

**Congress of the United States**  
**Washington, DC 20515**

September 21, 2017

The Honorable Peggy Gustafson  
Inspector General  
Department of Commerce  
1401 Constitution Avenue  
Washington, DC 20230

Dear Ms. Gustafson:

I write to request that your office investigate the continued operation of Northeast Fisheries Sector IX, as well as the lack of oversight by NOAA's National Marine Fisheries Service (NMFS) and the New England Fishery Management Council, in the wake of Carlos Rafael's March 30, 2017 guilty plea to 28 offenses related to his history of illegal, unreported, and unregulated (IUU) fishing and the profits he earned from it.

The sector system allows fishermen within each sector to collectively manage their combined quotas to limit overfishing. Carlos Rafael took advantage of this system through his amassed shares (up to 75% of New Bedford's groundfish quota) and is virtually the only active member in Sector IX.<sup>1</sup> We are highly concerned with NMFS' and the Council's failure to respond to the lack of enforcement and accountability within the Sector. This lack of accountability for Mr. Rafael's illegal overfishing has further depressed the recovery of key groundfish stocks in New England, and thus harmed all New England fishing communities.

As Ranking Member of the committee with jurisdiction over NOAA, I request your office investigate all potential legal and ethical violations related to continued operation and oversight of Sector IX, including the issues below, and answer the associated questions.

1. Mr. Rafael has been allowed to fish this season, despite his arrest last year, guilty plea this spring, and ongoing case in federal district court.<sup>2</sup> Including the 13 indicted vessels, Mr. Rafael and his associates own 21 of the 22 total vessels actively fishing in Sector IX.<sup>3,4</sup> Boats in this sector continue to operate in the same areas where Mr. Rafael

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<sup>1</sup> <http://www.capecodtimes.com/news/20170811/despite-guilty-plea-codfather-continues-to-fish>

<sup>2</sup> United States District Court for the District of Massachusetts, *United States of America v. Carlos A. Rafael* [1:16-cr-10124]

<sup>3</sup> *Ibid.*

<sup>4</sup> Active vessels authorized to harvest in Sector Operations Plan and Agreement. Available online: [https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/sector/docs/fy2017/nefs\\_9\\_fy\\_2017\\_and\\_2018\\_opsplan\\_final\\_for\\_web.pdf](https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/sector/docs/fy2017/nefs_9_fy_2017_and_2018_opsplan_final_for_web.pdf)

admitted to going over quotas, likely using the same captains that participated in Rafael's fraud.<sup>5</sup>

- Why was Sector IX allowed to continue operating after its dominant vessel owner pled guilty to federal crimes?
  - Why were vessels implicated in these crimes allowed to continue fishing?
2. The sector operating plan requires that the Sector Manager and Enforcement Committee investigate and take actions against any breach by a sector member.<sup>6</sup> Since Mr. Rafael's arrest, the sector has not investigated nor penalized Mr. Rafael, which violates the sector's contract with NMFS.<sup>7</sup> Both the sector manager (Mr. Rafael's daughter Stephanie Rafael-DeMello) and NMFS have failed to act on his contract violations.<sup>8</sup> In addition, NMFS renewed the sector operating plan this year while Mr. Rafael was still President and Director.<sup>9</sup> These are clear ethical breaches and violations of the Magnuson-Stevens Act's provisions on prohibited acts, annual catch limits, and accountability measures.<sup>10</sup>
- Why did Sector IX fail to investigate Mr. Rafael after it became clear that he had committed federal crimes related to violations of fisheries laws?
  - Why did NMFS renew the operating plan for Sector IX after it became clear that Mr. Rafael had violated the previous plan and the Sector had failed to investigate his wrongdoing?
3. Even after Mr. Rafael was arrested, he was listed as President and Director of the sector for more than a year until he resigned from both positions this past May. Sector IX is still led by those who are implicated in IUU fishing activities, including Mr. Rafael's family members, associates, captains, and shareholders. Thus far, there has not been any indication from the Sector, the Council, or NMFS, that there are plans to ensure that the sector regulations and operations will be enforced as a result of Mr. Rafael's actions. We feel that the leadership of the sector has been compromised but NMFS and the Council have failed to take appropriate action to shut down or suspend and reform the sector.
- Why have NMFS and the Council failed to take action against Mr. Rafael for clear violations of fisheries law and the sector operations plan?
  - Is it appropriate and legal for the Council and NMFS to simply hand over management responsibility for Sector IX to Mr. Rafael's family?
4. It is clear that the Department has failed to live up to its responsibility to manage federal fisheries and hold accountable those who violate the law. What actions should the Department take to ensure that this lack of oversight does not happen again in the future?

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<sup>5</sup> <https://www.hakaimagazine.com/article-long/last-trial-codfather>

<sup>6</sup> Sector Operations Plan and Agreement. Available online:

[https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/sector/docs/fy2017/nefs\\_9\\_fy\\_2017\\_and\\_2018\\_opsplan\\_final\\_for\\_web.pdf](https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/sector/docs/fy2017/nefs_9_fy_2017_and_2018_opsplan_final_for_web.pdf)

<sup>7</sup> *Ibid.*

<sup>8</sup> <http://www.southcoasttoday.com/news/20170824/straus-request-reveals-noaa-has-yet-to-penalize-rafael>

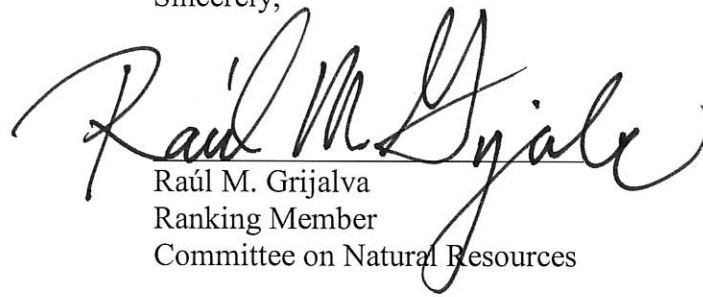
<sup>9</sup> A statement from NOAA on the plan renewal is included in

<http://www.capecodtimes.com/news/20170811/despite-guilty-plea-codfather-continues-to-fish>

<sup>10</sup> 16 U.S.C. § 1853, 16 U.S.C. § 1857

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "Raúl M. Grijalva". The signature is written in a cursive style with a large, sweeping initial "R".

Raúl M. Grijalva  
Ranking Member  
Committee on Natural Resources