



# MARINE MAMMAL COMMISSION

29 January 2016

Craig Hoover  
Chief, Division of Management Authority  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike, MS: BPHC  
Falls Church, VA 22041

Dear Mr. Hoover:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Fish and Wildlife Service's (FWS) 4 December 2015 notice (80 Fed. Reg. 75873) on proposed resolutions, decisions, and agenda items being considered for the Seventeenth regular meeting of the Conference of Parties (CoP17) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The notice invites comments concerning proposed resolutions, decisions, and agenda items that the United States is likely to submit, undecided on submitting, or not likely to submit for consideration at CoP17. The Commission provides the following recommendations and rationales for the items under consideration.

## **Marine species: Swim Bladder trade**

FWS is undecided on whether to submit a proposal for consideration at CoP17 to explore further the fish maw (swim bladder) trade to identify critical intervention points to ensure that this trade, which threatens two endangered species, can be stopped (Item B.10 in the Notice). This concerns trade in the swim bladders of the totoaba (*Totoaba macdonaldi*), a fish species listed as endangered under the Endangered Species Act and on CITES Appendix I. Totoaba are caught illegally in the upper Gulf of California, Mexico, and their swim bladders illegally traded, often through the United States, with the ultimate market in the People's Republic of China (PRC) and Hong Kong. Illegal capture of totoaba with large-mesh gillnets has been directly implicated in the bycatch and a doubling of the rate of decline of an endangered marine mammal species, the vaquita (*Phocoena sinuata*), which is already very close to extinction. Even with Mexico's two-year ban on the use of all gillnets within the vaquita's range in the upper Gulf of California, and a strong presence by Mexican enforcement authorities in that area, the high value of totoaba swim bladders provides a strong incentive for continued illegal fishing and trade.

The Commission applauds the efforts of FWS, in cooperation with Mexican authorities, to tackle this doubly destructive trade at our own borders and, increasingly, in cooperation with PRC and Hong Kong authorities. We note in particular the progress made at the 66<sup>th</sup> Meeting of the CITES Standing Committee (SC66) in January 2016, which considered the document (SC66 Doc. 58) submitted by Mexico, entitled *Totoaba (Totoaba macdonaldi): Opportunities for International Cooperation within the CITES Framework*. SC66 urged Mexico to strengthen implementation of CITES provisions that are applicable to totoaba and recommended that Parties cooperate with Mexico in sharing any relevant information about illegal trade in totoaba.

While welcoming these Standing Committee recommendations, the Commission is convinced that continued and strengthened international attention to the totoaba swim bladder trade is required to prevent the extinction of the vaquita and serious harm to the totoaba population. Efforts to document the scale of the totoaba swim bladder trade have exposed the larger overall Asian swim bladder trade (legal or otherwise) within which it occurs. This situation suggests that a CITES CoP decision generally addressing the trade in swim bladders (fish maw), crafted with specific reference to the case of totoaba, could focus attention on the particular operational challenges of monitoring and controlling this trade, and identify critical points where international cooperation and intervention need to be strengthened to ensure that this trade, which threatens at least two species known to be endangered, is stopped.

A CITES decision could follow the SC66 recommendations in directing Parties that are sources, intermediary countries, and consumers of swim bladders, to cooperate in identifying and implementing measures to reduce illegal catch and illegal trade of swim bladders, in particular from totoaba. These would include measures to improve surveillance and species identification of swim bladders and similar products in trade and in markets for such products, and to increase awareness of the trade and its illegal components among traders, customs authorities, and the general public. The decision could address the likely presence or emergence of swim bladder trade in other countries beyond China and Hong Kong and encourage CITES and customs officers in other countries to be vigilant in identifying illegal products within this trade.

The Standing Committee should be directed to consider further the elements of illegal swim bladder trade. For example, with reference to totoaba, the Committee might be asked to provide guidance to the Parties on balancing monitoring and enforcement priorities in situations in which the scale of the illegal market for a product in the destination country is very small relative to the overall legal and illegal wildlife market in that country, and yet the impact of that demand on the subject species in its range state is sufficient to drive the target species, and in this case, a second, even more vulnerable species, to extinction.

The Animals Committee should be directed to consider the implications of illegal trade in and markets for swim bladders (including totoaba) and proposals for the use of aquaculture as a possible alternative source of products from species that are sources of swim bladders, as the Committee reviews the effectiveness of range-state measures to protect the species in-situ.

Therefore the Commission recommends that FWS submit a proposal for a decision at CoP17 to further address the overall swim bladder (fish maw) trade, with specific reference to the trade in totoaba swim bladders, to identify critical intervention points to ensure that this trade, which threatens two endangered species, can be stopped and to identify actions, as detailed above, to be taken by Parties, the Standing Committee, and the Animals Committee. Commission staff would be pleased to work with you in developing such a decision.

### **Other issues**

With respect to item B.14 in the Notice, the Commission also recommends that FWS refrain from submitting a proposal to eliminate voting by secret ballot except for the election of officers. The use of secret ballots has proven valuable in other situations to prevent undue influence by other

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countries over votes by CITES Parties based on factors other than the merits of the proposal being considered or because of fear of retaliation for votes taken at CITES. The current practice should be retained.

The Commission supports the proposal (Item B.7) that the United States seek clarification of paragraphs 4 and 5 of CITES Article XIV if it is deemed timely to do so. In particular, the Commission believes that reliance on the provisions of another international agreement in lieu of CITES requirements in such situations is appropriate only if the other agreement has tracking and enforcement provisions comparable to those afforded by CITES.

Because of its focus on marine mammal issues, the Commission has also reviewed two of the proposals that FWS has indicated it is unlikely to submit to CoP17—one concerning the adoption of a CITES description code for cetacean blubber (C.16) and the other concerning the breeding of cetaceans (C.17). The Commission believes that FWS should give further consideration to proposing the adoption of a CITES description code for “blubber,” particularly as it relates to large cetaceans. Hunting of these species and related international trade is controversial and has prompted the United States to certify three whaling countries under the Pelly Amendment to the Fishermen’s Protective Act for diminishing the effectiveness of the International Convention for the Regulation of Whaling. Anything that would enhance the ability of U.S. agencies to track the nature and extent of this trade, including the differentiation of the products being traded, should be encouraged.

With respect to the question of whether the United States should “support establishing a clear policy [in CITES] regarding the breeding of rescued, wild cetaceans with their captive-bred counterparts,” the Commission notes the potential difficulties that can arise if cetaceans from different species or stocks are allowed to interbreed. Among other things, it may make it unwise to release the captive-bred offspring into the wild, should that ever be deemed desirable. The Commission therefore supports the adoption of clear policies regarding the breeding of rescued, wild cetaceans with captive-bred counterparts. However, we question whether this is something best accomplished within the framework of CITES. This is something that Parties should first address domestically or in some other forum, and then bring to CITES at a later stage if there are international trade implications that need to be addressed.

Please contact me if you have any questions concerning these recommendations and rationales.

Sincerely,



Rebecca J. Lent, Ph.D.  
Executive Director

cc: Ms. Donna Wieting  
John Henderschedt