

IN PROCEEDINGS CONDUCTED BY

**THE REVIEW PANEL ESTABLISHED UNDER ARTICLE 17 AND ANNEX II OF THE
CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS
FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN**

with regard to

**THE OBJECTION BY THE REPUBLIC OF ECUADOR TO A DECISION OF THE
COMMISSION OF THE SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT
ORGANISATION**

PROCEDURAL DIRECTIVE No. 1

REVIEW PANEL:

**Prof. Don MacKay (Chair)
Ms. Cecilia Engler
Prof. Erik J. Molenaar**

WHEREAS Article 17 of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the “**Convention**”) permits members of the Commission of the South Pacific Regional Fisheries Management Organisation (the “**Commission**”) to object to a decision adopted by the Commission within 60 days of the date of notification of the decision;

WHEREAS the Republic of Ecuador has invoked Article 17, objecting to its share in the total catch of *Trachurus murphyi* in 2018 specified in paragraph 5 and Tables 1 and 2 of the Conservation and Management Measure for *Trachurus murphyi* (“**CMM 01-2018**”) as set out in its letter dated 28 March 2018 (the “**Objection**”);

WHEREAS Article 17 provides for the establishment of a Review Panel when an objection is presented by a member of the Commission;

WHEREAS in accordance with Paragraph 1 of Annex II to the Convention, the Review Panel composed of Professor Don MacKay, Ms. Cecilia Engler, and Professor Erik J. Molenaar was established on 25 April 2018;

WHEREAS Paragraph 4 of Annex II provides that “[t]he Review Panel shall determine its own rules of procedure”;

The Review Panel issues the following Procedural Directive No. 1:

1. Procedural Timetable

The procedural timetable shall be as follows:

Date	Event
14 May 2018	Written memorandum and documentation submitted to the Review Panel by the Republic of Ecuador in support of its Objection.
14 May 2018	Written information, documents and material submitted by the South Pacific Regional Fisheries Management Organisation (the “ Organisation ”) that may assist the Review Panel in its consideration of the Objection.
17 May 2018	Written memoranda submitted by Commission Members wishing to do so, which shall indicate whether that Commission Member also requests the opportunity to be heard at the hearing.
21 May 2018	Written comments (if desired) by the Republic of Ecuador on the information, documents, materials and memoranda submitted to the Review Panel by the Organisation and Commission Members.
21 May 2018	Hearing schedule to be notified to the Republic of Ecuador, the Commission Members, and the Organisation.
23 May 2018	Hearing at the headquarters of the PCA at the Peace Palace in The Hague, the Netherlands
No later than 9 June 2018	Decision on Findings and Recommendations of the Review Panel and transmission to the Executive Secretary of the Organisation.

2. Substance of Written Submissions

2.1. Without prejudice to its findings and recommendations in any respect, the Review Panel requests that, in addition to such other matters as may be considered relevant, memoranda, information and documents submitted to it in accordance with the Convention address or are pertinent to one or more of the following matters:

- (a) Whether, apart from the question of discrimination referred to in sub-paragraph (b) below, the decision with respect to CMM 01-2018 to which the Republic of Ecuador has objected is inconsistent with the provisions of the Convention – in particular Articles 3, 19 and 21 – or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement, and in this respect the basis for the decision in fact and law, the competence and margin of appreciation of the Commission to make that decision, and the competence of the Review Panel with regard that decision.
 - (b) Whether the decision with respect to CMM 01-2018 to which the Republic of Ecuador has objected unjustifiably discriminates in form or in fact against the Republic of Ecuador, and in this respect the standard and means for determining what constitutes unjustifiable discrimination under the Convention.
 - (c) The standard and means for determining whether the alternative measures adopted by the Republic of Ecuador are equivalent in effect to the decision with respect to CMM 01-2018 to which the Republic of Ecuador has objected, and the relevance in this respect of paragraphs 4, 5, and 10 of CMM 01-2018.
 - (d) Whether, with reference to sub-paragraphs (a) and (j) of paragraph 10 of Annex II of the Convention, the total catch and its share specified by the Republic of Ecuador in its Objection are alternative measures that are equivalent in effect to the decision to which the Republic of Ecuador has objected.
 - (e) Whether, with reference to sub-paragraph (b) of paragraph 10 of Annex II of the Convention, there are specific modifications to the total catch and the share referred to in sub-paragraph (d) above that would render it an alternative measure that is equivalent in effect to the decision with respect to CMM 01-2018 to which the Republic of Ecuador has objected.
 - (f) Whether, with reference to sub-paragraph (c) of paragraph 10 of Annex II of the Convention, other alternative measures would be equivalent in effect to the decision with respect to CMM 01-2018 to which the Republic of Ecuador has objected.
- 2.2. Without prejudice to its findings and recommendations in any respect, the Review Panel further requests that the written information, documents, and material submitted by the Organisation include, in addition to other information, documents and material that the Organisation deems relevant, the following:
- (a) Information, documents and material on *Trachurus murphyi* and the *Trachurus murphyi* fishery, including its area of distribution, the status of the fishery resource, the fleets actively fishing for the resource and their fishing areas, the historic and present catches, and the past and present fishing patterns and practices.
 - (b) Information, documents and material on the conservation and management measures applicable to *Trachurus murphyi*, in particular the allocation of the total allowable fishing effort and the total allowable catch, including their history, rationale, agreed allocation criteria, and the sources of information considered in the allocation processes, including information about the fishing reserve referred to by Ecuador in its Objection.
- 2.3. The Review Panel may seek further information following the receipt of written submissions.

3. Form of Written Submissions

3.1. All written submissions shall conform to the following formal requirements:

- (a) Each submission shall be comprised of a written memorandum to which are appended copies of all materials, information, and documents upon which the submitting participant relies (“**supporting materials**”). The memorandum shall be succinct.
- (b) An official stamp or seal of the submitting participant shall be affixed to each submission.
- (c) The memorandum shall have page numbering and be divided into paragraphs, numbered consecutively, with each paragraph being confined to a distinct portion of the subject.
- (d) The memorandum shall be accompanied by a detailed table of contents that describes all of the supporting materials by number, date, type of document, author or recipient, if and as applicable.
- (e) Should a participant wish to submit witness statements or expert reports as part of its supporting materials, each statement or report shall state the name and address of the witness/expert, his or her background, qualifications and/or relevant experience, and a statement of the matters the witness/expert intends to establish.

4. Language of Written Submissions

4.1. All written submissions shall conform to the following language requirements:

- (a) The memorandum shall be submitted in English or Spanish by the dates set out in the Procedural Timetable. If the memorandum is submitted in Spanish, it shall be submitted together with a translation into English. Where absolutely necessary, the translation may be submitted no more than two business days following the relevant deadline for transmission.
- (b) Subject to sub-paragraph (c), all supporting materials shall be submitted in their original language, together with a translation into English where necessary. When the participant submitting the supporting materials considers that the content of a document is not relevant in its entirety, the English translation may be limited to the relevant passages and such other portions of the document as are necessary to put such passages in context. A full English and/or Spanish translation shall be provided if the Review Panel so directs or if another participant to these proceedings so requests and, in case of objection by the submitting participant, the Review Panel deems it appropriate.
- (c) Except as otherwise determined by the Review Panel, informal English and Spanish translations will be accepted as accurate unless contested by another participant, in which case the participants concerned shall attempt promptly to reach agreement on the translation. Any ongoing translation disagreements will be resolved by the Review Panel.
- (d) Each submitting participant will bear the costs of translation of its written memorandum and supporting materials.

5. Notification of Written Submissions

5.1. All written submissions shall be notified to the PCA in accordance with the Procedural Timetable and in the following manner:

- (a) The memorandum and all supporting materials shall be transmitted as attachments to an e-mail message to the PCA at the following e-mail addresses:

bureau@pca-cpa.org
mdoe@pca-cpa.org
hbrown@pca-cpa.org

- (b) The memorandum and supporting materials shall be transmitted in searchable Adobe Acrobat PDF format whenever possible.
- (c) The PCA will immediately transmit the memorandum and supporting materials to the Review Panel and promptly make these submissions available electronically to all participants through a secure webpage, the details of which will be communicated by the PCA at the appropriate time.
- (d) On the same day as the transmission of the submission by e-mail (or the next business day at the latest), the submitting participant shall dispatch by courier to the PCA five (5) bound hard copies of the memorandum and any supporting materials to the following address:

Permanent Court of Arbitration
Attn.: Martin Doe, Senior Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ, The Hague
The Netherlands
Tel.: +31 70 302 4165

- (e) Along with every hard-copy submission, the submitting participant shall dispatch to the PCA five (5) electronic copies of the submission and any accompanying supporting materials, each on an individual USB flash drive or CD-ROM, if possible in searchable Adobe PDF format.

6. Hearing

- 6.1. The hearing shall be held on 23 May 2018 at the headquarters of the PCA at the Peace Palace in The Hague, the Netherlands.
- 6.2. The Republic of Ecuador, the Organisation, and those Commission Members that have submitted written memoranda in accordance with the Procedural Timetable shall be permitted to make oral submissions at the hearing. The Republic of Ecuador and the Organisation shall have, in principle, an equal allocation of time at the hearing, subject to adjustment by the Review Panel if the circumstances so require.
- 6.3. Commission Members not having submitted written memoranda in accordance with the Procedural Timetable shall be permitted to attend the hearing but shall not be permitted to make oral submissions.
- 6.4. The hearing shall be audio recorded and shall be transcribed in English. At the end of the hearing, or as soon as practicable thereafter, the participants shall be provided with the hearing transcript.
- 6.5. The PCA shall arrange for transcription services, simultaneous Spanish-English interpretation services, and IT support at the hearing.

7. Transparency

- 7.1. The PCA shall publish the fact of the existence of the proceedings, the names of the participants and their representatives, and the names of the members of the Review Panel on its website, along with the following documents:

- (a) the Objection;
- (b) Written Submissions made by the Organisation, the Republic of Ecuador, and any other Commission Members;
- (c) the Review Panel's Procedural Directives;
- (d) the audio recordings and transcript of the hearing; and
- (e) the Review Panel's Findings and Recommendations.

7.2. The hearing shall be held *in camera* unless the Review Panel decides otherwise.

7.3. The Review Panel shall decide on any request for redaction of confidential information from the documents to be published on the PCA's website.