



**Recommendations on the Review of the
1987 Canada-United States
Great Lakes Water Quality Agreement (GLWQA)**

Phase II Report

**Prepared for:
The Water Quality Board, of
The International Joint Commission**

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Acknowledgements

The vision that inspires our “New Approach to Water Management” initiative is of a fresh, inclusive bi-national Great Lakes initiative that has the ultimate goal of protecting and improving the ecosystem integrity of the basin for future generations. We see a new approach to water management in the basin that takes a positive, progressive, prevention-oriented forward-looking view of what is needed to achieve future sustainability. While this vision recognizes that many positive gains have been achieved over the years, it suggests that new approaches, new partnerships and new institutions are needed to ensure protection of our Great Lakes water resources in the future.

We see these new approaches, partnerships and institutions coming together to develop a re-energized, positive, forward-looking Great Lakes agenda that focuses on water but addresses the ecosystem, community and economic sustainability of the region.

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Phase II Report

A. Introduction

PURPOSE: To develop, refine and present recommendations regarding the review and renewal of the 1987 Canada-United States Great Lakes Water Quality Agreement.

The Great Lakes Water Quality Agreement (GLWQA) was first issued in 1972, revised in 1978 and amended by supplement in 1983 and by protocol in 1987. Article X (4) of the GLWQA calls for the Parties (Canada and United States) to conduct a comprehensive review of the Agreement following every third biennial report of the International Joint Commission (IJC). No review of the Agreement has been completed since 1987.

The IJC has noted that a review of the Agreement by the Parties is required in 2004 following the release of the Twelfth Biennial Report. There is growing interest among other groups in the Great Lakes region for this review. Consequently, the IJC seeks development of advice to governments regarding the review of the Agreement as well as consideration of its role in this process.

Our Phase I report on this subject dated September 9, 2003 addressed two key questions:

**Is the Agreement still Valid?
What role should the IJC play in an Agreement Review?**

This Phase II report drives more deeply into the range of views regarding the efficacy of specific components of the Agreement and its Annexes and specific changes that could be made.

This Phase II report addresses the following key questions –

Q 1 What essential components of the Agreement must be retained? What action should be taken for each section of the Agreement: Retain as written? Delete? Revise?

Q 2 What new components should be added? Why / Why not? If revisions or additions are required how would such changes best be accommodated in a new or revised Agreement?

Q 3 Based on the scope and direction of potential revisions and additions, what improvements should be made to measure, monitor and report on programs and progress?

Q 4 How should the Parties consult with Great Lakes constituencies to solicit advice regarding the adequacy of the Agreement and specific changes that may

be required? What is the role for the Commission regarding stakeholder consultation?

These key questions are dealt with in accordance with the structure of the Agreement, with its Articles and Annexes.

The third and final Phase III report on governance will more specifically address institutional arrangements, programs and policies necessary to achieve the purpose of an Agreement.

B. Q 1 What essential components of the Agreement must be retained? What action should be taken for each section of the Agreement: retain as written? Delete? Revise? What new components should be added?

In Section B, we will analyse each section, Article and Annex of the Agreement; the format of the Agreement is addressed in section C.

TITLE

Revise: It is suggested that the Agreement title be amended slightly to *Great Lakes Water Quality and Ecosystem Agreement*.

Rationale: Maintaining the focus on water quality is appropriate and should calm fears that modifying the Agreement will reduce the commitment to restoring water quality. However, adding the term ecosystem sends a signal that the issues to be addressed are broader than water chemistry.

PREAMBLE

Revise: The Preamble section needs to be revised, with a vision and format that recognizes the importance of an ecosystem approach and an understanding of the inter-relationships between water, habitat, and biodiversity. A statement is needed on the need and support for sustainable use and protection.

Rationale: This section needs to send a signal as to the vision and direction of a new Agreement. The preamble of the current agreement is awkwardly structured as the 1987 preamble text was merely added to the preamble text of the 1978 Agreement and no attempt was made to integrate them. As a result, there is no overarching vision to “inspire” action and little strategic direction to guide the development and application of specific programs and measures. A new Preamble should allow the Agreement to move beyond a commitment to improving water chemistry only. It will indicate the direction and principles that will help launch a new Agreement, for the coming decades.

The text of the current preamble provides little perspective of the Great Lakes Basin Ecosystem (GLBE). It would be useful to revise the Preamble with a view to providing a better description of the GLBE so that readers can better appreciate the nature of the resource to which the Agreement provisions apply. It should present the idea that the ecological uniqueness of the GLBE requires extraordinary and unique actions.

The Preamble should also present the Great Lakes in an international and global context. We need to remind ourselves and the reader that the Great Lakes represent about one-fifth of the world’s available fresh surface waters and we have a particular responsibility to manage it wisely for future generations. It could speak to an obligation for the Great Lakes community to reach out to other peoples and to help build capacity to manage coastal freshwaters in an integrated manner both internationally and here at home and to

share ideas, expertise and encourage mutual protective actions. It should also acknowledge that it is in our own long-term self-interest to manage our resources sustainably.

The preamble should signal the importance of Watershed Planning and Management approaches at the Great Lakes Basin level and at the local regional watershed level.

In general, the format of the Agreement document could be rearranged and written in a way to make it more attractive and user friendly - thus contributing to public education and increasing public support, which then extends into more committed political support.

ARTICLE I DEFINITIONS

Revise: Article I should include the new definitions included in the draft “Recommended Revisions to Great Lakes Water Quality” (11/99 revision) report by Donahue, Gannon et al.;¹ as well, a definition for management systems should be added to the list.

Rationale: Donahue, Gannon et al suggest a new list of definitions including terms that broaden the Agreement beyond water chemistry. Terms such as ecosystem approach, habitat, and sustainable use are important to the new direction and scope of the Agreement. Adding “management systems” encourages the expectation that the parties are agreeing to use systemic approaches to problem solving.

For example, the following possible definitions as suggested in 1999 by Donahue, Gannon et al could be reviewed for their currency and acceptance in the Great Lakes community but they are a very thoughtful starting point:

- “Ecosystem approach” means a management framework that recognizes the fundamental interconnections of all ecosystem components, and emphasizes the maintenance of biological diversity, of natural relationships among species, and dynamic processes that ensure ecosystem sustainability.”
- “Aquatic nuisance species” means non-indigenous (non-native), water-dwelling plants, animals or other viable biological materials that enter an ecosystem beyond their natural range, that are harmful, and threaten the diversity or abundance of native species; the ecological stability of infested waters, wetlands”

In addition, the definition of *Hazardous Polluting Substances* should be reviewed in light of current usage in North American environmental protection and in light of the relevancy of Annex 10. Please refer to discussion regarding Annex 10 below.

¹ “Recommended Revisions to Great Lakes Water Quality” (11/99 revision) Donahue, Gannon et al

ARTICLE II PURPOSE

Revise: The purpose of Article II should be to protect the waters and the entire Great Lakes ecosystem. The specific objectives should go beyond water quality to address habitat restoration, species protection and diversity and sustainable use.

Rationale: Our Phase 1 report concluded with the recommendation that Article II should be retained but the words “of the waters” should be deleted from the Purpose statement. This would update the purpose of the GLWQA and bring it up to date with the current Great Lakes policies of the Parties.

The purpose statement “to restore and maintain the chemical, physical and biological integrity of the waters of the Great Lakes Basin Ecosystem” restricts the scope of the Agreement to only the *waters* of the Great Lakes Basin Ecosystem (GLBE). In accordance with suggested revisions to the Preamble and Article I, a new Agreement purpose should send a clear message as to the new and increased scope. While protecting and improving water quality is critical, that purpose alone will not solve the issues facing the system today, let alone tomorrow.

Phase #1 of this project examined the relevance of Article II. The following are key paragraphs taken from our Phase #1 report:

“The phrase ‘of the waters’ is in the current purpose statement to confine application of the agreement specifically to waters of the Great Lakes Basin Ecosystem and not to other components of the ecosystem. It is, however, generally accepted today that water is impacted by other components of the ecosystem and therefore management of air, land and waters must be carried out in an integrated manner to protect and restore any component of the ecosystem. This is reflected in two recent and important policy statements of the Parties in their respective domestic reaffirmations to the restoration of the Great Lakes Basin Ecosystem – namely the 2002 Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem and the 2002 Great Lakes Strategy of the U.S Great Lakes Policy Committee.

“Both the 1972 and 1978 Agreements were focussed on pollutant reductions; phosphorus in the 1972 agreement and toxic persistent substances in the 1978 Agreement. In spite of the introduction of the concept of the Great Lake Basin Ecosystem in the 1978 Agreement, the expansion of coverage to include contaminated sediments, groundwater and air- borne toxics was driven by a toxics reduction view. Contemporary environmental thinking and management has moved beyond mere pollutant reduction to include restoration, rehabilitation and resource management in all components of the ecosystem to protect and gain environmental quality improvement. It is now generally accepted in environmental management that it is not possible to protect or maintain water quality by just focussing on pollutant discharges to those waters. The job requires an ecosystem approach.”

An additional policy statement may also be considered that reflects the need for an ecosystem approach and the goal of sustainability.

Policy commitments in paragraphs “a” [discharge policies on toxic substances and toxic persistent substances] and “b” [infrastructure funding] are further specified in Article VI of the Agreement and in related annexes.

In contrast, the policy commitment in paragraph “c” on coordinated planning processes is not further specified in the subsequent sections of the Agreement. There is sufficient concern regarding inadequate land use planning and poor forms of urban development and their fundamentally negative impact to the integrity of the Great Lakes Basin Ecosystem to warrant the revision of paragraph “c” to refine this requirement to focus on land use planning and land development practices which would prevent urban sprawl and promote planning using principles of sustainability. This is the stated purpose of so-called “Smart Growth” planning processes now common to several Great Lakes jurisdictions.

Note that specific provisions to address land use issues are suggested in commenting on Article VI [1e] Pollution from Agriculture, Forestry and other Land Uses and Annex 13 – Pollution from Non Point Sources. These sections should all be made consistent with and rationalized against a new Article II.

ARTICLE III GENERAL OBJECTIVES

Revise: We suggest combining the existing water quality objectives into one or two new ones and add objectives on habitat, biodiversity, aquatic nuisance species, ecosystem management, and sustainable use.

Rationale: Basically, we need to “hit the refresh button” with this Article. If the Purpose statement in Article II of the Agreement is to be modified then the General Objectives will also need to reflect the change in emphasis that is brought about by this modification.

The General Objectives speak to real and practical issues which continue to be critical to the health of the Great Lakes. However, the language of the Objectives is somewhat dated and would benefit from a freshened approach. For example, the Objectives do not recognize explicitly the variety of pathways by which pollutants may be introduced to or enter the Great Lakes System. These include air, surface water and groundwater pathways. For the lakes to be free of pollutants all the pathways must also receive direct attention through pollution prevention and control measures and this should be reflected in the Objective statements.

We need to be going “up-stream” into the tributaries and watersheds to talk about prevention and protection and management, in addition to the very important traditional pollution control emphasis of past Agreements.

ARTICLE IV *SPECIFIC OBJECTIVES*

Revise: While the principle and benefits of having specific objectives is good, the current Specific Objectives are badly outdated and weak. They should be modified to include the ecosystem approach to management called for above. Also, the Specific Objectives should apply to the whole basin, not just to the “boundary waters”. One approach could be to basically replace the word “boundary” with “basin”.

Rationale:

In terms of their application, the Specific Objectives in the current Agreement are restricted to specifically the boundary waters of the Great Lakes System as set out in Annex 1. They presently do not apply to the broader Great Lakes Basin Ecosystem. To be meaningful, new Specific Objectives must apply to the whole basin, not just the Boundary Waters.

In terms of their scope, the Specific Objectives are good as they relate to water quality improvement and protection and these should be maintained. However in addition to two specific ecosystem objectives in Annex 1 (see below) the parties should add specific ecosystem objectives for habitat protection and restoration, aquatic nuisance species prevention and elimination, biodiversity and sustainable resource use.

Generally the logic of Article IV is sound and it provides for the development of a clear set of targets in Annexes 1 and 2. The Specific Objectives provide the rationale upon which the operational elements of the Agreement are based. Any changes/deletions/additions to the Specific Objectives will therefore have a ripple effect throughout the Agreement. The consequences of any proposed changes/deletions/additions will need to be carefully evaluated.

The Specific Objectives are inextricably linked with Annex 1 and any substantive policy change, deletion or addition to either must be reflected in both these elements of the Agreement. Similarly, Article IV (paragraph I[f]) is tied directly to Annex 2. On the other hand, adjustments of technical details in the Annexes do not necessarily impact on the overall approach presented by Article IV.

The work on Annex 1 objectives initiated in 1999 by the parties but not completed together with relevant work in the Donahue, Gannon et al paper should be resurrected and taken to completion. Also, the review of Specific Objectives being undertaken by the Science Advisory Board should be taken into consideration.

As noted above, there are two specific ecosystem related objectives in Annex I. These were developed by the Science Advisory Board in the mid to late seventies and incorporated into the current Agreement. These objectives were never acted upon by the Parties and jurisdictions, i.e. not applied into regulations, nor used for planning guidelines and possibly not even reviewed by jurisdictions and agencies. These should be reviewed as to their current scientific validity and utility.

Ecosystem objectives have been developed in various Lakewide Management Plans LaMPs [Stage I reports]. To the extent these objectives have been accepted by the Parties and address the ecosystem quality for the lake basin, they may be appropriate for incorporation into a renewed Agreement as specific objectives.

Implementation of the Specific Objectives by jurisdictions has been vague - the Agreement should be clear with regard to implementation. The Article should stipulate an Annex Supplement in which each Great Lakes jurisdiction posts its specific objectives in regulation and explains variations between its own objectives and the updated objectives of the Agreement. This needs to be coordinated with Article V-1.

The Article does not recommend or mention timing, dates or deadlines for the objectives but, at the same time, it does not preclude the inclusion of dates and deadlines in the later Annexes.

ARTICLE V STANDARDS, OTHER REGULATORY REQUIREMENTS AND RESEARCH

Revise: This Article needs to be re-focused and strengthened. In addition to highlighting the continued need for the Parties to ensure that standards and regulatory requirements are consistent with the Agreement, Paragraph 1 should reflect the new thrust of Articles I through IV. In particular, there should be recognition of the need for aquatic nuisance species regulatory requirements. In addition, there should be mention of research needs to support the ecosystem management objectives.

Rationale: Other than providing a specific link to Annex 17 and the provision for adequate funding for research by the Parties, the purpose and usefulness of this Article as it exists is really not very clear. While we are calling for it to be strengthened, some say it could actually be dropped and its contents distributed to other Articles.

Paragraph 1 of the Article addressing water quality standards and paragraph 2 addressing research priorities place onus on the Parties to ensure consistency of their practises with Objectives of the Agreement. Time has shown that the practicality and commitment to these provisions has been questionable in the light of relatively frequent political change in the jurisdictions around the Great Lakes. Also, the responsibilities of the Parties for water quality standards, program research, etc., are captured elsewhere in the Agreement.

Paragraphs 2a and 2c (and its reference to Annex 17) need to be reviewed and updated in light of current research needs.

Paragraph 2b – “mechanisms for appropriate cost effective international cooperation” should be stronger and more specific, to be meaningful. Consideration should be given to specifying programs or measures for more effective international cooperation. Further consideration could also be given for exchange of knowledge and expertise with other large lakes protection and enhancement programs domestically and internationally and in making a larger contribution to addressing the world freshwater crisis. Requirements to institute joint operational programs on shared problems with lake management programs of other foreign countries could be incorporated. Also, exchanges of information, students and experts between the Great Lakes program with lake management program counterparts from foreign countries could be incorporated. The final Conference Report from the Managing Shared Waters conference held in June, 2002 in Hamilton, Ontario should be helpful in suggesting specific ways that mutual Capacity Building agendas could be established amongst managers of shared waters.

ARTICLE VI PROGRAMS AND OTHER MEASURES

Revise: Article VI addresses and defines the full suite of program activities to be undertaken by the Parties and is a crucial part of the Agreement. Some modification of the existing language or structure of Article VI is recommended however; there are gaps in the coverage of Great Lakes issues in Article VI and additional provisions are recommended.

Rationale: This article speaks to the bulk of the work undertaken by the Parties under the auspices of the Agreement and provides the policy framework upon which most Great Lakes programs are based. The Article is therefore closely tied to the corresponding Annexes (3 – 16) which describe in more detail the proposed required actions of the Parties. Substantive change to specific aspects of Article VI or to these particular Annexes must be reflected in both the Articles and Annexes of the Agreement.

For the existing programs and measures described in the Article, evaluation of their relevance or adequacy should be carried out as part of the review of specific Annexes. In the Article, the language that has been employed is general and flexible enough to meet the policy objectives of the Agreement. There should be provisions however which formally call upon the Parties to develop and implement programs in areas such as:

- Ecosystem management
- Aquatic nuisance species;
- Biodiversity protection;
- Habitat management;
- Integrated watershed management;
- Climate change adaptation,
- Sustainability.

Also, there are a number of dates in this Article (1982 and 1983) and throughout this Agreement that should be revised or eliminated.

The following comments address the specific paragraphs of Article VI.

Paragraph 1.

Change 2nd sentence to read “Where present programs or measures are inadequate to meet the General and Specific Objectives, they will be revised to achieve the objectives”. Change the 3rd sentence by replacing the word “treatment” with the phrase “management practices”. Also, the sections on point sources should be updated, with reference to the Binational Toxics Strategy and/or the implementation of the Great Lakes Initiative (GLI).

Paragraph 1[a] Pollution from Municipal Sources

- Change to Pollution from Suburban and Urban Land Uses and refer to New Annex on Pollution from Suburban and Urban Land Uses
- Incorporate the municipal sewerage items under a Sewerage heading in a new annex.
- Particular attention might be given to the growing backlog of infrastructure funding needs for the upgrading and operations of sewerage facilities in the basin.
- Delete sentence “These programs shall be completed and in operation as soon as practicable, and in the case of municipal sewage treatment facilities no later than December 31, 1982.”
- Keep the rest of the paragraph.

Paragraph 1[b] Pollution from Industrial Sources

- Delete “These programs shall be completed and in operation as soon as practicable and in any case no later than December 31, 1982”
- Keep the rest

Paragraph 1[c] Inventory of Pollution Abatement Requirements

- Change title of sub paragraph to “Inventory of Municipal and Industrial Pollutant Releases and Transfers and Pollution Abatement Requirements”
- Consider adding a requirement for the publication of an inventory of pollutant releases and transfers of sources in the Great Lakes Basin based upon the data collected for the U.S. Toxics Release Inventory and the Canadian National Pollutant Release Inventory.
- Consider the utility of submitting an inventory of pollution abatement requirements to the IJC.

Paragraph 1[d] Eutrophication and Annex 3 –

- This paragraph needs to be updated in light of the re-emergence of eutrophication problems in the many near shore areas around the lakes and reoccurrence of the anoxic area in the central basin of Lake Erie

Paragraph 1[e] Pollution from Agriculture, Forestry and Other Land-Uses and Annex 13

- This needs to be updated in light of current and emerging manifestations of the pollution problems from these land-uses. Particular attention to intensive livestock operations [CAFO] should be considered and the spreading of biosolids on farm fields.

Paragraph 1[f] Pollution from Shipping Activities and Annexes 4, 5 and 6

- This should be reviewed, updated and simplified. The original provisions and annexes were relatively detailed as few regulatory requirements were in place in the early 1970s. Since that time new regulations to govern the disposal of human sewage from ships, the management and handling of cargo and the handling and disposal of fuels and other pollutants resulting from ship operations have been instituted. These international and domestic regulations should be referenced and serve as base level requirements. Any specific requirement for the Great Lakes beyond these base level requirements should be clearly stipulated. Requirements for the control of aquatic invasive species should be added to the Pollution from Shipping requirements. A single new annex with specific provisions as described above to replace the existing annexes should be considered.

Paragraph 1[h] Pollution from Onshore and Off Shore Facilities and Annex 8

- This requirement has been met and its reporting requirement long past. Delete this clause and annex.

Paragraph 1[i] Contingency Plan

- This should be updated and kept.

Paragraph 1[j] Hazardous Polluting Substances and Annex 10

- This provision and annex should be reviewed in light of new requirements for chemical assessments in both countries and the development and implementation of the Binational Toxics Strategy (BTS).

Paragraph 1[k] Persistent Toxics Substances and Annex 12

- This article and annex need to be updated. The principles are still valid and should be retained. Some of the definitions of technical terms are outdated and no longer used.
- Reference should be made to the Binational Toxics Strategy.

Paragraph 1[l] Airborne Toxic Substances

- Keep this article and annex but review in light of development of International Atmospheric Deposition Network and the work done under the Binational Toxics Strategy. Consistency with the Canada-US Air Quality Agreement might also be considered.

Paragraph 1[m] Surveillance and Monitoring

- This annex needs to be updated in terms of current specific surveillance and monitoring needs. It should incorporate State of the Lakes Ecosystem Conference (SOLEC) approaches.

Paragraph 1[q] Pollution from Contaminated Groundwater and Subsurface Sources and Annex 16.

- This needs to be updated with regard to new knowledge of groundwater in the basin.

Paragraph VI (2) Keep

ARTICLE VII POWERS, RESPONSIBILITIES AND FUNCTIONS OF THE IJC

Retain: This section seems to still be appropriate; however we would expect that it might require changes in order to ensure that the IJC role is appropriate in the context of overall Agreement responsibilities and governance.

Rationale: This Article as well as the remaining Articles (VII through XV) of the Agreement deal mainly with administrative and governance matters which are the principal subject of Phase 3 of this project. They will not be considered for detailed review at this stage.

ARTICLE VIII JOINT INSTITUTIONS AND REGIONAL OFFICE

Revise: It is time to rethink the membership and role of the Water Quality Board (WQB) and change it to a Great Lakes “Ecosystem Management Board”. The Science Advisory Board could become a “Great Lakes Ecosystem Monitoring, Surveillance and Research Board.” As recommended already, however, these changes need to be considered in the context of additional analysis regarding overall governance matters, in Phase III of this analysis.

Rationale: If the Agreement is changed in scope to be an ecosystem agreement, the make-up of the WQB will need to change as well. As a new “Ecosystem Management Board”, there should be inclusion of various stakeholders on the Board, reflecting this broader context and with membership that can deal with the new Articles and Annexes. The “management” word recognizes the need for an important shift in emphasis from “advisory”.

The Science Advisory Board needs a specific reference from the Commission. It needs to be charged with the task of evaluating the significance of current science in the light of Great Lakes protection needs.

The Boards should continue to be required to report to the Commission every other year on the implementation of the Agreement. The International Air Quality Advisory Board and Council of Great Lakes Research Managers should be retained with duties outlined and responsibilities more directly linked with the Agreement.

ARTICLE IX SUBMISSION AND EXCHANGE OF INFORMATION

Retain: This Article seems to be fine as it is.

ARTICLE X CONSULTATION AND REVIEW

Revise: This Article should be revised to include a reference to First Nation/Tribal Authorities.

Rationale: It is appropriate to include First Nation/Tribal authorities.

ARTICLE XI IMPLEMENTATION

Retain:

ARTICLE XII EXISTING RIGHTS AND OBLIGATIONS

Retain:

ARTICLE XIII AMENDMENT

Retain:

ARTICLE XIV ENTRY INTO FORCE AND TERMINATION

Retain:

ARTICLE XV SUPERSESION

Retain:

ANNEXES

Annex 1 *SPECIFIC OBJECTIVES*

Revise: As is the case with several other Annexes, this is a section of the Agreement that really needs to “hit the refresh button”. The pollutant lists are very dated and should be reviewed and revised. New chemicals of concern should be added, and concentrations based on consideration of current detection levels should be revised where better information is now available. A specific objective should be added for exotic species elimination. A specific objective should be added for biodiversity. Lake ecosystem objectives should be added for each Great Lake; the objectives should not be limited to water quality chemistry.

Rationale: The general intent of Annex 1 is still valid but strengthening and updating is needed. Consequently, a comprehensive overhaul of the Annex is recommended, including:

- insertion of strategic dates and deadlines for achievement of particular pollution reduction or elimination targets;
- continued provision for regular periodic review of the Annex to ensure its ongoing relevancy.

Since Annex I was prepared in 1978, much new information and new science has come forth and the Annex has been overtaken by other initiatives of the Parties. Some of these have been in response to the provisions of the Annex and others have been independent of it. They include the Bi-national Toxics Strategy and the Ontario Bans and Phase-outs program. The US Water Quality Guidance for the Great Lakes System and Canadian Environmental Quality Guidelines also contain many substances not on the current Annex 1 list. Conversely, a number of substances on the Annex 1 list are now banned or otherwise not in use in the Great Lakes Basin which throws the relevancy of parts of Annex 1 into question.

In addition, there are a number of technical or scientific weaknesses in the Annex which have been identified by various previous reviewers, including the Science Advisory Board. These include:

- Potential conflict between levels mandated as specific objectives and the overall goal of virtual elimination for substances such as persistent biological toxic substances;
- Lack of recognition of site-specific conditions that may require different levels or timing for acceptable and achievable pollutant reduction;
- Inconsistency of supporting scientific rationale with the current knowledge base in certain areas;
- Need to recognize new or emerging issues (e.g. endocrine disruptors, pesticides, pharmaceuticals, fire retardants).

From an ecosystem management point of view, it would be very helpful to have an integrated data system that would facilitate the mapping and understanding of the presence of Annex I substances in the environment. Also, in such a data management system, Parties and Jurisdictions should list their operational and legislated water quality objectives and criteria for the surface waters of the GLBE and explain differences in parameters which vary from the Agreement objectives. .

One way to achieve suggested advancements in a new Annex 1 would be for governments to charge the Science Advisory Board to hold a week-long workshop to update the whole Annex, all in the context of the directions to be taken in a potential new Agreement, of course.

Annex 2 REMEDIAL ACTION PLANS AND LAKEWIDE MANAGEMENT PLANS

Revise: The Areas of Concern (AOC) and Remedial Action Plan (RAP) sections of Annex 2 are generally sound and should be retained. The Lakewide Management Plans (LaMP) section should be expanded to cover more than chemical pollutants; habitat and biodiversity considerations should be added as recommended in previous sections. However there is considerable work to be done to achieve presently required objectives in RAP and LaMP areas and a renewed commitment as well as updated reporting requirements for both is needed.

Rationale: Review of the Annex should not lose sight of the fact that many programs and activities are in place and underway but unfinished. The RAPs and LaMPs programs have been in place for 17 years and some overhaul of the Annex is necessary to reflect lessons learned, to correct original weaknesses, and to bring the processes up to date. In general, this Annex addresses two large and very different program areas (RAPs and LaMPs) and could benefit from being split into two separate annexes.

With respect to RAPs, the program is well advanced in many areas so that implementation and, especially, delisting strategies are the key issues of concern at this time. A weakness of the original Annex was the lack of guidance on delisting strategies or procedures. This could be an important and timely addition. While there has been some recent progress reported, the parties need to seriously recommit to the remediation of AOCs.

With respect to LaMPs, the various lakewide initiatives have evolved beyond the original terms of reference of the program and are certainly looking beyond the original focus of “critical pollutants”. Broader issues such as coastal protection (and associated land-use planning) and habitat management are assuming greater prominence in the lakewide initiatives. Current reporting of progress on lakewide initiatives seems to bear little resemblance to the reporting schedule outlined in the Annex however and results are not clear. Expanding the scope of the LaMP effort and introducing Environmental Management System concepts including the use of goals, objectives, targets and periodic reporting could assist the parties make implementation progress.

Moving “upstream” into the sub watersheds of the basin will be important to achieving the overall LaMP goals. LaMP goals and plans should include a section on how critical pollutants of the lake into which they drain will be reduced in the watershed as well as dealing with source protection, sprawl, habitat restoration etc. Principles for integrated water resource management within an ecosystem approach context should be included.

In addition to Areas of Concern, areas of “significantly unique environmental quality” in each lake basin and could also be identified and plans for their protection by responsible authorities should be developed. Such areas would include for example, wetlands and other sensitive habitat for recognized endangered species.

Annex 3 CONTROL OF PHOSPHORUS

Retain: While we are suggesting that this Annex should be retained, it does need to be reviewed and refreshed, in light of new and emerging scientific information involving nutrients and with reviving interest regarding this issue.

Rationale: Delete existing reporting and review deadlines and replace with new reporting deadlines as appropriate. Basin managers also need to have advice as to whether the nutrient loadings tables and numbers are still correct, in light of current and expected environmental conditions.

Annexes 4, 5 and 6

Retain: Delete, replace or at least extensively revise these three Annexes; they are no longer justified in the light of current issues involving shipping and the threats of aquatic invasive species.

Rationale: Some say that the aquatic invasive species issue is the single largest problem presently facing biodiversity in the Great Lakes; it is not addressed in the Agreement and it alone may be reason enough to open the Agreement. One up-to-date annex could be developed that would cover pollution from commercial shipping activities including ballast water handling requirements for protection against aquatic invasive species. A new article and annex may be justified addressing recreational boating including boats and marinas.

Annex 7 DREDGING

Retain: It may be appropriate to combine Annex 7 (Dredging) with Annex 14 (Contaminated Sediments).

Annex 8 DISCHARGES OF POLLUTION FROM SHIPPING SOURCES

Retain:

Annex 9 JOINT CONTINGENCY PLAN

Retain:

Annex 10 HAZARDOUS POLLUTING SUBSTANCES

Revise: The list of chemicals is old and does not include some current chemicals of concern; the process outlined is basically sound but should be refreshed. The lack of an explicitly stated purpose is a shortcoming.

Rationale: This Annex needs to be reviewed in light of current assessment processes for chemicals used by both countries. This may help to determine if the Annex 10 chemicals need to be assessed and monitored as stipulated or if there need to be updates. Another consideration should be the implementation of the Binational Toxics Strategy and how the BTS will both delist and list chemicals of concern. Comments on Annex 10 should be considered in connection with comments on Annex 12.

Annex 11 SURVEILLANCE AND MONITORING

Revise: Much of this Annex should be retained. As in many of the other Annexes water chemistry is a major focus. While the interest and commitment to water pollution monitoring should not be lost, increased emphasis on ecosystem, habitat and biodiversity measures is appropriate and should be added.

Rationale: Surveillance and monitoring programs should be updated to be consistent with the evolving direction of the Agreement. The State of the Lakes Ecosystem Conference (SOLEC) should be linked in as it is currently developing and reporting on a set of 88 indicators. Parties and Jurisdictions should table their annual GL tributary monitoring and lake surveillance plans with the IJC and submit data reports against those plans as they are implemented. The IJC and the International Association of Great Lakes Research (IAGLR) could be drawn together to hold a major scientific evaluative workshop of monitoring and surveillance data every five years.

Annex 12 PERSISTENT TOXIC SUBSTANCES

Retain: This Annex is very important to the GLWQA and should be retained. As part of an overall refreshing of the Articles and Annexes, Annex 12 should be revised and updated, however.

Rationale: As a strong signal that we are not about to weaken the Agreement, this Annex should be retained. Virtual Elimination and Zero Discharge principles should be retained and the Binational Toxics Strategy should be an important reference. All out-of-date reporting deadlines, program requirements and definitions should be reviewed and updated.

Annex 13 *POLLUTION FROM NON-POINT SOURCES*

Revise: Impacts from land use activities including agriculture, particularly wide-spread concerns in most jurisdictions about Confined Animal Feed Operations (CAFOs) and land development pressures, should be highlighted in a revised Annex 13 in the context of watershed management approaches. In addition, habitat and other ecosystem impacts should be highlighted. The concept of a new resource “net gain or net improvement” standard should be considered for delivery by this Annex.

Rationale: As stated in the Donahue, Gannon et al 11/99 review paper, this section should “broaden the connection between land use and water quality”. We suggest that by building on such a connection, a future Annex should take the next logical steps of adding habitat protection and resource improvement as new standards for resource management.

Annex 14 *CONTAMINATED SEDIMENT*

Retain: This is still an appropriate Annex. As with Annex 13, the Long-Term Measures section of this Annex should benefit by a new standard based on the concept of resource improvement.

Rationale: This section should be maintained; the dates could be updated. As suggested in earlier comments, Annex 7 on Dredging and Annex 14 could be naturally combined.

Annex 15 *AIRBORNE TOXIC SUBSTANCES*

Retain: This is a “work in progress” Annex that should be retained but updated in light of increased knowledge of sources of contaminants to the atmosphere and their subsequent atmospheric transport and deposition.

Rationale: This remains a strong and important Annex particularly in view of new and emerging issues with respect to transboundary air pollution in the north east of North America and the recognition this has been accorded by the Canada-US Air Quality Agreement.

Annex 16 *POLLUTION FROM CONTAMINATED GROUNDWATER*

Revise: This Annex should be strengthened. The Great Lakes research community needs to do a much better job of understanding the Great Lakes Basin’s groundwater system. There should be a specific commitment to groundwater mapping and research.

Rationale: Understanding the relationship of the groundwater system and the surface watershed is critical to management and improvement programs.

Annex 17 RESEARCH AND DEVELOPMENT

Revise: This Annex should be reviewed and strengthened. It should go beyond its current “delineation” of research needs to also provide more strategic regional coordination that will help ensure that everyone benefits from research on emerging problems. Research priorities should be developed taking into account existing and new or emerging priorities.

Rationale: Currently, the Annex is very passive, providing really only a delineation of research needs, with no “value added” coordination or commitments. Many have highlighted the disjointed approach that has been taken to Great Lakes research and the need for coordination and leadership, all in the context of providing sound advice supporting the needs of the GLWQA. There are several new research priorities that need to be considered, including but not limited to:

- Watershed and airshed management including land use
- Ecosystem approach
- Biodiversity
- Groundwater
- Habitat restoration, protection and improvement
- Sustainable use
- Endocrine disruptors and pharmaceuticals
- Climate change adaptation
- Modelling of long range transport of air pollutants (LRTAP)
- Aquatic invasive species.

These research priorities should also be considered as topics for the development of new Annexes.

TERMS OF REFERENCE FOR THE JOINT INSTITUTIONS AND THE GREAT LAKES REGIONAL OFFICE

Revise: The Board reporting requirements should be revised to semi-annual rather than periodic reporting. Reports should be required to address each Article and Annex of the

Agreement. The Council of Research Managers and the International Air Quality Advisory Board should be included under this Annex, with terms of reference.

Rationale: These Terms of Reference are 25 years old and need to be reviewed and revised as the institutions and the operating environment have changed. The Terms of Reference will also be considered as part of Phase III of this analysis, addressing governance.

Q 2 If revisions of the Agreement are required, how would such changes best be accommodated in a new or revised Agreement?

First, a Review

The specific changes to the agreement should flow from a comprehensive review of the Agreement carried out under Article X of the existing agreement. There are 2 basic options for structuring the review which are discussed below:

Option #1 - Traditional Approach [as used in the 1976/77 and 1986/87 reviews]

The Parties can each undertake a review of the agreement separately and consult with their respective state and provincial governments and other stakeholders and produce a list of specific changes in a new draft text.

The Parties would then meet to combine the two draft review texts into one [essentially a negotiation process]. Once they had a combined text they could consult with stakeholders jointly on the combined text to obtain public comment.

The final text with the benefit of public input would be agreed to by the Parties.

Option #2 - Joint Review – full stakeholder involvement and public consultation

The Parties could agree to initiate a joint review of the agreement from the outset. They could set up bilateral working group or groups to review specific parts of the Agreement and recommend specific changes

The bilateral working groups could be restricted to government agency personnel and experts or could be composed of government agency personnel, stakeholders and individuals from non-government organizations.

The recommended changes would be put together into a draft agreement by the Parties for final consultation with the public.

Option #2 is preferred as it lends itself to a number of variations with regard to public involvement and consultation and provides the broadest opportunity for the input of the Great Lakes community

Specific Points to Consider In Option #2:

In past reviews, the Parties did not utilize the Commission in an active way in the review process even though the Commission is uniquely equipped with formal powers and an expert capacity to play a significant contributing role in the review process. The Parties should take advantage of the knowledge and experience of the Commission and seek strategic advice on the nature and content of the review process.

The following possible roles for the Commission are offered for consideration:

- **Participate and lead key bilateral working groups.** For example, the Parties could request the IJC to lead a bilateral working group to develop an appropriate vision for the Agreement which would become the draft Preamble to the new Agreement. Also, the SAB could more specifically review Annex 1 objectives and this should be brought into the review. The Council of Research Managers has recommended a review of Annex 17 Research and Development and this could be done in conjunction with IAGLR and brought into the review.
- **Convening special experts workshops** - the Commission could be helpful in convening expert groups to address key components such as “ecosystem approach”, “principles for integrated watershed management”, “principles for sustainability in urban development” etc. throughout the review process.
- **Hold formal public hearings** – once the Parties have a complete draft text of the Agreement they could ask the IJC to hold formal public hearings on it to gather public comment for the Parties.

Second, a new Agreement

The basic structure of the current Agreement has been unchanged since 1972, when it was designed as essentially a water quality management – pollutant reduction instrument between governments and it has been largely maintained in that fashion to date. Meanwhile, knowledge and practice in Great Lakes management over the past 40 years has advanced to a point where the interconnectedness of systems and current ecological issues of the Great Lakes Basin Ecosystem requires cross-media and multi-disciplinary thinking and action and a new approach in the context of achieving a sustainable Great Lakes community.

Accordingly, a revised Agreement structure which more clearly reflects this understanding and provides a vision and strategic direction toward the achievement of a sustainable Great Lakes community is needed. Development work on structure or framework of a new Agreement and its vision, principles and key elements could be underway while the Review goes forth.

Q 3 Based on the scope and direction of potential revisions and additions, what improvements should be made to measure, monitor and report on programs and progress?

In general, our comments on the specific Articles and Annexes of the present Agreement in section B of this report suggest a need for more strategic dates, deadlines and specific targets to enhance the accountability of the Parties (and to assist those sitting in oversight of the Parties). With this comes a natural demand and need for more measurement,

monitoring and reporting; on the other hand we seem to be almost overwhelmed with data and what we really want is more effective and strategic reporting.

Meanwhile, through SOLEC the Parties have committed to a system of indicators against which trend reporting will continue; the Parties are expected to continue to report progress of RAP and LMP implementation through to completion of those programs; and the Parties will continue to report progress against the challenges of the Bi-national Toxics Strategy. What seems to be missing is the measurement and reporting of progress in terms of program implementation including the program elements currently found in Article VI. Accountability is key. In addition to reports on progress - we also need to know what we are not doing; where we are not meeting our goals and commitments and where management attention and resources should be focused.

OPTIONS:

One approach could be to have fewer but more strategic reporting requirements, but only if there is an enhanced availability of publicly accessible data and reports (perhaps in a publicly accessible website) as a complement. Another possibility would be for the Commission and Parties to identify one or two key program areas based on the Agreement as well as COA 2002 and 2002 U.S. GL Strategy requirements in every biennial cycle and then hold reviews of the those areas. The parties could submit progress reports, the IJC Boards could review them, the Commission could hold public workshops and provide a final report in its biennial or special report to governments. In addition to the above options for measuring and reporting progress, further monitoring and surveillance is required as part of an overall “knowledge generation and management” function for the lakes.

A number of ideas to clarify these needs are:

- Pursuit of the idea of another “International Field Year for Great Lakes Research”, holistic scientific assessment of a lake from which long term monitoring needs for purposes of improved understanding will be identified,
- Identification of key scientific issues and knowledge gaps which need to be addressed with specified monitoring and surveillance. This could be generated by SAB or CRM or a combination of them. They would not only identify these gaps but would be authorized to mobilize resources to carry them out with the support of the Parties.

Q 4 How should the parties consult with Great Lakes constituencies to solicit advice regarding the adequacy of the Agreement and specific changes that may be required? What is the role for the Commission regarding stakeholder consultation?

The role of the IJC with respect to the subject of Great Lakes stakeholder and public engagement and the role of the IJC with respect to the development of a new Great Lakes vision and a new Great Lakes Water Quality (and Ecosystem) Agreement, is one that

could be demonstrated through a new approach based on the role that the IJC could play in a Review of the Agreement.

In our September 9, 2003 Phase I report to the Commission, we made the following recommendations regarding the role that the IJC should play in a Review:

Issue/Question # 9:

- *What role should the IJC play in a review?*

Recommendations:

1. *Recognizing that the Review will be by the Parties, the IJC should take a prominent role in the Review and make comprehensive recommendations to the Parties regarding the Review and the process by which it is carried out.*
2. *The Commission should make an offer of assistance to the Parties. The Commission, could for example, confirm its view that the Review is a serious and important task and should offer to provide resources for the facilitation of stakeholder input to the Review process. A Great Lakes "Roundtable" is one model that could be offered.*
3. *The Commission should make it clear to the Parties (first) that it would encourage discussion on options for a new agreement and that it will openly encourage a dialogue on a fresh, new vision and a new agreement.*

Background/Rationale:

1. *Under Article VII of the Agreement the Commission has the clear authority to Report to and provide assistance to the Parties. It has a mandate to provide advice on "how" the Review is undertaken.*
2. *The Commission has a unique bi-national perspective.*
3. *The Commission staff is qualified to make comprehensive recommendations.*
4. *The Commission has the interest (and hopefully the resources) necessary to facilitate stakeholder input into the review process. Such an effort could result in valuable perspectives for the Parties' consideration.*
5. *Note that the Commission is also responsible for inviting public comment on the Canada-United States Air Quality Agreement progress reports and for providing a synthesis of comments to the governments to assist them in implementing the agreement. Lessons that could be learned from the Commission's experience with respect to the Air Quality Agreement review process should be considered when considering the GLWQA review.*
6. *There is an interesting convergence taking place among groups and individuals who are working to "restore the greatness" of the Great Lakes. While there is a general recognition that lots of good work has been done, there is an acceptance that many more challenges remain and new ones are emerging. In dealing with these new challenges, many have noticed a trend in terms of moving from traditional "top-down" institutions and processes to more "bottom-up" models. There are a number of Great Lakes organizations that have "restoration strategies" and they are actively promoting them. This is a good sign but they are doing so in the absence of a shared vision and an overall integrated binational Great Lakes initiative.*

This leaves us with a new kind of challenge in terms of providing something that Great Lakes groups and organizations and businesses can rally around and a new vision, a new energy and a new idea with which people can identify and take ownership. There is a sense that the Great Lakes is kind of stuck in a "same old" rut but meanwhile people in communities around the Great Lakes have built a powerful capacity to do something positive to enhance the sustainability of the region. The orchestra has no leader.

Many feel that we would all benefit by having a fresh, energized, forward-looking more inclusive Great Lakes initiative. People feel we will also need more effective coordination among the numerous Great Lakes organizations and institutions that exist on both sides of the border, recognizing that each organization has a different role and purpose and largely complementary interests.

The IJC could take a leadership role by encouraging a comprehensive Review of the Agreement, connecting organizations through a Commission-supported stakeholder process, provide guidance, information (reminding people of its reports already done that highlight deficiencies) and catalyze a positive new approach to managing the Great Lakes through the development of a fresh new vision and a new Agreement.

With respect to our recommendations, above, that the IJC should take a prominent role in the Review and make comprehensive recommendations to the Parties regarding the Review and the process by which it is carried out, the response by the IJC is encouraging. The Commission sent a signal to the Parties and to the public following the IJC September 2003 Biennial meeting in Ann Arbor, Michigan in a Great Lakes Declaration² dated September 20, 2003. The IJC advised that it “will request a special mandate from the governments that defines an appropriate and substantial role for the commission in the review of the Great Lakes Water Quality agreement”

The IJC Declaration also commits to “Engage the public in active dialogue and discussion, making the advice it gives to government regarding the review of GLWQA transparent and open to input from all who care about the health of the Great Lakes basin ecosystem; and facilitate public participation in the review process by involving stakeholder organizations such as environmental and conservation groups, industry and trade associations and riparian interests through a variety of mechanisms.” The IJC has made an offer of service to the parties, and suggested a role in stakeholder engagement.

The urgent need for more effective coordination mechanisms A case study on the Great Lakes basin situation (Heathcote, 2002)³ prepared for participants at the Managing Shared Waters Conference held June 23-28, 2002 concluded that;

“In summary, progress toward Great Lakes water management goals is limited in part by weak capacity to measure and understand the physical, chemical and biological systems of the vast and complex Great Lakes. This limited capacity in turn can limit the capacity – and perhaps the will – to develop effective legislation tailored to particular problems. This situation is particularly critical because of the Basin’s rapidly ageing infrastructure and its ballooning population. As population

² Great Lakes Declaration, International Joint Commission, September 20, 2003.

³ *Capacity Development in the Laurentian Great Lakes Basin Ecosystem*, Heathcote, 2002

grows and more land is converted from agriculture to urban development, pressures on infrastructure can only escalate. It is clear that significant government restructuring and budget cuts in the mid-1990s have contributed to these problems; it is equally clear that those cuts have prompted a fundamental re-thinking of the entire challenge of environmental management. New technologies and new partnerships may offer solutions over the longer term. In the immediate future, there is a need to coordinate research and monitoring activities across borders and levels of government, as a basis for the development and enforcement of better legal systems, and the implementation of effective infrastructure. Although the International Joint Commission's boards and agencies, and the Remedial Action Plan program, provide some opportunities for this coordination, results have been mixed, and more effective coordination mechanisms are urgently needed." (Emphasis added).

Emergence of the Roundtable idea The suggestion of a Great Lakes Roundtable also emerged at the Managing Shared Waters Conference, in "The Hamilton Statement on Managing Shared Waters"⁴. It challenged the Great Lakes Community "to continue to innovate on institutional arrangements, such as Roundtables, and provide leadership in capacity building and sharing best practices". Pollution Probe and other partners have been working on the concept over the past year and several Great Lakes "stakeholders" feel that it is worth serious consideration in connection with a Review of the current GLWQA and with discussions regarding the need for a new vision for the Great Lakes and a means and process to bring the vision to fruition.

The need for a new Vision As is indicated in the analysis and recommendations in our Phase I report, there is a sense that the vision for the Great Lakes has become "stale". There is a need to freshen the issues, to move beyond a "restorative function" vision and to shape a new vision that would bring new direction, attention and resources to the basin.

The role of stakeholders in developing the new Vision It is very unlikely that any one group or agency can ever expect to create a "top down" vision that will be understood and embraced by everyone who has a "stake" in the Great Lakes; this can only come about by building it from the "bottom up". The RAPs have worked as well as they have because people see and understand problems and what to do something about them. We need to learn from our own community-based "bottom-up" RAP approach and broaden its application for other issues and approaches in other areas. We also need to re-define stakeholder to include "someone who's going to take action" not only "who's going to benefit" and this idea of what a stakeholder is should help develop a fresh Great Lakes vision. Some say that we actually do have a pretty good shared vision for the Great Lakes but nobody has actually articulated it yet.

The role of stakeholders with respect to Great Lakes Governance This is a subject that will be addressed in greater depth in Phase III of our report; however at this point we have a sense that with respect to Great Lakes governance, "the whole is less than the sum

⁴ *Hamilton Statement on Managing Shared Waters*, Managing Shared Waters Conference, June 28, 2002

of its parts”. There is a real need to clarify the roles of Great Lakes institutions: Who is responsible for what?” and “to whom are they accountable?” How can we make sure that the numerous Great Lakes institutions are part of the new Great Lakes vision and are part of the movement to put it in place, with an inclusive, coordinated binational effort? We will not presume to know the answers to all these kinds of questions, but we feel that the process by which they are pursued is really important. In that regard, we feel that a Roundtable process has merit.

What is a Roundtable? It is important to emphasize at this point in its contemplation that a Great Lakes Roundtable process should not be defined by the authors of this report, only sketched. Again, a Roundtable process really needs to be considered in the context of an overall review of Great Lakes governance and that will happen in Phase III of our report. In the meantime, however, a Great Lakes Roundtable could be imagined to be:

- *initiated by any organization or a group of organizations, public and private*
- *non-threatening - an arms length initiative owned by nobody but shared by everybody*
- *highlights sustainability and showcases opportunity*
- *made up of individuals from both public and private sectors who have an interest in developing a new collaborative and a wish to move it ahead*
- *includes senior level people with important information and perspectives, as well as a capacity to make decisions and commitments on behalf of their organization*
- *an institution that builds consensus about the changes needed to attain environmental sustainability in the GL and carries the political buy-in and clout needed to make sure things happen*
- *bi-national*
- *a place to discuss broad, strategic questions*
- *a catalyst for action*

A Roundtable should not be:

- *another self-serving “stakeholder”*
- *a debating society*
- *a threat to any institution*

The project team will continue to develop its perspectives and suggestions regarding the role of stakeholders and will report more fully on this in Phase III.