

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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Council approval of DEA: December 1-3, 2015

Submission of DEA:

Final submission of DEA:

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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"> • Amend scallop regulations to reduce potential economic and biological consequences from late implementation of specifications • Amend scallop regulations to reduce overall administrative burden associated with late implementation

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.

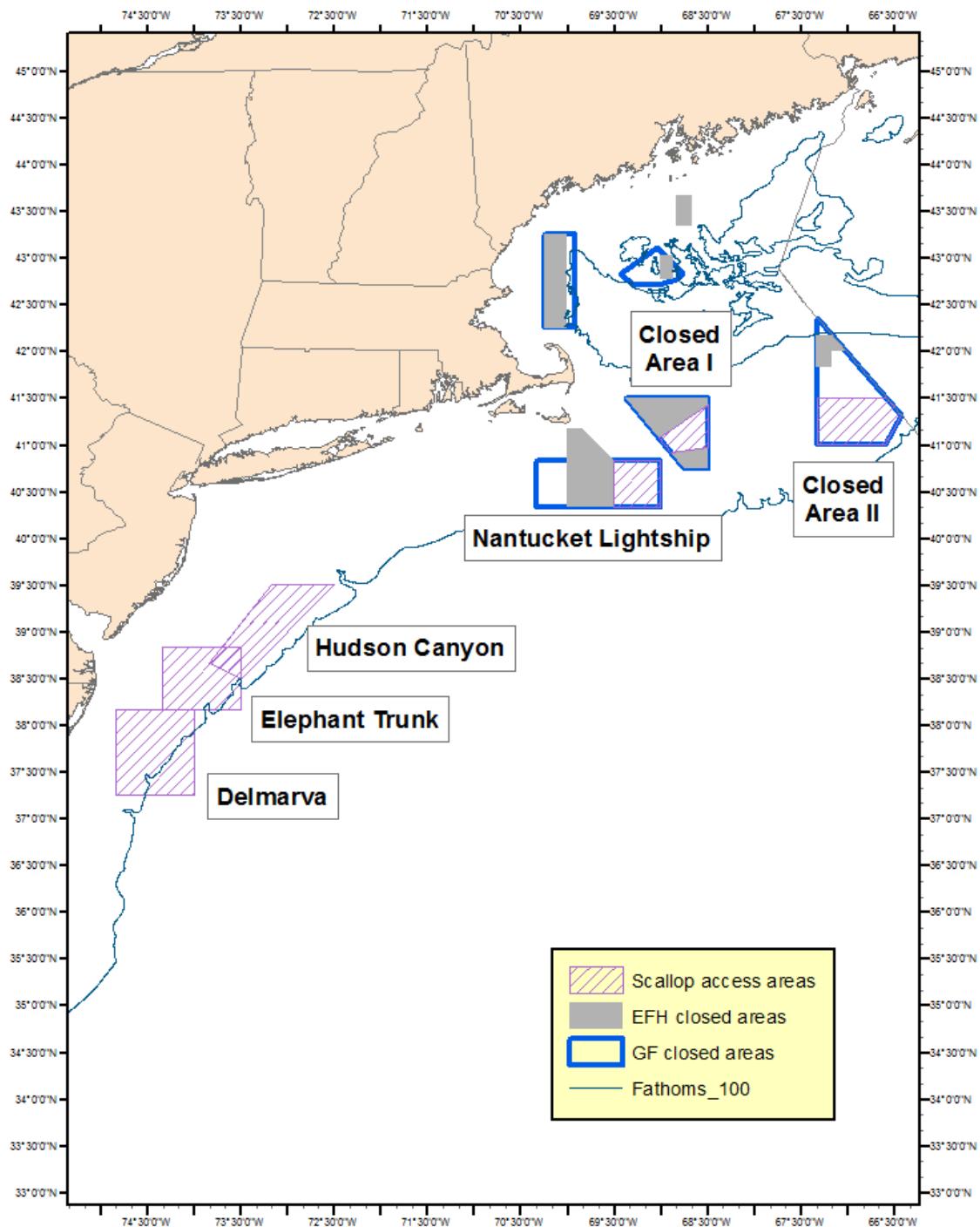
In 1999, Framework Adjustment 11 to the Scallop FMP allowed the first scallop fishing within portions of the Georges Bank groundfish closed areas since 1994 after resource surveys and experimental fishing activities had identified areas where scallop biomass was very high due to no fishing in the intervening 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.

Forth, 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.

Lastly, GARFO recently suggested another idea for streamlining the Council submission of an action and the rulemaking process. In the past, GARFO and Council staffs have finalized the NEPA documentation prior to publishing the proposed rule (Figure 2). Instead, if the Council is working on a simple, non-controversial action such as an action limited to scallop specifications,

the Council could submit an initial draft decision document following Council final action and GARFO could use the document to support the publication of a proposed rule (Figure 3).

GARFO is currently working on providing more guidance to this idea, but the basic idea is that this document must include the drafted NEPA documentation to date that the Council used to make its decisions (i.e., list of alternatives, drafted affected environment, drafted impacts, etc.) and the Council's preferred alternatives must be identified, with rationale for the selection. In addition, the document must include the necessary information for the drafting of the proposed rule's IRFA. This draft decision document will be referenced in the proposed rule, which would be drafted concurrently with Council's completion of a specifications package. . These steps would enable the proposed rule to publish sooner than in the past. NMFS could not approve the action or publish the final rule until the NEPA documentation is completed and formally submitted, and if the document is an EA, the FONSI is cleared and signed. Once the decision draft is submitted, Council staff will continue to work with GARFO staff to finalize and submit the NEPA documentation. This new process could result in a time savings that would result in specifications being implemented as early as on March 1.

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.

Figure 2 - Example timeline under the past Council documentation submission process and subsequent rulemaking process.

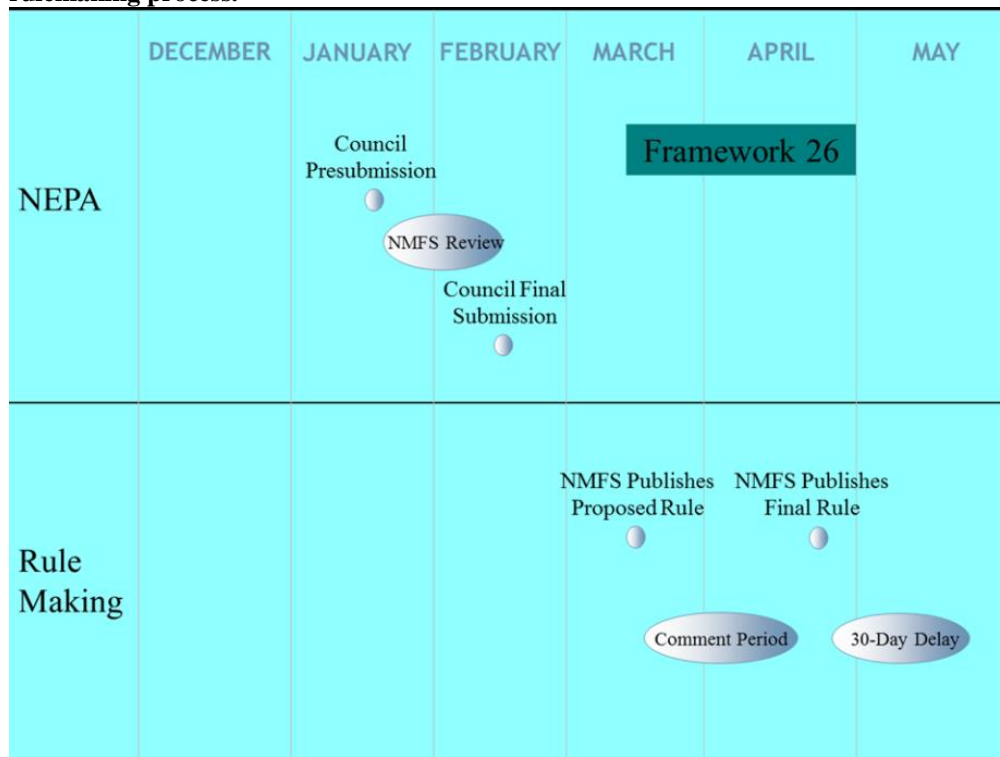
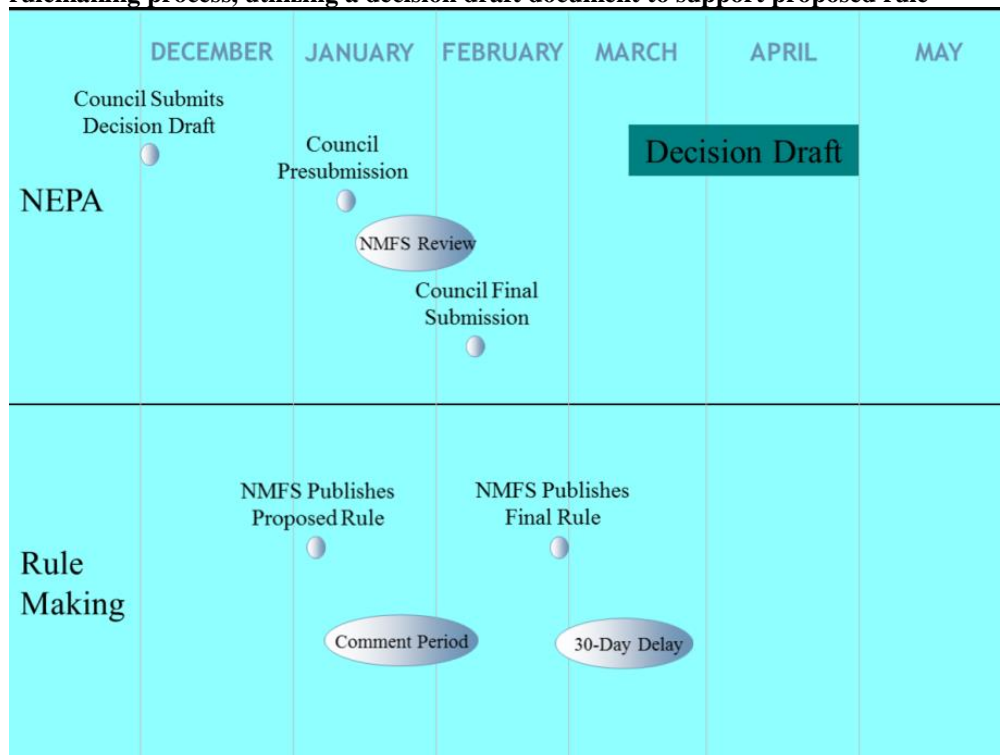


Figure 3 - Example timeline under the suggestion Council documentation submission process and subsequent rulemaking process, utilizing a decision draft document to support proposed rule



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.

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.

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
COUNCIL INITIATES FRAMEWORK	6.17.2014	6.19.2014	FORMAL EA SUBMISSION	2.18.2015	2.18.2015
DEVELOPMENT	5.1.2014	11.1.2014	PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED²	2.20.2015	3.17.2015
PDT MEETINGS (4)	5.1.2014	11.1.2014	PROPOSED RULE COMMENT PERIOD (15 DAYS)	3.17.2015	4.1.2015
ADVISORY PANEL/COMMITTEE MEETINGS (4)	5.15.2014	11.14.2014	FINAL RULE PREPARED (INCL. ADDRESSING PUBLIC COMMENTS)	3.17.2015	4.8.2015
COUNCIL TAKES FINAL ACTION	11.18.2014	11.20.2014	FINAL RULE SUBMITTED TO HQ AND PUBLISHED	4.9.2015	4.21.2015
COUNCIL STAFF FINALIZES EA¹	11.24.2014	1.22.2015	RANGE OF DATES FOR EFFECTIVENESS³	5.1.2015	5.21.2015
EA PRE-SUBMITTED TO NMFS	1.22.2015	1.22.2015			
EA REVIEWED BY NMFS	1.26.2015	2.16.2015			
EA COMMENTS INCORPORATED BY COUNCIL STAFF	2.16.2015	2.23.2015			

TOTAL WEEKS: ~46-49 weeks

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

² 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.

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

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

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.

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.

For NEPA, specifications would require the development of either an EA or a Specifications Information Report (SIR), which are a method to document NEPA compliance that can be used when the recommended specifications fall within the range of previously analyzed specifications. GARFO prepared a guidance document on the potential use of SIRs, which has been included as Appendix 1. What level of NEPA analysis is appropriate is dependent on the specifics of the individual action, the magnitude of the impacts (either positive or negative) from that action, and if the specific impacts and their magnitude have been previously considered in a prior action. The use of a SIR can reduce the time needed to implement an action, but they are only applicable in limited situations. For example, any shift in the baseline (for any of the VECs) could change the impacts from what was previously considered. Creating the opportunity to use a SIR does require upfront work to analyze the potential impacts of likely specification alternatives. Regardless of which is used (i.e., a SIR or EA), simplified actions such as specifications should result in simplified NEPA documents, which would result in a time savings.

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. 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 may want to 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.

Does the Council need to specify what measures should go in place in the event NMFS does not approve specifications? Currently in Section 304 of the MSA the Secretary can approve, disapprove, or partially approve anything developed in the plan or amendment. Specifications set by framework action fall under that category – but what about specifications set in a specifications process?

If specifications are not approved would default measures remain in place or would NMFS have authority to implement something different, as is the case for some specification processes used in the Mid-Atlantic.

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 **Error! Reference source not found.**

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.

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**

Note: this timeline would be expedited when using new streamlining process for document submission and proposed rule publication outlined in Section 1.3.1.2 (Figure 3).

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 ⁷ (3 WEEKS)	1.2.2015	1.23.2015
PDT MEETINGS (4)	5.1.2014	11.1.2014	PROPOSED RULE COMMENT PERIOD (15 DAYS) ⁸	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 ⁴	11.18.2014	11.20.2014	FINAL RULE SUBMITTED TO HQ AND PUBLISHED (3 WEEKS)	2.13.2015	3.6.2015
COUNCIL STAFF FINALIZES EA ⁵	11.20.2014	12.4.2014	RANGE OF DATES FOR EFFECTIVENESS ⁹	3.6.2015	4.5.2015
EA PRE-SUBMITTED TO NMFS	12.4.2014	12.4.2014			
EA REVIEWED BY NMFS (2 WEEKS) ⁶	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					

⁴ 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.

⁵ 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.

⁶ We anticipate that a simpler EA could result in a shorter NMFS review period.

⁷ 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.

⁸ 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.

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

2.3 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

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

The Council would identify a set of measures that would be analyzed upfront in this action. In future years the Council would be able to select measures from the pre-defined measures. For example, the initial document could analyze a specific range of DAS and access area trips that the Council would be able to choose from each year, a “menu- approach” to selecting specifications. Other decisions would need to be specified for required measures to comply with ESA, bycatch, NGOM, etc.

Rationale for rejection:

Staff expects that a fair amount of work would be needed upfront to establish the range of DAS and access areas that would sufficiently match a possible range of OFLs, ABCs, etc. The Council would not be able to consider alternatives outside the range considered in the original action, and that greatly reduces flexibility in setting specifications. As the PDT discussed this option it became more clear that it would take a lot of work to analyze this alternative, and it

would be difficult to predict a full range of specification scenarios since areas and fishing levels can change from year to year.

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

APPENDIX 1

Supplementation Options for National Environmental Policy Act (NEPA) Compliance

There may be instances when a new action is similar, or related, to an already completed action. Not every change to a proposed action, including the presence of new information, necessitates the development of a new or supplemental NEPA analysis. Agencies have broad discretion in deciding how to evaluate new information or change in action.

When must a NEPA document be supplemented?

CEQ regulations (40 C.F.R. § 1502.9(c)) require an EIS to be supplemented when the following two conditions exist.¹⁰ Courts have applied the same requirements to EAs that are required for EISs.¹¹ An EA and an EIS must be supplemented when there is:

1. Substantial change(s) to the proposed action that is/are relevant to environmental concerns; or
2. Significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

What do the CEQ requirements mean?

The CEQ requirements mean that a supplemental NEPA analysis must be prepared if a new proposed action is substantially different from a previously completed but related action.¹² If new information or circumstances have come to light since the completion of the previous action, the new information or circumstances were not previously considered, and this new information would alter the impacts previously considered, then a supplemental NEPA analysis must be prepared. A supplemental NEPA document is not required for a new or modified

¹⁰ Agency's may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so. 40 C.F.R. § 1502.9(c)(2).

¹¹ See [*Idaho Sporting Cong. v. Alexander*, 222 F.3d 562, 566 n. 2 \(9th Cir.2000\)](#).

¹² Several courts have concluded that supplementation is necessary only when effects from the proposed action are "substantially" or "seriously" different than those evaluated in prior NEPA analyses. See, e.g., *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 363 (1989) (holding that supplementation is only required when the proposed action will "affect the quality of the human environment 'in a significant manner or to a significant extent not already consider.'"; *Nat'l Comm. For the New River, Inc. v. FERC*, 373 F.3d 1323, 1330) (D.C. Cir. 2004)(stating that "a supplemental EIS is only required where new information 'provides a *seriously* different picture of the environmental landscape.'") (emphasis added); *Tri-Valley Cares v. U.S. Dept. of Energy*, 671 F.3d 1113 (9th Cir. 20012)(upholding DOE's supplemental environmental report because the conclusions did not show a "seriously different picture of the likely environmental harms stemming from the proposed project.") (citing *Wisconsin v. Weinberger*, 745 F.2d 412, 416-17 (7th Cir. 1984)).

action if the action and its impacts have been analyzed in a previous NEPA document. Based on the responses to the questions below, and consultation with NEPA staff, a “non-NEPA” document¹³ may be used to demonstrate that an original NEPA document sufficiently considers and analyzes the proposed action and its effects. NOAA refers to this non-NEPA document as a supplemental information report (SIR).

What is a SIR?

A SIR is a decision document that provides a concise explanation of why a supplemental NEPA analysis is unnecessary. The use of SIRs has become more common over the years and many courts have endorsed the practice.¹⁴ An SIR is *neither* an exemption from NEPA requirements nor a substitute.¹⁵ In practice, the SIR should describe the proposed action and explain that there is no significant new information or substantially changed circumstances and that the proposed action and its effects fall within the scope of a previous and related NEPA document. While NOAA does not yet have a standard format or formal guidance on the usage of SIRs, we have attached an example template. We recommend that the following information be included for each action:

- Cover memo to the File from Regional Administrator (RA) or Science Director (SD) -- *drafted by GARFO staff*
- Title page and date
- Introduction
- Purpose
- Background
- Changes from the original/parent action

¹³ The term “non-NEPA” is used at this time only because the SIR is a fairly new document. It is not described in NEPA law, procedures or formal guidance. Limited guidance through case law exists on its usage.

¹⁴ See, e.g., [*Price Rd. Neighborhood Ass'n v. United States Dep't of Transp.*, 113 F.3d 1505, 1510 \(9th Cir.1997\)](#); [*Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 383–85, 109 S.Ct. 1851, 104 L.Ed.2d 377 \(1989\)](#) (upholding the Army Corps of Engineers' use of SIR to analyze significance of new reports questioning the environmental impact of a dam project); [*Friends of the Bow v. Thompson*, 124 F.3d 1210, 1218–19 \(10th Cir.1997\)](#) (upholding use of SIR to evaluate significance of new survey of area to be logged); *Humane Soc. of U.S. v. Bryson*, 924 F. Supp.2d 1228, 1253 (D. Or. 2013) (upholding NMFS' use of a SIR to evaluate significance of new information or changed circumstances related to pinniped predation of ESA-listed salmonids at Bonneville Dam).

¹⁵ See *Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562 (9th Cir. 2000)(faulting the Forest Service for its reliance on a SIR to evaluate the significance of new information or changed circumstances that it knew or should have known it needed to include in its original NEPA analyses relied on a SIR to evaluate information)

- Evaluation of new information/new circumstances/change to action
- Summary of public involvement/comment
- Conclusions/Decision
- Preparers and persons consulted
- References
- Applicable law section, if desired (similar to the section used currently in EAs and EISs)

The document should briefly describe the proposed action and provide sufficient detail to support the determination that the NEPA documentation for the past action adequately analyzes the current proposed action. That is to say, the SIR should explain how and why the proposed action and impacts (or new information) falls within the scope of the alternatives and analysis presented in the original NEPA document.

If there is an existing document related to rulemaking for the proposed action (e.g., an MSA document), the SIR elements listed above should be integrated into the existing document and may be prepared either by Fishery Management Council (FMC) staff or internal staff as appropriate. The contents and scope of the SIR are unrelated to any other applicable laws and executive orders. For all other actions, a separate document must be prepared to address the above listed elements. The SIR (or information required for the SIR) should be kept short, ideally 10 pages or less. In either case, a cover memo to the File would be prepared that summarizes the support for, and conclusions of, the SIR. It should be less than two pages in length, and should also summarize and respond to public comment on the SIR, as applicable.

Asking the following questions will help determine if a supplemental EA or EIS is necessary. The questions are designed to initiate discussions that will help staff decide whether or not an SIR may be used. The determination to use an SIR or to supplement an existing NEPA analysis is not black-and-white. As is often the case, reasons may exist to follow one route or another, and NEPA staff should be consulted to make the determination.

If answer YES, then prepare:

1. Are there significant or uncertain new impacts from any information about, or changes resulting from, the proposed action?	Supplemental or new NEPA document
2. Does the new information about, or any change from, the proposed action provide a seriously different picture of the likely impacts not adequately envisioned by the original analysis?	Supplemental or new NEPA document
3. Should any new information or change to the action have been known and/or included at the time the original NEPA document was drafted?	Supplemental or new NEPA document
4. Are data or other analyses required in order to characterize the impacts of a proposed action?	Supplemental or new NEPA document
5. Is the proposed action considered a minor variation of one of the alternatives in the previous NEPA document?	SIR
6. Is the proposed action “qualitatively within the spectrum of alternatives” (from CEQs 40 Most Asked Questions ¹⁶) discussed in the previous NEPA document? In other words, is it within the range of alternatives fully analyzed in the original NEPA document? If so, did the original NEPA document take a “hard look ¹⁷ ” at the effects of the proposed action.	SIR
7. Has the public had an opportunity to comment in the prior NEPA document on impacts similar to the proposed action and alternatives?	SIR

¹⁶ CEQs 40 Most Asked Questions (question number 29) <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

¹⁷ *Kleppe v. Sierra Club*, 427 U.S. 390, 409 n.21 (1976) (citing *Natural Res.*

Def. Council v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972)). The Supreme Court has held that an agency’s decision under NEPA is governed by the APA’s “arbitrary and capricious” standard. They require agencies to take a “hard look” at the environmental effects of their proposed action, requiring them to clearly explain what factors they considered in the decision-making process and the weight given to those factors (known as the “hard look doctrine”).

What is the process for developing a SIR?

FOR FMC/INTERNAL MSA ACTIONS:

1. The FMC or the Greater Atlantic Regional Fisheries Office (GARFO) initiates a new management action.
2. The project lead, in coordination with NEPA staff, initially proposes whether or not the new action falls within the scope of a previously analyzed action. The questions listed above guide the determination of whether a new or supplemental EA or EIS, or SIR should be prepared.
3. NEPA staff confirm the use of an SIR once the management alternatives are identified by either the FMC or GARFO (for internal actions).
4. FMC staff or GARFO staff incorporate the information required to document the SIR into the MSA/rulemaking analysis.
5. The proposed MSA action follows the MSA regulatory process. NEPA staff review the SIR as part of the regulatory package and documentation. A certificate of attorney review is required from NOAA GC.
6. While public participation is not required for the SIR, it is strongly recommended.¹⁸ In most cases the public will have the opportunity to comment on the use of the SIR through the MSA/rulemaking process.
7. GARFO staff prepare the cover memo that transmits the SIR, even for FMC actions. The RA or SD sign the cover memo only at the final rule stage, leaving room for public comment on and changes to the proposed action through the MSA/rulemaking public comment process.
8. The SIR is not routed through NOAA NEPA (PPI); review and approval by NOAA NEPA is **not** required.

FOR INTERNAL/NON-MSA ACTIONS:

1. GARFO or New England Fisheries Science Center (NEFSC) staff initiate a new management action.
2. The project lead, in coordination with NEPA staff, initially proposes whether or not the new action falls within the scope of a previously analyzed action. The questions listed above guide the determination of whether a new or supplemental EA or EIS, or SIR should be prepared.
3. An SIR is drafted by GARFO or NEFSC staff. NEPA program staff are available for consultation and assistance.

¹⁸ There is no requirement to involve the public when an agency considers whether to supplement an EA or EIS. See *Friends of the Clearwater v. Dombeck*, 222 F. 3d 552 (9th Cir. 2000).

4. While public participation is not required for the SIR, it is strongly recommended. In some cases the public will have the opportunity to comment on the use of the SIR through an associated rulemaking process. If there is no associated rulemaking, consult with NEPA staff to find other methods to allow the public to participate/comment.
5. NEPA staff must review/concur on the SIR through the regulatory or other formal review process. A certificate of attorney review is required from NOAA GC.
6. The RA or SD sign the cover memo that transmits the SIR to the File.
7. The SIR is not transmitted to NOAA NEPA (PPI); review and approval by NOAA NEPA is **not** required.

Other Considerations

- GC Northeast should be consulted prior to initiating a SIR.
- To ensure that impacts are categorized correctly, subject matter experts should be consulted if an SIR is proposed.
- Standard NEPA delegation of authority is followed for SIRs. In practice, the development, review, and execution of SIRs is virtually the same as that of EAs.
- The conclusion language from the SIR cover memo would be appropriate to use in the determinations section of a decision memo.