



9 Thurlow Terrace
Suite 100
Albany, NY 12203

Tel: (518) 869-9731
ny.audubon.org
@AudubonNY

**Testimony of Erin McGrath
Policy Manager, Audubon New York
Before the Joint Legislative Hearings on the New York State Budget
Environmental Conservation
February 1, 2022**

Chairwoman Krueger, Chairwoman Weinstein, Chairman Kaminsky, Chairman Englebright, and distinguished members of the New York State Senate and Assembly, thank you for granting Audubon New York the opportunity to testify on Governor Kathy Hochul’s Executive Budget proposal for SFY 2022-23. I am Erin McGrath, and I serve as the Policy Manager for Audubon New York, a leading state program of the National Audubon Society.

The National Audubon Society protects birds and the places they need throughout the Americas using science, advocacy, education, and on-the-ground conservation. Audubon’s state programs, nature centers, chapters, and partners have an unparalleled wingspan that reaches millions of people each year to inform, inspire and unite diverse communities in conservation action. In New York State, Audubon New York leads a network of 99,000 members, 27 locally-affiliated chapters, seven sanctuaries and nature centers, and thousands of annual visitors, volunteers, and partners throughout the state.

Before addressing the Governor’s SFY 2022-23 Executive Budget proposal and Audubon’s 2022 budget priorities, I would like to extend our thanks to you and your colleagues for the 2021 legislative session’s environmental accomplishments. With your leadership, the state reauthorized the Environmental Bond Act, provided funds for the creation of the first New York State Birding Trail, adopted policies that will help preserve forest health, and maintained high levels of funding for our environment – providing critical resources to conserve open space, protect and improve water quality, upgrade aging water infrastructure, prevent pollution, and make New York State more resilient in the face of climate change.

As we seek to strengthen New York State’s economy after the instability of 2020 and 2021, we need to double down on our commitments to combatting climate change and protecting our environment. Good-paying green jobs and more resilient communities should be an essential part of our economy – and we already have the perfect framework for achieving these goals. The Environmental Protection Fund (EPF) and Environmental Bond Act look at the environment in a holistic way that recognizes how communities, the economy, and the environment intersect. Furthermore, the Climate Leadership and Community Protection Act (CLCPA) and the Accelerated Renewable Energy Growth and Community Benefit Act provide us with an achievable path to carbon neutrality. By using the power of nature-based solutions to adapt to the changes in our environment and responsibly-sited renewable energy to shrink our carbon footprint, we can ensure a more sustainable future for all New Yorkers.

Audubon and its membership are excited to back these proposals and know that New York State will be a strong ally in these efforts. Seventy-five percent of all Audubon members, including a majority of

moderate and conservative members, rank climate change as one of their top three concerns among all issues facing America today—and 82 percent of Audubon members (including 61 percent of moderates and conservatives) are personally “very concerned” about growing impacts of climate change.

Audubon is a proud partner and supporter of New York State’s conservation efforts, and we look forward to working with the Legislature during the 2022 legislative session. As you develop your SFY 2022-23 One House Budget proposals, we respectfully request that you consider the following Audubon priorities.

Dedicate \$400 Million to the Environmental Protection Fund. New York State has an ongoing obligation to provide reliable funding for environmental conservation. Recurring funding allows the State and its partners to establish long-term plans that are cost-effective and utilize public and private funding for overlapping priorities, such as land acquisition, improving habitat management, and increasing resiliency to climate change. In addition to funding this important work, the EPF generates \$40 billion in economic activity each year, supports 350,000 jobs across the state,¹ and provides a critical match or supplemental funding for other state and federal programs, such as the Great Lakes Restoration Initiative, the Lake Ontario REDI Initiative, Delaware River Basin Conservation Act, and the Long Island Sound Comprehensive Conservation Management Plan, among others – and has the potential to provide matching or complementary funding for the Environmental Bond Act. We are grateful that the Governor has proposed to increase the EPF to \$400 million and ask the Legislature to join in her in committing to this historic funding level.

Within the EPF, Audubon supports investments that advance bird conservation and mitigate impacts to critical habitat through the following categories:

Zoos, Botanical Gardens, and Aquaria Program. The Zoos, Botanical Gardens, and Aquaria Program is particularly important to Audubon as it provides funding for our nature centers and sanctuaries, which protect bird habitat and provide educational programming. If funding were cut, it would directly impact the operations and staffing at our centers; including the Montezuma Audubon Center in Savannah, Constitution Marsh Audubon Center in Garrison, Theodore Roosevelt Sanctuary and Audubon Center in Oyster Bay, and Rheinstrom Hill Audubon Sanctuary and Center in Hillsdale. We ask that you increase this funding from the proposed \$18 million to \$26 million if a larger funding proposal is contemplated by the Legislature. This will help to ensure continuity of operations at our centers and similar facilities, which are seeing increased traffic during the COVID pandemic as well as additional operational costs.

Regenerate NY. The Regenerate NY program encourages private landowners to improve forest health by providing a cost-share for beneficial management activities, including afforestation, reforestation, forest stand restoration, control of competing vegetation, creation of forest openings, construction of deer enclosure fencing, and other forest regeneration-focused practices approved by the Department of Environmental Conservation (DEC). These management strategies promote the successful regeneration of trees and shrubs, creating favorable habitat conditions for birds and making forests less susceptible to climate change and invasive species. Successful forest regeneration is also critical to maintaining and increasing the amount of carbon sequestered by our forests. Funding this program will build on Audubon’s successful efforts to manage habitat for woodland birds by supporting the creation of additional

¹ The economic benefits of New York Environmental Protection Fund. New Yorkers for Clean Water and Jobs. (2012, January). Retrieved January 28, 2022, from https://cleanwaterandjobs.org/wp-content/uploads/2020/12/2012_TPL_report_ny_econ_benefits_epf.pdf

quality habitat. We ask you to continue to provide at least \$500,000 in funding for Regenerate NY in the EPF, which includes \$400,000 for the cost of qualifying practices and \$100,000 for education and outreach. If the program is fully subscribed, we would also recommend providing an increase that would serve a greater number of applicants.

Ocean and Great Lakes Initiative. The Ocean and Great Lakes line provides funding for research and planning projects that support improved ecosystem-based management of the Great Lakes and our coastal ecosystems. On and around Lakes Erie and Ontario, this funding provides the means for studying recurrent flooding and erosion, examining the control of nutrients and sediment, including through Nine-Element Plans, promoting ecosystem-based management to private and public entities, and providing small research grants through the Great Lakes Research Consortium. Once completed, this research and planning usually leads to additional investments from private and public funders, including the federal Great Lakes Restoration Initiative, which provides the state, local entities, and nonprofits with capital funding to implement ecosystem-based management and restoration projects. This is particularly important this year, as \$1 billion in supplemental federal funding has been appropriated to address legacy pollution in Areas of Concern. We ask you to increase funding for this program from the \$22 million proposed to \$25 million for these reasons.

Delaware River Basin Commission. The EPF contains \$359,000 in funding that constitutes a portion of New York State's financial commitment to the Delaware River Commission. We encourage the State to provide adequate funding to support the Commission's efforts and cover the full cost of New York State's statutory share. Covering 13,500 square miles and four states—the Delaware River Watershed is a diverse landscape of more than 35 ecological systems and 185 natural communities. It provides essential year-round habitats and critical migratory stopovers for approximately 400 bird species. More than 13.3 million people obtain clean, abundant water from the Delaware River Watershed,² including 4.5 million New York City residents. The watershed is a significant economic driver, grossing more than \$22 billion annually in economic activity and \$21 billion in ecosystem goods and services each year and contributing 600,000 jobs and \$10 billion in annual wages to the economy.³

Upper Delaware River. New York State's Upper Delaware River watershed provides critical habitat for birds and contributes \$3.5 billion to the State's economy annually through ecotourism and other ecosystem services. But despite its regional importance, it has been overlooked for funding and support from the State. We ask that the State partner with the Friends of the Upper Delaware River (FUDR) and provide \$1 million in funding through the EPF, which FUDR can distribute as regrants to environmental conservation organizations and other partners in the watershed. Partners who received grants would pursue projects that restore habitat for native plants and animals, reduce impacts of climate change, improve flood resiliency, upgrade old and failing infrastructure, and improve and expand access to the Upper Delaware River.

Increase Environmental Agency Budgets and Staff. We strongly encourage you to support increased staffing levels at state agencies that are charged with stewarding and protecting our environment. We are pleased to see that the Governor has proposed investing an additional \$3.4 billion in the state

² State of the Basin 2019 (2019). Delaware River Basin Commission. Retrieved January 28, 2022, from https://www.nj.gov/drbc/library/documents/SOTBreport_july2019.pdf.

³ Kauffman, G. J. (2016). Economic Value of Nature and Ecosystems in the Delaware River Basin. *Journal of Contemporary Water Research & Education*, 158(1), 98–119. <https://doi.org/10.1111/jcwr.2016.158.issue-1>

agencies responsible for our environment, including the hiring of 94 new FTEs at the DEC and 53 new FTEs at the Office of Parks, Recreation and Historic Preservation (OPRHP). With regulatory, management, and stewardship responsibilities for the state's open spaces and natural resources, the DEC is on the front lines of efforts to conserve and restore New York State's environment. Additionally, OPRHP, and the Office of Renewable Energy Siting (ORES) all share in stewarding and protecting our environment, and are deserving of commensurate increases. Adequate financial support is critical following the passage of the CLCPA and the Accelerated Renewable Energy Growth and Community Benefit Act, which have placed new obligations on these offices and agencies. Past budget cuts and growth restrictions have impacted their ability to meet mandated activities, and New York State needs a long-term strategy to reinvest in the DEC and affiliated agencies to ensure they have the resources and staff to safeguard our environment appropriately.

Adequate staffing is critical for the DEC's charge to manage New York State's wildlife and administer the laws and regulations governing threatened and endangered species, and we are grateful that the Governor has proposed to add 22 new FTEs to the Fish, Wildlife, and Marine Resources Program. The Division of Fish and Wildlife must have sufficient staff to ensure the quick and efficient review of proposed development, issue associated permits, and meet ongoing research and conservation needs. As mentioned above, with the passage of the new siting law, the Division's workload will increase dramatically as more renewable energy projects enter the siting queue. Ensuring that adequate environmental reviews are completed for each of these projects is imperative. Many of the proposed projects are located on land that provides habitat for grassland birds, which are suffering from significant population declines due to habitat loss. We must ensure that appropriate measures are taken to avoid, minimize, or mitigate such projects' harm, including mitigation at alternate sites if appropriate.

For the same reasons, it's critical to provide ORES with adequate staff and resources. We are pleased to see that the ORES, DEC, and US Fish and Wildlife Service (USFWS) achieved meaningful protections for migratory birds in one of the first projects proposed under the new 94-c process – Heritage Wind. ORES's final decision required the developer to remove or relocate six wind turbines that were "prohibitively high-risk" for nocturnal migrating songbirds unless the developer can demonstrate that such changes are "impracticable."⁴

The proposed location for these turbines was within two miles of the Oak Orchard Wildlife Management Area ("the WMA") located within the Iroquois National Wildlife Refuge complex, which is one of Audubon's Important Bird Areas and a New York State Bird Conservation Area. The WMA is an important stopover and breeding area for migratory songbirds and waterfowl, and supports many threatened or endangered species, including the Pied-billed Grebe, Least Bittern, Black Tern, Short-eared Owl, and Sedge Wren.⁵

This situation was untenable because the turbines were aligned with the general direction and altitudes of migration in the area, which was confirmed by radar studies conducted by USFWS. During the spring, migrating birds initiating flight from the WMA would potentially collide with the turbines as their flight passed directly through the rotor swept zone. Similarly, birds descending into the WMA during fall migration could impact the turbines as they pass through the same zone. Additionally, since 80 percent

⁴ Additionally, if the developer does prove that such measures are impracticable, they will be required to create and implement an expanded post-construction monitoring plan and adaptive management program for the entire project, including, at a minimum, a radar study focused on nocturnal migrants and a curtailment program and/or use of technologies to reduce collisions.

⁵ Iroquois NWR/Oak Orchard and Tonawanda WMAs. Audubon New York. (2018, May 10). Retrieved January 28, 2022, from <https://www.audubon.org/important-bird-areas/iroquois-nwroak-orchard-and-tonawanda-wmas>

of migrating birds make their seasonable flights at night, poor visibility would have also contributed to a high number of collisions with the turbines. The developers' application also showed that such collisions would occur at a higher-than-average rate for a wind project, which typically sees two fatalities per megawatt per year according to industry averages.⁶

Audubon strongly supports the development of renewable energy and transmission infrastructure that is sited and operated to avoid, minimize, and effectively mitigate impacts on birds and other wildlife. Wind and solar power are clean, renewable sources of energy with few negative environmental impacts and are essential components in our fight against climate change. This decision proves that renewable energy development and the protection of New York State's birds are not mutually exclusive, and establishes a strong and much-needed precedent for future renewable energy projects.

Continue to Fund Capital Improvements in State Parks. Audubon and our locally-affiliated chapters partner with the OPRHP to advance bird conservation in State Parks through the 'Audubon in the Parks' initiative. This public-private partnership addresses conservation needs through outreach, interpretation, and on-the-ground conservation in Bird Conservation Areas and Important Bird Areas in our State Parks. We strongly support the ongoing restoration of New York State's parks and historical sites, which has revitalized our parks for people and wildlife, and ask that you support the Governor's proposal to provide \$202.5 million for OPRHP and \$90 million for the DEC for capital projects – including for projects focused on habitat improvement and natural or green infrastructure.

Environmental Bond Act. Our natural landscapes provide essential habitat for birds and other wildlife and are important economic drivers that support local communities. Investments in ecosystem-based restoration can provide multiple benefits, including increased habitat for threatened and endangered species, more sustainable fisheries, opportunities for recreation and tourism, and increased resiliency in the face of climate change. By funding ecosystem-based restoration projects, New York State can also inject much-needed capital and jobs into communities and ensure they are not vulnerable to the next superstorm.

For these reasons, we strongly support the inclusion of an additional \$1 billion in funding for the Environmental Bond Act and Governor Hochul's proposal to rename the Bond Act. The name "Clean Water, Clean Air, and Green Jobs Environmental Bond Act" will more clearly convey the purpose of the measure and assist with educating the public about the importance of the ballot proposal. And an additional \$1 billion in funding will allow more communities to benefit from capital projects that will improve water quality, mitigate climate change, increase resilience to extreme weather, protect wildlife and their habitat, and provide new opportunities and access to outdoor recreation. Lastly, this measure will also support more than 65,000 good-paying jobs⁷ and allow the state to leverage other public and private funding sources for an even greater impact.

Protect New York State's Wetlands. Wetlands are critical for bird health and population stability, and numerous freshwater wetlands are found in Audubon Important Bird Areas throughout the state. Approximately one-third of North American bird species use wetlands, and one hundred thirty-eight species and subspecies of birds in the US are designated as wetland-dependent, including many threatened or endangered birds in New York State. Protecting these birds' habitats is essential to their future survival. Freshwater wetlands also provide countless other ecosystem services, including flood

⁶ Decision of the Executive Direction in ORES DMM Matter Number 21-00026, issued January 13, 2022. Page 26.

⁷ Economic Impacts of the New York State Environmental Bond Act. Rebuild by Design. (2020, October). Retrieved January 28, 2022, from <http://www.rebuildbydesign.org/our-work/research/economic-impacts-of-the-new-york-state-environmental-bond-act>

protection, stormwater runoff control, and the filtration of pollutants, pesticides, and sediments. All of these benefits illustrate the need to protect the state's freshwater wetlands to the greatest extent possible.

Currently, the State has the authority to regulate freshwater wetlands 12.4 acres or greater in size or of unusual local importance. However, each of those wetlands must be delineated on jurisdictional maps held by the State. This is problematic because most of the jurisdictional maps have not been updated in over twenty-five years due to outdated statutory protocols for approving map amendments – leaving more than one million acres of wetlands unmapped and without protection. New York State must amend the Freshwater Wetlands Act to ensure that all wetlands are subject to oversight by the DEC regardless of size and remove the DEC's requirement to maintain and use jurisdictional maps for permitting decisions. Without this increased level of protection, wetlands will remain vulnerable to alteration, degradation, or even elimination. Construction, industrial activity, and pollution of various forms can drastically alter the delicate ecological balance of these wetlands, and the bird species depending on those wetlands would face serious risks.

It is critically important that we amend the law this year. Last week, the Supreme Court of the United States announced that it will hear an appeal in *Sackett v. EPA*,⁸ where two landowners are pressing to build a home on federally protected freshwater wetlands. This petition will allow the Justices to revisit the decision in *Rapanos v. United States*⁹ and potentially redefine what is considered a wetland pursuant to the federal Clean Water Act.

In *Rapanos*, the Court fractured and established two different tests for what constitutes a regulated wetland. Former Justice Antonin Scalia held that a wetland must have or be connected to waters that are “relatively permanent,” whereas former Justice John Paul Stevens' rule established that a wetland was subject to regulation if it had a “significant nexus” with an established jurisdictional navigable waterway. Although *Rapanos* ended with no precedential majority holding as to the proper test, most courts – including those who rendered decisions in *Sackett*, have embraced the significant nexus test.

The petitioners have asked the Court to establish the Scalia rule as the law of the land, which would eliminate federal protections for isolated wetlands and ephemeral or intermittent streams. If that unthinkable scenario occurred, the responsibility for protecting non-regulatory federal wetlands would fall to the States. In New York, this would mean that the over 1.4 million acres of freshwater wetlands that are 12.4 acres or greater in size and included on the State's maps would still be protected by the DEC – but – the future of the additional one million acres of unmapped wetlands would be uncertain at best.

For these reasons, we encourage the Legislature to support the Governor's proposal to reform the New York State Freshwater Wetlands Regulatory program. This proposal would eliminate the regulatory maps, establish a rebuttable presumption of the DEC's jurisdiction over all freshwater wetlands, and allow all wetlands to be eligible for protection from the DEC regardless of their size. These bold reforms would end decades of struggle, where the State's hands have been tied by the very laws meant to protect our wetlands. It's time to end the loss of our wetlands and allow the DEC to fulfill its mission to protect our environment.

Funding for Clean Water Infrastructure. New York State's investments in clean water infrastructure have provided significant and needed funding that improves our wastewater and drinking water

⁸ *Sackett v. EPA*, 566 U.S. 120, 131 (2012).

⁹ *Rapanos V. Untied States*, 547 U.S. 715 (2006).

infrastructure. The amount of funding that New York State has committed to new infrastructure has continued to outpace federal spending for the entire nation and provides a strong example that the federal government should follow.

As you know, New York State has estimated that the combined wastewater and drinking water needs in the state will exceed \$80 billion over the next 20 years, and that estimate does not take into account the cost to replace lead service lines, remove emerging contaminants, or address increased flooding caused by climate change. These costs will continue to grow unless we continue to make significant investments in upgrading and restoring our infrastructure.

For these reasons, we ask you to provide \$1 billion in funding for the Clean Water Infrastructure Act. New York State and the federal government must also step up to provide additional low-cost loans, zero-interest grants, and technical assistance or planning grants to communities so that they can ensure that their residents have access to clean water. This is particularly important this year, since the US Environmental Protection Agency (EPA) has announced that New York State will receive \$428 million for water infrastructure in 2022 from the federal Bipartisan Infrastructure Act. Fifty-one percent of this aid will be provided through loans, which will remain inaccessible to communities that cannot afford the interest payments. By increasing funding provided through the Clean Water Infrastructure Act, we can help communities access these funds and make the most of these critical federal resources.

Funding for Climate Implementation. Scientists have determined that climate change is the greatest threat to birds. Birds are vulnerable to subtle changes in their environment, such as availability of food, water, and habitat, which can cause them to shift or lose their ranges. Our peer-reviewed research shows that 314 species — roughly half of all North American bird species — are threatened with the loss of at least 50 percent of their current ranges by 2080.

Audubon and other leaders in the science and conservation space agree that in order to help prevent species extinctions and other catastrophic effects of climate change, we must reduce carbon pollution as quickly as possible. This will require us to electrify our economy as quickly as possible, make significant reductions in our use of fossil fuels, and invest in natural climate solutions that sequester carbon emissions.

Now that the CLCPA's Draft Scoping Plan has been released, we need to ensure that adequate funding is available for its implementation. We should examine existing revenue streams to see if they can be leveraged and identify new funding vehicles that will enable us to undertake the scoping plan's recommendations. The State should also coordinate closely with the New York State congressional delegation to maximize opportunities for matching funds from federal agencies like the EPA, USFWS, US Department of Energy, and the Army Corps of Engineers.

In New York State, the proceeds from the Regional Greenhouse Gas Initiative (RGGI) have provided a consistent source of funding for energy efficiency projects, Green Jobs – Green New York, and the State's renewable energy initiatives. Unfortunately, 17 percent of RGGI proceeds, or \$228 million, have been transferred to the General Fund by New York State Energy Research and Development Authority (NYSERDA). Now more than ever, it is important that these funds be used for their intended purposes and support New York State's transition to carbon neutrality. As New Yorkers reenter the workforce, we can build a stronger economy by providing training for "green-collar" jobs that will help us transform the private sector and bring carbon neutrality to residential neighborhoods.

Extension of Brownfield Tax Incentives. As stated above, Audubon strongly supports the development of renewable energy and transmission infrastructure that is sited and operated to avoid, minimize, and effectively mitigate impacts on birds and other wildlife. However, renewable energy projects and the

development of new transmission infrastructure can negatively affect wildlife through displacement and habitat degradation.

We recognize that identifying suitable locations for large-scale renewable energy and transmission infrastructure is challenging. For these reasons, while Audubon does support utility-scale solar projects that are sited responsibly, we believe that New York State should pursue and incentivize distributed solar and other behind-the-meter resources wherever possible. Solar panels that are installed on rooftops, brownfields, capped landfills, parking lots, and other structures minimize the amount of quality habitat that needs to be used for renewable energy projects and helps to decrease habitat fragmentation.

We strongly support the extension of the Brownfield Opportunity Program to 2032 and its associated tax incentives, as well as the creation of additional incentives for the redevelopment of these sites as renewable energy projects. Using brownfields as sites for community-supported renewable energy projects will help to preserve bird habitat, allow us to meet our climate goals, and contribute to the revitalization of disadvantaged communities that live with the impacts of these stagnant sites every day. Additionally, redeveloping brownfields in this manner will provide these communities with access to clean sources of renewable energy that can reduce health impacts associated with fossil fuels used for energy production.

Extended Producer Responsibility. Audubon supports establishing an extended producer responsibility program for product packing. New York State is facing a statewide solid waste and recycling crisis that is impacting local governments, taxpayers, and our environment at an unprecedented scale. The cost of recycling has skyrocketed while the value of recyclables themselves has declined due to changes in the export market, which leaves local recycling programs in a situation where revenue is not covering the cost of their operations.

These circumstances mean that we need to act now to support local communities and ensure that recycling continues to take place. Otherwise, these recyclables will be bound for a landfill, an incinerator – or even worse – will wind up in the ecosystems that birds need to thrive. On average, an estimated 8 million metric tons of plastic enter the ocean each year due to littering, illegal dumping, and poor waste management on land and at sea. Decreasing our reliance on single-use plastic and ensuring that there are opportunities for them to be recycled appropriately will help reduce the amount of pollution in our oceans and waterways, helping to prevent accidental ingestion by coastal and marine birds.

Scientists estimate that by 2050, 99 percent of all pelagic birds will have consumed plastic at some point in their lives. Some birds consume plastics because it looks like prey, and others fail to avoid microplastics when feeding since plastic has become so abundant. Plastic-packed birds often have little food in their stomachs, suggesting that they stop eating when the materials remain undigested. Additionally, chemical contaminants from plastics can be released in a bird's digestive tract when ingested and cause sub-lethal effects.

In order to resolve this crisis, the State should enact an extended producer responsibility program for product packaging. This would shift the responsibility for the recovery of product packaging from local governments to the producers and brand owners of these materials – making them responsible for the end-of-life management of their product packaging. This will relieve local governments of the unpredictable costs associated with recycling, create an incentive for producers to create less packaging in the first place, and develop packaging that is less costly and toxic to recycle.

Meeting the demand for improvements to our environment and protecting bird species from further decline will take creativity and a commitment from all levels of government. Audubon once again urges the Legislature to support historic funding levels for environmental conservation, policy initiatives that help protect our environment, and pragmatic solutions to address the threat of climate change.

Thank you again for allowing me to testify today, and should you need any additional information, please contact me at 518-860-4296 or erin.mcgrath@audubon.org.