

**Comments of the Russian Federation to the memorandum,
submitted by New Zealand to the Panel Review
on 21 June 2013**

Referring to the memorandum of New Zealand of 21 June 2013 on the objection of the Russian side regarding allocation of *Trachurus murphyi* (jack mackerel) quotas for 2013, established under the Conservation and Management Measure for *Trachurus murphyi* (CMM 1.01) (hereinafter referred to as the “CMM 1.01”), we hereby inform of the following:

Regarding response to Question (a)

1. In accordance with Article 21 of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (hereinafter referred to as the “Convention”) when taking decisions regarding participation in fishing for any fishery resource, including the allocation of a total allowable catch or total allowable fishing effort, the Commission shall take into account the status of the fishery resource and the existing level of fishing effort for that resource and the following criteria to the extent relevant:

(a) historic catch and past and present fishing patterns and practices in the Convention Area;

(b) compliance with the conservation and management measures under this Convention;

(c) demonstrated capacity and willingness to exercise effective flag State control over fishing vessels;

(d) contribution to the conservation and management of fishery resources, including the provision of accurate data and effective monitoring, control, surveillance and enforcement;

(e) the fisheries development aspirations and interests of developing States in particular small island developing States and of territories and possessions in the region;

(f) the interests of coastal States, and in particular developing coastal States and territories and possessions, in a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;

(g) the needs of coastal States and of territories and possessions whose economies are dependent mainly on the exploitation of and fishing for a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;

(h) the extent to which a member of the Commission is utilising the catch for domestic consumption and the importance of the catch to its food security;

(i) contribution to the responsible development of new or exploratory fisheries in accordance with Article 22; and

(j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.

2. In doing so, no other mechanisms for allocating a TAC into national quotas, except for those established under Article 21 of the Convention, are foreseen in the Convention.

3. According to paragraph 6 of CMM 1.01, the total catch of *Trachurus murphyi* the total allowable catch of *Trachurus murphyi* is shared between the Parties in the same proportions as their 2010 catches in conformity with the data reported to the Executive Secretary in the area to which this CMM applies and in the tonnages set out in Table 2. In paragraph 6 of CMM 1.01 Measure there are no references to the need to acknowledge the aforementioned data by the Interim Secretariat as is indicated in paragraph 3 of memorandum of New Zealand.

4. In paragraph 4 of the memorandum, submitted by New Zealand, reference is made to the “Standards for the collection, reporting, verification and exchange of data” that were adopted in 2007, as well as to their revisions thereafter. Under the provision “Maintenance of confidentiality” of these Standards, the Interim Secretariat was in charge of providing of accurate and complete statistical data. However, paragraph “Data verification” in the “Standards for the collection, reporting, verification and exchange of data” adopted in 2008 (Annex D to the Report of the Sixth International Consultations on drafting the Convention) stipulates that Participants are to verify data:

“ 6. Data verification

Participants are to ensure that fishery data are verified through an appropriate system. Participants are to develop, implement and improve mechanisms for verifying data, such as:

- (a) Position verification through vessel monitoring systems;
- (b) Scientific observer programmes to collect verification data on catch, effort, catch composition (target and non-target), discards and other details of fishing operations;
- (c) Vessel trip, landing and transshipment reports; and
- (d) Port sampling”.

Furthermore, under Article 24 paragraph 1 (d) of the Convention the members to the Convention shall collect, verify and report scientific, technical and statistical data pertaining to fishery resources and marine ecosystems in the Convention Area in conformity with the standards, rules and procedures established by the Commission.

5. In paragraphs 5 and 6 of the memorandum New Zealand refers to the provisions of the UN Convention on the Law of the Sea of 10 December 1982 and the 1995 Agreement. Paragraph 1 (e) of Article 87 *Freedom of the high seas* of the UN Convention on the Law of the Sea of 10 December 1982 stipulates freedom of fishing subject to the conditions laid down in section 2. Paragraph 2 of Article 87 *Freedom of the high seas* of the UN Convention on the Law of the Sea of 10 December 1982 reads that all States exercise these freedoms with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the high seas. Under paragraph 3 in Article 119 *Conservation of the living resources of the high seas* of the UN Convention on the Law of the Sea of 10 December 1982 “States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State”. Moreover, the adoption of CMM 1.01 will deprive the fishermen of the country, which specialists have made significant contribution to research and exploratory activities in the South Pacific Ocean; the country, which has more-than -40 years proven history of jack mackerel fishery in the South Pacific Ocean and has made a considerable indisputable contribution to the discovery of this stock on the high seas in the South Pacific Ocean; which since the very beginning has taken an active part in the international consultations to drafting the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean and its signing - of the right to fish for jack mackerel in this area. We believe that this fact evidently

contradicts paragraph 3 of Article 119 *Conservation of the living resources of the high seas* of the UN Convention on the Law of the Sea of 10 December 1982.

6. New Zealand states that only the data of Russian Federation on the 2010 catch has not been taken into account by the Commission as not full and accurate. Since 2007, there were also gaps in the data submitted by the other countries (Table 1a of the Supporting Material of the South Pacific RFMO Secretariat, pp.249-256). The letters of the Russian Federation Federal Agency for Fisheries containing the data on the Russian catches in the Convention Area in 2010, which is a confirmation of the data submitted by the Russian Federation following the voluntary commitments in place during that time, are attached to the Information Paper of the SPRFMO Secretariat dated 13 June 2013 (pp.92-93). The information on this matter was presented at the Third Preparatory Conference for the Establishment of the Commission of the SPRFMO (Supporting Material 52 in the Information Paper of the SPRFMO Secretariat, pp.206-208).

7. Paragraph 3 of the Resolution Establishing a Preparatory Conference also states that the Interim Measures will be applied on a voluntary basis. However, the Interim Measures 2009 do not provide any regulations on the exclusion of the data on jack mackerel by any Party if it cannot submit any information to a full extent, in particular, catch statistics to the South Pacific RFMO Secretariat. Paragraph 5 of the Interim Measures 2009 states that the measures are voluntary and are not legally binding under international law. Under paragraph 13 of the Interim Measures adopted in 2009, namely the participants engaged in jack mackerel fishery are to collect, verify, and provide all the data to the South Pacific RFMO Interim Secretariat. Therefore, the Commission had no power to verify completeness and accuracy of the data obtained before the Convention came into force in August 2012.

Regarding response to Question (b)

8. In accordance with paragraph 8 of the memorandum New Zealand believes that it is legal to use the year 2010 as a basis for the CMM 1.01 within the framework of negotiations on the Interim Measures 2009, 2011 and 2012, as well as CMM 1.01 with regards to the stock of *Trachurus murphyi*. Neither the reports of the meetings at which the aforementioned documents were adopted, nor the texts of those documents support this statement. In particular, paragraph 10 in the Report of the Second Session of the Preparatory Conference contains the reference that the delegations of Cuba, the Faroe Islands, the Republic of Korea and Venezuela did not agree with the decision to approve the Interim Measures 2011. The People's Republic of China reserved its position. Moreover, neither the meetings reports, nor the Interim Measures contain any information on the intention of the Contracting Parties to use the year of 2010 as a basis after the Convention enters into force. Only paragraph 6 of the CMM 1.0 stipulates that a total allowable catch of jack mackerel is shared between the Parties in the same proportions as their 2010 catches as reported to the Executive Secretary in the area to which the CMM 1.01 applies and in the tonnages set out in Table 2.

9. In paragraph 11 of the memorandum New Zealand notes that the CMM 1.0 was adopted following the assessments provided by the Scientific Working Group that urgent steps needed to be taken to reduce catches. However, there was no indication as to the extent to which it was managed to reduce a potential catch following the adoption of the CMM 1.01.

Regarding response to Question (c)

10. In paragraphs 14-16 of the memorandum New Zealand sets out the primary purpose of the CMM 1.01 and also establishes the criteria for verifying the efficiency of the alternative measure. In the letter dated 14 June 2013

No. Y03-062, the Russian Party stated its position on the allocation key for the total allowable catch of *Trachurus murphyi* in 2013.

11. The criteria stated in paragraph 15 are based on a scientific hypothesis about a single structure of the *Trachurus murphyi* stock in the South Pacific Ocean. Paragraph 12 of the Report of the First session of the Commission reflects a number of different points of view expressed by some countries on this matter. The Russian Party assumes that the efficiency of the alternative measure is determined in proportion to the restrictions adopted by other Parties under CMM 1.01.

Regarding response to Question (d)

12. In paragraphs 18-19 of the memorandum of New Zealand it is stated about a possible reduction in the catch shares for the other members of the Commission and CNCPs. The Russian Party in its objection (the letter of 14 June 2013 No. Y03-062) is not proposing to reconsider the catch limits allocated on 2013 for the other members of the Commission, but provides calculations of the Russian share in the proportion of the allocation for 2013, bearing in mind the fact that the Review Panel may recommend other measures as an equivalent to the decision of the Commission to which the Russian Party has objected.

13. The alternative nature of the measure proposed by the Russian Federation is that irrespective of the actual catch of jack mackerel by the Russian fishing vessels in 2013, in case the TAC of 360,000 tons of *Trachurus murphyi* is fished by the members of the Commission, the Russian Party will cease fishing for *Trachurus murphyi* in the Convention Area.

Regarding response to Questions (e, f)

14. The Russian Party is of the opinion that any amendments to the CMM 1.01 can be made in conformity with the procedure established in Annex II to the Convention.
