

# **Amendment 19**

## to the Atlantic Sea Scallop Fishery Management Plan

Including a  
Draft Environmental Assessment (EA)

Prepared by the New England Fishery Management Council, in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council

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## **1.0 INTRODUCTION AND BACKGROUND**

### **1.1 BACKGROUND**

This document contains the measures considered by the New England Fishery Management Council for Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP), consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This document also contains information and supporting analyses required under other applicable law, including the National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA), and Executive Order 12866.

This action is under development to address one specific issue that has existed in the sea scallop fishery for some time, late implementation of fishery specifications. For various reasons sea scallop fishery specifications are not always in place on or before March 1, the start of the federal scallop fishing year. This causes negative impacts on the scallop fishery and resource, as well as administrative challenges. This action is considering a range of alternatives to enable scallop specifications to be implemented closer, if not for the start of the fishing year, March 1.

The preferred alternative proposed in Amendment 19...*(to be completed after Council final action scheduled for September 2015).*

The proposed management action as well as other alternatives considered by the Council in Amendment 19 are described Section 2.0 of this document. This amendment document builds on the information and analyses provided in the last Environmental Impact Statement prepared for this FMP (Amendment 15) and most recent action approved by the Council in 2014 (Framework 26). Updates have been included in this action related to background information (Affected Environment, Section 4.0) and impact analyses (Section 5.0) wherever possible; the Amendment 15 FEIS and Framework 26 EA should be referenced for more comprehensive information.

### **1.2 PURPOSE AND NEED**

The primary need of this amendment is to improve the Scallop FMP so that fishery specifications are better aligned with the start of the scallop fishing year. The primary purpose or objective of this action is to amend scallop regulations to: 1) reduce potential economic and biological consequences from late implementation of specifications, and 2) reduce overall administrative burden associated with late implementation.

Late implementation of final measures can lead to complex in-season changes in fishery allocations, confusion and uncertainty for the fleet, as well as potentially negative impacts on the resource and fishery if effort shifts into areas or seasons that are less desirable as a result of delayed measures.

The measures developed and analyzed in this action are intended to meet the primary need and objectives summarized in Table 1.

**Table 1 - Purpose and Need for Scallop Amendment 19**

<i>Need for Amendment 19</i>	<i>Corresponding Purposes for Amendment 19</i>
To improve the Scallop FMP so that fishery specifications are better aligned with the start of the scallop fishing year	<ul style="list-style-type: none"><li>• Amend scallop regulations to reduce potential economic and biological consequences from late implementation of specifications</li><li>• Amend scallop regulations to reduce overall administrative burden associated with late implementation</li></ul>

### **1.3 SUMMARY OF SCALLOP FISHERY MANAGEMENT PLAN**

#### **1.3.1 Summary of past actions**

The Atlantic Sea Scallop FMP management unit consists of the sea scallop *Placopecten magellanicus* (Gmelin) resource throughout its range in waters under the jurisdiction of the United States. This includes all populations of sea scallops from the shoreline to the outer boundary of the Exclusive Economic Zone (EEZ). While fishing for sea scallops within state waters is not subject to regulation under the FMP except for vessels that hold a federal permit when fishing in state waters, the scallops in state waters are included in the overall management unit. The principal resource areas are the Northeast Peak of Georges Bank, westward to the Great South Channel, and southward along the continental shelf of the Mid-Atlantic.

The Council established the Scallop FMP in 1982. A number of Amendments and Framework Adjustments have been implemented since that time to adjust the original plan, and some Amendments and Framework Adjustments in other plans have impacted the fishery. This section will briefly summarize the major actions that have been taken to shape the current scallop resource and fishery, but a complete list of the measures as well as the actions themselves are available on the NEFMC website (<http://www.nefmc.org/scallops/index.html>).

Amendment 4 was implemented in 1994 and introduced major changes in scallop management, including a limited access program to stop the influx of new vessels. Qualifying vessels were assigned different day-at-sea (DAS) limits according to which permit category they qualified for: full-time, part-time or occasional. Some of the more notable measures included new gear regulations to improve size selection and reduce bycatch, a vessel monitoring system to track a vessel's fishing effort, and an open access general category scallop permit was created for vessels that did not qualify for a limited access permit. Also in 1994, Amendment 5 to the Northeast Multispecies FMP closed large areas on Georges Bank to scallop fishing over concerns of finfish bycatch and disruption of spawning aggregations (Closed Area I, Closed Area II, and the Nantucket Lightship Area - See Figure 1).

In 1998, the Council developed Amendment 7 to the Scallop FMP, which was needed to change the overfishing definition, the day-at-sea schedule, and measures to meet new lower mortality targets to comply with new requirement under the Magnuson-Stevens Act. In addition,

Amendment 7 established two new scallop closed areas (Hudson Canyon and VA/NC Areas) in the Mid-Atlantic to protect concentrations of small scallops until they reached a larger size.

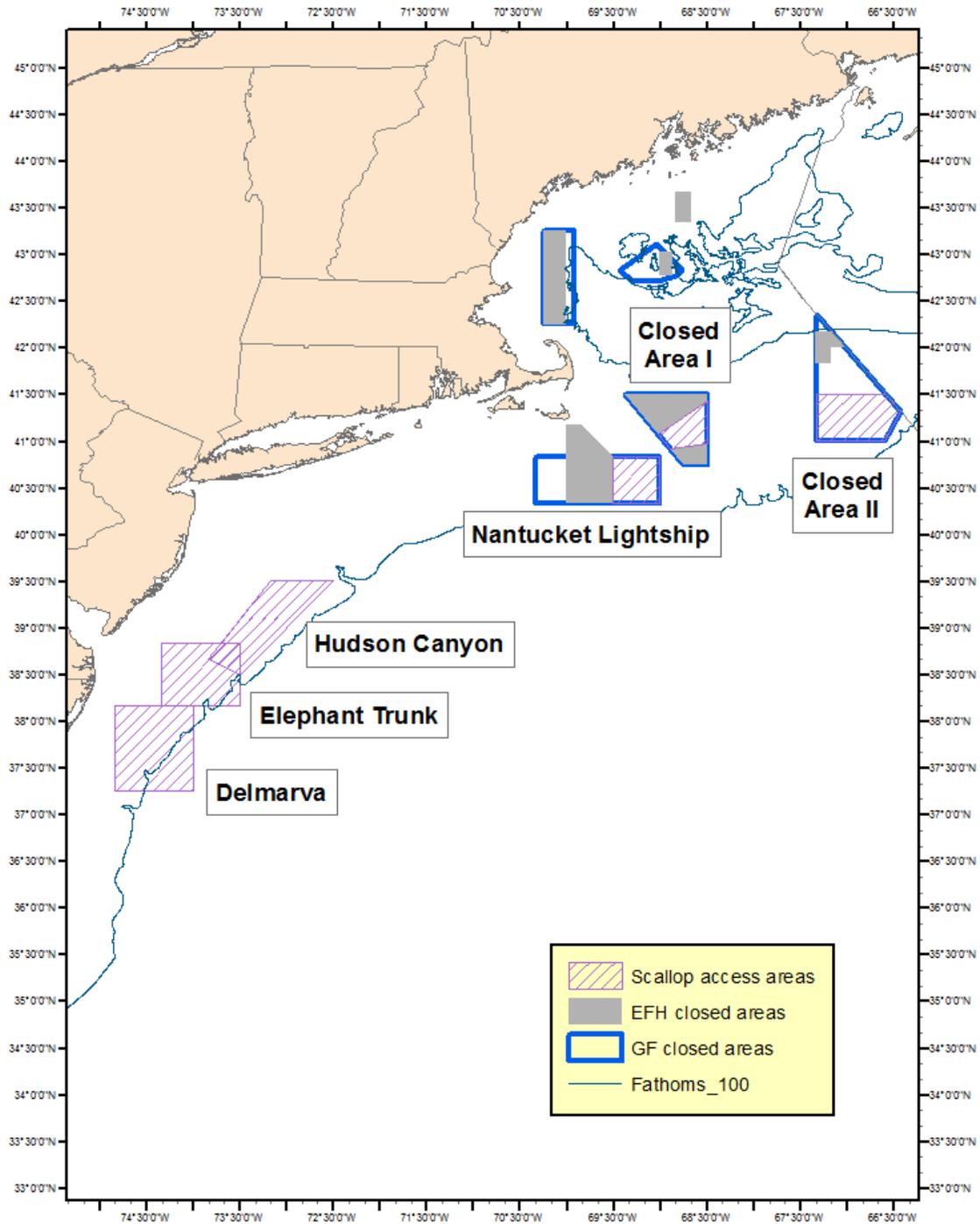
In 1999, Framework Adjustment 11 to the Scallop FMP allowed the first scallop fishing within portions of the Georges Bank groundfish closed areas since 1994 after resource surveys and experimental fishing activities had identified areas where scallop biomass was very high due to no fishing in the intervening years. This successful “experiment” with closing an area and reopening it for controlled scallop fishing further motivated the Council to shift overall scallop management to an area rotational system that would close areas and reopen them several years later to prevent overfishing and optimize yield.

In 2004, Amendment 10 to the Scallop FMP formally introduced rotational area management and changed the way that the FMP allocates fishing effort for limited access scallop vessels. Instead of allocating an annual pool of DAS for limited vessels to fish in any area, vessels had to use a portion of their total DAS allocation in the controlled access areas defined by the plan, or exchange them with another vessel to fish in a different controlled access area. The amendment also adopted several alternatives to minimize impacts on EFH, including designating EFH closed areas, which included portions of the groundfish mortality closed areas.

As the scallop resource rebuilt under area rotation biomass increased inshore and fishing pressure increased by open access general category vessels starting in 2001. Landings went from an average of about 200,000 pounds from 1994-2000 to over one million pounds consistently from 2001-2003 and 3-7 million pounds each year from 2004-2006 (NEFMC, 2007). In June 2007 the Council approved Amendment 11 to the Scallop FMP and it was effective on June 1, 2008. The main objective of the action was to control capacity and mortality in the general category scallop fishery. Amendment 11 implemented a limited entry program for the general category fishery where each qualifying vessel received an individual allocation in pounds of scallop meat with a possession limit of 400 pounds. The fleet of qualifying vessels receives a total allocation of 5% of the total projected scallop catch each fishing year. This action also established separate limited entry programs for general category fishing in the Northern Gulf of Maine and an incidental catch permit category (up to 40 pounds of scallop meat per trip while fishing for other species).

More recently Amendment 15 to the Scallop FMP was implemented in 2011. This action brought the FMP in compliance with new requirements of the re-authorized MSA (namely ACLs and AMs) as well as a handful of other measures to improve the overall effectiveness of the FMP.

Figure 1 – Past and present scallop management areas (purple hatched areas) with other reference areas



### **1.3.2 Background on late implementation issue**

The Scallop FMP is set up to review and adjust management measures at least every two years through the framework adjustment process. Framework measures typically include annual catch limits (ACLs), days-at-sea (DAS), access area trip allocations, individual fishing quota (IFQ) allocations, and TACs for vessels with LAGC Northern Gulf of Maine (NGOM) permits. In most cases, if not all, the Council also includes a handful of additional measures intended to improve overall management of the scallop fishery or specific aspects of the Scallop FMP. These measures can be fairly minor and easily addressed, or major, complicated, and time consuming issues.

Ideally frameworks with fishery specifications should be in place by the March 1, the start of the scallop fishing year, but in most recent years, the framework measures take effect in May, June or even later. It is important to understand the general timeline of the scallop specification process to appreciate the challenges that face this program. Typically the Council begins developing a biennial framework in June. During the late spring and summer scallop surveys are conducted by both the federal government as well as a handful of other organizations that are primarily funded through the Scallop Research Set-Aside (RSA) program to estimate scallop biomass in specific areas.

Depending on weather and availability of research vessels the Northeast Fisheries Science Center (NEFSC) completes the annual scallop survey before mid-July, and preliminary biomass estimates are not usually available until early fall. This has sped up to some degree in recent years to mid-August, but even that does not leave enough time to fully develop and analyze fishery specifications alternatives for the Council to take action on in September. In most years multiple survey estimates are combined and this does take time to put all the various survey results together. In order to incorporate the most recent available scallop survey information, the Council has been taking final action in November.

After the Council takes final action in November the framework document goes back and forth several times between Council staff and GARFO staff to complete the various regulatory requirements has required about 5 to 6 months for reviewing the action and completing the rulemaking process once the Council submits the action for review and implementation. The earliest we could implement an action submitted in early-December is about May 1 (e.g., Northeast (NE) Multispecies framework adjustments approved by the Council in November are implemented on May 1).

#### **1.3.1.1 History of late implementation of scallop specifications**

This is not a new issue. The Council has considered changing the fishing year in three different actions, but a change was never adopted due to scallop industry opposition.

*Include summary of actions that have considered changing the fishing year and examples of recent frameworks that have been late and why*

### **1.3.1.2 Summary of changes that could improve timing of scallop specifications but do not meet the purpose of this action to amend scallop regulations**

There are a handful of changes that could be considered that would potentially improve the timing of scallop fishery specifications so that they are better aligned with the start of the scallop fishing year. These changes do not require a change in the scallop regulations, so were not considered in this action, which is limited to measures that would require a regulatory change. These ideas could be considered best practices or ideas to consider that may improve overall timing related to developing, evaluating and implementing scallop specifications before the start of the fishing year.

First, modify when and how the federal scallop survey is conducted. Timing of the federal survey is not a measure that would require changes in fishing regulations, but it could allow for some time savings overall if surveys were done simultaneously. For example, if the dredge component of the federal scallop survey was conducted on industry vessels, the habcam component of the federal survey could be conducted on a different vessel (i.e. UNOLS vessel R/V Sharp). This approach could enable survey results from both methods to be available earlier if it is more efficient to conduct the surveys on different vessels.

Second, if the final Council action was moved several weeks earlier it may be possible to implement final measures earlier. September is too early for all survey data to be processed and developed into fishery specification alternatives. Arguably, final action in October would provide more time. It still may be too fast, but if fishery specification alternatives are relatively straight forward it may enable some time savings overall. There are other factors to consider such as other Council decisions and budget constraints that may prevent this change. For example, the Council also currently takes final action on groundfish specifications in November, which works in that FMP because the start of the fishing year is May 1.

Third, if frameworks with fishery specifications did not include other measures the overall time needed to develop, analyze, and review the framework would be reduced. Many times the Council includes a handful of other measures in fishery specification framework actions. These measures can be important to the FMP, but often take valuable time to develop, analyze and review. If the Council only included fishery specifications in scallop framework action it is possible that specifications could be implemented sooner, but not March 1. Even with only specifications there is not enough time for final submission, review and approval of a framework action between the end of November when the Council takes final action and March 1.

Lastly, if specifications are set for two years at a time final measures would definitely be in place for year 2 of the framework action. There may still be a similar delay for year 1, but all the measures for year 2 would be ready for March 1. This approach has risks if updated survey results suggest different allocations for year 2 (higher or lower), but this approach would reduce overall administrative and ensure measures are in place by March 1 every other year.

In summary, all of these ideas could be considered and would not require a change in the scallop regulations, and there may even be others.

## 2.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

### 2.1 NO ACTION

The no action for setting scallop fishery specifications is by framework action at least biennially, with default measures. For some years the Council sets fishery specifications for two years with default measures for a third year. And in more recent years the Council has set fishery specifications for one year only, with default measures for the second year. Typically the default measures for limited access vessels have been set at 75% of the projected DAS with no access area trips and the default measures for LAGC vessels has been set at 100% of the projected catch for that component of the fishery. Default measures can and do vary. For example, if access in a particular area is relatively certain for a default year, some access in that area may be included in the default measures.

The Council reviews scallop fishery specifications at a minimum of two Council meetings since they are developed by framework action. Typically the Council initiates a scallop fishery specification framework at the June Council meeting, and final action is taken at the November Council meeting. For example, when the Council set fishery specifications for fishing year 2015 the Council initiated Framework 26 in June 2014, final action was taken in November 2014, and final measures were implemented on May 1, 2015, two months after the start of the 2015 fishing year (March 1).

The scallop regulations related to setting fishery specifications are described below and a general timeline for developing and implementing fishery specifications under No Action is described in Table 2. The framework adjustment regulations include details about what information is required to be in the framework action; for example, how to specify OFL, ABC, ACL, ACTs, and accountability measures (AMs). There is a long list of measures that are considered frameworkable (§648.55 (f)). The Council can under No Action recommend that a framework be published as a final rule, but it must provide support and analysis justifying why a proposed rule should not be published (§648.55 (i)).

*§648.55 Framework adjustments to management measures.*

*(a) At least biennially, the Council shall assess the status of the scallop resource, determine the adequacy of the management measures to achieve scallop resource conservation objectives, and initiate a framework adjustment to establish scallop fishery management measures for the 2-year period beginning with the scallop fishing year immediately following the year in which the action is initiated. The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. The framework adjustment shall establish OFL, ABC, ACL, ACT, DAS allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, AMs, and other measures to achieve FMP objectives and limit fishing mortality. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of*

*rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.*

**Table 2 – Under No Action, the timeline would be similar to the scallop specifications framework process under Framework 26 (specifications for FY2015) (This is a best case scenario for an extremely streamlined process and outlines the similar dates for 2015/2016 under the same schedule used for Framework 26 development and rulemaking in 2014/2015)**

PROJECT PHASE	STARTING	ENDING	PROJECT PHASE	STARTING	ENDING
<b>COUNCIL INITIATES FRAMEWORK</b>	6.17.2014	6.19.2014	<b>FORMAL EA SUBMISSION</b>	2.18.2015	2.18.2015
<b>DEVELOPMENT</b>	5.1.2014	11.1.2014	<b>PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED<sup>2</sup></b>	2.20.2015	3.17.2015
<b>PDT MEETINGS (4)</b>	5.1.2014	11.1.2014	<b>PROPOSED RULE COMMENT PERIOD (15 DAYS)</b>	3.17.2015	4.1.2015
<b>ADVISORY PANEL/COMMITTEE MEETINGS (4)</b>	5.15.2014	11.14.2014	<b>FINAL RULE PREPARED (INCL. ADDRESSING PUBLIC COMMENTS)</b>	3.17.2015	4.8.2015
<b>COUNCIL TAKES FINAL ACTION</b>	11.18.2014	11.20.2014	<b>FINAL RULE SUBMITTED TO HQ AND PUBLISHED</b>	4.9.2015	4.21.2015
<b>COUNCIL STAFF FINALIZES EA<sup>1</sup></b>	11.24.2014	1.22.2015	<b>RANGE OF DATES FOR EFFECTIVENESS<sup>3</sup></b>	5.1.2015	5.21.2015
<b>EA PRE-SUBMITTED TO NMFS</b>	1.22.2015	1.22.2015			
<b>EA REVIEWED BY NMFS</b>	1.26.2015	2.16.2015			
<b>EA COMMENTS INCORPORATED BY COUNCIL STAFF</b>	2.16.2015	2.23.2015			

**TOTAL WEEKS: ~46-49 weeks**

<sup>1</sup> If Framework only has specs alternatives and is easier to analyze, there could be a time savings in the stage.

<sup>2</sup> Proposed rule will be developed and reviewed during time between Council final action and EA submission, so it can be submitted immediately after NMFS receives EA from Council.

<sup>3</sup> Effective date includes a range, depending on whether or not APA waiver for 30 day delay in effectiveness was cleared or not.

***Rationale:***

This is how scallop specifications have been set in the scallop fishery for years. Having the final action meeting in November enables the Council to use the most recent survey information to inform fishery allocations. Multiple surveys are typically conducted in many resource areas only several months earlier (May-July). Setting specifications through framework action enables the Council more flexibility to adjust other measures that are frameworkable, rather than only limited to fishery specifications. This flexibility is beneficial because it allows relatively small adjustments to the plan to be made on a regular basis that can improve the overall management program. However, there are costs as well. When other measures are included in a framework action beyond fishery specifications they can slow the overall process down because they typically take more time to develop, analyze, and review for implementation.

Additional rationale for the No Action process is that it has increased opportunities for public input. The framework process requires a minimum of two Council meetings before measures are final. There are also a handful of other meetings (i.e. PDT, AP and Committee) in between the Council meetings where the public can comment on the development and analysis of alternatives. Under the current process the proposed rule is not published until after the Council takes final action and the final EA is approved by NMFS. The proposed rule therefore includes the Council's preferred alternative and the complete final EA is available for the public to consider when making public comments. This approach may improve overall public awareness and ability to comment on proposed regulations because the Council's preferred alternative is included and more analyses are available.

**2.2 DEVELOP A SPECIFICATION SETTING PROCESS IN THE SCALLOP FMP**

This alternative would change the process for setting specifications in the scallop fishery. Currently a framework action is required to modify scallop specifications. This alternative would include a new specifications setting process that would not require a framework action. The specific measures that could be adjusted through the specification process include:

- OFLs, ABCs, ACLs, and ACTs, including sub-ACLs for the LA and IFQ fleets
- DAS open area allocations
- Possession limits
- Access area rotational schedules and seasons
- Access area poundage and fleet-wide trip allocations
- Incidental TTAC
- NGOM TAC

<p>Note: This is a strawman list only. Council may decide to include more items, but list should be as limited as possible otherwise higher risk of triggering an EA.</p>
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Under this specifications process the PDT would review updated survey information and identify a range of potential fishery specifications. Similar to the current Atlantic herring specifications process, the Scallop Oversight Committee would consider PDT recommendations, along with any public comment received, and recommend the appropriate specifications to the Council for a

certain period. The Council would need to select this timeframe (e.g., continue with the current process of setting up to 3 years of specifications, with third year being default measures intended to be replaced). The Council would then review these recommendations, including any additional public comment, and would recommend specifications to NMFS.

So long as the recommended specifications fall within the range of previously analyzed specifications than the Council would not have to develop an environmental assessment. Instead, the PDT could utilize a Specifications Information Report (SIR), rather than an Environmental Assessment. SIRs are not an exemption from NEPA requirements or a substitute; they are a method to document NEPA compliance. SIRs are a decision document that provides an explanation of why a supplemental NEPA analysis is unnecessary. SIRs can help the overall process go slightly faster, but they are only applicable in limited situations. Creating the opportunity to potentially use a SIR requires upfront work, and in the end a SIR may not be applicable if the environment changes. For example, if any of the conditions change beyond what was previously considered, such as bycatch or protected resources, a SIR may not be appropriate. Staff will need to work with the Regional Office before a specification process is used to determine if a SIR is applicable that year or not.

A SIR document should describe the proposed action and explain that there is no significant new information or substantially changed circumstances. The SIR should demonstrate how and why the proposed action (i.e., specifications) and its effects fall within the scope of a previous and related NEPA document.

The SIR, which can be incorporated into the MSA document being developed for the action, should include the following elements:

- Title page and date
- Introduction
- Purpose
- Background
- Changes from the original/parent action
- Evaluation of new information/new circumstances, change to action
- Summary of public involvement/comment
- Conclusions/Decision
- Preparers and persons consulted
- References
- Applicable law section

A SIR would likely reduce the time needed to develop and analyze specification alternatives compared to developing a full framework action with environmental assessment. However, there is no guarantee that a SIR will be appropriate because conditions change, and this will have to be considered for each individual action. It should also be pointed out that the Council would still not take action until the November Council meeting, whether a SIR is used or not. Therefore, to potentially further improve overall timing another possible strategy is to publish the proposed rule before the Council takes final action (See Section 2.2.1). This is not a process that would require Council action, and to date is not a process General Counsel is supportive of.

This specifications process is similar to the framework adjustment process in that specifications still require rulemaking, generally speaking, a proposed and final rule in accordance with APA requirements. In addition, unless the specifications are already covered under a previous NEPA analysis, they would require an EA at a minimum, similar to frameworks. NMFS and the Council must still adhere to all applicable laws when developing a specifications package (e.g., RIR, IRFA/FRFA, APA).

Note: The Council needs to identify the timeframe for specifications. Would they be set for 2 years, with the second year default only, or would they be set for three years, with the third year default only.

Default measures are flexible, but Council should provide guidance on whether they should remain similar to what they have been (75% of DAS only) or closer to what full specifications are expected to be for the default year. If the latter, it may be easier to argue that a proposed rule could be published earlier because final measures would most likely be very similar to default measures approved the year before.

Does the Council need to develop something in the event NMFS does not approve specifications – would default measures remain in place or would NMFS have authority to implement something different?

**Table 3 – Schematic of timeline for setting scallop specifications under a new specifications process. Highlights indicate where process changes due to use of specifications compared to No Action **DRAFT****

PROJECT PHASE	STARTING	ENDING	PROJECT PHASE	STARTING	ENDING
COUNCIL INITIATES FRAMEWORK	6.17.2014	6.19.2014	FORMAL EA SUBMISSION	12.30.2014	12.30.2014
DEVELOPMENT	5.1.2014	11.1.2014	PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED <sup>7</sup> (3 WEEKS)	1.2.2015	1.23.2015
PDT MEETINGS (4)	5.1.2014	11.1.2014	PROPOSED RULE COMMENT PERIOD (15 DAYS) <sup>8</sup>	1.23.2015	2.6.2015
ADVISORY PANEL/COMMITTEE MEETINGS (4)	5.15.2014	11.14.2014	FINAL RULE PREPARED (INCL. ADDRESSING PUBLIC COMMENTS)	1.24.2015	2.13.2015
COUNCIL TAKES FINAL ACTION <sup>4</sup>	11.18.2014	11.20.2014	FINAL RULE SUBMITTED TO HQ AND PUBLISHED (3 WEEKS)	2.13.2015	3.6.2015
<b>COUNCIL STAFF FINALIZES EA<sup>5</sup></b>	<b>11.20.2014</b>	<b>12.4.2014</b>	RANGE OF DATES FOR EFFECTIVENESS <sup>9</sup>	3.6.2015	4.5.2015
EA PRE-SUBMITTED TO NMFS	12.4.2014	12.4.2014			
EA REVIEWED BY NMFS ( <b>2 WEEKS</b> ) <sup>6</sup>	12.4.2014	12.21.2014			
EA COMMENTS INCORPORATED BY COUNCIL STAFF (~1 WEEK)	12.21.2014	12.29.2014			

**TOTAL WEEKS: ~38-42 weeks**

<sup>4</sup> The specifications process does not require two Council meetings to review alternatives, so it may be possible to take final action at the September Council meeting in some years. This could save us potentially up to 2 months. Not sure how this would work with sub-ACLs for groundfish.

<sup>5</sup> EA would be submitted sooner in than current No Action Framework because measures would be limited to allocations and it is assumed that the analysis would therefore be simpler (estimated savings of 6 weeks, which is entirely dependent upon staff's ability to front load work in light of other work responsibilities). A SIR may potentially be used instead of an EA, which could save some time on submission, but it is unclear on how much savings would result. The discussion of the appropriate NEPA document will be a topic amongst Council and GARFO staff for each specifications action.

<sup>6</sup> We anticipate that a simpler EA could result in a shorter NMFS review period.

<sup>7</sup> Proposed rule will be developed and reviewed during time between Council final action and EA submission, so it can be submitted immediately after NMFS receives EA from Council.

<sup>8</sup> This is the shortest that the comment period would be. There may be instances that would justify a longer comment period (~30 days), which would push back the effective date by 2 weeks.

<sup>9</sup> Effective date includes a range, depending on whether or not APA waiver for 30 day delay in effectiveness was cleared or not.

***Rationale:***

Specifications also do not require the Council to discuss measures over the course of two Council meetings like the framework process. While the Council may discuss specifications at more than one meeting, it is not required. Therefore, there could be a time savings. Secondly, by minimizing these actions to just specifications (i.e. not developing a framework that includes other non-allocations alternatives), it is more likely a SIR could be utilized.

A SIR would likely reduce the time needed to develop and analyze specification alternatives compared to developing an environmental assessment. However, there may be instances where an EA is necessary, depending on the allocations considered and if they diverge greatly from a previous NEPA analysis. Additionally, the Council would still likely not take action on the SIR until the November Council meeting. Therefore, to further improve overall timing this action could also consider a process that includes publishing the proposed rule before the Council takes final action. See Section 2.2.1.

Overall, adding the ability to adjust allocations through a specification setting process rather than a framework would be another tool in the toolbox that could result in some time savings, but would not guarantee allocations in place by the March 1 start of the scallop fishing year.

**2.2.1 Options for when to publish the proposed rule for the specifications process**

One way to help implement fishery specifications closer to the start of the fishing year is to publish the proposed rule for the specifications before the Council takes final action. However, it should be clarified that the proposed rule that would be published earlier would actually be the default measures previously approved by the Council the year before. For example, in the North Pacific Groundfish FMP specifications are set for two years at a time. The first year is implemented as soon as possible (usually after the start of the fishing year) and the second year is not proposed until the fall the following year, but before Council takes final action on updated specifications for that year. The proposed rule includes the default measures approved in the previous action and highlights that there may be changes (up or down) after the Council reviews updated stock assessments and SAFE Reports during that year. The North Pacific Council then votes on specifications for two years while the proposed rule is out; the first year includes final measures for the second year of the previous action, and default measures for the next year. This process rolls over from year to year, setting specifications for two years at a time, but always finalizing the specifications for the second year with updated specifications; the last year from one action overlaps with the first year of the next action.

**2.2.1.1 Option A – Proposed rule published after Council takes final action (No Action)**

Similar to how the process currently works in this region, the Council would take final action on scallop specifications at the late November/early December Council meeting. Staff would then submit the final SIR or EA, and then the proposed rule would be published. This is usually several months after the Council takes final action (mid-March based on timeline in Table 2). Under the specification process the final document may be submitted earlier than it currently is because the specifications process does not allow other measures to be included, and the level of analysis may be less if the specifications are within the range already analyzed. But waiting to publish the proposed rule until after the Council takes final action and the final SIR or EA is submitted does not enable specifications to be in place in time for the start of the fishing year.

***Rationale:***

If the proposed rule is not published until after the Council takes final action and the final SIR or EA is approved by NMFS it can include a description of the Council's preferred alternative and the complete final EA is available for the public to consider when making public comments. This approach may improve overall public awareness and ability to comment on proposed regulations because the Council's preferred alternative is included and more analyses are available.

**2.2.1.2 Option B - Proposed rule published before Council takes final action**

Under this option NMFS would publish the default measures already approved by the Council in year two of the previous action in the fall before that fishing year begins. The Council will meet in September and review preliminary updated survey results and those could be highlighted in the proposed rule to give the public a better sense if the default measures already approved are expected to increase, decrease, or remain the same. Table 4 shows the potential timeline for a specification process with the proposed rule being published in October/November, before the Council has taken final action. In this case, final action for the Council would be scheduled in late November / early December, during the proposed rule comment period. NMFS would consider the Council's decision when drafting the final rule.

Note: General Council currently not supportive of this approach
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**Table 4 – Schematic of timeline for setting scallop specifications under a new specifications process if proposed rule can be published before Council takes final action. Highlights indicate where process changes due to use of specifications compared to No Action. There is a lot of uncertainty with the dates presented, and this timeline ultimately shows that this process may not result in any time savings compared to No Action, but a lot of administrative burden. DRAFT**

PROJECT PHASE	STARTING	ENDING	PROJECT PHASE	STARTING	ENDING
COUNCIL INITIATES FRAMEWORK	6.17.2014	6.19.2014			
DEVELOPMENT	5.1.2014	11.1.2014	PROPOSED RULE COMMENT PERIOD (30 DAYS) <sup>12</sup>	1.21.2015	2.20.2015
PDT MEETINGS (4)	5.1.2014	11.1.2014			
ADVISORY PANEL/COMMITTEE MEETINGS (4)	5.15.2014	11.14.2014	COUNCIL STAFF UPDATES EA AND RESUBMITS TO NMFS <sup>13</sup>	11.20.2014	2.1.2015
COUNCIL LOOKS AT RANGE OF ALTERNATIVES	9.30.2014	10.2.2014			
PROPOSED RULE AND NEPA DOCUMENTATION DRAFTED, BASED ON DEFAULT MEASURES AND INITIAL COUNCIL INPUT, AND REVIEWED THROUGH NMFS <sup>10</sup>	10.3.2014	12.17.2014	ASSUMING LOGICAL OUTGROWTH, FINAL RULE SUBMITTED TO HQ AND PUBLISHED <sup>14</sup> (3 WEEKS)	2.27.2015	3.20.2015
PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED (5 WEEKS) <sup>11</sup>	12.17.2014	1.21.2015	IF NOT LOGICAL OUTGROWTH, NEW PROPOSED RULE MUST BE PUBLISHED COMMENTS PERIOD, FOLLOWED BY FINAL RULE	2.27.2015	6.1.2015
COUNCIL TAKES FINAL ACTION	11.18.2014	11.20.2014	RANGE OF DATES FOR EFFECTIVENESS <sup>15</sup>	3.20.2015	7.1.2015

**TOTAL WEEKS: ~40-60 weeks**

<sup>10</sup> There is much uncertainty in how long this would take and the entire process may fall apart here (note that in this example, the date the EA is finalized is a month after Council final action). A proposed rule cannot publish until NEPA documentation is drafted that analyzes the alternatives, so both the rule and the NEPA documentation must be drafted while staff are still heavily involved with developing the action for Council final decision. As a result, there may be no time savings, as the schedule shows. In addition, the EA may not be completed before Council takes final action, which requires that the EA be updated again with the final selected alternatives and analysis.

<sup>11</sup> The review at Headquarters would likely take longer, due to the complexities of the Council already taking final action and a rule going out that is not exactly the information that the Council voted for as preferred. It is a possibility that Headquarters would request that we pull the rule to update it, and then resend once it reflects Council's final specifications. This would result in a timeline more similar to No Action, or potentially longer.

<sup>12</sup> Assuming longer comment period may be necessary.

<sup>13</sup> Unlikely that a proposed rule can publish before an EA or SIR is submitted by Council to NMFS, but unclear how documentation can be submitted prior to Council final action.

<sup>14</sup> Note that if NMFS does not deem the final Council recommendations to be a logical outgrowth, another proposed rule will have to be developed and published, with another comment period. This could potentially push back the action passed May 1.

<sup>15</sup> Effective date includes a range, depending on whether or not APA waiver for 30 day delay in effectiveness was cleared or not and on whether the final rule can be justified as a logical outgrowth from the proposed rule.

***Rationale:***

If the proposed rule is not published before staff submits the final EA or specifications package, measures are not likely to be in place before the current start of the fishing year, March 1. There is not enough time between the final Council meeting in late November/ early December and March 1 to submit a final document and publish a proposed and final rule. If the proposed rule is published sooner, i.e. in October, there is higher likelihood that measures would be in place at the start of the fishing year.

**2.3 EVALUATE RANGE OF POSSIBLE ALLOCATIONS UPFRONT AND COUNCIL SELECTS FROM WITHIN THAT RANGE**

Menu approach –

Would a separate FW have to be submitted – better to just use SIR correct?

*Committee recommends that this alternative have lower priority for development if it becomes very complex to develop and analyze.*

**2.4 CHANGE THE START OF THE FISHING YEAR TO APRIL 1**

The start of the scallop fishing year would change from March 1 to April 1. New specifications would not be available to the fishery until April 1, or later. This measure could be selected with other alternatives (specifications process as well as publishing the proposed rule before final Council action).

The overall timeline is the same for this alternative as No Action (Table 2). If the specification process is not selected in this action (Section 2.2) it is possible to implement measures earlier than the timeline indicates if: the framework is limited to specifications only, the final Council meeting decision is moved earlier (i.e. in October), and if the proposed rule is published before the Council takes final action.

***Rationale:***

This change enables the Council to use the most recent survey information to inform fishery allocations. Multiple surveys are typically conducted in many portions of the resource area between May and July. Preliminary results are available in August, but there is not sufficient time to develop and analyze alternatives for the Council to take final action at the September Council meeting. If a framework was limited in scope and only included specifications, or a specifications process is approved (2.2), and the final Council meeting was moved earlier to October or early November it may be possible to implement final measures by April 1. If the final Council meeting remains in late November, fishery specifications may not be ready until after April 1. Finally, if the proposed rule is published before the Council takes final action it may be possible to implement specifications for April 1.

This process maintains the ability to have a minimum of two Council meetings, which can increase opportunities for public input.

### **3.0 CONSIDERED AND REJECTED ALTERNATIVES**

### **4.0 AFFECTED ENVIRONMENT**

### **5.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES**

#### **5.1 SCALLOP RESOURCE**

#### **5.2 PHYSICAL ENVIRONMENT AND ESSENTIAL FISH HABITAT**

#### **5.3 PROTECTED RESOURCES**

#### **5.4 ECONOMIC AND SOCIAL ENVIRONMENT**

#### **5.5 NON-TARGET SPECIES**

#### **5.6 CUMULATIVE EFFECTS**

### **6.0 COMPLIANCE WITH APPLICABLE LAW**

### **7.0 GLOSSARY**

### **8.0 REFERENCES**

### **9.0 INDEX**