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## Commemoration of the 100 Year Anniversary of the International Boundary Waters Treaty

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# COMMEMORATION OF THE 100 YEAR ANNIVERSARY OF THE INTERNATIONAL BOUNDARY WATERS TREATY

*Speaker – Rear Admiral Peter V. Neffenger*

## INTRODUCTION

*Daniel D. Ujcz*

MR. UJCZO: Case Western Reserve University School of Law and The University of Western Ontario Faculty of Law have a very privileged relationship with the United States Coast Guard. The Ninth District is located here in Cleveland, Ohio, right down the street.<sup>1</sup> The Ninth District manages all of the Great Lakes.<sup>2</sup> The United States Coast Guard refers legal issues to our law students each spring, and they get to utilize LexisNexis and Westlaw and conduct legal research on behalf of the United States Coast Guard Judge Advocate General.<sup>3</sup>

I was sitting not too long ago with a lawyer from the United States Customs and Border Protection Agency, and he said, “Case Western, you guys have that Coast Guard lab, don’t you? We have been funneling questions through the Coast Guard to you for a couple of years, and we are very fond of our relationship.”

It is tough to follow the sturgeon, I know, but there is perhaps no better advocate on behalf of the Canada-United States relationship than the United States Coast Guard. It is my high privilege and great pleasure to introduce to you Rear Admiral of the United States Coast Guard Ninth District, Peter Neffenger.

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<sup>1</sup> See generally United States Coast Guard, Ninth Coast Guard District Home Page, <http://www.uscg.mil/d9> (last visited Dec. 20, 2009).

<sup>2</sup> See *id.*

<sup>3</sup> See generally Case Western Reserve University, Institute for Global Security Law and Policy, <http://law.case.edu/centers/igslp/> (last visited Dec. 20, 2009) (stating the Law School continues to offer the Coast Guard Lab in the curriculum).

## SPEAKER

*Rear Admiral Peter V. Neffenger\**

MR. NEFFENGER: Well, it is tough to top *The Mysteries of the Great Lakes* and Dennis Kucinich. You know, I am going to worry about that fish for a long time, and I am not sure where to keep track of what happens to her.

It is a great honor to be here tonight to celebrate what is the centennial of the Boundary Waters Treaty<sup>4</sup> and the International Joint Commission<sup>5</sup> and to have the opportunity to recognize the importance of the treaty and the work of the Commission, especially regarding the Great Lakes. And as a native of the Great Lakes region, it makes me happy to be here to talk about taking care of the Great Lakes.

When Henry King asked me to make a few comments tonight, I said I would be happy to, but would have to check my schedule. He said he already had, and told me I was open. As you all know, he makes compelling arguments for saying yes when he calls. And since you all chose this over the Rock and Roll Hall of Fame Induction Ceremony, he apparently made the same compelling arguments to you. He informed me this was a wiser, better informed, and better choice overall, and I think he was absolutely right. And we are sorry he cannot be here with us tonight.

We are here to honor the Commission and some of its members, so my comments will be brief, but I would like to highlight a few of the reasons we owe our gratitude to the Commission. The Boundary Waters Treaty and the

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\* Rear Admiral Peter Neffenger is the operational commander of the Ninth Coast Guard District, which spans the five Great Lakes, Saint Lawrence Seaway and parts of the surrounding states, including 1,500 miles of international border. He leads over 6,900 Coast Guard active duty, reserve, civilian and auxiliary men and women serving at seventy-seven subordinate units and on the District staff. Rear Admiral Neffenger is a marine safety professional with a diverse career of operational and staff assignments, including five Marine Safety field assignments, Sector Commander/Captain of the Port, Los Angeles—Long Beach, Coast Guard Liaison Officer to the Territory of American Samoa, Coast Guard Fellow on the U.S. Senate Appropriations Committee, and most recently, as Chief of the Office of Budget and Programs at Coast Guard Headquarters. Rear Admiral Neffenger has earned three Master's degrees in: National Security and Strategic Studies from the Naval War College; Public Administration from Harvard University, Kennedy School of Government; and Business Management from Central Michigan University.

<sup>4</sup> See Treaty Relating to Boundary Waters Between the United States and Canada, U.S.-Can., Jan. 11, 1909, 36 Stat. 2448.

<sup>5</sup> See Boundary Waters Treaty, International Joint Commission Celebrates the Boundary Waters Treaty Centennial, <http://bwt.ijc.org/index.php?page=ijc-celebrates-centennial&hl=eng> (last visited Dec. 20, 2009).

International Joint Commission provide the principles and mechanisms to help resolve disputes and to prevent future ones, primarily those concerning water quantity and water quality along the boundary between Canada and the United States.<sup>6</sup> And, the Commission really works for all of us. The Boundary Waters Treaty requires the Commission give all interested parties a convenient opportunity to be heard on matters under consideration.<sup>7</sup> That is a quote from their charter.<sup>8</sup>

It is often difficult to ensure a respectable public forum on one side of the border let alone trans-boundary. So, this treaty and the commission are a model of effective cooperation in the history of United States-Canada relations; a model that has informed the work and partnerships of countless federal, state, and local agencies and private groups who often have competing interests in the shared boundary regions of our countries.<sup>9</sup> Indeed, without the pioneering history of the Commission and the example they have set, the work of the Coast Guard would be much more challenging. That applies whether we are clearing winter ice, placing navigational aids in channels, conducting rescues, ensuring safe and secure operation of ships transiting our waters, or responding to oil spills, which have surprisingly little respect for international boundaries.<sup>10</sup>

These are just a few of the missions we manage out of our office, often with the help of interns from Case Western Reserve School of Law.<sup>11</sup> Indeed, we manage a number of binational maritime agreements with Canada covering such things as search and rescue, cross-border law enforcement, aids to navigation, icebreaking and the like.<sup>12</sup> It is not at all unusual to see Canadian icebreakers in United States waters, United States icebreakers in Canadian waters, Canadian icebreakers with United States buoys on board and the reverse.<sup>13</sup> So it truly is seamless. You cannot think only of a border

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<sup>6</sup> See International Joint Commission, What is the Boundary Waters Treaty, <http://www.ijc.org/rel/agree/water.html#what> (last viewed Dec. 20, 2009).

<sup>7</sup> See Treaty Relating to Boundary Waters Between the United States and Canada, *supra* note 4.

<sup>8</sup> See INTERNATIONAL JOINT COMMISSION, RULES OF PROCEDURE OF THE INTERNATIONAL JOINT COMMISSION 7 (1912), available at [http://www.ijc.org/rel/agree/rules\\_e.htm](http://www.ijc.org/rel/agree/rules_e.htm).

<sup>9</sup> See generally International Joint Commission, Boards, [http://www.ijc.org/en/boards/boards\\_conseils.htm](http://www.ijc.org/en/boards/boards_conseils.htm) (last visited Dec. 20, 2009).

<sup>10</sup> See generally International Joint Commission, Activities, <http://www.ijc.org/en/activities/main Princ.htm> (last visited Dec. 20, 2009) (giving examples of joint initiatives by the International Joint Commission).

<sup>11</sup> See Case Western Reserve University, *supra* note 3.

<sup>12</sup> See generally United States Coast Guard, Missions, <http://www.uscg.mil/top/missions> (last visited Dec. 20, 2009).

<sup>13</sup> See CINDY BLAIR, UNITED STATES COAST GUARD, U.S., CANADA WORK TOGETHER TO MAKE THE GREAT LAKES MORE SECURE (2005), <http://www.uscgsanfrancisco.com/go/doc/443/92933/> (last visited Dec. 22, 2009).

up here, but rather a shared system of waters we jointly protect and manage. It would not be possible to do that without the example of the Commission and the kind of work the Commission has done over the past century.

The Great Lakes system is a binational treasure and resource we often take for granted. It is the largest collective body of surface fresh water in the world and critically important to the economic and environmental health of both Canada and the United States.<sup>14</sup> The Great Lakes provide drinking water, irrigate crops, serve as an international maritime highway, an essential part of North America's transportation infrastructure,<sup>15</sup> and they are a beautiful natural wonder. The Great Lakes are used by countless numbers of people for recreational boating and fishing, and sometimes even drifting on ice flows on western Lake Erie.<sup>16</sup>

The Great Lakes basin is among the most complex and sensitive of ecosystems in the world.<sup>17</sup> As early as 1918, shortly after the Commission's founding, the Commission released a report focused on Great Lakes pollution,<sup>18</sup> and it discussed, "measures and methods for remedying and preventing existing or future evils."<sup>19</sup> I have always liked the way people talked in the early 1900s of "evils." That is unambiguous language. This report considered the location, the extent, the sources of pollution, the localities in which pollution had a trans-boundary effect on health or property, and it looked at the effects of sewage discharges, sawmill and industrial wastes and pollution from vessels.<sup>20</sup> So it was a very forward-thinking and early look at what was soon to become a significant issue for the Great Lakes.

The report concluded, "[T]he entire stretch of boundary waters including Rainy River, Saint Mary's River, Saint Clair River, Detroit River, Niagara River, Saint Lawrence River from Lake Ontario to Cornwall and the Saint

<sup>14</sup> See International Joint Commission, *The Largest Fresh Water System on Earth: The Great Lakes-St. Lawrence River System*, [http://www.ijc.org/en/background/ijc\\_cmi\\_nature.htm#gls](http://www.ijc.org/en/background/ijc_cmi_nature.htm#gls) (last visited Dec. 20, 2009).

<sup>15</sup> See generally *id.*

<sup>16</sup> See Mike Robin, *More Than 125 Fishermen Pulled to Safety, but One Dies After Ice Breaks*, PLAIN DEALER, Feb. 7, 2009, available at [http://blog.cleveland.com/metro/2009/02/more\\_than\\_125\\_fishermen\\_pulled.html](http://blog.cleveland.com/metro/2009/02/more_than_125_fishermen_pulled.html).

<sup>17</sup> See generally Environmental Protection Agency, *Great Lakes Ecological Restoration and Protection*, <http://www.epa.gov/glnpo/ecopage/index.html> (last visited Dec. 20, 2009) (providing a series of links explaining the issues surrounding the complex Great Lakes ecosystem).

<sup>18</sup> See AARON T. WOLF AND JOSHUA T. NEWTON, *CASE STUDY OF TRANSBOUNDARY DISPUTE RESOLUTION: CANADA AND THE UNITED STATES OF AMERICA* 5 (2007), available at [http://www.transboundarywaters.orst.edu/research/case\\_studies/Documents/ijc.pdf](http://www.transboundarywaters.orst.edu/research/case_studies/Documents/ijc.pdf).

<sup>19</sup> See INTERNATIONAL JOINT COMMISSION, *FINAL REPORT OF THE INTERNATIONAL JOINT COMMISSION ON THE POLLUTION OF BOUNDARY WATERS* 8, (1918), available at [http://www.archive.org/stream/finalreportofint00interich/finalreportofint00interich\\_djvu.txt](http://www.archive.org/stream/finalreportofint00interich/finalreportofint00interich_djvu.txt).

<sup>20</sup> See *id.*

John River from Grand Falls to Edmonton, New Brunswick is polluted to an extent which renders the water in its unpurified state unfit for drinking purposes.<sup>21</sup> That is more unambiguous language. The report further concluded that pollution in certain parts of the boundary waters exists to an extent which causes substantial injury to health and property.<sup>22</sup> This was in 1918.<sup>23</sup> That early work ultimately led to an important, enduring, and an impressive promise to protect the Great Lakes: the Great Lakes Water Quality Agreement of 1972.<sup>24</sup> This agreement is a pledge by both countries to control pollution and clean up wastewaters being discharged into the lakes from industries and communities, and has served as a model for international management and protection of a shared natural resource.<sup>25</sup> Subsequent revisions to the agreement have expanded its scope and have resulted in a bi-national commitment to restore and maintain the chemical, physical, and biological integrity of the waters of the Great Lakes basin ecosystem.<sup>26</sup>

The Water Quality Agreement is a living document and one that continues to address new sources of pollution as well as the impact of climate change, urbanization, and aquatic invasive species, and it has done much to inform the way in which the U.S. Coast Guard works with our partners across the border. For example, we operate a joint ballast water inspection facility in Montreal with Transport Canada,<sup>27</sup> and together, we inspect every vessel coming into the seaway from overseas.<sup>28</sup> We test the ballast water for ocean salinity, indicating they have exchanged their ballast water with open ocean sea water to kill any fresh water organisms that may be present. If a vessel declares they do not have ballast, so-called 'No Ballast On Board.'<sup>29</sup> We ensure they have flushed their tanks with open ocean water to kill any freshwater organisms that may reside in the sediment of the tanks.<sup>30</sup>

We just recently released a Ballast Water Working Group report.<sup>31</sup> The Ballast Water Working Group is a joint United States-Canadian team which consists of Transport Canada, the United States Coast Guard, and the two

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<sup>21</sup> *Id.*

<sup>22</sup> *See id.*

<sup>23</sup> *See id.*

<sup>24</sup> *See* Great Lakes Water Quality Agreement, U.S.-Can., Apr. 15, 1972, 23 U.S.T. 301.

<sup>25</sup> *See generally id.*

<sup>26</sup> *See id.*

<sup>27</sup> *See* EUGENE H. BUCK, BALLAST WATER MANAGEMENT TO COMBAT INVASIVE SPECIES, CONGRESSIONAL RESEARCH SERVICE (Mar. 10, 2005), available at <http://ncseonline.org/nle/crsreports/05Mar/RL32344.pdf>.

<sup>28</sup> *See id.*

<sup>29</sup> *See id.*

<sup>30</sup> *See id.*

<sup>31</sup> *See* BALLAST WATER WORKING GROUP, 2008 SUMMARY OF GREAT LAKES SEAWAY BALLAST WATER WORKING GROUP (2009), available at <http://www.piersystem.com/posted/443/Document.261306.pdf>.

seaway corporations<sup>32</sup> which outlines this regime for ensuring there is no unmanaged ballast water entering the Great Lakes system from overseas.<sup>33</sup> That is a huge accomplishment. So for the past three years, at least, we can be assured the best practice available to date is being used to keep any new invasive species from being discharged into the lakes via ballast water.<sup>34</sup>

I would like to close by offering a few statistics to back up my claims regarding the importance of the region and underlining what I believe is the real significance of the Commission's work. Nearly thirty-six percent of the United States' and Canada's combined population lives in the Great Lakes region.<sup>35</sup> That region forms the second largest economic unit on the planet, second only to the United States economy as a whole.<sup>36</sup> The United States and Canada are the world's largest trading partners,<sup>37</sup> and the Great Lakes region accounts for some sixty-two percent of that trade.<sup>38</sup> The region also accounts for some fifty-five percent of North America's manufacturing and sales industries<sup>39</sup> and about half of all of North American retail sales.<sup>40</sup>

Ten of Canada's twenty largest ports are part of the Great Lakes Saint Lawrence Seaway system.<sup>41</sup> Those ports handle about forty percent of Canada's annual maritime trade<sup>42</sup> and some fifty percent of the trade volume with the United States.<sup>43</sup> United States domestic marine trade between ports in the system accounts for ten percent of all United States waterborne domestic

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<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See generally Great-Lakes.net, People in the Great Lakes Region, <http://www.great-lakes.net/envt/flora-fauna/people.html#overview> (last visited Jan. 2, 2010).

<sup>36</sup> See JOHN AUSTIN, ELAINE DEZENSKI, AND BRITANY AFFOLTER-CAINE, THE VITAL CONNECTION: RECLAIMING GREAT LAKES ECONOMIC LEADERSHIP IN THE BI-NATIONAL US-CANADIAN REGION (2008), available at [http://www.brookings.edu/~media/Files/rc/reports/2008/0324\\_greatlakes\\_canada\\_austin/greatlakes\\_canada.pdf](http://www.brookings.edu/~media/Files/rc/reports/2008/0324_greatlakes_canada_austin/greatlakes_canada.pdf).

<sup>37</sup> See IAN F. FERGUSON, UNITED STATES-CANADA TRADE AND ECONOMIC RELATIONSHIP: PROSPECTS AND CHALLENGES, CONGRESSIONAL RESEARCH SERVICE (May, 2009), available at <http://www.au.af.mil/au/awc/awcgate/crs/r133087.pdf>.

<sup>38</sup> See Presentation of John Austin, *Challenges and Opportunities Facing Michigan's Economy* (Feb. 2009), available at <http://www.closup.umich.edu/events/seminars/misc/mi-econ-09/Austin.ppt>.

<sup>39</sup> See Peter J. Sousounis and George M. Albercook, *Historical Overview and Current Situation*, in PREPARING FOR A CHANGING CLIMATE – THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE 17 (Peter J. Sousounis and Jeanne M. Bisanz eds. 2000), available at <http://www.gcric.org/NationalAssessment/greatlakes/greatlakes.pdf>

<sup>40</sup> See generally *id.* at 13-17.

<sup>41</sup> See generally Natural Resources Canada, Marine Transportation Infrastructure, [http://atlas.nrcan.gc.ca/site/english/maps/economic/transportation/marine\\_infra/1](http://atlas.nrcan.gc.ca/site/english/maps/economic/transportation/marine_infra/1) (last visited Dec. 20, 2009) (describing Canada's largest ports).

<sup>42</sup> See Ontario-Quebec Continental Gateway, A Secure, Sustainable and Competitive Gateway, <http://www.continentalgateway.ca/backgrounder.html> (last visited Dec. 20, 2009).

<sup>43</sup> See *id.*

trade.<sup>44</sup> That is fairly significant when you consider the fact that includes the western rivers system in the United States as well as all the coastal ports of the United States.

Finally, the commercial traffic through this system generates over four billion dollars in personal income on both sides of the border,<sup>45</sup> over three billion dollars of revenue,<sup>46</sup> and a whole lot of federal, state, and local taxes to support the various things we expect from our governments.<sup>47</sup> So the region is much more than just a collection of ports, locks, lakes, rivers, and cities. It is a collective treasure to be used wisely and preserved for the future. I think we owe our thanks to the International Joint Commission for helping us to meet this challenge.

I thank you for allowing me the opportunity to publicly recognize their important work. It has been my privilege to share this stage and to follow a great movie with a tribute to the Commission who have helped to ensure the protection of these Great Lakes. Thank you very much. I look forward to the awards ceremony.

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<sup>44</sup> See generally Richard D. Stewart, Great Lakes Marine Transportation System, [http://wupcenter.mtu.edu/education/great\\_lakes\\_maritime/lessons/Grt-Lks-Maritime\\_Transportation\\_System\\_Report\\_Stewart.pdf](http://wupcenter.mtu.edu/education/great_lakes_maritime/lessons/Grt-Lks-Maritime_Transportation_System_Report_Stewart.pdf) (last visited Dec. 20, 2009) (discussing the trade values within the Great Lakes-Saint Lawrence water system).

<sup>45</sup> See generally JOHN GLENN GREAT LAKES BASIN PROGRAM, GREAT LAKES RECREATIONAL BOATING ECONOMIC BENEFITS STUDY, GREAT LAKES COMMISSION, available at [www.glc.org/dredging/scoop/documents/recboating6-28-05.ppt](http://www.glc.org/dredging/scoop/documents/recboating6-28-05.ppt).

<sup>46</sup> See REGIONAL PAPER: GREAT LAKES, US NATIONAL ASSESSMENT OF THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE, EDUCATIONAL RESOURCES, available at <http://www.usgcrp.gov/usgcrp/nacc/education/greatlakes/greatlakes-edu-3.htm>.

<sup>47</sup> See, e.g., TED McDERMOTT, GREAT LAKES BOATING STUDY, May 19, 2009, available at <http://features.greatlakesboating.com/2009/05/great-lakes-boating-study.html>.

