

# **Guidance for (Redesignation) Delisting of Great Lakes Areas of Concern (AOCs) and their Beneficial Use Impairment (BUI) Indicators in New York State**

**New York State Department of Environmental Conservation  
Final - May 2010**

# Table of Contents

	<u>Page</u>
<b>I. Purpose</b>	3
<b>II. Applicability</b>	4
<b>III. Principles to Guide (Redesignation) Delisting</b>	4
<b>IV. Process for (Redesignation) Delisting</b>	7
<b>A. Individual BUI (Redesignation) Delisting</b>	8
<b>1. Starting Checklist</b>	8
<b>2. Tasks and Considerations</b>	9
<b>3. Procedures for (Redesignation) Delisting</b>	11
<b>B. AOC (Redesignation) Delisting – Stage 3</b>	12
<b>Appendix A - Lessons Learned from Oswego River AOC Delisting</b>	14

## **I. Purpose**

This guidance document describes the policies and procedures to be followed by all Communities and Remedial Action Plan (RAP) Coordinators for the process of (redesignating) delisting New York State Great Lakes Areas of Concerns (AOCs) as well as the individual Beneficial Use Impairment (BUI) indicators associated with the AOCs.

All policies and procedures within this document are intended to be consistent with pertinent United States and Binational guidance. Where differences may exist, this guidance shall have precedence. It is important to note that this guidance directly supports efforts designed to advance AOCs to their final stage as defined in Annex 2 of the Great Lakes Water Quality Agreement (GLWQA), "...when identified beneficial use impairments are no longer impaired and the area restored, the removal of its designation as an Area of Concern." The GLWQA is a non-regulatory agreement between the United States and Canada. Criteria and procedures developed under its auspices are non-regulatory in nature. However, the criteria and procedures for (redesignating) delisting AOCs and their BUIs shall be consistent with State and federal regulatory authorities and actions wherever applicable.

The governing authority by which the New York State Department of Environmental Conservation (DEC) has developed and executes these policies and procedures is derived from the DEC's general authority for environmental quality under the New York Environmental Conservation Law (ECL) and more specifically Article 17 addressing Water Pollution Control. Supplemental authorities, as may be delegated to New York State from the United States Environmental Protection Agency, to implement environmental restoration and protection include the federal Clean Water Act Sections 118, 319, 402, and 404 addressing respectively the Great Lakes, nonpoint and point source water pollution, and wetlands. In addition, the binational Great Lakes Water Quality Agreement provides direction.

The (redesignation) delisting guidance herein provides coordination for the preparation, tasks, considerations, and procedures that need to be conducted so that delisting recommendations in New York State are addressed in a consistent manner across Areas of Concern (AOCs). Through the Great Lakes Regional Collaboration, USEPA's Great Lakes National Program Office (GLNPO) has established a priority on taking a step by step approach to the delisting or redesignation of Beneficial Use Impairments at the 30 remaining United States AOCs. By applying the International Joint Commission's common 14 Beneficial Use Impairment (BUI) indicators across each AOC, a focused effort is now being taken to address BUIs.

Resources are being committed to undertake the necessary investigations and actions to resolve the BUIs and assure restoration and protection for an AOC. Through individual BUI delisting or redesignation, activities are to be taken, public interest is to be enhanced, the ecosystem is to benefit, and progress is to be documented in Great Lakes AOCs. Finally, with all 14 BUI indicators addressed in a given AOC, the entire AOC can be delisted. This formal process involves additional steps at the Federal level that are further delineated in EPA's delisting principles and guidance document.

In New York State, EPA and DEC, in cooperation with the local community and Remedial Advisory Committee, delisted the Oswego River AOC in 2006. The Stage 3 delisting document

serves as a model and lessons learned are identified in Appendix A herein to provide further guidance. With the five remaining AOCs in New York (two of which are Great Lake's Connecting Channels and have binational considerations), the focus is clearly on addressing individual BUIs towards the reporting and preparation of a Stage 3 delisting document. Because cleaning up contaminated sediments will be a significant component in addressing most of these AOCs, reaching a point of "remedial work completion" is anticipated. At this point, an AOC and BUI redesignation option that needs to be considered is the identification and redesignation of the BUIs (and ultimately the AOC) as an Area of Recovery (AOR). New York State AOC delisting strategies will need to incorporate this "in recovery" redesignation status consideration.

## **II. Applicability**

This guidance shall apply to all five AOCs, their respective RAPs and BUIs within New York State. These five New York Remedial Action Plans and AOCs include the:

- **Buffalo River**
- **Eighteenmile Creek**
- **Niagara River \***
- **Rochester Embayment**
- **St. Lawrence River at Massena \***

\* Connecting Channel Areas of Concern also involving binational coordination with the Canadian part of the AOC under a separate Four Party Agreement. Separate and consistent binational principles and guidance for developing and/or revising delisting criteria; redesignating or delisting beneficial uses; and changing the status to that of an area in recovery and delisting have been developed but not finalized.

## **III. Principles to Guide (Redesignation) Delisting**

The process of (redesignating) delisting an individual BUI or the entire AOC shall adhere, to the greatest degree possible, to the following principles whenever an AOC coordination organization or agency is considering (redesignation) delisting activities or addressing any special considerations and circumstances that may arise. For the RAP Process and this guidance document, the terms "redesignation" and "delisting" have the same fundamental meaning; any difference is essentially administrative.

### **Guiding Principles:**

- The original designation of AOCs and development of Remedial Action Plans for New York's AOCs was a community-driven process, based on the input of a broad and diverse range of individual citizens and stakeholder organizations. Likewise, the (redesignation) delisting of an AOC or an individual BUI shall be a transparent process offering the community a reasonable opportunity to provide advice on the evaluation and final interpretation of information.

- Each AOC's local RAP Remedial Advisory Committee should take action to adopt a strategy (Strategic Approach) to address and resolve its BUIs that includes: formulating a schedule of delisting steps or actions; identifying responsibilities in conducting post-delisting activities; and applying the six *Additional Delisting Principles and Guidance Points* numbered below. In a BUI or AOC (redesignation) delisting document, identification of the guidance, schedule, and responsibilities are each necessary and appropriate for making restoration progress, assuring environmental protection, and maintaining a public voice in the process.
- The best available scientific information is to be used to consider whether or not the (restoration and protection) delisting criteria have been achieved. The DEC recognizes that situations may occur when available science is not able to reasonably and cost-effectively provide certainty that delisting criteria have been achieved. In such situations, the overarching considerations shall be the degree to which the original causes of the impairment have been addressed, the overall progress realized in restoring the area to a condition no worse than the surrounding region, and the existence of institutional programs that are in-place to maintain or promote future improvements and protection.
- The RAP Coordinator is responsible for tracking the restoration of BUIs and for maintaining an official file of all pertinent records including contracts, correspondence, studies, technical reports, photographs, progress reports, etc. that serve to document the validity of the (redesignation) delisting action(s).
- Upon final delisting of an AOC, or following closure of a RAP Coordination contract, all official files shall become the property of the U.S. EPA Region 2.
- Further, the (redesignation) delisting of an individual BUI or of the entire AOC, does not end the communities' stewardship responsibilities or federal/state accountability for maintaining the public uses and environmental quality of the area. (However, delisting of an AOC does bring the formal RAP process and the work of the advisory committee to an end.) A Stage 3 delisting document and/or BUI redesignation document is to identify the role of existing framework organizations and environmental program activities that serve to maintain the restoration and protection of the AOC. The public needs to understand how to continue to participate in activities such that "life after delisting" concerns are addressed.

### **Additional Delisting Principles and Guidance Points:**

**1. The International Joint Commission's (IJC) responsibility in the delisting process is to review and comment on the Local/State/Federal position to delist (redesignate) an entire Area of Concern.** - Under the Great Lakes Water Quality Agreement, AOCs were designated (listed) by the respective federal governments. Therefore, the federal governments ultimately decide to delist. Local/ State governments can and should provide the basis for (redesignation) delisting. IJC is not an approval authority; however, their consultation is to be sought and their comments addressed when seeking to delist the entire AOC. This is done after a full draft Stage 3

document has been prepared. The work involves considerable preparation with EPA, DEC, local stakeholders, “peer review” and public information, coordination and liaison. The delisting or redesignation of an individual BUI involves a similar level of work coordination among EPA, DEC and locals. Together, the BUI write-ups form the basis for resolution of the AOC in the preparation of the entire draft Stage 3 document that is to be reviewed by IJC as a whole. EPA and DEC may seek IJC comment on individual BUI (redesignation) delisting.

**2. IJC and EPA have taken the position that there may still be some use impairment indicators where the beneficial uses may not be fully restored for justifiable reasons, and that this should not prohibit the (redesignation) delisting of an AOC or BUI. -**

(Examples of justifiable reasons include the existing natural conditions; occurrence of boating disturbances; and all remedial work having been implemented but a beneficial use is not expected to be fully restored). When these conditions occur and ongoing concerns exist, beneficial use impairment (BUI) indicator can be resolved by a larger management plan activity that is responsible to the issue. A “referral to be resolved by another responsibility” is appropriate to accomplish this resolution and is based on the fact that the RAP Process cannot provide the solution to the concern. In “assigning or referring” the responsibility for resolution, the “acceptance of responsibility” also needs to occur. As a result, the concern is assigned or referred and is to be resolved by another responsible environmental program or management plan. (See Lessons Learned #1 and #2 identified for the delisting of the Oswego River AOC in Appendix A.)

**3. Remedial Action Plans can only address impairments caused by local sources; impacts from outside an AOC (either upstream, downstream, via air deposition, or from the open lake waters) which cause use impairments should not impinge on the ability to delist the AOC. -** A source issue outside the AOC presents a concern that needs to be addressed by a larger management plan that accepts responsibility. It is important that stakeholders continue to have a voice on their issues of concern and that an opportunity for public input exists in any ongoing or newly identified framework organizations. In order to delist or redesignate these types of impairments (i.e. concerns relating to non-AOC causes and their attendant sources) there needs to be an “assignment or referral” of the concern to be resolved by another responsibility, environmental project or program area or management plan in order to assure that follow-up action, resolution, and protection take place. In delisting, the formal RAP Process (involving a committee focused on remedial strategies and BUI assessment) ceases. Ongoing concerns are transferred to existing responsible framework organizations for resolution. Life after delisting should provide for oversight and public input. (See Lessons Learned #3 in Appendix A.)

**4. The preparation of a draft Stage 3 document is fundamental to the delisting process for the AOC as are appropriate sections to address the (redesignation) delisting of each individual BUI. The preparation of the Stage 3 document and BUI section narratives must involve a public consultation process (by the lead agencies and locals). –**

There needs to be a “peer group” review process incorporated into the document preparation. Consultation as noted above on the content and review comments must be accomplished. With these items addressed, a final Stage 3 RAP document can be prepared for delisting the Area of

Concern. The delisting or redesignation of an individual BUI involves a similar level of work coordination among EPA, DEC and locals. The BUI write-up forms the appropriate section in the preparation of the draft Stage 3 document. (See Lessons Learned #4 in Appendix A.)

**5. With the completion of the final Stage 3 RAP document, the next step is for the State and Federal leads to declare the entire AOC as delisted. The individual BUI delistings or redesignations contribute to the preparation of the Stage 3 document. The work of both is rigorous; however, the formal level of coordination is more involved with the full AOC delisting than with the individual BUI redesignation.** - To realize full AOC delisting, certain steps need to be accomplished which include: State submittal of the final Stage 3 document to USEPA (review by EPA may involve a federal management committee or review team); final consultation with IJC; completion of minor adjustments to the document based on EPA and IJC review; statement letter of delisting to the Federal Department of State by USEPA; and, Federal Department of State announcement and action on the delisting.

Individual BUI redesignations (or delistings) contribute to AOC progress, Stage 3 preparation, and the goal to delist the entire AOC. These actions are to be based on monitoring, supporting data, and a sound resolution strategy and rationale. The RAP Coordinator is to accomplish liaison with DEC and EPA along with local support such that all agree on a BUI's resolution, protection, and (redesignation) delisting of its status. The (redesignation) delisting process needs to involve the public (preferably under a public involvement plan), make appropriate modifications to documentation, and record a Responsiveness Summary to address changes and all points of view expressed in the process.

**6. Apply the Delisting Principles and Guidance developed by the United States Policy Committee in 2001 located at:** <http://epa.gov/greatlakes/aoc/rapdelistingfinal02.PDF> -

The federal guidance recognizes the redesignation of "Recovery Stage" and further identifies the considerations and process for its use. An "Area of Recovery" (AOR) is a designation that has "not impaired" as a goal while recognizing that all practicable implementation activities have occurred and that a longer-term monitoring program is in place. This "in recovery" designation has applications to both the AOC at large as well as individual BUIs.

[Note - examples of (redesignation) delisting documents for both AOCs and individual BUIs are available on the Great Lakes Commission web site: <http://www.glc.org/rap/resources> .]

## **IV. Process for (Redesignation) Delisting**

This section describes, the planning, strategic thinking, guidance, policies, and actions for evaluating and applying restoration and protection (delisting) criteria to the individual BUIs in an AOC and documenting progress toward (redesignating) delisting individual BUIs as well as the AOC at large. DEC is committed to working in partnership with the U.S. EPA and Remedial Advisory Committees (RACs) in this effort.

By focusing on BUI redesignation, incremental progress can be accomplished in a systematic way. Taking actions and documenting the redesignation (delisting) of an individual BUI (i.e. changing the status of an individual BUI from “impaired, impairment inconclusive, unknown or needs further assessment” to “not impaired” or to one of “in recovery” or to one of “referred to be resolved by another responsibility”) will accomplish the incremental steps necessary that will ultimately lead to delisting of the AOC as a whole. This is a vision for the AOC and RAP Process and is achievable. Note that an individual BUI can be redesignated (effectively delisted) by one of three redesignations:

- “not impaired” – the delisting criteria have been achieved to the maximum extent practicable and environmental program oversight and monitoring are identified.
- “in recovery” – remedial measures and RAP process work accomplished to the maximum extent practicable; oversight and longer term monitoring identified.
- “referred to be resolved by another responsibility” – the RAP process collaborates to assign responsibility to address the resolution of a concern by another responsible environmental program and/or management plan(s).

Once all of the BUIs have been redesignated as defined above, the entire AOC can be redesignated as 1) Delisted, or as an 2) Area of Recovery. Further, an Area of Recovery is to be reevaluated periodically as to achieving the ultimate goal of “Delisted”. Each redesignation needs to recognize the oversight to be provided by the identified responsible environmental program and/or management plan(s).

The guidance below provides a listing of the activities involved in a full RAP process needed to prepare for, consider, and finally document (redesignation) delisting of individual BUIs or an entire AOC. These activities are contained in a breakdown of the RAP process to address (redesignating) delisting into three activity categories: A) **Starting Checklist** for establishing the necessary Remedial Advisory Committee organization and strategic thinking; B) **Tasks and Considerations** for accomplishing committee understanding and support for the strategy to (redesignate) delist a given BUI or the entire AOC; and, C) **Procedures** to accomplish the documentation of an individual BUI or AOC (redesignation) delisting.

## **A. Individual BUI (Redesignation) Delisting**

1. **Starting Checklist:** (re: for establishing the necessary committee organization and strategic thinking)
  - a. Remedial Advisory (Action) Committee (RAC) or Oversight Committee (OC) members are to assess and determine that member participation on the committee is balanced or diverse enough to have the point of view of all stakeholders reflected in discussions and considerations and agree by consensus or majority that this is the case.
  - b. Identify the different roles and responsibilities of the stakeholders and committee members (e.g. government, Tribal, academic, industrial, environmental, citizens, technical experts, chair person, RAP facilitator, DEC, and EPA, etc.).



- c. Review state and federal (redesignation) delisting principles, further establish local delisting principles consistent with these as appropriate, agree and accept principles in a strategy (“strategic approach”) to move forward, and document this in writing (reference: Oswego Stage 3 Delisting document Appendices B and C).
- d. Employ/identify a RAP Facilitator who will keep the discussion and agenda focused. Agree that decisions are to be made on a consensus basis (majority of opinion) and that all stakeholder concerns are to be addressed.
- e. Appreciate that the RAP Process is not a program unto itself; that it is to evolve into existing framework organizations; that the RAP endpoint is to assure that conditions in the AOC are no worse than those in the surrounding area; and, that (redesignation) delisting assures long-term protection and restoration.
- f. Local RAC and AOC Coordination are to adopt goals and a vision for the RAP, the AOC and its BUIs, that have achievable endpoints and maintain a public voice on topics of concern. An endpoint is different than a target or criteria; it is the vision of a status condition for a beneficial use indicator within the AOC when the RAP process has accomplished essentially all that it can. Such an endpoint can be defined as “able to eat fish that are not subject to advisory”, “environmental conditions that are not different from the river at large or further upstream/downstream”, “no further action is planned under the RAP process”, “concerns addressed by other existing framework organization”, “impairment not due to an in-AOC source and addressed by a larger management plan”. Therefore, the endpoint can be the “assignment or referral of the responsibility” for long-term monitoring, management, and resolution of the BUI indicator in a responsible way (i.e. “referred to be resolved by another responsibility”). It can also be achieving the conditions necessary for a redesignation to that of the “in recovery” status while maintaining a goal of “not impaired”.

2. **Tasks and Considerations:** (re: for achieving committee support and understanding to accomplish position statements and documentation)

- a. Review the Stage 1 (problem statements, original listing considerations) and Stage 2 (remedial measure alternatives and restoration strategies). Identify actual implementation activities and incomplete tasks.
- b. Assemble known information sources and data that have bearing on the Beneficial Uses and their Impairments. Shared resources must be applied to accomplish committee work to address data synthesis and assessments. This involves a collaboration of advisory committee members, separate technical and public participation subcommittee efforts, the inclusion of experts and private consultants as necessary in the process, and RAP facilitation to address needs and responsibilities and to assure progress.

- c. Obtain presentation(s) by technical experts and involved persons on study results and the relationship to the BUI indicators.
- d. Develop a “list of questions” that need to be addressed and link information to the BUIs and determine data gaps and/or if consensus position can be developed. Conduct further monitoring if necessary. See 2.b above to address resources.
- e. Establish a technical expert’s position statement as necessary and desired; (however, this may result in defining what the expert/management plan objective can “best live with” in terms of protection and restoration for the AOC.)
- f. Appreciate what can be accomplished by the RAC, the RAP, and the AOC. Identify what needs to be “assigned or referred to be resolved” by other program activities.
- g. Consider redesignation, recovery status, and the “null hypothesis” (not impaired unless demonstrated by ongoing environmental programs) for their implications and consequences. (e.g. look at the “in recovery” status as an interim measure to “not impaired” in order to resolve a BUI or the AOC as a whole)
- h. Determine Natural Resources Damages (NRD) case applicability to a delisting or redesignation change for a BUI and the timing. It may be that the legal consideration of the NRD case has priority over moving ahead with a BUI status change; however, the settlement of the NRD case may also form the basis for the resolution of the BUI and moving ahead with the redesignation. Sharing information is encouraged.
- i. For the Connecting Channel AOCs of the Niagara and St. Lawrence Rivers: collaborate with, share information, and utilize Canadian AOC strategies and studies to resolve BUIs. Regional study results that incorporate AOCs, such as Bird Studies Canada’s Marsh Monitoring Program, can provide useful information for all AOCs. Refer to the final draft *Four Party Agreement to Address Binational AOCs* for guidance on the coordination of addressing these Connecting Channel AOCs. (This guidance is entitled: “Principles and Guidelines for Developing and/or Revising Delisting Criteria; Redesignation of Beneficial Uses; Recognition of an Area In Recovery and Delisting New York/Ontario Binational Areas of Concern in the St. Lawrence and Niagara Rivers”).
- j. Identify concerns of all stakeholders in BUI status change determinations. Assure that consensus decisions reflect all concerns and issues in a Responsiveness Summary.
- k. Remember to use an ecosystem approach and involve the public as fundamental principles of the RAP Process. Methods to inform and involve the public are needed. Establish that a public voice in environmental activities continues beyond the RAP Process (e.g. SEQRA supports this for New York State)
- l. Invite Tribal governments to become involved in the RAP process. Assure that RAP information, mailings, communications, invitations, and opportunities for participation in the RAP process are made available to Tribal organizations.

- m. Assure that delisting criteria are achieved to the maximum extent practicable and that ongoing restoration or monitoring activities assure long-term protection.
- n. Assure that International Joint Commission (IJC) objectives under the Great Lakes Water Quality Agreement (GLWQA) are addressed. (reference: Oswego Stage 3 delisting document Section II.F and Table 1 listing objectives and BUI resolution strategies)
- o. Utilize each of the following to contribute to BUI (redesignation) delisting determinations: supporting data, monitoring indicators and needs, list of questions that need to be addressed, technical expert input and statements, identification of practicable long-term strategy and endpoints, capabilities of existing/ongoing environmental programs, establishment of consensus statements, documentation using a responsiveness summary, linking and assigning issues of concern that may be more appropriately addressed in a related BUI, identifying the difference between an impairment and a nuisance, and overall progress reporting and documentation.

**3. Procedures for (Redesignation) Delisting:** (re: for documentation of a status change in the Stage 3 document preparation)

- a. The local AOC Coordinator is to document all work and considerations in a Stage 3 narrative to support an individual BUI's delisting or redesignation recommendation. Explain by identifying the endpoints, delisting criteria, strategy considerations, supporting data, monitoring, rationale, technical expert statement, public information accomplishments, and consensus delisting determination.
- b. The local AOC Coordinator is to assure that other considerations are addressed, also through documentation in the Stage 3 narratives, such as Natural Resources Damages (NRD) assessment priorities, International Joint Commission (IJC) objectives under the Great Lakes Water Quality Agreement (GLWQA), Tribal considerations, and major permitting (or administrative order) requirements affecting the AOC. For example, the settlement of a NRD case or the issuance of a license or permit may serve to fully resolve an individual BUI for the AOC.
- c. Submit technical report and/or documentation of the above to NYSDEC Great Lakes Programs Coordinator/AOC Coordination for review and comments.
- d. These designated DEC staff are to review the submission with the assistance of Regional and Central Office DEC program areas to verify the documented work and achievements.
- e. DEC is to consult with USEPA (Region 2 first and then GLNPO) based on moving forward with individual BUI delisting (redesignation) and collaboration of comments for reply to local AOC Coordinator.

- f. The local AOC Coordinator is to receive comments and adjust BUI determinations and redesignation strategy per comments and make final recommendations. Documentation to justify the status change needs to be supported by a consensus of RAC members; all concerns and points of view need to be addressed in a Responsiveness Summary to the satisfaction of the consensus members. In the end, the AOC Coordinator will need to make and justify a status change that is consistent with federal/state programs.
- g. DEC and the local AOC Coordinator are to determine the formal public information activities for implementation (e.g. Environmental Notice Bulletin, public information meeting, presentation at other organizational meetings, news media, etc.)
- h. DEC is to act on the formal announcement in consultation with USEPA.

## **B. AOC (Redesignation) Delisting – Stage 3 Documentation**

Implementation of the Remedial Action Plan is a dynamic process that incorporates improvements, identifies use impairment changes and provides periodic update reports as knowledge on the status of the Beneficial Use Impairment (BUI) indicators, location of sources, and effectiveness of remedial action implementation advances. In the end, the RAP must document the implementation of restoration and protection activities regarding the Area of Concern that indicate the delisting criteria have been achieved to the maximum extent practicable and that the individual BUIs are resolved.

Implementation of remedial measures at major industrial facility sites in New York State contribute significantly to the success of the RAP process. Remedial measures have been and continue to be encouraged to address the larger ecosystem approach of the RAP process. All AOCs need to incorporate Tribal considerations and jurisdiction in the resolution of use impairments. Connecting Channel AOCs have an international component. Cleaning up the known sources of pollutants of a shared multi-use waterbody is fundamental to reclaiming and maintaining it as a valuable resource.

As noted at the beginning of this Section IV, the delisting process for individual BUIs can be accomplished by applying one of three delisting redesignations: “not impaired”, “in recovery”, or “referred to be resolved by another responsibility”. Further, (redesignation) delisting of the entire AOC should take place after all individual BUIs have been satisfactorily addressed (and redesignated as appropriate) in a draft Stage 3 delisting document. Coordination for the review of this Stage 3 document needs to be accomplished with EPA Region 2 and GLNPO in order to complete the further federal requirements (activity steps) identified in USEPA Delisting Principles and Guidance document.

These further steps require some formality involving IJC and the federal Department of State. The main differences then, between (redesignating) delisting an individual BUI and the entire AOC is in the Stage 3 preparation and the formal administrative steps at the end of the process. Also, in an entire AOC delisting, the formal RAP process evolves into existing framework

organizations. The following points to be accomplished in the (redesignation) delisting of an AOC essentially are restatements of steps identified in addressing the individual BUIs. These apply to the entire AOC as well:

- Once significant progress has been made in the improvement and resolution of BUI indicators' status and/or significant details of remedial activity implementation have been accomplished that address contamination sources, a RAP Update document can be produced to report on these activities. Ultimately, a Stage 3 report will require documentation of the resolution of all beneficial use impairment (BUI) indicators and satisfactory evidence that the causes and sources are addressed properly as to their impact on beneficial uses in the Area of Concern.
- In fulfilling documentation that the delisting criteria are achieved to the best condition practicable, the resolution information needs to address the supporting data and monitoring, strategy and rationale, and activities applicable to the decisions applied in (redesignating) delisting the individual BUIs and finally the overall AOC. Each individual BUI redesignation therefore forms a part of the overall Stage 3 documentation for (redesignation) delisting of the AOC at large.
- The application of the principles and guidance for delisting individual BUIs and AOCs as a whole address upstream and downstream conditions and local sources that may contribute to impairments. Identifying realistic endpoints in the RAP process (for the BUIs and AOCs) helps in resolving concerns and issues of conditions and sources.
- In addition to using an ecosystem approach, the RAP process needs to involve the public. The (redesignation) delisting of BUIs and AOCs requires a public information component. Details of public involvement need to be recorded and incorporated into the delisting documentation. Explanations regarding specific comments or questions raised by the public or through technical review that may (or may not) result in actual modification to a delisting document are to be further detailed in the Responsiveness Summary.
- Post- delisting activities are to be conducted by identified responsible environmental programs and/or management plans to implement the actions that are to address the remaining concerns of the BUI and AOC (redesignation) delisting process. The existing framework organizations and activities are to be identified. The Oswego River Stage 3 AOC Delisting document along with ongoing individual BUI (redesignation) delisting documents for New York AOCs can serve as models in identifying responsible environmental programs, management plans, and types of activities. These include the many existing environmental organizations that continue to provide ongoing program activities to assure that restoration and protection are maintained into the future for the AOCs and larger watershed areas.

## APPENDIX A

### *- Lessons Learned from Oswego River AOC Delisting -*

1. **Achieving the Endpoints** for the fish habitat/ populations, and fish consumption Beneficial Use Impairment (BUI) indicators were “assigned or referred to be resolved by other responsibilities”. For the Oswego AOC, these other responsible environmental program or management plans are 1) the FERC (Federal Energy Regulatory Commission) power dam license process and 2) the Lake Ontario Lakewide Management Plan (LaMP). The newly issued FERC license contains appropriate corrective action requirements and the LaMP addresses appropriate actions in its workplan. For the Oswego RAP, the goals or endpoints had therefore been achieved to the maximum extent practicable and the ultimate resolution strategy for “out of AOC” causes or sources of concern were now formally part of these larger environmental programs or Great Lakes management plan activities. Hence, no further action was planned under the RAP process.
2. **The RAP Process** provided the data to show that the Area of Concern is not impaired by local sources. The RAP process needs to establish that inclusive management plan activities will resolve any larger concerns held by stakeholders that cannot otherwise be fulfilled within the RAP process. Other examples of a larger management plan activity accepting oversight responsibility include: the Great Lakes Binational Toxics Strategy, watershed management strategies, lead agencies for fish consumption advisories, local oversight groups, and agencies for licensing or permitting processes.
3. **The Stage 3 Document** describes that all appropriate action has been taken within the AOC under the RAP process, remedial activities have been accomplished to the maximum extent practicable, responsibilities have been identified, and no further action is planned under the RAP process. The Stage 3 document substantiates that the Oswego AOC is not impaired by contamination from local or upstream sources. The control of the upstream river flow that does affect the fish habitat and fish population in the AOC is resolved by flow provisions and habitat restoration requirements in the FERC license renewal.
4. **The Public Consultation** involved presentations at local environmental group meetings, consultation with peers, and government agency review. A final draft Stage 3 delisting document, responsiveness summary, website posting, power point presentation, summary and fact sheet handouts, and formal Environmental Notice Bulletin comment period for the public at large all served to assure the delisting information was communicated and comments responded to in the completion of the AOC delisting steps.