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**PROPOSAL TO AMEND APPENDIX V OF THE IOTC RULES OF PROCEDURE****PREPARED BY: EUROPEAN UNION**

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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 first 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 summarize 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,

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 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 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 [3045](#) 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;~~
- ii) 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) 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 tables, each CPC may reply to the IOTC Secretariat within [3045](#) 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) ~~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 compliance analysis/exercise should be undertaken Country by country as well as measure by measure. 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 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 circumstance relevant to each response. The compliance discussion should be undertaken by CPC as well as measure by measure. 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 non-submission or late submission of the questionnaire by CPCs as well as repeated absences at Compliance Committee meetings. On the basis of the information available to the Compliance Committee the Provisional Compliance Report will be adopted which it shall record any findings of non-compliance. 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" shall be based on the following criteria.~~

- ~~i. For a CPC-level quantitative limit or collective CPCs quantitative limit, such as a limit on fishing capacity, fishing effort, or catch, verifiable data indicating that the limit has not been exceeded.~~
- ~~ii. For other obligations:
 
  - ~~a. Implementation – where an obligation applies, the CPC is required to provide information showing that it has adopted, in accordance with its own national policies and procedures, binding measures that implement that obligation; and~~
  - ~~b. Monitor and ensure compliance – the CPC is required to provide information showing that it has a system or procedures to monitor compliance of vessels and persons with these binding measures, a system or procedures to respond to instances of non-compliance and has taken action in relation to potential infringements.~~~~

~~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;~~
- ~~c) priority obligations to be reviewed; and~~
- ~~d) other responsive action, including incentive measures –which may be considered by the Commission as appropriate.~~

## 6. IOTC Compliance Report

~~At its annual meeting the Commission shall consider the IOTC Provisional Compliance Report. The IOTC Compliance Report shall outline the Commission's response to the recommendations of the Compliance Committee in the Provisional 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> <u>(description of what Secretariat records show with respect to implementation of conservation measure, including history)</u> <u>[To be completed by Secretariat]</u>	<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. CPCs should also include a suggested compliance category from Annex B and any proposed further action) <u>[To be completed by Contracting Party]</u>	<u>Compliance Committee comments/ compliance status/ recommended action(s)</u> <u>[To be completed by the Compliance Committee]</u>
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APPENDIX V – ANNEX BCOMPLIANCE STATUS CATEGORIES

<u>Compliance status</u>	<u>Criteria</u>	<u>Suggested action</u>
<u>Compliant</u>	<p><u>A CPC will be deemed Compliant with an obligation if the following criteria have all been met:</u></p> <ul style="list-style-type: none"> <li><u>a. reporting or submission deadlines;</u></li> <li><u>b. implementation of obligations through national laws or regulations and no infraction detected in the implementation;</u></li> <li><u>c. submission of all mandatory information or data required, in the agreed format, as applicable.</u></li> </ul>	<u>No action required</u>

<u>Compliance status</u>	<u>Criteria</u>	<u>Suggested action</u>
<u>Partially compliant</u>	<p><u>A CPC will be deemed Partially Compliant with an obligation if any of the following have occurred, as applicable:</u></p> <p>a. <u>information or data for the obligation has been submitted or reported, but in a way that is incomplete or incorrect.</u></p> <p>b. <u>a CPC has failed to meet reporting or submission deadlines by less than [15] days;</u></p> <p>c. <u>a CPC has fully complied with more than 50% of the individual obligations contained in a CMM (overall compliance)</u></p>	<ul style="list-style-type: none"> <li>• <u><b>No further action:</b> the CPC demonstrates that it has already taken appropriate response and no further action is required;</u></li> <li>• <u><b>Corrective action needed:</b> the CPC shall provide the additional information required or 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></li> </ul>



<u>Compliance status</u>	<u>Criteria</u>	<u>Suggested action</u>
<p><u>Non-compliant</u></p>	<p>A CPC will be deemed Non-Compliant when it has failed to comply with an obligation or category of obligations not specifically identified as Priority Non-Compliant;</p>	<ul style="list-style-type: none"> <li>• <u>No further action:</u> the CPC demonstrates that it has already taken appropriate response and no further action is required;</li> <li>• <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. 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:</li> </ul> <p><b><u>Remedies to be applied by the CPC</u></b></p> <ul style="list-style-type: none"> <li>- remedies proposed by the CPC and endorsed by the Compliance Committee;</li> <li>- the completion of an investigation by the CPC regarding a non-compliance situation and reporting back to the Commission;</li> <li>- enhanced monitoring of the fleet including increased VMS frequency, the placement of observers, increased inspection requirements, restrictions on landings and others;</li> <li>- amendments to the domestic procedures, legislation or policy including sanctions and penalties;</li> <li>- other remedies;</li> </ul> <p><b><u>Remedies to applied by the Commission</u></b></p> <ul style="list-style-type: none"> <li>- the provision of capacity building or technical assistance;</li> <li>- the undertaking of an external review of the domestic system in relation with the IOTC obligations;</li> </ul>

Compliance status	Criteria	Suggested action
<u>Serious non-compliant</u>	<p>A CPC will be serious Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <ul style="list-style-type: none"> <li>a. <u>exceeding quantitative limit established by the Commission;</u></li> <li>b. <u>failure to submit the standard questionnaire on compliance;</u></li> <li>c. <u>failure to provide nominal catch data, including zero catches for one or more species for a given year;</u></li> <li>d. <u>failure to report back on how previous instances of non-compliance have been addressed;</u></li> <li>e. <u>non-compliance with an obligation for two or more consecutively assessed years; or</u></li> <li>f. <u>any other non-compliance identified as Serious Non-Compliance by the Commission.</u></li> </ul>	<p><u>In addition to the remedies applicable for the cases of non-compliant, the Commission shall request the concerned CPC to present a detailed plan on how it intends to address the issues of serious non-compliance identified within 3 months from the end of the Commission annual session (if this is agreed CoC will develop a format).</u></p> <p><u>The Commission shall also determine additional remedies/corrective actions to address serious issues of non-compliance, including possible sanctions.</u></p>
<u>Additional information needed</u>	<u>Where there exists no/insufficient information for verification and assessment of CPC compliance</u>	<u>Additional information needed</u>
<u>CMM review</u>	<u>There is lack of clarity on the requirement of an obligation</u>	<u>The Commission shall review that obligation and clarify its requirements</u>
<u>N/A</u>	<u>The measure does not apply to the CPC</u>	