

**Oficio Nro. MAP-2018-0857-O**

**Manta, 21 de mayo de 2018**

**Asunto:** Written comments by the Republic of Ecuador on the information, documents, materials and memoranda submitted to the Review Panel by the Organization and Commission Members.

Señor  
Martin Doe R.  
**Consejero Legal Senior - Palacio de la Paz**  
En su Despacho

Dear Mr. Doe;

In regards to the Procedural calendar brought to the knowledge of the Ecuadorian State within the Procedure conducted by the Review Panel established pursuant to Article 17 and Annex II of the Convention for the Conservation and Regulation of the High Seas Fishery Resources of the South Pacific Ocean with respect to the objection of the Republic of Ecuador to the decision of the Commission of the Regional Organization for Fisheries Management of the South Pacific, Procedural Directive No. 1, which textually reads: “Written comments (if desired) by the Republic of Ecuador on the information, documents, materials and memoranda submitted to the Review Panel by the Organization and Commission Members”.

In consideration to the written submission submitted by the Regional Organization for the Fishing Management of the High Seas of the South Pacific Ocean:

“The Regional Organization for the Management of High Seas Fisheries of the South Pacific Ocean, in paragraph 1 of the conclusions indicates: " This memorandum has provided the Review Panel with a detailed factual account regarding the decisions adopted by the SPRFMO Commission on the Jack mackerel fishery and the subsequent allocation of the TAC. The information provided addresses the requests made by the Panel on part 2.2. of Procedural Directive 1, of 30 April 2018. It is for members of the SPRFMO Commission to present their views on the questions posited by the Panel in part 2.1. of the Procedural Directive, and for the Panel to assess and eventually recommend on Ecuador’s claims of discrimination and inconsistency of CMM 1-2018.”

However, it is important to consider the following aspects of the document in reference:

Numeral 25:

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" This success was only possible because SPRFMO Members have strictly adhered to the precautionary scientific advice when setting the TAC and made considerable efforts to reduce their catches. The current biomass is expected to support catches of 576 000 tonnes."

Table 2 Jack mackerel advice, TACs and catches since 2011

Year	Scientific Advice (tonnes)	TAC (tonnes)	Reported Catch (tonnes)
2011	711 783	n/a	634 580
2012	520 000	n/a	454 774
2013	441 000	438 000	353 123
2014	440 000	440 000	395 085
2015	460 000	460 000	394 212
2016	460 000	460 000	388 575
2017	493 000	493 000	402 050
2018	576 000	576 000	

Numeral 29:

"In this context, Annex III of the SPRFMO Convention is of key relevance. Paragraph 2 provides that the Scientific Committee should assess the status of the straddling fishery resources throughout its range and provide advice to the Commission on an appropriate TAC for the resource throughout the range. Paragraph 4 states that "In accordance with Articles 16 and 20, the Commission,...., shall establish a total allowable catch or total allowable fishing effort for the fishery resource **throughout its range** and adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded." . **The underline and the bold is mine.**

What is mentioned in this numeral is consistent with what is determined in Annex III of the Commission, whose full text says:

“ANNEX III

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PROCEDURES FOR THE ESTABLISHMENT AND IMPLEMENTATION OF A TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT FOR A STRADDLING FISHERY RESOURCE WHEN APPLIED THROUGHOUT ITS RANGE

1. In accordance with Articles 23 and 24, coastal State Contracting Parties and members of the Commission whose vessels fish for the straddling fishery resource in areas under national jurisdiction or on the high seas in the adjacent Convention Area shall provide all relevant scientific, technical and statistical data with respect to such fishery resources to the Commission for consideration by the Scientific Committee and, as appropriate, the Compliance and Technical Committee. â

2. De In accordance with Article 10, the Scientific Committee shall assess the status of the straddling fishery resource throughout its range and provide advice to the Commission and the relevant Sub-regional Management Committee on an appropriate total allowable catch or total allowable fishing effort for the resource throughout its range. Such advice should include where possible estimates of the extent to which the establishment of a total allowable catch or a total allowable fishing effort at different levels would achieve the objective or objectives of any management strategy or plan adopted by the Commission.

3. In accordance with Article 12, and on the basis of the advice of the Scientific Committee and any relevant advice of the Compliance and Technical Committee, the relevant Sub-regional Management Committee shall make recommendations to the Commission on a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and appropriate measures to ensure the total allowable catch or total allowable fishing effort is not exceeded.

4. In accordance with Articles 16 and 20, the Commission, on the basis of the recommendations and advice from the Scientific Committee and the relevant Sub-regional Management Committee and any relevant advice of the Compliance and Technical Committee, **shall establish a total allowable catch or total allowable fishing effort for the fishery resource throughout its range** and adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded. â The underline and the bold is mine.

5. In relation to the conservation and management of *Trachurus murphyi* (jack mackerel), the Commission shall, in accordance with Article 20, and as appropriate, **give primary consideration to establishing a total allowable catch**, without prejudice to any other conservation and management measures which it considers appropriate to adopt to ensure the conservation and sustainable use of this fishery

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resource.”” **The underline and the bold is mine.**

It is precisely based on the report of the scientific committee that determines that the current biomass supports catches of 576 000 ton, as reflected in the table presented by the SPRFMO and whose duplication has been presented is in this writing submission, which justifies the possibility of increasing the quota required by Ecuador through this objection, a scientific report that is irrefutable and on which the distribution of mackerel quota has already been made to the member countries of the organization, for the catch within the area of the convention.

From this same report of the Scientific Committee, it has been determined that there exists a difference between the total catch adopted and the total allowable catch, regardless of what we call "reserve" or "differential"

With regard to the written memorandum presented by the countries of Chile, Peru, Australia and New Zealand, it is evident that they establish that there is a differential, an amount that between the years 2014-2017 was 50,000 tons as recommended at that time by the Scientific Committee.

There is no scientific document where it has been determined that the differential or reservation is outside the convention area, this is in the Exclusive Economic Zones (EEZ) of Peru, Ecuador or any other members.

It is important to note that under no circumstances does Ecuador intend to affect the sovereignty of the member countries of the organization.

In this regard, Chile and Australia mention:

**Chile**, “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).”

**Australia**, “23. An effect of this approach was that the set aside amount that had been 50,000 tonnes from 2014- 2017 was effectively converted to a percentage (10.1421%) of the catch limit for the range of the stock. As such, any increase in the overall catch limit recommended by the Scientific Committee would see the set aside amount grow in future years.” ”

That is, they clearly recognize that there is a difference or reservation and that this is

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not established for the coastal States.

1. Regarding the aspects indicated and in which Ecuador establishes the grounds for its objection, the absence of discrimination of fact and form are merely statements, since there is no material evidence to establish that the 10 established criteria have been applied. in article 21 of the convention. Peru in this regard points out:

"Point 18. Regarding the previous paragraph, it shall be noted that the allocation of quotas or catch limits in the jack mackerel fishery in the area to which the Convention applies has not only been made based on the criteria of "historical catches and past and present fishing patterns and practices in the Convention area" (Art. 21(1) (a) of the text of the Convention). Since the first Meeting of the Commission held in Auckland in 2013, historical catches have been considered, as well as fishing patterns and practices in the area to which this Convention applies, in addition to being taken into account, perhaps in a less explicit manner, the other nine criteria of Art. 21 (1), and whose form and level of compliance varies greatly among the Parties."

That is, according to Peru, the other nine criteria were applied in a less explanatory manner, a statement without any justification, consequently, our argument is not only being ratified, but also the lack of application to the norm alleged by Ecuador is also evident.

2. The argument presented that the small amount received by Ecuador, has been assigned based on the criterion of being a developing country. It is an irrefutable evidence of discrimination, since it is limiting the development guaranteed by the Convention, by Convemar and the 1995 Agreement and as we already mentioned. We would need no less than 25 years to be able to start developing this fishery without depending on the uncontrolled circumstances that we could transfer the fee according to the provisions of numeral 9 of CMM1-2018.

3. As justified from the writings submitted, Ecuador has made use of the quota assigned via transfer to Chile, this situation, in contrast to the statements of the countries opposed to Ecuador's claim, is a fact that justifies that the capacity of assigned quota is insufficient to carry out an own exploitation, that is to say this demonstrates that until this date Ecuador can not develop its own fishery of this species.

4. The claim of Ecuador is based on the strict respect of the total allowable catches or the total fishing effort admissible for the fishery resource throughout its

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distribution area, established by the scientific committee, as well as the sovereign respect of the countries members within its EEZ

5. Regarding the procedural aspects: 1) Ecuador's request made at the meeting Lima CMM1 -2018 was acknowledged, treated, and discussed, as recorded in the minutes there was no refusal to treat, to the extent that a decision about it was made. 2) The objection raised has been made within the term established for this purpose by Article 17 and Annex II of the Convention, to the extent that it was admitted to the proceedings; therefore any objection regarding the procedure is not pertinent to the reality of the present process.

Best Regards;

*Documento firmado electrónicamente*

Ing. Ana Katuska Drouet Salcedo  
**MINISTRA ACUACULTURA Y PESCA**

Copia:

Señor Ingeniero  
Jorge Manuel Costain Chang  
**Subsecretario de Recursos Pesqueros**

jc