

Memorandum Urging Approval

COMMITTEE ON ANIMALS AND THE LAW

Animals #12-GOV

July 23, 2019

S. 5871
A. 6520

By: Senator Martinez
By: M. of A. Englebright

Senate Committee: Rules
Assembly Committee: Ways and Means
Effective Date: Immediately

AN ACT to amend the environmental conservation law, in relation to establishing the marine mammal and sea turtle protection area.

LAW & SECTION REFERRED TO: Article 11 of the Environmental Conservation Law is amended by adding new title 20-A.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL**

This legislation adds a new title 20-A to Article 11 of the Environmental Conservation Law establishing the marine mammal and sea turtle protection area around the shores of Plum Island, Great Gull Island and Little Gull Island.

Plum Island, Great Gull Island and Little Gull Island are in the Long Island Sound, northeast of the eastern tip of Long Island's north fork. Jurisdictionally, they are within the Town of Southold in Suffolk County. The islands are largely un- or underdeveloped. Plum Island is the largest and it has long housed a United States government animal disease research facility. The islands and the waters around them provide significant habitat for numerous wildlife species, particularly marine mammals like seals and sea birds. They may also include important or potentially important sea turtle habitats.

This legislation recognizes the islands' importance for wildlife and establishes a marine mammal and sea turtle protection area. It also provides that the protection area "may also be designated as a New York state bird conservation area pursuant to Section 11-2881 of [the Environmental Conservation Law]." The protection area would extend from the mean high-water mark along the coast of each island seaward for at least fifteen hundred (1500) feet, or further in the case of shallow water, to an outermost limit of waters fifteen (15) feet in depth. The legislation further provides that the marine mammal and sea turtle protection area shall mean:

- (a) A site providing habitat to species including:
 - (i) harbor seals (*Phoca vitulina*);
 - (ii) harbor porpoises (*Phocoena phocoena*);
 - (iii) gray seals (*Halichoerus grypus*); and
 - (iv) sea turtle species including kemp's ridley (*Lepidochelys kempi*), green turtles (*Chelonia mydas*) and leatherback (*Dermochelys coriacea*)¹;
- (b) Presence of a state-designated natural protective feature; and
- (c) Location within the boundaries of two estuaries of national significance.

The legislation authorizes the Department of Environmental Conservation to “promulgate regulations to prevent harassment and for the protection of marine mammals and sea turtles within the marine mammal and sea turtle protection area”. The bill also requires the department to establish a marine mammal and sea turtle protection area advisory committee which shall include governmental and unpaid nongovernmental representatives to “advise as to the management, educational, research and utilization of the marine mammal and sea turtle protection area.”

This legislation protects important known and potential habitat for marine mammals and sea turtles. It is a long-established New York State policy that “[s]ignificant coastal fish and wildlife habitats will be protected, preserved ...”² The policy clearly applies to the proposed marine mammal and sea turtle protection area given the known importance of the seal haul out areas, marine bird habitats and potential sea turtle habitats unique to the islands, the role these areas play (and may play) in supporting rare and endangered species, and the preference for preserving rather than restoring beneficial habitat.

The Plum Island Biodiversity Inventory documented the island’s rich biodiversity including important habitats “for many plants and animals of conservation concern,” especially harbor and gray seals and many species of marine birds.³ It noted that the southeast shore of Plum Island is one of the largest seal haul out areas in New York State, and that there seems to be more harbor seals on Plum Island and more gray seals on Great Gull Island.⁴ More recently, another scientist has reported that “gray seal are on Little Gull Island and are beginning to be observed year round with the majority of the animals arriving in November, December and peaking in March.”⁵ The Plum Island Biodiversity Inventory also called for further research on marine mammals, sea turtles and marine habitats.⁶ The Long Island Sound Study and related information resources

¹ The Committee notes that the loggerhead (*Caretta caretta*) is also among the sea turtles found in these waters. Email communication with Robert A. DiGiovanni, Jr., Founder and Chief Scientist, Atlantic Marine Conservation Society (July 10, 2019).

² New York State Department of State, Coastal Management Program, State Coastal Policies (June 2017) at 16-18, available at: <https://www.dos.ny.gov/opd/programs/pdfs/CoastalPolicies.pdf> .

³ Schlesinger, M.D., et. al, Plum Island Biodiversity Inventory (New York Natural Heritage Program, Albany, New York, and SUNY College of Environmental Science and Forestry, Syracuse, New York June 2016) at vii, available at: https://nynhp.org/files/PlumIsland_2016/Plum_Island_biodiversity_inventory_June2016.pdf .

⁴ *Id.* at 27.

⁵ DiGiovanni communication, *supra* note 1.

⁶ Schlesinger, M.D., et, al, Plum Island Biodiversity Inventory, *supra* note.3, at vii and 55.

make clear the importance of Plum and the Gull Islands in providing habitat for several species of terns and the piping plover.⁷

Now is the time to protect the important known and potentially beneficial wildlife habitats on and around Plum Island, Great Gull Island, and Little Gull Island. This legislation provides for such protection and the means for researching and better understanding how to best protect cherished marine mammal and sea turtle populations as well as individual members of such species and marine birds.

For the foregoing reasons, the NYSBA's Committee on Animals and the Law **SUPPORTS** this legislation and **URGES ITS APPROVAL** by the Governor.

⁷ See, e.g., Long Island Sound Study, Plum and Gull Islands, available at: <http://longislandsoundstudy.net/2012/08/plum-gull-islands/>; and Paton, Suzanne, "Great Gull Island", Long Island Sound Study newsletter, Sound Update, Summer 2011 at 1, available at: <http://longislandsoundstudy.net/wp-content/uploads/2011/09/Island11-final-summer-2011.pdf>.