

APPENDIX VII

REGULATORY IMPACT STATEMENT

for

Policy on Contaminants in Fish

for

N.Y.S. Department of Environmental Conservation

1. STATUTORY AUTHORITY

Environmental Conservation Law Section 11-0325.1 authorizes the Department of Environmental Conservation to restrict or control feral animals where disease is certified to present a threat to human health, fish and wildlife, or livestock. This certification must be obtained from either the Department of Health (DOH) or Department of Agriculture and Markets (DAM) prior to any action. Disease is interpreted to include actual effects or potential effects caused by chemical compounds as well as biological agents. Thus the human ingestion of chemically contaminated fish can be regulated by the Department following appropriate certification.

2. LEGISLATIVE OBJECTIVES

Consistent with Environmental Conservation Law Section 11-0303.2 of Environmental Conservation Law, this policy action, will aid protection of public health and welfare where chemical contaminants are present. Further, findings will provide an indicator for directing toxic substance control efforts of the Department of Environmental Conservation.

3. NEEDS AND BENEFITS

In the past, decisions and regulations on fisheries affected by chemical contaminants have not been uniform and consistent with public health risks. This has created public anger and confusion which erodes the credibility of and confidence in departmental decisions. This policy statement provides a mechanism for consistent interpretation and implementation of our Departmental mandates while providing necessary public health protection.

4. COSTS

- (a) To state government: See (d) below.
- (b) To local government: None.
- (c) To private regulated parties: The policy imposes no new costs. Implementation of the policy may cause a loss of income from fisheries closures, an increase in income when fisheries are reopened, or no change when a no action decision is reached. The extent of the impact will be dependent on the fishery involved and the area affected.
- (d) To the regulating agency: The Department of Environmental Conservation will remain committed to surveillance of chemical contaminant levels in fish and to enforcement of regulations pertaining to chemically contaminated fisheries. Necessary regulation changes and public notification of regulations and health advice will continue to be functions of the Department. New Costs will include costs of posting waters closed to recreational fishing or newly reopened to fishing. As a result of this new policy an added cost of \$4,000 is anticipated in the first year.

5. PAPER WORK

No new reporting, record keeping, or forms are required. More public documents (e.g. brochures, press releases, reports) may need to be produced as a consequence of more effective education and extension efforts.

6. DUPLICATION

The U.S. Food and Drug Administration (FDA) has the authority to regulate the sale and transportation of food products involved in interstate commerce. DAM regulates the sale and transportation of food within the state. The purpose of this policy is to regulate commercial fisheries to prevent harvesting of fish which would exceed contaminant tolerances established by FDA or DAM and therefore be subject to confiscation and destruction.

7. ALTERNATIVES

The alternatives for managing contamination of commercial and recreational fisheries differ and must be dealt with individually.

A. Commercial fisheries

1. No action

This alternative would eliminate prejudging FDA or DAM enforcement of food tolerances. However, FDA or DAM would be required to confiscate fish in the marketplace and subsequently destroy the fish on discovery of contamination. This activity is wasteful of the resource and creates adverse publicity affecting consumers as well as businesses. In addition, many contaminated fish would probably elude food surveillance efforts of FDA and DAM thus creating an unacceptable public health risk.

2. Use a single threshold for opening and closing fisheries

The variability of contaminant concentrations in fish is high. Thus, a few individual fish in a sample may strongly influence the average chemical concentration in the sample population. When average contaminant levels approach the single threshold, the possibility exists for frequent opening and closing of the fishery as the average fluctuates around the threshold. This response is both undesirable and inappropriate.

3. Use other contaminant criteria for decision making

Alternative criteria may include limits greater or less than established FDA limits. In all waters where commercial fishing is permitted, New York shares the fishery with other states, Canada, or foreign fishermen.

More restrictive limits would place New York fishermen at a competitive disadvantage although potentially providing greater public health protection. Less stringent standards than FDA would be pre-empted by FDA or DAM. Thus, they would not be enforceable.

4. Issue advisories or mark fish from contaminated waters

Advisories in commercial fisheries are impractical since the origin of fish in the marketplace is not readily determined by the consumer. If fish were marked, the market would likely vanish or may adversely affect sales of similar species from uncontaminated waters.

B. Recreational fisheries

1. No action - have no policy

Each new discovery of a contaminated fishery would be dealt with individually. In the past, inconsistencies in responding to these findings have developed. The result is public confusion and anger leading to loss of agency credibility.

2. Prohibit fishing

The public health threat of chemical contaminants is strongly suspected but generally unproven. Microbiological contamination of shellfish has unquestionably produced human illness and death. To treat these different public health threats in the same manner (i.e. to prohibit harvesting) may create public confusion about the different health risks or unduly frighten the public.

3. DEC develop advisories

This alternative usurps the responsibility of the Department of Health and exceeds the mandate to DEC. However, DEC will provide contaminant data and consult with health authorities to provide essential resource information. DEC has the mechanisms necessary to communicate directly with anglers and the lead responsibility for management of natural resources.

4. Provide additional public information

DEC currently informs the public about health risks associated with contaminated fish through publication of advisories in news releases, and the "Fishing, Small Game Hunting, and Trapping Regulations Guide", in correspondence, and at public meetings. Posting health advisories is considered undesirable. The rationale for this decision is found in the environmental impact statement as Appendix VI.

APPENDIX VIII

REGULATORY FLEXIBILITY ANALYSIS

1. Effect on small business

Growth of fishing activity would only occur when a fishery closure is removed or a health advisory becomes less restrictive. The primary impact would be on support industries such as lodging, restaurants, fuel stations. To a lesser degree sales of fishing tackle, boats, and other equipment might be affected. These latter impacts would be most significant where major fisheries are involved such as Lake Ontario salmonids or marine commercial fisheries.

In New York State, only two fisheries are totally closed to fishing, i.e. Onondaga Lake and the upper Hudson River from Fort Edward to the Troy Federal Dam. Reopening these fisheries while retaining restrictive human health advisories would probably produce local growth of fishing related industry as described above. The extent of such growth can only be surmised.

Economic loss can be anticipated for fisheries if a closure is imposed or, to a lesser extent, a restrictive health advisory is announced. For commercial fisheries, the principal loss will be incurred by the commercial fishermen although other industries such as transportation, fish processing, and marketing could suffer some loss. The extent of loss will be dependent on the value of the fish, volume of fish handled, and extent of the fishery closure.

For recreational fisheries, imposition of health advisories may produce an economic loss. However, the extent will be variable dependent on the size and prestige of the fishery affected. For smaller fisheries, the impact will be on local businesses which support the fishery such as lodging facilities, restaurants, fuel stations, and sport shops. For larger fisheries, the impact may also include reduced equipment sales such as boats and fishing tackle. Further discussion of fisheries economics is provided in the environmental impact statement in Sections II.C, III.A.3, and III.B.1.

2. Compliance requirements

Where commercial fisheries are involved, compliance with Department regulations is required. For recreational fisheries, the decision to fish for a chemically contaminated species is that of the angler. Where health authorities declare a public health emergency exists, the Department would issue regulations to close fishing. Angler compliance with the regulation would be required.

No new reporting, recordkeeping or forms are required of any business or individual.

3. Professional services

Compliance with the implemented policy would require no professional services.

4. Compliance costs

No capital expenditures are required for compliance with regulations arising from the policy. However, there will be loss of income where a commercial fishery is closed. Where health advisories are placed on a fishery, there may be loss of income to support industries. The loss of income in each situation is dependent on the fishery and the extent of the action taken. The level of impact is unknown. Further discussion is provided in the Environmental Impact Statement at Section III.A.3.

5. Minimizing adverse impacts

Environmental Conservation Law Sections 11-0303.2 and 11-0325.1 requires the protection of public health and welfare. The policy is designed to provide guidance for consistent decision-making with respect to chemical contaminants in fish flesh.

Chemical contaminants in commercial fisheries must be less than specific tolerances established by the Food and Drug Administration. The only realistic alternative for protecting human health from chemical contaminants in the marketplace is to close the affected fishery. Any other alternative would allow contaminated fish in the marketplace, produce a competitive disadvantage of New York fishermen, or would be unacceptable to the public. The policy minimizes the public impact by assuring decisions are reliable and unlikely to be subject to the vagaries of the data. Commercial fishermen are provided with the basis for decision-making and are assured that decisions will be consistent through time and uniform throughout the state.

With respect to the health advisories for recreational fisheries, the Department provides fisheries contaminants data to the Department of Health for human health evaluation. DEC provides other fishery information and communicates decisions to the affected public. However, the health advisories are the product of public health authorities.

When a chemical contaminant problem is identified, it is incumbent on DEC to identify the source and institute appropriate remedial measures, where possible. These activities are a standard part of the Department's activities and provide the greatest potential for mitigation of impacts.

Coastal Assessment Form

NEW YORK STATE
DEPARTMENT OF STATE

- (a) State agencies shall complete this assessment form for actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by state agencies in making determinations of significance pursuant to the State Environmental Quality Review Act (see § NYCRR, Part 617). If it is determined that an action will not have a significant effect on the environment, this assessment is intended to assist state agencies in arriving at their decision as to certification as required by 19 NYCRR § 600.4.
- (b) If any question in subsection (e) on this form is answered "yes," then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600, or (b) if the action is one for which an environmental impact statement is being prepared, making the findings required under SEQR, § NYCRR, § 617.9. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.
- (c) Before answering the questions in subsection (e), the preparer should review the coastal policies as explained in 19 NYCRR § 600.5. Actions should be evaluated as to their beneficial and adverse effects upon the coastal area.

(d) Description of Action

1. Type of Action

- (a) Directly undertaken, pursuant to: _____
- (b) Funding, pursuant to: _____
- (c) Permit(s), pursuant to: _____
- (d) Planning activity(ies), pursuant to: _____
- (e) Rule, regulation, procedure, policymaking, pursuant to: 11-0325 of Environmental Conservation Law

2. Location of Action, fill in blank(s), as applicable.

Statewide applicability

County(ies)	Town(s)	City(ies), Village(s)	Site

3. Anticipated Start Date of Action: 5 20 85
month/day/year

4. Will the action require review, funding, and/or approval by a federal agency(ies)? If yes, which federal agency(ies) Federal review not required but review by the following U. S. Agencies sought: Food and Drug Administration, Environ. Prot. Agency, National Marine Fisheries Serv., Fish & Wildlife Service.

Coastal Assessment	Yes	No
1. Will the action result in a large physical change to coastal site or physically alter more than two acres of land, land under water, or coastal waters, if located adjacent to the shore, or five acres if elsewhere within the coastal area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Will the action be located in or significantly affect the viability of a significant fish or wildlife habitat identified on the coastal area map?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Will the action have a significant effect on the commercial or recreational use of fish and wildlife resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the action be located in or have a significant effect upon an area identified on the coastal area map as a scenic resource of statewide significance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Will the action have any significant visual effect upon a natural or manmade resource which contributes to the scenic quality of the coastal area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Will the action be located on or significantly affect the conservation of important agricultural lands identified on the coastal area map?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Will the action be located in or have a significant effect upon any area included in an approved local waterfront revitalization program?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Will the action significantly affect existing or the development of future water dependent uses?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the action have a significant effect upon the operation of the State's major ports?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Will the action significantly affect land or water uses in and adjacent to the State's small harbors?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the action require new or expansion of public services or infrastructure into undeveloped or low density areas of the coast?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Does the action involve an energy facility not subject to Article VII or VIII of the Public Service Law?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Will the action be located in or significantly affect development in designated flood or erosion hazard areas, or on a beach, dune, barrier island, or other feature that functions as a natural protection feature against erosion or flooding?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Does the action involve mining, excavation or dredging within coastal waters?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Will the action result in a reduction of existing or potential public access to or along the shore?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Does the action involve the sale or change in use of state-owned underwater lands or lands adjacent to the coastline?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the action affect existing or potential recreation opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Will the action affect any structures, districts, areas, or sites of historic, archeological or cultural significance to the State or nation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(f) If you checked other than (d)(1)(c), and answered yes to one or more questions in subsection (e) on this form, briefly and precisely describe the nature and extent of the proposed action, in the space below, and submit the Department of State copy to the Division of Local Government and Community Services, NYS Department of State, 162 Washington Avenue, Albany, NY 12231.

See attached sheet.

Preparer's Name: Lawrence C. Skinner Telephone Number: 518-457-1769
 Title: Principal Fish and Wildlife Ecologist Agency: Environmental Conservation Date: 12/6/84

L104358-002 (10/82)
Original (Agency copy)
Yellow (Dept. of State copy)

Coastal Assessment Form

Attachment

3. Will the action have a significant effect on the commercial or recreational use of fish and wildlife resources?

The proposed policy could result in the closure of commercial fisheries or, in extreme circumstances, recreational fisheries. These actions would be consistent with state and federal food laws and thus the policy is not creating new conditions which would lead to the closure of commercial fisheries. Such closures or public health advisories could significantly reduce the harvest of selected fisheries.

8. Will the action significantly affect existing or the development of future water dependent uses?

As noted in response to question 3 above, commercial and recreational fishing could be significantly affected.

10. Will the action significantly affect land or water uses in and adjacent to the State's small harbors?

This policy may affect the use of small harbors. Where major fisheries are closed, the potential impact could be significant. For commercial fisheries, no impact is expected unless major fisheries are closed. Health advisories could discourage recreational anglers and diminish harbor use by charter boats, and boating anglers.

17. Will the action affect existing or potential recreation opportunities?

As noted in the response to question 3 above, health advisories or closures could reduce recreational angling opportunities.

APPENDIX X

HEARING OFFICER'S REPORT

Proposed Policy on Contaminants in Fish



New York State Department of Environmental Conservation

MEMORANDUM

TO: Distribution Below
FROM: Robert S. Drew, Chief Administrative Law Judge ^{RSD}
SUBJECT: Hearing Report -- Proposed Policy on Contaminants in Fish
DATE: April 1, 1985

Attached for your information is the joint Hearing Report of Chief Administrative Law Judge Robert S. Drew and Administrative Law Judge Andrew S. Pearlstein, dated March 29, 1985 in the matter of the Department's proposed new uniform policy on contaminants in fish and the accompanying repeal of the present bans on fishing in the Upper Hudson River (between Fort Edward and the Troy Dam) and Onondaga Lake, and on the taking of eels from the Hudson, East and Harlem Rivers.

Sport fishing organizations and local government officials in the Upper Hudson River area were unanimous in their enthusiastic support for opening the River to "catch-and-release" fishing on the basis of the recreational and economic benefits that would accrue to communities along the Upper Hudson River.

In the Onondaga Lake (Syracuse) area there were mixed opinions expressed regarding the reopening of Onondaga Lake to fishing. Some individuals also expressed the fear that lifting the ban would result in some people unknowingly eating dangerously contaminated fish. Additionally, many persons who supported lifting the bans on Onondaga Lake and the Upper Hudson River recommended that those bodies of water be posted with advisories not to eat the fish.

Commercial fishing organizations were strongly opposed to the portion of the proposed policy which would close commercial fisheries when contaminants are found to exceed established guidelines on the ground that their livelihood could be destroyed on the basis of admittedly uncertain scientific evidence. Commercial fishermen also indicated that the proposed policy appears to strongly favor recreational interests over commercial fishing interests.

The New York State Department of State, Westchester County Department of Health, and environmental organizations offered the following major criticisms and recommendations concerning the proposed policy as described in the DEIS: (a) the standards to be applied and procedures to be followed in monitoring fish contaminants and determining fishery closures are too vague; (b) further discussion is needed regarding the health risks from eating contaminated fish; and (c) the proposed methods of disseminating public health advisories are not likely to be successful. Additionally many environmental organizations were

particularly critical of what they perceived as the proposed policy's lack of commitment to protect public health and they supported the posting of contaminated waters.

A copy of this report together with the hearing file is being forwarded to Dr. Edward G. Horn in the Bureau of Environmental Protection for appropriate further action.

In addition to the distribution below, a copy of this report is being sent to Dr. Nancy A. Kim in the New York State Department of Health.

cc: Commissioner Williams
Lang Marsh
Janice Corr
Herb Doig
Ken Wich
Gordon Colvin
Jim Davis
Chuck Bassett
✓ Ed Horn w/file

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 Wolf Road
Albany, New York 12233-0001

In the Matter of the Department's proposed
POLICY ON CONTAMINANTS IN FISH AND PROPOSED REPEAL
OR AMENDMENT OF PARTS 11.1, 11.2 and 11.3 of Title
6 of the Official Compilation of Codes Rules and
Regulations of the State of New York (6 NYCRR), which
regulations currently prohibit fishing in Onondaga Lake,
the taking of any fish from the Hudson River from Fort
Edward south to the Federal Dam at Troy and the taking
of eels from the Hudson River, East River and Harlem
River.

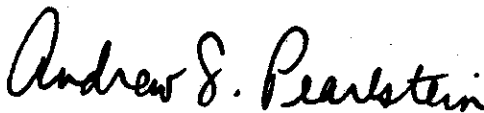
HEARING REPORT

Robert S. Drew and Andrew S. Pearlstein hereby
jointly submit this Hearing Report summarizing
the comments received in the captioned matter.



Robert S. Drew
Chief Administrative Law Judge

and



Andrew S. Pearlstein
Administrative Law Judge

March 29, 1985

PROCEEDINGS

The New York State Department of Environmental Conservation (the "Department") scheduled a series of legislative public hearings to provide an opportunity for the public to comment on the Department's proposed Policy on Contaminants in Fish and the proposed Repeal or Amendment of Existing Regulations in Parts 11.1, 11.2 and 11.3 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). These hearings were held pursuant to Environmental Conservation Law ("ECL") Sections 3-0301.1(a), 11-1303 and 11-0325.1.

In addition to the proposed adoption of the policy on contaminants in fish, the Department also proposes to repeal or amend existing regulations (6 NYCRR Parts 11.1, 11.2 and 11.3) which presently prohibit fishing in Onondaga Lake, and the Hudson River from Fort Edward south to the Federal Dam at Troy, and the taking of eels from the Hudson River, East River and Harlem River. Under the proposed revisions to the regulations recreational fishing would be allowed in these waters with public health advisories not to eat the fish.

A Draft Environmental Impact Statement ("DEIS") prepared pursuant to the State Environmental Quality Review Act (SEQRA) combined with a Regulatory Impact Statement, Regulatory Flexibility Analysis and Coastal Assessment Form prepared pursuant to the State Administrative Procedure Act, was published by the Department in January 1985.

Notice of the availability of the DEIS for review and of a series of legislative public hearings on the proposed Policy on Contaminants in Fish was published in the January 16, 1985 edition of the Department's Environmental Notice Bulletin. An amended notice was also published in the January 23, 1985 edition of the Department's Environmental Notice Bulletin clarifying the proposed amendment of the existing regulations (6 NYCRR Parts 11.1 and 11.2) which prohibit the taking of eels from the Hudson River, East River and Harlem River. Notice of the DEIS and the dates and times for the series of public hearings was also sent to a large number of governmental agencies, fishing organizations and individuals known to have an interest in the proposed policy. Legislative hearings were then held before Robert S. Drew, Chief Administrative Law Judge at the following times and locations:

February 19, 1985 at 1:30 PM
Department of Environmental
Conservation, Central Office
50 Wolf Road, Room 124
Albany, New York

February 19, 1985 at 7:00 PM
Stillwater Central School
North Hudson Avenue
Stillwater, New York

February 20, 1985 at 7:30 PM
Suffolk Co. State Office Bldg.
Veterans Highway
Hauppauge, New York

February 21, 1985 at 7:30 PM
White Plains Dist. Office Bldg.
85 Court Street
White Plains, New York

Additional legislative hearings were also held before Andrew S. Pearlstein, Administrative Law Judge at the following times and locations:

February 26, 1985 at 7:30 PM
Amherst Town Hall
5583 Main Street
Williamsville, New York

February 27, 1985 at 7:00 PM
SUNY College of Environmental
Sciences and Forestry
Syracuse University Campus
Syracuse, New York

The approximate number of persons attending each hearing session was as follows: Albany, 25 persons; Stillwater, 125 persons; Hauppauge, 25 persons; White Plains, 20 persons; Williamsville, 1 person; and Syracuse, 80 persons.

The Department Staff was represented at each of the hearings by Dr. Edward G. Horn, Director, Bureau of Environmental Protection. Mr. Lawrence C. Skinner, Principal Fish and Wildlife Ecologist, Bureau of Environmental Protection also attended some of the hearing sessions.

The New York State Department of Health was also represented at all the hearing sessions with the exception of the Williamsville hearing.

A total of 26 oral statements were presented at the public hearing sessions, with the exception of the Williamsville hearing where no statements were presented. Following the conclusion of the oral statements at each hearing session, the Department Staff also held an informal question and answer period to further explain the Department's proposed policy and to answer either general or specific questions regarding the subject of contamination in fish. Representatives from the Department of Health also participated in answering questions from the public.

The deadline for submitting written comments, as originally stated in the Public Hearing Notice, was March 6, 1985; however, upon good cause shown, the deadline was extended until the close of business on March 20, 1985. Notice of that extension was published in the Department's Environmental Notice Bulletin on March 13, 1985.

A total of 41 written statements were filed at the hearing sessions or with the Department following the hearings prior to the close of the record. Several persons also submitted both an oral statement and a supplementary written statement. All persons and organizations who submitted either oral or written comments and a summary of their respective statements are listed in the Summary of Statements section of this report.

SUMMARY OF PROPOSED POLICY AND AMENDMENTS

The Department is proposing a policy to explain to the public how it will respond to knowledge about chemical contamination in fish which might pose a public health threat. In addition, to be consistent with this proposed policy, the Department is proposing to repeal or amend three regulations which presently prohibit fishing in Onondaga Lake and the Hudson River between Fort Edward and Troy, and the taking of eels from the Hudson River, East River and Harlem River respectively. The Department Staff indicated that the repeal of these fishing bans is not a response to reduced contamination of the fisheries resource but rather to a perceived need by the Department to respond to fishery contamination in a uniform manner throughout the State and in a manner consistent with the public health threat created by chemically contaminated fisheries.

The Department's proposed policy consists of three major components:

1. Comprehensive data would be gathered regarding chemical contamination of fish and shellfish which may pose public health risks.
2. Recreational fisheries would not be closed or posted unless a public health emergency is certified by the Department of Health (DOH) or by the Department of Agriculture and Markets (A&M). Appropriate health advisories for particular fisheries would also be published by DOH after consultation with the Department. These advisories would be updated annually or as required by new data and would be published in the Department's Fishing Guide and disseminated to the public through pamphlets, brochures and press releases.
3. Commercial fisheries would be closed when the chemical concentration of an adequate sample of fish exceeds formal guidelines established by the U.S. Food and Drug Administration (FDA) or the DOH with 95 percent certainty and reopened when the contamination no longer exceeds that level.

The public health impact of this policy would probably be small although some individuals might catch and eat contaminated fish in amounts exceeding the recommended limit within a given time period. The beneficial economic effect of this policy could be significant in locales highly dependent on recreational fishing, although commercial fishermen could be driven out of business in areas closed to commercial fishing. The policy also should improve overall compliance with the Department's recreational fishing regulations.

The Department further indicated that to truly mitigate the public health threats posed by contaminated fish would require the elimination of the sources of the contaminants which in New York are primarily PCB's, Mirex, and heavy metals. Additionally, the Department's environmental permitting programs and water quality standards are designed to abate discharges to acceptably low levels to prevent fish contamination.

SUMMARY OF STATEMENTS

Support for Lifting Recreational Fishing Bans by Fishing Organizations

The following recreational fishing organizations indicated support for the proposed lifting of the ban on recreational fishing in the Hudson River between Fort Edward and the Troy Dam and Onondaga Lake and the subsequent opening of those fisheries to "catch-and-release" fishing, on the basis that the recreational and economic impacts would be beneficial in the localities affected: Albany Area Bass Masters; Rip Van Winkle Bass Masters, Inc., Catskill; Utica Bass Brigade; Stillwater Sportsman's Club; Crown City Bass Masters, Cortland County; Saratoga County Council of Fish and Game Clubs, Inc.; Rochester Bass Masters; Thousand Island Bass Masters; Capital District Bassmasters; Northern Bass Anglers Association, East Greenbush; Trout Unlimited; Save Our Stripers, Massapequa Park; United Mobile Sportfishermen, Inc., Bethpage; and the Sport Fishing Institute, Washington, D.C.

Those organizations listed above who also submitted oral or supplementary written comments are listed separately in the following sections of this Report.

SUMMARY OF ORAL STATEMENTS

Where persons submitted both oral statements and supplementary written statements, their written statements are summarized together with their oral comments in this section of the hearing report.

Albany Hearing Session

Peter R. Borrelli, President, Environmental Planning Lobby, Albany and New York Representative, Natural Resources Defense Council, Inc., New York City, submitted comments on behalf of both organizations. Mr. Borrelli indicated he lived in Rexford, New York and that during the tenure of Conservation Commissioner Peter A. A. Berle he served as a Special Assistant to the Commissioner and was involved in discussions within the Department regarding its obligation to protect the public from exposure to toxic chemicals in fish.

Mr. Borrelli stated that the Department's proposed policy is not environmentally responsible and would contribute unnecessarily to the public's toxic exposure. Additionally, Mr. Borrelli presented the following comments and criticisms of the Department's proposed policy and DEIS:

1. The Department has failed to articulate a reasonable and professional philosophical orientation with regard to the relative values of its interests in: (a) encouraging beneficial use of the fishery resources in waters of the State; (b) promoting uniformity of fishing policy; and (c) protecting public health.
2. Opening the Upper Hudson and Onondaga Lake to recreational fishing is sounding an "all clear" signal even though PCB and mercury levels in those bodies of water continue to exceed FDA tolerances.
3. The survey of fisherman response in the DEIS is invalid since the questionnaire only reflects the collective ignorance of the public and fosters an abdication by the Department of its responsibility to govern.
4. The Department has apparently failed to adequately enforce fishing closures and to educate the public about the dangers of eating contaminated fish.
5. The risks involved in eating contaminated fish may not be as "voluntary" as stated by the Department since anglers may not be informed, the health effects are long-term, and those who eat contaminated fish (particularly pregnant women and young children) include persons who do not actually catch the fish. The Department should also not be in the business of ranking risks.
6. The Department inappropriately questioned the toxicological studies based on animal testing that extrapolate the effects of toxic chemicals on animals to humans since such testing is "the state of the art and the law."
7. The Department should not defer to the Department of Health in the declaration of public health emergencies which would be required to close waters to recreational fishing.
8. The Department should consider more effective enforcement and educational activities such as increased river patrols, posting of contaminated waters, and devising a means of reaching those persons who fish

contaminated waters on a subsistence basis and who do not speak English.

9. If the proposed policy is adopted, a specific self-regulating and self-monitoring protocol for reviewing closures and new data should be established.

Mr. Borrelli also submitted a supplementary written statement on behalf of the Natural Resources Defense Council and Environmental Planning Lobby.

Ian Burliuk, Durham, indicated he was a commercial fisherman on the Hudson River. Mr. Burliuk urged the Department to adopt a more consistent overall policy for the benefit of commercial fishermen and to inform them in advance of any policy changes. Mr. Burliuk also pointed out that consumers buying commercial fish through middlemen may not be aware of the health risks involved.

George Gill, President, Taylor and Vadney Sporting Goods, Albany, expressed his support for the opening of the Upper Hudson to catch-and-release fishing since such catch-and-release programs have proven successful on various trout streams in the State and country.

Stillwater Hearing Session

Robert D'Andrea, New York State Assemblyman, Stillwater, stated his support for the Department's proposal to open the Upper Hudson River to recreational fishing. Assemblyman D'Andrea pointed out that modern means of communication should facilitate disseminating the Department of Health advisories not to eat contaminated fish and that fishermen have historically responded well to catch-and-release programs. Assemblyman D'Andrea also stated that the lifting of the ban would benefit the economy in the Upper Hudson area and would provide a beneficial activity for youngsters.

Paul F. Lilac, Supervisor, Town of Stillwater, expressed his support for the proposed lifting of the ban on recreational fishing in the Upper Hudson. Supervisor Lilac outlined the history of his Town government's efforts to lift the ban and institute a catch-and-release program in the Hudson River between Fort Edward and Troy. He stated that the proposal would allow the Town to take advantage of its greatest natural asset -- the beautiful Hudson River. Mr. Lilac concluded by stating that "this type of fishing in the Hudson River would greatly enhance the economic and recreational importance of the River and this community without endangering the health and welfare of our citizens."

Supervisor Lilac also submitted a written copy of his oral statement.

David Rathbun, Mayor, Village of Stillwater, expressed the support of the Village Board of Trustees and the residents of the Village for the Department's proposal to lift the ban on recreational fishing in the Upper Hudson River and institute a catch-and-release program. Mayor Rathbun stated that the Village Board of Trustees "advocates a policy which provides for the public health through education, not overly restrictive legislation." He also indicated his agreement with the Department's risk analysis and pointed out that many sport fishermen are not motivated by the desire to eat their catch. Mayor Rathbun further cited the positive economic impact the Department's proposal would have on the Stillwater community.

Mayor Rathbun also submitted a written copy of his oral statement.

James R. Peluso, Commissioner of Finance, City of Mechanicville and Governor's Appointee as Saratoga County's Representative on the Upstate Council of Elected Officials, expressed his support for the Department's proposal to open the Upper Hudson River to catch-and-release fishing. Mr. Peluso suggested, however, that the Department conduct a well orchestrated campaign to educate the public on the dangers of consuming contaminated fish and that warnings be posted on the Upper Hudson.

Sam Mormino, President, Capital District Bass Masters, Albany, indicated he was speaking on behalf of the Capital District Bass Masters, Helderberg Bass Masters and Albany Area Bass Masters. Mr. Mormino expressed those organizations' support for the Department's proposal to open the Upper Hudson River and Onondaga Lake to recreational catch-and-release fishing in the interest of providing a realistic response to the public health threat and encouraging consistency in State policy.

Mr. Mormino recommended that health advisories continue to be published in the State Fishing, Hunting and Trapping Guides and on the back of licenses; that recreational fisheries be closed only if there is a health advisory due to contact with the fish; that popular fishing access points be posted with health advisories; and that health advisories be removed when data indicates contaminant levels are below FDA standards.

Jim Salmon, Mechanicville Chamber of Commerce and Executive Director of the Mechanicville Area Community Services Center expressed those organizations' support for the Department's proposal to open the Upper Hudson River to catch-and-release recreational fishing. Mr. Salmon added that the proposal would

enable the Community Center's children's fishing classes to use the Hudson River which flows by the center's "back door."

Janice Bovat, Councilwoman, Town of Schaghticoke stated the Town of Schaghticoke's support for lifting the fishing ban on the Upper Hudson River. Mrs. Bovat added that the proposal would benefit her twelve-year-old son's recreational fishing activities and indicated her belief that the publicity regarding the health advisories would be adequately disseminated.

Robert Gilligan, President, Northern Bass Anglers Association, East Greenbush, stated his organization's support for the Department's proposal to open the Upper Hudson River to sport fishing.

Wayne DeSorbe, Sergeant, Town of Stillwater Police Department, stated his support for the Department's proposal to open the Upper Hudson River to fishing as it would help keep the Town's youth off the streets and channel them into healthy recreational activity.

* * *

Upon a request for a show of hands by Chief Administrative Law Judge Robert S. Drew, approximately 125 persons representing virtually 100% of the persons present at the Stillwater hearing session indicated their support for opening the Upper Hudson River to catch-and-release fishing.

Hauppauge Hearing Session

Robert H. Buss, President, Save Our Stripers, Inc., Massapequa Park, stated his organization's support for the proposed uniform policy on opening recreational fisheries throughout the State.

William E. Miller, Executive Director, United Mobil Sportfishermen, Bethpage, expressed his organization's general support for the Department's proposed policy on contaminants in fish and in particular for the proposed opening of the Upper Hudson River to catch-and-release fishing. Mr. Miller, however, criticized the requirement of 95% certainty before a fishery closure action is taken, since such a requirement would tend to foster undue delay in taking action to protect public health.

Mr. Miller also submitted a written copy of his oral statement on behalf of United Mobile Sportfishermen, Inc.

Joseph Giaramita, Esq., Brooklyn, Attorney for the United Fisherman's Association of New York State, Inc. ("UFA"), Staten Island, submitted oral comments on behalf of the UFA and

subsequent written statements on behalf of that organization as well as on behalf of the East Hampton Town Baymen's Association, Inc.

In his oral comments Mr. Giaramita criticized the following aspects of the Department's proposed policy on contaminants in fish: (a) the lack of an opportunity for the UFA to respond to the DEIS; (b) the Department's power to close commercial fisheries without Department of Health or Department of Agriculture and Markets certification; (c) the Department's exceeding its legislative mandate provided in ECL Section 11-0303.2; (d) the illogicity of proposing a policy to close commercial fisheries despite the admitted inconclusiveness of data regarding adverse health effects in humans caused by chemical contaminants in fish; (e) the inconsistent treatment of commercial and recreational fisheries; (f) the inconsistent treatment of the demonstrated risk posed by contaminated shellfish compared to the proposed policy; (g) the differences in the analytical sampling procedures used by the Federal Food and Drug Administration, Department of Agriculture and Markets, and the Department; (h) the Department's failure to indicate how it intends to encourage beneficial use of commercial fisheries; (i) and the Department's refusal to disclose all relevant data.

Mr. Giaramita stated the UFA's opposition to the Department's proposed policy, concluding that it would arbitrarily and unlawfully adversely affect the commercial striped bass fishing industry.

Mr. Giaramita also submitted a document in the nature of a legal brief entitled Draft in Opposition to Submitted Draft of Department of Environmental Conservation for Proposed Policy on Contaminants in Fish on behalf of the UFA and East Hampton Town Baymen's Association, Inc., as well as a letter on behalf of those organizations dated March 10, 1985 addressed to Governor Mario M. Cuomo. These documents synthesized and supplemented the comments made by Mr. Giaramita in his oral statement.

The major points made by Mr. Giaramita in his brief are as follows:

1. The DEIS admits that the evidence is inconclusive on the adverse effects in humans caused by fish contaminants and that more study is needed. This is in contrast to the situation regarding the consumption of contaminated shellfish, where resulting adverse health effects have been conclusively proven. The drastic action of depriving commercial fishermen of their livelihood should not be undertaken without conclusive substantial evidence that the public health would be adversely affected.

2. Recent scientific studies indicate that PCBs may be largely eliminated from fish under certain conditions and have recommended that the Hudson River striped bass fishery be utilized. All studies agree that more data is needed. Further, the Department's analytical methods are outdated, and, by calculating PCB levels for the entire fish rather than just the edible portions, are biased on the high side.
3. The Department is exceeding its statutory authority under ECL Section 11-0325 in relying upon that statute to close commercial fisheries. The Department may act only as a result of certification by DOH or A&M. Any closure of a fishery would cause irreparable injury to commercial fishermen and the Department should conduct an environmental impact study before any such action is taken.
4. The Department's policy inconsistently favors recreational fishermen over commercial fishermen. The Department has made no effort to communicate with commercial fishing interests on the subject of contaminants and has failed to provide for any flexibility in possible closures of commercial fisheries.
5. The Department should release all relevant data to the UFA and afford commercial fishermen due process with regard to an opportunity to oppose the Department's proposed policy.

The brief by Mr. Giaramita on behalf of the UAF and the East Hampton Town Baymen's Association concluded that "it is respectfully requested that the proposal be dismissed in its entirety due to its inconclusiveness, arbitrariness and for its failure to be supported by substantial evidence ..."

Appendices to the brief submitted by Mr. Giaramita included the following two scientific articles: Pizza, J.C. and O'Connor, J., PCB Dynamics in Hudson River Striped Bass, II. Accumulation from Dietary Sources, 3 Aquatic Toxicology 313 - 327 (1983); and, Califano, R. J., O'Connor, J.M. and Hernandez, J.A., PCB Dynamics in Hudson River Striped Bass, I. Accumulation in Early Life History Stages, 2 Aquatic Toxicology 187 - 204 (1982); and a memorandum dated May 25, 1977 by F. M. Gretch, a chemist with the United States Food and Drug Administration criticizing the Department's analysis of PCBs in fish in the lower Hudson River.

In his letter of March 10, 1985 addressed to Governor Cuomo, Mr. Giaramita indicated that it was written on behalf of the UFA and several fish houses in the Fulton Fish Market, New York City.

The letter repeated many of the comments summarized above in stating the opposition of those organizations to the Department's proposed policy. Additionally, Mr. Giaramita recommended that commercial fishermen be permitted to catch fish between 18 and 24 inches in length since fish of that size have lower levels of PCBs than larger specimens. Mr. Giaramita again concluded by requesting that the organization he represents be afforded a full opportunity to participate in any decisions made that might close commercial fisheries and that any such action be postponed pending the compilation of more conclusive data.

Maryellen McNicholas, Research Analyst, New York State Legislative Commission on Water Resource Needs of Long Island, Hauppauge, questioned the adequacy of the Department's efforts to educate the public on the hazards of eating contaminated fish. She also criticized the vagueness of the proposed policy and the rationale for opening contaminated waters based on past poor enforcement of closures. Additionally she recommended that the policy address the restocking of various contaminated waters; questioned the validity of the cited angler survey described in the DEIS; suggested that posting contaminated waters may be necessary in order to notify the public; and criticized the economic impact analysis in the DEIS.

In a written submission that amplified her oral comments Ms. McNicholas made the following major points on behalf of the Commission:

1. Additional efforts are needed to inform the public on the hazards of eating contaminated fish, especially since marine fishermen do not need licenses and do not receive the Fishing Guide, and notification is not likely to reach non-residents and youngsters.
2. The Department should articulate a policy on the restocking of fish into contaminated waters.
3. The Department should not relax its regulation of contaminated fisheries simply because closures may be difficult to enforce.
4. The Department should not base its policy on the public's perception of the public health risk but on the best scientific evidence available. It is irresponsible of the Department to downplay the potential health risk associated with chemical contaminants and the scientific research in that area based on animal studies.
5. The statement of policy is too vague with regard to: the type and number of species contaminated in a given water body; the extent and protocol for monitoring; and the definition of a public health emergency.

6. Waters warranting advisories not to eat any fish should be posted or closed to recreational fishing.

Arnold Leo, Secretary, East Hampton Town Baymen's Association, Inc., Amagansett, asserted that the Department appears to be biased in favor of the sports fishing lobby and against the commercial fishing industry. Mr. Leo pointed out that the Department apparently solicited the opinion of fresh water sports fishermen but never approached commercial fishermen with regard to their perceptions on this issue.

The East Hampton Town Baymen's Association further indicated that marine fishermen do not receive the Department's Fishing Guide; that the Department's proposal to completely close contaminated fisheries is inconsistent with the flexible treatment of fresh water recreational fisheries; it is not true that most salt water fishermen do not eat the fish they catch; and the Department's estimate of the revenue derived from commercial fishing is far too low. Mr. Leo further claimed that PCB contamination in striped bass in the marine district has been reduced since 1976.

Mr. Leo, in a written statement submitted on behalf of the East Hampton Town Baymen's Association, Inc., supplemented his oral comments with the following points:

1. The Department is acceding to the tendency of fresh water anglers not to obey the law by relaxing its regulation of contaminated fresh water fisheries.
2. A total closure of commercial fisheries in the apparent absence of a public health emergency would constitute an inconsistency in the Department's policy vis-a-vis its flexible policy toward recreational fisheries.
3. The Department's requirement of 95% statistical certainty of contaminant levels exceeding the FDA guidelines for PCBs is too arbitrary.
4. The Department's policy is vague with regard to a protocol for testing of contaminants in the marine district and the definition of a marine fishery closure.
5. The Department failed to justify the proposed total closure of the commercial fishing industry based on admittedly uncertain scientific evidence. In addition, the Department underestimated the true economic value of commercial fishing by not including its value to wholesalers, retailers, restaurants and truckers. Furthermore, it is false that most salt water anglers do not eat the fish they catch.

In conclusion, Mr. Leo claimed that the Department policy would improperly favor sport fishermen over commercial fishermen and is "inconsistent, inadequate, and arbitrary, and its adoption can be viewed by us only as the grounds for legal action against the DEC."

Pat Menichino, Executive Director, People Against Chlordane ("PAC"), Jericho, briefly expressed his organization's objection to the conclusions in the DEIS and specifically criticized the Department's apparent minimizing the health risks involved in eating contaminated fish. Mr. Menichino then indicated his organization's detailed comments would be submitted in a subsequent written statements.

Such a written statement was thereafter submitted by Mr. Menichino wherein the following major comments on the DEIS were presented:

1. The Department and the Department of Health can not properly justify exposing any persons to carcinogens on the basis of purported economic or recreational benefits.
2. The Department should respond to violations of its regulations with increased enforcement rather than by repealing the regulations being violated.
3. The Department irresponsibly minimizes the scientific evidence derived from animal studies on the human health effects from eating contaminated fish.
4. There is no viable distinction between voluntary and involuntary exposure to carcinogens in this matter.
5. Past efforts by the Department in monitoring fish contamination and in educating the public in this area have been poor.
6. Fisheries should be closed where contaminant levels exceed FDA guidelines and all waters should be posted with appropriate health advisories.

Elizabeth Anne Bourque, Ph.D., submitted both draft and final comments on behalf of People Against Chlordane ("PAC") as well as 24 copies of a letter signed by representatives of 9 environmental organizations and 15 individuals from around the country.

This letter, signed by the respective individuals and organizations and submitted by PAC, noted that the Department was knowingly adopting a policy that allows people to eat fish

contaminated above the FDA standards. The letter also included recommendations that the Department ban all fishing in waters where fish contaminants exceed that level; that posting of such waters be employed; and that the sources of contamination be eliminated. The letter further included a criticism of the Department's rationale for relaxing the restrictions based on poor enforcement as indicative of a lack of resolve to solve this problem.

Copies of this letter were signed by representatives of the following organizations: HEAL of Louisiana, Loranger, Louisiana; The Rachel Carson Council, Inc. Chevy Chase, Maryland; National Coalition Against the Misuse of Pesticides, Washington, D.C.; Rhode Island Group Against Spraying Pesticides, Exeter, Rhode Island; Greenpeace U.S.A., Seattle, Washington office; National Network to Prevent Birth Defects, Washington, D.C.; American Defender Network, Chicago, Illinois; Lake County Defenders, Lake Zurich, Illinois; and Northwest Coalition for Alternatives to Pesticides, Eugene, Oregon. Two of the letters signed by individuals indicated New York State addresses while others indicated addresses in the States of Massachusetts, Illinois, New Hampshire, Maine, Maryland, Texas, Minnesota, Pennsylvania, and the District of Columbia.

In her formal comments Dr. Bourque presented the following criticisms and comments:

1. The DEIS is written in misleading language and selectively deletes information the Department has in its own files. For example the DEIS does not clarify that PCB contamination in striped bass in 1983 of 4.8 parts per million (ppm) would exceed the current FDA tolerance of 2.0 ppm. In addition, Appendix 4 of the DEIS omits a number of contaminated bodies of water from the table listing waters in New York where contaminant levels exceed FDA standards or other established guidelines. Dr. Bourque also annexed a computer printout of data from the United States Fish and Wildlife Service on fish contaminants in the Hudson River and Lake Ontario which was not included in the DEIS.
2. The DEIS inappropriately minimizes the adverse health effects from eating contaminated fish. In this respect, the Department has failed to adequately consider the longterm carcinogenic and adverse reproductive effects of fish contaminants and evidence of other routes of exposure. The Department failed to properly interpret the results of the Jacobson, et al. (1984) study assessing birth defects in the Lake Michigan area caused by contaminated fish and should also release the results of current mink reproduction data.

3. The DEIS improperly preempts FDA standards for chlordane and other contaminants in fish.
4. The Department is not following its mandate to protect human health through effective efforts to inform the public. For example, the statewide health advisory in effect now for over 14 years to eat no more than one meal of fish per week from any water of the State is not generally known by the public. The proposed policy indicates that the Department is more interested in economics than in human health.
5. Anglers' criticism of the Department should not be used as a basis for relaxing the regulation of recreational fisheries.

In conclusion, Dr. Bourque, on behalf of People Against Chlordane, recommended that the Department ban all fishing in any waters where fish contaminants exceed FDA tolerances; that all waters be posted with appropriate health advisories; and that sources of contamination such as chlordane be eliminated.

Dr. Bourque also included a copy of her curriculum vitae stating her education and experience.

White Plains Hearing Session

Robert Gabrielson, President, New York State Commercial Fishermen's Association, Nyack, indicated that his organization consists of approximately 125 working fishermen on the Hudson River. Mr. Gabrielson expressed fear that different standards among the States and Federal government could work to threaten the livelihood of commercial fishermen and he recommended that the Food and Drug Administration and National Marine Fishery Service set standards and conduct analyses in a uniform manner for all commercial fisheries.

Syracuse Hearing Session

James C. Tormey, III, Onondaga County Legislator, Syracuse, presented the following comments and criticisms regarding the Department's proposed policy on contaminants in fish:

1. It is unrealistic to believe that most of the people who fish in Onondaga Lake would not eat the fish they catch. The situation regarding the probable eating of fish in bodies of water located in close proximity to metropolitan areas such as Onondaga Lake, must also be distinguished from the situation in bodies of waters such as Lake Ontario, which are fished for trophy-seeking purposes.

2. The comparison made in the DEIS between the health hazards associated with lifting the fishing ban and the health hazards associated with the use of cigarettes and alcohol is ill-advised.
3. The Department must guard against creating a false impression that Onondaga Lake is recovering from toxic pollution in order that real efforts towards the Lake's cleanup are not sidetracked.

Mr. Tormey also submitted a written outline of his written comments.

Bill Lipe, Onondaga County Legislator, Manlius, expressed his support for the Department's proposal to open Onondaga Lake to recreational fishing. Mr. Lipe stated that the proposal could aid data collection in Onondaga Lake; would provide a beneficial activity for youth in the area; and is an example of positive rather than pessimistic thinking. Mr. Lipe further noted that sport fishermen tend to respond well to catch-and-release programs.

Robert D. Hennigan, P.E., Project Director, Onondaga Lake Project, Central New York Regional Planning and Development Board, indicated that the Onondaga Lake Project was being funded by the Department and that the Board would issue a report on Onondaga Lake at the end of March, 1985.

Mr. Hennigan explained that the Onondaga Lake Fishery mercury contamination has persisted and even slightly increased in recent years despite the drastic reduction in mercury input into Onondaga Lake. While expressing support for the Department's proposed lifting of the fishing ban on Onondaga Lake, Mr. Hennigan cautioned that the fish are still not edible and recommended that the Department pursue a vigorous public education program and post the Lake to ensure that the public is aware of the advisory against eating the fish. Mr. Hennigan further indicated that the Department and the Onondaga County Department of Parks and Recreation must be prepared to manage the increased fishing activity and that it remained for the Department to take appropriate steps to eventually eliminate mercury contamination in Onondaga Lake.

Mr. Hennigan also submitted a written copy of his oral comments on behalf of the Onondaga Lake Project.

Les Monostory, Environmental Planner, Onondaga County Environmental Management Council ("EMC"), read a letter signed by the EMC's Chairman, Gary R. Schoonmaker.

The Onondaga County EMC expressed its support for the Department's proposed policy and repeal of the fishing ban on

Onondaga Lake, stating that the overall positive effects of lifting the ban appeared to outweigh the negatives. The EMC listed the following beneficial impacts from opening Onondaga Lake to recreational fishing:

1. Use of Onondaga Lake would be consistent with statewide policy applicable to other waters throughout New York.
2. Public health should not be adversely affected provided there is adequate notice of the health advisory which should continue to be published in the Department's Fishing and Hunting Guide.
3. The proposed policy would encourage greater recreational use of this urban community water resource, thereby heightening public awareness and interest in Onondaga Lake and increasing public support for water quality protection and lakeshore improvement programs.

The EMC also indicated that the addition of fishing to the recreational activities offered at Onondaga Lake is also supported by the Onondaga County Department of Parks and Recreation, which manages the County's extensive lakeshore park and trail system.

Mr. Monostory also added that a majority of EMC members favor replacing the existing signs banning fishing on Onondaga Lake with signs warning of the health advisory against eating the fish.

The letter from Mr. Schoonmaker, Chairman of the Onondaga County EMC, was also submitted for the record.

Bob Ripberger, Syracuse, expressed his support for the proposed repeal of the ban on fishing in Onondaga Lake and pointed out that mercury levels in fish taken from Onondaga Lake have declined significantly since 1970.

Mr. Ripberger stated that benefits accruing from opening Onondaga Lake to recreational fishing would include providing increased recreational opportunities; increasing public awareness of the potential for the Lake; increasing the chance to generate support for State and Federal help to further improve the Lake's water quality; and increase beautification by removal of the stigmatizing posters that ban fishing in Onondaga Lake. Mr. Ripberger also recommended that the Department develop a more specific program for monitoring fish contaminants in Onondaga Lake and that the Department publish the information on preparation of contaminated fish in more readily available form.

Mr. Ripberger also submitted a written copy of his oral comments.

Edwin Seguin, Fulton indicated he was a commercial eel fisherman on Lake Ontario. Mr. Seguin expressed dismay at the inconsistent regulations and guidelines he has been exposed to by various entities of the State and Federal governments.

Mr. Seguin also submitted a letter he wrote to a Representative of the United States Food and Drug Administration ("FDA") in Buffalo inquiring about eel contamination in Lake Ontario and a letter written by Congressman Frank Horton to a Deputy Commissioner of the FDA in Rockville, Maryland, requesting clarification of the jurisdictional responsibilities of the Federal government and State of New York over regulation of the sale of American eels taken from Lake Ontario.

Russell Mangicaro, Syracuse, stated that as a citizen of Syracuse and Onondaga County he is strongly in favor of lifting the ban on recreational fishing in Onondaga Lake and that opening the Lake would encourage beneficial use of the beautiful natural resource that is Onondaga Lake. Mr. Mangicaro also stated his opinion that people in the area are well aware that it is not safe to eat any fish taken from Onondaga Lake.

Patrick Sullivan, Liverpool, indicated that he was speaking on behalf of himself and many of his neighbors in expressing support for the Department's proposal to open Onondaga Lake to recreational fishing. Mr. Sullivan stated that lifting the ban would provide a positive recreational outlet for youth, would boost sales of sporting goods retailers, and would focus public attention on further improving the water quality of Onondaga Lake and its tributary streams. Mr. Sullivan added that there may well be trophy-size fish residing in Onondaga Lake at this time due to the past lack of fishing pressure in the Lake. Mr. Sullivan also recommended that the "No Fishing" signs around Onondaga Lake be replaced with signs banning consumption and warning people about the health effects of eating contaminated fish.

SUMMARY OF WRITTEN STATEMENTS

James N. Baldwin, Deputy Secretary of State, State of New York Department of State, Albany, submitted the comments of the Department of State and provided the name of a contact person at that agency (George R. Stafford, Coastal Program Administrator).

The Department of State presented the following comments directed to certain issues in the Department's proposed policy on contaminants in fish:

1. The policy statement does not include a clear set of standards by which a fishery would be judged contaminated. Further discussion should be provided as

to the meaning of an "adequate sample" needed to determine whether a fishery should be closed. An ongoing institutional arrangement fostering cooperation among all State agencies with authority in this area (such as the Department of Agriculture and Markets and the Department of Health, as well as the Department of Environmental Conservation) should be established. When an action with consequences as serious as those resulting from a closure of a commercial fishery is proposed, the data and methods of collecting that data should be as irrefutable as possible.

2. The Department should conduct a more complete survey of the research on chronic long-term health risks that may result from chemical contaminants in food sources. Such risks are at least equally dangerous to the public as acute health risks. In that regard the Department of State also attached an abstract summarizing a study on birth defects in infants whose mothers ate Lake Michigan fish contaminated with PCBs.
3. The proposed policy appears to treat consumers of recreationally and commercially caught contaminated fish inconsistently by merely advising against consumption of recreationally caught contaminated fish while totally closing contaminated commercial fisheries.
4. The proposed policy does not appear to address the need to inform those individuals who utilize contaminated waters for subsistence fishing, who may not possess fishing licenses, and who may not be fluent in English. These groups are very likely unaware of the health hazards associated with the consumption of chemically contaminated fish. Public education programs regarding this issue will have to be increased dramatically, perhaps through use of the electronic media, in order to reach all segments of the State's population.
5. The Department, as part of its proposed policy, should clarify how it intends to keep contaminated commercial fish off the market.

William E. Bush, New York State Assemblyman, Camillus, submitted copies of correspondence between himself and John Zwolak of Camillus. In his letter Assemblyman Bush expressed agreement with Mr. Zwolak's concerns (summarized later in this Report) that the Department could not guarantee that fish taken from Onondaga Lake would not be taken home and eaten.

Anita S. Curran, M.D., M.P.H., Commissioner of Health, Westchester County Department of Health, expressed the Westchester County Department of Health's general support for the Department's proposal to develop a uniform statewide policy on fish contaminants, but cautioned that economic issues should not overshadow the public health implications of contaminants in fish. The Westchester County Department of Health further offered the following comments on the DEIS:

1. Greater recognition should be given to the problems of counties such as Westchester where toxic contaminants exist in fishing waters but recreational fishing is not significant in the local economy.
2. More specific guidelines should be provided for monitoring, including for the use of local agencies' input and for the development of new standards for additional contaminants.
3. The definition of a "public health emergency" that would require the closure of a fishery should be clarified.
4. Additional consideration should be given to posting of waters where restrictive advisories are in effect in order to better inform children and certain cultural groups which may not be reached by the proposed public notification procedures.
5. The Department should specify what it means by an "adequate sample" and the statistical methodology it plans to use in interpreting data on fish contaminants.

Jon F. Stevens, Supervisor, Town of Easton, Johnsonville, expressed his enthusiastic support for the opening of the Upper Hudson River to recreational fishing. Supervisor Stevens pointed out that the Town of Easton has a greater length of river frontage than any other municipality in the affected area and that restoration of the sport would "help immeasurably in the efforts to develop the great recreational potential possessed by our area."

Ken Petronis, Town Justice, Town of Stillwater, expressed his support for opening the upper Hudson River to sport fishing, and stated that he has seen many children fishing (illegally) along the banks recently and that the fish are cleaner now than they were in the past.

Helen Quinby, New York State Council, Trout Unlimited, Bellport, expressed Trout Unlimited's general support for the proposed policy but stated that it appears to be overly compromised by economic and social pressures. The New York

Chapter of Trout Unlimited highly recommends posting all contaminated waters where health advisories are in effect. Trout Unlimited asserted that posting would increase public response to the restrictive consumption advisories and help garner public support for environmental conservation of water resources.

Gilbert C. Radonski, President, Sports Fishing Institute, Washington, D.C., described the Sports Fishing Institute as a non-profit, broadly-based conservation organization supported by manufacturers of fishing equipment and thousands of anglers and other concerned citizens.

The Sport Fishing Institute recorded its strong support for the Department's proposed policy and stated that the policy accords with the Institute's position that public health safety can not be met by merely setting tolerances, but requires informing the public of the real risks through health advisories. Mr. Radonski also suggested that the proposed policy would be strengthened by including a formal statement to that effect.

Esther B. Ernst, Westbury, identified herself as a member of the Water Management Advisory Committee. Ms. Ernst expressed support for the Department's proposed policy but questioned whether greater funding may be needed to assure the adequacy of the public educational programs on health advisories. Ms. Ernst also suggested that a self-regulating review protocol of health advisories and contaminant levels be instituted.

The Hudson River Sloop Clearwater, Inc., Poughkeepsie, by John Mylod, Executive Director, stated its opposition to the proposed lifting of the ban on fishing in the Upper Hudson River and Onondaga Lake and that it "disagrees radically with the Department's proposed policy on contaminants in fish and considers the DEIS inadequate in terms of providing the information needed for public debate of the proposed actions." Mr. Mylod presented the following reasons for Clearwater's position:

1. PCB levels in Upper Hudson River fish remain dangerously high and a ban on fishing there is the only effective way to limit human consumption of those contaminated fish. Violations of the ban should be remedied by increased enforcement.
2. The discussion in the DEIS on the public health risks from consuming contaminated fish is inadequate and misleading. The DEIS minimizes the chronic health implications of various contaminants and does not mention the fact that nine toxic substances named in the DEIS have been identified as carcinogens. It is incumbent upon the Department (in conjunction with the

Department of Health) to provide the public with more information on the risks of consuming contaminated fish including the potential cumulative risks from multiple contaminants.

3. Reliance on proposed water quality standards for the reduction of contaminants which bioaccumulate in fish is unwarranted in view of the great time lag involved and the many loopholes in such environmental quality programs as pesticide management.
4. A ban instituted to protect public health should be lifted only when the threat to human health no longer exists -- and not because of public demand to have it lifted.

In conclusion, the Hudson River Sloop Clearwater asserted that the Department's proposed policy is "clearly unsupportable" in terms of protecting public health and the public interest.

Scenic Hudson, Inc., Poughkeepsie, by Cara Lee, Environmental Program Coordinator, stated its opposition to the repeal of regulations which currently prohibit fishing on Onondaga Lake and the Upper Hudson River in that such a policy "would be in total disregard of the Department's obligation to protect the public from exposure to toxic substances." Scenic Hudson offered the following reasons in support of its position:

1. The existing ban on fishing in these areas remains the most effective way to limit consumption of the significantly contaminated fish in those waters. The proposed policy sends an underlying message that it may be all right to eat the fish again.
2. The Department's proposed educational mechanisms for the dissemination of health advisories is unlikely to succeed in actually reaching the entire sector of the public for which it is intended. The proposal even admits that it will be impossible to ascertain exactly how many people will be adversely affected by consumption of contaminated fish.
3. The Department's difficulty in enforcing existing fishing regulations is not an acceptable reason for abandoning those regulations.
4. It is unrealistic to anticipate that new water quality standards which the Department will implement will mitigate the public health threats posed by contaminated fish in the foreseeable future.

John Zwolak, Camillus, indicated that he was an avid fisherman and lives less than 10 miles from Onondaga Lake, but that he is opposed to opening Onondaga Lake to recreational fishing. Mr. Zwolak asserted that if people are allowed to again fish in Onondaga Lake a certain percentage of those people would keep and eat those fish with possibly dire consequences, and a certain percentage of the panfish caught there would inevitably find their way to commercial markets, thus presenting a substantial "involuntary" risk to buyers. Mr. Zwolak also stated that since most visible sewage pollution of Onondaga Lake has been cleaned up, the lifting of the ban would increase the likelihood of persons keeping and eating fish taken from Onondaga Lake. Additionally Mr. Zwolak claimed that there is no shortage of excellent alternative fishing waters in the Central New York area.

Mr. Zwolak further noted that it appeared that the Department was primarily interested in opening the Upper Hudson River to recreational fishing and that Onondaga Lake was added for the sake of consistency. In closing, Mr. Zwolak urged the Department not to make a hasty decision in response to pressure from a small but highly verbal group of sport fishermen in the Upper Hudson River area.

Neil H. Ringler, Baldwinsville, identified himself as a fisheries biologist, an angler, and the parent of two active fishermen. Mr. Ringler stated that he was opposed to opening Onondaga Lake to fishing unless a well advertised and supervised "fish for fun" program is instituted. Mr. Ringler offered the opinion that a simple reversal of the ban would lead local anglers to ignore health advisories and that the interests of the Department in promoting statewide uniformity should not necessarily prevail over the uniqueness of the problems found in Onondaga Lake.

Susan Peterson, Ontario, criticized the DEIS for inadequately considering the possible adverse effects of weakening the fishing bans and incompletely discussing the health impacts from eating contaminated fish. Ms. Peterson also questioned the results of the angler survey reported in the DEIS and questioned whether the proposed means of educating the public on the hazards of eating contaminated fish would be sufficient to inform many anglers in the State.

Ms. Peterson further suggested that the Department provide information on the hundreds of toxic contaminants not mentioned in the DEIS that are known to enter Lake Ontario through the Niagara River. She also remarked that in her experience Canadian anglers in Lake Ontario seem more aware of the health hazards from eating contaminated fish and are less willing to eat fish taken from Lake Ontario than are New York State anglers.

Linda C. Dittrich, Syracuse, expressed her support for the comments made on the record by Onondaga County Legislator James C. Tormey at the Syracuse hearing session. Ms. Dittrich stated her belief that lifting the fishing ban on Onondaga Lake will create a false sense of security, leading some people to eat contaminated fish despite the issuance of a health advisory. Ms. Dittrich further questioned whether the dissemination of the health advisory would be effective in reaching the entire affected public and recommended that the Department consider posting health advisories around Onondaga Lake.