

111TH CONGRESS
2D SESSION

H. R. 5876

To amend the Federal Water Pollution Control Act to reauthorize and improve activities for the protection of the Long Island Sound watershed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2010

Mr. BISHOP of New York (for himself, Mr. KING of New York, Mr. HIMES, Mr. MURPHY of Connecticut, Mr. ACKERMAN, Mr. SERRANO, Mr. COURTNEY, Ms. DELAURO, Mr. ISRAEL, Mr. CROWLEY, Mr. ENGEL, Mr. HALL of New York, Mrs. LOWEY, and Mr. OLVER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Water Pollution Control Act to reauthorize and improve activities for the protection of the Long Island Sound watershed, and for other purposes.

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 Improvement Act Amendments of 2010”.

1 **SEC. 2. LONG ISLAND SOUND.**

2 (a) DUTIES OF THE OFFICE.—Section 119(c) of the
3 Federal Water Pollution Control Act (33 U.S.C. 1269(c))
4 is amended—

5 (1) in paragraph (2)—

6 (A) in subparagraph (H) by striking the
7 “and” at the end;

8 (B) in subparagraph (I) by striking the pe-
9 riod at the end and inserting “, and”; and

10 (C) by adding at the end the following:

11 “(J) the impacts of climate change on the
12 Long Island Sound watershed, including—

13 “(i) the identification and assessment
14 of vulnerabilities in the watershed,

15 “(ii) the development and implementa-
16 tion of adaptation strategies to reduce such
17 vulnerabilities, and

18 “(iii) the identification and assess-
19 ment of the impacts of sea level rise on
20 water quality, habitat, and infrastructure
21 in Long Island Sound;”;

22 (2) by striking paragraph (4) and inserting the
23 following:

24 “(4) develop and implement strategies to in-
25 crease public education and awareness with respect

1 to the ecological health and water quality conditions
2 of Long Island Sound;”;

3 (3) in paragraph (6) by inserting after “the
4 public” the following: “, including on the Internet,”;
5 and

6 (4) by striking paragraph (7) and inserting the
7 following:

8 “(7) track the progress made towards meeting
9 the identified goals, actions, and schedules of the
10 Comprehensive Conservation and Management Plan,
11 including through the implementation and support
12 of a monitoring system for the ecological health and
13 water quality conditions of Long Island Sound;
14 and”.

15 (b) STORMWATER DISCHARGES.—Section 119 of
16 such Act is amended—

17 (1) by redesignating subsections (d), (e), and
18 (f) as subsections (j), (k), and (l), respectively; and

19 (2) by inserting after subsection (c) the fol-
20 lowing:

21 “(d) STORMWATER DISCHARGES.—

22 “(1) IN GENERAL.—Not later than January 1,
23 2013, a municipality that owns or operates a munic-
24 ipal separate storm sewer system shall be required
25 to obtain, without regard to the size of the popu-

1 lation served by the system, a permit under section
2 402(p) for discharges composed entirely of
3 stormwater for any portion of the municipality that
4 is located within both—

5 “(A) the Long Island Sound watershed;

6 and

7 “(B) an urbanized area.

8 “(2) REGIONAL STORMWATER PERMITTING.—

9 Notwithstanding the requirements of section
10 402(p)(3)(B)(i), and at the request of applicable
11 municipalities, permits described in paragraph (1)
12 may be issued on a regional basis.

13 “(3) REGULATIONS.—

14 “(A) IN GENERAL.—Not later than 2 years
15 after the date of enactment of the Long Island
16 Sound Improvement Act Amendments of 2010,
17 and after providing notice and an opportunity
18 for public comment, the Administrator shall
19 issue regulations to implement this subsection,
20 including regulations for permit issuance on a
21 regional basis under paragraph (2).

22 “(B) PERMIT REQUIREMENTS.—In car-
23 rying out subparagraph (A), the Administrator
24 shall ensure that—

1 “(i) permits held by industrial
2 stormwater dischargers located within a re-
3 gion subject to a regional permit issued
4 under paragraph (2) conform to the condi-
5 tions included in the regional permit;

6 “(ii) permits held by construction ac-
7 tivity dischargers located within a region
8 subject to a regional permit issued under
9 paragraph (2) conform to the conditions
10 included in the regional permit; and

11 “(iii) monitoring requirements are in-
12 cluded in a regional permit issued under
13 paragraph (2).

14 “(4) TECHNICAL ASSISTANCE.—The Adminis-
15 trator may provide technical assistance to a munici-
16 pality with respect to the establishment of a regional
17 permit issued under paragraph (2).”.

18 (c) REPORTING REQUIREMENTS.—Section 119 of
19 such Act (as amended by this section) is further amended
20 by inserting after subsection (d) the following:

21 “(e) REPORT.—

22 “(1) IN GENERAL.—Not later than 2 years
23 after the date of enactment of the Long Island
24 Sound Improvement Act Amendments of 2010, and
25 biennially thereafter, the Director of the Office, in

1 consultation with the Governor of each Long Island
2 Sound State, shall submit to Congress a report
3 that—

4 “(A) summarizes and assesses the progress
5 made by the Office and the Long Island Sound
6 States in implementing the Long Island Sound
7 Comprehensive Conservation and Management
8 Plan, including an assessment of the progress
9 made towards meeting the performance goals
10 and milestones contained in the Plan;

11 “(B) assesses the key ecological attributes
12 that reflect the health of the ecosystem of the
13 Long Island Sound watershed;

14 “(C) describes any substantive modifica-
15 tions to the Long Island Sound Comprehensive
16 Conservation and Management Plan made dur-
17 ing the 2-year period preceding the date of sub-
18 mission of the report;

19 “(D) provides specific recommendations to
20 improve progress in restoring and protecting
21 the Long Island Sound watershed, including, as
22 appropriate, proposed modifications to the Long
23 Island Sound Comprehensive Conservation and
24 Management Plan;

1 “(E) identifies priority actions for imple-
2 mentation of the Long Island Sound Com-
3 prehensive Conservation and Management Plan
4 for the 2-year period following the date of sub-
5 mission of the report; and

6 “(F) describes how Federal funding and
7 actions will be coordinated with the actions of
8 the Long Island Sound States and other enti-
9 ties.

10 “(2) PUBLIC AVAILABILITY.—The Adminis-
11 trator shall make the report described in paragraph
12 (1) available to the public, including on the Internet.

13 “(f) ANNUAL BUDGET PLAN.—The President, in the
14 annual budget of the United States Government submitted
15 under section 1105(a) of title 31, United States Code,
16 shall submit information regarding each Federal agency
17 involved in the protection and restoration of the Long Is-
18 land Sound watershed, including—

19 “(1) an interagency crosscut budget that dis-
20 plays for each Federal agency—

21 “(A) the amount obligated in the preceding
22 fiscal year for protection and restoration
23 projects and studies relating to the watershed;

24 “(B) the estimated budget for the current
25 fiscal year for protection and restoration

1 projects and studies relating to the watershed;
2 and

3 “(C) the proposed budget for succeeding
4 fiscal years for protection and restoration
5 projects and studies relating to the watershed;
6 and

7 “(2) a summary of any proposed modifications
8 to the Long Island Sound Comprehensive Conserva-
9 tion and Management Plan for the succeeding fiscal
10 year.”.

11 (d) FEDERAL ENTITIES.—Section 119 of such Act
12 (as amended by this section) is further amended by insert-
13 ing after subsection (f) the following:

14 “(g) FEDERAL ENTITIES.—

15 “(1) COORDINATION.—The Administrator shall
16 coordinate the actions of all Federal agencies that
17 impact water quality in the Long Island Sound wa-
18 tershed in order to improve the water quality and
19 living resources of the watershed.

20 “(2) METHODS.—The Administrator, acting
21 through the Director of the Office, may enter into
22 interagency agreements and make intergovernmental
23 personnel appointments in carrying out the duties of
24 this section.

1 “(3) FEDERAL PARTICIPATION IN WATERSHED
2 PLANNING.—A Federal agency that owns or occupies
3 real property, or carries out activities, within the
4 Long Island Sound watershed shall participate in re-
5 gional and subwatershed planning, protection, and
6 restoration activities with respect to the watershed.

7 “(4) CONSISTENCY WITH COMPREHENSIVE CON-
8 SERVATION AND MANAGEMENT PLAN.—

9 “(A) IN GENERAL.—To the maximum ex-
10 tent practicable, the head of each Federal agen-
11 cy that owns or occupies real property, or car-
12 ries out activities, within the Long Island
13 Sound watershed shall ensure that the property,
14 the actions taken by the agency with respect to
15 the property, and the activities of the agency
16 are consistent with the Long Island Sound
17 Comprehensive Conservation and Management
18 Plan, and any related subsequent agreements
19 and plans.

20 “(B) FORESTED LANDS AND RIPARIAN
21 HABITAT.—Not later than 2 years after the
22 date of enactment of the Long Island Sound
23 Improvement Act Amendments of 2010, the
24 Administrator shall coordinate with the head of
25 each Federal agency that owns or occupies real

1 property within the Long Island Sound water-
2 shed to develop and implement—

3 “(i) a plan to maximize, to the extent
4 practicable, forest cover and riparian habi-
5 tat on the property; and

6 “(ii) a plan for reforestation and ri-
7 parian habitat recovery, if necessary, on
8 the property.

9 “(C) STORMWATER MANAGEMENT PRAC-
10 TICES.—Not later than 2 years after the date
11 of enactment of the Long Island Sound Im-
12 provement Act Amendments of 2010, the Ad-
13 ministrator shall coordinate with the head of
14 each Federal agency that owns or occupies real
15 property within the Long Island Sound water-
16 shed to develop and implement a plan to mini-
17 mize or eliminate the discharge of stormwater
18 from the property.”.

19 (e) TRADING PROGRAM.—Section 119 of such Act (as
20 amended by this section) is further amended by inserting
21 after subsection (g) the following:

22 “(h) TRADING PROGRAM.—

23 “(1) ESTABLISHMENT.—The Administrator
24 shall, in consultation with the Governor of each
25 Long Island Sound State—

1 “(A) not later than September 30, 2011,
2 publish a proposal for a voluntary interstate ni-
3 trogen trading program with respect to Long
4 Island Sound that includes the generation, trad-
5 ing, and use of nitrogen credits to facilitate the
6 attainment and maintenance of the Long Island
7 Sound TMDL; and

8 “(B) not later than March 1, 2012, estab-
9 lish a voluntary interstate nitrogen trading pro-
10 gram with respect to Long Island Sound that
11 includes the generation, trading, and use of ni-
12 trogen credits to facilitate the attainment and
13 maintenance of the Long Island Sound TMDL.

14 “(2) REQUIREMENTS.—The trading program
15 established under paragraph (1) shall, at a min-
16 imum—

17 “(A) establish procedures or standards for
18 certifying, verifying, and enforcing nitrogen
19 credits to ensure that credit-generating prac-
20 tices from both point sources and nonpoint
21 sources are achieving actual reductions in nitro-
22 gen; and

23 “(B) establish procedures or standards for
24 providing public transparency with respect to
25 trading activity.”.

1 (f) ANNUAL PRIORITY LIST.—Section 119 of such
2 Act (as amended by this section) is further amended by
3 inserting after subsection (h) the following:

4 “(i) ANNUAL PRIORITY LIST.—

5 “(1) IN GENERAL.—Not later than one year
6 after the date of enactment of the Long Island
7 Sound Improvement Act Amendments of 2010, and
8 annually thereafter, the Director of the Office, in
9 consultation with the Governor of each Long Island
10 Sound State, shall compile, after providing notice, a
11 list identifying and prioritizing the activities,
12 projects, programs, and studies intended to be fund-
13 ed with amounts made available for grants under
14 subsection (j) during the succeeding fiscal year.

15 “(2) LIST COMPONENTS.—The list compiled
16 under paragraph (1) shall include—

17 “(A) a specification, in order of priority, of
18 activities, projects, programs, and studies that
19 will assist in meeting the goals and objectives of
20 the Long Island Sound Comprehensive Con-
21 servation and Management Plan;

22 “(B) information on the activities, projects,
23 programs, and studies specified in subpara-
24 graph (A), including the potential terms of fi-

1 nancial assistance and communities to be
2 served; and

3 “(C) the criteria and methods established
4 by the Director of the Office, in consultation
5 with the Governor of each Long Island Sound
6 State, for selecting activities, projects, pro-
7 grams, and studies for grants under subsection
8 (j).

9 “(3) APPROVAL OF LIST.—

10 “(A) SUBMISSION.—Not later than 15
11 days after compiling a list under paragraph (1),
12 the Director of the Office shall submit the list
13 to the Administrator for approval.

14 “(B) APPROVAL.—The Administrator shall
15 approve or disapprove a list submitted under
16 subparagraph (A) based on a determination of
17 whether the activities, projects, programs, and
18 studies specified in the list are consistent with
19 the goals and objectives of the Long Island
20 Sound Comprehensive Conservation and Man-
21 agement Plan.

22 “(C) EFFECT OF DISAPPROVAL.—If the
23 Administrator disapproves a list submitted
24 under subparagraph (A), the Administrator
25 shall provide the Director of the Office, in writ-

1 ing, a notification of and basis for the dis-
2 approval and shall allow the Director of the Of-
3 fice the opportunity for resubmission.

4 “(D) FAILURE OF ADMINISTRATOR TO RE-
5 SPOND.—If the Administrator has not re-
6 sponded in writing to a list submitted under
7 subparagraph (A) by the date that is 90 days
8 after the date of the submission, the list shall
9 be considered to be approved.

10 “(4) FAILURE TO COMPILE LIST.—If the Direc-
11 tor of the Office does not compile a list under para-
12 graph (1) with respect to a fiscal year, the Adminis-
13 trator shall compile the list for that fiscal year,
14 which—

15 “(A) shall include a specification, in order
16 of priority, of activities, projects, programs, and
17 studies that will assist in meeting the goals and
18 objectives of the Long Island Sound Com-
19 prehensive Conservation and Management Plan;
20 and

21 “(B) may include any activities, projects,
22 programs, and studies from previous lists com-
23 piled under paragraph (1) and approved under
24 paragraph (3) that have not yet been funded
25 with a grant under subsection (j).”.

1 (g) GRANTS.—Section 119(j) of such Act (as redesign-
2 nated by subsection (b)(1) of this section) is amended—

3 (1) by striking paragraph (2) and inserting the
4 following:

5 “(2) ELIGIBILITY.—

6 “(A) IN GENERAL.—Except as provided in sub-
7 paragraph (B), the Administrator is authorized to
8 make grants under this subsection to State, inter-
9 state, and regional water pollution control agencies
10 and other public and nonprofit private agencies, in-
11 stitutions, and organizations.

12 “(B) CONSTRUCTION OF TREATMENT WORKS.—

13 “(i) IN GENERAL.—The Administrator is
14 authorized to make a grant under this sub-
15 section for the construction of a publicly owned
16 treatment works within a Long Island Sound
17 State solely—

18 “(I) to a municipal, intermunicipal,
19 State, or interstate agency; and

20 “(II) if the State in which the recipi-
21 ent agency is located has established, or
22 the Administrator has established for the
23 State, allocations for discharges within the
24 State in a Long Island Sound TMDL.

1 “(ii) MINIMUM FUNDING.—To the extent
 2 practicable, the Administrator shall make
 3 grants to agencies under this subparagraph in
 4 a manner that ensures that each Long Island
 5 Sound State receives each fiscal year not less
 6 than 5 percent of the total amount made avail-
 7 able in grants under this subparagraph in that
 8 fiscal year.”; and

9 (2) in paragraph (3) by inserting after the first
 10 sentence the following: “Grants to construct a mu-
 11 nicipal separate storm sewer system made under this
 12 subsection to a municipality that is subject to a re-
 13 gional permit issued under subsection (d)(2) shall
 14 not exceed 65 percent of the costs of the construc-
 15 tion.”.

16 (h) AUTHORIZATION OF APPROPRIATIONS.—Section
 17 119(l) of such Act (as redesignated by subsection (b)(1)
 18 of this section) is amended to read as follows:

19 “(l) AUTHORIZATION OF APPROPRIATIONS.—

20 “(1) IN GENERAL.—There is authorized to be
 21 appropriated to carry out this section, other than
 22 subsection (j), such sums as may be necessary for
 23 each of fiscal years 2011 through 2015.

24 “(2) RELATIONSHIP TO OTHER FUNDING.—For
 25 each fiscal year, the amount the Management Con-

1 ference of the Long Island Sound Study is eligible
 2 to receive in grants under section 320 shall be re-
 3 duced by an amount equal to the amount the Man-
 4 agement Conference receives in grants under this
 5 section.

6 “(3) GRANTS.—There is authorized to be ap-
 7 propriated to carry out subsection (j)—

8 “(A) for grants to construct publicly owned
 9 treatment works, including municipal separate
 10 storm sewer systems (which may utilize low im-
 11 pact development technologies or approaches or
 12 utilize methods to address combined sewer over-
 13 flows)—

14 “(i) \$125,000,000 for fiscal year
 15 2011; and

16 “(ii) \$250,000,000 for each of fiscal
 17 years 2012 through 2015; and

18 “(B) for grants other than grants de-
 19 scribed under subparagraph (A) \$40,000,000
 20 for each of fiscal years 2011 through 2015.”.

21 (i) DEFINITIONS.—Section 119 of such Act (as
 22 amended by this section) is further amended by adding
 23 at the end the following:

24 “(m) DEFINITIONS.—In this section, the following
 25 definitions apply:

1 “(1) LONG ISLAND SOUND STATE.—The term
2 ‘Long Island Sound State’ means each of the States
3 of Connecticut, Massachusetts, New Hampshire,
4 New York, Rhode Island, and Vermont.

5 “(2) LONG ISLAND SOUND TMDL.—The term
6 ‘Long Island Sound TMDL’ means a total maximum
7 daily load established or approved by the Adminis-
8 trator to achieve water quality standards in the wa-
9 ters of Long Island Sound under section 303(d).

10 “(3) LONG ISLAND SOUND WATERSHED.—The
11 term ‘Long Island Sound watershed’ means Long Is-
12 land Sound and the area consisting of the drainage
13 basin leading into Long Island Sound, including—

14 “(A) the Connecticut River and its tribu-
15 taries;

16 “(B) the Housatonic River and its tribu-
17 taries;

18 “(C) the Thames River and its tributaries;

19 “(D) the Pawcatuck River and its tribu-
20 taries; and

21 “(E) all other tributaries in the States of
22 Connecticut and New York that drain into
23 Long Island Sound.

1 “(4) URBANIZED AREA.—The term ‘urbanized
2 area’ has the meaning given that term by the Bu-
3 reau of the Census.”.

4 **SEC. 3. INNOVATIVE STORMWATER MANAGEMENT AP-**
5 **PROACHES.**

6 Title V of the Federal Water Pollution Control Act
7 (33 U.S.C. 1361 et seq.) is amended—

8 (1) by redesignating section 519 as section 520;
9 and

10 (2) by inserting after section 518 the following:

11 **“SEC. 519. INNOVATIVE STORMWATER MANAGEMENT AP-**
12 **PROACHES.**

13 “To the maximum extent practicable, the Adminis-
14 trator shall consider the use of innovative stormwater
15 management practices and approaches, including nutrient
16 trading with respect to water quality and the use of low
17 impact development technologies, in meeting the require-
18 ments of this Act.”.

19 **SEC. 4. NUTRIENT BIOEXTRACTION PILOT PROJECT.**

20 (a) IN GENERAL.—Not later than 2 years after the
21 date of enactment of this Act, the Administrator of the
22 Environmental Protection Agency shall carry out a pilot
23 project to demonstrate the efficacy of nutrient bioextrac-
24 tion for the removal of nitrogen and phosphorous from the
25 waters of the Long Island Sound watershed.

1 (b) REPORT TO CONGRESS.—Not later than 5 years
2 after the date of enactment of this Act, the Administrator
3 shall submit to Congress a report on the results of the
4 pilot project described in subsection (a).

5 (c) DEFINITION.—In this section, the term “nutrient
6 bioextraction” means an environmental management
7 strategy by which nutrients are removed from an aquatic
8 ecosystem through the harvest of enhanced biological pro-
9 duction, including the aquaculture of suspension-feeding
10 shellfish or algae.

11 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated to carry out this section
13 \$1,000,000.

○