

**OBJECTION BY THE RUSSIAN FEDERATION TO THE CONSERVATION AND MANAGEMENT  
MEASURE FOR *Trachurus murphyi***

**REVIEW PANEL CONSTITUTED IN ACCORDANCE WITH ARTICLE 17 AND ANNEX II OF THE  
CONVENTION FOR THE CONSERVATION AND MANAGEMENT OF THE HIGH SEAS FISHERY  
RESOURCES OF THE PACIFIC OCEAN**

**MEMORANDUM FROM THE REPUBLIC OF PERU**

JUNE XX, 2023

The Government of the Republic of Peru hereby submits its position with respect to the objection raised by the Russian Federation, under paragraph 6 of Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, based on the points referred to in the Russian Federation's document.

## **I. BACKGROUND**

1. The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (hereinafter referred to as the Convention) was adopted in November 2009, and entered into force on August 24, 2012.
2. The South Pacific Regional Fisheries Management Organization (SPRFMO) is an international organization established by the Convention, whose competence includes the resources of high seas species and fishery resources in the area of application of the Convention, which encompasses the waters of the South Pacific Ocean outside and beyond the areas of national jurisdiction of its Members.
3. Peru actively participated in the constitution of the SPRFMO since its inception in 2006 during the international consultation process that led to the adoption of the Convention in 2009, so much so that Peru was the fifth country to sign the Convention. Subsequently, it continued to diligently intervene in its preparatory stage and, since its entry into force, first as a Cooperating Non-Contracting Party (CNCP) and then as a Contracting Party upon the approval of Legislative Resolution No. 30386, ratified by the President of the Republic through Supreme Decree No. 071-2015-RE, whereby, as of January 21, 2016, Peru became a Full Member of this organization, with the right to voice and vote in all decision-making processes of the organization.
4. At the Eleventh Meeting of the SRFMO Commission, held from January 13 to 17, 2023, in the city of Manta, Ecuador, the Commission adopted, by majority, the Conservation and Management Measure 01-2023, according to which it established, among others, that the total allowable catch in the area of application of the Convention shall be 981,832 tons. Likewise, Table 1 was adopted referring to the allocation in tons of the catch limits of jack mackerel in the area of application of the Convention for the Members and Cooperating Non-Contracting Parties corresponding to the year 2023, as well as Table 2 which establishes the percentages of the maximum catch limit of Jack mackerel accepted for its entire range of distribution to be allocated to the Members and Cooperating Non-Contracting Parties, being that these percentages are valid until the year 2032.

## **II. THE SPECIAL SITUATION OF PERU WITHIN THE FRAMEWORK OF SPRFMO**

5. The situation of Peru in the SPRFMO is of special relevance given the particularities it presents, insofar as the maritime zones under its national jurisdiction are adjacent to the area of application of the Convention, as described in article 5 of the SPRFMO Convention.
6. In this regard, Peru is a developing coastal State which has not accepted to submit its jurisdictional waters to the competence of the Commission, but which, in the exercise

of its sovereign rights, dictates in relation to the resources existing in such waters measures compatible with those adopted by the Commission. Such measures are further supported by the best scientific information available, based on research carried out by the Instituto del Mar del Perú at different times of the year<sup>1</sup>.

7. Under the above, it is necessary to indicate that, since 2020, the SPRFMO has adopted a provision by virtue of which it is required that, in those cases in which a Member that is a coastal State that has not submitted its jurisdictional waters to the regime of Conservation and Management Measure 01 on Jack mackerel and that has adopted conservation and management measures that could exceed the quota recommended by the SPRFMO for such maritime areas, shall submit a compatibility report<sup>2</sup>.
8. In relation to the above, since 2020, Peru has been developing an extractive activity of the Jack mackerel resource fishery, complying with due reporting on the matter through the compatibility reports, which, to date, have never been subject to objections by the members of the SPRFMO, both at the level of the Scientific Committee of the SPRFMO, the Technical and Compliance Committee or the SPRFMO Commission.

### **III. ADOPTION OF CONSERVATION AND MANAGEMENT MEASURE 01-2023**

9. During the Eleventh Annual Meeting of the SPRFMO Commission, the Members discussed the revision of Conservation and Management Measure 01-2023 (*Trachurus murphyi*), with which: (i) established that the maximum allowable limit amounts to 981 832 tons in the area of the SPRFMO Convention and (ii) updated the distribution in tons of the quota or catch limits for jack mackerel in the area of application of the Convention, contained in Table 1 in accordance with the percentages contained in Table 2 of this conservation and management measure of participation of the jack mackerel resource in its range of distribution.
10. Regarding Peru, it is necessary to indicate that, with the adoption of Conservation and Management Measure 01-2023, the percentage of participation in the Jack mackerel fishery assigned to Peru on the high seas was reduced by 0.1603% (from 2.0284% to 1.8681%) in Table 2 of this Conservation and Management measure and with respect to

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<sup>1</sup> PERU'S STATEMENT ON JACK MACKEREL (ANNEX 9h). <https://www.sprfmo.int/assets/Meetings/01-COMM/11th-Commission-2022-COMM11/COMM11-Report/Annex-9h-Peru-statement-on-jack-mackerel.pdf>.

<sup>2</sup> It is relevant to set out that the obligation to submit a compatibility report, in the Conservation and Management Measure 01-2023 reads as follows:

26. Where, due to exceptional and unforeseen circumstances in the stock biomass in the inter-sessional period, coastal States that have not given their express consent under Article 20 paragraph 4 (a) (ii) establish domestic measures concerning catches of *Trachurus murphyi* in areas under their national jurisdiction that may result in exceeding such difference as indicated in paragraph 25 above, they agree to:

- a) submit to the Secretariat, as a matter of urgency and no later than 15 days after their adoption, a report explaining to the Commission how the national measures concerning the *Trachurus murphyi* fishery in areas under their national jurisdiction are compatible with those adopted by the Commission, and how they have taken into account the requirements of Article 4 paragraph 2 (a), (b) and (c) of the Convention;

the quota recommended by the SPRFMO to Peru within its national waters by 0.0028% (from 9.1% to 9.09%).

11. In this regard, in the framework of the Eleventh Meeting of the SPRFMO Commission, the Peruvian delegation issued a statement that is annexed to the Report of the Eleventh Meeting of the SPRFMO Commission in which it is indicated that the allocation of percentages contained in Table 2 is in contradiction with the provisions contained in Article 21, paragraph 1 of the SPRFMO Convention since it is not based on the application of the criteria for the allocation of percentages of participation for the resources in the area of application of the SPRFMO Convention.

**Table 1:** Tonnes in 2023 fishery as referred to in paragraph 4.

Member / CNCP	Tonnage
Belize	1,100
Chile	716,758
China	63,136
Cook Islands	1,100
Cuba	2,219
Ecuador	12,570
European Union	60,758
Faroe Islands	11,027
Korea	12,753
Panama	1,100
Peru (HS)	20,175
Russian Federation	32,649
Vanuatu	46,487
Total	981,832

**Table 2:** Percentages<sup>2</sup> related to the catches referred to in paragraph 9.

Member / CNCP	%
Belize	0.1019%
Chile	66.3665%
China	5.8459%
Cook Islands	0.1019%
Cuba	0.2055%
Ecuador	1.1639%
European Union	5.6257%
Faroe Islands	1.0211%
Korea	1.1808%
Panama	0.1019%
Peru (HS)	1.8681%
Russian Federation	3.0230%
Vanuatu	4.3044%

12. Subsequently, through Letter G38-2023, the Executive Secretariat of the SPRFMO circulated the objection submitted by the Russian Federation in accordance with article 17, paragraph 2 of the SPRFMO Convention<sup>3</sup>.

<sup>3</sup> Article 17

IMPLEMENTATION OF COMMISSION DECISIONS

2.

(a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification “the objection period”. In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.

(b) A member of the Commission that presents an objection shall at the same time:

- (i) specify in detail the grounds for its objection;
- (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and
- (iii) advise the Executive Secretary of the terms of such alternative measures.

13. In view of the above, and, in the framework of the provisions of paragraph 6 of Annex II of the SPRFMO Convention, Peru submits a Memorandum with respect to the objection formulated by the Russian Federation that is being processed under PCA Case No. 2023-33.

#### **IV. PERU'S POSITION IN RELATION TO CONSERVATION AND MANAGEMENT MEASURE 01-2023**

14. Peru, in the framework of the Eleventh Meeting of the Commission, issued a statement in which it expressed its strong rejection of the decision adopted by the SPRFMO Commission to the extent that this conservation and management measure had to be approved by majority vote. We will now proceed to explain the reasons that support that the adoption of Conservation and Management Measure 01-2023 is contradictory to the provisions of the SPRFMO Convention, as well as the fact that this decision constitutes an unjustifiable discrimination.

##### **IV.1 Contravention of the provisions of the SPRFMO Convention**

15. In accordance with article 21, paragraph 1 of the RFMO-PS Convention, the criteria for the participation of resources are established as follows:

*“Article 21*

###### *PARTICIPATION IN FISHING FOR FISHERY RESOURCES*

*1 When taking decisions regarding participation in fishing for any fishery resource, including the allocation of a total allowable catch or total allowable fishing effort, the Commission shall take into account the status of the fishery resource and the existing level of fishing effort for that resource and the following criteria to the extent relevant:*

*(a) historic catch and past and present fishing patterns and practices in the Convention Area;*

*(b) compliance with the conservation and management measures under this Convention;*

*(c) demonstrated capacity and willingness to exercise effective flag State control over fishing vessels;*

*(d) contribution to the conservation and management of fishery resources, including the provision of accurate data and effective monitoring, control, surveillance and enforcement;*

*(e) the fisheries development aspirations and interests of developing States in particular small island developing States and of territories and possessions in the region;*

*(f) the interests of coastal States, and in particular developing coastal States and territories and possessions, in a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;*

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(c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.

*(g) the needs of coastal States and of territories and possessions whose economies are dependent mainly on the exploitation of and fishing for a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;*

*(h) the extent to which a member of the Commission is utilising the catch for domestic consumption and the importance of the catch to its food security;*

*(i) contribution to the responsible development of new or exploratory fisheries in accordance with Article 22; and*

*(j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.”*

16. In this regard, from Peru's perspective, the allocation of participation percentages contained in Table 2 of Conservation and Management Measure 01-2023 has been adopted basically on the transfers of quotas that have been made in favor of some members during previous years<sup>4</sup>. This is not a valid criterion in accordance with the provisions of article 21, paragraph 1, of the SPRFMO Convention, as well as article 8 of the same Conservation and Management Measure 01-2023<sup>5</sup>. Therefore, the adoption of said measure is not supported by the provisions of the Convention and therefore constitutes an unjustified decision on the part of the SPRFMO Commission.
17. In addition to the above, although it is true that the wording of Article 21, paragraph 1 of the SPRFMO Convention establishes that these criteria shall be taken into consideration for the allocation of participation percentages, as appropriate, in the case of the adoption of Conservation and Management Measure 01-2023, a rather arduous discussion was generated regarding the need to comply with all the criteria for the allocation of *Trachurus murphyi* within the framework of the Working Group on Jack mackerel allocation, as well as in the SPRFMO Commission Meeting.
18. In this regard, in the case of the adoption of Conservation and Management Measure 01-2023, the delegation of Vanuatu made a statement attached to the Report of the Eleventh Meeting of the Commission (Annex 9f), according to which, it affirms that the proposal prepared by the Chairman of the Commission regarding the distribution of

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<sup>4</sup> PERU'S STATEMENT ON JACK MACKEREL (Annex 9h). ELEVENTH SPRFMO COMMISSION MEETING. URL: <https://www.sprfmo.int/assets/Meetings/01-COMM/11th-Commission-2022-COMM11/COMM11-Report/Annex-9h-Peru-statement-on-jack-mackerel.pdf>

*This measure generates an unfair and inequitable situation that is not based on the criteria of Article 21 of the SPRFMO Convention, instead basically takes into account the transfers of quotas that some members of the Commission have made in previous years, without this constituting a valid criteria for the allocation of quotas or for the change of the percentages of participation in the jack mackerel (*trachurus murphyi*) fishery.*

<sup>5</sup> CONSERVATION AND MANAGEMENT MEASURE 01-2023

8. By 31 December each year a Member or CNCP may transfer to another Member or CNCP all or part of its entitlement to catch up to the limit set out in Table 1, without prejudice to future agreements on the allocation of fishing opportunities, subject to the approval of the receiving Member or CNCP.

percentages was agreed by all the members and took into consideration all the provisions of Article 21 of the Convention<sup>6</sup>.

19. Such statement has been endorsed by several Members of the SPRFMO, as it is highlighted in the paragraph 58 of the Memorandum submitted by the SPRFMO on June 8th, 2023 , according to which these Members endorsed the Commission Chairman's proposal on percentage allocation (which was subsequently approved as Conservation and Management Measure 01-2023) and expressed that it did consider Article 21 of the Convention, as well as past practice in 2017 regarding the previous percentage allocation process<sup>7</sup>.
20. However, during the sessions of the Working Group for the Allocation of Jack Mackerel, constituted within the framework of the Eleventh Meeting of the SPRFMO Commission, it did not defined how the proposals containing the percentage allocations were in accordance with the criteria contained in Article 21, paragraph 1, of the SPRFMO Convention, neither the reasons that could justify the allocation of a given percentage for each of the Members<sup>8</sup>.

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<sup>6</sup> VANUATU'S STATEMENT ON JACK MACKEREL (Annex 9f). URL: <https://www.sprfmo.int/assets/Meetings/01-COMM/11th-Commission-2022-COMM11/COMM11-Report/Annex-9f-Vanuatu-statement-on-quota-allocation-JM.pdf>

*Vanuatu supports the Chair's proposal because it is firmly based on the 2017 allocation that was agreed by all members and which was recognized as having taken into account all of the provisions of Article 21 of the Convention.*

*(...)*

*Vanuatu would therefore reiterate that the Chair's proposal is built upon the agreed 2017 quota allocation and that the two deviations from the current allocation are firmly based on the provisions of Article 21 of the Convention, which in Vanuatu's view has been appropriately complied with.*

<sup>7</sup> MEMORANDUM TO ASSIST THE 2023 REVIEW PANEL ESTABLISHED UNDER ARTICLE 17 OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN TO CONSIDER THE OBJECTION BY THE RUSSIAN FEDERATION TO THE CONSERVATION AND MANAGEMENT MEASURE FOR TRACHURUS MURPHYI (CMM 01-2023)

*58. Many Members supported Vanuatu's statement and expressed that the proposal does consider Article 21 and also reflects past precedence such as the 2017 allocation arrangement and the past allocations to new entrants. They noted that a significant biomass of jack mackerel is concentrated in Chilean waters. They expressed that, except for the new entrants and the increase to Chile, the remaining increases were allocated proportionately. These Members noted that claims of inconsistency with Article 21 had not been substantiated whereas claims of consistency with Article 21 had been substantiated.*

<sup>8</sup> PERU'S STATEMENT ON JACK MACKEREL (Annex 9h). ELEVENTH SPRFMO COMMISSION MEETING. URL: <https://www.sprfmo.int/assets/Meetings/01-COMM/11th-Commission-2022-COMM11/COMM11-Report/Annex-9h-Peru-statement-on-jack-mackerel.pdf>

*Peru expresses its strong opposition to the decision adopted by the Commission, which has placed us in the situation of having to vote, together with other delegations, against it. This decision particularly affects Peru, as a State Party to the Convention for the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the SPRFMO Convention), which has not given its express consent to submit its jurisdictional waters to the competence of the Commission, a circumstance that has not been duly taken into consideration now and neither on previous occasions.*

21. Therefore, from Peru's point of view, this unjustified decision generates an evident prejudice to our country. Indeed, as was made clear at the Eleventh Meeting of the Commission, the Jack mackerel fishery is of vital importance for Peru because it guarantees food security for its population, since 100% of jack mackerel catches are destined for direct human consumption and this resource is used to reduce the high rates of malnutrition in the infant population. In addition, it must be highlighted that this fishery serves as an economic sustenance for our artisanal fishermen, aspects that corresponds to criteria reflected in the subsections f), g) and h) of Article 21, paragraph 1 of the SPRFMO Convention.

#### **IV.2 Unjustifiable discrimination**

22. On the other hand, it is noted that the adoption of Conservation and Management Measure 01-2023 constitutes a case of unjustifiable discrimination, for which we will proceed to develop the scopes of the concept of unjustifiable discrimination and its application in the case of Peru.
23. In order to develop the concept of unjustifiable discrimination, it is necessary to take into consideration the reports of recommendations and conclusions issued by the previously established Review Panels. In this regard, in the case of the objection filed by Ecuador in 2018, the Review Panel that heard this case indicated, in paragraph 99 of its recommendations, the following regarding unjustifiable discrimination:

*"99. As regards the meaning of "unjustifiable discrimination" in Article 17(2)(c), the reference to "in form or in fact" reflects the different ways in which discrimination can occur.<sup>159</sup> These words include not only direct discrimination (including discrimination as regards procedure), but also measures which, although they are not overtly discriminatory, have an effect, substantive result, or outcome that is discriminatory."*

24. In relation to procedural discrimination, according to the Review Panel that resolved the objection filed by Ecuador in 2018, it noted that this consists of:

*"106. (...) That said, for there to be unjustifiable discrimination in the procedures relating to allocation, there would for example need to be treatment of Ecuador which was clearly inconsistent with the treatment of other similarly placed Members, or some unreasonable requirements made of Ecuador but not applied to other Members."*

25. Likewise, for the case of discrimination in the result, in the opinion of the review panel that heard the objection filed by Ecuador in 2018, this concept has been developed as follows:

*"108. (...) Therefore, although a sustained failure to increase Ecuador's allocation over a longer period of time might amount to discrimination in result absent*

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*This measure generates an unfair and inequitable situation that is not based on the criteria of Article 21 of the SPRFMO Convention, instead basically takes into account the transfers of quotas that some members of the Commission have made in previous years, without this constituting a valid criteria for the allocation of quotas or for the change of the percentages of participation in the jack mackerel (*Trachurus murphyi*) fishery.*



*other legitimate reasons for it, in the Panel's view that point has not yet been reached."*

26. Based on the above, the following section will proceed to address the arguments that support our position on the unjustifiable discrimination committed against Peru with the adoption of Conservation and Management Measure 01-2023, with respect to its allocated quota at sea, as well as that quota recommended by the RFMO-SP in accordance with the provisions of Article 25 of RFMO-SP Conservation and Management Measure 01-2023.

#### **IV.2.3. Discrimination in the case of Peru**

27. For the specific case of Peru, it is observed that an affectation has been evidenced both in the quota assigned to it on the high seas, as well as in the case of the quota recommended by the SPRFMO in waters under Peruvian national jurisdiction. For this purpose, both cases will be developed in a differentiated manner.

##### **IV.2.3.1. Discrimination Quota allocated to Peru**

28. In order to argue that the adoption of Conservation and Management Measure 01-2023 constitutes unjustified discrimination, it is necessary to recount the constant reductions in the quota allocation made to Peru, from 2013 to date.
29. In this regard, in 2013, with the adoption of Conservation and Management Measure 1.01, Peru was allocated a total of 18 636 tons out of a total of 360 000 tons, i.e., Peru had a percentage of participation of the horse mackerel resource of 5.1766%.
30. For its part, in 2014, with the adoption of Conservation and Management Measure 2.01, a reduction of the quota allocated to Peru was made, granting 4 238 tons out of a total of 390 000 tons, constituting a reduction to 1.0866%, which, was strongly opposed by Peru through a statement that appears as an Annex to the Report of the Second Meeting of the Commission of the SPRFMO, instance in which that decision was approved<sup>9</sup>.
31. For its part, in the framework of the Third Meeting of the SPRFMO Commission (2015), Peru was granted a total of 7, 400 tons out of a total of 410, 000 tons equivalent to 1.8048% of the participation percentages, which was also replicated in 2016.
32. Also, in the framework of the Sixth Meeting of the SPRFMO Commission (2017), Conservation and Management Measure 01-2017 was adopted, under which Peru was allocated a total of 10, 000 tons, which represents 2.0284% of a total of 493,000 tons and would remain in force until 2021.
33. For the year 2021, by an agreement of the members of the Commission and due to the pandemic generated by COVID-19, it was agreed that the distribution of percentages would be discussed in the year 2023.
34. Finally, at the Eleventh Meeting of the SPRFMO Commission, the Conservation and Management Measure 01-2023 was adopted by majority vote, establishing that the

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<sup>9</sup> STATEMENT BY PERU. SECOND SPRFMO COMMISSION MEETING (2014). URL: <https://www.sprfmo.int/assets/Meetings/Archived-Meetings/Meetings-2013-plus/Commission-Meetings/2nd-Commission-Meeting-2014-Manta-Ecuador/Annex-I-Statement-by-Peru.pdf>.

percentage of participation in the high seas fishery for Peru corresponded to 1.8681% of a total of 1 080,000 tons, which is equivalent to 20,175 tons.

35. In this sense, there is an unjustifiable discrimination for the case of Peru, since, from the review of the SPRFMO practice regarding the horse mackerel resource, at the beginning it had a percentage of 5.1766% assigned, which was subsequently diminished in 2014 and progressively increased; however, it has again been affected with the decision adopted with the Conservation and Management Measure 01-2023 which has reduced the percentage of participation assigned to Peru to 1.8681%.
36. Therefore, from Peru's perspective, the decision adopted by the SPRFMO Commission has a discriminatory effect, consequence or result. This is so, because the result of the allocation made by the Commission in the aforementioned Conservation and Management Measure 01-2023 (adopted at the Eleventh Meeting of the SPRFMO Commission) entails unequal treatment vis-à-vis other members of the SPRFMO.

#### **IV.2.4. The effect of Conservation and Management Measure 01-2023 on the recommended quota or "unallocated" quota**

37. As explained in section II of this document, Peru has invoked Article 20, paragraph 4, subparagraph a, paragraph (ii) of the SPRFMO Convention in order not to give its express consent to submit its jurisdictional waters to the regime of Conservation and Management Measure 01; however, the SPRFMO has contemplated a clause in the versions of Conservation and Management Measure 01-2020 onwards that establishes a recommended quota, which consists of the difference between the amount of catch for the zone of application of the SPRFMO Convention and the range of distribution of the resource<sup>10</sup>, which up to 2022 has corresponded to a 9.1% of the percentage of participation of the jack mackerel fishery in the resource distribution range.
38. In this context, it is discriminatory that Peru, being the only Member that is a coastal State that, in the exercise of its sovereignty, has not given its express consent to submit its maritime zones under national jurisdiction to the SPRFMO regime, the quota recommended by said international organization is reduced by 0.0028% in order to favor the demands of Chile regarding the increase of its quota or the demands of members such as the Cook Islands, Panama and Belize.

#### **V. PERU'S POSITION IN RELATION TO THE OBJECTION RAISED BY THE RUSSIAN FEDERATION**

39. In this regard, it should be noted that the objection raised by the Russian Federation argues, inter alia, that the increase in the percentages of participation of one Member to the detriment of another, without the latter having given its express consent, constitutes unjustified discrimination; however, the objection of the Russian Federation

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<sup>10</sup> CONSERVATION AND MANAGEMENT MEASURE 01-2023

25. Acknowledging the duty to cooperate to promote and ensure that CMMs established for the high seas and those adopted for areas under national jurisdiction are compatible, as required by Article 4 paragraph 2 and Article 8 (f) of the Convention, coastal State Contracting Parties participating in the *Trachurus murphyi* fishery in areas under national jurisdiction that have not given their express consent under Article 20 paragraph 4 (a) (ii), will undertake their utmost efforts to restrain from authorising catches that exceed the difference between the amount agreed in paragraph 9 of this CMM and the total catch allocated in paragraph 4 of this CMM.

does not specify to which Members the percentage should be reduced in order to satisfy its demand.

40. In view of the above, it is pertinent to point out that the alternative measure presented by the Russian Federation must be consistent with the arguments put forward by that Member in its objection. Consequently, since the Russian Federation states that it is discriminatory to increase the percentage of participation of one SPRFMO Member to the detriment of another, without the latter having given its prior consent, it would be necessary that, in the event that the objection of Russia is accepted by the Review Panel, the final decision does not affect the other members that were prejudiced in their percentages and that also did not give their consent for such purpose.

## **VI. CONCLUSIONS**

41. In view of the above, it is noted that the adoption of Conservation and Management Measure 01-2023 has been issued in contravention of Article 21, paragraph 1 of the RFMO-PS Convention, since it is based on criteria that are not contemplated in said norm.
42. Additionally, Conservation and Management Measure 01-2023 constitutes an unjustified discrimination as it implies the increase of the percentage in favor of one Member to the detriment of others, without the latter having given their express consent for such purpose.
43. Finally, with respect to the objection presented by the Russian Federation, it is necessary to indicate that, in accordance with the provisions of this objection, if it is accepted by the Review Panel, it should not affect the other Members that did not consent to the reduction of their percentages of participation, such as Peru, in favor of other Members.