



CCSBT-CC/2010/07

## **Guideline on principles for action and steps to be taken in relation to extraordinary circumstances**

### **Introduction**

CCSBT Circular #2020/053 advised Members that there was agreement for the Secretariat to prepare a draft Compliance Policy Guideline containing principles and the types of action to be taken in relation to exceptional circumstances, such as the COVID-19 pandemic, for consideration by the Compliance Committee.

The Secretariat prepared a draft guideline during July 2020 and circulated the draft to all Members individually for one round of informal consultation. All Members provided comments or changes to the guideline, despite being given an extremely short timeframe for providing these comments. The Secretariat is very grateful for the effort by all Members to provide these comments and changes in such a short period of time.

The revised draft “Guideline on principles for action and steps to be taken in relation to extraordinary circumstances” is attached.

A wide range of changes and comments to the guideline were received, and the Secretariat has incorporated most of these into the revised draft of the guideline. However, some changes were superseded by other proposed changes. Furthermore, some Members made comments without providing specific changes. We have tried to address those comments in most cases, but we cannot be sure if our changes reflect what Members were seeking. Consequently, Members should carefully examine the revised draft to ensure that their concerns have been adequately addressed.

For those individuals that reviewed the original draft, the following points identify some of the major changes that have been made to the draft as a result of the informal consultation:

- The terminology of “Partial implementation of measures” has been changed to become “Reliance on exemptions from measures”. This change was made because it was thought that the original terminology may lead to confusion.
- There is now a clear distinction between the steps in section 4 of the guidelines for cases where extraordinary circumstances result in non-compliance with measures, and cases where extraordinary circumstances result in reliance on the use of exemptions within measures. As a consequence of this, the original Annex 1 for notifications has become two annexes, with one annex being for notification of non-compliance and the other for notifications of the reliance on exemptions. The reason provided for the suggested distinction between the two cases was that:
  - In principle, non-compliance caused by extraordinary circumstances should be addressed by a decision of the Extended Commission and any alternative action should be initiated after the decision.

- Reliance on prescribed exemptions within a measure in cases of exceptional circumstances should be permitted, as long as the Member follows the provisions which allow it. In some cases, the Member may want to take action immediately. The Compliance Committee should assess whether the member followed the provision of the measure.
- A report to the annual meeting of the Compliance Committee is now required for cases of non-compliance and for cases of reliance on exemptions.
- Finally, for situations of non-compliance, the proposed actions notified by Members are now deemed to have been authorised by the Extended Commission if there are no objections from other Members within one week of the notification.

The Compliance Committee is invited to:

- Review and modify the guideline as appropriate, and decide whether to recommend the guideline be adopted by the Extended Commission; and
- If recommended for adoption, further recommend when the guideline should come into effect (i.e. immediately after the Annual meeting of the Commission meeting closes, or at a specified future date).

If the guideline is adopted by the Extended Commission, the Secretariat recommends that once the guideline comes into effect, new notifications should be made under this guideline for any extraordinary circumstances (particularly in relation to COVID-19) that commenced prior to this guideline coming into effect but which are still continuing.

## **Guideline on principles for action and steps to be taken in relation to extraordinary circumstances**

### ***Compliance Policy Guideline 5***

*(adopted at the Twenty-Seventh Annual Meeting: 12-15 October 2020)*

#### **1. Introduction**

Within this policy, extraordinary circumstances are considered to be rare and unpredictable events or problems that prevent the normal operation of the CCSBT's measures. This compliance policy provides guidelines on principles for action and steps to be taken under such extraordinary circumstances.

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

This policy does not override or change any existing or future decisions or Resolutions of the Commission. If a discrepancy exists between these guidelines and a decision or Resolution of the Commission, then the decision or Resolution of the Commission takes precedence<sup>1</sup>.

#### **2. Purpose of policy**

The purpose of this policy is to ensure, as far as practical, that extraordinary circumstances do not undermine the Commission's conservation and management measures, and that all Members understand how to respond to the Commission's expectations if extraordinary circumstances arise.

Extraordinary circumstances should not be used to justify non-compliance with measures when there are practical alternative means to achieve compliance, such as changing arrangements, or where reasonable foresight could have been used to ensure compliance.

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<sup>1</sup> For example, paragraph 1.7 – 1.9 and 4.1.2 - 4.1.3 of the "Resolution on the Implementation of a CCSBT Catch Documentation Scheme" specifies "exceptional circumstances" and paragraph 20 of the "Resolution on Establishing a Program for Transshipment by Large-Scale Fishing Vessels" specifies "force majeure". For such cases, Members should take action in accordance with decisions or Resolutions adopted by the Commission.

### **3. Principles to guide actions in extraordinary circumstances**

The following principles should be taken into account to guide the alternative action(s) to be taken when extraordinary circumstances occur:

- Action should be taken to minimise the risks<sup>2</sup> resulting from non-compliance with or reliance on exemptions<sup>3</sup> from CCSBT measures where:
  - Extraordinary circumstances prevent the normal operation of CCSBT's measures; and
  - Extraordinary circumstances are expected to affect either
    - multiple events<sup>4</sup>, or
    - a single event where it is practical to take action later<sup>5</sup>.
- Action(s) to be taken as a result of extraordinary circumstances should:
  - Be described in an unambiguous manner;
  - Be proportionate to the risks resulting from any non-compliance with or reliance on exemptions<sup>3</sup> from a measure;
  - Be otherwise consistent with international law;
  - Not unnecessarily undermine existing measures or the wider CCSBT management regime and where possible provide opportunities to improve the functioning of the CCSBT management regime;
  - Be of a nature that as far as possible avoids exacerbating the extraordinary circumstance being experienced; and
  - Be justified by the extraordinary circumstance and be temporary, with a clearly specified end (or review) date, or a clearly specified set of ending conditions.

### **4. Steps to take when extraordinary circumstances prevent full compliance with or full implementation of CCSBT measures**

The following steps should be followed by Members in situations where extraordinary circumstances prevent full compliance with or require reliance on exemptions from CCSBT measures

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<sup>2</sup> Such as IUU SBT fishing or trade by Members or Non-Members that result in excess catch being taken.

<sup>3</sup> In this context, "reliance on exemptions" refers to situations where a measure is only partially implemented, and that partial implementation occurred in accordance with exemptions within the measure which allow for extraordinary circumstances.

<sup>4</sup> Such as occurred in the COVID-19 pandemic, which prevented observer coverage for multiple transshipments at-sea.

<sup>5</sup> For example, extraordinary circumstances during a single transshipment at-sea, could potentially be addressed later by conducting a port inspection of the transhipped SBT.

(1) In cases of non-compliance:

- Notify the Executive Secretary<sup>6</sup> of the extraordinary circumstance as soon as possible and no later than 14 days after they are identified and provide the information and proposed actions to be taken in accordance with Annex 1;
- Such actions should include those to minimise risks in accordance with the principles described in Section “3”;
- If no Member objects to the proposed actions within 7 days<sup>7</sup> of the Executive Secretary circulating the notification of extraordinary circumstances, the proposed actions shall be deemed to have been authorised by the Commission and
  - If the proposed actions are not authorised by the Commission, the Member will continue to be considered as being non-compliant in relation to the relevant measure unless a meeting of the Commission decides otherwise;
- Record all instances of non-compliance with measures together with details of the action taken in each instance;
- Advise the Executive Secretary<sup>6</sup> of any changes in the extraordinary circumstance and/or the action taken as soon as practical after such changes;
- Provide a report to the next annual meeting of the Compliance Committee containing the information specified in Annex 3<sup>8</sup>; and
- The Compliance Committee will discuss the information provided, and make recommendations for future action, particularly if the specific extraordinary circumstance is ongoing or if action taken is not suitable.

(2) In cases of reliance on exemptions:

- Notify the Executive Secretary<sup>6</sup> of the extraordinary circumstance as soon as possible and no later than 14 days after they are identified and provide the information specified in Annex 2;
- Such information should include actions taken or to be taken to minimise risks in accordance with the principles described in Section “3”;
- If other Member(s) consider that the actions taken by the notifying Member do not follow the relevant Resolution(s) or the action taken to minimise risks are not sufficient, this should be discussed at the next Compliance Committee meeting; and

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<sup>6</sup> The Executive Secretary will circulate the notification including the relevant Annex to Members, as soon as possible after its receipt.

<sup>7</sup> If a Member cannot review the proposed actions within 7 days, that Member shall be granted an extension of up to another 14 days to review the proposed actions and lodge an objection.

<sup>8</sup> Irrespective of whether the exceptional circumstance is continuing or has ended.

- Provide a report to the next annual meeting of the Compliance Committee containing the information specified in Annex 3<sup>8</sup>.

## 5. Roles and responsibilities under this Policy

<i>Who</i>	<i>Responsibility to:</i>
Commission	<ul style="list-style-type: none"> <li>• Approve policy</li> <li>• Consider/authorise action submitted in relation to “non-compliance”</li> <li>• Consider Compliance Committee’s recommendations</li> </ul>
Compliance Committee	<ul style="list-style-type: none"> <li>• Evaluate the compliance with exemptions from relevant Resolutions, if requested</li> <li>• Make recommendations to the Commission on future action for a particular extraordinary circumstance should it arise again or be ongoing</li> </ul>
Members facing extraordinary circumstances and non-compliance	<ul style="list-style-type: none"> <li>• Notify the Executive Secretary of the extraordinary circumstance and the proposed action to be taken</li> <li>• Report to the Compliance Committee on the extraordinary circumstance and the action(s) taken</li> </ul>
Members facing extraordinary circumstances and relying on exemptions	<ul style="list-style-type: none"> <li>• Notify the Executive Secretary of the extraordinary circumstance and the action taken or to be taken</li> <li>• Report to the Compliance Committee on the extraordinary circumstance and the action(s) taken</li> </ul>
Other Members	<ul style="list-style-type: none"> <li>• Respond to the proposed action within one week in case of non-compliance</li> </ul>
Secretariat	<ul style="list-style-type: none"> <li>• Place this policy on the website</li> <li>• Circulate Annex 1 or Annex 2 notifications of extraordinary circumstances</li> </ul>

## 6. Policy review

This policy should be reviewed after operational difficulties associated with the COVID-19 pandemic have been resolved to incorporate lessons learned during the crisis. The policy should then be reviewed every five years from the first review date. 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 Executive Secretary not less than 70 days before the date fixed for the opening of the next scheduled Compliance Committee meeting in accordance with Rule 5 of the Rules of Procedure of CCSBT.

**Template for  
Notification of Non-Compliance due to the Extraordinary Circumstances and  
Proposed Action(s) to be taken**

<b>1. Date extraordinary circumstance commenced</b>	<i>DD/MM/YYYY</i>
<b>2. Description of extraordinary circumstance</b>	<i>(provide details of the extraordinary circumstance)</i>
<b>3. Date Member recognised the extraordinary circumstance</b>	<i>DD/MM/YYYY (date when the Member became aware of this extraordinary circumstance)</i>
<b>4. Affected CCSBT measures</b>	<i>(specify the CCSBT measures for which the normal operation will be prevented (including related CCSBT Resolution/decision and paragraph etc.), and provide the extent to which the extraordinary circumstance will prevent full compliance with CCSBT measures)</i>
<b>5. Proposed Action(s) to be taken by the Member</b>	<i>(propose action(s) to be taken by the Member, including the nature and extent of the action(s) to be taken to minimise risks.</i>
<b>6. Proposed Start date of Action(s)</b>	<i>DD/MM/YYYY (propose the start date of action(s), or the date action(s) started)</i>
<b>7. Proposed Ending and Review conditions</b>	<i>(propose the conditions that need to be met for the action(s) to cease and normal operation of CCSBT measures to recommence. Also propose the conditions that would trigger a review of the action(s) if the ending conditions are not met for a prolonged period)</i>
<b>8. Propose the End date (if know)</b>	<i>(propose the end date of the action(s) and when normal operation of CCSBT measures recommenced)</i>
<b>9. Other</b>	<i>(if any)</i>

**Template for  
Notification of Reliance on Exemptions due to the Extraordinary Circumstance  
and Action(s) taken or to be taken**

<b>1. Date extraordinary circumstance commenced</b>	<i>DD/MM/YYYY</i>
<b>2. Description of extraordinary circumstance</b>	<i>(provide details of the extraordinary circumstance)</i>
<b>3. Date Member recognised the extraordinary circumstance</b>	<i>DD/MM/YYYY (date when the Member became aware of this extraordinary circumstance)</i>
<b>4. Affected CCSBT measures</b>	<i>(specify the CCSBT measures for which the normal operation will be prevented (including related CCSBT Resolution/decision and paragraph etc.), and provide the extent to which the extraordinary circumstance required reliance on exemptions<sup>3</sup> from CCSBT measures)</i>
<b>5. Check with existing Resolutions</b>	<i>(specify relevant Resolutions which allow exemptions under extraordinary circumstance)</i>
<b>6. Action(s) to be taken by the Member</b>	<i>(specify action(s) taken or to be taken by the Member, including the nature and extent of the action(s) taken or to be taken to minimise risks.)</i>
<b>7. Start date of Action(s)</b>	<i>DD/MM/YYYY (the start date of action(s))</i>
<b>8. Ending and Review conditions</b>	<i>(specify the conditions that need to be met for the action(s) to cease and normal operation of CCSBT measures to recommence. Also specify the conditions that would trigger a review of the action(s) if the ending conditions are not met for a prolonged period)</i>
<b>9. End date (if known)</b>	<i>(specify the end date of the action(s) and when normal operation of CCSBT measures recommenced)</i>
<b>10. Other</b>	<i>(if any)</i>



**Template for  
the Report to the Compliance Committee on the  
Extraordinary Circumstance and the Action(s) taken**

<b>1. Circular Number</b>	<i>(the number of the Circular in which the first notification was provided)</i>
<b>2. Description of Extraordinary Circumstance</b>	<i>(provide details of the extraordinary circumstance, how it prevented full compliance with or full implementation of CCSBT measures, the date at which the extraordinary circumstance started, and the ending date if the circumstance has finished)</i>
<b>3. Start/End date of Action(s)</b>	From <i>DD/MM/YYYY</i> to <i>DD/MM/YYYY</i>
<b>4. Details of the action(s) taken</b>	<i>(Provide a breakdown, in Table 1 below, of the extent of non-complying events or reliance on exemptions<sup>3</sup> from measures due to the extraordinary circumstance and the actions actually taken. Provide any additional general information about Table 1 here and/or clarification of any terms used in Table 1 that are ambiguous. For example, if the term “inspection” was used, describe here what such an inspection involves.)</i>
<b>5. Assessment of impact</b>	<i>(provide an assessment of the impact of the extraordinary circumstance given the actions taken)</i>
<b>6. Other</b>	<i>(if any)</i>

**Table 1:** Details of non-compliance with and/or reliance on exemptions<sup>3</sup> from measures due to the extraordinary circumstance and the actions actually taken (*italicised text in the table are examples*).

Specific Date (if there are many dates, these may be grouped by month)	Extraordinary circumstance	Non-compliance or reliance on exemptions	Type of non-compliance or reliance on exemptions <sup>3</sup> from measures (specify the paragraphs of the relevant Resolutions)	Non-compliance or reliance on exemptions <sup>3</sup> from measures	Alternative action taken and for how many events	Assessment of the effectiveness of the alternative arrangements and whether there are any gaps
<i>DD/MM/YYYY</i>	<i>COVID-19</i>	<i>Reliance on exemptions</i>	<i>Transhipments at-sea without an observer (paragraph 25 of the Transhipment Resolution)</i>	<i>5 transhipments at-sea involving 2,000 SBT (110,000kg) were conducted without an observer present</i>	<i>All SBT on all 5 vessels were inspected at ##### when the carrier vessel arrived in port</i>	
<i>DD/MM/YYYY</i>	<i>COVID-19</i>	<i>Non-compliance</i>	<i>Use of non-compliant CDS tags (CDS tags could not be delivered to some vessels) (Paragraph 4.4 and Appendix 2 of the CDS Resolution)</i>	<i>500 SBT (27,500kg) from 3 vessels did not have a CDS compliant tag attached when killed</i>	<i>A paper tag was placed on all 500 SBT when they were killed, all SBT were inspected when landed at #####, and CDS compliant tags were attached to 400 of these SBT at this time</i>	