Response to Comments on
The 2018 NYS Section 303(d) List of Impaired Waters Requiring a TMDL

A Draft New York State 2018 Section 303(d) List of Impaired Waters Requiring a Total Maximum Daily Load (TMDL) (Draft 2018 List) was made available for public comment for a 45-day period that ended on August 6, 2018. Public comments were received from various organizations, municipalities/government and private parties/individuals. The Draft 2018 List was also reviewed and commented on by the United States Environmental Protection Agency (USEPA) Region 2, which has approval authority for state Section 303(d) Lists. Prior to the development of the Draft 2018 List, a public solicitation for available data also elicited a number of responses.

Along with the release of the Draft 2018 List, the New York State Department of Environmental Conservation (NYSDEC) Consolidated Assessment and Listing Methodology (CALM) was made available for public comment. The CALM describes the processes and procedures used to assess the quality of the waters and explains how data and information are used to determine the attainment status in each assessment unit, consistent with the applicable water quality standards (WQS). The current CALM was updated in March 2017.

General Response to Comments on the Consolidated Assessment and Listing Methodologies

NYSDEC did not receive any comments directly applicable to the CALM.

Response to Specific Comments on Section 303(d) Listed Waters

The public comments NYSDEC received regarding specific waterbody/pollutant listings on the Draft 2018 List and the Department’s response, including changes made to the Proposed Final New York State 2018 Section 303(d) List of Impaired Waters Requiring a TMDL (Final 2018 List), are presented below.

**Comment 1:** Pace Environmental Law Clinic Inc. (PELC) on behalf of Riverkeeper, Inc. commented that NYSDEC should extend the public comment period on the Draft 2018 List 30 days beyond the originally allotted 45 days.

**Response 1:** The 45 days allotted for public comment on the 303(d) List is 15 days beyond the standard NYSDEC public comment period of 30 days for similar actions. The commenter’s justifications for the deadline extension was a pending Freedom of Information Law (FOIL) request. NYSDEC expedited fulfillment of the FOIL request, providing the subject documents well ahead of the comment deadline.

**Comment 2:** Onondaga Nation commented that NYSDEC did not consult with them as required under Commissioner’s Policy for Contact, Cooperation, and Consultation with Indian Nations (CP-42, 2009).
Response 2: NYSDEC is committed to ongoing consultation with the Onondaga Nation regarding water quality assessments in or around their lands. We welcome and appreciate water quality data and information from the Onondaga Nation that is appropriate to incorporate into our waterbody assessments at any time.

Comment 3: The Natural Areas Conservancy (NAC) commented that NYSDEC needs to make all data used to make listing decisions publicly available.

Response 3: NYSDEC strives for transparency in all our actions and to make data available to the public. The NYSDEC Waterbody Inventory/Priority Waterbody List (WI/PWL) fact sheets, all available on the NYSDEC website, drafted for each individual waterbody segment, give the details of how and why waters are added or removed from the 303(d) List. WI/PWL fact sheets and other water quality data can be found at NYSDEC’s “Know Your Water” (https://water.ny.gov/doh2/applinks/waterqual/#/home) and “DECinfo Locator” (https://gisservices.dec.ny.gov/gis/dil/) websites. Additional water quality data can be found at the “DOW Monitoring Data Portal” (https://nysdec.maps.arcgis.com/apps/webappviewer/index.html?id=692b72ae03f14508a0de97488e142ae1).

Comment 4: IDEXX Corporation commented that NYSDEC should modify the CALM to abandon use of fecal coliform in favor of Escherichia coli (E. coli) as an indicator for fecal contamination.

Response 4: The CALM document cannot be modified to use alternate fecal indicator bacteria (FIB) criteria unless a WQS for that criteria is promulgated in 6 NYCRR Part 703.4. Modifications to NYS WQS are outside the scope of the CWA 303(d) listing requirements.

Comment 5: The Village of Cuba commented on a typo in the Draft 2018 List for Beaver Lake/Alma Pond (0201-0073). The waterbody is listed in Allegany County and should be listed in Cattaraugus County.

Response 5: NYSDEC has corrected this error in the Final 2018 List.

Comment 6: David Newman requests that the following waterbodies be included on the Section 303(d) List of Impaired Waters Requiring a TMDL: Brocton Reservoir (0105-0025); Hiawatha Lake (0702-0026); Kibby Lake (0703-0054); Sunset Lake (0703-0091); Newark Reservoir (0704-0045); Dryden Lake (0705-0042); Central Bridge (Upper) Reservoir (1202-0016); Irondequoit Bay (0302-001); Blind Sodus Bay (0302-0021); and East Bay (0302-0011); Morningside Lake (1402-0001).

Mr. Newman states that, “monitoring data showed exceedance of one or more parameter-specific use evaluation criteria, specifically all had mean chlorophyll a values above 15ug/l. These waterbodies also showed a corresponding elevated total phosphorus level (>20 ug/l). Additionally, harmful algal blooms were documented at many of these waterbodies.”
**Response 6:** Per the CALM, WI/PWL assessment updates are scheduled to correspond with the end of the Rotating Integrated Basin Studies (RIBS) cycle for the respective basin. These waterbodies are in basins where assessments are ongoing. Data for these lakes were collected by the NYSDEC Lake Classification Inventory (LCI) and Citizen Statewide Lake Assessment Program (CSLAP) and will be used to update the WI/PWL.

**Comment 7:** David Newman requests that Sugarloaf Pond be added to the WI/PWL and included on the Final 2018 List due to elevated chlorophyll $a$ levels with corresponding elevated phosphorus levels.

**Response 7:** NYSDEC agrees that Sugarloaf Pond meets the 6.4-acre area threshold for inclusion in the WI/PWL as described in the NYSDEC CALM. NYSDEC disagrees that this waterbody should be added to the Final 2018 List as there is insufficient information to determine use attainment and more water quality sampling is required to determine use support. NYSDEC will update the WI/PWL to incorporate Sugarloaf Pond and will consider the waterbody for water quality monitoring during the next monitoring cycle for the Upper Hudson River Basin.

**Comment 8:** Atlantic States Legal Foundation (ASLF) and the Onondaga Nation commented that Onondaga Creek, Lower (0702-0023), Onondaga Creek, Middle (0702-0004), Harbor Brook, Lower and tribs (0702-0002, ASLF only), and Ley Creek (0702-0001, ASLF only) should all be moved to Part 1 (“Individual Waterbody Segments with Impairments Requiring TMDL Development”) of the List and prioritized for TMDL development. These segments are currently included in Part 3c of the List (“Waterbodies for which TMDLs are/may be Deferred - Waterbodies Awaiting Development/Evaluation of Other Restoration Measures”) and impaired by Nutrients (phosphorus), Ammonia, and Pathogens. The ASLF comments focused primarily on pathogen pollution and its possible sources. The Onondaga Nation comments additionally requested Onondaga Creek, Lower (0702-0023), Onondaga Creek, Middle (0702-0004), and Onondaga Creek, Upper (0702-0024), all listed as impaired by Turbidity on Part 3a (“Waterbodies for which TMDLs are/may be Deferred - Waterbodies Requiring Verification of Impairment”), be moved to Part 1.

**Response 8:** For the segments impacted by Nutrients (phosphorus), Ammonia, and Pathogens, NYSDEC is re-examining the pollutant sources associated with the listings. NYSDEC plans to move the waterbody-pollutant combination covered by the Onondaga Amended Consent Judgement from Part 3c to Part 3b (“Waterbodies for which TMDLs are/may be Deferred - Waterbodies Requiring Verification of Cause/Pollutant/Source”). An updated footnote reflecting this conclusion will be added to the Final 2018 List.

The segments listed for turbidity will remain on Part 3a of the Final 2018 List until the cause of turbidity impacts can be differentiated from natural conditions. A joint NYSDEC-United States Geological Survey (USGS) project is currently underway to study the Tully Mudboils and their effects on Onondaga Creek.
Comment 9: Onondaga Nation commented that NYSDEC should update the suspected sources listed for Onondaga Creek, Lower, and tribs (0702-0023), Onondaga Creek, Middle, and tribs (0702-0004), and Onondaga Creek, Upper, and tribs (0702-0023). The Onondaga Nation would like the suspected sources for the turbidity impairment changed from “Streambank Erosion” to simply “Mudboils.” The Onondaga Nation also added, “EPA source categories related to resource extraction (subsurface mining (5200), abandoned mining (5900), or inactive mining (5950) (EPA, 1997)) would better capture this “suspected source” of the actual current impairment to Onondaga Creek and should be applied in this context.”

Response 9: In the 2016 listing cycle, NYSDEC updated the suspected sources from “Streambank Erosion” to “Streambank Erosion (mudboils)” at the request of the Onondaga Nation. The ‘EPA source categories’ cited by the Onondaga Nation are no longer in use by NYSDEC or USEPA.

Sources cited in the 303(d) List are suspected sources and providing suspected sources on the 303(d) List is not a CWA 303(d) requirement. When a TMDL or other restoration measure to address the impairments to the waterbodies is begun, it will examine all potential sources of turbidity to the subject waters to determine the most effective control strategy.

Comment 10: Onondaga Nation commented that NYSDEC should list Onondaga Creek, Upper, and tribs (0702-0023) as impaired by salinity. Links to data and references to past data submissions were provided to support the requested listing.

Response 10: NYSDEC does not have an ambient WQS for ‘salinity’¹, but would typically assess against the total dissolved solids (TDS) standard of 500 mg/L for a Class B/C water such as Onondaga Creek. The data referenced/provided by the Onondaga Nation was the same as the data provided in 2016. TDS levels in the data set do not exceed the WQS, and thus do not support the conclusion that Upper Onondaga Creek is impaired.

Comment 11: The City of Ithaca Watershed Coordinator requested that NYSDEC review the Cayuga Lake Modeling Project results and consider removing the phosphorus impairment listing for Cayuga Lake, Southern End (0705-0040). Additionally, the City submitted comments on the Cayuga Lake Waterbody Inventory Priority Waterbodies List fact sheets. No supporting data accompanied this request.

Response 11: NYSDEC views the assessment of waters and identification of impaired waters as a continuous process, which is punctuated every two years with the updating of the Section 303(d) List. NYSDEC will consider the City’s comments regarding the WI/PWL factsheets during the next assessment cycle for the Seneca-Oswego-Oneida River basin.

¹ There is currently one waterbody on the 303(d) List for salinity impairment; Crane Brook and tribs (0704-0024). This listing was originally added in 2008 and based on specific conductance measurements exceeding 100,000 microsiemens/cm. Listings based on surrogate parameters, such as specific conductance for TDS, are not part of NYSDEC’s current assessment practices.
Regarding the City’s request to delist Cayuga Lake, Southern End, for phosphorus, NYSDEC responds that a TMDL to address phosphorus impairment to the southern end of Cayuga Lake is being developed. While the Cayuga Lake Modeling Project associated with the TMDL may demonstrate scenarios where the total phosphorus guidance value may be met, adequate and representative ambient water quality data is required to delist a waterbody from the NYS Section 303(d) List of Impaired Waters.

**Comment 12:** Lindsay Groves submitted comments regarding Skaneateles Lake (0707-0004), “It is impaired! The rocks are slimey green, we are seeing HAB blooms already on August 4th.”

**Response 12:** No WQS or applicable guidance value exceedances have been documented. Water quality monitoring was conducted at two sites on Skaneateles Lake in 2017 and showed pollutant levels well below the threshold for impairment.

**Comment 13:** The Lake George Association commented that they, “strongly supports listing Lake George and its tributaries on the 303(d) list for impairments from sedimentation.”

**Response 13:** NYSDEC acknowledges this comment. (Lake George and tribs (1006-0016) are impaired by “Silt/Sediment” loadings and were added to the List in 2002.)

**Comment 14:** On the behalf of Riverkeeper, Inc., Save the Sound, and the Natural Resources Defense Council, PELC commented that, “DEC Should Develop a TMDL for the Entire Hudson River PCBs Superfund Site.” PELC additionally added, “The Record of Decision for the Hudson River PCBs Superfund Site will not adequately address the PCB impairment in the Upper Hudson River.” And, “DEC should prioritize developing a TMDL to address the PCB impairment in the Hudson River PCBs Superfund Site.”

**Response 14:** All waterbody/pollutants listings on the Section 303(d) List require the eventual development of a TMDL. Currently the Upper Hudson River is included in Part 3c of the 303(d) List where a TMDL is deferred pending other restoration measures. As such it is NYSDEC’s opinion that more needs to be done in the Hudson to address PCB contamination but a TMDL is not the most effective remedy at this time.

**Comment 15:** Regarding the Saw Mill River (1301-0007), the Saw Mill River Coalition inquired, “what data is used now to ‘delist’ floatables. I would appreciate any information you could give me as to how this was assessed.”

**Response 15:** NYSDEC does not have access to any historical or current data documenting the floatables impairment in Saw Mill River. NYSDEC believes that the original listing of the Saw Mill River for floatables was in error. See also response to Comment #39.

**Comment 16:** The Albany County Office of Natural Resource Conservation commented on Lawson’s Lake (1301-0235) and its listing for Phosphorus, stating that, “there is nothing in
the NYS DEC 2014 LCI Lake Water Quality Summary or county staff’s review to indicate that agriculture is a possible source. Almost the entire watershed (97%) is wooded and wetland. There is no agriculture in the watershed. Given the relative lack of development, impervious surface or other obvious sources it seems possible that internal loading is a likely cause of elevated phosphorous at this point.”

Response 16: All sources cited in the 303(d) List are suspected sources and providing suspected sources on the List is not a CWA 303(d) requirement. NYSDEC agrees with the commenter that “Agriculture” may not be the most accurate suspected source for phosphorus in Lawson’s Lake. We also have no data to support “Internal Loading” as a suspected source. As such, the suspected source for phosphorus to Lawson’s Lake will be changed to “Unknown.”

Comment 17: David Newman commented that, “Lake Washington 1303-0012 in Newburgh should be listed as impaired for use as a potable water supply source as treatment beyond conventional treatment is or will be used to remove/reduce perfluorooctanesulfonic acid (PFOS) contamination…”

Response 17: There is no WQS for PFOS in NYS, therefore waterbodies cannot be assessed as impaired by this pollutant for 303(d) reporting purposes.

Comment 18: On the behalf of Riverkeeper, Inc., PELC commented that, “Riverkeeper also appreciates that DEC has listed Lake Washington and Browns Pond Reservoir as impaired for phosphorus… However, Riverkeeper is concerned about DEC’s placement of these waterways on Part 3b, claiming that the suspected source for both waterways is ‘Unknown.’”

Response 18: All sources cited in the 303(d) List are suspected sources and providing suspected sources on the List is not a CWA 303(d) requirement. If and when a TMDL or other restoration measure to address the impairments to the waterbodies is begun, it will examine all potential sources of phosphorus to the subject waters to determine the most effective control strategy.

Comment 19: The Town of Montgomery Conservation Advisory Council commented that they support the added listings for the Wallkill River, Lower, Main Stem (1306-0027), Wallkill River, Middle, Main Stem (1306-0038), Wallkill River, Upper, and Minor tribs (1306-0017), Tribs to Middle Wallkill (1306-0061), and Quaker Creek and tribs (1306-0025) as impaired by Phosphorus.

Response 19: NYSDEC acknowledges this comment.

Comment 20: On the behalf of Riverkeeper, Inc., PELC commented that, “Riverkeeper appreciates that DEC has taken the important step of listing the Wallkill River and certain tributaries as impaired for phosphorus… However, Riverkeeper objects to the placement of these waterbodies on Part 3c of the Draft List, and urges DEC to develop a TMDL to adequately address the impairments.”
**Response 20:** NYSDEC’s ambient water quality sampling of the Wallkill was performed in the summer of 2017. The results from that sampling were used to update the assessments for the Wallkill segments and inform additions to the Draft 2018 List.

Concurrent with the 2017 reassessment of the Wallkill, NYSDEC staff began examining permitted dischargers within the sub-basin. Work by NYSDEC to update these permits has begun. Per 33 U.S.C. § 1313(d)(1)(A), addition of a water to the 303(d) List (and the subsequent TMDL) is not required until efforts to meet WQS through implementation of basic effluent limits have been exhausted. The placement of the Wallkill segments in Part 3c of the 303(d) List is appropriate as updates to the applicable SPDES permits are undertaken as ‘other restoration measures.’

**Comment 21:** The Orange County Department of Public Works – Division of Environmental Facilities & Services and Orange County Sewer District #1, (collectively “the County”) commented regarding Upper Ramapo River (1501-0037) and impacts from total dissolved solids (TDS). Per the County’s comment, “The data and analysis provided clearly demonstrates that the Upper Ramapo River is impaired and should be included on the Section 303(d) List. The County has been on record bringing information to the attention of the Department that clearly supports a determination of impairment.”

**Response 21:** The data submitted by the County did not meet NYSDEC’s quality assurance/quality control (QA/QC) requirements detailed in the CALM; thus, the data is not acceptable for listing purposes.

**Comment 22:** Peconic Estuary Protection Committee commented in support of moving waterbodies impaired for their shellfishing best use from Integrated Report (IR) Category 4a (‘TMDL development is not necessary because a TMDL has already been established for the segment/pollutant’) to Part 2c (‘Multiple/Categorical Waterbody Segments with Impairment Requiring TMDL Development - Waterbody Segments Impaired due to Shellfishing Restrictions’) of the Draft 2018 List. The commenter also requested that NYSDEC consider the comments provided separately by the Committee’s member municipalities on the Draft 2018 List regarding specific shellfishing waters.

**Response 22:** NYSDEC acknowledges the Peconic Estuary Protection Committees support of the shellfishing listings in the Draft 2018 303(d) List. Comments from the Committee’s member municipalities are addressed in the responses to Comments #23 through #28.

**Comment 23:** There were several commenters representing municipalities on Long Island with waters in their jurisdiction that are currently listed for shellfishing impairments due to pathogens (fecal indicator bacteria). The bulk of these comments were very similar in context, so they have been consolidated into tabular form below.

**Response 23:** Per the CALM, NYSDEC’s designation of waters as impaired for shellfishing use is based on certifications issued by NYSDEC Division of Marine Resources (DMR)
Shellfisheries Program and the National Shellfish Sanitation Program. When DMR has monitored a Class SA waterbody and determined the shellfishing area must be closed due to the measured fecal coliform bacteria, that water is not meeting its best use of shellfishing and is therefore impaired. Additionally, NYSDEC does consider additional data to assess waterbodies where DMR shellfishing closures are based on administrative reasoning only (e.g. presence of marinas, boat moorings, and/or discharge pipes).

All waters that are determined to be impaired for shellfishing are listed in Part 2c of the NYS 303(d) List. This placement within the 303(d) List groups waters with impairments that can be effectively addressed through multiple-waterbody TMDLs. Having these waterbodies in different parts of the List is counterproductive to the multiple-waterbody TMDL approach.

<table>
<thead>
<tr>
<th>Ref.</th>
<th>Commenter</th>
<th>Waterbody (PWL ID)</th>
<th>Comment Details</th>
<th>NYSDEC Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Town of East Hampton</td>
<td>Lake Montauk (1701-0031)</td>
<td>Waterbody should be moved from List Part 2c to Part 3a because closures are administratively based.</td>
<td>Closure is based on monitoring data in addition to administrative reasoning. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>b.</td>
<td>Town of East Hampton</td>
<td>Georgica Pond (1701-0145) Oyster Pond/Lake Munchoque (1701-0169)</td>
<td>Waterbodies should be moved from List Part 2c to Part 3c because data is older than 10 yrs. old.</td>
<td>Age of data does not warrant delisting. Waterbodies will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td></td>
<td>Town of East Hampton</td>
<td>Northwest Creek and tidal tribs (1701-0046) Acabonack Harbor (1701-0047)</td>
<td>Waterbodies should be moved from List Part 2c to Part 3b because cited suspected sources (“Urban/Storm Runoff”) are not consistent with current land use in watershed.</td>
<td>Cited suspected source will be updated to “Unknown.” Waterbodies will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>c.</td>
<td>Town of East Hampton</td>
<td>Hog Creek and Tidal Tribs (1701-0277)</td>
<td>If the suspected pollution sources are “Unknown” then the waterbody should be moved from List Part 2c to Part 3b.</td>
<td>Per the CALM, all waters impaired for their shellfishing use are cataloged in Part 2c. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td></td>
<td>Town of Riverhead</td>
<td>Flanders Bay, East/Center and tribs (1701-0030)</td>
<td>Waterbody is no longer sampled by DMR, data is more than 10 years old. Waterbody should be moved to Part 3a of List</td>
<td>Age of data does not warrant delisting. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>e.</td>
<td>Town of Shelter Island Town of Southold</td>
<td>Dering Harbor (1701-0050)</td>
<td>Waterbody should be delisted as the DMR closure is not based on monitoring data, but administrative reasons.</td>
<td>NYSDEC agrees that this waterbody should be assessed as threatened rather than impaired, it will be removed from the Final 2018 List.</td>
</tr>
<tr>
<td>f.</td>
<td>Town of Southampton</td>
<td>Little Sebonac Creek (1701-0253) Penny Pond, Wells and Smith Creeks (1701-0298) Penniman Creek and tidal tribs (1701-0300) Scallop Pond (1701-0354)</td>
<td>Current DMR data is insufficient to support the impaired designation; suspected sources cited do not match current land use.</td>
<td>Verification of water quality is not required for waters previously designated as uncertified by DMR. Cited suspected source will be updated to “Unknown.” Waterbodies will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td></td>
<td>Town of Southampton</td>
<td>Flanders Bay, East/Center and tribs (1701-0030) Sag Harbor and Sag Harbor Creek (1701-0035) North Sea Harbor (1701-0037) Quantuck Bay (1701-0042) Noack Creek and Tidal Tribs (1701-0237) Little Sebonac Creek (1701-0253)</td>
<td>DMR data is insufficient to warrant continued listing, cited suspected sources (“Urban/Storm Runoff”) are not accurate.</td>
<td>Waterbody is listed due to seasonal shellfishing certification by DMR. Cited suspected source will be updated to “Unknown” on the Final 2018 List.</td>
</tr>
<tr>
<td>Ref.</td>
<td>Commenter</td>
<td>Waterbody (PWL ID)</td>
<td>Comment Details</td>
<td>NYSDEC Response</td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
<td>--------------------</td>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>g.</td>
<td>Town of Southampton</td>
<td>Sebonac Cr/Bullhead Bay and tidal tribs (1701-0051)</td>
<td>DMR data is insufficient to warrant continued listing.</td>
<td>DMR has not certified this waterbody for year-round shellfishing, therefore it will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>h.</td>
<td>Town of Southampton</td>
<td>Weesuck Creek and tidal tribs (1701-0111)</td>
<td>DMR data, particularly for cold weather months, is insufficient to warrant continued listing.</td>
<td>DMR has not certified this waterbody for shellfishing, therefore it will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>i.</td>
<td>Town of Southold</td>
<td>Stirling Creek and Basin (1701-0049)</td>
<td>Waterbody should be moved from List Part 2c to Part 3a because closures are based on other pollutants, pathogen monitoring demonstrates compliance.</td>
<td>DMR has not certified this waterbody for shellfishing. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>j.</td>
<td>Town of Southold</td>
<td>Hashamomuck Pond (1701-0162)</td>
<td>Waterbody should be moved from List Part 2c to Part 3c because does not meet the minimum statistical threshold for evaluating sanitary conditions.</td>
<td>DMR has not certified this waterbody for shellfishing. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td></td>
<td>Town of Southold</td>
<td>Spring Pond (1701-0230) West Harbor, Fishers Island (1702-0046) Budds Pond (1701-0234) Wickham Creek and tribs (1701-0378)</td>
<td>Waterbodies should be delisted as the DMR closure is not based on monitoring data, but administrative reasons.</td>
<td>NYSDEC agrees that these waterbodies should be assessed as threatened rather than impaired, they will be removed from the Final 2018 List.</td>
</tr>
<tr>
<td>k.</td>
<td>Town of Southold</td>
<td>Gull Pond (1701-0231)</td>
<td>Waterbody is Class SC and therefore does not need to support shellfishing best use.</td>
<td>The original listing was made in error, the waterbody will be removed from the Final 2018 List.</td>
</tr>
<tr>
<td>Ref.</td>
<td>Commenter</td>
<td>Waterbody (PWL ID)</td>
<td>Comment Details</td>
<td>NYSDEC Response</td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
<td>-------------------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>l.</td>
<td>Town of Southold</td>
<td>Town/Jockey Creeks and tidal tribs (1701-0235) Goose Creek (1701-0236) Richmond Creek (1701-0245) Beach/Island Ponds, Fishers Island (1701-0283) Mattituck Inlet/Cr, Low, and tidal tribs (1702-0020)</td>
<td>Waterbodies should be moved from List Part 2c to Part 3a because DMR did not meet the minimum statistical threshold for evaluating sanitary conditions.</td>
<td>DMR has not certified this waterbody for shellfishing. Waterbodies will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>m.</td>
<td>Town of Southold</td>
<td>West Creek and tidal tribs (1701-0246) Mud/East Creek and tribs (1701-0377)</td>
<td>Waterbody should be moved from List Part 2c to Part 3b because cited suspected sources (“Urban/Storm Runoff”) are not accurate.</td>
<td>Cited suspected source will be updated to “Unknown.” Waterbodies will remain on Part 2c of Final 2018 List.</td>
</tr>
<tr>
<td>n.</td>
<td>Town of Southold</td>
<td>Goldsmith Inlet (1702-0026)</td>
<td>Waterbody is no longer sampled by DMR, data is older than 10 yrs. Waterbody should be moved to Part 3a of List</td>
<td>Per the CALM, age of data does not warrant delisting. Waterbody will remain on Part 2c of Final 2018 List.</td>
</tr>
</tbody>
</table>

**Comment 24:** Town of Southold requests that Marratooka Pond (1701-0129) be moved from Part 1 to Part 3c. The basis of the commenter’s request is that “in-lake recycling of phosphorus from the lake sediment cannot be addressed through a TMDL as the nutrient is already in the lake and is not being discharged to the lake through an addressable load.”

**Response 24:** All sources cited in the 303(d) List are suspected sources and providing suspected sources on the List is not a CWA 303(d) requirement. When a TMDL or other restoration measure to address the impairments to the waterbodies is begun, it will examine all potential sources of phosphorus to the subject waters to determine the most effective control strategy. Marratooka Pond will remain on Part 1 of the Final 2018 List.

**Comment 25:** Town of Southold requests that NYSDEC delist Marratooka Pond (1701-0129) for pathogens. The commenter asserts, “that there is NO water quality data supporting this
assessment. This waterbody is not a bathing beach nor is it a shellfishing area and is therefore not routinely assessed for pathogens.”

**Response 25:** NYSDEC does not have current monitoring data that demonstrates attainment of the relevant WQS for Marratooka Pond. No data or information were submitted for Marratooka Pond during the data solicitation period for the 2018 IR Cycle. Marratooka Pond will remain on the NYS Section 303(d) List of Impaired Waters Requiring a TMDL.

**Comment 26:** Town of Southold requested that Halls Creek, Deep Hole Creek, and James Creek, all portions of the Tidal Tribs to Great Peconic Bay, Northshore (1701-0247) be re-segmented and listed separately for pathogens. The commenter believes NYSDEC Division of Marine Resources, “has not met the minimum statistical thresholds for evaluating the sanitary condition of Halls Creek, Deep Hole Creek or James Creek for shellfishing, these three waterbodies should be listed individually and moved to Part 3a...”

**Response 26:** Determining the specific boundaries for individual waterbody segments is based on a number of considerations, including waterbody type, classification, hydrologic drainage, waterbody length/size, homogeneity of land use, and watershed character. Once defined, waterbody segments generally remain static and are not adjusted to reflect the changes to the area impacted by a specific pollutant. The segmentation of the Tidal Tribs to Gr. Peconic Bay, Northshore (1701-0247) complies with CALM requirements and will remain an intact segment listed on Part 2c of the Final 2018 List.

**Comment 27:** Town of Riverhead commented that East Creek and other unnamed tribs, all portions of Tidal Tribs to Great Peconic Bay, Northshore (1701-0247), are Class SC waterbodies, and therefore should not be assessed for the shellfishing best use.

**Response 27:** Per the CALM, waterbodies are delineated into discrete segments to strike a balance between assessment units that are too small and specific or too large and general. Based on the segmentation, Tidal Tribs to Great Peconic Bay, Northshore is predominantly Class SA and therefore required to support and protect shellfishing use. Continued inclusion of this waterbody/pollutant combination on Part 2c of the Final 2018 List is appropriate due to closures issued by NYSDEC DMR for the segment as a whole.

**Comment 28:** Town of Riverhead commented that Flanders Bay, West/Lower Sawmill Creek (1701-0254), Meetinghouse/Terrys Creeks and tribs (1701-0256), and Peconic River, Lower, and tidal tribs (1701-0259) are Class SC waterbodies and should not be included on NYSDEC’s Draft - List of Integrated Report (IR) Category 4a/b/c Waters - May 2018 as IR Category 4a waterbodies for pathogen impairments.

**Response 28:** The commenter is correct that Flanders Bay, West/Lower Sawmill Creek (1701-0254), Meetinghouse/Terry Creek and tribs (1701-0256), and Peconic River, Lower and tidal tribs (1701-0259) are Class SC waters and should no longer be included as IR Category 4a waters for pathogen impairments. The subject waters had coverage under the shellfishing TMDLs that are being withdrawn because they were adjacent Class SA waters impaired for...
The waters will be removed from IR Category 4a and assigned to IR 3 until updated monitoring data is available.

**Comment 29:** Save the Sound requested that Beaver Swamp Brook, Lower (1702-0126) and Beaver Swamp Brook, Upper, and tribs (1702-0090) be included in the Final 2018 List as impaired by pathogens. The commenter included water quality data for E. coli and fecal coliform from 2014 and enterococci data from 2015-2018.

**Response 29:** NYSDEC will consider Save the Sounds fecal coliform data when making updates to the WI/PWL factsheet for Beaver Swamp Brook, Lower and Beaver Swamp Brook, Upper, and tribs. The factsheet updates could affect the future Listing of these waters but NYSDEC will not make any changes to the Final 2018 List based on the data submitted. The NYSDEC CALM establishes September 30th (of the year prior to the issuing of a Section 303(d) List) as the cut-off date for submitting additional data and information to be considered by NYSDEC for listing decisions. Data submitted after this cut-off date or with public comments on the Draft 303(d) List cannot be considered for new listings.

**Comment 30:** On the behalf of Riverkeeper, Inc., Save the Sound, and the Natural Resources Defense Council, PELC commented that, “Exclusion of Any Waters from the Draft List as ‘Category 4b’ Waters Is Contrary to the Plain Meaning of the Clean Water Act.”

**Response 30:** NYSDEC has added all waters included in the DRAFT - Category 4b Demonstration for New York City Water Quality Limited Segments back into the Final 2018 List, under Part 3c (“Waterbodies Awaiting Development/Evaluation of Other Restoration Measures”). Other former IR Category 4b (“TMDL is not necessary because other required control measures are expected to result in restoration in a reasonable period of time”) waters have also been added back to the List, mostly under Part 3c. For additional details on this topic, please see Comments #38 and #39.

**Comment 31:** Multiple comments were received regarding NYSDEC’s proposal to move NYC waterbody/pollutant combinations to IR Category 4b and to the blanket delisting of a number of NYC waters for floatables/odors. Commenters claimed CSO Long Term Control Plans...
(LTCPs) will not restore water quality in a reasonable period of time and requested that TMDLs be completed for these waterbodies in addition to the existing regulatory actions. A subset of these comments were specific to only the Bronx River and/or Coney Island Creek.

**Response 31:** USEPA has taken no action on NYSDEC’s *DRAFT - Category 4b Demonstration for New York City Water Quality Limited Segments* and NYSDEC has not moved any waterbodies to IR 4b based on this document. For additional details on this topic, please see Comments #38 & #39.

LTCP implementation is in the early phases for many waterbodies in NY Harbor. As such, the necessity of TMDLs for these waterbodies cannot be determined at this time. NYSDEC is deferring TMDLs for the subject waterbodies, placing them on Part 3c of the Final 2018 List.

**Comment 32:** The NAC commented on the delisting of Spring Creek (170-00361) for Dissolved Oxygen & Pathogens and Paerdegat Basin (1701-0363) for Dissolved Oxygen. The commenter requested the data used to justify these delistings.

**Response 32:** The data used to support these delistings is discussed in the response to Comment #51.

**Comment 33:** The NAC commented on the delisting of Eastchester Bay (1702-0007) for pathogen impairments. The commenter requested the data used to justify the delistings.

**Response 33:** The data used to remove Eastchester Bay from IR Category 4b came from the NYC DEP Harbor Survey Program. The data set used during the 2017 update of this assessment, that resulted in the delisting, was from NYC DEP monitoring station ‘E12’ collected during 2016. For the months of June, July, August, and September the fecal coliform geometric means were 15, 57, 33, and 38 colony forming units (cfu)/ 100 mL, respectively. The applicable fecal coliform WQS for Class SC waters such as Eastchester Bay is 200 cfu/100 mL.

**Comment 34:** USEPA commented that NYSDEC’s practice of listing nutrient impairments (nitrogen or phosphorus) along with impairments for low dissolved oxygen (D.O.) on a common line in the Draft 2018 List is not allowed by the CWA. USEPA’s disapproval of the common line listing practice was documented in their comments on the Draft NYS 2016 Section 303(d) List (Draft 2016 List) and their partial approval/partial disapproval decision dated July 10, 2018 on said Final NYS 2016 Section 303(d) List (Final 2016 List). USEPA had additional concerns over NYSDEC’s use of a footnote for ‘Phosphorus/Low D.O.’ and ‘Nitrogen/Low D.O.’ listings that explains the disapproval history and NYSDEC’s approach to TMDL’s for the subject waters.

**Response 34:** No new waterbodies were added to the Draft 2018 List where Nutrient/Low D.O. is cited as the pollutant.
For ease of USEPA reporting, NYSDEC has decided to separate the ‘Phosphorus/Low D.O.’ or ‘Nitrogen/Low D.O.’ into separate lines on the 2018 Final List. These listings will all have a revised footnote #2 that explains low D.O is an observed effect of the corresponding nutrient pollutant. The revised footnote #2 will read as follows:

*The low dissolved oxygen observed in this system is likely an observed effect of the nutrient pollutant also present.*

**Comment 35:** USEPA requested that NYDEC use *E. coli* and Enterococcus data submitted during the data solicitation period to update Waterbody Inventory/Priority Waterbodies List (WI/PWL) assessments, noting there are no WQS associated with these indicators.

**Response 35:** This comment is outside of the scope of the 303(d) List comment/response process. Waters that do not meet State WQS must be placed on the State’s 303(d) List in accordance with the CWA. USEPA’s recommended *E. coli* and Enterococcus criteria are not NYS WQS.

**Response 36:** Regarding five waterbodies impacted by harmful algal blooms (HABs), USEPA states that, “NYSDEC is proposing to delist five waters from the 303(d) list and place them into Integrated Report Category 4c due to ‘algae/weed growth.’ These waters are: Cazenovia Lake (0703-0021), Owasco Lake (0706-0009), Canandaigua Lake (0704-0001), Lake Casse (1302-0100), and Roaring Brook Lake (1301-0037).” USEPA adds, “it is inappropriate to include these five waters in Integrated Report Category 4c.”

**Response 36:** Cazenovia Lake (0703-0021), Canandaigua Lake (0704-0001), Lake Casse (1302-0100), and Roaring Brook Lake (1301-0037) were never on the 303(d) List and are not being delisted. Only Owasco Lake (0706-009) was previously included on the Final 2016 List.

All the waters cited by USEPA experience impacts from HABs. However, none of the subject waterbodies exceed the total phosphorus guidance value (numeric translator of the narrative WQS) of 20 µg/L that NYSDEC uses to protect aesthetic conditions that could affect the best uses of primary and secondary contact recreation. Since this threshold is not exceeded in these waters, NYSDEC considers the observed HABs to be a condition of pollution, not a pollutant, and appropriate for placement in IR Category 4c (“TMDL is not appropriate because the sole impairment is the result of pollution, rather than a pollutant that can be allocated through a TMDL”).

The rationale for moving Owasco Lake to IR Category 4c is explained in the response to Comment #59.

**Comment 37:** USEPA requested that NYDEC expand the explanation of certain suspected sources (‘CSOs, Urban Runoff,” “Urban/Storm Runoff,” and “Urban/CSOs, Municipal”) cited on the Draft 2018 List.
**Response 37:** Citing suspected sources of pollutants on the List is not a CWA 303(d) requirement. NYSDEC provides the suspected sources on the List as a convenience to the user and for internal program needs. An inventory of pollutant sources is determined in the TMDL process.

**Comment 38:** USEPA commented that waterbody/pollutant combinations placed in IR Category 4b must have a 6-element justification associated with them.

**Response 38:** NYSDEC submitted a 6-element IR Category 4b justification for waters in and around New York City to USEPA along with the Draft 2018 List. USEPA acknowledged that they were reviewing the *DRAFT - Category 4b Demonstration for New York City Water Quality Limited Segments* justification provided by NYSDEC.

USEPA has taken no action on NYSDEC’s 6-element justification submitted with the Draft 2018 List. Absent USEPA approval, the subject NYC waters impaired for D.O./Oxygen Demand, Oxygen Demand, Pathogens, and Nitrogen will all be placed on the Final 2018 List in Part 3c. These waters are not appropriate candidates for TMDLs due to the ongoing restoration efforts driven by Consent Orders, Consent Judgements, and LTCPs as detailed in NYSDEC’s 6-element justification. The waterbody pollutant combinations to be added to Part 3c include the following:

<table>
<thead>
<tr>
<th>Segment Name</th>
<th>Assessment Unit ID</th>
<th>Waterbody Class</th>
<th>Pollutant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alley Creek/Little Neck Bay Tribs</td>
<td>NY1702-0009</td>
<td>I</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Alley Creek/Little Neck Bay Tribs</td>
<td>NY1702-0009</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Flushing Creek/Bay</td>
<td>NY1702-0005</td>
<td>I</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Flushing Creek/Bay</td>
<td>NY1702-0005</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Bergen Basin</td>
<td>NY1701-0009</td>
<td>I</td>
<td>Nitrogen</td>
</tr>
<tr>
<td>Bergen Basin</td>
<td>NY1701-0009</td>
<td>I</td>
<td>Oxygen Demand</td>
</tr>
<tr>
<td>Bergen Basin</td>
<td>NY1701-0009</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Thurston Basin</td>
<td>NY1701-0152</td>
<td>I</td>
<td>Oxygen Demand</td>
</tr>
<tr>
<td>Thurston Basin</td>
<td>NY1701-0152</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Coney Island Creek</td>
<td>NY1701-0008</td>
<td>I</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Coney Island Creek</td>
<td>NY1701-0008</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Newtown Creek and tidal tribs</td>
<td>NY1702-0002</td>
<td>SD</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Newtown Creek and tidal tribs</td>
<td>NY1702-0002</td>
<td>SD</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Westchester Creek</td>
<td>NY1702-0012</td>
<td>I</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Bronx River, Lower</td>
<td>NY1702-0006</td>
<td>I</td>
<td>D.O./Oxygen Demand</td>
</tr>
<tr>
<td>Bronx River, Lower</td>
<td>NY1702-0006</td>
<td>I</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Bronx River, Middle, and tribs</td>
<td>NY1702-0106</td>
<td>B</td>
<td>Pathogens</td>
</tr>
<tr>
<td>Hutchinson River, Lower, and tribs</td>
<td>NY1702-0003</td>
<td>SB</td>
<td>D.O./Oxygen Demand</td>
</tr>
</tbody>
</table>
### Parameter

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Classes</th>
<th>Standard</th>
<th>Listing Label 2018-Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil and floating substances</td>
<td>AA, A, B, C, D, SA, SB, SC, I, SD, A-Special</td>
<td>No residue attributable to sewage, industrial wastes or other wastes, nor visible oil film nor globules of grease.</td>
<td>“Oil &amp; Floating Substances”</td>
</tr>
<tr>
<td>Garbage, cinders, ashes, oils, sludge and other refuse</td>
<td>SA, SB, SC, I, SD</td>
<td>None in any amounts.</td>
<td>“Garbage &amp; Refuse”</td>
</tr>
</tbody>
</table>

The generic term “floatables” is not specific to either of these WQSs. This ambiguity related to the applicable WQS, combined with a lack of data, lead to the conclusion that many of these impairments for floatables were added to previous 303(d) Lists in error. For future

---

assessments and listings, NYSDEC will use “Oil & Floating Substances” to note violations of the first WQS in the table and “Garbage & Refuse” to denote impairments related to the second WQS in the table.

Based on comments received and additional research, NYSDEC will be taking the following actions in the Final 2018 List:

a) All waters previously listed for an impairment due to ‘odor’ will be removed from the List and/or IR Category 4. There is no quantitative data available to support any of these listings.

b) Waters of New York Harbor previously on the Final 2016 List or in IR Category 4b with floatables identified as the impairing pollutant, will be moved to Part 3c of the Final 2018 List. The impairing pollutant will be cited as “Garbage & Refuse” to represent the current NYS narrative WQS of “Garbage, cinders, ashes, oils, sludge and other refuse” for SA, SB, SC, I, and SD class waters. For this subset of waters, the New York City Department of Environmental Protection (NYC DEP) Floatables Monitoring Program Progress Report (March 2018) provides valid data that quantifies, using a 1-5 rating system, the floatable/garbage impacts to waters of the Harbor. The Progress Report provides detail on development of the rating system used by NYC DEP and provides pictures of what each rating category for floatables/garbage should look like. The NYC DEP floatables monitoring program includes data from 2006 to date and currently monitors up to 126 sites throughout the Harbor. Survey sites are monitored weekly during the summer and one to two times per month during the off-season for floating garbage and refuse.

NYC DEP has also committed extensive time and effort to control floating garbage and refuse in the waters of the Harbor. Historically, the NYC DEP floatables monitoring and collection efforts were driven by the 2005 Citywide Comprehensive Floatables Plan - Modified Facility Planning Report. The Comprehensive Floatables Plan originated due to various Combined Sewer Overflow (CSO) Consent Orders between NYSDEC and NYC DEP. More recently, the NYC Municipal Separate Storm Sewer System (MS4) Permit mandated additional floatables controls which are memorialized in the NYC Stormwater Management Program (August 2018). NYC has committed $9.2 billion to various CSO control efforts that include capture of trash from wastewater and on-the-water trash collection. USEPA recognizes NYC’s floatable control efforts on their Trash Free Water’s website as an acceptable TMDL substitute. These waters will be placed on Part 3c of the Final 2018 List and defer TMDLs development while NYC DEP continues their current floatable trash abatement efforts.

c) The remainder of the floatables-impacted waters proposed for delisting will remain delisted in the Final 2018 List due to a lack of data. These waters lack validated and representative measurements for the presence and impacts of “Oil & Floating Substances” or “Garbage & Refuse.” The delisted waters include: Two Mile Creek and

4 https://www.epa.gov/trash-free-waters/clean-water-act-and-trash-free-waters
tribs (0101-0005) Scajaquada Creek, Lower, and tribs (0101-0023), Scajaquada Creek, Middle, and tribs (0101-0033), Mohawk River, Main Stem (1201-0093), Utica Harbor (1201-0228), Mohawk River, Main Stem (1201-0010), Saw Mill River (1301-0007), Mohawk River, Main Stem (1201-0094), Larchmont Harbor (1702-0116), Mamaroneck Harbor (1702-0125), Milton Harbor/Lower Blind Brook (1702-0063), Port Chester Harbor (1702-0260), and New Rochelle Harbor (1702-0259).

**Comment 40:** USEPA requested that NYSDEC detail how it calculates geometric means (GM) to assess compliance with fecal coliform WQS.

**Response 40:** NYSDEC uses the calculation instructions provided in 6 NYCRR Part 703.4 to calculate the GM and assess compliance.

**Comment 41:** USEPA requested NYSDEC discontinue use of the pollutant titles “pesticides,” “priority organics,” “other toxics,” and “pathogens” for listed waterbodies. USEPA states that all cited pollutants must have a corresponding WQS.

**Response 41:** USEPA’s concerns are valid and supported by statute. However, the data required to split out the grouped pollutants into individual impairments supported by an underlying WQS is not immediately available to NYSDEC, with one exception.

For waterbodies with cited impairment for “pathogens,” NYSDEC clarifies that the pollutant for these waters is “Fecal Coliforms.” Any TMDL developed to restore these waters would be developed to the goal of meeting the fecal coliform WQS.

**Comment 42:** USEPA requested that NYSDEC (1) submit an Integrated Report via ATTAINS; (2) provide to the public supplemental documentation and information in support of proposed changes to the 303(d) List; and (3) permit an extension of the public comment period.

**Response 42:** The actions USEPA seeks are outside the scope of the CWA 303(d) Listing process. NYSDEC currently meets all statutory and regulatory requirements in its 303(d) and 305(b) programs, including time allotted for public comment. Integrated Reporting and use of ATTAINS are presented in USEPA guidance documents, not in statute or regulation.

**Comment 43:** USEPA commented on NYSDEC’s footnote #14 in the Draft 2018 List regarding the Jones Inlet/Jones Bay (1701-0373) listing for nitrogen impairment. The footnote from the Draft 2018 List states:

“Per 40 CFR Part 130.7 (d)(2), the USEPA Regional Administrator may identify additional impaired waterbody/pollutant combinations requiring a TMDL through their disapproval action on a state’s 303(d) List, and must subsequently establish the loads (TMDLs) associated with these added listings. Jones Inlet/Jones Bay (1701-0373) has been added to the NYS 303(d) List of Impaired TMDL Waters as per USEPA R2’s final partial approval/disapproval decision dated 4/23/2015. This waterbody/pollutant combination is not part of NYS’s List of record and is not part of NYS’s TMDL planning process. The listing has
been added to NYS’s 303(d) List as a convenience to List users and a courtesy to USEPA R2. The responsibility to establish a TMDL or alternative plan for this water lies entirely with USEPA R2. Any questions on the validity of the cited pollutant or pollutant source must also be addressed to USEPA R2. NYSDEC’s assessment of Jones Inlet/Jones Bay conclude that nitrogen concentrations and coverage of macroalgae (ulva) growing in the Inlet/Bay are both very low. The ulva impacts observed are due to excessive macroalgae growth in adjacent waters of the Western Bays, where nitrogen concentrations are significantly higher, which then wash into Jones Inlet/Bay due to the prevailing currents. NYSDEC concluded that this waterbody is impaired by algal/weed growth, but feels this impairment is due to pollution, not a pollutant, and therefore more appropriately recorded in Integrated Report Category 4c.”

USEPA’s concerns with the footnote include:

a) NYSDEC’s assignment of TMDL responsibility to USEPA
b) NYSDEC’s statement that the Jones Inlet listing for nitrogen was required by USEPA and not a State decision
c) NYSDEC’s assertion that IR Category 4c is the most appropriate placement for Jones Inlet

Response 43: NYSDEC considered the issues raised by USEPA on the footnote and the available data for the waterbody. Jones Inlet/Jones Bay (1701-0373) will not be included on the Final 2018 List but will remain in IR Category 4c.

NYSDEC’s assessment of Jones Inlet/Jones Bay conclude that nitrogen concentrations and coverage of macroalgae (ulva) growing in the Inlet/Bay are both very low (mean summer ammonia <25 µg/L, nitrate <6 µg/L, nitrite <1 µg/L). The ulva impacts observed are due to excessive macroalgae growth in adjacent waters of the Western Bays, where nitrogen concentrations are 4-16 times higher than those found in Jones Inlet/Bay. Excess ulva growing in the nitrogen-rich western bays then washes into Jones Inlet/Bay due to the prevailing currents. The nitrogen differential between the western portions of the bay and Jones Inlet/Bay are substantiated in the Town of Hempstead Water Quality Report 1975 – 2012. NYSDEC concluded that this waterbody is impaired by algal/weed growth, but not nitrogen. The ulva conditions in Jones Inlet/Bay is due to pollution, not a pollutant, and therefore more appropriately recorded in Integrated Report Category 4c.

Comment 44: Regarding NYSDEC’s elimination of “Appendix A - Smaller Lakes Impaired by Atmospheric Deposition (Acid Rain)” of the 303(d) List, USEPA requested “documentation indicating that NYSDEC resegmented the waters by consolidating the smaller segments into the larger segments. Please also provide the data that demonstrates that the larger segments

meet the applicable pH criterion or that the impairment affects less than 10-20% of the larger segments length/area.”

**Response 44:** NYSDEC analyzed the areas of the former Appendix A waters against the areas of the ‘parent’ segments they are being incorporated into. Per the CALM, in cases where these acid impaired lakes comprise more than 20% of the total segment areas, the parent waterbody is considered impaired and has been added to the Final 2018 List under Part 2a (“Multiple/Categorical Waterbody Segments with Impairment Requiring TMDL Development - Waterbody Segments Impaired by Atmospheric Deposition/Acid Rain”). The waterbodies added to Part 2a in the Final 2018 List are as follows (former Appendix A listings in [ ]):

- Mountain Ponds (0902-0108) [Mountain Pond (0902-0019)]
- Mud Pd, Long Pd, Little Clear Pd (0902-0005) [Unnamed Pond #3-170 (0902-0009)]
- Mountain Pond (0903-0176) [Rock Pond (0903-0013)]
- Dillon Pond (0905-0186) [Lost Pond (0905-0040)]
- Towbridge Brook and tribs (1003-0070) [Unnamed Pond #2-079 (1003-0027), Unnamed Pond #2-080 (1003-0028), Marsh Pond (1003-0020)]

NYSDEC will include all the former Appendix A lakes in the applicable WI/PWL Fact Sheets for all parent segments. If there are no other water quality issues in the parent segment, the new combined segments will be assigned to IR Category 3 (Unassigned/Needs Verification) for the purpose of 305(b) reporting.

Related to the elimination of Appendix A due to segment area, NYSDEC also proposed the delisting of Ridders Pond (1701-0176) and Spring Pond/Lake (1701-0230), both impaired by Chlordane and listed under Part 2b (“Multiple/Categorical Waterbody Segments with Impairment Requiring TMDL Development - Waterbody Segments Impaired due to Fish Consumption Advisories”). Both segments were less than the 6.4-acre area threshold specified in the CALM for WI/PWL inclusion. A similar area analysis was performed for these ponds against the total area of their parent segments. Ridders Pond is approximately 9% of its assigned parent segment, Lake Success (1702-0139), and therefore does not justify a listing. Spring Pond is approximately 32% of its parent segment, Upper Yaphank Lake (1701-0323), and that parent segment will be added to the Final 2018 List under Part 2b.

**Comment 45:** USEPA commented regarding NYSDEC’s elimination of “Appendix B - Listed Waterbodies Not Meeting Dissolved Oxygen Standards, Pending Verification of Use Impairments/Pollutants/Sources” of the 303(d) List.

**Response 45:** NYSDEC originally proposed delisting these 39 waterbodies because they support healthy fisheries and their best use of fishing. Also, the waterbodies contained in the former Appendix B do have low D.O. concentrations driven largely by natural conditions. NYSDEC will incorporate them into the main list under Part 3a. All former Appendix B waters added to Part 3a will have “Natural Conditions” listed as a Suspected Source and include the following footnote:
Morphology and other natural conditions may contribute to periodic dissolved oxygen (D.O.) depletion at lower depths in this water. However, bottom water conditions are not necessarily representative of the waterbody as a whole. The best use of fishing within this waterbody is fully supported. No anthropogenic pollutants driving D.O. excursions within the waterbody have been identified.

Milburn Pond (1701-0053), a former Appendix B segment, does not meet the 6.4-acre area threshold for inclusion in the WI/PWL and was not added to the Final 2018 List.

Comment 46: USEPA commented that four lakes subject to their partial disapproval decision on the Final 2016 List issued July 10, 2018 were not included Appendix B of the Draft 2018 List. These subject waterbodies are: Upper Cassadaga Lake (0202-0001), Cuba Lake (0201-0016), Laurel Pond (1701-0128), and Fort Pond (1701-0122).

Response 46: All lakes included in the former Appendix B of the 303(d) List are impacted by naturally occurring low D.O. conditions. Consistent with the response provide for Comment #45, NYSDEC has included Upper Cassadaga Lake (0202-0001), Cuba Lake (0201-0016), Laurel Pond (1701-0128), and Fort Pond (1701-0122) on Part 3a of the Final 2018 List.

Comment 47: USEPA commented that “The NYSDEC has proposed to delist nine waterbody/pollutant combinations ‘due to reassessment indicated uses are fully supported.’ …The NYSDEC did not provide data or information for the following eight waterbody/pollutant combinations that demonstrates that the applicable water quality criterion is met: Cobleskill Creek, Lower, and tribs (1202-0019) for Pathogens, Ninemile Creek, Lower, and tribs (1201-0014) for Pathogens, Red Creek and tribs (0402-0024) for Unknown (boil impacts), Jaycox Creek and tribs (0402-0064) for Phosphorus, Jaycox Creek and tribs (0402-0064) for Silt/Sediment, Spring Creek (1701-0361) for D.O./Oxygen Demand, and Paergedat Basin (1701-0363) for D.O./Oxygen Demand. Please provide this data.”

[USEPA’s comment calls out nine waterbody/pollutant combinations, only seven were listed in the comment.]

Response 47:
- Cobleskill Creek, Lower, and tribs (1202-0019) was originally listed for pathogens in 2004. There was no total or fecal coliform data used to establish this listing, it was based on sanitary survey observations in 2001 by Schoharie County Department of Health and NYSDEC Region 4 staff. There has been no follow-up monitoring since that survey. The waterbody/pollutant combinations will remain listed in the Final 2018 NYS Section 303(d) List pending follow-up monitoring and reassessment.
- Ninemile Creek, Lower, and tribs (1201-0014) was originally listed for pathogens in 2004. The listing was based on NYSDEC’s 2002 reassessment that identified failing on-site septic systems in and around the Village of Holland Patent as a pathogen source. Sewering of the Village was completed in 2005. Monitoring of Ninemile Creek in 2016 measured fecal coliforms at a geometric mean of 124 cfu/100 mL and total coliforms at a
monthly median of 420 cfu/100 mL. Ninemile Creek is meeting current coliform WQS and therefore, it will remain delisted in the Final 2018 List.

- Red Creek and trib (0402-0024) was originally listed in 2010 for unknown biological impacts. The listing was a result of macroinvertebrate sampling conducted in 2004 that yielded a biological assessment profile (BAP) score of 4.67, just below NYSDEC’s threshold of impairment of 5.0 per the CALM. Follow-up sampling conducted in 2014 yielded a BAP score of 5.62. Therefore, the Red Creek will remain delisted in the Final 2018 List.

- Jaycox Creek and trib (0402-0064) was originally listed in 2004 for phosphorus and silt/sediment. These listings were based on a macroinvertebrate BAP scores from 1999 sampling of 2.89, well below the 5.0 threshold for impairment in the CALM. Sampling in 2004 at the same location yielded a BAP score of 5.46, and sampling in 2014 improved to a score of 6.16. Therefore, Jaycox Creek will remain delisted in the Final 2018 List.

- The delisting of Spring Creek (1701-0361) and Paergedat Basin (1701-0363) are discussed separately in the response to Comment #51.

Comment 48: Regarding the delisting of Brooktrout Lake for pH, USEPA “requested more information regarding how this [the water’s inclusion in the Forest Preserve] relates to the applicable water quality standards for these waters and if so, whether the applicable water quality standards are met.”

Response 48: Brooktrout Lake (0801-0009) falls completely within the Adirondack Forest Preserve (FP) and as such it is to be maintained in its forever wild state. This also means it has no numeric WQS applicable to it. Because there are no numeric WQS applicable to FP waters and the ‘natural’ pH of many of these waters are unknown, the 2006 and 2014 TMDLs for acid impaired lakes used acid neutralizing capacity (ANC) as a recovery goal for the protection of aquatic life. Monitoring data shows Brooktrout Lake is exceeding the water quality target (ANC > 11 µeq/L) from the EPA approved TMDLs. Additionally, the fish population is recovering in the lake and natural reproduction is occurring. Therefore, Brooktrout Lake will remain delisted in the Final 2018 List.

Comment 49: USEPA requested NYSDEC “provide documentation of NYSDEC’s resegmentation” and how it relates to the delisting of Milton Harbor/Lower Blind Brook (1702-0063) for Silt/sediment impairment.

Response 49: The re-segmentation of Blind Brook/Milton Harbor performed in 2017 WI/PWL update grouped the estuary waters into one segment and the freshwater portions of Blind Brook into another. The historic water quality data for each segment are carried over to the new segments, reflective of current NYSDEC monitoring and assessment practices. There is no data to support silt/sediment impairment in segment 1702-0063.

Comment 50: USEPA commented that “Gowanus Canal (1701-0011) is included on the ‘List of

---

7 Data: https://nwis.waterdata.usgs.gov/usa/nwis/qwdata/?site_no=01337020
Integrated Reporting (IR) Category 4a/b/c Waters’ as a waterbody/pollutant combination in Integrated Report Category 4b without a demonstration justifying its inclusion in Integrated Report Category 4b. Please provide an adequate 4b demonstration or provide good cause (see 40 CFR § 130.7(b)(6)(iv)) for not listing this waterbody/pollutant combination.”

**Response 50:** The Gowanus Canal listing for Oxygen Demand has been moved from IR Category 4b to the 2018 Final Lind under Part 3c.

**Comment 51:** USEPA requested NYSDEC “provide an adequate 4b demonstration or provide good cause (see 40 CFR §130.7(b)(6)(iv)) for not listing…” Spring Creek (1701-0361) for Pathogens and Oxygen Demand and Paerdegat Basin (1701-0363) for Oxygen Demand.

**Response 51:** Spring Creek and Paerdegat Basin are being delisted for good cause based on data submitted by the NYC DEP during the data solicitation period for the Draft 2018 List. The data provided demonstrates that Spring Creek and Paerdegat Basin met the applicable WQS for fecal coliform and dissolved oxygen.

The Spring Creek data set spans February 2014 to September 2017. The historical fecal coliform geometric means for July 2014 and August 2014 show exceedances of the WQS but beyond those two months, all remaining months with five or more samples showed compliance with the 200 cfu/100 mL WQS. The period spanning June 2015 to September 2017 shows a three-year trend of 100% compliance with the fecal coliform standard. When examining the 2015-2017 data for dissolved oxygen in Spring Creek, the data demonstrates a 98% compliance rate with the 4.0 mg/L D.O. standard.

The data submitted for Paerdegat Basin also spans February 2014 to September 2017 and showed 99% compliance with the applicable Class I WQS for dissolved oxygen of ≥4.0 mg/L. There was a single excursion below the WQS on 8/9/2017 for both the top and bottom depth sample, but the 162 other data points in the set showed compliance with the WQS.

NYSDEC acknowledges that Spring Creek (1701-0361) for Pathogens and Oxygen Demand and Paerdegat Basin (1701-0363) for Oxygen Demand were erroneously included as IR Category 4b waters in the Draft - List of Integrated Report (IR) Category 4a/b/c Waters - May 2018 document released with the Draft 2018 List. The correct placement of these waters was in the Draft 2018 List, under Part 3c, as items redlined for delisting, noting that the formerly impaired uses are now fully supported.

**Comment 52:** Regarding the delisting of Muscoot River, Lower and minor tribs (1302-0049) for ammonia and dissolved oxygen, USEPA commented that “NYSDEC only assessed the Hallock Mill Brook section of the river stating that the failing wastewater treatment plant discharging to Hallock Mill Brook was the primary cause of impairment. The EPA requested that the NYSDEC further explain the reason for delisting given that it only
assessed a portion of the segment.”

**Response 52:** USEPA is correct that NYSDEC’s reassessment did not look at portions of the segment beyond where the historical ammonia and low dissolved oxygen impairments existed. The Muscoot River, Lower and minor tribs (1302-0049) will be added back onto Part 3b of the Final 2018 List for ammonia and oxygen demand impairments. Part 3b is appropriate because the upgraded Yorktown Heights WWTP can no longer be cited as the primary pollution source.

**Comment 53:** USEPA commented that NYSDEC is proposing to delist Schroon Lake (1104-0002) for PCBs because the associated fish consumption advisory has been withdrawn. USEPA requested the PCB data to support such a delisting.

**Response 53:** As detailed in the CALM, listings in Part 2b of the NYS 303(d) List are based on New York State Department of Health (NYSDOH) advisories not to eat fish of a particular species/size from that water due to pollutants measured in the fish flesh. Conversely, when such NYSDOH advisories are lifted, the associated waters can be delisted.

NYSDOH monitored and tested Lake Trout from Schroon Lake and found that the PCB concentrations in the fish flesh were below the 1 ppm guideline that triggers a species-specific consumption advisory. The fish consumption advisory issued by NYSDOH in April 2017, removed the “eat no more than one meal per month” of Lake Trout from Schroon Lake due to PCBs advisory, justifying the delisting of the waterbody. See https://www.health.ny.gov/environmental/outdoors/fish/health_advisories/regional/adirondack.htm.

**Comment 54:** USEPA requested that NYSDEC provide data and information to support the removal of the Nissequogue River, Lower (1702-0025) from IR Category 4c. The cited impairment was “Restricted Passage.”

**Response 54:** There is no documentation of barriers to fish migration in the Nissequogue River, Lower (1702-0025) and therefore it is not impaired by “Restricted Passage.” This portion of the Nissequogue River is an estuary segment with its mouth in Long Island Sound, terminating at the dam that impounds Phillips Millpond. In the segment, the river is tidal and flows freely to and from the point of the millpond dam that forms the border with the upstream segment. There are no conditions or structures within the segment that violate NYSDEC’s narrative WQS for Flow.

**Comment 55:** USEPA commented, “The following waters impaired by mercury cannot be delisted to Integrated Report Category 4a until the EPA approves an amendment to the Northeast Regional Mercury TMDL that would include these waters as covered by the TMDL: Stark Fall Reservoir (0903-0073), Willis Pond (0903-0105), Upper Hudson River, Main Stem (1101-0047), Schroon Lake (1104-0002), and Hinkley Reservoir (1203-0022).”
Response 55: The required information for a TMDL amendment was compiled and submitted to USEPA Region 2 on October 12, 2018. The amendment request included waterbodies impaired for mercury related to NYSDOH fish consumption advisories that had been added to the 303(d) List in the 2010, 2016, and 2018 cycles. The table below summarizes the waterbodies included in the amendment request:

<table>
<thead>
<tr>
<th>Segment Name</th>
<th>Segment ID</th>
<th>List Cycle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chenango River, Middle, Main Stem</td>
<td>0602-0164</td>
<td>2010 (re-segmented)</td>
</tr>
<tr>
<td>Chenango River, Upper, and minor tribs</td>
<td>0602-0165</td>
<td>2010 (re-segmented)</td>
</tr>
<tr>
<td>Beaver River, Lower, and minor tribs</td>
<td>0801-0273</td>
<td>2016</td>
</tr>
<tr>
<td>Limekiln Lake</td>
<td>0801-0388</td>
<td>2016</td>
</tr>
<tr>
<td>Stark Falls Reservoir</td>
<td>0903-0073</td>
<td>2018</td>
</tr>
<tr>
<td>Lower, Upper Browns Tract Pond</td>
<td>0903-0210</td>
<td>2016</td>
</tr>
<tr>
<td>Rollins Pond</td>
<td>1003-0100</td>
<td>2016</td>
</tr>
<tr>
<td>Murphy Lake, Willis Lake</td>
<td>1104-0155</td>
<td>2016</td>
</tr>
<tr>
<td>Lewey Lake</td>
<td>1104-0061</td>
<td>2016</td>
</tr>
<tr>
<td>Hinkley Reservoir</td>
<td>1203-0022</td>
<td>2018</td>
</tr>
<tr>
<td>Willis Pond</td>
<td>0903-0105</td>
<td>2018</td>
</tr>
</tbody>
</table>

USEPA approved the TMDL amendment in a letter dated November 7, 2018. Related to this approval, the mercury impairments for Stark Fall Reservoir (0903-0073), Willis Pond (0903-0105), and Hinkley Reservoir (1203-0022) will be removed from Part 2b of the Final 2018 List and transferred to IR Category 4a. Mercury impairments for Upper Hudson River, Main Stem (1101-0047) and Schroon Lake (1104-0002) will remain in the Final 2018 List and be evaluated for future amendments and eventual delisting.

Comment 56: USEPA commented, “Pursuant to 40 CFR § 130.7(b)(4), please specifically identify the waters targeted for TMDL development within the next 2 years.” USEPA specifically requested prioritization of the shellfishing waters that were removed from IR Category 4a and placed in Part 2c on the Draft 2018 List.

Response 56: Prioritization of the list, including assignment of “*” and “+” annotations, is done in accordance with the NYSDEC TMDL VISION Plan (http://www.dec.ny.gov/docs/water_pdf/dowvision.pdf). The NYSDEC TMDL VISION Plan is not being modified at this time, therefore modifications to the “*” and “+” annotations are not required. The organization of certain waters into Part 2 of the NYS 303(d) List is done because the eventual TMDLs will be drafted to address large groups of waterbodies that may or may not be hydrologically connected.

Comment 57: USEPA commented, “The NYSDEC did not include Peach Lake on the draft
2018 list. Instead, it is erroneously included under Integrated Report Category 4a. The EPA requested that the NYSDEC correct this error and add Peach Lake for pathogens to the 2018 303(d) list.”

**Response 57:** The Draft - List of Integrated Report (IR) Category 4a/b/c Waters - May 2018 listed Peach Lake for pathogens under IR Category 4a. There is an approved TMDL for Peach Lake to address impacts from phosphorus pollution, including a TMDL implementation plan to install a sanitary sewer system to replace failing on-site septic systems. Efforts to sewer the developed areas of the Peach Lake (completed in 2012) watershed will reduce the total and fecal coliforms measured in the Lake. However, the TMDL is not specific to pathogens.

NYSDEC performed fecal coliform monitoring in Peach Lake in the Summer of 2018. Many of the individual samples, collected across two stations, were well below the fecal coliform WQS, but due to lab dilution errors there was not sufficient data to calculate a geometric mean. Additional monitoring of the lake is needed.

NYSDEC acknowledges USEPA’s objections to the inclusion of Peach Lake for pathogens in IR Category 4a. The Final 2018 List will include a pathogen listing for Peach Lake (1302-0004) in Part 3c. The TMDL is deferred due to the parallel and complementary phosphorus controls being implemented in the watershed.

**Comment 58:** USEPA commented that during their partial approval/partial disapproval action dated July 10, 2018 on the Final 2016 List, the EPA identified Minor Tribs to Croton Falls Reservoir (1302-0001) as impaired for dissolved oxygen and phosphorus and NYSDEC did not add these waters back to the List. USEPA stated that the dissolved oxygen and phosphorus impairments for the Minor Tribs to Croton Falls Reservoir should not be included in IR Category 4a.

**Response 58:** There is an approved TMDL for the watershed of the Croton Falls reservoir system to address phosphorus impairments. The recovery metrics in the TMDL are specific to the reservoirs in the Croton system, but the TMDL waste load allocations and load allocations are specific to the tributaries feeding the reservoirs. Efforts to control phosphorus in the watershed will benefit all waterbodies within it.

NYSDEC acknowledges USEPA’s objections to the inclusion of Minor Tribs to Croton Falls Reservoir for phosphorus and low dissolved oxygen in IR Category 4a. The Final 2018 List will include a phosphorus and low dissolved oxygen listings for Minor Tribs to Croton Falls Reservoir (1302-0001) in Part 3c. The TMDL is deferred due to the overall phosphorus controls being implemented in the watershed.
Comment 59: USEPA commented that, “NYSDEC’s Waterbody Inventory/Priority Waters List indicates that Lake Como was included in Integrated Report Category 4c, however, the NYSDEC did not include this water on either the Draft 2018 List or the ‘List of Integrated Reporting (IR) Category 4a/b/c Waters.’”

USEPA also commented that “The NYSDEC included Owasco Lake on the New York State 2016 303(d) list. The NYSDEC is now proposing to delist Owasco Lake from the 2018 303(d) list and place it in Integrated Report Category 4c… Also, the EPA is aware that Owasco Lake is identified as a priority water under the 303(d) program vision and the NYSDEC intends to do a watershed restoration strategy for phosphorus. This water, therefore, should be on the list for the phosphorus.”

Response 59: Both Lake Como (0705-0029) and Owasco Lake (0706-0009) have experienced HABs, but the blooms cannot be explicitly attributed to phosphorus. Average total phosphorus concentrations measured within these lakes do not exceed the total phosphorus guidance value (numeric translator of the narrative WQS) of 20 µg/L that NYSDEC uses to protect aesthetic conditions that could affect the best uses of primary and secondary contact recreation. NYSDEC considers HABs to be a condition of pollution, and appropriate for placement in IR Category 4c. It is also important to note there is no NYS WQS associated with the occurrence of HABs.

Lake Como and Owasco Lake will not be added to the Final 2018 List but will remain in IR Category 4c and, in the case of Lake Como, added to the 2018 Final List of Integrated Reporting (IR) Category 4a/b/c Waters.