

**THE IJC UNDER THREAT:
A TIME FOR ACTION**

March 1992



Great Lakes United

About This Report

This report was written by Great Lakes United President John Jackson, and Board Member Paul Muldoon of Pollution Probe. Assistance was provided by Tim Eder of the National Wildlife Federation and GLU Executive Director Philip Weller. The ideas and thoughts in this report have been generated by discussions amongst many Great Lakes organizations. The cover was designed and produced by Reg Gilbert.

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Great Lakes United

Great Lakes United is a binational coalition for the conservation and protection of the Great Lakes-St. Lawrence ecosystem.

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Over the past decade, the International Joint Commission (IJC) has played an invaluable role in pointing out problems in the Great Lakes and at detailing new, truly effective long-term solutions to these problems. Its Fifth Biennial Report on Great Lakes Water Quality, which was released in April 1990, showed increased vigour in its efforts to protect the Great Lakes.

Unfortunately, the IJC is now running into troubled waters. This is a serious problem for all the residents in the Great Lakes basin, since the IJC has an essential role to play in protecting our well-being.

In this position paper, we define the appropriate role for the IJC, and describe the problems the IJC is encountering. We recommend ways to ensure the ongoing viability and effectiveness of this special binational institution.

THE ROLES OF THE IJC

1. To Evaluate, Audit and Review Progress Under the Great Lakes Water Quality Agreement.

One of the most crucial roles of the Commission is to evaluate the performance of the national, state and provincial governments in protecting and cleaning up the Great Lakes. The Great Lakes Water Quality Agreement (GLWQA) identifies a wide array of obligations to be undertaken by the governments. These activities are to be undertaken within the two basic pillars laid out in the Agreement: an ecosystem approach, and a preventive approach based on zero discharge.

The Agreement makes the IJC responsible for evaluating and reporting on progress by the governments. The IJC's Biennial reports and the Water Quality Board reports have been essential in fulfilling this function.

2. To Recommend the Most Effective Ways to Implement the Agreement.

The GLWQA tells the governments what they need to do to protect the Great Lakes. But the Agreement does not give all the details.

The IJC is instrumental in giving guidance and advice on how to implement the Agreement. The Commission's biennial reports have been invaluable at achieving this. The IJC's Virtual Elimination Task Force is now working out the details of a programme for achieving zero discharge. The Commission's thoughtful and insightful recommendations are essential in helping us all find solutions to the problems in the Great Lakes.

One of the strengths of the IJC is that it is able to focus its energies on the Great Lakes and build upon its years of experience in dealing with the problems in the Lakes. For other government institutions with responsibility for Great Lakes issues, Great Lakes is only one of the numerous competing responsibilities that press for their attention.

3. To Be on the Forefront of Policy Development, to Identify New Problems and Find Creative New Solutions to Problems.

Throughout its history, the IJC has made policy-makers aware of emerging problems. These have included the effects of contaminants on wildlife and humans, the invasion of exotic species into the Great Lakes, the potential effects of global climate change on the Lakes, and the significance of the long-range transport of toxics.

Perhaps the most significant legacy of the Commission is the contribution it has made in developing new policy responses to these problems. Its biennial reports and the reports of the Science Advisory Board have been central in fulfilling this role.

For example, the Commission has broken new ground in defining the ecosystem approach to addressing environmental problems. The Remedial Action Planning process is another example of a unique process that developed under the auspices of the IJC. Nowhere in the world has a government institution been able to forge new policy solutions as effectively as has the Commission over the past two decades.

4. To Make Information Available to the Public.

The IJC has become an invaluable source of detailed, critical information for the public on the state of the Great Lakes and of the effectiveness of government programmes in protecting the Lakes. The biennial reports of the Commission, its Water Quality Board and its Science Advisory Board are looked forward to by all those concerned about the Great Lakes. These reports are a basic source of information on the Lakes.

The IJC's library in Windsor is also an important source of information for the public. Its 38,000 books and reports and 300 periodicals are a central repository of

information on the Great Lakes, which is not matched at any other library.

The public relies on the IJC's biennial meetings to provide an opportunity for them to learn about the condition of the Lakes and to meet with other people working to clean up and protect the Great Lakes.

THE IJC'S CURRENT PERFORMANCE

1. The IJC is Failing to Do an Adequate Job of Evaluating Government Performance.

The residents of the Great Lakes basin look to the IJC to evaluate government actions. The chief advisers to the IJC who have helped in this evaluation have traditionally been the IJC's Water Quality Board. Government bureaucrats hold all the seats on this board. The public has repeatedly pointed out that it is naive to expect people who run their respective government's water quality programmes to help the IJC critique these same programmes. Recognizing this conflict of interest, the Water Quality Board has stepped back from this role. The Water Quality Board began its 1991 report to the IJC by saying that it is "taking on more of a policy advisory role to the Commission and is reducing its role as an evaluator of government programs."

Unfortunately, the IJC has not created anything to replace the Water Quality Board in helping it carry out this evaluative role. The Science Advisory Board made an effort to fill this vacuum in its 1991 report to the IJC, which contained more criticism of government programmes than it normally does. It would be a loss, however, if the Science Advisory Board were to replace its current essential functions with a stronger evaluative role.

Recent reports from the Canadian Auditor General and the U.S. General Accounting Office have provided more direct and hard-hitting assessments of government performance under the GLWQA than did any of the IJC's biennial reports released in 1991.

2. The IJC is Issuing Stronger Recommendations to the Governments for Action.

In their Fifth Biennial Report on Great Lakes Water Quality, the IJC Commissioners made stronger recommendations for government action than they had in the past. The IJC spoke with a more unequivocal voice in pointing out the directions that need to be taken. We hope that the IJC will continue to speak out on behalf of all the residents of the Great Lakes with this strong voice.

3. The IJC is Being Less Creative in its Efforts to Find New Solutions.

The Science Advisory Board has long played the lead role in pointing out emerging issues and new directions for action. More time now seems to be spent trying to figure out roles and responsibilities than on assessing the state of the Lakes and noting emerging issues and finding new solutions. This Board now holds two-day meetings instead of the three-day meetings that it used to hold. Its committees have been refocussed in directions that do not emphasize its creative role.

4. The IJC is Threatening to Step Back from its Public Information Role.

The Commissioners announced in February 1992 that they would get rid of their library in Windsor because they "can no longer afford to maintain and staff [it]." This would be a tragic loss for the people of the Great Lakes.

The IJC is now flirting with the idea of not holding a basin-wide biennial meeting in 1993.

REASONS FOR LACK OF GREATER SUCCESS BY THE IJC IN FULFILLING ITS ROLES

1. The Federal Governments are Undermining the Ability of the IJC to Fulfil its Roles.

The Canadian and U.S. federal governments have been withdrawing their support from the IJC's Great Lakes programme. This has become the most important impediment to the IJC in its efforts to fulfil its roles.

This retreat ranges from the subtle and symbolic to the obvious and substantive.

* The Canadian and U.S. federal governments are the IJC's sole source of funding. Changes to the GLWQA in 1987 created a need for increased IJC budgets. The governments have failed to raise IJC budgets sufficiently to meet these growing needs.

* The governments have withdrawn support from the IJC by reducing the amount of government staff time given to the IJC through their participation on IJC Boards and committees. In addition, the people from the governments who now sit on these bodies are less senior than the people who used to attend the meetings.

* The Canadian and U.S. governments disrupted the IJC's biennial meeting in Traverse City by holding their Pollution Prevention Symposium in the middle of the IJC's events. Now they threaten to pre-empt the IJC's next biennial meeting, which would normally be held in the fall of 1993. The governments are planning a basin-wide "State of the Lakes" meeting for April of the same year. Two basin-wide meetings in the same year would inevitably result in most people having to choose between the two. Government people would be much less likely to attend the IJC meeting if this were to occur.

* The governments have failed to ask the IJC to comment on a host of significant new government activities, such as the Lake Superior Initiative, the U.S.'s Great Lakes Water Quality Initiative and Ontario's Municipal-Industrial Strategy for Abatement.

* The governments are conducting a series of activities that parallel IJC activities. For example, they are developing listing and delisting criteria for RAPS, even though the IJC already spent years developing a set of criteria with considerable public and government input. The governments are ignoring many of the IJC's activities.

* The governments are lessening their reliance on the IJC as an advisory and investigative agency. For example, in March 1991, Canada and the U.S. gave the IJC the responsibility to solicit public comment on "The Air Quality Accord." The IJC is supposed to write a "synthesis of the views presented." The IJC is not asked to carry out an independent investigation and present its own conclusions.

The governments used to treat the IJC as the authoritative voice for the Great Lakes. It was the key and trusted adviser. Now, the governments treat the IJC like just another stakeholder, often ignoring its opinions.

2. The IJC does Not have an Adequate Information Base.

The IJC does not have the following information, which is critical if it is to carry out its roles:

* A systematic compilation over time of data on the state of the Lakes, such as loading and sources data, and ambient water and air quality.

* A systematic audit of government programs and resource allocations.

* A detailed comparison of government standards, regulations and actions with the commitments in the GLWQA to assess the extent to which the governments are fulfilling their responsibilities.

Much of the fault for the IJC not having access to the information just listed lies with the governments in the Great Lakes basin. The governments should gather and report on much more detailed information on discharges and loadings to the Great Lakes.

Instead of making progress in developing its information base, the IJC is now worsening the situation. Closing its Windsor library would be a serious blow to the ability of IJC staff to have easy access to information.

3. The Board Structures are in Need of Reform.

Historically, the Commission has carried out most of its work through its Water Quality and Science Advisory Boards. Since the amendments to the GLWQA in 1987, the mandate of these boards has been changed and new bodies, such as the Virtual Elimination Task Force, have been created.

The mandate of the boards and task force and how they interrelate with each other has become unclear. This confusion leads to duplication and also creates the potential for gaps in the execution of the duties of these bodies. The confusion has also diffused their resources, energies and attention.

The Water Quality Board has a new mandate -- to be a policy adviser rather than evaluator of progress. The committee structures through which it carried out most of its work have been dissolved. Its functions are now carried out at quarterly meetings, each of which is dedicated to a different issue area. This does not allow for serious in-depth assessment of policy directions.

In addition, the historic "conflict of interest" problems of this Board have not been resolved, although there is talk of putting four non-government people on the Board.

The Science Advisory Board is in confusion about the focus of its responsibilities and lacks the resources to carry out all its functions. Because of the failure of the Water Quality Board to continue to play an evaluative role, the Science Advisory Board has assumed some of this responsibility. Its excellent 1991 report to the IJC was the only evaluative content passed on to the IJC to help the IJC in writing its sixth biennial report -- with the exception of briefs from the environmental community.

Unfortunately, to the extent that it focuses on evaluation, the Science Advisory Board is detracted from its leading role as the lightning rod to point our emerging issues and find new creative solutions to the problems in the Great Lakes. For example, the Science Advisory Board has been the leading body in pointing out the health implications of the build up of toxics in the Great Lakes.

Confusion about the relative roles of the IJC's Virtual Elimination Task Force and the IJC's Boards is creating problems for this Task Force as it proceeds. For example, there is confusion as to whether it is the Task Force or the Water Quality Board that should take the lead in developing the legislative component of the virtual elimination strategy.

Another problem being experienced by the IJC's boards and task force is the new emphasis on putting representatives of all sectors, including industry, on IJC bodies. The ability of these bodies to provide strong, creative recommendations to the IJC is compromised by the presence of industry representatives with strong financial self-interests. This situation promotes compromise positions, which may not result in the solutions necessary to address the problems being experienced by the human and non-human residents of the Great Lakes basin.

Because of limited budgets, which means the IJC can hire only limited staff, the IJC must rely upon volunteer boards and committees to get most of its work carried out. As the governments have set up their own separate binational structures, they have lessened the volunteer time they devote to IJC work.

4. The IJC Regional Office is Not Fully Staffed and is Being Under Utilized.

The IJC has failed to hire the full complement of staff that has been provided for in its budget from the Canadian and U.S. governments. In the fiscal year 1991-1992, the IJC spent \$143,000 less on salaries than was provided for in the budget approved by the governments. Similar underexpenditures on salaries have existed for at least the past five years.

Many of the staff at the Windsor Regional Office are underemployed. Rather than being allowed to make the best use of their professional training, many of them spend most of their time as secretaries to boards, the task force and committees.

5. The IJC Spends Too Much Time Defining Its Role.

The amendments to the GLWQA in 1987 clarified the differing responsibilities of the governments and the IJC. The governments are responsible for implementing the Agreement. The IJC is responsible for monitoring progress.

Since those amendments, the IJC seems to have been in a perpetual state of re-evaluation and role defining.

RECOMMENDATIONS

1. Government Actions Needed:

The Governments must re-establish their commitment to the IJC.

- * The governments should increase the IJC budget to give it sufficient money to hire additional staff to replace the in-kind service historically given to the IJC by government participation in IJC Boards and committees.
- * The governments should make sure that the IJC has enough money to maintain its Windsor library.
- * The governments should ask the IJC to comment on the appropriateness of proposed programmes before government programmes are fully developed and implemented.
- * The governments should place top priority on responding to and implementing IJC recommendations.

2. IJC Actions Needed:

The IJC Commissioners must speak out strongly on behalf of the Great Lakes. They should avoid worrying about diplomatic protocol, stop speculating on government reactions and avoid actions that amount to pre-emptive capitulation.

- * The IJC should stop debating its role and get on with its job.
- * The IJC should put out a mission statement defining its Windsor office as an evaluator and critic of government programmes and as a major source of scientific expertise on Great Lakes water quality. The IJC should rely on its regional scientific staff to play the lead role in helping the IJC to carry out its responsibilities to audit the state of the Lakes and government activities under the Agreement.
- * The IJC should expand its scientific staff to be able to more fully carry out this role.

* The IJC should clarify the respective responsibilities of each of its boards and task forces.

* The IJC should maintain its Windsor library.

These recommendations must be acted upon immediately. The impacts of the erosion of the IJC are not yet being felt, but the decisions made today will affect the future. If the current trend continues, the IJC's ability to speak out strongly for the Great Lakes will be seriously jeopardized.