

# Great Lakes Protection Act Alliance



## Submission to the Standing Committee on General Government

### RECOMENDATIONS REGARDING AMENDMENTS TO BILL 66 – PROPOSED GREAT LAKES PROTECTION ACT

September 2015

Grant Crack, Chair  
Standing Committee on General Government  
99 Wellesley Street West, Room 1405  
Whitney Block, Queen's Park  
Toronto, ON  
M7A 1A2

Sylwia Przedziecki, Clerk  
Tel: 416-325-3515  
Fax: 416-325-3505  
sprzedziecki@ola.org

Cc Ellen Schwartzel, Acting Environmental Commissioner of Ontario

#### SUMMARY

The Great Lakes Protection Act Alliance consists of Canadian Environmental Law Association, Ducks Unlimited Canada, Ecojustice, Environmental Defence, and Nature Canada. The Alliance is supportive of Bill 66, the proposed Great Lakes Protection Act, with one exception. The Alliance is extremely disappointed to see that, unlike the prior version of the proposed legislation, Bill 66 contains an exemptions provision. The sudden appearance of a broad discretionary power to prescribe exemptions from the legislation is very disconcerting.

The Alliance has been engaged in all consultations that have been conducted regarding prior versions of the proposed legislation (specifically, Bill 100 introduced June 2012 and Bill 6 introduced February 2013) that died on the order paper. 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.

As stated in the Alliances' earlier submissions, 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.

The Alliance is very encouraged to see the strengthening of Bill 66 compared to the previous versions of the proposed legislation. In particular, the Alliance is very supportive of:

- Improved language in the Preamble, reflecting the importance of the Great Lakes-St. Lawrence River Basin;
- Additional language in purposes reflecting the importance of watersheds and the need to address climate change;
- Enhanced provisions related to promoting and considering traditional ecological knowledge in research and decision-making;
- Commitment to targets that will address algal blooms;
- Enabling the Minister of Natural Resources and Forests to set wetland target(s);
- Commitment to reducing or eliminating harmful pollutants;
- Incorporation of monitoring and reporting on ecological conditions;
- Increased accountability through addition of criteria development to prioritize geographically focussed initiatives (GFIs), the addition of principles and performance measures to the Strategy contents, commitment to consideration of purposes and principles in decision-making, and regular progress reports tabled in the Legislature;
- Enhanced public engagement through consultation prior to directing that a GFI proposal be developed, and allowing members of the public to bring forward requests to establish targets or GFIs; and
- Simplified, yet still rigorous, process for approving GFIs.

The Alliance believes that there are a few key amendments necessary to further strengthen the proposed legislation in order to ensure full realization of the province's vision and provide for genuine

and timely action to protect and restore Great Lakes-St. Lawrence River Basin health. These amendments, detailed below, relate to:

- Exemptions unnecessary
- Further enhancing purposes
- Interjurisdictional agreements
- Aligning pursuit of Great Lakes vision and goals

Finally, as stated in earlier submissions, the Alliance recognizes that the problems facing the Great Lakes are complex and that a single piece of legislation cannot provide all of the answers. The Alliance considers Bill 66 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 Bill 66, 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. As the Preamble to Bill 66 states, “three of Ontario’s four Great Lakes are in decline.” We must act quickly to enact Bill 66 and make use of the new tools provided by the proposed legislation to address the loss and degradation of natural habitats and biodiversity, the impacts of population growth and urbanization, threats to water quality and quantity, including eutrophication, and climate change.

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

Canadian Environmental Law Association, Theresa McClenaghan, Executive Director and Counsel

Ducks Unlimited Canada, Kevin Rich, Provincial Policy Specialist

Ecojustice, Pierre Sadik, Manager of Legislative Affairs

Environmental Defence, Tim Gray, Executive Director

Nature Canada, Ted Cheskey, Senior Conservation Manager

The Alliance wishes to acknowledge the assistance of Anastasia M Lintner of Lintner Law in drafting this submission.

## **ENDORSEMENTS**

Here’s where the Alliance will insert any endorsements received by Sep 23, 2015.

The following organizations have endorsed this submission:

Organization, Name, Position

## **IMPORTANCE OF BILL 66 & DETAILED RECOMMENDED AMENDMENTS**

As mentioned earlier, 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. The Great Lakes contain approximately 20 per cent of the world’s surface freshwater, and provide drinking water to over 10 million residents of Ontario. The Basin contains 40 per cent of the country’s economic

activity, including 25 per cent of Canada's agricultural production, and more than 75 per cent of Canada's manufacturing activity.

The Alliance believes that legislation is necessary because the current legal framework has not been successful in addressing on-going and emerging threats to the Great Lakes-St. Lawrence River. The Great Lakes-St. Lawrence River Ecosystem needs help. Scientists are telling us that 3 out of 4 of Ontario's Great Lakes are in a state of decline. We've lost 72% of southern Ontario's large wetlands so far, and fish harvests are expected to decline by another 25% in the next 25 years.

In some instances, threats to the Great Lakes are best dealt with under existing legal tools. However, for complex, cross-sectoral issues (such as algal blooms in western Lake Erie), the Alliance believes that solutions would better be proposed from the grassroots up. The Alliance sees the tools in Bill 66 as complementary to commitments in various agreements, policies and laws. The appropriate tool needs to be selected for each priority issue being addressed.

New tools introduced in Bill 66:

- Preamble/purposes
  - In no other law does the Ontario Legislature make a commitment to “protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin”; this is an important, nonpartisan commitment that impacts the vast majority of Ontarians.
- Great Lakes Guardians' Council
  - The issues facing the Great Lakes-St. Lawrence River Ecosystem require cooperation across sectors, ministries, disciplines and communities. The Council is anticipated to be an important forum where implementation of Bill 66 is discussed and debated. Bringing together representatives of all the interests in the health of the Ecosystem on a regular basis has the potential to improve decision-making and compel action.
- Great Lakes Strategy
  - Bill 66 mandates that a Strategy is maintained. Monitoring and reporting programs for assessing ecological conditions will be maintained. Progress reports will be tabled before the Legislature. And, a regular review will happen in 2018 and every six years thereafter. This provides for transparency and accountability, across all ministries whose decisions impact the health of the Ecosystem.
- Targets
  - Qualitative or quantitative targets can be established to further the purposes of the legislation. These public commitments to achieving specific goals toward the health of the Ecosystem will also be reported on in the progress reports and be subject to consideration under the public review of the Strategy.
- “Geographically-Focused” Initiatives (GFIs)
  - It is anticipated that initiatives (also known as GFIs) will be developed to address complex, challenging, multi-sectoral threats to the Ecosystem. When considering if a GFI is an appropriate tool to address a particular issue, the Minister is required to consult broadly, including with First Nation and Métis communities, municipalities, Great Lakes ministers, ENGOs, scientists, tourism & agricultural sectors, conservation authorities, and MPPs. Once a GFI is approved (a two-step process that involves the Minister approving a proposal and Cabinet approving the initiative), only then would any

applicable policy tool potentially come into play (eg, protecting natural heritage, limiting land use, or calling for shoreline regulation). If, for example, after consultation and approval within a watershed that requires protection of a shoreline that isn't currently under the jurisdiction of a municipality or a conservation authority, then there is the potential to use the regulatory tool to provide for protection that would otherwise not be available. In this way, any redundancy or duplication would be avoided.

- Consultation, Traditional Ecological Knowledge (TEK), Public Requests, Consideration of purposes & principles
  - Bill 66 includes important transparency & accountability provisions, including requirements
    - For broad public consultation with respect to the Strategy, Targets, and GFIs;
    - That the Minister shall consider TEK in various decisions made under the legislation;
    - Allowing “any person” to request that the Minister consider developing a Target or establishing a GFI; and
    - Ensuring that the principles in the Strategy are considered when carrying out various responsibilities related to the Strategy, Targets, and GFIs.

The Alliance believes that there are a few key amendments, detailed below, necessary to further strengthen the proposed legislation in order to ensure full realization of the province's vision and provide for genuine and timely action to protect and restore Great Lakes-St. Lawrence River Basin health. In the Alliance recommendations below, proposed additions to Bill 66 are underlined and proposed deletions are ~~struck through~~.

#### **I. Exemptions unnecessary**

As mentioned earlier, the Alliance is extremely disappointed to find that a provision has been added to allow Cabinet to prescribe exemptions from the legislation. The Alliance believes that there is no need to provide Cabinet with broad exemption powers from this enabling legislation. There are no similar exemption provisions in any of the following legislations: *Greenbelt Act, 2005*, *Lake Simcoe Protection Act, 2008*, *Niagara Escarpment Planning and Development Act*, and *Oak Ridges Moraine Conservation Act, 2001*. The Alliance strongly recommends that para 38(1)(l) be removed.

~~(l) exempting any person or class of person from any provision of this Act or regulations, subject to such conditions or restrictions as may be prescribed by the regulations.~~

#### **II. Further enhance purposes**

The Great Lakes-St. Lawrence River Basin provide essential habitat for nationally, continentally, if not globally significant concentrations of waterfowl and other waterbirds. Natural coastal habitats such as wetlands function as key stopovers and migratory corridors for significant numbers of migratory waterbirds and landbirds, bats, and migratory insects including Monarch Butterflies and dragonflies. Significant areas of congregation are recognized as part of the Important Bird and Biodiversity Areas program of BirdLife International. These areas are identified using internationally agreed upon, standardized, quantitative, and scientifically defensible criteria (see

<http://www.birdlife.org/datazone/info/ibacritglob>). Further, wetlands in the 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. To fully commit to the importance of natural habitats such as wetlands to the Basin, the Alliance recommends amending subsection 1(2) as follows:

2. To protect and restore watersheds, wetlands, beaches, shorelines and ~~other~~ coastal areas of the Great Lakes-St. Lawrence River Basin.
3. To protect and restore the natural habitats and biodiversity of the Great Lakes-St. Lawrence River Basin, including critical habitat areas for migratory birds, bats and insects such as Important Bird and Biodiversity Areas.
4. To protect and improve the capacity of the Great Lakes-St. Lawrence River Basin to respond to the impacts and causes of climate change, including by effectively managing urban and rural stormwater, promoting green infrastructure, and protecting and restoring wetlands.

As well, a definition of “Important Bird and Biodiversity Areas” will need to be added to section 3:

“Important Bird and Biodiversity Areas” means areas that have been identified by BirdLife International using internationally agreed upon, standardized, quantitative, and scientifically defensible criteria;

### **III. Interjurisdictional agreements**

In section 33, three interjurisdictional agreements that relate to the protection and restoration of the ecological health of the Basin are included. There are other key interjurisdictional agreements to which Canada is also a party that are important to the protection and restoration of the ecological health of the Basin, including the Migratory Birds Convention, the Ramsar Convention and the Convention on Biological Diversity. For example, the Convention on Biological Diversity (CBD) commits the parties to “Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies” (CBD, Article 6(b)). Ontario’s Great Lakes Strategy is a basin-wide vision that incorporates the input of the Great Lakes ministers and the Great Lakes community. As such, in reviewing the Strategy, consideration of the CBD commitment to integration is important.

The Alliance recommends adding the following to section 33:

4. Migratory Birds Convention signed by Canada and the United States on August 16, 1916 and associated implementing legislation in Canada – the *Migratory Birds Convention Act, 1994.*
5. Convention on Wetlands of International Importance especially as Waterfowl Habitat, also known as the Ramsar Convention, entered into force in Canada on May 15, 1981.
6. Convention on Biological Diversity, adopted during the Earth Summit in Rio de Janeiro in 1992, ratified by Canada on December 29, 1993.

### **IV. Aligning pursuit of Great Lakes vision and goals**

To achieve the vision expressed in Ontario's Great Lakes Strategy and the preamble and purposes of Bill 66, there will need to be alignment of the work of all Great Lakes ministries, in order to ensure that there is cross-ministerial accountability and efficient use of public resources. The Alliance proposes 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:

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