



# Charter Toolkit

## GREAT LAKES WATER GOVERNANCE PRIMER

**H**ow should the Great Lakes be governed? What should the role of individuals be? What role should governments have in making decisions? Are there alternative options to the current governance system? The Great Lakes Commons Charter along with other sources of knowledge help us answer these questions.

In order to move forward with the Charter's vision of a renewed relationship and mode of governance for our Great Lakes, we have to first examine where we are. Effectively acting on behalf of these waters and future generations, requires knowledge of the current decision-making processes in place.

This primer serves as an introduction to the governance system currently in place for the management of North America's Great Lakes. It is not intended to be a critique of the current system. It is an attempt to illustrate how the Great Lakes are governed by those with legal jurisdiction over the waters. It is our hope that this primer will inform members of the general public who are interested in learning how decisions are made concerning Great Lakes waters. However, it is not an exhaustive discussion. There are many decisions made at the local level (e.g. city or county) that can impact drinking water and ecological health which are not covered here. The processes for those decisions are much more complex and varied based on geography, local laws, and federal policy.



[GREATLAKESCOMMONS.ORG](http://GREATLAKESCOMMONS.ORG)



The Great Lakes are an incredible gift of nature that makes up most of North America's freshwater and 20 percent of the world's surface freshwater. Millions of people, along with diverse assemblage of living creatures, depend on them for drinking water, habitat, and other uses. The Great Lakes -- Superior, Huron, Michigan, Erie, and Ontario -- comprise a single water system connected by natural channels, though each lake has its own physical, biological, and cultural characteristics. Often, though not always, the St Lawrence River is included in decision-making processes since it is the outlet of the Great Lakes to the Atlantic Ocean. This primer will mainly cover the Great Lakes system and not any one of the individual lakes (though subtle differences can be found in the governance of each lake).

## FEDERAL (UNITED STATES AND CANADA)

Governance of the Great Lakes at the federal level is shared by the United States and Canada, except for Lake Michigan which resides completely within the U.S.. Canada and the U.S. mainly coordinate activities through two international agreements between the two countries: the 1909 Boundary Waters Treaty and the 1972 Great Lakes Water Quality Agreement (both agreements are discussed below). For both countries federal activities range widely, including establishing and enforcing regulations, prioritizing and funding restoration projects, monitoring and conducting scientific research on the lakes' ecosystem.

On the U.S. side alone, the federal government has over 10 agencies that are involved in Great Lakes activities, each with their own focus and responsibilities; though not all are involved in water policy. Since 2010 U.S. agencies have been implementing the Great Lakes Restoration Initiative (GLRI) action plan, a 2.2 billion investment (through 2016), in (water and habitat) restoration, (pollution and invasive species) prevention, (ecosystem) monitoring, research, and education. GLRI has been instrumental in federal, state, and tribal work under Great Lakes governance system outlined in this document.

Canada has several federal departments that work on Great Lakes water issues, chief among them in Environment and Climate Change Canada. Eight agencies work together on the Canadian Federal Great Lakes Program, setting goals to restore and protect the Great Lakes ecosystem. The Canadian government has power to pass laws for the management of fisheries and shipping along with general environmental legislation.





## EXAMPLE OF FEDERAL LAWS AND ACTORS:

### CANADA

#### Relevant Laws

- Environmental Protection Act
- Fisheries Act
- Environmental Assessment Act
- Species At Risk Act
- Navigation Protection Act

#### Federal Agencies and Departments

- Environment Canada
- Aboriginal Affairs and Northern Development Canada
- Agriculture and Agri-Food Canada
- Canadian Coast Guard
- Fisheries and Oceans Canada
- Foreign Affairs & International Trade Canada
- Health Canada
- Infrastructure Canada
- Natural Resources Canada
- Parks Canada
- Public Works & Government Services Canada
- Transport Canada

### UNITED STATES

#### Relevant Laws

- Clean Water Act
- Safe Drinking Water Act
- National Environmental Policy Act
- Endangered Species Act Great Lakes
- Legacy Act

#### Federal Agencies and Departments

- U.S. Environmental Protection Agency
- Department of Agriculture
  - Animal and Plant Health Inspection Service
  - Forest Service
  - Natural Resources Conservation Service
- Department of the Interior
  - Bureau of Indian Affairs
  - U.S. Fish & Wildlife Service
  - U.S. Geological Survey
  - U.S. National Park Service
- Council on Environmental Quality
- Department of Commerce
  - National Oceanic & Atmospheric Administration
- Department of Defense
  - U.S. Army Corps of Engineers
- Department of Health and Human Services
  - Agency for Toxic Substances and Disease Registry
- Department of Homeland Security
  - U.S. Coast Guard
- Department of Housing and Urban Development
- Department of State
- Department of Transportation
  - Federal Highway Administration
  - Maritime Administration



## NATIVE AMERICAN TRIBAL GOVERNMENTS

There are 27 U.S. federally recognized tribes within the basin, 12 of those U.S. Tribes hold federal treaties within certain areas of the basin. There are 5 additional tribes located outside the basin but have treaty areas within the basin. The 1836, 1837, 1842, and 1854 Treaties ceded tribal lands to the U.S. government. However, signatory tribes to each Treaty retained fishing, hunting, and gathering rights (Treaty Rights) within these territories. These tribes therefore have management agencies and regulations to govern their on and off-reservation activities. Tribes with Treaty Rights to Great Lakes waters (for fishing) are part of a tribal/state/federal cooperative management structure for the fisheries management and related activities (e.g. invasive species control). In addition there are three tribal natural resource management agencies that are influential in implementing tribal regulations and performing scientific research: the Chippewa Ottawa Resource Authority (CORA), the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), and the 1854 Treaty Authority.

### TRIBES WITHIN THE BASIN

- Grand Portage Band of Lake Superior Chippewa Indians\*
- Fond du Lac Band of Lake Superior Chippewa Indians\*
- Red Cliff Band of Lake Superior Chippewa Indians\*
- Bad River Band of Lake Superior Chippewa Tribe\*
- Lac Vieux Desert Band of Lake Superior Chippewa Indians\*
- Keweenaw Bay Indian Community\*
- Sokaogon Chippewa Community\*
- Pokagon Band of Potawatomi Indians
- Nottawaseppi Huron Band of the Potawatomi
- Forest County Potawatomi
- Stockbridge-Munsee Community
- Saginaw Chippewa Indian Tribe of Michigan
- Sault Ste. Marie Tribe of Chippewa Indians\*
- Bay Mills Indian Community\*
- Little Traverse Bay Bands of Odawa Indians\*
- Little River Band of Ottawa Indians\*
- Grand Traverse Band of Ottawa and Chippewa Indians\*
- Menominee Indian Tribe of Wisconsin
- Oneida Tribe of Indians of Wisconsin
- Hannahville Indian Community
- St. Regis Mohawk Tribe
- Seneca Nation of Indians
- Oneida Nation of New York
- Onondaga Nation
- Tuscarora Nation
- Tonawanda Band of Seneca Indians
- Cayuga Nation

### TRIBES OUTSIDE THE BASIN

- Mille Lacs Band of Ojibwe
- St. Croix Chippewa Indians of Wisconsin
- Lac Courte Oreilles Band of Ojibwe
- Lac du Flambeau Band of Lake Superior Chippewa Indians
- Bois Forte Band of Chippewa

*\* Denotes a tribe that holds Treaty Rights*



### FIRST NATIONS

There are approximately 133 First Nations communities in Ontario, approximately 64 of those reside in the Great Lakes basin. These communities make up 14 First Nations Councils, eight of which are in the basin. As a collective decision-making, action, and advocacy body, the Chiefs of Ontario play an important policy role in the Great Lakes basin on behalf of the First Nations communities located within the boundaries of the province of Ontario. For example, the “Water Declaration of the Anshinabek, Mushkegowuk and Onkwehonwe,” set forth several key principles for water care and decision making.

### FIRST NATION COMMUNITIES WITHIN THE BASIN \*

- Aamjiwnaang First Nation (Sarnia)
- Alderville First Nation
- Algonquins of Pikwakanagan First Nation
- Atikameksheng Anishnawbek (Whitefish Lake)
- Aundeck Omni Kaning First Nation
- Beausoleil First Nation (Christian Island)
- Biinjitiwaabik Zaaging Anishinaabek
- Bkejwanong Territory (Walpole Island)
- Brunswick House First Nation
- Caldwell First Nation
- Chapleau Cree First Nation
- Chapleau Ojibwe First Nation
- Chippewas of Georgina Island
- Chippewas of Kettle & Stony Point
- Chippewas of Nawash Unceded First Nation (Cape Croker)
- Chippewas of Rama First Nation
- Chippewas of the Thames First Nation
- Curve Lake First Nation
- Delaware Nation (Moravian of the Thames)
- Flying Post First Nation
- Fort William First Nation
- Ginoogaming First Nation (Long Lac #77)
- Henvey Inlet First Nation
- Hiawatha First Nation
- Animbiigoo Zaaging Anishinaabek
- Anishinaabek (Lake Nipigon Ojibway)
- Michipicoten First Nation
- Missanabie Cree First Nation
- Mississauga #8 First Nation
- Mississaugas of Scugog Island
- Mississaugas of the New Credit First Nation
- Mohawks of Akwesasne
- Mohawks of the Bay of Quinte
- Moose Deer Point First Nation
- Munsee-Delaware Nation
- Nipissing First Nation
- Ojibways of Batchewana
- Ojibways of Garden River
- Ojibways of Pic River (Heron Bay)
- Oneida Nation of the Thames
- Pays Plat First Nation
- Pic Mobert First Nation
- Red Rock Indian Band (Lake Helen)
- Sagamok Anishnawbek First Nation
- Saugeen First Nation, (Savant Lake)
- Serpent River First Nation
- Shawanaga First Nation
- Sheguiandah First Nation
- Sheshegwaning First Nation
- Six Nations of the Grand River Territory

\*Based on available information



## FIRST NATION COMMUNITIES WITHIN THE BASIN CONT'D \*

- Kiashke Zaaging Anishinaabek (Gull Bay)
- Lac Des Mille Lacs First Nation
- Long Lake #58 First Nation
- M&rsquo;Chigeeng First Nation (West Bay)
- Magnetawan First Nation
- Matachewan First Nation
- Mattagami First Nation
- Temagami First Nation, Bear Island
- Thessalon First Nation
- Wahta Mohawks, (Mohawks of Gibson)
- Wasauksing First Nation, (Parry Island)
- Whitefish River First Nation
- Whitesand First Nation
- Wikwemikong Unceded Indian Reserve
- Zhiibaahaasing First Nation

\*Based on available information

Water on First Nations reserves is a shared responsibility between First Nations Councils and federal departments. However, federal standards for water quality are not as strict as those of the provinces. Therefore, water managed on reserves, including those within the Great Lakes basin, is not necessarily held to the same standard as off-reserve waters. First Nations people are also concerned with water management in their traditional territories as well. However, in Ontario, First Nations territories outside the reserve fall under the jurisdiction of the province.

In 2004 First Nations and tribes came together and signed the Tribal and First Nations Great Lakes Water Accord. Forty First Nations and tribal leaders asserted their legal rights, roles, and responsibilities to protect and preserve the health of the Great Lakes. Though not legally binding, the Indigenous leaders committed to working with each other and with the federal, state and provincial governments governing Great Lakes waters. This type of understanding among Indigenous nations has a long history in the Great Lakes region. The Dish with One Spoon treaty made between the League of Five Nations and its allies, and the confederacy of Anishinabek and allied nations predates European colonization. The treaty emphasised collective responsibility and equity over the land, water, and wildlife of the region. First Nations and Métis have the opportunity to participate in the governance of the Great Lakes through consultation with federal and provincial agencies and by participating in non-regulatory management, such as through the Great Lakes Water Quality Agreement.





## CANADIAN PROVINCES

Provinces have primary jurisdiction over most natural resources and activities, such as agriculture, forestry, mining, and hydroelectric development. Provinces usually delegate water supply, which includes the treatment and distribution of drinking water and the treatment of waste water to municipalities. This delegation of authority often means that the water in the Great Lakes basin is subject to varied standards of treatment. The Province of Ontario is the only province bordering the Great Lakes. Ontario has jurisdiction of Great Lakes waters through drinking water and water quality regulations, shared fisheries management with Canada, and the Ontario Great Lakes Protection Act (2015). Quebec does border the St. Lawrence River (the outlet of the Great Lakes to the Atlantic Ocean) and gets included in some decisions (discussed below).

Ontario's 2006 Clean Water Act focused on "source water" protection (i.e. lakes, rivers, and aquifers), including headwaters of the Great Lakes. Much of its implementation is done by the province's Conservation Authorities who manage water resources on a watershed scale. (Note that currently not all watersheds in Ontario are covered by a Conservation Authority). The Act specifically addresses the Great Lakes, allowing for the establishment of specific water protection target and reporting, and requiring a Great Lakes advisory committee.

## U.S. STATES

There are eight U.S. States that are (partially) within the Great Lakes basin (watershed) and therefore have responsibilities and authorities in the governance of the Great Lakes. They only have jurisdiction over the lakes that are within the state's border that extend into the lake(s) off their coastline. State laws cannot be less strict than federal laws, and in some cases states have the authority to implement federal regulations within their borders (with federal agencies overseeing and ensuring proper implementation). For example, states implement water quality monitoring and permitting under the U.S. Clean Water Act. States also have their own laws in addition to federal rules and regulations that are implemented by the individual state.

In the Great Lakes region, several states have overlapping water jurisdiction with Tribes that hold Treaty Rights. In these cases tribes and states share and coordinate the management of activities within those waters. Michigan and the five tribes that comprise CORA share jurisdiction in lakes Superior, Huron, and Michigan, including the connecting lakes and rivers. While Wisconsin and Minnesota share overlapping jurisdiction with individual tribes and those that comprise GLIFWC in the Lake Superior watershed.

### UNITED STATES WITHIN THE BASIN

- Illinois
- Michigan
- New York
- Pennsylvania
- Indiana
- Minnesota
- Ohio
- Wisconsin



## NOTABLE AGREEMENTS AND CROSS—JURISDICTION ORGANIZATIONS

### GREAT LAKES WATER QUALITY AGREEMENT

The **Great Lakes Water Quality Agreement (GLWQA)** was first signed in 1972 to coordinate Great Lakes environmental actions of Canada and the United States. The purpose of the GLWQA is “...to restore and maintain the chemical, physical, and biological integrity of the Waters of the Great Lakes.”

Additionally, there are nine general objectives outlined in the latest update to the agreement (listed below). The agreement is a commitment by both countries to work cooperatively, it is not a law or enforcement tool. Both countries rely on their existing regulatory and financial resources to achieve the goals and objectives of the agreement. Though the U.S. and Canadian federal governments are the Parties to the GLWQA, they seek to work cooperatively in implementation in consultation with the eight Great Lakes states, the province of Ontario, Tribes, First Nations, Metis, municipal governments, watershed organizations, and others.

### OBJECTIVES OF THE 2012 GLWQA

#### **The waters of the Great Lakes should:**

1. Be a source of safe, high-quality drinking water;
2. Allow for swimming and other recreational use, unrestricted by environmental quality concerns;
3. Allow for human consumption of fish and wildlife unrestricted by concerns due to harmful pollutants;
4. Be free from pollutants in quantities or concentrations that could be harmful to human health, wildlife or organisms, through direct exposure or indirect exposure through the food chain;
5. Support healthy and productive wetlands and other habitats to sustain resilient populations of native species;
6. Be free from nutrients that directly or indirectly enter the water as a result of human activity, in amounts that promote growth of algae and cyanobacteria that interfere with aquatic ecosystem health, or human use of the ecosystem;
7. Be free from the introduction and spread of aquatic invasive species and free from the introduction and spread of terrestrial invasive species that adversely impact the quality of the Waters of the Great Lakes;
8. Be free from the harmful impacts of contaminated groundwater; and,
9. Be free from other substances, materials or conditions that may negatively impact the chemical, physical or biological integrity of the Waters of the Great Lakes.





## GLWQA CONT'D

The GLWQA was amended in 1987 in order to address local and lake-wide concerns. Forty three locations in the Great Lakes were labeled as **Areas of Concern (AOC)**, being recognized as seriously affected by historical water contamination and pollution. The federal, state, and provincial governments work at both the municipal and community level by implementing remedial action plans (collaboratively developed) with the goal of restoring the beneficial uses of the aquatic ecosystem through a systematic and comprehensive ecosystem approach. Of the 43 designated AOCs (26 U.S., 12 Canadian, 5 shared), seven no longer fail their beneficial use criteria (as determined by the governments) and have been delisted as AOCs.

The GLWQA also calls for the development and updating of **Lakewide Action and Management Plans (LAMPs)** for each lake. LAMPs are action plans for restoring and protecting the lake ecosystem. They are developed and implemented by committees comprised of government agencies (federal, state, province, tribes, and First Nations) with jurisdictional authority over a respective lake. Working with non-governmental partners, the LAMP Partnerships (committees) assess the condition and set targets for improving the health of lakes. The GLWQA was last updated in 2012. In the 2012 Amendments, a number of issues were elevated and new challenges identified, including aquatic invasive species, groundwater, and climate change.

The GLWQA is implemented through the **Great Lakes Executive Committee**. The U.S. Environmental Protection Agency and Environment and Climate Change Canada Co-chair the committee, whose purpose is to coordinate and implement the programs and commitments in the agreement. The committee is comprised of representatives from federal agencies, state and provincial governments, tribal governments, First Nations, Metis, municipal governments, and other local public agencies. Non governmental organizations can attend meetings and obtain “observer” status.

## INTERNATIONAL JOINT COMMISSION

The **International Joint Commission (IJC)** was created by the **Boundary Waters Treaty (1909)** signed by Canada and the United States. The IJC’s purpose is to prevent and resolve disputes between the United States and Canada and act as “an independent and objective advisor to the two governments.” Its work is largely based in science and policy research—not enforcement activities. For the Great Lakes, the IJC has a science advisory role for both water quality and quantity issues, as well as Lake Superior and the St. Lawrence River water control (dams) management and authority. The IJC also provides the two countries progress reports and recommendations under the GLWQA.



## CANADA—ONTARIO AGREEMENT

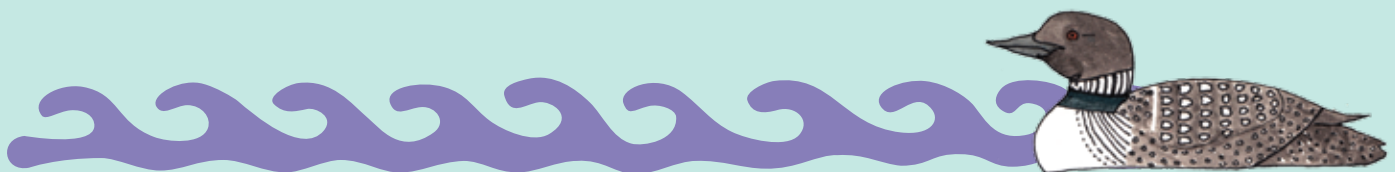
The **Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health** (often referred to as COA) outlines how Canada and Ontario “cooperate and coordinate their efforts to restore, protect and conserve the Great Lakes basin ecosystem. It is the means by which the federal partners of the Canadian Federal Great Lakes Program interact with the provincial ministries to help meet Canada's obligations under the Canada-US Great Lakes Water Quality Agreement.” COA is regularly updated - the most recent version was released in 2014.

## GREAT LAKES FISHERY COMMISSION

The **Great Lakes Fishery Commission (GLFC)**, established by the 1954 Convention on Great Lakes Fisheries and facilitates cross-border cooperation among the federal, state, provincial, and tribal management agencies with regulatory responsibilities of Great Lakes fisheries. Each fishery is managed on a lake-by-lake basis with agencies having jurisdiction over a particular lake involved in management of that lake. The GLFC coordinates the management of agencies but is not a regulatory body -- all agencies involved in fisheries management follow certain procedures under the GLFC. Authority over most of the major fisheries management decisions, including stocking and harvest, resides largely with the states, province, and tribes. The GLFC also implements a basin wide program to control the invasive sea lamprey -- a species that causes high mortality to the fishery.

## GREAT LAKES COMMISSION

In 1955 the Great Lakes states formed the **Great Lakes Commission** through a legal compact. The Great Lakes Commission promotes economic assets, use, and conservation of Great Lakes waters. The Canadian provinces of Ontario and Québec are “associate members.” Each jurisdiction is represented by of senior agency officials, legislators and/or appointees of the governor or premier. Although the Commission does not have any authority to make water management decisions on its own, it has an influential policy role in Great Lakes governance. It also implements state and federal projects to protect water quality and ecosystem health.





## THE GREAT LAKES COMPACT

In 2008, the **Great Lakes–St. Lawrence River Basin Water Resources Compact** (the Compact) was adopted by all eight Great Lakes states, approved by the U.S. Congress and signed by President Bush; making it both state and federal law. A companion agreement with the eight states and the provinces of Ontario and Quebec calls for increased coordination and water conservation measures. The Compact prohibits the diversion of Great Lakes water outside of the watershed, with three exceptions. Water that is bottled in containers 5.7 gallons or less is exempted from the Compact and permitted to leave the watershed. The other two exceptions apply to “straddling communities” that:

- a. are located partially in the Great Lakes watershed.
- b. are located within a county that is partially in the watershed.

A community that applies for one of these exceptions must demonstrate it has no other alternative water source. Diverted water can only be used “for public water supply purposes.” A process outlined in the Compact, which includes a technical review of the application, public and tribal consultation, Ontario and Quebec input, and a final review and decision by the Regional Body and Compact Council. Each Great Lakes state has a vote to approve or deny the application. Applications can also be approved with certain conditions set by the states. Only one vote of disapproval is needed to deny the application. In addition to the Compact largely banning diversions from Great Lakes waters, it also put in place a water use, conservation, and reporting system in each state.

## PUBLIC INVOLVEMENT OPPORTUNITIES

Great Lakes governance and decision making is complex. There are two federal governments, eight U.S. states, two provinces, dozens of tribes and First Nations, local governments, and about 40 million individuals, all spanning one watershed. Broad public participation and input is mandatory in almost every decision making process discussed in this primer (though, the degree to which governments use this input when making decisions is discretionary). The one exception to this is with tribal decisions governing their own citizens, where only tribal citizens have the opportunity to provide input. Most of the entities and initiatives discussed have specific sections on their websites dedicated to public opportunities to participate in the initiative or decisions being considered.

This work was carried out with the aid of a grant from the Commission for Environmental Cooperation.

The Park Foundation's support was also instrumental in bringing this resource to life.

We sincerely thank all who contributed to the development of the Charter Toolkit.

Creative Commons Attribution-NonCommercial-ShareAlike license 

Original artwork and design by [Lena Maude Wilson](#)

