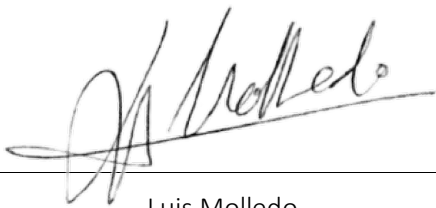


Memorandum to assist the 2023 Review Panel
established under Article 17 of the Convention on the Conservation and
Management of High Seas Fishery Resources in the South Pacific Ocean
to consider the objection by the Russian Federation to the Conservation
and Management Measure for *Trachurus murphyi* (CMM 01-2023)

Wellington, 08 June 2023



Luis Molledo

Chairperson of the Commission



Craig Loveridge

Executive Secretary



South Pacific Regional Fisheries Management Organisation

Memorandum outline

- Part I **Background** - provides information on the history of SPRFMO and the jack mackerel fishery.
- Part II **The development of the CMM for jack mackerel since 2017** - presents the decisions taken by SPRFMO concerning the participation of Members and CNCs in the jack mackerel fishery from 2017 until 2023.
- Part III **The text “without prejudice to future agreements on the allocation of fishing opportunities”** - provides the background for the text relating to without prejudice in paragraph 8 of the CMM 1-2023

I. Background

1. The 2009 Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean established the South Pacific Regional Fisheries Management Organisation (SPRFMO). The Convention entered into force on 24 August 2012, and the first meeting of the Commission, its governing body, was held in January 2013. Today there are 17 Commission Members (Australia, Belize, Republic of Chile, the People's Republic of China, the Cook Islands, Republic of Cuba, Republic of Ecuador, European Union, Kingdom of Denmark in respect of the Faroe Islands, Republic of Korea, New Zealand, Republic of Panama, Republic of Peru, Russian Federation, Chinese Taipei, the United States of America and Republic of Vanuatu), and two Cooperating Non-Contracting Parties (Curaçao and Republic of Liberia hereinafter CNCPs).
2. As of 2023, SPRFMO has in place a comprehensive suite of 23 Conservation and Management Measures (CMMs), 13 Decisions, as well as its Rules of Procedure, Financial Regulations, and various other administrative documents.
3. The objection by Russia to the CMM 01-2023 represents the third time that an objection has been lodged to a newly adopted SPRFMO conservation and management measure. In both previous cases, the objections related to SPRFMO's Conservation and Management Measure for *Trachurus murphyi*¹ (CMM 01) in 2013 (by the Russian Federation, PCA case number 2013-14) and in 2018 (by the Republic of Ecuador, PCA Case number 2018-13).
4. As a result of the memoranda prepared by the Chairperson of the Commission and the Executive Secretary for the two previous objections, much of the history concerning SPRFMO, the jack mackerel fishery and the development of the associated Conservation and Management Measure, CMM 01, up to and including 2018 has been previously collated. This Memorandum will not seek to replicate the earlier work, instead it will focus on the period from 2017 to 2023.

The jack mackerel fishery

5. The jack mackerel fishery that exists predominantly in FAO Area 87 off the coast of Latin America was managed under interim nonbinding arrangements beginning in 2007 and, with the entry into force of the SPRFMO Convention, has been managed under binding Conservation and Management Measures since 2013.
6. The fishery for jack mackerel by the coastal States –Chile, Peru, and Ecuador– is conducted mainly within their areas of national jurisdiction by purse seiners. In the high seas, jack mackerel has also been targeted by trawlers from the European Union and the Russian Federation during the most recent three-year period. Prior to 2020, other nations that were actively engaged in trawling or purse seining for jack mackerel in the high seas included Chile, China, Korea, Peru, and Vanuatu.
7. Regarding the period covered since the establishment of SPRFMO, the largest catches of jack mackerel in the South Pacific are taken by Chile in the Chilean EEZ, where the stock is concentrated. In the Peruvian and Ecuadorian EEZs, jack mackerel is often part of a mixed pelagic fishery (also targeting anchovy, mackerel and sardines) and catches vary greatly from year to year.

¹ *Trachurus murphyi* is the scientific name for Chilean jack mackerel (CJM). For ease of reading and to confirm with common terminology this species will be referred to as jack mackerel throughout the rest of this memorandum.

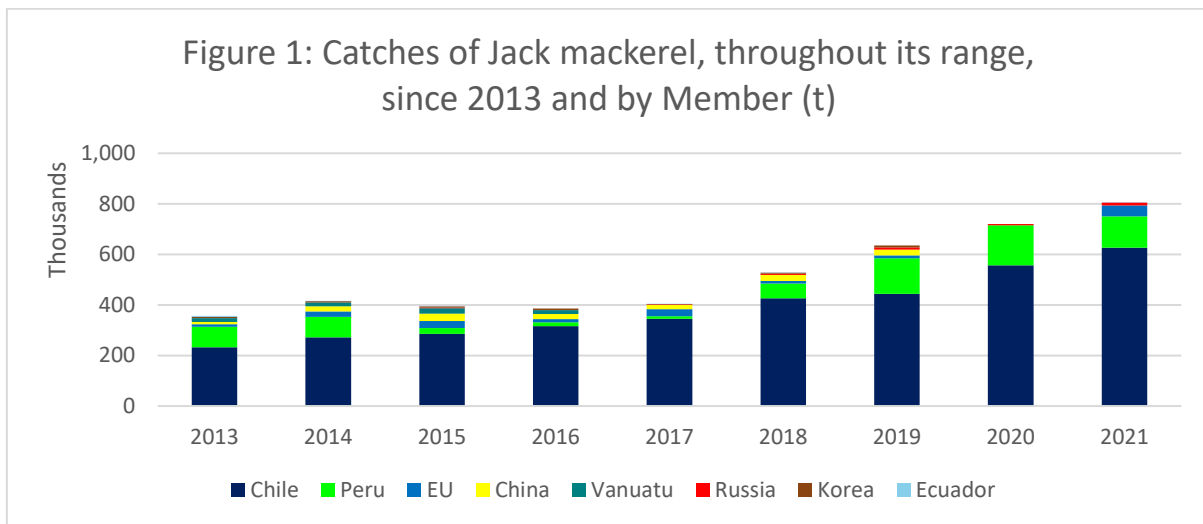


Figure 1. Catches of jack mackerel throughout its entire range since 2013, split by Member.

8. In 2013, when the SPRFMO Commission met for the first time, the jack mackerel stock was considered seriously overfished with biomass estimated between 8 and 17 percent of the unfished levels². In 2022, the Scientific Committee stock assessment results suggested that the jack mackerel stock status remains relatively stable, and the population trend was estimated to be increasing, allowing for an increase in the total allowable catch. Stock projections are favourable, even under the most conservative stock recruitment scenarios, and the 2022 biomass was estimated to be well above the level capable of supporting maximum sustainable yield³.

II. The development of the CMM for jack mackerel since 2017

Adelaide 2017: Fifth Commission Meeting

9. The fifth Commission Meeting⁴ was held in Adelaide, Australia from 18 to 22 January 2017. In his opening speech⁵, the Chairperson, Mr Gordon Neil (Australia), highlighted the progress made in rebuilding the jack mackerel stock and predicted important discussions on the allocation of the jack mackerel catches.
10. As recommended by the Scientific Committee, the Commission agreed to maintain the 2017 catches for jack mackerel throughout its range in the southeast Pacific at or below 493 000 tonnes.

² Supporting Material No 1 - A Better World – Volume 6, pages 45-47

³ Supporting Material No 2 - SC10-Report, paragraphs 90-91

⁴ Supporting Material No 3 - COMM5-Report

⁵ Supporting Material No 4 - COMM5-Report, Annex 11b

11. The Commission agreed to convene a jack mackerel Working Group (WG), chaired by Mr Frank Meere⁶ (Australia) to address the allocation of the additional 33 000 tonnes of catch recommended by the Scientific Committee and endorsed by the Commission. Mr Meere reported on the WG discussions to the Commission and stated that participants considered Ecuador and Peru's existing allocations and requests for additional quota to reflect their new status as Commission Members. In addition, the WG addressed a request from Cuba for an allocation in 2017 and a request from Cook Islands to record its interest for a future allocation. The same working group also addressed a proposal submitted by Vanuatu (COMM05-Prop01⁷), seeking to encourage greater utilization of the available quota. Peru suggested a review of the jack mackerel quota allocation process used by the Commission⁸.
12. The Commission adopted CMM 01-2017⁹ (*T. murphyi*) based upon a Working Paper that had been developed during the meeting (COMM5-WP06¹⁰). For the area of application of the measure, CMM 01-2017¹¹ set the TAC at 443 000, which was distributed among 11 Members (including the Cook Islands, with an allocation of "0" in the table to reflect its interest in a future allocation).
13. Following the adoption of CMM 01-2017 by the Commission, Cuba, Peru, and Korea were able to increase their share of the overall catch limit, while Chile's allocation share decreased. Cuba was a new entrant into the fishery and was allocated the same amount as Ecuador had received in 2015. Peru pressed its case for an increased high-seas catch limit claiming inequities in earlier decisions and its participation in the high seas fishery from 2009 until 2014. Korea reiterated its concerns with the size of its allocation and made reference to its active participation in the fishery and positive record of compliance. Chile agreed to a one-off transfer of 1 000 tonnes to assist Korea.
14. Importantly, CMM 01-2017 included a new table containing percentage entitlements which were to apply from 2018 to 2021 inclusive.
15. CMM 01-2017 stated that the measure shall be reviewed by the Commission in 2018 and would take into account the latest advice of the Scientific Committee and the Compliance and Technical Committee as well as the extent to which the current and past jack mackerel CMMs, and the Interim Measures for Pelagic Fisheries, have been complied with.
16. Regarding the proposal from Vanuatu, the Commission agreed that the proposal had merit but that more consideration needed to be given to its possible interaction with existing decisions.

⁶ Supporting Material No 5 and 6 - 2016 Intersessional letter by the SPRFMO Chairperson, and Peru's reply

⁷ Supporting Material No 7 - COMM5-Prop01 Vanuatu Proposal

⁸ Supporting Material No 8 - COMM 5 Peru's response to Vanuatu Proposal

⁹ Supporting Material No 9 - COMM5-Report, Annex 8a CMM 01-2017

¹⁰ As shown in the header of supporting material No 9

¹¹ As per table 1 of Supporting Material No 8

Table 1: Initial catch limits for jack mackerel (CMM 01-2017) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows actual catches taken in 2017.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Catch (%) |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Chile (High seas + EEZ) | 297 000 64.5652 | 317 300 64.3611 | 363 891 73.8116 | 344 745 85.3317 |
| China | 29 200 6.3478 | 31 294 6.3477 | 31 294 6.3477 | 16 802 4.1589 |
| Cook Islands | | 0 0 | 0 0 | 0 0 |
| Cuba | | 1 100 0.2231 | 0 0 | 0 0 |
| Ecuador (High seas) | 1 100 0.2391 | 1 179 0.2391 | 0 0 | 0 0 |
| European Union | 28 100 6.1087 | 30 115 6.1085 | 28 681 5.8176 | 27 887 6.9027 |
| Faroe Islands | 5 100 1.1087 | 5 466 1.1087 | 0 0 | 0 0 |
| Korea | 5 500 1.1957 | 7 321 1.4850 | 2 951 0.5686 | 1 235 0.3057 |
| Peru (High seas) | 7 400 1.6087 | 10 000 2.0284 | 0 0 | 0 0 |
| Russian Federation | 15 100 3.22826 | 16 183 3.2826 | 16 183 3.2826 | 3 188 0.7892 |
| Vanuatu | 21 500 4.6739 | 23 042 4.4678 | 0 0 | 0 0 |
| Area to which CMM 01 applies | 410 000 89.13 | 443 000 89.86 | 443 000 89.86 | 393 858 97.49 |
| Throughout the range | 460 000 100.00 | 493 000 100.00 | 493 000 100.00 | 404 006 100.00 |

Lima 2018: Sixth Commission Meeting

17. The sixth Commission Meeting¹² was held in Lima, Peru from 30 January to 3 February 2018. The Chairperson, Mr Osvaldo Urrutia (Chile), made an opening speech¹³ in which he highlighted the efforts by SPRFMO Members that led to the continuing recovery of the jack mackerel stock.
18. In view of the percentages contained in CMM 01-2017 applicable until 2021, the Commission did not convene a jack mackerel Working Group meeting to discuss allocation during this meeting¹⁴. The Chairperson asked Chile to prepare a working paper that would ultimately become the new jack mackerel conservation and management measure. The purpose of that document was to adopt a new catch limit throughout the entire range consistent with the advice from the Scientific Committee and to apply the percentages agreed in CMM 01-2017 to derive the new catch limits. This document was introduced by Chile as a Working Paper (COMM6-WP11¹⁵), entitled “Chile edits to CMM 01-2017 (jack mackerel)”.

¹² Supporting Material No 10 - COMM6-Report

¹³ Supporting Material No 11 - COMM6-Report, Annex 12b

¹⁴ Supporting Material No 12 - 2018 SPRFMO Memorandum for PCA case number 2018-13, para 74

¹⁵ Supporting Material No 13 - COMM6-WP11 Chile edits to CMM01-2017

19. Vanuatu presented again its jack mackerel fishery incentive proposal (COMM6-Prop04¹⁶) discussed at the previous Commission meeting. Although the proposal received wide support from among Commission Members, it could not be agreed, and it was withdrawn.
20. Ecuador had not presented a formal proposal to amend or modify the jack mackerel measure within the deadlines stipulated by the SPRFMO Rules of Procedure of the Commission (Rule 4 paragraph 5)¹⁷. However, during the meeting, Ecuador requested a catch entitlement of 1.13% of the total catch limit, which in 2018 corresponded to 6 500 tonnes. Ecuador also made a presentation¹⁸ explaining its reasons for this request. The Commission did not agree to Ecuador's request.
21. CMM 01-2018¹⁹ was adopted by voting, with Ecuador casting a negative vote (13-1).
22. Subsequent to the 6th Commission Meeting, on 29 of March 2018, Ecuador presented the Executive Secretary with an objection to CMM 01-2018 in accordance with Article 17 paragraph 2(a) of the Convention. A review panel to consider the objection was convened and submissions, considerations, findings and outcomes are available as PCA Case number 2018-13.

Table 2: Initial catch limits for jack mackerel (CMM 01-2018) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows actual catches taken in 2018.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Catch (%) |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Chile (High seas + EEZ) | 317 300 64.3611 | 371 887 64.5638 | 450 117 78.1453 | 426 401 80.8743 |
| China | 31 294 6.3477 | 36 563 6.3477 | 36 593 6.3477 | 24 366 4.6214 |
| Cook Islands | 0 0 | 0 0 | 0 0 | 0 0 |
| Cuba | 1 100 0.2231 | 1 285 0.2231 | 0 0 | 0 0 |
| Ecuador (High seas) | 1 179 0.2391 | 1 377 0.2391 | 0 0 | 0 0 |
| European Union | 30 115 6.1085 | 35 186 6.1086 | 9 693 1.6828 | 9 691 1.8381 |
| Faroe Islands | 5 466 1.1087 | 6 386 1.1087 | 0 0 | 0 0 |
| Korea | 7 321 1.4850 | 7 385 1.2822 | 7 385 1.2821 | 3 717 0.7050 |
| Peru (High seas) | 10 000 2.0284 | 11 684 2.0284 | 7 584 1.3167 | 0 0 |
| Russian Federation | 16 183 3.2826 | 18 907 3.2825 | 6239 1.0832 | 4 685 0.8886 |
| Vanuatu | 23 042 4.4678 | 26 921 4.6738 | 0 0 | 0 0 |
| Area to which CMM 01 applies | 443 000 89.86 | 517 582 89.86 | 517581 89.86 | 468 860 88.93 |
| Throughout the range | 493 000 100.00 | 576 000 100.00 | 576 000 100.00 | 527 239 100.00 |

¹⁶ Supporting Material No 14 -COMM6-Prop04_rev1 Vanuatu Proposal

¹⁷ Supporting Material No 15 - SPRFMO Rules of Procedure (in force in 2019)

¹⁸ Supporting Material No 16 - COMM6-WP24 Ecuador's presentation

¹⁹ Supporting Material No 17 - COMM6-Report, Annex 7a

The Hague 2019: Seventh Commission Meeting

23. The seventh Commission Meeting²⁰ was held in The Hague, The Netherlands from 23 to 27 January 2019. The Commission Chairperson Mr Osvaldo Urrutia (Chile) opened the meeting, highlighting significant work over the last year, including on the CMM for jack mackerel.
24. Vanuatu introduced its proposal (COMM7-Prop 01²¹) to promote increased utilization of jack mackerel quotas and provide fishing opportunities for Members or CNCPs with low or zero quota allocations. Following informal discussions, Vanuatu withdrew the proposal, noting that following some Members' suggestions, it may be further pursued next year.
25. Ecuador summarised its proposal (COMM7-Prop 02²²), noting the suggested inclusion of Ecuador's EEZ in the Area of the Convention under the provisions of Article 20 (4) (iii). Ecuador referenced the memorandum of SPRFMO sent to its Review Panel, which in paragraph 92 notes that the difference between the total catch that should not be exceeded throughout the range of the jack mackerel stock, and the total catch limit in the area to which the CMM applies – 58 418 tonnes – refers by implication to the EEZs of Ecuador and Peru. Ecuador proposed for itself an allocation of 11 523 tonnes from this area. Following informal discussions, two further revisions of this proposal were tabled for Members consideration.
26. After listening to the comments from SPRFMO Members, Ecuador, through an oral statement, decided to withdraw its proposal, underscoring the openness shown by Peru to continue bilateral discussions in order to reach an agreement.
27. The Commission formed a working group under the Chairperson Sam Good (Australia) to consider the recommendations arising from the 1st Performance Review Panel²³. In particular the Commission endorsed recommendation 166j in which the review panel *"Recognises the difficulty of reaching allocation decisions, including in the jack mackerel fishery, Considers that the Article 21 allocation criteria provide a solid foundation for decision making, and Encourages the continued consideration of these criteria in making future allocation decisions for both jack mackerel and other stocks"*.
28. As requested, the Secretariat presented a working paper (COMM7-WP18), as updated by the Scientific Committee advice. In considering this WP the Commission adopted an amendment to paragraph 9, recognising that catch entitlement transferred to a Member or CNCP that consents on applying this CMM in areas under its national jurisdiction, according to Article 20(4) (a) (iii), may catch this entitlement either in the Convention Area or in its EEZ. With this amendment, the Commission adopted the proposal (CMM 01-2019²⁴)

²⁰ Supporting Material No 18 - COMM7-Report, Section 6, paras 43-55 and 113-114

²¹ Supporting Material No 19 - COMM7-Prop01 Vanuatu Proposal

²² Supporting Material No 20 - COMM7-Prop02 Ecuador Proposal

²³ Supporting Material No 21 - Recommendations arising from the SPRFMO Performance Review

²⁴ Supporting Material No 22 - COMM7-Report Annex K CMM 01-2019

Table 3: Initial catch limits for jack mackerel (CMM 01-2019) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows actual catches taken in 2019.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Catch (%) |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Chile (High seas + EEZ) | 371 887 64.5638 | 381 572 64.5638 | 451 259 76.3552 | 444 321 69.9093 |
| China | 36 563 6.3477 | 37 515 6.3477 | 37 515 6.3477 | 22 699 3.5715 |
| Cook Islands | 0 0 | 0 0 | 0 0 | 0 0 |
| Cuba | 1 285 0.2231 | 1 319 0.2231 | 0 0 | 0 0 |
| Ecuador (High seas) | 1 377 0.2391 | 1 413 0.2391 | 0 0 | 0 0 |
| European Union | 35 186 6.1086 | 36 102 6.1086 | 12 973 2.1951 | 11 870 1.8676 |
| Faroe Islands | 6 386 1.1087 | 6 552 1.1087 | 0 0 | 0 0 |
| Korea | 7 385 1.2822 | 7 578 1.2822 | 7 578 1.2822 | 7 444 1.1712 |
| Peru (High seas) | 11 684 2.0284 | 11 988 2.0284 | 11 988 2.0284 | 0 0 |
| Russian Federation | 18 907 3.2825 | 19 400 3.2825 | 9 748 1.6494 | 9 423 1.4826 |
| Vanuatu | 26 921 4.6738 | 27 622 4.6738 | 0 0 | 0 0 |
| Area to which CMM 01 applies | 517 582 89.86 | 531 061 89.86 | 531 061 89.86 | 495 757 78.00 |
| Throughout the range | 576 000 100.00 | 591 000 100.00 | 591 000 100.00 | 635 568 100.00 |

Port Vila 2020: Eighth Commission Meeting

29. The eighth Commission Meeting²⁵ was held in Port Vila, Vanuatu from 14 to 18 February 2020. Commission Chairperson Mr Osvaldo Urrutia (Chile) opened the 8th Commission meeting of the SPRFMO. As part of his speech, he addressed concerns regarding exceeding the catch limit for jack mackerel in 2019 and called on Members to continue working under the spirit of cooperation to achieve constructive solutions for sustainable fishing.²⁶
30. The European Union, Vanuatu, Ecuador, Chile, and Peru submitted proposals to amend various parts of the jack mackerel CMM. After initial discussions of each proposal, the Commission Chairperson suggested addressing matters in an informal working group, and, consistent with his earlier letter²⁷, proposed Mrs Victoria Hallum (New Zealand) to guide the discussions. The Commission agreed to proceed this way. The mandate of the working group was to discuss consequences of the 2019 catches by Peru along with the four proposals regarding jack mackerel and bring recommendations to plenary on how to proceed as well as the proposal submitted by Ecuador.

²⁵ Supporting Material No 23 - COMM8-Report

²⁶ Supporting Material No 24 - COMM8-Report Annex 11a Chairperson Opening

²⁷ Supporting Material No 25 - Letter R06-2020 from the Chair re informal JMWWG

31. The Commission Chairperson introduced a working paper (COMM8-WP22²⁸), incorporating some of the substantive elements from proposals by the European Union, Vanuatu, Ecuador, Chile, and Peru, as well as outcomes from working group discussions on jack mackerel as reported in COMM8-WP25²⁹ into one single Chairperson’s proposal.
32. In addition to several reporting adjustments and an expanded section on cooperation in respect of fisheries in adjacent areas under national jurisdiction this working paper also contained an additional introductory clause *“BEARING IN MIND, the Findings and Recommendations of the Review Panel, from 5 June 2018, convened pursuant to Article 17 and Annex II of the Convention, in relation to the Objection by the Republic of Ecuador and their statements on possible ways forward in relation to that objection”*.
33. The working paper introduced by the Chairperson generated much discussion and, in terms of allocation, resulted in Ecuador receiving an increased quota that was derived solely from the amount of quota that was unallocated and outside the area of application of CMM 01. Many Members had previously welcomed Ecuador’s decision to give its express consent to apply CMM 01 to the area under its national jurisdiction. Peru opposed the proposal, noting that it agreed and supported the increased quota for Ecuador, but opposed the source for the allocation. Peru claimed that the allocation was unfair and unfounded³⁰.
34. The Chairperson referred to Article 16 (decision making), noting that all efforts to reach a decision by consensus had been exhausted. CMM 01-2020³¹ was adopted by vote with 13 Members casting a positive vote, 1 Member casting a negative vote (Peru) and 1 abstaining.

²⁸ Supporting Material No 26 - COMM8-WP22 Chairpersons proposal on JM

²⁹ Supporting Material No 27 - COMM8-WP25 Report of the JMWG

³⁰ Supporting Material No 28 - COMM8-Report Annex 11c Statement Peru Opposing Commission Decision

³¹ Supporting Material No 29 - COMM8-Report Annex 7a - CMM 01-2020

Table 4: Initial catch limits for jack mackerel (CMM 01-2020) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows actual catches taken in 2020.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Catch (%) |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Chile (High seas + EEZ) | 381 572 64.5638 | 439 034 64.5638 | 566 761 83.3472 | 556 497 77.2245 |
| China | 37 515 6.3477 | 43 164 6.3477 | 43 164 6.3476 | 0 0 |
| Cook Islands | 0 0 | 0 0 | 0 0 | 0 0 |
| Cuba | 1 319 0.2231 | 1 517 0.2231 | 0 0 | 0 0 |
| Ecuador (High seas+ EEZ) | 1 413 0.2391 | 8 594 1.2638 | 0 0 | 0 0 |
| European Union | 36 102 6.1086 | 41 538 6.1086 | 0 0 | 0 0 |
| Faroe Islands | 6 552 1.1087 | 7 539 1.1087 | 0 0 | 0 0 |
| Korea | 7 578 1.2822 | 8 719 1.2822 | 2 670 0.3926 | 0 0 |
| Peru (High seas) | 11 988 2.0284 | 13 793 2.0284 | 0 0 | 0 0 |
| Russian Federation | 19 400 3.2825 | 22 321 3.2825 | 5 406 0.7950 | 5 245 0.7278 |
| Vanuatu | 27 622 4.6738 | 31 782 4.6738 | 0 0 | 0 0 |
| Area to which CMM 01 applies | 531 061 89.86 | 618 001 90.88 | 618 001 90.88 | 561 742 77.95 |
| Throughout the range | 591 000 100.00 | 680 000 100.00 | 680 000 100.00 | 720 622 100.00 |

Virtual 2021: Ninth Commission Meeting

35. The ninth Commission Meeting³² was held in virtually from 26 January to 5 February 2021. Commission Chairperson Mr Osvaldo Urrutia (Chile) opened the meeting and offered a summary of the intersessional process by which the Commission agreed to hold its 9th Annual Meeting virtually and thanked all the Members for their support throughout the process.
36. Peru introduced its proposal (COMM9-Prop01³³), including changes to the section on cooperation in respect of fisheries in adjacent areas under national jurisdiction. The Commission did not adopt the proposal from Peru and noted that a formal statement was delivered and submitted by Peru during this meeting, and it would be annexed to the meeting report (Annex 8a³⁴).
37. The Secretariat presented a working paper (COMM9-WP06³⁵) to update the total catch for jack mackerel based on advice from the 8th Scientific Committee meeting. After discussion, the Chairperson of the Commission stated that all efforts to reach a decision by consensus had been exhausted and called on Members to express their votes. The Commission adopted CMM 01-2021³⁶ by vote: 13 Members cast a positive vote, 1 Member cast a negative vote (Peru), and 1 abstained.

³² Supporting Material No 30 - COMM9-Report

³³ Supporting Material No 31 - COMM9-Prop01 Peru Proposal CMM 01

³⁴ Supporting Material No 32 - COMM9-Report Annex 8a Peru Statement

³⁵ Supporting Material No 33 - COMM9-WP06 on Jack mackerel

³⁶ Supporting Material No 34 - COMM9-Report Annex 7a CMM 01-2021

Table 5: Initial catch limits for jack mackerel (CMM 01-2021) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows actual catches taken in 2021.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Catch (%) |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Chile (High seas + EEZ) | 439 034 64.5638 | 504 889 64.5638 | 637 470 81.5179 | 626 391 77.7792 |
| China | 43 164 6.3477 | 49 639 6.3477 | 17 639 2.2556 | 0 0 |
| Cook Islands | 0 0 | 0 0 | 0 0 | 0 0 |
| Cuba | 1 517 0.2231 | 1 745 0.2231 | 0 0 | 0 0 |
| Ecuador (High seas+ EEZ) | 8 594 1.2638 | 9 883 1.2638 | 100 0.0128 | 8 0.0010 |
| European Union | 41 538 6.1086 | 47 769 6.1086 | 43 168 5.5202 | 43 167 5.3601 |
| Faroe Islands | 7 539 1.1087 | 8 670 1.1087 | 0 0 | 0 0 |
| Korea | 8 719 1.2822 | 10 027 1.2822 | 127 0.0162 | 0 0 |
| Peru (High seas) | 13 793 2.0284 | 15 862 2.0284 | 0 0 | 0 0 |
| Russian Federation | 22 321 3.2825 | 25 669 3.2825 | 12 198 1.5598 | 12 151 1.5088 |
| Vanuatu | 31 782 4.6738 | 36 549 4.6738 | 0 0 | 0 0 |
| Area to which CMM 01 applies | 618 001 90.88 | 710 702 90.88 | 710 702 90.88 | 681 717 84.65 |
| Throughout the range | 680 000 100.00 | 782 000 100.00 | 782 000 100.00 | 805 345 100.00 |

Virtual 2022: Tenth Commission Meeting

38. The tenth Commission Meeting³⁷ was held virtually from 24 to 28 January 2022. The Chairperson of the Commission, Mr Luis Molledo (European Union), opened the 10th Annual Meeting of the SPRFMO Commission. He welcomed all participants and highlighted the main objectives for the meeting.
39. The Commission Chairperson noted a proposal to amend CMM 01-2021 (COMM10-Prop08³⁸) prepared by the Secretariat. He recalled that this CMM was due for review, but that discussion by the Heads of Delegation indicated support to roll over, for one year, the allocation percentages in the current CMM and use COMM10 to exchange ideas on how the review next year should be approached. COMM10-Prop08 suggested technical edits to reference the correct year(s) and associated Scientific Committee meeting and showed the outcome of applying the previously agreed allocation percentages against the new Scientific Committee advice (recommending a 15% increase in 2022 catches throughout the range). The proposal also extended the application of the allocation percentages to 2022 as well as a suggestion to review the CMM in 2023.

³⁷ Supporting Material No 35 - COMM10-Report

³⁸ Supporting Material No 36 - COMM10-Prop08 on JM

40. Many Members supported the proposal to roll over the allocation percentages. Cook Islands intervened to support the roll over and to highlight that it will be seeking an allocation at the next Commission meeting, consistent with its position as recorded in 2017. Peru put forward a statement explaining its position and requested that it be included in the Report (Annex 9a³⁹).
41. Following the intervention from Peru, the Chairperson stated that there was no consensus to adopt the amendment to CMM 01-2021, 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, one Member (Peru) against and one Member was not present during the voting. Therefore, the Commission adopted the amendment to CMM 01-2021 (Annex 7a⁴⁰). Following the voting Chile put forward a statement explaining its position and requested that it be included in the Report (Annex 9b⁴¹).

Table 6: Initial catch limits for jack mackerel (CMM 01-2022) compared with limits from the previous year and the effective limits after taking into account approved transfers. The final column shows ESTIMATED catches taken in 2022.

| Participant | Previous limit (%) | Initial limit (%) | Limit (after transfers) (%) | Estimated Catch (preliminary %) |
|------------------------------|--------------------|-------------------|-----------------------------|---------------------------------|
| Chile (High seas + EEZ) | 504 889 | 581 074 | 731 292 | 727 952 |
| | 64.5638 | 64.5638 | 81.2547 | 75.9052 |
| China | 49 639 | 57 129 | 12 129 | 0 |
| | 6.3477 | 6.3477 | 1.3477 | 0 |
| Cook Islands | 0 | 0 | 0 | 0 |
| | 0 | 0 | 0 | 0 |
| Cuba | 1 745 | 2 008 | 0 | 0 |
| | 0.2231 | 0.2231 | 0 | 0 |
| Ecuador (High seas+ EEZ) | 9 883 | 11 374 | 200 | 5 |
| | 1.2638 | 1.2638 | 0.0222 | 0.0005 |
| European Union | 47 769 | 54 977 | 44 746 | 44 425 |
| | 6.1086 | 6.1086 | 4.9717 | 4.6323 |
| Faroe Islands | 8 670 | 9 978 | 0 | 0 |
| | 1.1087 | 1.1087 | 0 | 0 |
| Korea | 10 027 | 11 540 | 0 | 0 |
| | 1.2822 | 1.2822 | 0 | 0 |
| Peru (High seas) | 15 862 | 18 256 | 0 | 0 |
| | 2.0284 | 2.0284 | 0 | 0 |
| Russian Federation | 25 669 | 29 543 | 29 543 | 27 043 |
| | 3.2825 | 3.2825 | 3.2826 | 2.8198 |
| Vanuatu | 36 549 | 42 064 | 33 | 0 |
| | 4.6738 | 4.6737 | 0.0037 | 0 |
| Area to which CMM 01 applies | 710 702 | 817 943 | 817 943 | 799 425 |
| | 90.88 | 90.88 | 90.88 | 83.36 |
| Throughout the range | 782 000 | 900 000 | 900 000 | 959 028 |
| | 100.00 | 100.00 | 100.0 | 100.00 |

³⁹ Supporting Material No 37 – Peru’s Statement

⁴⁰ Supporting Material No 38 - COMM10-Report Annex 7a CMM 01-2022

⁴¹ Supporting Material No 39 - Chile's statement

Manta 2023: Eleventh Commission Meeting

42. The eleventh Commission Meeting⁴² was held in Manta, Ecuador from 13 to 17 February 2023. The Chairperson of the Commission, Mr Luis Molledo (European Union), opened the 11th Annual Meeting of the SPRFMO Commission. The Chairperson recalled the decision taken by the Heads of Delegation at COMM10⁴³ to roll over the allocation percentages of the jack mackerel CMM for one more year for review at COMM11 and the expectations to have a substantive discussion on allocation at COMM11. Consistent with his letter of August 2022⁴⁴ it was his intention to propose the creation of a working group (WG) based on past practices.
43. Chile and Ecuador provided opening statements (Annex 9b⁴⁵ and 9c⁴⁶) referencing among other things their expectation to discuss jack mackerel allocation during the 11th Commission meeting.
44. Korea introduced its proposal (COMM11-Prop21⁴⁷) to amend CMM 01-2022. This proposal included a requirement for Members and CNCPs without gross tonnage limits to submit an effort management plan. The proposal also suggested that in cases where there is overcatch, then that amount is deducted from the total allowable catch (TAC) advised by the Scientific Committee. Finally, the proposal suggested extending the application of the percentages in the current CMM by one year, and to commence a process to develop an allocation framework.
45. Members expressed their objectives for the negotiation to amend CMM 01-2022 and their views on criteria to be considered in decisions on allocation, other issues related to the measure, and its duration. Members agreed to the Chair's suggestion to convene a WG with a mandate to discuss allocation of jack mackerel catch limits.
46. A jack mackerel WG, chaired by Mr Michael Brakke (United States), was established to facilitate discussions on the jack mackerel quota and allocation.
47. In the WG, the WG Chair recalled the objective and mandate of the group. The WG was responsible for exploring options related to allocation consistent with Article 21 of the Convention and fairly considering the views expressed by all Members. The WG did not have a mandate to develop a draft CMM or consider in-depth other issues related to the structure of the jack mackerel CMM, or to prepare a written report of its proceedings. The WG Chair articulated that the goal of the WG was to develop allocation tables that could be referred to the Commission Chair for inclusion in a proposal to amend CMM 01-2022. The WG Chair noted that, consistent with the Commission Chair's view of the process for negotiating and agreeing on allocation at this meeting, the measure was up for review and Members had the right to engage in that debate and seek changes to the allocation outcome regardless of whether they had submitted an individual proposal in advance. No Members objected to that process at the outset.
48. The WG Chair reiterated that the deliberations of the WG and Commission on allocation must be guided by the Convention, particularly Article 21 on the criteria to consider when taking decisions regarding participation in fishing for SPRFMO fisheries resources, as well as other relevant provisions including Article 19 on the Recognition of the Special Requirements of Developing States. The WG asked that Members give due consideration to Article 21 and reference it to the extent possible when articulating their positions on allocation.

⁴² Supporting Material No 40 - COMM11-Report 2023

⁴³ As per paragraph 96 of Supporting Material No 35

⁴⁴ Supporting Material No 41 – Letter R08-2022 from the Chairperson

⁴⁵ Supporting Material No 42 - COMM11-Report Annex 9b Chile's statement

⁴⁶ Supporting Material No 43 - COMM11-Report Annex 9c Ecuador's statement

⁴⁷ Supporting Material No 44 - COMM11-Prop21 Korea's Proposal for CMM 01

49. The WG Chair considered the views of all Members and presented various draft tables and options for allocation to elicit discussion from the parties, without prejudice to any eventual outcomes, over the course of several meetings. The first table discussed reflected Korea's proposal to apply existing percentage allocations to any increase in the total allowable catch. Several Members supported that approach. However, WG discussions highlighted that a rollover of the existing percentages would not be able to address Chile's interest in increasing its percentage of the overall allocation, which it sought for the reasons articulated in its opening statement and other statements made during the WG and Commission meeting. It would also not be possible to roll over the existing percentages while also accommodating any or all of the aspirations of potential new entrants – Belize, Cook Islands, and Panama – as any quota for those entrants would have to come from the percentages allocated to some or all of the existing fishery participants.
50. The WG Chair noted that most Members supported in principle the general goal of accommodating some increase in Chile's percentage allocation, which they considered to be consistent with several criteria in Article 21. Most Members also supported in principle accommodating some interests of new entrants. The WG extensively discussed the appropriate size of increases for Chile and new entrants as well as the source of that allocation. The WG also considered Chile's request to increase the total allowable catch by 20 percent, after considering the totality of scientific advice and the history of the harvest control rule with a default maximum increase of 15 percent. The WG Chair presented various approaches to allocation, considering Article 21 and other relevant factors, but no option could attract complete consensus given the limited overlap in some Member positions. The WG Chair had also asked Members to consider whether other factors related to historical or current fishing patterns – such as the extent to which Members were utilizing their own limits through fishing by vessels flying their flags, or the extent to which Members were fully utilizing their limits to support sustainable use of fisheries resources through either direct fishing activity or the transfer of limits to other Members – but there was no consensus around how to factor those patterns into the negotiations beyond the allocations already included in the table.
51. After considering the extensive WG discussions, one Member introduced an allocation proposal that would, inter alia: accommodate an increase in Chile's percentage allocation, albeit not at the level originally requested by Chile; provide an initial allocation for new entrants consistent with the initial allocations provided to new entrants in previous years; provide a 20% increase in total allowable catch for 2023 only; and establish a 10-year allocation framework to provide increased stability in the fishery. The proposal attracted support from most Members in the WG as a potential compromise package, which would require concessions by all Members relative to their initial positions, but also provide benefits to all Members (no Members would have a lower tonnage allocation even after accommodating an increase for Chile and new entrants) and enhanced stability and predictability in the fishery.
52. Russia and two other Members argued that any increased allocations for Chile and/or new entrants should come from the existing allocations of only those Members who were willing to transfer some of their limits. The WG Chair invited Members to consider this approach and the implications of it, if it would help to achieve consensus in the negotiations. Many other Members opposed Russia's position, as they thought it would be unfair and inconsistent with the spirit of cooperation to accommodate the interests of Chile and new entrants – which to most Members seemed consistent with the criteria to be considered in allocation – through a voluntary opt-in approach as opposed to applying any changes more fairly and equitably to all Members. Such an approach would also give every Member an incentive to ask to maintain their allocation and transfer the costs of cooperation to someone else, undermining the organisation's ability to accommodate an increased allocation for Chile as well as new entrant allocations, both of which the WG Chair and most Members considered important to satisfy based on the views expressed and the criteria to be considered in Article 21.

53. The WG Chair indicated to the Chairperson that the WG had reached the limit of what could be achieved at that level and referred a version of this proposal, which had been extensively debated in the WG, to the Chairperson for consideration in potential decision-making at the Commission. The WG Chair indicated to the Chairperson that some Members that were unwilling to accept any reduction in their percentage allocation did not support the outcome. The WG Chair submitted that the proposal was designed to be consistent with Article 21 of the Convention, which had been considered throughout the WG discussions, and fairly considered the views of all Members.
54. The Chairperson of the Commission integrated the allocation table into a Chair's Proposal (COMM11-WP24_rev1⁴⁸). The proposal provided a 10-year jack mackerel quota arrangement and allocation table for consideration, and also increased, for 2023 only, the 15% ceiling for TAC increases under adjusted Annex K to 20%. The proposal also incorporated some elements of the proposal presented by Korea.
55. Several Members expressed concern that provisions of Article 21 of the Convention were not given appropriate consideration. Further it was expressed that they could not agree to forgo any of their allocation to increase the allocation to others. They suggested that the Members that agreed to support increases for Chile and new entrants should be the ones contributing the quota to support these increases.
56. Russia noted that no documents were provided in support of claims of consistency with Article 21 of the Convention in accordance with regulation 4 of the Rules of Procedure. Many Members agreed with the procedural basis for the working group as well as for proceeding on the basis of the Chairperson's proposal, as per past practice.
57. Vanuatu made a statement (Annex 9f⁴⁹) supporting the Chairperson's proposal because it built upon the agreed 2017 quota allocation and the deviations were firmly based on the provisions of Article 21 of the Convention, which in Vanuatu's view has been appropriately complied with.
58. Many Members supported Vanuatu's statement and expressed that the proposal does consider Article 21 and also reflects past precedence such as the 2017 allocation arrangement and the past allocations to new entrants. They noted that a significant biomass of jack mackerel is concentrated in Chilean waters. They expressed that, except for the new entrants and the increase to Chile, the remaining increases were allocated proportionately. These Members noted that claims of inconsistency with Article 21 had not been substantiated whereas claims of consistency with Article 21 had been substantiated.
59. Some Members noted that the current adjusted-Annex K harvest scenario which is used to guide catch advice for jack mackerel in the SPRFMO region was developed as a rebuilding plan. The selection of the "15%" maximum change showed that, based on analyses done in 2014, this had the highest probability of the stock rebuilding in the shortest amount of time (noting that this was the only value on TAC limits that was fully evaluated). The SC10 report⁵⁰ Table A10.37 which includes alternative catch scenarios shows that the probability that catches in the range (between a 15 - 20% increase from the 2022 advice) keep the stock above B_{MSY} ⁵¹ by 2028 is greater than 98%.
60. The Chairperson of the Commission advised that, despite five days of discussion, it was not possible to reach consensus in the working group. Several options had been explored and the WG Chair's proposal represented the one with the most support. The interventions in the plenary confirmed the positions expressed at the WG and the Chairperson of the Commission concluded that all attempts to obtain consensus had been exhausted. He incorporated the WG Chair's proposal as an amendment to CMM 01-2022 and put the proposal to a vote as per Rule 7 of the Rules of Procedure.

⁴⁸ Supporting Material No 45 - COMM11-WP24_rev1 Chair's proposal for CMM 01

⁴⁹ Supporting Material No 46 - COMM11-Report Annex 9f Vanuatu's statement

⁵⁰ Refer to Table A10.37 of Supporting Material No 2

⁵¹ B_{MSY} is the biomass at which a fish stock can support maximum sustainable yield.

61. Russian Federation put forward a statement (Annex 9g⁵²) adhering to the position that the proposal on distribution of shares in the total allowable catch of *Trachurus murphyi* between the countries totally ignored relevant provisions of the Article 21 of the Convention and was inconsistent with paragraph 9 of CMM 01-2022.
62. The Commission voted and the result of the vote was 13 Members supporting the adoption of the proposal and three Members (China, Peru and Russia) not supporting the adoption. The Commission adopted the CMM 01-2023⁵³.
63. Peru made a statement (Annex 9h⁵⁴) expressing its strong opposition to the decision adopted by the Commission due to its circumstance (as a coastal State Contracting Party who has not given its express consent to submit its jurisdictional waters to the competence of the Commission) not being duly taken into consideration, and also due to their view that the measure was not based on the criteria of Article 21 of the SPRFMO Convention.

Table 7: Initial catch limits for jack mackerel (CMM 01-2023) compared with limits from the previous year.

| Participant | Previous limit (%) | Initial limit (%) |
|------------------------------|---------------------------|-----------------------------|
| Belize | | 1 100 0.1019 |
| Chile (High seas + EEZ) | 581 074 64.5638 | 716 758 66.3665 |
| China | 57 129 6.3477 | 63 136 5.8459 |
| Cook Islands | 0 0 | 1 100 0.1019 |
| Cuba | 2 008 0.2231 | 2 219 0.2055 |
| Ecuador (High seas+ EEZ) | 11 374 1.2638 | 12 570 1.1639 |
| European Union | 54 977 6.1086 | 60 758 5.6257 |
| Faroe Islands | 9 978 1.1087 | 11 027 1.0211 |
| Korea | 11 540 1.2822 | 12 753 1.1808 |
| Panama | | 1 100 0.1019 |
| Peru (High seas) | 18 256 2.0284 | 20 175 1.8681 |
| Russian Federation | 29 543 3.2825 | 32 649 3.0230 |
| Vanuatu | 42 064 4.6737 | 46 487 4.3044 |
| Area to which CMM 01 applies | 817 943 90.88 | 981 832 90.9104 |
| Throughout the range | 900 000 100.00 | 1 080 000 100.00 |

⁵² Supporting Material No 47 - COMM11-Report Annex 9g Russian statement

⁵³ Supporting Material No 48 - COMM11-Report Annex 9g CMM 01-2023

⁵⁴ Supporting Material No 49 - COMM11-Report Annex 9h Peru's statement

64. Subsequently, as provided for under Article 17 of the SPRFMO Convention, both the Russian Federation and the People’s Republic of China presented an objection to the Commission decision to adopt the 2023 Conservation and Management Measure for *Trachurus murphyi* (CMM 01-2023). The People’s Republic of China has since withdrawn its objection.

III. The text “without prejudice to future agreements on the allocation of fishing opportunities”

65. This wording is referred to in Russia’s objection and appears in paragraph 8 of the current Conservation and Management Measure (CMM 01-2023)⁵⁵.
66. This text was introduced to the CMM during the 4th Commission meeting⁵⁶ held in Valdivia, Chile from 25 to 29 January 2016.

IV. Conclusions

67. This memorandum has provided the Review Panel with a factual account regarding the decisions adopted by the SPRFMO Commission on the jack mackerel fishery, the subsequent allocation of the TAC and short histories pertaining to relevant decisions from SPRFMO’s history.
68. Specifically, this memorandum has:
- a) explained the most relevant aspects of the jack mackerel fishery in the South Pacific and given context to SPRFMO as the regional fisheries management organisation.
 - b) described the measures adopted by SPRFMO concerning the participation in the jack mackerel fishery, showing the outcomes of the negotiations since the 2017 SPRFMO Commission meeting.
 - c) provided the background for the “without prejudice” text in paragraph 8 of CMM 01-2023.
69. The Chairperson of the Commission and the Executive Secretary remain willing to provide additional information and to answer further questions from Review Panel as they are able.

⁵⁵ Refer to Supporting Material No 48

⁵⁶ Supporting Material No 50 - COMM4-Report