Sportfishing Restoration & Spending Plan for the Lake Ontario System

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Purpose

The purpose of the Sportfishing Restoration & Spending Plan for the Lake Ontario System is to describe the use of funds from the settlement of a major natural resource damages (NRD) claim. More specifically, it describes projects selected to restore injuries to sportfishing in the New York waters of the Lower Niagara River, Lake Ontario, and the St. Lawrence River (hereafter referred to as the Lake Ontario system). This Plan also describes the public role in its development and provides reasons why some proposed projects are unlikely to be implemented.

This Plan has been prepared by the New York State Department of Environmental Conservation (Department) in its capacity as Trustee for New York's natural resources. 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.

Basis of Claim

Several federal statutes, as well as state law, authorize federal and state officials to act on behalf of the public to restore natural resources affected by releases of contaminants. Under the *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* of 1980, the *Oil Pollution Act (OPA)* of 1990, the *Clean Water Act (CWA)* of 1977, and state common law, parties responsible for contaminating the environment and causing injury to natural resources are also liable for natural resource damages, which are to be used to restore the injured resources. Natural resource damages are compensation for the injury to, loss of, loss of the use of, or destruction of New York's natural resources, including land, biota, air, surface and ground waters.

The natural resource damages assessment process involves determining the nature and extent of injury to the public's natural resources, and restoring the use and enjoyment of either the injured or lost natural resources, or the services provided by these resources. The NRD process seeks to ensure that the public is compensated for the losses they suffer as a result of the injuries.

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; each of four additional payments is due on the anniversary of the approval date.

The claim arose under the federal CERCLA ("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.

Description of Injury

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

Restoration Strategies

The general hierarchy for the use of NRD funds, in order of greatest to least preference, is to restore or replace the injured resources. If neither of these approaches is possible or practical, then equivalent resources could be acquired. As stated previously, this settlement was based on the loss of (injury to) recreational fishing benefits resulting from the imposition of fish consumption advisories. The chemical contamination of fish resulted in fish consumption advisories extending from the Lower Niagara River downstream through Lake Ontario and the St. Lawrence River. Migratory fishes have transferred contaminants into tributary systems as well. Restoring the injured resource by reducing contaminant levels in fish to the levels prior to the release of toxic chemicals into the system would require extensive sediment dredging/disposal, which would be impracticable and cost prohibitive. Using available NRD funds for toxic clean-up efforts in the Lake Ontario system would be insignificant and therefore ineffective, as these contaminants now reside in sediments and biota throughout the entire system. In addition, toxic "hot spots" within the Lake Ontario system have already been identified, and efforts to remediate contamination in these areas are being coordinated through individual Remedial Action Plans (RAPs). The Department has therefore chosen to use these NRD funds to restore and enhance recreational sportfisheries within the Lake Ontario system.

Matching funds and contributions to this program from other agencies, non-governmental organizations and programs such as RAPs, the Open Space plan and the Fisheries Enhancement, Mitigation and Research Fund (FEMRF, as detailed in the following project descriptions) will be actively sought out to increase the longevity of this fund. This effort will also reduce redundancy of restoration efforts.

Project Lists

Of the approximate150 project proposals received from stakeholders, 80 were scored by the review committee. The remainder included comments rather than project proposals (not scored), or were rejected based on lack of merit. The Project Evaluation Team produced the following lists, which can be viewed at http://www.dec.ny.gov/outdoor/40068.html:

A. ***Selected Projects*** - These projects are listed in order of rank with the best scoring proposal listed first. The estimated costs for each of the proposals are preliminary and used for planning purposes only. More detail on actual costs will be determined as implementation proceeds. Cost estimates associated with this list are in no way a guarantee of funding, and are subject to change. The current total of the cost estimates for these projects surpasses available funding by about $317,500.

B. ***Other Scored Projects*** - These projects ranked beyond estimated available funding and therefore will not be pursued at this point in the program. However, project proposals on this list may be considered at a later date depending on the actual costs of implementing the selected projects.

C. ***Rejected*** – These proposals were rejected based on the review criteria presented above. Each is listed in Table 1 with the reason for its rejection.

The $12 million settlement has been apportioned to

include $10.8 million for projects and $1.2 million for fund administration. Providing a cost estimate for selected projects does not guarantee that project will receive any or all of those funds. The cost estimates were developed to approximate how many projects the $10.8 million can accommodate. As project implementation begins detailed spending plans for each project will be developed as needed.

Program update

The Plan was announced by NYSDEC Commissioner Peter Grannis in late January 2008. Steps have already been taken to move forward with several projects listed in the plan including the purchase of the Autofish tagging trailer from Northwest Marine Technology. The acquisition of this technology will enable the Bureau of Fisheries to mark and/or tag (i.e. coded wire tag) every Chinook salmon the NYSDEC stocks into Lake Ontario, and conduct other salmonid marking studies. This purchase is a first for fisheries science in the Great Lakes Basin, and heralds the opportunity for gaining knowledge of the Lake Ontario system only dreamed of in the past. The Autofish system was delivered to the State of New York in mid-March and successfully marked all 1.27 million of the 2008 year class of Chinook salmon to be stocked into New York (NYSDEC Salmon River Hatchery) and Ontario (Ringwood Fish Culture Station) waters of Lake Ontario. The broodstock fish for both agencies received an adipose clip and coded wire tags to help evaluate various aspects of their contribution to the fishery.

There are a number of other projects in preliminary planning stages that are expected to be initiated in 2008. They include, but are not limited to: improvements to the Salmon River Hatchery (Oswego Co.), renovations to Cape Vincent Hatchery facilities (Jefferson Co.), renovations to Goldens Marina (Jefferson Co.), repair and improve the Village of Lewiston boat launch (Niagara Co.), enhance the Fish Island access site at Dexter, NY (Jefferson Co.), repair and improve the Town of Wilson boat launch (Niagara Co.), Irondequoit Creek streambank stabilization project (Monroe Co.), public access improvements in the Village of Morristown (St. Lawrence Co.), Olcott Pier access improvement (Niagara Co.), Mud Bay cartop launch (Jefferson Co.), and angler parking areas at Lindsey and Stoney Creeks (Jefferson Co.).