

INTER-AMERICAN TROPICAL TUNA COMMISSION
COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF
MEASURES ADOPTED BY THE COMMISSION

2nd BIENNIAL SPECIAL MEETING

Lisbon, Portugal
26 August 2026

DOCUMENT CORSB-02 INF-A

SYSTEM FOR CATEGORIZING POTENTIAL NON-COMPLIANCE
AND ITS RELATIONSHIP TO THE FUNCTIONS OF THE
COMMITTEE FOR THE REVIEW OF THE IMPLEMENTATION OF
MEASURES ADOPTED BY THE COMMISSION (COR)

Introduction

This note was prepared by IATTC staff at the formal request of the Chairman of the COR, and in coordination with him. Its objective is to provide CPCs with a factual analysis of what current legal instruments establish in relation to five specific questions regarding the scope of the COR mandate and the legal framework applicable to the system of categorizing possible breaches and follow-up actions, currently under development. The five questions correspond to legal-interpretation questions raised by CPCs during the First Round of the intersessional process and identified in the Phase 3 Consolidated Document. The purpose of this document is solely informational and does not constitute a legal opinion nor does it reflect the position of the President or of any CPC on the issues discussed. Its sole purpose is to clarify what the instruments say, the design options they present, and the questions that require formal deliberation.

This note answers the five questions posed by the President in the order in which they were asked. Before addressing the questions, it is necessary to make a preliminary observation about the expected product of the COR's work, which directly affects the interpretation of all the answers that follow.

Preliminary observation

One question underlying all the questions posed by the President is the following: what is the specific product that the COR can and should develop within the framework of its mandate? The answer to this question determines the scope of all intersessional work.

Paragraph 8 of Resolution C-22-02 establishes that the Committee *"may consider developing a system of sanctions and incentives... which will be submitted to the Commission for its consideration and possible adoption"*. This formulation indicates the following sequence: the COR develops the entire system, with criteria, levels, monitoring actions, and adjustment mechanisms, and presents it to the Commission. The Commission then exercises its decision-making power, adopting or rejecting the system by means of a resolution. According to this reading, the mandate is not limited to initial preparation: it encompasses the full development of a technical and regulatory proposal ready for the Commission's consideration.

Under this reading, the outcome of the intersessional process is a fully developed proposal, on which the Commission exercises its decision-making authority.

Question 1. Scope of the COR functions: Can the Committee define and assign formal compliance categories with mandatory or quasi-mandatory follow-up actions?

Annex 3 of the Antigua Convention assigns the Committee the following functions: to examine and monitor compliance; to analyze information by flag or by vessel; to provide the Commission with information, technical advice and recommendations; and to recommend to the Commission ways to promote the effective implementation of the measures. The verbs that define the mandate are analytical and consultative: the Committee examines, analyzes, supplies, and recommends. Only the Commission has the power to make formal decisions with legally binding effects for CPCs.

One interpretation of these provisions is that the development of a system of levels of severity to classify potential violations constitutes an analytical task consistent with those functions. Its purpose is to improve the quality of the review process, without in itself generating direct legal consequences. A contrary interpretation, reflected in the record of the First Round of comments, maintains that the definition of the severity of violations is a matter reserved for the legal order of each CPC and that the prior assignment of severity categories would exceed an analytical function. It is up to the CPCs to determine which of these interpretations should prevail.

However, the President's question is not limited to fully binding actions: it also includes quasi-mandatory actions, that is, those that, without being formally binding in a strict legal sense, generate practical effects through transparency and structured communication. This design space, which exists between purely analytical classification and binding decision, is relevant to most of the follow-up actions contemplated in Levels 1 and 2 of document COR-16-INF-A and should be clearly distinguished from the actions of Levels 3 and 4.

In summary: The follow-up actions at Levels 1 and 2 (letters of concern, requests for information, action plans) correlate with paragraph 7 of Resolution C-22-02. For Levels 3 and 4, actions that involve material consequences for CPCs require express authorization from the Commission through a resolution. Determining whether the assignment of formal severity categories and the scope of the intermediary space described above fall within the Committee's current functions are matters for the CPCs to address in their deliberations.

Question 2. Authority by level of action: Which follow-up actions are within the current mandate of the COR and which require prior adoption by the Commission?

The analysis of current instruments allows us to establish the following distinction by level:

Level 1 — Minor (MI). The proposed actions, such as sending a letter expressing the Commission's concern and requesting information on actions to be taken, are clearly within the Committee's mandate. Paragraph 7 of Resolution C-22-02 already provides for the sending of letters from the Chairman of the Committee to the CPCs informing them of their compliance status and establishing the obligation to respond. A standardized format for Level 1 communications, developed by the Secretariat with input from the COR, does not require Commission action for its implementation.

Level 2 — Notable (NO). The request for detailed action plans, with deadlines and identification of resources, also falls within the Committee's monitoring function and is compatible with the current mandate. This action does not impose a new legal obligation: it requires the CPC to structure and communicate its corrective measures, which is consistent with the spirit of paragraph 7 of C-22-02. The requirement to submit missing information within a defined timeframe is equally compatible, insofar

as it is based on pre-existing obligations of the CPC under the corresponding resolutions, not on a new obligation created by the categorization system.

Levels 3 and 4 — Serious (S) and Very Serious (VS). The actions contemplated, such as recommendations for restrictions on fishing and fishing-related activities, and reinforced monitoring, control, and surveillance requirements, have material effects for CPCs. Although document COR-16-INF-A uses the language "consider recommending", which is formally consistent with the functions of the Committee, the Commission has not adopted any resolution defining the criteria, procedures and procedural safeguards applicable to such recommendations. This observation concerns the formulation of case-specific recommendations under the current framework; it does not concern the development of a proposed framework for submission to the Commission, which paragraph 8 of Resolution C-22-02 contemplates. In the absence of such a framework, the COR lacks a sufficient normative basis to formulate such recommendations in a consistent, predictable, and legally robust manner. For these actions to be implemented, the Commission must first adopt a framework that defines criteria, activation procedures, and guarantees for the affected CPCs. The Commission has established corrective mechanisms of this nature within specific scopes, including Resolution C-24-02 and Resolution C-25-01, paragraph 4.

During the intersessional process, proposals were made to mark with brackets those follow-up actions whose legal basis under the Antigua Convention or current resolutions is uncertain, thus distinguishing them from actions that do have express authorization. This mechanism allows technical work to advance in areas where there is clarity, without presupposing an authority that has not yet been conferred by the Commission.

Question 3. Automatic application: Does the automatic nature of follow-up actions raise legal concerns under the current framework?

The automatic nature referred to in the COR Work Plan is not a unitary concept. It comprises at least three distinct operations, with different implications for the Committee's mandate:

Automatic categorization based on criteria. Once objective criteria have been defined for each level, the assignment of the corresponding category to a possible breach can and should be the result of applying those criteria, without additional discretionary margin. This operation corresponds to the application of pre-defined criteria and provides the system with technical rigor and predictability.

Automatic communication and escalation. Once the category is assigned, the corresponding communication to the CPC (letter of concern, request for action plan) can be activated automatically, without the need for a discretionary decision by the Committee in each case. Paragraph 7 of Resolution C-22-02 provides the existing legal basis for communications from the Committee Chairman to the CPCs.

Automatic material consequences. The automatic activation of restrictions on fishing activities or other measures with material effects for a CPC without decisive intervention by the Commission raises a substantive legal, institutional, and political concern. Article IX of the Antigua Convention states that the Commission's decisions must be adopted by consensus. One consequence of a measure being automatically activated based on a determination by the COR, without the Commission having adopted a decision on the matter, is structurally equivalent to turning the COR into a body with decision-making powers that the Convention does not attribute to it. This cannot be remedied by the COR's procedural design; it requires a resolution from the Commission that expressly authorizes this mechanism and defines the applicable safeguards.

One design option that would address this tension without abandoning the objective of automatic operation is the following: categorization and communication are automatic and criteria-based. The recommendation to the Commission for Levels 3 and 4 is structured and predefined, not discretionary or political; and the final binding decision rests with the Commission, which acts based on that structured recommendation. If the Commission has upheld the consequences by resolution, the scope for political intervention in each individual case is substantially reduced, while preserving the institutional integrity of the Convention framework.

Question 4. Articulation with Resolution C-19-02: What aspects need to be harmonized before joint operationalization?

The intersessional work has highlighted an additional issue that this note addresses within the framework of this question, since it directly affects the articulation between the two instruments: what is the standard for assessing compliance at the CPC level when the primary obligation falls on the operator? Specifically, does the initiation of due process proceedings against an operator constitute sufficient proof of compliance by the CPC regardless of the outcome or stage of those proceedings, or should compliance be assessed based on whether the CPC detected and adequately followed up on the operator's violation? This question was raised by Colombia and several Central American CPCs during the first round and is identified in the Phase 3 Consolidated Document.

Resolution C-19-02 and Resolution C-22-02 operate on different planes. Resolution C-19-02 establishes a procedure to identify and include individual vessels on the List of Vessels classified under IUU Fishing, based on specifically documented serious violations. Resolution C-22-02 evaluates CPCs as entities in their overall compliance with the set of IATTC resolutions. They are instruments with different subjects, objects, and evidentiary standards that should not be confused.

Paragraph 2 of Resolution C-19-02 requires that the identification of IUU vessels be "*clearly and adequately documented*" and establishes strict, staggered deadlines with explicit procedural safeguards, with a preamble that expressly recognizes "*the importance of due process and stakeholder participation*". The categorization system being developed under Resolution C-22-02 does not contemplate equivalent timeframes or comparable procedural guarantees. This asymmetry raises questions when the same behavior activates both procedures in parallel.

There are four specific issues that require harmonization before the joint operationalization of both instruments.

First, defining the point of connection between the categorization system and the IUU List procedure: when and under what conditions can and should a COR determination under C-22-02 lead to the opening of a procedure under C-19-02?

Second, the restriction in paragraph 11 of Resolution C-22-02, which provides that information from the compliance review process will be used exclusively for the purposes of Annex 3 of the Convention: this limitation may prevent the categorization history generated under C-22-02 from being used as evidence in a proceeding under C-19-02, unless the Commission expressly enables such cross-use.

Third, the equalization of procedural guarantees: if the categorization system can produce recommendations with serious consequences for a CPC, the due process guarantees must be comparable to those of the C-19-02 procedure.

Fourth, the review of Resolution C-19-02 already recommended by COR16 offers an opportunity to address these issues in a coordinated manner: the two review processes should proceed coherently with each other.

Regarding the compliance standard applicable to operator obligations, the current instruments do not provide an express answer. Article XVII of the Antigua Convention assigns to CPCs the responsibility to ensure that ships flying their flag comply with the Commission's measures, suggesting an obligation of result that goes beyond the mere opening of proceedings. However, neither Annex 3 nor Resolution C-22-02 define the evidentiary threshold that must be reached to consider that a CPC has fulfilled that obligation in a specific case.

The instruments present the Committee with two reading options: a process-oriented interpretation, according to which the initiation of due process procedures constitutes sufficient compliance with the CPC regardless of the outcome; and an outcome-oriented interpretation, according to which compliance with the CPC is assessed by the effectiveness of detecting and monitoring the operator's violation. This note does not express an opinion on which of these readings is correct; that determination is for the CPCs to make within the framework of their deliberations.

Question 5. Balance between sanctions and incentives: Does paragraph 8 of Resolution C-22-02 require the simultaneous development of both components, or is there discretion to develop them independently?

Paragraph 8 of Resolution C-22-02 uses the term "*may consider*", which gives the Committee permissive authority, not an obligation of result. There is no requirement of simultaneity in the text: the paragraph does not establish that both components (sanctions and incentives) must be developed at the same time, nor that the system is invalid if one of them is developed before the other.

Paragraph 9 of the same resolution reinforces the incentive component by stipulating that, at the request of the CPC, the IATTC may consider capacity-building measures and technical assistance.

Consequently, the Committee has discretion to develop either of the two components independently, or to prioritize one over the other, without compromising the fulfillment of the mandate. Paragraph 8 refers to both components; the manner and sequence in which each is taken forward is a determination for the Committee and, ultimately, for the Commission.