



March 15, 2018

Mr. Chris Oliver, Assistant Administrator
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Mr. Michael Pentony, Regional Administrator
NOAA Fisheries, GARFO
55 Great Republic Drive
Gloucester, MA 01930-2276

Dear Mr. Oliver and Mr. Pentony:

We know you share our concern about the harm done to the New England groundfish fishery by Carlos Rafael's decades of criminal wrongdoing. The individuals, businesses and communities, New Bedford in particular, that depend on the fishery continue to face hardship as a direct result of Mr. Rafael's actions. NOAA now has an unprecedented opportunity to help stabilize and ultimately revitalize this critical fishery. Thank you for the work you have been doing to address this challenge, and for the opportunity to share our perspectives with you on ways to move forward.

As you continue to resolve civil violations in this case and review potential buyers for Mr. Rafael's business, we write today to re-emphasize two specific priorities that we believe are critical in securing a more stable and equitable future for all who depend on this fishery. In fact, we believe that these remedies can play a profound role in delivering the long-sought recovery of the fishery.

1. Require Multiple Buyers of Mr. Rafael's Assets

First, we encourage NOAA Fisheries to require that Mr. Rafael's assets (both vessels and permits) are not sold to a single entity or multiple entities controlled by a common owner. A recent agency report estimates that Mr. Rafael's holdings account for up to 25 percent of the value of the groundfish fishery. As an example of his disproportionate ownership, he is thought to control approximately 25 percent and 35 percent respectively of two important Georges Bank stocks – yellowtail and winter flounders. Mr. Rafael's criminal behavior, exacerbated by his vast holdings, has negatively affected the recovery of these and many other stocks, and arguably subjected other fishermen to lower quotas and fewer fish to catch in the long run.

The consolidation of vessels and permits in this fishery under Mr. Rafael's control has done real and lasting damage to the social fabric of coastal New England. Despite long-standing calls by EDF and many others for the adoption of meaningful accumulation limits, there have been repeated failures to emulate the kinds of provisions that have been incorporated successfully into management programs in other fisheries.

The modest accumulation limits that were adopted by Amendment 18 to the groundfish management plan are ineffective: a five percent permit cap, which makes no distinction between active and inactive permits, allows a single owner to control approximately 67 permits. Rather than instituting reasonable limits that would help fleet diversity and prevent excessive concentration of market power, the amendment ultimately allowed for further consolidation, even by an owner who possessed as much as Mr. Rafael does.

Recognizing the ineffective nature of consolidation limits in Amendment 18, we urge NOAA to seek multiple buyers for Mr. Rafael's assets. Requiring that the sale of his assets be distributed among multiple buyers would address many of the circumstances that allowed Rafael's unlawful actions to do serious damage and start to mitigate the other consequences of such acute consolidation.

2. Require Monitoring of Mr. Rafael's Vessels, and Establish Funding to Assist the Fleet in a Transition to Monitoring

A clear lesson from Carlos Rafael's crimes is that effective accountability in this fishery requires changes to how at-sea and dockside monitoring are conducted. A related lesson from other multispecies fisheries – notably the Pacific groundfish fishery, which has made a rapid recovery since adopting 100 percent monitoring coverage as part of a change in management – is that full accountability has the potential to unlock enormous long-term benefits for all fishery participants.

The existing New England groundfish monitoring program, in contrast, requires that only 10-14 percent of fishing trips carry an observer, and no dockside monitors receive fishermen when they land. The management system does not work to ensure compliance with catch limits if there is such low accountability. Fishermen have no confidence that others in the fishery are following the rules, and there is little incentive for fishermen to conserve low-quota stocks. Moreover, recent NOAA Fisheries studies indicate that fishing behavior changes when observers are on board with low observer coverage levels, and that vessel trip reports often don't align with real-time vessel monitoring system data.

In contrast, fishermen operating under full accountability, including in pilot programs in New England using cameras to provide at-sea monitoring, have reported multiple benefits to their business operations such as greater efficiency and incentives for innovating. Some of these fishermen have articulated their belief that monitoring is important to help close the trust gap between fishermen and managers over the status of fish stocks.

As stakeholders in New England grapple with how to improve monitoring – including through the Council's Amendment 23 – any disposition of Carlos Rafael's assets presents an opportunity to

achieve progress. We therefore urge NOAA Fisheries to require that Rafael's vessels be fully monitored, including under any future owner.

This has the potential to deliver multiple benefits which, taken together, could be transformative. First, it would provide other participants in the fishery with certainty that the misdeeds of the past are not repeated. Second, it would deliver valuable and reliable data about the fishery that could inform science and management to the long-term benefit of stakeholders. Third, it could serve to test and refine monitoring systems that in turn could contribute to future decisions about monitoring in the fishery as a whole. Having served as instruments of Mr. Rafael's criminality for decades, it is appropriate that these vessels or permits be subject to such additional requirements as a condition of any future sale – and it would be fitting if such a step delivered long-term benefits to those who have suffered the most as a consequence of his actions.

Finally, we request that any outstanding fines from the civil penalty phase be directed to assist fishermen in the transition to higher monitoring levels, including adopting electronic monitoring systems on their vessels. Again, directing fines associated with Mr. Rafael's actions towards increased accountability is an appropriate measure that provides assistance to the fishermen harmed by his actions.

We view this civil proceeding, in the scope of the offenses and impacts of those offenses, as an unprecedented opportunity to catalyze change for the better for the fishery. We have been advocating for effective monitoring above all else because it is the critical element that the fishery needs for stability and ultimately recovery.

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Although there is no way for us to turn back the clock, and the damage done by Rafael will continue to reverberate in New England for years to come, his criminal conviction followed by NOAA Fisheries' strong civil and administrative assessment does provide a critical opportunity to learn from our mistakes and begin to make amends. The fishery is at such an important juncture, and your actions in this matter could make all the difference. Thank you for the work you are doing to seize this critical moment.

Sincerely,



Matt Tinning
Senior Director, US Oceans Program



Johanna Thomas
New England Regional Director, Oceans Program