

**Response Summary for EPA's Proposed Listing of Jones Inlet/Jones Bay on New York's
2014 303(d) List**

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Section 303(d) of the Clean Water Act (CWA), 33 U.S.C. § 1251 *et. seq.*, requires states to “identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters.” In other words, states are required to identify all waters for which existing pollution controls or requirements are inadequate to provide for attainment and maintenance of water quality standards. The means by which a state identifies these waters has been commonly referred to as a state’s 303(d) List or list of impaired waters.

Pursuant to section 303(d) of the CWA, on November 3, 2014, New York State submitted a list of impaired waters to the U.S. Environmental Protection Agency (EPA) for approval or disapproval¹. EPA reviewed the list of impaired waters and supporting documentation. EPA’s review was based on whether the state developed its list in compliance with section 303(d) of the CWA and EPA’s implementing regulations, including whether the state reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

New York’s narrative water quality standard for nutrients is “None in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.” Existing and readily available data and information during the state’s 2014 data solicitation and public comment periods indicated an exceedance of this standard in Jones Inlet/Jones Bay (New York State Waterbody ID Number 1701-0373). However, the state did not include Jones Inlet/Jones Bay on its 2014 303(d) List. In light of this, on January 13, 2015, EPA partially approved and partially disapproved the state’s 2014 303(d) List.

Pursuant to CWA section 303(d)(2), after disapproving a state’s 303(d) List for failure to list a water not meeting applicable water quality standards, EPA is required to list that water on the state’s 303(d) List if, after providing a public comment period and considering all comments received, EPA deems that listing is necessary. On February 23, 2015, EPA published a notice in the Federal Register (Federal Register, Vol. 80, No. 35, pp. 9456-9457) opening a public comment period (February 23 – March 25, 2015) to solicit comments on its proposed listing of Jones Inlet/Jones Bay for nitrogen on New York’s 2014 303(d) List.

EPA received comments from the New York State Department of Environmental Conservation (NYSDEC) during the public comment period. EPA did not receive any other submissions. NYSDEC’s submission was in opposition to the listing of Jones Inlet/Jones Bay. EPA carefully reviewed NYSDEC’s comments, and EPA’s response is provided below. EPA finds no new information indicating that the proposed listing of Jones Inlet/Jones Bay on New York’s 303(d) List is not necessary. Therefore, EPA is adding Jones Inlet/Jones Bay (New York State Waterbody ID Number 1701-0373) to New York’s 2014 303(d) List.

¹ New York State also sent the EPA a delisting document dated 11/3/14, a list of Category 4 Waters dated 1/5/15 and a Response to Comments dated 1/7/15.

NYSDEC Comments Summary and EPA Responses

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NYSDEC Comments:

- NYSDEC acknowledges that deposition and accumulation of macroalgae along the shoreline of Jones Inlet/Jones Bay impairs recreational use of the Inlet/Bay.
- Available data show that nitrogen concentrations are relatively low in Jones Inlet/Jones Bay.
- Available data also indicate that bottom cover of the macroalgae *Ulva* (“sea lettuce”) is very low (<10%) in Jones Inlet/Jones Bay. Low bottom cover of *Ulva* indicates that nitrogen is not causing excessive growth of *Ulva* in this waterbody.
- NYSDEC acknowledges that excessive nitrogen in other waterbodies of the Western Bays is feeding macroalgae growth, and nitrogen impairments for these waterbodies are included on the 303(d) list.
- *Ulva* accumulating along the shoreline of Jones Inlet/Jones Bay is largely transported there by prevailing winds and currents from other Hempstead Bay waters.
- EPA’s proposed listing would place additional regulatory requirements on communities in the vicinity of Jones Inlet/Jones Bay.

EPA Response:

NYSDEC has acknowledged that deposition and accumulation of macroalgae along the shoreline of Jones Inlet/Jones Bay impairs recreational use of the Inlet/Bay. The applicable water quality standard for nutrients in Jones Inlet/Jones Bay is New York’s narrative standard for nutrients: “None in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.” As referenced in EPA’s February 19, 2014 e-mail to NYSDEC, macroalgae has accumulated in Jones Inlet/Jones Bay. Boaters, fishers, and swimmers are affected by this accumulation of macroalgae. Therefore, the recreation use for this water is impaired, and the narrative standard is not being met.

NYSDEC provided data to EPA showing that nitrogen concentrations are low in Jones Inlet/Jones Bay. Water quality standards attainment decisions, however, involve assessing the existing and readily available data and information for a water against the applicable water quality standard(s) for that water. New York’s applicable water quality standard for nutrients for Jones Inlet/Jones Bay is the narrative water quality standard stated above rather than a numeric standard based on nitrogen concentrations.

NYSDEC concluded from available data that bottom cover of *Ulva* is low in Jones Inlet/Jones Bay. In addition, NYSDEC has acknowledged that excessive nitrogen in other waterbodies is feeding macroalgae growth, and nitrogen impairments for those waterbodies were included on the 2014 303(d) List. EPA approved the additions to the 2014 303(d) List. Further, NYSDEC commented that the *Ulva* that is accumulating along the shoreline of Jones Inlet/Jones Bay is largely transported there by prevailing winds and currents from other Hempstead Bay waters. EPA responds that section 303(d) of the CWA requires a water to be listed if an applicable water quality standard for the water is not met. The water must be listed whether or not the source of

the impairment originates within the waterbody itself. States must list water quality-limited waters regardless of the type, location and/or level of knowledge of the source. See, EPA's *National Clarifying Guidance For 1998 State and Territory Clean Water Act Section 303(d) Listing Decisions* (August 17, 1997). Further, despite the fact that bottom cover of *Ulva* is low in most of the area, the algae accumulating along the shoreline causes impairment of recreational use.

NYSDEC commented that EPA's proposed listing would place additional regulatory requirements on communities in the vicinity of Jones Inlet/Jones Bay. However, listing decisions are based upon water quality standards and use attainment and not upon whether or not communities will be affected by additional regulatory requirements. Both EPA and NYSDEC recognize the Jones Inlet/Jones Bay as impaired; therefore, Jones Inlet/Jones Bay must be included on New York's 2014 303(d) List.