



**GENERAL FISHERIES COMMISSION
FOR THE MEDITERRANEAN
COMMISSION GÉNÉRALE DES PÊCHES
POUR LA MÉDITERRANÉE**



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GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN

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STATUS OF THE COMPENDIUM OF GFCM DECISIONS

I. INTRODUCTION

1. At its 1st Session (January 2007) the Compliance Committee was invited to examine general criteria and to identify subsequent actions in connection with the Compendium of GFCM Recommendations and Resolutions (the Compendium; see document COC/1/2007/Inf.4) which was prepared with the aim of better monitoring the implementation of GFCM decisions and measures. Several delegations emphasized the indispensable nature of the Compendium. It was highlighted that the standardization of decisions taken by the Commission lacked rigour and legal scope and that further elaboration on the subject was required.

2. This document takes stock of progress in the compilation of the Compendium, with particular reference to the desirability of applying stricter terminology criteria for the designation of GFCM decisions and to their binding nature as appropriate. Some suggestions for the development of the Compendium are presented and a revised draft of the Compendium, as compiled accordingly, is provided as document COC/2/2008/Inf.4.

II. STATUS OF THE COMPENDIUM AND SCOPE OF COMMISSION MEASURES

3. The Compendium was developed on the basis of the outline prepared for the 30th Session. It was based on the inclusion of key decisions adopted between 1956-2006 and was structured in three parts: (i) Recommendations, (ii) Resolutions and (iii) other decisions, pending more precise future definitions.

4. Some of the Recommendations listed in the Compendium were adopted according to Article V of the Agreement establishing the GFCM (the Agreement). Hence, Article V was inserted therein by means of amendments made in 1976. Others Recommendations were adopted prior to Article V. Though they have been both classified as Recommendations, it can be argued that the legal implications of the Recommendations adopted in virtue of the Article V are more pronounced. Article V provides for the procedure by which recommendations on management measures enter into force as referred to in Article III (b) of the Agreement¹. Prior to 1976 the Agreement only made

¹ Art. III was significantly amended in 1976 based on the text of former Article IV thereof.

indirect references to “Recommendations” in connection with some of the functions and responsibilities of the GFCM. Recommendations were usually adopted to develop projects and international research in the region, to disseminate information relating to aquatic resources and to promote the standardization of scientific equipment and techniques (see the Compendium)². Conversely, there was no mention throughout the text of the Agreement of terms such as conservation, management and implementation of measures. Owing to this, it was decided in 1974 to undertake without delay a revision of the Agreement so to enable the GFCM to play a more effective role regarding management measures and their implementation³. As a result, the 1976 amendments to the Agreement established that the Commission, in accordance with the provisions of the newly created Article V, would have had the function, *inter alia*, to adopt Recommendations in relation to:

- its responsibilities with regard to the conservation and the management of resources, as listed in Article III (b) (i)⁴;
- the implementation of conservation and management measures above, as specified in Article III (b) (ii)⁵.

Both these categories of Recommendations, introduced thanks to the 1976 amendments, are binding on Members and in some cases have (juridical) implications for third parties. It is suggested that the draft compendium focuses only on such Recommendations (namely, Recommendations adopted after 1976) because they made the Commission suited to the task imposed by sustainable fishery development, particularly in the field of resources management⁶, as per its current functions in the text of Article III of the Agreement. It is also suggested that a distinction is made between these recommendations and those adopted by the Commission to implement relevant ICCAT recommendations. The latter category is linked, as a matter of fact, to the existing collaboration between GFCM and ICCAT in connection with the management of stocks of large pelagic species in the Mediterranean rather than to the direct functions of the GFCM, as referred to in Article III (b) of the Agreement.

5. A number of Resolutions adopted by the Commission, mainly during the period 1956-1980, are also listed in the Compendium. Such measures are concerned mainly with decisions of the Commission that are institutional/procedural-orientated. In any case, they differ from Recommendations as they are devoid of a binding nature and fall outside the scope of the provisions laid down in Article V. However, many GFCM Resolutions would have benefited from being adopted in a more explicit juridical context or category. There are instances of Recommendations that were immediately binding but did not make reference to Article V of the Agreement in their text and were in turn classified as resolutions (e.g. Resolution GFCM 95/1 concerning bluefin tuna). Some Recommendations adopted under Article V on the other hand, could have been Resolutions (e.g. Recommendation GFCM/2006/7 on data confidentiality policy and procedures). It is suggested that in the draft compendium these decisions are included in the category which is more appropriate to reflect the scope of their content rather than being itemized according to the terminology used when they were passed. It is also suggested that the draft compendium lists only Resolutions adopted as of 1976 to promote consistency with Recommendations therein in the light of the present functions and structure of the Commission⁷.

6. Also, it is worth noticing that reports of sessions of the Commission, as formally adopted by Members, are the expression of commitments towards their contents, including various types of

² This was backed up by Rule XV of the Rules of Procedures (“The Commission may take recommendations for actions by Members on any matter pertaining to the functions described in Art. III of the Agreement”).

³ Paragraph 13 of the Report of the first session of the GFCM Committee on Resources Management and paragraph 6 of the Report of the 13th session.

⁴ Paragraph 20 of the Report of the first session of the GFCM Committee on Resources Management.

⁵ Paragraph 22 of the Report of the first session of the GFCM Committee on Resources Management.

⁶ Paragraph 3 of the Report of the first session of the GFCM Committee on Resources Management.

⁷ Resolutions adopted prior to 1976 are either superseded by subsequent decisions or by the very amendments to the Agreement which made to a certain extent obsolete the scope of resolutions adopted prior to 1976.

decisions other than Recommendations and Resolutions which are likely to be found in their text. These decisions fall into the general category of “international administrative acts” and carry with their legal implications, in view of their policy, institutional or administrative nature. These decisions were included within the remit of the "other decisions" category of the Compendium to encompass decisions *sui generis*⁸ whose magnitude is determined on a case-by-case basis (e.g. the "General Guidelines for a GFCM Control and Enforcement Scheme" appended in the Report of the 29th session, which was instrumental to draft document COC2/2008/Inf.9). It is suggested that this category also includes the terms of reference of the existing subsidiary bodies of the Commission, irrespective of the decision which was taken to establish them (e.g. the Compliance Committee was established by means of Recommendation GFCM/2006/6, some Committees were established by means of resolution in the past⁹ and there is also the case of subsidiary bodies, such as the GFCM/ICCAT Joint Working Group on Stocks of Large Pelagic Species, having been launched directly by reports of the sessions¹⁰) and matters such as the granting of observer statute by the Commission (e.g. paragraph 96 of the Report of the 31st session).

7. In order to facilitate the identification and the use of these measures, they could be given a reference number according to type of decision and the year/session during which they were adopted, along with a serial number. This will facilitate future online database search in connection with the contents of the draft compendium.

III. PROPOSED CRITERIA FOR CLASSIFICATION OF COMMISSION MEASURES

8. In the light of the suggestions above, and drawing upon the experience of other Regional Fisheries Management Organizations, most notably ICCAT, the proposed criteria used for the classification of major categories of GFCM decisions in the draft compendium would be:

- **Recommendations:** decisions that are legally binding on Members. Such decisions are adopted pursuant to Article V of the Agreement. It is suggested that they are itemized in three subcategories:

- **Recommendations on conservation and the management of fisheries and aquaculture** (based on Article III (b) (i)).
- **Recommendations on implementation of, and compliance with conservation and management measures** (based on Article III (b) (ii)).
- **Recommendations implementing relevant ICCAT recommendations.**

- **Resolutions:** decisions of a policy, institutional or procedural nature concerning the functioning of the Commission or its subsidiary bodies, including decisions relating to the compilation of data and information needed for fisheries and aquaculture management.

- **Other decisions:** any decision *sui generis* different from the categories above.

IV. SUGGESTED ACTIONS BY THE COMMITTEE

9. The Committee is invited to examine the general criteria suggested by the Secretariat for the draft compendium as a first step. The draft compendium could be then enhanced further by the Committee and other actions could include conditions for its future presentation and dissemination (e.g. by creating an online database to be made available on the GFCM website and to be regularly updated).

⁸ *Sui generis* meaning in this context that “other decisions” exist independently of other categorizations because of their uniqueness.

⁹ The Committee on Resources Management was established by Resolution GFCM/12/1974/3.

¹⁰ See paragraphs 48, 49, 50 and 51 of the Report of the 19th session for the GFCM/ICCAT Joint Working Group on Stocks of Large Pelagic Species.

The Committee could consider actions such as the establishment of a small group to work with the Secretariat, as appropriate.

10. Subsequent actions identified by the Committee – to be reviewed by the Commission – may comprise the decision on the adoption of the draft compendium, bearing in mind the legal scope of Recommendations, Resolutions and other decisions of the Commission. The Committee is also invited to express its views on whether it would be appropriate to make the draft compendium available both English and French.