



Water Quality Bills in the Remainder of the 111th Congress

Claudia Copeland

Specialist in Resources and Environmental Policy

December 3, 2010

Congressional Research Service

7-5700

www.crs.gov

R41517

Summary

The Senate and House could consider a number of water quality bills some time during the remaining days of the 111th Congress. Recent press reports have indicated that legislators, especially in the Senate, are seeking to gather support for several bills, possibly packaged with others dealing with public lands and wildlife protection. This report describes 10 water quality bills pending in the Senate that could be candidates for consideration during the lame duck session of the 111th Congress.

All of the water quality issues discussed below have been highlighted in recent press reports for inclusion in a package. All but one would amend the Clean Water Act (CWA), and all were approved by the Senate Environment and Public Works Committee in recent weeks. Similar House bills have been introduced for all but one of the Senate measures discussed in this report, and the House has passed two of them. With the exception of a bill on Chesapeake Bay, the individual bills are not likely to be considered controversial. Most of the individual bills would either reauthorize existing CWA provisions that address water quality concerns in specified geographic areas, or would establish similar provisions for other regions or watersheds. These water quality issues and related 111th Congress bills are:

- Estuaries under the CWA's National Estuary Program (H.R. 4715),
- Chesapeake Bay (S. 1816),
- Columbia River Basin (S. 3550),
- Great Lakes (S. 3073 and S. 933),
- Gulf of Mexico (S. 1311),
- Lake Tahoe (S. 2724),
- Long Island Sound (S. 3119),
- Puget Sound (S. 2739), and
- San Francisco Bay (S. 3539).

The descriptions in this report are based on bills as reported by the Senate Environment and Public Works Committee, although if any of the bills were to receive further consideration, provisions could differ from the reported version or amendments offered. Further, if the Senate or House were to consider a group of water quality bills, the package might include more or fewer than those discussed here. Also, whether sufficient time remains for necessary action by both the Senate and House is highly uncertain.

Contents

Background	1
The Legislation	2
1. National Estuary Program	2
2. Chesapeake Bay	3
3. Columbia River Basin	4
4. Great Lakes	4
5. Gulf of Mexico.....	5
6. Lake Tahoe.....	6
7. Long Island Sound	6
8. Puget Sound.....	7
9. San Francisco Bay.....	7

Contacts

Author Contact Information	7
----------------------------------	---

The Senate and House could consider a number of water quality bills some time during the remaining days of the 111th Congress. As of this writing, whether legislative action will occur, and if so, what bills might be considered, are unknown and will depend on numerous factors. Also, whether sufficient time remains for necessary action by both the Senate and House is highly uncertain. But recent press reports have indicated that legislators, especially in the Senate, are seeking to gather support for several bills, possibly packaged with others dealing with public lands and wildlife protection.¹

This report describes 10 water quality bills pending in the Senate that could be considered during the lame duck session of the 111th Congress, either individually or as a group. All of the issues discussed below have been highlighted in recent press reports for inclusion in a package. All but one of the bills would amend the Clean Water Act (CWA, 33 U.S.C. 1251 et seq.), and all were approved by the Senate Environment and Public Works Committee in recent weeks. Similar House bills have been introduced for all but one of the Senate measures discussed in this report, and the House has passed two of them. With the exception of legislation that focuses on Chesapeake Bay (S. 1816, discussed below), the individual bills are not likely to be considered controversial. Most of the other individual bills would either reauthorize existing CWA provisions that address water quality concerns in specified geographic areas, or they would establish similar provisions for other regions or watersheds.

The descriptions in this report are based on bills as reported by the Senate Environment and Public Works Committee, although if any of the bills were to receive further consideration, provisions could differ from the reported version or amendments offered. Further, if the Senate or House were to consider a group of water quality bills, the package might include more or fewer bills, or might reflect a different approach that is currently undefined.

Background

The CWA is the principal federal law that deals with polluting activity in the nation's surface streams, lakes, estuaries, and coastal waters. Enacted basically in its current form in 1972 (P.L. 92-500), the law established broad water quality restoration objectives for the nation's waters. The objectives were accompanied by statutory goals to eliminate the discharge of pollutants into navigable waters of the United States by 1985 and to attain, wherever possible, waters deemed "fishable and swimmable" by 1983. Programs at the federal level are administered by the U.S. Environmental Protection Agency (EPA); state and local governments have major day-to-day responsibilities to implement CWA programs through standard-setting, permitting, and enforcement. Considerable progress towards the goals of the act has been made, but long-standing problems persist and new problems have emerged.² The last major amendments to the law were the Water Quality Act of 1987 (P.L. 100-4), the most comprehensive amendments since 1972. Since the 1987 amendments, congressional committees have conducted oversight on the law, and Congress has enacted bills addressing a number of regional water quality concerns.³

¹ Paul Quinlan, "Colleagues enlist Reid's help with last-ditch push for massive water, lands, wildlife package," *Environment and Energy Daily*, December 1, 2010, <http://www.eenews.net/EEDaily/print/2010/12/01/1>.

² For further background, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*, by Claudia Copeland.

³ For information, see CRS Report R40098, *Water Quality Issues in the 111th Congress: Oversight and Implementation*, by Claudia Copeland.

The Legislation

The 111th Congress bills that could receive attention during the lame duck session address issues for these geographic-specific areas:

- Estuaries under the CWA's National Estuary Program,
- Chesapeake Bay,
- Columbia River Basin,
- Great Lakes,
- Gulf of Mexico,
- Lake Tahoe,
- Long Island Sound,
- Puget Sound, and
- San Francisco Bay.

1. National Estuary Program

Estuaries are areas where rivers meet the sea and where fresh and salt water mix. They are critical to the health of coastal environments. They serve as important habitat for fish and wildlife, provide wetland plants and soils that trap pollutants and temper storm surges, and provide tangible, direct economic benefits to regions and the nation. Many, however, are threatened or degraded by overuse of resources and human development. In response to concerns about conditions of the nation's coastal estuaries, the 1987 CWA amendments established the National Estuary Program (NEP) in Section 320 of the act. The NEP is a program to promote comprehensive planning efforts to protect nationally significant estuaries that are threatened by pollution, development, and overuse. Once approved by EPA, local stakeholders can receive financial and technical assistance to develop and implement a comprehensive conservation management plan that addresses factors that contribute to the estuary's degradation. To date, EPA has approved 28 estuaries for participation in the program. Since 1987, Congress has amended Section 320 to reauthorize funding and in several cases to identify estuaries to be given priority consideration under the program.

Current authorization of Section 320 appropriations expired at the end of FY2010. In April 2010, the House passed H.R. 4715, the Clean Estuaries Act, to reauthorize assistance through FY2016 and to increase the authorization from \$35 million annually to \$50 million annually to encourage EPA to expand the number of estuaries included in the program. Further, H.R. 4715 would add several requirements in the development of comprehensive management plans, such as addressing the impacts of climate change, and would require periodic update of the plan and evaluation and approval by EPA. Under the House-passed bill, if the EPA review were to find the plan deficient, EPA could reduce grant funding until the plan was revised.

The Senate Environment and Public Works Committee approved an amended version of H.R. 4715 in June. As reported, the bill would increase authorization of appropriations to \$75 million per year and would require updates and evaluations every five years, rather than every four years as in the House-passed version.

2. Chesapeake Bay

The bill with the greatest potential for controversy is S. 1816, the Chesapeake Clean Water and Ecosystem Restoration Act of 2009. It would revise CWA Section 117, which addresses restoration of Chesapeake Bay's water quality. Because of this stand-alone CWA provision, Chesapeake Bay is not included in the NEP.

Despite several decades' of activity by governments, the private sector, and the general public, efforts to improve and protect the Chesapeake Bay watershed have been insufficient to meet restoration goals. Although some specific indicators of bay health have improved slightly or remained steady (such as blue crabs and underwater bay grasses), others remain at low levels of improvement, especially water quality. Overall, the bay and its tributaries remain in poor health, with polluted water, reduced populations of fish and shellfish, and degraded habitat and resources.⁴

In May 2009, President Obama issued Executive Order 13508 that declared the bay a "national treasure" and charged the federal government with assuming a strong leadership role in restoring the bay. The executive order established a Federal Leadership Committee for the Chesapeake Bay to develop and implement a new strategy for protecting and restoring the Chesapeake Basin that would build on and accelerate existing programs like those under CWA Section 117.

A central feature of the overall strategy is EPA's pledge to establish a Total Maximum Daily Load (TMDL) for Chesapeake Bay. Section 303 of the CWA requires states to identify waters that are impaired by pollution, even after application of pollution controls. For those waters, states must establish a TMDL to ensure that water quality standards can be attained. A TMDL is essentially a pollution budget, or a quantitative estimate of what it takes to achieve standards, setting the maximum amount of pollution that a water body can receive without violating standards. If a state fails to do this, EPA is required to make its own TMDL determination for the state. Throughout the United States—including the Chesapeake Bay watershed—more than 20,000 waterways are known to be violating applicable water quality standards, and thus requiring development of a TMDL. Lawsuits have been brought to pressure EPA and states to develop TMDLs; under a consent decree in one such lawsuit, EPA must establish a Chesapeake Bay TMDL by no later than May 1, 2011, with a goal of beginning implementation of the TMDL by 2025. The Chesapeake Bay TMDL will be the geographically largest single TMDL developed to date. It will address all segments of the bay and its tidal tributaries that are impaired from discharges of nitrogen, phosphorus, and sediment, and the TMDL will allocate needed reductions of these pollutants to all jurisdictions in the 64,000-square-mile watershed. Detailed plans identifying specific reductions will be developed by the bay states in Watershed Implementation Plans.

Environmental activists are pleased that the federal government is now asserting a leadership role to restore the bay and are supporting legislation that would codify procedural requirements and deadlines for the bay TMDL and authorize grants and other assistance for implementing required measures. S. 1816 proposes to do so. As reported, the bill generally seeks to codify 2025 as a deadline for implementing restoration actions throughout the Chesapeake Basin and would make explicit backup authority for EPA to develop measures to restore the watershed, if states fail to do so. The legislation would authorize significant financial resources, totaling \$2.26 billion over five

⁴ For information, see Chesapeake Bay Program, "Bay Barometer, 2009," http://www.chesapeakebay.net/content/publications/cbp_50513.pdf.

years, to assist in implementing programs, projects, and measures for restoration of the Chesapeake Basin watershed. The legislation is controversial—as are EPA's TMDL plans and the overall federal bay restoration strategy—and a number of groups such as agriculture and developers are concerned about the likely mandatory nature of many of EPA's and states' upcoming actions that will occur with or without the authorization of appropriations in the pending legislation.⁵

The Senate Environment and Public Works Committee approved S. 1816 on June 30. In the House, companion legislation has been introduced (H.R. 3852), as have several other bills concerned with Chesapeake Bay issues (H.R. 3265, H.R. 5509, and H.R. 6382). None of these bills has been reported by a House committee.

3. Columbia River Basin

The lower Columbia River estuary is one of 28 estuaries included in the National Estuary Program. S. 3550, the Columbia River Basin Restoration Act of 2010, would add a new section to the CWA to establish a restoration program for the whole of the Columbia River Basin in the Pacific Northwest (the lower, middle, and upper portions, including the Snake, Clark Fork, and Pend Oreille Rivers and tributaries) and direct EPA to provide federal leadership and coordination. A particular focus of restoration efforts would be reducing toxic contamination throughout the Basin. The legislation includes a provision, unrelated to CWA Section 320, directing the President to preserve and protect the transboundary Flathead River watershed that spans the United States and Canada, including participation in cross-border collaborations. S. 3550 would authorize grants to carry out plans or projects under the legislation, authorizing appropriations of \$33 million annually from FY2012 through FY2017. Under the legislation, the federal share of project costs shall not exceed 75%.

The Senate Environment and Public Works Committee approved S. 3550 on June 30; a written report has not been filed. There has been no action in the House on similar legislation (H.R. 4652, which does not include a provision on the Flathead River watershed).

4. Great Lakes

The ecosystem of the Great Lakes, the largest system of surface freshwater in the world, faces threats from multiple stressors, including aquatic invasive species, pollution of the open waters and coastal areas of the lakes, habitat degradation, and sediments that are contaminated with mercury and other pollutants. Efforts by governments, private interests, and the public in both the United States and Canada to address these challenges have been underway for several decades. The 1987 CWA amendments established Section 118 of the CWA and put in place measures to achieve water quality improvement goals embodied in agreements between the United States and Canada. Congress has amended this provision several times since then, adding new authorities and requirements in order to strengthen Great Lakes restoration actions. In particular, in 2002 Congress passed the Great Lakes Legacy Act (P.L. 107-303), which amended CWA Section 118 to authorize funds for projects to remediate toxic, contaminated sediments throughout the lakes.

⁵ “Farm Lobby Urges Senate Not to Take Up Bay Cleanup Bill in Lame-Duck Session,” *Daily Environment Report*, no. 218 (November 15, 2010), pp. A-11.

In 2004 President Bush issued Executive Order 13340 that created the Great Lakes Interagency Task Force of federal agencies to coordinate restoration of the lakes. In separate action, a Regional Collaboration of state and local governments, the public, and the private sector subsequently released a strategy and implementation framework for restoration. In the FY2010 budget proposal, President Obama requested increased funding (totaling \$475 million) for an EPA-led Great Lakes Restoration Initiative to target federal funding to major threats to the ecosystem of the lakes that have been identified by the Interagency Task Force and the Regional Collaboration. The initiative is essentially a means of coordinating appropriations for Great Lakes restoration. Congress approved the requested FY2010 appropriations.

In the 111th Congress, the Senate Environment and Public Works Committee has approved two bills concerning Great Lakes issues. First, S. 3073, the Great Lakes Ecosystem Protection Act of 2010, addresses governance issues. It would amend CWA Section 118 to establish a Great Lakes Leadership Council to provide input on restoration priorities to the federal Interagency Task Force. It also would establish in law the existing Interagency Task Force, to continue coordination of restoration efforts, and the Great Lakes Restoration Initiative, to target the most significant environmental problems of the ecosystem. The bill would authorize \$475 million annually through FY2016 for the initiative. It also would reauthorize the Great Lakes Legacy Act program for projects to remediate contaminated sediments at \$150 million annually through FY2015.⁶

A second Environment Committee-approved bill, the Contaminated Sediment Remediation Reauthorization Act (S. 933), addresses only the existing program for remediation of contaminated sediments in the Great Lakes in CWA Section 118. It would reauthorize that program at \$150 million annually through FY2014.

The Senate Environment and Public Works Committee approved S. 3073 on June 30 and S. 933 on June 19. Similar measures have been introduced in the House. H.R. 4755, like S. 3073, would provide statutory authority for the Great Lakes Restoration Initiative and the Great Lakes Interagency Task Force and would reauthorize the Great Lakes contaminated sediment remediation program. There has been no action on this bill. Separate legislation, in Title V of H.R. 1262, also would reauthorize the contaminated sediment remediation program with \$150 million per year in funding through FY2014. The House passed H.R. 1262, including Title V, in March 2009.

5. Gulf of Mexico

The health of the Gulf of Mexico's economically important and biologically rich ecosystem had been a concern long before the 2010 Deepwater Horizon oil spill in the Gulf. In 1988 EPA administratively created a Gulf of Mexico Program to provide federal leadership and identify priority areas and projects for states and Gulf coastal communities to undertake on a voluntary basis to protect, maintain, and restore the productivity of the Gulf. S. 1311, the Gulf of Mexico Restoration and Protection Act, would add a new section to the CWA to establish the program in statute, codify authorities of the EPA Administrator to use interagency agreements to carry out functions of the program office, and authorize grants for monitoring of water quality and living resources, conducting research, developing and implementing restoration projects, and similar

⁶ In the 110th Congress, the House passed H.R. 6460, providing \$150 million per year through FY2014 in funding for cleanup of contaminated sediments. As enacted (P.L. 110-365), the bill retained the previous funding level of \$50 million per year.

purposes. The federal share of project costs would be limited to 75%. The bill would authorize a total of \$100 million through FY2014.

The Senate Environment and Public Works Committee approved S. 1311 on June 30. There is no similar House bill.

6. Lake Tahoe

Lake Tahoe is the second-deepest lake in North America, and the clarity of its waters and scenery are major tourist and recreational attractions. Since the 1960s, the governments of California and Nevada have engaged in efforts to protect the lake from environmental pressures such as nutrient pollution, fire, and invasive species. In 1969 Congress ratified an agreement between the two states that created a regional planning agency with authority to adopt and enforce environmental quality standards. In 1997 President Clinton issued Executive Order 13057, which created the Lake Tahoe Federal Interagency Partnership to lead a cleanup effort of the lake. In 2000 Congress enacted the Lake Tahoe Restoration Act (P.L. 106-506). It authorized \$300 million over 10 years for projects such as land acquisition, forest management, fire suppression, and water quality improvement. This law is not part of the CWA. Several federal agencies, including the Forest Service, the Fish and Wildlife Service (FWS), and EPA, have roles and responsibilities in carrying out its authorities.

In the 111th Congress, S. 2724, the Lake Tahoe Restoration Act of 2010, would reauthorize the 2000 legislation. The bill assigns high priority to a number of projects and programs, including watershed restoration, forest management, fire suppression, and invasive species management. It would direct EPA to establish a Lake Tahoe Basin Program to conduct research, provide scientific and technical support on restoration, and develop performance measures for assessing restoration. It would authorize appropriation of \$415 million through FY2018 for several federal agencies to perform ecological restoration activities in the Lake Tahoe Basin. Of the amount authorized, \$136 million would be for Forest Service projects to reduce the risk of fire; \$102 million would be for EPA research and grants for certain projects to improve water clarity and manage stormwater runoff; and \$41 million would be for FWS activities against invasive species. Remaining unallocated funds would be available to carry out other restoration projects.

The Senate Environment and Public Works Committee approved S. 2724 on June 30. There has been no action in the House on related legislation (H.R. 4001).

7. Long Island Sound

Long Island Sound, bordering New York and Connecticut, is one of the 28 estuaries included in the National Estuary Program; it was one of the original estuaries designated for priority when the NEP was established in law in 1987. In 2000, Congress amended the CWA to add Section 119, which established a Long Island Sound Program office providing federal leadership for developing a conservation management plan for Long Island Sound and authorized grants for related projects and activities. In 2006, Congress enacted separate legislation, the Long Island Sound Stewardship Act (P.L. 109-359), which did not amend the CWA but also dealt with Long Island Sound and authorized grants for restoration activities. In the 111th Congress, S. 3119, the Long Island Sound Restoration and Stewardship Act of 2010, would reauthorize both grant programs through FY2015 at their current authorized levels: \$40 million per year for the CWA Section 119 program and \$25 million per year for Long Island Sound Stewardship grants.

The Senate Environment and Public Works Committee approved S. 3119 on June 30. There has been no action in the House on related legislation, H.R. 5876, which deals only with the Long Island Sound Program under CWA Section 119.

8. Puget Sound

Puget Sound, a Washington state estuary, is one of 28 estuaries currently included in the NEP. S. 2739, the Puget Sound Recovery Act of 2010, would add a new section to the CWA to authorize federal funding expressly to support the protection and restoration of Puget Sound. It would authorize \$90 million annually through FY2015 to EPA to provide funding for projects that are prioritized by the Puget Sound Partnership, a Washington state agency, and approved by EPA in order to implement a comprehensive plan for restoring the estuary.

The Senate Environment and Public Works Committee approved S. 2739 on June 30. There has been no legislative action in the House on similar legislation (H.R. 4029).

9. San Francisco Bay

San Francisco Bay is one of 28 estuaries currently included in the NEP. S. 3539, the San Francisco Bay Restoration Act, would add a new section to the CWA to authorize a grant program to fund restoration of San Francisco Bay in accordance with the comprehensive conservation management plan developed through the NEP. According to S.Rept. 111-284, EPA has received \$17 million in appropriations over the last three years to provide grants for ecosystem restoration and water quality work in the San Francisco Bay.⁷ The bill would authorize “such sums as are necessary” annually through FY2020 for grants to undertake restoration projects. Under the legislation, a federal grant shall not exceed 75% of the total cost of eligible activities.

The Senate Environment and Public Works Committee approved S. 3539 on June 30. There has been no legislative action in the House on similar legislation (H.R. 5061).

Author Contact Information

Claudia Copeland
Specialist in Resources and Environmental Policy
ccopeland@crs.loc.gov, 7-7227

⁷ U.S. Congress, Senate Committee on Environment and Public Works, *San Francisco Bay Restoration Act*, report to accompany S. 3539, 111th Cong., 2nd sess., September 2, 2010, S.Rept. 111-284, p. 2.