

Separate Opinion of Sra. Valeria Carvajal dated 5 July 2013

With respect to the alternative measure recommended by the Review Panel today, I would have preferred to recommend such alternative measure under the circumstances described in paragraphs 10 (i) or (j) of Annex II. However, the possibility that the Review Panel recommends alternative measures without finding that the decision unjustifiably discriminated in form or in fact against the Russian Federation is not available under paragraph 10 of the Annex II. Accordingly, because the only basis for arriving at what I consider to be a reasonable outcome that might promptly replace the catch limit adopted by the Russian Federation requires the application of paragraph 10(c) of Annex II, I have reluctantly refrained from requesting a separate vote on the first finding of the Review Panel in spite of my personal view that there was no discrimination against the Russian Federation resulting from the implementation of CMM 1.01.

The alternative measure recommended by the Review Panel establishes the obligation of Russia to act in accordance with Article 3, paragraph 1(a)(v) of the Convention. After long discussions with the other members of the Review Panel, it is my understanding that Russia, before authorizing its vessels to fish in the Convention Area, shall ensure that the TAC has not yet been reached and if so, that the participants in the fishery that have not yet fully utilized their catch limits (as reflected in Table 3 of CMM 1.01) will not utilize them.