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**PUBLIC REVIEW DRAFT**

Amendment 17  
to the Northeast Multispecies  
Fishery Management Plan

To Address NOAA-Sponsored, State-Operated Permit Banks

Including a Regulatory Impact Review

April 2011

Prepared by the

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Final Draft Amendment Adopted by NEFMC:  
Final Amendment Submitted to NMFS:

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## Public Review Draft

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This draft of Amendment 17 to the Northeast Multispecies FMP has been approved by the New England Fishery Management Council for the purpose of soliciting comments from the public on the action the Council is considering taking in this amendment.

### **Submitting Comments on Amendment 17:**



Comments must be received by 5:00 p.m. on May 18, 2011.

Written comments by mail:

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930  
Subject line: "Groundfish Amendment 17 Public Review Comments"

Written comments by fax:

National Marine Fisheries Service , (978) 281-9135  
Subject line: "Groundfish Amendment 17 Public Review Comments"\*\*\*

Written comments by email:

Send to [GFAMendment17@noaa.gov](mailto:GFAMendment17@noaa.gov)  
Subject line: "Groundfish Amendment 17 Public Review Comments"

The Council will also accept oral comments during the following meetings:

- April 18, 2011 – Groundfish Oversight Committee Meeting  
Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048
- April 28, 2011 – New England Fishery Management Council Meeting  
Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355

For more information on these meetings, including meeting agendas, please see the Council's web page at [www.nefmc.org](http://www.nefmc.org).

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## Executive Summary

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This action would amend the Northeast Multispecies Fishery Management Plan (FMP) to explicitly define and facilitate the effective operation of permit banks operated by a New England state and funded, at least in part, through a Federal grant award from NOAA for this purpose (the “NOAA-sponsored, state-operated permit banks”). This amendment is prepared according to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) under the jurisdiction afforded by the Magnuson-Stevens Act to the New England Fishery Management Council (Council).

The Council, associated states, and NOAA’s National Marine Fisheries Service (NMFS) have an interest in promoting the effective implementation of catch-share programs in New England, while minimizing any potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses that can result from catch-share programs. To this end, NOAA has provided funding to the states of Maine, New Hampshire, Massachusetts, and Rhode Island, in the form of Federal grant awards, for the express purpose of establishing several “permit banks” of Northeast multispecies fishing vessel permits.

NOAA-sponsored, state-operated permit banks are not recognized under the current provisions of the Northeast Multispecies FMP, and the only entities allocated, and authorized to transfer, a sector’s annual catch entitlement (ACE) to sectors are other sectors. In this situation, the only mechanism available for NOAA-sponsored, state-operated permit banks to operate (i.e., provide fishing access to fishermen in the form of ACE transfers to the fishermen’s sector(s)) is for the permit bank to either join an existing sector as a member or to form a sector. Both of these mechanisms unnecessarily complicate the operation of the NOAA-sponsored, state-operated permit banks by requiring redundant administrative requirements.

This action would define a NOAA-sponsored, state-operated permit bank as a partnership between NOAA and one or more states in which Federal grant funds are used by the state(s) to establish a bank of Federal fishing vessel permits and to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by the state(s) to qualifying commercial fishermen and sectors according to criteria to which NOAA and the state(s) have agreed. NOAA-sponsored, state-operated permit banks are subject to U.S. Department of Commerce regulations regarding program income, such that any revenue generated by the permit banks may only be used to defray the program costs of operating the permit bank, or must be returned to the Federal Government to reduce the amount of the initial grant award.

Under this amendment, NOAA-sponsored, state-operated permit banks would be allocated ACE specifically authorized to provide ACE to approved groundfish sectors and/or days-at-sea (DAS) to vessels for the purpose of enhancing the fishing opportunities available to sector members, provided the NOAA-sponsored, state-operated permit banks comply with the

terms and conditions of any applicable Federal grant agreement (i.e., a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank) and a memorandum of agreement (MOA) established with NMFS for the administration of a permit bank that must meet certain minimum criteria.

The primary purpose of this administrative action is to address an existing regulatory constraint that prevents the NOAA-sponsored, state-operated permit banks from operating as intended, by creating a new provision such that NOAA-sponsored, state-operated permit banks may provide ACE and DAS to approved groundfish sectors and their members without first becoming, or joining, a groundfish sector. The action defines NOAA-sponsored, state-operated permit banks as separate entities from the groundfish sectors, and establishes certain minimum criteria for these newly defined entities in order to qualify for the streamlined administrative procedures described in this amendment. This action, in itself, does not establish, authorize, or promote the formation of any NOAA-sponsored, state-operated permit banks. Absent this amendment, such permit banks are free to form—subject to support and funding from NOAA—and operate to transfer ACE and/or DAS to sectors, according to the terms and conditions placed upon them by any NOAA grant award and/or MOA signed with NMFS, so long as they fully comply with the administrative and procedural requirements for groundfish sectors currently established in the Northeast Multispecies FMP.

## List of Acronyms and Abbreviations

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ACE	Annual Catch Entitlement
ACL	Annual Catch Limit
AM	Accountability Measure
APA	Administrative Procedure Act
CE	Categorical Exclusion
CZMA	Coastal Zone Management Act
DAS	Days-at-sea
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EIS	Environmental Impact Statement
EO	Executive Order
ESA	Endangered Species Act
FMP	Fishery Management Plan
IQA	Information Quality Act (also known as the Data Quality Act, or DQA)
MMPA	Marine Mammal Protection Act
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Act
NOAA	National Oceanic and Atmospheric Administration
PRA	Paperwork Reduction Act
PSC	Potential Sector Contribution
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
TAC	Total Allowable Catch

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## Chapter 1 Introduction and Background

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### Introduction

This action would amend the Northeast Multispecies Fishery Management Plan (FMP) to explicitly define and facilitate the effective operation of permit banks operated by a New England state and funded, at least in part, through a Federal grant award from NOAA for this purpose (the “NOAA-sponsored, state-operated permit banks”). This amendment is prepared according to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) under the jurisdiction afforded by the Magnuson-Stevens Act to the New England Fishery Management Council (Council).

Although this amendment has been prepared under the authority of the Magnuson-Stevens Act, it also addresses the applicable requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), the Coastal Zone Management Act (CZMA), Executive Orders (EOs) 12866 and 13132, the Administrative Procedure Act (APA), and the Information Quality Act (IQA, also known as the Data Quality Act, or DQA). These laws and directives help ensure that, in developing a fishery management action, the Councils and NOAA’s National Marine Fisheries Service (NMFS) fully consider the expected impacts the action may have on the marine environment, living marine resources, and human communities.

### Background

The Magnuson-Stevens Act establishes a regime for the management of fishery resources that occur in the U.S. Exclusive Economic Zone and establishes the Council as the body responsible for the development of fishery management plans for fisheries in the Atlantic Ocean seaward of the states of Connecticut through Maine.

The Council developed, and NMFS approved and implemented, Amendment 16 to the Northeast Multispecies FMP, which expanded a catch-share program known as “sectors” for the Northeast multispecies fishery. Catch-share management programs, when designed correctly, may help to prevent overfishing, eliminate the race to fish, reduce overcapacity and bycatch, and improve economic efficiency. However, catch-share programs may also result in the consolidation of fishing effort, reduce community involvement in local fishing, decrease access by small-scale fishermen to local fishery resources, create barriers to entry into the fishery by increasing the demand for capital to participate, and create competition among fishermen for access rights.

The sector management program allows groups of Northeast multispecies limited access permit holders (a minimum of three permit holders with no ownership interests in the other two permits) to be allocated, and manage the harvest of, a share of the annual catch limit (ACL) for certain stocks of groundfish in the form of a sector's annual catch entitlement (ACE). Northeast multispecies permit holders who do not join a sector would fish in the "common pool" under individual allocations of days-at-sea (DAS). Under Amendment 16, sectors may receive a transfer of additional ACE from other sectors to supplement their initial allocation, and members of the common pool may lease additional DAS from other common pool members to supplement their individual DAS allocations. Under Amendment 16, members of sectors may also lease additional DAS from other members of sectors (but not from or to common pool vessels) for the purpose of complying with the requirements of other FMPs.<sup>1</sup> Transfers between sectors and common pool vessels are prohibited.

The Council, associated states, and NMFS have an interest in promoting the effective implementation of catch-share programs in New England, while minimizing any potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses that can result from catch-share programs.<sup>2</sup> To this end, NOAA has provided funding to the states of Maine, New Hampshire, Massachusetts, and Rhode Island, in the form of Federal grant awards, for the express purpose of establishing several "permit banks" of Northeast multispecies fishing vessel limited access permits.

A permit bank, in its most basic form, is a collection of fishing permits held by an organization or individual for the purpose of providing to others the fishing privileges associated with those permits. NOAA and the states consider permit banks to have the potential to mitigate some of the possible adverse impacts associated with catch-share programs and to help preserve fishing opportunities for small-scale fishermen operating in small fishing ports that may otherwise be disproportionately negatively affected by the consolidation of fishing effort that often follows implementation of catch-share programs. Permit banks may help ease the transition to catch-share programs by:

- Providing options to fishermen with little access to capital;
- Helping fishermen to improve cooperation and operating efficiencies;
- Maintaining small-boat enterprises through the combination of a variety of permit attributes (e.g., DAS, potential sector contribution (PSC)) to meet the needs of fishermen and fishing communities for access to fishery resources; and
- Helping fishing communities preserve stable access to local fishery resources for local fishermen.

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<sup>1</sup> Currently, both the Monkfish FMP and the Skate FMP require permit holders in those fisheries to use DAS allocated under the Northeast Multispecies FMP in order to fish for monkfish and skates, respectively.

<sup>2</sup> See Goal #4 (section 3.4) in Amendment 16 to the Northeast Multispecies FMP, "Minimize, to the extent practicable, adverse impacts on fishing communities and shoreside infrastructure."

The Federal grant awards to the states of Maine, New Hampshire, Massachusetts, and Rhode Island are intended to facilitate partnerships between the states and NMFS that seek to:

- Preserve continued access to fishery resources for local, small-scale fishermen from small fishing communities throughout the states of Maine, New Hampshire, Massachusetts, and Rhode Island;
- Supplement existing access privileges held by fishermen in small communities; and
- Mitigate the effects of fishing effort consolidation on small-scale fishermen and fishing communities in these four states.

### Statement of the Problem

NOAA-sponsored, state-operated permit banks are not recognized under the current provisions of the Northeast Multispecies FMP, and the only entities allocated, and authorized to transfer, ACE to sectors are other sectors. In this situation, the only mechanism available for NOAA-sponsored, state-operated permit banks to operate (i.e., provide fishing access to fishermen in the form of ACE transfers to the fishermen's sector(s)) is for the permit bank to either join an existing sector as a member or to form a sector. Both of these mechanisms unnecessarily complicate the operation of the NOAA-sponsored, state-operated permit banks by requiring redundant administrative requirements. To form a sector, the state fishery management agencies must solicit for at least two other permit holders (without active vessels) with whom to form the sector, submit a complete sector roster of permits by September 1<sup>3</sup> in advance of each fishing year, and comply with redundant documentation and reporting requirements, among other things. A more efficient approach would be to include provisions in the Northeast Multispecies FMP that explicitly recognize NOAA-sponsored, state-operated permit banks as entities that are separate and distinct from sectors but nonetheless authorized to transfer ACE and DAS to sectors for the purpose of achieving the goals and objectives of the permit banks.

### Purpose and Need

This amendment is needed to modify the Northeast Multispecies FMP to formally define, and facilitate the effective operation of, NOAA-sponsored, state-operated permit banks. The purpose of this amendment is to:

1. Define a NOAA-sponsored, state-operated permit bank and distinguish this type of entity from that of a groundfish sector; and

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<sup>3</sup> The proposed rule to implement Framework Adjustment 45 to the Northeast Multispecies FMP proposes to revise this date to December 1 in advance of each fishing year (42 FR 11858, March 3, 2011).

2. Clarify and streamline the administrative procedures and requirements to which NOAA-sponsored, state-operated permit banks must comply in order to operate (i.e., be allocated ACE and provide ACE and/or DAS to approved groundfish sectors).

This amendment is not intended to address non-NOAA-sponsored, state-operated permit banks (e.g., private permit banks). The Council may consider modifying the Northeast Multispecies FMP to explicitly recognize and address non-NOAA-sponsored, state-operated permit banks in a future action.

### **Proposed Action**

For the purpose of public review, the Council has preliminarily selected as a preferred alternative for Amendment 17 the option described in the next section as Alternative 2, to define NOAA-sponsored, state-operated permit banks and to authorize entities that meet this definition to be allocated ACE and to provide ACE and/or DAS to approved groundfish sectors.

## Chapter 2

### Description of the Alternatives

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For each existing NOAA-sponsored, state-operated permit bank, a Federal grant was awarded to a state fishery management agency for the express purpose of obtaining Federal fishing vessel permits for use by a state-operated permit bank. Prior to the award issuance, each state was required to negotiate and enter into a formal memorandum of agreement (MOA) with NMFS that stipulates the agreed-upon terms and conditions under which the state may operate the permit bank. The terms and conditions of the MOAs between NMFS and the states are designed to establish specific criteria for determining which fishing vessels and sectors may qualify for access to the fishing privileges held by the permit bank, and include other requirements with which the state must comply, such as a requirement to declare annually which Federal permits held by the permit bank will be used for providing ACE and/or DAS to sectors and which will be used to provide DAS to common pool vessels, and annual reporting requirements. The MOAs may be modified at any time by agreement of both NMFS and the state and, once signed, are valid for 3-year terms but may be renewed with the consent of both signatories. This chapter presents the alternatives under consideration for Amendment 17 to the Northeast Multispecies FMP.

This amendment does not propose to *establish* any NOAA-sponsored, state-operated permit banks; these entities are established by joint agreement between NMFS and each partner state. Also, this amendment does not propose to *authorize* the formation or operation of any NOAA-sponsored, state-operated permit banks (these entities are established and authorized through the NOAA grants process and by virtue of the signed MOAs); absent this action, these entities are, by default, authorized to operate so long as all actions of the permit banks remain consistent with existing provisions of the Northeast Multispecies FMP and the applicable MOA. Thus, the alternatives presented below are narrowly focused on the administrative procedures and requirements to which NOAA-sponsored, state-operated permit banks would be subject in order to operate.

### Alternatives Under Consideration

#### Alternative 1: No Action

NOAA-sponsored, state-operated permit banks may continue to operate<sup>4</sup>, but must comply with all administrative and procedural requirements for groundfish sectors, as defined in Amendment 16 to the Northeast Multispecies FMP. These requirements include:

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<sup>4</sup> Pursuant to the requirements of the authorizing grant award and MOA with NMFS.

1. Prepare and submit a sector allocation proposal. Sector allocation proposals must be submitted to the Council to request that the sector be implemented through either a biennial adjustment or a framework adjustment, and be submitted at least 1 year prior to the date the sector wants to begin operations.
2. Meet the “rule of three.” Sectors must be comprised of at least three Northeast multispecies limited access permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued to the other two persons in the sector.
3. Prepare and submit a sector operations plan and sector contract. A sector operations plan must be submitted to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations. The operations plan may cover a 1- or 2-year period. Sector operations plans and contracts must contain the following elements:
  - a. A list of all parties, vessels, and vessel owners who will participate in the sector;
  - b. A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;
  - c. A contract signed by all sector participants indicating their agreement to abide by the operations plan;
  - d. The name of the designated representative or agent of the sector for service of process;
  - e. A plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;
  - f. A list of specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operation or cessation of operations once the ACEs of one or more stocks are harvested;
  - g. A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;
  - h. A plan of how the ACE allocated to the sector is assigned to each vessel;
  - i. Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;
  - j. Detailed plans for the monitoring and reporting of landings and discards by sector participants, including:

- i. Identification of the independent third-party service providers employed by the sector to provide dockside/roving and at-sea/electronic monitoring services;
    - ii. The mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea/electronic monitors and electronic monitoring equipment; and
    - iii. A list of the specific ports where vessels will land fish;
  - k. ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;
  - l. Identification of any potential redirection of effort into other fisheries expected as a result of sector operations;
  - m. A description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries; and
  - n. A list of existing regulations from which the sector is requesting exemptions during the following fishing year.
- 4. Comply with all sector monitoring and reporting requirements. All approved sectors are required to monitor and report catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year. In order to comply with this requirement, the following must be completed:
  - a. Beginning in fishing year 2010, all sectors must develop, implement, and pay for (to the extent not funded by NMFS) an independent third-party dockside/roving program for monitoring landings and utilization of sector ACE. Dockside/roving monitors shall monitor landings of regulated species and ocean pout by sector vessels to verify such landings. Beginning in fishing year 2012, an at-sea/electronic monitoring program must be implemented to verify area fished, as well as catch and discards by species and gear type.
  - b. Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector. The weekly reports must include:
    - i. Week ending date;
    - ii. Species, stock area, gear, number of trips, reported landings, discards, total catch, status of the sector's ACE, and whether this is a new or updated record of sector catch for each Northeast multispecies stock allocated to that particular sector;
    - iii. Sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads;
    - iv. Summary of offloads witnessed by dockside/roving monitors for that reporting week; and

- v. A list of vessels landing for that reporting week.
- c. Each sector must submit an annual year-end report to NMFS and the Council that summarizes the fishing activities of participating permits/vessels. The annual report must include:
  - i. Catch, including landings and discards, of all species by sector vessels;
  - ii. The permit number of each sector vessel that fished for regulated species or ocean pout;
  - iii. The number of vessels that fished for non-regulated species or ocean pout;
  - iv. The method used to estimate discards by sector vessels;
  - v. The landing port(s) used by sector vessels;
  - vi. Enforcement actions; and
  - vii. Other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations.
- 5. Develop and submit to NMFS an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures (including any proposed exemptions) described in the sector operations plan.

Under the No Action Alternative, the only entities authorized to be allocated and to transfer ACE (and DAS) to approved groundfish sectors would be another approved groundfish sector, defined as a group of three or more persons, none of whom have an ownership interest in the vessels owned or permits held by the other two persons in the sector, holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a total allowable catch (TAC) in order to achieve objectives consistent with the applicable FMP goals and objectives. Under this alternative, NOAA-sponsored, state-operated permit banks would continue to be required to either (1) join as a member (permit holder) of an existing groundfish sector, or (2) form one or more groundfish sectors, in combination with other vessel permit holders (private vessels permit holders or other states).

The states, in developing a proposed sector and sector operations plan, may request specific exemptions from some of the operational and administrative requirements listed above; however, sectors may not seek exemptions from prerequisites for forming a sector, such as: The requirement to prepare and submit a sector allocation proposal to the Council; the requirement to prepare and submit a sector operations plan and sector contract every 1-2 years; and, importantly, the requirement that the sector must be comprised of at least three different permit holders that have no common ownership interests. Under the no action alternative, states with NOAA-sponsored, state-operated permit banks would continue to be required to fulfill all of these requirements in order to operate the permit banks (i.e., provide ACE to other sectors).

**Alternative 2: NOAA-Sponsored, State-Operated Permit Banks Authorized to Provide ACE and/or DAS to Sectors**

This alternative would define a NOAA-sponsored, state-operated permit bank as an agreement between NOAA and one or more states in which Federal grant funds are used by the state(s) to establish a bank of Federal fishing vessel permits and to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by NMFS to the states' permit banks so that the state permit banks may transfer ACE and/or lease DAS to qualifying groundfish sectors and their member commercial fishermen according to criteria to which NOAA and the state(s) have agreed. NOAA-sponsored, state-operated permit banks are subject to U.S. Department of Commerce regulations regarding program income, such that any revenue generated by the permit banks may only be used to defray the program costs of operating the permit bank, or must be returned to the Federal Government to reduce the amount of the initial grant award.

Under this alternative, NOAA-sponsored, state-operated permit banks would be allocated ACE and specifically authorized to provide ACE and/or DAS to approved groundfish sectors for the purpose of enhancing the fishing opportunities available to sector members, provided the NOAA-sponsored, state-operated permit banks comply with the terms and conditions of any applicable Federal grant agreement (i.e., a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank) and an MOA established with NMFS for the administration of a permit bank that must meet certain minimum criteria.

The specific provisions of this alternative are:

1. The amount of ACE allocated to a NOAA-sponsored, state-operated permit bank to provide to sectors in any fishing year shall be, on a stock-by-stock basis, the product, in pounds, of multiplying the stock's available commercial sub-ACL<sup>5</sup> by the sum of the PSCs of that stock for all permits held by the state in the permit bank and appropriately declared by the state to be "ACE permits" for that fishing year, consistent with the terms of the state's permit bank MOA.
2. NOAA-sponsored, state-operated permit banks may not acquire additional ACE for a fishing year through a transfer from a sector. If a sector receives a transfer of ACE from a NOAA-sponsored, state-operated permit bank, but wishes to return this ACE to the permit bank (unused), NMFS would, upon written agreement by both parties,

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<sup>5</sup> Sub-ACLs are smaller portions of the overall ACL for a stock attributed to specific fisheries. The ACL for each groundfish stock is broken into three sub-ACLs: State; Groundfish; and Other. The State sub-ACL accounts for catch in state waters by state-permitted fisheries. The Groundfish sub-ACL accounts for all catch under the Northeast Multispecies FMP (including recreational catch by recreational vessels and commercial catch by sector vessels and common pool vessels). The Other sub-ACL accounts for assorted catch not otherwise accounted for, such as bycatch in exempted fisheries. The Groundfish sub-ACL is further broken into at least two sub-components--Common Pool and Sector--and may also include a Recreational sub-component. Sub-components are further divisions of a sub-ACL that are not considered ACLs.

void the initial transfer to the sector, thereby returning the ACE to the permit bank. The state permit bank may then redistribute the available ACE to another sector.

3. Subject to the terms and conditions of the states' permit bank MOAs with NMFS, NOAA-sponsored, state-operated permit banks may transfer ACE, on a stock-by-stock basis, to other NOAA-sponsored, state-operated permit banks for the purpose of maximizing the fishing opportunities made available by the permit banks to sector members. For example, the Rhode Island state permit bank may transfer Gulf of Maine ACE to the Maine state permit bank in exchange for Southern New England or Mid-Atlantic ACE.
4. The number of DAS available for a NOAA-sponsored, state-operated permit bank to provide to sectors for the purpose of sector vessels fishing for monkfish and/or skates in any fishing year shall be the accumulated Northeast Multispecies "A" DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state to be "ACE permits" for that fishing year, consistent with the terms of the state's permit bank MOA.
5. NOAA-sponsored, state-operated permit banks may not acquire additional A DAS through a lease from a vessel permit (including permits held by other state-operated permit banks). If a vessel receives a lease of DAS from a NOAA-sponsored, state-operated permit bank, but wishes to return these DAS to the permit bank (unused), NMFS would, upon written agreement by both parties, void the initial lease to the vessel, thereby returning the DAS to the permit bank. The state permit bank may then redistribute the available DAS to another vessel.
6. For analytical purposes, the total amount of ACE allocated to the groundfish sector sub-component in any fishing year shall be, on a stock-by-stock basis, the sum of all PSCs assigned to all vessels enrolled in sectors, *plus* the sum of the accumulated PSCs assigned to all the fishing vessel permits held by all states with established NOAA-sponsored, state-operated permit banks and appropriately declared by the states to be "ACE permits" for that fishing year, multiplied by that stock's sub-ACL. In the event that a state does not affirmatively declare which permits will be "ACE permits" for the fishing year prior to the time at which the analysis must be initiated, the analysis shall assume that *all* permits held by the state will be "ACE permits" for the year. A state may submit such a declaration later, but this would have the same impact as a vessel initially enrolled in a sector withdrawing from the sector for the year to enter the common pool—that is, the analysis would capture the maximum case for potential sector-related fishing effort.
7. State-operated permit banks shall be deemed to meet the definition above for a NOAA-sponsored, state-operated permit bank, and therefore qualify to operate as intended in this proposed action so long as the state-operated permit bank was *initially* established using a Federal grant award from NOAA for this purpose and maintains a valid MOA with NMFS that meets the following minimum criteria:

- a. That the MOA stipulates that the state may not associate the permit bank permits with any active vessels, to be defined such that no fishing or other on-the-water activities may be engaged in by any vessels to which these permits are assigned;
  - b. That the MOA stipulates the minimum eligibility criteria to be used by the state to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the permit bank;
  - c. That the MOA identifies a program contact person for the state agency administering the permit bank;
  - d. That the MOA stipulates that the state(s) provide to NMFS a list of all permits held by the state under the aegis of the permit bank, and identify whether the fishing privileges associated with each permit are to be used in the coming fishing year for (a) DAS leasing to common pool vessels, or (b) transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of complying with the requirements of other FMPs);
  - e. That the MOA stipulates that the state is required to prepare and submit an annual performance report to NMFS, and that said performance report include, at a minimum, the following elements:
    - i. A comprehensive listing of all permits held by the permit bank, identifying whether the permit was used for ACE/DAS transfers to sectors, or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the permit bank for transfers and leases to sectors and vessels;
    - ii. A comprehensive listing of all sectors to which ACE was transferred from the permit bank, including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;
    - iii. A comprehensive listing of all sector vessels to which DAS were leased from the permit bank, including the number of DAS leased to each sector vessel;
    - iv. A comprehensive listing of all common pool vessels to which DAS were leased from the permit bank, including the number of DAS leased to each common pool vessel; and
8. Once established, states may expand the permit banks using non-NOAA funds.
  9. Any of the specific provisions of this alternative may be modified through a framework adjustment to the Northeast Multispecies FMP.

Although the permit bank MOAs between NMFS and the states may be changed at any time by joint agreement of the signatories, under this alternative only those states with MOAs that continue to meet all of the requirements listed above in item 7 would be considered to

comply with the definition of a NOAA-sponsored, state-operated permit bank for the purpose of this action. If a change resulted in an MOA that did not fully comply with the requirements listed above in item 7, that state could continue to operate its permit bank, but would be required to form or join an approved groundfish sector before it could provide ACE and/or DAS to another approved groundfish sector.

## Rationale for the Proposed Action

The primary purpose of this administrative action is to address an existing regulatory constraint that prevents the NOAA-sponsored, state-operated permit banks from operating as intended, by creating a new provision such that NOAA-sponsored, state-operated permit banks may be allocated and provide ACE and DAS to approved groundfish sectors without first becoming, or joining, a groundfish sector. The action defines NOAA-sponsored, state-operated permit banks as separate entities from the groundfish sectors, and establishes certain minimum criteria for these newly defined entities in order to qualify for the streamlined administrative procedures described in this amendment. This action, in itself, does not establish, authorize, or promote the formation of any NOAA-sponsored, state-operated permit banks. Absent this amendment, such permit banks are free to form—subject to support and funding from NOAA—and operate to transfer ACE and/or DAS to sectors, according to the terms and conditions placed upon them by any NOAA grant award and/or MOA signed with NMFS, so long as they fully comply with the administrative and procedural requirements currently established for groundfish sectors in the Northeast Multispecies FMP.

This action would not change the fundamental principle of the groundfish sector program of the Northeast Multispecies FMP, in which the *sector* is the unit recipient of the groundfish catch share (ACE) and the only entity authorized to harvest ACE. Under this action, NOAA-sponsored, state-operated permit banks would only be able to contribute to the total amount of ACE available to a sector by providing ACE to that sector based on the fishing vessel permits obtained and held by the state for the purpose of the permit bank. The NOAA-sponsored, state-operated permit banks do not share the same flexibilities and opportunities available to sectors. The NOAA-sponsored, state-operated permit banks may not sell, trade<sup>6</sup>, increase (e.g., lease in addition), or harvest the ACE derived from the permits held by the state. Through this action, the Council recognizes that NOAA-sponsored, state-operated permit banks are fundamentally different entities from sectors, and intends to provide a means for these entities to operate effectively, within the groundfish sector program, to provide ACE to sectors. Under this action, NOAA-sponsored, state-operated permit banks would also be able to provide groundfish DAS to sector vessels for the purpose of targeting skates and/or monkfish.

One objective of this amendment is to clearly distinguish between sectors (as fishing operations) and NOAA-sponsored, state-operated permit banks (as government entities). For

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<sup>6</sup> This action proposes to allow NOAA-sponsored, state-operated permit banks to trade ACE with other NOAA-sponsored, state-operated permit banks, but would not authorize these permit banks to receive ACE from sectors.

example, sectors are collectives of fishing vessel operations joined together to maximize the economic efficiency of harvest, and the permit banks function as arms of state government agencies with different objectives and legal constraints. As opposed to an independent business operation with a direct financial interest in the fishing privileges associated with any fishing vessel permits it holds, the NOAA-sponsored, state-operated permit bank operates on behalf of the fishing communities in the state and members of the fishing industry that reside in and/or operate from the state. The state is not a profit-seeking entity, and is subject to Department of Commerce grant regulations regarding any revenue that may be generated through the operation of the permit bank (i.e., the state may only use such revenue to offset the costs associated with administration of the permit bank program, or must return the revenue to NOAA as a reduction in the amount of the initial grant award). In addition, pursuant to state law, several states are precluded from deriving *any* revenue from the permit bank program.

The Council considered the specific requirements and procedures to which sectors are bound in order to operate under the Northeast Multispecies FMP, and compared those requirements with those proposed for NOAA-sponsored, state-operated permit banks under this action. In some cases, there are strong similarities and redundancies between sector requirements and the requirements placed on NOAA-sponsored, state-operated permit banks through the MOAs to which each relevant state is currently subject. In other cases, the sector requirements appear to not be relevant to NOAA-sponsored, state-operated permit banks because such permit banks have no active fishing vessels and are prohibited (under the terms of the permit bank MOAs) from actively engaging in fishing activities. In yet other cases, the requirements are more appropriately placed on the sector(s) that would receive ACE from the NOAA-sponsored, state-operated permit banks, as these are the entities that would actually harvest fish under the ACE provided by the permit bank. Table 1 lists each sector requirement, and identifies whether a comparable requirement exists in the NMFS-state permit bank MOAs, or, if a comparable requirement does not exist in the MOAs, whether the requirement is applicable to the operation of the NOAA-sponsored, state-operated permit banks. If the Council took no action on this issue, NOAA-sponsored, state-operated permit banks would remain subject to all of the requirements listed in Table 1, many of which are redundant with the requirements to which such permit banks are already subject pursuant to the NMFS-state permit bank MOAs.

One of the primary requirements for a groundfish sector is to prepare and submit a sector operations plan, which must be submitted to NMFS for review and approval before the sector may operate. Sector operations plans are required to provide information regarding the structure and membership of the sector (including a list of all members, their permits, whether the permits will be enrolled in the sector or will remain in the common pool), a plan for distribution of ACE among sector members, steps the sector will take to avoid exceeding the ACE, penalties if the sector exceeds the sector's ACE, plans for monitoring and reporting catch by sector members, among other things. Under this proposed action, rather than prepare and submit a sector operations plan, NOAA-sponsored, state-operated permit banks would be

required to have an MOA with NMFS that addresses the relevant key issues that sectors must address in the sector operations plans (see Table 1).

Under this proposed action, the permit bank MOA must identify the program contact person administering the permit bank (comparable to the sector requirement to identify the sector representative or agent), include a list of all permits held by the state for the permit bank and, for each permit, whether it will be used to provide ACE/DAS to sectors, or be used to lease DAS to common pool vessels (comparable to the sector requirement to identify all permits held by sector members and whether those permits will be enrolled in the sector or remain in the common pool). This action would also require the MOAs to require annual reports to be prepared by the states, and stipulate basic information to be included in the reports (comparable to the sector requirement to provide NMFS and the Council with an annual year-end report summarizing the fishing activities of sector members).

Not all of the required elements in a sector operations plan would be similarly required of a NOAA-sponsored, state-operated permit bank, however. Some of the provisions, such as rules to avoid exceeding the allocated ACE, disciplinary procedures should a sector member not abide by the rules of the sector, a plan assigning ACE to each sector vessel, overage penalties, plans for monitoring and reporting landings and discards by sector members, and several other requirements that are specific to descriptions of vessel operations, are not relevant to NOAA-sponsored, state-operated permit banks, given that these entities cannot include active vessels and would be precluded from conducting any actual fishing activities. This action recognizes that these sector requirements are not relevant to the administration of a NOAA-sponsored, state-operated permit bank (see Table 1). The sector operations plans are also used to request, on behalf of the sector, exemptions from fishing regulations in order to provide operating efficiencies to the sector members. A comparable provision does not apply to the NOAA-sponsored, state-operated permit banks, as these entities would be precluded under this action from requesting any such exemptions.

Sectors are required to provide weekly catch reports that include information on the remaining ACE balances for the sector. Sectors are also required to establish an independent dockside monitoring program for monitoring landings, as well as to ensure that at-sea monitors are available to monitor catch, including discards, on sector fishing trips. None of these sector requirements are relevant to NOAA-sponsored, state-operated permit banks, again due to the nature of these entities, which would be precluded from including active vessels and from engaging in any fishing activities. However, the sectors receiving ACE from the permit banks would remain subject to these monitoring and reporting requirements, as part of normal sector operations, and so the ACE provided by NOAA-sponsored, state-operated permit banks would remain properly tracked and catch pursuant to that ACE would be accounted for by the receiving sectors. Additionally, ACE transfers by NOAA-sponsored, state-operated permit banks are processed by NMFS; therefore, NMFS maintains these data.

One of the central requirements that sectors must meet in order to be consistent with the provisions of Amendment 16 to the Northeast Multispecies FMP is the “rule of three”

owners. This rule stipulates that a sector must be composed of at least three permit holder entities that have no ownership interest in the permits held by the other two. The rule of three owners was introduced in Amendment 16 to address questions of what constituted a clear minimum size for the formation of the distinct legal entity serving as a sector. Prior to Amendment 16, a sector was defined simply as “persons entering into a contract,” implying, but not clearly establishing, that a sector had to be composed of more than one separate legal entity. During deliberations on Amendment 16, some Council members raised concerns regarding the potential for an individual owner of multiple vessel permits, held in the name of multiple and separate corporations, to form a sector and gain individual control over a portion of ACE. These concerns were, in part, allayed by the change to the sector provisions to require at least three separate owners, without any common ownership interests, to serve as the minimum size for the formation of any sector. The Council and NMFS determined this change to be consistent with the original intent of the definition of a sector. By defining NOAA-sponsored, state-operated permit banks as a separate and distinct type of entity that can provide ACE to sectors, without first becoming sectors, such permit banks would not be subject to the rule of three. This does not compromise the intent of the rule of three provision, which was implemented in order to prevent an individual permit holder from gaining complete control over a portion of fishable ACE. Under this proposed action, and under the terms and conditions of the NMFS-state MOAs, NOAA-sponsored, state-operated permit banks may not actually engage in any fishing activities, and may only provide ACE to sectors that would, by definition, meet the rule of three requirement.

The Council has no direct control over the terms and conditions established in the permit bank MOAs, which remain independent administrative arrangements between the relevant signatories, and this action asserts no such control. NMFS and the states remain free to modify the terms and conditions of the permit bank MOAs in any way they deem fit, without the need to consult with the Council or obtain Council approval. However, this action proposes to (1) require that a NOAA-sponsored, state-operated permit bank have an MOA with NMFS, and (2) establish a set of minimum criteria that these MOAs must meet in order for the permit bank to meet the definition established through this action and therefore be able to avail itself of the modified administrative procedures. Although a state and NMFS may, in the future, agree to terminate the MOA and allow the state to continue to operate the permit bank, such a state-operated permit bank would no longer meet the definition proposed in this action, and would only be able to provide ACE and/or DAS to sectors if it first became or joined a sector and complied with all of the relevant sector requirements. Similarly, because the Council cannot bind the states or NMFS as to the content of the permit bank MOAs, nothing precludes these parties from modifying the MOAs in the future. However, if any such modifications result in a permit bank MOA that fails to meet the minimum criteria proposed in this action, the state-operated permit bank would only be able to provide ACE and/or DAS to sectors if it first became or joined a sector and complied with all of the relevant sector requirements.

In addition to the ability to provide ACE and/or DAS to groundfish sectors, as described above, without first becoming or joining a groundfish sector, this action would also allow NOAA-sponsored, state-operated permit banks to transfer ACE to/from other NOAA-sponsored,

state-operated permit banks. The intent of this provision of this action is to facilitate the most efficient use of the ACE which NOAA-sponsored, state-operated permit banks are able to provide sectors. As NOAA-sponsored, state-operated permit banks obtain fishing vessel permits (under the terms of the NOAA grant awards), the portfolio of fishing privileges represented by the permits the individual permit banks hold may not represent the ideal balance of ACE, by stock, that can best serve the needs of the sectors to which the NOAA-sponsored, state-operated permit banks are providing ACE. By allowing ACE trades among the NOAA-sponsored, state-operated permit banks, the Council intends to facilitate for the states a means to improve the balance of ACE available to create a “best fit” scenario of ACE for the permit banks to provide to groundfish sectors. Although this action would allow such transactions among NOAA-sponsored, state-operated permit banks, they are currently not allowed under the NMFS-state permit bank MOAs. However, it is the Council’s preference that future iterations of the permit bank MOAs may allow this type of transaction, and to facilitate such a change in the MOAs by not precluding ACE trades among NOAA-sponsored, state-operated permit banks in this action.

In conclusion, the Council’s intent for this action is to streamline the administrative and procedural requirements of the Northeast Multispecies FMP so that NOAA-sponsored, state-operated permit banks can operate effectively and efficiently to the benefit of the states’ fishing industry and communities. This action does not propose to authorize any activity to occur that could not already occur through another, albeit more cumbersome, process.

**Public Review Draft**

**Table 1. This table maps each current requirement to establish a sector with whether a comparable requirement would apply to NOAA-sponsored, state-operated permit banks, or whether the requirement should not apply to the permit banks.**

Sector Requirement	Comparable Requirement for State-Operated Permit Banks?	Comment/Explanation
1. Prepare and submit a sector operations plan and sector contract.	Yes	Each state that wishes to operate a NOAA-sponsored, state-operated permit bank is required to develop, sign, and maintain an MOA with NMFS that specifies the requirements, criteria, and constraints on how the state will operate/administer the permit bank. This is the functional equivalent of the sector operations plan and contract. Such MOAs must be renewed at least every 3 years, but can be revised more frequently as needed.
2. Rule of three owners	N/A <sup>7</sup>	As separate and distinct from sectors for the purpose of providing ACE to sectors, NOAA-sponsored, state-operated permit bank would not be subject to the rule of three owners; however, the intent of this sector provision is maintained because such permit banks may only act to provide ACE to sectors (which remain subject to the rule of three provision) and may not otherwise benefit as permit holders.
3. Provide a list of all parties, vessels, and vessel owners participating in the sector	N/A	The MOAs governing the operation of the NOAA-sponsored, state-operated permit banks prohibit the states from holding the permit bank permits on active vessels, and the states are required to be the sole owner of record of each permit held in the permit banks.
4. Provide a list of all permits held by persons participating in the sector, indicating for each permit whether it is enrolled and will actively fish in the sector or will be subject to the provisions of the common pool	Yes	The MOAs governing the operation of the NOAA-sponsored, state-operated permit banks require each state to provide annually a list of all Federal permits held by the permit bank, and to declare for each permit whether its associated fishing privileges will be used to provide ACE and DAS to sectors, or whether it will be used to lease DAS to vessels in the common pool.
5. The name of the designated representative or agent of the sector	Yes	The MOAs governing the operation of the NOAA-sponsored, state-operated permit banks require the states to identify, and provide contact information for, a contact representative for the permit bank.
6. A plan for consolidation/re-distribution of ACE within the sector	Yes	The MOAs governing the operation of the NOAA-sponsored, state-operated permit banks require the states to provide NMFS a proposal describing how the state intends to allocate available ACE from the permit bank to fishing vessel sectors and/or DAS to vessel owners.
7. A list of specific rules the sector participants agree to abide by in order to avoid harvesting more than the allocated ACE for each stock	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from engaging in fishing activities, and may only act to provide ACE to sectors, such permit banks are not capable of harvesting more than the allocated ACE. The sectors that receive ACE from the permit banks would remain subject to this provision, as described in the sector operations plans.

<sup>7</sup> N/A = Not Applicable

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Sector Requirement	Comparable Requirement for State-Operated Permit Banks?	Comment/Explanation
8. A plan that defines the disciplinary procedures for sector members that do not abide by the rules of the sector	N/A	Because NOAA-sponsored, state-operated permit banks are not sectors, and do not have members, it is unnecessary for the state to define such disciplinary procedures. There are separate provisions, under NOAA grant rules, the state-NMFS MOAs, and the regulations at 50 CFR 648.4(n), that define the procedures available to NMFS should a state violate the terms and conditions of either the permit bank grant award or the permit bank MOA.
9. A plan of how ACE allocated to the sector is assigned to each vessel	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply.
10. Information on overage penalties to be taken if a sector harvests more than its allocated ACE for any stock	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply.
11. Plans for monitoring and reporting of landings and discards by sector participants	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.
12. ACE thresholds that may trigger revisions to sector operations to ensure allocated ACEs are not exceeded, and details for notifying NMFS once an ACE threshold has been reached	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.
13. Identification of any potential redirection of effort into other fisheries expected as a result of sector operations	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.
14. Description of how regulated species and ocean pout will be avoided while participating in other fisheries	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.
15. A list of regulations from which the sector is requesting exemptions	N/A	NOAA-sponsored, state-operated permit banks may not request exemptions from regulations.
16. Monitor and report catch by sector vessels to ensure that ACEs are not exceeded during the fishing year.	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.
17. Establish an independent third-party dockside/roving program for monitoring landings.	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement.

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Sector Requirement	Comparable Requirement for State-Operated Permit Banks?	Comment/Explanation
18. Weekly catch reports to NMFS stating the remaining balance of ACE allocated to each sector.	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, this requirement does not apply.
19. Annual year-end report to NMFS and the Council that summarizes the fishing activities of participating permits/vessels.	Yes	The MOAs governing the operation of the NOAA-sponsored, state-operated permit banks require the states to provide NMFS annual reports documenting the performance of the permit bank. Such reports must describe each permit bank transaction for the preceding fishing year, provide summary information for the preceding fishing year, and evaluate the impact of the permit bank program.
20. Develop and submit to NMFS an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operation plan.	N/A	Because NOAA-sponsored, state-operated permit banks are prohibited from assigning the permits held by the permit bank to active vessels, and from harvesting fish, there are no direct effects on the environment that stem from the operation of the permit banks. However, by providing ACE and/or DAS to sectors, the permit banks would increase the amount of fishing opportunities available to the sectors that receive the ACE/DAS. The environmental impacts associated with such an increase in the ACE or DAS available to members of a sector would be addressed and analyzed in the appropriate NEPA analysis for each sector. Sectors receiving ACE from a permit bank would be responsible for complying with this requirement. Also, Federal grant awards to a state for the purpose of establishing, or expanding, a NOAA-sponsored, state-operated permit bank are subject to NEPA requirements.

## Chapter 3

### Analysis of the Alternatives, Including a Fishery Impact Statement

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The purpose of this amendment can most succinctly be summarized as facilitating more efficient operation of the several NOAA-sponsored, state-operated permit banks that are being established in New England by defining a second type of entity that is authorized, under the Northeast Multispecies FMP, to be allocated ACE and to provide ACE and/or DAS to approved groundfish sectors. This amendment proposes to authorize NOAA-sponsored, state-operated permit banks to be allocated and provide ACE and/or DAS to approved groundfish sectors *without first forming or joining an approved groundfish sector*, provided the permit banks meet all the terms and conditions of the definition of a NOAA-sponsored, state-operated permit bank set out in this action. This would improve the efficiency of the NOAA-sponsored, state-operated permit banks by removing the redundant and/or unnecessary administrative requirements that would otherwise be imposed in order for these entities to first form or join an approved groundfish sector (see Table 1).

Because this amendment is concerned primarily with the administrative provision under which NOAA-sponsored, state-operated permit banks are authorized to provide ACE and/or DAS to approved groundfish sectors, the scope of the “environment” affected by this amendment is atypical for an FMP amendment. Most FMP amendments (and related actions) focus on changes to fishing regulations, which have a direct impact on fishing vessel operations (by modifying where, when, and/or how fishing may take place). These impacts on fishing vessel operations almost always affect the ways in which these fishing activities directly or indirectly interact with living marine resources, marine habitat, and the socio-economic constructs of the human environment. Thus, generally, for a fishery management action or an amendment of this type, an “Affected Environment” section would include specific, detailed information on the particular fishery and non-fishery species, the habitats of these species, and the fishing businesses and communities expected to be directly or indirectly affected by the proposed action.

However, the focus of this amendment is on defining a second type of entity that is authorized to transfer ACE and/or DAS to approved groundfish sectors, and the impacts of the preferred alternative only directly affect the state fishery management agencies operating NOAA-sponsored permit banks. Therefore, a detailed description of the environmental components including the biological resources, physical environment, and socio-economic structure that could be affected by the alternatives under consideration is not necessary. Rather, this amendment builds on, but does not alter, the analysis of impacts developed for Amendment 16 to the Northeast Multispecies FMP.

Amendment 16 to the Northeast Multispecies FMP established that the only entities authorized to be allocated ACE or to transfer ACE to approved groundfish sectors are other approved groundfish sectors. Amendment 16 also established that DAS associated with a

vessel permit enrolled in an approved groundfish sector may be leased or transferred only to other vessels similarly enrolled in approved groundfish sectors. Amendment 16 further established the administrative procedures that must be followed by an entity in order to be deemed an approved groundfish sector, including the requirements to develop and submit a sector operations plan and be composed of at least three independent vessel permit holders (see Chapter 2, Alternative 1, for a complete description of these requirements). All potential impacts to the human environment of the groundfish sector program were presented in the Environmental Impact Statement (EIS) that accompanied Amendment 16. This action proposes no changes to the overall groundfish sector program previously considered and implemented, save to define a second type of entity that may be authorized to provide ACE and/or DAS to approved groundfish sectors, provided that such an entity (a NOAA-sponsored, state-operated permit bank) meets the administrative criteria established in this amendment to be so deemed.

This action does not reverse any decisions made during the development of Amendment 16 regarding the administrative provisions to which NOAA-sponsored, state-operated permit banks should be subject, because at the time Amendment 16 was developed and approved by the Council, the establishment of any NOAA-sponsored, state-operated permit bank had not been contemplated, and no such permit banks existed. During the initial development of the terms and conditions under which NOAA-sponsored, state-operated permit banks would operate, and subsequent to the approval and implementation of Amendment 16, the relevant states and NMFS identified the administrative complexities that arise if state-operated permit banks must first form or join approved groundfish sectors in order to operate and provide ACE and/or DAS to other approved groundfish sectors. This action was initiated as soon as these complexities were recognized in order to consider options for amending the FMP to facilitate the efficient and effective operation of the NOAA-sponsored, state-operated permit banks.

During development of this amendment, various interested parties have expressed some concern regarding how the operations of state permit banks might affect the distribution of ACE among the sectors, or the amount of ACE available for use by sectors. The specific action proposed in this amendment—modifying the administrative process to facilitate the transfer of ACE and DAS from NOAA-sponsored, state-operated permit banks to approved groundfish sectors—would have no direct effect on either the distribution of ACE among sectors or on the amount of ACE available for use by sectors. Figure 1 (below) is intended to illustrate this conclusion. Regardless of whether the state permit banks first form or join sectors (consistent with the existing regulations implementing Amendment 16 to the Northeast Multispecies FMP), or are defined as separate entities allocated and authorized to transfer ACE (and DAS) to sectors, the total amount of ACE available for harvest by approved sectors in the groundfish fishery would not change. Also, because this Council action makes no changes to the MOAs held by the states with NMFS, the criteria to be used by the states to determine to which sectors and vessels the permit bank ACE and DAS will be eligible to receive transfers, this assessment presumes no changes in final distribution of ACE and DAS among the approved groundfish sectors, with or without this action.

In fact, even if it were relevant to this amendment to consider the potential effects of the four proposed NOAA-sponsored, state-operated permit banks on the distribution of ACE and fishing effort across the Northeast multispecies fishery, the best that could be hoped for is a tenuous and speculative qualitative analysis. NOAA has awarded grants to the states of Maine, New Hampshire, Massachusetts, and Rhode Island, with which the states are expected to purchase fishing vessels in order to obtain Northeast multispecies limited access fishing vessel permits that have been assigned PSC for use in determining a sector's potential ACE allocation. However, at this time, only Maine has begun the process to expend the grant funds they have been awarded. The actual amount of ACE that may be available to be allocated to a state based on the permits it may be able to obtain with the grant funding is unknown at this time, making it extremely difficult to project the effects that this unknown amount of ACE may have on the overall distribution of ACE throughout the region. Two states, Massachusetts and Rhode Island, have expressed interest in exploring a different model for how to utilize the grant funds: Massachusetts has requested the grant award be converted from a permit bank to a revolving loan fund, and Rhode Island is considering such a request as well. This potential change has implications for the overall effect of the permit bank program, which could be limited to only the states of Maine and New Hampshire should both Massachusetts and Rhode Island instead establish revolving loan funds instead of permit banks.

Another limitation on the analysis of potential effects of the permit bank program at this time is related to the issue of potential reallocation of fishing effort as a result of the terms and conditions in the current MOAs between NMFS and the states. Because the MOAs currently restrict access to the permit banks to certain classes of sectors and vessels based on criteria related to vessel and community size, there could be a potential reallocation of fishing effort if the states primarily purchase vessels that would not meet these same criteria (e.g., the vessels purchased exceed the maximum size criteria) and then transfer the ACE derived from the permits obtained from those vessels to sectors and vessels that do meet the criteria. However, there are two further constraints on analyzing these potential effects. For one, the states have not yet completed purchasing fishing vessels, so it is not known whether there is a potential effort reallocation associated with the permit banks. For another, even if it could be known whether the vessels themselves would have met the criteria for access to the permit banks, it cannot be determined at this time how the fishing effort associated with those permits would have been used in the absence of the permit banks. That is, the permit holders who choose to sell their vessels (and associated permits) to the states for the purpose of the permit bank could, in the absence of the permit banks, have selected from among several other options: (1) Sell their vessels/permits to another bidder, who may or may not have qualified for access to the permit bank; (2) joined a sector that would have qualified for the permit bank, remained inactive, and allowed others in the sector to harvest the allocation derived from their permits; (3) joined a sector that would have qualified for the permit bank and actively fished to harvest some amount of ACE allocated to the sector; (4) joined a sector that would not have qualified for the permit bank, remained inactive, and allowed others in the sector to harvest the allocation derived from their permits; (5) joined a sector that would not have qualified for the permit bank and actively fished to harvest some amount of ACE allocated to the sector; (6) remained in the common pool, remained inactive, and leased the DAS associated with their

permits to others in the common pool; or (7) remained in the common pool and actively fished under the common pool regulations.

In order to operate as a sector, an entity must first be approved by the Council and added to the list of approved groundfish sectors through a framework adjustment to the Northeast Multispecies FMP. In November 2010, the Council took final action on Framework Adjustment 45 and approved five new groundfish sectors: (1) State of Maine Permit Bank Sector; (2) State of Rhode Island Permit Bank Sector; (3) State of New Hampshire Permit Bank Sector; (4) Commonwealth of Massachusetts Permit Bank Sector; and (5) Sustainable Harvest Sector 3.<sup>8</sup> Framework Adjustment 45, therefore, serves as the vehicle through which the Council approved the future operations—as sectors—of the four NOAA-sponsored, state-operated permit banks. The remaining procedural step for the state permit banks to operate as sectors would be for the states to submit to NMFS, and have approved, annual sector operations plans (as described in Chapter 2, Alternative 1).

Absent this action, the entities that would meet the proposed definition to be considered NOAA-sponsored, state-operated permit banks would remain able to operate and function exactly as proposed under this action, provided they prepared and submitted annual sector operations plans.<sup>9</sup> That is, if a NOAA-sponsored, state-operated permit bank prepared, submitted, and had approved a sector operations plan that included at least two other permit holders; and complied with the reporting provisions of the regulations implementing Amendment 16, the permit bank would be able to transfer ACE and/or DAS to any sector(s) or sector vessel(s) that met the criteria set out in the state's MOA with NMFS. In this context, Amendment 17 would have no net effect on the recipients of the ACE and DAS provided by the NOAA-sponsored, state-operated permit banks, but would only affect the *processes* with which the states must comply in order to provide the ACE and DAS to those recipients. Functionally, then, regardless of whether the permit bank entity operates as a groundfish sector or as a NOAA-sponsored, state-operated permit bank, the same amount of ACE and DAS would be available for transfer to the same sector(s) and sector vessels. Therefore, there are no distinguishable impacts to the human environment, the fishery, fishery participants, or fishing communities that can be attributed to this proposed action (distinct from the effects of the permit banks themselves). What remains are the differences in administrative requirements the permit bank entity must fulfill in order to provide the ACE and/or DAS to those sectors and sector vessels (see Table 1).

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<sup>8</sup> The Council adopted Framework Adjustment 45 on November 18, 2010, and submitted the final version of the document to NMFS for review and implementation on January 21, 2011. On March 3, 2011, NMFS published a proposed rule to implement Framework 45, with comments accepted through March 18, 2011. This proposed rule notified the public that the Council had approved the four state permit banks to operate as sectors.

<sup>9</sup> As of March 2011, only the State of Maine has prepared and submitted to NMFS a complete sector operations plan to operate as a sector in fishing year 2011. The remaining three states intending to operate NOAA-sponsored, state-operated permit banks have the option to submit, by September 1, 2011, sector operations plans to operate as sectors starting in fishing year 2012.

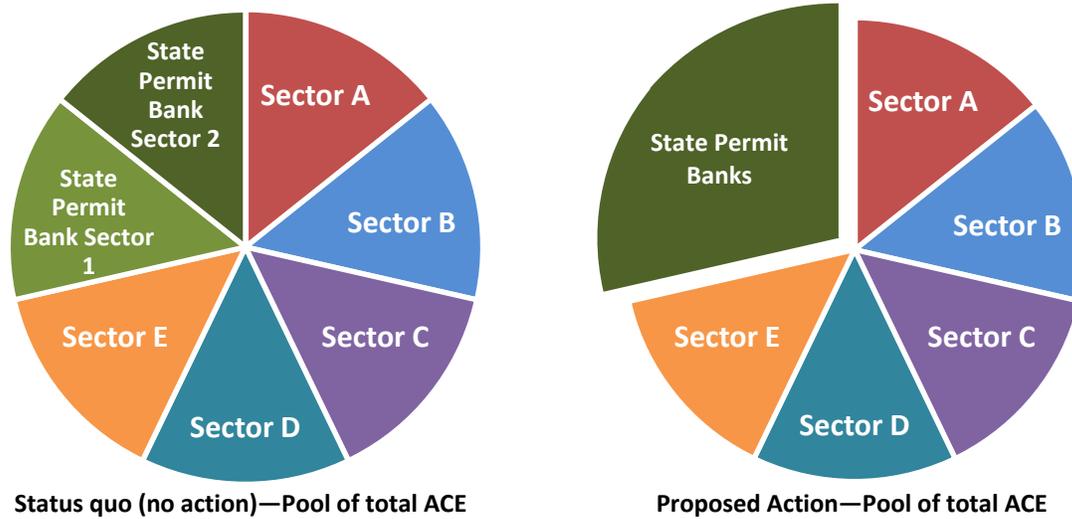


Figure 1. Under the current groundfish sector program (absent this proposed action), the total amount of ACE available is composed of the ACE held by all the approved groundfish sectors. In the status quo case, the NOAA-sponsored, state-operated permit banks would fulfill the requirements to form sectors, and the total pool of ACE that could be available to any sector active in fishing would be the sum of all the approved sectors' ACE. Under the proposed action, the total amount of ACE available is composed of the ACE held by all the approved groundfish sectors, *plus* the ACE represented by the fishing vessel permits held by all the NOAA-sponsored, state-operated permit banks as "ACE permits." In this case, the NOAA-sponsored, state-operated permit banks would not form sectors, but the total pool of ACE that could be available to any sector active in fishing would be the same as in the status quo case.

The appropriate action to consider the environmental impacts of the fishing effort conducted by vessels in groundfish sectors is the annual approval, by NMFS, of the set of sectors authorized to operate in any given fishing year. The set of sectors, the number and characteristics of the vessels operating in each sector, the regulatory exemptions requested by the sectors, and the total amount of potential fishing effort (as represented by the ACE available to the sectors) will vary each fishing year. For this reason, it was not possible to conduct an environmental analysis in Amendment 16 to the Northeast Multispecies FMP that would comprehensively evaluate the impacts of the sector program as it is implemented each fishing year.

Instead, NMFS (working collaboratively with the sectors proposed for each fishing year) conducts this analysis on an annual basis in conjunction with the Federal rulemaking that authorizes the sectors to operate each year. This analysis considers the characteristics of each proposed sector (the number and types of vessels, the types of fishing gears to be used, proposed exemptions, etc.) and evaluates the likely impacts to the environment of the proposed operations of that sector. Although each sector is initially allocated a specific amount of ACE based on the PSCs of its members, the environmental analysis conducted in support of the annual sector authorizations must consider that the sectors would be authorized to acquire additional ACE from other sectors (which may include the so-called "lease-only" sectors that

propose to have no active fishing vessels, but use the ACE allocated to the sector to lease to other approved sectors). Therefore, the analysis conducted in support of these annual actions has, and would be expected to continue to, evaluated the impacts on the environment of each sector fishing all the available ACE. That is, the analysis takes a “worst case” approach and, for the purpose of identifying all the potential impacts of the proposed sectors, assumes that each sector could gain access to 100 percent of the ACE available to all sectors for that fishing year.<sup>10</sup>

Under the no action alternative, nothing in this approach would change. Because the state permit banks would remain obligated to form or join a sector in order to be allocated ACE and authorized to transfer ACE to other sectors, the current analytical framework would utilize the ACE initially allocated to each permit bank sector in its “worst case” analysis. However, because the state permit banks are not allowed (pursuant to the permit bank MOAs with NMFS) to engage in any active fishing, a state permit bank (only) sector (e.g., if three or more state permit banks formed as a single sector, or if a state permit bank formed a sector with at least two other non-fishing permit holders) would only affect the analysis by increasing the total amount of ACE that could be available to sectors with active fishing vessels.<sup>11</sup>

Although the proposed action would relieve the NOAA-sponsored, state-operated permit banks from the requirements associated with forming or joining a sector in order to operate by authorizing entities that meet the proposed definition to be allocated and authorized to transfer ACE and DAS to approved groundfish sectors, this action would not substantively alter the analysis conducted by NMFS as part of the annual sector approval rulemaking. As summarized in Figure 1 above, the proposed action would have no effect on the total pool of ACE available to be harvested collectively by the approved sectors in any given year.<sup>12</sup> Instead, it would create an administrative distinction between the ACE allocated to the approved sectors and the ACE allocated to the NOAA-sponsored, state-operated permit banks. When analyzing the potential impacts to the environment of the annual set of proposed sectors, NMFS must consider the impacts of each sector with active fishing vessels gaining access to all available ACE. Because the total amount of ACE available to be harvested collectively by the approved sectors would not change under this proposed action, NMFS’s analysis would be incomplete if it did not continue to incorporate the ACE available to the NOAA-sponsored, state-operated permit banks as part of the pool of ACE available to each active sector. So, although NMFS would be required under the proposed action to ensure its

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<sup>10</sup> Even though this is never expected to actually occur, this type of analysis guards against any unexpected impacts if a sector acquires more ACE than the level assumed in an analysis that constrained itself to a more limited view of the potential ACE that could be fished by any one sector.

<sup>11</sup> A state could, under the current regulations and the terms of the existing MOAs, form (or join) a sector with two or more permit holders of active fishing vessels, and that sector would be allocated ACE to include the permits held by the permit bank. This ACE could be fished by the active vessels enrolled in the sector or transferred to another sector. The Council’s proposed action for Amendment 17 would not affect a state’s ability to enroll in such a sector.

<sup>12</sup> This is separate from any limits imposed by the permit bank MOAs as to which individual sectors may receive ACE transferred from the NOAA-sponsored, state-operated permit banks. Such limits may constrain the individual sectors with access to some percentage of the total ACE available, but the analysis described here is focused on changes at the scale of the fishery, which is unaffected by the proposed action.

analysis recognizes and incorporates the ACE available to the NOAA-sponsored, state-operated permit banks in addition to the ACE allocated to the proposed sectors, the analytical framework remains essentially the same (see Figure 1) and the results of the analysis would not change (relative to the no action).

Therefore, relative to the no action, the proposed action introduces no changes to the environmental analysis that NMFS is required to complete for each fishing year that sectors are approved and authorized to operate.

## Chapter 4

### Relationship to Applicable Laws and Directives

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#### **Administrative Procedure Act (APA)**

Section 553 of the APA establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

#### **Coastal Zone Management Act (CZMA)**

Section 307(c)(1) of the Federal CZMA of 1972 requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. However, because this action deals solely with the administrative provision under which NOAA-sponsored, state-operated permit banks are authorized to provide ACE and/or DAS to approved groundfish sectors, the preferred alternative associated with this action does not directly affect the coastal zone of any state. In addition, pursuant to the CZMA regulations at 15 CFR 930.33(a)(2) and 930.35, a negative determination does not appear to be required, and coordination with the state coastal zone management agencies under section 307 of the CZMA does not appear to be necessary.

#### **Endangered Species Act (ESA)**

Section 7 of the ESA requires Federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. Based on the administrative nature of the action, the Council has determined preliminarily that there would be no direct or indirect impacts on protected resources, including endangered or threatened species or their habitat.

#### **E.O. 12866**

Pursuant to the requirements of E.O. 12866, a Regulatory Impact Review will be completed as part of the final document prepared for submission.

## **E.O. 13132**

This E.O. established nine fundamental federalism principles for Federal agencies to follow when developing and implementing actions with federalism implications. The E.O. also lists a series of policy making criteria to which Federal agencies must adhere when formulating and implementing policies that have federalism implications. However, no federalism issues or implications have been identified relative to the measures under consideration in Amendment 17. This action does not contain policies with federalism implications sufficient to warrant preparation of an assessment under E.O. 13132. The affected states have been closely involved in the development of the proposed management measures through their representation on the Councils and through the development of the NOAA-sponsored, state-operated permit banks at issue. Thus far, no comments were received from any state officials relative to any federalism implications that may be associated with this action.

## **Information Quality Act**

Pursuant to NOAA guidelines implementing section 515 of Public Law 106-554 (the Information Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of the information (including statistical information) disseminated by or for Federal agencies. The following section addresses these requirements.

### Utility

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the proposed action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the preferred alternative is included so that intended users may have a full understanding of the preferred alternative and its implications.

Until a proposed rule is prepared and published, this document is the principal means by which the information contained herein is available to the public. The information provided in this document is based on the most recent available information relevant to the action. The development of this document and the decisions made by the Council to this point are the result of a multi-stage public process.

This document will be available in several formats, including printed publication and online through the Council's and NMFS's web pages.

### Integrity

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could

result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NOAA Fisheries Service adheres to the standards set out in Appendix III, "Security of Automated Information Resources," of OMB Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson-Stevens Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

### Objectivity

For purposes of the Pre-Dissemination Review, this document is considered to be a "Natural Resource Plan." Accordingly, the document adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act.

This information product uses information of known quality from sources acceptable to the relevant scientific and technical communities. The policy choices are clearly articulated, in Chapter 2 of this document, as the management alternatives considered in this action.

The review process used in preparation of this document involves the responsible Council, the Northeast Regional Office, and NMFS Headquarters. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the action proposed in this document and clearance of any rules prepared to implement resulting regulations would be conducted by staff at NMFS Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

This is a draft of the amendment, so there will be additional opportunity to improve the document based on relevant comments received during any public review. There is also the potential for changes to the preferred alternative ultimately proposed by the Council, based on input received during the public review process.

## **Magnuson-Stevens Act**

The preferred alternative identified in this draft amendment does not propose to modify any of the management measures previously implemented under the Northeast Multispecies FMP, which was found to be fully in compliance with all national standards of the Magnuson-Stevens Act. The action currently proposed to be implemented through this amendment is focused primarily with the administrative provision under which NOAA-sponsored, state-operated permit banks are allocated ACE and authorized to transfer ACE and/or DAS to approved groundfish sectors. This action is not required by, nor does it directly

address, any required provision of the Magnuson-Stevens Act. Although this action does not directly address any of the national standards, the objectives of the NOAA-sponsored, state-operated permit banks echo the goals of Amendment 16 and recognize the importance of fishery resources to communities and, therefore, such permit banks are intended to promote the sustained participation of fishing communities in the groundfish fishery by mitigating some of the adverse socio-economic impacts on such communities associated with catch share programs. By providing an administrative mechanism to enable NOAA-sponsored, state-operated permit banks to operate more efficiently, this action indirectly supports the intent of National Standard 8.

### **Marine Mammal Protection Act (MMPA)**

Based on the administrative nature of the action, the Council has concluded preliminarily that there would be no direct or indirect impacts on marine mammals, that the preferred alternative appears consistent with the provisions of the MMPA, and that the preferred alternative would not alter existing measures to protect the species likely to inhabit the management units of the subject fisheries.

### **National Environmental Policy Act (NEPA)**

Because the proposed action focuses solely with the administrative provision under which NOAA-sponsored, state-operated permit banks are allocated ACE and authorized to transfer ACE and/or DAS to approved groundfish sectors, and would not affect fishing vessel effort, operations, species targeted, or areas fished, there would be no direct or indirect impacts, individually or cumulatively, of the proposed action on any fishery resources, protected resources, or the habitat, including essential fish habitat, of any such resource. Therefore, consistent with the provisions of NOAA Administrative Order (NAO) 216-6, section 6.03.a.3(b)(1), it appears that this action may be categorically excluded from further NEPA analysis.<sup>13</sup>

### **Paperwork Reduction Act (PRA)**

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The preferred

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<sup>13</sup> Section 6.03.a.3(b)(1) of NAO 216-6 states that “a management plan amendment may be categorically excluded from further NEPA analysis if the action is an amendment or change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (these determinations must be accompanied by an individual memo to the record with a copy submitted to the NEPA Coordinator, and a brief statement within a decision memorandum).”

alternative currently associated with this action does not propose to modify any existing collections, or to add any new collections; therefore, no review under the PRA is necessary.

### **Regulatory Flexibility Act (RFA)**

The final Amendment 17 prepared for submission will address the requirements of the RFA to prepare an initial regulatory flexibility analysis (IRFA) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.