

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 260.000: PROHIBITION AGAINST CERTAIN FISHING IN NEW BEDFORD HARBOR

Section

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260.001: Findings and Purpose

The chemical substances known as polychlorinated biphenyls (PCBs) have been discharged into the Acushnet River and are present in that river and in the New Bedford Harbor. Laboratory analyses of lobster and bottom-feeding fish caught in this area have revealed that PCBs are present in these food sources in levels that exceed the current maximum allowable levels (or "temporary tolerance") established by the Federal Food and Drug Administration under the Food and Drug Cosmetic Act, 21 U.S.C. 301, § 346. Consumption of PCBs causes diseases deemed dangerous to the public health, namely PCB intoxication and carcinogenesis. 105 CMR 260.000 are promulgated to prevent and control the incidence of such diseases among members of the general public, and to prevent the sale of adulterated food to the public.

260.002: Emergency Promulgation

PCBs settle to the floor of the body of water into which they are discharged; they may remain there for decades. Because lobsters and certain fish are bottom-feeders, they take in PCBs which remain in their bodies in unacceptably high concentrations. These food sources are currently being taken from contaminated areas (as described in 105 CMR 260.005) for primarily recreational and other noncommercial purposes and are being consumed by the public. Consumption of these food sources by humans poses an immediate and lasting threat to health. Further public consumption of these overly-contaminated food sources must be avoided by immediately preventing the taking, sale, and thereby the eating of such food sources caught in the contaminated area. Immediate adoption of 105 CMR 260.000 is necessary for the preservation of the public health; observance of the requirements of notice and public hearing, generally required under the first paragraph of M.G.L. c. 30A, § 2 prior to the promulgation of regulations, would be, in this situation, contrary to the public interest.

260.003: Authority

105 CMR 260.000 is promulgated under authority of M.G.L. c. 111, § 5 and 6, M.G.L. c. 94, § 186 and 192, M.G.L. c. 30A, § 2.

260.004: Adulterated Fish

Fish, containing levels of PCBs exceeding the maximum allowable level (or "temporary tolerance") of PCBs established by the Federal Food and Drug Administration for the edible portion of such food sources are adulterated within the meaning of M.G.L. c. 94, § 186, first paragraph under food. Such food sources caught in the contaminated area are presumed to be contaminated.

260.005: Taking and/or Sale of Lobsters and Certain Fish Prohibited

(1) No person shall take and/or sell any fish (except bait fish), lobster or shellfish from the area of New Bedford Harbor (Area I) described below:

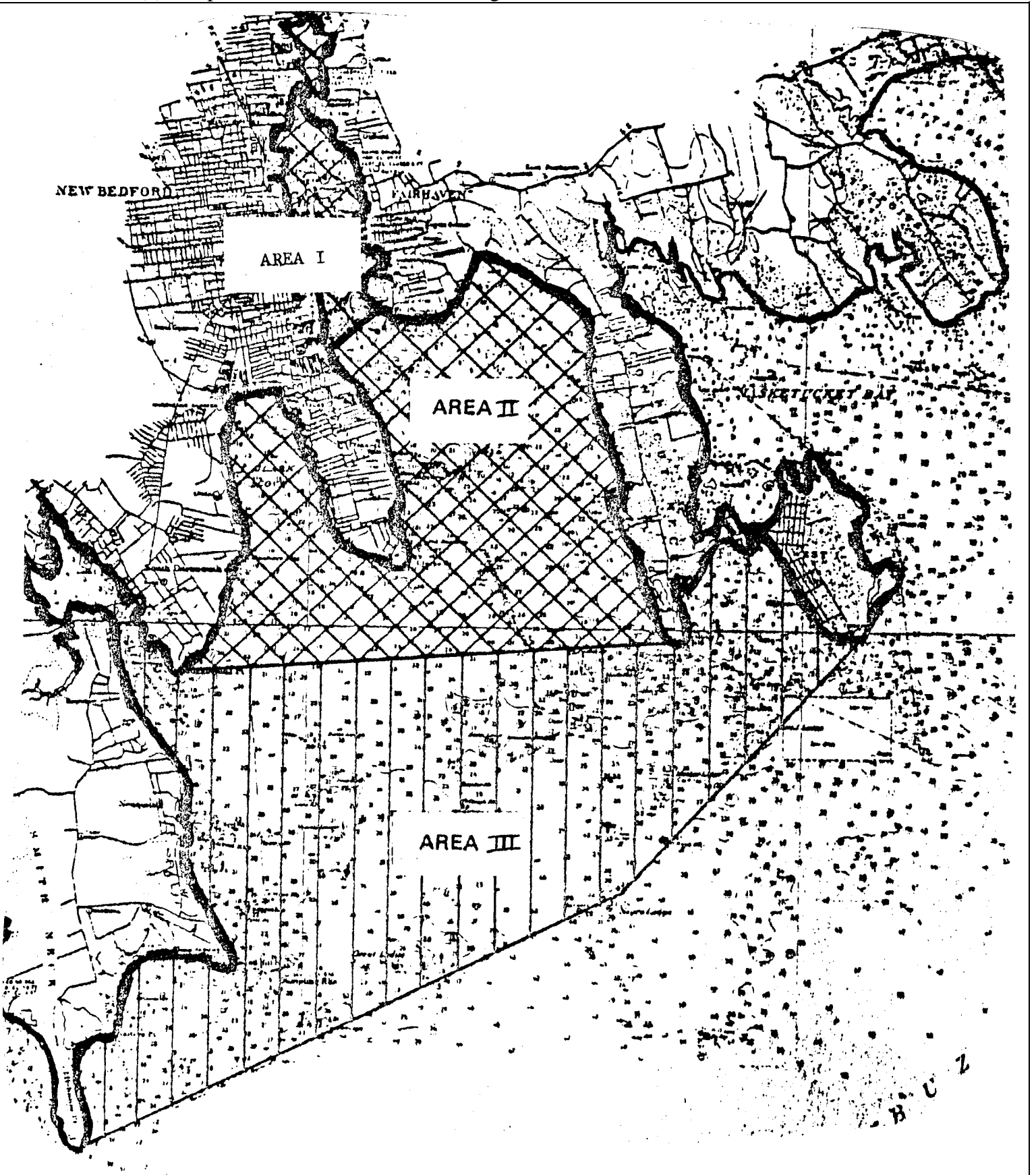
The waters north of the Hurricane Dyke in New Bedford Harbor.

260.005: continued

(2) No person shall take and/or sell any lobster or bottom feeding fish (including eels, scup, flounder and tautog) from the area of New Bedford Harbor (Area II) described in 105 CMR 260.005(4):
The waters generally south of area I and north of a line extending from Ricketson's Point in South Dartmouth westerly to Wilbur Point on Sconticut Neck.

(3) No person shall take and/or sell lobsters from the area of New Bedford Harbor (Area III) described in 105 CMR 260.005(4):
The waters generally south of area II and north of a line extending from Mishaum Point on Smith Neck in the town of Dartmouth north and west to Gong "3" on Hursett Rock off New Bedford Harbor and continuous north and west to Rocky Point on West Island in the town of Fairhaven.

(4) Map of New Bedford Harbor Outlining Areas I, II and III



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105 CMR 260.000: M.G.L. c. 30A, § 2; M.G.L. c. 111, §§ 5 and 6; M.G.L. c. 94, § 186 and 192.