

**PROPOSAL TO AMEND APPENDIX V OF THE IOTC RULES OF PROCEDURE**

**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 first circulated to Members via IOTC Circular 2018-16 on 22 March 2018. It was further presented and discussed at 22<sup>nd</sup> Session of the Commission (2018), at 2<sup>nd</sup> Working Party on the Implementation of Conservation and Management Measures (WPICMM) (2019), at the 16<sup>th</sup> Session of the Compliance Committee (2019), at the 23<sup>rd</sup> Session of the Commission (2019) and finally at the 3<sup>rd</sup> WPICMM (2020) Members of IOTC were also given the opportunity to send written comments intersessionally.

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 pre-identified 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;
- Grading of the different infractions according to their seriousness. While in the current system the assessment of non-compliance has a tendency to be reflected solely in terms of percentage of obligations that are met, under the revised system proposed by the EU, infractions will be treated in accordance to their seriousness and reflected accordingly in the Compliance Report;
- Ensuring an appropriate follow-up to infractions: the Compliance Report will summarize all the decisions recommended by the Compliance Committee and facilitate their 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 IOTC compliance record by accompanying CPCs' efforts to address compliance issues. This support might include providing technical assistance and capacity building as appropriate, clarifying statutory obligations, recommending amendments to existing Resolutions.

Compared to the proposal that was presented at WPICMM03, the following changes were made:

- Removal of the references to compliance with the IOTC agreement
- Clarification of the wording of some provisions

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 IOTC Conservation and Management Measures.
- 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 binding IOTC Conservation and Management Measures
  - ii) To gather and review information relevant to compliance with the IOTC Agreement and binding IOTC Conservation and Management Measures ~~from IOTC subsidiary bodies~~, and from documents submitted by CPCs (e.g. Reports of Implementation and standard questionnaires on compliance) submitted by CPCs or IOTC subsidiary bodies
  - iii) To identify and discuss problems related to the implementation of, and compliance with, the IOTC Agreement and binding IOTC Conservation and Management Measures, and to make recommendations to the Commission on how to address these problems, and where appropriate, sanctions and or penalties to encourage compliance.

**Commented [A1]:** Divergent views have been expressed by CPCs. References to the IOTC agreement is important considering that some obligations in the agreement are not translated into CMM (e.g. Implementation report) and considering that the CMMs are adopted pursuant the Agreement. Having reference to both the Agreement and the CMMs allow the Compliance Committee to verify compliance with all binding text of the IOTC, without one taking the priority over the other.

**Commented [A2]:** This was misplace. Should be at the end of the sentence to refer to document submitted to IOTC subsidiary bodies.

**Commented [A3]:** This was a repetition that should have been removed.

**Commented [A4]:** Displacement from 3.b.iv) to this section

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

- a) Review each individual CPC's compliance with the IOTC Agreement and binding IOTC Conservation and Management Measures 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 CPCs' conformity with the IOTC Agreement and binding IOTC Conservation and Management Measures
  - iii) The level of CPCs' 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.

**Commented [A5]:** Resolutions are binding

- 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 with~~ 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 binding Conservation and Management Measures, as described in paragraphs 4, 5 and 6 below. 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, in accordance with the process described in paragraphs 4, 5 and 6 below. ~~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, ~~where required appropriate, sanctions and or penalties or~~ other follow-up actions and a mechanism for their application to encourage compliance by all CPCs
  - v) Perform such other tasks as directed by the Commission.

**Commented [A6]:** Grammatical correction

**Commented [A7]:** This correspond to process described in 4.1.iv)

**Commented [A8]:** Can be deleted, procedure of par 4, 5 and 6 already mentioned

4. IOTC Compliance Committee preparatory works:

- a) In preparation for the meeting of the IOTC Compliance Committee the IOTC Secretariat ~~will~~ shall:
  - 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 Conservation and Management Measures covering the previous fishing year (1 January to 31 December), as well as~~ Such a questionnaire shall also seek information on any additional information ~~or follow-up actions by from~~ CPCs ~~or any follow-up actions noted by the Commission in response to~~ the previous year's IOTC Final Compliance Report ~~as stipulated in paragraph 6,~~ for receiving comments and answers from the concerned CPCs within ~~{30} {45}~~ days;
  - ii) compile CPCs' initial replies to the questionnaire within [21] days in the form of a draft IOTC Compliance Report, using the template in Annex A, to be developed by the Secretariat. The draft IOTC Compliance Report shall summarise all available information relating to each CPC's implementation of and compliance with obligations for review by the IOTC Compliance Committee and shall include the suggested compliance status ~~based on Annex B~~ for each compliance issue identified.
  - iii) The draft IOTC Compliance Report shall be provided to the relevant CPC on a secure section of the IOTC website ~~or~~ and emailed to the relevant authority. Upon website posting or emailing of the relevant draft 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;
    - c) identify technical assistance or capacity building needed to assist the CPC with implementation of any obligations; and/or
    - d) suggest an alternative compliance status for each compliance issue identified.
  - iv) The Secretariat shall then produce the IOTC Summary Compliance Report based on the draft Compliance Report of each CPC. The IOTC Summary Compliance Report shall form the basis for the compliance examination process described in paragraphs 5 and 6 and shall include, *inter alia*, a summary of each CPC's compliance with obligations, any compliance issues identified and a suggested preliminary compliance status by the Secretariat in accordance with Annex B ("Compliance Status Categories").
  - v) The IOTC Summary Compliance Report shall be made available to all CPCs on a secure section of

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the IOTC website no later than 30 days before the Commission meeting.

## 5. Provisional IOTC Compliance Report

- a) At each meeting, the IOTC Compliance Committee shall review the IOTC Summary Compliance Report, taking into account information contained in the report, as well as any further suitably documented information provided prior to or at the Compliance Committee meeting. The compliance examination process shall be undertaken by CPC as well as measure by measure and obligation by obligation, if required. The Compliance Committee may request any CPCs that have relevant information to provide further details. The Compliance Committee shall also discuss non-submission or late submission of the questionnaire referred to in paragraph 4.1(i).
- b) On the basis of the information available, the Compliance Committee shall adopt a Provisional Compliance Report [using the template at Annex A]. The IOTC Provisional Compliance Report shall record any compliance issues identified, including an assessment of compliance status in accordance with Annex B ("Compliance Status Categories"). The IOTC Provisional Compliance Report shall record suggested follow-up actions in respect of compliance issues identified, in accordance with Annex B, including timeframes for implementation.
- c) For the purposes of the Provisional and Final IOTC Compliance Report, "Compliance Status" shall be based on the following information criteria:
- i. For a CPC-level quantitative limit or collective CPC 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 inform and provide support documents, in national language if French and English is not available, 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.

**Commented [A12]:** Give more precision than just informing, but does not make mandatory translation. -S  
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5.4 The IOTC Provisional Compliance Report shall, where appropriate, 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 existing IOTC obligations;
- c) priority obligations to be reviewed for the next compliance assessment cycle, [during the process described in paragraphs 4, 5 and 6]; and
- d) other responsive action, including incentive measures which may be considered by the Commission as appropriate.

## 6. IOTC Final Compliance Report

The Compliance Committee shall recommend that, at its annual meeting, the Commission consider the IOTC Provisional Compliance Report and any associated or other relevant information, including responses to compliance issues and follow-up actions recommended by the Compliance Committee and adopt it, with amendments as required, as the IOTC Final Compliance Report, using the template at Annex A.

6bis. The process described in paragraphs 4, 5 and 6 shall be reviewed by the Compliance Committee after the compliance assessment process has been completed in full once. The Compliance Committee shall make recommendations to the Commission on future improvements to the process if necessary

**Commented [A13]:** New addition to allow continuously improvement of the assessment process in the future.

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

**APPENDIX V – ANNEX A**

TO BE DEVELOPED BY THE IOTC SECRETARIAT

TO BE CIRCULATED TO CPCS FOR PRIOR REVIEW

TO BE USED AS A SUITABLE TEMPLATE FOR THE DRAFT, SUMMARY, PROVISIONAL AND FINAL COMPLIANCE REPORTS

**APPENDIX V – ANNEX B**  
COMPLIANCE STATUS CATEGORIES

Compliance status	Criteria	Possible follow-up action
<b>Compliant</b>	<p>A CPC will be deemed Compliant with an obligation if the following criteria have all been met:</p> <ol style="list-style-type: none"> <li>a. reporting or submission deadlines;</li> <li>b. implementation of obligations through national laws or regulations</li> <li>c. no infraction detected in the implementation;</li> <li>d. submission of all mandatory information or data required, in the agreed format, as applicable.</li> </ol>	No action required
<b>Partially compliant</b>	<p>A CPC will be deemed Partially Compliant with an obligation if any of the following have occurred, as applicable:</p> <ol style="list-style-type: none"> <li>a. information or data for the obligation has been submitted or reported, but in a way that is incomplete or incorrect.</li> <li>b. a CPC has failed to meet reporting or submission deadlines by less than [15] days;</li> <li>c. a CPC has fully complied with more than [50%] of the individual obligations contained in a CMM (overall compliance)</li> </ol>	<ul style="list-style-type: none"> <li>• <b>No further action:</b> the CPC demonstrates that it has already taken appropriate action and no further action is required;</li> <li>• <b>Follow-up action needed:</b> the CPC shall provide additional information or address the compliance issue within a given period of time, and at the latest before the following annual meeting, unless otherwise decided by the Commission.</li> </ul>
<b>Non-compliant</b>	<p>A CPC will be deemed Non-Compliant when it has failed to comply with an obligation not specifically identified as Priority Non-Compliant;</p>	<ul style="list-style-type: none"> <li>• <b>No further action:</b> the CPC demonstrates that it has already taken appropriate action and no further action is required;</li> <li>• <b>Follow-up action needed:</b> the CPC shall address the compliance issue within a given period of time, and at the latest before the following annual meeting, unless otherwise</li> </ul>

		<p>decided by the Commission. The follow-up action shall be appropriate to the relevant compliance issue and shall include one or more of, but are not limited to, the following responses, taking into account the history, circumstances, extent, and gravity of the compliance issue:</p> <p><b>Actions to be taken by the CPC</b></p> <ul style="list-style-type: none"> <li>- actions proposed by the CPC and endorsed by the Compliance Committee;</li> <li>- the completion of an investigation by the CPC regarding a compliance issue 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/or others;</li> <li>- amendments to domestic procedures, legislation or policy including penalties;</li> <li>- other remedies;</li> </ul> <p><b>Actions the Compliance Committee recommends be taken by the Commission</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> <li>- other remedies.</li> </ul>
<p><b>Serious non-compliant</b></p>	<p>A CPC will be deemed serious Non-Compliant with an obligation if any of the following have occurred, as applicable:</p> <ul style="list-style-type: none"> <li>a. exceeding quantitative limit established by the Commission in [two] [three] or more consecutive year;</li> </ul>	<p>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</p>

Commented [A14]: Avoid double penalisation



	<p>b. <del>failure to respect a catch limit deduction resulting from an over-catch;</del> [redacted]</p> <p>c. failure to submit the standard questionnaire on compliance;</p> <p>d. failure to provide nominal catch data, including zero catches for one or more species <del>for a given year</del> <u>for two or more consecutive year;</u></p> <p>e. failure to report back against follow-up actions agreed by the Commission <u>for non-compliant issues;</u></p> <p>f. <del>non-compliance with an obligation for two or more consecutively assessed years;</del> <del>or</del> [redacted]</p> <p>g. <u>failure to respect a non-retention ban on a species;</u></p> <p>h. any other non-compliance identified as serious non-compliance by the Commission.</p>	<p>end of the Commission annual session (<i>if this is agreed CoC will develop a format</i>).</p> <p>The Commission shall also determine additional follow-up actions to address issues of serious non-compliance.</p>
<b>Additional information needed</b>	Where there exists no/insufficient information for verification and assessment of CPC compliance	Additional information needed
<b>CMM review</b>	There is lack of clarity on the requirement of an obligation	The Compliance Committee shall recommend the Commission review that obligation and clarify its requirements
N/A	The measure does not apply to the CPC	

**Commented [A15]:** Addition. Provide penalisation for a non-compliance issue for which there is no sanction planned

**Commented [A16]:** Provide more flexibility to CPCs. To be noted it only concerns nominal catch data.

**Commented [A17]:** Propose deletion to avoid a serious non-compliant status over a not so important compliance issues.

**Commented [A18]:** Addition