

Port of Albany Expansion Project Implementation Agreement Pursuant to 6 NYCRR 182

By: Albany Port District Commission

Re: Port of Albany Expansion Project, Town of Bethlehem, Albany County, New York
Part 182/Incidental Take Permit Application (January 2022)
DEC #4-0122-00322

1.0 Introduction

This Implementation Agreement ("Agreement") has been prepared in accordance with the New York State Environmental Conservation Law ("ECL") § 11-0535 and the accompanying regulations found at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Part 182. It sets forth the roles and responsibilities of each party that will be involved in the creation of one acre of new benthic¹ area at Schodack Island State Park ("Net Conservation Benefit Project") which is associated with an Incidental Take Permit to be issued by the New York State Department of Environmental Conservation ("NYSDEC") to the Albany Port District Commission ("Commission") for the Port of Albany Expansion Project ("Expansion Project") in the Town of Bethlehem, Albany County, New York.

The Expansion Project will modify an undeveloped industrially zoned property into an active marine terminal with specialized infrastructure capable of supporting a new manufacturing operation that would produce tower components for offshore wind developments. The Expansion Project will facilitate the marine-based import and export of materials and manufactured components to be used in the development of offshore wind projects. Site improvements include the construction of associated site utilities, roads and infrastructure; installation of a new bridge over Normans Kill; and a new wharf which requires dredging and associated shoreline improvements.

The proposed in-water work activities (e.g., wharf and dredging) would occur along the western bank of the Hudson River in an area of approximately 740 feet in length by 167 feet in width. The general layout of the proposed wharf places the riverside face of structure coincident with the face of the existing timber revetment. The proposed wharf consists of a deep foundation-supported concrete-framed open-type wharf structure that provides overall dimensions of approximately 500 feet in length by 93 feet in width. The total area of the wharf is approximately 45,500 SF. The area of the wharf provided over water (outboard of the sheet pile cutoff wall), where shade will occur, is approximately 27,500 SF. Shade would vary and subject to time of the day and season of the year. The existing width of the Hudson River at this location is over 700 feet.

The Expansion Project will result in a take of habitat that is essential to the state and federally endangered Shortnose and Atlantic Sturgeon. This habitat impact will be offset through completion of the Net Conservation Benefit Project. The Net Conservation Benefit Project is one element of the larger Schodack Island Restoration Project ("Restoration Project") proposed by the New York State Office of Parks, Recreation and Historic Recreation ("OPRHP"). NYSDEC staff have determined that the Net Conservation Benefit Project will satisfy the requirements of ECL § 11-0535 and 6 NYCRR Part 182.

¹ Benthic area will be inundated at mean high water.

2.0 Responsibilities of the Parties

The Commission shall be responsible for contributing funds to the Net Conservation Benefit Project as part of the larger Restoration Project. OPRHP shall use the funding received from the Commission for the Net Conservation Benefit Project. OPRHP shall be responsible for implementing the Net Conservation Benefit Project.

The Net Conservation Benefit Project will be implemented on lands owned and/or controlled by OPRHP at the Schodack Island State Park. The Net Conservation Benefit Project will be designed and permitted after a feasibility study is conducted. The feasibility study is being conducted by NYSDEC and will be completed by December 31, 2022.

2.1 Albany Port District Commission

- The Commission shall provide funding to OPRHP for the Net Conservation Benefit Project in accordance with the payment schedule and payment method set forth in Section 4 below.

2.2 OPRHP

- OPRHP shall administer the Net Conservation Benefit Project design that will create at least 1.0 area of benthic area at Schodack Island State Park, as identified in the Incidental Take Permit;
- OPRHP shall prepare and apply for the permits and approvals necessary to implement the Net Conservation Benefit Project;
- OPRHP shall administer the construction of the Net Conservation Benefit Project when sufficient funding is acquired and received;
- OPRHP shall consult NYSDEC staff to ensure the Net Conservation Benefit Project results in a net conservation benefit as required by the Commission's Incidental Take Permit; and
- OPRHP shall provide NYSDEC staff annual reports on progress of the design and construction of the Net Conservation Benefit Project, including three years post-construction monitoring, and other information as requested by NYSDEC staff to determine if the requirements of this Agreement and the Incidental Take Permit are met.

2.3 NYSDEC

- NYSDEC shall participate with OPRHP on the design review of the Net Conservation Benefit Project;
- NYSDEC shall assist OPRHP in obtaining all necessary NYSDEC and other permits/approvals for the Net Conservation Benefit Project;
- NYSDEC shall assist OPRHP with the oversight of the Net Conservation Benefit Project; and
- NYSDEC shall assist OPRHP with the three (3)-year post construction monitoring of the Net Conservation Benefit Project in accordance with 6 NYCRR Part 182.

3.0 Net Conservation Benefit Project Scope

The Expansion Project includes a wharf that is within the general vicinity of known Shortnose Sturgeon spawning habitat² and within essential foraging, rearing and migration habitat for both Shortnose and Atlantic Sturgeon. Both Sturgeon species are bottom feeders and have been documented to forage on benthic organisms found in the Hudson River. Habitat alteration is a key threat to Sturgeon populations.³ The impacts on site will detrimentally impact these essential habitats for the species. Therefore, a restoration project must be completed that provides more benefit than the harm caused by the incidental take of Sturgeon to create a net conservation benefit to the species.

The Expansion Project will result in the permanent loss of 0.76 acres of essential Sturgeon habitat through permanent habitat conversion associated with the construction of the wharf. This area consists of the areas currently less than 10-feet in depth that will be converted to riprap or permanently shaded by wharf construction.

In addition to the permanent habitat loss, the Expansion Project will also result in an initial temporary disturbance of 1.96 acres of essential Sturgeon habitat through the dredging of previously unimpacted river bottom. Maintenance dredging at the site will likely be required once every 10 years to maintain the area, resulting in an annualized Sturgeon impact of approximately 0.20 acres. Temporary impacts will be confined to September 1 through October 31, to minimize both habitat impacts and the potential for direct impacts on feeding sturgeon. Habitat studies in other portions of the Hudson River indicate that the benthic fauna that Sturgeon feed on will recolonize the site within one year of dredging.⁴

The adverse habitat impacts to Sturgeon described above will be offset and improved by the Net Conservation Benefit Project. The area where Schodack Island State Park is located was historically several small islands separated by side channels. The side channels were filled in with spoils from dredging the Hudson River for commercial navigation. The Net Conservation Benefit Project will create 1.0 acres of benthic habitat at Schodack Island State Park by converting habitat that is currently upland into habitat that can be used by Sturgeon. The goal of this project is to return the area to habitat that is more similar to what existed before the dredge and fill operations, and ultimately create a self-sustaining habitat that is beneficial to Sturgeon. The benthic habitat creation will provide new foraging habitat for Shortnose Sturgeon and new refuge area for several fish species, including Atlantic Sturgeon. The Net Conservation Benefit Project shall be incorporated into the larger Schodack Island Restoration Project that will be developed by OPRHP and NYSDEC. The Net Conservation Benefit Project shall include:

- New benthic area created by the excavation of previously deposited dredge spoils to a depth that is inundated at Mean High Water;
- Benthic area will be inundated with Hudson River water to deliver river sediment and benthic organisms appropriate to enhance the food supply of Shortnose Sturgeon;
- Increased refuge area for fish species that increases diversity of habitat and survival of predation and hanging water flows;

² Pendleton 2018 Acoustic Telemetry and Benthic Habitat Mapping Inform the Spatial Ecology of Shortnose Sturgeon in the Hudson River, New York.

³ Title: Biological Assessment of shortnose sturgeon *Acipenser periosteum*, Published Date: 2010.

⁴ Newell 1998 The Impact of Dredging works in coastal Waters: A Review of the sensitivity to disturbance and subsequent recovery of biological resources on the seabed.

- Stabilized restoration area to assure long-term benefit of benthic areas; and
- Monitoring for at least three years to document stability, water flows, and establishment of benthic organisms. Monitoring methodology will be consistent with other dredged areas to increase the understanding of Hudson River restoration.

4.0 The Commission’s Funding Obligations and Method of Payment

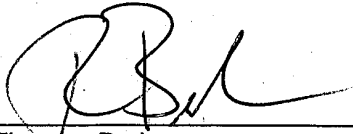
The Commission shall provide OPRHP with a total of \$700,000 for the Net Conservation Benefit Project in accordance with the payment schedule set forth in section 4.2. OPRHP shall dedicate these funds to be used for the Net Conservation Benefit Project. The total amount of \$700,000 is estimated to be sufficient to fund the creation of 1.0 acres of benthic area identified as requiring restoration.

ORPHP shall submit invoices to the Commission requesting payment. All invoices shall be prepared in a standard invoice format and accompanied by a New York State Standard Voucher and Documentation Requirements. All invoices will be processed in accordance with established procedures of OPRHP and the New York State Office of the State Comptroller (OSC). The Commission shall transfer the funds to OPRHP through electronic payment. Such electronic payment shall be made in accordance with ordinary OPRHP and OSC procedures and practices.

4.1 Funding Source: The Albany Port District Commission shall provide the funding to OPRHP. Upon OPRHP’s receipt of the final payment, in accordance with the funding schedule in 4.2, the obligation of the Albany Port District Commission for the Net Conservation Benefit Project will be complete.

4.2 Funding Schedule: To meet the obligations under the Incidental Take Permit, the Commission shall pay OPRHP a total of \$700,000 in accordance with the following schedule:

Payment Amount	Received by OPRHP on or before	Allocation of Funds
\$150,000	August 31, 2022	Design and Permitting of The Net Conservation Benefit Project
\$137,500	January 1, 2023	Construction and Monitoring
\$137,500	January 1, 2024	Construction and Monitoring
\$137,500	January 1, 2025	Construction and Monitoring
\$137,500	January 1, 2026	Construction and Monitoring



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6/6/22

Date

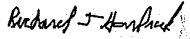
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Melinda Scott
Deputy Commissioner for Finance and
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Date

