Tolerance Area (ZTA) in which fishing activities of any kind, with any type of vessel, as well as any transit or navigation by any vessel, are prohibited without a special authorization; prohibit the use and possession of gillnets in a designated marine area; prohibit the transport of gillnets within 10 kilometers of the gillnet-prohibited area; prohibit the manufacturing, owning, and sale of gillnets in towns around the gillnet-prohibited area; require fishermen to surrender gillnets; and establish protocols for the enforcement of the September 2020 Agreement, as well as triggering factors for incidences of non-compliance with that Agreement;
- The 2017 Gillnets Order,⁵ which establishes a permanent ban on the use of gillnets, including passive operation, for fishing activities in the marine area of the Northern Gulf of California;
- The 1975 Totoaba Fishing Ban,⁶ which establishes a total ban on totoaba fishing in the Gulf of California; and
- The General Wildlife Law,⁷ specifically Article 55, which establishes that “[t]he importing, exporting, and re-exporting of specimens, parts and derivatives of wildlife species included in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) shall be carried out in the terms of the Convention, the provisions of this Act and of the provisions deriving therefrom”.

² *Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en Zonas Marinas Mexicanas en el Norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones*, DOF, 24 September 2020 (September 2020 Agreement).

³ *Plan de Aplicación en la Zona de Tolerancia Cero y el Área de Refugio para la Protección de la Vaquita Marina*, DOF, 20 January 2021 (Enforcement Plan).

⁴ *Acuerdo por el que se establecen los indicadores, factores detonantes y acciones predeterminadas, de conformidad con el artículo décimo séptimo del Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en zonas marinas mexicanas en el norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones*, publicado el 24 de septiembre de 2020, DOF, 9 July 2021 (Triggers Agreement).

⁵ *Acuerdo por el que se prohíben artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores en aguas marinas de jurisdicción federal de los Estados Unidos Mexicanos en el Norte del Golfo de California, y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para dichas embarcaciones*, DOF, 30 June 2017 (2017 Gillnets Order).

⁶ *Acuerdo que establece veda para la especie Totoaba, Cynoscion MacDonaldi, en aguas del Golfo de California, desde la desembocadura del Río Colorado hasta el Río Fuerte, Sinaloa en la costa oriental, y del Río Colorado a Bahía Concepción, Baja California, en la costa occidental*, DOF, 1 August 1975 (1975 Totoaba Fishing Ban).

⁷ *Ley General de Vida Silvestre (LGVS)* (amended Jan. 19, 2018) (General Wildlife Law).