

Calendar No. 302

109TH CONGRESS
1ST SESSION

S. 158

[Report No. 109-185]

To establish the Long Island Sound Stewardship Initiative.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2005

Mr. LIEBERMAN (for himself, Mrs. CLINTON, Mr. DODD, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

DECEMBER 8, 2005

Reported under authority of the order of the Senate of November 18, 2005, by Mr. INHOFE, without amendment

A BILL

To establish the Long Island Sound Stewardship Initiative.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long Island Sound
5 Stewardship Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) Long Island Sound is a national treasure of
2 great cultural, environmental, and ecological impor-
3 tance;

4 (2) 8,000,000 people live within the Long Is-
5 land Sound watershed and 28,000,000 people (ap-
6 proximately 10 percent of the population of the
7 United States) live within 50 miles of Long Island
8 Sound;

9 (3) activities that depend on the environmental
10 health of Long Island Sound contribute more than
11 \$5,000,000,000 each year to the regional economy;

12 (4) the portion of the shoreline of Long Island
13 Sound that is accessible to the general public (esti-
14 mated at less than 20 percent of the total shoreline)
15 is not adequate to serve the needs of the people liv-
16 ing in the area;

17 (5) existing shoreline facilities are in many
18 cases overburdened and underfunded;

19 (6) large parcels of open space already in public
20 ownership are strained by the effort to balance the
21 demand for recreation with the needs of sensitive
22 natural resources;

23 (7) approximately $\frac{1}{3}$ of the tidal marshes of
24 Long Island Sound have been filled, and much of
25 the remaining marshes have been ditched, dyked, or

1 impounded, reducing the ecological value of the
2 marshes; and

3 (8) much of the remaining exemplary natural
4 landscape is vulnerable to further development.

5 (b) PURPOSE.—The purpose of this Act is to estab-
6 lish the Long Island Sound Stewardship Initiative to iden-
7 tify, protect, and enhance sites within the Long Island
8 Sound ecosystem with significant ecological, educational,
9 open space, public access, or recreational value through
10 a bi-State network of sites best exemplifying these values.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) ADAPTIVE MANAGEMENT.—The term
14 “adaptive management” means a scientific proc-
15 ess—

16 (A) for—

17 (i) developing predictive models;

18 (ii) making management policy deci-
19 sions based upon the model outputs;

20 (iii) revising the management policies
21 as data become available with which to
22 evaluate the policies; and

23 (iv) acknowledging uncertainty, com-
24 plexity, and variance in the spatial and
25 temporal aspects of natural systems; and

1 (B) that requires that management be
2 viewed as experimental.

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (3) COMMITTEE.—The term “Committee”
7 means the Long Island Sound Stewardship Advisory
8 Committee established by section 5(a).

9 (4) REGION.—The term “Region” means the
10 Long Island Sound Stewardship Initiative Region es-
11 tablished by section 4(a).

12 (5) STATES.—The term “States” means the
13 States of Connecticut and New York.

14 (6) STEWARDSHIP SITE.—The term “steward-
15 ship site” means a site that—

16 (A) qualifies for identification by the Com-
17 mittee under section 8; and

18 (B) is an area of land or water or a com-
19 bination of land and water—

20 (i) that is in the Region; and

21 (ii) that is—

22 (I) Federal, State, local, or tribal
23 land or water;

24 (II) land or water owned by a
25 nonprofit organization; or

1 (III) privately owned land or
2 water.

3 (7) SYSTEMATIC SITE SELECTION.—The term
4 “systematic site selection” means a process of select-
5 ing stewardship sites that—

6 (A) has explicit goals, methods, and cri-
7 teria;

8 (B) produces feasible, repeatable, and de-
9 fensible results;

10 (C) provides for consideration of natural,
11 physical, and biological patterns;

12 (D) addresses reserve size, replication,
13 connectivity, species viability, location, and pub-
14 lic recreation values;

15 (E) uses geographic information systems
16 technology and algorithms to integrate selection
17 criteria; and

18 (F) will result in achieving the goals of
19 stewardship site selection at the lowest cost.

20 (8) THREAT.—The term “threat” means a
21 threat that is likely to destroy or seriously degrade
22 a conservation target or a recreation area.

1 **SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE**
 2 **REGION.**

3 (a) ESTABLISHMENT.—There is established in the
 4 States the Long Island Sound Stewardship Initiative Re-
 5 gion.

6 (b) BOUNDARIES.—The Region shall encompass the
 7 immediate coastal upland and underwater areas along
 8 Long Island Sound, including—

9 (1) those portions of the Sound with coastally
 10 influenced vegetation, as described on the map enti-
 11 tled the “Long Island Sound Stewardship Region”
 12 and dated April 21, 2004; and

13 (2) the Peconic Estuary, as described on the
 14 map entitled “Peconic Estuary Program Study Area
 15 Boundaries”, included in the Comprehensive Con-
 16 servation and Management Plan for the Peconic Es-
 17 tuary Program and dated November 15, 2001.

18 **SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY**
 19 **COMMITTEE.**

20 (a) ESTABLISHMENT.—There is established a com-
 21 mittee to be known as the “Long Island Sound Steward-
 22 ship Advisory Committee”.

23 (b) CHAIRPERSON.—The Chairperson of the Com-
 24 mittee shall be the Director of the Long Island Sound Of-
 25 fice of the Environmental Protection Agency, or a designee
 26 of the Director.

1 (c) MEMBERSHIP.—

2 (1) COMPOSITION.—

3 (A) APPOINTMENT OF MEMBERS.—

4 (i) IN GENERAL.—The Chairperson
5 shall appoint the members of the Com-
6 mittee in accordance with this subsection
7 and section 320(c) of the Federal Water
8 Pollution Control Act (33 U.S.C. 1330(c)).

9 (ii) ADDITIONAL MEMBERS.—In addi-
10 tion to the requirements described in
11 clause (i), the Committee shall include—

12 (I) a representative from the Re-
13 gional Plan Association;

14 (II) a representative of the ma-
15 rine trade organizations; and

16 (III) a representative of private
17 landowner interests.

18 (B) REPRESENTATION.—In appointing
19 members to the Committee, the Chairperson
20 shall consider—

21 (i) Federal, State, and local govern-
22 ment interests;

23 (ii) the interests of nongovernmental
24 organizations;

25 (iii) academic interests; and

1 (iv) private interests.

2 (2) DATE OF APPOINTMENTS.—Not later than
3 180 days after the date of enactment of this Act, the
4 appointment of all members of the Committee shall
5 be made.

6 (d) TERM; VACANCIES.—

7 (1) TERM.—

8 (A) IN GENERAL.—A member shall be ap-
9 pointed for a term of 4 years.

10 (B) MULTIPLE TERMS.—A person may be
11 appointed as a member of the Committee for
12 more than 1 term.

13 (2) VACANCIES.—A vacancy on the Committee
14 shall—

15 (A) be filled not later than 90 days after
16 the vacancy occurs;

17 (B) not affect the powers of the Com-
18 mittee; and

19 (C) be filled in the same manner as the
20 original appointment was made.

21 (3) STAFF.—

22 (A) IN GENERAL.—The Chairperson of the
23 Committee may appoint and terminate per-
24 sonnel as necessary to enable the Committee to
25 perform the duties of the Committee.

1 (B) PERSONNEL AS FEDERAL EMPLOY-
2 EES.—

3 (i) IN GENERAL.—Any personnel of
4 the Committee who are employees of the
5 Committee shall be employees under sec-
6 tion 2105 of title 5, United States Code,
7 for purposes of chapters 63, 81, 83, 84,
8 85, 87, 89, and 90 of that title.

9 (ii) MEMBERS OF COMMITTEE.—
10 Clause (i) does not apply to members of
11 the Committee.

12 (e) INITIAL MEETING.—Not later than 30 days after
13 the date on which all members of the Committee have been
14 appointed, the Committee shall hold the initial meeting of
15 the Committee.

16 (f) MEETINGS.—The Committee shall meet at the
17 call of the Chairperson, but no fewer than 4 times each
18 year.

19 (g) QUORUM.—A majority of the members of the
20 Committee shall constitute a quorum, but a lesser number
21 of members may hold hearings.

22 **SEC. 6. DUTIES OF THE COMMITTEE.**

23 The Committee shall—

24 (1) consistent with the guidelines described in
25 section 8—

1 (A) evaluate applications from government
2 or nonprofit organizations qualified to hold con-
3 servation easements for funds to purchase land
4 or development rights for stewardship sites;

5 (B) evaluate applications to develop and
6 implement management plans to address
7 threats;

8 (C) evaluate applications to act on oppor-
9 tunities to protect and enhance stewardship
10 sites; and

11 (D) recommend that the Administrator
12 award grants to qualified applicants;

13 (2) recommend guidelines, criteria, schedules,
14 and due dates for evaluating information to identify
15 stewardship sites;

16 (3) publish a list of sites that further the pur-
17 poses of this Act, provided that owners of sites shall
18 be—

19 (A) notified prior to the publication of the
20 list; and

21 (B) allowed to decline inclusion on the list;

22 (4) raise awareness of the values of and threats
23 to these sites; and

24 (5) leverage additional resources for improved
25 stewardship of the Region.

1 **SEC. 7. POWERS OF THE COMMITTEE.**

2 (a) HEARINGS.—The Committee may hold such hear-
3 ings, meet and act at such times and places, take such
4 testimony, and receive such evidence as the Committee
5 considers advisable to carry out this Act.

6 (b) INFORMATION FROM FEDERAL AGENCIES.—

7 (1) IN GENERAL.—The Committee may secure
8 directly from a Federal agency such information as
9 the Committee considers necessary to carry out this
10 Act.

11 (2) PROVISION OF INFORMATION.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (C), on request of the Chairperson of the
14 Committee, the head of a Federal agency shall
15 provide the information requested by the Chair-
16 person to the Committee.

17 (B) ADMINISTRATION.—The furnishing of
18 information by a Federal agency to the Com-
19 mittee shall not be considered a waiver of any
20 exemption available to the agency under section
21 552 of title 5, United States Code.

22 (C) INFORMATION TO BE KEPT CONFIDEN-
23 TIAL.—

24 (i) IN GENERAL.—For purposes of
25 section 1905 of title 18, United States
26 Code—

1 (I) the Committee shall be con-
2 sidered an agency of the Federal Gov-
3 ernment; and

4 (II) any individual employed by
5 an individual, entity, or organization
6 that is a party to a contract with the
7 Committee under this Act shall be
8 considered an employee of the Com-
9 mittee.

10 (ii) PROHIBITION ON DISCLOSURE.—
11 Information obtained by the Committee,
12 other than information that is available to
13 the public, shall not be disclosed to any
14 person in any manner except to an em-
15 ployee of the Committee as described in
16 clause (i) for the purpose of receiving, re-
17 viewing, or processing the information.

18 (c) POSTAL SERVICES.—The Committee may use the
19 United States mails in the same manner and under the
20 same conditions as other agencies of the Federal Govern-
21 ment.

22 (d) DONATIONS.—The Committee may accept, use,
23 and dispose of donations of services or property that ad-
24 vance the goals of the Long Island Sound Stewardship Ini-
25 tiative.

1 **SEC. 8. STEWARDSHIP SITES.**

2 (a) INITIAL SITES.—

3 (1) IDENTIFICATION.—

4 (A) IN GENERAL.—The Committee shall
5 identify 20 initial Long Island Sound steward-
6 ship sites that the Committee has determined—

7 (i)(I) are natural resource-based
8 recreation areas; or

9 (II) are exemplary natural areas with
10 ecological value; and

11 (ii) best promote the purposes of this
12 Act.

13 (B) EXEMPTION.—Sites described in sub-
14 paragraph (A) are not subject to the site identi-
15 fication process described in subsection (d).

16 (2) EQUITABLE DISTRIBUTION OF FUNDS FOR
17 INITIAL SITES.—In identifying initial sites under
18 paragraph (1), the Committee shall exert due dili-
19 gence to recommend an equitable distribution of
20 funds between the States for the initial sites.

21 (b) APPLICATION FOR IDENTIFICATION AS A STEW-
22 ARDSHIP SITE.—Subsequent to the identification of the
23 initial stewardship sites under subsection (a), owners of
24 sites may submit applications to the Committee in accord-
25 ance with subsection (c) to have the sites identified as
26 stewardship sites.

1 (c) IDENTIFICATION.—The Committee shall review
2 applications submitted by owners of potential stewardship
3 sites to determine whether the sites should be identified
4 as exhibiting values consistent with the purposes of this
5 Act.

6 (d) SITE IDENTIFICATION PROCESS.—

7 (1) NATURAL RESOURCE-BASED RECREATION
8 AREAS.—The Committee shall identify additional
9 recreation areas with potential as stewardship sites
10 using a selection technique that includes—

11 (A) public access;

12 (B) community support;

13 (C) areas with high population density;

14 (D) environmental justice (as defined in
15 section 385.3 of title 33, Code of Federal Regu-
16 lations (or successor regulations));

17 (E) connectivity to existing protected areas
18 and open spaces;

19 (F) cultural, historic, and scenic areas; and

20 (G) other criteria developed by the Com-
21 mittee.

22 (2) NATURAL AREAS WITH ECOLOGICAL
23 VALUE.—The Committee shall identify additional
24 natural areas with ecological value and potential as
25 stewardship sites—

1 (A) based on measurable conservation tar-
2 gets for the Region; and

3 (B) following a process for prioritizing new
4 sites using systematic site selection, which shall
5 include—

6 (i) ecological uniqueness;

7 (ii) species viability;

8 (iii) habitat heterogeneity;

9 (iv) size;

10 (v) quality;

11 (vi) connectivity to existing protected
12 areas and open spaces;

13 (vii) land cover;

14 (viii) scientific, research, or edu-
15 cational value;

16 (ix) threats; and

17 (x) other criteria developed by the
18 Committee.

19 (3) PUBLICATION OF LIST.—After completion
20 of the site identification process, the Committee
21 shall—

22 (A) publish in the Federal Register a list
23 of sites that further the purposes of this Act;
24 and

1 (B) prior to publication of the list, provide
2 to owners of the sites to be published—

- 3 (i) a notification of publication; and
4 (ii) an opportunity to decline inclusion
5 of the site of the owner on the list.

6 (4) DEVIATION FROM PROCESS.—

7 (A) IN GENERAL.—The Committee may
8 identify as a potential stewardship site, a site
9 that does not meet the criteria in paragraph (1)
10 or (2), or reject a site selected under paragraph
11 (1) or (2), if the Committee—

12 (i) selects a site that makes signifi-
13 cant ecological or recreational contribu-
14 tions to the Region;

15 (ii) publishes the reasons that the
16 Committee decided to deviate from the sys-
17 tematic site selection process; and

18 (iii) before identifying or rejecting the
19 potential stewardship site, provides to the
20 owners of the site the notification of publi-
21 cation, and the opportunity to decline in-
22 clusion of the site on the list published
23 under paragraph (3)(A), described in para-
24 graph (3)(B).

1 (5) PUBLIC COMMENT.—In identifying potential
2 stewardship sites, the Committee shall consider pub-
3 lic comments.

4 (e) GENERAL GUIDELINES FOR MANAGEMENT.—

5 (1) IN GENERAL.—The Committee shall use an
6 adaptive management framework to identify the best
7 policy initiatives and actions through—

8 (A) definition of strategic goals;

9 (B) definition of policy options for methods
10 to achieve strategic goals;

11 (C) establishment of measures of success;

12 (D) identification of uncertainties;

13 (E) development of informative models of
14 policy implementation;

15 (F) separation of the landscape into geo-
16 graphic units;

17 (G) monitoring key responses at different
18 spatial and temporal scales; and

19 (H) evaluation of outcomes and incorpora-
20 tion into management strategies.

21 (2) APPLICATION OF ADAPTIVE MANAGEMENT
22 FRAMEWORK.—The Committee shall apply the
23 adaptive management framework to the process for
24 updating the list of recommended stewardship sites.

1 **SEC. 9. REPORTS.**

2 (a) IN GENERAL.—For each of fiscal years 2006
3 through 2013, the Committee shall submit to the Adminis-
4 trator an annual report that contains—

5 (1) a detailed statement of the findings and
6 conclusions of the Committee since the last report;

7 (2) a description of all sites recommended by
8 the Committee to be approved as stewardship sites;

9 (3) the recommendations of the Committee for
10 such legislation and administrative actions as the
11 Committee considers appropriate; and

12 (4) in accordance with subsection (b), the rec-
13 ommendations of the Committee for the awarding of
14 grants.

15 (b) GENERAL GUIDELINES FOR RECOMMENDA-
16 TIONS.—

17 (1) IN GENERAL.—The Committee shall rec-
18 ommend that the Administrator award grants to
19 qualified applicants to help to secure and improve
20 the open space, public access, or ecological values of
21 stewardship sites, through—

22 (A) purchase of the property of the site;

23 (B) purchase of relevant property rights of
24 the site; or

25 (C) entering into any other binding legal
26 arrangement that ensures that the values of the

1 site are sustained, including entering into an
2 arrangement with a land manager or owner to
3 develop or implement an approved management
4 plan that is necessary for the conservation of
5 natural resources.

6 (2) **EQUITABLE DISTRIBUTION OF FUNDS.—**

7 The Committee shall exert due diligence to rec-
8 ommend an equitable distribution of funds between
9 the States.

10 (c) **ACTION BY THE ADMINISTRATOR.—**

11 (1) **IN GENERAL.—**Not later than 90 days after
12 receiving a report under subsection (a), the Adminis-
13 trator shall—

14 (A) review the recommendations of the
15 Committee; and

16 (B) take actions consistent with the rec-
17 ommendations of the Committee, including the
18 approval of identified stewardship sites and the
19 award of grants, unless the Administrator
20 makes a finding that any recommendation is
21 unwarranted by the facts.

22 (2) **REPORT.—**Not later than 1 year after the
23 date of enactment of this Act, the Administrator
24 shall develop and publish a report that—

1 (A) assesses the current resources of and
2 threats to Long Island Sound;

3 (B) assesses the role of the Long Island
4 Sound Stewardship Initiative in protecting
5 Long Island Sound;

6 (C) establishes guidelines, criteria, sched-
7 ules, and due dates for evaluating information
8 to identify stewardship sites;

9 (D) includes information about any grants
10 that are available for the purchase of land or
11 property rights to protect stewardship sites;

12 (E) accounts for funds received and ex-
13 pended during the previous fiscal year;

14 (F) shall be made available to the public
15 on the Internet and in hardcopy form; and

16 (G) shall be updated at least every other
17 year, except that information on funding and
18 any new stewardship sites identified shall be
19 published more frequently.

20 **SEC. 10. PRIVATE PROPERTY PROTECTION.**

21 (a) ACCESS TO PRIVATE PROPERTY.—Nothing in
22 this Act—

23 (1) requires any private property owner to allow
24 public access (including Federal, State, or local gov-
25 ernment access) to the private property; or

1 (2) modifies any provision of Federal, State, or
2 local law with regard to public access to or use of
3 private property, except as entered into by voluntary
4 agreement of the owner or custodian of the property.

5 (b) LIABILITY.—Approval of the Long Island Sound
6 Stewardship Initiative Region does not create any liability,
7 or have any effect on any liability under any other law,
8 of any private property owner with respect to any person
9 injured on the private property.

10 (c) RECOGNITION OF AUTHORITY TO CONTROL LAND
11 USE.—Nothing in this Act modifies the authority of Fed-
12 eral, State, or local governments to regulate land use.

13 (d) PARTICIPATION OF PRIVATE PROPERTY OWNERS
14 IN THE LONG ISLAND SOUND STEWARDSHIP INITIATIVE
15 REGION.—Nothing in this Act requires the owner of any
16 private property located within the boundaries of the Re-
17 gion to participate in or be associated with the Initiative.

18 (e) EFFECT OF ESTABLISHMENT.—

19 (1) IN GENERAL.—The boundaries approved for
20 the Region represent the area within which Federal
21 funds appropriated for the purpose of this Act may
22 be expended.

23 (2) REGULATORY AUTHORITY.—The establish-
24 ment of the Region and the boundaries of the Re-
25 gion does not provide any regulatory authority not

1 in existence on the date of enactment of this Act on
2 land use in the Region by any management entity,
3 except for such property rights as may be purchased
4 from or donated by the owner of the property (in-
5 cluding the Federal Government or a State or local
6 government, if applicable).

7 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) IN GENERAL.—There is authorized to be appro-
9 priated to carry out this Act \$25,000,000 for each of fiscal
10 years 2006 through 2013.

11 (b) USE OF FUNDS.—For each fiscal year, funds
12 made available under subsection (a) shall be used by the
13 Administrator, after reviewing the recommendations of the
14 Committee submitted under section 9, for—

- 15 (1) acquisition of land and interests in land;
- 16 (2) development and implementation of site
17 management plans;
- 18 (3) site enhancements to reduce threats or pro-
19 mote stewardship; and
- 20 (4) administrative expenses of the Committee.

21 (c) FEDERAL SHARE.—The Federal share of the cost
22 of an activity carried out using any assistance or grant
23 under this Act shall not exceed 75 percent of the total
24 cost of the activity.

1 **SEC. 12. LONG ISLAND SOUND AUTHORIZATION OF APPRO-**
2 **PRIATIONS.**

3 Section 119(f) of the Federal Water Pollution Con-
4 trol Act (33 U.S.C. 1269(f)) is amended by striking
5 “2005” each place it appears and inserting “2009”.

6 **SEC. 13. TERMINATION OF COMMITTEE.**

7 The Committee shall terminate on December 31,
8 2013.

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