

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

September 21, 2017

The Honorable Wilbur Ross  
Secretary  
Department of Commerce  
1401 Constitution Avenue  
Washington, DC 20230

The Honorable Jeff Sessions  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue  
Washington, DC 20530

Dear Secretary Ross and Attorney General Sessions:

I write to express my serious concern regarding the upcoming sentencing and possible settlement with Carlos Rafael. Mr. Rafael's actions represent the largest case of illegal, unreported, and unregulated (IUU) fishing in the recent history of New England and perhaps the entire country. It is very alarming that sentencing and settlement considerations suggest he may only serve a few years in prison while earning millions from his fishing permits.<sup>1,2</sup>

Mr. Rafael was arrested on February 26, 2016, after an undercover investigation by the Internal Revenue Service (IRS) found that he engaged in illegal activities related to his fishing business.<sup>3</sup> The investigation found that between 2012 and 2016, Mr. Rafael routinely misreported the quantity and species of fish his boats caught, then sold these fish to wholesalers for large amounts of cash that he often smuggled to Portugal to evade federal taxes.<sup>4</sup> Mr. Rafael was indicted on May 4, 2016 and pled guilty on March 30, 2017 in U.S. district court to 28 criminal counts, including 1 count of conspiracy, 23 counts of false labeling, 2 counts of false statements on records, 1 count of bulk cash smuggling, and 1 count of tax evasion.<sup>5</sup> Sentencing has been delayed twice this year and is set for September 25-26, 2017.

Mr. Rafael's actions have impacted every stakeholder in the fishery. He has hurt law-abiding fishermen, coastal economies, and citizens across the country that were lied to and cheated out of their fair share of public resources. Victim statements submitted to the U.S. District Court demonstrate just a few examples of the immense and widespread losses caused by his crimes.<sup>6,7</sup>

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<sup>1</sup> <http://www.southcoasttoday.com/news/20170330/fishing-mogul-carlos-rafael-pleads-guilty-to-conspiracy-other-charges>

<sup>2</sup> <http://www.southcoasttoday.com/news/20170815/carlos-rafael-files-motion-of-opposition-to-forfeiture>

<sup>3</sup> Affidavit of Special Agent Ronald Mullet [1:16-mj-04138-DHH, Document 3-1, Filed 02/24/16]

<sup>4</sup> *Ibid.*

<sup>5</sup> United States District Court for the District of Massachusetts, *United States of America v. Carlos A. Rafael* [1:16-cr-10124-WGY]

<sup>6</sup> Northwest Atlantic Marine Alliance, enclosed.

<sup>7</sup> Conservation Law Foundation, enclosed.

Much of the Northeast's economy, history, and people are tied to the fishing industry. While the region has strained to recover from overfishing<sup>8</sup>, Mr. Rafael targeted struggling fisheries and continuously violated regulations<sup>9</sup>. He controls such a significant stake of groundfish shares that his illegal fishing and misreporting likely decreased populations further and made critical stock data unreliable. Mr. Rafael damaged the management framework that makes the United States a global leader in sustainable fisheries.

Despite all of this, fishery stakeholders are concerned that NOAA's National Marine Fisheries Service (NMFS) plans to give Mr. Rafael nothing more than a slap on the wrist for his crimes. A possible settlement in addition to recent motions of opposition to forfeiture by Mr. Rafael, his wife, and his associates means he may be able to continue to run his fishing business or make millions of dollars by selling his permits, even during or after a few years in prison.<sup>10,11</sup> This would indicate to him, and to others, that getting caught for IUU fishing is simply a small cost of doing business.<sup>12</sup> Notably, getting caught hasn't stopped Mr. Rafael: prior to *United States v. Carlos Rafael*, he was charged for numerous fishing violations dating back to 1994<sup>13</sup>, and since his indictment, his criminal network has still been operating<sup>14</sup>.

If his blatant disregard for the law is ignored, our country will no longer be at the forefront of fighting IUU fishing, an organized criminal enterprise with links to human trafficking.<sup>15</sup> The United States has made significant commitments to addressing IUU fishing internationally, but we must also fully address the issue in our own waters.<sup>16,17,18</sup>

Finally, to prevent future abuses, NMFS must use its authority under the Magnuson-Stevens Act to impose stiff civil penalties and strip all of Mr. Rafael's fishing permits.<sup>19</sup> His groundfish and scallop permits combined are worth millions of dollars, and should be used to support law-abiding fishermen and revitalize the New England industry, rather than allowing Mr. Rafael and his associates to continue profiting from a manipulated system.

I urge you to review Mr. Rafael's crimes and to impose penalties that fully match the economic and environmental harm he has caused.

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<sup>8</sup> On September 13, 2012, the Department of Commerce declared a fisheries disaster in the Northeast multispecies industry. Between 2011 and 2013, the value of the groundfish sector in New Bedford went from \$31 to \$19 million, costing over a hundred jobs. <https://www.hakaimagazine.com/article-long/last-trial-codfather>

<sup>9</sup> See violations history in Appendix.

<sup>10</sup> <http://www.southcoasttoday.com/news/20170815/carlos-rafael-files-motion-of-opposition-to-forfeiture>

<sup>11</sup> <http://www.southcoasttoday.com/news/20170829/rafaels-wife-petitions-for-right-to-claim-vessels>

<sup>12</sup> Illegal fishing has been shown to be five times greater in profit than expected penalties. Lenfest Ocean Program, available online: [http://www.lenfestocean.org/~media/legacy/lenfest/pdfs/lenfest\\_rs\\_ne\\_fisheries\\_final.pdf?la=en](http://www.lenfestocean.org/~media/legacy/lenfest/pdfs/lenfest_rs_ne_fisheries_final.pdf?la=en)

<sup>13</sup> See violations history in Appendix.

<sup>14</sup> <https://www.justice.gov/usao-ma/pr/sheriff-s-deputy-convicted-scheme-smuggle-illegal-fishing-profits-abroad>

<sup>15</sup> <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>

<sup>16</sup> Presidential Task Force on Combating IUU Fishing and Seafood Fraud, available online:

[http://www.nmfs.noaa.gov/ia/iuu/noaa\\_taskforce\\_report\\_final.pdf](http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf)

<sup>17</sup> <http://www.noaa.gov/explainers/cracking-down-on-global-fish-crime>

<sup>18</sup> <http://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/FinalRuleTraceability.aspx>

<sup>19</sup> 16 U.S.C. § 1858

Sincerely,

A handwritten signature in black ink, reading "Raúl M. Grijalva". The signature is written in a cursive style with a large, sweeping flourish at the end.

Raúl M. Grijalva  
Ranking Member  
Committee on Natural Resources

Appendix. Summary of fishery violations committed by Carlos Rafael prior to *United States v. Carlos Rafael*.<sup>20</sup>

ITEM	VIOLATION DATE	SETTLEMENT DATE	VIOLATION TYPE	CORPORATION	NOVA AMOUNT	SETTLED AMOUNT
1	3/95	8/94	NO OPERATOR PERMIT	JOAO-CARLOS	\$2,000	\$1,500
2	7/94	6/97	PURCHASED FISH IN EXCESS OF TRIP LIMIT	CARLOS SEAFOOD	\$39,000	\$9,000
3	5/95	11/97	FALSE DAS DECLARATION	JOAO-CARLOS	\$10,000	\$1,000
4	5/95	12/97	FALSE DAS DECLARATION, NO/LATE VTR REPORT	C&J FISHING	\$35,000	\$3,500, 7-DAY OPERATOR SUSPENSION
5	1/98	12/98	EXCEEDED TRIP LIMIT, FAILED TO FILL OUT VTR, CONCEALED FISH	P&S FISHING	\$35,000	\$2,500
6	4/96	6/99	EXCEEDED DAS LIMIT	C&V FISHING	\$15,000	\$1,000, 2 DAS
7	6/95, 11/95	3/00	EXCEEDED TRIP LIMIT, INACCURATE VTR	IVONLIDE FISHING	\$55,000	\$10,000
8	2/00	8/01	CLOSED AREA VIOLATION, TOWED THROUGH GEAR	C&V FISHING	\$65,000	\$22,500
9	4/97, 8/97	3/02	FALSE LANDING REPORTS IN PERMIT APPLICATION	C&B FISHING	\$220,000	\$10,000, SOME SMB FISHING RIGHTS REVOKED
10	3/03	10/03	EXCEEDED TRIP LIMIT	IVONLIDE FISHING	\$50,000+\$135,113	\$30,000+\$110,000
11	12/02	UNKNOWN	EVADED BOARDING	R&P FISHING	\$25,000	UNKNOWN
12	5/04	10/04	NO VMS, FISHING IN CLOSED AREA WITH NO DECLARATION	AJ&C FISHING	\$40,000+\$26,146	\$517+\$26,146
13	12/05	2/08	MESH SIZE	C&D FISHING	\$70,000+\$23,781	\$30,000+\$23,781
14	11/06	11/08	EXCEEDED TRIP LIMITS	C&B FISHING	\$7,500	\$3,800
15	8/12	UNKNOWN	EXCEEDED TRIP LIMIT	VILA FISHING	\$6,000	UNKNOWN
16	11/11-11/12	UNKNOWN	INCORRECT DAS DECLARATIONS	APOLLO FISHING	\$1,000	UNKNOWN
17	9/14	UNKNOWN	IMPEDED LAW ENFORCEMENT	LADY PATRICIA	\$6,000	UNKNOWN
18	10/13	10/15	FALSE CATCH REPORT	IVONLIDE FISHING	\$100,000, PERMIT SANCTION	\$70,000, PERMIT SANCTION
19**	7/02	5/03	EXCEEDED TRIP LIMIT, DAS NOTIFICATION VIOLATION	MARINALDO FISHERIES**	\$30,000+\$16,183	\$30,000+\$16,183, 30-DAY OPERATOR SUSPENSION

<sup>20</sup> Original documents available online: <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280d0ac42>

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September 7, 2017

Honorable Judge Young  
District Court Judge  
United States District Court for the District of  
Massachusetts  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2300  
Boston, Massachusetts 02210



Re: United States of America v. Rafael, case number 1:16-cr-10124-WGY

### VICTIM IMPACT STATEMENT ON BEHALF OF THE NORTHWEST ATLANTIC MARINE ALLIANCE

Dear Judge Young,

On behalf of the Northwest Atlantic Marine Alliance (NAMA) we would like to provide the following written comments to be considered by the court at the sentencing of Mr. Carlos Rafael. As an organization representative of the interests of both the New England fishing communities and the ocean ecosystems, victims of the conduct of Mr. Rafael, we request the opportunity to appear and make a limited address to the court under section 3771 of the Crime Victims' Rights Act.

Our organization's work, the livelihoods of the fishermen who lead our work, and the ocean and fisheries we work on behalf of are all victims of Mr. Rafael's crimes, and the broader fisheries management policies that have empowered him. NAMA and many of our allies spent years working with policy makers to offer alternative solutions and warn them that the ocean and fishermen would be victims of crimes such as those committed by Mr. Rafael.<sup>i</sup>

Over the years, hundreds of New England fishermen and thousands of people in our network have weighed-in with letters, testimony, petitions, round table workshops, and a public "Who Fishes Matters" New England-wide tour to discuss solutions that protect the fish and fishermen from such crimes as Mr. Rafael's.<sup>ii</sup> In addition, thousands more weighed-in through our extended network of hospitals, universities, and institutional advocates.

When totaled, this equated to over a billion dollars worth of seafood purchasing power affected by Mr. Rafael's actions.

NAMA's track record shows that we are committed to a vision of healthy marine ecosystems, a diverse New England fishing fleet, a genuinely democratic management process, dignified livelihoods for community based fishermen, and a more just seafood system. Mr. Rafael's crimes have compromised and impacted our work toward realizing this vision.

We offer the following comments divided into two parts:

1. The impact of Mr. Rafael's actions on the fish, the fishermen, and the public
2. Recommendations for sentencing and sanctions against Mr. Rafael's fisheries assets

### **1. Impacts**

Mr. Rafael has pled guilty to false reporting, smuggling money, and cheating fisheries quota over the course of three years. The public record shows that Mr. Rafael has admitted to illegal activity and misreporting that spans 30 years. However, for the purpose of this statement we are focused on the crimes he committed that are outlined in the current case.

#### **1a. Mr. Rafael's actions, harvesting behaviors and misreporting compromised fish populations, marine ecosystems, and stunted fish rebuilding timelines in the following ways:**

The ocean - and what lives within it - is a victim of Mr. Rafael's crimes, and as an organization with 20-plus years of working to protect marine ecosystems and commercial fisheries, it's our responsibility to speak on its behalf.

For decades, we have worked with fishing families and their allies around New England to advance healthier marine ecosystems and fishermen's livelihoods. We have a deep interest in the outcome of Mr. Rafael's sentencing, and the lasting impact these decisions will have on the future, not only for New England fishermen and fisheries, but the US fisheries overall.

Accurate accounts of catch are the best way our government scientists have of estimating the total population of groundfish species such as cod, pollock, and other species. This is what allows managers to achieve their mandate of sustaining healthy levels of fish populations. Marine biologists who have spoken publicly estimate that Mr. Rafael's crimes threw off the count by millions.<sup>iii</sup> This may explain, biologists suggest, why fish stocks are far smaller than scientists have been projecting over the years.

In a media statement, Regional Director John Bullard of the National Marine Fisheries Service said,

*"The management is based on science. That's fundamental for science to be done well. An awful lot of data comes from fishermen. It needs to be accurately reported. Trust is essential."<sup>iv</sup>*

It is important to note that these fish stocks are animal species that not only have commercial value on land, but have ecological and ecosystem value in their natural habitat. A species like cod interacts with its various prey and predators, maintaining a balance within their marine ecosystems. Illegally harvesting species in high volume disrupts the balance and the impact can have rippling - and often crippling - effects on the rest of the ecosystem.<sup>v</sup>

In addition, leading science tells us that certain subpopulations of codfish exist with natal homing abilities that, like salmon, return codfish to the same spawning grounds year after year.<sup>vi</sup> Mr. Rafael's activities likely have disrupted some of these substocks potentially risking wiping out entire genome classes of codfish and reducing the overall biodiversity within the region.

In 2010-2013 fishermen from around New England testified at New England Fishery Management Council hearings to this impact saying that cheating within the quota system was taking place and that certain fishing activities were removing too many codfish from Stellwagen Bank, thus leaving the area-dependent fishermen with no fish to catch.<sup>vii</sup>

**1b. Mr. Rafael's actions directly and indirectly impacted the fishermen who lead our work in the following ways:**

As detailed further in some of the statements of victimized fishermen submitted with this statement, Mr. Rafael's false reporting of an estimated 800,000 pounds of fish directly and adversely impacted the fishing quota for other New England fishermen thus limiting their ability to make a livelihood from critical species and therefore making every fisherman who fished for groundfish and scallops a victim of his crimes.

Misreporting of fish also means the integrity of the scientific data that relies on accurate fishing records was undermined. This data is used to allocate how many pounds of any species fishermen can catch. Both under and over reporting of species translates into loss of opportunity for other fishermen. It will likely never be known how many fishermen were affected by Mr. Rafael's false reporting, but it is safe to assume that anyone with a New England groundfish and/or scallop permit was harmed due to Mr. Rafael's actions.

Mr. Rafael's false reporting also allowed his vessels to unfairly target cod fish in the inshore waters of the Gulf of Maine, which contributed to a pulse fishing pressure on that area that exceeded the ecosystem's capacity to withstand.<sup>viii</sup> While many fishermen warned policy makers this was occurring and that the fish stocks could not withstand the pressure,<sup>ix</sup> Mr. Rafael is on the record lobbying to ensure his fishing practices would continue. As a result, many fishermen and shoreside businesses' ability to make a living was compromised, and many were forced to exit the fishery or related fishing businesses.<sup>x</sup>

In addition, falsifying records compromised rebuilding efforts for highly valuable commercial fish species, thus preventing what otherwise would have been larger quotas allocated to fishermen around New England. In 2015 NOAA economists estimated that rebuilding all US fish stocks would generate an additional \$31 billion in sales impacts, support an additional 500,000 jobs, and increase the revenue fishermen receive at the dock by \$2.2 billion.<sup>xi</sup> While New England groundfish is only a fraction of the overall domestic catch (less than 1%) the economic loss based upon Mr. Rafael's actions ranges upwards into the hundreds of millions of dollars affecting thousands of jobs.<sup>xii</sup>

#### **1c. Mr. Rafael's actions directly and indirectly impacted the public in the following ways:**

The ocean and the fish are part of the public commons who are ultimately the "owners" of the ocean and all that lives within it. In the United States, the public owns out to 200 miles of the ocean and its bounty. Under the Public Trust Doctrine,<sup>xiii</sup> the ocean and its bounty are preserved for public use and the government must protect and maintain these resources for the public's use.<sup>xiv</sup> Under this Doctrine, the government holds title to all submerged land under navigable waters and is responsible for its protection on behalf of the public.<sup>xv</sup> Therefore, the crimes committed by Mr. Rafael include stealing from the public the rich assets beneath these navigable waters.

In addition, Mr. Rafael's failure to pay sufficient taxes means the public was robbed of resources that require tax monies. Subsequently, Mr. Rafael's failure to disclose his income means the public was robbed of the millions of tax dollars dedicated to the functions of the government, including any directed toward science and management of natural resources.

Mr. Rafael's aforementioned misreporting jeopardized the scientific data on which the government relies in their efforts to protect the fish stocks. This means the public's trust was violated both by Mr. Rafael and by fisheries managers who ignored warnings - by ourselves and many fishermen - that crimes were being committed that undermine the scientific integrity.



Furthermore, Mr. Rafael's misreporting of lesser priced fish and passing it off as the more lucrative species means many members of the public who rely on lower priced species for food and nutrition are also victims of Mr. Rafael's crimes because their access to essential foods was limited.

Finally, Mr. Rafael used his ill gotten profits to ensure control over more of the public's wealth by influencing policy. During recent New England Fisheries Management Council (the Council) meetings, Mr. Rafael publicly committed \$10 million to fight the Council's attempt to establish quota limits on excessive groundfish consolidation.<sup>xvi</sup> His lobbying efforts successfully influenced the Council's final decision resulting in a 15.5% cap that would effectively allow for a few large players to dominate the entire industry.<sup>xvii</sup> When the majority of fishermen spoke out in favor of a lower cap Mr. Rafael responded by saying,

*"The maggots screaming on the sidelines, they're done. They can scream all they want. Nobody can save them. They are like mosquitos biting on the balls of an elephant."<sup>xviii</sup>*

The impact of this policy may last into the foreseeable future and forever adversely impact the ability of new entrants and independent fishermen to have a place in this fishery. Not only that but this policy helped solidify the transfer of a public commons resource into his and others' private property that will forever reduce the general public's ability to ensure these fish stocks are well managed for the greatest benefit to the nation as required by the Magnuson-Stevens Fisheries Conservation and Management Act.

## **2. Recommendations & Restitution**

As victims of Mr. Rafael's crimes, on behalf of our organization, the fishermen who lead our work, and the ocean and fisheries we work on behalf of, we offer the following recommendations to the court:

Mr. Rafael should receive maximum jail time, maximum fines, and maximum forfeiture of assets, particularly those assets that Mr. Rafael employed to commit his crimes and those assets that he acquired from the tainted profits of his crimes.

Upon the forfeiture of Mr. Rafael's fishing assets, there are provisions under the federal criminal code that authorize the federal government to confiscate any property that was used in the commission of a crime. We believe the government should confiscate and liquidate any and all property, which includes fishing vessels, equipment, permits, buildings, etc.

We request that the court order specific restitution for the harms Mr. Rafael caused and that funds raised by the liquidation of Mr. Rafael's assets be applied and distributed in the following ways:

- Mr. Rafael should be barred from any future involvement in fisheries.
- Restitution of all Mr. Rafael's assets be considered on a New England-wide basis, not just New Bedford. The impact and harm caused by his crimes affects every fisherman who has held a groundfish and/or scallop permit and therefore they should receive restitution.
- Restitution of Mr. Rafael's groundfish quota should exclude any entities currently controlling an excessive share of groundfish quota (2% or higher for any species identified under the Northeast multispecies fisheries management plan).
- Restitution of Mr. Rafael's groundfish quota and scallop permits should provide a right-of-first-refusal to the fishermen who were put out of business or effectively removed from the groundfish and scallop fisheries due to Mr. Rafael's actions.

In conclusion, we appreciate this opportunity to voice our concerns and express the harm done to our organization's work, the livelihoods of the fishermen who lead our work, and the marine ecosystems we work to protect. Under Section 3771 of the Crime Victims' Rights Act, we request this statement be heard or read during the sentencing proceedings.

Sincerely,



Shannon Eldredge  
Commercial Fisherman  
Board President, Northwest Atlantic Marine Alliance  
On behalf of the Northwest Atlantic Marine Alliance Board of Trustees and Staff

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<sup>i</sup> Public comments to the National Oceanic and Atmospheric Administration and the New England Fishery Management Council, 2012 (attached)

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- ii NAMA comments to the National Marine Fisheries Service between 2010 - 2017, <http://www.namanet.org/our-work/nama-weighs>. Also, Thunderclap Online Petition. <https://www.thunderclap.it/projects/31991-stop-wall-street-fisheries>
- iii "New Bedford's Fishing Codfather Pleads Guilty" David Boeri, National Public Radio, March 30, 2017 <http://www.wbur.org/news/2017/03/30/carlos-rafael-new-bedford-codfather>
- iv Ibid
- v Ames, Edward "Cod and Haddock Spawning Grounds in the Gulf of Maine" Island Institute. <https://coastalfisheries.org/wp-content/uploads/2017/03/Cod-and-Haddock-Spawning-Grounds-in-the-Gulf-of-Maine1.pdf> (accessed September 6, 2017)
- vi Bentzen P, Bradbury IR "Don't bet against the natal homing abilities of marine fishes" *Molecular Ecology Journal*, <https://www.ncbi.nlm.nih.gov/pubmed/27306459> (accessed September 6, 2017)
- vii Tolley, B., Gregory, R., Marten, G. "Promoting resilience in a regional seafood system: New England and the Fish Locally Collaborative" *Journal of Environmental Sciences and Studies*, <https://link.springer.com/article/10.1007/s13412-015-0343-8> (accessed September 6, 2017) and *Marine Policy, Neoliberalism and the politics of enclosure in North American small-scale fisheries*, <http://www.sciencedirect.com/science/article/pii/S0308597X15000743> (accessed September 6, 2017)
- viii "One fisherman's tale shows plight of many," Richard Gaines, Gloucester Daily Times, February 6, 2013 [http://www.gloucestertimes.com/news/local\\_news/one-fisherman-s-tale-shows-plight-of-many/article\\_4f87b49d-279d-5400-8866-c00a6ce6c78b.html](http://www.gloucestertimes.com/news/local_news/one-fisherman-s-tale-shows-plight-of-many/article_4f87b49d-279d-5400-8866-c00a6ce6c78b.html) (accessed September 6, 2017) and "Small boats face double fishing hit," Richard Gaines, Gloucester Daily Times, March 2, 2013 [http://www.gloucestertimes.com/news/local\\_news/small-boats-face-double-fishing-hit/article\\_36516dba-6811-51da-b8b2-6028ca16f77f.html](http://www.gloucestertimes.com/news/local_news/small-boats-face-double-fishing-hit/article_36516dba-6811-51da-b8b2-6028ca16f77f.html) (accessed September 6, 2017)
- ix "Catch shares tied to cod losses," Richard Gaines, Gloucester Daily Times, February 28, 2013 [http://www.gloucestertimes.com/news/local\\_news/catch-shares-tied-to-cod-losses/article\\_e391c989-5443-5a07-baaa-06bc5edcc0be.html](http://www.gloucestertimes.com/news/local_news/catch-shares-tied-to-cod-losses/article_e391c989-5443-5a07-baaa-06bc5edcc0be.html) (accessed September 6, 2017)
- x Ibid
- xi Saving Seafood, NOAA Chief Jane Lubchenco's New England Groundfish Management Testimony, <http://www.savingseafood.org/news/washington/noaa-chief-jane-lubchencos-new-england-groundfish-management-testimony/> (accessed September 6, 2017)
- xii NOAA Fisheries, Fisheries Statistic Division, Commercial Fisheries Statistics <https://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/> (accessed September 6, 2017)
- xiii "Public Trust Doctrine and Coastal Zone Management," Washington State Department of Ecology, Publication No. 93-95, Version 1.0, October 1991 (attached)
- xiv State of Massachusetts, Executive Office of Energy and Environmental Affairs, "The Ocean as a Public Trust Resource" (<http://www.mass.gov/eea/docs/czm/oceans/waves-of-change/tech-pt.pdf>); Babcock, H.M., "Grotius, Ocean Fish Ranching, and the Public Trust Doctrine: Ride 'Em Charlie Tuna," 26 *Stan. Envtl.L.J.* 3-76 (2007).
- xv Turnipseed, M., Crowder, L.B., Sagarin, R.D., and Roady, S.E. "Legal Bedrock for Rebuilding America's Ocean Ecosystems" *Science Magazine*, Volume 324, April 10, 2009 (attached)
- xvi New England Fishery Management Council Scoping Hearing Summary, Amendment 18 to the Northeast Multispecies FMP, <http://archive.nefmc.org/nemulti/planamen/Amend%2018/scoping%20hearings/Fairhaven%20A18%20summary.pdf> (Accessed September 6, 2017)
- xvii Federal Register/Vol. 82, No. 76/Friday, April 21, 2017/Rules and Regulations. DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration. 50 CFR Part 648 [Docket No. 150630567-7360-02] RIN 0648-BF26 Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Amendment 18. Agency: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. ACTION: Final rule. <http://s3.amazonaws.com/nefmc.org/Final-Rule-Groundfish-Amendment-18.pdf>
- xviii "Carlos Rafael and His Fish Are the American Dream," Danny McDonald, Vice, May 24, 2013. [https://www.vice.com/en\\_us/article/kwnmea/carlos-rafael-fish-interview](https://www.vice.com/en_us/article/kwnmea/carlos-rafael-fish-interview)

September 6, 2017

Honorable District Judge William G. Young  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2300  
Boston, Massachusetts 02210

**Re: United States v. Carlos A. Rafael, No. 16-CR-10124-WGY (D. Mass.)**

Honorable Judge Young:

Conservation Law Foundation (“CLF”) respectfully submits this letter as a victim impact statement for your consideration as you evaluate appropriate criminal penalties for Rafael in the above-captioned matter. CLF is a member-supported non-profit organization that uses law, economics, and science to protect New England’s natural resources and communities from environmental threats. CLF and its members, who include fishermen, have a deep and abiding interest in the health and sound management of New England’s fisheries. Since 1989, CLF has worked on groundfish management issues in court and before the New England Fisheries Management Council and the National Oceanic and Atmospheric Administration (“NOAA”) to pressure these bodies to achieve the management objectives of federal fisheries law. In our opinion, CLF’s efforts and the valuable programs that some of these efforts helped produce were significantly harmed by Carlos Rafael’s crimes.

On March 30, 2017, Rafael pled guilty to all 28 criminal counts against him in this matter, including conspiracy to evade federal fishing quotas and profit from the sale of misreported fish, and falsified reporting to the federal government. Rafael’s egregious crimes inflicted severe damage that has rippled across many communities. We submit this statement to call the Court’s attention to the broad suite of victims who are suffering as a direct result Rafael’s crimes, including:

- a New England commercial groundfish fishing community, central to the culture and history of our region, that has declined over the past decade, in our belief, partly due to an inability to compete with illegal fishing operations such as Rafael’s;
- all participants in the groundfish fisheries that were affected by misreported information, which skews stock assessment models and weakens the credibility of fisheries scientists, thereby compromising acceptable future catch levels for all;

- conservation groups such as Conservation Law Foundation and recreational fishing groups who have worked for decades on behalf of the public and their thousands of members to safeguard the health and sustainability of New England's fisheries, the success of which has been undermined and jeopardized by Raphael's crimes and criminal activity;
- all New Englanders who value or make their living from the iconic groundfish populations that are among the stocks Mr. Rafael's boats illegally landed and misreported, and which have been subject to ongoing overfishing since the 1990s; and
- all who have a stake in a fishery management scheme that has not been able to achieve its statutory objectives of producing a sustainable yield of these stocks despite ever-tightening catch limits.

In particular, we write to your Honor on behalf of the many fishermen who are fearful of publically speaking out against Rafael even now, given the very real threat that his federal civil settlement will allow him to continue to participate in the New England commercial fishing industry. Many suspect, with good cause, that Rafael will continue to control his fishing businesses even if he receives jail time for his crimes. As we describe below, Rafael's historic contempt for his fellow fishermen and tactics of intimidation are well documented. His moniker, "The Godfather," speaks for itself. It is no surprise, then, that many of the fishermen most directly victimized by Rafael's crimes are unwilling to put their livelihoods at risk by publically detailing their harms to this Court. A few of the more forthright industry representatives have spoken out in the press, and we have enclosed copies of those press materials and incorporate them into this victims' statement for your Honor's consideration. We endeavor here to give voice to the many other silent victims, and all fishery stakeholders.

On behalf of all victims, we respectfully urge the Court to impose criminal penalties that are commensurate with the significant injuries Rafael inflicted through his crimes.

**I. Rafael's illegal catches and falsified reports injured the fishing community and destabilized the fisheries regulatory regime.**

Rafael's crimes have damaged the fishing industry and the very foundations of our regulatory system, undermining the well-being of every participant and stakeholder, and imposing significant costs.

Nothing is more corrosive to our fisheries regulatory scheme than fraud. Due to the cost of placing individuals on fishing boats to monitor activity, NOAA was only able to fund third-party observers on 14 percent of groundfish trips in New England last year.<sup>1</sup> This means that the

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<sup>1</sup> NOAA, *NOAA Fisheries Announces At-Sea Monitoring 2017 Coverage Levels for Groundfish Sector Fishery* (Mar. 15, 2017), available at [https://www.greateratlantic.fisheries.noaa.gov/mediacenter/2017/03/15\\_asm2017levels.html](https://www.greateratlantic.fisheries.noaa.gov/mediacenter/2017/03/15_asm2017levels.html).

fundamental integrity of this critical fishery is on an honor system for vast majority of the time spent fishing; NOAA, fisheries scientists, other fishermen and the public must rely on fisherman to accurately self-report the amount, weight, location, and type of fish they catch. Another critical source of fishery data that directly impacts scientists' evaluation of population health is dealers' reports on recorded landings. These data sets are used by the populations assessment scientists at the NOAA Northeast Fisheries Science Center in Wood's Hole as inputs to their population assessment models, used in turn to propose maximum harvest levels to federal fishery managers. Most fisherman and dealers handle this responsibility with integrity; but we believe Rafael's criminal misreporting of landings has tarnished the reputation of all.

Furthermore, Rafael's crimes have caused fishermen to question the validity of their quota limits under the current catch-share program. The catch-share management system established in 2010 apportioned shares based on ten-year historic catch totals. Based on now-questionable catch numbers, Rafael accrued the biggest stake of groundfish shares. Rafael reportedly owns significant amounts of quota in nearly all groundfish species, including almost 10 percent of Georges Bank cod, 8.3 percent of Georges Bank haddock, 14.5 percent of Georges Bank yellowtail flounder, and nearly 23 percent of Georges Bank winter flounder.<sup>2</sup>

What's more, as noted above, Rafael's falsified data has flowed directly into the scientific models used to determine future catch-share allocations. Over the past few years, population predictions about yellowtail flounder and cod stocks based on these models has proven to be so unreliable that scientists have concluded that some of the models are no longer credible for providing management advice on quotas. American plaice and witch flounder models also remain largely out of sync. All of these are stocks that Rafael inaccurately reported or illegally fished, and of which Rafael had an outsized, substantial share. While a causal relationship will likely never be determined between Rafael's criminal misreporting and the failure of these models, the coincidence is striking and noteworthy.

In a regulatory scheme where scientists and the public depend on fishermen and dealers for accurate data and where fishermen depend on science to set accurate and sustainable catch targets, illegal actors such as Rafael initiate a negative feedback loop that is virtually impossible to overcome. Everyone gets hurt and is therefore a victim of such criminal activity—false data causes scientists and fisheries managers to doubt the validity of their datasets and catch advice, which in turn leads to establishment of more conservative catch levels or high-cost enforcement measures, or both. Law-abiding fishermen will bear the burden of expected higher monitoring compliance costs as a result of Rafael's crimes.

Just as importantly, false data can lead fishermen, committed conservation groups such as Conservation Law Foundation, concerned politicians, and the public to doubt agency guidance. The anxiety surrounding the stability and future of our fisheries is well documented; regulations

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<sup>2</sup> Specific information on Rafael's catch and holdings is difficult for the public to access because of various confidentiality provisions implemented by NOAA pursuant to section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1881a(b).

built on falsified data erode faith in the regulatory system and put critical management measures at risk.

**II. Rafael ostensibly used criminal behavior to gain unfair market advantage at the expense of competitors.**

As fishing businesses were collapsing around him, it is likely that Rafael's illegal behavior gave him a significant competitive advantage that allowed his business to buy out struggling competitors and increase his market share. In 2010, Rafael "horded" fishing permits in anticipation of the new catch-share system, allegedly spending \$10 million<sup>3</sup> and growing his share of groundfish revenue from 9 percent to more than a quarter.<sup>4</sup> As of 2013, he was allegedly using 57 permits to operate 15 full-time trawl vessels and five part-time trawl vessels.<sup>5</sup> The size of his fleet, the large quotas, and his species misreporting allowed him and his fishing sector to continue fishing for groundfish when smaller operators could not. Much of this impact fell on the smaller fishing operations. Of the 120 boats that exited the fishery between 2010 and 2013, small boats left around twice the rate of larger boats.<sup>6</sup>

We urge the Court to consider the dire conditions of the groundfish fishing industry over the past five years, which put Rafael's crimes into sharp relief. Struggling groundfish populations—the very ones Rafael was directing his boats to catch and misreport—are in need of sustainable management and recovery. In 2012, the Department of Commerce declared the Northeast multispecies industry to be in a state of disaster.<sup>7</sup> Between 2011 and 2013, the value of the groundfish sector in New Bedford declined from \$31 million to \$19 million, losing a third of its value and costing over a hundred jobs.<sup>8</sup> THE BOSTON GLOBE ran a headline asking *Is this the end*

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<sup>3</sup> See Danny McDonald, *Carlos Rafael and His Fish Are the American Dream*, VICE (May 24, 2013), available at [https://www.vice.com/en\\_us/article/kwnmea/carlos-rafael-fish-interview](https://www.vice.com/en_us/article/kwnmea/carlos-rafael-fish-interview).

<sup>4</sup> Ben Goldfarb, *The Deliciously Fishy Case of the "Codfather"*, MOTHER JONES (Mar. 17, 2017), available at <http://www.motherjones.com/environment/2017/03/codfather-carlos-rafael-fish-fraud-catchshares/>.

<sup>5</sup> See Brendan Borrell, *The Last Trial of the Codfather*, HAKAI MAGAZINE (Jan. 10, 2017), available at <https://www.hakaimagazine.com/article-long/last-trial-codfather>.

<sup>6</sup> Goldfarb, *supra*.

<sup>7</sup> See NOAA Fisheries, *Secretary of Commerce declares Fisheries Disasters in Northeast, Alaska, and Mississippi* (Sept. 13, 2012), available at [http://www.nmfs.noaa.gov/stories/2012/09/09\\_13\\_12disaster\\_determinations.html](http://www.nmfs.noaa.gov/stories/2012/09/09_13_12disaster_determinations.html).

<sup>8</sup> See Borrell, *supra*.

*of the New England fisherman?*,<sup>9</sup> and Massachusetts set up a disaster relief fund for the struggling groundfish industry.<sup>10</sup>

In the midst of this devastation, Rafael was declared the “American Dream” by one media outlet, effortlessly and inexplicably thriving against odds that other dedicated, talented fishermen could not seem to overcome.<sup>11</sup> It is now known that what Rafael’s failed competitors lacked was the benefit of a massive, vertically integrated criminal conspiracy and that his “American Dream” was more of an “American nightmare” for everyone else. It is our conclusion that Rafael distorted the market by leveraging fraudulent landings sales to expand, while the law-abiding fishermen struggled (and too often failed) to survive.

### **III. Rafael’s behavior demonstrates malice and brazen disregard for the law.**

Rafael has evidenced persistent, open, malicious and selfish disregard for the fishing community, regulators, and the public whose resources he has pillaged. Taken as a whole, Rafael’s course of conduct should, we believe, lead this Court to conclude that his crimes deserve maximum punishment.

Rafael’s reputation for aggressively challenging and belittling anyone who stood in his way is well-known by anyone in the groundfish fishery and is well-corroborated by Rafael’s own reported statements to the media, as the following reported comments make clear. When his business was just starting out, Rafael would bid highest on daily hauls before systematically driving the price down later, claiming “*shame on them if they didn’t know any better.*”<sup>12</sup> When struggling fishermen protested the size of his colossal operation, Rafael decried them in crude terms as “*mosquitos on the balls of an elephant*”<sup>13</sup> and “*maggots screaming on the sidelines . . . they can scream all they want. Nobody can save them.*”<sup>14</sup> He sued Massachusetts for excluding him from a portion of the state disaster relief funding, then threatened to sell his boats to a buyer out-of-state out of spite, arguing that he “*didn’t want them to bring in one dollar for this state again.*”<sup>15</sup>

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<sup>9</sup> Jenna Russell, *Is this the end of New England fishermen?*, BOSTON GLOBE (June 16, 2013), available at <https://www.bostonglobe.com/magazine/2013/06/15/this-end-new-england-fisherman/XDE93VGrogaz5iwui7s3L/story.html>.

<sup>10</sup> See Jennifer Smith, *Mass. to receive \$14.5m for groundfish disaster funding*, BOSTON GLOBE (May 29, 2014), available at <https://www.bostonglobe.com/metro/2014/05/28/massachusetts-receive-million-for-groundfish-disaster-funding/ummCB1OfL0QL15ErdsuVSJ/story.html>.

<sup>11</sup> See McDonald, *supra*.

<sup>12</sup> *Id.*

<sup>13</sup> Goldfarb, *supra*.

<sup>14</sup> McDonald, *supra*.

<sup>15</sup> Simon Rios, *King of New England groundfishing plans to sell his fleet out of New Bedford*, SOUTH COAST TODAY (Jan. 4, 2015), available at <http://www.southcoasttoday.com/article/20150104/NEWS/150109720>.



Rafael's self-centered philosophy and fundamentally criminal state-of-mind is plainly revealed in a quote recently attributed to him by a regulator: "*I am a pirate . . . . It's your job to catch me.*"<sup>16</sup> To anyone involved in exercising the privilege of fishing in federal waters in the United States or anyone trying to manage or promote sustainable management of sustainable, healthy fisheries, this statement and perspective are extremely alarming. Pirates are criminals who do not abide by the laws or faithfully perform the responsibilities of a commercial fisherman. Pirates are not and should not be afforded the privilege of harvesting public resources, particularly those that are on the fragile edge of collapse. Pirates cannot be trusted to respect a management regime on which a great many honest fishermen depend for their livelihoods.

**We respectfully urge the Court to impose criminal penalties that are just and commensurate with the significant economic, reputational, and environmental damage Rafael inflicted on the above-listed victims through his extensive crimes, including full forfeiture of all the vessels identified by the Department of Justice and NOAA as having played a part in this criminal enterprise.** Given the notoriety of the defendant and the widespread attention on this case, Rafael's criminal penalties must be of sufficient magnitude to deter future illegal fishing conduct. The government has recommended the low end of possible prison time, per the Plea Agreement. As your Honor is well aware, criminal sentencing is not constrained by the prosecution's recommendation; the Court has sole discretion to impose Rafael's sentence up to the maximum sentence allowed by law. In the wake of Rafael's audacious illegal behavior, we feel it is critical that his term of imprisonment and other penalties send a strong signal that conduct like Rafael's will not be tolerated in our nation's fisheries. As we detailed above, illegal fishing and misreporting have real adverse consequences for real people; accordingly, we believe violators should be given penalties that are more than a mere "slap on the wrist" and a cost of doing business.

**With regards to Rafael's fishing vessels subject to forfeiture, we respectfully urge the Court to consider the gravity of Rafael's crimes and order the forfeiture of all connected vessels.** We strongly believe that Rafael and his associates should not gain any further benefit from vessels and permits that were used in the commission of crimes. Given the significant harms inflicted by Rafael through his crimes, forfeiture of *all* vessels identified in the indictment would be proportional and just.

Indeed, the purpose of the forfeiture provision of the Lacey Act, 16 U.S.C. § 3374(a)(2), is to impose strict penalties that match the grave environmental and economic impacts of illegal wildlife trade. The Report of the Senate Environment and Public Works Committee that accompanied the Lacey Act Amendments of 1981 explains that the amendments, including section 3374(a)(2), were a reaction to evidence that "uncovered a massive" and "highly profitable" illegal trade in fish and wildlife, often run by "well organized," "sophisticated,"

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<sup>16</sup> Goldfarb, *supra*.

“professional criminals.”<sup>17</sup> The Committee highlighted “grim environmental consequences” of illegal wildlife trade, which “threatens the survival of many species” and has “severe” economic consequences.<sup>18</sup> One of the express purposes of the Lacey Act Amendments of 1981 was to address enforcement problems that had developed over time due to the fact that the original statute’s “penalties [we]re too low, and the culpability standard too stringent.”<sup>19</sup> According to the Committee, “[f]orfeiture of equipment that has been used—and may be used again—in violation of the Lacey Act fosters the purpose of preventing further illicit use of the equipment and by imposing an economic penalty, thereby rendering illegal behavior unprofitable.”<sup>20</sup>

Overall, legislative history suggests that Congress intended for the Lacey Act Amendments of 1981 to impose strict penalties that would deter sophisticated violators like Rafael and prevent repeat offenses. In the case of Rafael, forfeiture of *all* vessels and properties engaged in the illegal activities would further both of these aims.

**Additionally, as the Court considers the fate of forfeited vessels, we respectfully urge the Court to consider remedies that would help bring relief to the fishery that has borne the brunt of Rafael’s crimes.** Rafael has pled guilty to crimes that have harmed many victims. This Court has discretion under Title 18 of the U.S. Code to order restitution to certain victims in connection with several of Rafael’s crimes, including conspiracy (18 U.S.C. § 371) and falsifying federal records (18 U.S.C. § 1519).<sup>21</sup> Additionally, under the Mandatory Victims Restitution Act of 1996, 18 U.S.C. § 3663A, restitution is mandatory in any case where a victim has directly and proximately suffered a pecuniary loss as a result of a crime. In cases of illegal fishing, courts have held that such victims can include governments, who are trustees of public resources and represent the public’s interest in protecting natural resources from illegal harvest.<sup>22</sup> Accordingly, we ask the Court to create a process by which fishing operations that believe they have been directly harmed by Raphael’s illegal actions can make a claim for restitution.

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<sup>17</sup> S. REP. No. 97-123, at 1 (1981), *reprinted in* 1981 U.S.C.C.A.N. 1748.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 14.

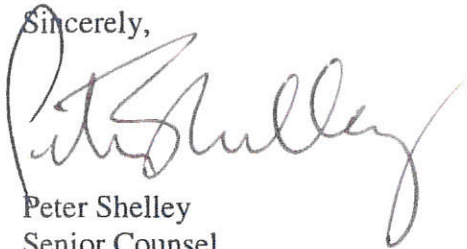
<sup>21</sup> 18 U.S.C. § 3663(a)(1)(A).

<sup>22</sup> *See United States v. Bengis*, 631 F.3d 33 (2d Cir. 2011) (where defendant plead guilty to conspiracy to violate Lacey Act by illegally harvesting lobsters in South Africa, finding that South Africa was due restitution under the Mandatory Victims Restitution Act); *United States v. Oceanpro Indus., Ltd.*, 674 F.3d 323, 331, 332 (4th Cir. 2012) (upholding a restitution order to Maryland and Virginia where seafood wholesaler was convicted of conspiracy to violate Lacey Act, finding that the states “possess a legitimate and substantial interest in protecting the fish in their waters as part of the natural resources of the State and its fishing industries” and that “[t]o qualify as victims, Maryland and Virginia need not even have been ‘owners’ of the striped bass, although they were after the fish were illegally caught; they merely had to have interests that were ‘harmed’ as a result of the defendants’ criminal conduct. Because we have concluded that their interests were indeed harmed, the States were victims and therefore properly awarded restitution”).

Restitution proceeds could be obtained from the sale of forfeited vessels. Proceeds should also be used to fund fisheries monitoring initiatives that help to mitigate the adverse impacts caused by Rafael's crimes. Greater monitoring coverage would not only help to deter and identify illegal fishing operations like Rafael's but also improve data collection and scientific models that have been compromised by Rafael's illegal behavior. Enhanced monitoring coverage would allow fishing industry regulators and participants a more complete and accurate picture of what is happening on the water, which should in turn enhance the reliability of fisheries management models and control measures. Electronic monitoring, in particular, has the potential to feasibly allow 100-percent monitoring coverage, and would represent a major step forward in managing New England's complex and diverse fisheries and making Raphael's approach to fishing a bad chapter in New England fishing that everyone can now move beyond. Lack of adequate NOAA funding has resulted in delay in implementation of much-needed electronic monitoring programs. Funds obtained in connection with Rafael's violations could provide critical support for such programs.

Thank you for your consideration.

Sincerely,



Peter Shelley  
Senior Counsel



Megan Herzog  
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Encls.

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