

Great Lakes Protection Act Alliance



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Detailed prioritized amendments to Bill 6 (proposed Great Lakes Protection Act) Supplemental Submissions* EBR Registry Number 011-6461

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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.

* The Alliance made extensive written submissions to the Ministry of the Environment, and members of the Alliance attended various workshops, during last summer's public consultations on Bill 100 (EBR Registry Number 011-6461) and the Draft Great Lakes Strategy (EBR Registry Number 011-6418). Bill 6 has very few changes relative to Bill 100. Given that we have significantly refined our recommendations since our initial comments were sent in July 2012, we are providing this supplemental submission. We reserve the right to further refine our recommendations before making submissions to the members of the Standing Committee that are directed by the Legislature to consider Bill 6.

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 intractable issues facing the Great Lakes now and into the future;
- Address current 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 7).

1) Prioritize action on key issues

To ensure swift action on key issues such as wetlands and toxic substances, we recommend the proposed Act require the setting of clear lake-by-lake targets with associated timeframes, and that initial targets be established within the first year of the proposed Act's passage.

To ensure the protection of existing wetlands and the restoration of degraded wetlands, we are proposing the development of specific wetland conservation targets with associated action plans. For example, a wetlands mapping exercise should be completed within a specific timeframe.

To address toxic substances, targets could for example, seek to reduce the release of high priority toxic substances that have been found in the Great Lakes by 50 per cent within five years of the proposed Act's passage.

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 support for this important tool, we are encouraging the government to initiate three to five new GFIs within the first five years.

2) Promote Accountability and Transparency

To ensure that real progress is made towards meeting the proposed Act's objectives, we recommend that the provincial government's responsibilities under the proposed Act be characterized as mandatory as opposed to optional.

In that regard, we suggest that tracking and monitoring action on targets defined in the proposed Act and performance measures outlined in the Great Lakes Strategy become a legislative requirement. It is also important to ensure that principles contained in the Strategy be used to guide provincial decisions affecting the lakes.

To increase transparency and ensure progress under the proposed Act, we recommend that progress reports be submitted to the legislature every three years, in addition to the public release of annual reports.

3) Strengthen Public Engagement

Our proposed amendments would enable members of the public to have a say in 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 7 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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EQUITY. JUSTICE. HEALTH.

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Sierra Club Ontario
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The following organizations have endorsed this submission:



Bayfield River Valley Trail Association



Citizens Environment Alliance

Citizens Environment Alliance of Southwestern Ontario



Canadian Federation of University Women (CFUW) Ontario Council
Brenda Robertson, President



David Suzuki Foundation



Earthroots
Amber Ellis, Executive Director



Environment North
Charlene Rogers, President



Federation of Ontario Cottagers' Associations

Federation of Ontario Cottagers' Association



Freshwater Future
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Inspiring Innovation and Discovery



LEAF (Local Enhancement and
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Toronto Environmental Alliance



Ontario Headwaters Institute
Andrew McCammon, Executive Director



Ontario Nature



Rescue Lake Simcoe Coalition



Wellington Water Watchers

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 two amendments: one related to traditional ecological knowledge (TEK) and one related to the membership of the Great Lakes Guardians' Council (see details below for the latter). 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. We continue to seek feedback on our proposals for amendments and look forward to discussing them further with interested parties with the possibility of making adjustments in our recommendations prior to making submissions to the members of the Standing Committee that are directed by the Legislature to consider Bill 6.

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

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.

For these reasons, we proposed that the following subsection be added to section 8:

Immediately establish wetlands conservation target(s)

- (1.1) Wetlands conservation[†] target(s) shall be established within 12 months of the day this section comes into force.

The establishment of such a target or targets 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 action on wetlands protection and restoration.

As well, there may be some cases, most particularly for wetlands, where an action plan is needed to demonstrate how a particular target is going to be met. This is not anticipated be required for every target established under Part IV of the proposed Act. For some targets, it is anticipated that there are tools outside Bill 6 that can be used to achieve the target. For others, it may be that a geographically-focussed initiative is needed. We believe that it is important to ensure that Bill 6 enables an action plan, similar to the proposed *Biodiversity: It's in Our Nature, Ontario Government Plan to Conserve Biodiversity* (EBR Registry Number: 011-6450), for a specified target. Further, we believe that the first action plan(s) should be developed for wetlands protection and restoration.

For these reasons, we propose that the following subsections be added to section 8:

Action plan to achieve target

- (3) The Ministry may, after consulting with any other Great Lakes ministers that have an interest in a particular target, develop an action plan that identifies specific actions and timelines for achieving the target.

Developing an action plan for achieving wetland conservation target(s)

- (4) A wetland action plan(s) shall be developed under subsection (3) for all wetland conservation target(s) established under subsection (1.1).

Same

- (5) Wetland action plan(s) shall be developed under subsection (4) within 2 years of the day this section comes into force.

The case for strong, comprehensive wetland protection in Bill 6 in order to prevent further loss of Great Lakes wetland habitat by encroachment or degradation 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

[†] We use the term “wetland conservation” to connote protection of existing wetlands, restoration of degraded wetlands and related activities. As such, the term aligns with both the purposes of Bill 6 (including clause 1(2)2. “to protect and restore wetlands”) and the Ontario Great Lakes Strategy goals.

priorities of the Province, including: protecting species-at-risk and biodiversity, adapting to climate change, and safeguarding our water quality and water supply.

B. ADDRESSING TOXIC SUBSTANCES

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 toxic substances, sediment 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 proposed new provision explicitly covers toxic substances within the Act's purposes to ensure toxic reduction or elimination is a valid target or goal of a geographically-focused initiative and these additions to Schedule 1 ensure that necessary policy tools will be available to achieve such targets and goals.

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

C. TIMELINE FOR ESTABLISHING THE INITIAL SET OF TARGETS

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

Initial target(s) to be established within 12 months

(1.2) Initial target(s), in addition to any set under subsection (1.1) shall be set within 12 months of the day this section comes into force.

Same

(1.3) Initial target(s) established under subsection (1.2) may be improved or added to from time to time in accordance with subsection (1).

Same

(1.4) The initial target(s) established under subsection (1.1) in no way limit the ability to set additional targets under subsection (1).

D. 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-focused 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 measureable 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.

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, it is important that targets be established across the Basin, ensuring that each of the Great Lakes' watersheds are represented (eg, 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

(1.5) Targets established under subsection (1) shall be representative of each of the Great Lakes' watersheds.

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. 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, 3-year progress reports

- (2) An annual report in subsection (1) that coincides with the mid-point of the reporting cycle required by subsection 7(1) shall ensure that all of the matters in subsection 7(2) are reported upon.

Same

- (3) 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 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

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 standing membership including the other Great Lakes ministers, First Nation and Métis community representatives, representatives of local and provincial government within the Great Lakes-St. Lawrence River Basin including Members of Provincial Parliament, 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 standing 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 or other documentation 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.

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*.