



Water Quality Bills in the Lame Duck Session of the 111th Congress

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Summary

Early in December 2010, press reports indicated that legislators, especially in the Senate, were seeking to gather support for several water quality bills that could be considered during the post-election, lame duck session of the 111th Congress, possibly packaged with others dealing with public lands and wildlife protection. These discussions resulted in a comprehensive bill, titled “America’s Great Outdoors Act of 2010,” that was introduced in the Senate on December 17 (S.Amdt. 4845 to S. 303). This report describes water quality bills that were included in the legislative package.

All but one of the bills discussed below would have amended the Clean Water Act (CWA), and all had been approved and reported by the Senate Environment and Public Works Committee. Similar House bills were introduced for all but one of the Senate measures, and the House had passed two of them. With the exception of a bill on Chesapeake Bay, the individual bills were not considered controversial. Most of the individual bills would either have reauthorized and in some cases modified existing CWA provisions that address water quality concerns in specified geographic areas, or would have established similar provisions for other regions or watersheds. The 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. 4016),
- 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),
- San Francisco Bay (S. 3539), and
- Monitoring water quality of coastal recreation waters (S. 878).

The 111th Congress adjourned *sine die* on December 22 without taking up either the omnibus bill or individual measures that were included in S.Amdt. 4845. Whether the 112th Congress will consider some or all of these bills is unknown for now.

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Early in December 2010, press reports indicated that legislators, especially in the Senate, were seeking to gather support for several water quality bills that could be considered during the post-election, lame duck session of the 111th Congress, possibly packaged with others dealing with public lands and wildlife protection.¹ These discussions resulted in a comprehensive bill, titled “America’s Great Outdoors Act of 2010,” that was introduced in the Senate on December 17 (S.Amdt. 4845 to S. 303). The water quality measures were found in Division J, Title CII (Subtitles A-I) and Title CII (Subtitle A) of S.Amdt. 4845.

This report describes water quality bills that were included in the package. All but one of the bills discussed below would have amended the Clean Water Act (CWA, 33 U.S.C. 1251 et seq.), and all had been approved and reported by the Senate Environment and Public Works Committee. Similar House bills had been introduced for all but one of the Senate measures, and the House had passed two of them. With the exception of legislation that focused on Chesapeake Bay (S. 1816, discussed below), the individual bills were not considered to be controversial, although some Members criticized the expansive scope and cost of the entire omnibus bill. Most of the individual bills would either have reauthorized and in some cases modified existing CWA provisions that address water quality concerns in specified geographic areas, or they would have established similar provisions for other regions or watersheds. As included in S.Amdt. 4845, most of the bills were little changed from the Senate Environment Committee-approved versions, while three reflected more substantive modifications (bills dealing with the Great Lakes, Long Island Sound, and San Francisco Bay).

The 111th Congress adjourned *sine die* on December 22 without taking up either the omnibus bill or individual measures that were included in S.Amdt. 4845. Whether the 112th Congress will consider some or all of these bills is unknown for now.

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. Subsequently, congressional committees conducted oversight on the law, and Congress 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>. Paul Quinlan, “Water, lands, wildlife omnibus full of GOP bills, not GOP support,” Environment and Energy Daily, December 9, 2010, <http://www.eenews.net/EEDaily/print/2010/12/09/5>.

² For further background, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*, by (name redacted).

³ For information, see CRS Report R40098, *Water Quality Issues in the 111th Congress: Oversight and Implementation*, (continued...)

The Legislation

The 111th Congress bills included in American's Great Outdoors Act of 2010 (S.Amdt. 4845) addressed issues for these geographic-specific areas and CWA programs:

- 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,
- San Francisco Bay, and
- Monitoring water quality of coastal recreation waters.

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.

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 have added several requirements in the development of comprehensive management plans, such as addressing the impacts of climate change, and would have required periodic update of the plan and

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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 (S.Rept. 111-293). As reported, the bill would have increased authorization of appropriations to \$75 million per year and would have required updates and evaluations every five years, rather than every four years as in the House-passed version.

In S.Amdt. 4845, National Estuary Program provisions were included in Division J, Title CII, Subtitle C. The provisions were essentially the same as in the bill as approved by the Senate Environment and Public Works Committee. Modifications were included to clarify EPA procedures for reviewing and determining completeness of a comprehensive management plan. The provisions of S.Amdt. 4845 would have authorized appropriations of assistance for NEP estuaries for six years (through FY2017) at \$75 million per year.

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

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

consent decree in one such lawsuit, EPA must establish a Chesapeake Bay TMDL by no later than May 1, 2011, with a goal of having TMDL implementation measures in place 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 proposed to do so. As reported, the bill generally sought to codify 2025 as a deadline for implementing restoration actions throughout the Chesapeake Basin and would have given EPA explicit backup authority to develop measures to restore the watershed, if states fail to do so. The legislation would have authorized significant financial resources, totaling \$2.26 billion over six years, to assist in implementing programs, projects, and measures for restoration of the Chesapeake Basin watershed. The legislation was controversial—as are EPA’s TMDL plans and the overall federal Chesapeake Bay restoration strategy—and a number of groups such as agriculture and developers have been 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 legislation.⁵

The Senate Environment and Public Works Committee approved S. 1816 on June 30 (S.Rept. 111-333). In the House, companion legislation was introduced (H.R. 3852), as were several other bills concerned with Chesapeake Bay issues (H.R. 5509, H.R. 3265, and H.R. 6382). The House Agriculture Committee approved an amended version of H.R. 5509 in July (no report was filed); there was no legislative action on the other House bills.

In S.Amdt. 4845, Chesapeake Bay provisions were included in Division J, Title CII, Subtitle H. The provisions were generally the same as the Chesapeake Bay bill approved by the Senate Environment and Public Works Committee, but did include some modifications that were based in part on separate legislation, H.R. 5509. In particular, revisions included the following: directing EPA to establish a website providing transparency on Chesapeake Bay restoration efforts,⁶ calling for EPA to prepare annually a financial report and interagency crosscut budget accounting for federal funding on Bay restoration, and modifying provisions related to compliance of agricultural or private forest conservation plans with state management plans for Bay restoration. Finally, the provisions of S.Amdt. 4845 included language that would amend the Food Security Act of 1985 (the farm bill) authorizing the Secretary of Agriculture to identify conservation practices for agricultural and private foresters that Chesapeake Bay states could use in their restoration implementation plans.

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.

⁶ EPA’s Chesapeake Bay website is <http://www.chesapeakebay.net/>.

3. Columbia River Basin

The lower Columbia River estuary is one of 28 estuaries included in the National Estuary Program. S. 4016, the Columbia River Basin Restoration Act of 2010, would have added 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 included 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. 4016 would have authorized 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 would not exceed 75%.

S. 4016 was an original bill that was introduced on December 8 and reported from the Senate Environment and Public Works Committee that same day (S.Rept. 111-358). There was no action in the House on similar legislation (H.R. 4652, which did not include a provision on the Flathead River watershed).

In S.Amdt. 4845, Columbia River Basin provisions were included in Division J, Title CII, Subtitle E. These provisions were generally the same as provisions of the Environment Committee bill, S. 4016.

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.

In 2004 President Bush issued Executive Order 13340, which 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 February 2010, the Interagency Task Force issued a multi-year restoration Action Plan to guide implementation of the

Initiative through projects and grants in five areas: toxic substances, invasive species, nonpoint source pollution, habitat and wildlife restoration, and partnerships and communication.

In the 111th Congress, the Senate Environment and Public Works Committee approved two bills concerning Great Lakes issues. First, S. 3073, the Great Lakes Ecosystem Protection Act of 2010, addressed governance issues. It would have amended 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 have established 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 have authorized \$475 million annually through FY2016 for the initiative. It also would have reauthorized the Great Lakes Legacy Act program for projects to remediate contaminated sediments at \$150 million annually through FY2015.⁷

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

The Senate Environment and Public Works Committee approved S. 3073 on June 30 (S.Rept. 111-283) and S. 933 on June 19 (S.Rept. 111-171). Similar measures were introduced in the House. H.R. 4755, like S. 3073, would have provided statutory authority for the Great Lakes Restoration Initiative and the Great Lakes Interagency Task Force and would have reauthorized the Great Lakes contaminated sediment remediation program. There was no action on this bill. Separate legislation, in Title V of H.R. 1262, also would have reauthorized 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.

In S.Amdt. 4845, Great Lakes provisions were included in Division J, Title CII, Subtitle F. These provisions were based on the committee-reported version of S. 3073 but included a number of modifications to that bill. The legislation would have established a Great Lakes Leadership Council, which, together with the existing Great Lakes Interagency Task Force, would be known as the Great Lakes Collaboration Partnership. The Partnership would be responsible for developing a Great Lakes Restoration Blueprint, a strategy for protecting water quality and the ecosystem of the Great Lakes basin. The Leadership Council also would be responsible for developing annual priority lists of projects to advance the goals and objectives of the Blueprint or the Great Lakes Restoration Initiative Action Plan. The legislation would have authorized to be appropriated \$475 million per year through FY2017 and authorized EPA to transfer not more than \$475 million to other federal agencies to carry out activities under the Blueprint, the Action Plan, or the Great Lakes Water Quality Agreement between Canada and the United States. It would have codified the Great Lakes Interagency Task Force, and it would have established new reporting requirements, as well as preparation of a crosscut budget for Great Lakes funding. Finally, the provisions in S.Amdt. 4845 also included an increase in authorization for the contaminated sediment remediation program, under the Great Lakes Legacy Act, from \$50 million to \$150 million annually, for FY2012-FY2017.

⁷ 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 through FY2014.

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 have added 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 purposes. The federal share of project costs would be limited to 75%. The bill would have authorized a total of \$100 million for five years, through FY2014.

The Senate Environment and Public Works Committee approved S. 1311 on June 30 (S.Rept. 111-241). There was no similar House bill.

In S.Amdt. 4845, Gulf of Mexico provisions were included in Division J, Title CII, Subtitle A. Provisions were generally the same as in S. 1311, but one modification reduced the five-year authorization of appropriations to \$57 million (FY2012-FY2016).

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 have reauthorized the 2000 legislation. The bill assigned high priority to a number of projects and programs, including watershed restoration, forest management, fire suppression, and invasive species management. It would have directed 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 have authorized 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 have been available to carry out other restoration projects.

The Senate Environment and Public Works Committee approved S. 2724 on June 30 (S.Rept. 111-211). There was no action in the House on related legislation (H.R. 4001).

In S.Amdt. 4845, Lake Tahoe provisions were included in Division J, Title CII, Subtitle B. These provisions were the same as the Environment Committee-approved bill, S. 2724.

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 have reauthorized grant programs under CWA Section 119 and the Stewardship Act through FY2015 at their current authorized levels: \$40 million per year for Section 119 program and \$25 million per year for Long Island Sound Stewardship grants. It also would have mandated new reporting and budgeting requirements and established a pilot project for natural filtration technologies to remove nutrients from the Sound.

The Senate Environment and Public Works Committee approved S. 3119 on June 30 (S.Rept. 111-298). There was no action in the House on related legislation, H.R. 5876, which dealt only with the Long Island Sound Program under CWA Section 119.

In S.Amdt. 4845, Long Island Sound provisions were included in Division J, Title CII, Subtitle G. These provisions made substantial changes to the Environment Committee-reported bill. In addition to provisions of the bill as reported, it defined the area covered by CWA Section 119 to be the Long Sound watershed, meaning the Sound and named rivers and tributaries that drain into the Sound, and defined Long Island Sound state to include Connecticut, New York, Massachusetts, New Hampshire, Rhode Island, and Vermont. It would have added new requirements in CWA Section 119 to authorize issuance of stormwater discharge permits on a regional basis and would have required that stormwater discharge permits held by industrial or construction sources within the watershed shall conform to municipal stormwater discharge permits issued under CWA Section 402(p).⁸ The provisions in S.Amdt. 4845 also would have directed EPA to work with governors of Long Island Sound states to establish a voluntary interstate nitrogen trading program. Under the legislation, the director of EPA's Long Island Sound Office would be required to prepare annually a list of priority restoration projects. Finally, the legislation would have increased authorization levels as in the reported bill (\$40 million per year for Section 119 program and \$25 million per year for Long Island Sound Stewardship grants, each for five years) and also would have authorized \$1.125 billion over four years for municipal wastewater treatment projects.

⁸ For information on the CWA's stormwater discharge requirements, see CRS Report 97-290, *Stormwater Permits: Status of EPA's Regulatory Program*, by (name redacted).

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 have added a new section to the CWA to authorize federal funding expressly to support the protection and restoration of Puget Sound. It would have authorized \$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. For certain types of activities, the federal share could be 75%; for identified priority projects, the federal share could be 50%.

The Senate Environment and Public Works Committee approved S. 2739 on June 30 (S.Rept. 111-292). There was no legislative action in the House on similar legislation (H.R. 4029).

In S.Amdt. 4845, Puget Sound provisions were included in Division J, Title CII, Subtitle D. These provisions were generally the same as the reported bill, but with several modifications. The changes addressed clarifying procedures for EPA's approval of an annual list of priority restoration projects, revising the allocation of funds to implement a comprehensive restoration plan (generally specifying percentages of available funds, but not dollar amounts), and allowing EPA to increase the federal share of certain projects or activities to 100% (e.g., a project carried out solely by a Puget Sound tribe).

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 have added 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.⁹ The bill would have authorized "such sums as are necessary" annually through FY2020 for grants to undertake estuary restoration projects. Under the legislation, a federal grant would not exceed 75% of the total cost of eligible activities.

The Senate Environment and Public Works Committee approved S. 3539 on June 30 (S.Rept. 111-284). There was no legislative action in the House on similar legislation (H.R. 5061).

In S.Amdt. 4845, San Francisco Bay provisions were included in Division J, Title CII, Subtitle I. These provisions made substantial changes to the Environment Committee-reported bill. As modified, the legislation would have directed EPA to prepare annually a list of priority projects to restore the San Francisco Bay estuary and would have authorized EPA to provide funding to the San Francisco Estuary Partnership for identified activities and projects. It would have authorized \$350 million over 10 years (FY2012-FY2021) for such assistance, at a 75% federal share. The legislation would have permitted the Estuary Partnership to receive assistance under these provisions, as well as through the NEP (CWA Section 320).

⁹ 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.

10. Monitoring Water Quality of Coastal Recreation Waters

In 2000 Congress enacted the Beaches Environmental Assessment and Coastal Health Act (BEACHES Act, P.L. 106-284), in order to augment federal and state efforts to prevent human exposure to polluted coastal recreation waters, including the Great Lakes. This act amended to CWA to direct coastal states to adopt updated water quality standards and EPA to develop new protection water quality criteria and standards for coastal recreation waters. It also authorized grants to coastal states to support monitoring and public notification programs. In the 110th Congress Senate and House committees held hearings on implementation of the BEACH Act, and bills to extend authorization of appropriations for beach monitoring grants were introduced, but none was enacted.

The 111th Congress considered similar bills. In June 2009 the Senate Environment and Public Works Committee approved S. 878, the Clean Coastal Environment and Public Health Act (S.Rept. 111-170), which would have required the use of more rapid testing of beach waters for contamination and faster notification to the public to warn of contamination. It also would have increased grants to states for beach monitoring and testing, from \$30 million annually to \$60 million annually, and extended the authorization of appropriations for five years, through FY2013. The House passed similar legislation, H.R. 2093, in July 2009.

In S.Amdt. 4845, provisions concerning water quality of coastal recreation waters were included in Division J, Title CIII, Subtitle A. The provisions in the amendment were generally the same as in S. 878 (including a five-year authorization of appropriations for grants to states of \$60 million per year), but would have extended authorization of appropriations for grants to states through FY2016. The amendment also included three new provisions calling for studies by EPA. One was a study on the long-term impact of pollution on coastal recreation waters, and the second was a study on the impact of excess nutrients and algal blooms on coastal recreation waters. The third study was to address the formula for distributing state grants under the BEACHES program.

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