

Resolution GFCM/43/2019/5
on a compliance assessment scheme for the implementation of
Recommendation GFCM/38/2014/2 concerning the identification of non-
compliance

The General Fisheries Commission for the Mediterranean (GFCM),

RECALLING the terms of reference of the Compliance Committee (CoC) provided in Annex 1 of the GFCM Rules of procedure;

RECALLING Recommendation GFCM/38/2014/2 concerning the identification of non-compliance, amending and repealing Recommendation GFCM/34/2010/3;

RECOGNIZING that compliance with GFCM conservation and management measures is critical to the success of the GFCM;

RECALLING that the CoC may provide information in addition to its activities to address issues of non-compliance or lack of cooperation with GFCM conservation and management measures, in accordance with the GFCM rules of procedure;

RECALLING that the CoC can undertake other functions or responsibilities as may be conferred by the GFCM, in accordance with the GFCM rules of procedure;

RECOGNIZING that a reinforced analysis of non-compliance cases should be established in order to reinforce the assessment of the CoC, in respect of GFCM conservation and management measures, reporting obligations and control measures;

RECOGNIZING that cases of non-compliance should be addressed in a concrete, transparent and non-discriminatory manner, in accordance with the principle of proportionality and taking into account the need to remain flexible in dealing with the individual situations of each contracting party and cooperating non-contracting party (CPC);

FURTHER RECOGNIZING that not all non-compliance cases are of the same level of severity and impact on the effectiveness of GFCM conservation and management measures or on the work of the GFCM;

COGNIZANT of the need to assist in providing a consistent, fair, and transparent approach for considering and applying appropriate actions and proportionate response to improve compliance with and enforcement of the GFCM decisions;

ADOPTS, in conformity with Articles 5 and 8 of the GFCM Agreement, the following resolution

PART I
Objective

1. The purpose of the present resolution is to adopt implementing rules for the process of identification of cases of non-compliance and the appropriate measures to deter non-compliance by CPCs as referred to in paragraphs 1 and 5 b) of Recommendation GFCM/38/2014/2 concerning the identification of non-compliance, amending and repealing Recommendation GFCM/34/2010/3.

PART II
Establishment of the compliance assessment scheme

2. In preparation of the session of the CoC, the GFCM Secretariat should produce a compliance assessment scheme for each CPC concerned. The compliance assessment scheme should include, for each individual case of non-compliance, a categorization and evaluation of severity, based on the criteria set in Annex 1:
 - a) The criteria listed under item 1 of Annex 1 should be used to determine the category of non-compliance with GFCM decisions; and
 - b) The level of severity of each individual case of non-compliance by CPCs should be assessed in accordance with the definitions provided under item 2 of Annex 1, taking into account mitigating or aggravating considerations.
3. The compliance assessment scheme should be distributed to CPCs for discussion during the CoC session. The compliance assessment scheme could be updated up to one week prior to the session.
4. The compliance assessment scheme should be integrated in the process of identification of cases of non-compliance referred to in paragraph 1 of Recommendation GFCM/38/2014/2. The CoC should review the compliance with GFCM decisions by each CPC on the basis of the compliance assessment scheme.

PART III
Appropriate measures to deter non-compliance

5. Highest priority should be given to determining and addressing significant non-compliance, although responsive action may also be warranted in other cases.
6. Cases of non-compliance should be examined in consideration of the applicability of GFCM decisions to relevant CPCs.
7. In 2020, the CoC should propose appropriate measures with regard to the categories and gravity of non-compliance (among those listed in Annex 1 of this resolution) and submit proposals to the GFCM. On the basis of CoC advice, the forty-fourth session of the GFCM may adopt a list of appropriate measures.

Criteria for the establishment of compliance assessment schemes

1. Determination of the category of non-compliance(s)

Category A: Conservation and/or management measures, including, *inter alia*:

- Failure to respect effort/catches/landings limits;
- Failure to restrict fleet size or other capacity measures;
- Failure to implement spatio-temporal closures;
- Failure to implement minimum conservation reference size restrictions; and
- Failure to implement gear restrictions.

Category B: Reporting requirements, including, *inter alia*:

- Failure to report or delay in reporting data and other required data; and
- Failure to submit or delay in submitting reports.

Category C: Monitoring, control and surveillance (MCS) measures, including, *inter alia*:

- Failure to exercise port state control, including port inspection requirements;
- Failure to exercise flag state control; and
- Failure to implement MCS measures, including, *inter alia*, catch documents /statistical document programmes (transshipment control), and vessel monitoring system (VMS) requirements.

2. Determination of the level of severity of non-compliance types

Minor non-compliance

Failures are first time or infrequent and do not significantly impact the work of the CoC or diminish the effectiveness of GFCM conservation and management decisions.

Significant non-compliance

Non-compliance issues reflect a systematic disregard by the relevant CPCs of GFCM measures or infrequent (and even first time) violations that individually or collectively have a significant impact on the objectives of the GFCM or its subsidiary bodies or diminish the effectiveness of GFCM conservation and management measures. These non-compliance issues could include frequent non-reporting or insufficient reporting that impact on CoC ability to effectively evaluate the compliance of a CPC.

Mitigating and aggravating considerations

Both mitigating and aggravating considerations, as indicated below, should be taken into account when determining the significance of non-compliance:

- Mitigating considerations may include, *inter alia*: 1) the extent to which available capacity-building and assistance programmes have been used by a CPC to improve its ability to meet its GFCM obligations; and 2) any action taken by a CPC to address its non-compliance or by a third party CPC in response to the non-compliance of another CPC's vessel.

- Aggravating considerations may include, *inter alia*: 1) non-compliance that is repeated, frequent, numerous, and/or severe in degree, scope, and/or effect, individually or cumulatively; and 2) lack of effective corrective action by the flag CPC or by the third party CPC, if appropriate.