

To: Heads of Delegation of the Members of the Commission

Dear Members,

Re: Objection against CMM01-2018 presented by the Republic of Ecuador

Today, the Secretariat received the attached communication from the Republic of Ecuador in which it presented to the Executive Secretary an objection to the Conservation and Management Measure for *Trachurus murphyi* (CMM 01-2018), pursuant to Article 17(2) of the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean (the Convention). A presentation by Ecuador to the Commission Meeting in Lima, Peru, on 2nd February 2018 has also been transmitted and is attached as a separate document to this email.

A Review Panel will be established, in accordance with Article 17 and Annex II of the Convention, to consider the objection. The Republic of Ecuador, in its letter, informed the Secretariat that it nominates Mr Rodrigo Arturo Polanco Zamora for the Review Panel.

This information is circulated in accordance with Article 17(4) of the Convention.

Sincerely yours,

Dr Johanne Fischer
Executive Secretary



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Asunto: OBJECTION AND REQUEST FOR ESTABLISHMENT OF REVIEW PANEL

Johanne Fischer

Secretaria Ejecutiva

**MANEJO PESQUERO REGIONAL DEL PACÍFICO SUR - SOUTH PACIFIC
REGIONAL FISHERIES MANAGEMENT ORGANIZATION (SPRFMO)**

En su Despacho

Dear Dr:

Katuska Drouet Salcedo, Minister of Aquaculture and Fisheries, as an accredited representative of my country before the **South Pacific Regional Fisheries Management Organisation (SPRFMO)**, within the established term in the literal a), numeral 2 of Art. 17 of the Convention, I appear in front of you and I interpose objection according to the following content:

BACKGROUND:

At the sixth meeting of the Commission, held in Lima Peru from January 30 to February 3, 2018 (COMM6), the modification of CMM 01-2017 (*Trachurus murphyi*) Table 1, established in point 6 of the report (COMM6) 01-2018, was treated and approved; with the text of the treatment and approval being the following:

“6. CONSERVATION AND MANAGEMENT MEASURES (CMMs)

CMM 01-2017 (*Trachurus murphyi*).

- The Commission agreed to a number of editorial changes to this CMM (see ANNEX 7a), under the condition that the revised CMM 06-2018 (VMS) would be adopted by the Commission at this meeting. ”
- Based on the advice of the Scientific Committee September 2017, the Commission adopted a catch limit for Jack mackerel of 517 582 tonnes in 2018. Based on this, Chile tabled a proposal to amend the Jack mackerel CMM (Working Paper 11). With regard to tables 1 and 2 of this proposal, Ecuador requested a catch entitlement of 1.13% of the total catch limit, which in 2018 would correspond to 6 500 tonnes. Ecuador also made a presentation explaining its reasons for this request, including why they could not attend the fifth Commission Meeting in Adelaide. The Commission could not agree to Ecuador’s request. The Chairperson stated that there was no consensus and that all efforts to reach consensus had been exhausted. The Commission voted in accordance with the Convention, Article 16, with the result that 13 Members voted in favour of Chile’s proposal, one Member (Ecuador) against and one Member was not present during the voting (Cook Islands).



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Therefore, CMM 01-2018 was adopted by the Commission.” (**The underline and the highlight is mine**)”

The Decision modified in reference, and which objection is interposed in the pertinent parts, textually says:

CMM 01-2018 1

“Conservation and Management Measure for *Trachurus murphyi*”

The Commission of the South Pacific Regional Fisheries Management Organisation;

NOTING ...

CATCH MANAGEMENT

5. In 2018 the total catch of *Trachurus murphyi* in the area to which this CMM applies in accordance with paragraph 1 shall be limited to 517 582 tonnes. Members and CNCPs are to share in this total catch in the tonnages set out in Table 1 of this CMM. ”

Table 1: Tonnages in 2018 fishery as referred to in paragraph 5.

Member / CNCP	Tonnage
Chile	371 887
China	36 563
Cook Island	0
Cuba	1285
Ecuador (HS)	1 377
European Unión	35 186
Faroe Island	6 386
Korea	7 385
Peru (HS)	11 684
Russian Federation	18 907
Vanuatu	26 921
Total	517 582

Table 2: Percentages⁴ related to the catches referred to in paragraph 10.



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Member / CNCP	%
Chile	64.5638
China	6.3477
Cook Island	0.0000
Cuba	0.2231
Ecuador (HS)	0.2391
European Unión	6.1086
Faroe Island	1.1087
Korea	1.2822
Peru (HS)	2.0284
Russian Federation	3.2825
Vanuatu	4.6738

4 These percentages shall apply from 2018 to 2021 inclusive. ”

Under the provisions of article 17 of the Convention, ECUADOR FORMALLY INTERPOSES OBJECTION TO THE MODIFIED DECISION NUMBER CMM 01-2018 1, FOR WHICH EFFECT IS THE FOLLOWING:

1. REASONS FOR THE OBJECTION.

In accordance with the provisions of Article 17 of the convention, numeral 2, literal c), the only admissible grounds for an objection are that the decision unjustifiably discriminate in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.

In this regard, Ecuador determines as a reason for the present objection the unjustifiably discriminate in form or in fact as well as the contradiction that exists between the adopted decision and the provisions contained in the Convention, in the 1982 CONVEMAR and 1995 Agreement.

LEGAL FRAMEWORK

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN :

Article 21 that deals with the participation in fishing of fishery resources in numeral 1 literal "e and f", textually establishes the following:



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Article 21

PARTICIPATION IN FISHING FOR FISHERY RESOURCES

“1. 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)...

(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;”
(The highlights are mine)

Article 3 of the convention that deals with the Principles and approaches in the matter of conservation and management in numeral 1 literal a) sub literal "viii" textually establish the following:

Article 3

CONSERVATION AND MANAGEMENT PRINCIPLES AND APPROACHES

1 In giving effect to the objective of this Convention and carrying out decision making under this Convention, the Contracting Parties, the Commission and subsidiary bodies established under Article 6 paragraph 2 and Article 9 paragraph 1 shall:

(a) apply, particular, the following principles;

i)...

viii) the interests of developing States, in particular the least developed among them and small island developing States, and of territories and possessions, and the needs of developing State coastal communities, shall be recognised;

Article 19 of the convention in its numerals 1, 2 literal "c", and, 3 textually, establishes the following:



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Article 19

RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

“1. The Commission shall give full recognition to the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in relation to the conservation and management of fishery resources in the Convention Area and the sustainable use of such resources. ”

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for fishery resources covered by this Convention, the members of the Commission shall take into account the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, in particular: **(The underline and the highlight are mine)** ”

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing State Contracting Parties, and territories and possessions. ”

3. The members of the Commission shall cooperate either directly or through the Commission and other regional or sub-regional organisations to:

a) enhance the ability of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, to conserve and manage fishery resources and to develop their own fisheries for such resources;”

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS):

The article 119 of the United Nations Convention on the Law of the Sea, which deals with the conservation of the living resources of the high seas, in its numeral 1 literal "a" textually establishes the following:

1. In determining the allowable catch and establishing other conservation

measures for the living resources in the high seas, States shall:

(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

economic factors, *including the special requirements of developing States*, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;”... (**The underlining and the italics are mine**).

1995 AGREEMENT:

Article 5 of the Agreement on the Application of the provisions of the United Nations Convention on the Law of the Sea, of December 10, 1982, concerning the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Populations, within the general principles in literal "b" textually indicates the following:

“(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;”

Article 24 numeral 2, literal "c" of the 1995 Agreement, which refers to the REQUIREMENTS OF DEVELOPING STATES, establishes:

Article 24

Recognition of the special requirements of developing States

“2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.”

Article 25 of the 1995 Agreement establishes:

"Forms of cooperation with developing States:

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve **and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;** ...(**The underlining and the italics are mine**)

RATIONALE BEHIND THE OBJECTION:



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Ecuador, as a contracting member state of the convention, of the coastal state and of the developing state, with the intention of developing its own jack mackerel Fishery (Trachurus murphyi) in the area of the convention, through the use of its national industry, in order to contribute part of the social and economic development of the country, and therefore, of its population, requested within the proposal presented by Chile, in the (COMM6) 01-2018, the modification with respect to Tables 1 and 2, which would allow access to a right capture of 1.13% of the total catch limit, which in 2018 would correspond to 6 500 tonnes from the fishing reserve maintained by the commission, what at least would allow it to operate for the first time a single vessel, which with the current allocation of 1377 Tons, is unfeasible and economically unsustainable. Furthermore, in the same petition, the force majeure caused by the effects of the 2016 earthquake was justified, which prevented from attending the 2017 meeting in Adelaide, where the previous quota allocation was made; absence that does not justify the lack of application of the fair criteria that would have resulted in a greater allocation of quota to the country.

Given that **the current quota distribution system is unjustifiably and discriminate, in form or in fact**; "Since only the criterion of historical catches with their practices regimes, is being considered", which disadvantages small and developing nations such as Ecuador, that does not have a record in the fishing of jack mackerel. And, at the same time, contravening the application and origin of the criteria and norms established in the convention for the protection of the special needs of the developing coastal States of the region, which are Contracting Parties, all of this is supported and contained in the Convention, in the 1982 UNCLOS (LAW OF THE SEA) and 1995 Agreement, whose norms have been expressed in textual form in the present objection under the section of "Legal Framework".

ALTERNATIVE MEASURES:

Pursuant to article 17, letter "b" iii, I am satisfied to inform the Executive Secretary of the content of the alternative measure proposed for the pertinent purposes.

â”

Ecuador proposes as an alternative measure to the interposed objection, that the capture capacity in 2018 of the Trachurus murphyi resource in the area of the convention, to which this MMC is applied in accordance with section 1, will be limited to 522,705 tn.

Proceeding the increase of 5,123 tons of the reserve that maintains the convention based on the amount recommended by the Scientific Committee of September 2017 in point 5.4, numeral 52 that talks about the status of the jack mackerel stock in the SC05 report (Shanghai, China Sept 2017) being the recommended amount of 576,000 tons, of which discounted the current assigned amount of 517,582, **leaves a reservation in the Convention of 58.218 tons.**



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Please note that this is the same scientific report which was considered for the percentage adjustment made at the CMM 01-2018 1; and, that when taking from this same reserve, the already assigned quantities to each member will not be touched; at the same time that the allocation of 5,123 tons in favour of Ecuador is in accordance with the relevant distribution criteria established in the Convention.

What would represent an overall assignment for Ecuador during the years 2018 -2021 of 1.13%

With the alternative measure proposed, the tables modified by decision CMM 01 2018 would be determined as follows:

Table 1: Tonnages in 2018 fishery as referred to in paragraph 5.

Member / CNCP	Tonnage
Chile	371 887
China	36 563
Cook Island	0
Cuba	1285
Ecuador (HS)	6 500
European Unión	35 186
Faroe Island	6 386
Korea	7 385
Peru (HS)	11 684
Russian Federation	18 907
Vanuatu	26 921
Total	522 705

Table 2: Percentages⁴ related to the catches referred to in paragraph 10.



Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Member / CNCP	%
Chile	64.5638
China	6.3477
Cook Island	0.0000
Cuba	0.2231
Ecuador (HS)	1.13
European Unión	6.1086
Faroe Island	1.1087
Korea	1.2822
Peru (HS)	2.0284
Russian Federation	3.2825
Vanuatu	4.6738

4 These percentages shall apply from 2018 to 2021 inclusive. ”

In accordance with the provisions of subparagraph b) numeral 1 of Annex II, I hereby inform you that the member of the Review Panel designated on our behalf is Mr Rodrigo Arturo Polanco Zamora.

Attached to the present objection, copies obtained from the web page of the commission of the report from the meeting (COMM6) 01-2018, clean report CMM 01-2018 1, the scientific Report SC05 - 2017; and, the petition filed by Ecuador.

The notifications that correspond to us will be received in the following emails:
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Best regards,

Documento firmado electrónicamente

Ing. Ana Katuska Drouet Salcedo
MINISTRA ACUACULTURA Y PESCA

Anexos:

- 6th_meeting__jurel_del_pacifico_srp-2015-0998-of.pdf
- sc05-report-final-4oct2017_(reporte_comite_cientifico_2017_).pdf
- cmm-01-2018-trachurus-murphyi-_clean_inform_8march2018.pdf
- presentación_srp_cuota_jurel_2018_.pdf



MINISTERIO
DE ACUACULTURA
Y PESCA



PRESIDENCIA
DE LA REPÚBLICA
DEL ECUADOR

Oficio Nro. MAP-2018-0594-O

Manta, 28 de marzo de 2018

Copia:

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