For Sept AP and Cmte Meetings
4 Issues to Address

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 rarely 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

Need for Amendment 19	*Corresponding Purposes for Amendment 19*
To improve the Scallop FMP so that fishery specifications are better aligned with the start of the scallop fishing year	• 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.

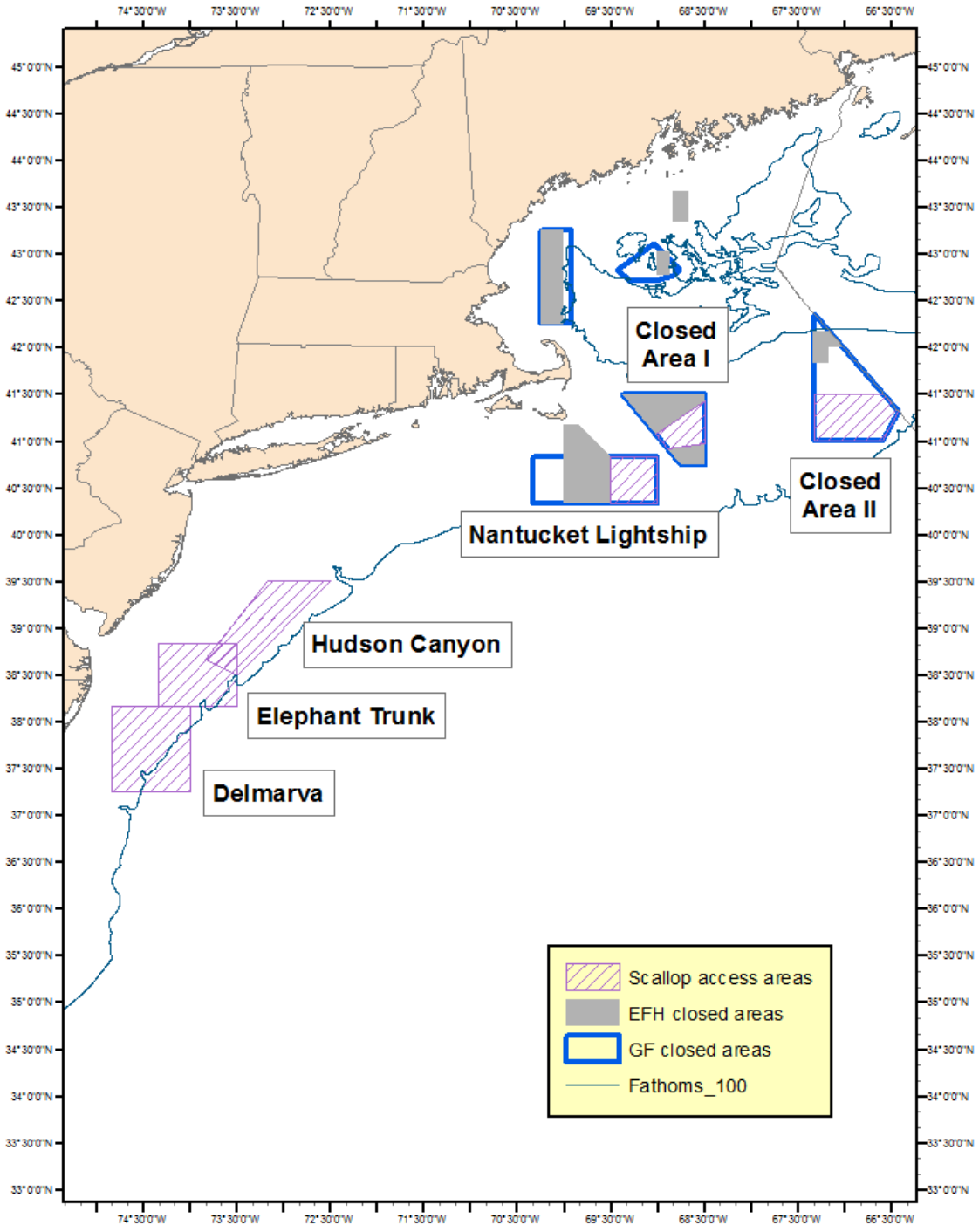
In 1999, Framework Adjustment 11 to the Scallop FMP allowed the first scallop fishing within portions of the Georges Bank groundfish closed areas since 1994 after resource surveys and experimental fishing activities had identified areas where scallop biomass was very high due to no fishing in the intervening 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 for nearly all years since 2000, 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. GARFO 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. Although GARFO staff in recent years have worked hard to streamline the review and rulemaking process down to about three months, this expedited timeline is not always possible depending on the level of complexity of a management action. The earliest GARFO 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

Late implementation is not a new issue. Since 2000, there have been 12 actions that have set annual scallop specifications (Table 2). Of those, four of those actions set specifications for two years, which ensured that the second year's specifications for each of those actions were implemented on March 1 for those fishing years. Aside from these instances, the specifications were implemented in March on only two occasions: Once in 2000 (Framework 12) and again in 2003 (Framework 15). NMFS was able to implement Framework 12 on March 1, 2000, because

the Council, following the criteria outlined in the scallop regulations at §648.55 (i), requested that GARFO waive the proposed rule and provided the necessary rationale for NMFS to agree with that request consistent with the Administrative Procedure Act. The March 1, 2003, implementation date for Framework 15 was possible because the Council took final action in September rather than in late November or early December.

Table 2 – Submission, Final Rule, and Effective Dates for annual (and biennial) adjustments since fishing year 2000

Specifications-Setting Action	Fishing Years*	Date of Council Submission	Date Final Rule Published in Federal Register	Effective Date
Framework 26 (EA)	2015	2/17/2015	4/21/2015	5/1/2015
Framework 25 (EA)	2014	3/13/2014	6/16/2014	6/16/2014
Frameworks 24/49 (EA)	2013	1/22/2013	5/9/2013	5/20/2013
Framework 22 (EA)	2011-2012	3/22/2011	7/21/2011	8/1/2011
Framework 21 (EA)	2010	3/19/2010	6/28/2010	6/28/2010
Framework 19 (EA)	2008-2009	12/19/2007	5/29/2008	6/1/2008
Framework 18 (EA)	2006-2007	12/16/2005	6/8/2006	6/15/2006
Framework 16 (EA)	2004 (mid-year adjustment) – 2005	7/2/2004	11/2/2004	11/2/2004
Framework 15 (EA)	2003	12/12/2002	2/28/2003	3/1/2003
Framework 14 (EIS)	2001-2002	2/28/2001	5/11/2001	6/15/2001
Framework 12 (EA)	2000	12/9/1999	3/3/2000	3/1/2000

* When a framework set allocations for two fishing years, the second year's allocations were always effective March 1 of that fishing year.

For those actions that were not implemented in March, most were implemented in May or June. The Council took final action on these frameworks in November. Those implemented in June generally involved extraordinary circumstances. For example, the scallop industry requested the Council reconsider its November decision in specifying Framework 21 allocations for the 2010 fishing year, resulting in the resubmission of Framework 21 in March. Although NOAA Fisheries worked very hard to publish the proposed rule for Framework 21 in April, less than a month after the Council's resubmission, the rulemaking process did not have enough flexibility to have final measures in effect sooner than late June 2010. An additional reason for June

implementation has been the Council's final submission of an action in March. GARFO's long-held policy has been to not publish a proposed rule until it has received a final version of the action from the Council. As a result, when a final action is not submitted until March, rulemaking is delayed and implementation is pushed back to June.

For those years when implementation occurred later than June, the reasons were due to actions being tied to more complicated amendments that had to be implemented at the same time (e.g., Framework 22/Amendment 15) or actions that the Council developed out of sequence with the usual timing of specifications (e.g., Framework 16).

Recognizing the complications and timing constraints in meeting the March 1 goal for implementing allocations, the Council considered changing the fishing year to May 1 in three different actions, most recently in Amendment 15, but a change was never adopted due to scallop industry opposition.

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 a 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.

Fourth, 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 with timing constraints 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.

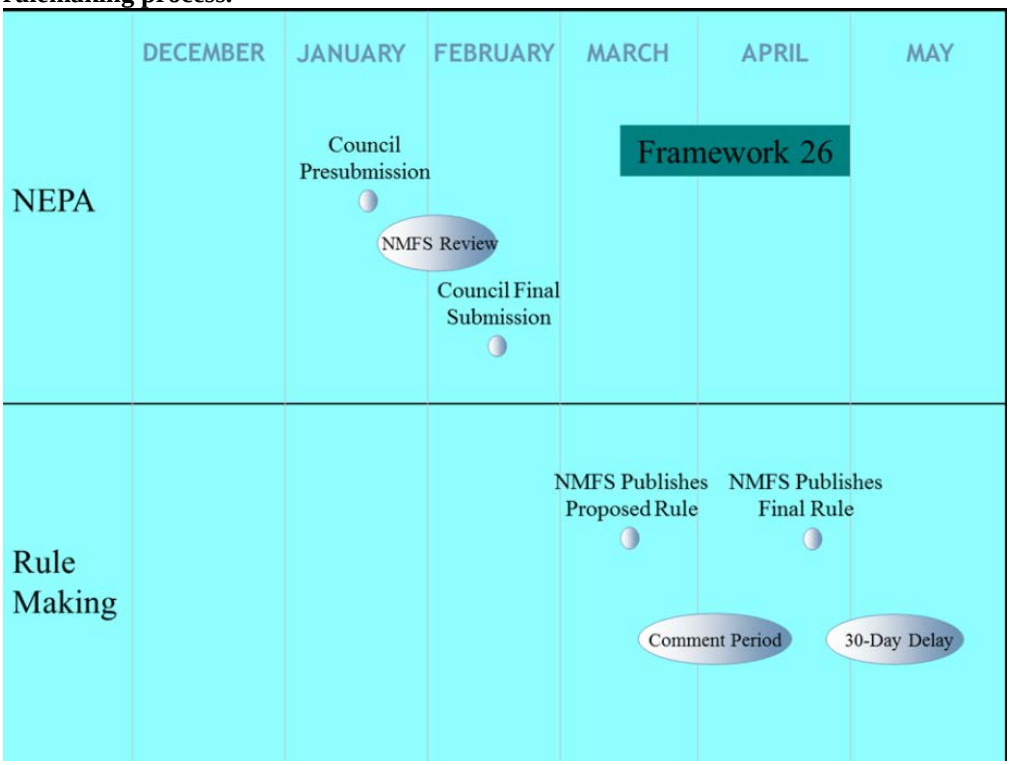
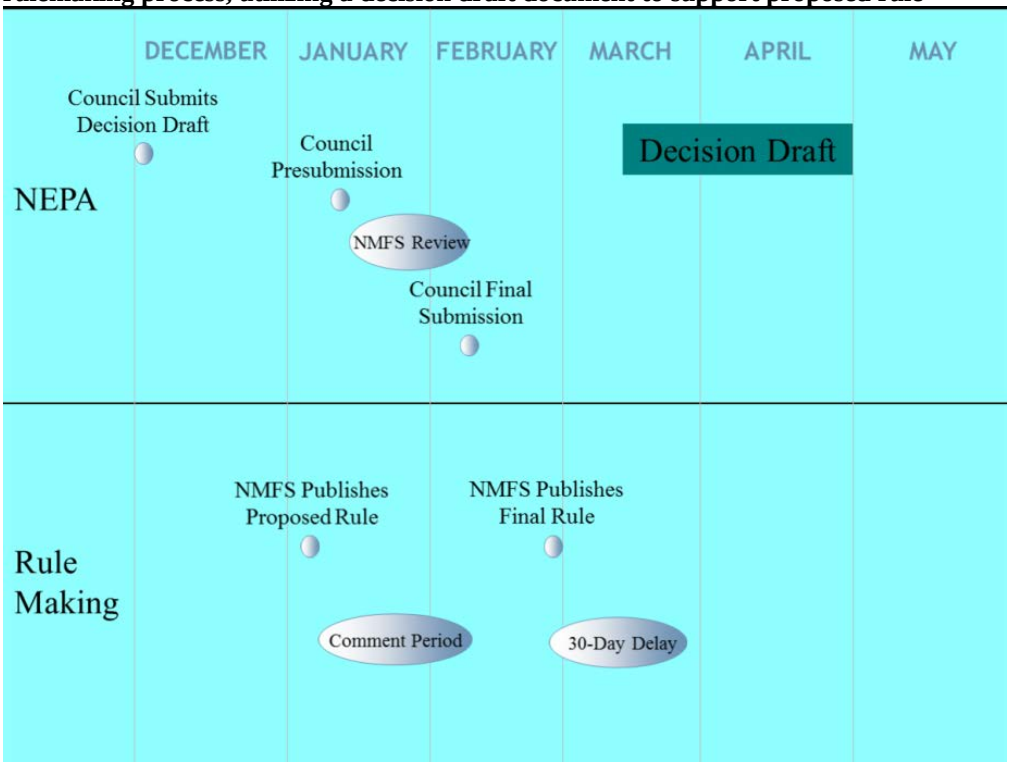


Figure 3 - Example timeline under the suggestion Council documentation submission process and subsequent rulemaking process, utilizing a decision draft document to support proposed rule



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 are flexible and 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 3. 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. Multiples 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 3 – 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
COUNCIL INITIATES FRAMEWORK	6.17.2014	6.19.2014
DEVELOPMENT	5.1.2014	11.1.2014
PDT MEETINGS (4)	5.1.2014	11.1.2014
ADVISORY PANEL/COMMITTEE MEETINGS (4)	5.15.2014	11.14.2014
COUNCIL TAKES FINAL ACTION	11.18.2014	11.20.2014
COUNCIL STAFF FINALIZES EA[1]	11.24.2014	1.22.2015
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
FORMAL EA SUBMISSION	2.18.2015	2.18.2015
PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED[2]	2.20.2015	3.17.2015
PROPOSED RULE COMMENT PERIOD (15 DAYS)	3.17.2015	4.1.2015
FINAL RULE PREPARED (INCL. ADDRESSING PUBLIC COMMENTS)	3.17.2015	4.8.2015
FINAL RULE SUBMITTED TO HQ AND PUBLISHED	4.9.2015	4.21.2015
RANGE OF DATES FOR EFFECTIVENESS [3]	5.1.2015	5.21.2015

TOTAL WEEKS: ~46-49 weeks

[1] If a framework only has specs alternatives and is easier to analyze, there could be a time savings.
[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
- Modifications to access area rotation management (i.e. schedule, seasonal restrictions, modifications to boundaries, etc.)
- 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.

For example, may want to consider including other measures that are technically allocations, but do not typically change from year to year: 1) allocation set aside for RSA program (currently fixed at 1.25 million pounds; 2) allocation set aside to defray cost of industry funded observer program. To be clear, if these are added to the list of items that can be modified in a specification process it is in regard to the allocation amount, not modifications to how the program functions or other modifications. Those types of changes would need to be considered in a framework action.

The PDT discussed if other items should be added to the list such as allocaitons for RSA and observer set-aside program and does not recommend including items that could have policy implications. If the Council wants to modify those allocation amounts a framework action may be more appropriate.

Issue #1 - AP and Committee recommendation?

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, ESA, etc.).

Note: The Council needs to identify the timeframe for the specification process. Would they be consistent with the current language for specifications set by framework which is up to 2 years and default measures for the third year; or would they be set for one year and default measures for the second year? The Council could always set them more often, but what should the minimum be?

PDT Recommendation – Specification process should be the same as the framework process – set for up to two years with default measures for the third year. The PDT recommends that specifications be set for two years at a time. The PDT would review survey results in August/Sept of the first year, and if results suggest that specifications for year 2 should be adjusted then the Council could initiate adjustments to year 2 specifications in the fall and modify them for April in the second year.

Issue #2 - AP and Committee recommendation?

The Council needs 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 specifications don not.

PDT Recommendation – Mirror the regulations for herring specification process
If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the general rotation policy described in Section 648.55. Specifications set in previous actions would remain effective until they are revised through the specification process.

Issue #3 - AP and Committee recommendation?

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.

Although adding the ability to adjust allocations through a specification setting process would not guarantee allocations in place by March 1, it would save time compared to the current framework process and could potentially get allocations in place much closer to the start of the fishing year.

Table 4 – Schematic of timeline for setting scallop specifications under a new specifications process.

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
COUNCIL INITIATES FRAMEWORK	6.17.2014	6.19.2014
DEVELOPMENT	5.1.2014	11.1.2014
PDT MEETINGS (4)	5.1.2014	11.1.2014
ADVISORY PANEL/COMMITTEE MEETINGS (4)	5.15.2014	11.14.2014
COUNCIL TAKES FINAL ACTION[4]	11.18.2014	11.20.2014
COUNCIL STAFF FINALIZES EA[5]	11.20.2014	12.4.2014
EA PRE-SUBMITTED TO NMFS	12.4.2014	12.4.2014
EA REVIEWED BY NMFS (2-3 WEEKS)[6]	12.4.2014	12.28.2014
EA COMMENTS INCORPORATED BY COUNCIL STAFF (~1 WEEK)	12.28.2014	1.4.2015
FORMAL EA SUBMISSION	1.6.2015	1.6.2015
PROPOSED RULE SUBMITTED TO HQ AND PUBLISHED[7] (3 WEEKS)	1.9.2015	1.30.2015
PROPOSED RULE COMMENT PERIOD (15 DAYS)[8]	1.30.2015	2.15.2015
FINAL RULE PREPARED (INCL. ADDRESSING PUBLIC COMMENTS)	1.31.2015	2.22.2015
FINAL RULE SUBMITTED TO HQ AND PUBLISHED (3 WEEKS)	2.22.2015	3.15.2015
RANGE OF DATES FOR EFFECTIVENESS[9]	3.16.2015	4.15.2015

TOTAL WEEKS: ~39-43 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 (i.e. specifications process).

The overall timeline is the same for this alternative as No Action (Table 3). 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 using new streamlining process for document submission and proposed rule publication outlines in Section 1.3.1.2).

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 (Section 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.

Need to clarify what would happen in year 1 if the fishing year is pushed back one month – what happens in March 2017?

If the fishing year is changed to April 1 in this action that would become effective mid-year in 2016.

Allocations for FY2016 are being set in FW27 based on a March-Feb fishing year.

1. No new allocations available until April 1
2. Default measures set in FW27 available March 2017 and A19 not effective until April 1, 2017
3. The first fishing year is 13 months long (March 1, 2017 – March 31, 2018)

PDT recommendation – Choice #3

Issue #4 - AP and Committee recommendation?

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 clearer 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 – SEE SEPARATE DOCUMENT

Will use the same one from FW27

5.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES

Impacts are underlined to facilitate review –will be removed in final version of document

5.1 SCALLOP RESOURCE

5.1.1 No Action

The scallop fishing year is out of sync with the framework adjustment process and the timing of when the scallop survey data become available for analysis. As a result, actions have not been implemented at the start of the fishing year, TACs have been misestimated due to reliance on older data, and extra actions have been required to compensate. These delays can have negative impacts on the scallop resource.

The Council now routinely sets default measures that are designed to be in place at the start of the fishing year that are ultimately replaced by specifications set in a following action. Default measures can minimize some of the potentially negative impacts of delayed specifications and are generally set conservatively to reduce potential negative impacts on the resource. However, default measures are typically a fraction of the final specifications and require additional

administrative work and can cause confusion for the fleet when the fishing year begins under one set of allocations, and are then replaced with a second set of allocations later in the year.

5.1.2 Develop a specification setting process

This alternative would no longer require a framework action to set scallop fishery specifications. Instead a specification only action would be developed, which is much more limited in scope and would not include other measures that can slow down the overall timeline for implementation. Less time overall is expected to be needed to develop, analyze, and review a specification process compared to frameworks that often include other measures. Therefore, final allocations are expected to be in place closer to the start of the fishing year, but would still not necessarily meet March 1 because the Council does not take final action until the end of November or early December. Compared to No Action this alternative is expected to have low positive impacts on the resource because a specification process would be more limited in scope reducing the overall time needed to develop, analyze, and review actions with fishery specifications. These delays can potentially cause negative impacts on the resource.

5.1.3 Change the start of the fishing year to April 1

This alternative would modify the start of the fishing year to April 1 and is expected to improve integration of best available science into the management process. Moving the start of the fishing year back one month allows for needed time to process, analyze, and integrate survey data from the current year into management decisions for fishery specifications being developed for the following year. Even under the alternative that would implement a specification setting process (Alternative 2.2) the estimated date of implementation is sometime in March to early April (Table 4). Therefore, final measures are not expected to be in place before March 1 under that alternative alone. Under this alternative, (Alternative 2.3) the start date of the fishing year would move to April 1, increasing the likelihood that final allocations would be implemented for the start of the fishing year. This alternative is expected to have low positive impacts compared to No Action and combining this alternative with Alternative 2.2 is expected to have the greatest chance of implementing fishery specifications in place before the fishing year begins.

Because this alternative only proposes to move the start date of the fishing year back one month later there are no major impacts on the resource expected in terms of optimizing yield per recruit. Historically there were increased fishing levels at the beginning of the fishing year when vessels received their annual allocations, but in more recent years that increase in fishing effort at the start of the fishing year has not been as prevalent. (Add reference to tables in eco section???)

Even if there is an increase in fishing effort at the start of the fishing year this alternative would have beneficial impacts compared to No Action because meat weights are larger in April compared to March (Figure 4). The recent assessment updated the estimates for seasonal meat weight variation using more data. The annual values for GB are generally higher (~15%) in the recent assessment compared to the last assessment, and slightly lower (~2%) for the MA. The assessment concluded that the estimates are higher on GB due to an increase in observed meat weights (Figure 5) and the shift in MA is relatively small likely drive by a combination of various changes in how observer data were analyzed and small changes in the shell height to meat weight model.

Figure 4 – Seasonal meat weight anomalies in most recent stock assessment (2014) compared to previous assessment (2010) for Georges Bank and the Mid-Atlantic. ***Source: Appendix B3 of SAW59***

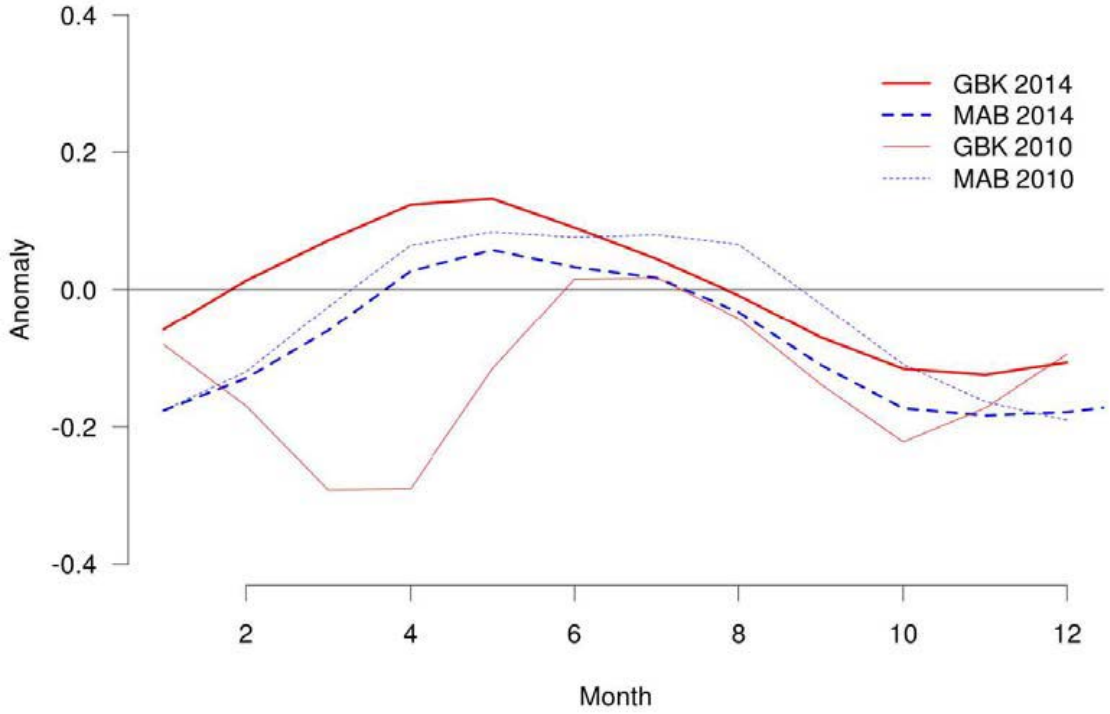
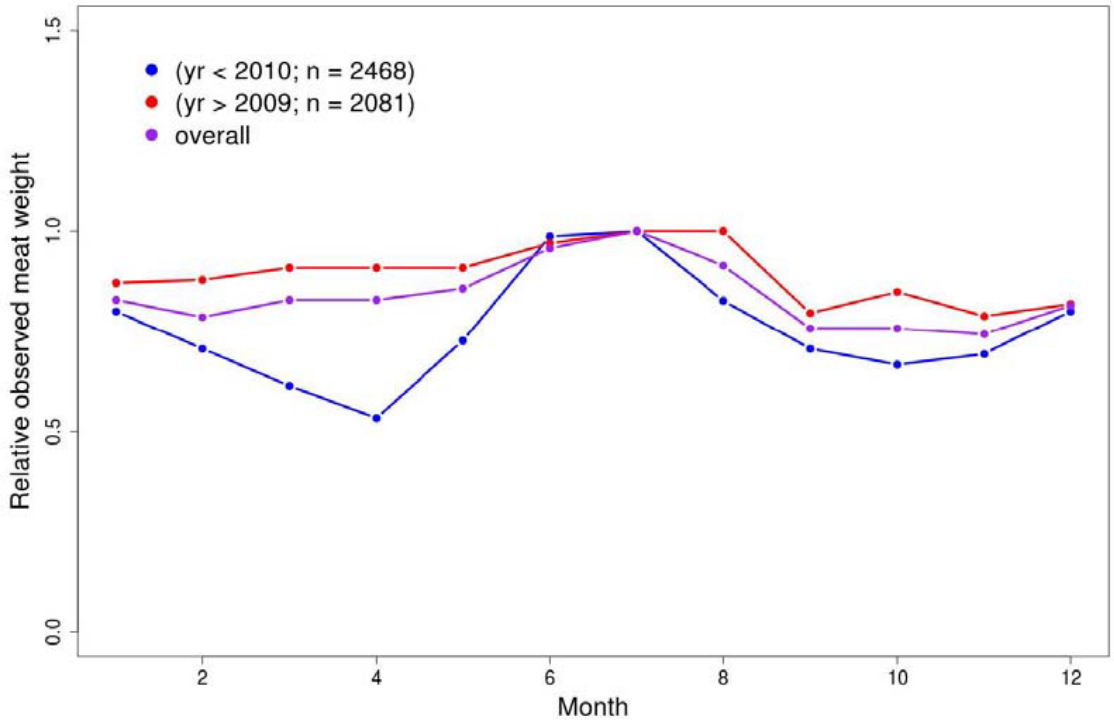


Figure 5 – Relative monthly meat weight in observed commercial catches on GB for the period prior to 2010, after 2010, and overall. ***Source: Appendix B3 of SAW59***



5.2 PHYSICAL ENVIRONEMENT AND ESSENTIAL FISH HABITAT

5.2.1 No Action

Currently, fishery specifications are set via a framework adjustment to the FMP, with the start of the fishing year on March 1. Combining the timing of when the scallop survey data become available for analysis, and the timing of the framework adjustment process, specifications have generally not been implemented at the start of the fishing year. However, the implementation date of the annual framework does not change the overall magnitude of the fishery in terms of the number of DAS, access area trips, or IFQ allocations. Rather, the implementation date affects how long default specifications would be in place. These default specifications tend to be conservative, such that overharvest of the resource is very unlikely. Thus, the current approach of framework adjustment action/March 1 fishing year does not appear to be generating substantial positive or negative impacts on EFH. In general, under No Action access area allocations are not available at the start of the fishing year, and in many cases not until the summer. In some years vessels are awarded multiple access area trips, and with delayed implementation there is less time for vessels to harvest scallops during higher meat weight seasons (spring and summer). This reduced flexibility can shift effort into seasons with lower meat weights increasing area swept, with potentially negative impacts on benthic communities.

5.2.2 Develop a specification setting process

This alternative would no longer require a framework adjustment action to set scallop fishery specifications. While the survey timing would remain the same, a specifications package is expected to require less time to develop, analyze, and review compared to frameworks that often include other measures. Therefore, final allocations are expected to be in place closer to the start of the fishing year under this alternative. If allocations are available sooner it provides more flexibility and time for vessels to harvest scallops during months with higher meat weights relative to later in the year. This flexibility can have potentially low positive impacts on EFH compared to No Action, which often implements access area allocations several months after the start of the current fishing year (March 1). However, since the overall allocations would ultimately be the same for the year the overall magnitude of the fishery in terms of adverse impacts on EFH would be the same. Thus, this alternative is expected to have neutral to low positive impacts on EFH, relative to the current framework adjustment model.

5.2.3 Change the start of the fishing year to April 1

This alternative would modify the start of the fishing year from March 1 to April 1. As above, while the survey timing would remain the same, pushing the fishing year back to April 1 would allow for the specifications to be in place closer to the start of the fishing year, reducing reliance on default measures. This alternative is expected to have neutral impacts on EFH because overall allocations for the year would ultimately be the same, regardless of when the updated specifications replace the default specifications.

5.3 PROTECTED RESOURCES

5.3.1 No Action

The No Action would maintain the current framework process to set scallop fishery specifications biennially, with the intent to have these specifications in place by March 1, the start of federal scallop fishing year. However, based on a long history of trying to implement scallop specifications in this manner, it is clear the scallop fishing year is out of sync with the framework adjustment process, and the timing of when the scallop survey data becomes available for analysis, as scallop specifications are rarely in place by March 1. As a result, actions have not been implemented at the start of the fishing year, TACs have been misestimated due to reliance on older data, and extra actions have been required to compensate. The delays can have negative impacts not only on the scallop resource, but also protected resources.

Although, in general, the timing of specifications does not change the overall magnitude of the fishery in terms of adverse effects on the environment since the same number of DAS, access area trips, and IFQ allocations will ultimately be allocated for the year whether they are available in March, April, or later in that fishing year, it does cause a delay in when vessels can begin fishing and therefore, effect the potential duration in which gear is in the water. Specifically, delays can cause vessels to increase area swept. Scallop meat weights are higher in the spring compared to later in the year, so in access areas it could take a vessel longer to harvest the same poundage of scallops in the late summer/fall compared to earlier in the year (See Figure 4– meat weights in the MA are highest in April through July). As interaction risks to protected resources are strongly associated, in part, with the duration of time gear is in the water, any increase in harvest time (i.e., area swept) has the potential to increase interactions with protected resources, specifically, as noted in Section 4.3, Atlantic sturgeon and sea turtle species.

In regards to Atlantic sturgeon, according to the NMFS 2012 Scallop Biological Opinion (Opinion), available information has shown no Atlantic sturgeon reported as caught in scallop dredge or in trawl gear where the haul target or trip target is scallop (NMFS 2012).[10] Given the known capture of Atlantic sturgeon in trawl fisheries operating in the affected environment (Stein *et al*. 2004; ASMFC 2007; NEFSC 2011a), the NMFS 2012 Opinion concluded that it is reasonable to anticipate that some small level of bycatch may occur in the scallop trawl fishery; however, given the way that scallop dredges operate, the lack of documented interactions is likely reflective of a true lack of captures of Atlantic sturgeon in scallop dredge gear and therefore, Atlantic sturgeon interactions with dredge gear is not expected. As the sea scallop fishery is primarily executed with dredge gear (~95% of the fisheries fleet) and the No Action does not change the gear usage in the fishery, potential interactions with Atlantic sturgeon are expected to be low, with or without any changes in the specification process. However, it is important to recognize that even though no takes of Atlantic sturgeon have been observed to date in this fishery, it does not mean the current operating conditions under the No Action do not introduce risks to these species that one day could result in an interaction.

[10] NMFS issued a biological opinion (Opinion) on the scallop fishery on July 12, 2012. The Opinion included an incidental take statement (ITS) authorizing the take of specific numbers of ESA listed species of sea turtles and Atlantic sturgeon. On May 1, 2015, an amended ITS was issued to the Opinion. For further information, please visit: http://www.greateratlantic.fisheries.noaa.gov/protected/section7/bo/actbo.html

Sea turtle species, as described in section X, are known to interact with scallop fishing gear. Most observed interactions occur in the Mid-Atlantic, where these species overlap with the scallop fishery primarily during the months of May through October (see Section 4.3). If allocations specific to access areas in the Mid-Atlantic (Hudson Canyon, ETA, and Delmarva) are implemented later in the fishing year (i.e. June compared to March), there are potentially negative impacts on turtles if vessels ultimately fish more in the summer compared to the spring.

Further, as described above, scallop meat weights are higher in the spring compared to later in the year, so in access areas it could take a vessel longer to harvest the same poundage of scallops in the late summer/fall compared to earlier in the year (See Figure 4– meat weights in the MA are highest in April through July), resulting in higher fishing effort levels in the summer when sea turtles are present. This increase in effort (via increases in area swept) has the potential to increase interactions with sea turtles, particularly because under this scenario gear may be present in the water for a longer period of time, thereby increasing the interaction risks to sea turtles. It is important to note; however, operation of the scallop fishery is currently covered by the ITS issued and authorized with the NMFS 2012 Opinion. To date, exceedance of any authorized sea turtles takes has not occurred. As a result, although maintaining the No Action conditions allows for the persistence of operating conditions that pose adverse risks to sea turtles, there is no indication that takes of sea turtles have gone above and beyond what has been considered and authorized by NMFS to date under these conditions. As a result, continuation of operating conditions under the No Action are not expected to introduce any new risks to these species that have not been considered by NMFS to date (NMFS 2012; NMFS 2015). Further, under the No Action, the scallop fishery has to comply with current sea turtle chain matt and TDD regulations (see section 4.3 for details).

Based on the information provided above, and due to the fact that sea turtle TDD and Chain Matt regulations will continue to be in place, we expect the No Action to have low negative to negative impacts to sea turtles and Atlantic sturgeon.

5.3.2 Develop a specification setting process

This alternative would no longer require a framework action to set scallop fishery specifications. Less time overall is expected to be needed to develop, analyze, and review a specification process compared to frameworks that often include other measures. Therefore, final allocations are expected to be in place closer to the start of the fishing year under this alternative. Compared to No Action this alternative may have positive impacts on protected resources if allocations are available earlier. Specifically, if specifications include access area allocations in Mid-Atlantic access areas and those allocations are available in March compared to June, more effort could take place during times when turtles are less common (early spring; see Section 4.3), potentially having positive impacts on turtles compared to the scenario of late allocations in the summer (see No Action above for details).

Further, area swept may decrease if allocations are available in March as poundage can be attained quicker during the early spring when scallop meat weight is likely higher. With a decrease in area swept, gear is likely to present in the water for a short duration, thereby decreasing interaction risks to sea turtles. In regards to Atlantic sturgeon, although there is no information to date that would suggest availability of allocations earlier or later in the year

provides any substantial positive or negative impacts to these species, any time a means can be put into place that may result in a decrease in time in which gear may be present in the water, and/or a decrease in effort, equates to a positive impact to protected species, including sturgeon. With interactions between Atlantic sturgeon and the scallop fishery expected to be low, this alternative would likely further reduce this interaction risk and therefore, afford positive impacts to this species as well.

5.3.3 Change the start of the fishing year to April 1

This alternative would modify the start of the fishing year to April 1 and is expected to improve integration of best available science into the management process. If the Council decides to only select this alternative, a framework process would still be required to set scallop fishery specifications. Under that scenario there may still be delays beyond April because other measures would likely be included for consideration that can extend the time needed to develop, analyze and review analyses. If the framework process is maintained it is possible that specifications will not be in place for April 1 even if this alternative is selected and the fishing year is changed under this alternative. Therefore, on its own, this alternative is expected to have similar low negative to negative impacts on protected species as described in No Action because delays in implementation are still expected under a framework process.

If this alternative is selected *in addition* to the alternative to implement a specification process (Alternative 2.2), then there is a greater chance that specifications would be in place on April 1, the start of the fishing year under this alternative. Having all specifications available on April 1 is expected to have positive impacts on protected resources, the same impacts as described in Section 5.3.2. Alternative 2.2 is the measure that is expected to directly reduce the time needed to review specification packages and enable allocations to be in place earlier in the year, which would have positive impacts on protected species. Alternative 2.3 alone does not have direct impacts on protected species compared to No Action because specifications could still be delayed beyond April 1 if they are developed as part of a complex framework action. However, if both alternatives are selected it is more likely that specifications would be implemented before the start of the fishing year (April 1) reducing the low negative to negative impacts on protected resources from delayed implementation of specifications under No Action (Alternative 2.1). Based on the above, depending on the means of implementing this alternative, impacts to protected resources could range from neutral compared to No Action (alternative implemented on its own) to positive (alternative adopted with Alternative 2.2).

5.4 ECONOMIC AND SOCIAL ENVIRONMENT

5.3.4 No Action

The no action for setting scallop fishery specifications is by framework action at least biennially, with default measures. Under the no action alternative there will be no change in the scallop fishing year or in the specifications process. Because the scallop fishing year is out of sync with the framework adjustment process and the timing of when the scallop survey data become available for analysis, estimation of TACs has to rely on older data resulting in inaccuracies, or specifications are implemented late. Since overfishing of the scallop resource due to incorrect estimation of TACs and DAS allocations needs to be corrected by future actions, the no action

alternative could result in more stringent regulations and a decline in scallop landings in future years, which will have negative impacts both on the scallop fishermen due to reduced revenues and on seafood consumers due to lower landings and potentially higher prices.

Although framework actions include default measures that are designed to be in place at the start of the fishing year until the specifications are set in a following action, default allocations are typically a fraction of the final specifications and typically do not include allocations for access area trips. This results in reduced flexibility for scallop vessels to take trips at the optimal times based on the current resource and market conditions including prices and fishing costs. The increased uncertainty and confusion regarding when the fishing year begins under one set of allocations, and are then replaced with a second set of allocations later in the year can cause inefficiencies in business planning. These issues can potentially have negative impacts on profits and economic benefits from the scallop resource.

5.3.5 Develop a specification setting process

This alternative would no longer require a framework action to set scallop fishery specifications. Instead a specification only action would be developed, which is much more limited in scope and would not include other measures that can slow down the overall timeline for implementation. As a result, final allocations are expected to be in place closer to the start of the fishing year, although not necessarily meet March 1 because the Council does not take final action until the end of November or early December. This change would also provide more time to incorporate the updated survey data from the current year into the fishery specifications being developed for the following year. A more accurate estimation of TACs for the access areas will reduce uncertainty associated with the rotational area management, and an implementation time that coincides better with the fishing year will benefit the scallop fishery. Therefore, compared to No Action, this alternative is expected to have low positive economic impacts on the scallop fishery by reducing the delays in implementation, by increasing the flexibilities for scallop vessels to optimally determine the timing and duration of their trips according to the current market and scallop resource conditions and by making it possible to integrate the updated survey data into TAC estimation.

5.3.6 Change the start of the fishing year to April 1

This alternative would modify the start of the fishing year from March 1 to April 1. This change will allow for more time to process, analyze, and integrate survey data from the current year into management decisions for fishery specifications being developed for the following year. It will also improve the likelihood that final allocations would be implemented at the start of the fishing year. Even under the alternative that would implement a specification setting process (Alternative 2.2), the estimated date of implementation is sometime in March to early April, which is not too different than the date under this alternative, Alternative 2.3 (Table 4).

Changing the start of the fishing year to April 1 will reduce the time lag between the fishing year and the time when the survey data becomes available. A more accurate estimation of TACs for the access areas will reduce uncertainty associated with the rotational area management, and an implementation time that coincides better with the fishing year will benefit the scallop fishery with low positive economic impacts on the participants compared to the No Action alternative.

The change in the fishing year will, however, require a change in the business plans of the scallop fishermen. Presently, the fishing year begins at a time when meat-weight of scallops begins to increase and a higher yield per unit effort could be obtained from scallop fishing. As a result, the vessels start using their day-at-sea based on the current resource and market conditions and fishing costs (such as fuel prices). If the fishing year starts in April, the vessel owners may need to postpone part of their day-at-sea allocations until the following March. Average proportion of landings that occurred in March was about 8% during the period from 1998 fishing year to the 2014 fishing year, within a range of 5% to 12% (Figure 6, Figure 7, and Table 6).

If the landings are postponed to next March because of the change in the start of the fishing year to April 1, and if the resource and market conditions turn out to be less favorable than they were expected a year ago; for example, because of a decline scallop prices or a decline catch per-unit effort, the scallop fishermen will incur a loss from not using them in earlier months. This loss is not expected to be high; however, taking into consideration that some of the effort normally occurred in March could be shifted to other months when meat weights are even higher and due to other mitigation factors discussed below.

Starting the fishing year in April could also lead to increased effort in this month if fishermen would want to postpone a smaller proportion of their allocations to next March due to uncertainties. However, an increase in scallop landings in April (compared to the earlier years when the start of the fishing year was in March) could also have some beneficial impacts compared to No Action (or compared to Alternative 2) because meat weights are larger in April compared to March (Figure 4). Although, average price of scallops could decline somewhat with increased landings in April, the higher prices associated with larger size scallops are expected to outweigh negative impacts on average prices and revenues. Figure 6 shows that percent of total scallop revenue (average of the fishing years 1998-2014) obtained in months March through June usually increased with the increase in landings during these months although average ex-vessel prices declined slightly. Of course, this represents an average trend as there were fluctuations in monthly and annual prices from year to year depending on the changes in the size composition of landings, in import prices, in demand for exports, in demand by fish consumers and in the level of landings (Figure 8, see also the price model presented in Appendix I).

In addition, any losses associated with increased effort in April are expected to be low since part of the landings that originally would have occurred in March could be distributed to months other than April when meat-counts are better or prices are higher. Other factors, such as constraints on labor due to some crew members working on multiple boats with the reduced landings, especially in the last couple of years, also help spread the effort throughout the fishing year.

There are also some additional mitigating factors that would reduce the risks associated with unforeseen conditions when the fishing year ends at the end of March. Present regulations allow a vessel to carry over 10 days-at-sea to the next fishing year, and this provision could be used if it turns out that the market conditions are not optimal or if there are vessel breakdowns in the following year in March.

In summary, starting the fishing year a month later will require some change in business planning and will create some risks due to reduced predictability of the resource and market conditions in March, a month when yields start improving. Negative impacts associated with this change are expected to be minimal and also are expected to decline over time as the vessel-owners gain experience with the new fishing year and learn to adjust their business plans more efficiently to the new conditions.

On the positive side, a more accurate estimation of area TACs and day-at-sea allocations will improve scallop yield over the long-term, increase revenues, and reduce the business costs associated with constantly changing regulations. Therefore, the positive economic impacts of changing the fishing year are expected to outweigh the negative impacts in situations when the scallop resource and market conditions turn out to be less favorable than expected at the end of the new fishing year (March). Thus, this alternative will have positive impacts on the scallop fishery compared to the No Action alternative and combining this alternative with Alternative 2.2 will result in the greatest chance of implementing fishery specifications in place before the fishing year begins, increasing the economic benefits for the scallop fishery associated with these measures.

Note: Will include a discussion regarding the measures to be taken in March 2017 if the start of the fishing year is changed to April in 2017.

Table 5 - Effective dates of implementation and number of access area trips

Specifications Setting Action	Fishing Years*	Effective Date	# AA trips
Framework 26	2015	5/1/2015	3
Framework 25	2014	6/16/2014	2
Frameworks 24/49	2013	5/20/2013	2
Framework 22	2011-2012	8/1/2011	4 , 4
Framework 21	2010	6/28/2010	4
Framework 19	2008-2009	6/1/2008	5, 5
Framework 18	2006-2007	6/15/2006	5, 5
Framework 16	2004(mid-year adjustment) – 2005	11/2/2004	7 5
Framework 15	2003	3/1/2003	3
Framework 14	2001-2002	6/15/2001	3 , 3
Framework 12	2000	3/1/2000	6
Framework 11	1999	6/15/1999	3

Figure 6 - Monthly distribution of scallop landings, revenues and ex-vessel prices (1998 -2014 fishing years)

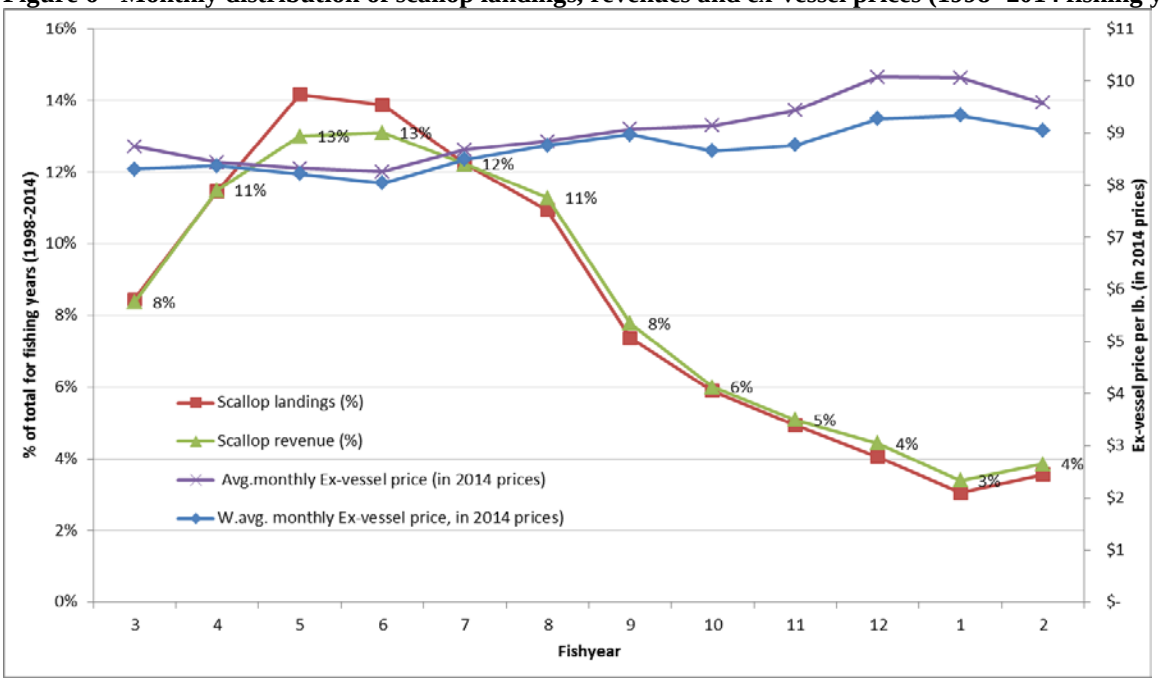


Figure 7 - Monthly distribution of scallop landings, revenues and ex-vessel prices (2004 -2014 fishing years)

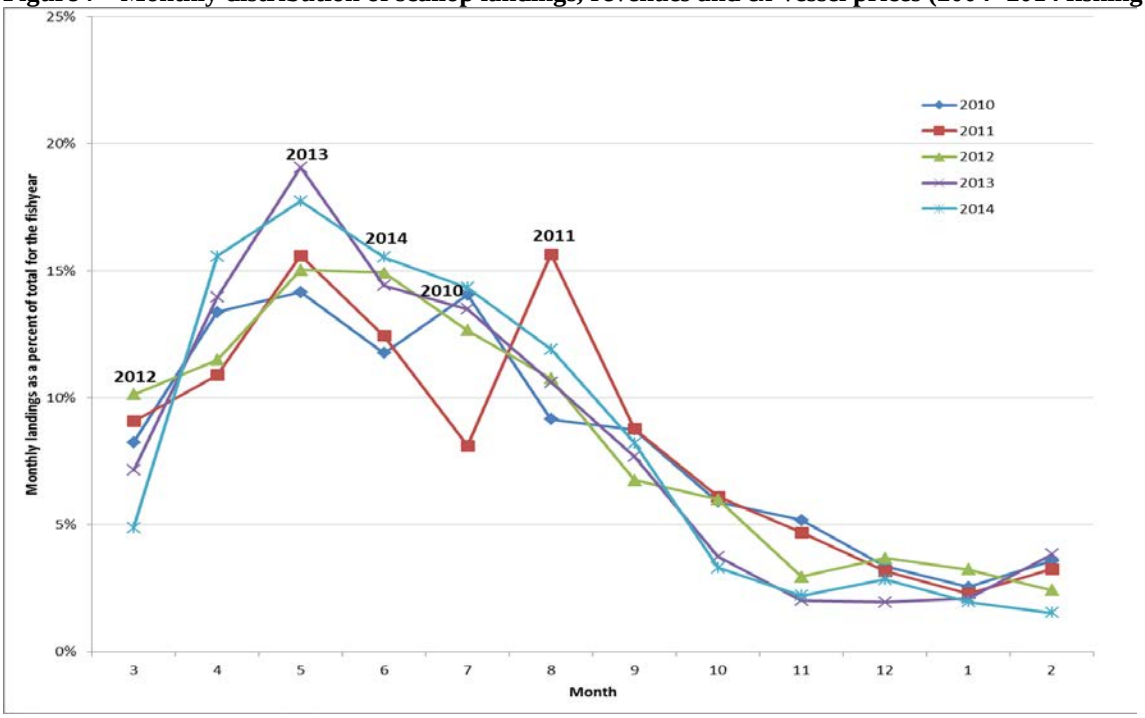


Figure 8 - Monthly ex-vessel prices (weighted averages, in 2014 prices)

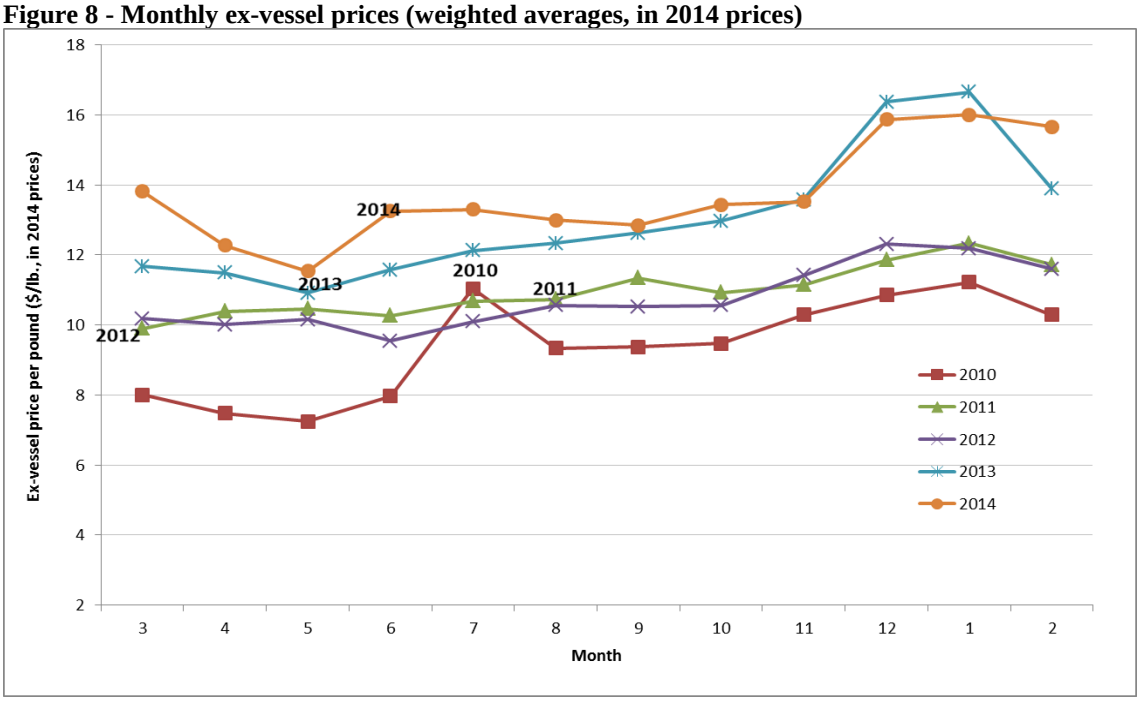


Table 6 - Monthly distribution of landings (% of fishyear totals, includes landings by all permit categories)

Fishyear	3	4	5	6	7	8	9	10	11	12	1	2	Effective dates of implement.
1998	7%	11%	11%	12%	11%	10%	6%	7%	6%	5%	4%	8%	
1999	7%	9%	13%	14%	14%	11%	5%	10%	6%	4%	2%	5%	6/15/1999
2000	6%	9%	14%	12%	11%	11%	8%	8%	5%	5%	6%	5%	3/1/2000
2001	6%	11%	13%	12%	12%	9%	8%	9%	6%	5%	4%	6%	6/15/2001
2002	7%	10%	12%	13%	12%	12%	9%	7%	6%	5%	3%	4%	3/1/2002
2003	8%	9%	13%	13%	12%	10%	7%	10%	7%	4%	3%	5%	3/1/2003
2004	8%	10%	12%	13%	10%	10%	8%	6%	9%	6%	4%	4%	11/2/2004
2005	7%	10%	14%	13%	14%	11%	9%	6%	5%	4%	3%	3%	3/1/2004
2006	7%	10%	11%	17%	16%	16%	7%	6%	4%	3%	2%	1%	6/15/2006
2007	12%	10%	12%	17%	12%	10%	6%	5%	5%	4%	3%	4%	3/1/2007
2008	12%	14%	12%	15%	13%	10%	5%	2%	5%	5%	3%	4%	6/1/2008
2009	12%	12%	13%	16%	11%	9%	7%	5%	5%	4%	3%	3%	3/1/2009
2010	8%	13%	14%	12%	14%	9%	9%	6%	5%	3%	3%	4%	6/28/2010
2011	9%	11%	16%	12%	8%	16%	9%	6%	5%	3%	2%	3%	8/1/2011
2012	10%	11%	15%	15%	13%	11%	7%	6%	3%	4%	3%	2%	3/1/2012
2013	7%	14%	19%	14%	13%	11%	8%	4%	2%	2%	2%	4%	5/20/2013
2014	5%	16%	18%	16%	14%	12%	8%	3%	2%	3%	2%	2%	6/16/2014
Grand Total	**8%**	**11%**	**14%**	**14%**	**12%**	**11%**	**7%**	**6%**	**5%**	**4%**	**3%**	**4%**	**100%**

Note: Highlighted cells show implementation dates for each year.

Table 7. Monthly distribution of revenue (% of fishyear totals, includes revenues by all permit categories)

Fishyear	3	4	5	6	7	8	9	10	11	12	1	2	Grand Total
1998	9%	11%	13%	12%	11%	9%	5%	6%	7%	6%	4%	7%	100%
1999	7%	8%	11%	13%	13%	11%	6%	11%	7%	6%	2%	5%	100%
2000	6%	8%	12%	11%	11%	12%	9%	10%	5%	6%	5%	4%	100%
2001	7%	11%	14%	12%	12%	10%	8%	7%	5%	5%	4%	6%	100%
2002	7%	10%	10%	11%	11%	12%	10%	8%	7%	6%	4%	4%	100%
2003	8%	8%	12%	12%	12%	11%	7%	10%	7%	4%	3%	6%	100%
2004	7%	9%	11%	11%	9%	10%	8%	7%	10%	8%	5%	5%	100%
2005	7%	9%	13%	12%	14%	13%	10%	6%	6%	4%	3%	3%	100%
2006	8%	12%	13%	16%	14%	14%	7%	5%	4%	3%	2%	2%	100%
2007	12%	11%	12%	15%	12%	10%	6%	5%	5%	5%	3%	4%	100%
2008	11%	13%	11%	15%	13%	11%	6%	3%	5%	5%	3%	4%	100%
2009	12%	12%	12%	16%	11%	9%	7%	5%	5%	4%	3%	3%	100%
2010	7%	11%	11%	10%	17%	10%	9%	6%	6%	4%	3%	4%	100%
2011	8%	11%	15%	12%	8%	16%	9%	6%	5%	4%	3%	4%	100%
2012	10%	11%	15%	14%	12%	11%	7%	6%	3%	4%	4%	3%	100%
2013	7%	13%	17%	14%	14%	11%	8%	4%	2%	3%	3%	4%	100%
2014	5%	15%	16%	16%	15%	12%	8%	3%	2%	3%	2%	2%	100%
Grand Total	**8%**	**11%**	**13%**	**13%**	**12%**	**11%**	**8%**	**6%**	**5%**	**4%**	**3%**	**4%**	**100%**

Table 8 - Average price by month (in 2014 inflation adjusted prices, includes landings by all permit categories)

Fishyear	3	4	5	6	7	8	9	10	11	12	1	2	Grand Total
1998	13.6	11.9	13.3	11.9	11.7	10.1	10.2	9.8	12.7	13.0	12.6	10.4	11.8
1999	9.0	8.0	7.5	7.8	8.3	9.1	10.3	10.0	9.4	11.7	11.8	9.6	8.8
2000	7.0	6.8	6.6	6.6	7.7	8.1	8.1	9.7	8.8	8.0	7.4	6.8	7.5
2001	6.2	5.7	5.8	5.8	5.8	6.0	5.5	4.8	4.8	5.0	5.8	5.7	5.6
2002	5.6	5.6	5.1	5.0	5.1	5.5	6.1	6.6	6.9	7.0	6.8	6.6	5.7
2003	6.3	5.9	5.4	5.5	5.7	6.7	6.5	6.4	6.5	7.0	7.2	7.0	6.1
2004	6.2	6.4	5.9	5.9	5.9	7.1	7.6	7.6	8.2	8.4	8.8	10.0	7.0
2005	9.7	8.7	9.0	9.3	10.0	11.2	11.7	11.5	11.3	10.9	10.1	9.7	10.1
2006	9.1	8.9	9.6	7.8	6.8	7.4	8.0	7.6	8.4	9.4	9.3	10.5	8.1
2007	7.8	9.1	8.1	7.5	8.2	8.0	7.8	8.1	8.2	8.6	8.3	8.0	8.1
2008	7.6	7.7	7.8	7.8	7.9	8.1	8.3	8.6	8.2	8.3	8.1	8.0	7.9
2009	7.3	7.2	7.0	7.2	7.4	7.2	7.6	7.7	7.6	7.4	7.2	8.0	7.3
2010	8.0	7.5	7.2	8.0	11.0	9.3	9.4	9.5	10.3	10.9	11.2	10.3	9.0
2011	9.9	10.4	10.5	10.3	10.7	10.7	11.3	10.9	11.1	11.9	12.3	11.7	10.7
2012	10.2	10.0	10.2	9.5	10.1	10.6	10.5	10.6	11.4	12.3	12.2	11.6	10.4
2013	11.7	11.5	10.9	11.6	12.1	12.3	12.6	13.0	13.6	16.4	16.6	13.9	12.1
2014	13.8	12.3	11.5	13.3	13.3	13.0	12.8	13.4	13.5	15.9	16.0	15.7	12.9
Grand Total	**8.3**	**8.4**	**8.2**	**8.0**	**8.5**	**8.8**	**9.0**	**8.7**	**8.8**	**9.3**	**9.3**	**9.0**	**8.5**

5.5 NON-TARGET SPECIES

5.5.1 No Action

The scallop fishing year is out of sync with the framework adjustment process and the timing of when the scallop survey data become available for analysis. As a result, actions have not been implemented at the start of the fishing year, TACs have been misestimated due to reliance on older data, and extra actions have been required to compensate. These delays can have negative impacts on the scallop resource, and if delays cause vessels to increase area swept there could be negative impacts on bycatch of non-target species if gear is fishing longer. However, in general the timing of specifications does not change the overall magnitude of the fishery in terms of adverse effects on bycatch since the same number of DAS, access area trips, and IFQ allocations will ultimately be allocated for the year whether they are available in March, April, or later in that fishing year.

The only type of scallop fishery allocations that are really impacted by a delay are access area allocations, the majority of DAS allocations are available on March 1 under default measures (typically about 75% of projected DAS), and LAGC IFQ vessels are allocated their entire projected IFQ at the start of the fishing year. In addition, there are a handful of measures that provide flexibility to carry effort to the following fishing year, which allow a vessel to fish beyond the end of the fishing year. Therefore, even if a vessel does not have their final allocation at the start of a fishing year, it is possible for a vessel to carry effort allocated later in that year and fish it in the beginning of the next fishing year. This flexibility makes it difficult to predict when vessels will eventually fish access area trips, because under No Action they already have the ability to delay fishing during the first 60 days of the next fishing year (March and April). Therefore, overall the impacts of these delays in terms of seasonal distributional effects are complex to evaluate because fishing behavior is difficult to predict and there are measures in place that afford flexibility and enable vessels to shift effort seasonally. In general, if area swept is higher under No Action because it reduces flexibility, impacts on bycatch could be greater, but there are mechanisms in place under No Action that may minimize these potential impacts. In some years vessels are awarded multiple access area trips, and with delayed implementation there is less time for vessels to harvest scallops during higher meat weight seasons (spring and summer). This reduced flexibility can shift effort into seasons with lower meat weights increasing area swept, with potentially negative impacts on bycatch and other fisheries.

5.5.2 Develop a specification setting process

This alternative would no longer require a framework action to set scallop fishery specifications. Less time overall is expected to be needed to develop, analyze, and review a specification process compared to frameworks that often include other measures. Therefore, final allocations are expected to be in place closer to the start of the fishing year under this alternative. Compared to No Action this alternative is expected to have low positive impacts on bycatch of non-target species because there would be fewer delays that can potentially increase area swept and impacts on non-target species. If access area allocations are available earlier in the year, it is possible that more scallop fishing activity could overlap with the season of highest meat weights (April-July). If more access area effort occurs during that season, compared to later in the summer, overall area swept may be lower, with potentially positive impacts on bycatch of non-target species from a total area swept perspective.

However, some bycatch species have different seasonal and spatial distributions. In general, if there are bycatch species that are more aggregated in scallop access areas in the spring there could be increased interaction. However, vessels do have flexibility to fish all year, excluding seasonal restrictions, so it is uncertain when trips would actually happen, making it difficult to predict how effort patterns could change as a result of access area allocations potentially being available earlier in the year.

5.5.3 Change the start of the fishing year to April 1

This alternative would modify the start of the fishing year to April 1 and is expected to improve integration of best available science into the management process. This alternative is expected to have neutral impacts on bycatch because overall allocations for the year would ultimately be the same. If this alternative reduces area swept compared to No Action then there could be positive impacts on bycatch, but they would be low because this alternative only shifts the start date by one month so the magnitude of any effort shifts is minimal. And any potentially positive impacts from reduced area swept could be outweighed by differences in seasonal and spatial distributions of bycatch species. Predicting the direct impacts on bycatch is relatively uncertain because it is difficult to predict potential shifts in scallop effort.

This alternative would modify the start of the fishing year to April 1 and is expected to improve integration of best available science into the management process. If the Council decides to only select this alternative, a framework process would still be required to set scallop fishery specifications. Under that scenario there may still be delays beyond April because other measures would likely be included for consideration that can extend the time needed to develop, analyze and review analyses. If the framework process is maintained it is possible that specifications will not be in place for April 1 even if this alternative is selected and the fishing year is changed under this alternative. Therefore, on its own, this alternative is expected to have similar low negative to negative impacts on protected species as described in No Action because delays in implementation are still expected under a framework process.

If this alternative is selected *in addition* to the alternative to implement a specification process (Alternative 2.2), then there is a greater chance that specifications would be in place on April 1, the start of the fishing year under this alternative. Having all specifications available on April 1 is expected to have positive impacts on protected resources, the same impacts as described in Section 5.3.2. Alternative 2.2 is the measure that is expected to directly reduce the time needed to review specification packages and enable allocations to be in place earlier in the year, which would have positive impacts on protected species. Alternative 2.3 alone does not have direct impacts on protected species compared to No Action because specifications could still be delayed beyond April 1 if they are developed as part of a complex framework action. However, if both alternatives are selected it is more likely that specifications would be implemented before the start of the fishing year (April 1) reducing the low negative to negative impacts on protected resources from delayed implementation of specifications under No Action (Alternative 2.1).

Based on the above, depending on the means of implementing this alternative, impacts to protected resources could range from negative (alternative implemented on its own) to positive (alternative adopted with Alternative 2.2).

5.6 CUMULATIVE EFFECTS

Completed after proposed measures are selected.

6.0 COMPLIANCE WITH APPLICABLE LAW

Completed after proposed measures are selected.

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.[11] Courts have applied the same requirements to EAs that are required for EISs.[12] 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.[13] 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

[11] 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).

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

[13] 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" document[14] 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.[15] An SIR is *neither* an exemption from NEPA requirements nor a substitute.[16] 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

[14] 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.

[15] *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).

[16] *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[17]) 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[18]" 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

[17] CEQs 40 Most Asked Questions (question number 29) http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm

[18] *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.[19] 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.

[19] 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.