

Great Lakes Protection Act Alliance



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Conserving Canada's Wetlands



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Environmental Law
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Detailed prioritized recommendations regarding amendments to Bill 6 (proposed Great Lakes Protection Act)

Submission to the Standing Committee on Regulations and Private Bills

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SUMMARY

The Great Lakes Protection Act Alliance is supportive of Bill 6, the proposed Great Lakes Protection Act. The Alliance believes the bill introduces important new legal and policy tools to help safeguard, restore and protect Ontario's portion of the Great Lakes-St. Lawrence River Basin.

A strong and effective Great Lakes Protection Act has the potential to:

- Create the planning and regulatory tools necessary to better address the complex and nearly intractable issues facing the Great Lakes now and into the future;
- Address legislative gaps in current Great Lakes policy;
- Provide mechanisms to track and measure progress on improving Great Lakes health and holding responsible authorities accountable;

- Create opportunities for stronger community involvement on Great Lakes issues;
- Affirm provincial commitment to meeting targets outlined in agreements with neighbouring Great Lakes-St Lawrence River states and provinces;
- Spark renewed interest in Great Lakes by focusing public attention and government resources on the urgency of the issues at hand; and
- Align priorities and decision-making across provincial ministries by legislating principles that guide decision-making related to Great Lakes health.

From the onset, it is important to acknowledge that First Nations and Métis communities have an important historic relationship with the Great Lakes-St. Lawrence River Basin. The proposed Act must explicitly recognize the value of traditional knowledge and ensure this perspective is incorporated directly into Great Lakes decision-making.

To ensure the proposed Act is fully implemented and drives genuine and timely action that restores and protects Great Lakes health, the Alliance proposes three categories of priority changes to Bill 6, summarized below. Specific legal language for the proposed amendments is available below (beginning at page 8).

1) PRIORITIZING KEY ISSUES AND ACTIONS

To secure swift action on key issues such as wetland protection, we recommend the proposed Act *require* the setting of at least one clear target that addresses each of the stated purposes of the Act: protecting human health and well being; protecting and restoring wetlands, beaches, shorelines and other coastal areas; protecting and restoring natural habitats and biodiversity; advancing science relating to existing and emerging stressors; and supporting environmentally sustainable economic opportunities in Great Lakes' communities. Targets should be set within the first two years of the Act coming into force.

We also suggest that targets be set for each of the Great Lakes' watersheds to ensure that a comprehensive approach is being taken to protect and restore the whole of Ontario's portion of the Great Lakes-St. Lawrence River Basin, and that a specific wetland conservation target be established to address the urgency associated with wetlands loss in Ontario.

To ensure the proposed Act adequately reduces and eliminates harmful pollutants, we suggest that this be a goal that is explicitly listed in the purposes of the proposed Act. Additionally, it should be made clear that the policy tools listed in Schedule 1 will be made available to achieve pollutant-reduction targets and goals.

One of the main features of the legislation, Geographically-Focussed Initiatives (GFIs), enables the development of plans to address complex issues at the local level. To ensure a transparent and fair system, we propose that the Great Lakes Guardians' Council develop selection, sequencing and prioritization criteria for GFIs. Further, we are encouraging the government to initiate three to five new GFIs within the first five years.

2) ACCOUNTABILITY, TRANSPARENCY, AND PUBLIC REPORTING

The proposed Act is meant to build on the approach outlined in Ontario's Great Lakes Strategy. As such, we would like to see the principles and performance measures listed in the Strategy added to the required contents of the proposed Act. This will ensure accountability by providing guidance for Great Lakes-St. Lawrence River Basin decision-making and by providing clear indicators by which to measure progress.

We suggest that the Minister of Environment report on progress made under the proposed Act every three years to describe among other things, actions that have been taken to address priority issues, and what will be done in the future to address emerging threats. We would also like to see the public release of annual reports to ensure accountability on a regular basis.

3) INVOLVING THE PUBLIC

Key to the success of the proposed Act will be the level of grassroots support for setting targets and implementing GFIs. Therefore, we recommend the proposed Act make it easier for the public to engage in the process by providing the necessary information for securing broad participation in the setting of targets and identifying GFIs, including a description of the geographical area targeted, public bodies involved, and the issue(s) to be addressed.

Our proposed amendments would enable members of the public to have a say in the decisions that impact the health of the Great Lakes by allowing them to request new geographically-focussed initiatives, targets and performance measures.

Implementation of the proposed Act needs to be an open and transparent process to ensure we are monitoring the right things, collaborating effectively, taking full advantage of public capacity and knowledge, and encouraging innovative, local solutions.

Proposed Great Lakes Protection Act – An Important Piece of the Puzzle

The Alliance recognizes the problems facing the Great Lakes are complex and that a single piece legislation cannot provide all of the answers. We consider the proposed Great Lakes Protection Act to be one step on the path towards protecting human health while safeguarding the ecological integrity of the Basin in ways that are economically viable. Next steps need to include making full use of the tools provided in the proposed Act, ensuring adequate budgets are allocated to implementation, applying integrated watershed management principles to decision-making, and aligning Great Lakes policy to meet local, provincial, federal and international commitments.

Beginning at page 8 are the Alliance’s detailed prioritized amendments, with specific language that we hope will be helpful in considering potential changes to Bill 6. We are happy to discuss our proposed prioritized amendments further.

This submission is authored by the following organizations as part of the Great Lakes Protection Act Alliance:



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DETAILED PRIORITIZED AMENDMENTS

Before we detail our prioritized amendments, we wish to express how, at a fundamental level, we anticipate that the Ontario government will meet their duty to consult and accommodate First Nation and Métis communities regarding Bill 6. Any recommendations that we make with respect to amendments to Bill 6 that relate to First Nation and Métis communities are intended to support their efforts and needs. In that regard, we are proposing the following amendment related to traditional ecological knowledge (TEK). Our interest in the provision regarding TEK is to ensure that if First Nations and Métis communities decide to offer their traditional ecological knowledge, it be mandated to be considered by the Great Lakes ministers. In that regard, we propose that section 28 be amended to read as follows:

28. First Nations and Métis communities that have a historic relationship with the Great Lakes-St. Lawrence River Basin may offer their traditional ecological knowledge for the purpose of assisting in anything done under this Act. If offered, traditional ecological knowledge submitted by First Nations and Métis communities shall be considered by Great Lakes minister(s) in any decision-making under this Act.

In the remaining sections, we outline our detailed prioritized amendments.

I. PRIORITIZING KEY ISSUES AND ACTIONS

Bill 6 is enabling legislation. As proposed, it offers new tools to address the complex threats that plague the Great Lakes – St. Lawrence River Basin. Our concern is that some of the threats in the Basin need action more urgently than others. As such (and in addition to our critical recommendations related to accountability, transparency, and public reporting), we seek to ensure that there is additional emphasis on some key issues and associated actions.

A. CONSERVING WETLANDS AND SETTING TARGETS

While both Bill 6 and Ontario's Great Lakes Strategy recognize the value of wetlands in protecting and restoring the ecological health of the Great Lakes and St. Lawrence River Basin, Bill 6 falls short of providing explicit measures to ensure that the full array of wetland benefits are completely realized. As enabling legislation, Bill 6 provides a solid platform and multiple tools that can be deployed in the future to help protect and restore wetlands and the ecological health of the Basin. Unfortunately, wetlands in the Great Lakes-St. Lawrence River Basin are in crisis now. Further delays in putting effective wetland protection and restoration measures in place will only cause further wetland loss and degradation, which the Great Lakes and Ontario can ill afford.

In that regard, we urge the following amendments that will ensure action is taken under the proposed Act in a timely manner.

Targets

The target setting enabled by Bill 6 cannot be discretionary. We propose that the subsection 8(1), Part IV be amended to read as follows:

Targets

(1) To achieve one or more purposes of this Act, the Minister of the Environment shall, after consulting with the other Great Lakes ministers, establish qualitative or quantitative targets relating to the Great Lakes-St. Lawrence River Basin, specifying in each target the area to which it applies, the manner in which, in his or her opinion, public bodies with jurisdiction in that area should take it into consideration, and the timeframes for achieving the targets.

As well, targets should be established in order to further all of the purposes of Bill 6 within a specified period of time. We propose that the following be added to section 8:

Targets addressing purposes to be established within 24 months

(1.1) At least one target addressing each of the purposes outlined in subsection 1(2) shall be set within 24 months of the day this Act comes into force.

In order to address the urgency associated with wetlands loss in particular (as noted above), it is crucially important that a target or targets be mandated that are specifically intended to advance wetland conservation. Therefore, we propose that the following subsection be added to section 8:

Wetland conservation target(s) be established within 24 months

(1.2) Wetland conservation target or targets shall be established within 24 months.

The establishment of such a target for wetlands can build on existing work and align with future actions already identified in the Great Lakes Strategy (p.46). In particular, there are strategic partnerships already in place, including the Great Lakes Wetlands Conservation Action Plan, that can be consulted and provide a springboard for moving Ontario into more effective action on wetland protection and restoration.

The case for strong wetland conservation measures enabled by Bill 6 to prevent further loss and degradation of Great Lakes wetland habitat in order to sustain the Great Lakes is unequivocal. This case is further bolstered upon consideration of how stronger wetland protection and restoration measures would substantially advance several priorities of the Province, including: protecting species-at-risk and biodiversity, adapting to climate change, and safeguarding our water quality and water supply.

Further, it is important that targets be established across the Basin, ensuring that each of the Great Lakes' watersheds are represented (e.g., Lake Superior, Lake Huron, Lake Erie, Lake Ontario and the Upper St. Lawrence River watersheds). We propose that the following be added to section 8:

Lake-by-Lake Targets

(1.3) When establishing targets under subsection (1), the Minister of the Environment shall ensure that there are targets representing threats in each of the Great Lake' watersheds.

B. ADDRESSING TOXIC SUBSTANCES

We propose that clause 1(2)1 be amended to read as follows:

1. To protect human health, well being, and ecological integrity through the protection and restoration of the Great Lakes-St. Lawrence River Basin, including the reduction and elimination of harmful pollutants.

We further propose that the following be added at the end of Section 1 of Schedule 1:

For greater certainty, such policies may include policies that restrict the use or emission of contaminants onto, into or from the use of land or the erection, location or use of buildings or structures for such purposes as may be set out in the initiative.

We also propose that the following be added at the end of Section 4 of Schedule 1:

For greater certainty, such policies may include policies that restrict the use or emission of contaminants permitted within prescribed instruments for such purposes as may be set out in the initiative.

This proposed amendment to subsection 1(2) explicitly covers toxic substances within the Act's purposes to ensure toxic reduction or elimination is a valid target or goal of a geographically-focussed initiative and these additions to Schedule 1 ensure that necessary policy tools will be available to achieve such targets and goals.

C. PRIORITIZING & SELECTING GEOGRAPHICALLY-FOCUSSED INITIATIVES

We propose that the following be added to subsection 4(4) paragraph (d) on the role of the Guardian Council:

(i.i) the development of criteria for the selection, sequencing and prioritization of initiatives contemplated by Part V,

This proposed new responsibility of the Great Lakes Guardians' Council is intended to ensure a transparent and fair system by which geographically-focussed initiatives are selected, by setting the criteria the Minister will be expected to use in deciding whether to direct an initiative be developed under Part V.

We also hope that the government will invest in the protection and restoration of the Great Lakes-St. Lawrence River Basin by ensuring support for developing geographically-

focussed initiatives and seeking to commence at least 3-5 new initiatives within the first 5 years.

II. ACCOUNTABILITY, TRANSPARENCY, AND PUBLIC REPORTING

A. ADDING TO MANDATED CONTENTS OF STRATEGY

As noted above, Ontario's Great Lakes Strategy adopts principles intended to "guide efforts to achieve Ontario's Great Lakes Goals" (p.31). As well, Ontario's Great Lakes Strategy includes some performance measures that are intended to "monitor progress" (pp.63-64). Both of these additions to the Strategy are supported by the Alliance and we would like to see principles and performance measures added to the required contents going forward. For this reason, we propose that the following clauses be added to the required contents of the Strategy in subsection 6(1):

- 0.1 Principles that are intended to guide decision-making under this Act.
- 4.1 Performance measures by which progress in achieving the purposes of this Act can be monitored.

These proposed amendments will ensure accountability by providing much needed guidance for all Great Lakes-St. Lawrence River Basin decision-making and providing clear indicators by which progress can be measured.

We hope that the Minister will build upon the performance measures and ensure that performance measures are refined and added to prior to the first formal review of the Strategy. In particular, we hope that performance measures can be adopted for wetlands that go beyond that which is indicated in the Strategy now; "supported by policies and programs to identify and take action on priority habitat, and by enhanced information" (p.64) is not measurable in the same way that the other performance measures are and this should be addressed.

B. ACCOUNTABILITY

To improve accountability, we propose some key amendments that contain non-discretionary language.

Principles for decision-making

As mentioned earlier, we support the principles listed in the Strategy and recommend that Bill 6 also clearly articulate that the principles articulated in the Strategy are intended to guide decision-making under the Act. We propose that the following subsections be added to section 1:

Decision-making Principles

- (3) Decision-making under this Act shall be exercised in accordance with the following principles, as defined in Ontario's Great Lakes Strategy:
 - (a) ecosystem approach,

- (b) precautionary approach,
- (c) accountability,
- (d) adaptive management,
- (e) collaboration and engagement, and
- (f) recognition of First Nations and Métis communities.

Same

(4) Additional decision-making principles may be prescribed as necessary to ensure the purposes of this Act are fulfilled.

Aligning pursuit of Great Lakes vision and goals

We propose that the following section be added to Part III to ensure that all of the Great Lakes ministers are aligning their policies and programs with the Strategy:

4.1 Great Lakes ministers shall individually and severally pursue the achievement of the visions and goals established in the Strategy.

Performance measures

As well, we support the performance measures that are currently contained in the Strategy. In addition to ensuring that performance measures will be added to the contents of the Strategy, we propose that the following part be added after Part III – Ontario’s Great Lakes Strategy:

**PART III.1
PERFORMANCE MEASURES**

Performance measures

7.1 (1) The Minister of the Environment shall, after consulting with the other Great Lakes ministers, establish performance measures against which achievement of the visions and goals identified in the Strategy maintained under section 5 can be evaluated.

Same

(2) Performance measures shall complement priorities for future action as identified in the Strategy.

C. REPORTING

In the Strategy, there is a commitment to report on progress every 3 years and review the Strategy every 6 years (p.4). This commitment is not entirely reflected in Bill 6. Given that the progress report envisions both past and future activities, this point-in-time reporting should be the outcome of continuing engagement on how we are collectively doing to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin. Such continued engagement would be consistent with the purposes of Bill 6. We proposed that section 7 be amended to read as follows:

Progress Report

7. (1) The Minister of the Environment, after consulting with the other Great Lakes ministers, shall prepare and table a report in the Legislature in the year prior to any review required by subsection 5(2).

Same

(2) The report in subsection (1) shall set out the following:

1. A description of recent actions that have been taken to address the priorities identified in the Strategy and whether those actions have contributed to achieving the visions, objectives and goals of the Strategy under Part III.
 - 1.1 A description of progress made on achieving performance measures established under Part III.1.
2. A description of any targets that have been established under Part IV and progress made towards achieving those targets.
3. A description of any proposals for initiatives that have been directed to be developed or have been developed or approved under Part V and any initiatives that have been developed, approved or implemented under Part VI and progress towards achieving the stated goals therein.
4. A list of the priorities identified in the Strategy that public bodies should focus on in the future and actions the Great Lakes ministers will take to address the priorities.
 - 4.1. A list of new, emerging or potential threats to the Great Lakes-St. Lawrence River Basin, consistent with a science-based precautionary approach and actions that will be taken to address those threats.
5. Such other matters as he or she considers advisable.

We also propose that the following section be added:

Annual progress reports

- 7.1. (1) An annual report shall be published and made available to the public by the Minister of the Environment, which may include any subset of the matters listed in subsection 7(2).

Same

- (2) An annual report in subsection (1) that coincides with the reporting cycle in the Great Lakes Water Quality Agreement shall ensure that the subset of matters includes those necessary to address the issues in that Agreement.

These proposed amendments will ensure that the Minister is held accountable to the

Legislature and is required to comprehensively report against the visions and goals set out in the Strategy, as well as reporting on progress towards achieving established targets and the objectives of approved initiatives.

Furthermore, these proposed amendments ensure the Minister reports on a more regular and certain basis than simply 'time to time', matching the commitment that is made in the Strategy. The proposed section also requires the Minister to report to the public on an annual basis on at least some of the matters listed in section 7 of Bill 6.

III. INVOLVING THE PUBLIC

We propose that section 9 be struck and the following be added after Part II:

PART II.1 CONSULTATION BY MINISTER

Consultation by Minister

4.1 (1) Before taking action under Part IV or Part V, the Minister of the Environment shall do the following:

1. Consult on a summary of the proposed target under Part IV of the proposed direction for an initiative under Part V, as he or she considers advisable, with:
 - i. the other Great Lakes ministers,
 - ii. representatives of the interests of First Nations and Métis communities,
 - iii. representatives of local and provincial government, specialists, scientists and Great Lakes stakeholders, including representatives of environmental, health and other interests of the general public, and
 - iv. such other persons as he or she considers advisable.
2. Table the summary of the proposed target or direction for an initiative at a meeting of the Great Lakes Guardians' Council.

Contents of summary

4.1(2) The Minister of the Environment shall ensure that the summary of the proposed target of the proposed direction for an initiative includes the following as appropriate:

1. A description of the geographic area of the Great Lakes-St. Lawrence River Basin in respect of which he or she intends to develop a target or direct the proposal for an initiative to be developed.
2. Identification of one or more public bodies that he or she intends to direct to develop the proposal for an initiative.
3. A description of the issues that he or she intends to have addressed through the development and implementation of a target or initiative.
4. Such other information as he or she considers advisable.

We further propose that the following section be added to Part VII:

Requesting that a proposal for an initiative be developed

26.1 (1) Any person may request that the Minister consider directing a public body to develop a proposal for an initiative under section 9.

Same

(2) The Minister shall consider whether the request is consistent with the purposes of the Act.

Same

(3) If the Minister considers the request in subsection (1) to be consistent with the purposes of the Act, the Minister shall refer the request to the Great Lakes Guardians' Council for consideration and input before making a decision on whether or not pursue the initiative.

This proposed new section will provide a mechanism by which the public is enabled to participate in the decision to initiate the process to develop a geographically-focussed initiative.

We similarly propose that the following section be added to Part VII:

Requesting that a target be developed

26.2 (1) Any person may request that the Minister consider establishing a target under section 8.

Same

(2) The Minister shall consider whether the request is consistent with the purposes of the Act.

Same

(3) If the Minister considers the request in subsection (1) to be consistent with the purposes of the Act, the Minister shall refer the request to the Great Lakes Guardians' Council for consideration and input before making a decision on whether or not to establish a target.

And, we similarly propose that the following section be added to Part VII:

Requesting that a performance measure be established

26.3 (1) Any person may request that the Minister consider establishing a performance measure under section 7.1.

Same

(2) The Minister shall consider whether the request is consistent with the purposes of the Act.

Same

(3) If the Minister considers the request in subsection (1) to be consistent with the purposes of the Act, the Minister shall refer the request to the Great Lakes Guardians' Council for consideration and input before making a decision on whether or not to establish a performance measure.

IV. ADDITIONAL PROPOSED AMENDMENTS

COSTING GEOGRAPHICALLY-FOCUSSED INITIATIVES

We propose that the following subsection be added to section 11, 'Proposal for initiative, contents':

(3.1) A budget outlining all expected costs required in undertaking to develop and implement the proposed initiative.

Knowing a geographically-focussed initiative's costs before approval will improve the likelihood of community support and of full implementation, if approved.

PUBLIC BODIES

Bill 6 proposes to include "source protection committees" and "source protection authorities" in the definition of "public body". There is concern that neither of these bodies are suitable for inclusion in part because there may be responsibilities assigned to public bodies that may have significant resource implications, both in terms of financial and human resources, that would be directed toward these bodies which are not incorporated under the *Clean Water Act, 2006* or any other legislation. As well, there is the potential for duplication of efforts, given the mandates of these bodies. While we agree that, in currently identified source protection regions, "source protection authorities" are all conservation authorities and, having already included conservation authorities in the definition of public bodies, it appears duplicative to also include "source protection authorities". However, under the *Clean Water Act, 2006*, there is an ability to extend source protection planning to watersheds that do not have a conservation authority. As such, there may in the future be source protection authorities in watersheds of the Basin that currently do not have the benefit of a conservation authority. In that circumstance, it may be appropriate to direct the source protection authority to perform tasks that can be required of a public body, assuming that the concern about not being an incorporated entity can be allayed.

SHORELINE REGULATIONS

Bill 6 proposes that an outcome of an approved geographically-focussed initiative could be a recommendation to enact a shoreline protection regulation. The authority to enact such a regulation is proposed to reside in the Lieutenant Governor in Council (section 26). Because there is such a rigorous process to have a geographically-focussed initiative approved and the Lieutenant Governor in Council is not compelled to enact such a regulation, even if one is recommended through an approved geographically-focussed

initiative, it is anticipated that such regulations will only be considered in very limited situations. And, in particular, that such regulations will not be enacted if there is already an ability to do so through an existing authority (such as a conservation authority).

We are supportive of the shoreline protection regulation provisions because not all of the Basin has conservation authorities, and thus, in those areas there will be no ability to make shoreline protection regulations under the *Conservation Authorities Act*.