



CCSBT-CC/2310/10

Review of Corrective Actions Policy (Compliance Policy Guideline 3)

1. Introduction

During discussions at CC17, Members recognised the limitations of the existing Corrective Actions Policy (CPG3) to address current compliance issues. From these discussions, the Secretariat was asked to review CPG3 and propose new tools that can be added to the policy to incentivise better compliance amongst Members for consideration at CC18.

2. Background

The purpose of the Corrective Actions policy is, “... to bring all Members into compliance with their CCSBT obligations in a way that maintains the stability and cohesion of the Commission.” It sets out a framework to respond to evidence of non-compliance by a Member. The primary focus is to assist Members to achieve capacity and improve their systems to effectively comply with CCSBT obligations.

This review looks at some of the underlying issues that have prevented the policy from delivering on its stated objectives. The review also proposes changes and additions to enhance the existing policy.

The goal of the proposed revisions to this policy is to improve compliance with CCSBT obligations through a variety of mechanisms including:

- By providing additional transparency and context about the nature and extent of the non-compliance;
- By improving understanding of the required capacity development needs;
- By providing additional responses to address non-compliance; and
- By reviewing the decision-making model used to assess compliance obligations in the context of the Compliance Committee (CC).

3. Problem Definition

To date, the CCSBT has utilised a mixed approach to compliance monitoring, reporting, and assessment that relies on input from Members, the Secretariat, non-governmental observers, and independent reviewers (in the case of QARs).

The CCSBT has a standardised annual compliance assessment process where Members utilise information presented by the Secretariat¹ and from individual Member reports to the CC to assess whether CCSBT obligations are being met. This approach requires both

¹ This comes primarily from the Secretariat’s “Compliance with Measures” paper presented at CC.

accurate self-reporting and a high level of diligence and engagement from Members when assessing the information presented.

In addition, CPG3's Guidelines for Corrective Actions often lack clear guidance outside of cases that involve catch in excess of allocation. In those cases, the policy clearly outlines three punitive measures that are to be considered:

- 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:
 - 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 limit until the excess catch has been paid back, unless otherwise agreed by the Extended Commission.

To date, the overwhelming majority of non-compliance identified in the CC relates to what has been termed in CPG3 as "administrative failings" rather than incidents directly involving catch in excess of allocation. However, the guidance for administrative failings is far less prescriptive and involves a greater level of subjectivity. This subjectivity may be influencing the willingness of Members to challenge one another on administrative matters during CC discussions.

Additional flexibility is provided to the CC to address administrative failings by developing country Members. This was intended to allow a greater focus on a capacity development program specific to the individual Member's needs. This has been difficult to achieve in practice given that it relies heavily on the developing Member having a clear understanding of both the nature of the administrative failing and how best to resolve it.

These factors have led to persistent non-compliance in certain administrative areas, for example with respect to the Catch Documentation Scheme (CDS) Resolution, annual reports, annual Data Exchange submission requirements, and the Port Inspection and Transshipment Resolutions.

4. Additional Corrective Actions

The existing CPG3 provides several corrective actions that already provide flexibility to the CC in determining how best to address the individual circumstances of the detected non-compliance, however, the following additional actions could be added to the policy to provide further flexibility.

4.1. Compliance Assistance/Capacity Building Programmes

To address the issue of how best to target capacity development activities, the Secretariat suggests that more emphasis be placed on supporting developing Members

to assess their needs and develop effective remedial strategies. Activities that could be undertaken with this aim include:

- On-site visits from Secretariat staff to support assessment of existing systems and identify weaknesses or gaps.
- Provision of technical and financial assistance by developed Members to remedy deficient systems.
- Independent targeted review of systems responsible for persistent administrative failings.

The outcomes of these activities should then be used to support the non-compliant Member develop a suitable corrective action plan for consideration by the CC.

4.2. Quota Reductions in National Catch Allocation

Although administrative failings often cannot be directly linked to catch in excess of a Member allocation, Members may wish to consider applying some of the punitive measures currently limited to instances of excess catch.

In particular, the constraints that limit the application of the Carry-Forward provisions could also be applied to cases of repeated administrative failings. Similarly, Members may wish to also broaden the application of the punitive provisions that remove the eligibility of Members to receive increases to effective catch to those Members who have persistent administrative failings.

4.3. Increased Monitoring Requirements

In addition to the increased monitoring options currently presented in CPG3, Members may also wish to include options that leverage the potential for QARs to address systemic or persistent incidents of administrative failings. Members with persistent administrative failings could be prioritised for future QAR or be subject to more frequent review.

The future of QARs is currently under review as part of wider conversations related to the Compliance Action Plan and the update to the Strategic Plan. Members may wish to give particular consideration to how future QARs can better target specific administrative or systemic failings.

4.4. Public Disclosure

The Secretariat currently maintains a record of non-Compliance with Members' allocation and the corrective action taken in response on its public website. Additionally, the Secretariat has also provided a link to the most recent Compliance Committee Meeting Report for additional context behind the decisions listed in the record above.

Members may wish to consider providing additional information on administrative failings as part of this Record of Non-Compliance. There is a comprehensive record of compliance with administrative requirements currently available in Attachment A of the Secretariat's "Compliance with Measures" paper. Although this paper is publicly available on the CCSBT website, Members may want to extract key performance measures from the tables of Attachment A and present this information on the CCSBT website.

4.5. Creating additional incentives

To recognise efforts of Members that are voluntarily seeking to improve compliance with CCSBT's measures, it is further proposed that Members greater use of positive incentives. Such incentives could include:

- Leniency for voluntary disclosure of non-compliance;
- Financial support for the delivery of remedial actions aimed at addressing non-compliance;
- Recognition for effective implementation of compliance systems (as assessed by performance against the existing performance indicators used in the Secretariat's Compliance with Measures paper). This may include acknowledgement of high performance on the public CCSBT website or extensions in QAR review period requirements.

5. Decision-Making Process

Members may want to consider altering the Terms of Reference for the Compliance Committee (TORs) to allow recommendations to be made without consensus (currently required under paragraph 5).

Other RFMOs have adopted an approach that encourages consensus but prevents an individual Member from blocking consensus with respect to their own non-compliance². The section on decision-making in CPG3 already makes provision for majority and minority views to be expressed but changes to the TORs could provide further procedural clarity and eliminate the potential for conflicts of interest to prevent consensus.

6. Conclusion and Next Steps

In reviewing CPG3, the Secretariat has determined that the policy does not currently present any barriers to the effective application of Corrective Actions. However, additions and changes could be made to improve clarity and enhance effectiveness. Although the use of the additional Corrective Actions proposed in this paper is not prohibited under the existing CPG3, the specific referencing of those actions may encourage greater uptake.

Similarly, although the current CPG3 does make provisions for majority and minority views it may be beneficial to formalise decision-making rules in relation to a Member's compliance assessment in a way that prevents that particular Member from blocking what would otherwise be a consensus recommendation from the CC. Recognising of course that any recommendation from the CC is still subject to consensus decision-making at EC.

Members are asked to consider the proposed changes and additions presented by the Secretariat to CPG3.

Prepared by the Secretariat

² WCPFC CMM 2021-03 Compliance Monitoring Scheme, paragraphs 35 and 36.