

**REVIEW PANEL ESTABLISHED UNDER ARTICLE 17 AND ANNEX II OF THE
CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH
SEAS FISHERIES RESOURCES IN THE SOUTH PACIFIC OCEAN
OBJECTION OF THE REPUBLIC OF ECUADOR TO CMM 01-2018**

(PCA Case No. 2018-13)

MEMORANDUM OF THE REPUBLIC OF CHILE

Valparaíso, 17 May 2018



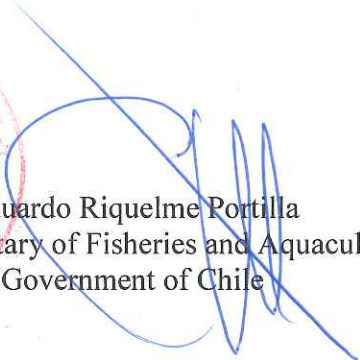

Eduardo Riquelme Portilla
Undersecretary of Fisheries and Aquaculture
Government of Chile

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I. Introduction

1. It is an honor to appear in front of you representing the State of Chile. We would like to thank the opportunity to contribute with our vision regarding the subject of this objection and the relevant background of the case, so that your conclusions and recommendations are based on the best and deepest information possible.
2. The Republic of Ecuador has presented an objection to the CMM 01-2018 based on two reasons described in Article 17, number 2, letter c) of the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean as follows:
 - a. That the objected decision discriminates unjustifiably in form and in fact against the Member of the Commission, and
 - b. That such decision is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.

II. Regarding provisions and rules of procedure for the decision-making process

3. It must be borne in mind that the allocation in question was agreed upon in 2017 and not in 2018. No Commission Member objected such allocation in the period after the adoption of CMM 01-2017.
4. In that sense, the Republic of Ecuador not only did not object CMM 01-2017 but also supported the decision contained in it, by authorizing the transfer of the tonnages that were allocated to it on 17 May, 2018 in conformity with paragraph 9 of CMM 01-2017¹. The same situation happened with the current CMM 01-2018, in which the Republic of Ecuador supported the measure that today is objecting by transferring the tonnages equivalent to its allocation.²
5. In this sense and besides the previous paragraph, the Commission has adopted rules of procedure that establish the manner in which States should guide their actions. Thus, Rule number 4, *Order of Business*, in paragraph 5 contains the relevant mechanism to amend conservation and management measures and other decisions in force. In that sense, the Republic of Ecuador did not present in time and in form an amendment proposal to the CMM 01-2017 for the consideration of the Commission at its Sixth Annual Meeting.

¹ Supporting material No. 1: Letter of the SPRFMO Secretariat Ref. 60-2017, as of 24 May, 2017.

² Supporting material No. 2: Letter of the SPRFMO Secretariat Ref. G09-2018 corr, as of 6 March, 2018.

6. This is not irrelevant since the Convention and decisions adopted pursuant to this Treaty establish manners and procedures to complaint or to propose amendments to measures in force. Failure to comply with established rules affects the legal certainty that must govern over the entire negotiation process. Accepting the opposite could call into question all the manners and rules of procedure that, under the provisions of the Convention, have been adopted by the Commission for the decision-making process.

III. Regarding the inexistence of a reserve and the powers of the Commission beyond the Convention Area

7. Chile, as a coastal State and as a State Party to the 1982 Convention would like to draw attention about an essential aspect that lies on its sovereign rights in its jurisdictional waters. In Chile's opinion, it is not possible to legally support the acknowledgement of the Commission capacities to decide over the distribution of catches that may be accessed in economic zones of coastal States adjacent to the Convention Area. Those are sovereign rights of the States. In that sense, we quote the provisions of the 1982 Convention, Article 56, *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*, in its number 1 letter a): "*In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non living...*".
8. Accordingly, the Commission does not have the authority to decide over such aspect; it would exceed the powers granted by the Convention and, therefore, it would infringe the international law in force.
9. This aspect is essential to the State of Chile since if there is no future consent to apply the measure in waters under our jurisdiction, we are entitled to establish measures according to our domestic legislation and in accordance with the compatibility of conservation and management measures referred to in Article 4 of the Convention.
10. The only exception that the Convention establishes to allocate a percentage or amount of tonnages corresponding to the EEZ occurs when a coastal State expressly consents to apply a total allowable catch (Article 20, number 4, letter (a), (iii)) within waters under its jurisdiction. This is the current case of Chile in the jack mackerel fishery, as it is described in paragraph 1 of CMM 01-2018 and previous versions.

11. Any decisions regarding the tonnages within the EEZs go beyond the powers of the Commission. In our opinion, one of the options to determine a certain allocation of the corresponding resources for coastal States in their EEZs, in this case Ecuador and Peru, would be through an exercise of bilateral cooperation either directly or through the SPRFMO.
12. It is important to note that the Republic of Ecuador has stated as an alternative measure of equivalent effect, the increase of its tonnages and percentages from a “*reserve in the Convention of 58,218 tonnages.*”
13. It should be taken into consideration that there is no reserve established by the Commission for coastal States, but rather the difference between the total allowable catch (TAC) recommended by the Scientific Committee for the whole range of the resource (paragraph 10, CMM 01-2018) and the TAC adopted for the Convention Area and the Chilean EEZ (paragraph 5, CMM 01-2018).
14. This is reflected in Tables 1 and 2 of the CMM 01-2018, which do not include the tonnages or percentages that correspond to jurisdictional waters of coastal States adjacent to the Convention Area but only to the EEZ of Chile as mentioned in paragraph 10.
15. In this respect, we would like to request the Members of this Panel to also take into account as a legal framework for the content of this part, Article 21, numbers 2, 3, and 4 of the Convention, as follows: “*Participation in Fishing for Fishery Resources. 2. When the Commission establishes a total allowable catch or total allowable fishing effort for any fishery resource pursuant to Article 20 paragraph 4 (a) (ii) or (iii), it may, with the express consent of the coastal State Contracting Party or Parties concerned, also take decisions regarding participation in fishing for that resource throughout its relevant range 3. In taking decisions under paragraph 2, the Commission shall take into account the historic catch and past and present fishing patterns and practices throughout the relevant range of the fishery resource concerned and the criteria listed in paragraph 1(b)-(j). 4. When the consent of the coastal State Contracting Party or Parties concerned is not provided pursuant to paragraph 2: (a) the Commission shall take decisions, in accordance with paragraph 1, regarding allocation of the portion of the total allowable catch or total allowable fishing effort established pursuant to Article 20 paragraph 4 (a) (i) that may be taken in the Convention Area; and (b) the Commission and the coastal State Contracting Party or Parties concerned shall cooperate in accordance with Article 4.*”

IV. Regarding whether the decision with respect to CMM 01-2018 is inconsistent with the provisions of the Convention or other relevant international law as reflected in the 1982 Convention and 1995 Agreement

16. The Republic of Ecuador has indicated that the decision of the Commission has contravened the provisions of the Convention by adopting only one of the criteria contained in Article 21 as the basis of a quota allocation and not its interests and aspirations as a developing State to participate in the jack mackerel fishery as well as its status as coastal State.
17. The State of Chile particularly considers that the criteria taken into account for the allocation of the Republic of Ecuador are different from that expressed in Article 21, number 1, letter (a). It should be taken into account that this Member has indicated that lacks historical catches in the Convention Area. This demonstrates that the remaining allocation criteria have been applied.
18. Criteria taken into account for Ecuador's allocation include, at least, its status as coastal State and its interests and aspirations as a Developing State, expressed in Article 21, number 1, letters (e) and (f).
19. Another important issue to mention is that when its status as a developing coastal State is mentioned as a basis for an allocation claim, the compliance of certain obligations contained in the same legal framework mentioned in the objection should be considered and that corresponds to some of the other allocation criteria set out in Article 21, as it will be addressed later on:
 - a. In this line, we quote Articles 61 and 62 from the 1982 Convention. The first, on *Conservation of the living resources* and the second on *Utilization of the living resources*.
 - b. Furthermore, provisions of the 1995 Agreement, particularly Articles 7 numbers 2 and 7, on *Compatibility of conservation and management measures*.
 - c. Article 4 of the Convention, on *Compatibility of conservation and management measures*, especially number 2.
20. Compliance with such duties materializes some of the allocation criteria of Article 21 of the Convention, including those in letters (d) and (j). In our opinion, the Republic of Ecuador should be asked regarding its conservation and management measures for jack mackerel; how those measures will not result in harmful impact to the living marine resources as a whole in the Convention Area; and how those measures are compatible with those in force adopted by the Commission. Likewise,

in order to reach a deep knowledge of the fishery status, we would like to ask the Republic of Ecuador about the conduction of scientific research with respect to this fishery.

V. Regarding whether the decision of the Commission in CMM 01-2018 unjustifiably discriminates in form or in fact the Republic of Ecuador

21. The Republic of Ecuador has claimed the existence of an unjustified discrimination in form and in fact caused by the decision adopted by the SPRFMO Commission in February 2018 based on a particular circumstance, i.e., the adoption of an allocation for participants of the jack mackerel fishery within the Convention Area and Chile's EEZ based only on a historical catch criterion in the Convention Area. In this sense, the Republic of Ecuador states: *"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."*
22. It would be difficult for Chile to support such position. It would disregard not only the hard work conducted by the Commission through complex negotiations that started at its first annual meeting in 2013, but also the declaration of the Republic of Ecuador, i.e., that lacks historical catches of jack mackerel within the Convention Area. The fact that the Republic of Ecuador currently has percentage allocation and therefore, allocation of tonnages is an irrefutable proof that allocation has also been based on other criteria established in Article 21 of the Convention different from historical catches.
23. Given the above, it would be helpful to clarify what are the criteria in Ecuador's opinion that served as basis for its current allocation. It would be also important to have further information on which would be the combination of historical catch years that such State believes were taken into account for the current quota distribution.
24. We would like to point out that precisely the consideration given to the Republic of Ecuador as a coastal State and developing State has supported the catch percentage allocated to Ecuador in the Convention Area.
25. Considering a higher allocation to Ecuador taking into account the criteria of Article 21, number 1, letters (e) and (f) may imply a double allocation under the same

criteria. This may lead to an unjustified discrimination for the rest of the fishery participants which besides such criteria, the others could also be applicable.

26. It is important to bear in mind that at the Fifth Commission Meeting in 2017, a five-year allocation was adopted. The first was based on tonnages and for 2018 and 2021, inclusive, in percentages. The allocation was agreed upon by consensus and the result was materialized in CMM 01-2017, adopted under Articles 8 and 21 of the Convention, and therefore, adopted by the Commission in conformity with all the allocation criteria of the latter provision.
27. In this sense, CMM 01-2017 is the basis of the current quota allocation. Its table 2, subject to objection, was not amended by the adoption of CMM 01-2018. Modifications to the measure were only the result of the update that must be conducted in conformity with the increase of the TAC established as a recommendation of the Scientific Committee.
28. It is important to mention that, given the 2018 TAC increased in approximately 16.84% with respect to the previous year, all States participating in the fishery increased their allocation in tonnages by the same proportion, with no discrimination at all.

VI. Regarding the alternative measure proposed and other alternatives that may have an equivalent effect to the decision of CMM 01-2018

29. This part applies provisions included in part III, in that regard and given that the Commission lacks the powers to allocate catches within jurisdictional waters of coastal States adjacent to the SPRFMO Area, we believe that the alternative measure proposed lacks the equivalent effect requested by the Convention.
30. Notwithstanding the above, and taking into account that the Republic of Ecuador states that its current catch entitlement is unfeasible and economically unsustainable, we believe that the Republic of Ecuador may today operate its fishery through the mechanism of quota transfer, established in paragraph 9 of CMM 01-2018 and its previous versions.
31. Quota transfer is the tool fishing States have been using to complement their allocations. This has been the case of Chile, that although has the largest catch entitlement, acquires from other Members all or part of their catch entitlements since its allocation is not enough to meet the requirements of its sector, which depends on such fishery. In favor of the Republic of Ecuador, it is important to note

that they acknowledge this mechanism and has applied it in different opportunities³
4 5

VII. Regarding a mechanism to improve participation of States with lower allocations and new entrants in the Jack mackerel fishery: proposal submitted by Vanuatu

32. The allocation process is undoubtedly one of the most difficult exercises to carry out. Therefore, we acknowledge the proposal submitted by Vanuatu as a future and effective mechanism to facilitate the complement of lower allocations and granting for new entrants at the two last Commission meetings.
33. Vanuatu's proposal consists of promoting the full utilization of Jack mackerel quotas allocated among the Members. In case the minimum requirements for the quota utilization are not met, through effective fishing or transfer, the Member loses its entitlement in any increase of the TAC. The difference not allocated to such Member will be distributed among those with lower quotas or new entrants.
34. During the last Commission meeting the proposal received wide support from among Members, but it could not be agreed and was withdrawn. As indicated in the first section of chapter 6 of the 6th Meeting of the Commission Report, Members will continue to work on this proposal and a revised version is intended to be submitted at the next annual meeting in 2019.⁶

VIII. Conclusions

35. It is essential a strict adherence to the provisions of the Convention, rules of procedure, and any other decision of the Commission established to regulate the manners and proceedings of this Organization, which otherwise would affect the legal certainty and safety of our acts and decisions.
36. The Commission lacks the powers to allocate such part of the TAC existent for the entire range of the resource, which corresponds to the EEZ of the coastal States adjacent to the Convention Area. This is a matter of sovereign rights of such States.

³ SPRFMO keeps a record of quota transfers of Jack mackerel conducted in 2017 and 2018, notwithstanding they are carried out since 2013.

⁴ Supporting Material No. 3: 2017 Transfers of Jack mackerel catch entitlement, retrieved from <https://www.sprfmo.int/measures/cmm-01-jack-mackerel/cmm01-transfers-2/2017-transfers-2/>, on 16 May 2018.

⁵ Supporting Material No. 4: 2018 Transfers of Jack mackerel catch entitlement, retrieved from <https://www.sprfmo.int/measures/cmm-01-jack-mackerel/cmm01-transfers-2/2018-transfers-2/>, on 16 May 2018.

⁶ Supporting Material No. 5: Report of the 6th Commission Meeting.

37. Given the lack of powers of the Commission to decide over the TAC proportion within waters under jurisdiction of coastal States adjacent to the Convention Area, the measure proposed by the Republic of Ecuador does not have the equivalent effect that the Convention demands as a requirement of an alternative measure.
38. The allocation process adopted in CMMs 01-2017 and 01-2018 for participants of the respective fishery is the reflect of the application of the different criteria included in Article 21 of the Convention and not only of historical catches as stated by the submitted objection.
39. Currently, there is a mechanism adopted by the Commission and acknowledged by the Republic of Ecuador that may be used to develop its jack mackerel fishery in the Convention Area, corresponding to the quota transfer system referred to in paragraph 9 of CMM 01- 2018 and its previous versions. This mechanism is in place and has been used since 2013 by different States, including the objecting State.
40. Chile believes that the measure proposed by Vanuatu, once adopted by the Commission, will allow the access for new entrants to the jack mackerel fishery and the increase of catch entitlements for those Members with lower allocations.



Supporting material No. 1

Letter of the SPRFMO Secretariat Ref.60-2017, as of 24 May, 2017



Ref: 60-2017

24 May 2017

To: Commission Members and CNCPs

Dear Members and CNCPs,

Re: Transfer of entitlement to catch *T. murphyi* from Ecuador to Chile

The Secretariat has received the attached letter from the Republic of Ecuador regarding the transfer of 1 179 tonnes of its *T. murphyi* catch entitlement to the Republic of Chile in accordance with CMM 4.01, paragraph 9.

As required under CMM 4.01, this letter is being circulated to all Commission Members and CNCPs.

Sincerely yours,


Johanne Fischer
Executive Secretary



Puerto Pesquero Artesanal de San Mateo
Telf.: 62-666109
www.agricultura.gob.ec
Manabí - Ecuador

Oficio Nro. MAGAP-SRP-2017-3383-OF

Manta, 17 de mayo de 2017

Asunto: TEMPORARY TRANSFER OF QUOTA (1179 TM JACK MACKEREL) AUTHORIZED BY THE UNDERSECRETARY OF FISHERY RESOURCES OF ECUADOR REQUESTED BY THE CIA EC TRANSMARINA C.A. FOR CHILEAN GOVERNMENT OF THE USE OF THE CHILEAN SOCIETY BLUMAR S.A. (F/V ALFONSO)

Johanne Fischer
Executive Secretary
SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT ORGANIZATION
(SPRFMO)
En su Despacho

Dear:

The Undersecretary of Fisheries Resources of Ecuador, through Official Letter Nro.MAGAP-SRP-OF-2017-2206-OF dated March 16, 2017, authorized to the Company TRANSMARINA C.A., to proceed to sign agreement Temporary Transfer of quota to SOCIETY CHILEAN BLUMAR SA ship-owner of F/V Don Alfonso.

Under determined in paragraph 9 of the Measures Conservation and Management CMM 3.01 for Trachurus murphy (Chilean Jack Mackerel) inform you that the Republic of Ecuador accepts and authorizes their right to fish 1,179 tones established in table 1 of these measures and assigned internally to the company TRANSMARINA CA, is transferred to the Republic of Chile for the exclusive use of CHILEAN SOCIETY BLUMAR SA ship-owner of the F/V Don Alfonso, for the year 2017, which will be captured under the control and monitoring rules established by the Chilean fishing authority, which will be duly informed to the SPRFMO. The transfer requires explicit consent of the Government of Chile, according to the conditions stated in the resolution.

Finished the period of the temporary transfer of quota, it will terminate and return to Ecuador to be exploited directly by Ecuadorian company TRANSMARINA C.A, as a favored assignee.

Atentamente,



Puerto Pesquero Artesanal de San Mateo
Telf.: 62-666109
www.agricultura.gob.ec
Manabí - Ecuador

Oficio Nro. MAGAP-SRP-2017-3383-OF

Manta, 17 de mayo de 2017

Documento firmado electrónicamente

Blgo. Victor Ezequiel Alcivar Rosado
SUBSECRETARIO DE RECURSOS PESQUEROS.

Copia:

Señora Abogada
Pilar Del Rocio Proaño Villarreal
Viceministra de Acuicultura y Pesca

Señor Biólogo
Eddison Fernando Vera Bazurto
Director de Políticas y Ordenamiento Pesquero, Encargado

Señorita
Rebeca Espinoza Bernal
Analista

Señor Ingeniero
Andres Antonio Jarre Iglesias
Analista

Señor Ingeniero
José Isidro Andrade Vera
Analista de Proyectos y Cooperación Internacional

Señor Abogado
Jimmy Alfredo Villavicencio Navia
Presidente
VILLAVICENCIO - ASOCIADOS CIA. LTDA.

ja/ev



Supporting material No. 2

Letter of the SPRFMO Secretariat Ref.G09-2018 corr, as of 6 March, 2018



Ref: G09-2018 corr

6 March 2018

To: Commission Members and CNCPS

Dear Members and CNCPS,

Re: Correction: Transfer of *T. murphyi* catch entitlement from Ecuador to Chile

The Secretariat has received the attached letter (Oficio Nro. MAP-SRP-2018-0636-O) from the Republic of Ecuador, communicating its intention to transfer 1 377 tonnes of its *T. murphyi* catch entitlement to Chile in accordance with CMM 01-2018, paragraph 9. This letter replaces Oficio Nro. MAP SRP 2018-0570-O from 27 February 2018, in which a different amount to be transferred had been indicated.

As required under CMM 01-2018, this letter is being circulated to all Commission Members and CNCPS.

Sincerely yours,


Johanne Fischer
Executive Secretary



Oficio Nro. MAP-SRP-2018-0636-O

Manta, 02 de marzo de 2018

Asunto: TEMPORARY TRANSFER OF ALLOCATION (1377 TM JACK MACKEREL) AUTHORIZED BY THE UNDERSECRETARY OF FISHERY RESOURCES OF ECUADOR REQUESTED BY THE CIA EC TRANSMARINA C.A. FOR CHILEAN GOVERNMENT OF THE USE OF THE CHILEAN SOCIETY BLUMAR S.A. (F/V DON ALFONSO)

Johanne Fischer
Secretaria Ejecutiva
MANEJO PESQUERO REGIONAL DEL PACÍFICO SUR - SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT ORGANIZATION (SPRFMO)
En su Despacho

Dear Mrs Fischer

The Undersecretary of Fisheries Resources of Ecuador, through Official Letter No. MAP-SRP-2018-0532-O dated February 22, 2018, authorized to the Company TRANSMARINA C.A., to proceed to sign agreement for Temporary Transferring the quota of *Trachurus murphyi* to SOCIETY CHILEAN BLUMAR SA ship-owner of F/V "DON ALFONSO".

According to paragraph 9 of the Conservative and Management Measure CMM 01 - 2018, the Republic of Ecuador authorizes temporary transferring its right to fish 1,377 metric tons of *Trachurus murphyi* on high seas to the Republic of Chile for the exclusive use of CHILEAN SOCIETY BLUMAR SA ship-owner of the F/V "DON ALFONSO", for the year 2018. This activity will be under the control and monitoring rules established by the Chilean Fishing Authority, which will duly inform to the SPRFMO.

The transfer requires explicit consent of the Government of Chile, according to the conditions stated in the resolution.

Finished the period determined above, the quota will return to Ecuador and will be use by the Ecuadorian company TRANSMARINA C.A, as a favored assignee.

This document render the note No. MAP-SRP-2018-0570-O of February 27th, 2018, invalid.

Atentamente,

Puerto Pesquero Artesanal de San Mateo – Telfs: (593 5) 2666109 – 2666360
www.acuaculturaypesca.gob.ec
Manabí – Ecuador



Oficio Nro. MAP-SRP-2018-0636-O

Manta, 02 de marzo de 2018

Documento firmado electrónicamente

Ing. Jorge Manuel Costain Chang
SUBSECRETARIO DE RECURSOS PESQUEROS

Copia:

Señorita
Rebeca Espinoza Bernal
Analista

Señor Ingeniero
Andres Antonio Jarre Iglesias
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Señor Tecnólogo
Boris Antonio Ayala Villa
Director de Políticas y Ordenamiento Pesquero

Señorita Ingeniera
Stephanie Vivian Zambrano Nieto
Secretaria de Despacho

re/ba



Supporting material No. 3

2017 Transfers of Jack mackerel catch entitlement, retrieved from <https://www.sprfmo.int/measures/cmm-01-jack-mackerel/cmm01-transfers-2/2017-transfers-2/>, on 16 May 2018

16/5/2018

South Pacific Regional Management Organisation

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2017 TRANSFERS

CONSERVATION

AND MANAGEMENT

This section contains all the transfers of Jack mackerel catch entitlement that were informed to the Secretariat in accordance with CMM 01 during 2017.

MEASURES

	Transfer of Entitlement			Request		Acceptance	
	FROM	TO	Tonnes	Date	Letter	Date	Letter
CMM 01 Jack mackerel	1 Vanuatu	Chile	10 000	09/05/2017	152-2017	18/05/2017	058-2017
Trachurus murphyi Fishery	2 Cuba	EU	1 100	16/05/2017	055-2017	17/05/2017	056-2017
	3 Ecuador	Chile	1 179	24/05/2017	060-2017	29/05/2017	063-2017
CMM01 Transfers	4 Vanuatu	Chile	5 000	28/06/2017	078-2017	10/07/2017	082-2017
2018 Transfers	5 EU	Chile	10 000	29/06/2017	079-2017	06/07/2017	080-2017
2017 Transfers	6 Vanuatu	Chile	3 000	07/07/2017	081-2017	20/07/2017	096-2017
	7 Vanuatu	Chile	3 042	04/08/2017	095-2017	09/08/2017	097-2017
CMM 01 Chile's Consent	8 Vanuatu	Chile	2 000	09/08/2017	098-2017	17/08/2017	109-2017
Benthic Impact Assessments	9 Faroe Islands	EU	5 466	11/09/2017	122-2017	12/09/2017	123-2017
	10 Korea	Chile	1 100	31/10/2017	162-2017	06/11/2017	169-2017
Record of Vessels	11 Korea*	Chile	3 280*	08/11/2017	171-2017	17/11/2017	178-2017
	12 Peru	Chile	8 000	14/11/2017	175-2017	17/11/2017	179-2017
SPRFMO IUU List	13 Peru	EU	2 000	14/11/2017	176-2017	16/11/2017	177-2017

Designated Ports and Points of Contact

* amended on 21 December 2017 to be reduced to 3 270 tonnes

At-Sea Boarding and Inspection Info

Superseded CMMs

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Supporting material No. 4

2018 Transfers of Jack mackerel catch entitlement, retrieved from <https://www.sprfmo.int/measures/cmm-01-jack-mackerel/cmm01-transfers-2/2018-transfers-2/>, on 16 May 2018

16/5/2018

South Pacific Regional Management Organisation

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2018 TRANSFERS

CONSERVATION

AND MANAGEMENT

This section contains all the transfers of Jack mackerel catch entitlement that have been informed to the Secretariat in accordance with CMM 01 so far in 2018.

MEASURES

CMM 01 Jack mackerel	Transfer of Entitlement			Request		Acceptance	
	FROM	TO	Tonnes	Date	Letter	Date	Letter
Trachurus murphyi Fishery	1 Vanuatu	Chile	20 000	14/02/2018	G02-2018	21/02/2018	G04-2018
	2 Ecuador	Chile	1 377	27/02/2018	G09-2018	06/03/2018	G13-2018
CMM01 Transfers	3 Cuba	EU	1 285	06/03/2018	G12-2018	07/03/2018	G14-2018
	4 EU	Chile	9 500	03/05/2018	G24-2018		

[2018 Transfers](#)
[2017 Transfers](#)

[CMM 01 Chile's Consent](#)

[Benthic Impact Assessments](#)

[Record of Vessels](#)

[SPRFMO IUU List](#)

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Supporting material No. 5

Report of the 6th Commission Meeting



SPRFMO

6th Meeting of the Commission Lima, Peru, 30 January to 3 February 2018

COMM6 – Report (Rev 1, 15 Feb 2018)

1. OPENING OF MEETING

The Minister of the Peruvian Ministry of Producción, Ms Lieneke Schol, accompanied by Mr Hector Soldi, Vice-Minister of Fisheries in Peru and Vice-Chairperson of the Commission, welcomed participants to Peru and to the Sixth SPRFMO Commission Meeting. She highlighted the importance of the SPRFMO for the conservation of high seas resources in the South Pacific, commending the Commission for the significant progress made so far in achieving the objectives of the Convention, and wished all a prosperous meeting (ANNEX 12a).

The Chairperson of the Commission, Mr Osvaldo Urrutia (Chile), then opened the meeting and reminded participants of the critical decisions to be taken at this meeting. He thanked Peru for hosting the meeting, the chairpersons of subsidiary committees and working groups for their significant interessional efforts, and to the Secretariat for supporting his work (ANNEX 12b).

a. Adoption of Agenda

The Commission adopted the provisional agenda (ANNEX 1) without any changes.

2. MEMBERSHIP

a. Status of the Convention

As the Depository of the SPRFMO Convention, New Zealand provided an update of the status of the Convention (COMM5-Doco8) and reported that after the United States of America ratified the SPRFMO Convention on 19 January 2017, which entered into force for the United States of America on 18 February 2017, the Commission has 15 Members. During 2017, the Republic of Liberia and the Republic of Panama were Cooperating non-Contracting Parties.

b. Participation in the taking of decisions by the Commission

In accordance with Article 15.9 of the Convention, the Executive Secretary informed the Commission that all Members had paid their assessed contributions in full and were thus participating in the taking of decisions by the Commission.

3. SCIENTIFIC COMMITTEE (SC)

a. Report of the Committee

The Chairperson of the SC, Dr James Ianelli (United States of America), presented the report and scientific advice of the 5thSC meeting that was held in Shanghai, China, from 23 to 28 September 2017 (SC5-Report). The Commission thanked the Scientific Committee and Dr Ianelli for the excellent work and advice.

The Commission adopted the report of the SC.

b. 2018 Scientific Committee Workplan

The Commission requested that the Scientific Committee Chairperson coordinate the drafting of the 2018 multi-annual workplan for the Scientific Committee. In this context, Members remarked on the importance of advancing Jack mackerel aging techniques, improving squid stock assessment and data provision to the SC, the need of reviewing the bottom fishing impact standards and to continue the work on seabird bycatch, in particular the endangered antipodean albatross. It was also requested to include in the work plan an estimate of financial resources required to allow the SC to conduct its work.

The Commission adopted the 2018 multi-annual workplan of the Scientific Committee (ANNEX 3).

4. FINANCE AND ADMINISTRATION COMMITTEE (FAC)

a. Report of the Committee

The Chairperson of the FAC, Ms Kerrie Robertson (Australia), presented the report (FAC5-Report) and recommendations of the fifth meeting of the FAC held during the sixth Commission Meeting. The Commission adopted the report and the FAC recommendations which were the following:

- That the Commission accept the Annual Financial Statements (FAC5-Doco3).
- That the Commission adopt COMM6-Prop10, Revision 2, which described a new budget formula to apply from January 2019, as well as a commitment to review the formula at the 2020 Annual Meeting (ANNEX 4c).
- That the Commission adopt COMM6-Prop11, revision 1 to amend the Financial Regulations to require a travel plan to be developed as part of the budget-setting process (ANNEX 4c).
- That the Commission adopt COMM6-Prop12, Revision 2, to amend the Staff Regulations in relation to leave, travel and separation of service (ANNEX 4d).
- That the Commission adopt COMM6-Prop13, Revision 1, for an internship and secondment policy (ANNEX 4e).
- That the Commission approve the proposal by Korea to second one of its staff members to the Secretariat for a period of up to two years.
- That the Commission continue to work on the development of a 2018-19 budget and also consider the forecasted budget for 2019-20.
- The FAC Chairperson recommended that the Commission apply the principles contained in the FAC3 meeting report to establish the schedule of contributions.
- That the Commission agree to the proposed dates and venue for the next Annual Meeting.

b. Budget Contribution Formula

The Commission agreed to revise the budget formula specified in Regulation 4.7 of the Financial Regulations consistent with Attachment A of COMM6-Prop10 Revision 2 (ANNEX 4c).

c. Budget and Schedule of Contributions

The Commission reviewed the draft budget presented by the FAC and adopted the 2018-19 budget (COMM6-Budget 2018-19) and noted the forecast for 2019-20 (ANNEX 4a). A schedule of contributions for the 2018-19 financial year was also adopted (WP 23, Revision 2, ANNEX 4b).

d. Date and Venue of the next meeting of the Commission

The Commission thanked the European Union for its offer to host the next meeting of the Commission in 2019 and adopted the proposed venue and date: The Hague, Netherlands from 19 to 27 January 2019 (CTC 19-21 January, Commission including FAC 23-27 January).

5. COMPLIANCE AND TECHNICAL COMMITTEE (CTC)

a. Report of the Committee

The Chairperson of the CTC, Mr Tobias Hanson (Australia), presented the CTC5-Report and recommendations of the CTC Meeting held from 26-28 January 2018 in Lima, Peru. In summary, the recommendations from the CTC to the Commission were the following:

- a. Regarding the VMS-WG, the CTC recommended that discussions be continued in the Commission, including revision of COMM6-Prop01.
- b. Regarding the Observer Programme-WG, the CTC recommended that revision of the new CMM on Observer Programme (COMM6-Prop02) continue during the Commission Meeting and that the Commission revise the terms of reference for the OPWG, as appropriate.
- c. The CTC adopted a Provisional Compliance Report for consideration of the Commission (COMM6-Doco6).
- d. In relation to the implementation of certain CMMs, the CTC:

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- e. Endorsed the advice outlined by the Secretariat regarding pair trawling (CTC5-Doco8) and recommended to task the SC with reviewing potential ecosystem and stock assessment impacts related to pair trawling.
- f. Asked the Commission to consider clarifying the scope of the obligation in CMM 12-2017 to undertake transshipments only between vessels authorised in the SPRFMO Record of Vessels to avoid future implementation issues.
- g. The CTC recommended that the proposals related to CMMs 01-2017 (COMM6-Prop04), 10-2016 (COMM6-Prop06), 11-2015 (COMM6-Prop07) and a new proposal for an Exploratory Pot Fishery (COMM6-Prop03) be further developed by the proponents in consultation with Members during the Commission meeting.

b. Final Compliance Report

The Commission considered the Provisional Compliance Report provided by the CTC (CTC5-Doco6) and adopted the Final 2018 Compliance Report (ANNEX 5).

c. 2018 Final IUU List

In accordance with CMM 04-2017, paragraph 12, the Commission adopted the recommendation of the CTC to not include any new vessels on the 2018 IUU List.

With regard to the request from the Russian Federation to remove two of its vessels, MYS MARI and TAVRIDA, from the current IUU List, the Commission considered the conclusions of the CTC. In view of the absence of any new information since the CTC meeting, the 2018 Final IUU list was adopted, retaining all vessels on the 2017 IUU List (ANNEX 6).

On related IUU matters, the Commission discussed the case of the vessel ZHONG XIANG, flagged to Liberia. The Commission took note of Liberia's assertion that it had issued a significant fine which had been paid, and the Commission indicated that the case would be discussed by the CTC next year when considering the 2019 Draft IUU List. China indicated that it would undertake an investigation into the other vessels involved in the incident and report back to the Commission.

d. Status of Cooperating non-Contracting Parties (CNCPs)

The Commission reviewed the recommendations made by the CTC and agreed to renew the CNCP status for Liberia and accept the application made by Curaçao. Colombia was not represented at the meeting and was contacted by email to inquire about its intentions to make voluntary contributions; a reply was received during the meeting, in which Colombia assured that while it was not in a position to make such contributions for the current year, it intended to do so next year. Despite the lateness of the application and in view of its commitment for future contributions, the Commission accepted the request for CNCP status by Colombia on an exceptional basis, noting that it would be helpful if Colombia could send one or more representatives to the next Commission meeting.

Concerning the application by Panama, the Commission noted last year its deep concerns regarding *"the serious issue of non-compliance by Panama"* and *"advised that Panama should not expect its CNCP application to be approved in 2018 unless Panama takes steps to improve its cooperation with the Commission"*. After conclusion of the CTC meeting, Panama provided most of the data and reports that had been missing. The Commission acknowledged receiving this information but was also very concerned about the lateness. The application for CNCP status by Panama was accepted; however, the Commission expressed its frustration and the expectation that in order to maintain its CNCP status in 2019, Panama would have to greatly increase its level of compliance and to hold to the commitments it made regarding its Compliance Action Plans.

Regarding Decision 2-2016, the CTC asked the Commission to revise paragraph 3(c) to take into account the existence of the existing CMM 11-2017 on Boarding and Inspections Procedures in the SPRFMO Convention Area. The Commission decided under paragraph 3(c) to delete the words *"once they have been adopted"* because a high-seas boarding and inspection measure is now in place.

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). Therefore, CMM 01-2018 was adopted by the Commission.
- COMM6-Propo4. Vanuatu presented its Jack mackerel fishery incentive proposal. Although the proposal received wide support from among Commission Members, it could not be agreed, and it was withdrawn. Members will continue to work on it and a revised version is intended to be submitted at the next Annual Meeting.

CMM 02-2017 (Data Standards). The Commission transferred the text of paragraph 3 of this CMM to the amended CMM 06-2017 (VMS) and made consequential amendments to CMM 02-2017 to that effect (ANNEX 7b).

CMM 03-2017 (Bottom Fishing). New Zealand summarised the objectives and strategies proposed in COMM6-INF09 (submitted by New Zealand and Australia) with the aim to adopt a revision of the bottom fishing measure at the Annual Meeting in 2019. Australia and New Zealand expressed their commitment to implementing the SC's advice in full and bringing forward a revised measure to the seventh meeting of the Commission. The observers Deep Sea Conservation Coalition and NZ High Seas Fisheries Group intervened on this agenda item (see Annex 12c and d). The Commission agreed to change the date of revision in paragraph 27 from 2018 to 2019 (see ANNEX 7c).

CMM 04-2017 (IUU List). The Commission took note of the observation by the CTC that there was ambiguity in the scope of the first bullet of paragraph 14 of this CMM as regarding the removal of fishing authorisations for fishery resources under the competence of SPRFMO or whether it extended to fishing authorisations beyond the SPRFMO competence. This issue could not be resolved during the meeting.

CMM 10-2017 (CMS). The European Union introduced a revised version of COMM6-Propo6, focusing on changes to ANNEX 1, in particular a more comprehensive list of follow-up actions, including actions by the Commission itself. During this meeting Members could not come to an agreement regarding the proposed amendments and the proposal was withdrawn with the intent to present a new revision at the next Annual Meeting.

CMM 11-2015 (Boarding and Inspection). The USA introduced their COMM6-Propo7. The USA recognised that several members had expressed general support for the proposal at CTC, while also recognising that the scope of the proposal presents fundamental difficulties for one Member, and that some substantive, technical, and procedural aspects were unresolved. The USA noted that good progress had been made at this meeting and further discussions are required. China expressed its fundamental concern with the scope of the proposal, based on Article 27 of the SPRFMO Convention, and stressed that the interpretation of the SPRFMO Convention should be based on international law as stated in the 1969 Vienna Convention on the Law of Treaties. China also emphasized that the fundamental issue must be resolved as a priority and bilateral communications can make contributions to that process. Chinese Taipei expressed its view that the scope of the proposal is consistent with the Convention. Several Members were optimistic that the text provided a good basis to proceed and reach a satisfactory solution. The proposal was withdrawn with the intent

of continuing discussion intersessionally, including bilaterally where possible, and presenting a revised version to the next Annual Meeting.

CMM 12-2017 (Transhipments). The CTC noted differences of interpretation of the transhipment measure, i.e. whether the obligation to undertake transhipments between vessels authorised in the SPRFMO Record of Vessel only applies to transhipments within the Convention Area or whether it has a global scope. The Commission did not come to a conclusion and postponed the matter to the Annual Meeting in 2019. Paragraph 10 was amended accordingly.

CMM 14b-2018 (Exploratory Pot Fishery in the SPRFMO Area) (COMM6-Propo3, Revision 3). Cook Islands presented a revision of its proposal for an exploratory pot fishery in the SPRFMO Area, explaining how they took into account the advice received from the Scientific Committee. The Commission acknowledged that the proposal now met Scientific Committee advice on the fishing effort and the total allowable catch. Taking into account the advice of the Scientific Committee, the Commission adopted the proposal noting that the Cook Islands will present the outstanding information required under CMM 13-2016 and that it was subject to review by the sixth Scientific Committee and the seventh Commission Meeting (ANNEX 7e). The Deep-Sea Conservation Coalition voiced concerns that in its opinion the proposal did not meet the standards required by the SPRFMO measures for the protection of seabirds and for bottom fishing

7. VESSEL MONITORING SYSTEM

The VMS WG, chaired by Mr Luis Molledo (European Union), continued its work during the Commission meeting, focusing on COMM5-Propo1, revision 9 which addresses revisions of CMM 06-2017 (VMS). After clarifying technical details, the Commission adopted the Proposal as CMM 06-2018. The Commission expressed appreciation for the work of Mr Molledo.

In relation to active surveillance operations and/or inspections at sea under paragraph 24(b), Members discussed the merits of the Secretariat being tasked to provide VMS data for the previous 10 days in relation to a vessel detected during surveillance, and /or inspection activities and any other vessels contemporaneously within 100nm of the vessel. A majority of Members supported the inclusion of such a provision, however, divergent views were expressed and there was no consensus in the Commission. In this regard, China stated that it is willing to work with other Members making best efforts to address this matter at the Commission meeting in 2019.

The Commission accepted the advice of the VMS working group on airtime fees as contained in Working Paper 26 (ANNEX 8b) as well as the advice in Working Paper 27 (ANNEX 8a). The Commission adopted the security standards described in Working Paper 28 (ANNEX 8c); the Secretariat offered to review these security standards before the next Annual Meeting in light of their experience. The Commission expressed its appreciation to the Secretariat and CLS for their efforts to operationalise the Commission VMS.

8. SPRFMO OBSERVER PROGRAMME

The Commission recognised the intersessional work of the Observer Programme Working Group and expressed appreciation for the work of Mr Michael Tosatto (United States of America) as the Chairperson. The USA introduced their proposal COMM6-Propo2. The initial discussion addressed some basic points, such as the observer coverage in different fisheries and on reefer or support vessels, as well as the relationship between scientific observation and monitoring and compliance with SPRFMO CMMs. Different views were expressed regarding the possibility of complementing or replacing human observers with other means of observation. Another point of discussion was how to ensure that observer coverage is representative and unbiased, especially in small fleets. In the discussion about accreditation, one Member expressed doubts whether accreditation was necessary. Members queried whether it was necessary to resolve the accreditation process at this meeting. The Commission agreed to progress arrangements for accreditation intersessionally, led by the Chairperson. Members also discussed if a fast-track process was appropriate in the case an observer programme had already been accepted by WCPFC or another RFMO. When adopting COMM6-Propo2, Revision 6, the Commission took note of an intervention by Chinese Taipei that the Scientific Committee could be tasked with studying whether existing observer programmes in other RFMOs could be cross-accredited for SPRFMO.

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The Commission adopted a revised version of COMM6-Propo2, (Revision 6, see ANNEX 7f). Some Members expressed concern regarding the wording of paragraph 33, and emphasised that alternative means of observations could not replace human observers.

The European Union generously offered to contribute EUR 100 000 to a SPRFMO observer accreditation process and the Commission gratefully accepted this generous offer.

9. SPRFMO PERFORMANCE REVIEW

The European Union introduced COMM6-Prop14 submitted by the EU and Australia on the first SPRFMO Performance Review. The Commission adopted the proposal (Decision 06-2018, ANNEX 9).

10. ANNUAL REPORT OF THE COMMISSION (Article 29)

The Executive Secretary presented the draft Annual Report (COMM6-Doco3_rev1) for adoption by the Commission. This report addressed relevant decisions by the SPRFMO in 2017 for the purpose of informing the UN and FAO. The Commission agreed to adopt the report (ANNEX 10).

11. FUTURE WORK PROGRAMME OF THE COMMISSION

The Commission reflected on the need for incorporating this item on the agenda every year and suggested that if nothing was proposed for discussion under this item, it might not be necessary to include it next year.

12. OFFICE HOLDERS

a. Appointment of the Executive Secretary

Following the process outlined in paragraphs 16 and 17 of decision 5-2017, Contracting Parties selected Dr Sebastián Rodríguez as the new Executive Secretary and this was confirmed by the Commission. The Commission welcomed and congratulated Dr Rodríguez on his appointment and wished him success in his future role. Dr Rodríguez thanked the Commission for the appointment and confirmed his availability by accepting the position. He assured the Commission of his commitment to work together with everyone in ensuring and achieving the objectives of the Convention and the Commission.

The Commission asked the Chairperson to engage in contract negotiations with Dr Rodríguez on the basis of the contract (Correspondence 216-2017)¹.

The Commission also expressed its gratitude to Dr Johanne Fisher for her commitment and dedication to the organisation and for leading the Secretariat as it grew with the aim of providing Secretariat services more efficiently and effectively. Members collectively thanked Dr Fisher for her efforts and wished her luck in the future.

b. Election of new CTC Chairperson

As the current CTC Chairperson, Ms Jihyun Kim (Korea), was no longer available to perform this task, the current CTC meeting was chaired by Mr Tobias Hanson (Australia). The Commission expressed appreciation to Ms Kim for her contribution to the work of the CTC and thanked Mr Hanson for his work throughout the 5th CTC Meeting. The Commission elected Mr Andrew Wright (New Zealand) as the next CTC Chairperson starting in January 2019. In the meantime, Mr Luis Mollado (European Union), the current Vice-Chairperson of the CTC, will lead the intersessional work until January 2019.

¹ [Terms of Appointment of Executive Secretary](#), member site, restricted

13. OTHER MATTERS

The European Union presented document COMM6-Prop15 to amend Rule 6 of the Rules of Procedure to ensure that in the absence of the Executive Secretary there is appropriate delegation and replacement. The Commission adopted this proposal after minor revisions (Revision 2, see ANNEX 11).

The Comisión Permanente del Pacífico Sur (CPPS) tabled a proposal for a Memorandum of Understanding between the CPPS and SPRFMO (COMM6-Obso3). The Commission decided that the Secretariat, in consultation with the Chairperson, will prepare a draft based on the CPPS proposal and circulate this to the Commission with the aim of preparing a new version for CPPS consideration.

New Zealand informed the Commission that a small group composed of New Zealand, the Chairperson of the Commission, the Vice-Chairperson of the FAC and the Executive Secretary, had started to develop a SPRFMO Code of Ethics and a Conflict Resolution Mechanism will be proposed to the Commission at its next meeting in 2019. The Commission supported this initiative and the Executive Secretary was asked to invite Members who wished to participate in the drafting group.

Peru presented an important initiative called "*The Regional Network to combat IUU Fisheries from Latin American and the Caribbean*". The initiative was well received by Members of the Commission and they expressed a willingness to collaborate with such a network, encouraging the Secretariat to follow up on Peru's initiative to cooperate and facilitate the exchange of relevant non-confidential information on fisheries activities and fishing vessels of mutual interest.

14. MEETING REPORT

The draft meeting report was prepared during the meeting by the Chairperson, assisted by the Secretariat, and presented to the Commission on the last day of the meeting for its consideration.

The report was adopted on 03 February 2018 at 23:45hrs.

15. CLOSE OF MEETING

The meeting was closed on 03 February 2018 at 23:45 hrs.

LIST of ANNEXES

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2. List of Participants
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4. Decisions related to Finance and Administration
 - a. Budget for the Financial Year 2018-19
 - b. Financial contributions for the Financial Year 2018-19
 - c. Amendments to the Financial Regulations of the Commission (new budget formula and travel plan)
 - d. Amendments to the Staff Regulations
 - e. Policy for Secondments and Internships
5. Final Compliance Report
6. Final IUU List
7. Amendments to Conservation and Management Measures:
 - a. CMM 01-2018 (*Trachurus murphyi*)
 - b. CMM 02-2018 (Data Standards)
 - c. CMM 03-2018 (Bottom Fishing)
 - d. CMM 06-2018 (VMS)
 - e. CMM 14b-2018 (Exploratory Potting Fishery)
 - f. CMM 16-2018 (Observer Programme)
8. VMS Working Group
 - a. Report of the VMS WG (Working Paper 27)
 - b. Airtime Fees (Working Paper 26)
 - c. Secretariat's Security Standards (Working Paper 28)
9. Decision 06-2018. First SPRFMO Performance Review
10. Annual Report of the Commission
11. Amendments to the Rules of Procedure
12. Statements:
 - a. Welcome speech by the Minister of Producción (Peru), Ms Lieneke Schol
 - b. Welcome speech by the Chairperson of the Commission, Mr Osvaldo Urrutia
 - c. Intervention by Deeps Sea Conservation Coalition
 - d. Intervention by the NZ High Seas Fisheries Group