MEMORANDUM OF UNDERSTANDING
December 1997

The Commonwealth of Massachusetts
Division of Marine Fisheries
Leverett Saltonstall State Office Building
100 Cambridge Street
Boston, Massachusetts 02202
727-3193

The Massachusetts Division of Marine Fisheries has determined that portions of the shellfish growing areas BB:11 and BB:14 in the Dartmouth and New Bedford East Coastals in the Towns of Dartmouth and Fairhaven and the City of New Bedford, Massachusetts meet the National Shellfish Sanitation Program (NSSP) criteria for a "CONDITIONALLY APPROVED" classification based upon established predictable rainfall amounts and acceptable performance of the New Bedford Waste Water Treatment Plant.

The Division of Marine Fisheries, the Towns of Dartmouth and Fairhaven and the City of New Bedford concur that the CONDITIONALLY APPROVED shellfish sub-areas defined in the attached "Area Management Plan as BB:11.3 and BB:14.3 shall be opened to shellfish harvesting and managed under the provisions set forth in the management plan.

Failure by any party to adhere to the conditions of this MOU and/or the conditions and compliance items of the "Area Management Plan, BB:11.3 and BB:14.3, the Dartmouth and New Bedford East Coastals" will cause the Division of Marine Fisheries to immediately change the status of the effected area(s) to closed to shellfishing.

This Memorandum of Understanding may be modified at any time by mutual consent, upon fourteen days written notice, due to changes in circumstances effecting the classification of the harvest area or general operation of this MOU.

If these conditions become burdensome or unmanageable to any of the below signed parties, the status of the effected area(s) will revert to "closed" upon fourteen (14) days written notice. If law enforcement is determined by the Division of Marine Fisheries to be inadequate, the Division may immediately change the status of an area to "closed" for a specific period of time. If enforcement deficiencies persist, or if any of the signatories determine that enforcement responsibilities have become burdensome, the status of the effected area will revert to "closed" upon fourteen (14) days written notice.

The Division of Marine Fisheries may, at anytime deemed necessary, change the status of the conditional areas to closed to shellfishing to ensure public health and safety.
AREA MANAGEMENT PLAN

BB:14, New Bedford South Coastal; Dartmouth, New Bedford and Fairhaven
November, 1997

I. General Description of Conditionally Managed Area

AREA DESCRIPTIONS
The Division of Marine Fisheries defines the DARTMOUTH EAST COASTAL area as:

BB:11 "The waters, flats and tributaries of that portion of Buzzards Bay in the Town of Dartmouth and the City of New Bedford, east of a line drawn due south from Round Hill Point in the Town of Dartmouth to the Bristol/Dukes County Line; west of a line drawn south from Clark Point in New Bedford to the Bristol/Dukes County Line; northerly of the Bristol/Dukes County Line; southeasterly of a line drawn from Ricketson’s Point in the Town of Dartmouth to Clark Point in the City of New Bedford; and southeasterly of a line drawn from Birchfield Farm’s pier to Ricketson’s Point.

APPROVED

BB:11.0 "The waters, flats and tributaries of that portion of Buzzards Bay in the Town of Dartmouth and the City of New Bedford, east of a line drawn due south from Round Hill Point in the Town of Dartmouth to the Bristol/Dukes County Line; west of a line drawn south from Clark Point in New Bedford to the Bristol/Dukes County Line; northerly of the Bristol/Dukes County Line; southeasterly of a line drawn from the yellow Dartmouth Town Marker buoy (41 degrees, 34 minutes, 57 seconds north; 70 degrees, 55 minutes, 10 seconds west) to Ricketson’s Point; southeasterly of a line drawn from Birchfield Farm’s pier to Ricketson’s Point; southwest of a line drawn from the yellow Dartmouth Town Marker buoy to the Bents Ledge buoy; south of a line drawn from the Bents Ledge buoy to the Brooklyn Rock buoy."

CONDITIONALLY APPROVED

BB:11.3 "The waters, flats and tributaries of that portion of Buzzards Bay in the Town of Dartmouth and the City of New Bedford, east of a line drawn from the Bents Ledge buoy to the yellow Dartmouth Town Marker buoy (41 degrees, 34 minutes, 57 seconds north; 70 degrees, 55 minutes, 10 seconds west); north of a line drawn from the Brooklyn Rock bell buoy to the Bents Ledge buoy; west of a line drawn from Clark Point to the Bristol/Dukes County Line; south of a line drawn from Ricketson’s Point to in Dartmouth to Wilbur Point in Fairhaven"
**PROHIBITED**

**BB:11.2** "The waters, flats and tributaries of that portion of Buzzards Bay in the Town of Dartmouth and the City of New Bedford, east of a line drawn from the Bents Ledge buoy to the yellow Dartmouth Town Marker buoy (41 degrees, 34 minutes, 57 seconds north; 70 degrees, 55 minutes, 10 seconds west); north of a line drawn from Ricketson's Point in Dartmouth to Wilbur Point in Fairhaven; west of a line drawn from Clark Point in New Bedford to the Bristol/Dukes County Line; south of a line drawn from Clark Point to Ricketson's Point."

**BB:11.4** "The waters, flats and all tributaries of that portion of Buzzards Bay known as the Nonquit Marsh in the Town of Dartmouth, west of a line drawn across the entrance of Nonquitt Creek (a.k.a. Bareknee)."

The Division of Marine Fisheries defines the **NEW BEDFORD EAST COASTAL** area as:

**BB:14** "The waters, and flats of that portion of Buzzards Bay in the Towns of Fairhaven and Dartmouth and the City of New Bedford, east of a line drawn south from Clark Point in the City of New Bedford to the Dukes/Bristol County Line; west of a line drawn south from Wilbur Point in the Town of Fairhaven to the Dukes/Bristol County line; northerly of the Bristol/Duke County Line, and southerly of a line drawn across the New Bedford/Fairhaven Outer Harbor from Clark Point in the City of New Bedford to Wilbur Point in the Town of Fairhaven."

**APPROVED**

**BB:14.0** "The waters, and flats of that portion of Buzzards Bay in the Towns of Fairhaven and Dartmouth and the City of New Bedford, east of a line drawn south from Clark Point in the City of New Bedford to the Dukes/Bristol County Line; west of a line drawn south from Wilbur Point in the Town of Fairhaven to the Dukes/Bristol County line; northerly of the Bristol/Duke County Line, and southerly of a line drawn from Wilbur's Point to the Brooklyn Rock buoy thence to Bent's Ledge buoy."

**CONDITIONALLY APPROVED**

(Status Open: Satisfactory New Bedford WWTP Performance) (Rain Event < 2.0 Inches/24 Hour Period)

**BB:14.3** "The waters, and flats of that portion of Buzzards Bay in the Towns of Fairhaven and Dartmouth and the City of New Bedford, east of a line drawn south from Clark Point in the City of New Bedford to the Dukes/Bristol County Line; northerly of a line drawn from Wilbur's Point to the Brooklyn Rock buoy thence to the Bent's Ledge buoy; and, southerly of a line drawn from Wilbur's Point to Ricketson's Point."
PROHIBITED

BB:14.2 "The waters, and flats of that portion of Buzzards Bay in the Towns of Fairhaven and Dartmouth and the City of New Bedford, east of a line drawn south from Clark Point in the City of New Bedford to the Dukes/Bristol County Line; northerly of a line drawn from Wilbur’s Point to Ricketson’s Point; and southerly of a line drawn from Wilbur’s Point to Clark Point."

New Bedford, East Coastal comprises approximately 9,482 acres of Buzzards Bay south of Fairhaven, Dartmouth and New Bedford. Approximately 1,703 acres of the area are located in the Town of Fairhaven, 2,263 acres in Dartmouth, while the remaining 5,516 acres are in New Bedford waters. The area is open Buzzards Bay waters and only touches land twice, Wilbur Point at the end of Sconticut Neck in the Town of Fairhaven and Fort Rodman at Clark Point in the City of New Bedford.

II. Factors Determining "Conditional" Classification

Analysis of the classification stations at the WWTP outfall and coliform level data obtained from the management personnel at the plant indicate a relationship between the treatment performance and coliform levels at the junction box and the effluent boil. As evidenced below, all of the stations exhibit acceptable water quality except for the one in the PROHIBITED area. Furthermore, the new station placed two-thousand feet south of the outfall pipe, just outside of the new CONDITIONALLY APPROVED area, has exhibited excellent water quality except for the one unexplained anomalous event at Negro Ledge.

Therefore, the primary factor determining the “CONDITIONAL” classification is the proper functionality of the WWTP. Secondarily, even though evidence of impact is marginal, rainfall events of greater than two inches will be used as a conditional criteria.
### Table 1

**AREA CLASSIFICATION**

<table>
<thead>
<tr>
<th>STATION #</th>
<th>LOCATION NAME</th>
<th>GEOMETRIC MEANS</th>
<th>%&gt;43</th>
<th>NUMBER OF SAMPLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Outfall boil</td>
<td>4.5</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Black Rock</td>
<td>2.2</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>5</td>
<td>Negro Ledge Buoy</td>
<td>2.6</td>
<td>6.6</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>Decatur Rock</td>
<td>1.8</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>7</td>
<td>2000 South of Outfall</td>
<td>1.9</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>

### III. Description of Predictable Pollution Events

**A. Wastewater Treatment Facility** (see Wastewater Facility Questionnaire attached to the Sanitary Survey for in-depth description of the New Bedford wastewater plant capabilities):

1. **New Bedford Reporting of Wastewater Treatment Incidences:** In the event of any malfunction; throttling of the gate at the Treatment Plant; planned or unplanned maintenance events that may interrupt or impede treatment, e.g., power outages; elevated fecal coliform levels above 200/100 ml at the junction chamber; reductions in the chlorination levels, abnormal chlorine residuals or increased flow rates above the daily average at the Wastewater Treatment Plant, the individual or operator in charge shall immediately notify the New Bedford Shellfish Constable, the Superintendent of the New Bedford Wastewater Division or the individual in charge in his absence and the Division of Marine Fisheries Biologist and enter the event in the logbook. If a change in status is required, as determined by the Division of Marine Fisheries, the Division shall initiate the notification procedure. If, due to the aforementioned conditions, the water quality of the area is determined to be significantly degraded, the Division of Marine Fisheries will close the area, or a portion thereof, for a period deemed reasonable and will decide if water samples are needed to re-open the closed area. The Division of Marine Fisheries shall make periodic unannounced inspections of the wastewater treatment plant and pertinent logs.
2. Extraordinary Rain Events: In the event that rain amounts exceed two inches in a twenty-four hour period, the status of the conditional area will automatically revert to "closed" and will remain so until the Division samples the area and finds it in compliance.

B. Hydrographic and Meteorological Characteristics

Meteorologically, the area experiences a variety of influences with observable seasonal patterns. The annual precipitation average for 1995 for the Dartmouth/New Bedford area, as compiled by the Northeast Regional Climate Center of N.O.A.A. was 47.34 inches with an average snowfall of 31.8 inches (the total precipitation average includes melted snow). Wind direction and velocity vary throughout the year with southwesterly predominating in the afternoons during the summer. Fall and winter winds tend to be westerly with stronger, more short-lived northwesterly and northeasterly events occasionally developing. The amount and duration of precipitation do not necessarily directly effect the introduction of coliform and other substances into the area. However, extraordinary rain events may outstrip the holding capacity of the new plant thus causing a potential infusion of elevated coliform counts. Although this type of event may only happen once or twice a year, provisions should be considered to address it (see "Extraordinary Rain Event" above). During times of elevated coliform counts, flooding tides and wind direction, duration and velocity dictate the deposition and retention of contaminants in the growing area. The elimination of pollutants from the area result from several factors; tides are a constant but relatively minor constituent, while northerly winds tend to effect more massive movements of pollutant laden surface waters. Southerly winds, on the other hand, tend to retard flushing and hold surface pollutants in the area over a two-tide period.

C. Seasonal Events

Seasonality and Coliform Levels: Analysis of the geometric means of coliform levels during different seasons indicates no substantial fluctuations.

1. Marinas. There are no marinas in the study area.

2. As noted above, seasonality does not reflect an adverse impact on the area.

3. Waterfowl, other than various species of seagulls, frequent the area during the winter months. Numbers range from single digits to large flocks of ducks and geese rafting in various locations. Even with these numbers, coliform geometric means analysis has not indicated a condition that can be predicted, nor has it demonstrated that waterfowl are a problem.
IV. Implementation of Conditional Area Closure

A. Notification of Management Plan Violations

1. The representative of the New Bedford WWTP will immediately notify the Division, and the Shellfish Constable(s) of the City of New Bedford and the Towns of Dartmouth and Fairhaven when conditions noted above ("Description of Predictable Pollution Events") are experienced. If conditions noted in item one of this section occur, the Division will make the decision on changing the area status to "closed" and the duration of the closure, depending upon the severity of the incident. Rainfall events greater than two inches will automatically cause the area status to revert to "closed". In this event, the New Bedford Shellfish Constable will notify other area constables and the Division of the rainfall.

2. Violations which fall within their purview will be acted upon immediately by the above-mentioned constables, followed by notification to the Division within fifteen minutes of said violations. Vessels fishing in the area shall be ordered to leave immediately and will not be allowed to return unless and until water quality is deemed by the Division to be acceptable. The New Bedford Shellfish Constable and/or his designee shall contact the Division of Marine Fisheries in Pocasset (Tel: 508-563-1779) during working hours or the Division Biologist at home during other hours, the Division of Environmental Law Enforcement Radio Room (TEL: 617-727-6398), and the Dartmouth and Fairhaven Shellfish Constables.

3. A rain gauge, approved by the Division of Marine Fisheries, shall be installed and maintained by the City of New Bedford at the City's Health Annex at 100 Brock Avenue and/or at the New Bedford WWTP.

4. The New Bedford Shellfish Constable or an official designee shall read the respective rain gauge daily, seven days per week, at 8:00 AM and record in a log the amount of rainfall. If the reading is not taken at 8:00 AM, the conditionally approved area noted above will not be allowed to open for shellfishing on that given day.

5. A copy of the rainfall logbook shall be sent to the Division of Marine Fisheries, Shellfish Program in Pocasset at the end of each month.

B. Implementation of Closure

1. When more than two (2.0) inches of rain falls within a 24 hour period, area BB:14.3 shall close to shellfish harvesting; likewise, when conditions at the WWTP occur warranting closure, area 14.3 shall close to shellfish harvesting.

2. If the amount of rain recorded at the rain gauge station at 8:00 AM is greater
than two inches (2.0), the portion of the area designated as 14.3 shall remain closed to shellfishing until the Division has sampled the area and found the water quality to be acceptable.

C. Enforcement of Closure

1. During such time that the area is open to the harvest of quahogs, a New Bedford, Dartmouth and/or Fairhaven Shellfish Constable (depending upon the part of the area being fished), shall be on duty and have an enforcement boat located at the area and ready for launch.

2. If at any given time, the constable or his assistant for the respective portion of the area is not on duty, the status of area BB:14.3 for that given portion shall be considered closed to shellfishing.

3. At such time as the area reverts to a closed status, anyone shellfishing shall be required to stop harvesting shellfish, discard all shellfish, check in with the shellfish officer on site, then vacate the area. No boat shall leave the area until inspected by the shellfish officer.

4. If the area listed above reverts to a closed status, constables from New Bedford, Dartmouth and Fairhaven shall patrol their respective closed areas on a regular basis during closure.

V. Criteria Necessary for Reopening a Conditional Area After Pollution Event

A. If the rain event relates to area BB:14.3, i.e., the closure occurs following a rainfall greater than 2.0 inches during a twenty four hour period, the area will remain closed until the Division samples the water in the area and finds it to be acceptable.

B. If the area status is “closed” due to any of the above-listed WWTP malfunctions, the area will reopen only when the Division has determined that the condition(s) no longer poses a threat of continued contamination. The length of closure will be reflected by the severity of the condition.

VI. Synopsis of Effectiveness and Cooperation

The above-mentioned descriptions and procedures should effectively manage the conditional shellfish area and ensure the public health. Water quality as it relates to WWTP operation, rain events, seasonality and other pollution factors will be monitored on at least a
monthly basis by the SSCA with appropriate adjustments in conditional elements.

Cooperation among the municipalities and the SSCA has been outstanding. The history of reporting in response to WWTP problems has been representative of their ability and willingness to respond in a timely fashion. Additionally, with the recent upgrade of the capabilities of the New Bedford WWTP, maintenance of water quality in the area should be better ensured.
March 11, 1996

The Honorable Rosemary Tierney
Mayor of New Bedford
City Hall
New Bedford, MA 02740

Board of Selectmen
Town Hall
Fairhaven, MA 02719

Ladies & Gentlemen:

In accordance with Chapter 130, Section 74A of the Massachusetts General Laws, the Division of Marine Fisheries has examined the waters of New Bedford/Fairhaven Outer Harbor (BB:15.4) in the Town of Fairhaven and (BB:15.5) in the City of New Bedford.

As a result of this examination, the division has determined that portions of this area meet the requirements for direct harvest of shellfish and has classified the below defined areas to "CONDITIONALLY APPROVED".

The Division of Marine Fisheries, the Town of Fairhaven and the City of New Bedford concur that the below defined shellfish area shall be managed in accordance with the MOU and "Conditional Area Management Plan for New Bedford Outer Harbor" dated February 27, 1996, providing that the conditions stipulated therein are adhered to by the governmental agencies involved.

Therefore, the below defined "CONDITIONALLY APPROVED" areas may be opened to the harvest of shellfish for direct human consumption subject to local rules and regulations under authority of Massachusetts General Laws, Chapter 130, Section 52.

"CONDITIONALLY APPROVED"
(Rainfall greater than 0.30 inches)
(Year-round)

BB:15.4
Fairhaven Outer Harbor

"The waters, flats and tributaries thereto of New Bedford/Fairhaven Outer Harbor south of a line drawn in a southwesterly direction from the "NO SHELLFISHING" sign on the beach at the western end of Baxter Avenue in the Town of Fairhaven to the orange marker at Egg Island; easterly of a line drawn from the orange marker at Egg Island to the Packet Rock Buoy; northerly
of a line drawn from Clark Point in the City of New Bedford to Wilbur Point in the Town of Fairhaven; west of a line drawn across the mouth of Perryville Pond; west of a line drawn from the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond to the "NO SHELLFISHING" sign on the beach at the southern end of Silver Shell Beach Drive."

BB: 15.5
New Bedford Outer Harbor

"The waters, flats and tributaries thereto of New Bedford/Fairhaven Outer Harbor south of a line drawn from the "NO SHELLFISHING" sign at the Davey's Locker parking lot bulkhead in the City of New Bedford to the orange marker on Egg Island; northwesterly of a line drawn from the orange marker on Egg Island to the Butler's Flat Lighthouse; thence to the end of the Fishing Pier on the eastern shore of Fort Rodman in the City of New Bedford."

PROHIBITED

BB: 15.41
Perryville Pond

"The waters, flats and tributaries of Perryville Pond in the Town of Fairhaven east of a line drawn across the mouth of Perryville Pond."

BB: 15.42
Winsegansett Pond, Northern Mouth

"The waters, flats and tributaries southeasterly of a line drawn from the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond to the "NO SHELLFISHING" sign on the beach at the southern end of Silver Shell Beach Drive."

BB: 15.43
Winsegansett Pond, Western Mouth

"The waters, flats and tributaries easterly of a line drawn from the "NO SHELLFISHING" sign at the western end of Murray Street in the Town of Fairhaven to the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond."

BB: 15.51
Monkey Island Shoreline

"The waters and flats westerly of a line drawn from the "NO SHELLFISHING" sign on East Beach in the City of New Bedford to the tip of the Monkey Island Breakwater, thence to the "NO SHELLFISHING" sign at the parking lot bulkhead at Davey's Locker Restaurant."
RESTRICTED

"The waters and flats southeasterly of a line drawn from the end of the Fishing Pier on the eastern shore of Fort Rodman in the City of New Bedford to the Butler's Flat Lighthouse; thence to the orange marker on Egg Island; northerly of a line drawn from Clark Point in the City of New Bedford to Wilbur Point in the Town of Fairhaven; westerly of a line drawn from the orange marker on Egg Island to the Packet Rock Buoy."

Shipping Channel

"The navigational channel bisecting the area and one hundred feet outside of the channel paralleling its entire length."

Outer Harbor North

"The waters, flats and tributaries thereto northerly of a line drawn from the "NO SHELLFISHING" sign at the Davey's Locker bulkhead in the City of New Bedford to the orange marker on Egg Island; thence to the "NO SHELLFISHING" sign on the beach at the western end of Baxter Avenue in the Town of Fairhaven; south of a line drawn across the shipping channel opening in the hurricane barrier."

Sincerely,

Philip G. Coates
Director

CC: R. Murray, P. McMann, W. McKeon, K. Dolan, P. Hanlon,
J. M. Craven, A. Bedreckis (Radio Room) DELE
J. Fair, M. Hickay, DMP
WPC. DEP
FDA
DPH
T. Allaire, Fairhaven Shellfish Constable
R. Belanger, Director New Bedford Department of Health
B. Bourque, New Bedford Shellfish Constable
APPENDIX B.

Memorandum of Understanding
Management Plans
DMF Notice
Fishermen's Affidavit
Patrol Log
MEMORANDUM OF UNDERSTANDING

The Massachusetts Division of Marine Fisheries has determined that portions of the shellfish growing area in New Bedford/Fairhaven Outer Harbor in the Town of Fairhaven, and the City of New Bedford, Massachusetts meet the National Shellfish Sanitation Program (NSSP) criteria for a conditionally approved classification based upon established rainfall amounts.

The Division of Marine Fisheries, the Town of Fairhaven, and the City of New Bedford concur that the shellfish areas defined in the attached "Conditional Area Management Plan, New Bedford Outer Harbor" as BB:15.4 in the Town of Fairhaven and BB:15.5 in the City of New Bedford classified as "CONDITIONALLY APPROVED" shall be opened to shellfish harvesting and hereby managed under the conditions stipulated in the Conditional Area Management Plan by the governmental agencies involved.

Failure by any party to adhere to the conditions of this MOU and/or the conditions and compliance items of the "Conditional Area Management Plan, New Bedford Outer Harbor" will cause the Division of Marine Fisheries to immediately change the status of the effected area(s) to closed to shellfishing.

This Memorandum of Understanding may be modified at any time by mutual consent, upon fourteen days written notice, due to changes in circumstances affecting the classification of the harvest area or general operation of this MOU.

If these conditions become burdensome or unmanageable to any of the below signed parties, the status of the effected area(s), i.e., BB:15.4 or BB:15.5 will revert to "closed" upon fourteen (14) days written notice. If law enforcement in selected area(s) of the Outer Harbor is determined by the Division of Marine Fisheries to be inadequate, the Division may immediately change the status of an area to "closed" for a specific period of time. If enforcement deficiencies persist, or if any of the signatories determine that enforcement responsibilities have become burdensome, the status of the effected area will revert to "closed" upon fourteen (14) days written notice.

The Division of Marine Fisheries may, at anytime deemed necessary, change the status of the conditional areas to closed to shellfishing to ensure public health and safety.
CITY OF NEW BEDFORD

Rosemary S. Tierney
Mayor

Mr. Raymond Delanger
Director
Department of Public Health

Mr. Ronald H. Labelle
Superintendent Wastewater Division

Bradford K. Bourque
Shellfish Constable
City of New Bedford

TOWN OF FAIRHAVEN

John Roderiques
Chairman, Board of Selectmen

John Haaland
Selectman

Patrick Mullen
Selectman

Thomas Allaire
Town of Fairhaven
Shellfish Constable

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

Philip C. Contra
Director
CONDITIONAL AREA MANAGEMENT PLAN
New Bedford Outer Harbor
February 27, 1996.

I. General Description of Conditionally Managed Area

The New Bedford Outer Harbor is a 3750 acre embayment on the northwestern shore of Buzzard's Bay, situated between the City of New Bedford and the Town of Fairhaven. It represents the southeasternmost extent of the Acushnet River estuarine system that drains an extensive watershed in New Bedford, Fairhaven, Fronttown, and Acushnet.

The Massachusetts Division of Marine Fisheries has determined that portions of the shellfish growing area in New Bedford/Fairhaven Outer Harbor in the Town of Fairhaven, and the City of New Bedford, Massachusetts meet the National Shellfish Sanitation Program (NSSP) criteria for a conditionally approved classification based upon established rainfall amounts.

The Division of Marine Fisheries, the Town of Fairhaven, and the City of New Bedford concur that the below defined shellfish areas BB:15.4 in the Town of Fairhaven and BB:15.5 in the City of New Bedford classified as "CONDITIONALLY APPROVED" shall be opened to shellfish harvesting and managed under the conditions stipulated herein by the governmental agencies involved.

The "CONDITIONALLY APPROVED" areas are described as follows and shown on Figure 1 (map of area):

AREA DESCRIPTION

BB:15.2
New Bedford/Fairhaven Outer Harbor:

"The waters, flats, and all tributaries of the New Bedford Outer Harbor in the Town of Fairhaven and the City of New Bedford, northerly of a line drawn across the entrance to the Outer Harbor from Clark Point in New Bedford to Wilbur Point in Fairhaven, and southerly of a line drawn across the main shipping channel gate in the hurricane barrier."

CONDITIONALLY APPROVED
(Rainfall greater than 0.30 inches)
(Year-round)

BB:15.4
Fairhaven Outer Harbor

"The waters, flats and tributaries thereto of New Bedford/Fairhaven Outer Harbor south of a line drawn in a southwesterly direction from the "NO SHELLFISHING" sign on the
beach at the western end of Baxter Avenue in the Town of Fairhaven to the orange marker at Egg Island; easterly of a line drawn from the orange marker at Egg Island to the Packet Rock Buoy; northerly of a line drawn from Clark Point in the City of New Bedford to Wilbur Point in the Town of Fairhaven; west of a line drawn across the mouth of Perryville Pond; west of a line drawn from the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond to the "NO SHELLFISHING" sign on the beach at the southern end of Silver Shell Beach Drive."

BB:15.5
New Bedford Outer Harbor

"The waters, flats and tributaries thereto of New Bedford/Fairhaven Outer Harbor south of a line drawn from the "NO SHELLFISHING" sign at the Davey's Locker parking lot bulkhead in the City of New Bedford to the orange marker on Egg Island; northwesterly of a line drawn from the orange marker on Egg Island to the Butler's Flat Lighthouse; thence to the end of the Fishing Pier on the eastern shore of Fort Rodman in the City of New Bedford."

PROHIBITED

BB:15.41
Perryville Pond

"The waters, flats and tributaries of Perryville Pond in the Town of Fairhaven east of a line drawn across the mouth of Perryville Pond."

BB:15.42
Winsegansett Pond, Northern Mouth

"The waters, flats and tributaries southeasterly of a line drawn from the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond to the "NO SHELLFISHING" sign on the beach at the Southern end of Silver Shell Beach Drive."

BB:15.43
Winsegansett Pond, Western Mouth

"The waters, flats and tributaries easterly of a line drawn from the "NO SHELLFISHING" sign at the western end of Murray Street in the Town of Fairhaven to the "NO SHELLFISHING" sign on the outer beach west of Winsegansett Pond."

BB:15.51
Monkey Island Shoreline

"The waters and flats westerly of a line drawn from the "NO SHELLFISHING" sign on East Beach in the City of New Bedford to
the tip of the Monkey Island Breakwater, thence to the "NO SHELLFISHING" sign at the parking lot bulkhead at Davey's Locker Restaurant."

RESTRICTED

BB:15.52
Fort Rodman East

"The waters and flats southeasterly of a line drawn from the end of the Fishing Pier on the eastern shore of Fort Rodman in the City of New Bedford to the Butler's Flat Lighthouse; thence to the orange marker on Egg Island; northerly of a line drawn from Clark Point in the City of New Bedford to Wilbur Point in the Town of Fairhaven; westerly of a line drawn from the orange marker on Egg Island to the Packet Rock Buoy."

BB:15.6
Shipping Channel

"The navigational channel bisecting the area and one hundred feet outside of the channel paralleling its entire length."

BB:15.7
Outer Harbor North

"The waters, flats and tributaries thereto northerly of a line drawn from the "NO SHELLFISHING" sign at the Davey's Locker bulkhead in the City of New Bedford to the orange marker on Egg Island; thence to the "NO SHELLFISHING" sign on the beach at the western end of Baxter Avenue in the Town of Fairhaven; south of a line drawn across the shipping channel opening in the hurricane barrier."

II. Factors Determining "Conditional" Classification

Analysis of all of the classification stations as it pertains to the relationship of rainfall amounts to fecal coliform levels indicates that rainfall does play a role in coliform loading. Unfortunately, the comparisons are not dramatic, i.e., although we can see a pattern where rainfall levels greater than 0.30 inches in a twenty four hour period have a tendency to cause elevated fecal coliform levels, some of the data exhibits relatively low coliform levels following five day periods of varying rain events. To evaluate the possible influence that rain events had on the area, 85.3 percent of the samples collected were taken within five days of varying amounts of rainfall while 54 percent of the samples were collected within five days of events of 0.30 inches or more.
There is enough evidence to indicate that rainfall levels of greater than 0.30 inches within a twenty-four hour period have enough of a deleterious effect on selected parts of the area to cause it to be classified as CONDITIONALLY APPROVED.

III. Description of Predictable Pollution Events

A. Wastewater Treatment Facility (see attached Wastewater Facility Questionnaire for in-depth description of the New Bedford wastewater plant capabilities)

1. New Bedford CSO Monitoring: A logbook shall be maintained by the New Bedford Wastewater Division noting daily inspections of the CSOs, tidegate and Wastewater Treatment Plant. The New Bedford Wastewater Division, CSO Group or the shellfish constable shall inspect daily and log the status of the dry wells at the CSOs on West and East Rodney French Bivds. An alarm shall be installed at the Apponagansett Street Pump Station to indicate an automatic closing of the sluice gate causing surcharged wastewater to enter the growing area. The gate at Sewer Gate #6 is to be checked regularly to note if it is closed causing surcharged wastewater to overflow into the Harbor. Copies of the CSO log book shall be sent to the Division of Marine Fisheries in Sandwich at the end of each month. The Division of Marine Fisheries may make unannounced inspections of the CSOs and tidegate during periods when the Outer Harbor is open to shellfishing.

2. New Bedford Response to CSO Activities: The CSO Group shall immediately notify the New Bedford Department of Health if any flow is noted at the CSOs, the Apponagansett Station alarm is activated, or the tide gates are allowing discharge into the Harbor. The Department of Health shall notify the Division of Marine Fisheries in Sandwich (508-888-4041). The Division of Marine Fisheries shall determine if such flow is significant and endangers the public health. If said flow is determined to be of public health significance, harvest of all shellfish shall cease immediately in those areas designated by the Division of Marine Fisheries and fishermen shall vacate the area. The Health Department shall initiate the notification procedure outlined in Figure 2 and the areas shall remain closed to shellfishing until the Division of Marine Fisheries changes the status to "open to shellfish harvesting."
J. New Bedford Reporting of Wastewater Treatment Incidences: In the event of any malfunction; throttling of the gate at the Treatment Plant; planned or unplanned maintenance events; elevated fecal coliform levels above 200/100 ml at the junction chamber; reductions in the chlorination levels, abnormal chlorine residuals or increased flow rates above the daily average of twenty-seven million gallons at the Wastewater Treatment Plant, the individual or operator in charge shall immediately notify the Superintendent of the New Bedford Wastewater Division or the individual in charge in his absence. The superintendent or his designee shall contact the New Bedford Department of Health and enter the event in the logbook. If a change in status is required, as determined by the Division of Marine Fisheries, the New Bedford Department of Health shall initiate the notification procedure outlined in Figure 2. If, due to the aforementioned conditions, the water quality of the Harbor is determined to be significantly degraded, the Division of Marine Fisheries will close the area, or a portion thereof, for a period deemed reasonable and will decide if water samples are needed to re-open the closed area. The Division of Marine Fisheries shall make periodic unannounced inspections of the wastewater treatment plant.

4. Fairhaven WWT Plant Malfunction Reporting: If the Fairhaven Waste Water Treatment Plant experiences any malfunction or condition that causes untreated sewage to be discharged into the Inner Harbor, the plant operator shall immediately notify the shellfish constable who will, in turn, immediately notify the Division of Marine Fisheries through the communication process.

B. HYDROGRAPHIC AND METEOROLOGICAL CHARACTERISTICS

Meteorologically, the area experiences a variety of influences with observable seasonal patterns. The annual precipitation average for the New Bedford area, as compiled by the Northeast Regional Climate Center of N.O.A.A. was 47.34 inches with an average snowfall of 31.8 inches (the total precipitation average includes melted snow). Wind direction and velocity vary throughout the year with southwesterlies predominating in the afternoons during the summer. Fall and winter winds tend to be westerly with stronger, more short-lived northwesterly and northeasterly events occasionally developing. The amount and duration of precipitation directly effects the introduction of coliform...
and other substances into the area, while wind direction and velocity dictate the ability of the outer Harbor to effectively flush contaminants. The elimination of pollutants from the outer Harbor result from several factors; tides are a constant but relatively minor constituent, while northerly wind, and increased ebbing due to runoff promote flushing; southerly winds tend to retard flushing.

Sampling following rainfall events indicates that they have measurable influence on the areas water quality. Stormwater runoff impacts the area throughout with Fairhaven contributing drainage from marshes, saltponds, and relatively sparse dwelling developments via creeks, street runoff and stormdrains. New Bedford's stormwater runoff, on the other hand, is collected in a thickly developed urban environment with minimal vegetative zones via street runoff, stormdrains and CSOs.

C. Seasonal Events

Seasonality and Coliform Levels:

Analysis of the geometric means of coliform levels during different seasons (Table 2 of Sanitary Survey) appears to indicate a slight elevation during winter months. This runs contrary to the normal "warm water" tendency of coliform proliferation. With levels being somewhat higher at the hurricane barrier, the infusion of unchlorinated sewage from the Fairhaven Sewage Treatment Plant outfall may be a major contributor. A sample taken at the "boil" during early March had a coliform level of greater than 246.

1. Marinas. There are no marinas in the study area. An anchorage of about 20 small boats is located on the western shore of the area, but none of the boats are live-aboards.

2. Seasonal rainfalls do not give any indication of adverse impact. Although rain events are heavier and more frequent during late fall and winter, they have not exhibited a pattern.

3. Waterfowl, other than various species of seagulls, frequent the area during the winter months. Numbers range from single digits to large flocks of ducks and geese rafting in various locations. Even with these numbers, coliform geometric means analysis has not indicated a condition that can be predicted, nor has it demonstrated that waterfowl are a problem.
IV. Implementation of Conditional Area Closure

1. A rain gauge, approved by the Division of Marine Fisheries, shall be installed and maintained by the City of New Bedford at the City's Health Annex at 100 Brock Avenue and by the Town of Fairhaven at the Fairhaven Wastewater Treatment Facility.

2. The New Bedford Health Department or New Bedford Shellfish Constable and the operator of the Fairhaven Wastewater Treatment Facility shall read their respective rain gauges daily, seven days per week, at 8:00 AM and record in a log the amount of rainfall. If the reading is not taken at exactly 8:00 AM, the aforementioned conditionally approved areas will not be allowed to open for shellfishing on that given day.

3. A copy of the rainfall logbook shall be sent by each municipality to the Division of Marine Fisheries, Shellfish Program in Sandwich at the end of each month.

4. When more than 0.30 inches of rain is recorded at either rain gauge listed above within a 24 hour period, the status of areas 15.4 and 15.5 shall change to closed to shellfish harvesting. The respective Shellfish Constables and/or their deputies shall immediately contact the Division of Marine Fisheries in Sandwich (Tel: 508-888-4043), the Division of Environmental Law Enforcement Radio Room (TEL: 617-727-6398), the Selectmen's Office in Fairhaven, and the New Bedford City Hall notifying them that the area is closed to shellfishing.

5. If the amount of rain recorded at either of the rain gauge stations at 8:00 AM is between 0.31 inches and 2.0 inches inclusive, those portions of the harbor designated as 15.4 and 15.5 must remain closed to shellfishing for five complete days. A complete day is defined as a twenty-four hour period starting at 8:00 AM. Shellfishing may resume on the sixth day following cessation of the rainfall event.

6. If more than two (2.0) inches of rain are recorded within a twenty-four hour period at either rain gauge, the conditional areas shall not reopen to shellfishing until the Division of Marine Fisheries assesses the water quality and changes the status to "open to shellfish harvesting".

7. Under conditions that do not exceed the established rainfall standard (0.30 inches), precipitation or runoff amounts that may result in excessive loading of coliform bacteria, e.g., rains causing melting of significant amounts of snow or several consecutive days of rain, the Division of Marine Fisheries may close the area to shellfishing for a
1. If the visibility is such that the markers, buoys or landmarks used to define the boundaries between the "open" and "closed" areas cannot be seen, e.g., fog, snow, etc. the status of the "open" areas affected will revert to "closed" and all shellfishing will cease. When conditions improve to a point where these markers are again visible, shellfishing may resume.

9. When the status of the shellfish areas is open to the taking of shellfish, a "YELLOW" flag will be placed on the flag pole at the Monkey Island in New Bedford for BB:15.5 and on a flagpole at the end of Baxter Street in Fairhaven for BB:15.4.

10. When the status of areas is closed to the taking of shellfish, a "RED" flag will be placed on the above mentioned flag poles.

11. If at any given time, no flag is present on the flag poles, the status of that area shall be considered closed to shellfishing.

12. If any person other than the shellfish constables places a yellow flag on the respective poles during the period when the red flag should be flown, the status of that area shall immediately be changed to "closed". The area shall remain closed to shellfishing until the municipalities take such measures as to prevent such acts and ensure the public's safety.

13. At such time as the area reverts to a closed status due to degraded water quality, anyone shellfishing in the conditional areas shall be required to stop harvesting shellfish, report to the appropriate shellfish officer on site, then vacate the area. No boat shall leave the area until inspected by the shellfish officer.

14. If fecal coliform levels in water samples collected in the conditionally approved portions of the Harbor exceed the NSSP criteria to maintain an "open" status for the harvest of shellfish, the Division of Marine Fisheries shall immediately notify the New Bedford Health Department and the Fairhaven Shellfish Constable and close the area to shellfishing.

15. The City of New Bedford and the Town of Fairhaven shall each produce a shellfish management plan that lists, among others elements, the fishing times, equipment, catch limits and dates allowed by the respective municipalities. These plans, along with a copy of the "Conditional Area
Management Plan" will be issued to each fisherman. Each fisherman shall sign an affidavit acknowledging receipt and understanding of the plan. These affidavits shall be maintained by the respective shellfish constables.

16. No shellfish dredge boat engaged in the New Bedford Outer Harbor Conditional Fishery shall leave the dock before 8:15 AM and shall have returned to the dock no later than 4:00 PM. Dredge boats shall not be in the area any other time with shellfishing gear on the vessel without written permission by the municipal official stating the date, time, and purpose. The Massachusetts Division of Environmental Law Enforcement and Division of Marine Fisheries must be notified by the official issuing the permission. If a license holder is found in violation of any of these provisions, their town shellfishing permit shall be revoked by the municipal licensing authority.

17. The local shellfish constables shall be the primary enforcement agents responsible for the patrol and enforcement of all closures made by the Division of Marine Fisheries under authority of Chapter 130, Massachusetts General Laws associated with the state designated shellfish area BB:15 and all of its subunits (BB:15.2, BB:15.4, BB:15.41, BB:15.42, BB:15.43, BB:15.5, BB:15.51, BB:15.52, BB:15.6, BB:15.7). The local constables shall also be the primary enforcement agents for the provisions of the "Conditional Area Management Plan for New Bedford Outer Harbor" (areas BB:15.4 and BB:15.5) as found in Section IV of said plan associated with the harvesting of shellfish.

18. During such time that the harbor (BB:15.4 and BB:15.5) is open to the harvest of shellfish, New Bedford and Fairhaven constables or their deputies must provide sufficient boat patrol in the area to intervene in the illegal harvest of shellfish from the adjacent closed areas and to enforce the provisions of local and state management plans.

19. The shellfish constable and/or the deputy constable(s) from each municipality shall maintain a patrol log that includes the name of the patrolling agent, the date and times of patrol, the number of boats on the fishery at the time of each patrol, violations issued with name of violator and boat name and other pertinent information. Shellfish constables will be issued patrol log forms by the Division of Marine Fisheries. A completed copy of these logs must be submitted to the Division on a monthly basis by the fifth day of the following month. The Division of Marine Fisheries may review these logs at any time.
V. Re-opening Criteria

A1. If the area is closed due to rain events in excess of 2.00 inches during a twenty four hour period, the area will remained closed until the Division collects water samples that result in acceptable coliform levels.

A2. Studies indicate that the area flushes coliform within three days following defined rain events with an additional two days allotted for further shellfish depuration.

A3 & 4. This period will allow shellfish sufficiently purge contaminants.

VI. Synopsis of Effectiveness and Co-operation

The above-mentioned descriptions and procedures should effectively manage the conditional shellfish area and ensure the public health. Water quality as it relates to rain events, seasonality and other pollution factors will be monitored on at least a monthly basis by the SSCA with appropriate adjustments in conditional elements.

Cooperation among the municipalities and the SSCA has been outstanding. Not only have the shellfish departments in each municipality been willing participants in the monitoring of the area, the respective health wastewater departments in each have been most effective in mitigative efforts to eliminate pollution sources.
The following is an amendment to the Memorandum of Understanding of March 27, 1992 for Clarks Cove (BB:13.1C). It reflects a change in the boundaries along West Rodney French Boulevard in area BB:15.5, reclassifying a portion from "Restricted" to "Conditionally Approved" and thus incorporating it into area BB:13.1C.

The reclassified area will follow the same criteria relative to rainfall and seasonality as the rest of the "Conditionally Approved" area of the Cove. The following two paragraphs are reiterations of those in the original MOU and are entered here to ensure a full understanding of this amendment.

"The Massachusetts Division of Marine Fisheries has determined that a portion of the shellfish growing area Clarks Cove in the Town of Dartmouth, and the City of New Bedford, Massachusetts meets the National Shellfish Sanitation Program (NSSP) criteria for a conditionally approved classification under certain predictable conditions.

The Division of Marine Fisheries, the Town of Dartmouth, and the City of New Bedford concur that the below defined shellfish area shall be managed on a "Conditionally Approved" rainfall basis during the period from March 15 through December 15, providing that the conditions stipulated herein are adhered to by the governmental agencies involved."

CONDITIONALLY APPROVED
MARCH 15 – DECEMBER 15

BB:13.1C
Clarks Cove

"The waters, and flate of Clarks Cove, south of a line drawn in an easterly direction from the "NO SHELLFISHING" sign at Rapoza Street in the Town of Dartmouth to the orange post on the Hurricane Barrier next to the Hurricane Dike Street Gate #2 on West Rodney French Boulevard in the City of New Bedford; west of a line drawn southerly from the orange post on the "condenser" in the northeast corner of the Cove to the orange "NO SHELLFISHING" sign at the northwest corner of the Screening House bulkhead on West Rodney French in the City of New Bedford; east of a line drawn southerly
from the orange panel on the "take out" pile at the end of Rogers Street in the City of New Bedford to the outermost rock at Moshers Point in the Town of Dartmouth; north of a line drawn from the orange "NO SHELLFISHING" sign at the end of the seawall at the South Rodney French Boulevard drawn westerly to the southern tip of Nickerson Point in the Town of Dartmouth and east of a line drawn in a northerly direction from the special yellow shellfish buoy designated "DART" at 41 degrees, 34 minutes, 57 seconds North, 70 degrees, 55 minutes, 10 seconds West to the end of the pier at Anthony's Beach in the Town of Dartmouth."

Except for the following conditions, all other conditions and standards of the original Memorandum of Understanding are to remain in effect.

The new recreational shellfish harvesting area is described as that intertidal area from the orange "NO SHELLFISHING" sign at the northwest corner of the Screening House bulkhead on West Rodney French Boulevard to the "NO SHELLFISHING" sign at the end of the seawall at west end of the South Rodney French Boulevard.

During such time as the recreational area is open, a New Bedford law enforcement patrol officer must patrol the area.

ITY OF NEW BEDFORD

Rosemary Tierney
Mayor

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

Philip G. Coates
Director

ymond A. Belanger
Ating Director
Department of Public Health

Newford K. Bourque
ilfish Constable
MEMORANDUM OF UNDERSTANDING

The Massachusetts Division of Marine Fisheries has determined that a portion of the shellfish growing area Clarks Cove in the Town of Dartmouth, and the City of New Bedford, Massachusetts meets the National Shellfish Sanitation Program (NSSP) criteria for a conditionally approved classification under certain predictable conditions.

The Division of Marine Fisheries, the Town of Dartmouth, and the City of New Bedford concur that the below defined shellfish area shall be managed on a "Conditionally Approved" rainfall basis during the period from March 15 through December 15, providing that the conditions stipulated herein are adhered to by the governmental agencies involved.

The "Conditionally Approved" area is described as follows and shown on Figure 1:

CONDITIONALLY APPROVED
MARCH 15 - DECEMBER 15

Clarks Cove

The western, and eastern sides of Clarks Cove, south of a line drawn in an easterly direction from "NO SHELLFISHING" sign at Raperza Street in the Town of Dartmouth to the orange post on the Hurricane Barrier next to the Hurricane Dike Street Gate #2 on West Rodney French Blvd. in the City of New Bedford; west of a line drawn southerly from the orange post on the "condenser" in the northeast corner of the Cove to the orange "NO SHELLFISHING" sign at the end of seawall at the foot of South Rodney French Blvd. in the City of New Bedford; east of a line drawn southerly from the orange panel on the "take out" pile at the end of Rogers Street in the City of New Bedford to the outermost rock at Moshers Point in the Town of Dartmouth; north of a line drawn from the orange "NO SHELLFISHING" sign at the
end of the seawall at the foot of South Rodney French Blvd. drawn westerly to the southern tip of Ricketsons Point in the Town of Dartmouth and east of a line drawn in a northerly direction from the special yellow shellfish buoy designated "DART" at 41 degrees, 34 minutes, 57 seconds North, 70 degrees, 55 minutes. 10 seconds West to the end of the pier at Anthony's Beach in the Town of Dartmouth."

2. That portion of Clarks Cove west of the line drawn from the special yellow shellfish buoy to the end of the pier at Anthony's Beach, designated BB:13.2, is classified as approved to shellfishing and is not included in the conditional area management plan.


4. During the period December 16 to March 14, the conditional portion of the Cove shall be reclassified as "SEASONALLY RESTRICTED" and prohibited to the harvest of shellfish.

CONDITIONS:

1. During such time as the cove is open to the harvest of quahogs, a Dartmouth or New Bedford law enforcement boat must be on patrol in the area to supervise shellfishing.

2. A rain gauge, approved by the Division of Marine Fisheries, shall be installed and maintained by the City of New Bedford at the City's Health Annex at 100 Brock Avenue or at a mutually agreed upon location.

3. A member of the New Bedford Health Department or New Bedford Shellfish Constable shall be assigned to read the rain gauge daily, seven days per week, at 8:00 AM and record in a log the amount of rainfall. If the reading is not taken at exactly 8:00 AM, the aforementioned area will not be allowed to open for shellfishing on that given day.

4. A copy of the rainfall logbook shall be sent to the Division of Marine Fisheries, Shellfish Program in Sandwich at the end of each month.

5. When more than 0.30 inches of rain falls within a 24 hour period, the area will be reclassified as "RESTRICTED" and closed to shellfishing. The respective Shellfish Constables and/or their deputies shall contact the Division of Marine Fisheries in Sandwich (Tel: 508-888-4043), the Division of Environmental Law Enforcement Radio Room (TEL: 617-727-6398), the Selectmen's Office in Dartmouth, and the New Bedford City Hall.
notifying them that the area is closed to shellfishing.

6. If the amount of rain recorded at the rain gauge station at 8:00 AM is between 0.30 inches and 2.0 inches inclusive, the Cove must remain closed to shellfishing for five complete days. A complete day is defined as a twenty-four hour period starting at 8:00 AM. Shellfishing may resume on the sixth day following cessation of the rainfall event.

7. When the shellfish area is classified as "CONDITIONALLY APPROVED" and open to the taking of shellfish, a "YELLOW" flag will be placed on flag pole at the Coral Street Pump Station in the City of New Bedford.

8. When the shellfish area is classified as "RESTRICTED" and closed to the taking of shellfish, a "RED" flag will be placed on the above mentioned flag pole.

9. If at any given time, no flag is present on the flag pole, the area shall be considered classified as "RESTRICTED" and prohibited to shellfishing.

10. If any person other than the shellfish constables places a yellow flag on the poles during the period when the red flag should be flown, the area shall immediately be reclassified to "RESTRICTED". The area shall remain prohibited to shellfishing until the municipalities take such measures as to prevent such acts and ensure the public's safety.

11. If more than two (2.0) inches of rain are recorded within a twenty-four hour period, the conditional area shall not reopen to shellfishing until the Division of Marine Fisheries reclassifies the area as "CONDITIONALLY APPROVED".

12. At such time as the area reverts to a closed status, anyone shellfishing in the conditional area shall be required to stop harvesting shellfish, discard all shellfish, check in with the patrol boat, then vacate the area. No boat shall leave the area until inspected by the patrol boat.

MONITORING:

1. Fifteen water sampling and eighteen pollution source stations have been established to monitor the water quality of both the conditional and the prohibited portions of the Cove.

2. Water samples in the "CONDITIONALLY APPROVED" portion of the Cove may be collected by the shellfish constable or members of the health departments each Monday morning for analysis by the New Bedford Health Department Laboratory.
3. Water samples may be collected daily at set stations along the buffer zones if needed. Random water samples may be collected in the harvest area or at any pollution sources prior to the commencement of fishing each day if deemed necessary by the Division of Marine Fisheries or the New Bedford Department of Health.

4. The Division of Marine Fisheries will sample the conditional area monthly while the area is classified as conditionally approved for shellfishing.

PERFORMANCE STANDARDS:

1. A logbook shall be maintained by the New Bedford Wastewater Division noting daily inspections of the CSOs, tidegate and Wastewater Treatment Plant. The New Bedford Wastewater Division, CSO Group or the shellfish constable shall daily inspect and log the status of the dry wells at the CSOs on the west side of West Rodney French Blvd. and the tidegate at the Cove Road Pump Station to determine if any flow (flushing fire hydrants, stormwater or sewage) is entering the Cove. Copies of the log book shall be sent to the Division of Marine Fisheries in Sandwich at the end of each month. The Division of Marine Fisheries shall make unannounced inspections of the CSOs and tidegate during the periods which the Cove is open to shellfishing.

2. The CSO Group shall immediately notify the New Bedford Department of Health if any flow is noted at the CSOs or the tidegate is in the open position. The Department of Health shall notify the Division of Marine Fisheries in Sandwich (508-088-4043) and determine if such flow is significant and endangers the public health. If said flow is determined to be of public health significance, harvest of all shellfish shall cease immediately, all shellfish shall be returned to the water and fishermen shall vacate the area. The Health Department shall initiate the notification procedure outlined in Figure 2 and the area shall remain closed to shellfishing until the Division of Marine Fisheries reclassifies the area as "CONDITIONALLY APPROVED".

3. In the event of any malfunction; throttling of the gate at the Treatment Plant; planned or unplanned maintenance events; elevated fecal coliform levels above 200/100 ml at the junction chamber; reductions in the chlorination levels, or increased flow rates above the daily average of twenty-seven million gallons at the Wastewater Treatment Plant, the superintendent or operator in charge shall immediately notify Mr. Ronald Labella or the person in charge of the New Bedford Wastewater Division, CSO Group during the hours of 7:00 AM to 4:00 PM. Mr. Labella shall contact the New Bedford Department of Health and enter the event in the logbook. If a change in classification is required, the New Bedford Department of Health shall initiate the notification
procedure outlined in Figure 2. The Division of Marine Fisheries shall make periodic unannounced inspections of the wastewater treatment plant.

4. If water samples collected in the conditionally approved portion of the cove exceed the National Shellfish Sanitation Program criteria for a classification of approved for the harvest of shellfish, the New Bedford Department of Health shall immediately notify the Division of Marine Fisheries and, if deemed necessary by the Division, stop all shellfishing.

5. The Division of Marine Fisheries shall conduct an annual re-evaluation of these area. The re-evaluation shall:

   a. evaluate compliance with the management plan, including problem and event reporting and review of cooperation of all personnel involved;

   b. make a determination of compliance with the National Shellfish Sanitation Program (NSSP) criteria for conditionally approved shellfish growing area classifications;

   c. contain a shoreline survey which evaluates all real and potential pollution sources in the Growing Area Clarks Cove (BB:13);

   d. include a review of the Wastewater Treatment Plant's performance and list any problems;

   e. a review of the past year's water samples collected by the New Bedford and Dartmouth Health Departments and the Division of Marine Fisheries;

   f. a written analysis of the findings of the re-evaluation and recommendations for the next year's operation of the conditional area.

6. Failure by any party to adhere to these conditions will cause the Division of Marine Fisheries to immediately reclassify Clarks Cove (BB:13) as "RESTRICTED" and closed to the taking or attempting to take shellfish.

7. This management plan may be modified at any time by mutual consent, upon fourteen days written notice, due to changes in circumstances effecting the classification of the harvest area of general operation of this Memorandum of Understanding.

8. If these conditions become burdensome or unmanageable to any of the below signed parties, the area will revert to a restricted classification upon fourteen (14) days of written notice.
CITY OF NEW BEDFORD

Rosemary S. Tierney
Mayor

Dr. Norman C. Tallos M.D.
Director
Department of Public Health

Mr. Ronald H. Labelle
Superintendent
Wastewater Division

Bradford K. Bourque
Shellfish Constable
City of New Bedford

TOWN OF DARTMOUTH

Kevin C. Santos
Chairman, Board of Selectmen

Leonard Gonsalves
Selectman

William M. Mosher
Selectman

Mr. John W. Sharan
Shellfish Constable
Town of Dartmouth

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES

Philip G. Coates
Director
NOTIFICATION AND COMMUNICATION
FLOW CHART

NBDPH

DMF

DART/HR SHELLFISH DEPTS.

----> SHELLFISH PERSONNEL
----> MAYOR'S OFFICE
----> SELECTMEN'S OFFICE
----> DEPT. OF PUBLIC WORKS
----> WASTE WATER DIVISION
----> DARTMOUTH POLIC DEPT.
----> NB POLICE DEPT.
----> DIRECTOR HOC
----> LAW ENFORCEMENT