



CCSBT-CC/1810/13

Review of the CCSBT Corrective Actions Policy (CPG3)

Introduction

The CCSBT Corrective Actions Policy (compliance policy guideline - CPG3) was adopted by CCSBT 18 in October 2011 and corresponds to Strategy 9.2, 'Corrective action and remedies' of the CCSBT Compliance Plan. The primary focus of this policy is to assist Members to achieve the capacity necessary to effectively comply with CCSBT obligations.

The Compliance Action Plan (item 10) tasks Members and the Secretariat with refining the Corrective Actions Policy, for example by considering whether it should be updated to publicly record instances of non-compliance in addition to those associated with the global SBT TAC, and the corrective action taken in response.

Proposed draft revisions to the Corrective Actions Policy are provided at **Attachment A** for CC13's consideration.

CC13 is invited to:

- Review and decide whether to agree the proposed revisions to this policy.

Prepared by the Secretariat

Corrective actions policy
Compliance Policy Guideline 3

(revised/updated at the Twenty-Fifth/Third Annual Meeting: ~~10-138~~ October 2018/6)

1. Introduction

This compliance policy provides direction and guidance to implement Strategy 9.1(ii)¹ of the CCSBT Strategic Plan:

~~Establish fair, transparent and non-discriminatory procedures for penalties (e.g. payback of overcatch, quota reduction) and incentives to promote compliance. Apply the CCSBT's Corrective Actions Policy to breaches in the rules of the CCSBT and establish incentives to promote compliance.~~

In this policy all references to the Commission include the Extended Commission, and all references to Members include Cooperating Non-Members (CNMs) of the Commission.

2. Purpose of policy

The purpose of this policy is to bring all Members into compliance with their CCSBT obligations in a way that maintains the stability and cohesion of the Commission. To this end, it sets out a framework to respond to evidence of non-compliance by a Member. The primary response focus is to assist Members to achieve capacity to effectively comply with CCSBT obligations.

3. Guidelines for corrective actions

Non-compliance with Members' obligations can arise due to three main sources:

- administrative failings, including not fully implementing effective systems and processes to support obligations
- failure by Members to take action against non-compliance by fishers, farmers, processors, exporters or importers within their jurisdiction
- deliberate actions by Members to avoid meeting obligations.

The following guidelines will be used to determine the corrective action to be recommended where there is evidence of non-compliance:

1. Catch in excess of the Member's annual or multi-year national catch limit should, in the first instance, be repaid at a ratio of 1:1 over a time period specified by the Commission. Where there are specific aggravating factors a higher ratio of quota payback may be determined. Furthermore, if a Member exceeds its national allocation for the 2017 fishing season or later without paying back its excess catch for those seasons:

¹ This corresponds to Strategy 9.2 Corrective action and remedies in the draft Compliance Plan.

- the carry-forward procedures provided in CCSBT’s “Resolution on Limited Carry-forward of Unfished Annual Total Available Catch of Southern Bluefin Tuna” shall not be applied by that Member until those catches have been paid back, unless otherwise agreed by the Extended Commission; and
- the Member is not eligible for an increase in its effective catch limit² until the excess catch has been paid back, unless otherwise agreed by the Extended Commission³.

1.2. Administrative failings should, in the first instance, be addressed through an agreed programme to correct administrative deficiencies within a specified timeframe.

2.3. Corrective actions for administrative failings by a developing country Member should focus on capacity building programmes, provided this is effectively targeted at correcting the deficiencies.

3.4. Corrective actions should take into account relevant aggravating factors such as harm caused to other Members, ongoing non-compliance without good cause (including systematic under-reporting or over-catch over multiple years), or evidence of intent to avoid CCSBT obligations.

4. Decision-making process

Compliance Committee

In considering potential non-compliance and any necessary corrective actions, the Compliance Committee may:

- assess initial evidence of non-compliance
- request the Member to investigate and report back
- if necessary (for instance, where the Member needs assistance or the Committee is not satisfied with the Member’s investigation), recommend an independent investigation which may include an audit or market review
- review evidence of non-compliance on the basis of the reports received
- consider any remedies suggested by the Member
- prepare a report to Commission, setting out findings, any remedies already agreed with the Member, and any recommended further corrective actions based on this policy guideline.

² The Effective Catch Limit is the Member’s National Allocation plus or minus any agreed short-term changes to that allocation, for example temporary transfers or quota pay-backs.

³ The Member’s national allocation may be increased but this increase may not be utilised until any excess catch has been paid back by the Member. Note for example that a 100t increase in the Members’ national allocation would result in a 200t excess catch being paid back in two years (assuming no further excess catches) since the Member’s effective catch limit would not increase during this time.

The Member will be provided with an opportunity to suggest corrective actions or remedies to improve their compliance with CCSBT obligations. Members will seek the support of the Compliance Committee for their suggested course of action.

Following consideration of the Member's suggestions, the Compliance Committee may agree to the Member's suggestion or recommend corrective actions for consideration by the Commission. The Compliance Committee report to the Commission may include majority and minority views.

Commission

The Commission will:

- consider the Compliance Committee report, and
- negotiate an outcome (corrective action) with the Member.

5. Corrective actions list

Depending on the particular circumstances and degree of non-compliance, corrective actions recommended by the Compliance Committee may include:

1. *Compliance assistance/capacity building programmes*
 - Skills training—e.g. for observers, compliance officers or validators
 - Systems development – e.g. technical or financial assistance to establish or improve operating systems and procedures
 - Analytical assistance – e.g. to improve monitoring of trade flow of SBT from catching phase to the market place
 - Technology purchase – e.g. VMS, data recording and transmission from fishing vessels
2. *Quota pay back*
3. *Quota reductions in national catch allocations*
4. *Increased monitoring requirements*
 - Placement of observers
 - Increased inspection requirements
 - Increased VMS reporting frequency
 - Restrictions on transshipment or landings
5. *Public disclosure*

The Executive Secretary shall maintain on the public side of the CCSBT website, a record of:

- record of any instances of non-compliance with Members' allocation of the global SBT TAC, and the corrective action(s) that was/were taken by the relevant Member in response to that non-compliance; and
- other instances of non-compliance with CCSBT obligations where corrective action has been specified, together with the corrective action taken.

6. *Trade or market restrictions consistent with international law*

6. Roles and responsibilities under this Policy

<i>Who</i>	<i>Responsibility to:</i>
Commission	<ul style="list-style-type: none"> • Approve policy • Consider Compliance Committee's recommendations • Initiate investigations • Determine corrective actions
Compliance Committee	<ul style="list-style-type: none"> • Monitor Member compliance • Assess evidence of non-compliance and consider Members' views • Consider Members' suggestions for corrective actions • If necessary, recommend: <ul style="list-style-type: none"> ○ independent investigation ○ quota payback timeframe ○ quota payback greater than 1:1 ○ corrective actions. • Review policy and recommend any revisions.
Secretariat	<ul style="list-style-type: none"> • Place policy and reports on website
Members	<ul style="list-style-type: none"> • Investigate evidence of national non-compliance • Respond to evidence of non-compliance from national or independent investigations

7. Policy review

This policy is to be reviewed every ~~three~~-five years from the date of agreement. The Commission may direct a review at any earlier time. A Member may request an earlier review. The request, setting out the reasons for the review, must be submitted to the annual meeting of the Compliance Committee.