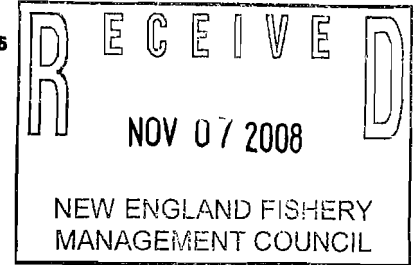


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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 NORTHEAST REGION
 55 Great Republic Drive
 Gloucester, MA 01930-2276

NOV - 6 2008



Paul J. Howard, Executive Director
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950

RE: Northeast Fisheries Science Center (Center) Comments on the Draft Environmental Impact Statement (DEIS) for Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Amendment 3)

Dear Paul:

Thank you for your October 24, 2008, letter describing your preference on how to proceed with addressing the pending science issues with Amendment 3. It was my hope that the Center would be able to work with the Skate PDT independently of the Data Poor Stocks Working Group (DPWG) assessment, but I acknowledge that resources and timing have been limited. I was also optimistic that the working meetings of the DPWG would provide enough new information to enable the Council and Center to come to a consensus on the best available science for Amendment 3. However, based on initial reports, this consensus has not yet been achieved.

Given the likelihood that these issues will remain unresolved at least until the DPWG is concluded, I recommend that final action on Amendment 3 be delayed until the peer-reviewed findings of the DPWG are made available. I feel that the need for using the best available science in this amendment outweighs the potential delays in the schedule for completion. The extra time will provide an opportunity our staffs to resolve some other outstanding fishery monitoring and implementation issues.

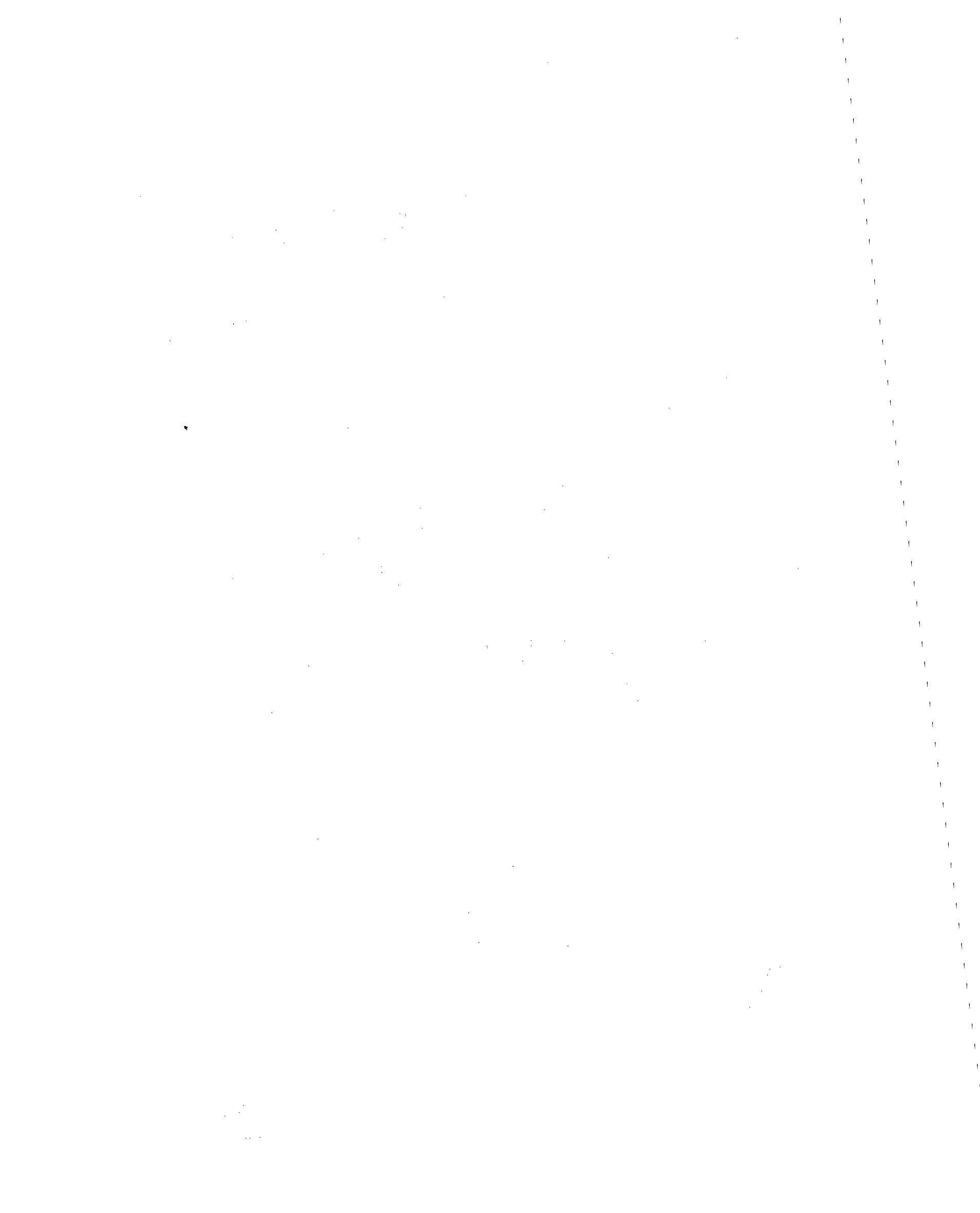
I acknowledge the awkward position that this recommendation may put you in, given that agendas have already been set for the upcoming Skate Oversight Committee and Council meetings. However, I feel that given the need to adequately resolve these issues, this is the best way forward at this time.

Sincerely,

Patricia A. Kurkul
 Regional Administrator

cc: J. Pappalardo
 N. Thompson
 C. Kellogg
 A. Applegate







New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

October 24, 2008

Ms. Patricia Kurkul
Regional Administrator
NOAA/NMFS
55 Great Republic Drive
Gloucester, MA 01930

RE: Northeast Fisheries Science Center (Center) Comments on the Draft Environmental Impact Statement (DEIS) for Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Amendment 3)

Dear Pat:

As your letter to the Council points out, the method that the Skate PDT developed to evaluate maximum catch levels that would rebuild smooth, thorny, and winter skate were the subject of several meetings by the Skate Plan Development Team (PDT) and a detailed peer review by the Scientific and Statistical Committee (SSC). These estimates were made by a new, innovative method to apply the species composition of the NMFS trawl surveys to commercial landings. The Northeast Fisheries Science Center (NEFSC)'s Kathy Sosebee is a member of the PDT and was sent all related documents and analyses for review. Furthermore, the NEFSC may also attend and submit related analyses or comments to the SSC for their consideration. The analyses that follow this process and are approved are thus considered the best available science for our plans and amendments.

Nonetheless, the Council understands the technical basis for the Center's concerns about the PDT's method of species composition assignment to commercial landings. Since skate assessment is on the agenda for the current Data Poor Assessment Workshop (DPWS), Andrew Applegate, a member of my staff assigned to skate plan management, presented to the workshop a statistical analysis which showed that the PDT's method did not significantly violate the stratified survey design. Nonetheless, it was discovered that the selectivity chosen to apply to the trawl skate wing fishery may have been too low, based on observed commercial catches. This does not affect the assignment of species composition to landings in the bait fishery or landings by vessels using gillnets. Andy and Kathy are working on updating the analyses to correct for this possible error, but these results will not be reviewed until the next DPWS meeting in early November and the results of the DPWS will not become final until December, at the earliest.

Since we also are conducting public hearings, taking public comments, and have scheduled an Oversight Committee/Advisors meeting between now and the November Council meeting, there simply is insufficient time for a full re-analysis of the results by the PDT before the Council meeting. Since the specifications and management measures are derived from aggregated-species fleet targets, I do not anticipate that the new results would change the management measures, their estimated effects on the fishery, or the Council's choice of a final alternative.

Instead of a re-analysis and PDT meeting before the November Council meeting, I propose that the updated DPWS estimates of catch species composition should be reviewed by the PDT after the November Council meeting and included in the Final Environmental Impact Statement (FEIS) when it is submitted. I recommend this approach to take advantage of the comprehensive SAW review process rather than having the work done solely by the Skate PDT. If there are any red flags that the proposed catch limits are insufficient, then Amendment 3 would have to be changed and re-approved by the Council. I do not anticipate that re-approval would be necessary however, because Amendment 3 includes a risk-adverse approach to addressing just this type of uncertainty, by specifying a target catch (ACT) that is 75% of the threshold ACL.

If this approach is not acceptable, then please let me know at the earliest opportunity, because we would have to postpone the Amendment 3 approval until the work can be done.

Sincerely,

A handwritten signature in cursive script that reads "Paul".

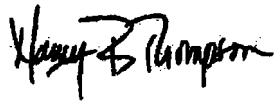
Paul J. Howard
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

September 9, 2008

MEMORANDUM FOR: Patricia A. Kirkul
Regional Administrator, NER

FROM: Nancy B. Thompson, Ph.D. 
Science and Research Director

SUBJECT: Review of Draft Environmental Impact Statement (DEIS) for
Amendment 3 to the Northeast Skate Complex Fishery
Management Plan (Skate FMP)

In response to your memo of August 20, 2008, Center staff members reviewed the Subject document, and the following comments are provided. A number of significant technical and analytical concerns are identified.

MAJOR COMMENTS:

Problems with the methods used to calculate MSY/OY/ACL (pages 4-26, 4-27, 5-31):

While the idea to split out catch by species using survey data proportions is a good one, the survey data were not used appropriately in the calculation. The data were averaged by statistical area, which violates the design of the survey. There are alternative ways of analyzing the data which would be appropriate (e.g., post stratification methods-- particularly domain estimation).

The commercial data were probably split out to a finer resolution than the data can support (this issue was addressed in several working papers at the GARM III Data Meeting). Alternatively, the survey data could be split appropriately into major regions (GOM, GB, SNE, and MA) with commercial catch split out the same way.

The assumption that RV *Albatross IV* catches the skate species in the same proportions as commercial vessels is a strong assumption. The validity of that assumption depends not only on the selectivity of the nets but also the areas where the commercial vessel fished. Some level of validation with comparisons of survey data with observer data may be useful. Such an analysis should make note of the possibility that some fraction of skates are likely misidentified.

The use of a median catch/biomass ratio method may not be the most appropriate in this case. After the catch is estimated by species, it may be useful to use a developed model,



such as AIM (an Index Method), which has been used for other species. The AIM model has been vetted at peer reviewed meetings, and could address similar questions.

General comment: Most of this skate information will be reviewed at the Data-Poor Stocks Working Group meeting in December 2008. Between now and then, it will be possible to do similar calculations using a variety of methods and to update the discard estimates by region. It is possible that recommendations from the Data-Poor Stocks WG will differ from what has been done in the subject document.

Protected Species:

Page 7-128. For turtles, the DEIS appears to use the Fisheries Sampling Branch webpage as the data source, and only identifies a single observed bycatch event. Specifically, the DEIS states that "According to the monthly reports on the NEFSC website for March 2006 – February 2008, one loggerhead turtle was taken in observed groundfish trips by a bottom trawl, and none were observed in sink gillnets." This statement needs to be qualified better and made more specific about how "trip" was defined to get this result. The number of bycatch events can and be greater than one, depending on what gear type and target species is queried from the database.

Section 7.3.7.1. Sea turtle bycatch analysis results from K. Murray need to be considered. For example, Murray estimated that 225 loggerhead turtles per year have been taken by the trawl portion of the monkfish (2), multispecies (43), sea scallop (20+136), and skate (24) FMPs (Murray 2007 and Murray FMP memo to Lynn Lankshear, 08/07/07). Murray has also estimated that as many as 749 loggerheads could be taken by the dredge portion of the scallop FMP in a single year (Murray 2004, 2005, 2006, 2007). These Murray analyses provide more information than was used in the 2003 Skate Biological Opinion.

Page 8-316 and elsewhere. The document needs to include a clear discussion about whether equal or unequal risk is being assigned to turtles in the gillnet versus trawl portions of the fisheries. It seems that the document assigns less risk to the gillnet portion of the fishery. If this is so, it should be corroborated by data. NEFSC is currently doing a gillnet bycatch analysis.

References to add:

Murray, K.T., 2004a. Magnitude and distribution of sea turtle bycatch in the sea scallop (*Placopecten magellanicus*) dredge fishery in two areas of the Northwestern Atlantic Ocean 2001–2002. Fish. Bull. 102 (4), 671–681.

Murray, K.T., 2004b. Bycatch of sea turtles in the Mid-Atlantic sea scallop (*Placopecten magellanicus*) dredge fishery during 2003. U.S. Dep. Commer., Northeast Fish. Sci. Cent. Ref. Doc. 04-11, 2nd ed. 25 p. (available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026).

Murray, K.T., 2005. Total bycatch estimate of loggerhead turtles (*Caretta caretta*) in the 2004 Atlantic sea scallop (*Placopecten magellanicus*) dredge fishery. U.S. Dep. Commer., Northeast Fish. Sci. Cent. Ref. Doc. 05-12, 22 p. (available from:

National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026).

Murray, K.T. 2006. Estimated average annual bycatch of loggerhead sea turtles (*Caretta caretta*) in U.S. Mid-Atlantic bottom otter trawl gear, 1996-2004. US Dep. Commer., Northeast Fish. Sci. Cent. Ref. Doc. 06-19; 26 p.

MINOR AND EDITORIAL COMMENTS:

Harbor porpoises are no longer candidates for ESA listing.

Need to update most marine mammal numbers when referring to a number in an old Stock Assessment (e.g., Waring et al.'s) particularly in sections 7.3.7 and 8.1.5 and pages 3-16.

The species name for thorny skate is *radiata*.

Page 3-16. Fourth paragraph, fifth sentence. Some text is needed to indicate that the data from observers are also incorrect, as little skate are too small to be cut for wings.

Page 4-20 and Table 13. Barndoor genus is *Dipturus* (left over from FMP misspelling).

Page 4-22 and all footnotes. Footnote numbers are in same font and look like a mistake.

Page 5-35. Section 5.1.3, paragraph 1, first sentence. The wing and whole pounds are backwards.

Page 5-39. Paragraph 1 – unfinished sentence at end.

Page 5-41. Options “a” for quotas 2 and 3 are either reversed or perhaps wrong. Check.

Page 5-49. Alternative 4. In the rationale section, lower possession limits are described, but Table 12 has the same limits as Alternative 1B.

Page 5-50. Another problem with prohibiting possession of winter skates is that the wing fishery would basically be eliminated. Barndoor and thorny are already prohibited and the other species are either not landed in the fishery (e.g., little, smooth, rosette) or a very small portion in the Mid-Atlantic fishery (e.g., clearnose).

Page 5-52. Section 5.3.8. In the Rationale section, the method for separating male skates from female skates is described using alar spines on the outer perimeter of the wings of males. This would only be a major problem for enforcement. Fisherman would have the fish whole and would be able to sort quickly based on the presence/absence of claspers. This paragraph should probably reflect both enforcement and sorting (which would still take time using claspers) issues.

Page 7-66. The SAW 44 description is of the working group meeting, not the SAW. The SAW/SARC occurred in December as the peer review.

Page 7-68. Second paragraph. The significant conversion coefficients were for little, winter, and smooth skates (thorny left-over from an earlier mistake in SARC 30).

Page 7-69. The descriptions of the surveys need to indicate that the data were updated for 2000-2006, or note the actual year the survey starts. This applies to most of the descriptions of auxiliary surveys.

Page 7-110. Discussion of latitudinal differences in maturity is from Frisk and Miller (2006) not Sulikowski and needs to be described as such.

Page 7-121. For each species, the size groups are listed as middle size of the group, which isn't made clear. However, it should be the range. Winter skates were divided into three size groups: small (≤ 30), medium (31-60) and large (≥ 61). Little skates were divided into two size groups: small (≤ 30) and large (≥ 31). Barndoor skate were divided into two size groups: small (≤ 80) and large (≥ 81). Thorny skates were divided into three size groups: small (≤ 30), medium (31-60) and large (≥ 61). Thorny skate has a sentence about small little/winter which should be removed. Smooth skates were divided into two size groups: small (≤ 30) and large (≥ 31). Rosette skates were divided into two size groups: small (≤ 30) and large (≥ 31). Clearnose skate were divided into two size groups: small (≤ 60) and large (≥ 61). Any reference to mature/immature should be removed. These size classes were not based on size at maturity.

Page 7-176. Paragraph 2, sentence 6. "The quantification of skates landed has little effect on price because there is has been ... " This sentence needs to be rewritten.

Page 7-199. Third to last paragraph mentions the strong US dollar. Is this left over from the FMP?

Page 8-231 and Table 61. Last paragraph before next section says Amendment 2.

Page 8-234. Paragraph 2, last sentence. The sentence as written is wrong. Skates lay their eggs on the bottom, they are not pelagic.

Page 8-235. Thorny skate is also on the candidate species list for ESA.

Page 8-291. Fourth paragraph, last line. Should be changed to few, if any little skate would be discarded with the current maximum size.

cc: F. Serchuk
J. Weinberg
P. Rago
P. Logan
R. Merrick
H. Haas
K. Murray
K. Sosebee
T. Curtis (NERO)