

IN PROCEEDINGS CONDUCTED BY

**THE REVIEW PANEL ESTABLISHED UNDER ARTICLE 17 AND ANNEX II AND 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**

PROCEDURAL DIRECTIVE No. 1

REVIEW PANEL:

**Prof. Bernard H. Oxman (Chair)
Prof. Kamil A. Bekyashev
Sra. Valeria Carvajal**

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

WHEREAS the Russian Federation has invoked Article 17, objecting to the shares in the catch limit of *Trachurus murphyi* in 2013 specified in the Conservation and Management Measure for *Trachurus murphyi* (“**CMM 1.01**”) as set out in its letter dated 19 April 2013;

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

WHEREAS in accordance with Paragraph 1 of Annex II to the Convention, the Review Panel composed of Professor Bernard H. Oxman, Dr. Kamil A. Bekyashev, and Sra. Valeria Carvajal was constituted on 21 May 2013;

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

WHEREAS on 27 May 2013, the Review Panel issued the attached Procedural Timetable for these proceedings in which it fixed time limits for written submissions from the Russian Federation, the South Pacific Regional Fisheries Management Organisation, and members of the Commission (referred to as “**participants**” for present purposes);

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

1. Substance of Written Submissions

1. Without prejudice to its findings and recommendations in any respect, the Review Panel requests that, in addition to such other matters as may be considered relevant, memoranda, information and documents submitted to it in accordance with the Convention address or are pertinent to one or more of the following matters:
 - (a) Whether, apart from the question of discrimination referred to in sub-paragraph (b) below, the decision with respect to CMM 1.01 to which the Russian Federation has objected is inconsistent with the provisions of the Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement, and in this respect the basis for the decision in fact and law, the competence of the Commission to make that decision, and the competence of the Review Panel with regard that decision.
 - (b) Whether the decision with respect to CMM 1.01 to which the Russian Federation has objected unjustifiably discriminates in form or in fact against the Russian Federation, and in this respect the standard and means for determining what constitutes unjustifiable discrimination under the Convention.
 - (c) The standard and means for determining whether alternative measures are equivalent in effect to the decision with respect to CMM 1.01 to which the Russian Federation has objected, and the relevance in this respect of paragraphs 5, 6, 7, and 11 of CMM 1.01.
 - (d) Whether, with reference to subparagraphs (a) and (j) of paragraph 10 of Annex II of the Convention, the catch limit specified by the Russian Federation in its letter objecting to the decision with respect to CMM 1.01 is an alternative measure that is equivalent in effect to that decision. The Review Panel requests that the question of alternative measures be included in the matters addressed by the Russian Federation in its memorandum due by 14 June 2013.

- (e) Whether, with reference to subparagraph (b) of paragraph 10 of Annex II of the Convention, there are specific modifications to the catch limit referred to in subparagraph (d) above that would render it an alternative measure that is equivalent in effect to the decision with respect to CMM 1.01 to which the Russian Federation has objected.
- (f) Whether, with reference to subparagraph (c) of paragraph 10 of Annex II of the Convention, other alternative measures would be equivalent in effect to the decision with respect to CMM 1.01 to which the Russian Federation has objected.

2. Form of Written Submissions

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

3. Language of Written Submissions

- 3. All written submissions shall conform to the following language requirements:
 - (a) The memorandum shall be submitted in English or Russian, together with a translation into the other language, by the dates set out in the Procedural Timetable. Where absolutely necessary, the translation may be submitted no more than two business days following the relevant deadline for transmission (see also *infra* paragraph 4(g)). The submitting participant shall indicate which language is authentic.
 - (b) Subject to sub-paragraph (c), all supporting materials shall be submitted in their original language, together with a translation into English and Russian. When the participant submitting the supporting materials considers that the content of a document is not relevant in its entirety, the English and Russian translations may be limited to the relevant passages and such other portions of the document as are necessary to put such passages in context. A full English and/or Russian translation shall be provided if the Review Panel so directs or if another participant to these proceedings so requests and, in case of objection by the submitting participant, the Review Panel deems it appropriate.
 - (c) Except as otherwise determined by the Review Panel, informal English and Russian

translations will be accepted as accurate unless contested by another participant, in which case the participants concerned shall attempt promptly to reach agreement on the translation. Any ongoing translation disagreements will be resolved by the Review Panel.

- (d) Each submitting participant will bear the costs of translation of its written memorandum and supporting materials.

4. Notification of Written Submissions

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

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

bureau@pca-cpa.org
sgrimmer@pca-cpa.org

- (b) The memorandum and supporting materials shall be transmitted in searchable Adobe Acrobat PDF format whenever possible.

- (c) A copy of the memorandum (including the table of contents of the supporting materials) shall also be sent by facsimile to the following facsimile number of the PCA:

+31 70 302 4167

- (d) The PCA will immediately transmit the memorandum and supporting materials to the Review Panel and promptly make these submissions available electronically to all participants through a secure webpage, the details of which will be communicated by the PCA at the appropriate time.

- (e) On the same day as the transmission of the submission by e-mail and facsimile (or the next business day at the latest), the submitting participant shall dispatch by courier to the PCA four bound (4) hard copies of the memorandum and any supporting materials to the following address:

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

- (f) Along with every hard-copy submission, the submitting participant shall dispatch to the PCA four (4) electronic copies of the submission and any accompanying supporting materials, each on an individual USB flash drive or CDROM, if possible in searchable Adobe PDF.

- (g) Where a submitting participant transmits a Russian translation of a written submission pursuant to paragraph 3(a) above after having transmitted the English version, that translation need only be transmitted to the PCA by e-mail, facsimile, and in four (4) hard copies. The format for notification of translations of supporting materials will be addressed on a case-by-case basis.