

# Threats and Barriers to Trade for Mexico's Commercial Fisheries

Case Studies on Artificial Barriers to Trade  
Affecting the value chain.

# Profit Hungry, Unethical NGOs Have Raised Millions Through Boycotts, Embargo Lawsuits, and false Eco-Labels at the Expense of Responsible Mexican Fisheries

- Turtle Excluder Devices – EII boycotts and lawsuits for embargoes, with the support of competitive elements of the U.S. shrimp industry.
- EII consumer boycotts and legislation imposing embargoes against Mexican tuna, promoted by NGOs in consort with the U.S. tuna industry.
- EII and Tuna processor “dolphin safe” eco-labels implemented in the U.S. and internationally making false claims about their own tuna and about Mexican fisheries.
- Organized efforts to block MSC Sustainability Certification of Mexican tuna industry by NGOs making false claims about the fishery while simultaneously engaged in commercial co-branding of tuna with a U.S. tuna processor.
- U.S. spiny lobster industry-backed effort to erect USG barriers to transshipment of Mexican catch to foreign markets.
- Consumer boycotts and embargo lawsuits by NGOs against Mexican shrimp, curvina, chano, and sierra on the false premise of harm to vaquita.

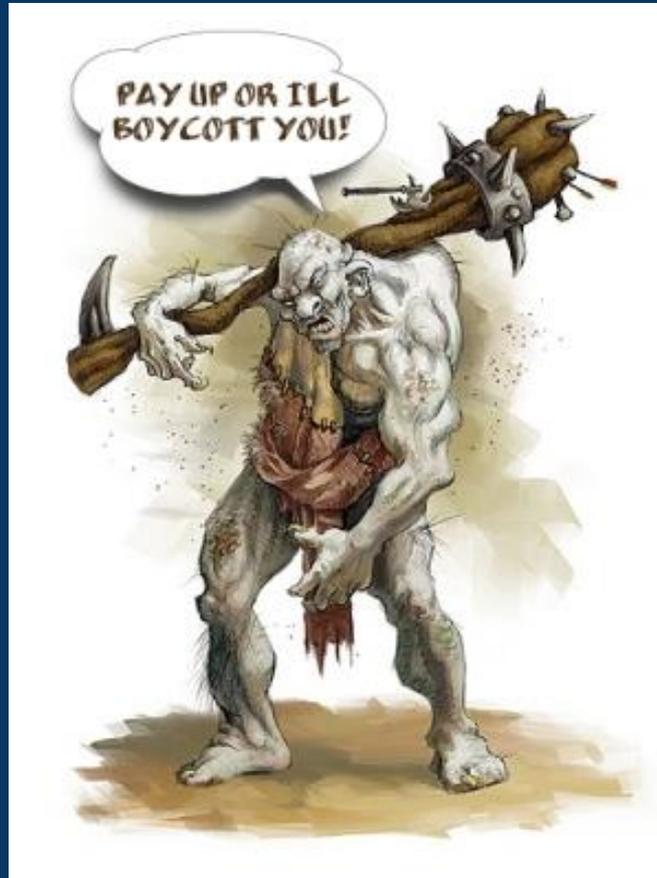


# Interference & Intimidation

Intimidation

False claims

Lack of credibility  
for eco-labels



Unwarranted Boycotts

Business interference

Disruption of  
distribution chain

**Consumer deception**

# Misuse and Abuse of Tuna Eco-labels

- Since its introduction in 1991, the EII “dolphin safe” labeling scheme has aggressively sought to control global tuna trade through its boycott protection scheme. It has colluded with major market players to this end and has greatly enriched itself in the process.
- The United States Government, despite statutory mandates to do so, has failed to monitor the deceptive activities and false claims associated with the EII scheme, allowing for the effective closure of the U.S. market to all but those conceding to EII control and allowing for the distortion of global tuna trade.
- EII’s deceptive scheme has pressured fishermen around the world to fish in unsustainable ways with tremendously high levels of bycatch in order to gain access to the label and markets.

# NGOs Have Falsely Attacked Legal and Responsible Fisheries with Deceptive Eco-Labels

Given their impact on markets, consumers, and responsible fishery management, claims associated with seafood eco-labels such as “dolphin safe” must be required to meet basic credibility standards:

- They cannot be deceptive to consumers
- If they are deceptive, they should not be permitted to be trade and market distorting
- They should be monitored by regulators for their unintended adverse consequences for the environment and sustainability of the fishery

**Eco-labels must be measured against an accepted set of standards such as those developed by the ISEAL Alliance and those embodied by MSC.**

# UPDATE: Eco-Labels, Dolphin Safe and the WTO

The WTO case against the U.S. “dolphin safe” labeling scheme has been ongoing since 2008, and has entered its final phase. The WTO ruled against the United States five consecutive times and last year authorized Mexico to impose \$163.2 million in annual penalties against U.S. imports. A lower panel ruling last year was challenged by Mexico before the Appellate Body and a final decision is expected next month. Mexico fully expects the Appellate Body decision to be in its favor, meaning the penalties authority will remain in place, motivating the United States to change its law in favor of a final resolution.

The penalties are based on WTO conclusions that:

- The U.S. “dolphin safe” measure failed to fulfill its stated objectives and could actually mislead, rather than inform consumers, because the absolute assurance given to U.S. consumers that they were buying “dolphin safe” tuna was not confirmed by independent observers, was not traceable through the supply chain, and was likely to be inaccurate.
- Mexican tuna caught in the Eastern Tropical Pacific (ETP) is treated differently than virtually all other tuna coming to the U.S. market, caught in other oceans by other fishing methods but resulting in significantly higher dolphin mortality.
- Earlier decisions of the Appellate Body found that the U.S. was completely ignoring the high incidence of dolphin mortalities in other oceans supplying more than 95% of tuna to the U.S. market, which resulted in consumer deception about the “dolphin safe” status of tuna bearing that eco-label.
- The Appellate Body acknowledged that the multilateral Agreement on International Dolphin Conservation and Protection (AIDCP), to which both Mexico and the United States are parties, had dramatically reduced dolphin mortality in the Eastern Tropical Pacific (ETP) since 1990.

# What Do Consumers Want and Expect?

National polls of American consumers were conducted in 2003, 2010 and 2016 on their perceptions of dolphin-safe:

**Almost two-thirds of adults think the definition of “dolphin safe” should be that no dolphins were injured/killed.**

*“Thinking more about this...what do you think the definition of ‘dolphin safe’ should be? Is it...”*

March 2003

Oct 2010

Sept 2016

**25%**

**22%**

**21%**

*There is guaranteed to be no dolphin meat in the can.*

**13%**

**10%**

**12%**

*Dolphins were not encircled and then released in the capture of the tuna.*

**53%**

**59%**

**63%**

*No dolphins were injured or killed in the course of capturing tuna.*

# Vaquita Case: NGO's Deceptive Boycott and Embargo Litigation against Mexican Shrimp and other fisheries

In March of last year, a group of NGOs in the U.S. launched a boycott against Mexican shrimp and then launched two lawsuits demanding embargoes against shrimp and finfish imports from Mexico, purportedly to protect the Vaquita.

## FACTS:

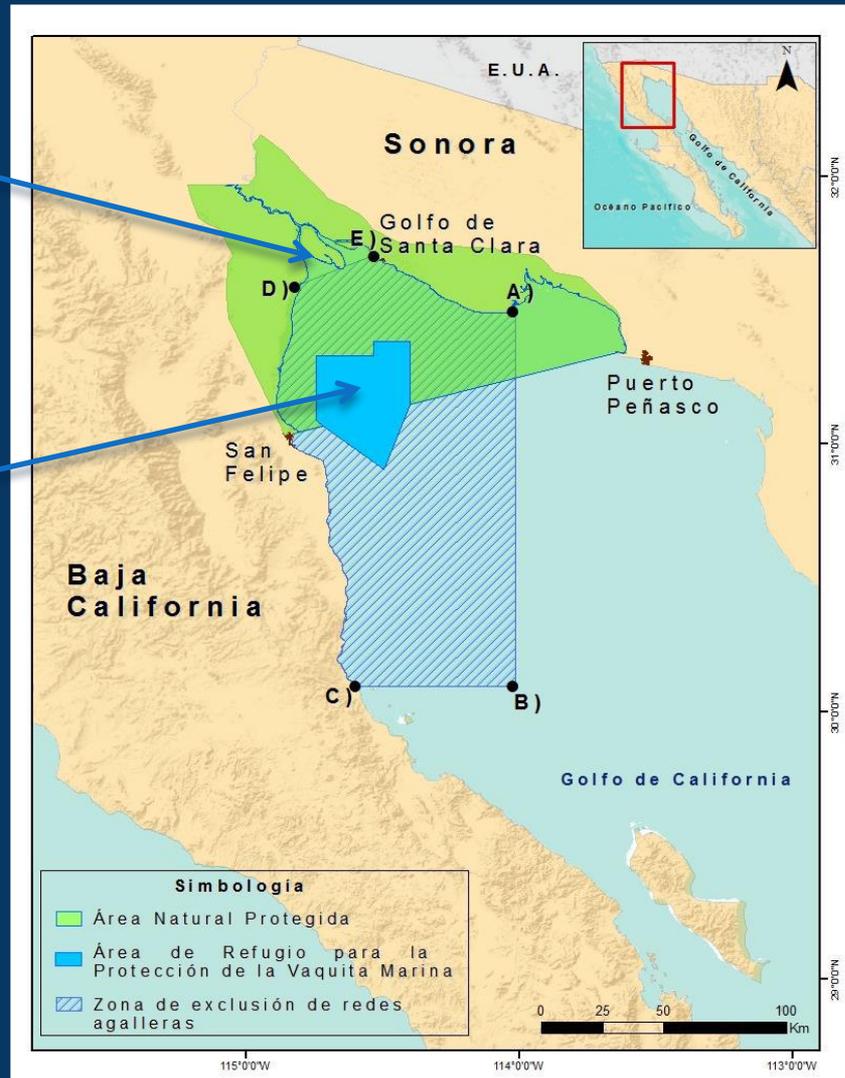
- Gillnet fisheries in the area of the vaquita have been banned since 2015.
- No shrimp, curvina, sierra or chano are caught within the range of the Vaquita.
- No legal and highly regulated fisheries in Mexico have any interaction with the vaquita.
- Mexico has expended hundreds of millions of pesos on enforcement, research, compensation to idled fishermen and the development and testing of new gears under the Comprehensive Program for the Protection and Recovery of the Vaquita.

Nonetheless, the NGOs have pursued their market and legal assaults on these responsible and legal fisheries in order to extort the Government of Mexico to ban regulated and vaquita-safe fisheries.

On their own boycott website, they state, "In 2016, the United States imported millions of tons of shrimp from Mexico valued at more than \$274 million...Not all Mexican shrimp products come from the Gulf of California, but only by boycotting all Mexican shrimp is the industry likely to help save the vaquita."

Curvina  
fishing area

Range of the  
Vaquita  
(refuge)



On April 2015, the Mexican Government established the Inter-Institutional Operations Center “COI” under the leadership of the Secretariat of the Mexican Navy (SEMAR).

The Command and Control Center for the COI was established in the Naval Sector San Felipe.



# Current Situation

Last month, the Court of International Trade granted the NGO petition for an preliminary injunction, ordering an embargo against shrimp and other fish products from Mexico.

While only products caught with gillnets in the protected area of the upper gulf are prohibited entry, the ruling and the resulting embargo implementation by the USG put an undue burden on producers of a wide range of seafood products from across Mexico, requiring exporters to prove the products were not caught using that gear in that area of the upper Gulf.

These embargoes, aside from being unfounded, are having significant commercial, regulatory, political and socio-economic impacts and are actually drawing critical resources and attention away from the effort to protect the vaquita.

# Managing Risks and Pursuing Solutions

Unfortunately, the problem of unfair barriers to fair market access to the U.S. for Mexican products is not limited to seafood. In addition to those I have mentioned, there are a host of other high-profile examples from over the years, including cement, sugar, avocado, tomatoes and more.

In the cases of tuna and shrimp, in the current and past Presidential Administrations, the industry has cultivated and benefitted from a very close coordination with the various Government Secretariats and agencies in ensuring a high-level response to such barriers and to seeking resolution of the threat.

This coordination has been crucial since these assaults occur on many different levels. It is hoped and believed that Mexico, as a result, has a relatively clear but complex path forward to resolving these two issues in the near term.

# Elements of Effective Response

- Identification and definition of the threat.
  - Who is behind it and what are their objectives?
  - What are their claims to support their position?
  - What are the impacts of the demanded action on industry interests?
- Responding to the threat.
  - Immediate effort to substantively respond to and counter the claims, including the preparation of factual materials and data to do so.
  - Immediate engagement with the senior officials of the relevant Ministries (i.e. Economia, Sagarpa, Relaciones, etc.) to:
    - Share what you know about the threat
    - Brief them on the facts at issue
    - Agree upon a coordinated approach, including bilateral engagement, sometimes collaborative and sometimes adversarial, by your government, and commercial engagement with your U.S. market allies (customers, importers, users, etc.)

## The Answer is a Different Approach to Ensuring Sustainability

For the past 30 years, Mexico and its tuna and shrimp industries have committed to multilateral, science-based management of their fisheries in a manner that ensures the sustainability of the target resource and all other living marine resources.

The tuna and shrimp industries in Mexico, and all of the other fisheries operating in the Upper Gulf of California have made great sacrifices and gone to great economic expense to protect the delicate balance of the ecosystems within which they operate. When these responsible fishermen are unfairly and falsely maligned, it is critically important for them to respond forcefully and effectively. It is the only way for them to counter competitive commercial opportunists and, in the cases we have looked at today, predatory and economically self-interested “NGO Enterprises.”

Thank you