ERRATA TO THE ENVIRONMENTAL ASSESSMENT FOR FRAMEWORK ADJUSTMENT 22 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

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NOAA's National Marine Fisheries Service, Northeast Region
55 Great Republic Drive
Gloucester, MA 01930-22766

1.0 BACKGROUND AND PURPOSE

The New England Fishery Management Council (Council) submitted Framework Adjustment 22 (Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP) to NOAA's National Marine Fisheries Service (NMFS) on March 23, 2011. Following the submission Framework 22, NMFS has identified additional information which could help clarify discussion regarding recent proposed listings of protected species and the impacts of some alternatives on other fisheries. This errata document provides this additional information to the Environmental Assessment to Framework Adjustment 22 (Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP).

This errata applies to the following sections of Framework 22: 2.2, 4.3, 4.3.1, 4.2.3.1, 5.3, 5.3.8, 5.6.1, 5.6.5, 5.6.7, 5.7.5, 5.7.6, 5.7.8, and 8.0.

2.0 SUMMARY OF THE PROPOSED ACTION

Corresponds to Section 2.1 (Management alternatives under consideration) in the Council's Framework 22 document.

Replace the section number for "Updated allocations for LAGC IFQ vessels (Proposed)" in Table 2 (page 14 of Council's Framework 22 document) with "2.6.2" to reflect the correct section number. Currently, the document states "2.6.1" for both the No Action alternative and the proposed alternative.

4.3 PROTECTED RESOURCES

Corresponds to Section 4.3 (Protected Resources; Page 100) in Council's Framework 22 document.

Insert the following text at the end of the list of protected species found in the environment in which the sea scallop fishery is prosecuted.

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Proposed Species for Listing	**Proposed Status**
Atlantic sturgeon *(Acipenser oxyrinchus oxyrinchus)*	Endangered/Threatened
Loggerhead sea turtle *(Caretta caretta)*	Endangered*

* Proposed up-listing from threatened, which is the current status under ESA."

4.3.1 Proposed, Threatened, and Endangered Species Not Likely to be affected by the Alternatives under Consideration

Corresponds to Section 4.3.1 (Threatened and Endangered Species Not Likely to be affected by the Alternatives under Consideration; Page 101 of Framework 22 document).

Insert the following text at the end of the discussion of threatened and endangered species not likely to be affected by the Framework 22 Alternatives under Consideration.

"Atlantic Sturgeon (Proposed for Listing)
Atlantic sturgeon have been proposed for listing under the ESA (75 FR 61872 and 75 FR 61904; October 6, 2010). NMFS has concluded that the U.S. Atlantic sturgeon spawning populations comprise five Distinct Population Segments (DPSs) (ASSRT, 2007). The Gulf of Maine DPS of Atlantic sturgeon is proposed to be listed as threatened, and the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon are proposed as endangered. Atlantic sturgeon of each of the five DPSs occur where the scallop fishery operates.

Atlantic sturgeon is an anadromous species that spawns in relatively low salinity, river environments, but spends most of its life in the marine and estuarine environments from Labrador, Canada to the Saint Johns River, Florida (Holland and Yelverton 1973, Dovel and Berggen 1983, Waldman et al. 1996, Kynard and Horgan 2002, Dadswell 2006, ASSRT 2007). Tracking and tagging studies have shown that subadult and adult Atlantic sturgeon that originate from different rivers mix within the marine environment, utilizing ocean and estuarine waters for life functions such as foraging and overwintering (Stein et al. 2004a, Dadswell 2006, ASSRT 2007, Laney et al. 2007, Dunton et al. 2010). Fishery-dependent data as well as fishery-independent data demonstrate that Atlantic sturgeon use relatively shallow inshore areas of the continental shelf; primarily waters less than 50 m (Stein et al. 2004b, ASMFC TC 2007, Dunton et al. 2010). The data also suggest regional differences in Atlantic sturgeon depth distribution with sturgeon observed in waters primarily less than 20 m in the Mid-Atlantic Bight and in deeper waters in the Gulf of Maine (Stein et al. 2004b, ASMFC TC 2007, Dunton et al. 2010). Information on population sizes for each Atlantic sturgeon DPS is very limited.

Based on the best available information, NMFS has concluded that incidental catch, vessel strikes, water quality and water availability, dams, lack of regulatory mechanisms for protecting the fish, and dredging are the most significant threats to Atlantic sturgeon. Atlantic sturgeon are known to be captured in sink gillnet, drift gillnet, and otter trawl gear (Stein et al. 2004a, ASMFC TC 2007). Of these gear types, sink gillnet gear poses the greatest known risk of mortality for caught sturgeon (ASMFC TC 2007). Scallop dredge and trawl gear are not known to pose a risk for Atlantic sturgeon despite many hours of observer coverage for these gear types. In fact, according to the NMFS Observer database, there are no reports of Atlantic sturgeon captures in scallop dredge or trawl gear from 2001 through 2010 (NEFSC 2011, Stein et al. 2004a, ASMFC TC 2007). Because the scallop fishery predominantly uses dredge gear, this species is not likely to be affected by the operation of the scallop fishery. Final determinations on the proposed listings are expected by October 6, 2011."

4.3.2.1 Sea Turtle Background
Corresponds to Section 4.3.2.1 (Sea Turtle Background; Page 105 of Framework 22 document).

Replace the last two paragraphs of the loggerhead sea turtles discussion with the following:

"As mentioned in Section 4.3.2.1, the Services published a proposed rule to designate nine loggerhead DPSs worldwide, with seven as endangered and two as threatened, on March 16, 2010 and the timeline for the final determination was extended for six months until September 16, 2011 (76 FR 15932).

ESA Section 7 consultations are required when a proposed action may affect listed species; however, a conference is required only when the proposed action is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat. Therefore, a conference would be required if it were determined that the scallop fishery, including implementation of Framework 22, was likely to jeopardize one or more of the proposed nine DPSs of loggerhead sea turtles. The effects of the scallop fishery on loggerhead sea turtles was conducted in the March 14, 2008, Biological Opinion. That Biological Opinion concluded that the scallop fishery may affect, but was not likely to jeopardize, loggerhead sea turtles. An incidental take statement and associated reasonable and prudent measures (RPMs) and terms and conditions (T/Cs) were included with that Biological Opinion. In reaching that conclusion, the Biological Opinion considered the effect of the estimated take on nesting beach aggregations and ultimately to the global species as listed. The difference between the analysis contained in the 2008 Biological Opinion and that conducted for the proposed species would be that it was conducted at the level of the global species and it was conducted for a species listed as threatened whereas the proposal is for nine DPSs, two of which are proposed to be listed as threatened and seven to be listed as endangered. The Northwest Atlantic DPS is the one affected the most by the scallop fishery, and it is proposed to be listed as endangered. It is important to note that the effects analysis was conducted by examining the estimated number of takes against what is known about the biological status of loggerhead sea turtles and did not explicitly include any specific variable that would be affected by the listing status (*e.g.,* threatened or endangered). Since the 2008 Biological Opinion considered effects at the nesting beach aggregation level first and then aggregated up to consider effects at the species level, an analysis considering effects at the DPS rather than species level and on an endangered rather than threatened species would not likely change the conclusion of that Biological Opinion.

Regardless of the proposed up-listing of the Northwest Atlantic DPS, the Council and NMFS must still adhere to the current RPMs and T/Cs of the most recent Biological Opinion."

5.3 IMPACTS ON PROTECTED RESOURCES

Corresponds to Section 5.3 (Impact on Protected Resources) of the Council's Framework 22 document).

5.3.8 Alternatives to minimize impacts of incidental take of sea turtles as per the 2008 scallop biological opinion

Corresponds to Section 5.3.8 (Alternatives to minimize impacts of incidental take of sea turtles as per the 2008 scallop biological opinion) of the Council's Framework 22 document).

Insert the following paragraph at the beginning of this Section (page 201):

"As mentioned in Section 4.3.2.1, the Services' proposed rule to designate nine loggerhead DPSs worldwide, with seven as endangered and two as threatened, would not change the conclusion of the 2008 Biological Opinion of the sea scallop fishery. Therefore, the Council and NMFS must still adhere to the current RPMs and T/Cs of the most recent Biological Opinion. Since the 2008 Biological Opinion considered effects at the nesting beach aggregation level first and then aggregated up to consider effects at the species level, an analysis considering effects at the DPS rather than species level and on an endangered rather than threatened species would not likely change the conclusion of that Biological Opinion. The proposed up-listing of loggerhead sea turtles does not currently impact anything the Council and NMFS are required to do for FW22 with regards to adhering to the current RPMs and T/Cs of the most recent Biological Opinion."

5.6.1 ACCEPTABLE BIOLOGICAL CATCH (ABC)
Corresponds to Section 5.6.1 (ABC; Page 276 of the Council's Framework 22 document).

This information replaces the text in Section 5.6.1 to read as follows:

"There are not expected to be any additional impacts on other fisheries as a result of setting ABC values in the scallop fishery as proposed (60.1 M lb in fishing year (FY) 2011 63.8 M lb in FY 2012). These proposed ABC values are similar to the No Action ABC alternative (57.8 M lb for both FYs). The scallop fishery's ABC, defined as the maximum catch that is recommended for harvest, is part of the process of establishing the annual catch limits (ACLs) for the scallop fishery. Buffers for management uncertainty are applied to the ABC to further reduce the total scallop landings allocated to this fishery. For fish species known to be caught while on dedicated scallop trips, such as yellowtail flounder, separate ACLs have been allocated to the scallop fishery through the Northeast Multispecies FMP. Amendment 15 to the FMP only considers accountability measures (AMs) for non-target species that have been identified by the primary FMP that manages a particular species, and yellowtail flounder is the only species that has currently been identified. Because the impact of scallop landings for yellowtail flounder has already been considered and accounted for in the Northeast Multispecies FMP, and because no other fisheries' FMPs have identified a need for a sub-ACL in the scallop fishery, the two scallop ABC alternatives are not expected to have any additional impacts on other fisheries."

5.6.5 Modify the in-shell possession limit for Limited Access General Category (LAGC) vessels seaward of the VMS demarcation line
Corresponds to Section 5.6.5 (Modify the in-shell possession limit for LAGC vessels seaward of the VMS demarcation line; Page 277 of the Council's Framework 22 document).

This information replaces the text in Section 5.6.5 to read as follows:

"The No Action (proposed) alternative will keep the in-shell possession limit at 100 bu of scallops. Currently, LAGC scallop vessels are able to possess 100 bu of scallops seaward of the VMS line but may not possess more than 50 bu when shoreward of the VMS demarcation line. The only other alternative considered was to reduce this seaward possession limit due to enforcement concerns that LAGC vessels were buoying 50 bu of scallops seaward of the VMS line to retrieve and land them the next day. Because this was an enforcement-related issue focusing on possessing scallops onboard a vessel, neither of the alternatives considered are expected to have direct impacts on other fisheries."

5.6.7 Eliminate reference to Georges Bank (GB) access area schedule in regulations
Corresponds to Section 5.6.7 (Eliminate reference to GB access area schedule in regulations; Page 277 of the Council's Framework 22 document).

This information replaces the text in Section 5.6.7 to read as follows:

"The two alternatives considered by the Council were the No Action alternative (keep the current one year closed/two years open schedule) or to remove this schedule so that the access area schedule would be based solely on scallop biomass projections and set in biennial framework adjustments (proposed alternative). The proposed alternative is merely allowing the access area schedules to be set as they have in previous years but relieves the unnecessary confusion that has resulted due to the late implementation of frameworks. These alternatives are not expected to have direct impacts on fisheries because they are administrative in nature."

5.7.5 Past and Present actions – Protected Species
Corresponds to Section 5.7.5 (Past and Present actions) of the Council's Framework 22 document).

Insert the following paragraphs at the end of the protected species discussion on page 289:

"As mentioned in Section 4.3.2.1, the Services' proposed rule to designate nine loggerhead DPSs worldwide, with seven as endangered and two as threatened, would not change the conclusion of the 2008 Biological Opinion of the sea scallop fishery. Therefore, the Council and NMFS must still adhere to the current RPMs and T/Cs of the most recent Biological Opinion. Since the 2008 Biological Opinion considered effects at the nesting beach aggregation level first and then aggregated up to consider effects at the species level, an analysis considering effects at the DPS rather than species level and on an endangered rather than threatened species would not likely change the conclusion of that Biological Opinion. The proposed up-listing of loggerhead sea turtles does not currently impact anything the Council and NMFS are required to do for FW22 with regards to adhering to the current RPMs and T/Cs of the most recent Biological Opinion."

5.7.6 Reasonably Foreseeable Future Actions – Protected Species
Corresponds to Section 5.7.6 (Reasonably Foreseeable Future Actions) of the Council's Framework 22 document).

Insert the following text at the end of this Section (page 302):

"As mentioned in Section 4.3.2.1, the Services' proposed rule to designate nine loggerhead DPSs worldwide, with seven as endangered and two as threatened, would not change the conclusion of the 2008 Biological Opinion of the sea scallop fishery. Therefore, the Council and NMFS must still adhere to the current RPMs and T/Cs of the most recent Biological Opinion. Since the 2008 Biological Opinion considered effects at the nesting beach aggregation level first and then aggregated up to consider effects at the species level, an analysis considering effects at the DPS rather than species level and on an endangered rather than threatened species would not likely change the conclusion of that Biological Opinion. The proposed up-listing of loggerhead sea turtles does not currently impact anything the Council and NMFS are required to do for FW22 with regards to adhering to the current RPMs and T/Cs of the most recent Biological Opinion."

5.7.8 Cumulative Effects Analysis – Protected Species
Corresponds to Section 5.7.8 (Cumulative Effects Analysis – Summary of cumulative effects on protected resources) of the Council's Framework 22 document).

Insert the following text before the last sentence of the second paragraph of this Section (page 313):

"If the final determination of NMFS is to up-list the loggerhead sea turtle to Endangered status for the Northwest Atlantic Ocean DPS, Section 7 consultation under ESA will be reinitiated on the sea scallop fishery. Since the March 14, 2008, Biological Opinion considered effects at the nesting beach aggregation level first and then aggregated up to consider effects at the species level, an analysis considering effects at the DPS rather than species level and on an endangered rather than threatened species would not likely change the conclusion of that Biological Opinion."

8.0 LITERATURE CITED
Corresponds to Section 8.0 (Literature Cited; Page 370 of the Council's Framework 22 document).

Insert the following citations to Section 8.0 of the Council's Framework 22 document:

"ASMFC TC (Atlantic States Marine Fisheries Commission Technical Committee). 2007. Special Report to the Atlantic Sturgeon Management Board: Estimation of Atlantic sturgeon bycatch in coastal Atlantic commercial fisheries of New England and the Mid-Atlantic. August 2007. 95 pp.

ASSRT (Atlantic Sturgeon Status Review Team). 2007. Status review of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). National Marine Fisheries Service. February 23, 2007. 188 pp.

Dadswell, M. 2006. A review of the status of Atlantic sturgeon in Canada, with comparisons to populations in the United States and Europe. Fisheries 31: 218-229.

Dovel, W. L. and T. J. Berggren. 1983. Atlantic sturgeon of the Hudson River estuary, New York. New York Fish and Game Journal 30: 140-172.

Dunton, K.J., A. Jordaan, K.A. McKown, D.O. Conover, and M.G. Frisk. 2010. Abundance and distribution of Atlantic sturgeon (*Acipenser oxyrinchus*) within the Northwest Atlantic Ocean determined from five fishery-independent surveys. Fish. Bull. 108:450-465.

Holland, B.F., Jr., and G.F. Yelverton. 1973. Distribution and biological studies of anadromous fishes offshore North Carolina. Division of Commercial and Sports Fisheries, North Carolina Dept. of Natural and Economic Resources, Special Scientific Report No. 24. 130pp.

Kynard, B. and M. Horgan. 2002. Ontogenetic behavior and migration of Atlantic sturgeon, *Acipenser oxyrinchus oxyrinchus*, and shortnose sturgeon, *A. brevirostrum*, with notes on social behavior. Environmental Behavior of Fishes 63: 137-150.

Laney, R.W., J.E. Hightower, B.R. Versak, M.F. Mangold, W.W. Cole Jr., and S.E. Winslow. 2007. Distribution, habitat use, and size of Atlantic sturgeon captured during cooperative winter tagging cruises, 1988-2006. *In* Anadromous sturgeons: habitats, threats, and management (J. Munro, D. Hatin, J.E. Hightower, K. McKown, K.J. Sulak, A.W. Kahnle, and F. Caron (eds.)), p. 167-182. Am. Fish. Soc. Symp. 56, Bethesda, MD.

New England Fisheries Science Center (NEFSC). 2011. Standard Bycatch Reporting Methodology Annual Discard Report 2010, Section 2.

Stein, A. B., K. D. Friedland, and M. Sutherland. 2004a. Atlantic sturgeon marine bycatch and mortality on the continental shelf of the Northeast United States. North American Journal of Fisheries Management 24: 171-183.

Stein, A.B., K. D. Friedland, and M. Sutherland. 2004b. Atlantic sturgeon marine distribution and habitat use along the northeastern coast of the United States. Transaction of the American Fisheries Society 133:527-537.

Waldman, J. R., J. T. Hart, and I. I. Wirgin. 1996. Stock composition of the New York Bight Atlantic sturgeon fishery based on analysis of mitochondrial DNA. Transactions of the American Fisheries Society 125: 364-371."