

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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Report RL31714

Designating Lake Saint Clair a Great Lake: Legal Analysis

Stephen R. Vina, American Law Division

Updated January 27, 2003

Abstract. This report discusses the selected statutory programs that benefit the Great Lakes and how these programs would benefit Lake Saint Clair, if designated as a Great Lake.

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Designating Lake Saint Clair a “Great Lake”: Legal Analysis

January 27, 2003

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Designating Lake Saint Clair a “Great Lake”: Legal Analysis

Summary

The Great Lakes and their connecting waters form the largest fresh surface water system on Earth. The Great Lakes affect millions of people as well as aspects of the natural environment. Consequently, law makers have now become sensitive to the industrial and environmental needs of the Lakes. Several federal agencies play key roles in the management and protection of the Great Lakes by implementing programs for pollution control, conservation, navigation, and scientific research. Lake Saint Clair is located between Lakes Huron and Erie, and is the smallest lake in the Great Lakes system. Although not recognized as a traditional “Great Lake,” Lake Saint Clair is a vital resource to many of the region’s citizens, animals, and ecosystems.

This report focuses on the statutory language of the programs specifically authorized for the Great Lakes and discusses various national programs as applicable. In particular, this report discusses the statutory programs that benefit the “Great Lakes” and how these programs would benefit Lake Saint Clair, if designated as a “Great Lake.” This discussion, however, requires an initial consideration of the statutory language for each program to assess whether Lake Saint Clair is not already, either explicitly or implicitly, eligible to receive the benefits of a program.

A review of the programs discussed herein demonstrates that Lake Saint Clair is generally included in the statutory language for programs that benefit the “Great Lakes,” the “Great Lakes Basin,” or the “Great Lakes Region,” or for a “Great Lakes State.” In essence, Lake Saint Clair appears eligible for most of the programs and funding that are specifically designated for the traditional Great Lakes and may be eligible under others. Thus, a designation as a “Great Lake” would appear to have little or no legal significance for these purposes. This report will be updated as warranted.

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Designating Lake Saint Clair a “Great Lake”: Legal Analysis

Introduction

As the largest concentration of fresh water on Earth, the Great Lakes play a vital role in the daily lives of millions of people and the economies of two nations. Traditionally, the term “Great Lakes” has always included lakes: Huron, Ontario, Michigan, Erie, and Superior. Beyond these bodies of water, the broader Great Lakes system also includes all of the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes. As an entity, the Great Lakes system provides channels of transportation for hundreds of manufacturers, a billion dollar commercial and recreational fishing industry, and drinking water for the nearly 40 million U.S. and Canadian residents of the region.

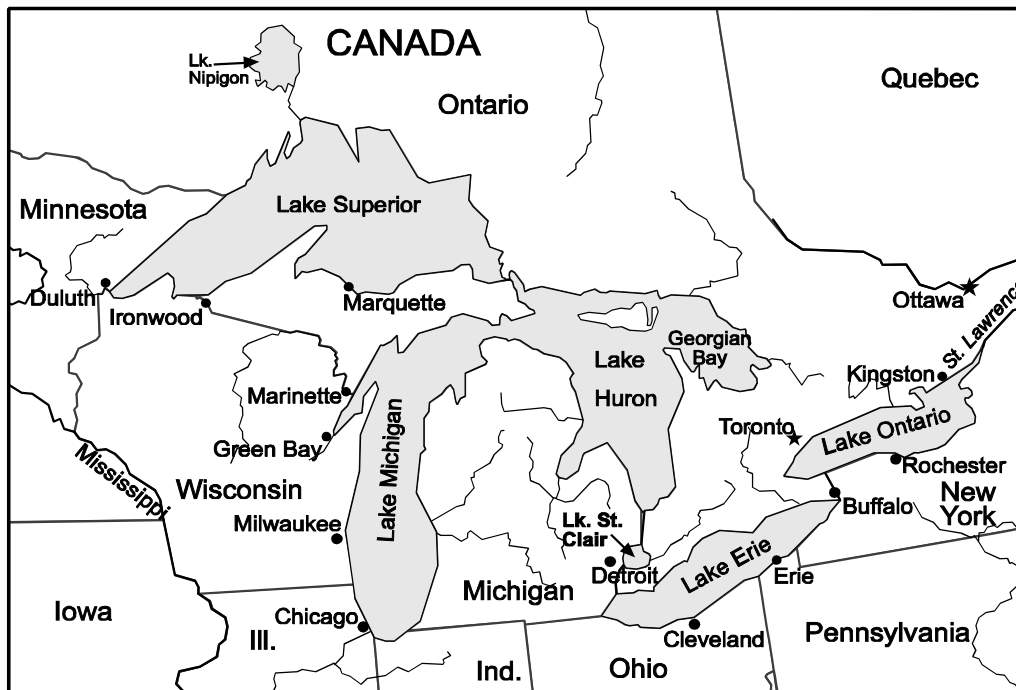
The channels that connect the Great Lakes play an important role in the system. Although not normally characterized as a “Great Lake,” Lake Saint Clair is located within the Great Lakes system (see Figure 1) and plays a vital role in the livelihood of many Americans and Canadians. Lake Saint Clair, located just northeast of Detroit, Michigan, is a 420 square mile body of water connecting Lake Erie and Lake Huron. Lake Saint Clair measures 26 miles long and 14 miles wide at its widest point and is 21 feet deep at its greatest natural depth. Heart shaped and shallow, Lake Saint Clair is home to an extensive delta and an Indian reservation and provides drinking water to nearly six million Americans and Canadians. Nevertheless, Lake Saint Clair is also plagued with a variety of ills from toxic contamination to reoccurring dredging needs.

Due to the multitude of interests that are affected by the Great Lakes, law makers have attempted to address this natural resource from a variety of environmental concerns. In general, Great Lakes programs funded by the federal government have concerned pollution, weed and flood control, the elimination of noxious marine life, wetland restoration, conservation, navigation, and scientific research. Several federal agencies play an important role in the management and protection of the Great Lakes, including the Departments of Agriculture, Commerce, State, Health and Human Services, the Interior, and Transportation, the Environmental Protection Agency, and the Army Corps of Engineers. These federal agencies oversee programs that are national in scope with the potential to affect the Great Lakes and programs that are designed solely to benefit the Great Lakes.

This report discusses the selected statutory programs that benefit the “Great Lakes” and how these programs would benefit Lake Saint Clair, if designated as a

“Great Lake.”¹ This discussion necessarily requires an initial consideration of the statutory language for each program to ensure that Lake Saint Clair is not already, either explicitly or implicitly, eligible to benefit under the program. Only if a program is strictly limited to the traditional five “Great Lakes” themselves, and does not also cover other components of the Great Lakes system, would formal designation of Lake Saint Clair as a “Great Lake” expand its current eligibility.

Figure 1. Great Lakes System



Source: Map Resources. Adapted by CRS. (M.Chin 01/03)

Department of Agriculture

Great Lakes Basin Program. One important program, the Great Lakes Basin Program, was initiated in 1988 to address the economic and environmental issues associated with soil erosion and sedimentation.² The several million tons of top soil that wash into the Great Lakes every year create hazardous conditions for bottom-dwelling wildlife and impede navigation. Through the collaborative efforts

¹ Though not completely exhaustive, CRS has attempted to be as inclusive as possible in this compilation and has relied heavily on the compilation and information contained in *The Great Lakes at the Millennium: Priorities for Fiscal 2001*, by Rochelle Sturtevant & Allegra Cangelosi (2000) available at: [<http://www.nemw.org/GLFY2001.pdf>].

² The predecessor of the Great Lakes Basin Program was authorized under the USDA’s Conservation Reserve Program in 1985. See Food Security Act of 1985, Pub. L. No. 99-198. The current Great Lakes Basin Program was added by Pub. L. No. 107-171 (current version at 16 U.S.C. §3839bb-3).

of the U.S. Department of Agriculture, the U.S. Environmental Protection Agency and the Great Lakes Commission, the Great Lakes Basin Program provides competitive grants and educational programs to the eight Great Lakes states³ and local jurisdictions.

Although no definition for the term “Great Lakes Basin” exists in the statute that enacted the program (16 U.S.C. § 3839bb-3), the term is defined in the Great Lakes Basin Compact,⁴ which was an earlier agreement between the Great Lakes states to cooperatively develop, use, and conserve the waters of the Great Lakes Basin. To manage the resources of the Great Lakes Basin, the Compact established the Great Lakes Commission, which is specifically referred to in 16 U.S.C. § 3839bb-3. According to Article III of the Great Lakes Basin Compact, the term “Basin” specifically includes Lake Saint Clair, as well as the five traditional Great Lakes. Consequently, if it is reasonable to give “Great Lakes Basin” the same meaning in the statute that it has in the compact, designating Lake Saint Clair a “Great Lake” would likely have no effect under this program since it appears to already be included within the statute. Furthermore, as a lake off the coast of Michigan, Lake Saint Clair would apparently receive the benefits associated with Michigan’s status as a “Great Lake State.”

Department of Commerce⁵

Marine Sanctuaries Program. Originally created under the Marine Protection, Research and Sanctuaries Act of 1972, the Marine Sanctuaries Program⁶ was established to identify, designate, and manage areas of marine environment with significant conservation, recreational, ecological, historical, scientific, educational, cultural or esthetic qualities. Once a “marine environment” has been designated a “marine sanctuary” by the Secretary, it will be managed as part of the National Marine Sanctuary System.⁷ Currently, twelve Marine Sanctuaries have been designated, including a program for Thunder Bay on Lake Huron. The statute defines “marine environment” as “those areas of coastal and ocean waters, the Great Lakes and their connecting waters”⁸ This definition appears to include Lake Saint Clair since it is part of the Great Lakes’ “connecting waters.” Accordingly, Lake

³ See *The Great Lakes at the Millennium: Priorities for Fiscal 2001*, by Rochelle Sturtevant & Allegra Cangelosi (2000) *available at*: [<http://www.nemw.org/GLFY2001.pdf>]. “Great Lakes State” means any of the following states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, or Wisconsin. See, e.g., 33 U.S.C. §1268(3)(G) and 16 U.S.C. §931(e) (listing “Great Lakes States”).

⁴ Pub. L. No. 90-419.

⁵ For information on the Department of Commerce’s Great Lakes Environmental Research Laboratory see *The Great Lakes at the Millennium: Priorities for Fiscal 2001*, by Rochelle Sturtevant & Allegra Cangelosi (2000) *available at*: [<http://www.nemw.org/GLFY2001.pdf>].

⁶ Pub. L. No. 92-532 (codified as amended at 16 U.S.C. §1431).

⁷ 16 U.S.C. §1431(b)(1).

⁸ *Id.* at §1432(3).

Saint Clair would likely be eligible for the benefits of this statutory program and a “Great Lake” designation would seem to have no significant legal impact.

Department of State

Great Lakes Fishery Commission. The Great Lakes Fishery Commission was first conceived by the United States and Canada at the Great Lakes Fisheries Convention in 1954 in order to restore Great Lakes fish populations devastated by sea lamprey predation. The Convention’s proceedings later helped develop the Great Lakes Fishery Act of 1956.⁹ Through the Fishery Commission, programs have been established to research and improve fisheries and to minimize sea lamprey populations throughout the Great Lakes. Under the Great Lakes Fishery Act of 1956, “Great Lakes” is defined to specifically include Lake Saint Clair.¹⁰ Thus, Lake Saint Clair is already eligible to receive program services from the Great Lakes Fishery Commission.

Department of the Interior

Great Lakes Fish and Wildlife Restoration. The United States Fish and Wildlife Service (FWS) provides a variety of services to the Great Lakes Basin.¹¹ Through the Great Lakes Fish and Wildlife Restoration Acts of 1990¹² and 1998, FWS has worked with other government and private entities to develop proposals for the implementation of fish and wildlife protections in the Great Lakes Basin and to encourage cooperative conservation, restoration, and management of fish and wildlife resources.¹³ Additionally, the Great Lakes Fish and Wildlife Restoration Act of 1998 reauthorized FWS’s Great Lakes Fishery Coordination Offices and Fishery Resources Offices.¹⁴ These offices serve as central locations for the coordination of all FWS activities in the Great Lakes Basin.

The Great Lakes Fish and Wildlife Restoration Act uses the term “Great Lakes Basin” to determine the locality for its programs. Under the Restoration Act, “Great Lakes Basin” is defined as “the air, land, water, and living organisms within the drainage basin of the Saint Lawrence River at or upstream from the point at which the river becomes the international boundary between Canada and the United

⁹ Pub. L. No. 84-558 (codified at 16 U.S.C. §§931-939).

¹⁰ 16 U.S.C. §931(e).

¹¹ For example, one national FWS program of great importance to the Great Lakes is the Aquatic Nuisance Species Program. Authorized by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, Pub. Law No. 101-646 (codified as amended at 16 U.S.C. §§4701-4751), this national program performs activities to prevent, manage, monitor and control aquatic invasive species. The Act specifically includes Lake Saint Clair within its definition of Great Lakes; therefore, Lake Saint Clair may receive the same benefits as the other specifically designated lakes under the Act. *See* 16 U.S.C. §4702(7).

¹² Pub. L. No. 101-537 (codified as amended at 16 U.S.C. §§941-941g).

¹³ 16 U.S.C. §941(a).

¹⁴ *Id.* at §941(e).

States.”¹⁵ This definition appears to include Lake Saint Clair since the waters from Lake Saint Clair drain into the basin of the Saint Lawrence River upstream from the point at which the river becomes the international boundary. Consequently, Lake Saint Clair appears to be included in the term “Great Lakes Basin” and currently is eligible for programs associated with the Great Lakes Fish and Wildlife Restoration Act.

United States Geological Survey.¹⁶ As a part of the United States Geological Survey, the Great Lakes Mapping Coalition (GLMC) provides maps for the safe navigation of commerce and provides basic data for engineering and scientific purposes of the shoreline areas associated with the Great Lakes.¹⁷ GLMC is authorized under the Great Lakes Shoreline Mapping Act of 1987, which specifically includes Lake Saint Clair under its definition of “Great Lakes.”¹⁸ As a result, GLMC is specifically authorized to map the shorelines of Lake Saint Clair, and a designation as a “Great Lake” would not entitle the lake to additional services from the Great Lakes Mapping Coalition.

Department of Transportation

United States Coast Guard.¹⁹ The United States Coast Guard performs a variety of functions that serve the Great Lakes region.²⁰ The Coast Guard has the authority to develop and operate icebreaking facilities “on, under, and over the high seas and waters subject to the jurisdiction of the United States.”²¹ In general, ice breaking functions are required to facilitate the movement of maritime commerce, to relieve ice jams that cause flooding, and to assist other agencies in the pursuit of maritime science. Because Lake Saint Clair is a body of water subject to the jurisdiction of the United States, it appears already to be eligible to receive the Coast Guard’s services.

¹⁵ *Id.* at §941(b)(7).

¹⁶ For information on USGS’s Great Lakes Science Center, see *The Great Lakes at the Millennium: Priorities for Fiscal 2001*, by Rochelle Sturtevant & Allegra Cangelosi (2000) *available at*: [<http://www.nemw.org/GLFY2001.pdf>].

¹⁷ Pub. L. No. 100-220 §§3201-3206 (codified as amended at 33 U.S.C. §883(a) note).

¹⁸ Pub. L. No. 100-220 §3205(2) (codified at 33 U.S.C. §883(a)).

¹⁹ The Coast Guard is scheduled to be transferred to the Department of Homeland Security on March 1, 2003. *See* Pub. L. No. 107-296 §§888(b), 1502; *see also* Department of Homeland Security Reorganization Plan, November 25, 2002, *available at*: [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf].

²⁰ For example, the Coast Guard, in conjunction with a variety of other Federal agencies, is involved in the ballast water prevention programs authorized by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and the National Invasive Species Act of 1996. The Acts specifically include Lake Saint Clair within their definitions of Great Lakes, thus entitling Lake Saint Clair to the same benefits as the other designated lakes under the Act.

²¹ 14 U.S.C. §2.

Saint Lawrence Seaway Development Corporation. The Saint Lawrence Seaway Development Corporation is a wholly owned government corporation within the U.S. Department of Transportation created by statute May 13, 1954,²² to construct, operate and maintain the portion of the St. Lawrence Seaway between the Port of Montreal and Lake Erie. The primary function of the seaway is to serve the U.S. intermodal and international transportation system by improving the operation and maintenance of a safe, reliable, efficient, and environmentally responsible deep-draft waterway, in cooperation with its Canadian counterpart. Since Lake Saint Clair is not a body of water between the Port of Montreal and Lake Erie, any rules and regulations promulgated for the Saint Lawrence Seaway Development Corporation would appear to have no application to Lake Saint Clair.

Environmental Protection Agency

Great Lakes National Program Office. The Great Lakes National Program Office (GLNPO) was established under section 118 of the Clean Water Act²³ to achieve the goals and fulfill the responsibilities of the United States embodied in the Great Lakes Water Quality Agreements (GLWQA) of 1978 and 1987 with Canada. GLNPO monitors and researches the Great Lakes for water quality with an emphasis on toxic pollutants.²⁴ “Great Lakes,” as defined by the Clean Water Act, specifically includes Lake Saint Clair.²⁵ Furthermore, the statute defines the “Great Lakes System” as “all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.”²⁶ Under the Clean Water Act, Lake Saint Clair is explicitly included within the term “Great Lakes” and impliedly included within the term “Great Lakes System.” Thus, designating Lake Saint Clair a “Great Lake” would not entitle it to additional resources since it is currently eligible to receive services from the GLNPO.

Great Waters Program. Authorized by the Clean Air Act Amendments of 1990,²⁷ the Great Waters Program²⁸ was created to assess the implications of airborne toxic pollutants in the Great Lakes. Specifically, the purpose of the Great Waters Program is to evaluate the atmospheric deposition of air pollutants in the Great Lakes, Lake Champlain, Chesapeake Bay, and coastal waters. The Clean Air Act does not specifically refer to Lake Saint Clair nor does it define the terms “Great Lakes” or “coastal waters.” Instead, the Clean Air Act makes specific references to other bodies of water, namely, Lake Champlain and Chesapeake Bay. Under canons of statutory construction, a “negative inference” may be drawn from the fact that the

²² Pub. L. No. 83-358 (codified at 33 U.S.C. §§981 *et. seq.*).

²³ In 1987, Congress formally recognized the Great Lakes as a valuable national resource in an amendment to the Federal Water Pollution Control Act, commonly known as the Clean Water Act. *See* Pub. L. No. 100-4 (codified as amended at 33 U.S.C. §1268).

²⁴ *See* 33 U.S.C. §1268(d).

²⁵ *Id.* at §1268(a)(3)(B).

²⁶ *Id.* at §1268(a)(3)(C).

²⁷ Pub. L. No. 101-549 §112(m) (codified as amended at 42 U.S.C. §§7401 *et. seq.*).

²⁸ 42 U.S.C. §7412(m).

statute omits Lake Saint Clair but lists other bodies of water.²⁹ A negative inference would suggest that Congress specifically intended to omit Lake Saint Clair when it included other specific bodies of water. Furthermore, the authorizing statute for the Great Waters Program makes specific reference to “five” Great Lakes.³⁰ This language would appear to suggest that Congress intended to maintain the generally accepted concept³¹ of the five Great Lakes and did not intend to include Lake Saint Clair within the meaning of “Great Lakes.”

However, to accept the proposition that there are only five Great Lakes may frustrate the purpose of the Clean Air Act, which has the broad purpose to enhance and protect the quality of the nation’s air supply.³² Furthermore, the term “Great Lakes” as cited in various other statutes referenced throughout this report has always included Lake Saint Clair; therefore, it may be reasonable to maintain a consistent interpretation of the term. Although “Great Lakes” is not defined under the regulations promulgated for the Clean Air Act, various other EPA regulations may support the inclusion of Lake Saint Clair within the term “Great Lakes.” For example, EPA regulations for the Clean Water Act specifically define “Great Lakes” to include Lake Saint Clair.³³ The broad purpose of the Clean Air Act may support an interpretation of the term “Great Lakes” that is consistent with other statutes and regulations that affect the Great Lakes region.

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry. The Agency for Toxic Substances and Disease Registry (ATSDR) performs a variety of tasks to prevent adverse human health effects caused from exposure to hazardous substances in the environment. To better serve these functions in the Great Lakes region, Congress authorized by an amendment to the Great Lakes Critical Programs Act of 1990, a research project to be conducted jointly by ATSDR, the Great Lakes Research Office and the Great Lakes states.³⁴ The program was named the Great Lakes Human Health Effects Research Program (Fish Consumption Study) and was designed to assesses the health effects of contaminated fish consumption on people in the Great Lakes states, and the health of fish, shell fish, and wildlife in the Great

²⁹ As a variation of “statutory silence” a negative inference is sometimes expressed in Latin as *expressio unius est exclusio alterius* (the inclusion of one is the exclusion of others). See CRS Report 97-589A, *Statutory Construction: General Principles and Recent Trends*, by George Costello (updated August 3, 2001).

³⁰ See 42 U.S.C. §7412(m)(2)(A).

³¹ *Glass v. Kemper Corp.*, 920 F. Supp. 928, 933 (N.D. Ill. 1996) (“When the terms of a statute are not specifically denied, the words must be given their ordinary and popularly understood meanings, but the words must also be construed with reference to the purposes and the objects of the statute.”) See also 2A Norman J. Singer, *Statutes and Statutory Construction*, §47.07 at 231 (6th ed. 2000).

³² See *Glass*, 920 F. Supp. at 933.

³³ See 40 C.F.R. §132.2; see also 40 C.F.R. §140.3 (allows the use of Coast Guard-certified marine sanitation devices on the Great Lakes and the inter-connected waterways).

³⁴ Pub. L. No. 101-596 (codified as amended at 33 U.S.C. §1268(e)(3)).

Lakes system. Under the statute, “Great Lakes Systems” is defined as “all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.”³⁵ This definition would appear to include Lake Saint Clair since it is a lake within the drainage basin of the Great Lakes. Additionally, with its shoreline off the coast of Michigan, Lake Saint Clair may receive the benefits associated with Michigan’s status as a “Great Lake State.”³⁶ As a result, designating Lake Saint Clair a “Great Lake” would not make it eligible for additional resources from ATSDR.

Army Corps of Engineers

The Army Corps of Engineers is authorized to conduct a variety of specific and national projects that affect the Great Lakes region. Through various statutes, the Corps of Engineers is authorized to conduct programs related to: navigation improvements and maintenance, environmental restoration, water level maintenance, flood management, sediment transport analysis, and shoreline erosion prevention. The Corps of Engineers conducts most of its programs through the authority granted by the various Water Resources Development Acts (WRDA), the Rivers and Harbors Act of 1958, and the National Invasive Species Act of 1996.³⁷

River and Harbors Act of 1958. Under the River and Harbors Act of 1958,³⁸ the Corps conducts research on aquatic plant control wherever they may be found including the Great Lakes region. Although there is no general definition of the term “Great Lakes” under the River and Harbors Act of 1958, the Act authorized a program designed to control and eradicate noxious aquatic plant growths in “navigable waters, tributary streams, connecting channels, and allied waters of the United States.”³⁹ This program would most likely include Lake Saint Clair because it is a body of navigable water and a connecting channel, and, therefore, a designation as a “Great Lake” would not make it eligible for additional services under the River and Harbors Act of 1958.

Water Resources Development Acts. A number of programs directly or potentially benefit the Great Lakes region through the Water Resources Development Acts.⁴⁰ WRDA programs for the Great Lakes have included strategic planning for

³⁵ 33 U.S.C. §1268(a)(3)(C).

³⁶ *Id.* at §1268(a)(3)(G).

³⁷ The National Invasive Species Act of 1996 amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, Pub. L. No. 101-646 (codified as amended at 16 U.S.C. §§4701-4751). This national program authorizes activities to prevent, manage, monitor and control aquatic invasive species. The 1990 Act specifically includes Lake Saint Clair within its definition of Great Lakes, thus entitling Lake Saint Clair to the same benefits as the other specifically designated lakes under the Act. *See* 16 U.S.C. §4702(7).

³⁸ Pub. L. No. 85-500, tit. I, §104 (codified as amended at 33 U.S.C. §610).

³⁹ 33 U.S.C. §610(a); *see also* 33 C.F.R. §273.13.

⁴⁰ WRDA of 1976, Pub. L. No. 94-587; WRDA of 1986, Pub. L. No. 99-662; WRDA of 1988, Pub. L. No. 100-676; WRDA of 1990, Pub. L. No. 101-640; WRDA 1992, Pub. L. No. 102-580; WRDA of 1996, Pub. L. No. 104-303; WRDA of 1999, Pub. L. No. 106-53;

(continued...)

water quantity, sediment transport, and contaminated sediments; environmental restoration; and navigation.⁴¹ Although several of the Development Acts have influenced the development of the Great Lakes, the WRDA of 1999⁴² significantly increased the Corps' responsibilities in the Great Lakes. Of particular importance to Lake Saint Clair was the authorization to develop a comprehensive management plan to identify sources of environmental degradation and contamination at Lake Saint Clair and the Saint Clair River.⁴³ The Corps was also authorized to study the feasibility of constructing a flood control project at the shores of Lake Saint Clair.⁴⁴ These programs would directly benefit Lake Saint Clair, and a designation as a "Great Lake" would not affect the Lake's eligibility for services under these programs.

Although the WRDA of 1999 does not have a specific provision defining the term "Great Lakes," several programs throughout the statute use similar terms. For example, a shoreline erosion program under the WRDA of 1999 defines "shore" to include the Great Lakes and the lakes, estuaries, and bays directly connected therewith.⁴⁵ This program apparently includes Lake Saint Clair since it is a body of water "connected" within the Great Lakes. Other programs, such as the John Glenn Great Lakes Basin Program⁴⁶ and a Great Lakes water diversion program,⁴⁷ use the terms "Great Lakes," "Great Lakes Basin," "Great Lakes Region" and "Great Lake States." As analyzed throughout this report, these terms have consistently included Lake Saint Clair; therefore, if it is reasonable to apply the same meaning for these

⁴⁰ (...continued)

WRDA of 2000, Pub. L. No. 106-541.

⁴¹ Specific Corps of Engineer programs for the Great Lakes include: the Great Lakes Strategic Plan, Western Lake Erie Basin Management, Great Lakes Biohydrological Information, Lake Ontario and St. Lawrence Water Levels Review, Chicago Diversion Accounting, Sediment Transport Models & Management Plans, Sediment Remediation Alternative Technology, Great Lakes Navigation Study, Improvement of the Soo Locks, Upper St. Mary's River Deepening, Great Lakes Recreational Boating, and Dispersal Barrier Demonstration. National programs that also benefit the Great Lakes include: Interagency and International Support, Planning Assistance to States, National Contaminated Sediments Task Force, Restoration of Environmental Quality, Aquatic Ecosystem Restoration, Environmental and Beneficial Dredging, and the Aquatic Nuisance Plant Control Research. *See* The Great Lakes at the Millennium: Priorities for Fiscal 2001, by Rochelle Sturtevant & Allegra Cangelosi (2000) *available at*: [<http://www.nemw.org/GLFY2001.pdf>].

⁴² 33 U.S.C. §2201 *et. seq.* But see WRDA of 1986, Pub. L. No. 99-662, tit. XI, §1132, (codified at 33 U.S.C. §2309) for the creation of the Great Lakes Commodities Board, which coordinates economic revitalization and environmental enhancement for the Great Lakes and their connecting channels and the Saint Lawrence Seaway. Lake Saint Clair is part of the "connecting channels" of the Great Lakes and would be included within the activities of the Great Lakes Commodities Board.

⁴³ Pub. L. No. 106-53 §426.

⁴⁴ *Id.* at §427.

⁴⁵ *See* 33 U.S.C. §426h-1.

⁴⁶ 42 U.S.C. §1962-21.

⁴⁷ *Id.* at §1962-20.

terms that has been used in the other statutes to the WRDA of 1999, designating Lake Saint Clair a “Great Lake” would probably have little effect on its eligibility for Corps programs.

Under the WRDA of 2000 many of the programs that benefit the Great Lakes do not define the term; however, there are two programs that specifically define “Great Lakes” to include Lake Saint Clair. The Great Lakes Fishery and Ecosystem Restoration Program⁴⁸ and the Great Lakes Dredging Levels Adjustment Program⁴⁹ both include Lake Saint Clair within the meaning of the term “Great Lake.” As a result, the services under these programs could legally be provided to Lake Saint Clair regardless of whether it is designated a “Great Lake.”

Conclusion

From the preceding discussion, it appears Lake Saint Clair is covered by the statutory programs discussed herein that are generally designated for the “Great Lakes,” the “Great Lakes Basin,” the “Great Lakes Region,” or for a “Great Lakes State.” Only the Clean Air Act makes ambiguous references to the Great Lakes that could potentially exclude Lake Saint Clair. Programs provided by the Army Corps of Engineers may also be problematic because the vast majority of WRDA programs do not contain a definition for “Great Lakes” or any of its related terms. However, the WRDA does include a few programs that either apply directly to Lake Saint Clair, or specifically define “Great Lakes” or use other applicable terms to include Lake Saint Clair. Consequently, there may be support for the inclusion of Lake Saint Clair in the various Corps programs, if it reasonable to conclude that the term “Great Lakes” when it is defined in the various statutes has always included Lake Saint Clair. In general, therefore, designating Lake Saint Clair a “Great Lake” would apparently have little or no legal effect on its eligibility for additional program benefits or sources of funding that are provided to the traditional five Great Lakes.

⁴⁸ Pub. L. No. 106-541 §506 (codified at 42 U.S.C. § 1962d-22). This program allows the Corps to plan, design, and construct projects to support the restoration of the ecosystem, fishery and beneficial uses of the Great Lakes.

⁴⁹ Pub. L. No. 106-541 §343 (codified at 42 U.S.C. §426o-1). This program authorizes the Corps to conduct dredging within the Great Lakes to ensure minimal operating depths.