

*Addendum to the Biennial Report to Congress Pursuant to
Section
403(a) of the
Magnuson-Stevens Fishery Conservation and Management
Reauthorization Act of 2006*

**Positive Certification Determination for Mexico's 2013
Identification for Bycatch of North Pacific Loggerhead Sea
Turtles**

September 2016

**U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230**

Purpose of the Addendum. Mexico was negatively certified in the Addendum to the 2015 Biennial Report to Congress for not having a regulatory program comparable in effectiveness to that of the United States. Specific issues that led to the negative certification included: uncertainty regarding the effectiveness of Mexico's bycatch measures, including the mortality cap; the limited temporal and spatial scope of the reserve and the restricted area, and associated management measures; a lack of clarity on mechanisms to implement effective observer and enforcement programs; and uncertainty of the long-term conservation measures beyond the initial two years of the regulation. Based on changes to Mexico's regulatory program, and additional commitments from Mexico regarding the duration of the regulations and co-operative research with the U.S. (as explained below), NMFS issues a positive bycatch certification determination for Mexico in this Second Addendum to the 2015 Biennial Report to Congress.

Notification and Consultation. On August 14, 2015, NMFS notified Mexico via letter of its negative certification in the Addendum to the 2015 Biennial Report to Congress for bycatch of North Pacific loggerhead sea turtles. The National Commission of Aquaculture and Fisheries (CONAPESCA) was the primary entity within the Government of Mexico involved in the consultation. The following lists key communications between Mexico and the United States during the consultation period following the negative certification:

- On August 20, 2015, NMFS sent Mexico additional information on relevant U.S. fisheries.
- On October 27, 2015, U.S. officials met with the Government of Mexico at its Embassy in Washington, DC to discuss the negative certification further. Mexico gave a presentation on the status of its monitoring program.
- In November 25, 2015, NMFS sent Mexico additional information on relevant U.S. fisheries, areas for potential improvement in Mexico's regulation, and additional technical questions.
- On December 8, 2015, NMFS and the Government of Mexico held a technical call to discuss Mexico's existing regulation, implementation of its provisions, and questions Mexico had for the United States on the fisheries used in the comparability analysis.
- On January 22, 2016, CONAPESCA sent a letter to NMFS responding the points that the negative certification highlighted as deficiencies in Mexico's regulation, and to the additional technical questions that NMFS had sent in November 2015.
- On March 8, 2016, U.S. and Mexican officials met on the sidelines of the Seafood Expo North America to discuss holding a meeting to resolve outstanding technical and management questions.
- On April 27 -28, 2016, U.S. and Mexican officials met in La Jolla, CA to hold a technical meeting to discuss Mexico's legal authorities, elements that could be included in an amended regulatory measure, in particular expansion of the geographic and temporal scope of the regulation, and more accurate accounting of loggerhead mortality in the fishery. Presentations were given on Mexico's efforts with onboard observers and video surveillance systems, and U.S. efforts with electronic monitoring.
- On May 31, 2016, NMFS sent a letter to CONAPESCA following up on the outcomes from the April technical meeting.
- On June 10, 2016, CONAPESCA sent a letter to NMFS with a draft regulation to address North Pacific loggerhead sea turtles.

- On June 23, 2016, Mexico published its new regulation, *Agreement Establishing the Fishing Sanctuary Reserve and New Measures to Reduce the Possible Interaction between Fishing Activities and Sea Turtles in the West Coast of Baja California Sur*.
- On July 20, 2016, CONAPESCA sent a letter to NMFS regarding its long-term commitment to adaptive management of the Gulf of Ulloa with regard to loggerhead sea turtle bycatch, and intent to engage in collaborative research with the United States on post-interaction mortality of loggerhead sea turtles.
- On July 22, 2016, Presidents Obama and Peña Nieto met in Washington, DC to discuss issues of mutual concern. Following the meeting, the White House issued a statement that included the announcement of Mexico's commitment to continue strengthening its implementation of an improved sea turtle bycatch regime to protect endangered loggerhead sea turtles in the Gulf of Ulloa from harm by fishing interactions to ensure their long term protection.

Requirements to Receive a Positive Certification for Bycatch. To receive a positive certification under the Moratorium Protection Act, a nation identified for bycatch must have: (1) adopted a regulatory program to end or reduce PLMR bycatch that is comparable in effectiveness to that of the United States, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and (2) established a management plan to assist in the collection of species-specific data to support stock assessment and conservation efforts. In the 2015 Addendum, NMFS determined that the Government of Mexico had established a management plan to assist in the collection of species-specific data to support stock assessment and conservation efforts so that is not addressed here.

Actions Taken to Address PLMR Bycatch. On June 23, 2016, Mexico published its new regulation, *Agreement Establishing the Fishing Sanctuary Reserve and New Measures to Reduce the Possible Interaction between Fishing Activities and Sea Turtles in the West Coast of Baja California Sur*. This measure expanded on and replaced the 2015 regulation. It establishes a Temporary Partial Fishing Sanctuary Reserve (Reserve) in the Gulf of Ulloa, significantly larger than the Reserve established in the 2015 regulation. Within the Reserve, the 2016 regulation sets a loggerhead turtle mortality limit for commercial fishing vessels of 90 turtles; if that 90 turtle mortality threshold is met, the use of gillnets and longlines will be suspended for the rest of the calendar year. Under the 2015 regulation, if the turtle mortality limit was met, Mexico would only suspend gillnet fishing from May through August. The 2016 regulation suspends fishing activities in the Sanctuary Reserve through September 30, 2016, with some exceptions for harvest of abalone, lobster, clams, seashells, octopus and sea cucumber. Mexico has reported that the goal of this closure is to temporarily end bycatch within the Gulf of Ulloa, as well as to support research on the causes of strandings on nearby beaches. The 2016 regulation requires that all vessels within the Reserve have either onboard observers or video monitoring, in conjunction with satellite monitoring of vessels. The regulation also institutes other measures, including safe handling techniques for sea turtles, restrictions on recreational fishing, and concessions for coastal fishing for domestic consumption. Finally, the regulation establishes a subset of the Reserve as a Specific Restricted Fishing Area (Restricted Area), with gear restrictions for gillnets, longlines, and traps. For gillnets, mesh sizes greater than 10.8 cm (4¼ inches) may not be used May-August, and mesh sizes cannot be greater than 15.2 cm (6 inches) for the remainder of the year. In marine waters of the Restricted Area, gillnets will not operate for more than six continuous hours.

In the August 2015 negative certification decision, NMFS noted that the Reserve and Restricted Area, as outlined in the 2015 regulation, had limited geographic scopes, despite surveys showing more extensive use of the Gulf of Ulloa by loggerhead sea turtles and fisheries operations. In addition, Mexico's 2015 regulatory program may have incentivized fishing effort to move outside of the Reserve where there would be no bycatch reduction measures, including gear restrictions or monitoring requirements. U.S. Federal regulations in the longline fishery in Hawaii and the California drift gillnet fishery, the two U.S. fisheries that also interact with North Pacific loggerhead sea turtles, manage for bycatch throughout the range of fishing operations.

In response to these concerns, Mexico greatly expanded the geographic scope of the measures in the 2016 regulation. The Reserve, where the bycatch mortality cap and monitoring program apply, has been expanded to include nearly the entire Gulf of Ulloa.¹ The Restricted Area, where the gear restrictions are in place, was also greatly enlarged to capture areas of the Gulf of Ulloa typically fished.² By amending the size of the Reserve and the Restricted Area, Mexico has ensured that bycatch management measures for gillnet fisheries are in place throughout most of the Gulf of Ulloa.

In the 2015 regulation, Mexico did not provide an indication of the management measures in place from September to April to directly reduce bycatch of North Pacific loggerhead sea turtles in the Gulf of Ulloa, outside of the gear mitigation measures in the Restricted Area. For example, if the mortality cap was reached, the fishery was only closed from May thru August, allowing fishing, and potentially bycatch, to occur for the rest of that calendar year. In addition, some of the gear restrictions in the Restricted Area were only applicable from May to August with a six month delay before these requirements would be in force. Loggerhead sea turtles are known to occur in this area year-round. The 2016 regulation expands the timeframe when the fishery would be closed if the bycatch cap is met to the remainder of the calendar year, thereby closing the previous temporal loophole. In addition, the 2016 regulation has no delay in implementation.

The 2015 gear restrictions only addressed mesh size, not other factors (e.g., soak time, length of net) that could impact the frequency of bycatch and mortality of loggerhead sea turtles. The 2016 regulation requires that, in the waters of the Restricted Area, gillnets not operate for more than six continuous hours. In addition to the soak time requirements and the mesh size requirements, the Government of Mexico closed fisheries in the Gulf of Ulloa in summer 2016 with the goal of temporarily ending bycatch within the Gulf as well as supporting research on the causes of strandings on nearby beaches.

The 2015 Addendum reported that there was uncertainty surrounding the effectiveness of the implementation of the mortality cap of 90 turtles. NMFS was concerned that the cap would not take into account all mortality that is likely to occur from gillnet fisheries in the Gulf of Ulloa (i.e., that it would not address post-interaction mortality). To address these concerns, Mexico expanded the temporal and geographic scope of the Reserve and the Restricted Area. In addition, NMFS and the Government of Mexico have agreed to undertake cooperative research

¹ The 2015 Reserve was 8,848.2 km²; the 2016 Reserve is 19,934 km²

² The Restricted Area was 2,511 km² in the 2015 regulation, and was expanded to 7,244km² in the 2016 regulation.

to develop estimates of post-interaction mortality of loggerhead sea turtles in the Gulf of Ulloa gillnet fishery.

The 2015 regulation did not specify how the 90 mortality cap would be implemented in real time by the observer programs or how compliance with the mortality cap would be accomplished. The 2016 regulation stipulates that if a vessel does not have an onboard observer, it must use a video surveillance system and vessel monitoring system. Video review will be conducted on a regular basis, and more frequently when the mortality cap is neared. During consultations, NMFS and Mexican scientists had in-depth discussions on how the onboard observer program data collection and the electronic monitoring programs worked together to monitor the bycatch of the fishery.

The 2015 regulatory program was only authorized through 2016. While the 2016 regulation is only authorized through 2018, Mexico has committed to maintaining its conservation and management measures to reduce bycatch in the Gulf of Ulloa after this time. Mexico has also stated that the management measures allow for adaptive management. Additionally, following the July 2016 Presidential meeting, President Peña Nieto announced Mexico's commitment to continue strengthening its implementation of an improved sea turtle bycatch regime to protect endangered loggerhead sea turtles in the Gulf of Ulloa from harm by fishing interactions to ensure their long term protection.

Certification. After a thorough analysis of Mexico's regulatory program for North Pacific loggerhead sea turtles, NMFS determined that the Government of Mexico has established a regulatory program to end or reduce bycatch that is comparable in effectiveness to that of the United States, taking into account different conditions that could bear on the feasibility and efficacy of these measures. Based on this finding, NMFS has made a positive certification determination for Mexico for its bycatch identification.

Next Steps. The United States and Mexico will continue to collaborate on the conservation of North Pacific loggerhead sea turtles. For example, Mexico will engage the United States to conduct joint research regarding post-interaction North Pacific loggerhead sea turtle mortality.