

ADMINISTRATIVE SANCTION AND ASSESSMENT POLICY

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RESPONSIBLE OFFICE	BELIZE HIGH SEAS FISHERIES UNIT	RESPONSIBLE EXECUTIVE	DIRECTOR FOR HIGH SEAS FISHERIES	
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1.0 POLICY STATEMENT

The purpose of this Policy is to ensure that administrative penalties are assessed in a fair, transparent, and consistent manner and that penalties are appropriate for the gravity of the violation committed and are sufficient to deter offenders from committing these violations. Although this Policy provides guidance regarding the assessment of penalties, the Belize High Seas Fisheries Unit (the "BHSFU") reserves the right to access the full range of penalties authorized by law in any case.

2.0 SCOPE

This Policy applies to all vessel owners and operators whose vessel operate under the Belize flag.

3.0 RESPONSIBILITY

The BHSFU is responsible for the implementation, compliance, monitoring and review of this Policy.

4.0 RELEVANT LEGISLATION

This Policy is implemented pursuant to the High Seas Fisheries Act, 2013 (the "Act") and the High Seas Fishing (Sanctions) Regulations S.I. No. 32 of 2014.

5.0 BACKGROUND

The scourge of illegal, unreported, and unregulated (IUU) fishing has seriously affected the sustainability of the marine environment and the economic impact has unfairly prejudiced the livelihood of honest fishermen. It is therefore important that administrations which regulate the fishing activities of its vessels put into place sanction policies that will deter all (IUU) activities and will bring about a fair and equitable balance amongst all stakeholders involved in fisheries and related activities.

6.0 ROLE OF THE BHSFU IN ADMINISTERING ADMINISTRATIVE SACTIONS

All sanctions shall be imposed by the Director administratively, but any appeal shall be made to the Registrar of Merchant Shipping.

7.0 APPLICATION OF AN ADMINISTRATIVE SANCTION

When an Officer of the BHSFU identifies a statutory or regulatory violation, that officer may pursue one of the several available options depending on the nature of and severity of the violation.

- Where a violation is minor or merely of a technical nature, and having little to no impact on marine resources, the officer may provide a written email warning which provides the alleged violator with an opportunity to correct the violation within a certain time and waives all disciplinary action if the violator takes appropriate remedial actions.
- Where an Officer determines that an alleged violation is of moderate significance, the officer will prepare a disciplinary action recommendation to the Director. This recommendation will include a brief description of the case and a recommendation by the Officer for disciplinary action. Disciplinary action may include any of the list of accompanying sanctions indicated in section 9.2 below.
- Where an officer determines that an alleged violation is significant, or where the violator has more than one previous violation or does not pay a proposed summary settlement amount, the officer will refer the case to the Director for further action.
- The Director shall review the case and take appropriate actions in accordance with the conditions of this Policy for the issue a Violation Notice.

7.0 FACTORS USED TO DETERMINE LEVEL OF PENALTY

The factors used to determine an appropriate level of penalty for violations committed against the Act, are as follows:

- Gravity, seriousness, or nature of the violation,
- Degree of culpability of the violator,
- Recidivism or prior offenses (repetition of an offence generally leads to the imposition of a higher sanction in addition to other disciplinary measures).
- Solvency (economic situation or capacity of the offender),
- Estimated economic benefits derived from the violation,
- Type of fish or fisheries involved
- Damage caused to the fishery resources or the environment

8.0 CRITERIA FOR ESTABLISHING PENALTIES

8.1 Preliminary Base Penalty (PBP)

Factors which determine the PBP and the seriousness of the violation are as follows:

- Gravity, seriousness, or nature of the violation committed.



- The violators degree of responsibility in the violation committed.

The PBP is established by locating the violation committed on the Violation Guide (Annex 3) which is a listing of the most common violations identified by Belize. The guide assigns each violation to a specific level, which ranges from level I to III. This offense level corresponds to the Penalty Schedule (Annex 4). The preliminary penalty range is established by using the offense level and the violator's degree of responsibility, to find a penalty box within the appropriate schedule. The PBP is the midpoint or average of the penalty range within that box.

8.2 Determining Actual Base Penalty (ABP)

The ABP is calculated as follows:

Preliminary Base Penalty based on gravity and culpability + upward or downward adjustments for specific circumstances) + Proceeds of the unlawful activity and any additional commercial benefits = Actual Base Penalty

The Director discretionally may adjust the PBP upward or downward between the penalties as contained on the Penalty Schedule based on the violation committed. The following are considered when deciding these adjustments:

- i. The violators history of non-compliance
- ii. The behavior of the violator after the violation occurred. That is, whether the violator made any efforts to take immediate remedial actions and, cooperate with any investigation carried out or alternately, whether the violator attempted to avoid detection, interfered with the investigation or participated in any other uncooperative activities.
- iii. Solvency of the violators business
- iv. Economic impact to the marine environment

8.3 Proceeds from the Violation Committed and any Additional Commercial Benefit

Once the PBP and adjustments have been established, an additional penalty fee may be added to the ABP for any profits that may have derived from the violation committed or any economic benefits received thereof.

9.0 ESTABLISHING THE ACTUAL BASE PENALTY SCHEDULE

9.1 Guide and Schedules

The BHSFU has established a Violation Guide which provides a listing of the most common violations that have been identified and a Penalty Schedule which provides guidance in determining the gravity of the violation. These are set out in Annex 3 and 4 respectively.

For the Penalty Schedule, the gravity of the offence and the degree of culpability forms the two axes in the schedule. The gravity of the offense ranges from Level I to III with increasing penalties as the gravity of the violation becomes more significant. The degree of culpability ranges from unintentional to negligent to reckless to intentional.

9.2 Penalty Ranges

In establishing suitable penalty ranges for each violation, the maximum level of penalty that could be imposed under Part VII, Sec 49(2) of the Act was considered. Subsequently, this allowed for progressive penalties with the most serious offences warranting the maximum penalty and the least serious violations warranting a significantly lower penalty. This process would allow for a fair calculation while taking into consideration the seriousness of the violation.

Where recidivism by the violator is a factor, the penalties as stipulated in the Sanctions Regulations shall apply. Each violation shall be fined separately and the total fine for the series of violations may be greater than the maximum fine stipulated in the Penalty Schedule and the Sanctions Regulations depending on the total sum of the fines resulting from all the separate offenses

9.2 Accompanying Sanctions

Where the assessed fine does not adequately account for the proceeds of the violation committed, accompanying Sanctions are also applied. These accompanying sanctions are other means of preventing, deterring, and eliminating any future violations. They are determined based on the nature and culpability of the offense and may also be applied separately. The Sanctions Regulation allows for the following accompanying sanctions:

- i. Suspension or withdrawal of fishing license, authorization, or permit.
- ii. Prohibition from sailing.
- iii. Confiscation of gears, equipment and/or fishery products, as appropriate.
- iv. The sequestration of vessel involved in the violation.
- v. Withdrawal or reduction of fishing quotas.
- vi. Withdrawal or reduction of fishing rights.
- vii. Recommendation for the de-registration of the vessel

10.0 ESTABLISHING THE PRELIMINARY BASE PENALTY USING THE PENALTY SCHEDULE

In establishing the PBP, the Director first establishes the gravity of the offense, using the Violation Guide.

Where a violation is not listed in the Violation Guide or where the violation is of a statute for which no schedule has been developed, the Director shall determine the offense level by comparing it to similarly listed violation. If no similar violation can be identified, the Director may use discretion to determine an appropriate violation level by assessing the gravity of the violation and violator's degree of culpability based on the criteria described below. In these cases, the Director will document the basis for using the selected offense level when making a penalty determination.

10.1 Gravity of the Violation

There are three offence levels as indicated in the Penalty Schedule. The offence levels reflect a variety of increasing gravity, considering the nature of the circumstances and extent of the violation with offence level 1 representing the least significant charged offence and offence level 3 being the most significant. The Schedule assigns the most common violations to a corresponding offence level. In establishing the appropriate offence level to assign to each violation, several factors are considered, including:

- i. The quality and status of the resources that have been compromised in the violation, such as whether the fishery is overharvested, overharvesting continues of the vulnerability of the stock, whether the violation affects measures established to protect the stock.
- ii. The degree of damage done to the resources.
- iii. Whether the violation entailed fishing in closed areas, overfishing of quotas, fishing without required authorization or fishing with an unauthorized gear.
- iv. Whether the violator derived commercial benefit from the violation or provided a competitive advantage over those operating lawfully.
- v. Whether the violation is hard to identify without an on-scene enforcement presence or other monitoring, control, and surveillance measures, such as vessel monitoring, at sea observer, port inspections.
- vi. Whether the violator has committed other previously identified violations.

Multiple level 1 or 2 violations together or repeat violations of the same nature could constitute a level 3 violation and would therefore be classified on that level. Similarly, where a violation of a continuous nature occurs, each day after the first day of the violation may be considered a separate offence and can incur a separate and equal penalty as the penalty for the initial violation.

10.2 Degree of Culpability

The degree of culpability is the accountability of the violator before and after the violation was committed and is categorized into the following:

- i. Unintentional – is an accidental incident which is not aimed at a particular result.
- ii. Negligent – is showing ignorance of the consequences likely to occur as a result of one's action. A failure to practice a reasonable amount of care. Negligence may occur where the violator fails to carry out due diligence. The failure to know of relevant laws and regulations or to identify when a violation has happened may be classified as negligence.
- iii. Reckless – a violator consciously disregards the risk of violating conservation and management measures and deviates from the normal conduct of legitimate operations. This would occur where the violator does not intend for the violation to occur but foresees the possibility of such result occurring and takes the risk with full knowledge that the action could possibly result in a violation.
- iv. Intentional – a violation is considered intentional when it is committed on purpose and voluntarily, i.e. the violator intended to commit the act that instituted the violation, knew the consequences, and desired the results to occur. Intent may be proven through violations committed as part of a pattern, course of conduct, or where a violator is guilty of recidivism.

In determining the level of culpability, the Director may consider the following elements:

- Whether or not the violator took the necessary safeguards in preventing the violation from occurring.
- The level of influence the violator had over the events.
- Whether or not the violator knew or should have known of the harms or non-compliance that would result from the violation committed.
- Any other elements as may be deemed appropriate.

11.0 APPLICATION OF ADJUSTMENT FACTORS

The gravity of the violation and the accountability are the factors used to determine the preliminary base penalty. Once these elements have been determined several other adjustment factors are applied to appropriately reflect the differences in violations of the same nature. The adjustment factors are based on the following considerations:

- The violators compliance history
- The violators level of cooperation after the violation occurred
- History of prior offenses; that is:
 - i. the similarity of the prior violation,
 - ii. how recent the prior violation was,
 - iii. the number of prior violations, and
 - iv. the violator's cooperation after the prior violation was committed.

Depending on the penalty range, the Director will utilize the adjustment factor to adjust (upward or downward) the penalty scale or adjust to a different level. These adjustment factors will either increase, decrease or have no influence on the base penalty assessed. The adjustment factors are aggregated, that is, more than one factor may apply to a case. When applying these factors, the Director will only consider the evidence that is available at the time of the evaluation.

a) Compliance History – a history of non-compliance is considered intentional disregard for the substantive laws of Belize or a general disposition of recklessness or negligence of compliance thereto. Additionally, it is an indication that the previous sanctions imposed were not sufficiently deterrent to prevent future violations. Under these circumstances, previous history of non-compliance would warrant the adjustment of penalty upward. The criteria that will be used in considering this adjustment include, inter alia, the following:

- the similarity of the current and previous offense in respect to similar facts, law, regulations, and resources compromised.
- the time frame in which the violation(s) occurred -, considering only those violations occurring within a three-year period.
- the number of previous violations within the previous three years
- the efforts of the violator to rectify the previous violation or cooperation with the authorities.

Violators with a history of previous infraction will automatically warrant an upward adjustment to the next range in the schedule.

The following shall be considered when determining previous violation history:

- Whether the owner(s) of the vessel engaged in the violation has changed and the new owners are not affiliated with the previous owners in any way.
- A violation by the master or crew will be considered as a prior violation for any other violation they may commit on the same vessel.
- If two or more vessels have the same owner(s), the violation committed by one vessel may also be accredited as a prior violation for the other vessel under this ownership.
- If two or more vessels are owned by separate companies but are operated or controlled by the same person or entity, any violation by one vessel may also be accredited as a prior violation for the other vessel(s).

b) High Seas Fishing Vessels in the EEZ of another State

Where a violation results from the operation of a vessel within the Exclusive Economic Zone (EEZ) of another State and that State takes actions against the vessel, depending on the nature of the offence, the latter may be an adjusting factor allowing for an increase or decrease in the initial base penalty.

c) Conduct after Violation – Efforts to Comply and Cooperate

The Director may increase or decrease a preliminary base penalty depending on the conduct of the violator after the violation in respect of his level of cooperation. Highly cooperative behavior could result in the decrease of the initial penalty in consideration of the violator's effort to report the violation and, providing helpful information during the investigation. Conduct which constitutes uncooperative behavior will result in the increase of the preliminary base penalty; and includes, inter alia: violators attempt to avoid detection, concealments, flight, interference with investigation, destruction of evidence, intimidating or threatening of an authorized officer or any similar acts.

There will be no downward adjustments of the penalty if the infraction would have been duly identified without self-reporting by the violator.

12.0 PROCEEDS OF UNLAWFUL ACTIVITY AND ANY ADDITIONAL ECONOMIC BENEFIT

In assessing penalties, the value of any proceeds gained from illegal activities and any additional commercial benefit of non-compliance will be taken into consideration. This is done to prevent the violator from gaining any benefit from the illegal activity or engaging in inappropriate behavior. This measure serves to promote equity in the industry, ensuring the violators do not gain an unfair advantage over those law-abiding stakeholders. As a result, any proceeds from the illegal activity will be added to the base penalty.

13.0 VIOLATION NOTICES

Once the Director has assessed the level of fine to be imposed for the violation committed, a Violation Notice will be issued to the violator which will contain a description of the violation, the monetary fine imposed and any accompanying

sanctions. This will be sent to the owners and/or operators or representatives. They will be given the following options to choose from in response to the violation and the assessed penalty:

OPTION 1: The violator admits to the violation and the assessed penalty and do not contest the notice. He agrees to pay all fine and abide by all accompanying sanctions. The violator has 10 days from date of admission to the violation to make payment of any fine imposed. Once the violator has paid any fine imposed and complied with any accompanying sanction, the case will be closed.

OPTION 2: The violator does not contest the Notice but request leniency in any assessed fine and accompanying sanctions. The violator will need to submit a statement of evidence showing the mitigating circumstances, together with a payment of 10% of the assessed fine. In this instance, the case will be reviewed, and a decision will be taken which may confirm, modify or reverse the sanctions imposed. This decision will be considered final and may not be appealed. The 10% payment of the assessed fine is used as administration fee and as such is non-refundable.

OPTION 3: The violator contests the Notice and requests an administrative appeal. The violator should submit a statement and evidence showing reasons for the appeal in addition to a payment of 10% of the fine imposed. The case will be reviewed, and a final decision will be rendered within 30 days of the appeal. All administrative appeals will be submitted to the Registrar of Merchant Shipping for a final decision. The 10% payment of the assessed fine is used as administration fee and as such is non-refundable irrespective of the decision taken.

The violator has 15 calendar days from the date which the Notice is sent in which to respond to the Notice, and thereafter will be subject to full compliance with the terms of the Notice without any further consideration.

All communication regarding any violations and notices issued will be filed in the vessel's file and in the consecutive file of all Violation Notices issued.

14.0 VIOLATORS ABILITY TO PAY

When a violator is unable to pay an assessed penalty, the Director may, inter alia, consider the following:

- a. an installment plan accruing interest at a rate of 10% of the fine imposed and payable in equal installments together with the payment of the fine.
- b. a suspended penalty subject to prescribed conditions.
- c. a reduction of the penalty with the option to impose other accompanying sanctions.
- d. direct penalty reduction.

The abovementioned options may be exercised at the sole discretion of the Director and will depend on the financial circumstances of the case.

15.0 ASSESSMENT OF PENALTY AND ACCOMPANYING SANCTIONS

In assessing a violation and applying a penalty, the Director will complete the assessment worksheet (Appendix 2). Where several violations have been committed at the same time, an assessment will be carried out for each violation.

16.0 POLICY REVIEW

The BHSFU will periodically review this Policy and consider revisions or modifications as appropriate to ensure that it continues to serve the stated purpose.

Approved this day of the year at BELMOPAN, Belize

Claude B.F. Haylock
Registrar of Merchant Shipping



Valarie Lanza
Director for High Seas Fishing



ANNEX 1

ASSESSMENT OF VIOLATION

Description of the Violation

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I. Preliminary Base Penalty

Offense Level:	
Degree of Culpability:	
Preliminary Base Penalty:	

II. Adjustment Factors

History of Prior Offences:	
Other Factors:	
Official Base Penalty after Adjustments:	

III. Proceeds of unlawful activity and any additional economic benefit

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ANNEX 2

ASSESSMENT WORKSHEET

Name of Alleged Violator(s) _____

Description of Violation: _____

Violation Case Number: _____

I. Base Penalty

- a. Offence Level (I through III)
- b. Culpability (1 through 4)
- c. Schedule Penalty

Preliminary Base Penalty

- d. History of Prior Offences
- e. Other such as the Director may require
 - i. Action after violation/cooperation
 - ii. Other

Adjustment Factors

TOTAL BASE PENALTY:

II. Proceeds of the Unlawful Activity & Any additional Economic Benefit

- a. Proceeds of Unlawful Activity
- b. Economic Activity Derived from the violation

TOTAL ECONOMIC BENEFIT:

III. Total Penalty (I +II)

IV. Additional Accompanying Sanctions

Director: _____

Date: _____

ANNEX 3

VIOLATION LEVEL GUIDE**Level I Violations (Minor)**

1. Failing to affix vessel markings
2. Failing to have on-board seabird and turtle mitigation devices
3. Failing to comply with discharge and discard restrictions
4. Failure to report changes in license information
5. Entering a closed area or transiting a closed area with fishing gear not properly stored onboard the vessel
6. Failing to submit timely catch reports
7. Failing to submit logbooks on time
8. Failure to maintain operational Vessel Monitoring System while at Port
9. Being in possession of prohibited species.

Level II Violations (Major)

1. Fishing with non-compliant gear
2. Providing false, inaccurate, or misleading information in respect to an application, record or report
3. Breach of prohibition from sailing
4. Failure to have on board relevant license and/or navigation documents
5. Tampering with an official document such as licenses or authorizations
6. Tampering with, damaging, destroying, altering in any way, rendering inoperative or inaccurate the MTU
7. Failing to install an appropriate vessel monitoring system
8. Fishing in excess of an allocated catch limit
9. Violating the conditions of a license, permit or authorization
10. Refusing to carry an authorized at-sea observer on board
11. Possession of prohibited species in large amounts
12. Failure to comply with the requirements for Fish Aggregating Devices (FADs)

Level III Violations (Very Serious)

1. Fishing without a valid license, authorization, or permit
2. Use of a prohibited fishing gears and methods
3. Fishing in a closed or prohibited area
4. Concealing the markings, identification, or registration of a vessel
5. Refusal to allow an authorized officer on board a vessel
6. Targeting quota related species without an authorized allocation
7. Concealing, tampering with, or disposing of evidence relating to a violation or an ongoing investigation
8. Failure to transmit vessel monitoring data
9. Obstructing the work of an authorized observer or inspector
10. Engaging in unauthorized transshipments
11. Taking on board, landing, or transshipping undersized fish in contravention of applicable conservation and management measure
12. Participating in joint fishing operations which supports, or re-supply other fishing vessels identified as having engaged in IUU fishing including those listed on an established IUU list.
13. Falsification of documents or use of such document relevant to the operation of the vessel
14. Carrying out operation in and Regional Fisheries Management Organization (RFMO) regulated area in a manner inconsistent with or in contravention of the conservation and management measures of that organization
15. Non-compliance with measures outlined in domestic regulations such as fishing vessel circulars and notices

ANNEX 4

SCHEDULE

In cases of recidivism, sanctions shall be applied cumulatively and may exceed the maximum penalty prescribed in this Schedule

Violation Level	DEGREE OF ACCOUNTABILITY			
	(1) Unintentional	(2) Negligent	(3) Reckless	(5) Intentional
Level I – Minor	Written Warning - \$2,000	Written Warning - \$5,000	\$5,000 - \$8,000	\$8,000 - \$10,000
Level II – Major	\$4,000 - \$10,000	\$10,000-\$20,000	\$20,000 - \$30,000	\$30,000 - \$50,000 and Accompanying Sanction
Level III – Very Serious	\$50,000-\$75,000 and/or Accompanying Sanction	\$75,000 - \$100,000 and/or Accompanying Sanction	\$100,000-\$200,000	\$200,000 - \$500,000 with Accompanying Sanctions