



CCSBT-CC/1610/12

Review of the CCSBT Corrective Actions Policy

Introduction

The CCSBT Corrective Actions Policy (compliance policy guideline - CPG3) corresponds to Strategy 9.2, Corrective action and remedies, of the CCSBT Compliance Plan. It was adopted by CCSBT 18 in October 2011.

The purpose of the Corrective Actions Policy is to bring all Members/ Cooperating Non-Members (CNM) into compliance with their CCSBT obligations in a way that maintains the stability and cohesion of the Commission by putting in place a framework to respond to evidence of non-compliance by a Member/ CNM. The primary response focus is to assist Members to achieve capacity to effectively comply with CCSBT obligations.

Paragraph 7 of this policy notes that it is to be reviewed every three years from the date of its agreement, or at an earlier time as directed by the Commission, or potentially upon the request of a Member/CNM. This policy has not been reviewed since its initial adoption, hence it is timely to review it now.

Corrective Actions Policy (CPG3)

The current Corrective Actions Policy is provided for Members' information at **Attachment A**.

Members are invited to:

- Review this policy, and
- Propose any amendments, noting recommendations relevant to this policy made by the 2014 CCSBT Performance Review Panel (recommendations PR-2014-48 and PR-2014-49)¹, which are provided at **Attachment B** for Members' information.

Prepared by the Secretariat

¹ Some draft compliance action items that were proposed by the Secretariat to address these two PRP recommendations can be found at Attachment B of paper CCSBT-CC/1610/11

Corrective actions policy
Compliance Policy Guideline 3
(adopted at the Eighteenth Annual Meeting – 10-13 October 2011)

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.

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

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

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.
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.

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*
 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 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.

8. Approval

This policy was approved by the Commission:

Chair, Commission

Date

Review date: _____ (unless reviewed earlier)

2014 CCSBT Performance Review Panel (PRP) Recommendations Relevant to the Corrective Actions Policy (Compliance Policy Guideline 3)

| 2014 Performance Review Panel Recommendations PR-2014-48 and PR-2014-49 | |
|--|--|
| PR-2014-48 | The CCSBT has taken steps since 2008 to considerably strengthen its compliance assessment processes and tools, including a framework for applying a range of penalties for instances of Member and CNM non-compliance with CCSBT measures. CCSBT should continue to refine these tools and ensure they are transparently and fairly implemented when necessary to ensure legitimacy and integrity in its system, thereby creating an incentive for compliance among members and CNMs. |
| PR-2014-49 | The CCSBT has taken steps since 2008 to considerably strengthen its compliance assessment processes and tools, including reworking its Compliance Committee terms of reference, giving the Committee adequate time to meet, and adopting an IUU Vessel List measure. Members and CNMs are cooperating with the process, providing their national reports on time and submitting themselves to a multilateral review of their compliance in the Compliance Committee. The CCSBT should continue implement these tools fully and ensure non-compliance is transparently and fairly assessed, thereby creating an incentive for compliance among members and CNMs. The CCSBT should also consider mandating that a member who is being considered for a sanction under its policies may not participate in the decision-making on that issue. |