

*Addendum to the Biennial Report to Congress Pursuant to Section
403(a) of the*

*Magnuson-Stevens Fishery Conservation and Management
Reauthorization Act of 2006*

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

August 2015

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

Purpose of the Addendum. Mexico was identified for bycatch of a protected living marine resource (PLMR) in the 2013 Biennial Report to Congress. For a number of reasons, the National Marine Fisheries Service (NMFS) decided not to make a certification decision on the 2013 PLMR bycatch identification in the 2015 Biennial Report. First, Mexico made meaningful progress late in 2014 to develop a draft regulatory program to address loggerhead sea turtle bycatch, which culminated in the December 5, 2014, publication of a proposal to establish a refuge area within the Gulf of Ulloa for the conservation of this species. Second, the Government of Mexico gave assurances that this program would be adopted by April 1, 2015. Although the 2015 Biennial Report stated an intention to issue the final certification determination in May 2015, this determination was delayed as NMFS did not receive the adopted regulatory program from Mexico until April 10, 2015. NMFS now issues the PLMR bycatch certification determination for Mexico in this Addendum to the 2015 Biennial Report to Congress. For the reasons explained below, NMFS has determined that Mexico should receive a negative certification concerning its actions, to date, to address the issues raised in the 2013 bycatch identification.

Basis for Mexico's 2013 Identification for Bycatch of PLMRs. In 2012, Mexican fishing vessels in the gillnet fishery in Baja California Sur incidentally caught North Pacific loggerhead sea turtles, a PLMR shared with the United States. In October 2012, the Mexican Fisheries Research Institute published a report on bycatch reduction trials conducted earlier in 2012 in the gillnet fishery in Baja California Sur. During six days of trials, 88 loggerhead sea turtles were captured. The report concluded that local fleets likely have high bycatch rates. In July and August 2012, 483 North Pacific loggerhead sea turtles were found stranded, dead, along 43 kilometers of the shoreline of Playa San Lazaro, Baja California Sur, according to Mexican Wildlife Law Enforcement. Mexico did not provide evidence of management measures that are comparable in effectiveness to those of the United States to address this bycatch.

Notification and Consultation. On January 10, 2013, Mexico was notified of its identification in the 2013 Biennial Report to Congress for IUU fishing and bycatch of North Pacific loggerhead sea turtles through a diplomatic note from the Department of State (DOS) and a letter from NMFS. 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:

- On February 1, 2013, in response to its request for information, NOAA received information from Mexico regarding national efforts and regulations to protect sea turtles and efforts in the Gulf of Ulloa to address loggerhead sea turtle strandings.
- On March 4, 2013, the United States again requested information from Mexico on regulations to address bycatch of North Pacific loggerhead sea turtles in the coastal gillnet fishery of Baja California Sur, as well as on non-regulatory actions to conserve North Pacific loggerhead sea turtles.
- On May 22, 2013, Mexico provided information on alternative gear research that had been carried out by the Government.
- On July 2, 2013, Mexico provided information on efforts to determine if strandings of North Pacific loggerhead sea turtles were connected to fishing activities.

- On August 22, 2013, the U.S./Mexico Fisheries Bilateral in La Jolla, CA was held. Mexico's identification for PLMR bycatch was an agenda topic.
- On January 6, 2014, NMFS again requested information on Mexico's actions to address the bycatch of North Pacific loggerhead sea turtles.
- On May 12, 2014, officials from Mexico and the United States met to discuss Mexico's identification under the Moratorium Protection Act. Discussion focused on the type of information the United States requires for positive certification.
- On July 25, 2014, Mexico and the United States met at their annual Fisheries Bilateral in Mazatlán, Sinaloa, Mexico. Mexico outlined actions it is taking related to North Pacific loggerhead sea turtles.
- On August 28, 2014, Mexico provided information on steps being taken to address and investigate bycatch of North Pacific loggerhead sea turtles.
- On October 13, 2014, Mexico provided additional information outlining the basis of its bycatch management measures for the Gulf of Ulloa.
- On October 16, 2014, Mexican and U.S. officials discussed Mexico's program to address bycatch of loggerhead sea turtles in the Gulf of Ulloa.
- On November 5, 2014, Mexico provided additional details on the bycatch program.
- On December 5, 2014, Mexico's Ministry of Environment and Natural Resources (SEMARNAT) published a proposal to establish a refuge area within the Gulf of Ulloa for the conservation of North Pacific loggerhead sea turtles.
- On December 10, 2014, Mexico sent additional background information on the bycatch program it is working on.
- On February 9, 2015, the day the 2015 Biennial Report to the U.S. Congress was released, the United States and Mexico met at the Embassy of Mexico in Washington, DC to discuss NMFS' decision not to make a certification determination in the 2015 Report for Mexico's bycatch identification.
- On April 10, 2015, Mexico published and sent its "Agreement to establish a fishery reserve and measures to reduce possible interaction between fisheries and sea turtles on the west coast of Baja California Sur" to the United States. This Agreement was issued by CONAPESCA.
- On April 22, 2015, Mexico and the United States participated in an in-person consultation on the margins of the U.S./Mexico Fisheries Bilateral in Washington, DC. Mexico presented its regulations, published on April 10, 2015.
- On April 23, 2015, additional technical questions on the new regulation were sent to Mexico.
- On May 1, 2015, NOAA received the responses to the additional technical questions it had asked Mexico.

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 U.S., 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.

Actions Taken to Address PLMR Bycatch. On April 10, 2015, Mexico published regulatory measures to address bycatch of North Pacific loggerhead sea turtles in the Gulf of Ulloa. These measures establish a Temporary Partial Fishery Reserve in the Gulf of Ulloa which has a loggerhead turtle mortality limit of 90 turtles for commercial fishing vessels. If that 90 turtle mortality threshold is met, gillnets and longlines will be suspended from May through August of that year. Mexico established a subset of the Reserve as a Specific Restricted Fishing Area (Restricted Area), with gear modifications and restrictions for gillnets, longlines, and traps. Thirty percent of vessels within the Reserve are required to have on-board scientific observers, and up to 70 percent are to have video surveillance in conjunction with satellite monitoring of vessels. The regulation includes observer forms to be used in the fishery, including a sea turtle log form. Mexico also instituted other measures, including sea turtle safe handling and release techniques, restrictions for recreational fishing, and a provision for coastal fishing for domestic consumption. The Reserve and the Restricted Area will remain in effect for 2 years. The gear-related measures for the Restricted Area are not in force until 6 months after the start of the regulation (i.e., they come into effect in October 2015).

While Mexico's regulatory program represents significant progress towards the development of a comprehensive bycatch management program, it is not currently comparable in effectiveness to applicable U.S. regulations in reducing the bycatch of North Pacific loggerhead sea turtles. To evaluate Mexico's regulation, a technical team comprised of NOAA personnel with expertise in North Pacific loggerhead sea turtle biology, fisheries bycatch reduction, and fisheries management, reviewed the status of North Pacific loggerhead sea turtles, examined relevant U.S. fisheries and the Gulf of Ulloa gillnet fishery for which Mexico was identified, and analyzed the relative effectiveness of these regulatory programs to address bycatch in the relevant U.S. and Mexican fisheries in accordance with the Moratorium Protection Act regulations. This analysis focused on the North Pacific Loggerhead Distinct Population Segment (DPS), as it was the basis of Mexico's identification. Therefore, only those U.S. Federal fisheries interacting with this DPS – the Hawaii shallow-set longline fishery and the California drift gillnet fishery – were used for the comparability analysis. Based on this technical guidance, and as detailed below, NOAA determined Mexico should receive a negative certification.

Mexico's Reserve and Restricted Area have limited geographic scopes, as do their associated management measures. In addition, some of the gear restrictions in the Restricted Area are only applicable from May to August and there is a six month delay before these requirements will be in force. Moreover, the gear restrictions only address mesh size and do not address other factors (e.g., soak time, length of net) that could impact the frequency of bycatch and mortality of loggerheads. Mexico did not provide documentary evidence to indicate what management measures are 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. In addition, the regulatory program is only authorized through 2016, and Mexico has provided no information about how it will address these bycatch issues in 2017 and beyond.

Uncertainty also surrounds the effectiveness of the implementation of the mortality cap of 90 turtles. The regulations do not require bycatch reporting in real-time, making it unclear how the fishery could be closed in a timely manner to ensure that additional mortality does not occur.

Mexico has not clarified how it will consider post-interaction mortality in the gillnet fishery in the Gulf Ulloa. Without considering this post-interaction mortality, Mexico is likely to underestimate the level of mortality in the gillnet fishery. The mortality limit applies only within the Reserve, yet gillnet vessels are known to operate outside of this area as well. Mexico's regulatory program may incentivize fishing effort to move outside of the Reserve, where currently there are no bycatch reduction or observer coverage requirements, but where loggerhead sea turtles are present. Any mortality outside of the Reserve would not be taken into account in the hard cap of 90 mortalities. Lastly, the observer and enforcement programs were not described in detail in the regulations, and there was an overall lack of clarity regarding how they will be implemented. There are specific concerns regarding the effectiveness of the observer program and its ability to support the implementation of the mortality cap.

Certification. After a thorough analysis of Mexico's regulatory program, NMFS determined that the Government of Mexico has established a management plan to assist in the collection of species-specific data to support stock assessment and conservation efforts, but has not adopted 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 made a negative preliminary certification determination for Mexico for its bycatch identification.

Next Steps. Nations negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken the necessary actions pursuant to the Moratorium Protection Act to receive a positive certification. NMFS will continue to work with Mexico to take appropriate corrective action to remedy these bycatch activities and to ensure its regulations are comparable in effectiveness to those of the United States. Should Mexico achieve a positive certification by resolving the issues with its regulatory program to address the bycatch of the North Pacific loggerhead sea turtles prior to the issuance of the 2017 Biennial Report, NMFS would announce this determination in a subsequent Addendum to the Biennial Report to Congress.