
**PROPOSAL TO AMEND APPENDIX V OF THE IOTC RULES OF PROCEDURE IN ORDER
TO STREAMLINE AND STRENGTHEN CPCs COMPLIANCE ASSESSMENT IN IOTC****PREPARED BY: EUROPEAN UNION**

In accordance with Rule XVIII of the IOTC Rules of Procedure (2014), the European Union has submitted the below proposal to amend Appendix V of the IOTC Rules of Procedure (2014) - the Compliance Committee terms of reference and rules of procedure.

This proposal was circulated to Members via IOTC Circular 2018-16 on 22 March 2018.

The objective of the EU proposal to amend Appendix V of the IOTC Rules of Procedure (RoP) is to streamline and strengthen the CPCs compliance assessment in IOTC. Notably the proposal aims at improving the existing IOTC compliance assessment procedure by:

- Providing a structured process with increased involvement from CPCs and the Commission in the assessment and follow-up: under the terms of the EU proposal, CPCs are invited to propose the compliance status (self-assessment) applicable to a given non-compliance case amongst a limited number of categories. That assessment, together with the response from the CPC, is then reviewed by the Compliance Committee and endorsed by the Commission. The outcome of the process is reflected in the commitments from CPCs included in the Compliance Report;
- Establishing a framework of possible responses to non-compliance situations: the current letter of non-compliance is replaced by a non-exhaustive list of specific actions to be undertaken by the CPC in case of non-compliance. As in the case of the assessment, the response is discussed and validated by the Commission and registered in the Compliance Report for record and further follow up and necessary;
- Grading of the different infractions according to its seriousness: it can be contended that under the current system the assessment of non-compliance has a tendency to be solely reflected in terms of percentage of obligations that are met with no reference to its seriousness. Under the revised system proposed by the EU, infractions will be treated in accordance to its seriousness and the Compliance Report will reflect the different situations;
- Ensuring the follow-up to the infractions: the Compliance Report will summarise all the decisions recommended by the Compliance Committee and facilitate its follow-up in the future;
- Improving overall compliance: the final goal of the compliance discussions is not to single-out CPCs' compliance cases but to improve compliance in IOTC by accompanying efforts from CPCs to address compliance issues, including by providing technical assistance and capacity building as appropriate, clarifying the obligations, recommending amendments to existing Resolutions, etc.

The proposed amendments to Appendix V of the IOTC Rules of Procedure are provided below.

INDIAN OCEAN TUNA COMMISSION: RULES OF PROCEDURE (2014)

[...]

APPENDIX V

THE COMPLIANCE COMMITTEE - TERMS OF REFERENCE AND RULES OF PROCEDURE

1. Meeting of the Compliance Committee

The meetings of the Compliance Committee shall be held for a period of at least 2 days to assess individual IOTC Contracting Parties (Members) and Cooperating Non-Contracting Parties' (hereinafter referred together as "CPCs") compliance and enforcement with their obligations as Members and Cooperating Non-Contracting Parties of IOTC.

2. Mandate and Objectives of the Compliance Committee

- a) The Compliance Committee shall be responsible for reviewing all aspects of CPCs individual compliance with the IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~binding IOTC Conservation and Management Measures in the IOTC area of competence~~
- b) The Compliance Committee shall report directly to the Commission on its deliberations and recommendations
- c) The Compliance Committee shall cooperate closely with other IOTC subsidiary bodies in order to remain informed on all issues concerning compliance with binding IOTC Conservation and Management Measures
- d) The work of the Compliance Committee shall be guided by the following overall objectives:
 - i) To provide a structured forum for discussion of all problems related to effective implementation of, and compliance with, the IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~binding IOTC Conservation and Management Measures in the IOTC Area~~
 - ii) To gather and review information relevant to compliance with the IOTC Agreement and Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~IOTC Conservation and Management Measures~~ from IOTC subsidiary bodies, and from Reports of Implementation submitted by CPCs
 - iii) To identify and discuss problems related to the implementation of, and compliance with, the IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~binding IOTC Conservation and Management Measures~~, and to make recommendations to the Commission on how to address these problems.

3. The terms of reference of the Compliance Committee shall be to:

- a) Review each individual CPC's compliance with the IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~binding IOTC Conservation and Management Measures adopted by the Commission~~ and make such recommendations to the Commission as may be necessary to ensure their effectiveness, notably in relation to:
 - i) The mandatory statistical requirements and all issues related to obligatory reporting and data providing, including non targeted species
 - ii) The level of CPC's conformity with ~~binding~~ the IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission ~~IOTC Conservation and Management Measures~~
 - iii) The CPC's conformity with the resolutions concerning the limitation of the fishing capacity
 - iv) The status of implementation of resolutions for monitoring, control, surveillance and enforcement

adopted by the Commission (e.g. Port inspections, VMS, follow-up on infringements and market related measures)

- v) The reporting on authorised as well as active vessels in IOTC area of competence, in particular in relation to the IOTC Resolution on fishing effort limitation.

b) The Compliance Committee shall also be tasked to:

- i) Compile reports, with the help of the IOTC Secretariat, based on information submitted by CPCs in accordance to the various Resolutions adopted by the Commission and, which will form the basis for the compliance examination process
- ii) Develop a structured, integrated approach to evaluate the compliance of each CPC against the [IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission](#) ~~IOTC Resolutions in force~~. The Chairman of the Compliance Committee, assisted by the IOTC Secretariat, will identify, select and transmit the significant non compliance issues to each CPC and submit them for discussion at the Compliance Committee meeting
- iii) Issue its opinion on the compliance status of each CPC at the end of the meeting. Non compliance with the [IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission](#) ~~binding IOTC Conservation and Management Measures~~ will lead to a declaration of non compliance by the Compliance Committee and recommend suitable actions for consideration of the Commission [in accordance with paragraphs 5 and 6 of this Appendix](#).
- iv) Develop a scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs
- v) Perform such other tasks as directed by the Commission.

4. IOTC Compliance Committee preparatory works:

4.1 In preparation for the meeting of the IOTC Compliance Committee the IOTC Secretariat will:

- i) send each CPC, [no later than](#) 4 months prior to the annual meeting, a standard questionnaire on compliance with the ~~various IOTC~~ [IOTC Agreement and the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission](#) ~~Resolutions governing conservation and management covering the previous year (1 January to 31 December) and issues noted by the Commission as requiring additional information from CPCs in the previous year's IOTC's Compliance Report~~ for receiving comments and answers from the concerned CPCs within ~~30~~⁴⁵ days;
- ii) circulate to all CPCs, 2 months prior the annual meeting, the comments and answers provided by each CPC in response to the questionnaire and invite comments and possible questions from all other CPCs;
- iii) compile CPCs' initial replies to the questionnaire and comments and questions provided by other CPCs [within 21 days](#) in the form of draft [IOTC Compliance Report tables that will form the basis for the compliance examination process using the template in Appendix A](#). The draft [IOTC Compliance Report tables shall summarise will present](#) all available information relating to each CPC's implementation of obligations for review by the IOTC Compliance Committee [including the suggested compliance status for each compliance issue identified. As a means of complementary information, the IOTC Secretariat shall also post on a secure section of the IOTC website the comments and answers provided by each CPC in response to the questionnaire;](#)
- iii)iv) The draft [IOTC Compliance Report tables shall will](#) be provided to the relevant CPC on a secure section of the IOTC website ~~for emailed to the relevant authority~~. Upon website posting ~~for emailing~~ of the relevant draft [IOTC Compliance Report tables](#), each CPC may reply to the IOTC Secretariat within ~~30~~⁴⁵ days in order to (where appropriate):
 - a) provide additional information, clarifications, amendments or corrections to information contained in its draft report;
 - b) identify any particular difficulties with respect to implementation of any obligations; or

- c) identify technical assistance or capacity building needed to assist the CPC with implementation of any obligations.

~~iv)v)~~ The IOTC Secretariat will then produce the IOTC Summary Compliance Report finalised tables for each CPC based on the draft Compliance Report of each CPC. The IOTC Summary Compliance Report that will shall form the basis for the compliance examination process and shall include, inter alia, a summary of each CPCs implementation of obligations for review by the IOTC Compliance Committee, any compliance issues and the suggested preliminary compliance status. The IOTC Summary Compliance Report shall be made available to all CPCs on a secure section of the IOTC website no later than 30 days before the Compliance Committee meeting. These tables will be distributed to CPCs for discussion during the IOTC Compliance Committee session. This table could be updated up to one week prior to the commencement of the Compliance Committee.

4.2 ~~The Chairperson of the IOTC Compliance Committee, assisted by the IOTC Secretariat, will identify, select and transmit the significant non compliance issues to each concerned CPC and submit them for discussion in the IOTC Compliance Committee meeting at least 30 days in advance.~~

5. Provisional IOTC Compliance Report ~~Opinion of the Compliance Committee~~

~~The At the end of the meeting the~~ Compliance Committee shall consider the IOTC Summary Compliance Report taking into account the information received and considering the circumstances relevant to each case. The compliance discussions shall be undertaken by measure by measure and by CPC. The Compliance Committee might request any CPC that have relevant information to provide further details so that the Compliance Committee may fully assess each compliance issue. The Compliance Committee shall also discuss cases of repeated absences at Compliance Committee meetings and make recommendations to the Commission to promote full participation. The Compliance Committee shall adopt the Provisional Compliance Report which shall include any findings of non-compliance and the recommended action. The IOTC Provisional Compliance Report shall include an assessment of the compliance status in accordance with Annex B ("Compliance Status Categories"). For the purposes of the Provisional and Final IOTC Compliance Report, "Compliance Status" refers to compliance with the IOTC provisions by CPCs vessels and administrations, and "suggested action" takes into account CPCs' responses and corrective actions to address compliance issues identified. The IOTC Provisional Compliance Report shall also include recommendations to the Commission regarding:

- a) any remedial action taken, or proposed to be taken, by the CPC;
- b) where appropriate, proposals to amend or clarify the existing IOTC obligations; and
- c) other responsive action, including incentive measures, which may be considered by the Commission as appropriate.

6. Final IOTC Compliance Report

1) ~~At its annual meeting the Commission shall review the IOTC Provisional Compliance Report. On adoption of the Final IOTC Compliance Report, the Commission's shall outline its response to the recommendations of the Compliance Committee in the Provisional IOTC Compliance Report. issue its opinion on the compliance status of each CPC.~~

7. The procedures of the Compliance Committee shall be governed *mutatis mutandis* by the Rules of Procedure of the Commission.

APPENDIX V – ANNEX A

<u>Relevant binding IOTC obligation</u>	<u>Obligation implementation</u> (description of what Secretariat records show with respect to implementation of conservation measure, including history) [To be completed by Secretariat]	<u>Additional information</u> (including, but not limited to, further documentary or photographic evidence demonstrating the implementation of conservation measures, specific actions taken/to be taken and expected time frame to effectively address possible non-compliance. CPs should also include a suggested compliance category from Annex B and any proposed further action) [To be completed by Contracting Party]	<u>Compliance Committee comments/ compliance status/ recommended action(s)</u> [To be completed by the Compliance Committee]

APPENDIX V – ANNEX B

COMPLIANCE STATUS CATEGORIES

<u>Compliance status</u>	<u>Criteria</u>	<u>Suggested action</u>
<u>Compliant</u>	<u>Contracting Party fully compliant with obligations</u>	<u>No action required</u>
<u>Minor non-compliant</u>	<u>Infringements of minor nature, including, but not limited to, non-repeated minor delays in the submission of reports and other regular data provisions as required or information or data has been submitted or reported in a way that is incomplete, incorrect, wrongly formatted or is otherwise insufficient.</u>	<ul style="list-style-type: none"> • <u>No further action:</u> the CPC demonstrates that it has already taken appropriate response and no further action is required; • <u>Corrective action needed:</u> the CPC shall address the non-compliance situation within a given period of time, and at the latest before the following annual meeting, unless otherwise decided by the Commission.
<u>Non-compliant</u>	<u>Non-compliance of moderate severity</u>	<ul style="list-style-type: none"> • <u>No further action:</u> the CPC demonstrates that it has already taken appropriate response and no further action is required; • <u>Corrective action needed:</u> the CPC shall address the non-compliance situation within a given period of time, and at the latest before the following annual meeting, unless otherwise decided by the Commission. <u>The corrective action shall be appropriate to the relevant infraction and shall include one or more, but are not limited to, of the following responses taking into account the history, circumstances, extent, and gravity of the act or omission:</u> <ul style="list-style-type: none"> <u>Remedies to be applied by the CPC</u> - <u>remedies proposed by the CPC and endorsed by the Compliance Committee;</u> - <u>the completion of an investigation by the CPC regarding a non-compliance situation and reporting back to the Commission;</u> - <u>enhanced monitoring of the fleet including increased VMS frequency, the placement of observers, increased inspection requirements, restrictions on landings and others;</u> - <u>amendments to the domestic procedures, legislation or policy including sanctions and penalties;</u> - <u>other remedies;</u>

<u>Compliance status</u>	<u>Criteria</u>	<u>Suggested action</u>
		<u>Remedies to applied by the Commission</u> <ul style="list-style-type: none"> - <u>the provision of capacity building or technical assistance;</u> - <u>the undertaking of an external review of the domestic system in relation with the IOTC obligations;</u> - <u>other remedies.</u>
<u>Seriously, frequently or persistently non-compliant</u>	<p><u>Serious, frequent or persistent non-compliance in relation to breaches of IOTC binding obligations which undermines the objectives of IOTC.</u></p> <p><u>It includes, but it is not limited to, failure to comply with previous corrective action after sufficient time and assistance, as appropriate, has been provided; repeated failure to provide nominal catch data, including zero catches, for one or more species for a given year, in accordance with the Resolution 15/02, paragraph 2 (or any subsequent revision); repeated failure to submit the standard questionnaire on compliance as required; and exceeding an authorized quota by greater than 5%. Frequent non-compliance refers to a situation of non-compliance with an obligation for two or more consecutive years. Persistent non-compliance refers to a non-compliance with an obligation continuing to exist or occurring over a prolonged period.</u></p>	<p><u>In addition to the remedies applicable for the cases of minor non-compliant and non-compliant, the following non-exhaustive responses could be also considered by the Compliance Committee to recommend further action(s) by Commission:</u></p> <ul style="list-style-type: none"> - <u>suspension of the participation in the decision-making process;</u> - <u>quota reductions, including, but not limited to, for cases of quota overfish which are to be repaid at a ratio of 1:1 over a time period specified by the Commission. Where there are specific aggravating factors or persistent non-compliance a higher ratio of 1:2 payback shall apply;</u> - <u>suspension of fishing rights (including, but not limited to, for cases of repeated non-compliance with the reporting obligations on catches or VMS);</u> - <u>application of non-discriminatory trade measures;</u> - <u>other remedies.</u>
<u>Need of interpretation by the Compliance Committee</u>	<u>Ambiguity or misunderstanding of relevant obligation</u>	<u>If necessary, review conservation measure to address any technical impediments to implementation</u>
<u>No compliance status assigned</u>	<u>Cases of emergency relating to the safety of a ship and those on board or saving life at sea</u>	<u>No action required</u>