

Tom Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Mill #2  
Newburyport, MA 01950



Re: Groundfish Catch Share Program Review

Dear Tom Nies,

On behalf of the North American Marine Alliance (NAMA), we would like to provide comments for the New England Groundfish Catch Share Program (“Catch Share Program”) review.

As an organization that supports fishing families and their allies around the United States in the movement to protect marine ecosystems and fishermen’s livelihoods, we have engaged in the New England Fishery Management Council (“Council”) process for developing its groundfish Catch Share program for over a decade.

Prior to the implementation of the Catch Share Program, fishermen and allies warned decision-makers that catch shares would strip fisheries access away from small and medium-scale, independent fishermen and shift access to multinational corporations and outside investors. Decision-makers told fishermen that was a delusion, and that they were “inventing a boogeyman.”

Within the past year, one of the same Council members who dismissed fishermen’s warnings sold his fishing fleet and privileges to a subsidiary of Bregal Partners, a multibillion-dollar private equity firm which the Catch Share Program has enabled to control fisheries access indefinitely. That company is now in a position to further acquire millions of dollars of groundfish quota that was seized by the government from Carlos Rafael for seafood fraud and tax evasion and will likely be sold or redistributed to other individuals or entities.

These developments are a direct result of the Catch Share Program and the Council’s failure to adopt meaningful safeguards in accordance with its stated objectives in the Groundfish Management Plan.

Our comments are divided into two parts:

1. The Catch Share Program and the Council’s actions from 2010-2015 failed to protect fleet diversity and prevent excessive consolidation; and

2. The process for implementing the Catch Share program revealed a failure of the Council to uphold democratic principles.

## Background

In 2009-2010, the Council adopted the Catch Share Program. Although new to New England, catch share programs initially began in the United States during the early 1990's with the Surf Clam Ocean Quahog (SCOQ) fishery. Since its inception, the Catch Share Program was designed to commoditize fisheries access and consolidate fishing fleets into fewer, higher capacity and vertically integrated businesses. Within a decade, the SCOQ fishery transitioned from a diverse and primarily owner-operator fleet, to a fleet owned and controlled by four multinational corporations. Today, the largest SCOQ quota owner – Thailand-based Thai Union Group – is one of the largest seafood dealers in the world.

Some catch share programs have not taken this route. In 1995, Alaska's Fishery Management Council implemented a catch share program to manage halibut and sablefish. The program design included safeguard protections to ensure access for owner-operator fishermen and opportunities for small, medium, and large-scale fishing businesses. Some of those safeguards included owner-operator provisions, caps on quota ownership ranging from 0.5% to 1%, and leasing restrictions. Even with these safeguards in place, the number of residents of Alaska communities who hold halibut quota fell by more than half, with small-scale fishermen and indigenous communities bearing the brunt of the impacts.<sup>1</sup> Economic trends also show that many Alaska fishermen face an increased risk of income volatility because they are not able to afford diverse portfolios, and are fishing in fewer areas for fewer species of fish.<sup>2</sup>

In 2010, the New England Council rushed to implement the Catch Share Program, promising to quickly establish safeguards in a subsequent amendment. Amendment 18 was supposed to be the mechanism to create safeguards and ensure equity in the fishery. However, following several years of hearing from hundreds of fishing community members around New England and facing a federally declared groundfish disaster, it is clear that the measures put in place were meaningless and woefully inadequate. Amendment 18 simply maintained the status quo and allowed groundfish quota to remain a tradable commodity that is concentrated in fewer hands, leaving no hope for future independent fishermen.

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<sup>1</sup> Donkersloot, R., & Carothers C. (2017). Beyond Privatization: Rethinking Fisheries Stewardship and Conservation in the North Pacific. In P. S. Levin & M. R. Poe (Eds.), *Conservation for the Anthropocene Ocean* pp. 253-270. San Diego, CA: Elsevier Science Publishing.

<sup>2</sup> Seifer, J (2019, July 25). Locked in and off-loaded: Quotas stifle diversity and stability in fishing. *National Fisherman*. Retrieved from <https://www.nationalfisherman.com/uncategorized/locked-in-and-off-loaded-quotas-stifle-diversity-and-stability-in-fishing/>

The harmful consequences of the Catch Share Program are exemplified by the criminal conviction of Carlos Rafael, the former owner of a vertically integrated seafood business that used catch shares to yield unchecked control over the New England groundfish fishery. We have long been concerned that policies designed to consolidate fisheries access would lead to this type of corruption, collusion, and ultimately undermine the Council's conservation goals.

Under the Council's management, the transition to a Catch Share Program has caused a host of social, ecological and economic crises.

### **I. The Council Failed to Ensure Fleet Diversity and Address Excessive Consolidation**

In order to achieve the Council's groundfish management goals, Amendment 18 had two broad objectives that were informed by a dozen public scoping hearings and thousands of public comments. They were as follows:

1. Promote a diverse groundfish fishery, including different gear types, vessel sizes, ownership patterns, and geographic locations; and
2. Prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.

However, in early 2013, the objectives were modified based on recommendations from the Groundfish Advisory Panel (GAP). Those recommendations were not based on public comments, but rather on a small number of special interest groups. The modified objectives included "enhancing sector management" and "promoting resilience and stability of fishing businesses."

In developing measures to address the Amendment 18 objectives, the Council hired Compass Lexecon in 2013 to analyze catch shares in the groundfish fishery. Their report concluded that excessive consolidation did not exist in the groundfish fishery. Although we disagreed with this conclusion, the findings came as no surprise because Compass Lexecon had previously reached the same conclusion in a study of the aforementioned Surf Clam Ocean Quahog fishery, which is widely acknowledged as being among the most highly consolidated fisheries in the world.

Based on the Compass Lexecon report, the Council decided to cap potential sector contributions (quota) at 15.5% of the aggregate groundfish allowable catch. Far from being a real solution, this provision paves the way for greater consolidation by allowing single entities to control upwards of 90% of key groundfish species.

For example, cod quota in the Gulf of Maine comprised 0.3% of the entire groundfish aggregate stock (total of 13 species) in 2015. Since the current quota cap limits aggregate ownership across all stocks at 15.5% with no restrictions on individual species, one entity would be able to control nearly all of the cod in the Gulf of Maine while remaining well below the cap. Allowing one entity to effectively control all of the cod in the Gulf of Maine, which is just one example, clearly fails to prevent excessive consolidation. Instead, this provision allows a few large companies to own and control key species, consolidate the fleet into fewer ports, and eliminate fleet diversity. We recommend that NMFS take immediate action to establish quota ownership limits of between 2% and 5% per species.

Another major flaw in the Catch Share Program is that quota holders have no incentive to harvest their quota. This has created a perverse system where quota holders are able to lease their quota to others in perpetuity (by passing it on from one generation to the next) and make a profit at the expense of active fishermen who cannot afford to buy quota. The result is that fisheries are controlled by outside investors and quota prices are skyrocketing. We recommend that NMFS mandate owner-operator provisions and reasonable restrictions on quota leasing. These restrictions should include limits on the length of time that quota can be leased to another individual or entity, with a corresponding reduction in quota and/or transfer to other qualified fishermen after a specified time period.

Finally, the Council has allowed data on fishing quota to remain confidential, violating the public's right to know who is controlling their fisheries. Fishing quota transactions take place completely in the dark, out of the view of fisheries managers and the public. We recommend that NMFS take immediate action to require full disclosure of data on quota holdings, leases and transfers.

## **II. The Council is Failing to Uphold the Public Process**

Hundreds of fishermen and members of the public weighed in on Amendment 18 during a seven-year process. They showed up to the meetings. They wrote letters. They articulated clear problems and solutions. Yet the Council effectively ignored the majority of public testimonies, failed in its duties to uphold the public process, and ultimately adopted an amendment that maintained the status quo.

During those years, fishermen attended Council meetings to provide input, only to have the agenda shift at the last minute and not get to have their say. Fishermen were interrupted or had their mics turned off. Brett Tolley at NAMA personally had his mic turned off or was interrupted on four separate occasions. In one incident at the April 2015 Council meeting, the Council Chairman publicly called him an "asshole."

A pattern of violating the public process has already been acknowledged by the Council. In 2011, the Council requested a third-party review of its “public process.” The resulting Touchstone Report acknowledged serious problems and found that the Council’s governance process is too complex and discourages active participation; lacks collaboration or constructive dialogue; lacks any presence in the field or use of industry knowledge; requires overly burdensome reporting along with untimely feedback; uses overly complicated wording; is vulnerable to filibustering by Council members to prolong meetings; and lacks a vision or strategic plan to guide decision-making.

The Touchstone Report also offered solutions including: create a more welcoming environment that fosters service to the industry; redesign meetings and provide more time on the agenda for collaborative working sessions that promote active participation and dialogue; change the meeting layout and format to be more collaborative; engage professional facilitators to encourage full participation from Council and audience members; prevent individuals from dominating the conversation; work with fishermen to understand what information they need to receive; and develop a strategic plan for New England fisheries.

According to the Touchstone Report, many have lost faith in the process. The Council has a responsibility to show what it has done to implement these recommendations. Clearly, what we have experienced and observed demonstrates that not much has been done in the way of implementing any of the report’s suggestions.

## **Conclusion**

The Catch Share Program is designed to privatize fisheries access and consolidate the fishing industry. For seven years, fishermen and the public followed the process to ensure that social, environmental, and economic safeguards were established in the Catch Share Program. But the process failed them. As it currently stands, the Council is incapable of acting in the best interest of the fishing industry and the broader public. Therefore, we will commit to continue seeking recourse outside of the Council’s failed process. For trust to be restored among fishermen and the public, we need to see a serious commitment from the Council to address these issues and restore a genuine participatory democracy in fisheries management.