

New York State Department of Environmental Conservation
Division of Fish, Wildlife and Marine Resources

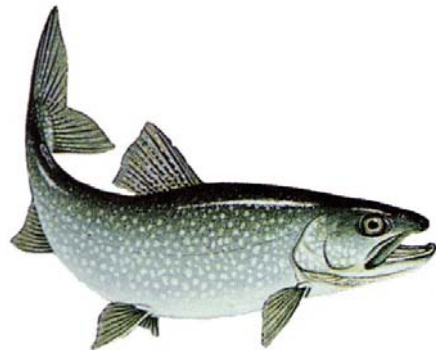
Public Participation Plan

For Development of the

Sportfishing Restoration and Spending Plan for the Lake Ontario System

Prepared by

New York State Department of Environmental Conservation



FINAL DRAFT 5 January 2007

ELIOT SPITZER, GOVERNOR
DENISE M. SHEEHAN, COMMISSIONER

SECTION I. PURPOSE

The purpose of this plan is to describe public participation activities associated with the Natural Resource Damage (NRD) Restoration and Spending Planning process for the Lower Niagara River, Lake Ontario, and the St. Lawrence River (hereafter referred to as the Lake Ontario system). The geographic scope of the area addressed extends from the base of Niagara Falls, through Lake Ontario and downstream to the Robert Moses Power Dam on the St. Lawrence River, and includes tributaries to these waters upstream to the first barrier impassable to fish. The principal goals of these activities are to: 1) increase public understanding of the Lake Ontario system NRD process; and 2) solicit comments and feedback from the public, organized interest groups, and local, state, and federal governmental entities on a proposed Restoration and Spending Plan as developed by the NRD Trustee, the New York State Department of Environmental Conservation (Department). The Department intends to accomplish these goals by communicating with the public at each major step of the process, and to adapt our approach as informed by comments received.

Background

In June of 2006, New York State announced that the Department and the Office of the Attorney General had reached a settlement of the State's NRD claim for the Lake Ontario system. Defendant Occidental Chemical Corporation (OCC) agreed to pay the State \$12 million in five equal payments over four years. The first installment of \$2.4 million was paid within 30 days of the June 21, 2006 court approval of the settlement; each of four additional payments is due on the anniversary of the approval date.

The claim arose under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or federal Superfund) and New York State common law, and compensates the people of the State for injuries to natural resources caused by the release of harmful chemicals to the environment.

The settlement was based on an assessment of the damages to the State's natural resources, in particular a loss of recreational fishing benefits resulting from the imposition of fish consumption advisories because of the presence of contaminants in the fish. The damages were calculated by measuring the difference between the value to anglers of fishing for the contaminated fish, and what the value would have been if the fish had not been contaminated.

This settlement represents the final claim in a lawsuit filed against OCC's predecessor, Hooker Chemical, in 1983. The \$12 million settlement is one of the largest settlements in the nation of a NRD claim based on lost recreational fishing use. The proceeds of the settlement will be used to restore and enhance sportfishing and other injured natural resources.

SECTION II. PUBLIC NOTICE, DOCUMENT AVAILABILITY & MEETINGS

A. Notice periods

Consistent with 43 Code of Federal Regulations § 11.32, a 60-day notice period will be offered following the release of the *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System* (“*Plan*”). Similarly, separate review periods will be offered if significant modifications are made to the *Plan*. Although the regulations require a 30-day review period, we have extended it to 60 days to afford the public an opportunity to review the *Plan* prior to public meetings and to submit their input subsequent to the meetings. Public meetings (see Section D. below) will be scheduled approximately half-way through the review period(s).

B. Notice of review period

Notice of opportunities to review the *Plan* will be provided both formally and informally. Formal notice will be published the New York State *Environmental Notice Bulletin* (ENB). Additional notice will be given on the Department’s website, through press releases, and by direct mailings. A constituent letter and fact sheet summarizing the *Plan* and announcing the public meetings and comment periods will be mailed to interested constituents including non-governmental organizations, individuals, local government officials, elected state and federal officials, federally recognized native American tribal authorities, and N.Y.S. and federal natural resource agencies (U.S. Fish and Wildlife Service, U.S. Army Corp of Engineers, U.S. Geological Survey, Bureau of Indian Affairs, U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration). These documents will also be posted on the Department website.

C. Document availability

Documents will be available in downloadable format on the Department website www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html, from designated Department contacts, and at information repositories, as listed in Appendix A.

Thirty (30) copies of the *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System* will be mailed to:

The New York State Library
Document Distribution Center
State Education Building, Room 30
Washington Avenue
Albany, New York 12234

D. Public Meetings

A series of public meetings will be held in order to: 1) inform the public about the *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System* in general; and 2) solicit comments and ideas from the public on the draft *Plan*. Evening public meetings (7:00 – 9:00 PM) will be held at each of five (5) locations near Lake Ontario and the St. Lawrence River to effectively cover the geographic range of this restoration. Meetings will be convened as follows:

Region	City	Time	Date	Facility	Contact
6	Ogdensburg	7:00 PM	2-12-2007	St.Lawrence Valley Sportsmens Club Route 37, Red Mills, NY	Frank Flack (315) 785-2262
6	Watertown	7:00 PM	2-13-2007	Watertown State Office Building First Floor Conference Room 317 Washington St. Watertown, NY	Frank Flack (315) 785-2262
7	Mexico	7:00 PM	2-14-2007	Mexico H.S. Auditorium Route 104 Mexico, NY	Daniel Bishop (607) 753-3095
8	Rochester	7:00 PM	2-7-2007	RIT campus, Carlson Aud., Imaging Science Bldg. 1 Lomb Memorial Drive, Rochester, NY	Web Pearsall (585)226-5339
9	Lewiston	7:00 PM	2-15-2007	Lewiston-Porter H.S. 4061Creek Road, Youngstown, NY	Paul McKeown (716) 372-0645

SECTION III. DOCUMENTS TO SUPPORT PUBLIC PARTICIPATION

In addition to the *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System*, the following documents will be prepared to fully implement the public participation process. Each can be revised as the *Plan* evolves from *Draft* to *Final*.

A. Environmental Notice Bulletin

Notice of the *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System* will appear in the Environmental Notice Bulletin (ENB), and will be published each week from 1-17-2007 to 3-20-2007. The notice will appear under “Public Notice” in the “Statewide and Multiregional” section, under “SEQR and Other Notices”. A draft bulletin is attached as *Appendix B*.

B. Notification Letter

This invitation to participate in the review process and development of the *Plan* announces public meetings and the comment periods. It will be posted on the Department website and will be mailed to interested parties as identified by regional staff and to include: non-governmental organizations, local government officials, elected state and federal officials, federally recognized native American tribal authorities, and N.Y.S. and federal natural resource agencies. A draft is attached as *Appendix C, Draft Constituent Letter*.

C. Fact Sheet

A stand-alone document that summarizes the *Plan* is intended as a plain-language explanatory tool. It will be mailed along with the Notification Letter; used as a handout at meetings; and posted on the Department website. A draft is attached as *Appendix D, Draft Fact Sheet*.

D. Press Release

A draft release is attached as *Appendix E*.

SECTION IV. USE OF INPUT FROM PUBLIC PARTICIPATION EFFORTS

A. Public Input

The Department will maintain a record of all written and oral comments received during the formal notice period, which may be delivered electronically (e-mail or fax), in person, or via conventional mail. A single electronic address will be established for the receipt of e-mailed comments. In addition, a Departmental contact is identified below for other forms of comment. All comments concerning the *Draft Plan* received from members of the public, together with responses to those comments, shall be included as part of the *Responsiveness Summary* and the *Final Lake Ontario Sportfishing Restoration and Spending Plan*.

Mr. Christopher J. Balk
Lake Ontario OCC NRD Coordinator
New York State Department of Environmental Conservation
P.O. Box 292
Cape Vincent, New York 13618

B. Responsiveness Summary

A *Responsiveness Summary* will be prepared that describes the comments on the *Draft Restoration and Spending Plan*. The *Responsiveness Summary* will be available through all of

the outlets described previously in this document. It may be issued separately or as part of the *Final Sportfishing Restoration and Spending Plan for the Lake Ontario System*.

C. Final Lake Ontario Sportfishing Restoration and Spending Plan

The Department will revise the *Draft Plan* to reflect the comments and ideas received during the formal comment period. The *Final Plan* will be noticed and available in the same repositories as the *Draft Plan*.

APPENDIX A
Information Repositories

Regional Fisheries Management Unit
NYS Department of Environmental
Conservation, Region 6
317 Washington Street
Watertown, New York 13601

Regional Fisheries Management Unit
NYS Department of Environmental
Conservation, Region 7
P.O. Box 5170, 1285 Fisher Road
Cortland, NY 13045

Regional Fisheries Management Unit
NYS Department of Environmental
Conservation, Region 8
6274 East Avon-Lima Road
Avon, NY 14414

Regional Fisheries Management Unit
NYS Department of Environmental
Conservation, Region 9
182 East Union Street, Suite 3
Allegheny, NY 14706

Lake Ontario Unit Leader
NYS Department of Environmental
Conservation
P.O. Box 292
Cape Vincent, NY 13618

APPENDIX B
Environmental Notice Bulletin

NOTE: Place this item in all issues between 1-17-2007 and 3-20-2007. It should be a Public Notice in the “Statewide and Multiregional” section, under “SEQR and Other Notices”.

The New York State Department of Environmental Conservation is soliciting public comments on a *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System*. The Draft Plan proposes ways to restore/enhance recreational fishing and fisheries in the New York waters of the lower Niagara River, Lake Ontario, the St. Lawrence River, and their tributaries upstream to the first barrier impassable to fish (hereafter referred to as the Lake Ontario system).

Funds for this restoration are available from a settlement of the State’s Natural Resource Damages (NRD) claim for the Lake Ontario system. The Occidental Chemical Corporation agreed to pay the State \$12 million in five equal payments over four years. The settlement was based on an assessment of the damages to the State’s natural resources, in particular a loss of recreational fishing benefits resulting from the imposition of fish consumption advisories because of the presence of contaminants in Lake Ontario fish. The proceeds of the settlement will be used to restore/enhance sportfishing and the injured natural resources.

Copies of the *Draft Plan* can be viewed or downloaded from;
<http://www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html> or from NYSDEC Regional Headquarters in Watertown, Syracuse, Avon and Buffalo. Public meetings are scheduled as follows:

Region	City	Time	Date	Facility	Contact
6	Ogdensburg	7:00 PM	2-12-2007	St.Lawrence Valley Sportsmens Club Route 37, Red Mills, NY	Frank Flack (315) 785-2262
6	Watertown	7:00 PM	2-13-2007	Watertown State Office Building First Floor Conference Room 317 Washington St., Watertown, NY	Frank Flack (315) 785-2262
7	Mexico	7:00 PM	2-14-2007	Mexico H.S. Auditorium Route 104 Mexico, NY	Daniel Bishop (607) 753-3095
8	Rochester	7:00PM	2-7-2007	RIT campus, Carlson Aud., Imaging Science Bldg. 1 Lomb Memorial Drive, Rochester, NY	Web Pearsall (585)226-5339
9	Lewiston	7:00 PM	2-15-2007	Lewiston-Porter H.S. 4061 Creek Road, Youngstown, NY	Paul McKeown (716) 372-0645

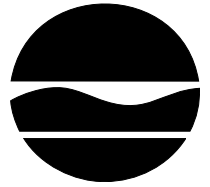
All interested parties are encouraged to use [website] for both reviewing the *Draft Plan* and for submitting comments. Conventional written comments should be mailed to:

Mr. Christopher J. Balk
Lake Ontario Natural Resource Damages Coordinator
New York State Department of Environmental Conservation
P.O. Box 292
Cape Vincent, New York 13618

All comments must be received by 3-20-2007.

APPENDIX C
Notification Letter

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
Lake Ontario Unit, Cape Vincent Fisheries Station
541 E. Broadway, PO Box 292
Cape Vincent, NY 13618-0292
Phone: 315-654-2147 FAX: 315-654-4118
Website: www.dec.state.ny.us



Denise M. Sheehan
Commissioner

Dear Interested Party:

The New York State Department of Environmental Conservation is soliciting public comments on a *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System*. The *Draft Plan* proposes ways to restore/**enhance** recreational fishing and fisheries in the New York waters of the Lower Niagara River, Lake Ontario, the St. Lawrence River, and their tributaries upstream to the first barrier impassable to fish (hereafter referred to as the Lake Ontario system).

Funds for this restoration are available from a settlement of the State's Natural Resource Damages (NRD) claim for the Lake Ontario system. The Occidental Chemical Corporation agreed to pay the State \$12 million in five equal payments over four years. The settlement was based on an assessment of the damages to the State's natural resources, in particular a loss of recreational fishing benefits resulting from the imposition of fish consumption advisories because of the presence of **contaminants** in Lake Ontario fish. The proceeds of the settlement will be used to restore/enhance sportfishing and the injured natural resources.

Copies of the *Draft Plan* can be viewed or downloaded from <http://www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html> or from NYSDEC Regional Offices in Watertown, Syracuse, Avon and Buffalo. Public meetings are scheduled as follows:

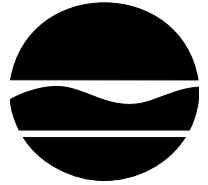
We encourage all interested parties to use our website for both reviewing the *Draft Plan* and for sending us your comments. Conventional written comments should be mailed to:

Mr. Christopher J. Balk
Lake Ontario Natural Resource Damages Coordinator
New York State Department of Environmental Conservation
P.O. Box 292
Cape Vincent, New York 13618

All comments must be received by 3-20-2007. We look forward to hearing from you.

**APPENDIX D
FACT SHEET**

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
Lake Ontario Unit, Cape Vincent Fisheries Station
541 E. Broadway, PO Box 292
Cape Vincent, NY 13618-0292
Phone: 315-654-2147 FAX: 315-654-4118
Website: www.dec.state.ny.us



Denise M. Sheehan
Commissioner

FACT SHEET

**Public Review of the Draft Sportfishing Restoration and Spending Plan
for the
Lake Ontario System**



As Trustee, the New York State Department of Environmental Conservation is planning how to spend money received as a settlement of a natural resource damages (NRD) claim.

NRD background

Several federal statutes, as well as state law, authorize federal and state officials to act on behalf of the public to restore/enhance natural resources affected by releases of oil and hazardous materials. Under the Comprehensive Environmental Response, Compensation and Liability Act (federal Superfund) and State common law, parties responsible for contaminating the environment and causing injury to natural resources are also liable for natural resource damages (or compensation), which are to be used to restore/enhance the injured resources.

The Natural Resource Damages (NRD) assessment process involves determining the nature and extent of injury to the public's natural resources in order to restore them to the condition they

would have been in but for the release of hazardous materials. The NRD process seeks to ensure that the public is compensated for the losses it suffered as a result of the contamination.

In June of 2006, New York State announced that the Department and the Office of the Attorney General had reached a settlement of the State's NRD claim for the Lake Ontario system. Defendant Occidental Chemical Corporation (OCC) agreed to pay the State \$12 million in five equal payments over four years. The first installment of \$2.4 million was paid within 30 days of court approval of the settlement; each of four additional payments is due on the anniversary of the approval date.

The claim arose under the federal Comprehensive Environmental Response, Compensation and Liability Act (federal Superfund), and State common law, and compensates the people of the State for injuries to natural resources caused by the release of harmful chemicals to the environment. The Lake Ontario system includes the New York waters of the lower Niagara River, Lake Ontario, the St. Lawrence River, and their tributaries upstream to the first barrier impassable to fish.

Use of NRD monies

Monies recovered as a result of an NRD claim will be used to restore/enhance either the injured natural resources themselves or the services provided by the natural resources. In this case, because recreational fishing was injured, the recovered damages can be used to restore the recreational use of the fish and to restore/enhance the fishery itself.

Injured resources

The human use of Lake Ontario fish has been injured by the presence of contaminants in fish flesh. Because of elevated levels of contaminants, the New York State Department of Health has issued health advisories since 1972. The current advisory recommends eating either no fish or no more than one meal per month, depending upon the species and size of fish, and the location within the Lake. The current advisory also recommends that women of childbearing age, infants, and children under the age of 15 should not eat any fish.

Types of restoration projects and Geographic Scope

The Department is proposing four types of restoration/enhancement projects: 1) access projects; such as boat launch sites and public fishing rights; 2) habitat restoration projects: such as the creation/enhancement of spawning habitat, streambank stabilization; 3) angler outreach/education; 4) fish population/management enhancement; such as improvements to existing NYS Great Lakes hatchery facilities that will improve the Department's ability to effectively manage fisheries. Proposed projects must result in a benefit to sportfisheries in the New York waters of the Lower Niagara River, Lake Ontario, the St. Lawrence River, and their tributaries upstream to the first barrier impassable to fish.

Role of public

As Trustee, the Department will actively solicit public input throughout the Restoration and Spending Planning process prior to making final decisions on project funding. The Department will consider all comments when developing a *Final Sportfishing Restoration and Spending Plan for the Lake Ontario System* and when selecting individual projects for implementation. Notices on the availability of information and the opportunity for public input will be posted on the following web page www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html and through other media.

DRAFT Press Release

For Release: IMMEDIATE

DEC Contact: Christopher J.Balk
(518) 773-7318 ext. 3005

DEC ANNOUNCES PUBLIC MEETINGS ON USE OF FUNDS TO RESTORE/ENHANCE LAKE ONTARIO AND ST.LAWRENCE RIVER FISHERIES

The New York State Department of Environmental Conservation (DEC) announced today that they are soliciting public comments on a *Draft Sportfishing Restoration and Spending Plan for the Lake Ontario System*. The Draft Plan proposes ways to restore and enhance recreational fishing and fisheries in the New York waters of the lower Niagara River, Lake Ontario, the St. Lawrence River, and their tributaries upstream to the first barrier impassable to fish (hereafter referred to as the Lake Ontario system).

Funds for this restoration are available from a settlement of the State's Natural Resource Damages (NRD) claim with Occidental Chemical Corporation (OCC). The settlement arose under the federal Comprehensive Environmental Response, Compensation and Liability Act (federal Superfund), and State common law, and compensates the people of the State for injuries to natural resources caused by the release of harmful chemicals to the environment. OCC agreed to pay the State \$12 million in five equal payments over four years. The settlement was based on an assessment of the damages to the State's natural resources, in particular a loss of recreational fishing benefits resulting from the imposition of fish consumption advisories because of the presence of contaminants in Lake Ontario fish. The proceeds of the settlement will be used to restore/enhance sportfishing and the injured natural resources.

DEC Commissioner **Denise M. Sheehan** said, "New York State works hard to hold polluters accountable for contaminating our environment. This settlement is one of the largest in the nation based on lost public use of recreational fisheries, and we are confident that use of these funds will improve sportfisheries in the lower Niagara River, Lake Ontario, and the St. Lawrence River. We are committed to working with the citizens of New York State in determining the best uses of these funds for enhancing these world-class fisheries."

Copies of the *Draft Plan* can be viewed or downloaded from www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html or from NYSDEC Regional Headquarters in Watertown, Syracuse, Avon and Buffalo. Public meetings are scheduled as follows:

(MORE)

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9	Lewiston	7:00 PM	2-15-2007	Lewiston-Porter H.S. 4061 Creek Road, Youngstown, NY	Paul McKeown (716) 372-0645

All interested parties are encouraged to use www.dec.state.ny.us/website/dfwmr/fish/lkontactivities.html for both reviewing the *Draft Plan* and for submitting comments. Written comments can be e-mailed to fwncrd@gw.dec.state.ny.us or mailed to:

Mr. Christopher J. Balk
Lake Ontario Natural Resource Damages Coordinator
New York State Department of Environmental Conservation
P.O. Box 292
Cape Vincent, New York 13618

For more information, the public is encouraged to contact DEC regional offices in Watertown, Cortland, Avon, Allegheny, and Cape Vincent. A listing of regional office contact information can be found at <http://www.dec.state.ny.us/website/about/abtrull3.html> on the DEC website.

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