



Legislative Bulletin.....July 16, 2008

Contents:

H.R. 415—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

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$150,000 in FY 2009 and each year thereafter

Effect on Revenue: \$0

Total Change in Mandatory Spending: 0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 415—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 (*Frank, D-MA*)

Order of Business: H.R. 415, the Taunton River Wild and Scenic Rivers Designation Act, is scheduled to be considered on the House floor on Wednesday, July 16, 2008, subject to a structured rule ([H.Res.1339](#)), making in order four amendments, each debatable for 10 minutes. A summary of each amendment made in order can be found at the bottom of this document.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Summary: H.R. 415 would designate approximately 40 miles of the Taunton River—from the river’s headwaters in the town of Bridgewater, Mass., to the river’s convergence with the Quequechan River in Fall River, Mass.—as a part of the National Wild and Scenic Rivers System. The river would be classified and managed as follows:

- The first 18 mile segment (moving from north to south) would be classified as a scenic river;
- The following five mile segment would be classified as a recreational river;
- The following eight mile segment would be classified as a scenic river;
- The final nine mile segment would be classified as a recreational river.

Under the bill, the Taunton Wild and Scenic River segment would be managed by the Department of Interior, in accordance with the stipulations of the Taunton River Stewardship Plan dated July, 2005. Under the plan, the river would be managed by the Taunton River Stewardship Council. The Secretary of Interior would be authorized to enter into cooperative agreements (which may include financial assistance) with the State of Massachusetts, the Taunton River Stewardship Council, or any appropriate non-profit organizations to provide for the long-term protection, preservation, and enhancement of the river.

The bill would state that current local zoning ordinances regarding the conservation of floodplains, wetlands, and watercourses satisfy the federal standards for a conservation plan as required by the Wild and Scenic Rivers Act of 1968. H.R. 415 would also stipulate that the Secretary could only obtain land by donation or the consent of the owner, and not through condemnation.

The bill would prohibit any federally funded or approved construction or development projects on the segments of the river designated as a part of the Wild and Scenic Rivers System.

Additional Background on Wild and Scenic Rivers: The Wild and Scenic Rivers Act of 1968 (P.L. 90-542) was enacted in order to protect the natural characteristics of the nation’s “outstanding” free flowing rivers and their immediate surrounding environments. Specifically, the legislation prohibits federal construction of dams or other facilities that endanger the free flow and/or resource value of the river. According to the Congressional Research Service (CRS), at the time the Act was passed it was a national policy for the federal government to construct dams and flood control treatment facilities along the nation’s rivers. Such “impoundments” often resulted in the permanent alteration of the river’s flow or the geography of the land surrounding the river. The Wild and Scenic Rivers Act was passed as a means by which to set-aside certain rivers in order to protect their natural free flow from future development.

The original Wild and Scenic Rivers legislation states that rivers which “possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” According to the Wild and Scenic River System’s [Website](#), the Act protects the natural resources and free flow of selected rivers by:

- Prohibiting dams or other federally approved projects on the river;
- Protecting outstanding natural, cultural, and recreational resources;
- Ensuring that selected rivers’ water quality is maintained;
- Requiring a comprehensive river management plan to establish resource protection and river management practices.

There are now 166 rivers designated as part of the Wild and Scenic Rivers System, stretching some 11,000 miles through 38 states. Each segment is managed by the Department of Interior (DOI) or the Department of Agriculture (USDA), either through the Bureau of Land Management (BLM), the National Park Service (NPS), the Fish and Wildlife Service (FWS), or the Forest Service (USFS). Rivers designated as segments of the Wild and Scenic Rivers System are arranged according to one of three classifications:

- *Wild Rivers*: Rivers that are free from dams or other impoundments and are usually underdeveloped only accessible via trail.
- *Scenic Rivers*: Rivers that are free from dams or other impoundments, but are accessible via roads and may have some development along their shore.
- *Recreational Rivers*: According to the Wild and Scenic Rivers Act of 1968, recreational rivers are “those rivers or sections of rivers that are readily accessible by road or railroad, that may have *some* development along their shorelines, and that may have undergone *some* impoundment or diversion in the past.” *[Emphasis added]*.

H.R. 415 would designate 26 miles of the Taunton River as a scenic river and 14 miles as a recreational river.

Lower Taunton River: Some Members of the Natural Resources Committee have questioned the discretion of including the lower nine-mile stretch of the Taunton River as a part of the Wild and Scenic River System. According to the Taunton River Wild and Scenic River Study’s [Website](#), the original study was only supposed to review the upper Taunton River for inclusion. However, after “petitions from lower river communities,” the study was extended to include the entire river. In dissenting views included in [House Report 110-735](#), Natural Resources Committee Ranking Member Don Young (R-AK), and Parks and Public Lands Subcommittee Ranking Member Rob Bishop (R-UT), expressed their concern that the lower portion of the river did not meet the traditional requirements for inclusion in the Wild and Scenic Rivers System.

Citing the fact that the lower portion of the Taunton River (especially in and around the city of Fall River, Mass.) is highly industrialized, Reps. Young and Bishop point out that this designation is unlike any other segment of the Wild and Scenic River System. Though most rivers which meet the requirements for inclusion in the Wild and Scenic Rivers System are

located in remote areas that are unaltered by significant industrial development, the shores of the lower Taunton River are beset by industrial expansion. In their dissenting views, Reps. Young and Bishop ask, “What beautiful scenery should one expect to find on a canoe trip down the Lower Taunton? Among other sights, you will see power plants, oil refineries, vessel repair docks, shipyards, dilapidated bridges, a battleship museum, yacht clubs, a designated port area, street lights, a hair salon, and even a McDonald’s.” Opponents of the designation argue that because of the industrial characteristics of the lower Taunton River (as seen in the picture below), that segment of the river does not meet the definition of “wild” or “scenic,” and should not be subject to the development restrictions associated with a Wild and Scenic River designation.



A portion of the Taunton River (near Fall River, Mass.) that would be designated as a Wild and Scenic River under H.R. 415

During committee consideration of H.R. 415, it was revealed that the U.S. Park Service had produced a number of alternative plans for designating segments of the Taunton River as a part of the Wild and Scenic River System. According to the dissenting views, other alternatives would have designated the majority of the river as a Wild and Scenic River, while omitting the highly industrialized segment near Fall River. H.R. 415, which contains nine-miles of developed shoreline, represents what the U.S. Park Service termed the “environmentally preferred alternative” for the river. When questioned by Rep. Bishop during a subcommittee hearing on the designation, a Park Service official testified that the “environmentally preferred alternative” was defined as “what the river would choose if it could speak.”

During the committee markup of H.R. 415, a series of amendments were offered by Rep. Bishop in an effort to address a number of concerns with the bill. Several of the amendments sought to strengthen the property rights protections in the bill by allowing property owners to opt out of inclusion in the designation and to prohibit federal takings of private property via eminent domain or condemnation. Other amendments sought to exclude the controversial nine-mile segment of the designation that passed through the industrialized portion of the river. The amendments offered in committee were considered en bloc and were not agreed to by voice vote.

Rep. Bishop offered five similar amendments to the Committee on Rules. The committee made in order one amendment offered by Rep. Bishop, which would remove the nine-mile stretch of the lower Taunton River from designation as a “recreational river.”

Weaver’s Cove Liquefied Natural Gas Import Terminal: The leading explanation for why the final version of H.R. 415 included the designation of the industrialized segment of the lower Taunton River is that it is an effort to block the construction of the proposed Weaver’s Cove Energy Liquefied Natural Gas (LNG) terminal. The project would consist of a storage tank that would store LNG shipped in from overseas and distribute the LNG to the Algonquin Gas Transmission Company for transmission throughout the region. According to Weaver’s Cove Energy [Website](#), the facility would be located on the Taunton River in Fall River (within the area pictured above). The facility would consist of a storage tank, a new pier, processing equipment, a number of small support buildings, and two new pipelines to transmit LNG. According to the proposal—which was approved by the Federal Energy Regulatory Commission (FERC) in 2005—ships would transport LNG through the Taunton River to the LNG terminal, where it would be stored and transmitted throughout New England.

According to Weaver’s Cove Energy, the new LNG import terminal would produce an essential, clean-burning energy resource for the entire New England region. Weaver’s Cove Energy states that the new facility would provide New England with 15-20% more natural gas and, as a result, lower the expected cost of natural gas in the area by \$500 million annually, or about 10-15% per household. In addition, the company says that the LNG import terminal will meet 35% of New England’s daily winter gas demand by supplying 800 million cubic feet of natural gas to the region every day. In a letter of opposition to H.R. 415, Weaver’s Cove Energy argues that, “Because supplies are tight in New England, and will remain so until new infrastructure is added, the region will continue to experience sharp spikes in heating costs until supply is substantially increased. LNG delivered to the region is the best way to offset this.” In their dissenting views in [House Report 110-735](#), Reps. Young and Bishop concurred with Weaver’s Cove Energy. Citing the current energy crisis and the strain borne by American families attempting to heat their homes, the dissenting views state that the legislation “exacerbates the energy crisis at a time when we should be expanding our ability to provide clean, reliable sources of fuel.”

Opponents of the LNG terminal cite an unfavorable safety ruling issued by the Coast Guard in 2007. The background information given by the Majority in [House Report 110-735](#) asserts that, without the Coast Guards’ approval, the project is dead regardless of the river’s designation. However, the Coast Guards’ ruling was based on the initial plan for transporting LNG in and out of the Fall River facility. Originally, Weaver’s Cove Energy had planned to use small tankers to transport LNG from Fall River to other facilities around Narragansett Bay. The Coast Guard ruled that the Taunton River was not suitable for navigation by numerous LNG tankers. In response to the Coast Guards’ decision, Weaver’s Cove Energy devised a new proposal that would alleviate the Coast Guards’ traffic concerns by transmitting LNG throughout the region using pipelines instead of tankers. The overhauled terminal project is now under appeal, and FERC is in the process of deciding whether to authorize the revamped project. If the project receives FERC approval again, the Coast Guard would reassess safety concerns. On June 4, 2008, FERC gave the Environmental Protection Agency (EPA) notice of its intent to prepare an environmental impact study, as its assessment of the LNG terminal moves forward. H.R. 415

would ultimately halt FERC's determination process by prohibiting federally approved development on the Taunton River.

While proponents of H.R. 415 claim that the lower Taunton River should be designated as a National Recreational River, reports have indicated that even the bill's sponsors proposed major federal development of that segment of the river in recent years. According to recent a [Wall Street Journal editorial](#):

(Rep. Barney) Frank claims that the wild and scenic designation has nothing to do with the terminal. But six months before the terminal was first proposed in 2002, Mr. Frank had advocated dredging this not so pristine landscape to preserve its viability as an industrial port. Suddenly, he's discovered its wild, natural beauty. Mr. Frank has also blocked the demolition of the Brightman Street Bridge just downriver from the site, with the aim of blocking ship access to any LNG terminal.

Because the Brightman Street Bridge was not demolished as planned, the Coast Guards' final ruling determined that the river could not safely facilitate increased tanker traffic. A 2005 [Boston Globe article](#) suggests that the bridge, which has been the subject of much debate in the community, was purposefully protected by federal lawmakers to thwart the establishment of a new LNG energy facility. The article said:

Moreover, after Congress passed a \$286 billion transportation bill signed into law by President Bush this month, Massachusetts lawmakers disclosed that they had slipped language into it prohibiting the demolition of the old Brightman Street Bridge connecting Fall River and Somerset. The bridge, which is being replaced by a larger structure, spans the approach to the proposed terminal and is too narrow for LNG tankers."

Due to the highly irregular designation of an industrialized river as a segment of the Wild and Scenic Rivers System, and the past attempts by Massachusetts lawmakers to block the LNG terminal, many have argued that H.R. 415 is a poorly disguised effort to stop new energy transmission in New England. Accordingly, Reps. Young and Bishop's dissenting views refer to the designation of the lower nine miles of the Taunton River as a "loophole," discovered by "local environmental zealots" to block energy development.

Possible Conservative Concerns: Some conservatives may have multiple concerns with H.R. 415, including the following.

Designating an Industrialized River as a Wild and Scenic River: Some conservatives may be concerned that H.R. 415 would create a new unit in the Wild and Scenic Rivers System which would include a nine-mile stretch of industrialized shoreline containing coal burning power plants, commercial ship traffic, high voltage power transfers, and sewage and storm water discharge areas. Some conservatives may be concerned that Wild and Scenic River designations are traditionally reserved for remote and pristine rivers that are relatively untouched by development and provide only limited public access. In fact, during committee consideration of H.R. 415, the National Park Service said that the Taunton River would be the "most industrialized" segment of the Wild and Scenic River System ever created by Congress.

Some conservatives may be concerned that H.R. 415 would represent an unprecedented expansion of the traditional definition of a "wild" and "scenic" river. Some conservatives may

be concerned that if an industrialized area such as the lower portion of the Taunton River is eligible for inclusion, any river in the U.S. could be designated as a segment of the Wild and Scenic Rivers System. Some conservatives may be concerned that expanding Wild and Scenic Rivers designations and restrictions could have dire consequences on commercial activity along our nation's rivers. In addition, some conservatives may be concerned that the precedent set by H.R. 415 may be followed by any environmental group, as a tactic to prohibit any commercial or energy growth on rivers.

Prohibits the Creation of a Liquefied Natural Gas Terminal: Some conservatives may be concerned that H.R. 415 would effectively kill a proposed liquefied natural gas (LNG) terminal that has been approved by the Federal Energy Regulatory Commission. According to Weaver's Cove Energy, the company that would construct and operate the facility, the LNG terminal would supply New England with 15-20% more clean natural gas and, as a result, lower the expected cost of natural gas in the area by \$500 million annually, or about 10-15% per household. In addition, the company says that the LNG import terminal will meet 35% of New England's daily winter gas demand by supplying 800 million cubic feet of natural gas to the region every day. Some conservatives may be concerned that H.R. 415 is a veiled attempt by environmental activists to block the development of clean energy resources at a time when Americans are suffering under record-high energy prices.

Property Rights: Some conservatives may be concerned that H.R. 415 does not specifically require the Secretary of Interior to notify the owners of private property along the river of the new designation or let them decline from participating. In addition, some conservatives may be concerned that the legislation would block future development rights along the shore of an industrialized river.

Committee Action: H.R. 415 was introduced on January 11, 2007, and was referred to the Committee on Natural Resources' Subcommittee on National Parks, Forests, and Public Lands. On October 30, 2007, the subcommittee held a hearing. The bill was discharged from the subcommittee without further action on June 25, 2008. That same day, the full committee held a mark-up and the bill was reported, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 415 would cost the National Park Service (NPS) \$150,000 in FY 2009 and each year thereafter to manage the designated areas.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill creates a new federal Wild and Scenic River designation.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Natural Resources, in [House Report 110-735](#), "H.R. 415 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI."

Constitutional Authority: The Committee on Natural Resources, in [House Report 110-735](#), cites constitutional authority in Article I, Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[Emphasis added]*

AMENDMENTS MADE IN ORDER UNDER THE RULE

- 1. Bishop (R-UT).** The amendment removes the nine mile segment of the lower Taunton River that would be classified as a recreational river from the designation. The river segment in question has been subject to scrutiny because the industrialized segment contains characteristics that differ from traditional Wild and Scenic River designations. Also, the segment contains the site of the potential Weaver’s Cove Energy liquefied natural gas terminal, which would be prohibited if the segment were designate as a part of the Wild and Scenic River System.
- 2. Shuler (D-NC).** The amendment would state that nothing in the Act shall be construed as limiting the authority or responsibility of the Commonwealth of Massachusetts to manage, control, or regulate hunting, fishing, trapping, and recreational shooting.
- 3. Pearce (R-NM).** The amendment would require the Secretary of Interior, in cooperation with the Secretary of Energy and private industry, to prepare a report concerning energy resources available on the lands and water within the Taunton River Wild and Scenic River. The report would be submitted to the House Committee on Natural Resources, the Senate Committee on Energy and Natural Resources, and affected states’ legislatures. The amendment would require that the report contain the best available description of the types and amounts of energy resources withdrawn from possible development. Specifically, the amendment would require the report to include the number of barrels of oil, cubic feet of natural gas, and megawatts of solar, wind, and geothermal energy that could be commercially produced on any water or land that would be designated as a part of the Wild and Scenic Rivers System.
- 4. Boyda (D-KS).** The amendment would state that nothing in this Act shall impact the supply of domestically-produced energy resources.

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