

Great Lakes Protection Act Alliance:
Proposed prioritized amendments to Bill 100
(if it had continued to move through the legislative process)

October 23, 2012

The Great Lakes Protection Act Alliance (Canadian Environmental Law Association, Ducks Unlimited Canada, Ecojustice, Environmental Defence, Great Lakes United, Sierra Club Ontario) were in the process of developing detailed prioritized amendments to Bill 100 (the proposed Great Lakes Protection Act). We understand that events last week mean Bill 100 has “died on the Order Paper”. However, we believe that legislated protection for the Great Lakes Basin is still an important goal for Ontario. As such, we are sharing our work as it exists as of the Legislature being prorogued.

Please note that these amendments, currently in draft form, do not necessarily reflect the views of all the members of the Alliance, as we had not completed our consultations among the members. That said, we have agreed to share these as the work of the Alliance.

We believe that any legislation developed to protect the Great Lakes Basin must apply to the entire Basin. Bill 100 could have been read to apply to the whole Basin; however, the focus of the sections that deal “geographically-focussed initiatives” (Part VI) offer tools that only can be used to in areas where there are municipalities or conservation authorities (eg, section 19 would have required that a policy tool be identified or a regulation be recommended, and the policy tools to select from in Schedule 1 will be familiar primarily to municipalities and conservation authorities, who are dealing with planning matters on a regular basis). Within areas of the Basin in which there are no municipalities and/or conservation authorities, it will be much more challenging to make use of the tools proposed. Given that so much of Bill 100 was dedicated to Part IV (12 pages of the 32 page document), it may have given the impression that the weight of the proposed law was to apply only in areas with municipalities and conservation authorities. This presents a significant challenge to ensuring that all the tools are intended to apply equally throughout the Basin. We recognize that the number of pages in a piece of legislation is not a determinant of the importance of a particular tool or section; however, not all members of the public will be aware of this and may make assumptions about how the proposed law would have been applied. Should any legislation be brought forward in the future, we recommend addressing this challenge head on.

Below are some specific recommendations that have been developed in relation to Bill 100 as it was proposed.

I. WETLANDS

The urgency, importance, and complexity of the issues related to wetlands protection, and the options available to provide protection for wetlands, warrants a separate document. A number of groups from the Alliance, who have particular interest in wetlands protection, will continue to work on solutions and recommendations regarding wetlands protection.

II. ADDING PRINCIPLES TO GUIDE DECISION-MAKING

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:

- (a) science-based precautionary approach,
- (b) ecosystems approach,
- (c) subwatershed approach,
- (d) adaptive management approach,
- (e) sustainable development approach, and
- (f) shared responsibility approach.

Same

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

And, we further propose that the following clause be added to the required contents of the Strategy in subsection 6(1):

0.1 Definitions of the decision-making principles in accordance with subsection 1(3).

We recommend that detailed descriptions of each principle will be prepared for inclusion in the Strategy. Our initial recommendations for each are based on definitions developed through various multi-stakeholder processes, including the *Lake Simcoe Protection Plan* and Rio+20, which have been referenced and are provided below:

Science-based precautionary approach

A science-based precautionary approach will be exercised to protect the environment when there is uncertainty about environmental risks.¹

¹ Based on the definition developed for the *Lake Simcoe Protection Plan*.

Ecosystem Approach

An ecosystem approach will be used, one that treats the Great Lakes St. Lawrence River Basin as an interconnected system. Individual components of the system, including humans and our activities, affect and are affected by other parts of the system. The ecosystem approach uses best available science, considers cumulative impacts, and promotes watershed and subwatershed approaches. It recognizes that a healthy environment provides the foundation for healthy communities and a healthy economy.²

Subwatershed Approach

A multi-scale watershed approach will be used, where some policies and management actions may apply across an entire watershed, whereas others may be specific to the needs and priorities of a particular subwatershed. This approach can further focus effort in selected parts of a subwatershed and provide more detailed guidance for specific water resource issues such as the development of certain targets and actions at the subwatershed level.³

Adaptive Management Approach

Continuously improve and adapt our approaches, policies and management by incorporating new knowledge and innovative design, practices and technology from ongoing science and monitoring.⁴

Sustainable Development Approach

Equitably meet the developmental and environmental needs of present and future generations.⁵

Shared Responsibility

Effective implementation of the Great Lakes Protection Act will require collaboration amongst the Province, the First Nations and Métis communities, municipalities, the Lake Simcoe Region Conservation Authority, agricultural, commercial, and industrial sectors and small businesses, environmental groups, and the general public.⁶

These principles will provide much needed guidance for all Great Lakes-St. Lawrence River Basin decision-making, while ensuring that principles developed in the future may also be applied to this type of decision-making if enabled through regulation.

III. ESTABLISHING METRICS & REGULAR REPORTING OF VISIONS & GOALS

We propose that the following clause be added to section 6:

4.1 Identification of performance measures against which achievement of the visions and goals of the Strategy can be measured.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Based on the definition for sustainable development that resulted from the United Nations Rio + 20 Conference, held in 2012 in Rio de Janeiro, Brazil.

⁶ Based on the definition developed for the *Lake Simcoe Protection Plan*.

We also propose that section 7 be amended to read as follows:

7. The Minister of the Environment, after consulting with the other Great Lakes Ministers, shall prepare and table a report in the Legislature, from time to time, but no later than every 5 years. The report will 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.
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.
 - 4.1. A list of new, emerging or potential threats to the Great Lakes - St. Lawrence 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:

Interim reports

- 7.1. An interim report shall be published by the Minister annually, which may report on any subset of the matters listed in section 6 and must be made available to the public.

These amendments will ensure that the Minister is held accountable to Legislature and is required to comprehensively report against the visions and goals set out in the Strategy and whether progress has been made towards achieving established targets and approved initiatives. The section now also requires the Minister report to the public on an interim basis on at least some of the matters listed in section 7.

These amendments also ensure the Minister reports on a more regular and certain basis than simply 'time to time', while also ensuring that the Minister has the most recent data available from each of the Great Lakes, which the Ministry of the Environment collects every five years on a one lake per year basis.

IV. REDUCING AND ELIMINATING TOXIC CHEMICALS IN THE BASIN

We propose that the following clause be added to the Purposes, subsection 1(2):

2.1 To reduce and eliminate toxic substances in the Great Lakes-St. Lawrence River Basin, particularly persistent pollutants and air borne pollutants, including those that have cumulative adverse impacts.

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 new section provides explicit coverage for 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 that necessary policy tools will be available to achieve such targets and goals.

The wording of proposed section 2.1 has been crafted to align with the purposes of Ontario's *Toxic Use Reduction Act*.

V. ALL GREAT LAKES MINISTERS MUST PURSUE VISIONS & 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.

VI. REQUIRING LAKE BY LAKE TARGETS & ASSOCIATED TIMELINES

We propose that the subsection 8(1), Part IV be amended to read as follows:

(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 each of the watersheds in 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.

We also propose that the following subsections be added to section 8:

Initial target(s) to be established within 12 months

(1.1) In consultation with the Great Lakes Council, initial target(s) shall be set within 12 months of this section coming into force.

(1.2) These initial targets may be improved or added to from time to time in accordance with subsection (1).

The above amendments will ensure that the Minister must set targets and do so within a specified time. Originally, the Minister was merely enabled to set targets. These amendments will give confidence to Ontarians that Bill 100 represents a commitment to improve the Great Lakes basin by reporting against measurable targets that cannot be weakened.

VII. A CORE GROUP WITHIN THE GREAT LAKES GUARDIANS' COUNCIL

We propose that subsection 4(3) be amended to read as follows:

(3) Before a meeting of the Council is held, the Minister of the Environment shall, as he or she considers advisable, extend written invitations to individuals to attend and participate in the meeting, including,

(a) a permanent membership including the other Great Lakes Ministers, specialists, scientists and Great Lakes stakeholders, including representatives of environmental, health and other interests of the general public; and

(b) further stakeholders appropriate to the meeting's topic and or location, including,

(i) representatives of the interests of municipalities located in whole or in part in the Great Lakes-St. Lawrence River Basin;

(ii) representatives of the interests of First Nations and Métis communities that have a historic relationship with the Great Lakes-St. Lawrence River Basin;

(iii) representatives of the interests of conservation authorities, environmental organizations, the scientific community and the industrial, agricultural, recreational and tourism sectors in the Great Lakes-St. Lawrence River Basin; and

(iv) representatives of any other interests that the Minister considers should be represented at the meeting.

Providing for a core membership will provide consistency and assurances that broad input will be considered by the Council. Furthermore, it is hoped that the Great Lakes Guardians' Council will be accompanied by Terms of Reference that will outline its members' roles and responsibilities, ensure adequate representation to understand the diversity of challenges throughout the Basin, provide assurances for transparency and public notice of meetings, and other administrative issues.

VIII. PRIORITIZING & SELECTING GEOGRAPHICALLY-FOCUSSED INITIATIVES

We propose that the following be added to paragraph 4 (d):

(i.i) the development of criteria for the selection, sequencing and prioritization of geographically-focussed initiatives,

This new requirement 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.

IX. FIRST NATIONS & METIS TRADITIONAL ECOLOGICAL KNOWLEDGE

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 Ministers in any decision making under this Act.

Our interest is ensuring that *IF* First Nations and Métis communities offer their traditional ecological knowledge, it is important that the Ministers are mandated to consider it.

X. "BOTTOM-UP" TRIGGER FOR COMMENCING AN INITIATIVE

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

Requesting that a proposal for an initiative be developed

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

Minister to refer to Council

(2) The Minister shall refer any public proposal received to the Great Lakes Guardians' Council for consideration and input before making a decision on whether or not pursue the initiative.

This 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.

XI. COSTING OF 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 the proposed initiative.

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

XII. CLARIFY THE PURPOSES (RE: RESTORATION)

We propose the following subsection be added to the Purposes:

Same

1(4) For greater clarity, restoration is the process of assisting the recovery of an ecosystem that has been degraded, damaged or destroyed. Restoration of degraded, damaged or destroyed water and lands is more costly than protection of resources before damage occurs. Therefore, this Act recognizes the wisdom of supporting ecological protection.

This subsection is based on the United States Great Lakes Protection Initiative Plan (2010) and will help guide the effective development of targets and geographically-focussed initiatives under the Act by ensuring that protection efforts are prioritized over restoration efforts, while still highlighting the importance of restoration efforts where needed.