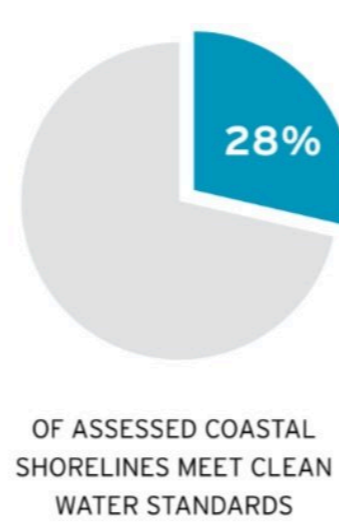
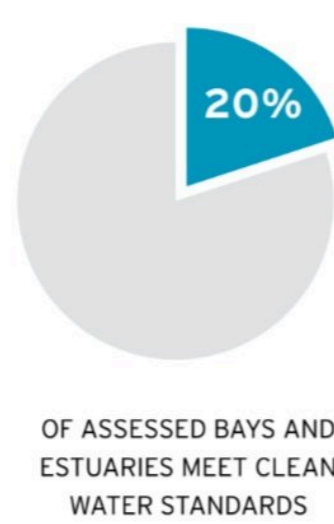
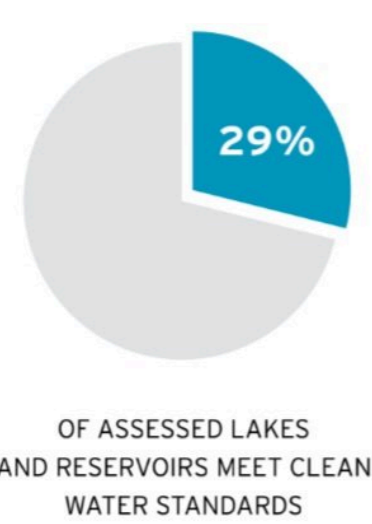


The Clean Water Act: What Still Needs To Be Done

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The Clean Water Act is foundational to the protection of our waterways and Mobile Baykeeper’s mission and work. The act sets out as its goal to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Still, there are many ongoing pollution issues that it has not yet successfully addressed.

The Clean Water Act initially set a goal of eliminating discharges of pollutants to navigable waters by 1985 and set July 1, 1983 as the deadline for achieving water quality goals that would provide protection of fish, shellfish, wildlife, and recreation. Yet, today, most of our nation’s waters (69 percent of rivers and 55 percent of lakes and reservoirs) are not monitored for pollution under the Clean Water Act due to a lack of funding, prioritization, and other factors. Further, less than 30 percent of lakes, bays, and coastal shorelines that were monitored are currently meeting their designated water quality standards.



Less than 30% of many waterbody types have recent or consecutive water quality monitoring efforts to inform standards are being met. Graphic made available through the Waterkeeper Alliance ACT50 Campaign.

What is a water use designation?

The "designated" uses of a water body are the goals for the water and articulate a vision for its use to be maintained or improved. Uses establish water quality goals which dictate permitting of pollution that can be discharged into that waterway. Public Water Supply, Swimming and Whole-Body Water-Contact Sports, Shellfish Harvesting, Fish and Wildlife, and Warmwater Fishery are some examples.

Unfortunately, even waterbodies that are monitored do not all meet criteria for various water quality uses. Environmental groups such as Mobile Baykeeper advocate for impaired waterbodies (those waterbodies not meeting their designated water quality standards due to pollution) to receive higher water use designations. For example, a waterway that currently does not meet all criteria for swimming or fishing should still be listed to support these activities if that waterbody is used for swimming or fishing.

In fact, the Clean Water Act mandates that water use designations acknowledge historical uses instead of the current state of water quality. This is to say, if a river is widely utilized by a community for swimming but continues to receive pollution which make this activity unsafe, the state should change permit limits for polluters in the waterway rather than forcing users to abandon a waterway due to pollution. Additionally, if real progress is to be made towards the initial goal of implementing higher water quality for all waterbodies, then higher designations should result in stricter permitting. Although this framework gives polluted waterbodies an opportunity to recover, if efforts to meet higher water quality criteria are not made in a timely manner, then people using that waterbody to swim and fish are put at risk and habitats continue to degrade.

According to the Environmental Protection Agency (EPA), primary pollutants of concern identified as leading causes of water body impairment include:

- Mercury
- Pathogens
- Nutrients
- Polychlorinated Biphenyls or PCBs
- Sediment
- Organic Enrichment/Oxygen Depletion
- Concentrated Animal Feeding Operations (CAFOs) and Agriculture Runoff



Baykeeper Cade Kistler investigates a sewage overflow to document whether bacteria levels exceed compliance. Sewage spills are a chronic issue for the Mobile Bay area and a major source of pathogen pollution in waterways when untreated waste enters the environment.

Mobile Baykeeper and other Waterkeeper Alliance groups in the state regularly submit comments as a part of the Alabama Department of Environmental Management’s (ADEM) Alabama Triennial Review on Water Quality. An example of the type of comments we make is in regard to Halls Mill Creek, a tributary of Dog River, Chickasaw Creek, and portions of Mobile Bay. Even though these waterbodies are commonly used for swimming, ADEM has so far refused to designate their use as swimming thus neglecting to protect swimmers in these waterbodies. ADEM has responded to previous comments by Mobile Baykeeper requesting that these waterbodies be upgraded to swimming stating, “simply because swimming is observed in a particular waterbody classified as [Fish and Wildlife, it] does not necessitate that the Swimming and Other Whole-Body Water-Contact Sports classification should be added to the subject waterbody.” In our comments from 2021 we requested that the Department clarify how communities are to properly demonstrate a waterbody is used for recreational purposes.

Additionally, we requested that the Alabama Department of Environmental Management develop Total Maximum Daily Load (TMDL) designations for Mercury as vast portions of Mobile and Baldwin County along with the Escatawpa, Mobile, and Tombigbee River Basins have been identified as impaired for this heavy metal toxin. Mercury is transferred through aquatic food chains and is one of the more common reasons for fish consumption advisories along with PCBs. A TMDL is a calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that pollutant. A TMDL determines a pollutant reduction target and determines the plan necessary to reduce the source(s) of the pollutant. We reiterated there is an immense need for statewide adoption of nutrient criteria. Nitrate and phosphorous loading deplete oxygen in waterways and cause mass vegetative and fish die-offs. In fact, the EPA recommended state agencies incorporate nutrient criteria into their water quality standards almost 20 years ago. Likewise, the state’s turbidity criteria, which dictates allowable particulate concentrations from sediment runoff and other discharge that cloud water, is comparatively laxer than 21 other states. For example, limits on turbidity for Alabama are 2, 5, and 10 times higher than Florida, Utah, and Alaska respectively.

There are many hurdles for cleaner water we have yet to overcome at a state and national level. Fortunately, the Clean Water Act is specifically designed to create aspirational protections for waterways despite their current designated uses and despite the state approved use (especially if it does not align with the way that people actually use that waterbody). It is important to remember that the Clean Water Act specifically encourages for waterbodies to not merely be monitored and given a designation based on current water quality, but for the waterbody to obtain higher water quality through stricter protection over time. Currently this is an uphill battle in Alabama as the state agency charged with ensuring our waterways meet these goals is 49th or 50th in per capita funding depending on the year and receives almost zero funds from the state’s general fund. If we hope to achieve cleaner water we will have to empower and embolden ADEM, our state’s environmental agency, to set bold goals for our waterways and resource them both with the necessary funding and staff to effectively enforce environmental rules against polluters, no matter their size, to protect our waterways and our citizens.



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