

# Atlantic States Marine Fisheries Commission

## Executive Committee

*May 3, 2023*  
*8:00 – 10:00 a.m.*  
*Hybrid Meeting*

## Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.  
A portion of this meeting will be closed for Committee Members and Commissioners only.

1. Welcome/Introductions (*S. Woodward*)
2. Committee Consent
  - Approval of Agenda
  - Approval of Meeting Summary from February 1, 2023
3. Public Comment
4. Report of the Administrative Oversight Committee (*J. Cimino*) **Action**
  - Presentation of the Fiscal Year 2024 Budget
5. Discuss Potential for Legislator and Governors Appointee Commissioner Stipends (*R. Beal*)
6. Review Potential Changes to the Conservation Equivalency Policy and Technical Guidance Document (*T. Kerns*)
7. Legislative Committee Update (*A. Law*)
8. Future Annual Meetings Update (*L. Leach*)
  - October 15-19, 2023 – Beaufort, North Carolina
  - 2024 – Maryland
  - 2025 – Delaware
  - 2026 – Rhode Island
  - 2027 – South Carolina
9. Other Business
10. Executive Director Performance Review (**Closed Session**)
11. Adjourn

The meeting will be held at The Westin Crystal City (1800 Richmond Highway, Arlington, VA; 703.486.1111) and via webinar; click [here](#) for details

# **Commissioner Stipend Discussion Paper**

Atlantic States Marine Fisheries Commission

April 18, 2023

## **Background**

The Commission has discussed the potential to provide stipends to Legislative and Governors' Appointee (LGA) Commissioners for their participation in Commission activities. To date, the Commission has not provided a stipend or other financial compensation to Commissioners for participation. In contrast, the Magnuson-Stevens Act establishes a daily compensation rate (GS 15, Step 7, currently ~\$540/day) for Federal Fishery Management Council members when engaged in Council activities. This paper presents different options that have been discussed.

## **Potential Tax Benefit for Commissioners**

At the Winter Meeting, the idea of a potential tax benefit for Commissioners was suggested. Given that LGA Commissioners volunteer their time, staff was asked explore potential tax benefit options for the Commissioner's donated time.

Staff talked with tax professionals including a CPA. The tax professionals generally did not commit to a potential tax benefit for Commissioners volunteering time to the Commission. They noted a benefit was unlikely but each Commissioner would need to consult with their own tax advisor.

## **Stipends Paid by Member States to Their Commissioners**

It was suggested that each state could voluntarily provide stipends to their LGA Commissioners if they choose to do so. These stipends would be outside of the Commission process and would be handled entirely by the individual states. Staff did not research this approach since it would be addressed by the individual states.

## **Options for Providing a Stipend to Legislative and Governors' Appointee (LGA) Commissioners**

The following options are similar to those presented at the 2023 Winter Meeting.

### **Option 1 – Status Quo**

The LGA Commissioners will continue to serve on a volunteer basis and not receive a stipend from the Commission.

Option 2 – A Stipend will be provided only for extraordinary meetings

The LGA Commissioners will receive a stipend for meetings that are outside of the four quarterly Commission meetings and outside of the joint meetings with one of the three Federal Fishery Management Councils. Examples of these meetings include NEFMC Atlantic Herring Committee meetings, Recreational Fisheries Summit, Scenario Planning Summit, etc.

Approximate Financial Impact: 13 Person days X \$540 Stipend = \$ 7,020

Option 3 – A Stipend will be provided for meetings outside of the Commission Quarterly Meetings

The LGA Commissioners will receive a stipend for meetings that are outside of the four quarterly Commission meetings including joint meetings with one of the three Federal Fishery Management Councils and other extraordinary meetings.

Approximate Financial Impact: 82 Person days X \$540 Stipend = \$44,280

**Other Considerations**

If a stipend is provided to LGA Commissioners, consideration should be given to the following items:

- Stipend for Proxies
- Virtual Participation
- LGA Eligibility to Receive Stipend
- Travel Days
- Partial Days
- Administrative Burden
- Other

Atlantic States Marine Fisheries Commission

**DRAFT CONSERVATION EQUIVALENCY:  
Policy and Technical Guidance Document**



First Edition Approved May 2004  
Revised and Approved October 2016  
Draft Revisions for Review May 2023

## **Introduction**

The purpose of this document is to provide policy and technical guidance on the application of conservation equivalency in interstate fisheries management programs developed by the Atlantic States Marine Fisheries Commission. The document provides specific guidance on development, submission, review and approval of conservation equivalency proposals.

## **Background**

The Atlantic States Marine Fisheries Commission (Commission) employs the concept of conservation equivalency in a number of interstate fishery management programs. Conservation equivalency allows states/jurisdictions (hereafter states) flexibility to develop alternative regulations that address specific state or regional differences while still achieving the goals and objectives of Interstate Fishery Management Plans (FMPs). Allowing states to tailor their management programs in this way avoids the difficult task of developing one-size-fits-all management measures while still achieving equivalent conservation benefits to the resource.

Conservation equivalency is currently defined in the Interstate Fisheries Management Program (ISFMP) Charter as:

*“Actions taken by a state which differ from the specific requirements of the FMP, but which achieve the same quantified level of conservation for the resource under management. One example can be, various combinations of size limits, gear restrictions, and season length can be demonstrated to achieve the same targeted level of fishing mortality. The appropriate Management Board/Section will determine conservation equivalency.” The application of conservation equivalency is described in the document Conservation Equivalency Policy and Technical Guidance Document*

In practice, the Commission frequently uses the term “conservation equivalency” in different ways depending on the language included in the plan. Due to concerns over the lack of guidance on the use of conservation equivalency and the lack of consistency between fishery management programs, the ISFMP Policy Board approved a policy guidance document on conservation equivalency in 2004. In 2016, the Policy Board recognized some of the practices of the Commission regarding conservation equivalency had changed and revised the guidance. The Policy Board is again considering revision to the guidance to include requirements in how conservation equivalency is used.

## **General Policy Guidance**

The use of conservation equivalency is an integral part of the Commission management process. Conservation equivalency is used in 2 ways: (1) in the development of the FMP

**Commented [TK1]:** While this path was used in the past it is not something that has been used in the last 10 years or more because of the additional time it adds to the process (needs time for states to develop measures that would be equivalent to the coastwide options in the document)

(including implementation plans) and (2) as alternative management programs outside of the FMP process.

During the development of a management document the Plan Development Team (PDT) should recommend if conservation equivalency should be permitted for that species. The board should will provide a specific determination if conservation equivalency is an approved option for the fishery management plan FMP, since conservation equivalency may not be appropriate or necessary for all management programs. The PDT should consider stock status, stock structure, data availability, range of the species, socio-economic information, and the potential for more conservative management when stocks are overfished or overfishing is occurring when making a recommendation on conservation equivalency. During the approval of a management document the Board will make the final decision on the inclusion of conservation equivalency.

**Commented [TK2]:** If this is a requirement will need to change

If conservation equivalency is determined to be appropriate, the conservation equivalency process should will be clearly defined and specific guidance should will be supplied in the fishery management documents. Each of the new fishery management plans, amendments, or addenda should will include the details of the conservation equivalency program, if applicable. The guidance should will include, at a minimum, a list of management measures that can be modified through conservation equivalency, evaluation criteria, review process, and monitoring requirements. If possible, tables including the alternative management measures should be developed and included in the management documents. The development of the specific guidance is critical to the public understanding and the consistency of conservation equivalency implementation.

**Commented [TK3]:** If we modify #1 above, I recommend this section is deleted.

Conservation equivalency proposals and Board approval are not required when states adopt a single more restrictive measures than those required in the FMP (e.g., higher minimum size, lower bag limit, lower quota, lower trip limit, closed or shorter seasons). These changes to the management program should will be included in a state's annual compliance report or state implementation plan. If states intend to change more than one regulation where one is more restrictive but the other is less restrictive, even if the combined impact is more restrictive, states must submit a conservation equivalency proposal for Board approval due to unexpected consequences that may arise (e.g., a larger minimum size limit could increase discards).

**Commented [TK4]:** Should this change? What if a state does something .5% more conservative to get around CE rules?

The States have the responsibility of developing conservation equivalency proposals for submission to the Plan Review Team (see standards detailed below). Upon receiving a conservation equivalency proposal, the PRT will initiate a formal review process as detailed in this guidance document. The state submitting the conservation equivalency proposal has the obligation to ensure proposed measures are enforceable. If the PRT has a concern regarding the enforceability of a proposed measure it can task the Law Enforcement Committee with reviewing the proposal. Upon approval of a conservation equivalency proposal, the implementation of the program becomes a compliance requirement for the state. Each of the approved programs should will be described and

evaluated in the annual compliance review and included in annual FMP Reviews, unless different timing is approved by the board.

The management programs ~~should~~ will place a limit on the length of time that a conservation equivalency program can remain in place without re-approval by the Board. Some approved management programs may require additional data to evaluate effects of the management measures. The burden of collecting the data falls on the state that has implemented such a conservation equivalency program. Approval of a conservation equivalency program may be terminated if the state is not completing the necessary monitoring to evaluate the effects of the program.

The Plan Review Team (PRT) will serve as the “clearing house” for approval-review of conservation equivalency proposals. All proposals will be submitted to the PRT for review. The PRT will collect all necessary input from the appropriate committee (e.g., the technical committee, Law Enforcement Committee, Committee on Economics and Social Sciences and the Advisory Panel). The PRT will compile input ~~from all of the groups~~ and forward a recommendation to the management board.

#### When Conservation Equivalency will not be Permitted

##### Stock Status Conditions

Option 1. Conservation Equivalency is not permitted if the stock is overfished

Option 2. Conservation Equivalency is not permitted if overfishing is occurring

Option 3. Conservation Equivalency is not permitted if overfishing is occurring and the stock is overfished

##### Measures that cannot be Quantified

Measures that cannot be quantified are not be permitted under CE if their sole purpose is for credit in the reduction. The state submitting a proposed measure for credit must be able to demonstrate, to the satisfaction of the TC, a measurable reduction in harvest. Measures that are non-quantifiable can be encouraged and considered as a buffer but not used as direct credit for a reduction in harvest. The TC will determine if a measure is quantifiable or non-quantifiable. Non-quantifiable measures could include circle hooks, non-targeting zones/period, no gaffing, outreach promoting best practices for release, and other measures expected to reduce release mortality or overall discards.

##### Combining Coastwide and Conservation Equivalency

If there is a target coastwide reduction needed it cannot be achieved through a combination of some states implementing the coastwide measure and some states implementing the coastwide percent reduction at the state level. If a state proposes CE, that CE proposal must demonstrate equivalency the state-specific reduction that would have been achieved if the coastwide measure were implemented. For example, a

**Commented [TK5]:** Depending on the level of prescription these are options Boards could consider or one of the options could be the policy standard.

If it for the Boards then I suggest we add the following text:

Each species Board should/will consider which, if any, of the stock status CE options below are appropriate. If a species Board implements a stock status restriction for CE, it may choose to apply that restriction to the entire fishery or to some parts of the fishery (e.g., specific sector). If a species Board decides not to implement a stock status restriction for CE, the Board will provide rationale (via meeting proceedings) as to why such a CE restriction is not needed for that species.

[coastwide measure may be projected to achieve a 10% coastwide reduction. In a particular state, that coastwide measure may be projected to achieve a 15% reduction in that state alone. If that state wants to propose a CE program, that CE program must demonstrate a 15% reduction, not a 10% reduction.](#)

### **Standards for state conservation equivalency proposals**

Each state seeking to implement a conservation equivalency program must submit a proposal for review and approval. Proposals [will keep the number of options to a reasonable limit, those proposals](#) that include an excessive number of options may delay timely review by the PRT and other groups and may ultimately delay the report to the Board. [The states should limit the number of options included in a proposal or prioritize the options for review. Boards may set a cap on the number of options submitted.](#)

State conservation equivalency proposals [should will](#) contain the following information:

1. Rationale: Why or how an alternate management program is needed in the state. Rationale may include, but are not limited to, socio-economic grounds, fish distribution considerations, size of fish in state waters, interactions with other fisheries, protected resource issues and enforcement efficiency.
2. Description of how the alternative management program meets all relevant FMP objectives and management measures (FMP standards, targets, and reference points). States are responsible for supplying adequate detail and analysis to confirm conservation equivalency based on the most recent stock assessment.
3. A description of:
  - Available datasets used in the analysis and data collection method, including sample size and coefficient of variation, [explicitly state any assumptions used for each data set.](#)
  - Limitations of data and any data aggregation or pooling.
    - [The TC should establish minimum standards for the types and quality of data that can be used in a proposal. Examples include, but should not be limited to: minimum sample size, amount of imputed/borrowed data points, limit on PSE, types of data allowed and minimum number of years, survey design, data caveats and analytical assumptions, and consider previous CE proposals and build on their strengths \(e.g., length of closed season\). Some states may not be able to participate in CE because their data will not meet the standards established by the TC. The TC could consider alternative criteria, or states could consider alternatives, such as submitting a joint proposal with neighboring states.](#)



- When evaluating closed periods, availability will be considered. Even within a month, availability can be very different, particularly when comparing the beginning and end. Any closed period must come from a period of high availability and include at least two consecutive weekend periods (Friday, Saturday and Sunday). Pooling of several years' worth of data should be encouraged for evaluation.

- The length of time the state is requesting conservation equivalency and a review schedule for the length of the program. Proposals ~~should~~ will identify the length of time measures are intended to be in place and the timing of the review of the specific measures which is required annually, it is encouraged to review the measures in conjunction with the FMP Review. If an approved CE program consistently meets program objectives, achieves the proposed measures with the management actions implemented, and if stock conditions remain favorable, a request for an extension should be made to the species management board at the end of the project period. Extensions for successful conservation equivalency programs should not exceed the next scheduled benchmark stock assessment.

4. Each proposal must justify any deviations from the conservation equivalency procedures detailed in the FMP of this document. The state should conduct analyses to compare new procedures to procedures included in the plan, as appropriate, including corroborative information where available.
5. Include a plan describing the monitoring schedule, reporting requirements and documentation process of evaluating the impacts of the conservation equivalency measures.

### **Review Process**

Implementation of new amendments/FMPs ~~should~~ will include timelines and a review process for conservation equivalency proposals. However, the review process and timeline needs to be established for all conservation equivalency proposals that are submitted outside of the implementation of a new management document.

The following is a list of the steps and timelines for review and approval of conservation equivalency proposals. Any deviations from the following process ~~should~~ must be included in the FMP.

1. Conservation equivalency ~~should~~ will be approved by the Management Board and where possible implemented at the beginning of the fishing year.

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2. If a state is submitting a proposal outside of an implementation plan process, it ~~must will~~ provide the proposal ~~at least two~~ months in advance of the next board meeting to allow committees sufficient time to review the proposal and to allow states to respond to any requests for additional data or analyses. States may submit conservation equivalency proposals less than two months in advance of the next board meeting, but the review and approval at the upcoming board meeting is at the discretion of the Species Management Board Chair. Proposals submitted less than two weeks before a meeting will not be considered for approval at that meeting. The board chair will submit proposal to the Plan Review Team (PRT) for review.
3. The PRT should notify the state that the proposal is complete.
4. Upon receipt of the proposal, the PRT will determine what additional input will be needed from: the Technical Committee (TC), Law Enforcement Committee (LEC), ~~and or~~ Committee on Economic and Social Sciences (CESS). The PRT will distribute the proposal to all necessary committees for comment. The review should include a description of the impacts on or from adjoining jurisdictions or other management entities (Councils and/or NMFS). If possible, this description should include qualitative descriptions addressing enforcement, socio-economic issues and expectations from other states perspective (shifts in effort). The review should highlight efforts to make regulations consistent across waterbodies.
5. The PRT will compile all of the input and forward the proposal and comments to the Advisory Panel when possible. However, when there are time limitations, the AP may be asked for comments on a proposal prior to completion of other committee reviews. The Chair of the Advisory Panel (AP) will compile the AP Comments and provide a report to the Management Board.
6. The PRT will forward to the Board the proposal and all committee reviews, including any minority reports. The PRT will provide comment on whether the proposal is or is not equivalent to the standards within the FMP. ~~If possible,~~ the PRT ~~should will~~ identify potential cumulative effects of all conservation equivalency plans under individual FMPs (e.g. impacts on stock parameters).
7. The PRT reviews ~~should will~~ address whether a state's proposal followed the CE standards outlined in this policy, and any additional specifications included in the FMP.
8. The Board will decide whether to approve the conservation equivalency proposal and will set an implementation date, taking into account the requested implementation date in the proposal. Board action should be based on the PRT recommendation as well as other factors such as impacts to adjoining states and

**Commented [TK6]:** I am concerned 2 months would not be enough time with some of the additional data requirements

federal management programs. When a board cannot meet in a timely manner and at the discretion of the board and Commission Chair, the boards have the option to have the ISFMP Policy Board approve the conservation equivalency plan.

### **Plan Review Following Approval and Implementation**

1. Annually thereafter, states should will describe and evaluate the approved conservation equivalency programs in their compliance reports submitted for annual FMP Reviews, unless otherwise specified.
2. The PRT is responsible for evaluating all conservation equivalency programs during annual FMP reviews to determine if the conditions and goals of the FMP are maintained, unless a different timeline was established through board approval. If the state is not completing the necessary monitoring to evaluate their approved conservation equivalency program, this may be grounds for termination of the plan. The PRT will report to the Board on the performance of the conservation equivalency program, and can make recommendations to the Board if changes are deemed necessary.
3. Review Criteria: Fisheries data are confounded by uncertainty, which make evaluating actual performance difficult and impossible to develop a one size fits all analysis to evaluate performance. Criteria to consider when establishing guidelines for CE program analysis include:
  - Use multiple years' worth of data with consistent regulations to smooth variability
  - Use rates, rather than totals (e.g., CPUE vs catch) to account for changes in effort
  - Explicitly state and discuss assumptions and caveats of data and how they might affect the analysis
  - Account for any extra buffer required in the state's CE proposal
4. The Board may stablish appropriate actions for any state that does not achieve the target. It is recommended, action be established before performance is evaluated, perhaps as early as when criteria for developing CE proposals are established to alert states to the consequences of failing to meet the target before plans are implemented. Proposed action should be fair and equitable to all states, with the overall goal of achieving management objectives of the FMP.
5. The TC should also establish guidelines for what determines success. Considerations include:

**Commented [TK7]:** Evaluating success of any management measure is extremely difficult and some may say impossible.

**Commented [TK8]:** I am concerned this task could be unachievable for the TC

- [Recognizing the various sources of uncertainty, how many years of data are needed to evaluate performance?](#)
- [Is the target based on harvest or total removals \(harvest + dead discards\)?](#)
- [If a state approaches, but does not achieve, the target, how close is close enough?](#)
- [For a state that requires a buffer, is it sufficient if they achieve the target, but not the target + buffer requirement?](#)
- [Is any action required if not all states achieve the target, but the coast as a whole does achieve the target?](#)
- [Do the answers to these questions differ depending on if the state is a major contributor to the fishery vs a fringe state?](#)
- [Would the Board allow a state to adjust their regulations if it is determined their proposal was overly conservative?](#)

#### **Coordination Guidance**

The Commission's interstate management program has a number of joint or complementary management programs with NOAA Fisheries, US Fish and Wildlife Service and the Fishery Management Councils. Conservation equivalency creates additional burden on the Commission to coordinate with our federal fishery management partners. To facilitate cooperation among partners, the Commission should observe the following considerations.

- The Commission's FMPs may include recommendations to NOAA Fisheries for complementary EEZ regulations. Conservation equivalency measures may alter some of the recommendations contained in the FMPs, which would require the Commission notify NOAA Fisheries of any changes. The Commission needs to consider the length of time that it will take for regulations to be implemented in the EEZ and try to minimize the frequency of requests to the federal government.
- The protocol for NOAA fisheries implementing changes varies for the different species managed by the Commission. The varying protocols need to be considered as conservation equivalency proposals are being developed and reviewed.
- When necessary for complementary management of the stock, the Commission Chair will request federal partners to consider changes to federal regulations.



# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

**From:** Conservation Equivalency Work Group

**To:** Executive Committee

**Re:** Conservation Equivalency Task Responses

**Objective 1:** Determine what constitutes Conservation Equivalency success, policy wise

**Objective 2:** Define before and after technical analyses of CE proposals

**Product 1:** Revise the current Conservation Equivalency Guidance, based on Work Group recommendations and Policy Board decision points. Focus on Guidance elements to change from “recommended” to “required”, in order to tighten up CE implementation.

**Product 2:** Create a Conservation Equivalency proposal template outlining all required proposal information, including content standards and criteria for evaluating CE

**Work Group members:** Collen Bouffard (CT), Jeff Brust (NJ), Lewis Gillingham (VA), Kevin Sullivan (NH), Dennis Abbott (NH), Joe Cimino (NJ), Jason McNamee (RI)

### 1. Develop a way to better characterize and address uncertainty of CE proposals:

Uncertainty in fisheries data can arise from numerous sources, including but not limited to, small sample size, reporting bias, gear selectivity, environmental variability, or non-representative sampling. Uncertainty in the data sources in turn carries through to analytical results of past performance, current status, or future predictions, in addition to compounding of uncertainty when combining multiple data sets with their own uncertainties. This is important for conservation equivalency proposals because uncertainty in proposal results affect the probability of success of achieving equivalency, and ultimately, management objectives. Proposals based on data with low uncertainty will be more likely to achieve the target than proposals based on data with high uncertainty.

The primary concern when highly uncertain data are used is that a proposal will not be conservative enough. For example, an insufficient harvest reduction. It is equally likely a proposal based on uncertain data could be overly conservative. While this might sound beneficial, it has the potential to result in lost opportunity for fishery participants, and erodes management equality among the states. It is in the best interest of ASMFC and its partners to achieve equivalency with as much precision as possible.



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To ensure proposals have a high probability of achieving the management target, the TC should establish minimum standards for the types and quality of data that can be used in a proposal. Examples include, but should not be limited to:

- Minimum sample size
- Amount of imputed/borrowed data points
- Limit on PSE
- Types of data allowed; minimum number of years
- Survey design
- Data caveats and analytical assumptions
- Consider previous CE proposals and build on their strengths (e.g., length of closed season)

The appropriate TC should establish a comprehensive list of standards. The Assessment Science Committee could outline the standards and provide examples, for TCs to build on for individual species and fishery implementation. To assist with development of the list, TCs should consider previous CE proposals and build on the strengths of those. Each proposal should include explicit discussion of how each data set meets the standards, as well as any other known or assumed biases that might affect its utility. Further, proposals should explicitly state any assumptions used for each data set when they are used in the analysis.

In many cases, the uncertainty of a dataset is unknown, such as with volunteer reported data. For these data sources, the TC could decide not to allow their use, or require states to provide evidence (or at least written justification) that the uncertainty falls within an acceptable range. Examples include comparing length frequency from volunteer data to MRIP data, or comparing volunteer reported catch rates with survey abundance.

If a state proposal does not meet all the criteria established by the TC – for example, if uncertainty in a dataset exceeds the allowable range, a proposal fails to fully explain assumptions and biases, or a dataset with unknown uncertainty can't be fully justified – it may result in a proposal being denied. Alternatively, the TC could impose additional/alternative criteria, such as requiring a 'penalty' term or buffer on achieving the target. These additional criteria should be established relative to each state's proposal, and not applied as a one size fits all solution.

It should be noted that any criteria established by the TC may affect the "structure" of each state's proposal differently. For example, a state with low MRIP PSEs might be able to provide a wave-specific proposal, while other states with higher PSEs might need to combine data across waves. There will undoubtedly be situations where some states will not be able to participate in CE at all because their data do not meet the standards. In these situations, alternative criteria



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could be considered, or states could consider alternatives, such as submitting a joint proposal with neighboring states.

### **2. Develop a buffer to account for uncertainty**

#### **a. Should stock status be accounted for when establishing buffers (stock status steps/tiers, control rule)**

The Work Group agrees stock status should determine whether CE is allowable. The Conservation Equivalency guidance currently states “The PDT should consider stock status, stock structure, data availability, range of the species, socio-economic information, and the potential for more conservative management when stocks are overfished or overfishing is occurring when making a recommendation.”

#### **b. A buffer should not be overly burdensome on “fringe states”. Should the buffer apply differently to the fringe states?**

A buffer should apply differently or perhaps not be used at all for states with very small harvest. However, CE should be reevaluated to see if it was effective, just like any other state. A change is needed to avoid choose your own adventure by individual states. It’s either coastwide measures or everyone does CEs. Every state should take the same reduction. A blanket ‘fringe’ state rule should not pertain to CE buffers.

Also, there is no current definition of ‘fringe states’. One option would be a state with less than 1% of total removals (not <1% harvest).

### **3. Develop a hindsight analysis to see how well CE performed, including the coast wide measure for comparison**

#### **a. To inform the above buffer**

#### **b. Consider harvest vs total removals consistent with FMP**

To achieve the Commission’s long-term vision of “sustainable and cooperative management of Atlantic Coast fisheries,” it is imperative that all Commission partners be held accountable for successful implementation of Commission management plans. Without accountability, it will be difficult for cooperative management to succeed. With respect to conservation equivalency, it is important to evaluate the effectiveness of each proposal after the fact to determine if the equivalency target was achieved. If equivalency was not achieved, appropriate repercussions should be established and implemented.



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As noted before, however, fisheries data are confounded by uncertainty, which make evaluating actual performance difficult. Factors that may affect catch include:

- Recruitment
- Environmental variability (availability)
- Sample size and sampling design (data variability)
- Effort (e.g., market conditions, weather)
- Angler behavior
- Frequently changing regulations (moving baseline)

These factors, taken in conjunction with the wide range of proposals, makes it impossible to develop a one size fits all analysis to evaluate performance. Regardless, Boards and TCs should still strongly consider developing a method of evaluation. Criteria to consider when establishing guidelines for CE proposal analysis include:

- Use multiple years' worth of data with consistent regulations to smooth variability
- Use rates, rather than totals (e.g., CPUE vs catch) to account for changes in effort
- Explicitly state and discuss assumptions and caveats of data and how they might affect the analysis
- Account for any extra buffer required in the state's CE proposal

The TC should also establish guidelines for what determines success. Considerations include:

- Recognizing the various sources of uncertainty, how many years of data are needed to evaluate performance?
- Is the target based on harvest or total removals (harvest + dead discards)?
- If a state approaches, but does not achieve, the target, how close is close enough?
- For a state that requires a buffer, is it sufficient if they achieve the target, but not the target + buffer requirement?
- Is any action required if not all states achieve the target, but the coast as a whole does achieve the target?
- Do the answers to these questions differ depending on if the state is a major contributor to the fishery vs a fringe state?
- Would the Board allow a state to adjust their regulations if it is determined their proposal was overly conservative?

Finally, the Board should also establish appropriate actions for any state that does not achieve the target. Ideally, actions should be established before performance is evaluated, perhaps as





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early as when criteria for developing CE proposals are established. This would alert states to the consequences of failing to meet the target before plans are implemented, and might sway a state's decision to implement if the risk outweighs the reward. Further, any proposed action should be fair and equitable to all states, with the overall goal of achieving management objectives of the FMP.

Although it is not possible to develop a single method to evaluate performance of CE proposals, development of explicit review criteria and guidelines by the relevant TC and Management Board prior to implementation, in addition to appropriate management responses for states that do not achieve equivalency, will promote accountability among the participating states.

- 4. Some measures are non-quantifiable. For species and measures that are harder to evaluate equivalency, should CE be allowed?**
  - a. Should there be bounds on CE or is anything allowed unless specifically excluded by the FMP?**

The state submitting a proposed measure for credit must be able to demonstrate, to the satisfaction of the TC, a measurable reduction in harvest. Any measures meeting that criterion, and not specifically excluded in the FMP, should be allowed for consideration but could be rejected upon review. Measures that are non-quantifiable can be encouraged and considered as a buffer but not used as direct credit for a reduction in harvest. Non-quantifiable measures include circle hooks, non-targeting zones/period, no gaffing, outreach promoting best practices for release, and other measures expected to reduce release mortality or overall discards.

- b. Should FMPs allow the mix of coast wide measures and CE measures within the same management process? E.g. last round of Striped Bass measures**

Stock status (over-fished vs not over-fished and their trend) should be the first consideration. If a stock is both over-fished and overfishing is occurring plus the stock abundance is in decline then the most conservative coast wide measures should be required by all states. If the stock is not over-fished then the CE criteria adopted by the Striped Bass Management Board "the PSE range not to exceed 40%" should apply. Consider additional latitude above the 40% PSE threshold, up to 50% PSE, if the stock is neither over-fished nor over fishing is occurring.

For recreational fisheries, we acknowledge there are not many FMPs that would be evaluating CE because there are not many species that use CW measures. We also note some species have annual catch targets (like RHLs). And there are species that have state/regional specific catch targets. Others simply manage to F targets which can only be evaluated after assessment



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updates - although there are management actions that seek a reduction value from a base year to an upcoming year.

There is consensus from the Work Group that if there is a target reduction needed it cannot be through a combination of a coastwide measure that is optional with some states opting to use an alternative method. It is possible that a state's harvest or expected harvest is so small that it may not impact the Coast Wide reduction projection if they didn't implement the measures. In other sections we refer to these as fringe states. There should not be a fringe exemption to this idea that there cannot be a mix of CE and Coast Wide targets. However, if a fringe state is de minimis then it they will likely be exempt from putting in Coast Wide measures.

For commercial fisheries, the application of CE is rare. Harvest reductions are often employed by straight forward quota reductions. However, in some circumstances a state may wish to employ CE over mandated trip limits or seasons to avoid issues of dead discards. Such proposals should be allowed to be submitted for TC and Board review. The only recent example of commercial CE is when NC used a bycatch percentage of the catch instead of a 100-pound trip limit for weakfish. The reason for the CE was to avoid massive discards. It would be important to keep such options on the table and allow the specific Board/PRT/TC to review such proposals.

### **5. Should measures that cannot be quantified be permitted under CE?**

Measures that cannot be quantified should not be permitted under CE if their sole purpose is for credit in the reduction.

The submitting state must present quantifiable evidence that CE is necessary, not just use manipulation of models to make their case. The standards for state conservation equivalency proposals in the guidance document should be rigidly adhered to. For proposed CE measures where data provided are presented correctly, the Board must carefully consider whether the presented data sets are being applied correctly and with their intent in mind based on survey/study design. Board and TC review should not be solely on sound survey design, appropriate time series, and accuracy of data analysis, but should pass judgment on if the proposed data application is appropriate or rather it is being 'stretched' beyond its intent (e.g., reducing APAIS estimates beyond the survey design of 2-month Wave estimates to monthly, weekly, or daily catch rates). A PSE threshold (e.g., 40%) would address this for APAIS data to prevent data being used for 'rare event' species that are beyond the scope of a coastwide or regional survey designed to produce statistically reliable annual estimates. A similar threshold of data precision needs to be applied to smaller, state conducted programs.



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As an example, the implementation of 'No Targeting Seasons' used in the Chesapeake Bay fishery in response to Addendum VI for Striped Bass included many assumptions on how angler behavior would change with the regulations. Many measures, assessments, or analyses approved by the Board are caveated with some admission that we cannot predict changes in angler behavior, but measures such as 'No Targeting Seasons' rely heavily on the prediction of assumed changes in angler behavior. The effect of a No Targeting Season is nearly impossible to measure, thus their contribution to a resulting reduction or increase is immeasurable. In a case such as this, the CE should have been required to provide the required reduction at the 18% level with equivalent uncertainty, and the 'No Targeting Season' could have been added as a buffer to make the proposal more conservative. Furthermore, the CE guidance document states: "The state submitting the conservation equivalency proposal has the obligation to ensure proposed measures are enforceable." Proposed CE measures that may be considered 'non-traditional' forms of management should have strict review and agreement in a clear enforceability by the LE committee.

### **6a. Are there minimum data standards for CE?**

A goal of 20% PSE was established by the ACCSP Recreational Technical Committee for sampling recreationally important species. NOAA Fisheries' advice is anything over 50% PSE should not be used for management. The Striped Bass Fishery Management Board set an acceptable maximum of PSE 40% for consideration of CE.

More flexibility may be appropriate when a stock is not over-fished nor over fishing is occurring, and stock abundance is stable or increasing.

States not meeting minimum data standards (PSE threshold) should consider a regional approach, as used for black sea bass and summer flounder, and by pooling their data (increasing sample size) to lower their cumulative PSE.

Any proposal must demonstrate a quantifiable reduction in harvest to be considered for CE.

The work group expressed concern regarding the use of citizen science in CE. Generally, the data gathered tends to be from a very select group with no means of validation. However, a program that has been on-going for a number of years with consistent sampling could provide useful insight as an index.

### **6b. Is there a required level of review of the data sets used if not within the bounds of the minimum data standards?**



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A set of the most appropriate models and level of analytical review for data sets should be identified prior to the TC review. This should provide guidance for the TC and lead to more open discussion. A cap on the maximum number of proposals, plus an earlier timeline for submittal for state proposals, should be established to facilitate a more extensive review.

Any analyses that do not meet approved precision standards but are included for consideration should undergo sensitivity analyses to determine the effects on the stock due to modest proposed state changes from coast wide measures.

When evaluating closed periods, availability should be considered. Even within a month, availability can be very different, particularly when comparing the beginning and end. Any closed period should come from a period of high availability and include at least two weekend periods (Friday, Saturday and Sunday). Pooling of several years' worth of data should be encouraged for evaluation.

### **6. Should there be a time limit on CE programs (set number of years, assessment cycle, etc.)?**

While a conservation equivalency program can be proposed to a species management board at any time, an approved program timeline should align with the next scheduled benchmark stock assessment. If an approved CE program consistently meets program objectives, achieves the proposed measures with the management actions implemented, and if stock conditions remain favorable, a request for an extension should be made to the species management board at the end of the project period. Extensions for successful conservation equivalency programs should not exceed the next scheduled benchmark stock assessment.

Though the timing of compliance reports may not coincide with CE program timelines and data collection, the work group feels annual updates for future approved conservation equivalency programs should be provided in species compliance reports. The updates should provide an overview of the program and approved measures, as well as a narrative describing the success or limitations of achieving the effects of the management measures. The updates should be reviewed by the species Plan Review Team and, if deemed necessary, sent to the species Technical Committee for further evaluation to determine the efficacy of the measures implemented and to provide comment back to the Board.

### **7. Should stock status impact CE? If so, how? Example, if a stock is declared OF/OFO then CE be re-evaluated?**



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CE should be re-evaluated after any benchmark stock assessment. If a stock is declared overfished, CE should not be allowed. CE could not be reinstated until stock status returned to not overfished. The work group considered different categories of overfishing. If overfishing only occurred in the terminal year or was slightly above the threshold for two recent years, use of CE is not limited.

The work group devised additional questions. If a stock is determined overfished and CE is no longer allowed, do new coast wide measures automatically kick in? Or, if states had CE and for some reason there are no recommended changes for the upcoming year, are the current CE measures grandfathered in? It is possible F is trending down and the stock hasn't had time to rebound yet but status quo measures would be recommended.

The states always have the option to be more conservative. If a state wants to introduce more conservative measures, would they have to use the CE process, have an analysis done, and reviewed by a TC? If CE is prohibited while overfished, how would the more conservative measures be evaluated?