

## Calendar No. 787

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-355 }

### TAUNTON RIVER LEGACY ACT

JUNE 16, 2008.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 868]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 868) to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the Commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. DESIGNATION OF TAUNTON RIVER, MASSACHUSETTS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

“(171) TAUNTON RIVER, MASSACHUSETTS.—The main stem of the Taunton River from its headwaters at the confluence of the Town and Matfield Rivers in the Town of Bridgewater downstream 40 miles to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, to be administered by the Secretary of the Interior in cooperation with the Taunton River Stewardship Council as follows:

“(A) The 18-mile segment from the confluence of the Town and Matfield Rivers to Route 24 in the Town of Raynham, as a scenic river.

“(B) The 5-mile segment from Route 24 to 0.5 miles below Weir Bridge in the City of Taunton, as a recreational river.

“(C) The 8-mile segment from 0.5 miles below Weir Bridge to Muddy Cove in the Town of Dighton, as a scenic river.

“(D) The 9-mile segment from Muddy Cove to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, as a recreational river.”.

#### SEC. 2. MANAGEMENT OF TAUNTON RIVER, MASSACHUSETTS.

(a) TAUNTON RIVER STEWARDSHIP PLAN.—

(1) IN GENERAL.—Each river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1) shall be managed in accordance with the Taunton River Stewardship Plan, dated July 2005 (including any amendment to the Taunton River Stewardship Plan that the Secretary of the Interior (referred to in this section as the “Secretary”) determines to be consistent with this Act).

(2) EFFECT.—The Taunton River Stewardship Plan described in paragraph (1) shall be considered to satisfy each requirement relating to the comprehensive management plan required under section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

(b) COOPERATIVE AGREEMENTS.—To provide for the long-term protection, preservation, and enhancement of each river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1), pursuant to sections 10(e) and 11(b)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e) and 1282(b)(1)), the Secretary may enter into cooperative agreements (which may include provisions for financial and other assistance) with—

(1) the Commonwealth of Massachusetts (including political subdivisions of the Commonwealth of Massachusetts);

(2) the Taunton River Stewardship Council; and

(3) any appropriate nonprofit organization, as determined by the Secretary.

(c) RELATION TO NATIONAL PARK SYSTEM.—Notwithstanding section 10(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), each river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1) shall not be—

(1) administered as a unit of the National Park System; or

(2) subject to the laws (including regulations) that govern the administration of the National Park System.

(d) LAND MANAGEMENT.—

(1) ZONING ORDINANCES.—The zoning ordinances adopted by the Towns of Bridgewater, Halifax, Middleborough, Raynham, Berkley, Dighton, Freetown, and Somerset, and the Cities of Taunton and Fall River, Massachusetts (including any provision of the zoning ordinances relating to the conservation of floodplains, wetlands, and watercourses associated with any river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1)), shall be considered to satisfy each standard and requirement described in section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)).

(2) VILLAGES.—For the purpose of section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)), each town described in paragraph (1) shall be considered to be a village.

(3) ACQUISITION OF LAND.—

(A) LIMITATION OF AUTHORITY OF SECRETARY.—With respect to each river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1), the Secretary may only acquire parcels of land—

(i) by donation; or

(ii) with the consent of the owner of the parcel of land.

(B) PROHIBITION RELATING TO ACQUISITION OF LAND BY CONDEMNATION.—In accordance with section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)), with respect to each river segment designated by section 3(a)(171) of the Wild and Scenic Rivers Act (as added by section 1), the Secretary may not acquire any parcel of land by condemnation.

## PURPOSE

The purpose of S. 868 is to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the Commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System.

## BACKGROUND AND NEED

The Taunton River is one of Massachusetts’ and New England’s most significant anadromous fish rivers. It supports the state’s largest herring run. The Taunton system supports anadromous and catadromous fish species, including alewife, blueback herring, American eel, American shad, rainbow smelt, white perch, striped bass, and the endangered Atlantic sturgeon.

Public Law 106–318 required the Secretary of the Interior to complete a study of the Taunton River to assess whether or not the river is suitable to be designated as a component of the Wild and Scenic River system.

Between November 2004 and July 2005, the legislative bodies of all ten communities abutting the mainstem of the Taunton River voted to support the Wild and Scenic River designation.

In June 2007, the National Park Service released a draft study entitled, “Taunton Wild and Scenic River Study, Draft Report and Environmental Assessment.” The draft study states that “[a]ll 40 miles of the mainstem of the Taunton River have been found eligible for Wild and Scenic River designation based upon free-flowing condition and the presence of one or more outstandingly remarkable natural or cultural resource value. . . . Outstandingly remarkable values include fisheries; history and archaeology; ecology and biodiversity; and scenery and recreation.” The Park Service expects to complete its final study in 2008.

#### LEGISLATIVE HISTORY

S. 868 was introduced by Senator Kennedy and Senator Kerry on March 13, 2007. The Subcommittee on National Parks held a hearing on S. 868 on September 11, 2007 (S. Hrg. 110–213). The Committee on Energy and Natural Resources ordered the bill favorably reported on May 7, 2008.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 7, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 868, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 868, the Committee adopted an amendment in the nature of a substitute. The amendment requires that the river segments designated by section 1 be managed in accordance with the Taunton River Stewardship Plan, dated July 2005. In addition, the amendment authorizes the Secretary to enter into cooperative agreements with state and local government entities as well as nonprofit organizations to provide for the long-term protection of the river. Finally, the amendment states that the local ordinances shall be considered to satisfy each standard and requirement described in section 6(c) of the Wild and Scenic Rivers Act.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* amends section 3(a) of the Wild and Scenic Rivers Act to designate segments of the Taunton River as components of the National Wild and Scenic Rivers System.

*Section 2(a)* requires that the segments designated by section 1 shall be managed in accordance with the Taunton River Stewardship Plan. This subsection also states that the Taunton River Stewardship Plan shall be considered to satisfy each requirement relat-

ing to the comprehensive management plan required under section 3(d) of the Wild and Scenic Rivers Act.

Subsection (b) authorizes the Secretary of the Interior to enter into cooperative agreements with the Commonwealth of Massachusetts, the Taunton River Stewardship Council, and any appropriate nonprofit organization.

Subsection (c) states that, notwithstanding section 10(c) of the Wild and Scenic Rivers Act, each segment designation by section 1 shall not be administered as a unit of the National Park System or subject to the laws that govern the administration of the National Park System.

Paragraph (d)(1) states that the zoning ordinances adopted by local towns and cities in the vicinity of the Taunton River shall be considered to satisfy each standard and requirement described in section 6(c) of the Wild and Scenic Rivers Act.

Paragraph (2) states that for the purpose of section 6(c) of the Wild and Scenic Rivers Act, each town described in paragraph (1) shall be considered to be a village.

Paragraph (3) authorizes the Secretary, with respect to each river segment designated by section 1, to acquire parcels of land only by donation or with the consent of the owner. This paragraph also prohibits the Secretary from acquiring any land by condemnation.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

*S. 868—A bill to amend the Wild and Scenic Rivers Act to designate segments of the Taunton River in the commonwealth of Massachusetts as a component of the National Wild and Scenic Rivers System*

S. 868 would designate four segments of the Taunton River in Massachusetts as scenic or recreational rivers under the Wild and Scenic Rivers Act. The bill would authorize the Secretary of the Interior to execute cooperative agreements with Massachusetts and local nonprofit organizations to manage the newly designated segments, which encompass about 40 miles of the river between the towns of Bridgewater and Fall River. Based on information provided by the National Park Service and assuming the availability of appropriated funds, CBO estimates that the agency would spend about \$150,000 a year to manage the designated areas. Enacting S. 868 would not affect direct spending or revenues.

S. 868 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out

S. 868. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 868, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 868, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the September 11, 2007, subcommittee hearing on S. 868 follows:

##### STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to appear before your committee today to discuss the views of the Department of the Interior on S. 868, a bill to amend the Wild and Scenic Rivers Act by designating a segment of the Taunton River as a component of the national wild and scenic rivers system.

The Department is currently completing the study authorized by Public Law 106-318 to determine the eligibility and suitability of the Taunton River for inclusion in the national wild and scenic rivers system. The draft report and environmental assessment is currently out for public and agency comment, with the comment period scheduled to close on September 17, 2007. We request that the committee defer action on the bill until the study is complete. In addition, if this bill moves forward, we would like to work with the committee to make this bill consistent with other wild and scenic river designation bills that have been enacted by Congress.

S. 868 would designate the entire 40-mile main stem of the Taunton River as a component of the national wild and scenic rivers system. This corresponds to "Alternative B: Full Designation" as described in the draft report, and is identified in the draft as the environmentally preferred alternative because it is the alternative that, by virtue of its inclusion of the entire main stem in the designation, provides the highest degree of protection. The draft study does not include an agency preferred alternative. The environmentally preferred alternative is supported by the town meeting and city council votes of all ten communities abutting the Taunton River, as documented in the draft report and the companion document developed during the study, the Taunton River Stewardship Plan, dated July 2005.

The draft report concludes that the Taunton River meets the eligibility requirements of the Wild and Scenic Rivers Act by virtue of its free-flowing condition and presence of

one or more outstandingly remarkable resource values. The 40-mile Taunton River is the longest undammed coastal river in New England. This unique character, including the lack of a head-of-tide dam, is directly related to outstandingly remarkable values identified during the study, including fish, ecology and biological diversity, and recreation. As such, the Taunton River represents a natural fit with Wild and Scenic River Act purposes of recognizing and protecting special free-flowing rivers and the values they support.

The Taunton River is recognized as the most significant river in Massachusetts for anadromous fish species, including alewife, blueback herring, American shad, hickory shad, gizzard shad and rainbow smelt, a direct result of the free-flowing character of the river which allows these and other species unfettered access to spawning tributaries. Similarly, the broader ecology of the river is unusually diverse and intact, supporting 31 distinct wildlife habitats, globally rare plant species, regionally significant freshwater and brackish tidal marshes, and many rare species of birds and amphibians. A Nature Conservancy study has concluded that the Taunton River represents one of the most unique, diverse, and intact ecosystems in the North Atlantic Ecoregion, from Delaware to Maine. Recreationally, the 40-mile Taunton River offers outstanding flatwater paddling, and, in the lower river, additional opportunities for broader recreational uses including power boating and sailing.

The study authorized by Public Law 106-318 has been conducted in partnership with the local communities of the Taunton River, the Commonwealth of Massachusetts, and other local river interests based upon the partnership wild and scenic river model. This model recognizes and anticipates a limited federal role stemming from the lack of federal land ownership. Successful planning and management under these circumstances requires the fundamental support and involvement of state and local interests. This common basis of support and involvement for the Taunton River is outlined in the Taunton River Stewardship Plan (July, 2005). This plan and the strong support it has received through the extensive public involvement of the study, is the principal basis for the draft report's conclusion that the Taunton River can be effectively managed and protected as a component of the national wild and scenic rivers system, and thereby meets the criteria for wild and scenic river suitability. The management scheme proposed in the stewardship plan is similar to ones that have proven effective on other partnership wild and scenic rivers, including the Sudbury, Concord, and Assabet Rivers also in Massachusetts.

It is important to point out that the draft report is out for public review and comment. Once the study is complete, the Secretary is required by law to submit to the President a report on the suitability or nonsuitability of the river for addition to the national wild and scenic rivers

system. The President is then required to report to the Congress his recommendations and proposals with respect to the designation of the studied river. If the President recommends that this river be included in the system, we would like to work with the committee on several amendments to the bill to clarify the management scheme for the river and to conform to established legislative models. It would be particularly important in this regard to consider the Taunton River Stewardship Plan as the basis for management of the designated wild and scenic river segment.

Mr. Chairman, this concludes my prepared remarks, and I would be happy to answer any questions you or other committee members may have regarding this bill.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 868 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### WILD AND SCENIC RIVERS ACT

**(Public Law 90-542; Approved October 2, 1968)**

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

\* \* \* \* \*

SEC. 3(a). The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

\* \* \* \* \*

(171) TAUNTON RIVER, MASSACHUSETTS.—

*The main stem of the Taunton River from its headwaters at the confluence of the Town and Matfield Rivers in the Town of Bridgewater downstream 40 miles to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, to be administered by the Secretary of the Interior in cooperation with the Taunton River Stewardship Council as follows:*

*(A) The 18-mile segment from the confluence of the Town and Matfield Rivers to Route 24 in the Town of Raynham, as a scenic river.*

*(B) The 5-mile segment from Route 24 to 0.5 miles below Weir Bridge in the City of Taunton, as a recreational river.*

*(C) The 8-mile segment from 0.5 miles below Weir Bridge to Muddy Cove in the Town of Dighton, as a scenic river.*

*(D) The 9-mile segment from Muddy Cove to the confluence with the Quequechan River at the Route 195 Bridge in the City of Fall River, as a recreational river.*

\* \* \* \* \*

