

13 March 2014

Dear Colleagues

The interpretation of CMM 2.01 paragraph 4

The Secretariat has been asked for confirmation that paragraph 4 of CMM 2.01 regarding gross tonnage limits for vessels engaged in *Trachurus murphyi* fisheries in the Convention Area applies only to vessels that are actively fishing and not to support vessels.

The Secretariat has consulted me in my role as Chairperson of the Commission and also in respect of my previous roles of Chairman of the Consultations on the establishment of the SPRFMO and Chair of the Preparatory Conference for the Commission. I have advised the Secretariat that in my view this was the clear intention of the participants and, although the language of the paragraph could and should have been clearer, this is the correct legal interpretation taking into account the context and the relevant preparatory work in accordance with Articles 31 and 32 of the Vienna Convention on the law of Treaties.

The origin of paragraph 4 of CMM 2.01 is to be found in the 2007 Interim Measures (paragraph 1 under the heading “Pelagic fisheries”). At that time the draft Convention was at an early stage of development and could not be used as a reference point for the drafting of the voluntary interim measures. The term “actively fishing” was chosen for use in paragraph 1 as a general term that would distinguish between vessels actively engaged in taking fish from the water and any support vessels.

The same term was used in the 2011 Interim Measures for Pelagic Fisheries (paragraph 8) and the 2012 Interim Measures for Pelagic Fisheries (paragraph 8). Again this term was used because participants understood the meaning and intention in the context of these voluntary measures and the Convention was not yet in force.

The time constraints involved in the negotiation of CMM 1.01 at the first meeting of the Commission in 2013 meant that the same language was used again in the relevant paragraph on effort management (paragraph 5). But the footnote to Table 1 of CMM 1.01 makes it clear that all participants understood that the tonnage limits referred to vessels engaged in direct fishing operations and not support vessels.

The negotiations in the Working Group that developed the final version of what became CMM 2.01 at the Second Meeting of the Commission were focussed primarily on the catch management numbers that are set out in Table 1 to that measure. On the last morning there was discussion over the formulation of paragraph 4 on effort management. Some thought the paragraph was no longer necessary now that the focus was on the effective management of catch numbers. Others thought it was important to retain the previous effort management provision. Of those who thought the provision should be retained some thought the provision needed to be included in its entirety, including the table and footnote. Others thought the footnote unnecessarily refocussed attention on an unresolved point that was no longer an issue in the wake of the acceptance of the Findings and Recommendations of the Review Panel of 5 July 2013. In the event I myself proposed a compromise that the first sentence simply refer to Table 1 of CMM 1.01 without repeating it in the new measure. This was accepted.

Had more time been available to re read carefully the entire measure it is probable that the Working Group or the Commission itself would have seen the desirability of updating the language of paragraph 4 accurately to reflect the original intention but taking full account of the Convention definitions of “fishing” and “fishing vessel”. I note this was done in the section under the heading “Catch Management” where paragraph 6 provides that catches will be attributed to the Flag State whose vessels have undertaken “the fishing activities described in Article 1(g)(i) and (ii) of the Convention” rather than whose vessels “were actively fishing”.

An appropriately updated formulation for the first sentence of paragraph 4 would read as follows:

“Members and CNCPs shall limit the total gross tonnage (GT) of vessels flying their flag and participating in the fishing activities described in Article 1(g)(i) and (ii) of the Convention in the *Trachurus murphyi* fisheries in the Convention Area to the tonnage of their flagged vessels that were engaged in such fishing activities in 2007 or 2008 or 2009 in the Convention Area and as set out in Table 1 of CMM 1.01.”

It is my clear view that this is the intention and correct interpretation of paragraph 4 of CMM 2.01.

Confirmation that this is the intention and correct interpretation of paragraph 4 of CMM 2.01 can be found in the decision of the Commission to grant Liberia and Panama CNCP status to enable them to authorise vessels to tranship in the Convention Area. If paragraph 4 of CMM 2.01 were to be interpreted to cover support vessels as well as vessels actively engaged in taking fish from the water then Liberia and Panama automatically would be in breach of CMM 2.01 if they authorised any such support vessels because they have no gross tonnage listed in Table 1 of CMM 1.01.

In this regard, and as a final point, I would emphasise that any vessel engaged in fishing (in the widest sense of the definition of that term in Article 1) for fishery resources in the Convention Area must be authorised by a Member or CNCP or risk being included in the Commission's IUU list.

Kind regards

A handwritten signature in black ink that reads "Bill Mansfield". The signature is written in a cursive, flowing style.

Bill Mansfield
Chairperson
Commission of the South Pacific Regional Fisheries Management Organisation