

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 regards to

THE OBJECTION BY THE RUSSIAN FEDERATION TO A DECISION OF THE  
COMMISSION OF THE SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT  
ORGANIZATION

ORAL HEARING

Monday, July 1, 2013

The Permanent Court of Arbitration  
Peace Palace, Small Courtroom  
Carnegieplein 2, 2517 KJ The Hague  
The Netherlands

The hearing in the above-entitled matter came on,  
pursuant to notice, at 10:00 a.m. before:

PROF. BERNARD H. OXMAN, Chair

PROF. KAMIL A. BEKYASHEV, Panel Member

SRA. VALERIA CARVAJAL, Panel Member

ALSO PRESENT:

Registry, Permanent Court of Arbitration:

MS. SARAH GRIMMER  
Senior Legal Counsel

MS. KATHLEEN CLAUSSEN  
Legal Counsel

MS. OLGA BOLTENKO  
Legal Counsel

MS. HYUN JUNG LEE  
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MS. IRINA van ERKEL

MR. YURI SOMOV

## ATTENDEES :

On behalf of the SPRFMO Commission:

MR. BILL MANSFIELD  
Chairperson

On behalf of the SPRFMO Secretariat:

MR. ROBIN ALLEN  
Acting Executive Secretary

On behalf of the Russian Federation:

DR. VLADIMIR A. BELYAEV  
Representative of the Federal Agency for Fisheries

MR. ALEXANDER GLUBOKOV  
Head of the International Section of GUP All Russian  
Scientific Research Institute of Fisheries

MS. SOFIA SARENKOVA  
Embassy of the Russian Federation in the Netherlands

MR. VASILY TITUSHKIN  
Embassy of the Russian Federation in the Netherlands

MS. DARIA GOLUBKOVA  
Embassy of the Russian Federation in the Netherlands

MS. EVGENIYA YAKUSHEVA,  
Embassy of the Russian Federation in the Netherlands

On behalf of the Republic of Chile:

MR. JUAN MARTABIT  
Ambassador of Chile in the Netherlands

MR. EDGARD ECKHOLT  
First Secretary, Embassy of Chile in the Netherlands

MS. MARÍA ALICIA BALTIERRA  
Subsecretaría de Pesca y Acuicultura, República de  
Chile

MS. KATHERINE BERNAL  
Subsecretaría de Pesca y Acuicultura, República de  
Chile

ATTENDEES: (Continued)

On behalf of the Republic of Chile:

MR. DAVID QUIROGA

Dirección de Medio Ambiente y Asuntos Marítimos,  
Ministerio de Relaciones Exteriores, República de  
Chile

On behalf of the Chinese Taipei:

MS. NICOLE SU, Director, Political Division, Taipei  
Representative Office in the Netherlands

MS. MIN-HUEI TZENG, Officer, Department of  
International Organizations, Ministry of Foreign  
Affairs

MR. RAYMOND CHEN-EN SUNG, Secretary, Tang Prize in  
Rule of Law Office, Academia Sinica

## C O N T E N T S

	PAGE
OPENING OF THE HEARING BY CHAIRMAN OF THE REVIEW PANEL	6
PRESENTATION OF THE CHAIRPERSON OF THE COMMITTEE	11
PRESENTATION OF THE RUSSIAN FEDERATION	
By Dr. Belyaev	27
PRESENTATION OF THE REPUBLIC OF CHILE	
By Ms. Bernal	40
By Ms. Baltierra	44
QUESTION AND ANSWER SESSION WITH THE REVIEW PANEL	52
CONCLUDING REMARKS OF THE CHAIRPERSON OF THE COMMISSION	98
CONCLUDING REMARKS OF THE RUSSIAN FEDERATION	
By Dr. Belyaev	100
CONCLUDING REMARKS OF THE REPUBLIC OF CHILE	
By Mr. Quiroga	105
CLOSING OF THE HEARING BY CHAIRMAN OF THE REVIEW PANEL	110

## 1 P R O C E E D I N G S

2 CHAIRMAN OXMAN: Good morning. It is my pleasure and  
3 my honor to open today's hearing on the Objection of the  
4 Russian Federation to the Conservation and Management Measure  
5 for--I'm going to get this wrong--Trachurus murphyi--which was  
6 raised pursuant to Article 17 and Annex II of the Convention on  
7 the Conservation and Management of High Seas Fishery Resources  
8 in the South Pacific Ocean.

9 On behalf of the Review Panel, I welcome the Acting  
10 Executive Secretary of the Organization and also welcome the  
11 distinguished representatives of Chinese Taipei, who have  
12 indicated that they would have liked to attend this hearing,  
13 but have not indicated that they plan to speak.

14 I also welcome the oral participants in today's  
15 hearing: The distinguished Chairperson of the Commission, and  
16 the distinguished representatives of the Russian Federation and  
17 the Republic of Chile.

18 May I now invite the Russian Federation and the  
19 Republic of Chile to introduce the Members of their delegations  
20 and to indicate the order in which their Members will address  
21 the Panel.

22 DR. BELYAEV: Esteemed Chairman, dear participants of  
23 the hearings, I would like to introduce Members of the  
24 delegation of the Russian Federation present here. My name is  
25 Balyaev. I'm the representative of the Federal Agency for

10:03 1 Fisheries of the Russian Federation;

2 Mr. Glubokov, who is also the--a part of the  
3 delegation of the Russian Federation representing the Federal  
4 Agency of Fisheries of the Russian Federation;

5 Sofia Sarenkova, who is a Member of the Embassy of the  
6 Russian Federation in the Kingdom of the Netherlands;

7 And Mr. Titushkin, Russian Embassy in The Netherlands.

8 Thank you.

9 MR. QUIROGA: Thank you, Mr. Chairman. Good morning.

10 The delegation of Chile is represented by Mrs. María  
11 Alicia Baltierra, Undersecretary of Fisheries of Chile;

12 Mrs. Katherine Bernal, she's a lawyer from the  
13 Undersecretary of Fisheries of Chile;

14 And Mr. Edgard Eckholt, he is First Secretary of the  
15 Embassy of Chile in The Netherlands;

16 And in my case, David Quiroga, representative of the  
17 Ministry of Foreign Affairs of Chile, specifically in charge of  
18 the Department of First Maritime Affairs in Chile.

19 Thank you very much, Mr. President.

20 CHAIRMAN OXMAN: Thank you very much.

21 Allow me now to introduce the Members of the Review  
22 Panel.

23 To my right is Señora Valeria Carvajal, and to my left  
24 is Professor Kamil Abdulevich Bekyashev.

25 As you know, we are assisted in these proceedings by

10:05 1 the outstanding staff of the Permanent Court of Arbitration:  
2 Sarah Grimmer; Kathleen Claussen, who is at the front table;  
3 Hyun Jung Lee, on my right; and Olga Boltenko, on my left. We  
4 are also assisted by our court reporter, David Kasdan; and by  
5 our interpreters, Irina van Erkel and Yuri Somov.

6 Today's proceedings are being interpreted  
7 simultaneously from English to Russian and vice versa and are  
8 being simultaneously transcribed in English. In order for  
9 those aspects of the hearing to function well, we request that  
10 speakers ensure that their microphones are on while they are  
11 speaking. Please note that the microphones are not for  
12 amplification but for recording purposes.

13 There should be only one person speaking in the room  
14 at any given time.

15 Let me express the Review Panel's appreciation to the  
16 Organization for the Information Paper and supporting materials  
17 submitted, and to the Commission Members for their submissions  
18 and supporting materials, all of which were prepared under  
19 challenging time constraints which are imposed on all of us by  
20 the Convention and which we are all obliged to respect.

21 You have all received the hearing schedule, and I note  
22 that copies are on the table before you. If it were ever true  
23 to say that time is of the essence, it is so with respect to  
24 these proceedings. You are all well aware that the Convention  
25 stipulates that the Panel's Findings and Recommendations shall

10:08 1 be transmitted to the Executive Secretary on July 5th, this  
2 Friday.

3           The PCA will be keeping track of the time used for  
4 each intervention and will indicate to us from behind when the  
5 allotted time is nearly up. In that regard, the Review Panel  
6 is confident that the participants have taken note of its  
7 direction that speakers should avoid repeating orally what has  
8 already been submitted to the Panel in writing and will focus  
9 in particular on the main points of disagreement arising out of  
10 the written submissions, including those written submissions  
11 that were filed by Commission Members who are not participating  
12 in this Oral Hearing.

13           I do want to emphasize that there is absolutely no  
14 penalty for finishing early.

15           You will have seen that the hearing schedule includes  
16 a question-and-answer session with the Panel that follows the  
17 lunch break.

18           The Panel has decided to distribute some of its  
19 questions in writing to the participants at the beginning of  
20 the two-hour lunch break. We hope that this will give you time  
21 to organize your responses to at least some of the matters on  
22 which Members of the Panel would like to hear comment. This is  
23 not to say, however, that there will not be other additional  
24 questions posed by the Panel over the course of the day; there  
25 may well be.

10:10 1           On this point, let me state clearly that all of the  
2 questions are without prejudice to the position of any Member  
3 of the Review Panel on any issue, including the relevance of  
4 the matter to which a question may relate.

5           For the question-and-answer session, each participant  
6 will be allocated approximately 30 minutes for its responses,  
7 but it is under no obligation to use the full 30 minutes. You  
8 will see from the schedule that you each will have a further  
9 opportunity to make concluding remarks at the end of the  
10 question-and-answer session following a break.

11           I do want to note that if the Review Panel concludes  
12 that the question-and-answer session must run over the allotted  
13 time, we may need to continue proceedings past 6:00 p.m.  
14 tonight. This, I trust, offers an additional incentive to be  
15 concise.

16           As some of you may know, The Hague is not renowned for  
17 its tropical temperatures. I do note that the weather forecast  
18 for today is for clear, sunny skies, although I do not, of  
19 course, vouch for the reliability of weather forecasts. The  
20 Peace Palace, as you may know, was constructed before the age  
21 of air conditioning, and, therefore, it will warm as the day  
22 goes on. Any of you should feel completely free to remove your  
23 jackets and, if need be, to loosen your ties.

24           That concludes my opening remarks.

25           I take it we can express some sympathy for those who

10:12 1 are involved in another proceeding in this building and are  
2 wearing heavy, warm, woolen robes.

3 I think we can begin now and, according to the  
4 schedule, we will begin with the Chairperson of the Commission.

5 PRESENTATION OF THE CHAIRPERSON OF THE COMMISSION

6 MR. MANSFIELD: Mr. Chairman, Members of the Panel,  
7 it's an honor to appear before you today.

8 May I begin by thanking you on behalf of the South  
9 Pacific Regional Fisheries Management Organization for  
10 undertaking this important task. As you know, the Organization  
11 is a new one, still in its first year, having been established  
12 with the entry into force of the Convention on 24 August 2012,  
13 and having held the First Meeting of its principal body, the  
14 Commission, in January this year.

15 It's very important that it gets off to a good start  
16 that unifies the Parties in support of the objective of the  
17 Convention and also encourages other States that may have an  
18 interest in the Fishery Resources covered by the Convention to  
19 join the Organization.

20 In this regard, I should note that the right of any  
21 Member of the Commission to raise an objection to a decision of  
22 the Commission is an important right. Equally important is the  
23 process established by the Convention to ensure any such  
24 objection is promptly, properly, and fairly considered and  
25 resolved.

10:14 1           As you point out, Mr. Chairman, the timetable for this  
2 process certainly puts pressure on everyone involved; and, in  
3 this regard, I would particularly like to acknowledge the  
4 willingness of you, Mr. Chairman, and the other Members of the  
5 Panel to fit this task into your already very busy schedules.

6           As Chair of the Commission with responsibilities in  
7 respect of the establishment of the Review Panel, I am most  
8 grateful to you, as is the Organization as a whole.

9           And may I also, through you, express the appreciation  
10 of the Organization to the Permanent Court of Arbitration. We  
11 are again most grateful for the willingness of the PCA to  
12 provide the facilities for this hearing and to undertake the  
13 role of servicing and supporting the Review Panel, and I would  
14 like to acknowledge the experience and expertise they bring to  
15 this task and the high level of professionalism with which they  
16 are carrying out their role.

17           Without wishing to emphasize the obvious, I should  
18 note that the intention behind the tight deadlines for the  
19 Objection review process was to ensure, as far as possible,  
20 that any significant disagreement amongst the Members of the  
21 Commission is resolved quickly, thereby avoiding the situation  
22 that has occurred in some other regional fisheries management  
23 organizations where disagreements have dragged on over several  
24 years to the detriment of the stocks under management and the  
25 efficacy of the decision-making capability of the organizations

10:16 1 concerned.

2           If I may, I would like to offer a brief overview of  
3 the process leading to the establishment of the Organization  
4 and set the Objection under consideration in the context of  
5 what, in my view, is, for the most part, a history of very good  
6 cooperation and constructive engagement.

7           I would begin back in 2006 and note that there was an  
8 excellent response to the invitation from Australia, Chile, and  
9 New Zealand to all interested States and fishing entities to  
10 attend the meeting to discuss the establishment of a South  
11 Pacific Regional Fisheries Management Organization. The  
12 outcome of that meeting was that the participants agreed to  
13 work to establish a binding legal agreement as a matter of  
14 priority and, to that end, requested the Chair to develop a  
15 Draft Convention text and a draft text for interim arrangements  
16 for the next meeting. They also established a Science Working  
17 Group and a Data and Information Working Group.

18           The reasons for the strong attendance at that First  
19 Meeting are best known to the States themselves. Some were not  
20 actively engaged in fishing and were more concerned about the  
21 need for an organization to manage the potential future  
22 pressures on the high seas in the South Pacific and the  
23 possible effect of those pressures on the fisheries within  
24 their own exclusive economic zones. Others were active  
25 participants in the most important commercial fishery--jack

10:18 1 mackerel--and saw the need for a new organization to work with  
2 Coastal States to manage this important straddling stock. All  
3 recognized the need to fill the major gap that existed in the  
4 architecture of high seas fisheries management and protection  
5 of the marine environment in the South Pacific.

6           Now, one of the risks of commencing negotiations on a  
7 new Regional Fisheries Agreement is that fishing States may  
8 enter an existing fishery or seek to increase their effort in  
9 that fishery in order to position themselves for future  
10 allocation decisions. The participants at this First Meeting  
11 recognized this risk in requesting a draft of voluntary Interim  
12 Measures for consideration at their next meeting. But, in  
13 retrospect, they were slower than they should have been in  
14 agreeing appropriate Measures.

15           The draft Interim Measures I prepared for the Second  
16 Meeting of the Consultations required participants, inter alia,  
17 to agree that fishing in the area under discussion should not  
18 increase beyond the then-current levels and that fishing for  
19 new fishery resources or in new parts of the area should not  
20 take place until Conservation and Management Measures were in  
21 place. This proposal, and variants of it discussed at the  
22 meeting, was not accepted by all delegations, and it was not  
23 until the Third Meeting in May 2007 that the first set of  
24 Interim Measures was agreed.

25           The first part of the 2007 Measures, adopted in May of

10:20 1 that year, was an attempt to control the growth in the fishing  
2 effort for jack mackerel. States that had fished for jack  
3 mackerel in the Convention Area in 2007 were not to increase  
4 the gross tonnage of vessels flying their flag in 2008 and  
5 2009, but States with a previous catch history that had not  
6 fished in 2007 were also allowed to enter the fishery in 2008  
7 and 2009 while exercising voluntary restraint of fishing  
8 effort.

9           And, of even more concern, the Measures placed no  
10 restraint on the introduction of additional vessels between the  
11 date of the adoption of the Measures, or even the date from  
12 which they were to become operative, which was  
13 30 September 2007, and the end of that Year 2007. As a result,  
14 there was a significant increase in the fishing effort in the  
15 latter part of 2007, approximately nine more vessels.

16           A further 16 vessels, representing an additional gross  
17 tonnage of over 70,000, entered the fishery in 2008 and 2009  
18 under the exemption for States with a previous catch history  
19 that had not fished in 2007.

20           The more positive aspects of the 2007 Interim Measures  
21 were, first, the information on fishing activity by vessels  
22 flying their flag, that participants were to collect and  
23 contribute to the work of the Science Working Group; and,  
24 second, the request to that group to provide advice by 2009 on  
25 the status of the jack mackerel stock.

10:22 1           As noted in Paragraph 8 of the Information Paper we  
2 submitted to you, the level of information required was very  
3 detailed, even compared with that required by existing regional  
4 fisheries management organizations, and, by the following year,  
5 2008, the Science Working Group was already indicating it had  
6 concerns about the declining state of the jack mackerel stock.

7           There were some issues about different possible stock  
8 structures for the jack mackerel stock; and so, in the absence  
9 of an agreed stock structure and all the information necessary  
10 to undertake a stock assessment as such, the Science Working  
11 Group in 2009 used a comprehensive review of the fishery and  
12 other indicators to serve as the basis for their advice to the  
13 next and Final Meeting of the International Consultations on  
14 the Draft Convention.

15           That advice was that the indicators showed fishing  
16 mortality was likely to have exceeded sustainable levels since  
17 at least 2002 and continued to do so. It's important to note  
18 that the Science Working Group's advice was based on  
19 information about stock throughout its range, including "in  
20 zone" catches; and I should at this point also recall that  
21 Article 20(4)(a)(ii) of the Convention provides that, with the  
22 express consent of the relevant Coastal State, the Commission  
23 may establish a Total Allowable Catch throughout the range of  
24 the fishery resource.

25           The response of the Eighth and Final Meeting of the

10:25 1 International Consultations to this advice from the Science  
2 Working Group was to adopt the 2009 Revised Interim Measures,  
3 under which participants agreed to voluntarily restrain their  
4 catches for 2010 and until the Convention entered into force to  
5 the levels they recorded in 2007, 2008, or 2009. The meeting  
6 passed the responsibility for reviewing these Measures to the  
7 Preparatory Conference and specified that they should be  
8 reviewed and revised as appropriate no later than  
9 31 December 2010, to take account of the stock assessment of  
10 jack mackerel that the Science Working Group had proposed and  
11 the meeting had endorsed.

12 That stock assessment was carried out in October 2010  
13 and was presented in the report of the Science Working Group to  
14 the Second Meeting of the Preparatory Conference in  
15 January 2011; and the results, quite frankly, were a shock. To  
16 give you a sense of the impact of this report, I would like to  
17 quote from my remarks as Chair of the Preparatory Conference at  
18 the formal opening ceremony of that meeting. I quote:

19 "Between the time of our First Meeting in 2006  
20 and the end of last year, 2010, jack mackerel total  
21 biomass is estimated to have declined by 65 percent to  
22 its historically lowest level--only 11 percent of the  
23 estimated unfished biomass level. Spawning biomass is  
24 estimated to have declined to only 3 percent of the  
25 unfished level, quite possibly making this the most

10:27 1 depleted major fish stock under the responsibility of  
2 an RFMO anywhere in the world.

3 "Immediate and substantial Measures are required  
4 to reverse this decline. To rebuild the stock to  
5 long-term sustainable levels, it seems we need to  
6 consider at least halving the catch compared to the  
7 2010 catch level. Every indication is that failing to  
8 implement such Measures will result in continued  
9 decline in a stock that was once the largest fish  
10 stock in the South Pacific Ocean, but is now reaching  
11 levels which are almost uneconomical to fish."

12 Now, as summarized in Paragraph 15 of the Information  
13 Paper, the key management message from the Science Working  
14 Group's Report was that if catches continued at 2010 levels,  
15 then, under recent average levels of recruitment, there was  
16 100 percent probability that the biomass would continue to  
17 decline. If catches were reduced to 75 percent of 2010  
18 catches, then there would still be more than a 50 percent  
19 chance the biomass would continue to decline. But if catches  
20 were reduced to 50 percent of 2010 levels, then the models  
21 indicated that biomass would increase to about double the  
22 then-current biomass by 2020.

23 Now, this time, the response of the Preparatory  
24 Conference was the adoption of the 2011 Interim Measures. In  
25 essence, the decision was to limit 2011 catches to 60 percent

10:29 1 of those in 2010 and to signal that, in the absence of some  
2 dramatic improvement, the 2012 catches would need to be reduced  
3 to 40 percent of those in 2010.

4           Now, this was a difficult decision for all those  
5 engaged in the fishery, and, as recorded in Paragraph 10 of the  
6 report of the meeting, four delegations--Cuba, Faroe Islands,  
7 Korea, and Venezuela--advised they could not accept the  
8 decision, and a fifth, China, said it would advise its position  
9 a little later. China subsequently advised it would reduce its  
10 2010 catch by 30 percent for 2011, and its actual catch was  
11 significantly less than that.

12           Now, regrettably, the subsequent stock assessments by  
13 the Science Working Group did not indicate any significant  
14 improvement in the situation. Moreover, the seriously depleted  
15 state of the jack mackerel fishery had become international  
16 news as a result of a series of articles by investigative  
17 journalists. And the seriousness of the situation was  
18 recognized by all participants, and the previously signaled  
19 reduction to 40 percent of 2010 catches was agreed at the Third  
20 Meeting of the Preparatory Conference, this time without any  
21 dissent.

22           I should note here, I think, a factor that may have  
23 contributed to the lack of improvement in the status of the  
24 stock or at least did not help. This was the straddling nature  
25 of the stock and the year-on-year fluctuation in catches in the

10:32 1 high seas and Exclusive Economic Zones.

2           As I noted in my remarks at the opening ceremony of  
3 the Third Meeting, the total catch on the high seas in 2011 was  
4 only 114,000 tons--a much greater percentage reduction than the  
5 40 percent reduction on the 2010 catch levels that was  
6 specified in the 2011 Interim Measures. I pointed out that if  
7 the "in-zone" catches had been reduced by even just a little  
8 over 20 percent, then the total catch would have been well  
9 under the 390,000 tons suggested by the Science Working Group  
10 as the maximum catch offering some prospect of rebuild.

11           In fact, although one of the "in zone" catches, that  
12 of Chile, was significantly down on the previous year's catch,  
13 the catch in the other two zones had increased dramatically so  
14 that the total catch was 608,000 tons. This situation  
15 highlighted the need for the "in zone" and high seas catches to  
16 be managed cooperatively to ensure that in all years the total  
17 catch remains within the parameters for sustainability  
18 established on best scientific advice.

19           This was an important part of the background to the  
20 adoption of the 2012 Interim Measures, which was coupled with  
21 the inclusion of important paragraphs in the Meeting Report  
22 relating to the position of relevant Coastal States regarding  
23 "in zone" catches.

24           And it remained an important issue for the First  
25 Meeting of the Commission at the beginning of this year in the

10:34 1 development of its first Conservation and Management Measure,  
2 CMM 1.01. Again, that decision had to be fully cognizant of  
3 the report of the Science Working Group on the outcomes of its  
4 most recent stock assessment carried out in October 2012. This  
5 time, the report noted that there were some indications of an  
6 increasing stock, but it was still at very low levels.  
7 Accordingly, the recommendation was that catches should be  
8 maintained at or below 2012 levels; that is, the total catch  
9 for 2013, throughout the range, should be at or below the  
10 441,000 tons that in October, when the Science Working Group  
11 met, was anticipated to be the final catch for 2012.

12           In terms of the objective of the Convention and the  
13 conservation and management principles and approaches it was  
14 required to apply under Article 3, the Commission was therefore  
15 bound to seek to limit catches this year to the level at which  
16 the scientific advice suggested there was a reasonable prospect  
17 of rebuild. To do this, it had to ensure that high seas  
18 catches for Members and Cooperating Non-Contracting Parties was  
19 set significantly below that level so that there was room for  
20 the Coastal State Member Chile to be reasonably encouraged and  
21 expected to agree that its "in zone" catches be covered by the  
22 Measure, and there was also room for appropriately restrained  
23 "in zone" catches by Coastal State Cooperating Non-Contracting  
24 Parties.

25           So, this is the essential scheme of CMM 1.01, with

10:37 1 shares in the limited overall catch, again in proportion to  
2 those in 2010 with an adjustment for Chile. And I should pause  
3 here to note that if it was difficult to reach agreement on the  
4 2011 Interim Measures, the negotiation of CMM 1.01 was an  
5 equally difficult challenge. The Working Group was able to  
6 reach agreement only after several lengthy meetings involving  
7 all participating countries; and, for much of the time, it  
8 appeared there would be no agreement on a Conservation and  
9 Management Measure limiting the catch for 2013, despite the  
10 clear advice from the Science Working Group that catches should  
11 be maintained at or below 2012 levels. If that had been the  
12 result, the Commission would have failed to meet its most  
13 fundamental obligation at its First Meeting.

14           Now, Mr. Chairman, Members of the Panel, I have  
15 briefly traversed this history to emphasize that, at least from  
16 the point at which there was incontrovertible scientific advice  
17 that the jack mackerel stock was seriously depleted, the  
18 Preparatory Conference and the Commission have been dealing  
19 with a situation that, although not formally categorized as an  
20 emergency in terms of Article 20(5), has certainly had a  
21 similar sense of exceptionalism and urgency.

22           In essence, CMM 1.01 is the latest component of a  
23 three-year effort to restrict total catches of jack mackerel to  
24 around half or less of the catches in 2010, the catch year  
25 against which the Science Working Group made their specific

10:39 1 recommendations for reductions.

2           The exceptional nature of this effort was recognized  
3 by participants in the statements included in the 2011 and 2012  
4 Interim Measures and repeated in CMM 1.01 that these measures  
5 are not to be considered precedents for allocation or other  
6 decisions in the future, in accordance with Article 21 of the  
7 Convention relating to participation in fisheries for jack  
8 mackerel.

9           In my perception, participants were quite clear that  
10 in developing these measures, they were not engaged in an  
11 Article 21 decision-making exercise regarding participation;  
12 rather, they were attempting to find an acceptable means of  
13 urgently and severely reducing current catches to allow the  
14 potential of a stock rebuild to a level at which an Article 21  
15 exercise could reasonably be undertaken, and they believed that  
16 everyone's position in relation to future participation was  
17 covered by the disclaimers included in the Measures.

18           Now, I would like to say just a few words at this  
19 point about the controversy concerning the vessel Lafayette.

20           The Information Paper we have provided contains a  
21 considerable amount of material on this subject, and it does so  
22 simply because it seemed important that you have available to  
23 you a full account of the communications in respect of this  
24 vessel together with the supporting documents rather than have  
25 an attempted summary by the Secretariat on a matter which it

10:42 1 was directly involved.

2           As I'm sure you will appreciate, a factual  
3 disagreement of this kind between participants is difficult to  
4 manage and can place the Secretariat, in particular, in an  
5 awkward position. As Chair of the Commission and, earlier, the  
6 Preparatory Conference, my principal concern was that the  
7 disagreement should be managed, as far as possible, in ways  
8 that meant it did not inhibit the ongoing progress on all the  
9 other work that needed to be brought to a conclusion for the  
10 Organization to get underway.

11           In the absence of agreed Rules of Procedure in the  
12 Preparatory Conference and also a history of working by  
13 consensus in that forum and also the preceding process for the  
14 drafting of the Convention, this meant, where necessary,  
15 finding ways of recording different positions so they could be  
16 returned to at any relevant point in the future.

17           For the Secretariat, however, the situation became  
18 more difficult. It was expected to keep the Web site regularly  
19 updated with information about reported catches. In addition,  
20 an Information Paper recording this information was always  
21 prepared for meetings of the Science Working Group and the Data  
22 and Information Working Group with a revised version being made  
23 available to the Preparatory Conference and the First Meeting  
24 of the Commission, respectively.

25           Although the Web site and these papers were for

10:44 1 information only and were not authoritative, there was an  
2 expectation on the part of participants that the Secretariat  
3 would ensure the information was as accurate as possible.

4           In the light of the discussions at the Final Meeting  
5 of the Science Working Group and the preparatory conference  
6 about the catches attributed to the vessel Lafayette, the  
7 Secretariat found itself in a very difficult position. On the  
8 one hand, it had no wish and no authority to challenge the  
9 catch advice submitted by the Russian Federation. On the other  
10 hand, if these catches were included, the information would be  
11 seen as inaccurate and possibly misleading by the majority of  
12 participants, especially in view of the concerns expressed that  
13 they might, in part or in whole, include catches also reported  
14 by Peru.

15           The Executive Secretary had several conversations with  
16 a delegate from the Russian Federation during the Third Meeting  
17 of the Preparatory Conference in an effort to find a way to  
18 manage the situation, but, in the absence of an agreed  
19 solution, concluded that the Secretariat had to make its best  
20 judgment as to what seemed the most accurate information to  
21 provide.

22           Mr. Chairman, Members of the Panel, I should like to  
23 conclude by returning to the point I made at the beginning of  
24 my remarks.

25           I consider that overall the process involved in the

10:46 1 establishment of this new organization has been characterized  
2 by cooperation and constructive engagement on the part of a  
3 wide range of countries including, I may say, countries from  
4 both sides of the Pacific that have not previously had many  
5 occasions to work closely together on a complex matter of this  
6 kind.

7           The Convention itself is, I think, a significant  
8 achievement. Amongst its significant features are the leading  
9 edge provisions relating to the application of conservation and  
10 management principles to decision-making; the provisions  
11 relating to the management of straddling stocks, including the  
12 possibility, with the express consent of the Coastal State, of  
13 Commission Decisions having application throughout the range of  
14 stocks; and, finally, the possibility of substantive  
15 decision-making by qualified majority, coupled with a right of  
16 objection.

17           As I noted at the outset, the right of a Member of the  
18 Commission to object to a decision, even one that is taken by  
19 consensus, is an important right. The Russian Federation is a  
20 major State with a significant historical connection to fishing  
21 for jack mackerel in the Pacific as well as more recent  
22 activity in the fishery in this century. It actively  
23 participated from the beginning in the Consultations that  
24 resulted in the adoption of the Convention, in all three  
25 meetings of the Preparatory Conference, and in the First

10:48 1 Meeting of the new Commission.

2           Their delegates also played their part in the work of  
3 the Science Working Group and the Data and Information Working  
4 Group. In this regard, it is very appropriate that their  
5 objection is given serious and careful consideration by such a  
6 distinguished Panel and that their concerns are fully  
7 understood, explored and, if possible, resolved with your help.

8           Thank you for your attention.

9           The Executive Secretary, Dr. Allen, and I would be  
10 happy to answer any questions you may wish to address to us and  
11 to provide any additional information you may require.

12           Thank you very much.

13           CHAIRMAN OXMAN: I thank the distinguished Chairperson  
14 of the Commission for his remarks, and I would think that if  
15 the representatives of the Russian Federation are ready, that  
16 we may proceed to their remarks.

17           PRESENTATION OF THE RUSSIAN FEDERATION

18           DR. BELYAEV: Thank you very much.

19           Thank you very much for giving me the floor,  
20 Mr. Chairman, dear Members of the Review Panel.

21           THE INTERPRETER: Excuse me, the microphone has been  
22 switched off. The interpreter cannot hear the speaker.

23           DR. BELYAEV: First of all, I would like to express my  
24 gratitude to the representatives of the Permanent Court of  
25 Arbitration for organizing these hearings at the top level,

10:50 1 which allows us effectively to investigate this issue.

2           The Russian Federation believes that it is extremely  
3 important to attract experts' attention to the history of the  
4 issue as well as to the international legal basis which became  
5 the grounds for the Objections of the Russian Federation based  
6 on the CMM 1.01. In accordance with this Measure, Russia was  
7 allocated a zero quota for jack mackerel catch in 2013. At the  
8 same time, the main criteria for the allocation of the national  
9 quota in accordance with Article 21 of the SPRFMO Convention,  
10 the historical catch and our part in research have not been  
11 taken into account. In accordance with the data, Russia has  
12 the major part of the catch of jack mackerel in the Convention  
13 reach, with the exception of the EEZ of the coastal countries.

14           Overall, the catch amounts to 10,973,000 tons. Chile  
15 is on the second place with the total catch of 2,764,000 tons.  
16 Behind them with a big gap, other countries follow. Thus, in  
17 accordance by this criterion, Russia should have the maximum  
18 quote or at least one of the biggest.

19           The second major criterion embedded in Article 21 is  
20 the scientific research input. In the period between 1955 to  
21 2011, Russia conducted 563 research expeditions in this  
22 Convention Area on 63 vessels with the overall cost of  
23 5,630,000,000 U.S. dollars. Russia remains the only Member  
24 country of the Convention which conducted regular research in  
25 the central part of the Convention region.

10:53 1           The most recent research was conducted back in 2002  
2 and 2009. The information about this research was submitted at  
3 the First Meeting in February 2006 in Wellington. This  
4 information was also submitted, and it's placed on the slide,  
5 and the information has also been submitted to the Review Panel  
6 as a hard copy; well, at least I think it has been submitted.  
7 Therefore, in accordance with this criterion as well, Russia  
8 should receive the maximum limit.

9           As far as other criteria of Article 21 is concerned,  
10 Russia should also receive a substantial quota. Russia is the  
11 acknowledged world leader in the area of research in the area  
12 of long-term sustainable use--over 50 years--of marine  
13 bioresources of the high seas of the South Pacific.

14           During the first Preparatory Conference in Oakland in  
15 July 2010, the procedural regulations included Article 10.2,  
16 stipulating the necessity to translate the main document to  
17 other languages including the Russian language, which is also  
18 the indirect acknowledgment of the above said. Allow me to  
19 highlight that only Russia speaks Russian out of all the Member  
20 States. Further information on this point is contained on the  
21 side of the SPRFMO and is also limited to the Review Panel as a  
22 hard copy.

23           Point 6 of the information package of the Secretariat  
24 of South Pacific refers to 2007. I quote: "In 2007, in the  
25 Exclusive Economic Zone of Peru, Chile, and Ecuador and the

10:55 1 adjacent regions of the high seas, over 2 million tons of jack  
2 mackerel were caught. That catch was received by the Coastal  
3 States and the distant water fleets of Belize, Vanuatu,  
4 European Union, China, Korea, and Faroe Islands.

5           The First Meeting--I'm sorry, the first assessment of  
6 SWG of the jack mackerel stock was given at the Ninth Meeting  
7 of this group in October 2010. The following conclusions were  
8 drawn: Since 2006, jack mackerel catch were continuously going  
9 down, and it kept decreasing in 2010. However, the preliminary  
10 catches in September for 2010 are the lowest since 1976. I  
11 refer to Point 15 of the Information Paper of the Secretariat.

12           As I already mentioned, the Interim Measures were  
13 adopted, because the jack mackerel catch kept growing, from  
14 different countries in the areas both regulated by the  
15 Convention and in the regions under national jurisdiction in  
16 the latest years.

17           The Russian Federation understands its responsibility  
18 for the conservation of the jack mackerel stock in South  
19 Pacific, took active part in developing and adopting the  
20 Interim Measures covering the pelagic stock, first and foremost  
21 of jack mackerel; and all the interim measures adopted by the  
22 Parties are always explicitly described the goal status. The  
23 Interim Measures are voluntary and not legally binding in  
24 accordance with international law.

25           And Point 3 of the Resolution establishing the

10:58 1 Preparatory Conference also stipulates that their Interim  
2 Measures will be applied on the voluntary basis. To prove  
3 that, to prove the point concerning the legal status of the  
4 Interim Measures, we can refer to Point 10 of the Report of the  
5 Second Session of the Preparatory Conference which contains the  
6 statement that the delegations of Cuba, Faroe Islands, Republic  
7 of Korea, and Venezuela did not agree to the decision to adopt  
8 the Interim Measures 2000 level. China reserved its position.

9 Point 5 in particular, Interim Measures 2009, which  
10 applied to the fishing in the region regulated by the  
11 Convention, stipulates that the Interim Measures are voluntary  
12 and they're not legally binding under international law.

13 Under Paragraph 4 of the Revised Interim Measures to  
14 govern the Pelagic Fisheries in 2009, the interim 2009  
15 Measures, based on which jack mackerel was caught in the  
16 Convention Area in 2010, the provisions of the 2009 Interim  
17 Measures will not be viewed as a precedent for future  
18 allocation or for other decisions to be taken by the  
19 Commission, pursuant to Article 21 of the Convention, as far as  
20 participation in the jack mackerel fisheries.

21 Under Paragraph 13 of the 2009 Interim Measures is  
22 exactly on the participants engaging in jack mackerel fishing  
23 that the authority was imposed to collect, confirm, and provide  
24 data to the temporary Secretariat of the South Pacific.

25 Also, in a document called the "Standards for

11:01 1 Collection, Transmission, Confirmation, and Exchange of Data,"  
2 adopted in 2008 Supplement D to the Protocol of International  
3 Consultations Number 6 to prepare the Convention, has a  
4 section, namely, Section Number 6, Confirmation of Data,  
5 whereby the function to verify the data is put into the  
6 competence of the participants in the Organization.

7           As far as the Information Paper by the South Pacific  
8 Secretariat, attached to it are letters from the Russian  
9 Committee for Fisheries that contain data on Russia's catch in  
10 the Convention Area of regulation in 2010, which, of course,  
11 constitutes confirmation by the Russian side of the specified  
12 data under the voluntary obligations in operation as of that  
13 period of time. The Russian side has never withdrawn the said  
14 catch data, including during the First Session of the  
15 Commission.

16           As far as statements by certain countries, and on  
17 account of those statements, the Russian Party has conducted  
18 again, in accordance with its domestic legislation, an  
19 investigation into the operations of the Russian fishing vessel  
20 Lafayette; and, based on the results of the investigation,  
21 submitted information on this matter--reported, rather,  
22 information on this matter during the Third Preparatory  
23 Conference to establish the South Pacific Secretariat. I'm  
24 referring to Additional Material Number 52 in the information  
25 document by the South Pacific Secretariat.

11:04 1           And yet the Interim Secretariat considered it possible  
2 to assume the responsibility, following the Third Preparatory  
3 Conference, to exclude data on Russia's catch in the data  
4 section on the Organization's Web site, and a description of  
5 that is provided in Paragraph 61 of the Secretariat's  
6 Information Paper.

7           In addition, in the absence of legal grounds, the  
8 information document prepared by the South Pacific Secretariat  
9 for the First Meeting of the Commission, the Russian  
10 Federation's 2010 registered catch was never indicated.

11           Notably, under Paragraph (1)(d), Article 24 of the  
12 Convention, the obligations of the Convention Members comprise,  
13 among others, collection, verification, and reporting of  
14 scientific, technical, and statistical data pertaining to the  
15 fisheries and marine ecosystems in the Convention Area as  
16 pursuant to the standards, rules and procedures established by  
17 the Commission.

18           During the First Session of the Commission, as the  
19 matter was discussed of adopting SMU 1.01 with regard to  
20 Conservation and Management of the jack mackerel, the Russian  
21 Party expressed its position, which is reflected in Note  
22 Number 5 to SMU 1.01, which says, "The Russian Federation has  
23 noted--has advised the Commission that in spite the situation  
24 referred to in Footnote Number 4, the Russian Federation  
25 believes that it has a legitimate right to part of the 2013

11:07 1 fisheries calculated in proportion to its fishing activities  
2 performed by it, and information to that effect had been  
3 submitted to the Interim Secretariat back in 2010."

4 And also in a supplement to the report of the First  
5 Session of the Commission, a statement by the Russian Party.

6 As it stands, the adopted CMM 1.01 deprives the  
7 fishermen of a country that both, say, longer than 40 years'  
8 worth of confirmed story of fishing for jack mackerel and has  
9 also made an unquestionable contribution to discovering jack  
10 mackerel stocks in the high seas in South Pacific, a country  
11 that has conducted scientific studies in the area subject to  
12 the Convention and with regard to regulating the right to fish  
13 for jack mackerel, which in itself is inconsistent with  
14 Paragraph Number 3, Article 119, preservation of living marine  
15 high seas resources of the Law of the Sea UN Convention dated  
16 December the 10th, 1982.

17 In this regard, one can note that the CMM 1.01 Measure  
18 reflects provisions that are at variance with conclusions  
19 contained in our opponent's submitted objections. For example,  
20 under Paragraph 6 of CMM 1.01, the Total Allowable Catch of  
21 jack mackerel is divided between the Parties in a proportion  
22 that is similar to their shares in the 2010 catch in accordance  
23 with data turned over to the Executive Secretary in the Area  
24 where this Measure is applied and in amounts established in  
25 Table Number 2.

11:11 1           Item 6 of CMM 1.01 does not contain any references to  
2 the need to confirm the specified data by the Interim  
3 Secretariat, as indicated, among other things, in Paragraph 3  
4 of the written statement submitted by New Zealand.

5           I would like to emphasize, this having been said, that  
6 in the Russian Federation there exists and operates--and  
7 operates in a highly effective manner--a monitoring system.  
8 And such data are provided or submitted on a daily basis to the  
9 monitoring centers located in different parts of the Russian  
10 Federation and the federal fisheries agency, which is located  
11 centrally, headquartered in Moscow.

12           I would like to emphasize that both representatives of  
13 the EU and representatives of many countries are familiar, in  
14 fact, with this monitoring system, and they have paid visits to  
15 such monitoring centers in the Russian Federation annually. We  
16 have meetings in particular with EU delegations, and there  
17 hasn't been a single precedent where such delegations doubted  
18 data that we submit as far as catch or catches in the various  
19 regions covered by various international organizations.

20           Supplement Number 1 to the Measure comprises the gross  
21 tonnage of the Russian Federation--I'm referring to CMM  
22 1.01--which includes the fishing vessel Lafayette. Despite the  
23 presence of a number of footnotes to Russian data in Supplement  
24 Number 1, the lack of objections submitted by other countries  
25 pursuant to the procedure set forth in Article 17 of the

11:14 1 Convention, in fact, constitutes confirmation of the need to  
2 include the tonnage of the vessel Lafayette in the overall  
3 numbers, and it appears to us that only the Convention contains  
4 definitions that reflect the Parties' common understanding of  
5 what constitutes a fishing vessel and fishing.

6 I will allow myself to quote from Paragraphs (g) and  
7 (h) of Article 1 of the Convention:

8 "Fishing refers to factual or exploratory search for,  
9 catch, removal, or collection of fishing resources,  
10 participation in any kind of activity that objectively may lead  
11 to detection, removal, catch, or collection of fishing  
12 resources for any purposes, overloading and any acts on the  
13 high seas in support or for preparation of any activity  
14 described herein. And the use of any vessel, a dry-land  
15 transportation vehicle, an air vessel, or an air-cushion vessel  
16 in regard to any activity described herein. Therefore, a  
17 fishing vessel refers to any vessel used or intended for  
18 fishing including fish processing vessels, auxiliary vessels,  
19 transportation vessels, and any other vessels that are directly  
20 involved in fishing operations."

21 In this regard, I would like to mention that the  
22 fishing vessel Lafayette received a certificate to sail under  
23 the flag of the Russian Federation in the Kaliningrad port as a  
24 fishing vessel. This vessel has its own unique number, has its  
25 own unique Certificate Number. Essentially, this is a document

11:18 1 that confirms that this vessel is a fishing vessel, or falls  
2 under the category of fishing vessels.

3           In conclusion, I would like to comment on the EU  
4 objection in the sense that the use of catches of any  
5 particular year as a key to TAC allocation and distribution of  
6 national quotas is not unique. As an example, the European  
7 Union refers to the Measure CPSF. Again, this Measure does not  
8 use the principle of utilizing one year, and that is the  
9 Year 2005, as they placed restrictions on the catches of  
10 albacore tuna.

11           In accordance with this Measure, the catch allocation  
12 would be based on the 2005 catches or any of the years in the  
13 2000-2004 range; that is, a six-year long interval is employed.  
14 Information in this regard can be found at the WCPCF Web site,  
15 and the language of this Measure is available on the hard  
16 medium, and we can turn it over to the distinguished Tribunal.

17           The Russian Party proceeds from the premise that TAC  
18 distribution international quotas must be performed under  
19 Article 21 of the Convention on the Conservation of Fisheries  
20 on the high seas in South Pacific, subsequently Convention, as  
21 decisions are made on the participation in the catch of any  
22 fishing resources, including distribution of Total Allowable  
23 Catch or total allowable level of fishing effort.

24           The Commission should take under consideration of the  
25 state of the fishing stocks and the existing level of fishing

11:21 1 effort as applied to this particular resource, and also the  
2 following criteria, and with the understanding that the  
3 principal goal of the CMM 1.01 is to establish a Total  
4 Allowable Catch at the level of 360,000 tons in the  
5 geographical area to which it applies--my apologies,  
6 360,000 tons to which it applies, which is the subject--which  
7 is the Area governed by the Convention and the EEZ of the  
8 Republic of Chile.

9           The Russian Party, as it determined its national quota  
10 proposed, an alternative measure which incorporates the  
11 following positions: Being guided by the principle of the  
12 distribution of the amounts of jack mackerel catch for 2013  
13 established in CMM 1.01, the Russian Party establishes a  
14 restriction on the jack mackerel catch for Russian fishing  
15 vessels in the Convention Regulation Area in 2013 at the level  
16 of 19,944 tons.

17           The Russian Federation, in the submitted objection,  
18 which contains an alternative measure, does not suggest review  
19 of the overall catch for other countries for 2013.

20           In 2013, when the level of 360,000 tons is reached in  
21 the region covered by CMM 1.01, the Russian Federation,  
22 irrespective of the amount of the quotum used until then of the  
23 national quota, will stop fishing. Taking into account this  
24 approach, the applicable limits should be seen as equivalent to  
25 Measure CMM 1.01 and also being in line with the objectives of

11:24 1 the Convention.

2 Referring to the all mentioned above, the Russian side  
3 believes that these team experts will be capable to give an  
4 objective assessment of the arguments presented and take a  
5 correct decision.

6 Russia is a participant to 25 regional organizations,  
7 fisheries management, FMO. In some of them, it has been a  
8 member since their inception. And Russia has been a member to  
9 ICES, which is one of the esteemed organizations, and has been  
10 a member for over 100 years. And until now, the Russian  
11 Federation was never faced with a situation when one of the  
12 major participating States received a zero limit, a zero  
13 quatum.

14 Allow me to underline an exceptional role Russia plays  
15 in exploration, research, and long-term sustainable management  
16 of marine bioresources of high seas and South Pacific. And  
17 because of the role it plays, my country cannot be totally  
18 excluded from participating, of exploring the most profitable  
19 for a number of nations fishing resource jack mackerel.

20 I would like to thank you for your patience. I would  
21 like to thank the Chairman and all the participants.

22 CHAIRMAN OXMAN: We thank the representative of the  
23 Russian Federation. We also wish to express our thanks to both  
24 previous speakers for remaining well within the relevant time  
25 limits. I am sure that all of the participants will wish to

11:27 1 make good use of the time saved in preparing to deal with the  
2 questions.

3 I would suggest that we take our break now and that we  
4 resume with the remarks of the Republic of Chile at 11:45  
5 sharp.

6 Thank you.

7 (Brief recess.)

8 CHAIRMAN OXMAN: Is the Republic of Chile ready to  
9 proceed?

10 MS. BERNAL: Yes.

11 PRESENTATION OF THE REPUBLIC OF CHILE

12 MS. BERNAL: Good morning, Members of the Review  
13 Panel, Members of the Executive Secretariat, and Chairperson of  
14 the South Pacific Regional Fisheries Management Organization,  
15 Members of the distinguished delegations that are here today,  
16 Russian Federation, Chinese Taipei, on behalf of the delegation  
17 of Chile, I want to express that it's an honor to be here and  
18 remarks that you get in this process indicates that the  
19 Organization is working and that is our wish, that the  
20 Organization works in the best way possible in order to ensure  
21 the objective of the Convention: This is the conservation and  
22 sustainable use of the fishery resources.

23 On behalf of the delegation of Chile, we are here to  
24 present the arguments of the Government of Chile to support  
25 that the decision adopted by the Commission does not

11:49 1 discriminate unjustifiably against the Russian Federation.

2           First, and before going into the matters of substance  
3 of the Objection, it is necessary to review some formal  
4 aspects, done in accordance with Chile's point of view,  
5 contravenes the Convention and presents a contradiction between  
6 the formulated facts. As a matter of fact, the first document  
7 submitted by the Objecting Party states that its catches  
8 reporting during 2010 shall be considered in the participation  
9 process. On the other hand, the second document states that  
10 the Year 2010 should not be considered to determine the  
11 participation of the Member States in the CMM 1.01.

12           Besides being contradictory, both arguments are of a  
13 different nature. If this Panel accepts any argument presented  
14 by the Objecting Party, that decision will have adverse and  
15 different effects.

16           Additionally, according to the Rules of Procedure of  
17 the Convention, the time period to present an Objection was  
18 expired when the second document submitted by the Russian  
19 Federation was presented. Therefore, the Objecting Party could  
20 only present arguments to support its formal presentation but  
21 not for adding new objective facts. Our delegation explicitly  
22 requests this Panel to issue a--

23           THE INTERPRETER: Slower, please. Slower. Thank you.

24           MS. BERNAL: --in addition, and if the formal aspects  
25 submitted were not to be considered, it is important to

11:51 1 highlight the memorandum submitted by the delegation of New  
2 Zealand, where it states that the alternative Measure proposed  
3 a non-equivalent in effect to the objective of the Convention.  
4 If the alternative Measure proposed by the Russian Federation  
5 was adopted, it would exceed the safeguarding adopted by the  
6 Scientific Working Group of the Convention regarding the  
7 fishery of the jack mackerel.

8           Finally, it shall be stated that the Objecting Party  
9 did not object to the 2013 Total Allowable Catch.

10           Regarding to the substance aspect, our delegation  
11 would like to establish that the Information Paper circulated  
12 by the Secretariat is a comprehensive work in which every event  
13 is detailed as they occurred and on which we have based our  
14 presentation. Without prejudice of the foregoing and in order  
15 to present our argument, it is important to highlight the  
16 following facts:

17           First, in 2010, the Objecting Party had only one  
18 vessel authorized and operating in the Convention Area. It was  
19 the Lafayette.

20           Second, according to the inspections conducted and  
21 circulated to all participants of the Convention, it is  
22 concluded that the vessel Lafayette had not and has never had  
23 the capability to carry out catches herself or perform  
24 pair-trawling fishing activities.

25           As you can see, this slide is aimed merely to show the

11:53 1 photograph attached to the inspection, and, in that sense, it  
2 is evident the essence of fishing equipment in the vessel. The  
3 vessel has neither fishing gear such as trawls or warps, and  
4 also the vessel had not designed or size to carry out  
5 pair-trawling fishing activities. As the previous slide, the  
6 photographs speak by themselves.

7           And third place, another important fact is that the  
8 Objecting Party reported 41,315 tons of jack mackerel for 2010,  
9 as it has been shown in the Information Paper of the  
10 Organization.

11           Fourth, it is important to consider that the rule  
12 reported, as required by the Interim Secretariat, for the same  
13 year that four out of its six vessels transshipped 31,275 tons  
14 to the vessel Lafayette.

15           And, fifth, the information submitted by the Objecting  
16 Party to the Scientific Working Group is another relevant  
17 aspect that is important to emphasize.

18           For example, in Table 1 of the National Report for the  
19 Russian Federation in 2011 shows only one vessel operating in  
20 the Area in 2010. As we already said, it was the Lafayette.  
21 That you can see in the red circle. And the same document  
22 shows in Table 3 that catches for the Year 2010 amounted to  
23 41,315 tons.

24           Without prejudice of the foregoing, Table 6 of the  
25 same document referred to the number of tows or number of

11:55 1 fishing days and shows no information for 2010. Then you can  
2 see the information for the Year 2008, 2009, and 2011, but  
3 there is no information for 2010, even when they explicitly say  
4 that they have one vessel operating in the Area.

5 Finally, Figure 6 regarding monthly catches of jack  
6 mackerel between 2008 and 2011 shows no information for 2010 as  
7 well.

8 For its parts in the document provided by the  
9 Scientific Observers of the Russian Federation for 2010, there  
10 is no information about the fishing performance for that year.  
11 You can see the information for the previous years and for  
12 2011.

13 As shown in previous slides, by the time of the stock  
14 assessment for jack mackerel in 2012, the Scientific Working  
15 Group adopted the decision of eliminating the catches reported  
16 by the Russian Federation. Otherwise, if the Scientific  
17 Working Group would accept the catches reported, it will  
18 involve duplicity of catches with those reported by the  
19 Peruvian vessels.

20 So, the catches are shown in Table A1.3. As you can  
21 see, there is a zero in the red circle.

22 MS. BALTIERRA: After reviewing the facts and data, we  
23 shall now move to the consequences that, according to the  
24 judgment of the delegation of Chile, imply the absence of  
25 complete and accurate information submitted by the Russian

11:57 1 Federation. And it is our understanding that failure to submit  
2 information in accordance with Article 3 of the Convention  
3 implies legal and factual consequences.

4           Regarding legal infringement, there is a  
5 non-compliance with 2009 Interim Measures as well as to the  
6 previous Interim Measures. In fact, Paragraph 13 states that  
7 participants were committed to submit information of fishing  
8 activities in a tow-by-tow basis according to the Data  
9 Standard. Additionally, Paragraph 15 states that estimated  
10 monthly basis were to be submitted within 30 days of the end of  
11 each month. Both requirements were not accomplished for the  
12 Russian Federation.

13           On the other hand, the decision with respect to the  
14 CMM is not inconsistent with the provision of the Convention.

15           Regarding the factual consequences, accepting  
16 information submitted by the Russian Federation implies a  
17 certain duplicity of catches for that year, since they were  
18 already reported by Peru. This is a serious issue due to the  
19 critical conservation condition of the jack mackerel fishery.  
20 In fact, its critical biological condition still shows a great  
21 deterioration year after year, and this has been recognized by  
22 the Scientific Working Group year after year.

23           Additionally, this involved ignoring sound and  
24 conclusive evidence, as demonstrated the inspection to the  
25 vessel Lafayette, and the Objecting Party did not present

12:00 1 evidence to prove otherwise.

2           As indicated by the European Union in its memorandum,  
3 the Objecting Party submitted information to the Interim  
4 Secretariat. However, the data is not complete. For example,  
5 the information of catches on a tow-by-tow basis has not been  
6 submitted yet. And, on the other hand, it's not correct,  
7 either. Information, the 2010 catches did not come from  
8 Russian vessels but from transshipments from Peruvian vessels.  
9 The previous fact has been extensively exposed in the  
10 Information Paper submitted by the Chairperson and the  
11 Executive Secretary as well as in the memorandum submitted by  
12 Chile.

13           In the memorandum in the New Zealand in Paragraph 3  
14 states that Russian Federation data was assessed as  
15 insufficient. This was the reason for not to have been taken  
16 into account in adopting CMM 1.01.

17           Another aspect to be considered is that the Objecting  
18 Party states that the Commission did not have powers to review  
19 the information reported during the interim period. This issue  
20 is relevant for our delegation, since this Organization is  
21 well-known for having a long and regulated interim period.  
22 Indeed, in an earlier stage of the negotiation process, there  
23 was a full consensus regarding the need of regulation and  
24 especially the need of information, both scientific and of the  
25 fishing activities.

12:02 1           As a matter of fact, in 2007, and during the third  
2 International Consultation, the Data Standard was agreed and  
3 submission of information was required at the moment of the  
4 adoption of the first Interim Measures. This aspect defined  
5 this Organization. Even though the Interim Measures were  
6 voluntary and not legally binding, the participants' commitment  
7 to comply with them.

8           Another issue to be addressed is the Article of the  
9 Convention. Article 3 of the Convention indicates that the  
10 Commission has power to verify the information when adopting a  
11 decision. This does not in any case mean that the Convention  
12 has a retroactive effect since the Measure was adopted this  
13 year with the Convention fully in force. In use of its powers,  
14 the Commission could decide the use of the Year 2010 or another  
15 year. This fact was not argued by the Objecting Party as will  
16 be explained in the following slide.

17           Additionally, the New Zealand paper indicates in its  
18 documents in Paragraph 2, Article 3.1 of the Convention,  
19 especially Letter 8.4, and the full and accurate data on  
20 fishing, including information relating to impacts shall be  
21 collected, verified, reported, and shared in a timely and  
22 appropriate manner.

23           The Russian Federation states in its document that the  
24 submission of 2010 information on a tow-by-tow basis was not  
25 mandatory, based on the incorporation of a footnote in the 2011

12:04 1 Interim Measures. This footnote indicated that the submission  
2 of information will be carried out according to the 2009  
3 Interim Measure. However, the 2009 Interim Measure indicated  
4 that the submission of data had to be conducted in accordance  
5 with the Data Standard. Additionally, the Data Standard is  
6 obligatory to all participants since 2007. This situation has  
7 been clearly explained in Paragraph 35 of the Information Paper  
8 submitted by the Organization.

9 In another aspect to be considered is a use for the  
10 Year 2010. But here we have in our mind the CMM Measure is for  
11 only one year. The CMM Measure is for only one year. And  
12 based on Paragraph 4 of the 2011 Interim Measure, the Objecting  
13 Party states that the Year 2010 could not be on future  
14 allocation in accordance to Article 21. It also states that  
15 the Interim Measure are voluntarily and not legally binding.  
16 In this regard, the 2010 was not objected neither during the  
17 adoption of the Measure nor the objecting paper. Only the  
18 Russian Federation mention it in the supporting memorandum:  
19 The CMM 1.01 shall be reviewed by the Commission in 2014.

20 Additionally, at the moment of the adoption of the CMM  
21 1.01, the Commission took into account Paragraph 4 of the 2009  
22 Interim Measure and explicitly indicated that in Paragraph 3 of  
23 that Measure, the Year 2010 is excluded from the years that are  
24 not to be considered for future allocation. The Objecting  
25 Party did not object to this paragraph by the time of the

12:07 1 adoption of the CMM, neither in the Objection Document.

2           In accordance with our vision, the New Zealand  
3 memorandum in paragraph indicated, Paragraph 10, said that at  
4 the time of the adoption of CMM, therefore, the Russian  
5 Federation recorded its Objection to another set of data but  
6 did not record an Objection to the use of the 2010 year.

7           Now, we would like to refer to some comments about the  
8 memorandum of the other delegation. Before presenting the  
9 conclusion, it is important to mention the comments issued by  
10 the Chinese Taipei. The delegation of Chinese Taipei indicated  
11 in its document that this Panel shall take into account the  
12 concept of fishing and fishing vessels. In its judgment, the  
13 answer to this problem or controversy is found in this concept.  
14 In this respect, we note the definition of "fishing vessels" is  
15 indeed broad, including vessels used or intended for fishing as  
16 well as processing on current vessels. And this definition is  
17 common in another treaty, for example, in the flag State or in  
18 the port State.

19           Regarding to the definition of "fishing," it's  
20 included four meanings: Actual catches, any activity with an  
21 expected result of catching, transshipment, and the use of any  
22 vessels in relation to the previous activities, notwithstanding  
23 the previous definition the concept to adopt the Measure, the  
24 actual catches carried out by the vessel flying the flag of a  
25 State that reported those catches.

12:09 1           Furthermore, during the interim period, the concept  
2 "actively fishing" was used, meaning that a vessel was deployed  
3 for fishing year within the Convention Area with the resolve of  
4 catching fish. In this concrete situation, all doubt, the  
5 vessel Lafayette is included in definition of "fishing vessels"  
6 according to Article 1, Paragraph 1(h) of the Convention. The  
7 fact is that the Lafayette received catches carried out by  
8 Peruvian flag vessels, which were reported and included in the  
9 calculation for the participation of Peru. If we incorporate  
10 the Lafayette tons, we have a duplicity of catches for 2010.

11           The conclusion of delegation of Chile are the  
12 objective CMM does not discriminate unjustifiably against the  
13 Objecting Party in form or in fact. It is clear that the  
14 Russian Federation did not comply with its duty to report, as  
15 expressed in the Information Papers submitted by the  
16 Chairperson and Executive Secretary of the Convention. In case  
17 of lack of correct and timely information, the Commission has  
18 full power to verify and eliminate incorrect information.

19           The use of the Year 2010 as a basis for the  
20 participation of Members and Cooperating Non-Contracting  
21 Parties in 2013 Total Allowable Catch was expressly authorized  
22 by the CMM. In addition, the Year 2010 was not objected in  
23 time and in form. Catches reported by the Russian Federation  
24 for 2010 did not come from vessels of its flag and were also  
25 reported by Peru.

12:12 1           Consequently, it is requested that this Panel rejects  
2 the Objection presented by the Russian Federation due to lack  
3 of argument in fact and in law.

4           Thank you very much, Mr. President.

5           CHAIRMAN OXMAN: We thank the representative of the  
6 Republic of Chile.

7           This does provide additional time, which may indicate  
8 the dedication of all the participants to principles of human  
9 rights since it means that the representatives may have the  
10 opportunity both to enjoy some lunch and to prepare for the  
11 question-and-answer session.

12           We are going to distribute to you now the previously  
13 prepared questions. As you might have guessed and, indeed, as  
14 we guessed, some of you have already addressed some of these  
15 questions in the proceedings this morning, and obviously you  
16 should feel free to rely on that and not feel obliged to repeat  
17 what you have already said in response to the questions. I do  
18 note that there may be additional questions that have arisen  
19 out of the remarks this morning, and we will, of course, convey  
20 those orally.

21           At this point, I would suggest that we adjourn for  
22 lunch, and that we reconvene at the scheduled time; that is,  
23 3:00, sharp.

24           (Whereupon, at 12:14 p.m., the hearing was adjourned  
25 until 3:00 p.m., the same day.)



15:07 1 Ecuador, and the European Union for this year.

2 MR. MANSFIELD: Mr. Chairman, the next question is  
3 addressed to the Organization by Ms. Carvajal, and I will  
4 attempt to answer that.

5 The question relates to the references in the Preamble  
6 to Articles 4(2), 20(4) and 21(2) of the Convention, and I  
7 would say that these references in the Preamble are all  
8 references to the Convention provisions dealing with straddling  
9 stocks and, in particular, the possibility that, with the  
10 express consent of a Coastal State, a Conservation and  
11 Management Measure can have application in areas under that  
12 State's national jurisdiction. Those provisions were referred  
13 to in the Preamble because in these circumstances, Chile was  
14 agreeing that CMM 1.01 would apply within areas under its  
15 national jurisdiction.

16 Article 21(1), as I explained in my opening remarks,  
17 the participants were, in my view, clear that in developing  
18 this Measure, they were not engaging in an allocation exercise  
19 under that Article; rather, they were attempting to find a way  
20 of constraining current catches to enable a stock rebuild to a  
21 level at which an Article 21 exercise could properly be  
22 undertaken.

23 To elaborate on that a little, I don't think anyone  
24 thought that an Article 21 allocation process was a practical  
25 possibility for the Commission's First Meeting. There was a

15:09 1 great deal of other work to be done to get the Organization  
2 fully under way, and I think you can see that from the report  
3 of the meeting. For example, it was necessary to adopt the  
4 Rules of Procedure and the Financial Regulations, including the  
5 formula for calculating the budget, to adopt the budget itself,  
6 and to appoint all the officers for the subsidiary bodies, and  
7 to adopt a number of other consolation Measures, for example,  
8 on Data Standards, gill nets, and IIU fishing. To have  
9 attempted to negotiate a full and lasting allocation  
10 arrangement would simply just have not been possible within the  
11 time available, and I think participants were clear that they  
12 were simply adopting a one-year provision and doing so without  
13 prejudice to anyone's position for a subsequent Article 21  
14 exercise. And I think they thought they had made that  
15 relatively clear in Paragraph 3 of the Measure itself.

16           Table 2 of CMM 1.01 simply reflected the latest part  
17 of this three-year effort to restrict catches to half or less  
18 of the 2010 catches, the catch year against which the Science  
19 Working Group had made their specific recommendations for  
20 reductions. Table 2 and Table 3 were needed on this occasion,  
21 as compared with the past, simply to make clear the practical  
22 effect of the decision by the high seas fishing countries to  
23 honor a one-off basis to transfer 10 percent of what would have  
24 been their limits to Chile. Without the tables, one wouldn't  
25 have been able to understand it. So that is, I hope, the

15:12 1 answer to that question.

2           Turning to Professor Bekyashev's questions, if I may,  
3 the first question asks about the legal effect of Paragraph 4  
4 of CMM 1.01. I think I have to say that, in my view, it is not  
5 appropriate for me as Chair of the Commission or for the  
6 Executive Secretary to express a view on the legal effect of  
7 CMM 1.01 and whether, for example, it would qualify as a matter  
8 to be taken into account under Article 31(3) of the Vienna  
9 Convention on the Law of Treaties in interpreting Article 21(1)  
10 of the Convention. That is a legal matter which I think must  
11 be left to the Parties themselves.

12           Now, the second question, I'll refer to Dr. Allen.

13           MR. ALLEN: Thank you.

14           And in respect of this question, I would say that at  
15 no point did I request let alone order an inspection of the  
16 Lafayette. Rather, as is spelled out in the Information Paper,  
17 the French authorities contacted me to say they were going to  
18 inspect the vessel and asked me if there was any particular  
19 information the Organization would like, and I responded to  
20 that request.

21           MR. MANSFIELD: Thank you.

22           And question (1)(c). And I think (1)(c) and (1)(d) go  
23 very much together, if I might say so. And I think my answer  
24 would be this: That the thrust of the relevant parts of the  
25 Interim Measures and of CMM 1.01 is catch, not fishing.

15:14 1 Whether the Lafayette was a fishing vessel under Article 1 of  
2 the Convention is not really a relevant question. The question  
3 is whether catch was properly attributed to that vessel or  
4 properly attributed to other vessels.

5           So, the question, I think, specifically in respect to  
6 (d) is, yes, in my view, the Lafayette would be covered by the  
7 definition of Article 1, but the real question that was being  
8 grappled with was whether the catch in question was catch that  
9 was attributed to that vessel or to other vessels.

10           Question (e), to answer that, I think I would refer to  
11 the point I made in my opening remarks and my answer that I  
12 have just given to Ms. Carvajal. In essence, at least as I  
13 perceived it as Chair and the intentions of the participants,  
14 this was not an allocation exercise under Article 21.

15           Dr. Allen was just asking whether I had made the point  
16 in relation to Question (d): Was the Lafayette a fishing  
17 vessel in terms of Article 1? And I think the answer to that  
18 is yes, but the real question, as I say, is whether the catch  
19 was appropriately attributable to that vessel.

20           As to (f), again I think I would say that the  
21 development of CMM 1.01 was not an Article 21 allocation,  
22 exercised for the reasons I've already explained.

23           Can I go on to say that, when an Article 21 exercise  
24 is carried out, I certainly think it should cover, say, in the  
25 past 10 years as in the question. So, I think that would be

15:17 1 very much the kind of matter that would be brought into account  
2 in a full Article 21 exercise.

3 Question (g), the relevant instruments there--the  
4 question is what instrument or document defined the procedure  
5 for submitting the catch dated to the Commission in 2010 and  
6 2011--the answer to that question is that the relevant  
7 instruments were simply the Interim Measures and the Data  
8 Standards, and they were, indeed, not legally binding, but all  
9 delegations had voluntarily agreed to follow those Measures.

10 Next one, Robin Allen.

11 MR. ALLEN: And the last question, I don't know  
12 whether the French authorities have sent the formal documents  
13 relating to inspection of the Lafayette to the Russian  
14 Federation, but I would note that Article 26(3) applies in a  
15 situation where a Commission Member considers that a vessel has  
16 violated the provision of the Convention, and I don't believe  
17 there has ever been a suggestion that the vessel in question  
18 has violated a provision of the Convention, which, of course,  
19 in any event, was not in force at the time of that inspection.

20 MR. MANSFIELD: So that, Mr. Chairman, I think, is our  
21 answers to the questions that have been specifically directed  
22 at the Organization or the Secretariat.

23 Thank you.

24 CHAIRMAN OXMAN: Thank you very much.

25 I give the floor to the representatives of the Russian

15:19 1 Federation.

2 DR. BELYAEV: Thank you, Mr. Chairman, for passing the  
3 floor to us.

4 Please bear with us for our being late, which had to  
5 do with certain logistical issues. We spent so much time  
6 printing out our documents.

7 What I would like to start with by way of answering is  
8 with questions by Valeria Carvajal.

9 The Russian Federation believes that the use of 2010  
10 data to determine the total level catch for vessels under  
11 Russian flags in 2014 is a case of discrimination both in form  
12 and as a fact. As far as CMM 1.01 and its form, even though it  
13 applies to all and everyone, meaning the participants, the  
14 Member States of the Convention, it applies the criteria of  
15 allowable catch as the availability--as the existence of catch  
16 in an individually selected year; that is, the Year 2010.  
17 Therefore, out of the--therefore, those States can be excluded  
18 from fishing that for any reason were not fishing in this  
19 particular year.

20 Also, notably, one of the reasons for an individual  
21 State possibly to not have engaged in fishing could have been  
22 the very Interim Measures that prevented the State from  
23 fishing, including all the way to completely disallowing the  
24 State in question to fish on that particular year, revoking its  
25 privilege to fish in that particular year. That Measure is

15:22 1 inconsistent with Paragraph 3, Article 119 of the UN Law of the  
2 Sea Convention (1982) which says that Measures to conserve and  
3 Measures to implement such Measures must not be discriminatory  
4 in form or in substance against fishermen of any State.

5           Essentially, the criterion of giving access to a  
6 Member State in the Convention area is available in its  
7 Article 21 and includes, among other things, the following  
8 language:

9           "Historical catch and past and present models of  
10 fishing in the Demonstration Area, a demonstration of the  
11 ability and willingness to effect monitoring of the flag  
12 carried by fishing vessels; contribution to the cause of  
13 maintaining and managing fisheries, including provision of  
14 accurate data, of effective monitoring systems, implementation  
15 systems, and enforcement systems; a contribution to responsible  
16 development of a new or exploratory fishery in accordance with  
17 Article 32; a participation in scientific research concerning  
18 the fishing stock and proliferation of the results of such  
19 research."

20           As it was demonstrated in the presentation of the  
21 Russian Federation, my country, during the whole period of  
22 fishing in this area, has the highest figures among all the  
23 other participating States. That becomes the basis for the  
24 legality of our demands to use the waters in Convention Areas.

25           Point 2, we demonstrated the involvement of the

15:25 1 Russian's many years of participation in the research in the  
2 area involved.

3 Point 3, Russian Federation carries out the effective  
4 control over its fishing vessels, including in the Convention  
5 Area. Russia takes all the necessary steps to provide the  
6 accurate data for the fishing monitoring and control.

7 And, finally, there is no doubt that the input of the  
8 Russian Federation in safeguarding the fisheries in the south  
9 part of the South Pacific allowed to preserve the stock in the  
10 Convention Area.

11 Therefore, as mentioned above, that is the violation  
12 of Paragraph 3, Article 119 of the UN Convention on the Law of  
13 the Sea, and Paragraph 11, Article 87 and Article 116 of the  
14 above-mentioned Convention, stipulating the overall principle  
15 of the fishing carried out on the high seas, which constitute  
16 the major part of the Convention Area.

17 Point 3 of Article 8 of the Agreement of 1995  
18 stipulates the same. In this situation, the regional fishery  
19 organization and their rules should not be applied in such a  
20 way as to discriminate any country or group of countries that  
21 have a real fishery interest in that area.

22 Next question, 1(b) and 1(c), as an alternative  
23 measure suggested by the Russian Federation, the allocation key  
24 for 2013 for jack mackerel which is stipulated by CMM 1.01,  
25 Russia sets the jack mackerel fishing limit for the Russian

15:28 1 fishing vessels in the Convention area in 2013 at the level of  
2 19,944 tons, and this was not to revisit the other country's  
3 limits for 2013. If the countries achieve the level of  
4 360,000 tons in the area applying the CMM 1.01, then the  
5 Russian Federation will stop fishing, irrespective if it  
6 achieves the national level of catch or not.

7           Answering the questions posed by Mr. Oxman, Professor  
8 Oxman, I would say the following: In accordance with the  
9 requirements of the Russian legislation, when Lafayette was  
10 operating in South Pacific in 2010, the fishing vessel was  
11 supposed to provide the overall catch and data without  
12 detailing its actual fishing activities. Therefore, the  
13 Lafayette activities on high seas were subject to reporting in  
14 accordance with the above-mentioned Russian legislation  
15 requirements and the overall requirements of the Convention Law  
16 of the Sea and the Agreement of 1994 and the Law of the Sea of  
17 '82.

18           Interim Measures concerning the submitted data format  
19 in that area are voluntary, and they are not international and  
20 legally binding obligations. In this respect, the Russian  
21 Federation cannot agree to the Chilean statement which we heard  
22 today, saying that the format of the date as opposed to  
23 2006--'7--I'm sorry--obligatory. The requirements of the  
24 Russian legislation, however, which are applicable at 2010,  
25 were fully satisfied by the Lafayette vessel.

15:31 1           The reports received by the Russian Federation from  
2 Lafayette highlight that the catch of 2010 was, in fact,  
3 produced by this particular vessel. This information was  
4 submitted in accordance with the Russian Federation  
5 legislation. The Federal Fishery Agency investigated this fact  
6 in order to understand the source of this information. The  
7 investigation proved the correctness of the data provided.

8           We're moving on to the next question, Point Number 3,  
9 Points 6, 7, and 11 of the Interim Measures, CMM 1.01 are not  
10 applicable to the transshipment of the catch.

11           THE INTERPRETER: Note of the interpreter: I think it  
12 was the overload of the catch.

13           DR. BELYAEV: Next question posed by Mr. Bekyashev or  
14 a set of questions posed by Mr. Bekyashev:

15           Question (a), Russian Federation possesses the  
16 document proving that the Lafayette is a fishing vessel.

17           The type of the vessel has been registered, and the  
18 relevant license or of the certificate proving the right to fly  
19 the national flag of the Russian Federation and was issued in  
20 Kaliningrad, proving it to be a fishing vessel.

21           Point 2(b), as mentioned in our answer to the question  
22 of Ms. Carvajal, Russian Federation, applying the Convention of  
23 '82 and applying the Agreement of '95 and Article 21 of the  
24 Convention, believes CMM 1.01 as discriminating Russian  
25 Federation both in form and in fact, and it is, therefore,

15:33 1 incompatible with the Articles of the Convention or any other  
2 applicable international law.

3           As far as the legal basis concerned for the objection  
4 voiced by the Russian Federation concerning CMM 1.01, such  
5 reasons are by all means provided by Points 2(a), (b), and (c)  
6 of Article 17 of the Convention on Conservation and Management  
7 of High Seas. The answer to the question to the question of  
8 Mrs. Carvajal is more or less the same answer as we can give to  
9 Mr. Bekyashev's question.

10           The next, Question (d), the Russian Federation  
11 received the Inspection Reports of the Lafayette which were  
12 conducted in January 2011 by French authorities. Two months  
13 later, in March 2011, in spite of the fact that at that time  
14 the Convention was not in force yet and the Russian Federation  
15 was not obliged to fulfill the requirements, the Russian  
16 Federation nevertheless carried out the investigation which I  
17 have already described.

18           Question (e), in the proposal of the Russian  
19 Federation, how the Russian catch could be calculated in  
20 19,000 tons--I'm sorry--19.944 thousand tons are based on the  
21 calculation key for different Members in 2010, and it's also  
22 based on the overall catch figure of 360,000 tons.

23           Question (f), in accordance with the Russian Federal  
24 law on fishing, fishing activity is production catch of marine  
25 resources and in cases stipulated in the Russian Federal law on

15:36 1 accepting, processing, overloading, transporting, storage, and  
2 offloading, production of fish and other product from the buyer  
3 resources. Such a definition coincides completely with the  
4 definition of Point (g) of Article 1 of the Convention.

5           The Convention stipulates that fishing is not just the  
6 search and catch or harvest of marine resources but also  
7 participating in any other related activities as well as  
8 overload and any other activity at sea in support or in  
9 preparation to any other activities stipulated in the same  
10 definition.

11           In addition, Point (h), Article 1, such a definition  
12 of fishing vessel which includes any type of vessel which is  
13 used or meant for fishing, including supporting,  
14 transportation, and any other vessels which can be used for  
15 fishing activities. Therefore, these two definitions of  
16 "fishing" and "fishing vessel" can be seen as similar as in the  
17 Russian legislation and the WTO Convention.

18           The last question here, on the one hand it seems to be  
19 very simple; on the other hand, it is a complicated issue.  
20 Reporting practice in relation to the catch data in various  
21 regional fisheries organizations is not unified, and it depends  
22 on what you fish, and it depends on the particularities of the  
23 fishing area. There is no unification approach which would  
24 allow us to say that the reporting were conducted similar  
25 everywhere and that the data we submit is similar everywhere.

15:38 1 Thank you very much for your attention, ladies and  
2 gentlemen.

3 CHAIRMAN OXMAN: We thank the representative of the  
4 Russian Federation.

5 The representatives of the Republic of Chile have the  
6 floor.

7 MS. BALTIERRA: Thank you very much, Mr. President.

8 In the first time, we refer to the question by the  
9 Professor Oxman, and the question is the three, the Paragraphs  
10 6, 7, and 11 of CMM 1.01 applied to catches from another  
11 vessel.

12 In this case of transshipment of catches from one  
13 vessel to another vessel, the Paragraphs 6, 7, and 11 of CMM,  
14 in our view, are applicable in the following form: Even when  
15 the vessels then transfer the catches and the vessels that  
16 receive the catches are both fishing vessels as defined in the  
17 Convention, it's important to understand the paragraph, the CMM  
18 are limited to the vessels that actually undertake catches.

19 The main point in our view is the catch all fit. It  
20 is not the concept of the fishing vessels. It is important to  
21 consider that the Paragraph 17 of the CMM established that a  
22 list of the vessels in accordance with the definition of the  
23 Convention shall accede, as well at least of the vessels'  
24 activities of fishing or engaged in transshipment in the  
25 Convention Area shall be maintained by the Secretary.

15:40 1           In the second question about with respect to  
2 application of Paragraph 1 of the Article 21 and in reference  
3 to Paragraph 3 in the same article, in this answer, we're  
4 considering the question under 3 by Mrs. Carvajal, too. Chile  
5 agree with the memorandum submitted by New Zealand,  
6 particularly Paragraph 11 and 12 regarding that the CMM was  
7 adopted, taking into account the advice and recommendation of  
8 the Scientific Working Group as well as the urgent need to  
9 reduce the catches. In that sense, the only manner to  
10 effectively reduce the catches, as experience has indicated, is  
11 to establish a limitation criteria and thus to establish the  
12 limitation of catches of each participant of the fishery.

13           Additionally, it should be considered that the  
14 Preamble of the CMM refers to the Articles 4, 20, and 21, but  
15 when referring to Article 21, the Measure only indicates its  
16 Paragraph 2, which related to the situation when the Measure  
17 applied throughout the range of the Fishery Resources with the  
18 express consent of the Coastal State, Contracting Party or  
19 Parties concerned.

20           Also, Paragraph 4 of the CMM established that  
21 application of the Article 21 in the future will take into  
22 account the status of the resources, implementation, and  
23 compliance with the CMM as well as the Interim Measure for  
24 Pelagic Fisheries. As well as stated by the New Zealand in  
25 Paragraph 12, none of the provisions of the Article preclude

15:42 1 the right of the Russian Federation in future Measure and  
2 participation to be adopted by the Commission.

3 In respect to the adoption of the CMM, it's important  
4 to establish that the Commission adopted Measure in conformity  
5 with Article 8, that they empower the Commission to, in letter  
6 (a), adopt Conservation and Management Measures; in letter (b),  
7 determine the nature of the extent of participation in fishing  
8 for Fishery Resources; and in letter (b), to exercise any other  
9 function and take into any other decision that may be necessary  
10 for achieving the objective of this Convention.

11 Moreover, it is necessary to remember that when the  
12 CMM was adopted, the Organization was not fully constituted  
13 regarding its subsidiary bodies at the Sub-regional Management  
14 Committee, the Scientific Committee, and the Compliance and  
15 Technical Committee. In this regard, for us, the CMM is not an  
16 exercise of the allocation. It's an exercise of the restrained  
17 catches for this year, the 2013 year.

18 Another question is about the Articles 16 and 17 of  
19 the Convention applied to a decision to allocate the catch.  
20 Regarding to the first part of Paragraph 6 of the CMM, which  
21 refers to the total catch of *Trachurus murphyi*, the decision  
22 was taken by consensus. No State, including the Russian  
23 Federation, objected to this part. The second part of the  
24 Paragraph 6 establishes a catch limit for each Member  
25 incorporating non-Contracting Parties. In our view, the

15:45 1 adoption was made by consensus. However, the Russian  
2 Federation did include a statement about this decision.

3 At Paragraph 13, the report of the First Commission  
4 Meeting indicated that the Russian Federation made a statement  
5 in respect of the CMM and also the calculation for financial  
6 contributions to Organization concerning the facts that data  
7 provided by the Russian Federation had not been taken into  
8 account.

9 Our vision is supported in the fact that the Russian  
10 Federation objected to the information taken into account for  
11 the calculation of the share of the catch limit because the  
12 data was not considered.

13 In another question by Professor Bekyashev--I'm sorry,  
14 my pronunciation, Bekyashev--the letter (a), in our view, when  
15 the Commission adopt the Measure was in force and have powers  
16 to adopt this decision or another decision because the decision  
17 was adopted in January this year. In that sense, the Russian  
18 Federation recognizes expressly the use of the year and the  
19 catches of 2010 when this delegation proposed equivalent  
20 Measure referred to the 2010.

21 In a memorandum of Chile, we explain our view about  
22 this topic, and now we amend them, indicating that the Russian  
23 Federation signed the Convention in January 2011 during the  
24 Second Preparatory Conference. According with that and the  
25 Article 18 of the Vienna Convention, any Party of this

15:47 1 Convention cannot frustrate the objective of the Convention.  
2 In our view, the Commission when adopted the CMM considering  
3 any information including the past information--furthermore, of  
4 this information it is available and regulated for the Parties  
5 because the interim period was regulated because of consensus  
6 of all of the Parties and the participants, in effect, the rule  
7 to the faculty to revise the information for the Commission.

8           Another question in letter (b), the Professor  
9 Bekyashev, in our view, the interim period was reflecting  
10 political will of the participants. The Organization had a  
11 long and regulated interim period. Indeed, in an earlier stage  
12 of the negotiation process, there was a full consensus  
13 regarding the need of regulation and especially the need of  
14 information, both on scientific and the fishing activities.  
15 All data re-collected in this was recognized for the Commission  
16 in the session in January of this year.

17           Finally, about the question by Mrs. Carvajal in letter  
18 (a), in our view, the catches to be considered is a part of the  
19 Total Allowable Catches of the State that fish. The question  
20 is in relation to transshipment. The definition, the fishing  
21 vessel is broad because it is necessary to include it, the  
22 processing and the current vessel for the control Measures.  
23 But here, the importance is the catch or fit. It's not another  
24 concept in this definition.

25           And in the last question about Mrs. Carvajal and how

15:50 1 is the Chilean fishery of *Trachurus murphyi* going this year,  
2 this year the fishery is in a majority inside of our zone, and  
3 now our fleet caught about 80 percent inside our zone, and  
4 probably we complete the Total Allowable Catch in a few days.

5 And this is all.

6 Thank you very much.

7 CHAIRMAN OXMAN: We thank the representative of Chile.

8 We will now take a 15-minute break and reassemble at  
9 4:05. And, as I indicated before, if there are oral questions,  
10 we will proceed with those, and when that is completed, we will  
11 proceed directly to the concluding remarks of the participating  
12 delegations.

13 Thank you.

14 (Brief recess.)

15 CHAIRMAN OXMAN: We had just paused for a moment to  
16 have some pictures taken, and I also did want to note that the  
17 Review Panel is honored by the presence of the Ambassador of  
18 the Russian Federation to The Netherlands and welcomes him to  
19 these proceedings.

20 We have a few questions regarding the responses.

21 Professor Bekyashev.

22 QUESTIONS FROM THE REVIEW PANEL

23 PANEL MEMBER BEKYASHEV: Thank you very much,

24 Dr. Oxman.

25 I would like to express my gratitude to all the

16:18 1 delegations for their concise answers they gave to my  
2 questions, but I do want to clarify a number of issues here.

3           If you allow me, my first question is to the Executive  
4 Secretary and the Chairman of the Commission.

5           So, could we please go back to Question (e).

6           What I wanted to hear from you is why, when  
7 determining the optimal level of catch and the distribution of  
8 the national limit, such a criteria as a contribution of a  
9 given State into the scientific research of a particular stock  
10 was not taken into account. I have not received the answer to  
11 my question. I understand that Article 21 consists of 10  
12 points, and each of the points is very important in determining  
13 the optimal level of catch and national quota, and I understand  
14 that the Commission was supposed to pay particular attention to  
15 all of those 10 points. Tactics like that I would call double  
16 standards.

17           So, could you please answer that question, and then I  
18 will have an additional question later on.

19           Thank you very much.

20           MR. MANSFIELD: Well, thank you. I will try to do my  
21 best.

22           I, of course, am only the Chair of the negotiation.  
23 The negotiation was carried out amongst the Parties. So my  
24 view is really based on my perception and understanding of the  
25 way delegations were approaching the matter. And as I tried to

16:20 1 explain in my opening remarks and also in further answers to  
2 questions, this was not seen as an Article 21 exercise. I  
3 entirely agree with you, Professor, that were an Article 21  
4 exercise being conducted, then certainly all the matters listed  
5 in Article 21 must be carefully balanced and considered. That  
6 was an exercise that, as I said in answer to one of the earlier  
7 questions, was probably simply not achievable at this First  
8 Meeting of the Commission. You, yourself, I'm sure will  
9 recognize that when you look at the factors in Article 21,  
10 there is a whole range of issues, not only historic catches,  
11 but the position and significance of developing countries, et  
12 cetera. So there would be a major exercise in trying to engage  
13 in an allocation that would stand for probably a number of  
14 years.

15           Instead, what the Commission was, I believe, trying to  
16 do at its First Meeting was to simply carry on the process that  
17 had started with the decisions of the Interim Measures in 2011  
18 and 2012 to find some way of carrying those forward for another  
19 year in order to try and give the stock the chance of  
20 rebuilding. Once you had that done--and certainly the Interim  
21 Measure itself specifies that it must be reviewed the following  
22 year, and I would certainly expect that one should move into an  
23 allocation process as soon as possible, and maybe at the next  
24 Commission meeting that will be possible--and certainly in such  
25 a process I would think, without question, that the record in

16:22 1 respect of Russia's activities would be a factor that would  
2 have been very carefully considered in that allocation exercise  
3 once we get to that stage.

4 But I hope this answers your question. In this  
5 situation, we were simply acting, I believe, as a Commission  
6 under powers of the Commission under its functions to take some  
7 conservation and management measures, but we're not engaging in  
8 an allocation exercise under Article 21.

9 I hope that helps.

10 PANEL MEMBER BEKYASHEV: Thank you very much. Thank  
11 you very much for such a detailed answer.

12 Especially optimistically, I consider the issue that  
13 you will take this into account next year, but, as we say it in  
14 Russian, this train has already departed.

15 Historical principle is my next point.

16 I have studied the practice of other regional fishery  
17 management organizations, and what they apply is a 10-year  
18 period.

19 Oh, by the way, talking about historical principle,  
20 taking the Convention of '82, we can refer to that, but you  
21 would agree with me that one year is not history. It is but a  
22 moment. So, my question is: Why was 2012 taken?

23 MR. MANSFIELD: Did you mean 2012 or 2010? Professor,  
24 did you mean 2012 or 2010?

25 PANEL MEMBER BEKYASHEV: Well, you determine the

16:24 1 optimal level of catch, and you broke it down to States,  
2 judging by the date of 2010. So, then you see one year as  
3 history. That is impossible. One year is not history. So,  
4 why didn't you take--well, I'm just saying 2009 or 2008 or 1945  
5 and then take the period from '45 to 2010? Why was just one  
6 year taken as the basis?

7 Thank you.

8 MR. MANSFIELD: Well, I think the answer to the  
9 question is, first of all, to state that this was not an  
10 allocation exercise under Article 21.

11 The origin of the 2010 year was--and this was one of  
12 the reasons I went back over the history in my opening  
13 remarks--2010 was the year that the Science Working Group  
14 confronted us with a report that said, if you carry on fishing  
15 at current levels--that's the levels of 2010--then this stock  
16 is doomed. They said that if we carried on fishing at a  
17 hundred percent of those levels--carried on at that level, then  
18 there was a hundred percent probability that the stock would  
19 continue to decline. They said that if we went to 75 percent  
20 of that 2010 level, then we would still have a very--better  
21 than 50 percent chance that the stock would continue to fall.  
22 Only if we halved that stock, the catches of 2010, would we  
23 have a chance for allowing the stock to rebuild.

24 And so, that was--that was the year in which they had  
25 done their calculations, and they made their recommendations by

16:26 1 reference to those 2010 catches. And they said, in essence, if  
2 the stock is going to be useful to all of you, if you're going  
3 to have the opportunity of fishing in the future for future  
4 generations, then you must--you must--reduce seriously your  
5 catches from that year. And so, that's the reason why 2010  
6 became, in effect, the reference year.

7           So we tried in 2011, as I explained, to get an  
8 agreement on reduction of the catches, and we got--some of the  
9 participants were prepared to agree. It actually included the  
10 Russian Federation at that time, but a number of countries said  
11 they could not agree to doing that.

12           But nonetheless, the majority, even though the others  
13 were not going to restrain themselves, the majority said we  
14 will go ahead and restrain in the way recommended. That was  
15 very important and, I think, a very significant move.

16           Now, the following year, when we found that there had  
17 been no improvement in the stock, in the following year we got  
18 agreement to go even lower, to the levels recommended by the  
19 Science Working Group at that time, with the agreement of  
20 everyone--not legally binding, but everyone--including those  
21 who had previously said, no, they couldn't do it. Everyone  
22 agreed to reduce to that level. So, that was also a  
23 significant move.

24           When we came to this last year--this current year, in  
25 January, that was the background, a background of an impressive

16:28 1 level of restraint, when you look back at it, a real attempt by  
2 all the participants to restrain their catching. And so there  
3 was just an attempt to try and again find a way forward and  
4 finding how we could take those Measures from the last two  
5 years through into the new period, the new year.

6 That's the background, and I think certainly I would  
7 agree with you in terms of history that one year is certainly  
8 not an historic catch or relevant. In the terms of a proper  
9 allocation exercise, we would, I would suggest, certainly agree  
10 with you to be looking at something like 10 years or so as a  
11 relevant figure.

12 I hope that answers your question as to why this  
13 particular 2010 was the year focused on.

14 Thank you.

15 PANEL MEMBER BEKYASHEV: I thank you very much.

16 Thank you very much, Chairman.

17 But you see, I'm a lawyer by training, and I'm  
18 interested in the procedure how the historical term is set, and  
19 not, you know, the maximum catch levels and so on.

20 The way I see it is that, in your case, the procedure  
21 to establish the historical catch was not there. You just took  
22 the data for 2010 because you believed this is the most optimal  
23 level.

24 And my third question is quite brief. Could you  
25 please pay special attention to Point (b) in my question.

16:30 1           There is a letter in the information package from the  
2 Executive Secretary of the Commission addressed to the  
3 authorities of French Polynesia, and it is almost kind of an  
4 instruction, how to inspect the Lafayette, and they were  
5 instructed to have a look at the trolls on board of the vessel.

6           So, my question is as follows: The Commission did not  
7 exist as such. The Convention had not come into force. The  
8 Russian Federation was not a Party to the Convention. On what  
9 grounds did you instruct the French Polynesian authorities to  
10 inspect a vessel flying another nation's flag?

11           And, by the way, the authorities of French Polynesia  
12 sent a report, but they did not send the report to the Russian  
13 Federation, but this is a different issue.

14           You know the impression I get is that the Executive  
15 Secretary did not have legal grounds to instruct those  
16 authorities to inspect a Russian vessel. Isn't that overuse of  
17 your authority?

18           And this is the extent of my questions. Thank you.

19           MR. MANSFIELD: Well, thank you, and I will ask  
20 Dr. Allen to make another comment about that.

21           But I'm quite clear that the Executive Secretary in no  
22 way instructed the French authorities to undertake an  
23 inspection. Rather, there had been some controversy, already  
24 in relation to the vessel The Lafayette, that had been a matter  
25 in some discussion and disagreement prior to this time.

16:32 1           What happened was that the French authorities sent a  
2 message to the Executive Secretary. The French authorities  
3 sent a message to the Executive Secretary asking--saying that  
4 the vessel was in their port, and they were conducting an  
5 inspection. Was there any information that would be helpful to  
6 the Organization and the Secretariat, to which, as I understand  
7 it, the Executive Secretary replied and said, well, any  
8 information that you are able to provide that would indicate  
9 that this vessel was, in fact, fishing would be helpful in  
10 clarifying a disagreement that has already occurred. And that  
11 was the nature of the intervention. I don't think for a moment  
12 the Executive Secretary was issuing orders. He would have no  
13 authority or no--the French authorities would have--would not  
14 have recognized any order from the Executive Secretary.  
15 Rather, he was helpfully trying to clarify or seek the  
16 opportunity to get some information that would help to resolve  
17 a matter which was already a difficult question within the  
18 discussions.

19           But I will ask Dr. Allen to also offer a comment.

20           MR. ALLEN: Yes, thank you.

21           The background that existed before the request that  
22 the French had made to us was that we had been advised by the  
23 Russian Federation that the vessel Lafayette was intending to  
24 enter the fishery to fish for jack mackerel, another name for  
25 the--sorry, to fish for horse mackerel. There was another name

16:34 1 for the species, as taken off the coast of Chile.

2           We were told the dimensions of the vessel and a little  
3 bit about it and looked up what could be found about the vessel  
4 from public sources and saw it was generally described as a  
5 fish-processing vessel. And so we corresponded back to the  
6 Russian Federation and asked if it was really being intended to  
7 be registered as a vessel that would actively fish or whether  
8 it was more likely to be processing fish, and we got the answer  
9 back that it was going to be actively fishing for horse  
10 mackerel.

11           A little while later, the correspondence, which is  
12 contained in Supporting Material 14, took place. That was  
13 initiated by the French authorities in French Polynesia, and  
14 there was an e-mail to me which said: A Russian vessel, not a  
15 fishing vessel, as indicated, but a factory ship, will be on  
16 scale on Saturday and Sunday in front of Papeete harbor. We  
17 shall organize an investigation of the vessel about its  
18 fisheries activities. Are there any particular regulations  
19 applying to this vessel according to SMPFRO or other  
20 regulations? And that was signed by Dominique Person, the head  
21 of the Service of Maritime Fisheries of French Polynesia.

22           I would note that that does not say it's going to be a  
23 formal inspection of the vessel, but they're going to organize  
24 an investigation of the vessel about its fisheries activities.

25           My reply was: Thank you very much for your e-mail.

16:37 1 Last December, we were advised by the Russian Federation that  
2 this vessel would actively fish for Trachurus species as a  
3 mid-water trawler. And accordingly, the vessel has been listed  
4 on the SPRFMO Web site as one of the vessels that actively  
5 fished Trachurus species in the SMPFRO Area during 2009. It  
6 would be very useful if your investigation could confirm that  
7 information, for example, by catch records or the presence of  
8 appropriate fishing gear.

9           So in no way did that amount to an instruction to  
10 investigate the vessel. We simply required--replied to a  
11 request about any particular regulations that would apply to  
12 the vessel and passed on information that would be--or passed  
13 on a specification of information that would be very useful to  
14 verify that the vessel had been fishing in the SPRFMO Area.

15           So, I think that covers those points.

16           PANEL MEMBER BEKYASHEV: Thank you, Mr. Allen. I was  
17 basing myself on Paragraph 23 of your memorandum, but thanks  
18 anyway.

19           CHAIRMAN OXMAN: Thank you, Professor Bekyashev.

20           I notice by the way on the transcript that I was  
21 unfairly being given credit for Professor Bekyashev questions.

22           I do have some questions of my own, first for the  
23 Chairperson of the Commission. They all turn on his repeated  
24 statements that there has been no allocation under Article 21.

25           The first, if I may be forgiven, is a lawyer's

16:39 1 question: If the allocation was not under Article 21, under  
2 what Article was it done?

3           Second related to the first: If this was not an  
4 allocation under Article 21, what was the legal basis for  
5 transferring 10 percent to Chile, among other things?

6           And, third, I take a look at those very helpful charts  
7 which lists different countries with different numbers next to  
8 them, and we know from these proceedings that there could well  
9 have been added to that list the Russian Federation with the  
10 Number 0. And if that is not an allocation, I would appreciate  
11 some education on exactly what is that. I give you the  
12 opportunity to comment on those questions.

13           MR. MANSFIELD: Well, Mr. Chairman, I'm really going  
14 back to the point of intention, and I will say again that I  
15 don't think people were intending what they were doing was an  
16 allocation exercise. If they were not doing an allocation  
17 exercise under Article 21, they were taking a decision of  
18 Conservation and Management Measure kind under the broad  
19 functions of the Commission under the Article 8 on its  
20 functions.

21           Was it an allocation in effect? It was a distribution  
22 of limits that were to be applied in this particular year,  
23 recognizing that an allocation exercise was going to be needed  
24 in the future, but unless something was done now, there would  
25 be nothing to allocate and to do an allocation exercise on in

16:41 1 the future.

2           So, in part, I'm talking about a simple practical  
3 problem of how one proceeded to deal with the extraordinarily  
4 concerning situation with which we had been confronted. What  
5 the Commission--well, let me go back and say, the Preparatory  
6 Conference had managed to deal with that with some difficulty,  
7 but they had dealt with it as a practical matter of finding  
8 some way of getting people to cut back their catches. And  
9 that, of course, prior to the entry into force of the  
10 Convention, had no legal effect. It was simply an exercise of  
11 political will by the participants around the table.

12           The intention, when it came to the First Meeting of  
13 the Commission was to find a way of achieving the same result  
14 while not moving into a formal allocation process and, in legal  
15 terms, to be covered by, firstly, the general powers and  
16 functions of the Commission; and, secondly, by the specific  
17 statements in the Interim Measures themselves, which I believe  
18 all the participants considered protected the position of all  
19 the Parties to the Convention and the position of the  
20 Cooperating Non-Contracting Parties that this decision to limit  
21 the catches and, indeed, to engage in some redistribution of  
22 limits was not a decision that would have any precedential  
23 effect for the future and certainly would not be a precedent  
24 that would prejudice any participant's decision in the future  
25 when we came to an allocation process.

16:44 1 I hope that answers your question, Mr. Chairman.

2 CHAIRMAN OXMAN: Thank you very much.

3 My next question is for the Russian Federation, and I  
4 hasten to say that it was clear to me in watching the  
5 representative of the Russian Federation in dealing with my  
6 Question 2 that he had the look and sound of someone who was  
7 giving a very precise answer. What came across to me in  
8 English--and this is no fault of the interpreters--we are  
9 dealing with a technical question here--I was unable to  
10 understand.

11 It's possible that overnight, with the assistance of  
12 PCA staff and Professor Bekyashev and the Russian text, this  
13 will all become clear, but I discussed this with my colleagues,  
14 and they thought that, in fairness, we should give you the  
15 opportunity to clarify simply because it was my question, and I  
16 did not understand the answer in English.

17 I'm not necessarily asking you to follow what I  
18 thought was the superb example of your answer to Question 3,  
19 which was one word, "no," but if you could focus on the  
20 questions and perhaps try to reduce them to what you think is  
21 the minimum necessary for accuracy, it would be helpful. I'm  
22 not sure it's essential; and to that extent, I regret that I'm  
23 asking you this, but we won't have the opportunity to ask you  
24 to clarify this later, and I, therefore, thought in fairness I  
25 should inform you that I had difficulty understanding the

16:46 1 question.

2           And let me just clarify my understanding of my  
3 question, which is: Did the reports that the Russian  
4 Federation received from the Lafayette make clear whether this  
5 was catch taken from the sea or catch transferred from another  
6 vessel?

7           And then (b) is: Do the laws and regulations of the  
8 Russian Federation require that it be clear whether it is catch  
9 taken from the sea or catch taken from another vessel?

10           And what followed from that on (c) is the very narrow  
11 question--not the broad question--there is much in the written  
12 submissions of the Russian Federation on the inspections it has  
13 carried out, and that's appreciated--but the very narrow  
14 question of what was done by the Russian Federation to try and  
15 ascertain whether this was catch which was taken from the sea  
16 or catch transferred from another vessel.

17           I'm sorry to go on at any length, and I'm doing this  
18 only because colleagues advised me that they thought it would  
19 be fair to inform you that I had not understood the response  
20 and to give you a chance to clarify it while you're still here  
21 in The Hague.

22           DR. BELYAEV: Very well, thank you for your question.

23           I guess I will start with the domestic Russian; that  
24 is, legislation.

25           According to Russian legislation, each vessel has a

16:47 1 quota. A quota is allocated per vessel which operates and  
2 fishes in the high seas. In this situation--in this case the  
3 situation often arises as follows, and there are plenty of  
4 examples like that, including in the 200-mile coastal zone of  
5 the Russian Federation, where a vessel obtains a large quota  
6 and, for various reasons, is unable to fill the quota. What it  
7 does then is that it brings in other vessels which supply the  
8 shortfall, and the fish butt against the vessel's bigger quota.  
9 So, in the grand scheme of things, the quota belongs to the  
10 original vessel. So, what a vessel can do is obtain fish in  
11 the sea and hire other vessels, help it fill the quota, and, of  
12 course, it pays the other vessels. Essentially, it leases or  
13 rents the other vessels' services.

14           So, whenever there is a question regarding whether or  
15 not something is a fishing vessel or not a fishing vessel under  
16 our law, a vessel is a fishing vessel as long as it has a quota  
17 for a specific fisheries item. If it does not have a quota,  
18 then whether or not it has fishing gear, it is a violator that  
19 happens to be in violation of the Russian legislation when it  
20 comes to exploiting marine water-based resources. The vessel  
21 Lafayette, the one that we have been talking about, again under  
22 our Russian legislation, it operated under our Russian  
23 legislation. And, of course, we have to understand that, even  
24 though we follow all the Terms and Provision of the Convention,  
25 and our country does the same, but each vessel works in

16:50 1 accordance with the legislation of its own country, especially  
2 in the high seas; that is the areas outside the 200-mile  
3 coastal zones of other countries.

4           As far as data and everything else, information was  
5 being received prior to a certain period of time. It was  
6 submitted, I would say, in a truncated format--or perhaps  
7 "general format" is a better word. Information now comes to  
8 the monitoring center, and it's mandatory on a daily basis.  
9 And we know what vessel happens to be where, what its daily  
10 catch is. It is then information generalized monthly,  
11 quarterly, on a six-month basis, and then on an annual basis.  
12 This monitoring is organized quite well; and, as I've said,  
13 many countries, representatives of many countries, have visited  
14 our monitoring centers, and now the problem does not exist  
15 anymore.

16           Perhaps in 2010, actually, yes, in 2010, we did have  
17 certain problems regarding this. And I think the questions we  
18 have now been asked regarding Lafayette must have had to do  
19 with that because for 200-mile economic zones we did even at  
20 that time have fairly strict rules. We ran our own--we  
21 gathered our own statistics. However, for vessels that  
22 operated outside the 200-mile economic zones, we had them  
23 operate under somewhat more lax rules, such as they were not  
24 expected to submit data exactly on a daily basis and to provide  
25 data in a very detailed manner, such as tow by tow, such as the

16:52 1 amount of catch. Now the situation has changed. They submit  
2 data both by the area where they have been fishing by their  
3 daily catch. And if we have any additional request, they will  
4 give us information on a tow-by-tow basis, and these fishes  
5 break down and everything else.

6           So, the situation in Russia has changed dramatically  
7 in what concerns the high seas; that is the vast expanses of  
8 the ocean outside of the 200-mile Economic Zone. That is, we,  
9 compared to a couple of years ago, gather probably ten times as  
10 much information as we used to on the one hand. It's a major  
11 burden, and there's a lot of information to process. On the  
12 other hand, we have information as to where, who, what, and  
13 when. And immediately on a computer screen, essentially in  
14 realtime, we can find out where a specific vessel is and what  
15 it is doing at the time. All of this information is available  
16 electronically. At this time, any information that is being  
17 requested, we can easily transmit, should there be a request.

18           Thank you for listening.

19           CHAIRMAN OXMAN: Thank you for answering. That is  
20 very helpful from the Russian Federation.

21           And again, I want to say to the interpreters, this a  
22 highly technical subject, although it's apparent to me that  
23 this time around you've already learned a great deal about it.

24           I did want to then turn with the same kind of point to  
25 the representatives of Chile, and this relates to two of the

16:53 1 questions.

2           First, Question 3, which was posed to both the Russian  
3 Federation and the Republic of Chile. The setting was one in  
4 which the Chairman of the Commission, when he spoke, made the  
5 point that the question was one of catch and not whether the  
6 vessels were fishing vessels. It was readily apparent to me at  
7 least that the Russian Federation understood that point and,  
8 therefore, was able, with commendable brevity, to supply the  
9 answer "no" to Question 3.

10           Personally--and I'm not expressing any substantive  
11 opinions here--I thought this was then going to move very  
12 quickly, since, in reading the written submissions of Chile,  
13 Chile had raised the problem of the same catch being reported  
14 by two different States, and I would have thought that that  
15 would have led to an answer to Question 3 that had the same  
16 elegant brevity as the answer that we received from the Russian  
17 Federation.

18           But I have to confess I didn't understand the answer,  
19 so let me try again, stressing that this is not a common law  
20 court. Chile is not under trial, and it is not obliged to  
21 answer yes or no. But let me rephrase the question: Does  
22 Chile disagree with the answer of the Russian Federation to  
23 Question 3? And if so, why? Their answer to Question 3 was  
24 "no."

25           MS. BALTIERRA: Okay, thank you very much,

16:56 1 Mr. President. I tried to explain our position about this  
2 point.

3 In our view, the main point is not the definition of  
4 the fishing vessels because the fishing vessels is a broad  
5 definition; okay? It's fishing vessel to catch and to carry  
6 out or in the transshipment. The point is the vessels to catch  
7 because when the vessel to catch in this case is important to  
8 input these catches for one country or one State. This is the  
9 main point.

10 In the Paragraphs 6, 7, and 11 in the CMM, the point  
11 is the fishing vessel to catch and then these catches is for  
12 one State. One State. And then if these vessels and to catch  
13 transshipment on another vessels, well, the catches is the  
14 first vessels is the catch vessels because it's informed about  
15 that this vessel and the transshipment vessel, well, it's  
16 duplicative to the catches.

17 It is important, the one information. And then the  
18 Commission requirement, another situation. It's important to  
19 inform to the Executive Secretariat the vessels in the  
20 transshipment. Two vessels is important for the information,  
21 but for--is the amount of the catch is only, one, the first  
22 vessel that is important, to the fixed or catch vessels.

23 Thank you very much.

24 CHAIRMAN OXMAN: Thank you.

25 I have one other--that's very helpful. I appreciate

16:57 1 that. And then one last question.

2           The Chairman of the Commission, in his initial remarks  
3 and again in response to my question just now, has made the  
4 point that in his opinion the Commission was faced with a very  
5 serious problem of a sharply declining stock that needed really  
6 significant Measures to try and protect it from further  
7 declines, and that the focus of the effort, therefore, was on  
8 that and that the focus was not on what might constitute a  
9 full-scale allocation, if one wishes, under Article 21. I  
10 realize I'm paraphrasing.

11           By this, and implicit, I think--but the Chairman of  
12 the Commission can correct me if he thinks I'm wrong--was that  
13 at some point we will get to this, but that's not what we were  
14 doing in 2013 and, therefore, without prejudice.

15           That question or that point of view or that  
16 description of what happened or how one should appreciate what  
17 happened in the opinion of the Chairman of the Commission is  
18 arguably linked to the much broader question of principle,  
19 which was posed by Question 4(a) in my questions. I would  
20 have, had the Government of New Zealand decided to participate  
21 in the hearing, asked them the same question because their  
22 statement that--we will get to it--and their statement on the  
23 matter stopped short of fully addressing the question that I  
24 have raised in Paragraph 4(a). But I don't have the option of  
25 asking the Government of New Zealand that question. I do have

17:00 1 the option of asking Chile, which shares, as I understand it,  
2 the view of the Government of New Zealand and, indeed, repeated  
3 what was said in the New Zealand submission on this issue.

4           And, therefore, I thought, as a closing question, that  
5 I would afford you one more opportunity, which you can use or  
6 not use, to clarify your view on 4(a). 4(a) is not a question  
7 about what was done in CMM 1.01. It is, rather, a question of  
8 principle as to whether the Russian Federation is or is not  
9 regarded as being covered by the language in Paragraph 1(a) of  
10 Article 21 and the comparable language in Paragraph 3.

11           It isn't even a question of what the introductory  
12 words in Paragraph 1--

13           THE INTERPRETER: Please repeat the very last  
14 sentence.

15           CHAIRMAN OXMAN: Even a question of what is meant by  
16 the words "taking into account." It is simply a question of  
17 whether the Russian Federation is regarded as being included in  
18 the language of Paragraph 1(a) and the essentially similar  
19 language in Paragraph 3. And I just wanted to afford you  
20 another opportunity to reflect on your response to that  
21 question.

22           Thank you.

23           MR. MANSFIELD: Mr. Chairman, were you addressing that  
24 question to me or to Chile? Chile was looking at me. I  
25 thought the question was directed to Chile, and I'm happy to

17:02 1 express a view, but it is only a view of the Chair and not that  
2 of any country. I thought the question was directed to Chile.

3 CHAIRMAN OXMAN: The question was directed to Chile,  
4 but since you have the floor, you might as well finish the  
5 sentence.

6 (Laughter.)

7 MR. MANSFIELD: Well, purely as a question addressed  
8 to the Chair, and I just happen to be the Chair, but in my view  
9 the answer to that question would be "yes."

10 CHAIRMAN OXMAN: Does the representative of Chile wish  
11 to comment? And you're under no obligation to do so.

12 MS. BALTIERRA: Well, I understand your question. We  
13 tried to explain in the--in before time. And the CMM is not an  
14 allocation exercise. In this regard, it is difficult to  
15 explain you if the Russian Federation is presenting in letter  
16 (a), (b), or (c) the Article 21. Because when we adopt  
17 allocation Measures, well, in this moment, it's probably we  
18 have clear where is the Russian Federation or Republic of Chile  
19 in this letter.

20 But I think Russian Federation effectively catches in  
21 the past in the South Pacific Area and probably in the 17 years  
22 or 18 years but it's really true in the last 10 years is not  
23 present now but catch in the past in the Area; no? I think is  
24 really the situation.

25 But I don't know if the Russian Federation is present

17:04 1 in which letter in this Article. I don't know. But in our  
2 case, I know our relationship about the fishery in the Area,  
3 but I don't know which is the Russian Federation relation about  
4 the Area or the Article 21.

5 But in this Panel, the Russian Federation mentioned it  
6 about the investigation or any other topics, and I think it is  
7 probably a good exercise in the moment--or in the moment in the  
8 future.

9 Thank you very much.

10 CHAIRMAN OXMAN: Thank you. That's very helpful.

11 Professor Bekyashev has indicated that he has one or  
12 two more questions.

13 PANEL MEMBER BEKYASHEV: Thank you. Thank you,  
14 Professor Oxman. My questions will be quite brief.

15 My question is addressed one to the delegation of  
16 Chile and one to the delegation of the Russian Federation.

17 Chile, thank you very much that you paid some  
18 attention to my questions, though I'm not fully satisfied by  
19 your answers to these questions, but I did not want to initiate  
20 a discussion. So an additional question.

21 In your memorandum, which I read with great interest,  
22 in Point 29, I read that the Commission, when allocating the  
23 limits and allocating the national limits, acted in accordance  
24 with international legislation. So my question is, which  
25 international law you're talking about, and where did you find

17:06 1 the norms of international laws which allowed the Commission to  
2 do that?

3 Thank you.

4 And I would like to go back to Point B of my question,  
5 so it is more or less the same, which has in my written  
6 questions, and as far as international law is concerned, you  
7 understand that Interim Measures act as international law, but  
8 in this room, at this Panel it has been mentioned more than  
9 once that Interim Measures, Point 5, if I'm not mistaken, is of  
10 a voluntary nature and it is not connected to the international  
11 law. Thank you.

12 I expect a concise answer.

13 Thank you.

14 MS. BALTIERRA: Thank you very much.

15 In the first question, I try to explain. When we  
16 refer in Paragraph 29, we refer when the Commission adopted the  
17 Measures, it adopted the Measures full in force. The  
18 Convention is entering into force in January of this year, and,  
19 obviously, the Commission have powers for adoption the  
20 Measures. In this regard, the Commission is possible to adopt  
21 this Measure or another Measure. For example, in Article 8(p),  
22 faculty to a Commission for adopting other Measures in  
23 accordance with the objective in the Commissions or the  
24 Convention.

25 And in the second question, I'm sorry, but I don't

17:08 1 retain, is about--in the interim period. Well, in this regard,  
2 we tried to explain in our memorandum and in our exposition  
3 today in the morning, in our view, when they adopted the  
4 Measures, the Commission has power for adopting this Measure or  
5 another one because the decision was adopted in the Convention  
6 entered into force because--it was this year in January, and  
7 the Convention enter into force in August, the last year.

8           And then, in this moment, the Commission is  
9 probably--choose for the restrain the catches, okay? Any other  
10 decision because have power for that.

11           Thank you very much.

12           PANEL MEMBER BEKYASHEV: It's clear. Thank you.

13           However, you failed to answer my question. I asked  
14 about Point 29. You say, "On the basis of the international  
15 law, the Commission applied the historical principle." So  
16 which international legislation describes the historical  
17 approach? This is what I'm asking about.

18           MS. BALTIERRA: Well, this Convention is absolutely  
19 integrated about other international law. For example, well,  
20 on the Combimar Angles (ph.) or New York Agreement absolutely,  
21 according with this Convention. This is a mention.

22           PANEL MEMBER BEKYASHEV: Thank you very much.

23           Now, my question to the Russian Federation.

24           It is quite difficult to understand this issue, and I  
25 would like to thank the Russian Federation for answering my

17:10 1 questions in such a detailed way.

2           So I'm not an expert in this area from the point of  
3 view of equipment and technique. What do you need to report on  
4 tow-by-tow basis? For example, the troll was dropped and an  
5 hour later the net comes up. Do you need to rush and report  
6 the data to the headquarters in Auckland? In Auckland, if I'm  
7 not mistaken. So, do you need to report your coordinates,  
8 where you are? I'm not aware of any other RFMO which would  
9 apply similar rules. So could you please tell me based on  
10 which act or on which regulation such a reporting process is  
11 described as stipulated?

12           DR. BELYAEV: Well, first of all, there is no similar  
13 requirement or rule prescribing data submission on a tow-by-tow  
14 basis, just right after this action has been finished. Just  
15 like in other international organizations, there are agreements  
16 regulating the reporting time. When we talk about information,  
17 the information should be limited. We cannot deal with  
18 unlimited information volumes; otherwise, we will be drowned in  
19 data linked to the fishing.

20           The document itself does not offer any clear-cut  
21 explanations on data submission. If I'm not mistaken, only the  
22 Scientific Group discussed those issues.

23           My colleague will elaborate.

24           MR. GLUBOKOV: Presently, we are discussing the issue  
25 on how the data should be submitted. I'm talking about the

17:13 1 period before the Convention came into force, since 2007 until  
2 2012, and that was the period when Interim Measures were in  
3 force; and when a new set of Interim Measures was adopted, the  
4 Standards and the level of detail of data was adjusted.

5           So, at that level, the level of utilization was quite  
6 low. After Convention came into force, we were obliged to  
7 apply the Standards for data submission which prescribed how  
8 often and which activities should be reported to the  
9 Commission. And as Professor Balyaev has pointed out, this  
10 data and this information is collected in full extent, and they  
11 will be timely in accordance with the Standards submitted to  
12 the Organization covering the Convention reaching of SPRFMO.

13           Thank you.

14           CHAIRMAN OXMAN: Thank you very much.

15           I think that that completes the oral question period.

16           Unless the participants would prefer a short break,  
17 our plan was to proceed directly now into the Closing  
18 Statements, but let me hesitate for a moment to look around the  
19 room and see if the participants would prefer...

20           Okay. Then we will proceed, and I call on the--

21           THE INTERPRETER: Well, the Professor was saying yes,  
22 yes, yes.

23           CHAIRMAN OXMAN: Yes for a delay or yes, we should  
24 proceed?

25           I give the floor to the Chairperson.

17:15 1 CONCLUDING REMARKS OF THE CHAIRPERSON OF THE COMMISSION

2 MR. MANSFIELD: Well, thank you, Mr. Chairman.

3 I have not prepared any concluding remarks as such,  
4 but I would perhaps take this opportunity to make some general  
5 points and perhaps reaching back to my opening comments.

6 The first is to say, again, my gratitude to yourself  
7 and the other Members of the Panel for making yourselves  
8 available to deal with this question and to say that I think  
9 that it is most unfortunate in a way that we have had to call  
10 on your services so early in the history of the organization,  
11 but I also believe that it is very helpful to have this process  
12 and to be able to move forward to try and resolve issues that  
13 arise as quickly as possible. And I think that is particularly  
14 the case we're looking at the particular fish stock or stocks  
15 that we are discussing here.

16 As I've said several times, it was certainly a great  
17 shock to me, but also to all participants in the negotiation to  
18 be confronted with incontrovertible scientific advice that  
19 suggested that this stock was in the most seriously depleted  
20 state and one of the most seriously depleted of stocks anywhere  
21 in the world and that urgent action was needed.

22 It has been a process since then of trying to find a  
23 way of responding to that situation as best we can. And while  
24 I--well, let me just say that the alternative, if we fail to do  
25 this, was that collapsing the inevitable; and, in those

17:17 1 circumstances, everyone was going to lose out, not only the  
2 Coastal States, but also the distant water countries, distant  
3 water fishing States, but also, I believe, the wider  
4 international community, particularly the community-wide or  
5 international community in the South Pacific because they have  
6 an interest in the health of the wider ecosystem.

7           So, from my perspective as Chair, I very much hope  
8 that this matter can be resolved, but resolved in a way that  
9 does not in any manner reduce our ability to continue to  
10 conserve this stock and to continue to have support for the  
11 Measures that have already been taken, difficult as they have  
12 been, to try and manage this in the short term.

13           Having said that, I would also like to return to the  
14 notion that an allocation process the full and, may I say, sort  
15 of normal application of allocation procedures in an RFMO is  
16 something that I think needs to be done and needs to be done as  
17 reasonably quickly as possible, and that is a process that  
18 should involve a careful analysis of all the elements that are  
19 normally considered in that process and are specifically  
20 spelled out in our particular Convention in Article 21. And I  
21 think that should involve all those with a current and those  
22 with a previous history of fishing in the Area to work through  
23 a longer-term allocation process.

24           But, I stress again, even in that process, it must  
25 always be a situation of emphasizing the importance of the

17:20 1 conservation of the stocks so that we have on an ongoing basis  
2 something to allocate.

3 I think that's all I wish to say, Mr. Chairman, other  
4 than to express my thanks, again, to you and the other Members  
5 of the Panel, to the Permanent Court of Arbitration for their  
6 support and assistance throughout the process, and to those  
7 from the other delegations that are present here for their  
8 contributions and their effort to try and find a way forward  
9 with goodwill.

10 Thank you very much, Mr. Chairman.

11 CHAIRMAN OXMAN: Thank you.

12 I give the floor to the Russian Federation.

13 CONCLUDING REMARKS OF THE RUSSIAN FEDERATION

14 DR. BELYAEV: Dear Chairman, thank you very much for  
15 the opportunity to take the floor. Dear Panel, dear Members of  
16 the Commission, Representatives of the Republic of Chile,  
17 Representative of the Secretariat, and Chinese Taipei.

18 First, I would like to underline that Russia  
19 appreciates the depleted state of stock in the South Pacific,  
20 and it does understand the necessity to limit the catch to  
21 360,000 tons in 2013.

22 In our statements, we never expressed any doubt that  
23 that was the correctly estimated stock for 2013, and we've  
24 heard that on a number of occasions, in statements from Chile  
25 and from the Chairman of the Commission, and we understand that

17:22 1 there is worry about stock depletion. We're all for regulating  
2 the fishing stock. We're all for the control and management.

3           You know, when we hear explanations saying that the  
4 whole issue with the Russian Federation came about because we  
5 tried to safeguard the fishing stock, but the Russian  
6 Federation also tries to do the same thing. The CMM 1.01 does  
7 not have the ground to limit the stock at zero level for the  
8 Russian Federation. Therefore, in January 2013, Russia, in its  
9 statement, called this Measure a discriminatory Measure.

10           However, in spite of that, this Measure was applied.  
11 This way, we see the effect of discrimination because Russia,  
12 the only one of Member States, is put into the underprivileged  
13 position. It is not just limited by the reasonable Measures  
14 aimed at control on conservation just like other States, but,  
15 in fact, it is deprived of this right. However, we do not  
16 assume in any way that our colleagues in the Commission took  
17 this decision.

18           I don't think that there was any intentional decision  
19 to limit the rights of specifically Russia in the Convention  
20 Area. However, the fact remains the fact. The decision has  
21 been made, has only one victim, and that victim happens to be  
22 the Russian Federation.

23           There is one thing that I would like to share with  
24 you. Of course, we have been talking about the status of the  
25 stocks, about the preservation of the stocks but sometimes we,

17:24 1 I believe, tend to forget the fishermen themselves. Every  
2 fisherman thinks about what tomorrow will bring and, frankly  
3 speaking, the Measure was taken, came as a major surprise for a  
4 significant number of fishermen who map out their annual plan  
5 as to where they will work, what they will catch. And I can  
6 say that the fishing vessels that were planning to go and fish  
7 in the Convention Area are now moored and not moving anywhere,  
8 and, therefore, this decision will impact the standards of life  
9 of people who are involved in fishing.

10           There is something else I need to say.

11           Today a statement has been made that the Measures were  
12 taken based on Article 8 of the Convention and that the Measure  
13 only concerns preservation of the jack mackerel; therefore,  
14 provisions of Article 21 were never used. We could not  
15 disagree with this in any stronger terms.

16           We believe that there's a whole number of the  
17 provisions in this Measure is evidence of the fact that this  
18 Measure cannot be treated exclusively as a preservation or  
19 conservation Measure. Its very language, starting with the  
20 dispositive part of it that refers to Article 21 of the  
21 Convention, the bulk of the language, the section managing the  
22 fisheries or catch management and other way to supplements  
23 thereto that directly allocate catch quotas, indicates that the  
24 Measure concerned both preservation and management, including  
25 distribution of quotas. As a result, the taking of this

17:27 1 Measure, without taking into account the criteria contained in  
2 Article 21 of the Convention, appears to be a direct violation  
3 of the Convention's provisions.

4           Let me note that as Mr. Chair has just said, he agrees  
5 that the criterion of the historical role and traditional catch  
6 in the Convention Area, they're all very important for  
7 decisions, as decisions are being made on the Shares in the  
8 Total Allowable Catch. That these criteria must necessarily be  
9 taken into account is what Russia said in its interventions,  
10 and we ask ourselves this question: Does the legitimacy of the  
11 1.01 Measure, the fact that these criteria, indeed, were not  
12 applied as the Measure was taken as factually and actually  
13 evidenced today on the part of the Commission, given the above,  
14 we would also like to raise the question as follows: Could the  
15 Commission, without leaving aside the agreed-upon Measures to  
16 preserve the 360,000 tons of Total Allowable Catch--and that's  
17 the limitation of it--make a decision that would not be a  
18 discriminatory decision with respect to just one single nation?

19           Of course it could. We believe that there is nothing  
20 in the Convention, there is nothing in other applicable  
21 provisions of international law that creates any obstacles for  
22 a decision like that to actually be made that would not be  
23 discriminatory with respect to just one single State. The  
24 Commission was not obliged to limit itself to just one year as  
25 a key to distribution if even the matter at hand was emergency

17:29 1 or extraordinary Measures intended to replenish the stocks.

2           However, the choice made by the Commission  
3 conclusively and knowingly excludes the Russian Federation from  
4 among those entitled to fish from among those States entitled  
5 to fish in the Convention Area.

6           Given the above, the Russian Federation kindly  
7 requests the group, as per Paragraph 10 of Attachment 2 to the  
8 Convention, to rule that the decision unjustifiably  
9 discriminates against the Russian Federation both in form and  
10 in substance. And to rule that the decision is incompatible  
11 with Article 21 of the Convention on the South Pacific and the  
12 1982 Convention and the 1995 Agreement that stipulate that no  
13 such discrimination is to occur or be tolerated; and also to  
14 rule the Measure proposed by the Russian Federation having such  
15 effect or having the same effect as CMM 1.01 and accordingly to  
16 rule that the Measure proposed by the Russian Federation is  
17 equal to CMM 1.01 and mandatory, and to adopt recommendations  
18 based on such conclusions as provided for in Paragraph 10(b) of  
19 Supplement 2 to the Convention.

20           We would like to extend our thanks to the Chairman of  
21 the group, Professor Oxman, Members of the group, Ms. Carvajal  
22 and Professor Bekyashev for their work and, of course, to the  
23 Secretariat that has gone out of their way to help us. We  
24 would like to thank our interpreters, who have made sure that  
25 we were able to work in a comfortable environment, and I would

17:32 1 like to thank all the participants in this meeting.

2 Thank you very much.

3 CHAIRMAN OXMAN: I thank the Representative of the  
4 Russian Federation, and I now give the floor to the  
5 Representative of the Republic of Chile.

6 CONCLUDING REMARKS OF THE REPUBLIC OF CHILE

7 MR. QUIROGA: Thank you very much, Mr. Chairman.

8 Well, first of all, personally, it is a pleasure to be  
9 in the heart of the international law.

10 Honorable Members of the Panel Review, distinguished  
11 Members of the South Pacific Regional Fisheries Management  
12 Organization, distinguished Members of the Commission and the  
13 Secretariate of the South Pacific Regional Fisheries Management  
14 Organization, distinguished Senior Legal Counsels of the  
15 Permanent Court of Arbitration and its staff, distinguished  
16 delegations, Ladies and Gentlemen:

17 On behalf of the Government of Chile, it is an honor  
18 to address this Distinguished Panel on the occasion of the  
19 segment of the proceedings: "Concluding remarks."

20 Chile wishes to thank all those who attend this highly  
21 significant process. We are aware of the noble task of this  
22 Organization, endowed with complex duties as well as with  
23 far-reaching functions. We would also like to highlight the  
24 role of the Commission for the Organization's effectiveness.

25 As a Member country, Mr. Chairman, this is an

17:34 1 opportunity to clearly demonstrate that our multilateral  
2 organization is working, and that cooperation constitutes the  
3 core instrument supporting its purpose. I would like to  
4 mention some agreed supportive concepts of our common goals:  
5           Conservation;  
6           Management;  
7           Scientific and technical support for policy-making  
8 effects;  
9           Long-term sustainable (above all with fisheries  
10 resources under proven low biomass of the stock);  
11           Biodiversity;  
12           Accountability;  
13           Inclusion;  
14           Best practices.

15           Therefore, a number of multilateral efforts are being  
16 directed towards the suitable management of non-highly  
17 migratory fisheries, and to protect biodiversity, and the  
18 marine environment in the High Seas Area of the South Pacific  
19 Ocean.

20           We have an effective modern Organization characterized  
21 with a strong conservationist personality and, above all,  
22 endowed with an institution that protects the fishing heritage  
23 in the framework of a multilateral convention.

24           Honorable Members of the Panel, Regional Fisheries  
25 Management Organizations are inter-governmental organizations

17:36 1 that have powers to exercise competence according to their  
2 respective conventional instruments in order to pursue and  
3 establish fisheries, conservation and management measures on  
4 the high seas. Accordingly, the Regional Fisheries  
5 Organization in the South Pacific performs a key role--a key  
6 role--in matters of fisheries governance along the lines of  
7 what is expected by the international community.

8           As we have seen on April 25 of this year, a  
9 Contracting Party submitted to the Executive Secretary an  
10 Objection under Article Number 17 of the Convention concerning  
11 the Conservation and Management Measure for *Trachurus murphyi*,  
12 which had been adopted this year by the Commission. The  
13 Government of the Republic of Chile, through acknowledging the  
14 right of any Party to the Convention, to present its Objection,  
15 considers that it is necessary to look at this matter from the  
16 perspective of the competences of the Commission and the  
17 principles and objectives of the Convention. Thus, it is worth  
18 noting that the Commission adopted the decision on the  
19 Conservation and Management Measure (CMM 1.01) in a way  
20 consistent with the Convention on the Conservation and  
21 Management of High Seas Fishery Resources in the South Pacific  
22 Ocean, taking fully into account the aim of Conservation and  
23 Management of *Trachurus murphyi*.

24           As Chile has sustained, the Measure CMM 1.01 is  
25 well-founded and must be maintained. It has been the result of

17:39 1 consensus and cooperation: This Decision (CMM 1.01) represents  
2 an achievement of regional cooperation in order to protect the  
3 sustainability of the *Trachurus murphyi*.

4           The Review Panel has to consider whether the Objection  
5 is well-founded. Given the information related to the actual  
6 catches of the Year 2010, and after considering alternative  
7 Measures that could have been made applicable in the Area, it  
8 must be taken into account whether the Measure already  
9 introduced represents a legitimate means to protect the species  
10 adopted in accordance with regular Standards in compliance with  
11 the applicable rules. Chile has no doubts about the legal and  
12 technical basis of this Measure.

13           The report sent to the PCA by the President and the  
14 Executive Secretary of the South Pacific Regional Organization,  
15 call it "Information Paper" dated June 13, 2013, contains a set  
16 of ideas that illustrate in depth about the decision. I humbly  
17 invite you to analyze and apply on this issue.

18           Under the logic of cooperation and establishment of  
19 mechanisms that have been brought together by the organized  
20 international community, relevant actors and participants have  
21 to get closer to the Commission and to provide information for  
22 the decision-making process. Moreover, the governing body of  
23 this organization has the necessary background to support a  
24 conservation measure. In this case, my Government believes  
25 that the Measure is adequate and fulfills the goals envisioned

17:42 1 by the Convention in order to implement equitable and  
2 reasonable methods purposes to fisheries. We would like to see  
3 the Objecting Party to associate itself to the Measure and to  
4 contribute with its own expertise in the field of fisheries to  
5 its effective implementation.

6 To deny the legitimacy of the Conservation and  
7 Management Measure, to deny this Measure for an alleged  
8 retroactive character lacks foundation and should not be given  
9 weight by this Panel. In its 2013 Decision, the Commission  
10 gave substantive--substantive reasons for the consideration of  
11 specific Interim Measures as permitted by the Convention  
12 itself.

13 Finally, on the basis of a comment made by a  
14 distinguished diplomat, who referred before to the United  
15 Nations Convention as a "Constitution of the Oceans," it is  
16 worth to say on this matter that the Convention attains to  
17 stand alive through the operation of the Commission. It's  
18 largely through this institutional provision that the  
19 Convention looks to the implementation of its rules under the  
20 development of the law of the sea as a matter of substance, if  
21 not of form.

22 Allow me finally to make a quoting, a very famous  
23 quoting: "One is hard-pressed to imagine a situation more  
24 appropriate to the classic admonition: Let us not make the  
25 best the enemy of the good."

17:44 1 I respectfully call upon the Review Panel to support  
2 the Measure in integrum and to declare it valid and  
3 enforceable.

4 Thank you very much, Mr. Chairman.

5 CHAIRMAN OXMAN: Thank you for your remarks. Muchas  
6 gracias, spasibo. Thank you all very much.

7 I wish to thank the participants, all of the  
8 participants, for their presentations and for their responses  
9 to the Panel's questions, both the written questions and the  
10 oral ones with very little notice.

11 As I'm sure you have seen, my colleagues on the Panel  
12 and I have carefully reviewed the written submissions that are  
13 on record, both by those present here and by those who are not  
14 present here, and we have listened to your interventions today  
15 with attention, and they have been very helpful. It is now our  
16 job to deliberate over the issues in these proceedings, which  
17 we plan to do with great care, and within the time limits  
18 foreseen under the Convention, which sets a time limit to which  
19 we will do our very best to adhere of this Friday to  
20 communicate findings and recommendations to the Executive  
21 Secretary.

22 We are, indeed, cognizant of the fact that this is the  
23 first proceeding of its kind under the Convention, and we  
24 appreciate the honor and the concomitant duties entailed in  
25 being invested with the task before us.

17:47 1           On behalf of my colleagues, I would like to extend our  
2 thanks to the interpreters, to the Court Reporter, to the  
3 Permanent Court of Arbitration, and its staff for their  
4 invaluable assistance.

5           I thank the participants again for their efforts in  
6 illuminating the issues before us, and my colleagues and I wish  
7 everyone a safe journey home.

8           The hearing is adjourned.

9           (Whereupon, at 5:47 p.m., the hearing was concluded.)

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CERTIFICATE OF REPORTER

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

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

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DAVID A. KASDAN