

Overview of Potential Options for Regulatory Streamlining – White Paper

Introduction

There are various factors and statutory requirements that must be considered by the Gulf of Mexico Fishery Management Council (Gulf Council) and the National Marine Fisheries Service (NMFS) when determining the type of Fishery Management Plan (FMP) or Amendment to those plans that may be necessary to develop and recommend regulatory changes. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) each FMP must include 15 components (section 303(a)) and may include a number of other provisions (section 303(b)). Many Councils, including the Gulf Council, have established frameworks within various FMPs to more quickly enact identified regulatory changes, these are often called a standard or open framework process. Some Councils have also established an abbreviated process for identified regulatory changes that are considered routine or insignificant; these are often called a closed framework process.

The Council process is an open and transparent; however, there will always be tradeoffs between transparency, efficiency, and throughput that must be considered. This is especially true as managers search for tools and processes that can be used to integrate new science for management decisions. These are important considerations when evaluating the regulatory efficiencies outlined herein.

A history of recent regulatory actions was compiled for the last five years (2017-2021) to identify and evaluate potential regulatory efficiencies. Only actions initiated by the Gulf Council to the time the rule(s) became effective were considered. To determine if there were trends in timing of regulatory development to implementation due to the type of Magnuson-Stevens Act and National Environmental Policy Act (NEPA) document, the actions were separated into the following bins: 1) plan amendment that necessitated an Environmental Impact Statement (EIS); 2) plan amendment that necessitated an Environmental Assessment (EA); 3) Framework Action that necessitated an EA and is considered a standard open framework; and, 4) Abbreviated Framework Action that typically necessitates a categorical exclusion (CE) and are considered open frameworks. A general overview of the regulatory processes for the Council is shown in Figure 1.

NEPA requires stages of public input to be considered in document development and the Magnuson-Stevens Act triggers the requirement to hold public hearings in addition to any Council requests to hold public hearings. Under NEPA, NMFS also has to consider additional notices for public comment when an EIS is needed for the action and includes a notice of intent and 45-day comment period for the draft. The Magnuson-Stevens Act also requires a public comment period of 60 days announced through a notice of availability for amendments, standard

frameworks, and open frameworks, that requires a public comment periods of 15-60 days for proposed rules.

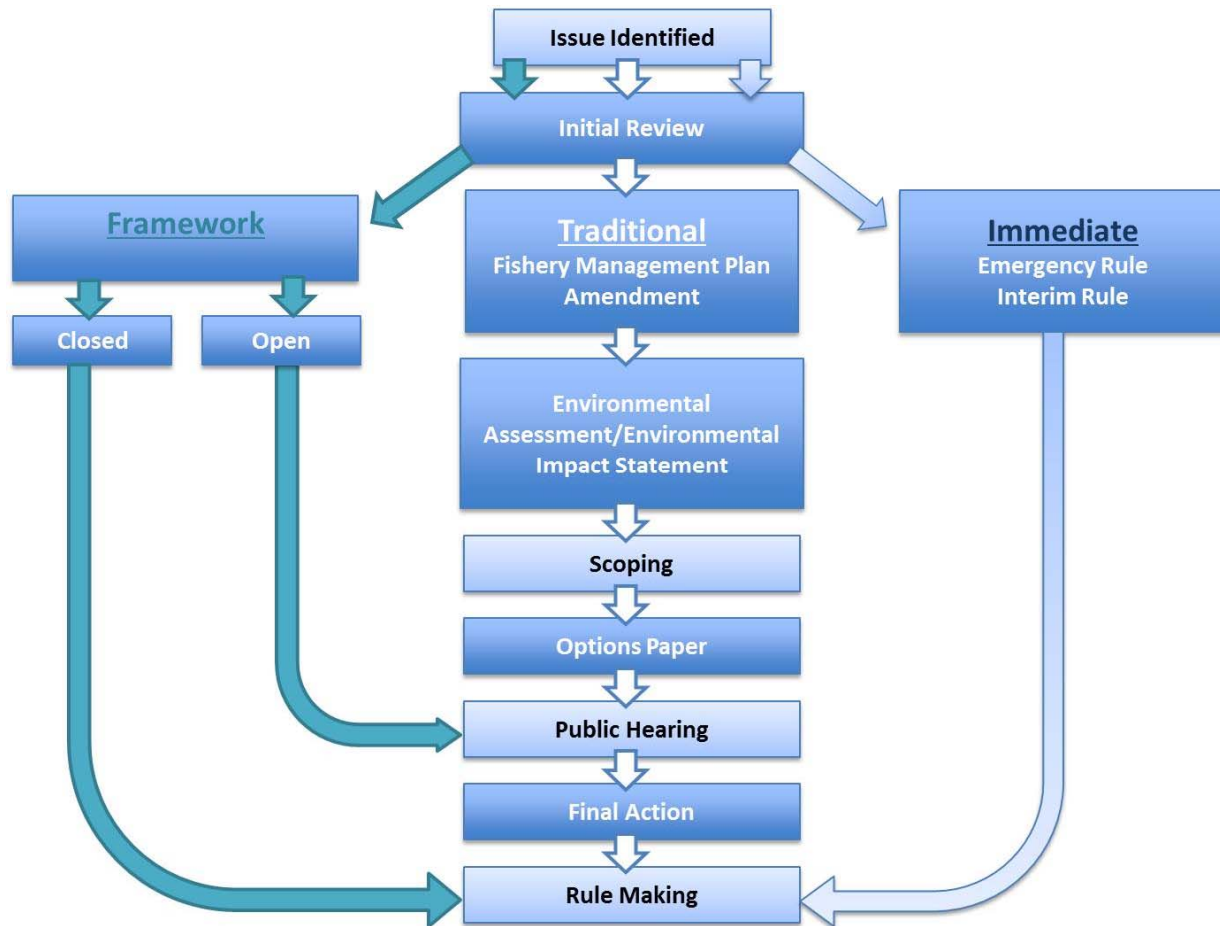


Figure 1. General overview of the regulatory processes for the Council.

Figure 2 shows 5 years (2017-2021) of recent regulatory history for Gulf Council actions. Only actions that were initiated by the Gulf Council to the effective date in this time period were included in this synthesis. During that time period, the following type and number of documents were developed and implemented: 3 full plan amendments that required an EIS; 13 plan amendments that required an EA; 14 Framework Actions that required an EA (standard open frameworks); and two Abbreviated Framework Actions (open frameworks) that were supported by categorical exclusions. Council timing was defined as the first day of initiation via a motion by the Council to the day that the document was transmitted to NMFS, Southeast Regional Office (SERO). NMFS time is defined as the day that the action was transmitted to the day that rule(s) became effective.

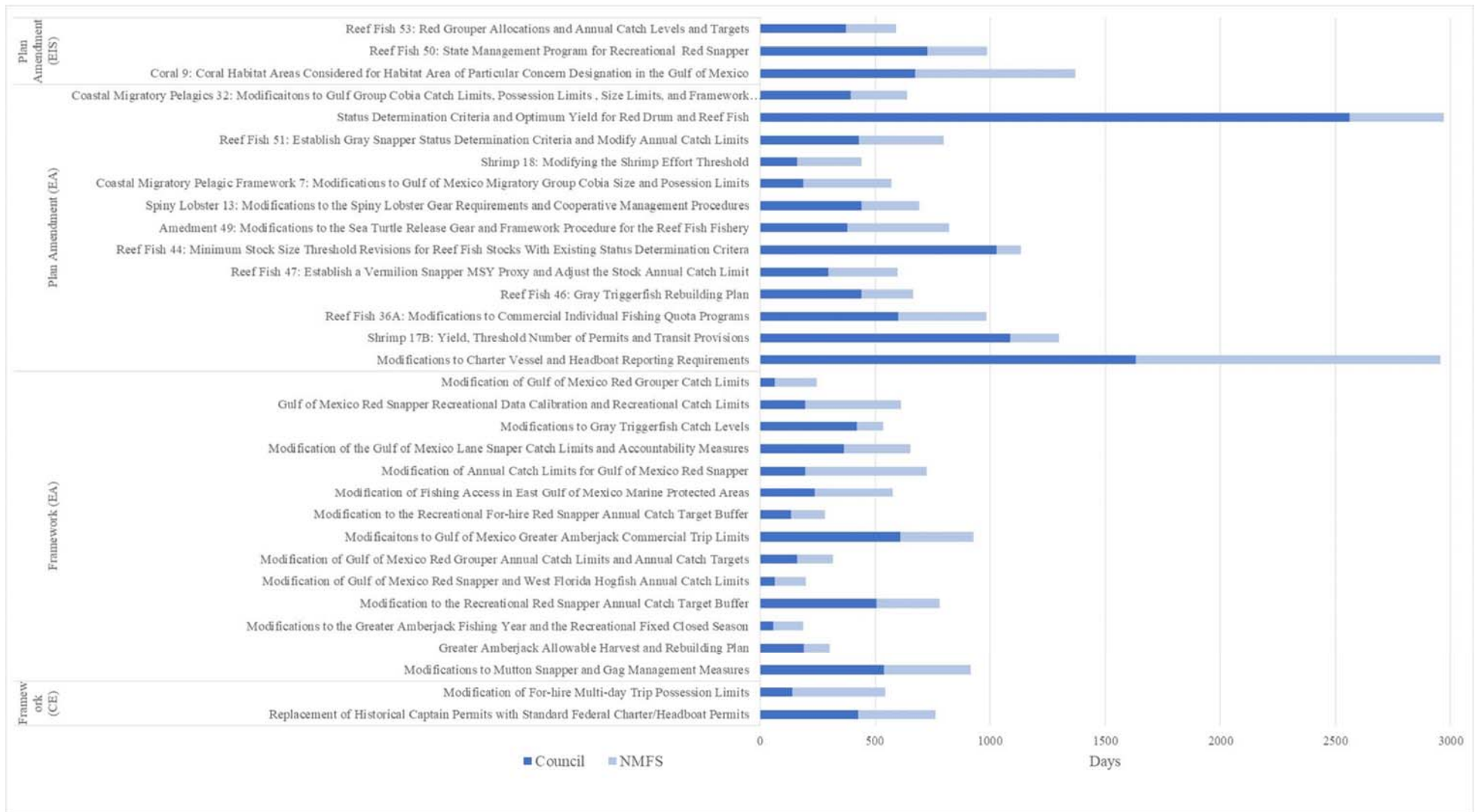


Figure 2. Recent history of Gulf Council regulatory actions, by Magnuson-Stevens Act and NEPA category. Note: Gulf Council timing was defined as the first day of initiation via a motion by the Council to the day that the document was transmitted to NMFS, SERO. NMFS time is defined as the day that the action was transmitted to the day that rule(s) became effective.

Next the average number of days the Council and NMFS took to develop and implement the various types of Magnuson-Stevens Act and NEPA documents was synthesized (Figure 3).

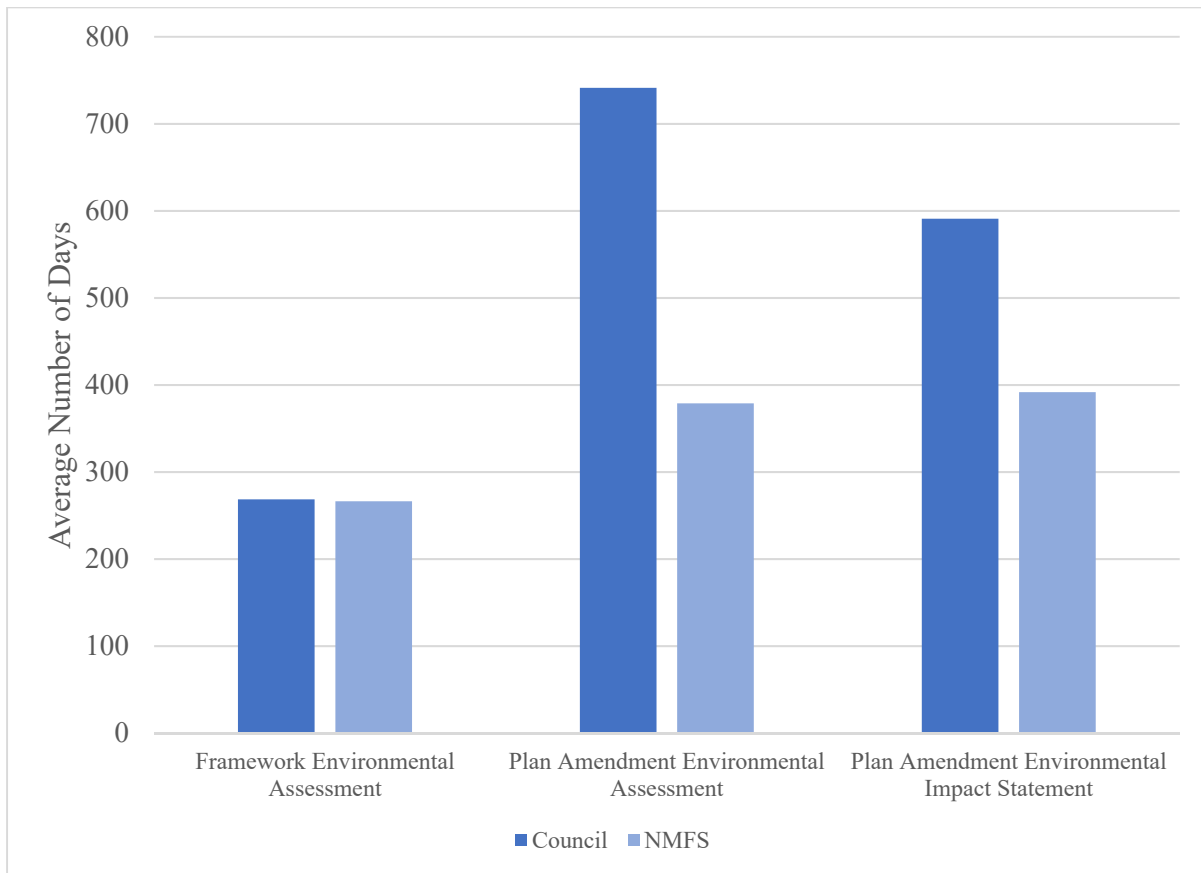


Figure 3. Average number of days for Council and NMFS to complete regulatory actions in the last five years (2017-2021) by Magnuson-Stevens Act and NEPA category. Note: The Abbreviated Framework Actions (open frameworks) with a CE were not included due to the sample of two actions.

Currently, Framework Actions with EAs (standard open frameworks) take the least number of days, with an average of 266-days for the Gulf Council and 251-days NMFS respectively to complete. The Gulf Council only completed two Abbreviated Framework Actions (open frameworks) in the last 5 years and the total time to develop and transmit by Gulf Council ranged from 140-427 days and for NMFS ranged from 334-405 days. Plan amendments, both EAs and EISs, take the longest for the Gulf Council and NMFS. This is to be expected as those documents typically analyze more difficult and controversial actions such as sector allocations, permits, reporting requirements, ending overfishing, and/or establishing or modifying rebuilding plans. It took an average of 713 days to move through the process and a range of 63 – 1,600⁺ days. It took NMFS an average of 381 days complete rule making for plan amendments with EAs and EISs and a range of 107-1,300⁺ days.

NEED:

Fisheries managers need additional tools to rapidly respond to changing environmental factors, fisher behavior, and social and economic indicators. The Southeast Fisheries Science Center (SEFSC) recently provided a new tool, called an interim analysis (IA), for the Gulf Council to consider catch advice changes between stock assessments. The IA allows the Gulf Council to more quickly respond to on-the-water observations reported by stakeholders. However, it was determined that the IA could not be used

every year due to the amount of time it takes to enact regulatory changes. Thus, during the August 2022 Council meeting, staff provided a brief presentation outlining potential mechanisms to improve the timeliness and efficiency of updating routine changes in catch advice. This resulted in the Council passing the following motion.

***Motion:** In collaboration with SERO staff, explore mechanisms to improve timeliness and efficiency of updating routine changes in catch advice using either the existing framework process or suggest changes in framework procedures that could be used to reduce the time between the completion of science and implementation of management changes. Provide an update at a future Council meeting.*

Motion carried with no opposition.

The aim of this document is to consider developing an automated process that will reduce the time between the Scientific and Statistical Committee's (SSC) catch level recommendations being finalized and catch limits being updated via regulatory document, while minimizing losses in transparency and opportunity for stakeholder input on the proposed changes. In order to fully consider this effort, a review was conducted of what other regional fishery management councils were currently doing and what the Gulf Council has considered to date. The following three types of frameworks that currently appear in FMPs were identified: 1) annual or multi-annual specifications or other procedures; 2) non-discretionary or automatic management responses to specified triggers (e.g., closure upon attainment of a quota; and 3) fishery re-openings.

Framework Types:

1). Annual or multi-annual specifications or other procedures

Many Council FMPs include a process outside of an amendment for establishing annual catch limits or other specifications. A typical specification framework establishes a regular (annual or multi-annual) process for the Council to review information about a particular fishery and make catch level changes or other management measures. Often these frameworks are written to include detailed instructions for executing management decisions that have previously been made. Some examples from other Councils include regulations set forth with percentages or formulas for calculating catch levels.

Below is an example from the Gulf Council where an FMP with an associated EIS established a mechanism to allow a Gulf state to request the closure of areas of federal waters adjacent to state waters to red snapper recreational fishing.

Below is an example from the Gulf Council Reef Fish Amendment 50A FMP¹:

***Action 3** – Procedure for Allowing a Gulf State to Request the Closure of Areas of Federal Waters Adjacent to State Waters to Red Snapper Recreational Fishing*

***Alternative 1:** No Action. Do not establish a procedure to allow a state to request that NMFS close areas of federal waters adjacent to state waters to red snapper recreational fishing.*

¹ <https://gulfcouncil.org/wp-content/uploads/State-Management-Program-for-Red-Snapper-Final-5-23-2019.pdf>

Preferred Alternative 2: Establish a procedure to allow a state to request NMFS close areas of federal waters adjacent to state waters to red snapper recreational fishing. The state would request the closure by letter, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in this amendment, NMFS would publish a notice in the Federal Register implementing the closure. The closure would apply to the recreational sector component(s) included in that state's approved management program.

The anticipated amount of time it takes to develop and complete a framework process similar to this is anticipated to be 10-24 months as it would require the development of a full plan amendment with an associated EIS or EA. After the amendment is implemented the time saving could be quick as 60 -90 days or if the Gulf Council wanted more involvement up to 90 days.

Estimated time to implement these types of actions after the FMP is implemented is 60 days.

2) non-discretionary or automatic management responses to specified triggers; and 3) fishery re-openings

Several Councils including the Gulf Council have included a provision in at least one of its FMPs for automatic closures, or similar responses, when a quota is projected to be reached or is reached. The regulation states NMFS “will close” the affected fishery, sector, or area. Some Council FMPs also include provisions for discretionary action by NMFS to re-open a fishery if the quota was not actually met. Typically, once the framework is developed and approved in an FMP, these actions can occur very rapidly.

Below is an example from the Gulf Council Reef Fish FMP for both closing and reopening a reef fish fishery:

Consistent with existing requirements in the FMP and implementing regulations, the Regional Administrator is authorized to conduct the following framework actions through appropriate notification in the Federal Register:

- a. Close or adjust harvest any sector of the fishery for a species, sub-species, or species group that has a quota or sub-quota at such time as projected to be necessary to prevent the sector from exceeding its sector-quota for the remainder of the fishing year or sub-quota season,*
- b. Reopen any sector of the fishery that had been prematurely closed,*
- c. Implement accountability measures, either in-season or post-season.*

Estimated time to implement these types of actions is 1-10 days.

Proposed Next Steps:

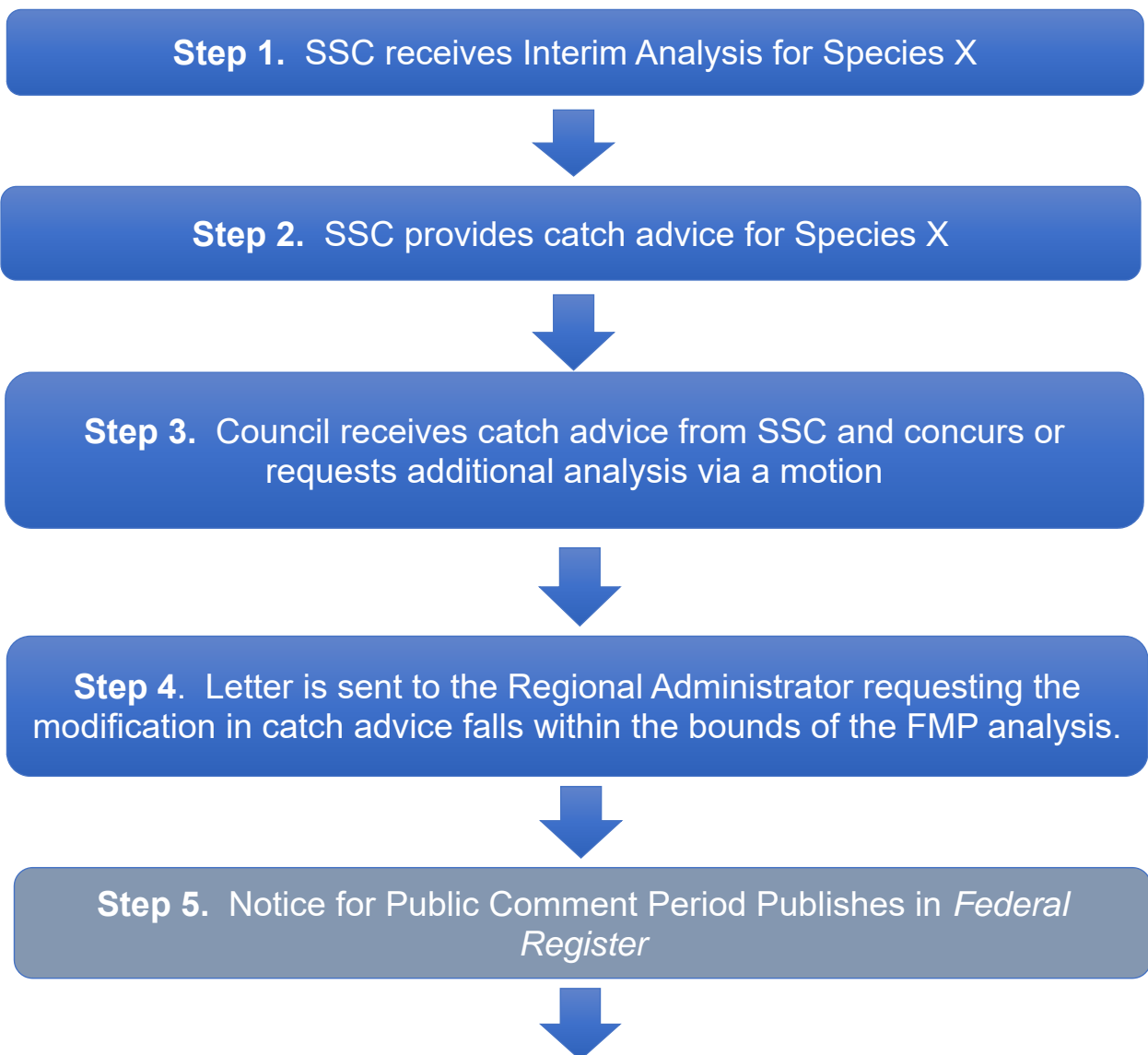
Consider developing a Reef fish FMP plan amendment that includes a framework for establishing catch advice for a limited number of species that have a successful IA with proposed catch advice vetted by the SEFSC and reviewed and approved by the Gulf Council's SSC. For example, red grouper, gray triggerfish, red snapper, and gag. It is possible that vermilion snapper and king mackerel could be considered in the future.

The document would need to analyze a range of catches, with the same sector allocations for each of these species. The tricky part of this process will be the range of catch advice that can be adjusted scientifically and outlined in a document prior to the completion of the IA. Close coordination with the SEFSC will be necessary to successfully develop and operationalize this effort. For simplicity it is recommended that changes in stock status and sector allocations be avoided. Figure 4 outlines the anticipated proposed process steps if the Gulf Council moves forward with this effort. The italicized text is a potential example of how the current Reef Fish FMP Framework Procedures could be modified to implement such a Closed Framework process:

1. *Consistent with existing requirements in the FMP and implementing regulations, the Regional Administrator is authorized to conduct the following framework actions through appropriate notification in the Federal Register:*

- *Adjust sector-specific or stock annual catch limit (ACL) for a species, sub-species, or species group by 25-30% below or 25-30% above the current total ACL*

Figure 4. Proposed process if catch advice recommended from the SSC falls within the framework established in the Reef Fish FMP.



Step 6. Notice for Final Rule Publishes in *Federal Register*



Step 7. Comment period ends – Rule becomes effective

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