

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,  
378 N. Main Avenue  
Tucson, AZ 85701,

ANIMAL WELFARE INSTITUTE,  
900 Pennsylvania Avenue SE  
Washington, DC 20003,

*Plaintiffs,*

v.

DAVID BERNHARDT, *in his official  
capacity as Secretary of the U.S. Department  
of the Interior,*  
1849 C Street NW  
Washington, DC 20240,

U.S. DEPARTMENT OF THE INTERIOR,  
1849 C Street NW  
Washington, DC 20240,

*Defendants.*

Case No. 1:20-cv-1532

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs Center for Biological Diversity and Animal Welfare Institute (collectively “Plaintiffs”) challenge the failure of Secretary of the Interior David Bernhardt and the Department of the Interior (“Defendants”) to respond to a 2014 petition (“the Petition”) filed pursuant to the Administrative Procedure Act (“APA”). The Petition requested that Defendants “certify” Mexico under the U.S. Pelly Amendment for Mexico’s ongoing failure to halt illegal fishing of and international trade in endangered totoaba fish. *See* 22 U.S.C. § 1978(a)(2). This take and trade violates and “diminishes the effectiveness” of the Convention on International

Trade in Endangered Species of Fauna and Flora (“CITES”) and is contributing to the imminent extinction of the vaquita, a critically endangered porpoise. *Id.*

2. Likely only 10 vaquita remain on Earth. Vaquita face a single threat: they become entangled and drown in fishing gear, including in gear set illegally to catch totoaba, a giant, endangered fish. Totoaba are traded on the black market from Mexico to China, where the totoaba’s swim bladder is believed to have medicinal properties.

3. Totoaba and vaquita are both protected under CITES as Appendix-I species, and thus international, commercial trade in both species is prohibited. Mexican law also prohibits totoaba fishing.

4. Yet for years, Mexico has failed to enforce these bans on totoaba fishing and trade, and as a result, the vaquita population has plummeted. If Mexico does not take serious, immediate, and concerted action to increase enforcement, the vaquita may be extinct by next year.

5. Under the Pelly Amendment, if “the Secretary of the Interior . . . finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary . . . shall certify such fact to the President.” 22 U.S.C. § 1978(a)(2). Upon the Secretary’s certification of a nation, the President is authorized to direct the Department of Treasury “to prohibit . . . the importation into the United States of any products from the offending country.” *Id.* § 1978(a)(5).

6. The Petition, filed September 29, 2014, requested that the Secretary of the Interior certify Mexico for trade and taking of totoaba that “diminishes the effectiveness” of CITES, pursuant to the APA and the Pelly Amendment. 5 U.S.C. § 553(e); 22 U.S.C. § 1978(a)(2).

7. Defendants have not made a final determination on the Petition as of the date of this Complaint's filing.

8. Defendants' delay in responding to the 2014 Petition is unlawful, unreasonable, and violates the APA. 5 U.S.C. §§ 555(b), 706(1). More than five years have passed since the Petition's filing, and during this time, Mexico's totoaba taking, trade, and violations of CITES has continued, as the vaquita's population has declined precipitously.

9. Plaintiffs file this Complaint pursuant to the APA seeking a declaratory judgment and injunctive relief to compel Defendants to respond substantively to the Petition by a date certain, as well as Plaintiffs' fees and costs associated with the litigation.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (actions arising under the laws of the United States), 28 U.S.C. § 1346 (action against the United States), 28 U.S.C. § 1361 (power to issue writs of mandamus), 28 U.S.C. §§ 2201–02 (power to issue declaratory judgments and injunctive relief in cases of actual controversy), and 5 U.S.C. § 702 (APA jurisdiction for those adversely affected by agency action).

11. This lawsuit is brought pursuant to the APA. 5 U.S.C. §§ 551–559, 701–706. Plaintiffs seek judicial review under the APA. *Id.* § 706(1). The requested relief is authorized under 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), 5 U.S.C. § 706 (APA), and the Court's equitable powers.

12. Venue properly lies in this District under 28 U.S.C. § 1391(e)(1), as this civil action is brought against an agency of the United States and an officer and employee of the United States acting in his official capacity; Defendants reside and are headquartered in the

District of Columbia; and a substantial part of the events and omissions giving rise to the claim occurred in the District of Columbia.

13. The APA provides waiver of the federal government's sovereign immunity. 5 U.S.C. § 702.

### **PARTIES**

14. Plaintiff Center for Biological Diversity ("the Center") is a 501(c)(3) nonprofit corporation incorporated in the State of California that maintains offices across the country, including in Washington, DC, California, Arizona, Florida, New York, Oregon, and Washington State, 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. The Center has over 74,000 active members and around 1.7 million online activists.

15. The Center and its members have a strong and longstanding interest in protecting imperiled marine mammals and fish like the vaquita and the totoaba. Through its International and Oceans Programs, the Center has worked for years to protect marine mammals within 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 take reduction teams under the Marine Mammal Protection Act. The Center has a long history of actively advocating for protection of the imperiled vaquita and the totoaba within the United States, in Mexico, and at numerous international forums.

16. Members of the Center reside throughout the United States, in Mexico, and in other countries. The Center has members who have visited and have specific plans to return to the vaquita's habitat in Mexico's Upper Gulf of California. For example, Mr. Brett Hartl, a

member who resides in Arizona, lived in the Upper Gulf in 2003 for ten weeks and traveled extensively in the area. He visited San Felipe, near the vaquita's habitat, in 2009 and 2018 and attempted to view, study, and photograph the vaquita. Mr. Hartl had planned to return to the Upper Gulf this September to again attempt to view the vaquita, but these plans have been postponed because of the coronavirus pandemic. He now plans to return to the Upper Gulf to attempt to view vaquita in May or June of 2021, assuming it is safe to travel at that time due to COVID-19. Another Center member, Mr. Taylor McKinnon, has been visiting the Upper Gulf regularly since childhood. He has visited San Felipe and the surrounding coast six times, including in 2016, 2017, and 2018, kayaking, taking photos, and looking for vaquita. He plans to take the same trip in October of 2020, if allowed and safe given COVID-19 recommendations, and to continue such annual trips in the future, as he has done in the past. Mr. Alejandro Olivera is a Center member who resides in California Baja Sur, Mexico and regularly visits the Upper Gulf and the vaquita's habitat, including six trips over the past 11 years. Each time Mr. Olivera visits the Upper Gulf, he attempts to view a vaquita, including from on the water, and he has also seen gillnets being used near San Felipe. Mr. Olivera planned to return to the vaquita's habitat to attempt to see the vaquita and evaluate on-the-water enforcement by Mexican officials in April of this year, including booking travel; however, he cancelled those plans due to the coronavirus pandemic. Mr. Olivera has rescheduled his trip and now plans to visit the vaquita habitat in the fall of 2020, if permissible under COVID restrictions, and will continue to return to the Gulf regularly in the future, as he has in the past.

17. Plaintiff Animal Welfare Institute ("AWI") is a non-profit animal advocacy organization with its principal place of business in Washington, DC. Since its founding in 1951, AWI's mission has been to end human-inflicted animal suffering and exploitation by vigorously

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