

South Pacific Regional Fisheries Management Organisation

To: Permanent Court of Arbitration

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Information Paper for 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 to consider the Objection by the Russian Federation to the Conservation and Management Measure for *Trachurus murphyi* (CMM1.01)

Signed by:



Robin Allen
Acting Executive Secretary



Bill Mansfield
Chairperson of the Commission

South Pacific Regional Fisheries Management Organisation

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Background to the establishment of the SPRFMO

1 In 2006 Australia, Chile and New Zealand identified that there was a gap in the conservation and management of non-highly migratory fisheries and protection of biodiversity in the marine environment in the high seas areas of the South Pacific Ocean. While several states had already targeted these species on the high seas and continued to do so, the area in question was not covered by an organisation with the competence to establish appropriate conservation and management measures.

2 As a result, in 2006 negotiations began to establish an organisation that would work to ensure the long-term conservation and sustainable use of fish stocks and to protect biodiversity in the marine environment. In the following three years, eight rounds of International Consultations were held to negotiate the agreement that would establish the proposed South Pacific Regional Fisheries Management Organisation (the SPRFMO).¹ All states and fishing entities with a history of fishing in the area to be covered by the new agreement were invited to participate in the negotiations and a number of others joined as the negotiations continued.

3 On 14 November 2009, the *Convention on the Conservation and Management of High Seas Resources of the South Pacific Ocean* (the [Convention](#)) was adopted. In the Final Act of the International Consultations, recording the adoption of the Convention, the Eighth Meeting of the International Consultations decided that a Preparatory Conference should be convened to make arrangements for the smooth entry into force of the Convention and adopted a resolution to that end². The Preparatory Conference was convened by the Depositary of the Convention and three sessions were held.³ The Final Report of the Preparatory Conference was adopted on 3 February 2012 and was presented to the first meeting of the Commission ([Final Report of the Preparatory Conference](#)) following the entry into force of the Convention on 24 August 2012. The Commission currently has 11 members (Australia, Belize, Republic of Chile, Cook Islands, Republic of Cuba, European Union, Kingdom of Denmark in respect of the Faroe Islands,

¹ The rounds were held in: Wellington, New Zealand, 14-17 February 2006 ([First Meeting Report](#)); Hobart, Australia, 6-10 November 2006 ([Second Meeting Report](#)); Renaca, Chile, 30 April-4 May 2007 ([Third Meeting Report](#)); Noumea, New Caledonia, 10-14 September 2007 ([Fourth Meeting Report](#)); Guayaquil, Ecuador, 10-14 March 2008 ([Fifth Meeting Report](#)); Canberra, Australia, 6-10 October 2008 ([Sixth Meeting Report](#)); Lima, Peru, 8-22 May 2009 ([Seventh Meeting Report](#)); New Zealand, 8-14 November 2009 ([Final Act](#)).

² The functions of the Preparatory Conference are specified in the [Resolution Establishing a Preparatory Conference](#).

³ The sessions were held in: Auckland, New Zealand, 19-23 July 2010 ([Auckland Meeting Report](#)); Cali, Colombia, 24-28 January 2011 ([Cali Meeting Report](#)); Santiago, Chile, 30 January-3 February 2012 ([Santiago Meeting Report](#) and [Final Report of the Preparatory Conference](#)).

Republic of Korea, New Zealand, Russian Federation, and Chinese Taipei)⁴ and the first Commission meeting took place from 28 January to 1 February 2013 in Auckland, New Zealand.

4 An overview of the development of the Convention text, the interim measures and the establishment of the Science Working Group (SWG) and the Data and Information Working Group (DIWG) can be found in the [Final Act](#), the [Resolution Establishing a Preparatory Conference](#) and the [Final Report of the Preparatory Conference](#). The Report of the First Meeting of the Commission was adopted on 1 February 2013 ([Meeting Report](#)).

SPRFMO and Chilean Jack Mackerel

5 There were a number of fisheries for non-highly migratory fish in the high seas of the South Pacific, in respect of which no international management agreements existed before the establishment of the SPRFMO. Among these, the most important were for Chilean jack mackerel (*Trachurus murphyi*) and some associated pelagic species; squid, mostly Jumbo flying squid (*Dosidicus gigas*) in the east and flying squid (*Nototodarus spp*) in the west; and the deep water fisheries by bottom trawl and line for species such as orange roughy (*Hoplostethus atlanticus*) and bluenose (*Hyperoglyphe antarctica*). The full history of catches of non highly migratory species reported to the SPRFMO can be found in the SPRFMO data report ([Data Submitted to the Interim Secretariat](#)).

6 In 2007 more than 2,000,000 tonnes (t) of Chilean jack mackerel were taken from the exclusive economic zones (EEZs) of Chile, Peru and Ecuador and in the adjacent high seas, by the coastal countries and distant water fleets from Belize, China, European Union, Faroe Islands, Korea, and Vanuatu. In the same year more than 600,000 t of Jumbo flying squid were taken from the South Pacific by vessels from Chile, China, Peru and Chinese Taipei. About 3,000 t of fish were taken from the high seas by bottom fishing methods by vessels from Australia, Belize, Chile, China, European Union and New Zealand. The conservation and management issues in the high seas of the South Pacific of most immediate interest to the participants in the International Consultations related to the sustainable management of the Chilean jack mackerel and the prevention of damage to vulnerable marine ecosystems by bottom fishing. Both of these issues were

⁴ The People's Republic of China ratified the Convention on 6 June 2013 and accordingly will become the 12th member of the Commission on 6 July 2013.

the subject of interim management measures by the International Consultations and the Preparatory Conference.

7 There are other species of jack mackerel that occur in the South Pacific leading to some confusion in nomenclature in the early years. The first [Interim Management Measures](#) adopted by the International Consultations at the 3rd meeting in 2007 referred generally to Pelagic Fisheries, even though there was only one significant pelagic fishery in the area, for Chilean jack mackerel. The 2009 Revised Interim measures for Pelagic Fisheries, the 2011 Interim Measures for Pelagic Fisheries, and the 2012 Interim Measures for Pelagic Species applied only to *Trachurus* species. The Conservation and Management Measure for *Trachurus murphyi* (CMM 1.01) is more accurately restricted in its application to *Trachurus murphyi*. However, in practice the Interim Measures that applied to pelagic fisheries and the CMM 1.01 were all intended to be directed at the same fishery. It should be noted that the nomenclature was further complicated by the use of other common names for jack mackerel by some participants, in particular "horse mackerel".

Data collection

8 From an early stage in the [International Consultations](#) the importance of having adequate data to support stock assessment and as a basis for conservation and management was recognized. The DIWG was established at the 1st meeting of the International Consultations and standards for the collection, reporting and exchange of data were adopted at the [3rd meeting](#) of the International Consultations in 2007 ([2007 Data Standards](#)). These standards were very detailed in respect of information that was to be collected by participants, even compared to those for existing regional fisheries management organisations (RFMOs), however there was some initial uncertainty about the detail and format in which the data were to be reported to the Interim Secretariat. The 2007 standards provided specifications for the principal fishing methods, trawl, purse-seine, and bottom longline. Other fishing methods were added in subsequent revisions. The 2012 revision of the Data standards ([2012 Data Standards](#)) provided that participants were not only to collect the detailed data from each fishery but also to report the detailed data to the Interim Secretariat. The importance the Members place on timely submission of high quality, detailed data is reflected in the adoption of the Standards for the Collection, Reporting, Verification and Exchange of Data ([CMM 1.03](#)) at the first Commission Meeting in February 2013.

The fishery for Chilean jack mackerel

9 Figure 1 shows catches of Chilean jack mackerel in the South-eastern Pacific from 1993 to 2012. Catches had been increasing throughout the 1980s and reached a peak in 1995 of about five million t, most of which was taken by Chile. Peru and Ecuador also had a long standing fishery within their EEZs. Subsequently the coastal countries' catches declined precipitately to 1999 and then stabilised until 2007 when they started to decline again. After 2000, distant water fishing countries (Belize, China, European Union, Faroe Islands, Korea, Russian Federation and Vanuatu) entered (or re-entered) the fishery with rapidly increasing fishing effort and catch until 2007. This was then followed by a sharp decline of catches.

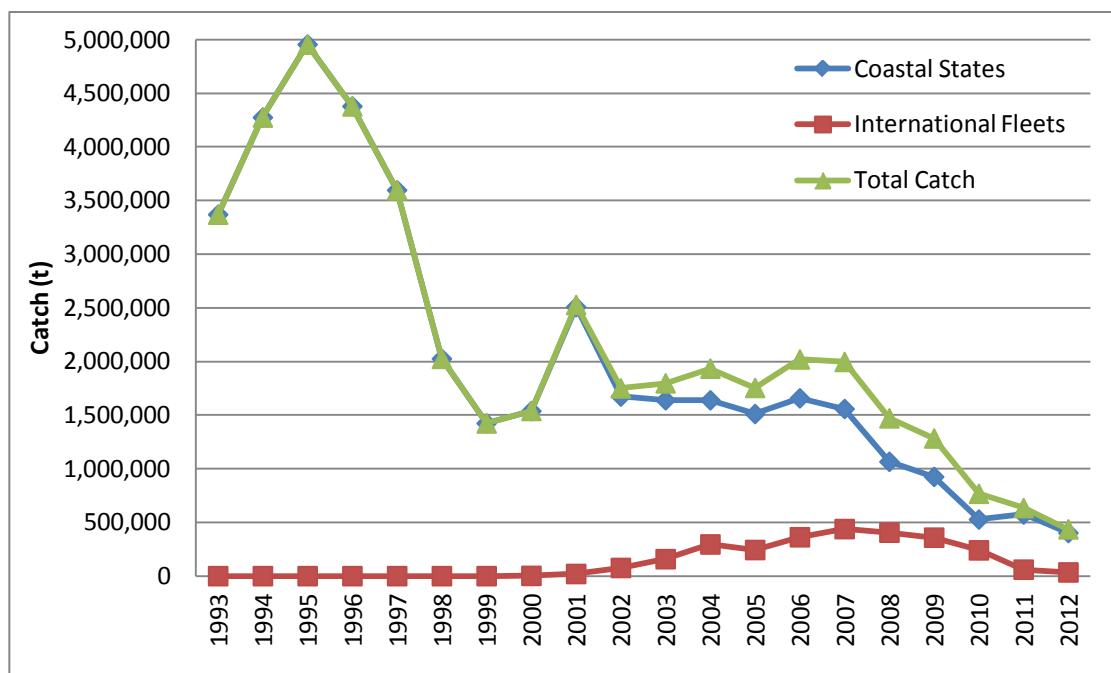


Figure 1: Catch of jack mackerel in the South-eastern Pacific 1993-2012

Stock assessment and management during the interim period

10 The International Consultations established the [SWG](#) at its first meeting, whose initial activity was to describe the fisheries of the area and to prepare species profiles. At the [3rd meeting of the SWG](#) in 2007, the Chilean delegation presented an assessment ([SPRFMO-III-SWG-18](#)) for an assumed stock in an area including the Chilean EEZ and ranging out to 105°W which suggested that the stock was fully exploited. The 3rd meeting of the International Consultations supported the establishment of a separate [jack mackerel subgroup](#) which would be responsible for jack mackerel research and stock assessment.

11 The 2007 [Interim Management Measures](#) were also adopted at this meeting. These Interim Measures were in two parts, the first referring to Pelagic Fisheries and the second to Bottom Fisheries. The Measures for Pelagic Fisheries excluded squid, and so the only significant fisheries they addressed were the purse-seine and mid water trawl fisheries targeting Chilean jack mackerel. The motivation for these measures was the rapid growth in fishing effort for jack mackerel in the high seas off the coast of Chile. The measures attempted to control the growth of fishing effort by limiting the total of gross tonnage of vessels flying their flag fishing for pelagic stocks in 2008 and 2009 to the levels of total gross tonnage recorded in 2007 in the Area. However, the measure also allowed coastal and fishing states with a catch history in the pelagic fisheries in the South Pacific that did not fish in 2007, to enter the fishery in the Area in 2008 and 2009 exercising voluntary restraint of fishing effort. Participants agreed to communicate the total level of gross tonnage recorded in the Area in 2007 for those vessels flying their flag that were actively fishing in 2007 to the interim Secretariat by 1 January 2008. In notifying this information, Participants agreed to verify the effective presence of their vessels in the Area in 2007 through vessel monitoring system (VMS) records, catch reports, port calls or other means. The interim Secretariat was to have access to such information upon request.

12 As there was at that time no agreed understanding of the status of the stocks of Chilean jack mackerel, the Interim Measures provided that in 2009, the SWG would give advice on the status of the pelagic stocks.

13 The [fifth meeting](#) of the SWG in March 2008 reviewed a further Chilean stock assessment and in its [report](#) noted concerns about the declining state of the jack mackerel stock. A [jack mackerel stock structure and assessment workshop](#) was held in July 2008 to develop working hypotheses for the stock structure of jack mackerel stock and to consider assessment requirements, the former being seen as a necessary step before assessment could be carried out. The meeting noted that it was required to give advice on stock status in 2009, but expressed concern that it did not have all the data required to undertake assessments, referring to detailed data which had been provided by participants to the Interim Secretariat but which were kept confidential and standardized catch per unit effort information, which had not previously been requested. Both issues were subsequently addressed. In the absence of agreed stock assessments, the [8th meeting](#) of the SWG (November 2009) used a comprehensive review of the fishery and other indicators as a basis for [advice](#) to the International Consultations. This

advice concluded that the indicators showed that fishing mortality was likely to have exceeded sustainable levels since at least 2002, and continued to do so. The then current biomass levels were substantially below levels at the peak of the fishery in the 1990s and, as a result of recent poor recruitment, were highly likely to be still declining. Low recruitment, low and declining spawning and total biomass, low and declining spawning biomass per recruit and landings in excess of surplus production all indicated that further declines in stock status were likely unless fishing mortality was reduced, particularly if recruitment remained poor. To stop further declines and re-build the jack mackerel stock, urgent and adequate measures were required to limit fishing mortality to sustainable levels. Indicators suggested that this would require a decrease in fishing mortality and, given the decline in estimated biomass, a decrease in fishing mortality would require a reduction in total removals.

14 In response the 8th meeting of the International Consultations adopted the [2009 Revised Interim Measures](#) for Pelagic Fisheries in which participants agreed to voluntarily restrain⁵ their catches for 2010 and subsequently until the Convention entered into force to the levels they recorded in 2007, 2008, or 2009.

15 The first stock assessment for Chilean jack mackerel by the SWG was carried out at its [9th meeting](#) in October 2010 with the [conclusions](#) that:

- Jack mackerel catches had declined steadily since 2006, and continued to decline in 2010, with provisional (to September) 2010 catches being at the lowest level since 1976. There was close agreement on the then current biomass levels between all of the assessment models used. Assessment results indicated that total biomass had declined by 79% since 2001 to 2.1 million t, the lowest level in the history of the fishery. Current total biomass levels were estimated to be 9% - 14% of the biomass which would have existed if there had been no fishing.
- Estimated average recruitment over 2005 – 2009 had only been 30% of long-term average recruitment. There had been an appearance of small (20 cm) fish in 2010 catches in a number of regions and fisheries which might have signalled the start of a period of increased recruitment towards higher average levels.
- However, past recruitment histories and auto-correlation between annual recruitment indicated that recruitment increase would be gradual. It was

⁵ Participants with a catch history in the *Trachurus* species fisheries in the South Pacific, but not exercising such fisheries activities in 2007 or 2008, and who communicated to the Interim Secretariat by 31 December 2009 the GT¹ of vessels flying their flag that entered the fishery in 2009, agree to voluntarily restrain in 2010 catches by such vessels flying their flag in the Convention Area.

therefore likely that recruitment in 2011 would be closer to the recent 5-year average recruitment, than to higher 10-year average recruitment.

- Under 5-year average recruitment, for the base case assessment, there was a 100% probability that biomass would continue to decline at 2010 catch levels (711,783 t), with projected biomass in 2020 of 10% of the then current biomass. At 75% of 2010 catches, there was a 54% chance that biomass would continue to decline, with projected biomass in 2020 of 97% of the then current biomass. At 50% of 2010 catches, all models indicate that biomass would increase to about double the then current biomass.
- Given the current low biomass, and the high likelihood of rapid further declines at 2010 catch levels, immediate catch reductions would be required to prevent further biomass decline and provide some possibility of rebuilding.

16 In response the [2nd meeting](#) of the Preparatory Conference adopted the [2011 Interim measures](#) for Pelagic Fisheries which provided that participants would limit 2011 catches to 60% of those in 2010, and in principle, 2012 catches would be reduced to 40% of those in 2010. Later stock assessments at the 10th and 11th meetings of the SWG provided essentially the same results as those from the 9th meeting and the reduction to 40% of 2010 catches was agreed at [the 3rd meeting](#) of the Preparatory Conference in the [2012 Interim Measures](#) for Pelagic Fisheries.

A chronological record of the controversy concerning the vessel *Lafayette*

17 On 22 July 2009 the Russian Federation advised the Interim Secretariat by email⁶ that it had authorised four vessels to fish in the SPRFMO Area in 2009; this email was followed up with a fax⁷ dated 6 August 2009 containing the same information. On 16 September 2009 the Russian Federation confirmed via email⁸ that those four vessels had all been active in the SPRFMO Area during 2009; tow-by-tow information for 2008 was sent in the same email⁹.

18 On 5 November 2009 (during the [8th SWG](#)) the Interim Secretariat received an email¹⁰ from the Russian Federation noting that "*more vessels authorized to fish in 2009*

⁶ See Supporting Material 1

⁷ See Supporting Material 2

⁸ See Supporting Material 3

⁹ Actual operational tow-by-tow data and VMS records are not included in the supporting material due to the need to maintain the confidentiality of data that Members have provided. Refer [CMM 1.03](#) 8(c).

¹⁰ See Supporting Material 4

but not entered fisheries yet". On 17 November 2009 the Interim Secretariat received a fax¹¹ from the Russian Federation advising that the vessel *Lafayette* would fish for "Horse Mackerel"¹² in the SPRFMO Area in the 2009 season. The Interim Secretariat saw a news item¹³ on 19 November 2009 stating that the *Lafayette* was a mother ship or processing vessel. The Interim Secretariat also saw material confirming this on publically accessible web sites such as vessel tracker (www.vesseltracker.com).

19 On 25 November 2009 the Interim Secretariat wrote an email¹⁴ to the Russian Federation thanking them for the fax received 17 November 2013. The email referred to a news item similar to that referred to in paragraph 18 above and asked the Russian Federation to confirm if the *Lafayette* would fish as a midwater trawler during 2009 or whether the vessel would perhaps be better described as a fish processing vessel. The Russian Federation replied via email¹⁵ on 10 December 2009 and confirmed that the *Lafayette* would fish as a midwater trawler during 2009.

20 On 10 December 2009 the Russian Federation advised the Interim Secretariat by fax¹⁶ that the fishing vessel *Atlantida* had been fishing for "Horse Mackerel" in the SPRFMO Area during the 2009 season. On 30 December 2009 a similar fax¹⁷ from the Russian Federation was received by the Interim Secretariat which stated that the *Lafayette* was actively fishing for "Horse Mackerel" in the SPRFMO Area during the 2009 season.

21 On 2 January 2010 the Executive Secretary circulated¹⁸ a table (2010_0001¹⁹) showing the number and total Gross Tonnage of vessels that had actively fished for the *Trachurus* species during 2009 in the SPRFMO Area. At that stage only two participants had supplied Gross Tonnage information (Faroe Islands and the Russian Federation). The Faroe Islands had verified the effective presence of their vessel using catch reports,

¹¹ See Supporting Material 5

¹² The species being managed by CMM 1.01 is *Trachurus murphyi*. *T. murphyi* has various common names including Chilean jack mackerel, Peruvian jack mackerel, Horse mackerel and Jurel). Previous communications with the Russian Federation indicated that the term Horse Mackerel did in fact refer to the species *T. murphyi*, this assumption was later confirmed by comparing Russian Federation submissions with Russian Federation National reports. Refer to [SP-07-SWG-JM-02](#) for an in depth description of *T. murphyi*

¹³ See Supporting Material 6

¹⁴ See Supporting Material 7

¹⁵ See Supporting Material 8

¹⁶ See Supporting Material 9

¹⁷ See Supporting Material 10

¹⁸ Note the term circulated indicates that the letter/email was made available to all participants by the Executive Secretary.

¹⁹ See Supporting Material 11

in accordance with the 2007 Interim Measures. The effective presence of the Russian Federation vessels had not yet been verified.

22 In a letter (2010_0002²⁰) which the Executive Secretary circulated on 8 January 2010, the Chilean authorities *"stress[ed] that according to the revised Interim Measures both VMS records and catches reports, are required to be submitted to the Interim Secretariat for verification of the effective presence of vessels in the area in 2009"*. Chile asked the Interim Secretariat to collect this information from relevant participants. The Executive Secretary circulated a request for these data within the same email.

23 On the 23 January 2010 French authorities in Papeete sent an email²¹ to the Executive Secretary advising that they would be conducting an inspection of the *Lafayette* and asking if there were *"particular regulations applying to this vessel according to SPRFMO?"* The Executive Secretary replied the same day via email²² informing the French that the vessel had been listed as one of the vessels that actively fished *Trachurus* species in the SPRFMO Area during 2009 and stating *"It would be very useful if your investigation could confirm that information, for example, by catch records or the presence of appropriate fishing gear"*.

24 On 28 January 2010 via email²³ the Papeete authorities sent the Executive Secretary an image of the *Lafayette*, Ship's particulars, a sketch that appeared to outline pair trawling operations using the *Lafayette* and a copy of the authorities' report (in French) detailing the inspection of the *Lafayette* conducted on 24 January 2010. The accompanying email said that *"The captain of the vessel considers that he is a master of a "fishing vessel" but we did not find any fishing gear or fishing equipment on board"* and *"an experimental fishing campaign will be organized soon but the captain is not sure, contrary to the Scottish engineer on board, of the result"*. This information was not consistent with reports from the Russian Federation which had reported that the vessel had already been fishing in the SPRFMO Area during late 2009. The Executive Secretary replied via email²⁴ and asked the Papeete authorities if they had any other information *"such as log information showing evidence of fishing, the most recent port call"*.

25 On 30 January 2010 (via email²⁴) the Papeete authorities sent the Executive Secretary some additional documents including a Port of call list, an Equasis

²⁰ See Supporting Material 12

²¹ See Supporting Material 13

²² See Supporting Material 14

²³ See Supporting Material 15

²⁴ See Supporting Material 16

(www.equasis.org) ship search report, and three images of new unused equipment aboard the *Lafayette*. The Papeete authorities stated that the port of call list showed that the *Lafayette* "was on scale in China, South Korea and Solomon Islands, far from areas in South Pacific where jack mackerels are fished". The Equasis ship search identified the *Lafayette* as a "Crude oil Tanker" and according to the Papeete authorities "Photos attached show clearly that the vessel has never fished (no cable astern on the 60 Tons fishing winch, no fishing equipment, all factory equipment new on board)". The Executive Secretary concluded that this material from the French authorities showed that the vessel could not have fished in December 2009.

26 From 31 January 2010, the Interim Secretariat began to receive hourly VMS²⁵ reports by email²⁶ for the *Lafayette*. These reports continued until 14 October 2010 and showed that the *Lafayette* was in the South-eastern part of the SPRFMO Area during 2010 (note that the Interim Secretariat did not receive 2009 VMS records for the *Lafayette* until April of 2010, as explained in the following paragraphs).

27 On 16 February 2010 the Executive Secretary wrote to the Russian Federation (2010_0008²⁷) requesting specifically *that the effective presence of 'Lafayette' in the Area in 2009 is confirmed by the submission of either VMS records, catch reports, port calls or other means* at the earliest convenience.

28 On 17 February 2010 the Executive Secretary decided²⁸ that the *Lafayette* would not be included *"in the list of vessels actively fishing on the basis that our information to date indicates that it was not actively fishing at the time we were advised it was (2009)"*.

29 On 26 March 2010 the Executive Secretary wrote to the Russian Federation (2010_0012²⁹) following up on the request dated 16 February 2010. The Executive Secretary's letter drew attention to the table available via the SPRFMO website which listed the gross tonnage of vessels that actively fished for *Trachurus* species during 2009. The letter also included the paragraph:

*I now wish to advise you that we have been provided with a copy of a report from an inspection of the *Lafayette* when it called at Papeete in January of this year. The inspection found no fishing gear onboard the vessel. Also since being flagged as a vessel of the*

²⁵ Actual operational tow-by-tow data and VMS records are not included in the supporting material due to the need to maintain the confidentiality of data that Members have provided. Refer [CMM 1.03](#) 8(c).

²⁶ See Supporting Material 17

²⁷ See Supporting Material 18

²⁸ See Supporting Material 19

²⁹ See Supporting Material 20

*Russian Federation in August 2009, the vessel had been in in China, South Korea and the Solomon Islands, some distance from the fishery for *Trachurus* species. That supports my initial view that the vessel should not be included in the web site table of vessels that actively fished for *Trachurus* species in 2009.*

30 On 3 April 2010 the Russian Federation sent an email³⁰ to the Interim Secretariat which contained 2009 VMS records for the *Lafayette*. The VMS positions were mapped and showed that the *Lafayette* was in a high-seas enclave area near the Federated States of Micronesia on the Western side of the SPRFMO Area during the final four days of December 2009. On the basis of this information, the Executive Secretary wrote an email³¹ to the Russian Federation on 7 April 2011 and advised them that they would “*include the *Lafayette* in the list of vessels that were actively fishing *Trachurus* species in 2009*”³².

31 The Interim Secretariat assumed that the vessels authorised to fish by the Russian Federation in 2009 would also be authorised in 2010 and constructed its initial list of 2010 authorised vessels accordingly. But the only authorisation actually received for 2010 was for the *Lafayette*. Accordingly, on 6 June 2010 the Executive Secretary sent an email³³ to the Russian Federation advising them that the authorised vessel list for 2010 will be corrected to show only the *Lafayette*, requesting monthly reports for 2010 and reminding the Russian Federation of the letter of 16 February 2010 (referred to above) requesting confirmation of effective presence in 2009. On 13 July 2010 the Russian Federation sent a fax³⁴ with monthly catch reports for “horse mackerel” (*Trachurus murphyi*) in the SPRFMO Area for December 2009 through to June 2010. The recorded catches were 3,723 t, 2,846 t and 10,924 t for April, May and June 2010, respectively (596 t was recorded as being caught in December 2009).

32 The [PrepCon 1 report](#) (adopted 23 July 2010) contained the following statements – “*Concern was expressed at indications of a lack of compliance with the Interim Measures by some Participants and indications that the size of the fleet might increase further*” (para 6) and “*Concern was expressed by Participants at the fact that complete and finest*

³⁰ See Supporting Material 21

³¹ See Supporting Material 22

³² This decision was based upon the paragraph in the 2009 Interim Measures which required the Interim Secretariat to maintain a register of authorised vessels. Participants were to notify the Interim Secretariat which of these authorised vessels were activity fishing in the Convention Area and this information was to be posted on the SPRFMO website.

³³ See Supporting Material 23

³⁴ See Supporting Material 24

scale data had not been supplied by all those Participants engaged in the fishery" (para 8).

33 At the [9th meeting](#) of the SWG in October 2010 the Russian Federation presented its Annual National report ([SWG-09-10](#)). Table 1 in this report showed that six vessels had fished in the Southeast Pacific during 2009. Final Annual Catch figures for the Southeast Pacific for 2009 (9,113t) were also presented. The report stated that in 2009 "*the vessels which were involved in this fishery use single midwater trawls*" and that they operated in the area 34.7°S to 44.0°S and 79.0°W to 126.1°W (in the Southeast Pacific) during May to September 2009. This information was spatially and temporally inconsistent with the *Lafayette* VMS records provided earlier on 3 April 2010 showing its presence only in the Western Pacific and only in December 2009. Tow-by-tow data which confirmed the effective presence for the remaining five Russian Federation vessels (*Atlantida*, *KapitanKuznetsov*, *Germes*, *IvanLyudnikov*, and *Semiozernoe*) were submitted to the Interim Secretariat via a USB flash drive at the 9th SWG meeting. For four of the vessels the tow-by-tow data were spatially and temporally fully consistent with the Russian Federation Annual National Report. The tow-by-tow data for the vessel *Atlantida* showed it had also caught some fish during October 2009. None of the tow-by-tow records showed fishing during December 2009 and nor were any of the tows conducted on the Western side of the SPRFMO Area.

34 On 23 December 2010 the Russian Federation emailed³⁵ the Interim Secretariat monthly catches of "horse mackerel" (*Trachurus murphyi*) in the SPRFMO Area. The amounts recorded were 9,463 t, 9,722 t and 4,637 t for July, August and September 2010, respectively. The remaining months were nil. This meant that the total 2010 catch estimate for the Russian Federation (including the earlier information from 13 July 2010) was 41,315 t. This preliminary total catch figure was reported in the Interim Secretariat Data Report to the 2nd meeting of the Preparatory Conference, [PrepCon-2-INF-03](#) (Table 2.3). This same table contained Peru's 2010 reported annual catch for the SPRFMO Area (40,516 t).

35 The [2011 Interim Measures](#) were adopted on 28 January 2011 at [PrepCon II](#). The 2011 Interim Measures contained a footnote in which the Russian Federation noted that it would not apply paragraph 11 (requiring participants to submit tow by tow data for trawlers to verify annual catch reports) for its 2010 catch data. But instead, the Russian Federation would observe the [2009 Revised Interim Measures](#) requirement which was "All

³⁵ See Supporting Material 25

participants engaged in the fishery are to collect, verify, and provide all data to the Interim Secretariat, in accordance with the SPRFMO Data Standards, by 30 June of each year for their previous (January to December) year's fishing activities, including information relevant to stock status and recovery".

36 On 23 March 2011 the French authorities advised the Executive Secretary via email³⁶ that they had officially sent the Russian authorities a "note verbale au sujet du 'Lafayette'" along with an English summary of the French Inspection made in Papeete on 24 January 2010 and a copy of the original French report (the same report the Executive Secretary received on 28 January 2010). The email contained the following statement "*the French authorities consider the Lafayette as a former oil tanker converted into a processing vessel, not operating as an active trawler in 2009*".

37 On 30 March 2011 the Executive Secretary circulated a summary (2011_0012³⁷) of the French Inspection of the vessel *Lafayette* conducted on 24 January 2010 to participants as the inspection had been referred to in Interim Secretariat papers presented at both PrepCon I and PrepCon II. The cover letter stated that the vessel was "*currently listed on the data page of the Web Site as actively fishing in 2009*".

38 On 11 April 2011 China wrote a letter³⁸ to the Chairman expressing concern "*about the legitimacy of catch figures submitted by some Participants*", and its eagerness to see the publication of final verified data. On 28 April 2011 the Executive Secretary circulated a letter³⁹ from Chile in which it asked that the Interim Secretariat request the Russian Federation to submit "*a report on the situation of the Lafayette, as promised in the Second Preparatory Conference*".

39 On 2 May 2011 the Executive Secretary circulated a letter (2011_0022⁴⁰) addressed to the Russian Federation referring to concerns about the vessel *Lafayette* raised at PrepCon II, and referring to an oral assurance given by the Russian Federation delegation at that meeting to "*undertake an investigation in relation to this vessel on receipt of the full report of the French authorities of their port inspection of it*". The Executive Secretary's letter stated that it was important that the report was made available to all delegations and that it include "*tow by tow reports of catches*", "*reports of*

³⁶ See Supporting Material 26

³⁷ See Supporting Material 27

³⁸ See Supporting Material 28

³⁹ See Supporting Material 29

⁴⁰ See Supporting Material 30

transhipments" and "*Landing/unloading reports*". The Executive Secretary also asked when the report might be expected.

40 The Executive Secretary also wrote to Peru on 2 May 2011 (2011_0024⁴¹) asking for unloading or transhipping data involving the *Lafayette* during 2010, in response to which Peru submitted information on 27 June 2011⁴² showing that four of its vessels transhipped 31,275 t to the *Lafayette* in 2010.

41 On 3 May 2011 the Executive Secretary circulated a letter from the European Union (2011_0025⁴³) which expressed "*serious misgivings as to whether the vessel would be able to operate as a pair trawler*" and joined Chile in requesting a report on the situation of the *Lafayette* and the catches declared in 2009 and 2010. On 4 May 2011 the Executive Secretary circulated a letter from Korea (2011_0026⁴⁴) in which it expressed interest in the Russian Federation's investigation into the activities of the *Lafayette*.

42 The Russian Federation wrote a letter⁴⁵ to the Interim Secretariat on 20 May 2011 advising that the absence of a formal inspection report signed by both parties involved created difficulties for the Russian authorities in conducting an effective investigation in relation to the vessel *Lafayette*. Nevertheless, investigative work had commenced and upon completion of this work, the results would be communicated to the Interim Secretariat. An email advising participants that "*the Russian fisheries authorities are seeking explanations regarding the inspection of the vessel Lafayette conducted by the French authorities, and that upon completion of the work the results will be communicated to the Interim Secretariat*" was circulated by the Executive Secretary on 25 May 2011 (2011_0030⁴⁶).

43 On 25 May 2011 the Executive Secretary circulated a letter (2011_0031⁴⁷) from the European Union transmitting a letter from the relevant Mauritanian authorities which stated that the *Lafayette* is not a fishing vessel. The European Union also reiterated "*its kind request addressed to the Russian authorities to clarify the situation of this vessel*".

⁴¹ See Supporting Material 31

⁴² See Supporting Material 32

⁴³ See Supporting Material 33

⁴⁴ See Supporting Material 34

⁴⁵ See Supporting Material 35

⁴⁶ See Supporting Material 36

⁴⁷ See Supporting Material 37

44 On 2 June 2011 the Executive Secretary circulated a letter (2011_0035⁴⁸) from China in which it encouraged the Interim Secretariat “*to fulfil its function in relation to catch data verification to improve the data accuracy of some relevant fishing participants, including the Lafayette issue discussed currently*”.

45 On 3 June 2011 the Executive Secretary circulated an email (2011_0037⁴⁹) containing the final recorded catches for *Trachurus* species in the SPRFMO Area in 2010 which included the 41,315 t reported by the Russian Federation in its monthly reports.

46 On 14 June 2011 Chile wrote a letter⁵⁰ to the Chairman expressing concern regarding a lack of commitment by some countries as to the conservation of the jack mackerel fishery. Attached to this letter was a press release from the NGO CeDePesca describing several instances of catch misreporting including reports for the *Lafayette* during both 2009 and 2010. The Executive Secretary circulated a second similar letter (2011_0044⁵¹) from Chile on 19 July 2011 which also expressed concern about evidence of misreporting and included the CeDePesca press release.

47 On 2 August 2011 the Executive Secretary wrote an email (2011_0048⁵²) to the Russian Federation asking for an update on the investigation into the vessel *Lafayette*.

48 On 9 August 2011 the Executive Secretary circulated a letter (2011_0048a⁵³) from the European Union in which it was “*alarmed to note that neither Peru, nor Russian Federation, nor Vanuatu provided any information in accordance with the Standards for the collection, reporting, verification and exchange of data for year 2010*” and stated that “*The lack of detailed tow-by-tow data for the Peruvian and Russian vessels for year 2010 is of even greater concern*”. The European Union urged “*all participants to submit outstanding data as a matter of high priority*”.

49 On 23 September 2011, at the [9th DIWG](#) meeting the Interim Secretariat presented the paper [DIWG-09-INF-01](#) which detailed data submissions to date and included both the Russian Federation reported monthly catch in 2010 of 41,315 t and Peru’s reported monthly catch of 40,516 t. At the [10th SWG](#) meeting held concurrently, the Russian Federation presented their National report [SWG-10-12](#) which indicated that one vessel took 41,315 t in 2010, but did not contain detailed information for 2010 activities (this

⁴⁸ See Supporting Material 38

⁴⁹ See Supporting Material 39

⁵⁰ See Supporting Material 40

⁵¹ See Supporting Material 41

⁵² See Supporting Material 42

⁵³ See Supporting Material 43

report made it clear that in 2010, there were no other Russian fishing vessels in the SPRFMO Area with which the *Lafayette* could have pair trawled). During the jack mackerel subgroup meeting some participants expressed concern at the possible double-counting of Russian and Peruvian reported catches in 2010 (Paragraph 8.1 of the jack mackerel subgroup [report](#)). The Russian Federation 2009 and 2010 reported catch figures were included in the assessment produced by the SWG.

50 On 3 October 2011 the Executive Secretary circulated a letter (2011_0059⁵⁴) to the Russian Federation in which he again requested an update on the Russian authorities' investigation concerning the *Lafayette*, and detailed operational data for 2010.

51 The [2011 Interim Measures](#) (adopted 28 January 2011) included a provision requiring the Interim Secretariat to verify annual catch reports submitted by participants against submitted detailed data, and to inform all participants of the outcome of the exercise. On 28 October 2011 the Executive Secretary wrote (2011_0069⁵⁵) to the Russian Federation advising that the verification exercise for 2010 was commencing and requesting that data to assist with that exercise be provided. A similar letter (2011_0070⁵⁶) was sent to Peru.

52 On 29 November 2011 the Executive Secretary circulated a letter (2011_0075⁵⁷) from Chile in which Chile asked the Interim Secretariat to clarify the situation regarding catches taken by Peru and/or Russian vessels during 2010, particularly in regard to the *Lafayette*.

53 On 8 January 2012 the Executive Secretary circulated a report (2012_0001⁵⁸) with the results of the 2010 verification exercise. The summary stated that "*Trawl tow by tow, or purse-seine set by set or trip by trip operational catch data were provided by all participants in the fishery except Belize, Peru and the Russian Federation. Belize provided daily operational catch data, and Peru and the Russian Federation have not yet provided operational catch data for 2010*". The report went on to say "*The Interim Secretariat has provided reminders to Peru and the Russian Federation, but is not able to verify those two participants reported catches based on detailed operational information. However, Peru provided transhipment information for 4 of its 6 vessels that transferred 31,275 t to the Russian Federation vessel Lafayette. This is consistent with Peru's*

⁵⁴ See Supporting Material 44

⁵⁵ See Supporting Material 45

⁵⁶ See Supporting Material 46

⁵⁷ See Supporting Material 47

⁵⁸ See Supporting Material 48

reported monthly catches that totalled 40,516 t". Subsequently on 27 January 2012, the Interim Secretariat did receive 2010 operational catch data from Peru.

54 On 26 January 2012, four days before the [3rd meeting](#) of the Preparatory Conference, at the request of the European Union the Executive Secretary circulated (2012_0011⁵⁹) a letter, an inspection report and a technical report on the capability of the *Lafayette* produced by Spain during the vessel's port call into Las Palmas on 2-3 December 2011. In the covering letter the European Union said the results of this inspection confirmed the findings of the earlier inspection by the French authorities and the attached technical report concluded that it was highly unlikely that the *Lafayette* could have ever acted effectively as a pair trawler. A [copy of the letter](#) was also distributed four days later at [PrepCon III](#).

55 On the same day the New York Times, the International Herald Tribune and other international media published articles^{60, 61} reporting the results of a project on the state of the Chilean jack mackerel fishery undertaken by the International Consortium of Investigative Journalists through the Center for Public Integrity. Some of these articles referred to the *Lafayette*.

56 The paper prepared by the Interim Secretariat for [PrepCon III](#) which details annual catch data provided to the Interim Secretariat ([PrepCon-03-INF-03](#)) included the Russian Federation annual catch figures for 2009 (9,113 t) and 2010 (41,315 t).

57 On 30 January 2012 during PrepCon III the Executive Secretary circulated a [letter](#) in which Chile expressed concern about various reported cases of non-compliance with the 2011 Interim Measures, including that of the reported catches of the *Lafayette*.

58 During the meeting a number of delegations criticised the level of compliance with the Interim Measures. In particular, Peru, European Union, France, Vanuatu, Chile, and Australia expressed concern about the credibility of the *Lafayette* data. The European Union, supported by Australia, Vanuatu and Peru, recommended the gross tonnage and catch data for the vessel be placed in abeyance pending receipt of operational fishing information. This concern was encapsulated in paragraph 9 of the PrepCon III [report](#) which states "*The Conference expressed concern with the low level of compliance with the Interim Measures by some Participants*".

⁵⁹ See Supporting Material 49

⁶⁰ See Supporting Material 50

⁶¹ See Supporting Material 51

59 The delegation from the Russian Federation said it had studied the material provided about the Lafayette, but had been unable to launch a full scale investigation against a private company without an inspection report signed by both parties. The vessel had obtained certificates to be qualified as a fishing vessel, had annual surveys and provided the required data. The delegation went on to say that, taking into account the concerns of other delegations, the vessel had not been authorised to fish in the SPRFMO Area in 2011⁶².

60 The Executive Secretary held several discussions with a delegate from the Russian Federation about removing the data from the relevant tables. No agreement was reached during these discussions. The Chairman concluded a final debate on Table 1 of the [2012 Interim Measures](#) saying he would draft a footnote referring to the *Lafayette*. The 2012 Interim Measures for Pelagic Fisheries adopted by PrepCon III includes the footnote to Table 1:

4 This total includes the vessel Lafayette. Operational fishing data, in accordance with the consolidated data standards, has not been supplied to the Interim Secretariat in respect of this vessel and information supplied by some delegations indicates that the vessel probably was not capable of fishing in either 2009 or 2010. Some delegations requested the GT for this vessel (49,173 GT) should be held in abeyance pending receipt of operational fishing information. The Russian delegation stated that vessel Lafayette has duly obtained all certificates from the Russian Maritime Register of Shipping to be qualified for the fishing class; the vessel has undergone initial physical inspections and subsequent annual surveys to confirm its ability to be engaged in direct fishing operations.

61 The first document prepared by the Interim Secretariat following PrepCon III that set out Annual Catch Data was included in the [data section](#) of the SPRFMO website "Data submitted to the Interim Secretariat as at 1 March 2012" which was updated on 6 March 2012⁶³. In Table 2.1, in the row for 2010, the Russian Federation column included the footnote *"Aggregated annual catch was provided for a single vessel (the Lafayette) however the data has not been included in table 2.1, pending receipt of operational fishing information"*. On the same day the Interim Secretariat also updated the SPRFMO website by removing the Lafayette from the [list of vessels](#) actively fishing *Trachurus* species in 2009. Subsequently the data report ([DIWG-10-INF-01](#)) prepared for the 10th

⁶² See Supporting Material 52

⁶³ See Supporting Material 53

[DIWG](#) and [11th SWG](#) during 15-19 October 2012 did not include the Russian Federation reported catch for 2010 and referred to the omission with the preceding footnote.

62 The jack mackerel subgroup of the 11th SWG reviewed all the catch data for the fishery and [reported](#):

7.1. Updating of data sets for additional stock assessment runs

The SPRFMO Data Manager coordinated with updated data sets that were provided for the stock assessment runs conducted at the meeting. Additionally, participants were asked to present data to improve inputs to the models.

A substantial amount of time was spent updating and revising data inputs for the Joint Jack Mackerel (JJM) stock assessment model. These updates include revisions to many of the catch data series, including: revision of historical catches for some countries⁶⁴ and updating of preliminary 2012 catches for all fleets; preparation of an updated table of aggregated catches for the four fleets used in the JJM model; generation of catch-at-age matrices for the four fleets; introducing newly standardized CPUE and other indices; and a new matrix of mean weights at age over time for the far north fleet.

The revised data table (Table A1.3) used in the stock assessment had zero catch for the Russian Federation and 40,516 t for Peru for the catch of the fleet outside the Chilean EEZ in 2010.

63 The data paper prepared for the [1st meeting of the Commission \(COMM-01-INF-07\)](#) also did not contain the 2010 reported catch for the Russian Federation (this was explained by use of the footnote shown in Paragraph 62 above).

The development of the Conservation and Management Measure for *Trachurus murphyi* (CMM 1.01)

64 [CMM 1.01](#) was based on a proposal by the European Union that was given the documentary reference of Working Paper 10⁶⁵. The proposal drew on the previous [2012 Interim Measures](#) for Pelagic Fisheries. In respect of fishing effort, the proposal limited the fishing effort of each member and Cooperating Non-Contracting Party (CNCP) to the gross tonnage of vessels flying the flag of that the member or CNCP that were actively

⁶⁴ The delegation of the Russian Federation stated that the Russian Federation will implement the 2012 Interim Measures and further management measures for the pelagic fisheries according to the data which were provided to the Interim Secretariat.

⁶⁵ See Supporting Material 54

fishing in 2007, 2008, or 2009 in the SPRFMO Area, as indicated in Table 1 of the 2012 Interim Measures for Pelagic Fisheries. In respect of catches, the proposal included a provision that the 2013 total catch of *Trachurus murphyi* (here after all catches refer to catches of *T. murphyi*) would be limited to 300,000 t and shared among members and CNCPs in the same proportion as 2010 catches.

65 This pressing Conservation and Management issue relating to the *Trachurus murphyi* fishery was discussed first in the Plenary and then referred to a Working Group, where several sessions were required to reach agreement.

66 After initial deliberation in the Working Group the Chair of the Working Group⁶⁶ prepared Revision 1⁶⁷ on 30 January 2013. The first Revision was an attempt to take account of the willingness of Chile to give its express consent for its catches in its national jurisdiction area to be subject to the measure, by increasing the catch limit for the area to which the measure applied to 360,000 t. At the same time, the Revision proposed that the total catch throughout the range of the stock should not exceed 438,000 t⁶⁸, consistent with the advice of the SWG. Revision 1 was not accepted.

67 Revision 2⁶⁹ was a refinement of Revision 1 and included a table (Table 2) showing the catch limits for each member and CNCP for 2013. Table 2 showed a catch limit of zero for the Russian Federation.

68 On 1 February 2013 the Chair of the working group prepared Revision 3⁷⁰ to reflect an agreement reached the previous evening. The essence of this proposal was that on a one off basis 10 per cent of the shares set out in Table 2 for Belize, China, European Union, Faroe Islands, Korea, Peru and Vanuatu were to be transferred to Chile, resulting in catch limits as set out in Table 3. Table 2 was the same as that in Revision 2 except a footnote (5) had been added to the effect: '*The Russian Federation notified the Commission that it considers it had a legitimate right to a share in the fishery notwithstanding the situation referred to in footnote 4 and asserts its right to participate in the fishery in 2013 in a proportion calculated by reference to its fishing activities it reported to the Executive Secretary in 2010*'. Neither Table 2 nor Table 3 included the Russian Federation.

⁶⁶ Gerard van Bohemen of New Zealand

⁶⁷ See Supporting Material 55

⁶⁸ in addition to the SPRFMO area and the zone of national jurisdiction of Chile, catches are made in the zones of national jurisdiction of Ecuador and Peru

⁶⁹ See Supporting Material 56

⁷⁰ See Supporting Material 57

69 Revision 4⁷¹ (a clean version of revision 3) was prepared at 12:30pm and was considered by the Plenary and approved with minor amendments as [CMM 1.01](#).

70 After the adoption of CMM 1.01, the Russian Federation delegation made a statement that is attached to the Report of the 1st Commission Meeting as [Annex K](#).

⁷¹ See Supporting Material 58