

Atlantic States Marine Fisheries Commission

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



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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 equivalency¹ 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 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.

¹ At the time of approval of this policy, the Summer Flounder, Scup and Black Sea Bass FMP includes conservation equivalency provisions that allow the Board and the Mid-Atlantic Fishery Management Council set state specific/regional recreational measures in lieu of a coastwide measure. This application of conservation equivalency is different than the conservation equivalency described in this document and the guidelines in this document do not apply to that specific application of conservation equivalency in the Summer Flounder, Scup and Black Sea Bass FMP.

General Policy Guidance

The use of conservation equivalency is an integral part of the Commission management process that allows the use of alternative management programs from FMP standards.

During the development of a management document the Plan Development Team (PDT) should recommend if conservation equivalency should not be permitted for that species action. The default is that any management measure is subject to conservation equivalency unless otherwise specified in the FMP. The board will provide a specific determination if conservation equivalency is not allowed for the measure approved in the fishery management document, since conservation equivalency may not be appropriate or necessary for all management actions. During the approval of a management document the board will make the final decision on the exclusion of conservation equivalency.

The Plan Review Team (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 and forward a report to the management board.

States have the responsibility of developing conservation equivalency proposals for submission to the Board Chair (see standards detailed below) and the PRT will serve as the “clearing house” for review of conservation equivalency proposals. Upon receiving a conservation equivalency proposal, the PRT will initiate a formal review process as detailed in this guidance document. The state submitting the 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 will be described and evaluated in the annual compliance review and included in annual FMP Reviews, unless different timing is approved by the board.

Management boards should place a limit on the length of time that a conservation equivalency program can remain in place without re-approval by the board. The board will evaluate conservation equivalency programs after stock assessments if the stock status has changed. 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.

Conservation equivalency proposals and board approval are not required when states adopt a single more restrictive measure 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 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).

When Conservation Equivalency will not be Permitted

Stock Status Conditions

The board will consider if a change in the use of conservation equivalency is necessary after each stock assessment where, conservation equivalency is not permitted if the stock is overfished or depleted, unless allowed by a board via a 2/3 majority vote (the rules on voting in Article II. Section 1 of the Rules and Regulations apply). If the board determines conservation equivalency is not permitted, it will apply to future actions of the board. The board can determine if conservation equivalency is not permitted across the entire FMP or for a specific sector of the fishery within the FMP (e.g., commercial measures or recreational measures).

Measures that Cannot be Quantified

Only measures that have a quantifiable impact on achieving the FMP standards will be considered when calculating and approving conservation equivalency proposals. Measures that can't be quantified can be implemented as a buffer but will not be considered in conservation equivalency calculation credit. The state submitting a proposed measure for credit must be able to demonstrate, to the satisfaction of the TC, the measure has a measurable impact on the removals or management target the action is intended to achieve. The TC will provide feedback to the board if a measure is quantifiable or non-quantifiable. Non-quantifiable measures could include² 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

Coastwide measures are intended to achieve a specific result when all states implement the measures. However, at the state level the impact on removals or other metric may be different, therefore, if a state proposes conservation equivalency, that conservation equivalency proposal must demonstrate equivalency with the state level impact of the coastwide measure, if the coastwide measure were implemented in that state. For example, a coastwide measure may be projected to achieve a 10% coastwide reduction. However, in a particular state, the coastwide measure may be projected to achieve a 15% reduction in that state alone. If that state wants to propose a conservation equivalency program, that conservation equivalency program must demonstrate a 15% reduction, not a 10% reduction.

² These are a few examples of non-quantifiable measures at the time of approval of this document. Methods to demonstrate it is quantifiable may be developed in the future that would change the status of a tool.

Standards for State Conservation Equivalency Proposals

The state seeking conservation equivalency has the burden of proving its proposed measure provides at least as much conservation as the FMP standard. Each state seeking to implement a conservation equivalency program must submit a proposal to the board chair for board 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. Boards may set a cap on the number of options submitted.

State conservation equivalency proposals 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.
 - If data allows, 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 conservation equivalency proposals and build on their strengths (e.g., length of closed season). Some states may not be able to participate in conservation equivalency because their data will not meet the standards established by the TC. The TC may suggest the state consider alternative criteria, or states alternatives, such as submitting a joint proposal with neighboring states. It remains the states responsibility to draft the proposal it seeks to advance to the board.
 - 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 include at least two consecutive weekend periods (Friday, Saturday and Sunday). Pooling of several years' worth of data should be encouraged for evaluation.

4. Each proposal must justify any deviations from the conservation equivalency procedures detailed in 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

The following is a list of the steps and timelines for review and approval of conservation equivalency proposals.

1. Conservation equivalency will be approved by the board and where possible implemented at the beginning of the fishing year.
2. If a state is submitting a proposal outside of an implementation plan process, it 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 board chair (the chair will consult with the appropriate committee if necessary). Proposals submitted less than two weeks before a meeting will not be considered for approval at that meeting.
3. The board chair will submit the proposal to the PRT for review. The PRT will notify the state if the proposal is missing required components.
4. Upon receipt of the proposal, the PRT will determine what additional input will be needed from: the TC, Law Enforcement Committee, or Committee on Economics and Social Sciences. 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, socioeconomic 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 advisory panel may be asked for comments on a proposal prior to completion of other committee reviews. The chair of the advisory panel will compile the advisors' comments and provide a report to the 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 will identify potential cumulative effects of all conservation equivalency plans under individual FMPs (e.g., impacts on stock parameters).
7. The PRT reviews will address whether a state's proposal followed the conservation equivalency 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 report as well as other factors such as impacts to adjoining states and federal management programs. Ultimately, the board must determine whether the proposed action provides at least as much conservation as the measure the proposals intends to replace. When a board cannot meet in a timely manner and at the discretion of the board and Commission Chair, a board has the option to have the ISFMP Policy Board approve the conservation equivalency proposal.

Plan Review Following Approval and Implementation

1. Annually thereafter, states will evaluate the performance of the approved conservation equivalency programs in their compliance reports submitted for annual FMP Reviews, unless otherwise specified. The PRT will annually review the conservation equivalency program.
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.

Coordination Guidance

The Commission's ISFMP has a number of joint or complementary management programs with NOAA Fisheries and the Regional 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 regulations in the exclusive economic zone (EEZ). 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 should consider the length of time that it will take for regulations to be implemented in the EEZ, whether NOAA Fisheries considers federal regulation possible under the National Standards 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.