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FEB 20 2007

February 15, 2007

Mr. Jack Terrill
New Bedford Harbor NRD Trustee Coordinator
NOAA - New England Region Management Division
One Blackburn Drive
Gloucester, MA 01930

Dear Mr. Terrill:

The Massachusetts Department of Public Health (MDPH), Center for Environmental Health (CEH), in coordination with the Massachusetts Department of Environmental Protection (MDEP), has been asked to review the 2005 Shellfish Restoration Statement of Work and Budget prepared by the Regional Shellfish Restoration Committee on behalf of the Towns of Dartmouth and Fairhaven and the City of New Bedford. The proposed regional shellfish restoration work in New Bedford Harbor has been submitted to the New Bedford Harbor Trustee Council.

CEH staff, in consultation with the MDPH Office of General Counsel, has reviewed the proposed restoration work to determine whether the proposed restoration project might pose an unacceptable risk to public health and whether it might conflict with MDPH regulations governing the taking of fish and shellfish in New Bedford Harbor. Based upon this review and for the following reasons, MDPH does have concerns about certain parts of this restoration project.

Among the many goals of the New Bedford Area Shellfish Restoration Project, the proposal that concerns MDPH the most is the plan to relocate shellfish from Area I to Area II. These areas are defined in Section 260.005(4) of the MDPH regulations entitled *Prohibition Against Certain Fishing in New Bedford Harbor* (105 CMR 260.000). A copy of these regulations is attached.

These regulations impose restrictions on the taking of fish and/or shellfish in each of the three areas of New Bedford Harbor. This restoration project is subject to these regulatory



restrictions. Specifically, 105 CMR 260.005(1) prohibits any taking or selling of any fish (except bait fish), lobster or shellfish from Area I. The MDPH Food Protection Program considers a "taking" to be any capturing or harvesting of fish or shellfish, even for the purpose of relocating. Therefore, the relocation of shellfish from Area I to Area II would violate these regulatory restrictions.

In addition to concerns about the restoration plan violating MDPH regulations, CEH believes that the findings of the Greater New Bedford Health Effects Study (GNBHES), released in 1987, clearly demonstrated a relationship between consumption of fish caught from the closure areas and higher serum PCB levels. In New Bedford, approximately 50 percent of fish eaters who ate fish from closed areas of the harbor had serum PCB levels in the range of 9-15.5 parts per billion (ppb) compared to mean prevalence estimates in the general population of approximately 6 ppb. Since the time of our study (1984-1987), research indicates that health effects are of concern at even lower serum PCB levels (e.g., in the 2-6 ppb range) than what was known in the mid-1980s, thereby supporting great caution with respect to harvesting fish or shellfish from the closure areas.

We appreciate the opportunity to comment on this New Bedford Harbor Restoration Plan. If you have any questions regarding this letter, please contact me at 617-624-5220.

Sincerely,



James Ballin
Deputy General Counsel

Enclosure: 105 CMR 260.000

Cc: Suzanne Condon, Associate Commissioner, MDPH-CEH
Martha Steele, Deputy Director, MDPH-CEH