



Evidence Package

Standing Committee on Fisheries and Oceans

07 June 2023

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Great Lakes Fishery Commission Status Update

May 2023



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Great Lakes Fishery Commission La Commission des Pêcheries des Grands Lacs

Status Update – May 2023

The Great Lakes Fishery Commission is a binational treaty organization dedicated to coordinating scientific research, controlling invasive species, and facilitating cross-border partnerships and resource management between the provinces, states, Indigenous and national governments involved. The Commission is not a lobby group nor a private interest. The Commission is funded by the governments of Canada and the United States, and has several treaty responsibilities, including one that directs us to, “recommend appropriate measures” to safeguard the Great Lakes against a range of threats.

After five years of tireless work to resolve the Commission’s ongoing financial, governance and conflict of interest issues with the Canadian portfolio manager, US frustrations boiled over, and on November 28th, 2022, the Commission’s US

Section suspended all further discussion with Canadian Commissioners. US Commissioners provided their Canadian counterparts with two conditions to be met prior to any return to normal operations:

1. US Commissioners requested a resolution to the 30-year, Canadian underfunding legacy of the Commission’s treaty-based program in Canada. US Commissioners were confounded by Canada’s sudden and unilateral reversal (in a November 29th, 2022 letter) of a Budget 2022 promise to fully fund the work of the Commission rather than continuing to expect US taxpayers to finance the shortfall; and
2. Recognizing the binational decision-making structure of the Commission, and given the inappropriate practice of the Portfolio Manager systemically overriding the decisions of the duly appointed Canadian Commissioners after bilateral negotiations, the US Section demanded to know, “who actually speaks for Canada” around the Commission table. US Commissioners confirmed they would no longer negotiate programming and budget decisions with a partner who was not the decision maker and/or was not prepared to respect the treaty-based process.

The consequence of ignoring these issues has been a serious hobbling of the Commission’s ability to fulfil its treaty mandate of:



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1. Cross-border collaboration on Great Lakes issues;
2. The development and perpetuation of freshwater science, and
3. Control of the invasive, predatory sea lamprey.

Discussion have been ongoing between Commission representatives and the Canadian portfolio manager, and political support for change has been expressed by elected officials and Senators in all regions, parties, caucuses, and groups. As one example, on April 17th, 2023, forty-two Liberal MPs wrote to the Prime Minister and asked for the “Commission’s Canadian portfolio manager from [the Department of Fisheries and Oceans] DFO to Global Affairs Canada (GAC) as a way of resolving governance conflicts and aligning the Commission’s governance structure in Canada with the structure successfully utilized for nearly

70 years in the US.” It should also be noted that, since 2021, dozens of US Congressional Representatives and Senators have written to the Canadian Ambassador in Washington, DC, in support of the Commission’s call for change. To date, not one US lawmaker has received a reply from Canada.



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Despite the above, progress has been made on the noted financial issues.

Despite DFO's November 29th, 2022, communique confirmation that it would be unilaterally withholding approximately 35% of the new GLFC funds for undefined internal priorities of the department, on April 25th, 2023, DFO revised and replaced its November declaration and agreed to provide the GLFC with a full annual allocation of approximately \$19.5 million annually. The anticipated allocation was received by the GLFC on May 1st, 2023, more than a year after the tabling of Budget 2022.

Progress on the “who actually speaks for Canada” question has been less profound. Despite the apparent resolution of the financial conflicts noted above, the GLFC asserts that money is a symptom of a larger governance problem, rather than the actual problem.

The GLFC's relationship with the Canadian fiduciary has become fraught and requires a wholesale restructuring if the GLFC is to be well-positioned to undertake its treaty responsibilities moving forward. While the organizational/relationship problems are multifaceted, at the core of this structural breakdown are two essential elements of note:

1. In addition to viewing the GLFC as an internal branch of DFO (rather than as an independent treaty-based organization), DFO has historically been unable to separate its own budget and domestic programming priorities and objectives from Canada's binational treaty obligations. As DFO ultimately determines how much money GLFC receives from Canada (in clear contravention of the treaty-authorized process), and as such funds come out of DFO's own budget allocation, GLFC and DFO are competing for the same finite resource. The difference in interests of DFO and the GLFC gives rise to a systemically entrenched conflict of duties that imperil the GLFC's independent functioning and resourcing; and
2. By requiring DFO to function simultaneously as both the body responsible for the GLFC's machinery of government functions, and as the selected sea lamprey control agent for the GLFC, DFO has been placed in a conflict of interest/duties that cannot be resolved or mitigated without restructuring in a substantial way. This dysfunctionality has led to a decades-long underfunding of the Commission and resulted in Canada's failure to maintain a fully functional Commission.

For these reasons, the GLFC urges reform and clear articulation of machinery of government functions. There is no need for a leap of faith nor is there a need to reinvent the wheel to solve the cited problems. There is a clear need to keep the solution as straightforward as possible rather than placing the historical effectiveness of the GLFC at risk. Shifting the GLFC's Canadian machinery of government functions to GAC, while retaining DFO as the contracted sea lamprey control agent, is the preferred and most appropriate option. This structure is neither unproven nor a new structural concept and will cost nothing to implement. This arrangement mirrors the long-standing and highly effective US structure whereby the



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Department of State manages the machinery elements, and the US Fish and Wildlife Service is the contracted sea lamprey control agent. Similar structures exist in Canada, and even within GAC. For example, the binational agreement to administer the Roosevelt Campobello International Park (New Brunswick/Maine), is similarly structured, with GAC functioning as the Secretariat's portfolio manager.

As the proposed model already exists and has been proven effective, it seems that any notion or claims of risk to moving the machinery of government function to GAC is more a red herring than a genuine concern rooted in fact.

The GLFC assert that DFO's systemically entrenched conflict of interest/duties must be corrected if we are to avoid continued fiscal and governance challenges in the future. The GLFC's desire to continue to retain DFO as the contracted control agent is also an important consideration for the GLFC as we seek to correct the governance challenges.



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**Legal Opinion on Department of Fisheries and Oceans Conflict
of Interest**

24 June 2022

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June 24, 2022

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Mr. Robert G. Lambe
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Dear Mr. Lambe:

Re: Role of Department of Fisheries and Oceans in relation to Commission

We are pleased to provide this legal opinion on the role of the Department of Fisheries and Oceans (DFO) in relation to the Great Lakes Fishery Commission.

The opinion considers whether Commissioners who work for DFO might find themselves in a conflict of duties situation, whether there is a conflict between DFO's role as contract agent for sea lamprey control and its responsibility within the machinery of government for the Commission, and whether DFO's machinery of government responsibility is consistent with best practices of governance including conflict-avoidance.

Background

Our opinion is based on the following facts and assumptions.¹

The Commission was established by the *Convention on Great Lakes Fisheries between Canada and the United States of America*,² signed in 1954 and ratified by each country in 1955.

DFO (known in 1954 as the Department of Fisheries³) has long been associated with the Commission. One of the two Canadian representatives who signed the Convention, identified as the Chairman of the Canadian delegation, was Stewart Bates, the Deputy Minister of Fisheries. The country's other representative was Canada's Ambassador to the United States. It was the Minister of Fisheries who recommended to Cabinet⁴ and then introduced in the House of Commons Bill 279, the Act to implement the Convention.⁵ The Minister also took the lead in explaining the Convention to the House.



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At all times (except for occasional short gaps between appointments, including presently), at least one and usually two Canadian Commissioners were either DFO employees or former DFO employees who worked in DFO when first appointed. This opinion uses the term **DFO-employed Commissioner** to describe an individual who, at the time of original appointment to the Commission, was a DFO official.

Since the Commission's creation, the appointments of Canadian Commissioners have consistently been recommended to Cabinet⁶ by Ministers of Fisheries.⁷ The composition of the Commission is described in more detail below.

In the first decades of the Commission's existence, Government of Canada funding to the Commission was recorded in the Public Accounts of Canada as spending of the Department of Fisheries.

Initially, the Department of External Affairs (now the Department of Global Affairs⁸) also had a relationship with the Commission and involvement in the Convention. In 1954, staff-level negotiations of the preliminary draft Convention were conducted among the U.S. State Department, the Department of External Affairs, and the Department of Fisheries. It was the Secretary of State for External Affairs who reported to Cabinet on the negotiations and recommended that authority be granted for the appointment of a small delegation to be sent to Washington to negotiate and sign the final document.⁹ Another Secretary of State for External Affairs represented Canada in official communications effecting the 1967 amendment to the Convention,¹⁰ and in 1981 the then-Secretary of State for External Affairs recommended to the Governor in Council the *Great Lakes Fishery Commission Privileges and Immunities Order*.¹¹ Records of the Commission also indicate that the Commission continued to work directly with the Department of External Affairs on issues such as finance until at least 1978. For example, the Commission would recommend to the Department of External Affairs how much of Canada's funding to the Commission should be retained by DFO for sea lamprey control and how much should be transferred to the Commission as Canada's portion of administrative and program costs.¹² (Since the Commission was created in 1955, dealings of the U.S. Government with the Commission have been led by the Department of State.)

Nonetheless, within the machinery of government, DFO is the lead Government of Canada department in dealings with the Commission. DFO's machinery of government responsibilities include transferring government funds to the Commission and, through the Minister of Fisheries and Oceans, recommending to the Governor in Council the appointment of Canadian Commissioners. To our knowledge, Parliament, the Privy Council, and the Department of Finance have rarely prescribed the dollar figure that DFO must transfer to the Commission. (Specific reference to the Commission in Budget 2022 is perhaps an exception.) DFO ultimately determines how much money the Commission receives from Canada for the Commission's budget and operations. It is our understanding that such funds come out of DFO's own budget.

In addition to being, as noted, the department responsible for the Commission, DFO is also the primary Canadian contractor that provides certain sea lamprey control services to the Commission and has acted as such since 1956. At its organizational meeting in April 1956, the Commission

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selected DFO to carry out the “Sea Lamprey Control Program” in Canada. The Commission made the selection in accordance with Article VI of the Convention, which requires that the Commission “in so far as feasible, make use of the official agencies of the Contracting Parties [being Canada and the U.S.] and of their Provinces or States”.¹³ The Commission’s contractual relationship with DFO is currently governed by a Memorandum of Agreement, dated November 19, 2019, and signed by the Executive Secretary on behalf of the Commission and the Regional Director General, of Central and Arctic Region, on behalf of DFO. As consideration for its performance of the contractor function, DFO effectively pays itself by withholding the applicable amount from the funds that DFO would otherwise transfer to the Commission for the Commission’s budget and operations.¹⁴

The full complement of the Commission is four Canadian Commissioners appointed by the Governor in Council, and four U.S. Commissioners, plus one alternate, appointed by the U.S. President. As noted above, though Canadian Commissioners are appointed by the Governor in Council, it is DFO, through its Minister, that recommends the appointments.

- Two of the four Canadian federal appointees to the Commission are typically current DFO officials. DFO normally recommends the appointment of an Assistant Deputy Minister, and of the Regional Director General whose regional responsibility includes the Great Lakes¹⁵ (though since 2013 that Regional Director General has not served on the Commission).
- To fill the other two Canadian positions, DFO usually recommends to Cabinet the appointment of individuals nominated by the Ontario Government (usually an official of the Ministry of Natural Resources or a successor ministry¹⁶ and an academic with expertise in fish biology or limnology).

Commissioners are responsible for budget setting, liaison work with the U.S. and Canadian governments, appointments to committees within the Commission, establishing global policy, assisting with program development, and evaluating program deliverables in fulfilling the Commission’s broad treaty mandate.

The Commission has a Canadian budget and a U.S. budget. The Canadian budget is submitted to the Government of Canada through DFO,¹⁷ while the U.S. budget is submitted to the U.S. Government through the State Department and Congress.

Once the Commission submits its Canadian budget to DFO, the DFO-employed Commissioners participate in internal, Government of Canada deliberation and decision-making concerning the Commission budget. The other Commissioners (those who are not DFO-employed Commissioners) do not participate in these Government of Canada deliberations. DFO justifies the exclusion from budget deliberations based on the confidentiality of recommendations to Cabinet and Cabinet decision-making. The practical result is that the DFO-employed Commissioners participate in all government decision-making in response to the Commission’s budget request and the other Commissioners do not.



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Opinion

Based upon, and subject to, the background information above and the authorities cited in the end notes, we are of the opinion that:

1. DFO-employed Commissioners are likely in a real or perceived conflict of duties situation that results in a fiduciary breach

The Commission is an international organization created by the 1954 *Convention on Great Lakes Fisheries between the United States and Canada*.¹⁸ This Convention was approved and confirmed by the Parliament in the *Great Lakes Fisheries Convention Act*,¹⁹ which implemented the Convention's provisions in Canadian law.

The Commission enjoys the immunities and privileges set out in the *Great Lakes Fishery Commission Privileges and Immunities Order*,²⁰ an order made by the Governor in Council under the *Privileges and Immunities (International Organizations) Act*,²¹ which was subsequently repealed and replaced by the *Foreign Missions and International Organizations Act*.²² (The order is deemed to have been made under the *Foreign Missions and International Organizations Act*.²³)

Under section 3 of the *Great Lakes Fishery Commission Privileges and Immunities Order*, the Commission is deemed to "have in Canada the legal capacities of a body corporate."²⁴ As an organization with the legal capacities of a body corporate and the independence that flows from such legal capacities,²⁵ the Commission is owed a fiduciary duty by its Commissioners.

A fiduciary duty arises in equity when a person holds the "trust and confidence" of another.²⁶ While there is "no ironclad formula" for recognizing whether a fiduciary relationship exists,²⁷ the Supreme Court of Canada has held that six characteristics must be present to create a fiduciary relationship:

- (a) The fiduciary possesses "some discretion or power,"
- (b) The fiduciary "can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests."
- (c) The beneficiary is "peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power."
- (d) The fiduciary gives an undertaking to the beneficiary to act in its best interests.
- (e) A "defined person or class of persons vulnerable to a fiduciary's control (the beneficiary or beneficiaries)."
- (f) The fiduciary's exercise of discretion or control can adversely affect the "legal or substantial practical interest of the beneficiary."²⁸



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These characteristics describe the relationship between the Commissioners and the Commission. The Commission is placed in a vulnerable position by the empowerment of a Commissioner, who undertakes to act in the Commission's best interests, to exercise discretion or control over its assets in a manner that can adversely affect the legal or substantial practical interest of the Commission.

Equity imposes an extremely high duty on individuals found to be fiduciaries. In the words of Justice Reid of the Ontario High Court of Justice, "the law knows none higher."²⁹ This high standard requires the Commissioners to exercise "norms of exemplary behaviour",³⁰ which "betokens loyalty, good faith and avoidance of a conflict of duty and self-interest."³¹ Courts strictly enforce this high standard of loyalty, utmost good faith, and selflessness.³²

The concept of a fiduciary duty derives from equitable doctrines developed centuries ago. The application of fiduciary duties to members of an organization's governing board finds its roots in *Charitable Corporation v. Sutton* (1747), a decision of the English Court of Chancery.³³ In that case, Lord Hardwicke concluded that "committee-men are most properly agents to those who employ them in this trust, and who empower them to direct and superintend the affairs of the corporation."³⁴

"By accepting a trust of this sort," Lord Hardwicke explained, "a person is obliged to execute it with fidelity and reasonable diligence; and it is no excuse to say that they had no benefit from it, but that it was merely honorary."³⁵ Here, Lord Hardwicke captures a board member's duty of heightened loyalty in the word "fidelity".³⁶

Conflicts divide a fiduciary's loyalty, resulting in a fiduciary breach. Even a potential conflict constitutes a fiduciary breach because, as Mark Ellis in *Fiduciary Duties in Canada* observes, "to wait until damage or prejudice actually occurs is to prejudice the beneficiary's right to utmost loyalty and avoidance of conflict."³⁷

A strong argument can be made that DFO-employed Commissioners face a conflict of duties in any matter related to the Commission's budget-setting and funding-request processes. First, there exists a basic conflict because DFO is a contracted service provider to the Commission. Second, because the Commission's budget ultimately comes out of DFO's budget, the funding of Commission operations and programs conflicts with the funding of other DFO operations and programs. Additionally, because the Government of Canada has chosen to deal with the Commission through DFO, DFO-employed Commissioners find themselves in a situation where they are compelled to make a budgetary recommendation, for the Commission, to their DFO superordinates, subordinates, or peers. When DFO-employed Commissioners participate in the Commission's budget-setting and funding-request processes, their obligations to, and the interests of, DFO run counter to the Commissioners' fiduciary duty to the Commission.

We have been informed that the conflict of duties of DFO-employed Commissioners has been a source of frustration for everyone involved. Recognizing the existence of a conflict, some DFO-employed Commissioners have questioned the propriety of their participation in the Commissioners' decision-making on budget-setting. At the same time, the other Commissioners (those not DFO-employed Commissioners) are generally shut out from Government of Canada

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deliberations concerning the implementation of the Commission's budget (to which the DFO-employed Commissioners are generally privy because of their employment with DFO). The end result is that all Commissioners are inhibited, in one way or another, from fulfilling their chief responsibility of setting, implementing and otherwise overseeing the Commission's budget.

To address the conflict, DFO-employed Commissioners should, at minimum, recuse themselves from formal votes of the Commissioners, or, in lieu of formal voting, consensus decision-making among the Commissioners, on the Commission's budget. Failure to do so would offend the trustee-like status of the Commissioners and would potentially result in a fiduciary breach.

2. A conflict likely exists between DFO's role as contract agent and its responsibility within the machinery of government for the Commission

The *Public Servants Disclosure Protection Act* recognizes the Government's commitment to create a "Charter of Values of Public Service" setting out the values that should guide public servants in their work and professional conduct,³⁸ and requires the President of the Treasury Board to establish a code of conduct applicable to the public sector,³⁹ which deputy heads must mirror in the codes of conduct of their departments and agencies.⁴⁰

The Treasury Board's current code, the *Values and Ethics Code for the Public Sector* (Public Sector Code),⁴¹ is the basis for each department's code: in the case of DFO, the *Fisheries and Oceans Canada Values and Ethics Code* (DFO Code).⁴² Both the Public Sector Code and the DFO Code apply to persons employed by DFO.⁴³

Treasury Board has also adopted a *Policy on People Management*⁴⁴ and a *Directive on Conflict of Interest*⁴⁵ (replacing the earlier *Policy on Conflict of Interest and Post-Employment*).⁴⁶ These also apply to DFO.

Under the Public Sector Code, "[o]rganizations are expected to take steps to integrate [the Code's] values into their decisions, actions, policies, processes, and systems."

The *Directive on Conflict of Interest* states that the responsibilities of the senior official designated by the deputy head include putting in place the infrastructure and controls to effectively administer this directive and ensuring that conflict of interest and conflict of duties risks are identified and resolved.⁴⁷

Regarding conflicts of interest, the DFO Code provides that, "[b]eing a member of a board of directors of an organization Whether it is part of our official duties ... could pose a potential risk of conflict of interest ... if the entity has dealings with the Department."⁴⁸

It bears repeating that DFO-employed Commissioners likely face a conflict of duties in matters related to the Commission's budget-setting and funding-request processes. Because the Commission's budget ultimately comes out of the DFO's budget, the Commission and DFO are competing for the same finite resource. The difference in interests of DFO and the Commission gives rise to the conflict of duties. Furthermore, because DFO's contract services consume the vast



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majority of the Commission's budget, decisions related to the Commission's budget are materially relevant to the DFO contract.

Similarly, DFO-employed Commissioners likely face a conflict of duties when negotiating the terms of DFO's contract agent function. As contract agent for the Commission, DFO is, by definition, contracting with the Commission. The Memorandum of Agreement is effectively a contract. Widely-accepted conflict principles hold that a board member possesses a conflict of interest (or conflict of duties) and should not take part in contract decisions if the board member is related to the contractor. Parliament has legislated this principle in Acts governing Crown corporations,⁴⁹ business corporations,⁵⁰ and not-for-profit corporations,⁵¹ and same principle ought to be observed by the Commission.

When a conflict is occasional, it may adequately be addressed through declarations of interest and recusals from decision-making. On the other hand, a conflict that is structural or systemic is incompatible with board membership.⁵² The appropriate resolution of a systemic conflict is resignation, or not to appoint the individual in the first place. The conflict of duties of DFO-employed Commissioners is systemic.

3. "Conflict of duties" principles apply even though a public official's roles both originate with the Government of Canada

It is understood that in the case of a DFO-employed Commissioner, the individual's employer and the appointing body are the same: the Government of Canada. Nonetheless, "conflict of duties" principles still apply. The application of conflict of duties principles is critical for preserving the Commission's legally recognized independence from Canada as an international organization.

As is customary with any international organization that operates in Canada, the Commission enjoys certain immunities and privileges from the Canadian state to protect its independence.⁵³ Because international organizations must operate on the territory of their host state and through individuals who have nationality and are therefore vulnerable to interference, immunities and privileges are commonly granted by the treaty itself or the host state to avoid undue interference in their operations.⁵⁴ The Supreme Court of Canada has recognized that such "immunity [is] essential to the efficient and independent functioning of international organizations."⁵⁵

The *Great Lakes Fishery Commission Privileges and Immunities Order* explicitly states that the Commission "shall, to such extent as may be required for the performance of its functions, have the immunities and privileges set forth in sections 2, 5, 6, 7 and 8 of Article II of the [Convention on the Privileges and Immunities of the United Nations]".⁵⁶ This immunity protects the Commission's autonomy to conduct its business and the actions it takes in performing its functions from undue interference.⁵⁷

This principle of independence is also consistent with the *Foreign Missions and International Organizations Act*, under which the *Great Lakes Fishery Commission Privileges and Immunities Order* is made.⁵⁸ As recognized by the Supreme Court of Canada, a key objective of Parliament in enacting the Act was to respect the independence of international organizations hosted by Canada.⁵⁹

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Even though DFO-employed Commissioners are employed and appointed by the Government of Canada, their duties owed to the Commission are separate and apart from their duties owed to the Government of Canada. To suggest otherwise is incompatible with the efficient and independent functioning of the Commission as an international organization, which has been recognized by the *Great Lakes Fishery Commission Privileges and Immunities Order*.

Conclusion, Best Practices and Recommendations

DFO's machinery of government responsibility is not consistent with best practices for conflict-avoidance. We are aware that DFO's internal responsibility for the Commission dates back to 1955. This history does not mitigate the conflict of duties and conflict of interest concerns that are outlined above; it merely indicates that the situation giving rise to the concerns is long-standing.

To prevent conflicts, the following actions should be taken:

1. Responsibility for the Commission should be transferred from DFO to another federal department, such as the Department of Global Affairs.⁶⁰ Specifically, a department other than DFO should be made responsible for funding the Commission and for recommending to Cabinet (through the Minister responsible for that other department) the appointment of Commissioners.
2. Cabinet should avoid the appointment of Commissioners who would need to recuse themselves from decision-making because of their relationship with the officials at the responsible department.

Yours very truly,

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END NOTES

- ¹ The facts and assumptions in the Background section of this letter provide context only. They are not meant to be normative statements about what ought to occur.
- ² *Convention on Great Lakes Fisheries between The United States of America and Canada* (September 10, 1954), 238 UNTS 97 (entered into force October 11, 1955).
- ³ Since 1954, the Department has been named the Department of Fisheries (to 1969), Department of Fisheries and Forestry (1969-1971), Department of the Environment (1971-1976), Department of Fisheries and the Environment (1976-1979), and Department of Fisheries and Oceans (1979-present).
- ⁴ Cabinet Minutes (December 1, 1954), p. 4, online: <https://recherche-collection-search.bac-lac.gc.ca/eng/home/record?app=cabcon&IdNumber=13986> See also: Cabinet Minutes (Sept. 30, 1954), pp. 5-6, online: <https://recherche-collection-search.bac-lac.gc.ca/eng/home/record?app=cabcon&IdNumber=13842>
- ⁵ Bill 279, *An Act to Implement a Convention on Great Lakes Fisheries between Canada and the United States*. See *Journals of the House of Commons of Canada*, 22nd Parliament, 2nd Session, Vol. 99, No. 52 (March 21, 1955), p. 312.
- ⁶ See, for example, Cabinet Minutes (November 30, 1955), p. 14, online: <https://recherche-collection-search.bac-lac.gc.ca/eng/home/record?app=cabcon&IdNumber=14727>
- ⁷ The title of the portfolio minister has evolved: Minister of Fisheries (to 1969), Minister of Fisheries and Forestry (1969-1971), Minister of Environment and Minister of Fisheries (1971-1974), Minister of Environment, supported by Minister of State (Fisheries) (1974-1976), Minister of Fisheries and the Environment (1976-1979), Minister of Fisheries and Oceans (1979-2015), Minister of Fisheries, Oceans and the Canadian Coast Guard (2015-present).
- ⁸ Established in 1909 as the Department of External Affairs, it subsequently became the Department of External Affairs and International Trade (1989-1995), Department of Foreign Affairs and International Trade (1995-2013), Department of Foreign Affairs, Trade and Development (2013-2015), and Department of Global Affairs (2015-present).
- ⁹ Cabinet decided that the delegation would be appointed by the Secretary of State for External Affairs and the Minister of Fisheries in consultation. Cabinet Minutes (August 18, 1954), pp. 13-15, online: <https://recherche-collection-search.bac-lac.gc.ca/eng/home/record?app=cabcon&IdNumber=13756>
- ¹⁰ Hon. Paul Martin, Secretary of State for External Affairs, Letter (April 6, 1988) to Ambassador of the United States to Canada, in *Convention on Great Lakes Fisheries between Canada and the United States of America*.
- ¹¹ P.C. 1981-2359, SOR/81-690.
- ¹² Letter from Carlos M. Fetterolf, Jr., Executive Secretary, Great Lakes Fishery Commission, to Hon. Donald Jamieson, Secretary of State for External Affairs (August 8, 1978).
- ¹³ See note 2.
- ¹⁴ The Commission does not approve of the process by which DFO effectively pays itself. The practical result is that the Commission lacks fiscal supervision and control over its primary contract service provider.
- ¹⁵ The DFO region that includes the Great Lakes was previously the Central and Arctic Region, and is presently the Ontario and Prairie Region, but since the name change the Regional Director General has not been appointed to the Commission.
- ¹⁶ From 2014-2021, the Ministry of Natural Resources was known as the Ministry of Natural Resources and Forestry. In 2021 it was merged into the Ministry of Northern Development, Mines, Natural Resources and Forestry. The last ministry official to serve as a Commissioner held office until 2020, when the ministry was still the Ministry of Natural Resources and Forestry.
- ¹⁷ In addition to submitting its budget request formally to DFO, during the last three budget cycles the Commission has also communicated its request to members of the House of Commons Standing Committee on Finance and to certain other Members of Parliament.
- ¹⁸ See note 2.

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- ¹⁹ R.S.C. 1985, c. F-17, s. 3.
- ²⁰ SOR/81-690, note 11.
- ²¹ R.S.C. 1985, c. P-23.
- ²² S.C. 1991, c. 41.
- ²³ *Ibid.*, s. 16.
- ²⁴ *Great Lakes Fishery Commission Privileges and Immunities Order*, note 11, s. 3.
- ²⁵ The principle of independence is discussed in detail below.
- ²⁶ *Peoples Department Stores Inc (Trustee of) v Wise*, 2004 SCC 68, at para. 35.
- ²⁷ *Lac Minerals Ltd v International Corona Resources Ltd*, [1989] 2 S.C.R. 574, at 598, 61 D.L.R. (4th) 14 [*Lac Minerals*].
- ²⁸ *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24, at para. 27, 36; *Frame v Smith*, [1987] 2 S.C.R. 99 at 136, 42 D.L.R. (4th) 81; *Hodgkinson v Simms*, [1994] 3 S.C.R. 377, at 408. See also *Lac Minerals*, note 27, at 598-99, 645-46.
- ²⁹ *Collins v Ontario (Pension Commission)*, 56 O.R. (2d) 274, at para 40, 31 D.L.R. (4th) 86 (H.C.J.).
- ³⁰ *Can Aero v O'Malley*, [1974] S.C.R. 592, at 610, 40 D.L.R. (3d) 371.
- ³¹ *Ibid.* at 606.
- ³² See *ibid.* at 607.
- ³³ Mark Vincent Ellis, *Fiduciary Duties in Canada* (Toronto: Thomson Reuters Canada, 2022) (ProView edition, release no. 2022-5), at § 20:1.
- ³⁴ *Charitable Corporation v Sutton* (1747), 2 Atk 402 at 405, 9 Mod 349 (UK Ct. Ch.).
- ³⁵ *Ibid.*, at 406.
- ³⁶ Angus Stevenson, ed, *Oxford Dictionary of English (3rd Ed)*, (Toronto: Oxford University Press, 2010) sub verbo “fidelity” (fidelity means “faithfulness to a person, cause, or belief, demonstrated by continuing loyalty and support”).
- ³⁷ See Ellis, *supra*, note 33, at § 1:11.
- ³⁸ S.C. 2005, c. 46, preamble.
- ³⁹ *Ibid.*, subs. 5(1).
- ⁴⁰ *Ibid.*, subs. 6(1).
- ⁴¹ Treasury Board Secretariat, *Values and Ethics Code for the Public Sector*, 2017, ISBN: 978-1-100-20021-7.
- ⁴² Department of Fisheries and Oceans, *Values and Ethics Code*, 2020, ISBN: 978-0-66036578-7.
- ⁴³ *Public Servants Disclosure Protection Act*, note 38, subs. 7(1).
- ⁴⁴ Treasury Board Secretariat, *Policy on People Management*, 2020.
- ⁴⁵ Treasury Board Secretariat, *Directive on Conflict of Interest*, 2020.
- ⁴⁶ Treasury Board Secretariat, *Policy on Conflict of Interest and Post-Employment*, 2017, ISBN: 978-0-660-09901-9.
- ⁴⁷ *Directive on Conflict of Interest*, note 45.
- ⁴⁸ *Values and Ethics Code*, note 42, at 26-27.
- ⁴⁹ *Financial Administration Act*, R.S.C. 1985, c. F-11, s. 116.
- ⁵⁰ *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 120.
- ⁵¹ *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, s. 141.
- ⁵² See Ellis, note 37, § 20-23. See also *681210 Alberta Ltd v. Hunter*, 2011 ABQB 320 (CanLII), at para 141, aff'd 2012 ABCA 83 (CanLII).

⁵³ *Great Lakes Fishery Commission Privileges and Immunities Order*, note 11.

⁵⁴ *Amaratunga v Northwest Atlantic Fisheries Organization*, 2013 SCC 66, at paras. 1, 29 [*Amaratunga*].

⁵⁵ *Ibid.*, at para. 29.

⁵⁶ *Great Lakes Fishery Commission Privileges and Immunities Order*, note 11, s. 3.

⁵⁷ *Amaratunga*, note 54, at para 53.

⁵⁸ *Foreign Missions and International Organizations Act*, note 22.

⁵⁹ *Amaratunga*, note 54, at para. 45.

⁶⁰ The Department of Global Affairs may be an appropriate federal department to oversee Canada's involvement with an international organization such as the Great Lakes Fishery Commission.

**Letter from United States Great Lakes Fishery Commissioners
to Canadian Commissioners**

2 December 2022



Great Lakes Fishery Commission United States Section

December 2, 2022

Commissioner Earl Provost, Chair
Canadian Section
Great Lakes Fishery Commission
2200 Commonwealth Blvd. Ste. 100
Ann Arbor, MI 48105

Dear Chair Provost:

This letter is further to the notice provided to you on the evening of November 28 that the US Section to the Great Lakes Fishery Commission (Commission) would not participate in the 2022 Interim Meeting. We did so after two section meetings, with great reluctance and with the upmost respect for Canadian commissioners. The decision was made more difficult knowing that such action would be unprecedented in the history of the Commission. At the core of our disquiets was unavailability of critical financial information from Canada and ongoing concerns about Canada's decision-making process related to the Commission's business.

As you know, commissioners use the annual interim meetings to fulfill their duties related to the Commission's accountability, program planning, and budget-setting responsibilities, as required by the Convention. These meetings are also critical for short- and long-term strategic planning. To properly prepare commissioners for these critical meetings, Secretariat staff provide us with thorough briefing books at least two weeks in advance of the meetings. Unfortunately, the briefing books provided for the 2022 Interim Meeting lacked information required for commissioners to fulfil our duties. Through discussion with staff, it became clear that the reason for the briefing book voids was the unavailability of Canada's budgetary information.

We respectfully remind you that at the 2021 Interim Meeting, we were unable to establish a Commission budget, for the first time in the Commission's history, because of the \$8.815 million (Canadian) deficit in Canada's appropriation and the significant impact of the deficit on the Commission's programs. The shortfall was exacerbated by the fact that the US was no longer in a position to subsidize Canada's deficit as it had been doing for several years. The outcome was to defer establishment of a Commission budget for FY2022 to the June meeting. The US Section was pleased to learn in June that Canada had committed to funding the Commission at \$19.625 million annually and on the basis of that information, the Canadian and US Sections established a FY2022 budget to fully fund the Commission's suite of programs. We were dismayed when reviewing the briefing material for the 2022



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Interim Meeting that not only had the additional FY2022 funding not been provided, but the Canadian appropriation for FY2023 was not available either, some six-eight months following the commitment to fund the Commission at \$19.625 million.

The US Section is also concerned about the lack of transparency with which Commission-related decisions are made in Canada and the impact that this has on the operation of this binational organization for which the US has joint responsibility and on which we rely heavily for effective sea lamprey control, coordinated fishery management, and coordinated research in support of both sea lamprey control and sustainable Great Lakes fisheries. As commissioners, the Canadian and US Sections make decisions on program deliverables to fulfill the Commission's mandate, approve costs for these programs, and establish budgets based on the long-standing Canada-US funding formula, as per the charge provided to commissioners in the Convention. We enter into discussion with our Canadian counterparts trusting that decisions taken between the two sections, representing the parties to the Convention, will be implemented as agreed and that follow-up discussions would be initiated in the event that changes are required after the fact. Unfortunately, this does not seem to be the case, and failure to address the problem seriously compromises the ability of the Commission to fulfill its mandate as established by the Convention between our two countries.

We respect that as a sovereign nation, Canada has the right to establish governance structures, processes, and procedures as it deems appropriate. However, we find the current arrangement for managing the Commission portfolio confusing, lacking transparency, and possibly contributing to concerns about the degree to which decisions reached between the two sections can be implemented. On one hand, the Canadian Section is comprised of duly appointed commissioners, presumably charged with the same responsibilities as their counterparts within the US Section. On the other hand, the same federal agency that delivers sea lamprey control on behalf of the Commission retains full responsibility for Canada's fiscal arrangement regarding the Commission. The latter creates the scenario whereby the "funding agency" establishes priorities for the federal funding provided, unilaterally determines what is required for the particular service it delivers and apportions the balance to the Commission for non-sea lamprey control related functions. Such an arrangement would seem to usurp the decisions taken by the Canadian Section in collaboration with the US Section, thereby undermining functionality of the Commission as specified in the Convention.

As you will have observed from the briefing book provided for the 2022 Interim Meeting, the Commission is operating with a FY2022 deficit due to the lack of availability of full Canadian funding for that fiscal year. Furthermore, the Commission is unable to establish a budget for FY2023 for the same reason. These are critical issues which require commissioners to convene an interim meeting as soon as possible. However, we must have clarity on both Canadian funding (for fiscal years 2022 and 2023), and Canada's governance for the Commission, before we can convene such a meeting. Therefore, we respectfully ask that you collaborate with the Canadian government to provide the following as soon as possible so that staff can plan an interim meeting on our behalf:

1. Details regarding the Canadian appropriations for FY2022 and FY2023;



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2. Clarification on Canada's governance model, or a short-term plan to provide clarification on the governance model, for the purpose of ensuring that the decision-making process between the sections, as representatives of the parties, can be advanced as per the Convention.

Sincerely,

Electronically Signed By

Ethan Baker
US Commissioner
Commission Vice-Chair

Electronically Signed By

William Taylor
US Commissioner

Electronically Signed By

Charlie Wooley
US Commissioner



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**Memorandum from Greg McClinchey to Canadian and US
Advisors to the Great Lakes Fishery Commission**

16 March 2023



Great Lakes Fishery Commission
La Commission des Pêcheries des Grands Lacs

MEMORANDUM

To: Canadian Advisors

US Advisors

From: Greg McClinchey, Director, Policy and Legislative Affairs

Great Lakes Fishery Commission

CC: Bob Lambe, Executive Secretary

Marc Gaden, Deputy Executive Secretary

Jill Wingfield, Director of Communications

Date: March 16th, 2023

RE: March 9th, 2023, Meeting Follow Up

I am writing as a follow up to our discussion at the March 9th meeting of the Canadian Advisors regarding the long-standing issue of the Commission's faulty interface with the Government of Canada. While Canadian Advisors have a solid background on the core issues, as evidenced by their 2021 and 2022 resolutions on the subject, I thought it prudent to provide an update given the dynamic and highly fluid nature of the issue. In simple terms, our Commission's governance relationship with Canada (via DFO) is fraught and unworkable, and now threatens many core functions of our historically successful



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Commission. After many years of unsuccessfully working to resolve these matters (with the help of the Canadian Advisors), we are now informed that the ultimate resolution of the matter rests in the hands of the PMO (but input can still be provided by groups such as Global Affairs Canada and the Privy Council Office). In the Commission's view, the solution to the impasse is to transition the GLFC's machinery of government (MOG) functions from DFO to Global Affairs Canada; an action that would mirror the existing and proven US structure and restore the trust and functionality of the relationship without imposing new costs on government.

At the core of our issue is our need and desire to function in a manner that respects the government's stated high ethical and conflict avoidance expectations, and the 1954 Convention on Great Lakes Fisheries (a treaty between Canada and the United States). Currently the governance structure we must use in Canada is riddled with conflicts of interest/duties and potential Treasury Board rules violations, which have combined to create a flawed and unworkable interface with DFO. Accordingly, we have asked that the agency responsible for serving as the Commission's MOG source be moved immediately from DFO to GAC.

For clarity, nothing in this document should be taken as a slight at the front-line staff involved with the sea lamprey control program. Commission concerns relate to governance and should not be spun to suggest concern with the work or dedication of sea lamprey control agents in the field.

By way of background, in 2018, after years of failed and often one-sided discussions with DFO on the subject, Commissioners directed the Executive Secretary and the Secretariat to pursue a MOG change in Canada. Their proposal was to move all non-sea lamprey control functions from DFO to GAC as a way of alleviating DFO's clear conflict of interest/duties with respect to the file, while also resolving several serious organizational concerns like:

- An inconsistent/unreliable budget interface between DFO and GLFC;
- An ineffective, imbalanced, and fraught government interface;
- Chronic underfunding of the GLFC by the Government of Canada;
- DFO's ongoing disregard for Commissioner independence and decisions regarding Convention-mandated deliverables; and
- DFO's disdain for the structures and mandate requirements set forth in the Convention, including a disregard for GLFC oversight of certain elements of sea lamprey control programming administered by DFO.

This directive was given only after it became clear that DFO was neither prepared to collaborate on constructive solutions nor to acknowledge the existence of any problems

(structural or otherwise). In short, DFO's paternalistic view regarding the GLFC was no longer tenable given its negative toll on our core operations, and on the Commission's ability to attain mandate success.

It is germane to note that the GLFC suggested several possible solutions prior to advocating for a MOG change. These proposals included:

- A twice-annual tripartite summit with high-level GLFC/GAC/DFO representatives to address concerns and barriers to success;
- That the GLFC's annual allocation (set at \$19.6 million for 2022) should be a line in the federal budget/Public Accounts of Canada;
- The establishment of an independent dispute settlement process aimed at engendering trust and genuine partnership;
- That DFO must establish, in consultation with the GLFC and GAC, a consistent and responsive budget interface for the Commission, and that this process must allow the GLFC access to the portfolio manager (Minister), to GAC's input, and to political input/recourse as required;
- That a written commitment be made by DFO to clearly acknowledge and separate its MOG responsibilities apart from any sea lamprey control agent functions;
- That, in keeping with the practices used with other bilateral commissions under the jurisdiction of GAC, DFO should ensure the timely and full delivery of the Commission's full appropriation at a consistent time each year (i.e., first quarter) and without holdback;
- The establishment of an appointments formula that would see PCO appoint Commissioners that are focused on the GLFC's success rather than on exclusively advancing DFO's internal priorities and agenda;
- That DFO formally agree that Commission funding will be "fenced" so that it is not available to supplement DFO's domestic programs or not available for reduction/elimination associated with government-wide or departmental austerity programs; and
- That good faith discussions occur between equal parties to the Convention, and the terms and costing of the sea lamprey control agreement should be negotiated without financial threat, holdback, or undue influence by DFO.

Each of these ideas were raised on several occasions by the GLFC, and immediately and summarily dismissed by DFO officials without alternative suggestions. Over the years, this DFO intransigence has harmed Commission operations, damaged critical binational relationships, irreparably fractured the GLFC/DFO association, and necessitated a MOG change. It is the Commission's view that, given the current state of affairs, the conflicts articulated above cannot be resolved without the noted MOG change.



DFO's (Current) Dual Role

- Section 33 of the *Government Organization Act, 1979* directed that the DFO Minister “administer” the *Great Lakes Fisheries Convention Act*, but did not create Ministerial authority beyond that. This means DFO, as the portfolio manager, does not make certain decisions, but rather functions as administrator for those who are empowered to make the decisions. For example, DFO does not appoint Commissioners as that power rests with PCO. Similarly, DFO cannot legally make decisions regarding GLFC programming as Commissioners are empowered to make those decisions as “Representatives of the Parties.” By presuming an authority to direct and to manage GLFC programming via measures such as budget manipulation, withholding of funds appropriated by Parliament, and countermanding Commissioner decisions, DFO has clearly abused its MOG functions in violation of both the Convention and several Treasury Board rules concurrently.
- In accordance with the Convention, Commissioners have opted to select DFO as the GLFC's sea lamprey control agent in Canada. The department's role as a contract-based sea lamprey control agent for the Commission should be distinct and apart from the MOG functions, but as it stands, it is not. If the letter, spirit, and integrity of the Convention are to be observed, it is essential that these two dissimilar functions be formally separated. DFO needs to understand the limits of its role as the contracted sea lamprey control agent, and that this function is distinct from the “administrator” role assigned by the *Government Organization Act, 1979*. Thus far, the department has refused to accept this limitation, and that refusal is the clear cause of this structural and organizational schism. **It should be noted that the Canadian Section recently directed the Executive Secretary to prepare a comprehensive report containing options for the full Commission to consider with respect to selecting a new Canadian sea lamprey control agent. This action is being reluctantly taken to prepare for the eventuality that the PMO does not alter the MOG structure. Commissioners have taken the position that DFO can not resolve their conflict of duties challenge while retaining their dual role; the conflict must be resolved one way or the other.**
- While DFO does have some mandated responsibilities within the Great Lakes, including aquatic habitat protection, aquatic species at risk management, and aquatic invasive species mitigation, that authority specifically excludes the invasive sea lamprey, for which responsibility was conferred to the GLFC in the *1954 Convention on Great Lakes Fisheries between the United States of America and Canada*. Primary responsibility for Great Lakes fisheries management rests



with the province of Ontario, which is why the province, and not DFO, participates in the GLFC-led, Great Lakes basin-wide lake committee process through which critical fishery management decisions are made. DFO's refusal to respect these realities are contributors to the fraught DFO/GLFC relationship.

The Current Status

- In November of 2021, the GLFC's US Section prevented the passage of the Commission's 2022 budget as Canada was not appropriating an amount in keeping with the established funding proportions thus causing the US Section to bear a disproportionate fiscal responsibility for the GLFC's Canadian mandate.
- In response, Minister Freeland and Parliament passed Budget 2022 in which additional resources were promised to the GLFC. Specifically, Budget 2022 committed to a \$44.9 million Canadian allocation thus bringing Canada's total annual spending commitment to \$19.605 million in each of the fiscal years 2022/23, 2023/24, 2024/25, 2025/26, and 2026/27 (this figure is comprised of the \$10.625 million contribution rate from 2021/22, plus the additional allocation of \$8.98 as expressed in Budget 2022). Budget 2022 also promised to, starting in 2027/28, provide the Commission with a permanent funding allocation of \$19.624 million on an ongoing basis. This promise was well-received by the GLFC's U.S. Section.

On November 29th, 2022 (one day before the GLFC was meeting to set its 2023 budget), the GLFC received a formal notification from the DFO Chief Financial Officer that asserted the new budget allocation was provided to DFO for their utilization as part of their support function to the GLFC. Consequently, DFO informed the GLFC that it was unilaterally reallocated \$15 million dollars away from the GLFC over the next five years in favour of an increase to control programming and internal staffing (20 new FTE's) viewed by the department as

- an internal priority. **This was done expressly against the verbal and written wishes of the Commission as shared by the Secretariat.**
- Discussions between DFO and the GLFC ensued, but to date the bulk of the resources promised in the 2022 federal budget have not been transmitted/committed to the GLFC by DFO. The GLFC has been cash managing Canadian operations since. The Commission's 2023 budget has not passed due to a US Section boycott.
- In January of 2023, the following note was issued to DFO by the GLFC,



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“... the Secretariat has now started the process required to cancel the annual Board of Technical Experts and Sea Lamprey Research Board meetings. In short, this is the beginning of the full cancellation of the Commission’s 2024 binational research cycle (with implications for research contracts issued in 2022, and for 2023). As you can imagine, this will almost certainly cause serious distress from a GLFC programming, public outreach, and partnership perspective. Given the potential for angst, in the spirit of openness and good faith, I wanted to make sure that you were fully aware.”

In response, on February 2nd, 2023, DFO transferred \$9,459,191 to the GLFC by DFO. This represents the majority of the promised money for the GLFC’s 2022 field season (the season that concluded in 2022). This allowed the GLFC to move ahead with the research cycle referenced in the above note, but does not resolve outstanding financial and structural issues for the current year, years ahead, nor does it speak to the broader MOG concerns. The ongoing fiscal and structural uncertainty that DFO has created has now surpassed the GLFC’s ability to cash manage and to plan proactively for the future (both near and long-term). Commission functions and core programming are now under threat. It must be noted that the US Section of the GLFC continues with its boycott of the GLFC out of frustration for DFO’s unwillingness to respect established Convention processes and funding proportions. DFO’s continued resistance to the concepts noted herein is a conflict of interest/duties and example of DFO abusing its GLFC MOG role.

The Core Issue

It has been suggested that this issue is complex. I respectfully submit that it is not. In fact, the matter is so simple that most believe that it must be more complex despite the general simplicity nature of the ask.

For clarity, the ask is not about money. Although financial allocations, underfunding, and a broken budget process have been problems connected to this issue, they are not central to the problem itself. The real issue at hand is the department’s intentional blending of its contract-based sea lamprey control functions with the MOG functions. This is at the very heart of why the Commission is seeking to transition the MOG functions (but NOT to transition sea lamprey control services unless forced to do so) from DFO to GAC. Combining these distinct roles has created a conflict of duties that threatens the independence and functionality of the Commission and compromise the fiduciary responsibilities of Commissioners.

DFO’s intentional extension of the Department’s domestic aquatic invasive species program to include sea lamprey control, rather than to recognize the Department’s engagement in sea lamprey control as a function of the Commission’s Canadian control



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agent, is central to the conflict between the two organizations and continues to usurp the role and responsibility of Canada's duly appointed commissioners. While DFO's program responsibilities within the Great Lakes merits collaboration with the Commission for the reasons stated above, the common goals of DFO's Great Lakes programs and those of the Commission do not warrant DFO also assuming the MOG function; in fact, doing so has created conflict of duties and continues to do so at the detriment of the Commission.

The existing structure may also violate certain Treasury Board rules governing public appointment and the ethical expectations of Public Office Holders. The Commission is subject to the immunities and privileges set out in the Great Lakes Fishery Commission Privileges and Immunities Order, an order originally made by the Governor in Council under the Privileges and Immunities (International Organizations) Act. Accordingly, the Commission is deemed to "have in Canada the legal capacities of a body corporate." As an organization with the legal capacities of a body corporate and the independence that flows from such legal capacities, it is generally accepted in law that the Commission is owed a "fiduciary duty" by its commissioners. While the matter is challenging to fully articulate in this format, a strong argument can be made that DFO-employed commissioners face a conflict of duties in any matter related to the Commission's budget-setting and funding-request processes. First, there exists a basic conflict because DFO is a contracted service provider to the Commission. Second, because the Commission's budget ultimately comes out of DFO's departmental budget, the funding of Commission operations and programs directly conflicts with the funding of other DFO operations and programs. Additionally, because the Government of Canada has chosen to deal with the Commission through DFO, DFO-employed Commissioners find themselves in a situation where they are compelled to make a budgetary recommendation, for the Commission, to their DFO superordinates, subordinates, or peers.

When DFO-employed Commissioners participate in the Commission's budget-setting and funding-request processes, their obligations to, and the interests of, DFO, run counter to the commissioners' fiduciary duty to the Commission. Recognizing the existence of a conflict, some DFO-employed commissioners have, in the past, questioned the propriety of their participation in the commissioners' decision-making on budget-setting. At the same time, the other commissioners (those non DFO-employed Commissioners) are generally shut out from Government of Canada deliberations concerning the implementation of the Commission's budget (to which the DFO-employed commissioners are generally privy because of their employment with DFO). The result is that all commissioners are inhibited, in one way or another, from fulfilling their chief responsibility of setting, implementing, and otherwise overseeing the Commission's budget.



Additionally, the Public Servants Disclosure Protection Act recognizes the Government's commitment to create a "Charter of Values of Public Service" setting out the values that should guide public servants in their work and professional conduct and requires the President of the Treasury Board to establish a code of conduct applicable to the public sector, which deputy heads must mirror in the codes of conduct of their departments and agencies. The Treasury Board's current code, the Values and Ethics Code for the Public Sector (Public Sector Code), is the basis for each department's code: in the case of DFO, the Fisheries and Oceans Canada Values and Ethics Code (DFO Code). Both the Public Sector Code and the DFO Code apply to persons employed by DFO. Treasury Board has also adopted a Policy on People Management and a Directive on Conflict of Interest (replacing the earlier Policy on Conflict of Interest and Post-employment). These also apply to DFO. Moreover, under the Public Sector Code, "[o]rganizations are expected to take steps to integrate [the Code's] values into their decisions, actions, policies, processes, and systems." The Directive on Conflict-of-Interest states that the responsibilities of the senior official designated by the deputy head include putting in place the infrastructure and controls to effectively administer this directive and ensuring that conflict of interest and conflict of duties risks are identified and resolved.

Regarding conflicts of interest, the DFO Code provides that, "[b]eing a member of a board of directors of an organization Whether it is part of our official duties... could pose a potential risk of conflict of interest ... if the entity has dealings with the Department." It bears repeating that DFO-employed commissioners likely face a conflict of duties in matters related to the Commission's budget-setting and funding-request processes. Because the Commission's budget ultimately comes out of the DFO's budget, the Commission and DFO are competing for the same finite resource (this would not be the case if GAC were to be responsible for the MOG functions). The difference in interests of DFO and the Commission gives rise to the conflict of duties. Furthermore, because DFO's contract services consume a large portion of the Commission's budget, decisions related to the commission's budget are materially relevant to the DFO contract (something the Minister of DFO specifically reference in an October 4th letter to the Commission by stating, "DFO officials look forward to working with the GLFC Secretariat in the coming months to develop a new sea lamprey control workplan that is reflective of the recent Budget 2022 funding commitment.").

Similarly, DFO-employed commissioners likely face a conflict of duties when negotiating the terms of DFO's contract agent function. As the selected agent for the Commission, DFO is, by definition, contracting with the Commission. The Memorandum of Agreement (the MOA referenced above) is effectively a contract. Widely accepted conflict principles hold that a board member possesses a conflict of interest (or conflict of duties) and should not take part in contract decisions if the board member is related to the contractor. Parliament has legislated this principle in Acts governing Crown

corporations, business corporations, and not-for-profit corporations, and same principle ought to be observed by the Commission. When a conflict is occasional, it may adequately be addressed through declarations of interest and recusals from decision-making. On the other hand, a structural or systemic conflict is incompatible with board membership.

Legal experts agree that the appropriate resolution of a systemic conflict is resignation, or not to appoint the individual in the first place. The conflict of duties of DFO-employed commissioners seems systemic so long as DFO is responsible for both the sea lamprey control functions and the MOG functions simultaneously.

In addition to the above, it is understood that in the case of a DFO-employed commissioner, the individual's employer and the appointing body are the same: the Government of Canada. Nonetheless, "conflict of duties" principles still apply. The application of conflict of duties principles is critical for preserving the Commission's legally recognized independence from Canada as an international organization. As is customary with any international organization that operates in Canada, the Commission has certain immunities and privileges from the Canadian state to protect its independence. Because international organizations must operate on the territory of their host state and through individuals who have nationality and are therefore vulnerable to interference, immunities and privileges are commonly granted by the treaty itself or the host state to avoid undue interference in their operations. The Supreme Court of Canada has recognized that such "immunity [is] essential to the efficient and independent functioning of international organizations."

For these reasons and more, the Commission continues to assert that transitioning the Commission's MOG functions to GAC is the cleanest and most effective way to address the concerns noted above and as first formally raised with DFO by the Commission in 2018. The only other alternative would be to change the sea lamprey agent (to alleviate DFO's dual role).

In short, it is the structural conflict that is the core issue that must be addressed – the fiscal shortfall caused by the conflict is a serious symptom of the larger problem.

What is Needed Now?

The GLFC has suggested a plan to move past the current impasse including:

- A transfer of all MOG functions from DFO to GAC (not the sea lamprey control program role). This transfer necessitates the establishment of a new relationship

paradigm. Formal processes need to be established following the transfer, but existing models for this approach (i.e.: the Roosevelt Campobello Commission) already exist within GAC. The Commission has asked that GAC support this call and make representations to the Prime Minister to action this MOG request.

It is the request and hope of Commissioners that the Government of Canada will move quickly and decisively to resolve this growing problem. The GLFC has a legacy of successfully bridging the binational divide for the shared success of Canada and the United States. The fact that DFO's has mismanaged this file into a crisis is as disappointing as it is fixable. Dozens of US and Canadian lawmakers have already made representations to Canada on this matter; most recently, on March 8th, nine members of Congress (representing both parties) wrote to the President urging him to call upon Prime Minister Trudeau to ensure that Canada is a good Great Lakes partner on this and on other issues (this letter is available upon request).

What Can Advisors Do to Help?

As discussed on March 9th, the Commission and the Secretariat continue to aggressively press this issue in Ottawa and at Queen's Park. There has been progress, but additional help and input from Advisors would be impactful if coordinated, and not at cross purposes with the Commission's outreach.

Advisor actions could include:

1. Meeting with government MPs, Ministers, and officials to press for a MOG transition to GAC;
2. Letters to MPs, Ministers, and officials to press for a MOG transition to GAC; and
3. Leveraging of networks to encourage others to meet with and write to MPs, Ministers, and officials to press for a MOG transition to GAC.

Jill Wingfield and I have spoken about these issues at length and would offer a weekly call to engage and update advisors if there is an interest. We are also happy to consider any other ideas and actions advisors propose.

Thank you for your time, input, and ongoing interest in this critical issue. I look forward to continuing to work with all advisors on this important and time-sensitive matter.



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**Resolution from the Great Lakes Fishery Commission's
Committee of Advisors**

21 April 2023



Committee of Advisors
to the
Great Lakes Fishery Commission



Resolution 23-01: A RESOLUTION CALLING FOR THE TRANSITION OF THE CANADIAN MACHINERY OF GOVERNMENT FOR FIDUCIARY RESPONSIBILITIES RELATING TO THE GREAT LAKES FISHERY COMMISSION FROM FISHERIES AND OCEANS CANADA TO GLOBAL AFFAIRS CANADA

WHEREAS, the U.S. and Canadian Committee of Advisors to the Great Lakes Fishery Commission (Commission) has passed two resolutions calling on the Government of Canada to change the machinery of government (MOG) interface for the Commission from Fisheries and Oceans Canada (DFO) to Global Affairs Canada (GAC) in 2021 and 2022, and has received no Canadian governmental response;

WHEREAS, correspondence has been sent on this issue over the past 3 years with no Canadian governmental response and no resolution, including (but not limited to):

- On November 23, 2020, the Chair of the Canadian Committee of Advisors wrote on this issue to the President of the Privy Council (PCO), who is responsible for appointing commissioners to the Commission, and
- On September 21, 2021, the Vice-Chair of the Commission wrote to Canada's Prime Minister, Minister of Foreign Affairs, and Minister of Fisheries and Oceans, requesting a transition of the Commission's MOG functions from DFO to GAC, and



- On October 6, 2022, the Executive Secretary wrote to Canada’s Minister of Fisheries and Oceans, and provided specific details regarding *conflict of duties* concerns vis-à-vis the current MOG arrangement between the Commission and the Government of Canada, and
- On December 2, 2022, the U.S. Section of the Commission sent to the Canadian Section, a letter request – which was subsequently shared with DFO and GAC – requesting clarification on Canada’s official position with respect to confirming that the PCO appointed Canadian Commissioners speak, as per the 1954 *Convention on Great Lakes Fisheries*, on behalf of the Government of Canada as the Party to the Convention, and
- On March 8, 2023, a group letter was sent from nine members of Congress to President Biden, asking the President to raise this matter with Prime Minister Trudeau, and
- On March 20, 2023, the Commission made its most recent representation to the Treasury Board of Canada regarding the urgent need to resolve certain systemic conflicts of duties innate with the existing MOG interface, and potential violations of Treasury Board rules caused by the existing structure; and
- On March 27, 2023, the Canadian Section of the Commission wrote to Canada’s Minister of Foreign Affairs to identify current MOG challenges and asking for action to resolve said challenges, and
- On March 31, 2023, a letter was sent to Prime Minister Trudeau from 43 Members of the Liberal Caucus, asking him to “approve the transfer of GLFC MOG functions from DFO to GAC without delay”;

WHEREAS, on November 29, 2022, DFO formally communicated its intention to the Commission to unilaterally withhold nearly \$15 million dollars of the new Parliamentary allocation in the first five years alone;

WHEREAS, in an apparent demonstration of the conflicted and unreliable nature of the existing governance arrangement, at the March 27, 2023 meeting of the Standing Committee on Fisheries and Oceans, certain factual inconsistencies in the testimony previously offered by DFO officials relating to the Commission, were publicly identified by MPs in attendance;

WHEREAS, in response to Commission representations, and in keeping with figures presented by the Commission to the House of Commons Standing Committee on Finance, the 2022 Canadian federal budget specifically mentioned multi-year and increased funding commitment for the Commission, thereby creating a clear binational expectation that Canada would fully fund the Commission’s Canadian programming mandate for the first time since 2001;



WHEREAS, in the days following the presentation and subsequent passage of the 2022 Canadian federal budget, representatives of DFO, Finance Canada, and various other branches of the Government of Canada, verbally committed to fund the Commission at the requested level and to work to resolve the identified MOG issues, but the actions of the government and DFO to date run counter to that narrative, and appear to disregard the specific MOG and fiscal issues identified by the Commission;

WHEREAS, if these issues are not resolved, the 1954 *Convention on Great Lakes Fisheries* will be placed at further risk of collapse, as happened with the two previous treaties, thereby returning the Great Lakes basin to a system of divided governance, which has a long history of strained relations, ineffective management, and degraded environmental and economic outcomes;

WHEREAS, the 67-year successful history of the Great Lakes Fishery Commission, established by the 1954 *Convention on Great Lakes Fisheries* relies on

- (1) consistent commitment to securing necessary funds to support the Commission's mandates under the Treaty, and
- (2) a commitment to ethical collaborative governance among the Parties, the Commission, its fiduciaries, and federal, tribal, First Nation, Métis, state, and provincial management agencies;

WHEREAS, the Commission's inability to efficiently conduct business in this current environment, affects the ability of state, tribal, First Nation, Métis, and provincial partners to continue to conduct their business;

WHEREAS, the U.S. and Canadian Committee of Advisors are duly appointed in accordance with established procedures to represent a range of national and binational interests;

WHEREAS, the U.S. and Canadian Committee of Advisors support the Commission in any and all efforts to rectify this issue if the Government of Canada fails to remedy the MOG challenges;

WHEREAS, the Sea Lamprey Control Centre (SLCC) has done a phenomenal job of delivering the sea lamprey control programme and the preference of the Commission and advisors would be to continue to use DFO's SLCC as the delivery agent going forward;

THEREFORE BE IT RESOLVED, the U.S. and Canadian Committee of Advisors requests the Council of Great Lakes and St. Lawrence Governors and Premiers and Council of Great



ÉTABLIE 1955 PAR TRAITÉ
EST 1955 BY TREATY

Great Lakes Fishery Commission
12 Collins Way
Strathroy, ON CANADA N7G 0E5

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greg@glfc.org
glfc.org

Lakes Fishery Agencies write to Canada's Minister of Foreign Affairs and the United State's Secretary of State to express concern about this issue and request immediate intervention;

THEREFORE BE IT FURTHER RESOLVED, the U.S. and Canadian Committee of Advisors call upon the Government of Canada to rectify the identified machinery of government issue immediately,

THEREFORE BE IT FURTHER RESOLVED, the U.S. and Canadian Committee of Advisors call upon the Commission to seek solution, such that if the Government of Canada fails to transfer the machinery of governance, the Commission must explore an alternative conflict-free agency to deliver the sea lamprey control programme;

THEREFORE BE IT FURTHER RESOLVED, the U.S. and Canadian Committee of Advisors commit to meeting with Members of Parliament and Congress to discuss this matter;

THEREFORE BE IT FINALLY RESOLVED, the U.S. and Canadian Committee of Advisors commit to meeting with media representatives to discuss the binational issues and concerns addressed herein.



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**Letter from Canadian Commissioners to the Hon. Melanie Joly,
Minister of Foreign Affairs**

27 March 202



Great Lakes Fishery Commission
La Commission des Pêcheries des Grands Lacs

March 27th, 2023

Hon. Mélanie Joly, PC, MP
Minister of Foreign Affairs
House of Commons
Ottawa, ON K1A 0A6

Madam Minister,

As Chair of the Canadian Section of the Great Lakes Fishery Commission (Commission), and as a commissioner appointed by the Privy Council of Canada to the Commission, I am writing about a matter of grave concern that is negatively impacting the operation of this binational organization established by the 1954 *Convention on Great Lakes Fishery between the United States of American and Canada* (Convention). The issue has to do with confusion regarding governance as it relates to the Commission. The matter has been problematic for Canadian commissioners for some time and is now intensified by the fact that US commissioners will not meet with the Canadian Section for reasons that are directly attributable to the manner in the Commission portfolio is managed in Canada.

The fundamental problem with the current machinery of government (MOG) is the inability of Canadian commissioners to fulfill their roles as representatives of Canada as a party to the Convention. More specifically, the current MOG usurps commissioners' responsibilities as they relate to establishing and implementing budgets, operational programs and strategic direction jointly with our US counterparts. These problems have been manifested multiple times in the past with the most recent example having to do with Canada's funding for the Commission.

In this most recent example, the Canadian portfolio manager unilaterally withheld funding appropriated to the Commission by the Canadian Government in the 2022 federal budget. This had the effect of shortchanging Commission programs and initiatives that had been approved jointly by the Commission (Canadian and US



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sections); more specifically, the portfolio manager's actions nullified decisions taken by the Commission. It is due in large part to this action that the US Section notified the Canadian Section, in the letter attached, that US commissioners would not meet with the Canadian Section until these management and budget issues are addressed. I draw your attention to the two questions raised on pages two (2) and three (3) of the US commissioners' letter.

The inability for the Canadian and US sections to convene not only prevents the Commission from fulfilling reporting requirements outlined within the Convention, but the lack of engagement between the two parties also inhibits the Commission from making funding, operational and strategic decisions critical to realizing the organization's mandate. Therefore, it is a matter of urgency that Canada addresses these issues to restore functionality to this critical binational organization.

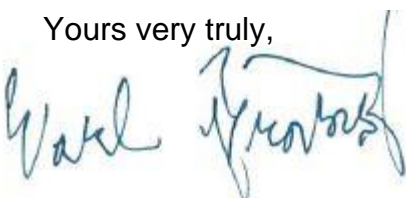
We are corresponding with you as Minister of Global Affairs Canada because the *Department of Foreign Affairs, Trade and Development Act*, 10(2)(b), specifies that communications between the Government of Canada and international organizations are to be conducted through External Affairs; the Commission is an international organization recognized under *International Organizations and Immunities Act*. Furthermore, the Commission has primarily communicated, since 1980, with Fisheries and Oceans Canada (DFO) in that department's "administrative" role for the *Great Lakes Convention Act* and the *Government Organizations Act, 1979*; however, the aforementioned legislation does not provide DFO with Ministerial authority to address the issues raised herein. Hence, we ask your office to please undertake to respond to the "governance" question that is at the heart of our concern.

In summary, we ask that you please:

- Address, on the Canadian commissioners' behalf, the question of governance as communicated in the attached letter for the purpose of ensuring that the decision-making process between the sections, as representatives of the parties, can be advanced as per the Convention; and
- Undertake a leadership role in addressing the flawed machinery of government (MOG) through which the binational Commission portfolio is managed in Canada, with the Commission's desired outcome being a transition of administrative responsibilities to Global Affairs Canada.

Given that the Commission has not been able to meet since the fall of 2022, and that our annual meeting is scheduled for late May 2023, we would very much appreciate your personal assistance and leadership on this matter as soon as possible. We look forward to cooperating with you in every way possible in this endeavor.

Yours very truly,



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Earl Provost
Chair, Canadian Section
Great Lakes Fishery Commission

Enclosure

cc: Hon. Joyce Murray, PC, MP
Minister of Fisheries and Oceans



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**Letter to the President of the United States, Joseph R. Biden
from Congressional Members of the Great Lakes Task Force**

8 March 2023

Congress of the United States
Washington, DC 20515

The Honorable Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue NW
Washington, DC 20500

March 8, 2023

President Biden:

As members of the Great Lakes Task Force, we write to underscore the importance of the Great Lakes to the United States and Canada, as well as the shared commitment that both our nations must uphold to support the Great Lakes. We encourage you to highlight the importance of this binational resource, the investments needed to restore and protect the Great Lakes during your official visit to Canada, as well as support for our binational institutions that promote the environmental and economic health of our region.

The Great Lakes contain one-fifth of the world's fresh surface water, providing drinking water for more than 30 million Americans and Canadians, supporting a \$6 trillion regional economy, and providing habitat for a host of fish and wildlife. Through partnerships between the United States and Canada, sustained investments are critical to clean up toxic Areas of Concern, address the threat of invasive species, restore habitats, reduce harmful algal blooms, and mitigate other threats to the Great Lakes.

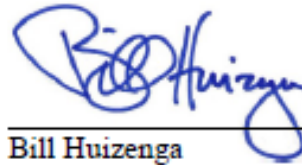
The Great Lakes Water Quality Agreement and the 1954 Convention on Great Lakes Fisheries obligates both countries to provide funding for the Great Lakes. The United States has consistently provided substantial investments into the Great Lakes' health and water quality, administered principally through the Great Lakes Restoration Initiative (GLRI). The GLRI has received more than \$400 million, on average, over the last five years to carry out this important work.

We appreciate your support of the Great Lakes and encourage you to emphasize the importance of our binational institutions and investments for the Great Lakes from the Canadian government. This will be essential to supporting the health of this treasured natural resource, which is critical to both our nations.

Sincerely,



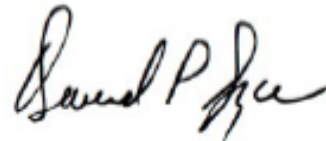
Brian Higgins
Member of Congress



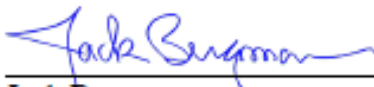
Bill Huizenga
Member of Congress



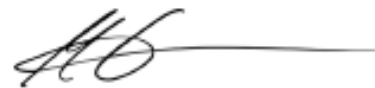
Marcy Kaptur
Member of Congress



David P. Joyce
Member of Congress



Jack Bergman
Member of Congress



Mike Gallagher
Member of Congress



Debbie Dingell
Member of Congress



Elissa Slotkin
Member of Congress



John R. Moolenaar
Member of Congress

MEMBERS OF CONGRESS

CC: The Honorable David Cohen, U.S. Ambassador to Canada

**Detroit Free Press Article “President Biden heads to Canada as
Great Lakes commissioners fume over funding” by Todd
Spangler**

23 March 2023

Detroit Free Press

POLITICS

President Biden heads to Canada as Great Lakes commissioners fume over funding



Todd Spangler

Detroit Free Press

Published 6:05 a.m. ET March 23, 2023 | Updated 6:36 a.m. ET March 23, 2023

Since late last year, the U.S. members of the Great Lakes Fishery Commission — a 69-year-old symbol of international cooperation instrumental in fighting the spread of sea lampreys — have boycotted meetings and refused to write a budget for the new year, adamant that the Canadian agency responsible for that nation's share of the funds first guarantee it will live up to its commitments.

And they're hoping President Joe Biden, who begins two days of meetings with Prime Minister Justin Trudeau and Canadian officials in Ottawa on Thursday, will intervene on their behalf.

"I'm not going to think for a second this issue is top of mind for President Biden," said Ethan Baker, a U.S. member of the Fishery Commission and mayor of Troy. "Our budget is a drop in the bucket. But if we could have the president's support, even a passing word can go a long way."

At issue is whether the Canadian agency responsible for assuring that nation's share goes to funding the commission's agenda has instead dithered in appropriating the money, and why, in the minds of some commissioners and other officials, it won't commit to guaranteeing funds authorized by the Parliament will be there for the commission in years to come.

In statements to the Free Press, Fisheries and Oceans Canada, the department responsible, defended its handling of the funds, saying the commission has all the assurances and information it needs.

But it's not just the U.S. members who feel the agency is failing in its responsibilities. "Our own government has been failing on its commitments," said Dave Epp, a member of

Parliament representing a southwestern Ontario district, who has questioned departmental officials on claims that, as far as they were concerned, the 2023 Fishery Commission budget was settled when it was not.

"(The funding) should flow directly to the commission," Epp said. "That's where the department has used their sticky fingers."

US has covered at least \$70 million Canada should have paid

Officials in both countries say since 2002, the U.S. has covered more than \$70 million of Canada's share required under the 1954 treaty that created the Fishery Commission as a means to control invasive sea lampreys — parasitic fish that can decimate stocks of other fish — and perform other research and construction to protect the watershed.

And while the Canadian Parliament last year agreed to provide \$19.6 million a year for five years, which would constitute that nation's full responsibility under the treaty going forward, commission officials say Fisheries and Oceans Canada has refused to guarantee the funding will be there each year for the commission's priorities and not redirected to its own.

Epp provided a timeline indicating that late last year, the department made a unilateral decision to reallocate some \$15 million of the five-year funding, including some of the new year's, to other priorities. Most of the coming fiscal year's funding was restored, he said, but it left commissioners frustrated and commitments for future years unsettled.

Complicating matters is that since the early 2000s, Fisheries and Oceans Canada has served as both the administrative agency through which the funding flows to the commission from Parliament and the department that does the work of fighting the spread of sea lampreys — largely through the application of chemicals that kill the species' larvae in spawning waters — in Canada.

No one seems to have much problem with Fisheries and Oceans Canada in that latter role. But there are plenty of concerns that the former presents an issue, since some maintain the department has used it to funnel funding to its own priorities — which, in some cases, are similar to the commission's — and not theirs. They argue that the treaty gives decision-making authority to the commission, not the department.

What they'd like to see is the administrative authority switched to Global Affairs Canada, that nation's diplomatic arm, just as in the U.S., the funding comes through the State Department.

"Until we feel confident that the commission can rely on the funds promised and allocated by the Canadian government on a regular basis, I'm not sure we'll be meeting," Baker said. "Our hope is we have a resolution that makes sense."

Impasse comes as US-Canadian relations more tested

A spokesman for Fisheries and Oceans Canada told the Free Press on Wednesday that the \$19.6 million annual funding amount "demonstrates our commitment to improving the Great Lakes." But he also noted in a statement that Canada's support to the Fishery Commission "takes a number of forms, including direct transfers." Commission officials say that is shorthand for Fisheries and Oceans Canada's belief that it has authority to overrule the commission's budget decisions.

"It's baloney," said Marc Gaden, deputy executive secretary of the Fishery Commission, which is based in Ann Arbor, and who is also an adjunct associate professor in the Fisheries and Wildlife Department at Michigan State University. "It's the commission's decision (how to budget the funding), not the (department's)."

The Fisheries and Oceans Canada spokesman said the department believes the Fishery Commission has all the information it needs to complete its new binational budget — which should come to about \$30 million U.S. and \$20 million Canadian a year. But Gaden said there is still funding for research and other programs the commission has not received.

Fisheries and Oceans Canada also said there is "no conflict" between administering the funds and running the sea lamprey program "because those interests in this context are one and the same." Commission officials and others have contacted Trudeau's office about the impasse and say there is support for switching administrative agencies. But so far there hasn't been any change.

While no one seems worried that work to prevent the spread of sea lampreys is in jeopardy this year, there are concerns by some that the current circumstances could upend the treaty, which calls for the U.S. to pay 69% and Canada to pay 31% of the cost of lamprey control while sharing equally other research and administrative costs. If that were to happen, lamprey control could become an issue again, as it was before the treaty was signed.

The concerns also come at a time when relations between the two nations, while still close, have felt more fraught: The push by Michigan officials and environmentalists to shut down Line 5, an oil pipeline running at the bottom of the Straits of Mackinac; Biden's decision to stop work on the Keystone pipeline; and initiatives to encourage American manufacturing

over those in other countries, including Canada, have all strained relations. On Wednesday, several Michigan members of Congress introduced a resolution, with support from across the Great Lakes states, voicing opposition to Canadian plans to construct a nuclear waste storage site not far from Lake Huron.

Two weeks ago, several U.S. lawmakers, including some from Michigan, urged Biden to mention the need for Canada during his Ottawa trip to recognize "the shared commitment that both our nations must uphold to support the Great Lakes." It didn't mention the Fishery Commission by name, but it mentioned the 1954 treaty. It's not known whether Biden or others will broach the subject this week.

"Our ask was not that they retroactively pay us but moving forward will you at least pay what you're supposed to be paying under the treaty," Baker said. "(But) They don't want to lose access to those funds for their (own) programming needs and that's very frustrating. ... We need more assurances."

Contact Todd Spangler: tspangler@freepress.com. Follow him on Twitter@[tsspangler](https://twitter.com/tsspangler).

**Liberal Caucus Letter to Canadian Prime Minister, Justin P.J.
Trudeau
March 2023**



March 2023

Rt. Hon. Justin Trudeau, PC, MP
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Prime Minister,

Since forming government in 2015, under your leadership, our team has worked tirelessly to promote good and ethical government, sound relations with our US neighbours, and responsible and proactive stewardship of natural resources such as the Great Lakes. Canadians support these objectives, and as Caucus Members we view these items as critical elements of our government's agenda. It is in this context that we write today.

It is our understanding that you are currently considering a machinery of government (MOG) change that would transition responsibility for the Great Lakes Fishery Commission (GLFC) from Fisheries and Oceans (DFO) to Global Affairs Canada (GAC). The purpose of this letter is to support and encourage this change as a way of underscoring the government's commitment to good and responsible governance on the Great Lakes.

The existing structure whereby DFO is responsible for the GLFC's MOG functions is misaligned with the US structures and has become unworkable. Serious ethical issues have emerged with respect to the current MOG structure, and in the past few months alone, several US lawmakers have written to Canada's Ambassador expressing concerns with Canada's commitment to the Great Lakes partnership; an assertion that is seemingly supported by Canada's ongoing failure to fully fund the organization (despite a Budget 2022 commitment of new resources). Worse yet, as a manifestation of their frustration, the entire US Section recently launched a boycott at a GLFC meeting citing DFO mismanagement of the file as the cause. For these reasons and more, we assert that transitioning the Commission's MOG functions to GAC is the cleanest and most effective way to address the concerns noted above. Frankly, it seems that DFO's current MOG responsibilities with the GLFC may not be consistent with best practices for conflict-avoidance nor for the successful maintenance of important binational relationships. **Accordingly, we are asking for you to approve the transfer of GLFC MOG functions from DFO to GAC without delay.**

Put plainly, in addition to attaining binational alignment with the Commission's US structures and resolving a growing binational irritant, moving the Canadian MOG functions from DFO to GAC would enhance outcomes while improving fiscal accountability, planning and responsiveness.

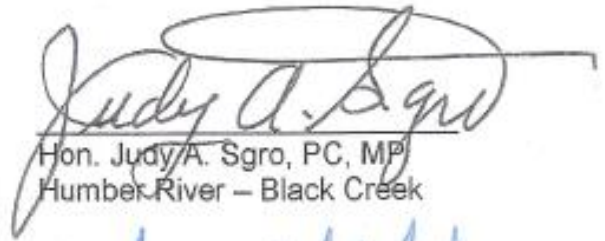
As you know, the Great Lakes are critical binational assets that contain more than 20% of the world's surface fresh water. The system is invaluable as the source of drinking water for more than fifty (50) million people, more than 1.5 million jobs, sixty (60) billion dollars in wages annually, and they are the backbone for a six (6) trillion-dollar regional economy that would be one of the largest in the world if it stood alone as a country. It is important to note that this is all maintained and protected via careful binational partnerships such as those described in the *Convention on the Great Lakes Fisheries*. In this context, **we are seeking your leadership and direct assistance in correcting these long-standing issues as they relate to the Great Lakes Fishery Commission. Now more than ever, genuine binational cooperation is critical, and Canada has an important role to play. Please take the actions required to fully transfer the Commission's Canadian MOG functions from DFO to GAC.**

We look forward to your reply.

Sincerely,



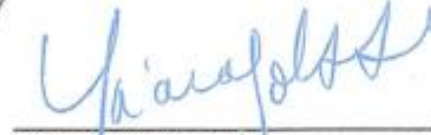
Hon. Rob Oliphant, PC, MP
Don Valley West



Hon. Judy A. Sgro, PC, MP
Humber River - Black Creek



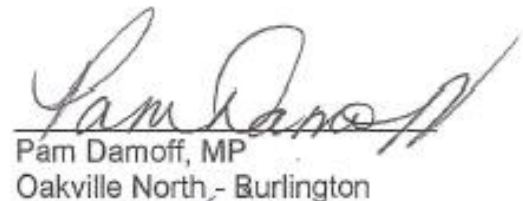
Hon. John McKay, PC, MP
Scarborough - Guildwood



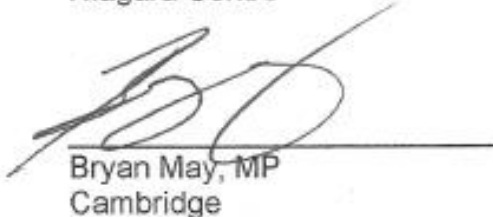
Ya'ara Saks, MP
York Centre



Vance Badawey, MP
Niagara Centre



Pam Damoff, MP
Oakville North - Burlington




Bryan May, MP
Cambridge



Julie Dzerowicz, MP
Davenport

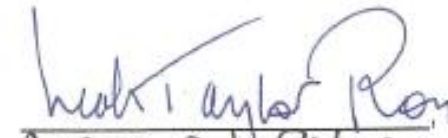

London North Centre, MP


C. Lawrence, MP


Mississauga-Streetsville, MP

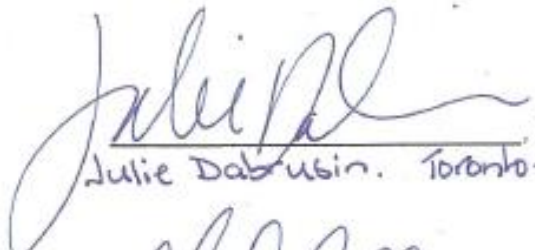

Van Bynen, MP


Willowdale, MP


Aurora-Oak Ridges-Richmond Hill, MP


ADAM VAN KOEVERTEN, Milton, MP



GARY ANANDASABAGAN, MP



Julie Dabrusin, Toronto-Danforth, MP


Disallepner, MP
MP Hamilton Mountain



CHAD COLLINS, MP


Mississauga East Cooksville, MP


Francesco Sorbara, Vaughan-Woodbridge, MP

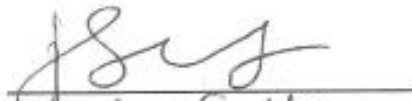

Marcus Powlowski, MP


Iqbal Chahal, MP

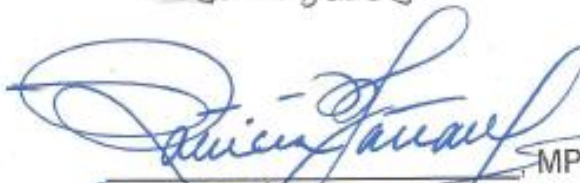

Jean Yip, MP


Charles Sousa, MP



James Maloney, MP



Jenne Sudds, MP


Annie Koutrakis, MP


PATRICIA LATTANZIO, MP


IRAK KOSMOPOULOS, MP


Nate Erskine-Smith, MP


~~MASIH LEHANNI~~
RICHARD HILL, MP


Michael Coteau, MP


MARC SÉGUIN, MP



TIM LOUIS, MP



Ryan Turnbull, MP


Alfred - Pellon, MP


Brossard - Saint Lambert, MP


Bonavista - Burin - Trinity, MP


Peter Schiefke, MP


Brenda Shankhan, MP


Chris Bittle, MP


Mark Gerretsen, MP

**Letter to Canadian Prime Minister, the Rt. Hon. Justin P.J.
Trudeau from the Congressional Members of the Great Lakes
Task Force
6 June 2023**

Congress of the United States

Washington, DC 20515

June 6, 2023

The Right Honorable Justin Trudeau
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Prime Minister Trudeau,

We are writing to draw your attention to a matter of great concern regarding the implementation of the Convention on Great Lakes Fisheries of 1954, the bilateral treaty that governs the approach to the Great Lakes fishery between the United States and Canada.

As members of the bipartisan Great Lakes Task Force, we were pleased to hear about the attention given to the Great Lakes during President Biden's recent visit to Ottawa. However, we are concerned by the breakdown in the functioning of the Great Lakes Fishery Commission (or Commission), which is responsible for coordinating cross-border fishery management and controlling invasive sea lamprey in the Great Lakes. It is our understanding, that this breakdown can be traced to the Department of Fisheries and Oceans (DFO), the federal institution responsible for Canada's custodial obligations to the Commission.

Since its adoption in 1954, the Great Lakes Fishery Commission has been instrumental in addressing shared, binational issues related to the fishery between our two nations, including cross-border fishery management coordination (e.g. involving interstate, interprovincial, and intertribal interactions), directing a binational science program that provides crucial information for management and restoration, and controlling the invasive, destructive sea lamprey that threaten these shared waters. As early as 1897, it was clear that a cooperative approach to managing the Great Lakes fishery was needed, as the existing parochial approach was leading to economic and ecological ruin. The Convention on Great Lakes Fisheries of 1954 successfully addressed this issue and has been highly effective for decades. Thanks to the Commission's tireless work, the fishery has rebounded, native species have recovered, a world-class recreational fishery has emerged along with a wealth of scientific research and information. The Commission truly has united our two nations for our mutual benefit.

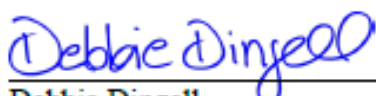
Unfortunately, the Great Lakes Fishery Commission's collaborative process has broken down. Both the U.S. and Canadian sections agree on what the problems are and are calling for change. To date, the Commission has not convened for more than a year, and regular programming for the Commission has not been set since November 2020. This situation is beyond troubling and, frankly, unacceptable. While DFO has recently agreed to finally provide the necessary funding for 2023, we are concerned that this development, although positive, is not indicative of the permanent change that is necessary to safeguard the Commission's operations in the long-term; DFO acted only after it was subject to significant and sustained pressure from Members of Parliament.

As members representing communities across the Great Lakes Basin, we join the U.S. commissioners on the Great Lakes Fishery Commission in expressing our frustration with the current situation but also to express our strong wish to see both sections resume their work together soon.


As an ally and a neighbor who jointly share the binational responsibility to protect these treasured waters, we respectfully bring this matter to your personal attention and hope you will address these concerns without delay. The Great Lakes Fishery Commission, more than 50 members of the Canadian Parliament, and many others have asked Minister Joly to assume fiduciary responsibilities for the Commission, which would match the fiduciary arrangement in the United States. That, to us, makes perfect sense and would certainly get this Commission back on track but we also want to be respectful of Canada's sovereignty. We collectively urge you to do everything in your power to find a long-term solution and resume normal operations of the Great Lakes Fishery Commission as soon as possible.

Thank you for your attention to this important matter and we stand ready to work with you to find a binational solution, which is critical to the long-term health of the Great Lakes.

Sincerely,



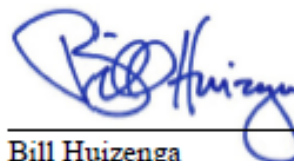
Debbie Dingell
Member of Congress



David P. Joyce
Member of Congress



Marcy Kaptur
Member of Congress



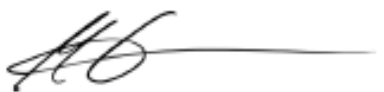
Bill Huizenga
Member of Congress



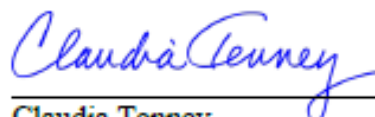
Lisa C. McClain
Member of Congress



Brian Higgins
Member of Congress



Mike Gallagher
Member of Congress



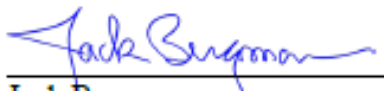
Claudia Tenney
Member of Congress



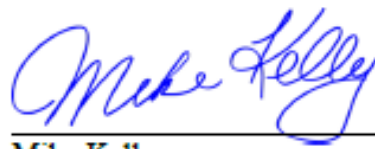
Bryan Steil
Member of Congress



Haley M. Stevens
Member of Congress



Jack Bergman
Member of Congress



Mike Kelly
Member of Congress



Elissa Slotkin
Member of Congress



John R. Moolenaar
Member of Congress



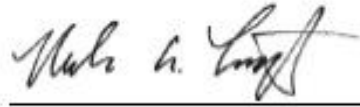
Shri Thanedar
Member of Congress



Glenn Grothman
Member of Congress



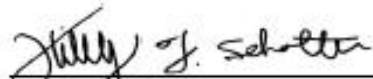
Mike Quigley
Member of Congress



Nicholas A. Langworthy
Member of Congress



Shontel M. Brown
Member of Congress



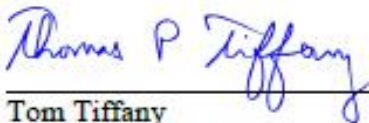
Hillary J. Scholten
Member of Congress



Joseph D. Morelle
Member of Congress



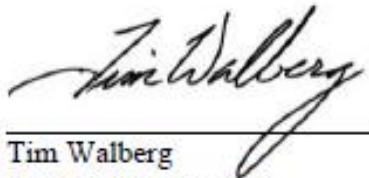
Pete Stauber
Member of Congress



Tom Tiffany
Member of Congress



Danny K. Davis
Member of Congress



Tim Walberg
Member of Congress

