

To Do List for **Scallop FMP** in Order to Comply with “Mandatory” Provisions of NS1 Guidelines:

Please note that this is a preliminary list that may warrant further refinement based on follow-up discussions with NMFS and Council staff.

1. The Scallop FMP purports to cover all scallop stocks off Alaska, Scallop FMP at 1, including weathervane scallops, pink scallops, spiny scallops and rock scallops. However, it only provides an estimate of **MSY** and sets **OY** for weathervane scallops. If pink scallops, spiny scallops and rock scallops are to remain in the fishery, the FMP will need to estimate MSY and set OY for each of these stocks. See 50 C.F.R. §§ 600.310(c)(1)-(2). Another option that would not require estimating MSY and setting OY for these species would be to remove pink scallops, spiny scallops and rock scallops from the FMP, or classify them as Ecosystem Component Species, see below (#4). Several additional requirements pertain to the estimate of MSY and specification of OY.
 - a. Another consideration is whether the estimate of MSY and establishment of OY for weathervane scallops is based on the best available science. It must be. 50 C.F.R. § 600.310(e)(1)(iv). The FMP includes a single estimate of MSY and OY for weathervane scallops throughout the waters off Alaska. However, Appendix D on EFH states that “[t]he weathervane scallop resource consists of multiple, discrete, self-sustaining populations that are managed as separate stock units.” Does this require MSY to be estimated separately for each of these discrete stocks?
Action 1: Amendment analysis to redefine species in FMP and estimate weathervane scallop MSY. Remove all but weathervane scallops from FMP. Consider estimation of MSY by A) statewide stock (including closed areas stock estimates not currently considered in statewide MSY estimate) and B) discrete stocks (information almost certainly unavailable for this).
2. The Scallop FMP does not include an acceptable biological catch (ABC) Control Rule. It must. 50 C.F.R. § 600.310(c)(3); see also 50 C.F.R. § 600.310(f)(4). Several additional mandatory provisions, both procedural and substantive, relate to the establishment of the ABC Control Rule and the specification of ABC:
 - a. The Council must establish the ABC Control Rule based on scientific advice from the SSC. 50 C.F.R. § 600.310(f)(4).
 - b. “The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and the scientific uncertainty in the estimate of OFL and any other scientific uncertainty.” 50 C.F.R. § 600.310(f)(4).
 - c. ABC may not exceed OFL. 50 C.F.R. § 600.310(f)(3).

- d. The SSC must recommend the ABC to the Council. 50 C.F.R. § 600.310(f)(3). If the SSC recommends an ABC that differs from the result of the control rule, it must explain why. *Id.*
- e. “For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan.” 50 C.F.R. § 600.310(f)(3)(ii).

Action 2: FMP amendment to include an ABC control rule for scallop and a process by which SSC will recommend annual ABC to the Council. The current timing of SPT review (February) and SSC review (April) of SAFE report should allow for this SSC review and recommendation to occur without impacting GHL-setting for scallop (fishery in July, GHLs established ~June).

- 3. Although the Scallop FMP provides that the State will establish Guideline Harvest Ranges (GHRs) on an annual basis, these GHRs do not appear to satisfy all of the requirements that apply to **Annual Catch Limits**. The FMP does not preclude the State from establishing GHRs that exceed the ABC recommendation made to the Council by the SSC. See 50 C.F.R. § 600.310(b)(2)(v)(D); 16 U.S.C. § 302(h)(6). In addition, the FMP does not expressly provide for the Council to determine whether the GHR has been exceeded nor for accountability measures to be automatically triggered if the GHR is exceeded. See 50 C.F.R. § 600.310(g)(3) (“On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known.”).
 - a. Provided there is sufficient opportunity for the Council and/or NMFS to participate in the State process for setting GHRs and to review the GHRs established by the State, it may be permissible for the State to continue to set GHRs once an ABC Control rule has been implemented; however, this question warrants further consideration.

Action 3: FMP amendment to include explicit directive that the GHR not exceed the established ACL and provision for annually calculating all catch and comparing against the ACL. This could be done in conjunction with the annual SAFE report production for the previous fishing year.

- 4. The Council has three options for dealing with pink scallops, spiny scallops, rock scallops and any other non-specified scallop species:
 - a. Determine they are in the fishery as non-target stocks that are retained or may become subject to overfishing, and specify status determination criteria and reference points;
 - b. Determine that they are EC species that fit the 4 criteria at 600.310(d)(5)(i), without specifying status determination criteria or reference points. This may require some form of vulnerability analysis to determine whether some of the stocks may be likely to become subject to overfishing absent conservation and management;
 - c. Eliminate them from the FMP altogether.

Action 4: see action 1 to eliminate these from the FMP (4c)

In addition to the above requirements, which the Scallop FMP does not appear to satisfy, there are several additional requirements that are not clearly satisfied by the Scallop FMP and/or implementing regulations, analyses, or management decisions thereunder.

Actions : TBD

5. It is unclear whether all catch is counted against OY. It must be. 50 C.F.R. §600.310(e)(3)(v)(C).
6. It is unclear from the Scallop FMP whether fishing mortality will be constrained when the stock drops below MSST due to environmental conditions that do not reduce the long-term reproductive potential of the stock. In this event, fishing mortality must be constrained. 50 C.F.R. § 600.310(e)(2)(iii)(A).
7. It is unclear from the Scallop FMP whether mortality of scallops caused by bycatch is taken into account during the evaluation of stock status with respect to OFL, ABC & GHR. Bycatch mortality must be taken into account when evaluating the status of stocks. 50 C.F.R. § 600.310(l)(5).
8. It is unclear the degree to which the reference points (OFL & GHR currently) reflect appropriate consideration of risk and take into account uncertainties in estimates of harvest or the effects of environmental factors. See 50 C.F.R. § 600.310(l)(3) (“Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.”).
9. The specification of OY in the FMP does not identify or evaluate the relevant social, economic or ecological factors that must be considered in reducing OY from MSY, nor does it show that the chosen OY will result in the greatest benefit to the Nation. See Scallop FMP at § 3.1.1.2 (pp. 14-15). The Council must do so, in an analysis document, if not in the FMP itself. See 50 C.F.R. § 600.310(e)(3)(ii) (“An FMP must contain an assessment and specification of OY, including a summary of information utilized in making such specification, consistent with requirements of section 303(a)(3) of the Magnuson-Stevens Act. A Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, and then evaluate them to determine the OY. The choice of a particular OY must be carefully documented to show that the OY selected will produce the greatest benefit to the Nation and prevent overfishing.”). If an existing analysis does already do so, these requirements must be met.