

Elements for an Effective IATTC Compliance Review Process: Categories of Non-Compliance & Follow Up Actions

1. Introduction

Compliance review processes are central to the good governance and performance of RFMOs, including at the IATTC. To increase clarity and objectivity to these processes, most RFMOs have adopted procedures to categorize the severity of instances of non-compliance and to assign corresponding follow up actions. These important elements help make compliance reviews more efficient and lead to responses that are more targeted, proportionate, and effective.

Around the world, at least nine RFMOs have adopted compliance categorization and follow up action schemes. In 2024, IATTC agreed, as part of the priority elements of the COR workplan, to develop a scheme to 1) define levels of non-compliance in view of their seriousness; 2) precisely define each status category; and 3) improve the identification of specific follow up actions.

This paper provides an overview of current RFMO approaches to these elements and includes recommendations for each item based on the clarity, objectivity, and effectiveness of the reviewed schemes. Finally, based on this overview and recommendations, an example of a compliance status and follow up actions scheme is included in the Appendix.

2. Categories of Non-compliance

Assigning severity levels to instances of non-compliance helps streamline reviews, identify relevant follow up actions, and reduce future deliberations at compliance review meetings.

Levels of non-compliance

RFMO schemes frequently define similar levels of non-compliance, even if the terminology or the infractions associated with them is not consistent across those RFMOs:

Compliant Non-compliant Priority Non-compliant Serious/Persistent Non-compliant

Several RFMOs also establish a category for less serious instances of non-compliance, such as submission delays or data and reporting errors. Some RFMOs consider aggravating or mitigating circumstances when assigning a severity level.

Recommendations:

- ☐ **Adopt at least three levels of severity of non-compliance to provide sufficient granularity.**
- ☐ **Reserve one category for infractions that can be easily resolved, and one for very serious or persistent infractions that deserve closer review and a stronger response.**
- ☐ **Avoid modifying severity levels based on aggravating or mitigating circumstances, as this introduces subjectivity into the process.**

Definition of non-compliance status category

Some RFMO schemes identify the specific infractions, or categories of infractions, which are assigned to each level of non-compliance. Categories are defined based on the seriousness and the impact of not complying with an obligation and/or the persistence of the infraction over time.

Recommendations:

- ☐ **Adopt a list of the specific infractions that fall into each severity level. For example:**
 - **Non-compliant:** Information submitted by members is incomplete or incorrect; information submitted with delay of less than 15 days;
 - **Serious non-compliant:** Non-compliance that has not been resolved within a year or instances of non-compliance that have not been deemed very serious or critical;
 - **Very serious non-compliant:** Serious non-compliance that has not been resolved within a year or particularly serious infractions such as: failure to respect a catch limit deduction resulting from an over-catch; failure to submit the standard questionnaire on compliance; and failure to submit the implementation report;¹
 - **Critical non-compliant:** Persistent non-compliance, such as very serious non-compliance that has not been resolved within a year and serious non-compliance that has not been resolved within two years.
- ☐ **When defining the status categories, the severity of an infraction should not be determined solely by its persistence in time but should also be based on the impact posed by the infraction.**

3. Follow Up Actions

Pre-establishing the follow up actions that are assigned to specific types of infractions provides greater objectivity and predictability to the compliance review process.

Adoption of specific follow up actions

Several RFMOs have adopted specific follow up actions to address different instances of non-compliance, either based on the specific infraction or on the severity level. These follow up actions include enhanced data collection and reporting; fishery restrictions; other types of restrictions to existing rights; enhanced MCS measures; technical assistance and capacity building; public disclosure of infractions and follow up actions; and amendments to domestic measures.

Recommendations:

- ☐ **Agree on specific follow up actions for each type of infraction that are automatically assigned once an instance of non-compliance is identified.**
- ☐ **When an automated follow up action to an infraction is not yet agreed, require that members choose at least one follow up action from a pre-established list.**

¹ The example scheme in the Appendix provides a list of very serious infractions currently agreed at RFMOs.

- ☐ **Ensure follow up actions are timebound, clearly defined and relevant to the severity and impact of the infraction.**

Mandatory follow up actions

When an instance of non-compliance is identified, most RFMOs assign follow up actions based on deliberations at annual Compliance Committee and Commission meetings, while some allow their members to determine which follow up actions to take. All RFMOs mandate members to report on the follow up actions they take, and some require members to develop domestic action plans or take other pre-agreed actions in specific instances, such as quota reductions if there is overcatch. One RFMO makes it mandatory to choose at least one follow up action from a pre-established list.

Recommendation:

- ☐ **When an instance of non-compliance is identified, make assignment of specific follow up actions mandatory.**

Timing

When an infraction is identified, most RFMOs require members to report at the next compliance meeting on follow up actions they have taken, and some request they provide additional information or take other actions within a year. One RFMO, in instances of persistent non-compliance, applies a three-month deadline for submitting a compliance action plan.

Recommendations:

- ☐ **If an instance of non-compliance is identified, require members to submit a time-bound plan to the next Meeting of the Committee for the Review of Implementation of Measures Adopted by the Commission that includes concrete steps to resolve the non-compliance.**
- ☐ **Ensure members take follow up actions as soon as an infraction is identified.**

4. Key elements of an effective compliance status scheme

Based on a review of current RFMO measures and practices, an effective compliance categorization and follow up scheme needs to be clear, timely, predictable, and objective. It should:

- Clearly define levels of severity of non-compliance, including categories for very serious infractions.
- List the different types of infractions that fall into each severity level.
- Assign specific follow up actions for specific types of infractions, or at a minimum, provide a list of options that members need to choose from.
- Promote automatic implementation of follow up actions, minimizing additional deliberation or re-interpretation of severity levels.
- Make assignment of specific follow up actions mandatory.
- Ensure that when instances of non-compliance are identified, members develop a time-bound compliance action plan and take follow up actions as soon as possible.

Appendix. Example of a compliance categorization and follow up actions scheme

Compliance status	Criteria	Follow up action
Compliant	There are no compliance issues with an obligation.	No action required.
Non-compliant	<ul style="list-style-type: none"> Information submitted by members is incomplete or incorrect. Information submitted with delay of less than 15 days. 	<p>Within 3 months:</p> <ul style="list-style-type: none"> Provide delayed information Provide complete information Provide corrected information <p>If no information is provided within 3 months:</p> <ul style="list-style-type: none"> Submit a detailed plan and timeline before the next COR meeting on how to address the non-compliance, including, if necessary, a request to the Commission for specific technical assistance.
Serious non-compliant	<ul style="list-style-type: none"> Member has failed to implement, monitor or ensure compliance with an obligation, which does not fall under very serious or critical infractions. Within the past year, Member has not resolved an instance of non-compliance or has not submitted a compliance action plan to resolve it. 	<p>No later than three months before the next COR meeting, submit a detailed plan and timeline on how to address serious non-compliance, which includes an automated follow up action or, if not yet agreed, at least one of the following actions, in addition to any necessary request for technical assistance:</p> <ul style="list-style-type: none"> Completing an investigation of the non-compliance and reporting back to the COR on next steps. Enhanced MCS measures Enhanced data collection and reporting. Amendments to domestic procedures, legislation or policy, including penalties. Any action recommended by the COR and endorsed by the Commission.
Very serious non-compliant	<ul style="list-style-type: none"> Within the past year, Member has not resolved a serious non-compliance or has not submitted a compliance action plan to resolve it. 	<p>Within three months, submit a detailed plan and timeline on how to address the very serious non-compliance, which includes an automated follow up action or, if not yet agreed, at least one of the</p>

	<ul style="list-style-type: none"> • Member has failed to implement, monitor or ensure compliance with a high impact obligation, including: <ol style="list-style-type: none"> (a) exceeding quantitative limit established by the Commission in two or more consecutive years; (b) failure to respect a catch limit deduction resulting from an overcatch; (c) failure to provide nominal catch data, including zero catches for one or more species for two or more consecutive years; (d) failure to provide nominal catch data in time for the conduct of stock assessment for one or more species for two or more consecutive years; (e) failure to implement, monitor or ensure compliance with time/area closures, gear restrictions, minimum size restrictions and a non-retention ban on a species for two or more consecutive years; (f) failure to report back against follow-up actions agreed by the Commission for compliance issues; (g) failure to submit the standard questionnaire on compliance; (h) failure to submit the implementation report; (i) failure to implement, monitor or ensure compliance with the same obligation for two or more consecutive years. 	<p>following actions, in addition to any necessary requests for technical assistance:</p> <ul style="list-style-type: none"> • Enhanced MCS measures. • Enhanced data collection and reporting. • Amendments to domestic procedures, legislation or policy, including penalties. • Any action recommended by the COR and endorsed by the Commission.
Critical non-compliant	<ul style="list-style-type: none"> • Member has not resolved a serious non-compliance within two years or has not shown evidence of significant progress towards resolving the infraction within the next year. • Member has not resolved a very serious non-compliance within a year or has not shown evidence of significant progress towards resolving the infraction within the next year. 	<p>If a detailed plan and timeline on how to address the very serious non-compliance is not submitted within 3 months of the conclusion of the annual meeting or if there is no reporting at the following COR meeting on the action(s) taken to implement the compliance plan, the member shall have all authorizations to fish for its flagged vessels suspended until the non-compliance is completely resolved.</p>