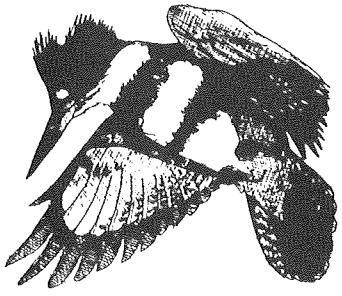
Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

8 York Street, 5th Floor South, Toronto, Ontario M5J 1R2, telephone (416) 366-9717

SUBMISSIONS
OF THE
CANADIAN ENVIRONMENTAL LAW ASSOCIATION
ON BEHALF OF THE
SECOND MARSH DEFENCE ASSOCIATION
TO THE
GREAT LAKES SEAWAY TASK FORCE

SEPTEMBER 1980



'Preserve Our Wetlands'

SECOND MARSH DEFENCE ASSOCIATION, INC.

P.O. Box 762, Oshawa, Ontario L1H 7M9

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I. INTRODUCTION: Canadian Environmental Law Association and the Second Marsh Defence Association; A Word About Who We Are

The Canadian Environmental Law Association (CELA) is a non-profit, non-government organization of lawyers, scientists and laypeople formed in 1970 to use existing laws to protect the environment and, where necessary, to advocate appropriate environmental law reforms. The Second Marsh Defence Association (SMDA) is also a non-profit organization, incorporated under provincial law whose objects include establishment of a sound planning process that will ensure the future integrity of Oshawa Second Marsh. Appendix I to this submission contains excerpts from a recent SMDA brochure which outline further information about the organization, the multi-faceted importance to society of wetlands generally and Oshawa Second Marsh in particular. An earlier summary review of our concerns was filed by SMDA at the July 31, 1980 sitting of the Great Lakes Seaway Task Force in Oshawa.

This submission will briefly deal with the importance of the Great Lakes Ecosystem, review selected existing and prospective institutional arrangements for environmental control, provide a mini-case study on the Oshawa Second Marsh and the Oshawa Harbour Commission as a basis for providing final conclusions and recommendations pursuant to the Seaway Task Force's terms of reference.

II. THE IMPORTANCE OF THE GREAT LAKES ECOSYSTEM

Investigations undertaken for the International Joint Commission (IJC) respecting the importance of the Great Lakes Ecosystem indicate that the Lakes contain approximately 20 per cent of the world's fresh surface water supply. Until recently, the Lakes have been regarded as a virtually inexhaustible supply of high quality water. However, increasing population, advancing technological innovation and intensification of water and land use in the Great Lakes Basin have resulted in a continuing degradation of the Lakes primarily from toxic substances and phosphorous.[1]

The principal focus of the Seaway Task Force relates to such matters as harbours, shipping and related marine transport economic concerns.[2] And

certainly, historically, the Lakes have been used as an important transportation corridor, providing access to the interior of North America. However, IJC investigations concluded that in any discussion of the Great Lakes, the goals and values perceived by the public for the Lakes must be considered in their entirety and that these concerns were found to include:

- a contaminant-free source of drinking water;
- water suitable for swimming and recreational boating;
- water that is visually appealing (i.e. no turbidity or aquatic weeds);
- a viable commercial and sport fishery;
- restoration of "clean water" fish species;
- preservation of wetlands and important farmlands;
- preservation of aquatic plant and animal communities and habitats;
- maintenance of shipping; and
- continued industrial use of water.[3]

Because of the importance of the Great Lakes to the 37 million residents of Canada and the United States who live in the Basin, both governments entered into Agreements in 1972 and 1978 to restore and enhance the water quality of the Great Lakes Basin Ecosystem.[4]

It is clear, therefore, that the Seaway Task Force must be fully cognizant of the multi-faceted importance of the Great Lakes, particularly with respect to water quality preservation, as it develops its final report and recommendations.

III. ENVIRONMENTAL CONCERNS FROM MARINE TRANSPORTATION ACTIVITIES IN THE GREAT LAKES

The 1978 Great Lakes Water Quality Agreement outlines several areas of environmental concern arising from marine transportation, or ancillary activities. These include: discharges of oil and hazardous polluting substances from ships[5] and onshore and offshore facilities;[6] discharges of garbage, sewage and waste water from ships;[7] and dredge and fill activities where nutrients and contaminants are released from dredged materials or wetlands

are threatened or destroyed by dredging or disposal activities.[8]

IV. EXISTING AND PROSPECTIVE INSTITUTIONAL CONTROL MECHANISMS FOR ENVIRONMENTAL PROTECTION[9]

Because an extensive review of regulatory law in all the areas outlined in Part III is beyond the scope of these submissions, this Part will emphasize selected aspects of environmental legislation and policy as they pertain to certain marine related shoreline landfilling (dredge and fill) activities.

A. Federal Legislation and Programs

Federal authority to regulate foreshore landfill and dredging operations is derived from British North America Act provisions respecting navigation and shipping, and the transference from provincial to federal control of public harbours, dredges and related matters at the time of confederation. In addition, federal responsibility for the protection of fisheries authorizes federal involvement in certain activities that affect fish and waters frequented by fish.

Generally, no permits or approvals are required under federal environmental legislation before dredge and fill activities take place. 1977 amendments to the Fisheries Act make it the best federal instrument for controlling water pollution from shoreline landfills and dredging. These amendments broaden the definition of fish habitat, and enable the Minister to require plans and specifications for existing and proposed activities and to reject a proposal or order that it be modified with the approval of Cabinet. A Ministerial order under the Fisheries Act would have to relate to the protection of fish or fish habitat not to water quality per se; though in practice there may well be few instances where this limitation would prevent the Act from being used to protect water quality.

The federal Environment Minister's capacity to require plans and specifications from the proponent of an activity is not, and is evidently not intended to be, used systematically as though it were a permit system. It is rarely invoked for projects in Ontario which are otherwise under federal jurisdict-

ion. Generally, the Act has been administered by the province and not the federal government, with the result being that the Act has fallen into virtual disuse in Ontario.

Thus control of environmental damage from such activities is not normally undertaken through federal environmental legislation such as the Fisheries Act. Where control has been attempted, it has usually been initiated through legislation that was enacted to facilitate such development projects or else through non-statutory in-house administrative procedures and guidelines.

The federal government has developed a non-statutory program known as the Environmental Assessment and Review Process (EARP). The EARP developed as part of a federal cabinet directive to control pollution from existing federal facilities and to prevent pollution from proposed federal works. It is intended to apply to projects that are initiated by federal departments and agencies, for which federal funds are to be made available, and where federal property or Crown lands will be used. Federal proprietary crown corporations (i.e. those in competition with private enterprise) and regulatory agencies (e.g. National Energy Board responsible for pipelines) are invited, though not required, to participate. However, no public hearings or environmental assessments have ever been used for dredge and fill projects in Ontario pursuant to the EARP process.

Under the Navigable Waters Protection Act, no dumping fill or excavation materials may be placed in navigable waters unless the work, the site and the plans have been approved by the Minister of Transport (MOT). Such activities that in the Minister's opinion do not substantially interfere with navigation, do not require this approval. This is also known as a fill permit exemption. The Minister may also issue an exemption with conditions. The purpose of this Act is protection of navigation, not water pollution control.

Harbour Commissions which have the authority to regulate and control the use and development of land and property within harbour limits for purposes related to navigation and shipping and related matters, may enact by-laws res-

pecting dump and fill activities that cause nuisances or damage or endanger property or persons. Environmental protection is not a purpose of Harbour Commission legislation per se.

Under the 1972 Canada-U.S. Agreement on Great Lakes Water Quality, dredging was also the subject of a special International Working Group review to identify current practices, programs and institutional mechanisms for its control. The Working Group's terms of reference required it to conduct its study and formulate its recommendations on the basis of the following principles: (1) dredging activities should be conducted in a manner that will minimize harmful environmental effects; (2) all reasonable and practicable measures shall be taken to ensure that dredging activities do not cause a degradation of water quality and bottom sediments; and (3) as soon as practicable, the disposal of polluted dredged spoil in open water should be carried out in a manner consistent with the achievement of the water quality objectives, and should be phased out.

The recommendations of the Working Group's 1975 report included that dredging projects be examined on a site-specific, case-by-case basis.

Under the 1978 Canada-U.S. Agreement on the Great Lakes, both parties agreed to develop measures to abate and control pollution from dredging activities, including development of criteria for identification of polluted sediments and disposal of polluted dredged material. In the interim, both parties agreed to conduct dredging operations in a manner that will minimize adverse effects on the environment. Under Annex 7 to the Agreement, the parties agreed to direct particular attention to the identification and preservation of significant wetland areas in the Great Lakes Basin Ecosystem which are threatened by dredging and disposal activities.

B. Ontario Legislation and Programs

No permits or approvals are required under the Environmental Protection Act if clean or inert fill is dumped. The EPA (Part V) has not generally been used to require permits or approvals where on-land disposal of contaminated dredged spoils is contemplated. Neither the EPA, nor any other special or

general Act explicitly covers control of dredging. The Environmental Assessment Act to date has not been used to require approvals of such activities either on a class or individual project basis.

Under the Public Lands Act, administered by the Ministry of Natural Resources (MNR), it is an offence to throw or deposit any material or substance upon public lands, whether or not covered with water or ice, without Ministerial consent.

Conservation Authorities are authorized by their enabling legislation to control through permits the placing or dumping of fill in a mapped floodplain or scheduled area attached to their regulations. Some Conservation Authorities along the Lakes undertake recreational landfilling projects themselves.

Municipal and regional governments may also include policies in their official plans for protecting water quality including marshes, swamps, bogs, water recharge/headwater areas and environmentally sensitive areas.

Generally, the applicability of all of the above mechanisms for controlling the adverse environmental effects of dredge and fill activities has been marginal.

C. Observations

The framework for control of dredge and fill pollution has weaknesses which call attention to the more general issue of (1) the effectiveness of non-statutory administrative arrangements and (2) constitutional limitations of provincial law. Where the validity of provincial jurisdiction is in doubt, then preventive federal environmental legislation may be necessary in conjunction with or as supplement to provincial laws. In the absence of such federal action, then provincial controls by themselves may be insufficient.

Federal statutes such as the Navigable Waters Protection Act are not pollution control statutes. In the case of the NWPA (whose sole purpose is navi-

gation) exemptions for NWPA permit requirements for the dumping of fill cannot be denied if the application has negative environmental implications, but would not infringe on navigation. According to an EPS/Canadian Wildlife Service report on wetland destruction, a standard form federal Ministry of Transport response to environmental agency requests to deny an NWPA application reads "cannot deny exemption on grounds of interference to navigation, we note your environmental concerns and suggest you invoke environmental regulations outside the Act". Ironically, environmental agencies frequently turn to the NWPA because there is not adequate preventive federal environmental legislation to invoke. It is submitted that an Act such as NWPA, which provides an opportunity to review projects and express concerns but which is not specifically related to pollution problems is not adequate for environmental protection.

Non-statutory programs established by Cabinet directive in Canada such as the Environmental Assessment and Review Process (meant to apply to federally owned, assisted or operated activities) may also be seriously handicapped in acting as substitutes for preventive regulatory controls:

(1) There are questions as to which federal bodies the process applies (e.g. harbour commissions appear unaffected by the process);

(2) EARP can be limited by conflicts with other cabinet directives (e.g. on harbour development);

(3) EARP can be limited by federal legislation that is silent on environmental matters;

(4) EARP has concentrated on large development proposals as opposed to the many smaller ones.

The cumulative effects of these limitations can serve to make EARP neither a comprehensive nor a preventive planning/pollution control strategy.

Recommendations arising from Fisheries and Environment Canada (EPS) reviews conducted under administrative arrangements may be incorporated into contracts between the Department of Public Works (DPW) and the dredging companies. However, limitations on staff and resources make it difficult for EPS to know if its recommendations are being followed, or, if they are being followed, whether they are producing the desired results. The result

is that frequently EPS cannot refine and improve upon its recommendations to DPW in future dredging proposals. Moreover, this difficulty may also result in the inability to enforce Fisheries Act pollution prohibitions, since insufficient on-site review may result in insufficient evidence to prosecute a case.

No permits or approvals are required under the EPA if clean or inert fill is dumped. Reactive control of clean fill dumping under the EPA has been constrained by judicial determinations that have strictly construed such options in relation to the use of private property. Maximum penalties for unauthorized filling under the Public Lands Act are nominal.

Generally no environmental permits for dredging have been required under provincial law. This would appear to be the case because of perceived or actual constitutional constraints. Without preventive environmental restrictions under federal law, provincial control may be less thorough or in doubt altogether where navigation or shipping matters (federal heads of power) may be affected. It is arguable under such circumstances whether the Ministry of Environment could use Part V of the EPA in a preventive manner (i.e. permit issuance) where on-land disposal of contaminated dredged spoils was contemplated.

The recently amended Fisheries Act while giving Fisheries and Environment Canada greater authority to protect fish frequented waters and fish habitat still suffers from serious preventive control flaws. These preventive control gaps and inadequacies are of concern especially where comprehensive provincial legislative authority may be in doubt because of constitutional and jurisdictional constraints. For example, the Act does not set up a permit system and DFE's use of the Act's other preventive control options is rare. It is not generally invoked in Ontario prior to fill activities associated with navigation, shipping or certain harbours (areas arguably under exclusive federal jurisdiction).

Conservation Authorities can control by permit the dumping of fill in a mapped floodplain or area scheduled under their regulations. However, constitutional constraints appear to limit the effectiveness of Authority regu-

lations. For example, Conservation Authority dump and fill regulations have been held by the courts to be inapplicable to the activities of an inter-provincial railway.

It is further regarded as doubtful whether Conservation Authorities could apply their regulation to federal land. Authorities have been unable to control the dump and fill activities of some harbour commissions within their harbour jurisdiction in the past.

Regional government official plan policies of protecting water quality and wetlands may conflict with federal ownership and plans for the commercial or industrial development of such lands. The result may be regional environmental policies not being realized. In one instance, representations by the Oshawa harbour commission to the Durham Regional government contributed to changing the intended designation of federal land from an environmentally sensitive category to an industrial use category.

Even when procedural requirements are being met it appears that within the same level of government there is a reluctance or inability to enforce provisions of established regulatory programs. For example, a 1975 Oshawa harbour commission dump and fill incident was the subject of questions in the House of Commons in May 1976, including one as to whether the federal Department of Environment intended to take action against the Ministry of Transport if any infractions of federal laws were indicated. In November, 1976, the response of the Federal Minister of Environment was that federal departments do not take legal action against one another.

V. A MINI-CASE STUDY: THE OSHAWA HARBOUR COMMISSION AND THE OSHAWA SECOND MARSH

Perhaps the best way to illustrate present day environmental problems associated with marine issues is to briefly review a specific situation. In this regard, we have chosen the Oshawa Second Marsh controversy because it may well exemplify the conflict generally found throughout the Great Lakes System respecting our dwindling marsh resources and transportation development pressures.

A. The Value of Wetlands

Generally, wetlands have long been regarded as being of prime importance for water quality and wildlife protection as well as flood control. They also have scientific educational and aesthetic value.[10] The International Joint Commission, in a recent report to the Canadian and U.S. governments on Great Lakes pollution,[11] concluded that there is a demonstrated need to protect wetland areas. It noted that:

> "Coastal wetlands, particularly at tributary mouths, tend to act as at least temporary traps for nutrients, sediments and chemicals. Their disruption by development or intensive use can reduce their effectiveness as sediment traps and as systems for redistributing nutrients. In addition, a new direct source of pollution would be caused by erosion siltation and pollutants emanating from the new land use, problems which would be intensified by their location on a flood plain."

The report also affirms the view that coastal area wetlands normally support very rich, productive and diverse biological communities "which should be preserved."

B. The Value of Oshawa Second Marsh

The Oshawa Second Marsh, located on Lake Ontario due east of the City of Oshawa and to the west of Darlington Provincial Park, has been described by the Ontario Ministry of Natural Resources as "the finest example of cattail marsh located on the north shore of Lake Ontario between Niagara and Presqu'ile."[12] Other aspects of this marsh's importance are highlighted in Appendix 1.

We would also note that various statements have been made from time to time by officials in the City of Oshawa to the effect that within a 25; 50; and 75 mile radius of Oshawa there are thousands, if not millions, of acres of wetlands available so "what's so special about this one?" We understand that similar statements have recently been made before your task force as well.

We would respond as follows. First, the comments are based on an unofficial report whose accuracy has often been disputed. Second, assuming for the moment that the report was correct, the comment still suggests a substantial ignorance of the fact that all wetlands are under development pressures. Moreover, all wetlands are not cattail marshes. Oshawa Second Marsh is a freshwater cattail marsh on Lake Ontario. Because of its size, location, vegetative composition and related matters, it is most definitely a rare and endangered habitat that deserves special recognition and preservation. The city's officials have ignored the fact that 75% of the cattail marshes on Lake front have been lost in the last 50 years. Using this yardstick, a much clearer understanding of Oshawa Second Marsh's significance is revealed because of the very small amount of this marsh type that is left.

C. The Oshawa Harbour Commission and the Marsh

The Marsh was deeded to Her Majesty the Queen in Right of Canada in 1970 by the City of Oshawa. It is administered by the Oshawa Harbour Commission (OHC) which reports to the federal Minister of Transport. According to the deed the marsh was to be developed within a reasonable time as a harbour, or the lands would revert to the City. It is our understanding that the OHC also owns most of the Gifford Farm which is to the west of the Marsh. To the east of the Marsh is the Beaton Farm, which is owned by a land developer. To the extreme east is the Darlington Provincial Park.

With the exception of Darlington Park, these lands have been either proposed (Marsh, Beaton Farm) or approved (Gifford Farm) as industrial lands under the Durham Regional and Oshawa Official Plans respectively. However, OMB hearings have been deferred on both the Marsh and the Beaton Farm for the time being.

CELA and SMDA have both long and short-term concerns respecting the Marsh, which include:

1) the long-term environmental impacts from harbour expansion; and

2) short-term environmental effects arising from piece-meal land and hydrologic disturbances.

1. OHC Harbour Expansion

Because the OHC has long sought to expand its harbour facilities, it has from the outset viewed the marsh as "useless" in and of itself. In a 1966 letter to the City of Oshawa the OHC outlined its desire to enlarge its harbour facilities and stated:

> "We have in mind the city land east of the harbour known as the Second Marsh. This land is we understand, useless at the present time due to its being a marsh and in places below water level at certain periods of the year."

Notwithstanding the OHC commitment to harbour expansion it has been reluctant to detail its proposals for the development of the Second Marsh as a harbour. Three alternatives that have been discussed at various times by the OHC respecting harbour development have included:

1) an extension of the present harbour into Lake Ontario;
2) dredging of the Oshawa Second Marsh for use as a harbour;
3) extension inland of the present harbour.

Yet it has never been made clear to us what program the OHC and the Ministry of the Transport intend to pursue. Economic and engineering feasibility studies respecting harbour expansion in the Oshawa area have been requested by the OHC and paid for by other federal departments including Ministry of Transport and the Department of Public Works (DPW).[13] Ironically, these studies have frequently shown that the need for a new harbour simply has not been demonstrated, notwithstanding the OHC's perhaps misplaced optimism. For example, the findings of the 1971 Oshawa Port Study indicated that present facilities were sufficient to handle the maximum foreseen expansion of traffic and therefore development of the harbour was not required for at least that decade. The 1972 DPW engineering study noted that economic justification of expanded port facilities had not yet been established.

The report outlined plans and costs for an outer harbour at the mouth of the existing one, with staged construction when the need arose. The development of a new harbour in Second Marsh was not ruled out but was not considered a preferred choice as the site did not lend itself to a multi-staged development program. It was also noted that construction of turning basins and berths would be extremely difficult. The 1978 CD Howe/Price Waterhouse studies were even more negative in their overall assessment of port expansion needs at Oshawa. Price Waterhouse advised that Seaway traffic was steadily declining and that many of the individual commodities studied for the Oshawa Port are declining; that if the Port is to grow at all, Oshawa must aggressively attract new industry in competition with other cities; and that Oshawa ranked lowest of five areas studied in its ability to attract new industry. The consultants also advised that economic pressures for consolidation of general cargo at the few Great Lakes Ports will increase and that this trend is not favourable to the Oshawa Harbour.

In short, while such studies have not generally found the idea of harbour expansion to possess much merit given the short and long-term transport economic options of western Lake Ontario, the OHC continues to cling to the idea and to spend substantial public monies in the process. Unfortunately, while there have been a surfeit of economic and engineering studies on harbour expansion, there has been no OHC environmental study work on the ecological significance of the Marsh. This can be especially problematic in anticipation of EARP hearings, for one would expect as a matter of common sense that the proponent of a particular activity would be able to demonstrate that his gain is not the wider community's loss. To date, the best the public has been able to obtain from Transport Canada officials is assurance that prior to making a decision on a major expansion of Oshawa Harbour, the EARP process will be implemented.[14] However, given other OHC development initiatives in the marsh area (described below), these assurances do not do a great deal to instill public confidence in government.

2. Landfill Proposal

Notwithstanding the above Transport Canada assurances respecting the undertaking of an environmental assessment and public hearings prior to any harbour expansion, other major and related activities currently being considered in the vicinity

of the Marsh appear to be exempt from this commitment.

Since the mid-1970's the OHC has been planning to develop the Gifford Farm (the land area immediately east of the harbour and west of the Marsh) for industrial purposes and has approached the federal government for assistance. The Department of Public Works in 1978 produced an "engineering concept" which includes the levelling of a hill on the Gifford Farm, and dumping at least 1,000,000 cubic metres of fill into Lake Ontario thereby creating approximately 60 acres of landfill. In conjunction with 80 additional acres on land, this 140 acre OHC industrial proposal was in 1979 estimated at approximately $10 million. Such activity could have significant adverse water quality, fish habitat, hydrologic and shore process impacts. In addition, it could signal the beginning of a series of incremental development steps leading to general deterioration in the Marsh area. As well it could eliminate certain harbour options (see the three listed above) at a future EARP hearing which might otherwise permit preservation of the Marsh. Notwithstanding all of this, the industrial landfill proposal is not regarded as a candidate for EARP by either Transport[15] or DPW[16]. The OHC has no intention of so entering the project into the EARP process because it argues that the landfill proposal and any future harbour expansion are unrelated.

This segmentation of OHC initiatives, which are clearly interdependent, makes a mockery out of government processes. The OHC argument that after a decade it still doesn't have a harbour proposal worthy of EARP, but it knows that the multi-million dollar Gifford Farm landfill proposal is not part of such a development scheme, is to put it charitably, boilerplate. This nickel and dime development approach to the general Marsh vicinity can have inevitable consequences for the Marsh's ultimate preservation or disposition.

What is perhaps most ironic, however, is that such a scheme may make little economic sense to the extent that Durham Region, let alone the City of Oshawa, would appear to have a glut of serviced and unserviced industrial land.

3. Illegal Dumping

Whether the OHC could be said to have a consistent record of disregard for environmental concerns is left for the Task Force to consider. However, other environmental agencies have had difficulties with the OHC in the past. In

July 1975 the Central Lake Ontario Conservation Authority sent a letter of violation to the OHC concerning landfill and creek diversion operations at the mouth of the Oshawa Creek (which flows directly into Oshawa Harbour). CLOCA requested a stop to further operations and the removal of illegally dumped fill or legal action under the Conservation Authorities Act would be necessitated. The OHC ignored the request and perhaps because of potential constitutional limitations on provincial law in relation to harbour commission (navigation and shipping) activities, the CLOCA did not pursue the matter. Nonetheless, environmental damage occurred.

4. Dyke Emplacement

Another concern relates to the erection of a dyke in the Marsh itself during 1974 by the OHC or DPW. We understand that the purpose of the dyke at the time of its construction was to permit the taking of soil tests. We are not aware of any environmental studies that were conducted by the OHC, DPW or any other federal entity respecting possible adverse environmental effects of this dyking prior to its construction. We understand that, although the OHC agreed to remove the dyke in February 1975, as of this writing the dyke is still in place and may be causing problems for the Marsh's natural processes.

The Ministry of Transport has, on many occasions, been asked to direct the OHC to remove the dyke and to restore the Marsh environment to its pre-dyke situation.[17] However, to date no such government action has been taken.

5. Restriction of Marsh Access

Because of the Marsh's ecological importance it is an area rich for scientific, educational and passive nature interpretation opportunities. While local naturalists once had such opportunities to study the Marsh, the OHC has increasingly restricted Marsh access, thereby depriving naturalists of these pursuits. While we understand that such restriction was never intended by the deed between the federal government and the City, a specific condition permitting access to the Marsh by naturalists and others for passive pursuits was omitted from the deed itself. As the OHC has never given legitimate reasons for depriving naturalists of access to the Marsh, and because of the benefits the public can gain from such passive pursuits, the Ministry of Transport has frequently been asked to direct the OHC to permit at least limited access for

naturalists and others engaged in passive, interpretive marsh study.[18] To date no such government action has been taken.

VI. CONCLUSIONS AND RECOMMENDATIONS

The Great Lakes Seaway Task Force's terms of reference require it to identify and respond to any environmental concerns relating to marine issues in the Great Lakes System. It is evident from even the brief review provided here that there is much room for improvement in the understanding and actions of marine transportation and related agencies with respect to environmental protection issues and in the observance of environmental laws.

While we are mindful of potential constitutional limitations of the provincial role in this area, we would recommend to the Task Force that:

- it should be federal and provincial policy and law to require that comprehensive socio-economic and environmental studies be undertaken before commitments are made to harbour expansion or creation and that public hearings be an integral part of the process;
- it should be federal and provincial policy and law to produce an overall plan for ports and seaway traffic that is consistent with preservation and maintenance of the Great Lakes Ecosystem pursuant to such international commitments as the Canada-U.S. Great Lakes Water Quality Agreement; and
- it shoud be federal and provincial policy to evaluate the need for existing harbours with a view towards consolidation as appropriate.

All of which is respectfully submitted.
September 1980.

J.F. Castrilli, Research Director
Canadian Environmental Law Association
on behalf of the
Second Marsh Defence Association.

NOTES

1. International Reference Group on Great Lakes Pollution from Land Use Activities. Environmental Management Strategy for the Great Lakes System. Final Report to the International Joint Commission. Windsor, Ontario. July 1978.

2. See, for example, Hon. James Snow, Ontario Minister of Transportation and Communication. Statement in the Legislature of Ontario respecting the Great Lakes Seaway Task Force March 25, 1980. See also Terms of Reference for the Task Force taken from its brochure, undated.

3. Supra note 1

4. 1972 and 1978 Canada-United States Great Lakes Water Quality Agreements.

5. Supra note 4, Annex 4 to the 1978 Agreement.

6. Supra note 4, Annex 8 to the 1978 Agreement.

7. Supra note 4, Annex 5 to the 1978 Agreement.

8. Supra note 4, Annex 7 to the 1978 Agreement.

9. See, generally, J.F. Castrilli, Control of Water Pollution from Land Use Activities in the Canadian Great Lakes Basin: An Evaluation of Legislative, Regulatory and Administrative Programs. Prepared for the International Joint Commission - Pollution from Land Use Activities Reference Group (IJC-PLUARG). Windsor, Ontario. 1977.

10. See, for example, Dr. Isabel Bayley. An Overview of the Value of Wetlands to Society. A paper prepared for an Ontario Ministry of Natural Resources Seminar. Toronto. March 1978. (Dr. Bayley is a biology professor at Carleton University, Ottawa). See also "Why Wetlands" a special issue of the Ontario Naturalists. Vol. 19. No. 2. Summer 1979.

11. International Joint Commission. Pollution in the Great Lakes Basin from Land Use Activities. An IJC report to the Governments of the United States and Canada. March 1980.

12. Ontario Ministry of Natural Resources. Division of Fish and Wildlife. Position Paper with respect to the Future of the Second Marsh at Oshawa. 1974.

13. Federally supported studies we are aware of include:

-Department of Public Works, Ontario Region, Engineering Study into Proposed Harbour Expansion Oshawa, Ontario. November 1972.

-Oshawa Harbour Commission. Oshawa Port Study. August 1971, Kates, Peat, Marwick and Co. (Supported financially by MOT).

-Oshawa Harbour Commission. Market Traffic and Capacity Study, Port of Oshawa 1978, C.D. Howe & price Waterhouse. (Supported financially by MOT).

-Department of Public Works. Future Port Requirements - Western Lake Ontario, 1969. Gibb, Albery, Pullerits and Dickson.

14. See, for example, letter from S. Cloutier, Deputy Minister of Transport, to Blair Seaborn, Deputy Minister of the Environment, June 11, 1976. See also letter from the Hon. Otto Lang, Minister of Transport, to the Hon. J.H. Faulkner, Secretary of State, August 11, 1976, Ottawa.

15. Letters from the Hon. Otto, Lang, Minister of Transport to CELA dated February 14 and March 15, 1979 respectively.

16. Letters from the Hon. Andre Ouellet, Minister of Public Works, to CELA dated December 21, 1978 and February 19, 1979 respectively.

17. See, for example, letter from CELA to the Hon. Don Mazankowski, Minister of Transport dated August 3, 1979.

18. See, for example, supra note 17.