

PCA Case No. 2023-33

IN PROCEEDINGS CONDUCTED BY

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

with regard to

THE OBJECTION BY THE RUSSIAN FEDERATION TO A DECISION OF
THE COMMISSION OF THE SOUTH PACIFIC REGIONAL FISHERIES
MANAGEMENT ORGANISATION (CMM 01-2023)

HEARING

Monday, 26 June 2023

The Permanent Court of Arbitration
Peace Palace, Great Hall of Justice
Carnegieplein 2, 2517 KJ The Hague
The Netherlands

The hearing in the above-entitled matter came on
at 10:00 a.m. (CET) before:

PROF. BERNARD H. OXMAN, Chair

DR. ERIK J. MOLENAAR, Panel Member

MS. OLGA SEDYKH, Panel Member

ALSO PRESENT:

Registry, Permanent Court of Arbitration:

MR. JULIAN BORDAÇAHAR
Senior Legal Counsel

MS. JINYOUNG SEOK
Legal Counsel

MR. MIKHAIL BATSURA
Legal Counsel

MS. YIWEI LU
Assistant Legal Counsel

MR. SARTHAK MALHOTRA
Assistant Legal Counsel

MS. ALEJANDRA MARTINOVIC
Case Manager

Realtime Stenographer:

MR. DAVID A. KASDAN
Registered Diplomate Reporter
Certified Realtime Reporter
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America

Interpreters (Russian/English):

MS. IRINA van ERKEL
MR. SERGEI MIKHEYEV

ATTENDEES:

On behalf of the SPRFMO Commission:

MR. LUIS MOLLEDO
Chairperson

MS. ALEXA COLE
Vice-Chairperson

MR. CRAIG LOVERIDGE
Executive Secretary

On behalf of the Russian Federation:

MS. ANASTASIA PODOLYAN
Federal Agency for Fisheries,
Permanent Mission of the Russian Federation
to FAO and other UN Agencies in Rome

MS. RUSANA GLOOVA
Federal Agency for Fisheries

MR. GRIGORY ORLOV
Embassy of the Russian Federation in The
Netherlands

MR. DMITRY KREMENYUK
Deputy Head of the International
Cooperation Department Federal Agency for
Fisheries

On behalf of the Republic of Chile:

H.E. MR. JAIME MOSCOSO VALENZUELA
Ambassador of Chile in The Netherlands

MS. PAULA MONSALVE ESPINOZA
Second Secretary and Legal Advisor to the
Embassy of Chile in The Netherlands

APPEARANCES: (Continued)

On behalf of the Republic of Chile:

MS. PATSY CONTARDO

Legal Advisor, Division of Environment,
Climate Change and Oceans, Ministry of
Foreign Affairs

MR. PAULO SEPÚLVEDA

Head of the Law Division, Undersecretariat
for Fisheries and Aquaculture

MR. MAURO URBINA

Undersecretariat for Fisheries and
Aquaculture

On behalf of the Republic of Chile:

MR. JUAN SANTIBAÑEZ BUSTOS

Undersecretariat for Fisheries and
Aquaculture

MR. JULIO CORDANO

Director of Environment, Climate Change and
Oceans, Ministry of Foreign Affairs

MR. SALVADOR VEGA

Head of Department of Ocean Affairs,
Ministry of Foreign Affairs

On behalf of the People's Republic of China:

MR. CE LIU

Division of Distant Water Fisheries,
Bureau of Fisheries

MS. LEILEI ZOU

Division of Distant Water Fisheries,
Bureau of Fisheries

APPEARANCES: (Continued)

On behalf of the Chinese Taipei:

MR. KE-YANG LIN

Director, Taipei Representative Office in
The Netherlands

DR. CHI-TING TSAI

Associate Professor, National Taiwan University

On behalf of the Kingdom of Denmark in respect of the
Faroe Islands:

MS. DURITA LAMHAUGE JÓANSDÓTTIR

Senior Adviser/Chief of Protocol Foreign
Service

On behalf of the Republic of Perú:

MR. JESUS BALDEÓN VASQUEZ

Director of Policies Assessment

MR. ANTONINO MORENO MACEDO

Legal Specialist in Foreign Affairs

C O N T E N T S

	PAGE
OPENING OF THE HEARING BY THE CHAIR.....	7
PRESENTATION OF THE RUSSIAN FEDERATION:	
By Ms. Podolyan.....	10
By Mr. Kremenyuk.....	36
PRESENTATION OF THE REPUBLIC OF CHILE:	
By Ambassador Moscoso.....	18
By Mr. Sepúlveda.....	22
QUESTION AND ANSWER SESSION WITH THE REVIEW PANEL.....	42
CONCLUDING REMARKS OF THE RUSSIAN FEDERATION:	
By Mr. Kremenyuk.....	90
CONCLUDING REMARKS OF THE REPUBLIC OF CHILE:	
By Mr. Sepúlveda.....	94
CLOSING OF HEARING BY THE CHAIR OF THE REVIEW PANEL.....	96

P R O C E E D I N G S

CHAIR OXMAN: (missing audio) ...asserts that the Decision on distribution of share in the Total Allowable Catch in 2023 between Members demonstrates unjustifiable discrimination against the Russian Federation in form and in fact, and is inconsistent with the Convention.

This Hearing will be in hybrid form, with some individuals physically present in the room and others participating or observing by electronic means.

It is now my privilege to introduce the Review Panel Members: To my left, participating by electronic means is Ms. Olga Sedykh; to my right is Dr. Erik Molenaar; and my name is Bernard Oxman.

We are ably assisted in these proceedings by the Permanent Court of Arbitration, Julian Bordaçahar, who is seated next to the Panel; and Ms. Jinyoung Seok and Mr. Mikhail Batsura are seated right there to my right; and Yiwei Lu and Sarthak Malhotra are seated at the rear.

Today's proceedings are being interpreted simultaneously in English and Russian by Ms. Irina van Erkel and Mr. Sergei Mikheyev. The proceedings are also simultaneously transcribed in English by our Court Reporter, Mr. David Kasdan. We join them in requesting that speakers ensure that their microphones are turned on before they begin to speak.

1 Also present today is a visiting researcher at
2 The Netherlands Institute for the Law of the Sea,
3 Mr. Maximiliano Franco Astoro Beltran, who works with
4 Dr. Molenaar. Mr. Astoro Beltran asked to be able to
5 observe the Hearing, and the Panel is inclined to grant
6 that request, unless either of the participants object.

7 I hear no objection.

8 The Review Panel welcomes the Chairperson and the
9 Vice Chairperson of the Commission as well as the Executive
10 Secretary of the South Pacific Regional Fisheries
11 Management Organisation. They are attending by electronic
12 means. While they do not plan to make oral statements,
13 they have graciously indicated that they remain available
14 during the Hearing to answer any questions that the Review
15 Panel may have.

16 We also welcome the observer delegations. The
17 representatives of Chinese Taipei are attending in person.
18 The representatives of the People's Republic China, the
19 Kingdom of Denmark in respect of the Faroe Islands, and the
20 representatives of the Republic of Perú are attending by
21 electronic means.

22 I would now like to welcome the representatives
23 of the Russian Federation and the Republic of Chile, who
24 will be making the oral statements today at this Hearing.
25 And, before continuing my remarks, I would like to invite

1 the Russian Federation and the Republic of Chile to take a
2 moment to introduce the Members of their Delegations, who
3 will be speaking today, and to indicate the order in which
4 their Members will address the Review Panel.

5 Russian Federation.

6 MS. PODOLYAN: Good morning, Chairperson and the
7 Members of the Review Panel.

8 Today, the Russian Federation is represented by
9 the following Members: I'm Anastasia Podolyan. This is
10 me. I represent the Fisheries Agency. And right next to
11 me is Rusana Gloova, who is also from the same agency; she
12 will be taking part in these proceedings alongside myself.
13 Dmitry Kremenyuk, who will represent the Federal Fishery
14 Agency, will be joining us electronically. He will be
15 ready to take your questions in the afternoon, after the
16 lunch break. Remotely, Grigory Orlov, who is the advisor
17 to the Embassy of the Russian Federation to The
18 Netherlands, will be joining us on the line as well.

19 CHAIR OXMAN: Thank you very much.

20 Chile.

21 AMBASSADOR MOSCOSO: Thank you, Mr. Chair. Good
22 morning, everyone.

23 I would like to introduce my Delegation here
24 today. My name is Jaime Moscoso. I'm the Ambassador of
25 Chile to The Netherlands. I will do the introductory

1 remarks.

2 And with me is Mr. Paulo Sepúlveda, Head of the
3 Law Division and Undersecretariat for Fisheries and
4 Aquaculture in Chile. He will take the floor after me;
5 and, as well, I would like to introduce Ms. Patsy Contardo,
6 Legal Advisor, Division of Environment, Climate Change and
7 Oceans, Ministry of Foreign Affairs; and then Mrs. Paula
8 Monsalve Espinoza, Second Secretary and Legal Advisor to
9 the Embassy of Chile in The Netherlands.

10 Thank you very much.

11 (No microphone.)

12 SECRETARY BORDAÇAHAR: Microphone, please.

13 CHAIR OXMAN: Let me start again.

14 This Hearing is being conducted with the benefit
15 of extensive written material that has already been
16 submitted to the Review Panel. Let me express the Review
17 Panel's appreciation that the Chair of the Commission and
18 the Executive Secretary and staff of the Organisation for
19 the very helpful information, documentation, and response
20 to questions that the Organisation has submitted; as well
21 as the Review Panel's appreciation for the following
22 Commission Members for the very enlightening memoranda and
23 documents that they supplied: The Republic of Chile,
24 Chinese Taipei, The European Union, New Zealand, the
25 Republic of Perú and, of course, the Russian Federation.

1 All of this material was prepared under tight timelines
2 given the deadlines set forth in the Convention for
3 transmission of the Review Panel's final Findings and
4 Recommendations.

5 You have all received the Hearing Schedule, which
6 should also be on the table before you. The PCA will be
7 keeping track of the time used for each intervention, and
8 will indicate to us when the allotted time is nearly up.

9 The Review Panel trusts that the speakers today will
10 respect those time limits and will focus on the main points
11 of disagreement arising out of the written and oral
12 submissions, including those made by Commission Members
13 that are not participating in the Hearing.

14 The Hearing schedule includes a
15 question-and-answer session with the Panel that follows the
16 lunch break. The Panel transmitted a list of questions for
17 the Russian Federation and the Republic of Chile in advance
18 in order to give each Delegation time to prepare its
19 responses either in its presentations or during the Q&A
20 session or by some combination of the two, as each
21 Delegation prefers. Copies of those questions are now
22 available on the PCA website.

23 I should add that there may well be additional
24 questions posed by the Panel during the course of the
25 Hearing today.

1 Following the question-and-answer period and the
2 ensuing break, each participant will have the opportunity
3 to make concluding remarks.

4 It should be borne in mind that all of the
5 questions that already have been posed or that may be posed
6 today are without prejudice to the positions of the Review
7 Panel or any of its Members on any issue. It would be a
8 mistake to treat the questions as tea leaves to be studied
9 in an effort to discern positions from any particular
10 question or its formulation. Tea leaves are best left to
11 perform their renowned function of blending with the warm
12 water from the samovar to yield a soothing glass of chai.

13 I now invite the Delegation of the Russian
14 Federation to take the floor and make its presentation.

15 OPENING PRESENTATION BY THE RUSSIAN FEDERATION

16 MS. PODOLYAN: Yes, thank you very much,
17 Chairperson. I would like to welcome everyone and say good
18 morning to everyone once again.

19 First of all, allow me to express my gratitude
20 for organizing hearings at such high level with the
21 possibility of remote participation.

22 Regarding the international agenda, we will
23 consider it necessary to emphasize the fundamental role of
24 international arrangements and the fisheries aimed at
25 conservation and management of living marine resources. We

1 also consider it extremely important to act in accordance
2 with the rules provided by the international organizations
3 unless the Parties of those organizations agree otherwise.

4 I would like to remind everyone that, according
5 to the UN Convention on the Law of the Sea of 1982, the
6 States must ensure that their Conservation Measures and
7 their implementation do not discriminate, either in form or
8 in substance, against fishermen of any State, based on the
9 international norms and the Convention on the Conservation
10 and Management of High Seas Fishery Resources in the South
11 Pacific Ocean, the Russian Federation presented their
12 Objection to the CMM of the regional organisation regarding
13 the jack mackerel fishery. So, CMM 01-2023. This is the
14 Measure we are talking about.

15 And the basis of this particular objection was
16 the fact that the Commission's Decision to adopt the
17 Measure in relation to the jack mackerel fishery was
18 discriminatory against the Russian Federation and, thus,
19 was incompatible with the norms of international law,
20 including the provisions of the Convention on the
21 Conservation and Management.

22 It will be noted that the allocation keys, as
23 stipulated by the Decision of the Commission, then at the
24 5th Session in 2017, were applied during five years, from
25 2017 to 2023, and this arrangement was not the best.

1 However, it was based on the arrangement of the Parties
2 based on their goodwill which, all other things being
3 equal, allowed to consider taking into account the
4 character laid down in Article 21 of the Convention.

5 Since 2017, the Russian Federation claim a quota
6 increase of 3.2825% of the TAC increase since for the first
7 time the percentages were tied to the total TAC, including
8 the balance reserved under Perú. Previously, where the
9 quota increased, the Russian Federation quota increase was
10 based on a high percentage without a reference to any fixed
11 volume.

12 At the 11th Session of the Commission in 2023,
13 the criteria of 21 of the Convention were not taken
14 into--in the Decision and the Procedural Order, Rule 4 of
15 the Rules of Procedure was not followed. Rule 4 of the
16 Rules of Procedure established the time limits for the
17 preparation of the Agenda for another session of the
18 Commission for the distribution of--the Executive Secretary
19 of the materials for the session of the Commission and the
20 submission of proposals. Only the proposal of the Republic
21 of Korea aimed at maintaining the status quo with regard to
22 allocation of the jack mackerel was submitted for
23 consideration of the Commission within the prescribed time
24 frame. The Russian Federation, in the absence of agreed
25 keys for the allocation quotas, considered the proposal of

1 the Republic of Korea to be justified, and the Russian
2 Federation supported it.

3 The Russian Federation position is based on the
4 fact that, in the absence of the agreed allocation criteria
5 allowing for an objective attribution of the quota shares,
6 the process from some other country is discriminatory in
7 nature. What we mean is not the transfer process and the
8 Conservation Measure for jack mackerel, but the voluntary
9 agreement to change the allocation key in favor of somebody
10 else such as, for example, happened in 2017. No other
11 proposals were made within the time frame established by
12 the Rules of Procedure, including the Republic of Chile to
13 increase the share in the jack mackerel quota during the
14 11th Session, and such proposals were never submitted to
15 the Commission.

16 The reference or the intention to participate in
17 the jack mackerel fishery in the course of early Commission
18 stages--we're talking about the 5th Session of 2017--and
19 the 10th Session of '22 does not apply to compliance with
20 Rule 4 of the Rules of the Procedure in advance of the 11th
21 session. In other words, this reference does not
22 pre-include the need to send an offer for jack mackerel
23 fishery to be sent to the Executive Secretary at least 50
24 days before the 11th Session of the Commission in 2023;
25 and, accordingly, the need to circulate this at least 45

1 days before the 11th Session of the Commission, and this is
2 the Rule 4 and the Rules of Procedure.

3 Moreover, Article 19 of the Convention
4 establishing the special needs of the developing countries
5 does not impose quotas on developing countries for a
6 particular species of marine living resources if such a
7 country is not a coastal country to the region where the
8 species is found. Both Article 19 of the Convention and
9 the 1995 Agreement contains similar provisions that provide
10 for different mechanisms to take into account the
11 developing country's interests. Nevertheless, regarding
12 only the jack mackerel within the Organisation Article 19
13 of the Convention was applied; and, as a result, the quota
14 is transferred to the developing countries became the
15 subject of the transfer rather than providing access to
16 fisheries for small scale and artisanal fishers and women
17 fish workers and indigent peoples in such developing
18 countries which are Parties.

19 As a result, the Russian Federation, together
20 with two other Members, voted against the Amendment, the
21 Conservation and Management Measure with respect to the
22 jack mackerel fishery. These circumstances indicate that
23 the failure to submit the appeals on allocation of the jack
24 mackerel quota in the established order, limited the rights
25 of the Parties to receive information within the establish

1 time limit.

2 In the 11th session of the Commission, the
3 adoptions of Standards of Decision was preceded by that
4 non-compliance with that decision on the issues preceded by
5 the Rules of Procedure. The shares of the jack mackerel
6 quota were changed without taking into account Article 21
7 of the Convention, and the Russian Federation did not agree
8 to reduce the percentage of participation in the jack
9 mackerel quota distribution, and it is confirmed by the
10 voting results on this Measure. And the adopted decision
11 on participation in the fishing of the jack mackerel
12 indicates a discriminatory nature in relation to Russia,
13 and this is in violation of the current international legal
14 norms.

15 On the basis of the Convention, Russia adopted
16 alternative measures equivalent and the impact on the
17 decision Measure Conservation and Management with regard to
18 jack mackerel fishery. The alternative change in the share
19 implies its increase by 0.2595% of the total possible
20 allowable catch (sound interference) amounts to 35,452
21 tons. And this amount of the Russian share amounting to
22 35.452 tons was presented in the table of the Chairman of
23 the Working Group on jack mackerel at the 11th Session of
24 the Commission when the total allowable amount of jack
25 mackerel was increased by 20%.

1 While resorting to such a measure, the Russian
2 Federation took into account the risks of condition of the
3 jack mackerel on the basis of the recommendation of the
4 Scientific Commission; and, according to the assessment of
5 the Scientific Committee conducted against the Asia Pacific
6 Model, which has been applied for 13 years, the stock
7 remains at a biological sustainable level, and the
8 population has a tendency to grow. In this regard, the
9 increase of the Russian Federation quota of 4.22% will not
10 damage the jack mackerel stock. Taking into account all
11 the above, we believe the Decision of the Commission
12 reflected in this CMM 01-2023 is unfounded and
13 discriminatory in nature for the Russian Federation. The
14 alignment with the international fishery norms is required.

15 Many thanks.

16 CHAIR OXMAN: Fine. I thank the representative
17 of the Russian Federation.

18 According to the Schedule, the presentation of
19 the Republic of Chile would be next, but it was to follow
20 the morning break. Let me ask the distinguished
21 representatives of the Republic of Chile whether he would
22 like to proceed now or would like to have the break and
23 then proceed.

24 AMBASSADOR MOSCOSO: Thank you, Chair. We prefer
25 to go directly to our Opening remarks, and then we can have

1 this break that you mentioned. All right?

2 CHAIR OXMAN: Please proceed.

3 AMBASSADOR MOSCOSO: Thanks.

4 OPENING PRESENTATION BY THE REPUBLIC OF CHILE

5 AMBASSADOR MOSCOSO: Thank you. Honourable
6 Review Panel. I would like to greet the Members of the
7 Review Panel, Professor Oxman, Ms. Sedykh and Dr. Molenaar.
8 And also to greet the Delegation of the Russian Federation
9 and the Chinese Taipei as observer, as well as the SPRFMO
10 Secretariat and all of the Members of the Organisation for
11 having online attendance.

12 Chile welcomes the opportunity to present its
13 position on the Objection raised by the Russian Federation
14 to this Review Panel. As a country with a profound and
15 historical ocean vocation, the matter of discussion in
16 these Hearings is of our highest interest.

17 As a precedent, Chile would like to recall its
18 long and recognized contribution to the International Law
19 of the Sea. Already back in 1952, Chile, Ecuador, and Perú
20 introduced through the Declaration of Santiago on the
21 maritime zone signed the concept of 200 miles, key concept
22 in the later development of the United Nations Convention
23 on the Law of the Sea. Chile's participation in numerous
24 multilateral and bilateral initiatives for the protection
25 of the ocean and its living resources is well-known.

1 Moreover, the role of Chile in the genesis of the
2 South Pacific Regional Fisheries Management Organisation
3 (SPRFMO) is undeniable. As in 2006, we joined Australia
4 and New Zealand in the process that led to the adoption of
5 the Convention on the Conservation and Management of High
6 Seas Fishery Resources in the South Pacific Ocean.

7 Chilean history is deeply connected with the
8 Pacific Ocean and exploration of its marine resources.
9 According to the data of the Organisation, Chile has been
10 the main catcher in the jack mackerel fishery, with a
11 sustained increase of its catches, both in the short and
12 medium term.

13 This activity has been traditionally a backbone
14 of the Chilean economy and food security system; the volume
15 of the catches carried out by the Chilean fleet represents
16 the bulk of the Total Catches of the jack mackerel under
17 the Convention.

18 In addition, since the adoption of the first
19 SPRFMO, jack mackerel Conservation and Management Measures
20 (CMM), this activity has mainly developed within the
21 Chilean Economic Exclusive Zone, successfully balancing the
22 protection of 43% of its jurisdictional waters with this
23 thriving fishing activity.

24 Moreover, Chile has been contributing to the
25 sustainability of jack mackerel fishery by providing

1 complete and timely data, and developing effective
2 monitoring, control, surveillance, and enforcement.

3 Against this background, we consider legitimate
4 the aspiration of Chile, as coastal Developing State, to
5 increase its share of participation in the jack mackerel
6 fishery, in line with the criteria provided in Article 21
7 of the Convention.

8 Chile is available and willing to contribute to
9 the review and development of the decision-making
10 procedures under the Convention as proposed by the Republic
11 of Korea to amend the CMM 01-2022, provided it will help to
12 strengthen future proceedings.

13 However, Chile reaffirms its conviction that
14 CMM 01-2023 was adopted under the established practices in
15 the Commission and in full compliance with the provisions
16 of Article 21 of the Convention; this approach was adopted
17 also in the previous decisions of the Commission Meetings
18 in 2013, 2014, 2015, and 2017.

19 In addition, it is relevant to consider that
20 CMM 01-2023 was adopted by the Commission according to the
21 decision-making rules established pursuant to Article 16 of
22 the Convention, considering that all efforts to reach a
23 decision by consensus were exhausted at the meeting. Under
24 this procedure, the majority of the Members of the
25 Commission validate the Measure, even surpassing the

1 three-fourths majority required for its adoption.

2 Finally, Chile wishes to highlight the work of
3 the Organisation in order to ensure the sustainability of
4 the jack mackerel fishery. The close cooperation between
5 its 17 Members in pursuing the recovery of this fishing
6 resources has been successful. After a long period of
7 overexploitation, we are confident that this good faith
8 spirit must continue to drive the Organisation, drawing
9 lessons from these more than 10 years of work, and using
10 them to ensure protection of jack mackerel and other
11 fishing resources in the South Pacific.

12 I thank you, Mr. Chair.

13 CHAIR OXMAN: Would the Republic of Chile like to
14 continue with its remarks now? Take a break?

15 AMBASSADOR MOSCOSO: Thank you, Mr. Chairman. We
16 are going to continue after the break.

17 CHAIR OXMAN: After the break?

18 AMBASSADOR MOSCOSO: After the break. Yes, thank
19 you.

20 CHAIR OXMAN: Why don't we take the break now,
21 and why don't we reassemble, we could take a somewhat
22 longer break and reassemble at 11:00. Is that all right?

23 Fine. We will resume, then, at 11:00. Thank
24 you, both.

25 (Recess from 10:30 to 11:00 a.m.)

1 CHAIR OXMAN: The Delegation of the Republic of
2 Chile has the floor.

3 MR. SEPÚLVEDA: Thank you very much, Chair.

4 Well, to continue with the presentation of the
5 Republic of Chile, I would like to say, in the first place,
6 that in our opinion, CMM 01-2023 was adopted according to
7 procedure. Thereby, having failed all efforts to reach a
8 consensus, the Commission made its Decision in accordance
9 with the provisions of Article 16 of the Convention, that
10 is, by at least a three-quarters majority of its Members.
11 Moreover, in this case, such quorum was actually exceeded,
12 as the CMM counted with 13 votes in favor and three
13 against, which is equivalent to 81% of votes in favor
14 instead of 75%.

15 In relation to the need to submit a proposal to
16 amend the previous Measure and the way of working during
17 the Commission, it's important to say that the Commission
18 had already adopted, in Measure CMM 01-2022 and earlier in
19 CMM 01-2017, a decision of an upcoming review. In 2017, by
20 consensus, it was agreed that, at the time of completion of
21 the participation adopted in Adelaide in 2017, the Measure
22 would be reviewed. Furthermore, CMM adopted in 2022
23 expressly states in its Paragraph 31: "This Measure shall
24 be reviewed by the Commission in 2023." Let us remember
25 that, according to Article 8 of the Convention, the

1 Commission, as the main body of the Convention, is the one
2 entitled to adopt CMMs and, according to letter (p) of the
3 first paragraph of the said Article, it may adopt other
4 decisions that may be necessary to achieve its objective.
5 Therefore, in use of these kind of faculties, the decision
6 to discuss CMM 01-2023 in a Working Group was made.

7 In any case, a CMM proposal was submitted by the
8 Republic of Korea, which was duly discussed but which is
9 not mandatory for the Commission to decide in the sense
10 suggested by the proposal. Moreover, according to the
11 previous practices of the Commission, having it taken the
12 decision to review a CMM, a proposal in this sense has
13 never been required, and this has resulted in the
14 modification of CMMs in lieu with the Commission's mandate.
15 This is why Chile did not submit a particular proposal for
16 a Jack Mackerel CMM, knowing that this topic was going to
17 be analyzed in the respective Working Group, and
18 considering that Chile had already stated its interest in
19 increasing its participation in the 2022 Meeting which is
20 when the rollover decision was discussed.

21 The latter is extremely important. This
22 entitlement cannot be denied to the Commission which, by
23 this virtue, has determined the way of working, following
24 the previous practices, this is, using the resource of the
25 Working Group within the framework of the Commission

1 Meeting. In this sense, the SPRFMO memorandum submitted to
2 this Review Panel, which is dated 8th of June 2023, is
3 sufficiently eloquent in order to report all of the times
4 that this way of working has been adopted. And for
5 consultation, you may look at Paragraphs 11, 18, 27, 30,
6 and 42 of the said memorandum, which has the details of all
7 of the times that the Working Group has been utilized as a
8 means of decision-making.

9 As mentioned, it is the Commission that has the
10 power to take the Measures and, in accordance with
11 Article 8(p), to adopt other decisions that may be
12 necessary to achieve its objective; and, in this sense,
13 from the beginning it has exercised its functions through
14 Working Groups not only for the Measures of jack mackerel
15 but also for other CMMs. For instance, we can mention the
16 CMMs regarding Deepwater Species in the SPRFMO Convention
17 Area, CMM on transshipments, and other transfer operations;
18 boarding and inspection procedures in the Convention Area;
19 management of Jumbo Flying Squid Fishery, et cetera. This
20 way of working has never been negated or even challenged,
21 and proof of this is that the very Heads of Delegation in
22 the month of August 2022 (prior to the February Meeting)
23 agreed to carry out in this way in a meeting that included
24 the participation of the Russian Federation. Ignoring this
25 would be completely contrary to the good faith that must

1 exist in all areas of cooperation.

2 The existence of this faculty can also be derived
3 from Article 9(6) of the Convention, which indicates: "All
4 subsidiary bodies shall operate under the rules of
5 procedure of the Commission unless otherwise decided by the
6 Commission." Thus, this last sentence is also a reflection
7 that the Commission can establish other procedural rules.

8 Moving to another topic, I would like to talk
9 about the consistency of CMM 01-2023 with Article 21 of the
10 Convention. In this regard, we have that, in the opinion
11 of Chile and other Members of the Commission, as stated in
12 their respective memoranda (for instance, we have the
13 European Union and New Zealand), the Commission adopted its
14 Decision based on the framework granted by the said
15 provision. Within this framework, as it has been stated
16 during this process, the Commission has a "wide margin of
17 discretion," which was also recognized by the Review Panel
18 that heard Ecuador's Objection and is especially important
19 when considering the criteria established by the rule. As
20 noted by New Zealand, the Commission takes Article 21
21 criteria into account, to the extent relevant, when making
22 decisions regarding participation in a fishery resource.
23 Each factor will carry greater or lesser weight, depending
24 on the context.

25 Now, regarding the question about how was the

1 participation of the Members applied and considered
2 according to Article 21 of the Convention? This question,
3 of course, will be addressed in the following lines, but it
4 is important to make an explanation about the adoption of
5 the Total Allowable Catch, or "TAC", before moving to the
6 participation topic. This will also address one of the
7 questions made by the Panel, which is the one related to
8 the decision to increase the TAC beyond the level
9 recommended by the Scientific Committee.

10 In this regard, first of all, it is important to
11 clarify some aspects, and on the one hand, we have the
12 Agreement of the Commission on the Total Allowable Catch,
13 or "TAC", is prior to the particular determination of the
14 participation by Members. Moreover, regarding the
15 recommendation of the Scientific Committee, it must be
16 taken into consideration its declarations, especially the
17 one in Paragraph 90 of the Meeting Report where the
18 recommendation to increase the TAC limit was made. This
19 paragraph indicates "the estimated biomass of jack mackerel
20 increased from 2021 to 2022 and is estimated to be well
21 above the BMSY. Therefore, the SC noted that the stock is
22 estimated to be in the third tier of the harvest control
23 rule. Within the third tier of the harvest control rule,
24 catches should be limited to a fishing mortality of FMSY
25 which would be expected to result in catches in 2023 of

1 3,120 kt." This is equivalent to 3,120,000 tons.

2 "However," the paragraph continues, "according to
3 the directive of the Commission to the Scientific
4 Committee, a maximum change in the catch limit of 15%
5 should be applied related to the TAC of the current year."
6 Subsequently, as stated in Paragraph 4 of the Scientific
7 Committee report, it was recommended a precautionary 15%
8 increase in 2023 catches throughout the range of jack
9 mackerel at or below 1,035 kilotons, but also indicating
10 that "this advice for catch limits in 2023 does not depend
11 on the stock-structure hypothesis that is used."

12 The foregoing is of total importance because when
13 modifying the increase limit of the TAC to a 20%, the
14 Commission only changed a previous decision of its own that
15 established a limit for the Scientific Committee. This
16 maximum increase limit of 15% in relation to--

17 (Overlapping interpretation channel.)

18 MR. SEPÚLVEDA: So, in this sense the Commission
19 consulted and confirmed its postulate during the last
20 meeting asking for the opinions of the Chair and Vice Chair
21 of the Scientific Committee and the Chair of the Jack
22 Mackerel Group, and they all estimated that the increase to
23 20% would not affect the resource.

24 Moreover, due to this commitment of the
25 Commission, it was established that such a recommendation

1 would be applied only for 2023 and not for the following
2 years. Later, the Scientific Committee must necessarily
3 review the decision to make a new recommendation regarding
4 the maximum percentage of increase for the TAC.

5 On the other hand, now, we would move to the
6 topic of the participation of Members, and it has a
7 starting point in the percentages adopted by consensus in
8 2017 and amended in 2020 to accommodate Ecuador's needs and
9 for which the Members recognized their basis in Article 21
10 without discussion. In this sense, during the work of the
11 Jack Mackerel Group at its last meeting, the adjustments to
12 such percentages were discussed based on the analysis of
13 current circumstances, this is: The consideration of the
14 interests and needs of Chile and the requests of the new
15 entrants. Therefore, historical catches, as well as past
16 and present patterns and the needs and interests of Chile
17 are relevant factors that were taken into account for the
18 allocation and that differentiates Chile from other
19 Members, such as the Russian Federation or the Republic of
20 Perú. Thus, it must be considered that Perú has caught
21 zero tons in the Convention Area since 2017 (and before)
22 and Russia catches reach only to an average of 1.45% of the
23 total capture. And these are undoubted determinant
24 factors.

25 In this regard, it's important to bring to the

1 discussion the response memorandum of the Russian
2 Federation, dated 20 June 2023, and its assertion that
3 "Article 21 of the Convention does not establish as a
4 criterion the historical catch and past and present fishing
5 patterns and practices in the adjacent waters to the
6 Convention Area." Chile strongly disagrees with such
7 assertion of the Russian Federation based on Paragraphs 2
8 and 3 of Article 21 of the Convention. Additionally, this
9 will also respond to Question 7(a) of the Review Panel.

10 In this sense, under the hypothesis that a
11 Coastal State has provided its express consent to establish
12 a Total Allowable Catch and has decided to adopt a
13 participation throughout its relevant range (as occurs with
14 Chile), the Convention clearly states what are the
15 Commission's possibilities, indicating that it "shall take
16 into account the historic catch and past and present
17 fishing patterns and practices through the relevant range
18 of the fishery resource concerned and the criteria listed
19 in Paragraph 1(b)-(j)." In other words, it turns out to be
20 mandatory for the Commission to analyze such factors in the
21 relevant range. What is the relevant range? The one
22 established by CMM 01 itself, which Paragraph 1 indicates
23 that this Measure will apply to the Convention Area and by
24 its express consent to the Exclusive Economic Zones of
25 Chile and Ecuador. Hence, it is mandatory for the

1 Commission, it must act (and it did) within that margin.
2 This is of utmost importance.

3 With respect to the consultation regarding the
4 obligation of Article 62 of UNCLOS, indeed, in our opinion,
5 the provisions of the said Article are applicable, and
6 considering this, Chile has determined its capacity to
7 catch the jack mackerel, and it results that Chile does
8 have the capacity to harvest the entire allowable catch
9 established by the Commission and even more.

10 For consultation, you can also look at the
11 supporting material submitted actually by the Russian
12 Federation in their Reported catches in the South Pacific
13 for *Trachurus murphyi*, and you can see in Table 2.1 that,
14 for example, in 1995, the catches of Chile reached to more
15 than 4 million tons. In 2007, it reached to more than
16 1 million tons, and that only declined due to the
17 establishment of SPRFMO and the efforts of Chile to
18 actually limit its fleet in order to maintain the
19 sustainability of the resource.

20 And this limitation it's not referred only to the
21 industrial fleet. It also includes the artisanal fleet in
22 pursuit of the international cooperation and sustainability
23 within the framework of the SPRFMO. This principal has led
24 our country not only to fight for the establishment of this
25 Organisation, SPRFMO, but also to make our Exclusive

1 Economic Zone available to the Commission to apply the
2 CMM 01, even when this implies less participation than it
3 would have if it did not do so, and even when most of the
4 available biomass is currently located in Chile's Exclusive
5 Economic Zone.

6 Under this kind of consideration, the Working
7 Group discussed a percentage increase for Chile of 2% in a
8 reduction for the rest of the participants. This reduction
9 was calculated according to the distribution in force until
10 the Year 2022. That is, each Member with a percentage in
11 force in 2022 would contribute to that increase in
12 accordance to such percentage. Please note that this
13 reduction does not consider the unassigned quota that
14 results from the difference between the Total Allowable
15 Catch--sorry, the total allowable for the entire range of
16 the resource, and what is permitted as TAC. And that is
17 only captured by proof.

18 Important is also to say that, these catches,
19 referred to the unassigned quota, have shown harvests above
20 the limit in recent years, and without submitting to the
21 framework of the compatibility and cooperation required by
22 the Convention.

23 Moving forward to the allegation that the
24 Commission based its participation decision on the
25 transfers that Chile has received permanently since 2013.

1 We have to say that the transfers, as Chile stated in its
2 memorandum, are only a reflection of its needs and of other
3 criteria and factors mentioned in detail. They show the
4 reality of a Coastal State that depends on the resource,
5 and of the fact that, currently, most of the jack mackerel
6 biomass is located in Chile's Exclusive Economic Zone. Had
7 the transfer been considered as an allocation criterion,
8 Chile would have advocated on an allocation close to 80%.

9 Recognizing the Members' realities at the time in which the
10 Commission makes decisions is essential, otherwise it would
11 go against the Convention, which in no case establishes the
12 perpetuity of allocations nor does the Commission have the
13 power to do so. The foregoing is clearly denoted by what
14 is stated by the CMM 01, Paragraph 3, which says that:

15 "This CMM is not to be considered a precedent for future
16 allocation decisions." And also Paragraph 8 which says
17 that, "this CMM is without prejudice to future agreements
18 on the allocation of fishing opportunities." Can the
19 Commission take these agreements as a basis? Yes, it can.
20 Is it mandatory? No, it is not. As pointed out later, the
21 Commission takes the criteria of Article 21 into account,
22 to the extent relevant, when making decisions regarding
23 participation in a fishery resource. Each factor will
24 carry greater or lesser weight, depending on the context.
25 This also responds to the Panel queries that were consulted

1 in Question 7(c) and (e).

2 Lastly, as has already been indicated in our
3 Memorandum and in the same vein by other Members, Chile
4 considers that the alternative Measure adopted by the
5 Russian Federation does not have an equivalent effect.
6 Therefore, an equivalent Measure for CMM 01-2023 could not
7 be considered as such if it results in an effect such as
8 surpassing the TAC adopted by the Commission in
9 accordance--which was also established in accordance with
10 the scientific advice that was provided. In Chile's
11 opinion, an increase in the TAC could only occur through a
12 decision of the Commission after a new scientific
13 pronouncement, given that the only answer in this regard
14 from the scientific perspective was about how a 20%
15 increase in the TAC would affect the resource.

16 Secondly, it would affect other Members for whom
17 the Commission adopted a reduction, and it would affect
18 Chile by not considering their special needs, interests,
19 and their current and past fishing patterns, in particular
20 that the biomass is found almost entirely in the Exclusive
21 Economic Zone of Chile, and also considering the historical
22 catches.

23 Since 2017, and even before, Chile has
24 fished--sorry. Chile has fished 100% of its assigned
25 share, corresponding to 70% of the total quota caught, and

1 this is without taking into account percentages derived
2 from catches based on transfers, which, if considered,
3 would reach around to 80%.

4 In addition, the Russian Federation does not
5 address the matter of how the percentage increase included
6 in its alternative Measure would operate and who would bear
7 such increase, which was arrogated contravening the
8 Decision adopted and the participation of other Members,
9 including new entrants.

10 Thank you very much.

11 CHAIR OXMAN: I thank the Delegation of Chile.
12 Does that conclude your presentation for this
13 morning?

14 AMBASSADOR MOSCOSO: Yes, Mr. Chair.

15 CHAIR OXMAN: Thank you.

16 There is a little time left, and let me ask the
17 Delegation of the Russian Federation whether there is
18 anything that they would like to add this morning or
19 whether they would like us to begin the lunch break now and
20 resume after lunch?

21 MS. PODOLYAN: Dear Chairperson, at the moment,
22 we have nothing to add, so we would agree to taking a lunch
23 break now and then resume after the lunch break.

24 MR. KREMENYUK: I apologize, Mr. Chairperson,
25 there is a brief comment which would make sense to talk

1 about it right now before the lunch break.

2 MS. PODOLYAN: Chairperson, this was Mr. Dmitry
3 Kremenyuk, representative of the Agency for Fisheries. He
4 is on the video channel participating, so I request giving
5 the floor to him so that he can provide a comment on behalf
6 of the Russian Federation just before the lunch break.

7 MR. KREMENYUK: My dear colleagues, dear Review
8 Panel, thank you so much.

9 In addition to what has been said by the Russian
10 Federation this morning, I would like to come with a brief
11 addition to the procedure applicable during these
12 proceedings. I believe it's important to say that the
13 Panel pays sufficient attention to similar situations when
14 Parties came up with the Objections in the past.

15 It is extremely important for us to point out
16 that the positions of the Parties need to be comparable and
17 compatible during various proceedings. The Delegation of
18 Chile indicated the established practice in considering the
19 CMM provided by the Commission. I would like to direct
20 your attention to the memorandum of the Republic of Chile
21 dated May 17, 2018, regarding the Objection of Ecuador in
22 case of 2018-13 of PCA, and in particular to Point 5.

23 And the Honourable Delegation of Chile indicated
24 therein that the Ecuador Delegation did not present in time
25 an affirmed amendment proposal to the CMM 01-2017 for the

1 consideration of the Commission in this meeting. In other
2 words, the Republic of Chile stated that the Rules of
3 Procedures of the Commission were to be followed, and that
4 is what is stated in 2018.

5 At the same time, the presented memorandum at the
6 present hearing, we see that the Delegation of Chile has
7 changed its Opinion and is completely the opposite. The
8 same memorandum mentioned the situation with the transfer
9 and how they have to be taken into account, and the
10 Delegation of Chile is talking about the Vanuatu suggestion
11 regarding the better use of the quota for jack mackerel and
12 how to allocate it between the Members.

13 The Chile Delegation indicates that the efficient
14 fishing or transfer would allow the parties to keep their
15 quotas. So, in fact, indirectly, they agree to the
16 approach of the Russian Federation. However, this year,
17 the position of Chile has somewhat changed.

18 I would like to address the Panel's attention and
19 the attention of our colleagues to the situation of the
20 jack limit quota allocation, and the approach to that
21 distribution has changed as compared to 2018. I believe
22 it's important to reiterate the Russian Federation's
23 position, namely that when considering the issue of the
24 allocation of the jack mackerel quota, the Commission,
25 Russian Federation was consistent in its demand and the

1 proposal was sent on time and the status quo of principle
2 have to be considered as there are no criteria on the
3 allocation of the quota for jack mackerel this year.

4 Article 21 contains the list of the criteria
5 dealing with the Coastal Nations. However, since the First
6 Session, the Parties considered the position of Chile, and
7 the additional 10% of the additional quota were presented
8 to Chile, and this approach remained for many years. So,
9 the approach remained the same, and Chile was the main
10 country and its interests were considered.

11 Moreover, Article 21, the point dealing with the
12 historic catch, deals with the Convention Area, and all the
13 catch of Chile is done outside the Convention Area, and the
14 fact of the Agreement and the fact of the Exclusive
15 Economic Zone, and the statement of the compatible nature
16 of the CMM, do not fully reflect the control Measures taken
17 by the Chile regarding the artisanal fishery as compared to
18 the High Seas Fisheries.

19 In this respect, we need to consider that the
20 main fishing countries and High Seas in the Convention Area
21 are still the Russian Federation, the European Union and,
22 to a lesser degree, some other countries. In this respect,
23 please note that the issue of the impact on the economy of
24 the Coastal States has not been considered by the
25 Commission this year, and the actual catch volumes for

1 Chile have grown almost twofold in the time since the First
2 Session of the Commission.

3 And it's quite obvious that the economic
4 advantages for the Chilean fisheries have grown, and they
5 have become more considered--or they have grown
6 considerably. They're now more than for other countries.
7 So Chile is the leading fishing country, and the
8 Measures--nobody can deny that--should be compatible. If
9 we're basing ourselves on the Measures linking to those
10 areas, then we're moving from the Convention Areas to the
11 national jurisdictional areas, thus placing at a
12 disadvantage the fishermen who work in those areas as
13 compared to those fishing adjacent to the Convention Area
14 waters. In this respect, the compatibility principle is
15 violated.

16 And the esteemed Chilean Delegation has not
17 indicated how the Chilean fishermen can fish only in the
18 waters dedicated to other countries in the Convention Areas
19 and they cannot fish in the adjacent area, but Chile thinks
20 it admissible to work in the Exclusive Economic Zone. This
21 question remains open, and the Russian Federation is quite
22 consistent in following the principles on the Convention
23 and following the Conservation Measures, including the
24 recommendations of the Scientific Committee.

25 The Scientific Committee recommended 15%; but, in

1 fact, it was higher. As was already indicated, the
2 mortality rate, if the quota is increased by 20 to 25%,
3 differs considerably, and the negative effect is not
4 evident. And, in fact, this would be an acceptable
5 allowance for large-scale fishing, and the Russian
6 Federation has not allowed overcatching in the Convention
7 Region and outside this region, and we're not conducting
8 this kind of fishing, and in this context, the Russian
9 Federation is fully in compliance with the recommendations
10 of the Commission, is not violating them, and is also
11 responsibly implementing the recommendations of the
12 Committee.

13 In concluding my statement, I would like to thank
14 one more time the distinguished Members of the Review
15 Panel, and we hope that they will provide a favorable
16 consideration to the objections expressed by our
17 Delegation.

18 Thank you very much.

19 CHAIR OXMAN: I thank the representative of the
20 Russian Federation.

21 Is there anything further before we break for
22 lunch?

23 MS. PODOLYAN: Mr. President, we have concluded
24 our comments before the lunch break. Thank you.

25 AMBASSADOR MOSCOSO: Thank you very much, Chair.

1 We don't have any comments right now, and we are
2 going to resume these comments that we already provided
3 after the lunch break. Thank you.

4 CHAIR OXMAN: All right. Then we will proceed to
5 lunch.

6 Reference has been made this morning to some of
7 the questions that have already been posed by the Review
8 Panel. Others have not been addressed. We had afforded
9 discretion to each Delegation to decide when it would do
10 so, and I just wish to note that that matter remains
11 outstanding.

12 In accordance with the Schedule, we will resume
13 our session at 14:10 this afternoon. I wish everyone a
14 pleasant lunch break.

15 (Whereupon, at 11:36 a.m., the Hearing was
16 adjourned until 2:10 p.m., the same day.)

17 AFTERNOON SESSION

18 CHAIR OXMAN: I trust that everyone has had a
19 pleasant luncheon break and has had time to further ponder
20 the questions that were put to both Parties by the Review
21 Panel. We would propose that each of the Delegations first
22 be given an opportunity to give its responses to those
23 questions; and that once we've completed that, then there
24 may be additional questions from Members of the Review
25 Panel in addition to those that were in writing.

1 So, let's begin with that process.

2 QUESTIONS FROM THE REVIEW PANEL

3 CHAIR OXMAN: Obviously, in the morning, some of
4 the questions were addressed, at least in part, but I think
5 now is the time to complete that process, so let me first
6 invite the Delegation of the Russian Federation to address
7 the written questions.

8 RESPONSES TO TRIBUNAL QUESTIONS FROM THE
9 REPRESENTATIVE OF THE RUSSIAN FEDERATION

10 MR. KREMENYUK: Thank you, Mr. President. With
11 your permission, I will go over the questions sequentially,
12 referring to the number of the question. Perhaps I will
13 repeat myself with respect to some points, but at the same
14 time I would like it address the questions as exhaustively,
15 and I apologize once again for any repetition.

16 The first question addressed in writing to the
17 Russian Federation concerns our objections of April 10,
18 2023, that indicates that some Members can demonstrate
19 goodwill and could hand over part of the quota to another
20 Member. The question is: Could this transfer cost
21 something to the beneficiary?

22 First of all, I would like to say what is the
23 essence of the Russian Objection? We stated that in
24 accordance with Article 21 of the Convention, there was no
25 determination with respect to some universal keys that

1 would allow to distribute objectively quotas from one party
2 to the other; that is to say, to determine the quota fairly
3 of one or the other Party for a subsequent period; in this
4 case, for 10 years. We indicated that the countries that
5 were interested in handing over an equivalent quota to
6 Chile and who voted in favor of this Decision at the same
7 time by distributing the amount of handover in their quota
8 to the countries that were not interested in such a
9 transfer, stating that this is not in line with their
10 assessment of the distribution of quotas in accordance with
11 the criteria established in Article 21.

12 As we understand it, the countries who saw that
13 they were ready to hand over had to carry the burden of
14 handing such quotas over because, objectively, to
15 demonstrate that they should be handed over by each
16 country, this country could not then (unclear) that. For
17 its part, the Russian Federation stated that, in case of a
18 situation where there is no understanding, what amount
19 should be handed over to a particular country, then we
20 should keep the status quo.

21 Furthermore, the Russian Federation indicated
22 that, based on the understanding of the Russian Federation
23 with regard to all the criteria because they are
24 interlinked as we understand it, in one way another, the
25 Russian Federation could count on an increase of a relevant

1 quota for the subsequent period. But given the fact that
2 there was no understanding with the criteria, we could
3 follow the suggestion by Korea.

4 The question is how distribution is established
5 and whether this requires any financial compensation. As I
6 see it, the question of keys of distribution was not linked
7 to the compensation in this context. This preservation
8 Measure--Conservation Measure does not require any
9 compensation for 10 years for any country. At least, we're
10 not aware of anybody stating this.

11 I would also like to point out a number of points
12 that, in one way or another, relate to this fishing
13 arrangement. Article 21 states that, in making the
14 determination, as far as the historic catch is concerned,
15 at Paragraph 2.1 and also the current and future present in
16 the Convention Area; that is to say, it determines the
17 current state of affairs in the Convention Area. The
18 presence, as of 2022, indicated the presence of the ships
19 of the Russian Federation and the ships of the European
20 Union; and, in the neighboring waters, the ships of the
21 neighboring States.

22 Essentially, these countries, in fact, had to
23 implement other conservancy Measures because they carried
24 the responsibility for gathering data and for implementing
25 the conservancy Measures, and in fact, carried an added

1 burden of responsibility. With respect to other countries,
2 there was no application of this approach to this
3 situation. This, in brief, is as far as the first question
4 is concerned.

5 Now, with your permission, I will move on to
6 Question 2 regarding the application of Article 16(2) of
7 the Convention and the use of the described procedure.

8 The procedure of decision-making is clearer to
9 us. When there is no consensus, then we use the procedure
10 of the Majority vote. But we regard the Convention not as
11 something individual but something complex, integrated.
12 That is to say, if Article 21 of the Convention states that
13 "the Commission shall evaluate all the criteria," then this
14 procedure has to be determined by the Commission. If, as
15 is indicated in a number of comments of the Working Group
16 that assists the Commission, this does not preclude that
17 the Commission carry out this work in accordance with the
18 procedure and take appropriate Measures.

19 Question 3, regarding when Russia learned about
20 the intention of Chile to increase at the 11th Session.
21 Before the session, of course, Russian Federation did not
22 know about the intention of Chile to increase its quota.
23 We didn't have any note or information that the Chilean
24 side was interested in that. As far as the situation of
25 the Session, from the statements made by Chile, it was

1 difficult to form a definitive opinion about the motivation
2 for the increase and the justification that Chile provided.
3 As we understood it, to review this as a justified reasoned
4 document was not possible, it was just not possible, to
5 understand what indicators would be used.

6 If we speak about the flag obligations with
7 respect to the ships and the responsibility, then this
8 applies to all Parties. They do not increase but they
9 apply from the moment of the implementation of the
10 Convention. If the Measures were implemented in full,
11 then, of course, one would speak about a decrease and not
12 an increase of the quota.

13 And the Russian Federation, in consequence, based
14 on this assumption, when the proposal was submitted to an
15 informal group, only at this stage, we understood the
16 intention of the Chilean Party to increase. We have a
17 table in our document that, in fact, considers the increase
18 at the expense of everybody. There were no other criterias
19 that would indicate how these volumes are justified.

20 As far as the transfers are concerned, I would
21 like to, once again, touch on this question: Why more is
22 caught compared to transfers. There is a situation that,
23 as we know from the mass media, some commercial
24 organizations represented the interests of the States. For
25 instance, the Vanuatu Case is actively discussed in the

1 press, when the State believes that the representative at
2 the negotiations could not authorize any actions on the
3 part of the State, which raises question regarding the
4 legitimacy of the processes that were taking place in the
5 context of the transfer, and that's why we have doubts
6 about the use of this methodology.

7 Question 4: Does Russia want to comment on the
8 comment of the European Union to decrease the quote of the
9 Russian Federation in 2017? Yes, we would like to make a
10 comment on this question, but because it has to be
11 commented in a more expanded way, linked not to 2017 but
12 based on the process to increase the quotas in the previous
13 year. That is to say, in 2014 and 2015, the quotas of the
14 Russian Federation, specifically in 2015, it was increased
15 disproportionately, but considerably higher; that is to
16 say, the countries claimed an interest not in connection
17 with the fixed figures in 2018, but they could claim
18 different figures for the increase.

19 And even in 2017, the quote increased
20 disproportionately for various countries in subsequent years
21 and this volume became the basis for fixating the interests
22 of the country in increasing quotas, and those who had
23 fewer keys received fewer amounts. This is the basis for
24 the calculations. And when I look at the Figure 328 for
25 the fixed amount, this, in fact, is a freeze of the

1 situation for the subsequent three years. And, as a
2 result, the slight changes both in volume of fishing,
3 Russia could not claim more in the subsequent year because
4 of the automatic promulgation. At the same time, to
5 repeat, we did not insist on increasing our quota because
6 it was difficult for us to determine the criteria to be
7 used to assess the keys for distribution.

8 Furthermore, I would like to go back to the
9 question of the transfers. As I mentioned, in the
10 Memorandum of 2017, Chile also referring to the case of
11 Vanuatu, that the countries that are not using up their
12 quotas and do not hand them over through transfer, they
13 should be used to increase the quota of the countries that
14 fully exhaust their quotas either through transfers or by
15 themselves. That is to say, this was a criterion of
16 cautionary approach, and any way to exhaust the quotas,
17 confirming, thereby, that the transfer is the basis for
18 historical catchment. This was the basis for 2017, but
19 then it was taken off. This is Paragraph 38 of the Chilean
20 Memorandum of 2017.

21 Because the approaches in those years were
22 different, and despite the fact that today Chile states
23 that a reference in the disclaimer that the situation with
24 the transfer does not create a basis for a review, then, in
25 fact, in 2023, it was reviewed, and the transfers were used

1 as a basis for such a reconsideration review, even though,
2 as we understand it, I would like to emphasize this point
3 once again, Article 21 provides a broader definition in
4 Paragraph 1(a), the meaning of "historical catch," which is
5 not based just on a historical process but the presence in
6 the fishing area, and proportionate to the fishing effort.

7 That is to say, it's not just a mechanical
8 assessment, but an assessment is also made of the effective
9 present because the country is present in the Convention
10 Area. This criteria, unfortunately, was not reviewed by
11 the Commission because, in fact, there were countries that
12 transferred their quotas and countries that are
13 implementing fishing in Conventional Areas and neighboring
14 waters.

15 And once again, to repeat, the situation
16 regarding the review of quotas is a very sensitive issue.
17 We understand that a country that is losing part of its
18 quota and fishing in a Conventional Area gets a multiplier
19 effect compared to the country that is leading the
20 conventional fishing because the effectiveness of the
21 fishing is higher than the fishing in the Convention Areas.

22 Maybe I have taken too much time, I apologize,
23 but if there are any additional question, I'm ready to
24 address them.

25 Thank you very much.

1 CHAIR OXMAN: I thank the representative of the
2 Russian Federation.

3 I did want to ask whether there were any
4 additional comments on Question No. 7 which was addressed
5 to both of the Delegations.

6 MR. KREMENYUK: Yes, thank you, Chairperson. My
7 apologies for not answering that question straightaway. I
8 will move over to that question, and I was planning to
9 touch upon that later on anyway, so...

10 (Pause.)

11 MR. KREMENYUK: Well, thank you.

12 The way we understand it, there were a number of
13 additional points which I have already touched upon earlier
14 regarding the application of the UN Convention on the Law
15 of the Sea and the compatibility of the Measures. I
16 understand that if the country agrees that the Measure as
17 applied in the Exclusive Economic Zone, then it does not
18 automatically mean that Article 21(1)(a) considers only the
19 Exclusive Economic Zone along all the criteria of the catch
20 and the presence. Because the Article itself, the criteria
21 gives a broader definition of the "Convention Area."

22 Moreover, the Measures to not disclose the
23 situation, whether it would be possible to use up fully the
24 quotas which do not apply to the quotas of the Coastal
25 States.

1 Regarding the States that have not consented to
2 the Measures to apply to Exclusive Economic Zone, they have
3 a separate quota for High Seas for the Convention Area, so
4 it is marked as "High Seas." Therefore, there is ambiguity
5 here as well. So, for the countries to which this source
6 applies, their quota is divided into the Conventional Area
7 and national jurisdiction. This is the so-called
8 "set-aside quota" under the Convention, so it was supposed
9 to be applied by the States that did not agree for the
10 Exclusive Economic Zone to follow that.

11 So, then what do we understand on the
12 compatibility of the areas? So, if the majority of the
13 quota is used up outside the Convention Area, then how
14 would you decide the compatibility if nothing were to be
15 used up in the Convention Area, then, because for the
16 coastal areas, it will be extremely difficult to compare
17 the Measures imposed by the Convention. This is with
18 regard to Part 1.

19 Another important issue regarding applicability,
20 despite the fact that the rights for the Coastal State to
21 use up the quota in its Economic Zone would not
22 automatically mean the identical calculation of the share
23 in future, so this is the question the Convention was
24 supposed to give an answer to.

25 Regarding new Members and the Commission

1 newcomers, we have many more questions here because we
2 understand that, in 1995 and the Agreement our Commission
3 based its work on, there are general guidelines, and the
4 region to which the developing countries' notion applies on
5 should also coincide with a range of the living marine
6 resources, and the Convention Area range contains a great
7 number of biological marine resources. Then, in this case,
8 with the jack mackerel situation, we need to consider the
9 needs of the developing countries and newcomers.

10 In the situation in 2023, this process happened
11 automatically. It has nothing to do with the historic
12 catch volume, it has nothing to do with the vessels used
13 here. It took into account rights of all those countries,
14 despite the fact that Article 19 does not provide for the
15 allocation of the quotas. It provides for various option
16 like financial assistance, et cetera. However, only the
17 quotas for jack mackerel were used. And all those quotas
18 were used up as transfer to other countries, so they could
19 not be the basis for application of Article 19 the way it
20 is now.

21 Right. The monetization issue. Here, too, as
22 far as we know, this question, the issue of monetization of
23 quotas and transfers--well, we do not process the
24 information as far as the States are concerned. However,
25 from mass media and regarding the commercial organizations

1 and these issues are considered and the International Court
2 in London, so those issues are under discussion. Vanuatu,
3 as a State, disputes the position of the States which were
4 represented by France, so neither Article 21 nor CMM
5 01-2023 imposed the obligation to compensate for the quota
6 transfer, and mass media does show that those things did
7 happen.

8 So, what does the number of transfers explain in
9 the last years in respect to jack mackerel? Each situation
10 with transfer different. Sometimes the country has no
11 intention to fish, but historically it was allocated a
12 quota.

13 Another situation, the State does have a quota,
14 but it is not sufficient for its fishing, so economically
15 it is not efficient. It is too small. And yet, in other
16 situations, due to a number of reasons, the choice is made
17 to transfer respective fishing opportunities. There are a
18 number of factors as we see them, but the main factor is
19 that fishing in the Convention Area is more complicated, it
20 requires higher financial costs and efforts and States
21 fishing at a distance; but they are limited to a fishing
22 area. And pelagic species can travel high distances
23 quite--at great velocity.

24 And if the State and vessels of the country
25 fishing at a big distance cannot physically use up the

1 quota when their fishing capabilities are limited, then,
2 technically, their capacities are complicated, and they
3 have higher risks compared to the possibility to fish in
4 waters adjacent to the Convention Area.

5 By the way, current statistics do indicate that
6 fishing outside the Convention Area in the adjacent
7 waters--and up until now, so the first months until now, so
8 every fishing activity that happened was outside the
9 Convention Area, so then we're not talking about the
10 coastal countries but countries that have to fish there.
11 And again, I refer to the economic effectiveness and to the
12 relevant factors.

13 Chairperson, thank you so much, so I tried to be
14 brief and to cover this second batch of the questions
15 related also to Chile.

16 CHAIR OXMAN: We thank the representative of the
17 Russian Federation.

18 Unless there are any more comments on the written
19 questions from the Russian Federation, I will ask Chile to
20 proceed.

21 Do you have any more comments?

22 MS. PODOLYAN: Dear Chairperson, no more comments
23 from us.

24 CHAIR OXMAN: Thank you.

25 Chile, of course, had already addressed some of

1 these questions, so we ask the representatives of the
2 Republic of Chile to continue accordingly. Thank you.

3 RESPONSES TO TRIBUNAL QUESTIONS FROM THE
4 REPRESENTATIVE OF THE REPUBLIC OF CHILE

5 MR. SEPÚLVEDA: Thank you very much, Chair.

6 In regard to the situation, we would like to give
7 the opportunity to--since we have already answered several
8 of the questions made by the Panel, we would like to take
9 the opportunity to address some of the comments made by the
10 Russian Federation early in the morning, if it's okay with
11 you.

12 In this regard, first of all, we would like to
13 indicate that the Chilean position has been consistent and
14 compatible across the time. There is no such change of
15 opinion as mentioned by the Russian Federation. Our
16 starting point for all of our argumentation has always been
17 that there has been a decision made in advance by the
18 Commission that the jack mackerel Measure will be reviewed
19 in Year 2023 followed by a subsequent and historical
20 practice used under those circumstances that this Measure
21 would be debated in a Working Group. And this, by the way,
22 has never been contested by the Russian Federation until
23 this opposition. The case pointed out by the Russian
24 Federation related to the Ecuadorian position, differs from
25 the situation currently discussed since the respective CMM

1 mentioned in that occasion, had expressly established that
2 it would be in force for five years. And we are talk about
3 CMM 01-2017. And the Ecuadorian Delegation looked for its
4 amendment before that time. And hence, in the absence of a
5 decision made by the Commission on how to proceed, the
6 respective Rule of Procedures was highlighted by the
7 Chilean Delegation in regard to amendments that should have
8 followed the respective Rules of Procedure.

9 Henceforth, the cases in discussion are totally
10 different, and we are of the view that the Russian
11 Federation has mistaken its interpretation on the Chilean
12 position. But the most important thing to recall or to
13 bear in mind is that this Panel has been made, and this
14 opposition is specifically related to a measure that has
15 been adopted by the Commission by a majority of 13 Members
16 and not by the Chilean behavior, so focusing only in our
17 allegations and not in the established practices and
18 procedures by the Commission and by the Convention. That
19 should be the end of this Panel discussion.

20 In relation to the Russian remarks about the
21 Chilean Exclusive Economic Zone, it would be important to
22 recall, and we would like to recall, the meeting held in
23 Oakland in Year 2015. In that occasion, there was an
24 exercise made in order to determine what would be the
25 capture possibilities in the Convention Area if the Chilean

1 Exclusive Economic Zone was not considered into the
2 respective basis of the calculation, and the results of
3 that exercise showed that at that time the possibilities of
4 captures for the Members of the Convention in High Seas
5 would have been reduced significantly. Hence, under these
6 circumstances, it's difficult to sustain that efforts made
7 by Chile on the matter and in lieu with the Principle of
8 International Cooperation do not render benefits for other
9 Members.

10 Now, regarding the obligation of Article 21, the
11 Russian Federation just mentioned that they meet several of
12 the criteria. We also are aware that out of all of the
13 criteria indicated in Article 21, are made by--most of them
14 are made by the Chilean Institution, by Chile, except for
15 the fact that we're not an island country, and that is
16 something that is pretty much determined by our geography.
17 So, under that kind of circumstances, having several
18 countries in similar kind of conditions, it is important to
19 take into consideration criteria that can be objectified in
20 lieu with what is established in the specific Article 21;
21 and, out of those criteria, captures is one of the most
22 objective matters to consider without prejudice that,
23 according to Numbers 2 and 3 of Article 21, it is
24 compulsorily for the Commission to take into consideration
25 in allocation the historic catch and past and present

1 fishing patterns and practices, considering the situation
2 that Chile has contributed with its Exclusive Economic
3 Zone.

4 Now, it's also relevant to mention that the
5 Convention addresses specifically what the compatibility
6 principle should be about, and it's important to highlight
7 that, in the case of Chile, Chile goes even beyond the
8 compatibility principle considering that Chile does not
9 adopt alternative measures that should be compatible with
10 the Measures adopted by the Commission. Chile adopts the
11 CMMs themselves as they are stated issued by the
12 Commission, so the compatibility principle in this case
13 shouldn't be a problem for the Chilean situation.

14 I would also just like to do some quick comments
15 about the questions that have not been addressed in our
16 previous statement.

17 I have the conviction that questions included in
18 Number 5 and 6 that have been specifically addressed to
19 Chile, have been responded. In case of any further doubt
20 coming from the Panel, we are more than open to complement
21 our previous statement.

22 The same situation would occur with the Question
23 Number 7(a) and (b) and (c).

24 Regarding letter (d), we are of the view that the
25 topic treated in this question is not a matter that should

1 be treated by Chile on its own. The criteria related
2 to--in regard to the geographic limitations in Article 1(f)
3 on the Convention should be referenced developing country
4 and the region, et cetera. Those are matters that should
5 be treated within the Convention framework considering that
6 this kind of decision should involve the feeling of the
7 entire Commission. So, this is why Chile would prefer not
8 to provide a specific response on that matter.

9 Now, regarding Question 7(e), we are of the view
10 that monetization of allocations are unimpeded to affect
11 those transfers. I mean, transfers are actually permitted,
12 considering the provisions of Paragraph 8 of the CMM
13 01-2023, and all of the CMMs related to jack mackerel. And
14 the fact that there is an economic aspect of those
15 transfers are an effect that could or could not be part of
16 that transfer. Actually, Chile has received transfers
17 before for free; for example, coming from China. However,
18 if its transfers are also related to an economic benefit,
19 it's something that is allowed by the Convention.

20 However, it's difficult to note as part of the
21 Convention provisions that contemplate or authorize the
22 perpetuation of such financial interests, we are of the
23 view that SPRFMO itself is a fishing organisation, and that
24 all of the Measures adopted are temporary in nature due to
25 the need of a constant review of the CMMs. Hence,

1 perpetuation is something that should not be part of--it
2 should not be an expectation for Members, basically. And
3 although the economic benefit might be part of transfers is
4 not something that is on the core of the Organisation.

5 Finally, I am aware that in relation to letter
6 (f) that refers to what explains the number of transfers
7 and other end-use allocations of jack mackerel over the
8 last several years. We are aware that maybe the response
9 to this question might have not been that clear. This is
10 why I would like to--couple of remarks with regard to that.
11 And pretty much the explanation that we see that directly
12 affects the number of transfers, or explains the number of
13 transfers currently happening, is the fact that the biomass
14 is mainly concentrated in the Exclusive Economic Zone of
15 Chile. Hence, it is harder for other countries that are
16 part of the Convention to actually capture their
17 allocations, considering that they are in Chilean
18 territory, hence, the need of transferring arises, which
19 may be one of the main factors why that occurs. But that's
20 just our opinion. I mean, that's how we see the situation.

21 So, I think those are the comments I wanted to
22 make, and I remain attentive to any further interaction
23 that you would like to have.

24 CHAIR OXMAN: I thank the representative of the
25 Republic of Chile for these further elaborations, and I

1 think I would now like to ask my colleagues whether they
2 have any additional questions that they would like to put
3 to either/or both of the Delegations.

4 Ms. Sedykh?

5 PANEL MEMBER SEDYKH: Thank you, Mr. Chair.

6 May I ask a question to the Organisation?

7 CHAIR OXMAN: Certainly.

8 PANEL MEMBER SEDYKH: Thank you.

9 QUESTIONS FROM THE TRIBUNAL

10 PANEL MEMBER SEDYKH: So, my question regards
11 proposals submitted at the last Annual Meeting of the
12 Commission. My question is whether there were any
13 proposals from the new entrants, Contracting Parties, I
14 mean the three newcomers to the fishery, and what was the
15 text of these proposals, and what were the grounds for the
16 Commission's Decision to allocate quantities of jack
17 mackerel for these countries? For example, why there were
18 no allocations of some other species covered by the
19 Convention, to these new entrants, newcomers to the
20 fisheries.

21 CHAIR OXMAN: This question has been posed for
22 the Organisation, and I leave it to the three
23 representatives of the Organisation who have been
24 monitoring our proceedings to decide who would like to
25 respond to this question. They're, of course, are

1 monitoring us remotely.

2 VOICE: They should be able to take the floor, so
3 I don't know who is going to take the floor.

4 MR. LOVERIDGE: Thank you, Chairperson, thank
5 you, Panel. Can you hear me okay?

6 CHAIR OXMAN: Yes, we can.

7 MR. LOVERIDGE: Thank you for the question. Just
8 as an introduction, my name is Craig Loveridge, I'm the
9 Executive Secretaries of SPRFMO. It's a pleasure to be
10 able to partake in these proceedings, and I would like to
11 thank the Review Panel for making themselves available to
12 assist and also for all of the participants in the
13 proceedings, including the Russian Federation, the Republic
14 of Chile, and the representatives from Chinese Taipei who
15 have taken the position to be there in person, and the
16 others who have submitted on this topic.

17 So, I'm just going to talk about the first part.
18 From my understanding, just to repeat the question, it was
19 a two-part question which talked about any proposals
20 submitted at the Annual Meeting by the new entrants to the
21 fishery, being the jack mackerel fishery. There was a
22 second part that was what was the grounds for their
23 allocations, and I think I will pass that on to our
24 Chairperson, who will be in a better position to answer
25 that.

1 But I can touch on the third part, which was why
2 they were not considered for allocation in other fisheries.
3 So, that's how I would like to approach the question, if
4 that's all right, the three parts.

5 So the answer to the first part is, no, there
6 were no formal proposals put forward. I was not present
7 for the discussions in--these particular discussions in the
8 meetings, so I wouldn't want to comment on that, but I can
9 certainly confirm that there were no formal proposals put
10 forward prior to the meeting commencing from the new
11 entrants.

12 In terms of the third part, just briefly to say
13 why it probably wasn't considered for other species, I
14 would let me colleagues elaborate on that, but I would say
15 that my position is that the way SPRFMO manages its
16 fisheries, it seems to manage them on a fishery by fishery
17 basis, so we have a CMM for jack mackerel. We also have a
18 CMM for jumbo flying squid, and I've got to use the common
19 names. And we also have a CMM on bottom fisheries. So,
20 this kind of spread out the way we look at the fisheries,
21 and we have specific Measures for each of those specific
22 fisheries. We also have a number of general Measures as
23 well, but I won't go into those.

24 The jack mackerel fishery is also the--sorry, the
25 Jack Mackerel CMM, my apologies, is actually the CMM for

1 Trachurus murphyi. It's for the species itself, that is
2 Trachurus murphyi, and it doesn't consider allocation of
3 any other species caught with Trachurus murphyi or not.
4 And that's generally because Trachurus murphyi fishery is a
5 very, very clean fishery. Generally you're targeting
6 schools, and generally you only catch a very, very high
7 proportion of Trachurus murphyi with very, very little
8 other species. So, when we've done allocation, it's been
9 on the main species involved in the fishery, being jack
10 mackerel.

11 So, I hope I've answered on those two parts, and
12 as I say, I will leave it to my colleagues to pick up on
13 the grounds--one what the grounds were for allocating
14 allocations to the new entrants because I really wasn't
15 there for those discussions, and it's not something I can
16 comment on.

17 Thank you.

18 CHAIR OXMAN: Thank you.

19 Would one of the colleagues from the Organisation
20 like to continue the comments?

21 MR. MOLLEDO: Thank you. Good afternoon. This
22 is Luis Molledo, I'm Chairperson of the Organisation, so
23 thank you for inviting us to participate today.

24 I will ask, please, the representatives of the
25 Russian Federation to repeat the question that is still

1 pending, please.

2 CHAIR OXMAN: Member of the Review Panel,
3 Ms. Sedykh.

4 PANEL MEMBER SEDYKH: Yes, my question was
5 regarding formal proposals that is already answered, and
6 what were the grounds to allocate jack mackerel to the new
7 entrants in the absence of formal proposal, and what were
8 the reasons why Commission decided to allocate this species
9 to the new entrants to fisheries.

10 MR. MOLLEDO: Thank you very much.

11 My understanding is that this is done on the
12 basis of UNCA and Article 21 of the Convention. I think
13 during the discussions that took place in the Working
14 Groups and in the Commission, the SPRFMO Members, and those
15 requesting a quota for new entrants, they showed an
16 interest in the fishery, so, there was a common decision to
17 allocate a certain amount of quota for those participants
18 in the fisheries, taking into consideration as well that
19 some of them are developing Coastal States. So, I think
20 this was a very strong argument in when this decision was
21 taken.

22 So, three things: The international law
23 applicable; the Convention, including the reference to
24 Coastal Developing States; and the request from new
25 entrants and the favorable consideration by SPRFMO Members.

1 Thank you.

2 CHAIR OXMAN: Thank you, sir. Ms. Sedykh, do you
3 have any follow-up questions on that?

4 PANEL MEMBER SEDYKH: Yes, I can ask, what were
5 the options which were addressed or discussed at the
6 Working Group of the Commission? Because on the final
7 option of distribution, which is incorporated in the CMM,
8 but what were the other options that were considered or
9 discussed at this Working Group?

10 CHAIR OXMAN: And is that question addressed to
11 the Chairperson of the Commission, Ms. Sedykh?

12 PANEL MEMBER SEDYKH: To the Commission.

13 CHAIR OXMAN: Yes. Did the Chairperson of the
14 Commission hear that question?

15 MR. MOLLEDO: Yes, thank you, Chair, and thank
16 you to the Russian Federation for the question.

17 I did not attend the Working Group discussions,
18 but as it has been stated in the memorandum submitted by
19 the Organisation, there were four days, five days of
20 discussions on this topic of the Working Group. I think
21 that there were a number of options that were considered,
22 and the most important thing is that none of them gained
23 enough consensus to be put forward to be--realistically be
24 put forward for consideration at the Commission.

25 So, as they discussed above, there were some

1 options that gained more support, more attract than the
2 other alternatives, and the final outcome was that the
3 option with more support was put forward to the Commission
4 for consideration and came about.

5 Thank you, Chair.

6 CHAIR OXMAN: Thank you, sir.

7 PANEL MEMBER SEDYKH: My last question may be at
8 this stage: What, again, to the Chairperson of the
9 Organisation, what, in your opinion--what is your opinion,
10 how this CMM will contribute to the development of
11 fisheries in the High Seas in the Convention Area?

12 MR. MOLLEDO: In what sense?

13 PANEL MEMBER SEDYKH: In the sense of it shows
14 the development of fisheries in the High Seas--I mean,
15 increasing fishing effort, increasing presence of vessels
16 and so on.

17 MR. MOLLEDO: Well, this is not really a question
18 for me to answer. I think this is rather a question for
19 SPRFMO Members to answer.

20 CHAIR OXMAN: In light of that, let me ask if
21 either of the Members would like to address Ms. Sedykh's
22 question.

23 MR. KREMENYUK: Mr. Chair, I'm not sure I will be
24 able to answer how this is going to impact the fishing
25 effort going forward in the coming years, but in practical

1 terms, in terms of what is happening at the moment, we can
2 see that the new opportunities that the developing
3 countries have through the transfers in favor of the
4 Coastal States. And as far as those who are fishing in the
5 High Seas, and who have decreased opportunities in the High
6 Seas, of course, they will have a decreased possibility to
7 do fishing in the High Seas. This is my understanding of
8 the situation. I hope this will help to address your
9 question.

10 And one more time, I would like to point this
11 out. I would like to mention that the changes were made
12 mechanically. We already presented the table that
13 indicated that the changes were not made dependent on the
14 country, but if a quota was handed over to new entrants, it
15 would be handed over to each proportionally, regardless of
16 whether it is a Coastal State, whether it has historic
17 fishing, and a proportionate reduction would also have
18 taken place; that is to say, no proportional decrease in
19 favor of others, and that's why it is difficult to say that
20 the criteria were provided for on an individual basis.

21 Thank you very much.

22 CHAIR OXMAN: Thank you, sir.

23 Would the Chilean Delegation like to comment on
24 the question?

25 MS. CONTARDO: Yes, Chair, we would like to ask

1 for a few minutes to discuss our answer, if it's possible.
2 Just if it's possible.

3 MR. SEPÚLVEDA: Excuse me, sir. Yes, as my
4 colleague mentioned, we were wondering if we could have
5 some couple of minutes to discuss the Reply that we would
6 like to provide in order to address in a better way the
7 question that was just made.

8 (No microphone.)

9 VOICE: It's enough for us.

10 REALTIME STENOGRAPHER: I cannot hear,
11 Mr. Chairman. Your microphone is not on.

12 CHAIR OXMAN: Excuse me.

13 There is an additional question, and then we
14 might take a short break so you could talk about this then.

15 PANEL MEMBER MOLENAAR: Thank you.

16 I have one small question, and it relates to the
17 different types of review procedures that are included in
18 each of the CMMs, the predecessors, so it's a separate
19 section at the end, it has two paragraphs, and I wonder if
20 the Members here today could explain the difference between
21 these two review procedures.

22 So, in the current CMM in 3132, I think. So, we
23 could take an answer of these questions also after the
24 break.

25 CHAIR OXMAN: I would like to, as long as you're

1 going to be consulting, I entirely agree with your comment
2 that you had already responded in significant measure to
3 Question 6, but I would like to focus on the last sentence
4 of Question 6. As your Delegation will doubtlessly note,
5 this is not new. Chile referred to those factors in 2022,
6 if I am correct, and the question is the extent to which
7 the availability or cost of transfers of which Chile has
8 been a significant beneficiary, whether the availability or
9 cost of transfers was among the factors that prompted its
10 Decision to seek an increase in its allocation.

11 And unless there is anything else, what I would
12 suggest is that we take a--will five minutes you think be
13 enough? All right. Take a five-minute break, and the two
14 Delegations can use that to consult, and we will resume at
15 3:15.

16 (Brief recess.)

17 (No audio.)

18 CHAIR OXMAN: I think we are ready to proceed.

19 REALTIME STENOGRAPHER: Yes, I'm ready now.

20 Thank you.

21 MR. SEPÚLVEDA: Thank you very much.

22 As I was saying before, in relation to Question
23 No. 6, the second part, the pursuit of Chile to increase
24 its allocation is not necessarily related to the coastal
25 transfer, the fact that Chile accepts or is recipients of

1 all these transfers is due to the need or the reliance of
2 the country on the fishery. There is a really significant
3 industry that relies on the catches of the specific fishery
4 coming from different parts of the country, and considering
5 all of the efforts that Chile has been doing for striving
6 in the success of the Organisation and the conservation of
7 the jack mackerel.

8 There is the view of the industry that, as an
9 increase in the allocation as it was required or requested
10 would be fair, considering all the efforts that the country
11 does in regard to jack mackerel and the significance that
12 the fishery has in the fishing sector on its own, and proof
13 of this is the different paragraphs that were mentioned
14 also in our memorandum starting from Paragraph 17, I think,
15 from 17 to 20, which explained the percentages of catches
16 that we have in terms of--considering the total amount of
17 catches done by all of the Members, Chile, of which, is 70%
18 of those catches, actually harvested.

19 So, in that consideration, Chile, in the first
20 place, strived because it shouldn't be--probably shouldn't
21 be that effective to ask for an increase to 70% with the
22 Total Allowable Catch. So, our first aim or first
23 objective was to reach to 68%, but considering all of the
24 discussions and the different interests involved in the
25 Commission and in the Working Group, Chile decided to lower

1 its objective in terms of the percentage of allocation to
2 66%, which translated into an increase granted by the
3 Commission of 2%, considering the previous allocations that
4 it already had.

5 So, in general terms, the situation is not
6 related to transfers. Transfers are just a reflection of
7 the needs of the country in relation to the fishery. It
8 would be hard for me to imagine a circumstance and
9 circumstances under which the Chilean--the Republic of
10 Chile would not accept that transfer because the whole
11 industry is demanding the resource, pretty much. So, those
12 are the reasons why we strive for increase in the
13 allocation.

14 In regard to how the Measure cooperates with the
15 development of the fisheries in High Seas, I would like to
16 say that it's a difficult question to reply because it's
17 difficult to think the consequences would be derived
18 exclusively from the CMM because there are several factual
19 issues to be considered in order to achieve or to obtain a
20 better development of the fishery in High Seas. As I said
21 before, currently, jack mackerel, the behavior of jack
22 mackerel is very coastal. The biomass is mainly located in
23 the coastal area. It's really close to the continent. But
24 this is not a situation--we cannot really guarantee that
25 this is going to keep on happening in the future. I mean,

1 the behavior of the biomass has been different in the past
2 with more presence in High Seas.

3 So, so far the Measure allocates quotas
4 regardless of the availability of the resource in High
5 Seas. However, this is an effort that is done in order for
6 the different Members to have a right to start developing
7 their fishery, the fishery in their respective country, and
8 that's the starting point. Afterwards, it depends a lot on
9 how the industry develops and how the reliance of the
10 country on the fishery evolves in order to ensure that each
11 of the Members would be able to harvest their resource in
12 the whole Convention Area.

13 So, I think it's a very complex matter that
14 involves different factors that interact systematically.

15 And in regard to the last two paragraphs, if I
16 understood you okay, your question was related to the last
17 two paragraphs of CMM 01-2023 in order to understand the
18 reasons for those paragraphs being there, the reasons for
19 that procedure?

20 PANEL MEMBER MOLENAAR: Yes, I guess the original
21 CMM that is relevant is of 2018, but I think all the
22 paragraphs are essentially identical; right? So, there is
23 a separate paragraph that refers to the allocation key,
24 which is the last paragraph, and then the earlier paragraph
25 talks about a different type of review. I would just like

1 to understand the difference.

2 MR. SEPÚLVEDA: In my understanding, these
3 paragraphs are there in order to ensure that all of the
4 Measures are reviewed. It's a decision made in advance in
5 order to ensure that there is going to be constant analysis
6 on the Measures taken and establishing a specific deadline
7 to do that.

8 I don't know if that's clear.

9 PANEL MEMBER MOLENAAR: Okay. So, CMM 01-2023,
10 so you have Paragraph 3, and it says: "The Measure shall
11 be reviewed by the Commission in 2024." And then,
12 Paragraph 31, in the last sentence, it says that the
13 percentages included in Table 2 will be used by the
14 Commission as a basis for the allocation of Member and
15 CNCP's catch limits from 2023 to 2032.

16 So, on the one hand--there are different dates;
17 right? Different years. And I have an idea what this
18 means, but...

19 CHAIR OXMAN: If the Delegation of Chile would
20 prefer to address this in its concluding remarks after the
21 break, we can do that also. That's up to you.

22 MR. SEPÚLVEDA: In my understanding, I am aware
23 that every year the total allowable for the whole range of
24 the resources reviewed, regardless of the fact that the
25 percentage of allocation is reviewed at the end of this

1 10-year period.

2 CHAIR OXMAN: I have a few questions I would like
3 to add. I will state all three, and then we can probably
4 take them in that order.

5 The first is for the Executive Secretary of the
6 Organisation. We would appreciate it if you could give us
7 a bit of an update on the status of the fishery. Where do
8 things stand as of now? How much longer do you expect the
9 season to last and so on and so forth.

10 I must say that I recall from the first Review
11 Panel which had been my honour to chair, that at that time
12 the Delegation of Chile told us that within a matter of
13 days it would be completing its allocation, but, of course,
14 the stock was in very bad state at that time, and the
15 allocations were much smaller, in any event, we would
16 appreciate something of an update on the state of the stock
17 from the Executive Secretary.

18 The second question is for the Russian
19 Federation, in the first two sentences of the Letter of
20 Objection, the words "in 2023" appear. And those words
21 are, in fact, then repeated in the Memorandum of the
22 Russian Federation, and it is not clear what's meant by
23 that. Is the Objection addressed only to the allocations
24 for 2023, or should those words be understood in effect as
25 the date--the year in which the CMM was adopted and the

1 Objection should be understood as a reference to the
2 percentages not only with respect to 2023 but thereafter as
3 well, and if the Russian Federation could clarify that, it
4 would be helpful.

5 The third is for Chile, and in light of the very
6 helpful comments that were made in respect to Question
7 No. 6. Let me try and put it differently, and that is:
8 What exactly was it that prompted Chile ultimately with
9 some success to seek to alter the status quo under the
10 prior CMM by seeking a significant increase in its
11 allocation? Or, in other words, what was wrong with the
12 status quo that led to what was at least, in part, a
13 successful effort by Chile to alter that in 2023?

14 I would suggest that we take those questions in
15 order and would request the Executive Secretary if I can be
16 heard to give us a quick update on the status of the stock
17 and the fishery for the stock.

18 MR. LOVERIDGE: Thank you, Chair.

19 Can you hear me okay?

20 Thank you very much--

21 (Overlapping speakers.)

22 MR. LOVERIDGE: Thank you. I'm pleased to be
23 able to say that the jack mackerel fishery is in a much
24 better position than potentially when you last were
25 involved, and certainly in 2013 and even in 2018. The

1 stock has recovered, and the latest advice from our
2 Scientific Committee is that the jack mackerel stock
3 remains relatively stable. The population trend is
4 increased--is estimated to be increasing, and stock
5 projections are favorable, even under the most conservative
6 recruitment scenarios.

7 2022 biomass was estimated to be well above the
8 level capable of supporting Maximum Sustainable Yield, so
9 the stock is in a good position at the moment. That has
10 been an exceptional recovery over the past 10 years from a
11 very, very poor state, particularly in 2011 and 2012.
12 That's due, in no small part, to the quick action of the
13 Members under the voluntary arrangements when they all took
14 very, very large cuts, which I'm sure you will remember,
15 and then they've always been also very, very respectful in
16 following SC advice, and we have an SC that's very, very
17 diligent and been providing advice each year, and the
18 Members have respected that advice right the way through,
19 so we are in a good position now.

20 I would just like to read a little bit about the
21 current state, the exact latest information we have. As of
22 the latest information we've circulated, we do a monthly
23 circulation of Monthly Reports, we are currently at 67% of
24 the total TAC having been caught. And that's not unusual
25 for this time of year, that may sound high, but that is

1 also reflective of when the fishery occurs. The fishery
2 occurs much earlier in the year, and the Coastal States
3 tend to catch the fish first, and then it's available in
4 the High Seas later on.

5 Currently, we have--in the High Seas, we have
6 European Union, Perú, and Russian Federation fleets have
7 been active in the High Seas recently. They are all
8 fishing now currently, and they've all got--basically just
9 started fishing in the High Seas whereas, as I say, the
10 Coastal States, particularly Chile, has actually set around
11 78% of its current limit. But that's not unusual, as I
12 said, that is usually the case for about this time of year.
13 We were just switching to a 15-day reporting, and we will
14 be soon, in order to be able to keep a better idea on the
15 catches and monitor them through to the end of the year.
16 And we normally switch to 15-day reporting about June or
17 July of each year, so it's tracking pretty consistent with
18 the last few years in terms of that. And so that, I think,
19 gives you a better flavor of how the fishery is at the
20 moment and the state it's in and where we are right in this
21 current year.

22 Please let me know if you want to know anything
23 more about this. Thank you.

24 CHAIR OXMAN: Thank you. Thank you very much for
25 that information and for the concise manner in which it was

1 conveyed.

2 Could I ask the Russian Federation if they have a
3 comment on the question?

4 MR. KREMENYUK: Thank you so much, Chairperson.

5 Allow me to start with the essence of the
6 Conservation Measure.

7 As it has been rightfully noted, the CMM has two
8 points, one--

9 (Lost interpretation.)

10 SECRETARY BORDAÇAHAR: Sorry to interrupt, but we
11 seem to have lost the interpretation.

12 THE INTERPRETER: The Interpreter lost the sound
13 from the speaker for a couple of sentences and has
14 requested to repeat the sentences but he has not heard me.

15 MR. KREMENYUK: Right, the interpretation is on.

16 Then, the second point which determines
17 allocation keys for the subsequent 10 years, when we
18 formulated our position regarding the original Conservation
19 Measure, or were supporting the allocation keys for one
20 year, that position required working with the same keys as
21 it has originally been proposed by Korea.

22 Our approach is based on the following: If the
23 allocation keys are not reviewed by the Commission, if the
24 Commission sees no grounds for revision, then, in our
25 understanding the keys should remain unchanged because the

1 discrimination would be not in favor of the Russian
2 Federation, and we believe that the 10-year period should
3 remain the way it is now, as it was, for example, in 2017,
4 if the Commission sees no opportunity to review the
5 allocation keys in the coming years.

6 So, if the allocation remains for the coming 10
7 years, then our position is that the key should remain as
8 previously, so for the 10-year period determined by the
9 Commission.

10 However, allow me to go a bit further. We're not
11 sure that the stability of the stock of jack mackerel for
12 10 years would allow us to say that it will keep growing.
13 There is a possibility that the stock will start
14 decreasing, and the quota of the countries will have to
15 start decreasing, and that will be of impact on the
16 position of the countries regarding the allocation of the
17 quotas. To expect the increase for the coming 10 years
18 would not be based on the scientific approach, it would be
19 rather a short-term approach. We need to think about the
20 global decline, climate conditions, and they will have the
21 impact on the allocation of the future years. So, this is
22 our answer to the question. Thank you.

23 CHAIR OXMAN: Thank you.

24 SECRETARY BORDAÇAHAR: The answer to the first
25 point was not recorded in the Transcript because the

1 Interpreter could not listen. Would you mind repeating the
2 first point so that it gets recorded in the Transcript?

3 MR. KREMENYUK: I will repeat the first part for
4 the question.

5 For the record, initially, the Russian side was
6 in agreement to preserve the status quo for two years.
7 This was the position absent the understanding regarding
8 the criteria. However, if the Commission will proceed on
9 the assumption that the allocation keys will expand
10 ten-years, then we would prefer the quota that was defined
11 in 2012 for the subsequent 10 years.

12 Thank you very much.

13 CHAIR OXMAN: Thank you very much, and we
14 appreciate your repeating that. We thank the
15 representatives of the Russian Federation.

16 Does Chile have any comment now on the question
17 or would you prefer to wait until your concluding remarks?

18 MR. SEPÚLVEDA: Just to address the question that
19 was just made. I have the impression that Chile has had
20 met the different criteria and has demonstrated that it
21 complies with the different factors that would allow for an
22 increase of the allocation, considering the figures that I
23 already referred about. And the thing is, this is a
24 process that we could have strived for a while ago, not
25 necessarily now, where there were a lot of different

1 factors that kept us from it, starting from the point that
2 the Measure had already established a period for
3 application.

4 But specifically because we had gone through
5 every tough period caused by the COVID-19 pandemic.
6 Chile's efforts in order to be recognized as a fishing
7 country would have been undermined under those
8 circumstances since the fishing industry declined due to
9 the different COVID Measures. And now, there has been put
10 in place--how do you say this?--a measure and a behavior
11 that encourages other countries to also have a harvest, to
12 also capture, as I mentioned before.

13 SPRFMO, in our view, SPRFMO has been set up to be
14 a fishing organisation, and the idea is that actual fishing
15 should be considered in order to allocate the different
16 quotas. So, I think that this time there was a recognition
17 of that matter and yield the results that we have already
18 discussed.

19 CHAIR OXMAN: Thank you very much.

20 May I ask my colleagues if they have any further
21 questions.

22 Ms. Sedykh?

23 PANEL MEMBER SEDYKH: Thank you, Mr. Chair.

24 My question is to the Organisation, to the
25 Executive Secretary of the Organisation. In CMM 01,

1 Paragraph 8, it is stated that each Member or entity of the
2 Commission may transfer to another Member all or part of
3 which it is entitled to catch. And there is described the
4 relevant passage, but I failed to find this Measure
5 anywhere else the information regarding statistics of these
6 transfers. Can you please clarify how is this transfers
7 that this catch derived from transfers is reflected in the
8 catch statistics, whether the catch which is obtained out
9 of this transfer goes to transmitting or to receiving
10 parties?

11 MR. LOVERIDGE: Thank you for the question.

12 Yeah, so I believe the answer you're seeking is
13 for the purposes of the records of the Organisation, when
14 Members do their annual catch submissions, they submit to
15 the Organisation how much they catch. So, the catch is
16 recorded against the Member that receives it, that receives
17 the transfer, to be clear. So, it's not--the catch doesn't
18 go back to the original Member. It's recorded against in
19 the catch histories of the Organisation, it's recorded
20 against the Member that actually does the catching and
21 pulls the fish out of the water using the catch resource.

22 I hope that's clear. So, it's the transfer is
23 just an entitlement limit or a right to catch that
24 entitlement. That's what's being transferred across. The
25 catch is not being transferred--the catch records for the

1 organisation reflects where the catch was caught, by which
2 Member or in which jurisdiction it was caught. Members
3 report on this annually, and they also report in the
4 reports to the UC as well.

5 So, you can see that the catches of all of these
6 species, or the main species for SPRFMO, are on the SPRFMO
7 website. They're also reported each year to the Commission
8 Meeting as an Information Paper. There's an Information
9 Paper reported to the Commission every year that has
10 catches in it. And there is also a spot on the website as
11 well which I've made available in a--which we answered a
12 question for previously, that shows catch transfers back to
13 2017. We simply didn't do it earlier because it's a
14 relatively recent initiative that we started with a small
15 Secretariat. So, we have been able to do that for the last
16 few years, but we haven't backdated those transfers yet
17 onto the website simply because we don't have the capacity
18 to do so at the current time. But we do have records for
19 those, and they are publicized to the Members as part of
20 the monthly report. So, we send out a monthly report which
21 shows both the effect of the transfers, so it shows the
22 transfers changing the Members' entitlements, and then it
23 also shows independently the catches that the Members have
24 taken through the year and versus whether they--and we use
25 that to assist whether they are going over the entitlement

1 limit that they have being a current entitlement, including
2 the effect of any transfers that they may have received or,
3 in fact, given.

4 I hope that's been clear. Please, let me know if
5 you need any further clarification. Thank you.

6 PANEL MEMBER SEDYKH: Thank you.

7 CHAIR OXMAN: Ms. Sedykh, do you have any further
8 questions?

9 PANEL MEMBER SEDYKH: Yes, I have. Thank you,
10 Mr. Chair. My question will be, again, to Mr. Executive
11 Secretary of the Organisation. Article 21 of the
12 Commission says that when taking decisions regarding
13 participation in fishing for any fishery resource are
14 criteria, inter alia, of the interest of Developing States,
15 in particular small island Developing States in territories
16 and positions in the region, must be--should be taken into
17 account. What is your opinion if these territories and
18 States are allocated quotas and they make transfers, in
19 what way are their interests taken into account?

20 MR. LOVERIDGE: Thank you for the question, but
21 I'm sorry, I don't believe that's a question that's
22 appropriate for me to answer. These decisions are made by
23 the Members, and that's something that they do in their
24 considerations, where simply--especially in my
25 position--I'm there to support the Organisation and to

1 facilitate its workings. But I'm not there for any sort of
2 opinions or decision-making. So, I'm sorry, I don't
3 believe I can answer that.

4 Thank you.

5 CHAIR OXMAN: Thank you.

6 Would either of the Delegations wish to comment
7 on that question?

8 I see no volunteers. Are there any other
9 questions, Ms. Sedykh?

10 MR. KREMENYUK: Thank you. Thank you, Mr. Chair.

11 Perhaps I will not be able to answer this
12 question directly, but I would like to say how the
13 Commission reflected this in the Conservation Measures with
14 regard to jack mackerel regarding the Measures at 2023 and
15 the previous Measures, there's a special provision
16 regarding the developing stage at Paragraph 29. It reads
17 as follows: "In recognition of the special requirements of
18 the Developing States, specifically small island Developing
19 States and the territories and possessions are urged to
20 provide conventional scientific assistance where available
21 to enhance the ability of the States and territories and
22 permissions to implement the CMM."

23 That is to say, the paragraph that was initially
24 indicated does not provide for providing assistance in
25 terms of providing quotas. It provided financial

1 assistance, urged the countries to provide scientific
2 financial and technological assistance in terms of
3 Conservation Measures.

4 But, subsequently, there was a transformation in
5 2017 that involved more interested parties in the voting
6 process. First, it was one Developing State, it received a
7 quota, then three more States were added. And as we
8 understand from the statements of our colleagues, in the
9 economic sense, it became attractive to participate in the
10 distribution of the quotas. That is to say, they became
11 interested in obtaining them.

12 However, the Conservation Measures, the previous
13 Conservation Measures were targeting certain provisions of
14 the Convention and the Agreement of 1995 that spoke more
15 about the financial, technological assistance and not about
16 distribution of quotas, on the understanding that if the
17 developing countries are not coastal and they don't have
18 jack mackerel, they will not be able to develop this kind
19 of fishery independently.

20 Thank you very much, Mr. Chair.

21 CHAIR OXMAN: Thank you very much for that
22 response.

23 Are there any other comments on that question?

24 Ms. Sedykh, one last question?

25 PANEL MEMBER SEDYKH: Thank you, Mr. Chair, but

1 maybe we shall ask another Member of the Panel, maybe he
2 wishes to take the floor.

3 CHAIR OXMAN: Mr. Molenaar?

4 Are we ready for the break, or would you like to
5 ask the question that Dr. Molenaar didn't ask?

6 PANEL MEMBER SEDYKH: Okay. Then may I ask the
7 Russian Federation regarding the issue of future
8 perspective of fisheries in the SPRFMO Convention Area.
9 What are the intentions of the countries that include the
10 development of fisheries on the High Seas, and what are the
11 circumstances which are in favor or against this process?

12 MR. KREMENYUK: Thank you very much, Mr. Chair,
13 distinguished Member of Panel, we tried to answer it, but
14 maybe we didn't provide an exhaustive answer. As we
15 understand it, this was already mentioned in the part where
16 it was said that any fishing in the Convention Area is--has
17 a number of risks involved in terms of the existing stocks.

18 When a quota is increased even in such a case for
19 every fishing vessel to ensure that it is economically
20 profitable, it requires a certain amount of quota. If a
21 quota for one vessel is more for one but less than for two,
22 then there is a risk that the quota will not be performed
23 and maybe then it will be handed over to another party.

24 And again, to repeat, these risks exist not only
25 with respect to the Russian Federation but are also

1 applicable to a number of other countries, specifically, as
2 far as we remember, China mentioned a problem in the
3 context of the COVID epidemic that affected the
4 effectiveness of fishing. Other countries said that they
5 had large quotas and were not able to ensure effective
6 fishing. That is to say, the risks in the Convention Area
7 is considerably higher, and that's why these risks in the
8 context, when the prospects for enhancing quotas are not
9 significant, then the companies try to minimize the risks
10 as far as possible to avoid any economic overheads because
11 it is very difficult to invest into an industry with a high
12 level of uncertainty.

13 In terms of quota distribution, when there are no
14 clear criteria and also with respect to other additional
15 factors that exist; that is to say, distribution of stocks,
16 the need to take all this into account, and this is linked
17 to a number of risks.

18 And again, I repeat myself if this has already
19 been mentioned, we can see that the fishing in the adjacent
20 areas is growing in the Convention Area; but, in the
21 Convention Area, the trend is probably the reverse one.

22 I hope that I was able to address your question.
23 Thank you very much.

24 CHAIR OXMAN: Thank you.

25 I note that we're a bit behind schedule, but this

1 has been an exceedingly useful exchange, and I would like
2 to thank all of the participants in the exchange for their
3 very helpful responses to the questions.

4 What remains are the concluding remarks of both
5 Delegations, beginning with the Russian Federation, but we
6 are scheduled to take a break, and I think it would make
7 sense to have a short break before that happens, even
8 though we're a bit behind schedule. So, that what I would
9 suggest, if it's all right with you, is that we make it a
10 10 or, if you will, an 11-minute break and that we begin
11 with the concluding remarks of the Russian Federation at
12 4:10 p.m.

13 Is that agreeable? All right. Then we'll take a
14 short break now. Thank you.

15 (Brief recess.)

16 CHAIR OXMAN: Welcome back.

17 I give the floor to the representatives of the
18 Russian Federation for their concluding remarks.

19 CONCLUDING REMARKS BY THE RUSSIAN FEDERATION

20 MR. KREMENYUK: Thank you very much, Chairperson.
21 Thank you very much, Chair. And I would like to express my
22 gratitude to this team's Members of the Review Panel and to
23 everyone who took part in this Hearing, to the observers
24 and to the participants. And I would also like to express
25 my gratitude to the PCA Secretariat for their technical and

1 logistical support to all those present.

2 When the Hearing started, at the outset, we
3 mentioned that Part 3 Article 19 on the Convention, the Law
4 of the Sea, just that the Conservation Measures should not
5 be discriminatory, neither in form nor in substance,
6 towards the fishermen of the State. When we join the
7 Convention, when we took part in the negotiations for the
8 Convention, the main aim was the preservation and
9 sustainable management of the stock, and first and foremost
10 as applied to the jack mackerel stock.

11 Unfortunately, we've heard a lot about the
12 rights, about the needs of the fishing sector. However, we
13 have not heard the main thing, what are the criteria used
14 to assess the needs? We do not doubt that the interests of
15 the industries of the Coastal States, we vote for the
16 objectivity. The results of the session this year have
17 clearly demonstrated that at least three countries, for
18 various reasons, voiced their disagreement with the
19 Conservation Measure. One of those countries is a coastal
20 country, and two other countries are not coastal countries,
21 but they're involved in the fishery of stock mackerel.

22 But each of these countries has pointed out that
23 it was prepared to keep the status quo up to the moment
24 when the unified criteria are developed. However, the
25 Commission took its Decision. In this regard, we do hope

1 that the Review Panel will study this issue in its
2 entirety. We thoroughly went through all the comments and
3 all the evaluations.

4 And yes, there are different approaches, indeed.
5 However, there is a feeling that the Commission failed to
6 assess all the considerations on this issue when it took
7 its Decision. Moreover, the Decision was based on the
8 so-called "mechanical approach" without considering the
9 particular circumstances of each countries and everything
10 those countries have done. And instead of continuing the
11 discussion and looking for a compromise, the Commission
12 took quite a hasty decision. We saw a number of issues,
13 quite objective ones, and the question should be
14 asked--should have been asked earlier, and maybe the Review
15 Panel will have to answer those questions.

16 For example, the question of (unclear) regarding
17 the accounting for transfers, how to account for them, and
18 if the disclaimer is obligatory, the conservation and
19 disclaimer obligatory or not. And what is, in fact, what
20 can they impact on the conservation of the stock? What are
21 the developing countries? What is the way to compensate
22 for their part in this Agreement? Do we need quotas which
23 are equally distributed between everyone? And the main
24 question would probably be--what were the grounds in which
25 the Russian--

1 (Lost interpretation.)

2 SECRETARY BORDAÇAHAR: Sorry to interrupt.

3 THE INTERPRETER: The Interpreter has lost the
4 sound. I apologize. For a couple of minutes I think I
5 lost the sound.

6 SECRETARY BORDAÇAHAR: The Interpreter asks if
7 you could go back a couple of minutes and resume, then it
8 should be fine.

9 MR. KREMENYUK: Right. So, the main question
10 here, was the Russian Federation right in demanding the
11 same allocation as in 2017? The Russian Federation
12 considered that allegation not very well-balanced, but it
13 still reflected the Agreements based on the goodwill of all
14 the Parties. Instead of that, we are facing a situation
15 whereby the criteria on which Article 21 is based were not
16 taken into account, and we hope that the expertise and the
17 assessment carried out by the Review Panel then may be not
18 to the full extent but in part concerning the most complex
19 issues, so the Panel would provide a well-grounded review
20 dealing not only with this particular case but with the
21 general approach of the Commission. We understand that are
22 not only jack mackerel but also other species and sedentary
23 species would become the matter of this question. And we
24 believe that their recommendation, which will be provided
25 by the Review Panel this week will also contain that part.

1 So, we do hope that the Review Panel would provide the
2 objective decision.

3 And I would like once again to express my
4 gratitude to everyone. Thank you.

5 CHAIR OXMAN: I thank the distinguished
6 representative of the Russian Federation.

7 Are there any additional comments by the Russian
8 Federation? I see none.

9 I now give the floor to the representatives of
10 the Republic of Chile.

11 CONCLUDING REMARKS BY THE REPUBLIC OF CHILE

12 MR. SEPÚLVEDA: Thank you very much, Chair.

13 In the first place, Chile would like to thank the
14 opportunity to be heard by this Panel, especially
15 considering our deep connection with the International Law
16 of the Sea, the Pacific Ocean, and the jack mackerel
17 fishery. In these concluding remarks, we would like to
18 recall that the purpose of this procedure is to analyze a
19 measure taken by the Commission of the Organisation of
20 SPRFMO, in lieu with the arguments presented throughout
21 this day.

22 It has been made clear that the allegations of
23 the Objections presented by the Russian Federation has been
24 challenged and negated. First of all, regarding the
25 procedure, it's been clear that the Commission is provided

1 with the right entitlement in order to determine the ways
2 of decision-making being the main organ, the main body of
3 the Organisation, and having the power to establish CMMs.

4 It has also been clearly proven that this
5 is--this has been a consistent practice, a historical
6 practice. We have provided information that the years in
7 which this way of decision-making has been put in place,
8 which results in a rather surprising way of seeing this
9 procedure as discriminatory, considering all of the basis
10 for the Decision that we have provided. And this is not an
11 allegation that can be made only by the Chilean Delegation.
12 It's something that has been stated by at least two other
13 Members in their respective memorandum. And it has to be
14 also taken into consideration that this is a Decision that,
15 although it has been not agreed by three Members, there are
16 other 13 Members that supported it, under the condition
17 that the Decision was made in accordance to the provisions
18 of the Convention and their respective international
19 legislation that's applicable.

20 In this sense, it's important to recall that this
21 Objection has been made under the basis that the allocation
22 for that was made considering only transfers, which is an
23 argument that has been negated throughout this whole round
24 of allegations, and which is proof also of the consistency
25 of the criteria used by the Convention in order to make

1 this Decision and to approve the CMM.

2 It's important also to recall that the same
3 criteria utilized are the same ones that have been used for
4 the 2017 CMM, and under of those circumstances no challenge
5 was posed to that Decision; and that the only additional
6 matters to be taken into consideration and that were put in
7 place, were the needs represented by Chile and by the new
8 entrants.

9 Henceforth, and as a conclusion of this
10 statement, we would like to thank the Panel for having the
11 time to carefully listen to all of the allegations that we
12 have made before, and aiming that the pronouncement should
13 recognize that the Decision made by the Commission has
14 complied with the respective applicable legislation, and
15 that it does not represent a discrimination in any form or
16 fact against any Member of the Convention.

17 Thank you very much.

18 CLOSING OF THE HEARING BY THE CHAIR OF THE REVIEW PANEL

19 CHAIR OXMAN: I thank the representatives of the
20 Republic of Chile.

21 Unless either Delegation has anything to add,
22 that will bring us to the conclusion of these proceedings.
23 I would like to express the appreciation of the Panel for
24 the very helpful presentations and responses that we have
25 heard from both Delegations and from the officers and

1 representatives of the Organisation in response to our
2 questions. I think we leave this Hearing with a much
3 better appreciation of the questions and the importance of
4 the questions that are before us. We have now several days
5 under the specific terms of the Convention to reach our
6 findings and recommendations, and we will, of course, give
7 very careful consideration to both the written and oral
8 statements and remarks that have been made by everyone
9 concerned.

10 I want to thank everyone for their cooperation,
11 for the cooperative spirit that they have shown all along,
12 and to which everyone who is present in the room here, a
13 very pleasant journey.

14 The Hearing is now closed.

15 (Whereupon, at 4:47 p.m., the Hearing was
16 concluded.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", positioned above a horizontal line.

DAVID A. KASDAN