

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

CENTER FOR BIOLOGICAL DIVERSITY,

and

ANIMAL WELFARE INSTITUTE,

Plaintiffs,

v.

WILBUR ROSS, *in his official capacity as
Secretary of Commerce,*

UNITED STATES DEPARTMENT OF
COMMERCE,

CHRIS OLIVER, *in his official capacity
as Assistant Administrator of the
National Marine Fisheries Service,*

NATIONAL MARINE FISHERIES
SERVICE,

STEVEN MNUCHIN, *in his official
capacity as Secretary of the Treasury,*

UNITED STATES DEPARTMENT OF
THE TREASURY,

KIRSTJEN NIELSEN, *in her official
capacity as Secretary of Homeland
Security,*

and

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendants.

Civil Action No. _____

COMPLAINT

INTRODUCTION

1. The vaquita is the world's smallest and most endangered porpoise. Fewer than 30 vaquita remain today, and the species is currently being caught and killed in Mexican fishermen's gillnets at the staggering rate of nearly 50 percent of the population each year. If current levels of gillnet fishing continue in the porpoise's small range, the vaquita will likely be extinct by 2021.

2. The vaquita is found only in the northern part of the Gulf of California, a narrow body of water between Baja California and the Mexican mainland that is about 100 miles south of the U.S. border. The Gulf of California is heavily fished, and although the vaquita is not the target of Mexican fishermen, it is frequently captured, killed, and discarded during gillnet fishing (also known as bycatch).

3. Vaquita mortalities from gillnet fisheries are well documented. In the past two years alone, six dead vaquita were confirmed to have been killed by drowning in gillnets. Vaquita, like all mammals, breathe air. When vaquita become entangled in a gillnet, they cannot surface for air and eventually drown. Scientists who study vaquita agree that entanglement in gillnets is the principal threat to the species, and that the use of gillnets in the vaquita's range will cause their extinction.

4. Gillnets are a type of non-selective fishing net that is hung vertically in the water column sometimes for hours, or even days, to harvest marine species. Because they are non-selective, gillnets capture and incidentally kill a vast array of life, and it is not uncommon for the target species to comprise only a small fraction of a gillnet's total kill. In Mexico's Gulf of California, fishermen use gillnets to comb through the water for shrimp and various finfish, including curvina, chano, totoaba, and sierra (also known as Spanish mackerel).

5. Most of the commercial shrimp and a significant percentage of the finfish caught in the northern Gulf of California are exported to and sold in the United States. This is due to the Gulf's proximity to the border and the higher prices fishermen can secure in the U.S. seafood market.

6. To combat the threat from commercial fisheries and provide marine mammals, including porpoises like the vaquita, protection against man's activities, Congress enacted the Marine Mammal Protection Act of 1972 (MMPA). The MMPA was designed not only to reduce domestic marine mammal bycatch toward zero, but to put pressure on foreign fisheries that export their products to the United States to do the same. This serves the dual purposes of ensuring greater protection of dolphins, porpoises, and whales abroad and safeguarding U.S. fishermen from unfair competition.

7. Since the MMPA was enacted more than forty-five years ago, not a single species of marine mammal has gone extinct in U.S. waters, and the status of many U.S. marine mammal populations is considerably better today than it was in 1972. While domestic fishermen have been required to invest in gear and adopt practices that minimize bycatch, the provisions in the MMPA that require foreign fisheries that export their products to this country to meet U.S. standards for dolphin and porpoise bycatch have gone largely ignored for decades. Foreign marine mammals, including the vaquita, have suffered the consequences.

8. The vaquita is being drowned by gillnets in the northern Gulf of California at an unprecedented rate that far exceeds U.S. standards.

9. The MMPA mandates that the Secretary of Commerce, the United States Department of Commerce, the Secretary of the Treasury, the United States Department

of the Treasury, the Administrator of the National Marine Fisheries Service, the National Marine Fisheries Service, the Secretary of Homeland Security, and the United States Department of Homeland Security (Defendants) “ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.” 16 U.S.C. § 1371(a)(2). The Secretary of Commerce “shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.” *Id.* Fish imported from Mexico’s northern Gulf of California harvested with gillnets do not meet this standard.

10. This case is about the U.S. government’s failure to comply with the MMPA’s foreign-bycatch provisions to protect the last vaquitas. Plaintiffs urge this Court to declare that Defendants are violating federal law, to hold that Defendants must insist on “reasonable proof” that Mexico is meeting U.S. standards for this species, and to enter an injunction requiring Defendants to ban the import of fish or fish products from the Mexican commercial fisheries that use gillnets within the vaquita’s range.

11. Defendants’ inaction thwarts one of our country’s most tried-and-true environmental statutes and a collective commitment, manifest in the MMPA itself, to protect marine mammals around the world from harmful commercial fishing practices. If Defendants are not compelled to act now, we risk the irretrievable loss of the vaquita.

JURISDICTION

12. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. § 1581(i). This action is commenced against U.S. agencies and officers under

section 101(a)(2) of the MMPA, which provides for an embargo on certain fish and fish products. *See* 16 U.S.C. § 1371(a)(2) (“The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.”).

13. This Court may grant the relief requested pursuant to section 101(a)(2) of the MMPA, 16 U.S.C. § 1371(a)(2), the Administrative Procedure Act, 5 U.S.C. § 706(1), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

PARTIES

14. Plaintiff Natural Resources Defense Council, Inc. (NRDC) is a national environmental-advocacy group organized as a New York not-for-profit membership corporation with more than four hundred thousand members nationwide. Through its Marine Mammal Protection Project, NRDC has worked for more than twenty years to implement and enforce the MMPA and to protect marine mammals in the United States and around the world. NRDC advocates, litigates, participates in teams mandated by the MMPA, and helps develop policy to reduce marine mammal mortality and serious injury from commercial fisheries.

15. NRDC members regularly travel to northern Baja, particularly San Felipe and the northern Gulf of California coastline, where they delight in knowing vaquita reside. They plan to continue visiting the region and hope to observe vaquita in the future. NRDC members derive recreational, conservation, aesthetic, and other benefits from vaquita in the wild. These interests have been, currently are, and will continue to be directly, adversely, and irreparably affected by Defendants’ violations of the law.

16. Plaintiff Center for Biological Diversity (the Center) is a 501(c)(3) nonprofit corporation incorporated in the State of California with over 63,000 active members. The Center maintains offices across the country and in Baja California Sur, Mexico. The Center works through science and environmental law to advocate for the protection of endangered, threatened, and rare species and their habitats, both in the United States and abroad. Through its Oceans and International Programs, the Center has worked for years to protect marine mammals in the United States and abroad that are threatened by unsustainable or harmful fishing practices, including through advocacy, litigation, and participation as appointed members of five MMPA-mandated domestic teams that work to reduce marine mammal mortality and serious injury from commercial fisheries to a level approaching zero.

17. The Center and its members have a strong interest in protecting vaquita and ensuring that fish caught or sold in the United States are harvested in a manner that does not harm vaquita. The Center's members have visited and have specific plans to return to the northern Gulf of California to study, advocate for, visit in its natural habitat, and try to observe and photograph the vaquita.

18. Plaintiff Animal Welfare Institute (AWI) is an international nonprofit animal-advocacy organization with its principal place of business in Washington, D.C. AWI has more than 20,000 members worldwide, including members in Mexico and the southwest United States who reside in areas near the Gulf of California and the Colorado River Delta Biosphere Reserve, the principal habitat of the vaquita. Since its founding in 1951, AWI's mission has been to end human-inflicted animal suffering and exploitation by vigorously defending animals' interests through the law. AWI promotes increased protections of marine mammals from unsustainable fishing practices around

the globe, especially those practices that cause death due to entanglement in fishing gear.

19. AWI members strongly desire increased protections for the vaquita and its habitat in order to increase the likelihood of species recovery. AWI members purchase and consume or seek to purchase and consume fish caught with minimal impacts to marine mammals. AWI members regularly travel to the northern Gulf of California and the Colorado River Delta Biosphere Reserve where they delight in the continued existence of vaquita, advocate for vaquita, and have specific plans to return in hopes of observing vaquita.

20. Plaintiffs and their members derive professional, scientific, educational, recreational, conservational, aesthetic, and other benefits from the existence of the vaquita in the wild. Defendants' collective failure to comply with the MMPA, and the resulting harm to the vaquita population, directly and irreparably harms these interests.

21. Plaintiffs' injuries will be redressed by the relief they request.

22. Defendant Wilbur Ross is the Secretary of Commerce and directs all business of the United States Department of Commerce (Commerce). Commerce oversees the National Marine Fisheries Service's compliance with the MMPA and is responsible for implementing the MMPA, including portions of section 101(a)(2). Therefore, Commerce and Secretary Ross in his official capacity are responsible for violations alleged in this complaint.

23. Defendant Chris Oliver is the Assistant Administrator of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries). Commerce has delegated responsibility for implementing the MMPA to NOAA Fisheries, including implementation of section 101(a)(2). Therefore, NOAA

Fisheries and Assistant Administrator Oliver in his official capacity are responsible for violations alleged in this complaint.

24. Defendant Steven Mnuchin is the Secretary of the Treasury and directs all business of the United States Department of the Treasury (Treasury). Section 101(a)(2) of the Act directs Treasury to ban the importation of commercial fish and fish products that do not meet U.S. standards for protection of marine mammals. Therefore, Treasury and Secretary Mnuchin in his official capacity are responsible for violations alleged in this complaint.

25. Defendant Kirstjen Nielsen is the Secretary of Homeland Security. In this capacity, she directs all business of the United States Department of Homeland Security (Homeland Security). Treasury has partially delegated its authority related to trade bans to Homeland Security, pursuant to the Homeland Security Act. 6 U.S.C. § 203(1); 6 U.S.C. § 212(a)(1); 68 Fed. Reg. 28,322 (May 23, 2003). Therefore, Homeland Security and Secretary Nielsen in her official capacity are responsible for violations alleged in this complaint.

LEGAL BACKGROUND

26. The Marine Mammal Protection Act was enacted by Congress more than forty-five years ago to protect and restore marine mammal species that “are, or may be, in danger of extinction or depletion as a result of man’s activities.” 16 U.S.C. § 1361(1). In passing the MMPA, Congress recognized that “marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic,” and found “that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource

management.” *Id.* § 1361(6). Not a single marine mammal has gone extinct in U.S. waters since the MMPA was enacted.

27. Public outcry over bycatch of dolphins and porpoises in commercial fishing gear was a major driving force behind the enactment of the MMPA. In response, Congress prescribed an overarching “immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.” *Id.* § 1371(a)(2); *see also id.* § 1387(b) (“[T]he Secretary shall review the progress of all commercial fisheries” toward the “[z]ero mortality rate goal” and “take appropriate action.”).

28. To achieve this goal, the MMPA contains specific standards for tracking, assessing, and limiting marine mammal bycatch. *See, e.g., id.* §§ 1386-1387.

a. Stock Assessments: The MMPA requires NOAA Fisheries to prepare a “stock assessment” for each marine mammal population in U.S. waters, which includes, among other requirements, a report of the population’s abundance, the current population trend, the fisheries that interact with the population, the level of “mortality and serious injury” caused by those fisheries each year, and whether the mortality from commercial fisheries is “insignificant and is approaching a zero mortality and serious injury rate.” *Id.* § 1386(a).

b. Potential Biological Removal: The MMPA requires the calculation of the “potential biological removal” (PBR) level for each marine mammal population. *Id.* PBR is the “maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock

while allowing that stock to reach or maintain its optimum sustainable population.” *Id.* § 1362(20). The statute provides a specific formula for calculating PBR. *Id.*

c. Take Reduction Plan: If a commercial fishery is incidentally killing a marine mammal population at or above the PBR, or that species is listed (or likely to be listed) as threatened or endangered, the MMPA requires the development and implementation of a “take reduction plan.” The plan’s immediate goal shall be to reduce fishery-related mortality and serious injury below the PBR within six months, and the long-term goal shall be to reduce bycatch levels to “insignificant levels approaching a zero mortality and serious injury rate” within five years. *Id.* § 1387(f).

d. Monitor and Estimate Bycatch Provision: The MMPA also requires “a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations” in order to “obtain statistically reliable estimates” of bycatch. *Id.* § 1387(d). This may be achieved by placing human observers onboard fishing vessels. *Id.*

29. The MMPA standards apply not only to domestic commercial fisheries, but also to foreign fisheries that export their products to the United States. *Id.* § 1371(a)(2).

30. The MMPA requires that “[t]he Secretary of the Treasury *shall* ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.” *Id.* (emphasis added).

31. In order to ensure compliance with this mandate, the “Secretary [of Commerce] *shall* insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States” *Id.* (emphasis added).

32. Until recently, the MMPA’s foreign-fisheries provisions have—with a single exception for dolphins caught in yellowfin tuna nets—never been implemented or enforced. In August 2016, in response to a petition for rulemaking by Plaintiff the Center, NOAA Fisheries promulgated regulations to guide implementation of section 101(a)(2) of the MMPA. *See* 50 C.F.R. § 216.24; 81 Fed. Reg. 54,390 (Aug. 15, 2016) (the MMPA Imports Rule). The MMPA Imports Rule grants some foreign commercial fisheries a five-year phase-in period for meeting regulatory requirements. 50 C.F.R. §§ 216.3, 216.24(h)(2)(ii). However, in passing the MMPA Imports Rule, NOAA Fisheries recognized the need to demand immediate adherence to the MMPA, for example, in the case of a “very small” marine mammal population like the vaquita “where any incidental mortality could result in increased risk of extinction” and a fishery is “having or likely to have an immediate and significant adverse impact on a marine mammal stock.” 81 Fed. Reg. at 54,395.

33. The MMPA also established the Marine Mammal Commission as an independent U.S. agency. 16 U.S.C. § 1401(a). Among other duties, the Commission is directed to “recommend to the Secretary [of Commerce] and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals.” *Id.* § 1402(a)(4). The MMPA requires that any deviation from such

recommendations be explained in detail, a level of deference unprecedented for an advisory panel at the time that the MMPA was adopted. *See id.* § 1402(d).

FACTUAL BACKGROUND

34. The vaquita is the world's smallest porpoise and its most endangered. The species has an annual decline rate of almost 50 percent and, if current commercial gillnet-fishing practices continue in its habitat, experts predict that the vaquita will be extinct by 2021.

35. The vaquita is found only in the northern Gulf of California, Mexico. Its range is approximately 4,000 square kilometers in size, or about the area of Long Island—the smallest range of any whale, dolphin, or porpoise.

36. While the vaquita has been on the planet for millions of years, scientists first characterized and categorized it in 1958. In 1997, the first survey of the population's abundance estimated a total of 567 individual animals. The species began a precipitous decline sometime in the 1990s, and that decline has been directly attributed to the use of gillnet fishing gear inside its range.

37. In response to calls for the vaquita's conservation, in 1996, the Mexican government created the Comité Internacional para la Recuperación de la Vaquita (International Committee for the Recovery of the Vaquita, or CIRVA), a group of the world's preeminent vaquita experts. CIRVA meets regularly to take stock of the species and to make science-based recommendations to save the vaquita. CIRVA's findings and recommendations are published in a meeting report. Numerous U.S. government employees, including staff from NOAA Fisheries, have both served on and advised CIRVA over the last 20 years.

38. In its eighth meeting report, published in February 2017, CIRVA estimated that between 2011 and 2016, the vaquita suffered an average annual rate of decline of 39 percent, “corresponding to a population decline of 90% over this five-year period.” The annual decline rate increased to 49 percent in 2015 and 2016. CIRVA estimated that there are fewer than 30 vaquita remaining and that at the current rate of gillnet mortality, the vaquita will be extinct in just a few years.

39. The vaquita’s decline is attributable to historic and ongoing bycatch in gillnets used in a select group of Mexican fisheries. A gillnet is a wall of netting that fishermen hang vertically in the water column to catch target species. Gillnets come in various mesh sizes, and fishermen use them actively or set them with weights and buoys for later retrieval. Gillnets are notorious for catching and killing non-target species, including porpoises, dolphins, sea turtles, and even birds.

40. CIRVA has repeatedly recommended that the Mexican government implement a permanent ban on all gillnets throughout the entire range of the vaquita.

41. CIRVA has also recommended that the sale or possession of gillnets on land and at sea be made illegal within and adjacent to the vaquita’s range. CIRVA has called for more effective enforcement by the Mexican government of existing fisheries regulations, including faster response times to reports of illegal fishing, increased penalties, and stronger prosecution efforts. CIRVA has also identified a need to improve the program to remove lost or abandoned gillnets inside the vaquita’s range and recommended swifter development and implementation of viable alternative fishing methods to ensure gillnet-free fisheries in the northern Gulf of California.

42. The Mexican government declared a temporary ban on some gillnet use within the vaquita’s range in 2015 and made that partial ban permanent in 2017. The

partial ban, however, suffers from serious flaws. First, it exempts the curvina and sierra gillnet fisheries. NOAA Fisheries, CIRVA, and scientific experts who study vaquita agree that the use of gillnets by any fishery in the vaquita's range is incompatible with the survival of the species. The sierra fishery has been a documented source of vaquita bycatch. The curvina fishery is particularly problematic because it overlaps spatially with the vaquita's range, making the risk of bycatch "more than remote," by NOAA Fisheries' own assessment. The curvina fishery also overlaps spatially and temporally with the totoaba season and, therefore, is likely to hamper enforcement and facilitate the illegal fishing of totoaba.

43. Fishing for totoaba is widely recognized to be one of the serious drivers of vaquita decline. The totoaba is a large fish that is also unique to the northern Gulf of California and highly endangered. The Mexican government banned fishing for totoaba in the 1970s; however, because of high demand for the fish's swim bladder, poachers continue to illegally hunt for the fish. The preferred method to catch totoaba is with gillnets.

44. The curvina and totoaba fisheries peak in their levels of activity in March and April, and this has corresponded with a spike in vaquita drownings. For example, scientists attributed three vaquita deaths in March 2016 to gillnet entanglement.

45. The Mexican government also lacks the resources necessary to enforce the partial ban of gillnets. As a result, illegal fishing continues in the area, as does the unprecedented decline of the vaquita population. In its most recent report of February 2018, CIRVA documented the findings of a multi-institutional program to find and remove illegal and abandoned fishing gear in the vaquita's range. In 166 days of field work, 518 pieces of illegal or abandoned fishing gear were retrieved, and 220 of these

were active fishing gear inside the vaquita's range. CIRVA concluded that illegal fishing activities, particularly the setting of large-mesh gillnets, "continue at alarming levels within the range of the vaquita."

46. On June 30, 2017, the Mexican government announced a permanent ban on most gillnet fishing in the vaquita's habitat, prohibited some night-time vessel activity, established a series of designated landing sites for boats, and required the use of tracking devices on small fishing boats. However, the new regulation continues to suffer from obvious shortfalls. Paramount among those is the fact that the government exempted fishing for curvina and sierra in the vaquita's range from the gillnet ban.

47. The Marine Mammal Commission has recommended that Defendants ban, on an emergency basis, the import of gillnet-caught seafood from the vaquita's habitat.

48. On March 1, 2017, the Marine Mammal Commission submitted a letter to NOAA Fisheries stating that "[t]he gillnet fisheries of the upper Gulf of California . . . continue to cause high levels of bycatch mortality for the vaquita." The Commission concluded that "[w]e currently have sufficient information to indicate that all gillnet fisheries that incidentally catch vaquita are employing a fishing technology that kills . . . marine mammals in excess of U.S. standards."

49. On September 21, 2017, the Commission submitted a second letter to NOAA Fisheries formally recommending that the agency act immediately "to ban the import into the United States of all fish and fish products from fisheries that kill . . . , or that have the potential to kill . . . vaquitas." The Commission's recommendation was based on: (1) the inadequacy of Mexico's regulatory efforts, which are unlikely "to prevent extinction, much less to provide for conservation and recovery of the species";

(2) the fact that Mexico’s regulatory program “cannot be considered comparable in effectiveness to the U.S. regulatory program”; and (3) the fact that “there can be no question that [northern Gulf commercial] fisheries are having an immediate and significant adverse impact on the vaquita.”

50. The current level of mortality of vaquita in gillnets in Mexico’s northern Gulf of California vastly exceeds the bycatch limit that would be allowed for U.S. fishermen under the MMPA for a critically endangered and declining marine mammal species like the vaquita (i.e., far fewer than one vaquita per year) and is undoubtedly “in excess of United States standards.” 16 U.S.C. § 1371(a)(2). The Mexican government has failed to adequately assess the status of, establish an adequate bycatch reduction plan for, or monitor bycatch of the vaquita. Likewise, the Mexican government has failed to provide—and the U.S. government has failed to insist on—“reasonable proof” regarding the effects that its gillnet fisheries have on the vaquita. *Id.* § 1371(a)(2)(A).

51. For these reasons, the MMPA mandates that Defendants ban the importation of Mexican northern Gulf of California fish and fish products that legally or illegally use gillnets in the vaquita’s habitat. These include fisheries targeting shrimp, curvina, chano, and sierra.

52. Most of the shrimp and a substantial portion of the curvina, chano, and sierra harvested from the northern Gulf of California are exported for sale to the United States. A ban on these imports would inflict serious economic and political pressure on Mexico to manage its northern Gulf of California fisheries in a way that meets U.S. standards and would directly benefit vaquita.

53. The failure to ban these Mexican northern Gulf of California fish and fish products risks the extinction of the vaquita and hurts U.S. fishermen who must meet

U.S. standards for marine mammal bycatch prevention and are, therefore, at a competitive disadvantage.

54. On May 18, 2017, Plaintiffs submitted an emergency petition requesting that the Secretaries of Commerce, Treasury, and Homeland Security immediately implement MMPA section 101(a)(2) and ban the import of all fish and fish products from Mexico sourced in a manner that “results in the incidental kill or incidental serious injury” of vaquita “in excess of United States standards.” Specifically, Plaintiffs requested that the government ban all fish and fish products originating from the vaquita’s range in the northern Gulf of California that were obtained using any kind of gillnet, the fishing gear solely responsible for the near-extinction of the vaquita.

55. NOAA Fisheries acknowledged receipt of Plaintiffs’ petition by publication of notice in the Federal Register. 82 Fed. Reg. 39,732 (Aug. 22, 2017). To date, however, on information and belief, Defendants have taken no action to ban fish or fish products from the northern Gulf of California harvested with gillnets and have not received reasonable proof from the Mexican government that the Gulf of California gillnet fisheries meet U.S. standards.

FIRST CLAIM FOR RELIEF

Failure to Ban Imports Section 101(a)(2) of the MMPA

56. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs.

57. Section 101(a)(2) of the MMPA provides that Defendants “shall ban the importation of commercial fish or products from fish which have been caught with

commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.” 16 U.S.C. § 1371(a)(2).

58. Despite the fact that Mexican gillnet fisheries in the northern Gulf of California export to the United States fish caught with technology that results in the incidental killing of vaquita in numbers exceeding U.S. standards, Defendants have not banned the importation of fish and fish products from those fisheries, in violation of section 101(a)(2) of the MMPA. *Id.*

59. Defendants’ failure to act constitutes “agency action unlawfully withheld or unreasonably delayed,” for which this Court may order relief under the Administrative Procedure Act. 5 U.S.C. § 706(1).

SECOND CLAIM FOR RELIEF

Failure to Demand Reasonable Proof Section 101(a)(2)(A) of the MMPA

60. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs.

61. Section 101(a)(2)(A) of the MMPA provides that Defendants “shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States” for the purposes of determining whether such technology meets U.S. standards for the protection of marine mammals. 16 U.S.C. § 1371(a)(2)(A).

62. Mexico exports fish and fish products to the United States from northern Gulf of California fisheries using gillnets, a technology that results in the incidental kill of vaquita in excess of U.S. standards.

63. The Mexican government has not proven that any northern Gulf of California Mexican commercial export gillnet fishery meets U.S. standards with respect to the vaquita.

64. Defendants have not insisted that the Mexican government provide reasonable proof of the effect of the use of gillnets in Mexican commercial fisheries on the vaquita or that these fisheries meet U.S. standards, in violation of section 101(a)(2)(A) of the MMPA. *Id.*

65. Defendants' failure to act constitutes "agency action unlawfully withheld or unreasonably delayed," for which this Court may order relief under the Administrative Procedure Act. 5 U.S.C. § 706(1).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendants unlawfully withheld and unreasonably delayed the banning of fish and fish-product imports from northern Gulf of California Mexican commercial fisheries that use gillnets within the vaquita's range;
2. Declare that Defendants unlawfully withheld and unreasonably delayed a demand for reasonable proof of the effect on the vaquita of northern Gulf of California Mexican commercial gillnet fishing for export to the United States;
3. Enter an injunction requiring Defendants to ban the import of fish or fish products from any Mexican commercial fishery that uses gillnets within the vaquita's range;
4. Enter an injunction requiring Defendants to insist on reasonable proof from the Mexican government of the effects of the use of gillnets by northern Gulf of California fisheries on vaquita and that they meet U.S. standards;

5. Award Plaintiffs the costs of this action, including reasonable attorneys' fees; and
6. Grant any other relief this Court finds just and proper.

Dated: March 21, 2018

Respectfully submitted,

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