

PROPOSAL TO NOAA FOR IX NORTHEAST FISHERY SECTOR TO RESUME ACE TRADING TO AND FROM OTHER SECTORS

SUMMARY

In response to the letter from the Regional Administrator and the Interim Final Rule from NOAA, the Board of Directors of NEFS IX has recalculated the 2017 (current) fishing year ACE status for NEFS IX to account for any overages of cod, yellowtail flounder, witch flounder, and plaice as a result of the misreported catches stipulated in the [plea agreement] United States v. Carlos Rafael and calculated the ACE in the effort to resume operations. The Board took the additional steps of estimating cod and yellowtail flounder management area stock overages by dividing the species amounts for those stocks by the number of management areas. We used this formula because the Regional Administrator and GARFO staff did not supply the actual misreported catch by stock for those species as promised to the Board at the October 26 meeting. If GARFO does have this data available, NEFS IX BOD would be willing to revisit the data and calculation provided in this proposal.

The Board also levied penalties based on Section E's Penalty Schedule in the Operations Plan that was approved by GARFO on vessel owner (Carlos Rafael) for both misreporting catch and placing the sector at risk. The Board has also taken measures to insure that catch is reported accurately moving forward. Carlos Seafood was prohibited from buying groundfish from any vessels owned by Mr. Rafael effective 6/1/2017. We also formed a new Board of Directors and are currently looking to hire a new NEFS Manager to address the concerns of GARFO of the sector's integrity and structure. New language in its Operations Plan to eliminate misreported catch is another measure the sector's BOD has taken.

Upon completion of these changes, the Board requests that NEFS IX be allowed to transfer ACE in an effort to make the sector whole.

BACKGROUND

On November 20, 2017, the Regional Administrator of the National Marine Fisheries Service Greater Atlantic Regional Fisheries Office (GARFO) withdrew its approval of NEFS IX's Operational Plan, which stopped all vessels in NEFS IX from fishing for groundfish and transferring ACE to and from other sectors. (Letter from John Bullard, Regional Administrator to Virginia Martins, President NEFS IX) The Interim Final Rule published in the Federal Register on 11/22/2017. NEFS IX was also not allowed to buy or sell ACE until the Regional Administrator approved a new Operations Plan.

The Regional Administrator's letter and subsequent Interim Final Rule listed several requirements for reinstating NEFS IX's operations plan. This included investigating ACE overage from misreported catch, proposing ACE compensation for misreported catch, proposing penalties for misreported catch and placing the sector agreement at risk, changes in the NEFS's operations plan to eliminate misreported catch and other violations, and changes in NEFS IX' Board of Directors and background of new Board members.

In this proposal, the Board has corrected these deficiencies necessary for approval by the Regional Administrator, which would allow NEFS IX to resume operations and trading ACE to and from other sectors.

NEFS IX'S ACE OVERAGES AND REQUIRED COMPENSATION CAUSED BY MISREPORTED CATCH

In the absence of clear regulatory language that contemplates retrospective accounting for NEFS "overages" that were not known by a NEFS in the years in which they occurred but were instead known several years after they occurred, the NEFS has extracted guidance from numerous statements contained in the November 20, 2017 Interim Final Rule.

With this being the only "guidance" that NEFS IX Board of Directors has received to date and notwithstanding the potential lack of regulatory basis for the approach taken by the Board, the following method/s were used to provide the agency with a retrospectively adjusted accounting of NEFS IX, 2017 ACE status for stocks and years in which catch is known to have been misreported.

1. The approach applies the misreported catch to the year in which the misreporting occurred by adding it as a line item to the total used ACE for that year.
2. If the result of adding the misreported catch was an overage, the overage was deducted from the following year initial allocation.
3. If a carryover was credited for a stock from the previous year where the retrospective analysis showed there would have in fact been an overage, the carryover that was credited was then deducted.
4. The method was applied chronologically from the beginning of the misreporting period to produce a current 2017 ACE status had the misreported catch been properly reported as catch in the years they occurred. The net effect is cumulative as a result of the losses of carryover and additional catches that are applied successively to present.
5. At this time, the NEFS IX Board of Directors is still unable to apportion misreported catch of Cod and Yellowtail to their corresponding stock areas. GARFO staff told us on several occasions that they would supply the specific stock overages for cod and yellowtail flounder after we requested them at our meeting in Gloucester on October 26, 2017. However, since we feel it is critical to address this issue immediately, the Board adopted the following approach: For Cod and Yellowtail Flounder the Board split the misreported annual totals of each species equally among the management units for each species. For cod, the misreported catch was applied 1/3 to each of GB East, GB west and GOM cod. For Yellowtail Flounder the misreported catch was attributed 1/3 each to GB, CC/GOM and SNE. The Board proposes this method for the sake of expediting a reasonable resolution to ACE accounting in the fishery. The Board envisioned that it may cost a significant amount of effort and time for the agency to attempt to unravel the stock attributions and that the task may be onerous, if not impossible. However, if the Board has incorrectly assessed this issue of the difficulty for the agency to produce a less arbitrary approach, the Board is open to using the 1/3 split method as an interim

resolution for the ACE accounting component of the NEFS 9 reactivation plan with the understanding that if the agency provides information that supports a different proportional attribution among the management units the Board will make those adjustments at that time.

See the attached excel file for the computations described above. See Table 1 (below) for the summary computations for FY2017.

Table 1. End of Year Net ACE by Stock Adjusted for Misreported Catch.							
	2012	2013	2014	2015	2016	2017	ACE needed
Witch Flounder	149,515	-25,954	-92,486	-219,805	-216,890	-66,288	-66,288
Plaice				-130,126	-124,088	14,899	
GB Yellowtail	82,926	49,062	119,774	58,165	130,589	88,670	
SNE Yellowtail	93,042	57,463	32,830	42,255	31,238	36,221	
GoM Yellowtail	69,036	4,916	48,048	-31,006	-17,485	47,810	
GB Cod West	—	—	—	16,962	13,697	87,257	
GB Cod East	—	—	—	-15,574	-14,196	25,512	
GoM Cod	—	—	—	-23,442	-21,883	-6,096	-6,096

PENALTIES FOR VIOLATIONS OF MISREPORTING CATCH

NEFS IX also found it appropriate to exercise the penalty schedule found in Exhibit E of the Operations Plan. The Board decided to execute the violation regarding reporting and documentation requirements. This violation states “All violations including but not limited to: providing false statements or supporting documentation on applications or reports to the NEFS; late reporting or non-reporting; (technical and minor violations may result in a letter of warning).” This penalty fines the member \$2,500. We found that all 13 vessels involved in the United States v. Carlos Rafael would be fined this amount for their lack of reporting correctly to the NEFS for a total of \$32,500.

The Board also chose to execute the violation of placing authorization of NEFS IX operations plan at risk. This violation states “All violations including but not limited to a violation of a stop fishing order, fishing in a closed area, transfer of fish from non-NEFS vessel to a NEFS vessel, transfer of fish from NEFS vessel to a non-NEFS vessel; subverting the reporting requirements or any other action so egregious that it would severely jeopardize the NEFS’s existing and future authorization(s).” Due to the actions taken by Carlos Rafael, we found it appropriate to execute this penalty in the amount of \$10,000.

Carlos Rafael is also required monetarily to make the NEFS whole. As the table above indicated, this would require a payback of 66,288 pounds of Witch flounder as well as 6,096 pounds of GOM Cod. This weight reflects the NEFS’s overage after the accounting of the misreported fish included in the available documents from [plea agreement] Carlos Rafael v. The United States, as shown above. It would be the responsibility of Carlos Rafael to provide the value of the cost of leasing for this ACE.

PREVIOUS ACTIONS BY NEFS IX TO ELIMINATE MISREPORTING OF CATCH

As noted in our previous communications with GARFO, NEFS IX has taken measures to prevent anything of this magnitude from ever again occurring. The Board had voted to prohibit Carlos Seafood from being a primary buyer from any of Carlos Rafael's vessels, removed Carlos Rafael from the BOD, and constructed a BOD that includes a wealth of knowledge of the industry who has the interest of the NEFS as a whole in mind. The BOD of NEFS IX has also reached out to GARFO to open the lines of communication for transparency to work to resolve the issues that took place.

PROPOSED CHANGES IN NEFS IX'S OPERATION PLAN TO ELIMINATE MISREPORTING CATCH

NEFS IX has implemented some measures to prevent anything unethical from occurring. The captains will be required to submit both a start and end hail to notify GARFO of both their sailing and arrival to port. The vessels will be required to submit their end hail 6 hours prior to their arrival to port. The BOD will also require a contract to be signed by captains, which will require their compliance in reporting catch accurately. The captains will also agree that VTRs are to be filled out in their entirety prior to reaching the offload facility. At this point, the offload facility will scan the original copy of the VTR to a third party who will hold the VTRs in the event GARFO has a question in regards to a VTR. This will take place prior to the captain providing the VTR to the new NEFS manager. The office of the new NEFS manager will also be relocated at the time the new NEFS manager begins and vessels resume.

PERSONNEL CHANGES

In addition to the extensive governance changes made in 2017 (Letter from Virginia to Bullard) and acknowledged in the Interim Final Rule published on November 20, 2017, the board has accepted the resignation of the sector manager, Stephanie Rafael-DeMello, to become fully effective no later than the date NEFS 9 vessels are issued Letters of Authorization (LOA) to resume fishing activity under a NEFS 9 operations plan. The board anticipated and ultimately accepted Stephanie's resignation in the context of the significant distinctions between the periods prior to and subsequent to Carlos Rafael's sentencing and incarceration. Prior to Carlos' incarceration there existed sufficient space for the sector manager, irrespective of relationship to a member, to independently conduct their duties to compile sector level reporting and the monitoring of sector ACE status. Since Carlos' incarceration, Stephanie may be needed to play a role on behalf of the Rafael fleet operations going forward.

CHANGES IN COMPOSITION OF NEFS IX'S BOARD OF DIRECTORS

On May 24, 2017, Carlos Rafael and Richard Canastra resigned from the Board of Directors of NEFS IX with Mr. Canastra retaining his position on the Board of Directors of the Northeast Seafood Coalition. A list of people that were elected to comprise the Board of Directors at that time follows. Cassie Canastra was elected to the Board on January 3, 2017.

Virginia Martins, Personal Biography

Virginia is the President and a member of the Board of Directors of IX Northeast Fishery Sector, Inc. Her Career in the fishing industry started in 1984 working for a Marine Supply Store. Loving everything about the fishing industry and being a daughter to a fisherman, in 1998 she started her own business selling marine supplies and marine fuel to the fishing vessels out of New Bedford. Virginia is proud to say that she is the only woman that owns a business of this type in Greater New Bedford servicing the commercial fishing industry and she has witnessed many changes in the industry over the years. Virginia employ 6 employees.

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Anne E. Jardin-Maynard, Personal Biography

Anne is the Clerk and a member of the Board of Directors of IX Northeast Fishery Sector, Inc. After graduating from Roger Williams University in 1985 with a Bachelor's degree in Accounting and a Minor in Computer Science, Anne started working as an accountant at Dawson Boat Settlements in New Bedford. In 1988, she become partner with Kevin Dawson. In 2012, with Kevin Dawson's retirement, she became the sole owner of Jardin and Dawson, Inc. She has over 32 years of fishing industry experience, from boat settlements, corporate and personal tax returns, fishing vessel permit applications, licensing, and all accounts payable and receivables. She handles all of the accounting needs for the fishing industry. Over the last 32 years working with the fishing industry, she has been very much involved in the many changes that have impacted the fishing industry and have seen it develop over these years to its current state. Jardin and Dawson, Inc. currently employs six employees.

Anne E. Jardin-Maynard
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John F. Reardon, Personal Biography

John is a member of the Board of Directors of IX Northeast Fishery Sector, Inc. and also serves on the Enforcement Committee. His career in the commercial fishing industry started in February 1982 as crew to Captain on several different fishing vessels in the ground fishing industry. On November 8th 1999, he was hired by IMP Marine Group to run this company as general manager taking the company from 5 core employees to 19 presently employed. In April 2010, IMP Marine was purchased by Hercules SLR US Inc. and he was kept on in the same capacity to present date.

John F Reardon
General Manager
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Tor Bendiksen, Personal Biography

Tor is a member of the Board of Directors of IX Northeast Fishery Sector, Inc. and also serves on the Enforcement Committee. He is the Operations Manager and Trawl Technician at *Reidar's Trawl Gear and Marine Supply* in New Bedford, Massachusetts. He has over 25 years' experience in the fishing industry. He comes from a fishing family and went out to sea for the first time at 13 years old, with his father, on the F/V Narragansett. He earned a certification in Trawl Technology from SINTEF Fisheries in Hirtshals, Denmark and has travelled extensively throughout the North Atlantic studying mobile fishing gear. He has designed and developed innovative fishing gear for research organizations such as NOAA and Massachusetts Division of Marine Fisheries as well as several universities on the East Coast. His family's company, *Reidar's Trawl Gear and Marine Supply*, employs 16 individuals who manufacture fishing gear for vessels in the Northeast Fisheries.

Tor Bendiksen
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Raymond Canastra, Personal Biography

Co-owner
BASE New England/ Whaling City Seafood Display Auction
Ray is the Treasurer and a member of the Board of Directors of IX Northeast Fishery Sector, Inc. He has been involved in the fishing industry for 40 years. He started off on the New Bedford waterfront as a fish lumper, eventually making his way onto several fishing vessels from 1977 – 1989. In 1984, he became the captain of a scalloper, the F/V Donna Lynn. After the birth of his daughter Cassie in 1989, he decided to stay on land to be closer to my family. He opened RCC Foods Inc. with his brother, Richard in 1989. At the time, he and Richard offloaded many of the fishing vessels in the Port of New Bedford. They also purchased and processed large volumes of multi-species groundfish, scallops and lobsters. He and Richard then decided to start a seafood display auction, Whaling City Seafood Display Auction, in 1994; to provide a fair market for New Bedford fishing vessels. As a result, they developed BASE (Buyers and Sellers Exchange) an electronic auctioning company in which WCSDA owns and operates. In conjunction with BASE New Bedford, they opened BASE Gloucester in 2007 to offer vessels another unloading facility further north. Currently, they offer both fish and scallop auctions to fishing vessels from Maine to North Carolina.

Raymond Canastra
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Daniel Georgianna, Personal Biography

Dan is a member of the Board of Directors of IX Northeast Fishery Sector, Inc. and also serves on the Enforcement Committee. He is a Professor Emeritus of Economics at UMass Dartmouth and currently a Research Associate at SMAST. He is also a member of the Scientific and Statistical Committee of the New England Fishery Management Councils. Over the past 40 years, he has completed over 25 contracts with NOAA or other government agencies on the economics of fisheries and management. He also published 20 papers in peer reviewed journals on fisheries. He has worked with numerous Federal, State and Local government agencies, including the US State Department in presenting the US position on the US-Canadian Boundary to the World Court.

Daniel Georgianna

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Cassie Canastra, Personal Biography

Cassie is a member of the Board of Directors of IX Northeast Fishery Sector, Inc. Cassie Canastra has worked for the Whaling City Seafood Display Auction since 2009. She became the marketing director of the auction, BASE New England, after graduating from the College of the Holy Cross in 2012. She has served as a board member for the New Bedford Fishing Heritage Center and is currently on the board of the Fishermen's Tribute Fund in New Bedford and the Northeast Seafood Coalition. In 2015, Cassie began her Masters in Fisheries Science at the School for Marine Science and Technology (SMAST). As a master's student, she has done research on the market dynamics of groundfish species, which was presented the Research Committee of NEFMC. In 2014, she also opened Bela Flor Seafood Brokerage LLC, a seafood brokerage firm in New Bedford.

Cassie Canastra

Marketing Director

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