DEAR THE DEPARTMENT OF JUSTICE,

THIRTY YEARS IS A LONG TIME TO WAIT FOR THE HAND OF JUSTICE.MY NAME IS THOMAS A. KENNEDY,(NO RELATION TO THE HYANNIS KENNEDY"S), AND FOR THAT LENGTH OF TIME HAVE BEEN BATTLING TO RECTIFY AN INJUSTCE CAUSED BY THE PCB CONTAMINATION INTO THE ACUSHNET RIVER. MY BACKGROUND INCLUDES SERVING ON THE NEW BEDFORD CITY COUNCIL 1979-1983. I AM GRATEFUL TO BE ABLE TO COMMENT ON THE NEW SETTLEMENT AGREEMENT BETWEEN THE U.S. AND A.V.X.(366MILLION DOLLARS).

MY REMARKS TODAY ARE SPECIFALLY CONCERNING THE 110MILLION QUOHOGS(SHELLFISH)NONHARVESTABLE OR DESTROYED IN THE DREDGING PROCESS TO DATE.WHEN I SERVED ON THE CITY COUNCIL I WAS CHAIRMAN OF THE SHELLFISH COMMITTEE AND WAS HEARTENED BY THE ORIGINAL CONSENT DECREE BY JUDGE YOUNG.JUDGE YOUNG STATED THAT THE SET ASIDE FUNDS COULD ONLY BE USED TO RESTORE ,REPLACE, OR ACQUIRE THE EQUIVALENT OF THAT WHICH WAS DAMAGED BY THE PCB CONTAMINATION.AVX AGREED TO 66 MILLIONDOLLARS AND THE JUDGE SET ASIDE AND ADDITIONAL 6.7 MILLION FORDAMAGE TO NATURAL RESOURCES OR 10% APPROXIAMATELY.THESE SET ASIDE FUNDS WERE COMBIMED WITH OTHERS AND FOR THE LAST TWENTY YEARS WERE DISPERSED FOR VARIOUS ENVIRONMENTAL PROJECTS IN THE ACUSHNET RIVER WATERSHED BY THE HARBOR TRUSTEE COUNCIL.AS THE HTC DIMINISHED

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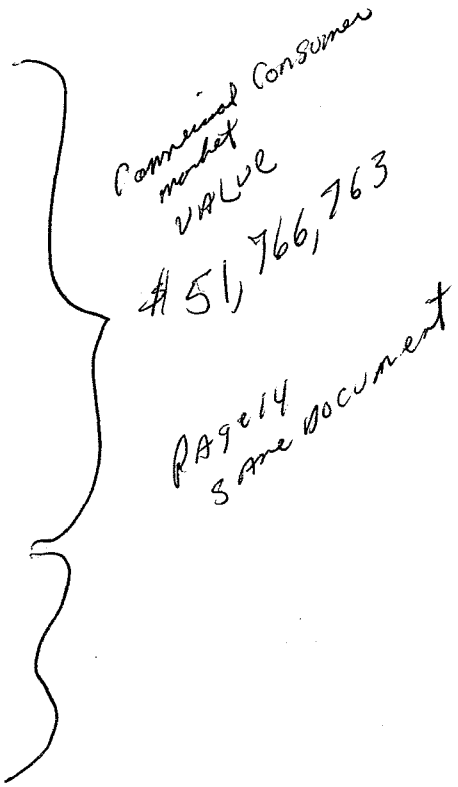
THE RELAVANCE OF SHELLFISH CONTAMINATION BY NOT RECOGNIZING THE POINT OF INJURY ASPECT WHATSOEVER IN THE ORIGINAL, THEY JUST CONTINUED TO IGNORE IT THROUGHOUT THE GRANTMAKING PROCESS. WE UNDERSTOOD AT THE TIME THAT TORESTORE AND REPLACE OR EVEN ACQUIRE THE EQUIVALENT OF 110 MILLION QUOHOGS WOULD LEAVE NO FUNDS FOR ANYTHING ELSE.WE WERE PATIENT AS THEY STATED, "WELL THE DAMAGE ASSESSMENT OF THE AREA HADNT BEEN COMPLETED YET." INITIALLY THIS WAS THE RESPONSIBILITY OF THE DEPARTMENT OF INTERIOR WHO THEN PASSED IT OFF TO THE HTC.BY THE TIME THE SECOND ROUND OF FUNDING CAME AND WENT IN JANUARY 2001(EXHIBIT A), THEIR OWN DOCUMENT STATED THAT THE ASSESSMENT HADN'T BEEN COMPLETED.WE KNEW BETTER. A DOCUMENT ON SHELLFISH STOCK ASSESSMENT WAS COMPLETED WITH THEIR FUNDING IN 1999. IT IS TITLED "CROP SURVEY" BY DAVE WHITTAKER JUNE 6, 1999. IF YOUR INTERESTED ITS ON PAGE 8.THE BREAKDOWN IS AS FOLLOWS;

SEED	16million680thousand
LITTLE NECKS	21MILLION346 thousand
CHERRY STONES	28MILLION330 thousand
CHOWDERS	44 MILLION



THE FUNDING THAT WAS RECEIVED WAS FOR PROJECTS OUTSIDE THE INNER HARBOR AS THE ENTIRE STOCK JUST MENTIONED CAN NEVER BE HARVESTED AND MOST OF IT ALREADY DESTROYED BY EPA DREDGING.THIS POINT OF INJURY ASPECT MUST BE CONSIDERED BY THE JUDGE AS HIS WISDOM IN THIS SETLEMENT OF 366MILLION GETS HIS OR HER REVEIW.BELIEVE ME WE UNDERSTAND THE EVOLUTION OF THE CERCLA REGULATIONS AND HOW THEY MAY EFFECT THE CURRENT SETTLEMENT PARTICULARLY IF NO SET ASIDE SPECIFICALLY FOR SHELLFISH IS GRANTED. JUST IMAGINE IF NONE IS GRANTED. THE EPA CAN THEN STATE THAT THERE WERE NO INJURIES TO THE SHELLFISH IN THE INNER HARBOR DUE TO CONTAMINATION OF PCBS.YOU KNOW THEY WOULD BE RIGHT BECAUSE DAMAGES UNDER CERCLA ARE ONLY COUNTED WHEN THERE IS COMPENSATION .NO COMPENSATION NO DAMAGES.NO DAMAGES NO INJURY.THIS IS WHY THAT WHOMEVER IS READING THIS COMMENT THAT SOME HOW THE JUDGE REVIEWING THIS SETLLEMENT CAN RECTIFY THE SHELL FISH DILEMNA.

CERCLA ALSO HAS WITHIN IT"S EVOLVING REGULATIONS A NOTION OF "DISCOVERY" WHICH CAN BE HELPFUL CONCERNING OUR PLEA.COMMONLY REFERRED TO AS THE SOUTH TERMINAL PROJECT, A CONSULTING FIRM HAD TO PERFORM A SHELLFISH SURVEY TO DETERMINE HOW MUCH STOCK IN THE SOUTHERNMOST AREA OF THE INNER HARBOR WOULD BE EFFECTED BY THE SUBSEQUENT DREDGING OF THIS MOST IMPORTANT PROJECT THAT WE ARE ALL IN FAVOR OF. MITIGATION TOOK PLACE AND FOR 5 MILLION SHELLFISH THAT WOULD BE DISPLACED 25 MILLION SEED WOULD BE USED TO REPLACE THE FIVE MILLIONSTOCK. A DERIVATIVE PROCESS WAS USED AND LIKE MOST DERIVATIVES VALUATIONS BECOME PERVERTED AND WHEN

your dealing with live organisms it BECOMES FURTHER PERVERTED BECAUSE OF MORTALITY RATES IN RESEEDING.CERCLA ALLOWS FOR THE DERIVATIVE PROCESS.WE DIDN'T LIKE IT BUT BECAUSE OF THE IMPORTANCE OF THE OVERALL PROJECT WE WERE GLAD TO SUPPORT IT. WE ALSO HAVEN'T BEEN INFORMED OF WHERE THE FUNDING FROM THE DERIVATIVE RESEEDING WILL COME FROM SINCE IT IS SEPERATE AND DISTINCT FROM THE CURRENT SETTLEMENT BEFORE YOU. I MENTION IT BECAUSE IT IS THE FIRST TIME ANY COMPENSATION HAS BEEN GRANTED FOR SHELLFISH STOCK IN THE INNER HARBOR AND HOPEFULLY CAN BE USED FOR DISCOVERY PURPOSE.(THE CONSULTING COMPANY THAT PERFORMED THAT SURVEY IS CALLEDAPEX)EXHIBIT B EPA DRAFT DETERMINATION P.29.

IN CLOSING WE BELIEVE THE JUDGE CAN SET ASIDE AS PER THE ORIGINAL CONSENT DECREE, A CERTAIN AMOUNT OF FUNDS TO BE PLACED IN AN ESCROW ACCOUNT SPECIFICALLY FOR SHELLFISH RESTORATION IN CLEAN WATERS IN THE CITY OF NEW BEDFORD IN AN ATTEMPT TO MAKE WHOLE THAT WHICH WAS DESTROYED BY THE PCB CONTAMINATION.UNDERSTANDING THAT THE FIGURE WOULD BE IN THE TENS OF MILLIONS OF DOLLARS WE ARE NOT ASKING FOR THAT. WE ARE ASKING THAT YOU WHO ARE READING THIS MAKE AN DETERMINED EFFORT TO GET THIS INFORMATION BEFORE THE JUDGE SO THAT JUSTICE CAN FINALLY BE SERVED.OUR RECOMMENDATION IS THAT AN ESCROW ACCOUNT BE ESTABLISHED RESTRICTED FOR SHELLFISH IN NEW BEDFORD WATERS IN THE AMOUNT OF 15 MILLION DOLLARS WITH ONLY THE MAYOR OF THE CITY AND THE REGIONAL DIRECTOR OF THE DEPARTMENT OF MARINE SERVICES BEING ABLE TO ACCESS THIS ACCOUNT.FURTHER THAT ALL FUNDS BE USED FOR

SHELLFISH PROPAGATION INCLUDING SEEDING AND TRANSPLANTING.

THANK YOU FOR YOUR TIME.

RESPECTFULLY,

Thomas A. Kennedy

TAK

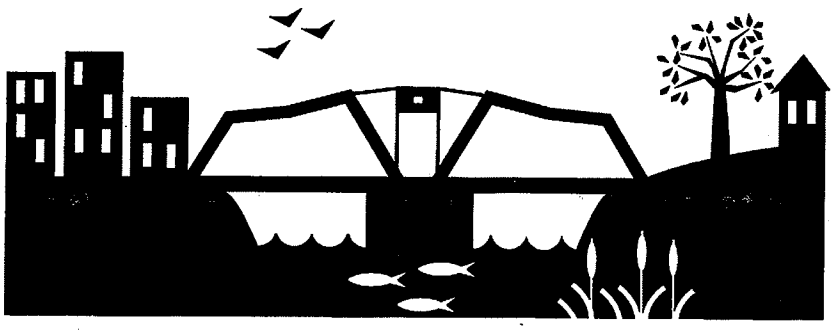
THOMAS A. KENNEDY
78ELLEN ST 2ND FLOOR EAST
NEW BEDFORD, MASS.
02744

TEL508-9927948

ps WE SUPPORT THE SETTLEMENT AND HOPE THEIR IS A SET ASIDE!

Copy
Mayor
Mitchell

New Bedford Harbor Trustee Council



Environmental Assessment

New Bedford Harbor Restoration

Round II

Final

EXHIBIT H

Commonwealth of Massachusetts

U.S. Department of Commerce

U.S. Department of the Interior

Final January 2001

Commonwealth of Massachusetts

Division of Marine Fisheries

1213 Purchase St. 3rd Floor
New Bedford, MA 02740
(508)990-2860
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Paul J. Diodati
Director

Deval Patrick
Governor
Timothy P. Murray
Lt. Governor
Richard K. Sullivan, Jr.
Secretary
Mary B. Griffin
Commissioner

Re Comment Period AUX

October 25, 2012

Mr. Thomas Kennedy
78 Ellen Street
New Bedford, MA 02744

Dear Mr. Kennedy,

Enclosed, please find a copy of the report that you requested, entitled "Quahog Standing Crop Survey, New Bedford/Fairhaven, Inner and Outer Harbors". This report was written by David K. Whittaker in 1999.

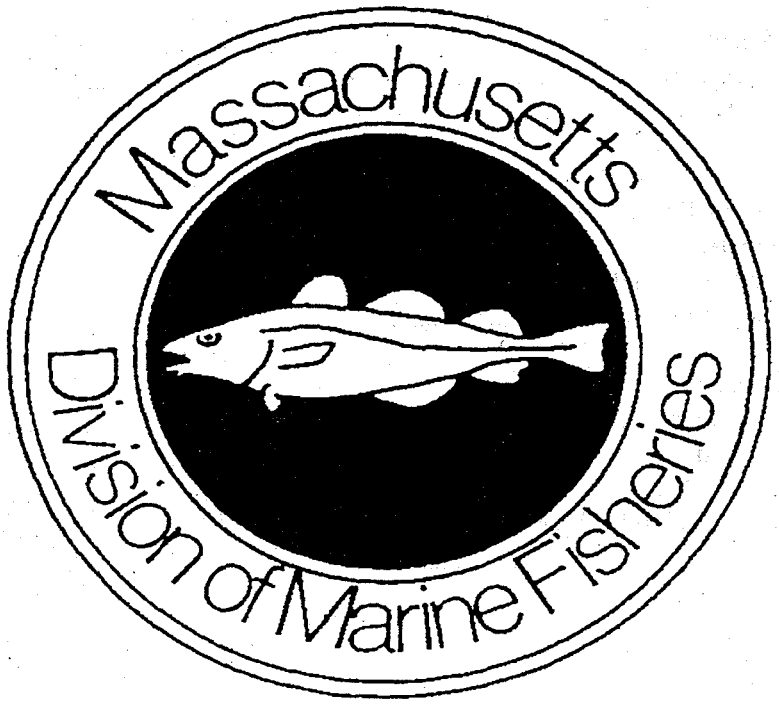
The results of the shellfish survey of the South Terminal site in New Bedford Harbor, conducted by Apex Companies LLC, are not a matter of public record. As a result, I am unable to provide you a copy.

Sincerely,

Thomas Shields
South Coast Shellfish Project Leader

QUAHOG STANDING CROP SURVEY

New Bedford/Fairhaven
Inner and Outer Harbors



David K. Whittaker
Marine Fisheries Biologist
June 6, 1999

Funds for this study were provided by the New Bedford Harbor Trustee Council.

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Table No.

APPENDIX F.

Assessment of Quahog Stocks in Contaminated Waters of Southeastern Massachusetts

Therefore, using the above figures, the value of the quahog fishery in the inner and outer harbors are noted below. The "Value to Fishermen" column denotes the dollars paid to fishermen by the dealers. To realize the gross value to the general community, however, these figures must be factored by the economic multiplier of 4.50 (Wong, 1968). The "Consumer Market Value" column reflects the total dollars after using the multiplier.

Table 7
Current Value of Quahogs for New Bedford Inner and Outer Harbors

Harbor	Littlenecks	Cherrystones	Chowders	Total Value to Fishermen	Consumer Market Value
Outer	$683,229	$625,494	$4,191,780	**$5,500,503**	**$24,752,264**
Inner	$3,811,950	$2,124,990	$5,566,785	**$11,503,725**	**$51,766,763**
Total	**$4,495,179**	**$2,750,484**	**$9,758,565**	**$17,004,228**	**$76,519,027**

OBSERVATIONS AND CONCLUSIONS

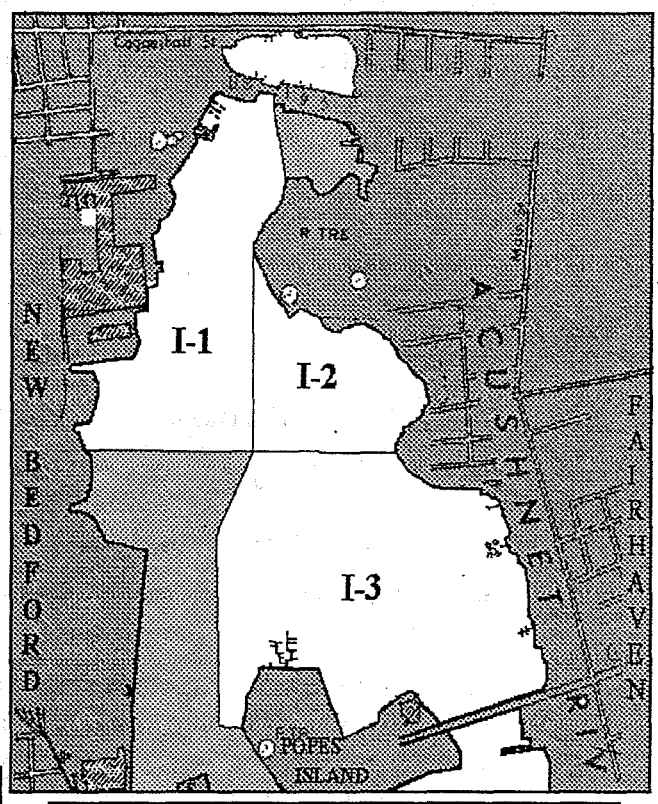
Sampling Observations

As noted above, densities of quahogs varied throughout both the inner and outer harbors and significantly from the inner harbor to the outer harbor. These variances are due to several factors, e.g., fishing pressures, predation, bottom types etc. and have been demonstrated in other standing crop surveys and treatises (Saila et al. 1965;66). However, as much as these factors contribute to contagious distribution of the animal, sampling biases may result in skewed representations of that distribution. Previous studies on quahogs populations sampled by use of dry dredges (Russell, 1972) were constructed around the stratified random sampling methodology where preliminary reconnaissance of an area served to identify areas of abundance resulting in density contours. Purely statistical manipulation of the data was then used to determine the efficiency of the sampling technique. Hickey, (1983) during his investigation of the standing crop of the inner and outer harbor modified this stratified random sampling method. His sampling protocol was enhanced with two significant features; by increasing the number of sampling sites and utilizing a dredge efficiency coefficient.

total standing crop. The cherrystone size category followed closely with 25.98%. These two size categories constitute approximately 67% of the standing crop. Littleneck comprise 17.9% and seed 15.31% of the standing crop.

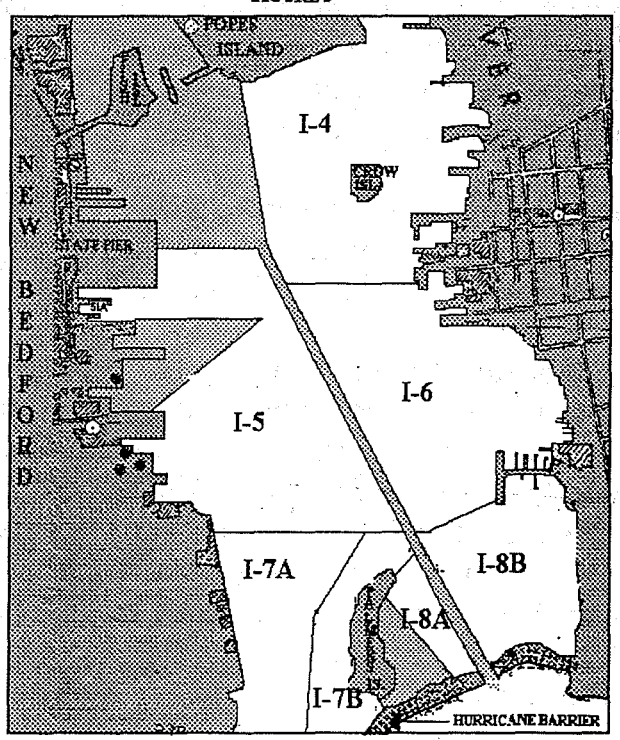
Observations indicate that the greatest percentages of "chowders" were found in sampling unit areas I-2 (Fig. 2) just south of Marsh Island and sampling unit area I-8A (Fig. 3) just northwest of the hurricane barrier opening. Significant percentages of greater than thirty for "cherrystones" were found in sampling unit areas I-3, along the Fairhaven shoreline just north of the Fairhaven Bridge, I-5 on the New Bedford shoreline fronting the fishing fleet piers, I-6 on the Fairhaven shoreline

FIGURE 2



NEW BEDFORD INNER HARBOR STANDING CROP SURVEY (UPPER PORTION)

FIGURE 3



NEW BEDFOR INNER HARBOR STANDING CROP SURVEY (LOWER PORTION)

fronting their fishing piers, and I-7A and I-7B in Palmer's Cove. Littlenecks in percentages greater than twenty were found in sampling unit areas I-3, I-5, I-7A and I-7B. Seed in abundances greater than ten percent were found in six of the ten sampling unit areas with sampling unit area I-4, on the Fairhaven shoreline just south of the Fairhaven Bridge, exhibiting the greatest at 18.93%.

The range of average adjusted quahog densities by size class for the inner harbor are: seed, 0.08/ft^2 to 2.28/ft^2; littlenecks, 0.16/ft^2 to

4.19/ft^2; cherrystones, 0.27/ft^2 to 6.07/ft2; and, chowders, 0.10/ft^2 to 6.60/ft^2. Table 1 presents the totals and percentages of the inner harbor standing crop.

Table 2
Quahog Standing Crop Assessment
New Bedford Inner Harbor

Area Square Feet	Area Acres				
17,495,874	401.65	**Seed**	**Littleneck**	**Cherrystone**	**Chowder**
	Total Quahogs	**16,680,452**	**21,346,744**	**28,333,211**	**44,534,264**
	Total Bushels		**50,826**	**118,055**	**371,119**
	Total Bushels/Acre:		**126.54**	**293.93**	**923.99**

Several other species were noted in varying abundances throughout the area. However, the distribution of soft shelled clams (Mya arenaria) in sampling unit areas, I-3, I-4, I-7A and I-7B and oysters (Crassostrea virginica) in sampling unit areas I-1, I-4, I-6, I-7A and I-7B is significant. In at least two tows in sampling unit area I-2, almost a bushel of soft shelled clams was landed in the dredge. The area just south of Palmer's Island contained approximately 15 clams per ft^2.

Large quantities of oysters and clams were also observed around Crow Island and Palmer's Island. Other specie noted during sampling along with substrate compositions and quahog length frequency information are found in Appendix I.

Substrate types in the inner harbor varied from a relatively large mud area in sampling unit area I-3 to firm sand and gravel with interstitial mud around Palmer's Island. Pockets of very soft, black mud are found scattered over the area. Quahog densities were found to be comparatively low at these locations with no seed observed and an average of 0.30 quahogs per ft^2 of the other three class sizes. Large quantities of debris ranging from soda cans to unknown "hangs" that literally stopped the forward progress of the dredge are found predominantly in the area between the hurricane barrier and the Fairhaven Bridge concentrated near the fishing fleet piers on either side of the harbor.

THOMAS KENNEDY
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NEW BEDFORD, MASS
02744

DEPARTMENT OF JUSTICE
ASST ATTORNEY GENERAL
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DOJ MAILROOM

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