**Calendar No. 484**

104TH CONGRESS, 2d Session | SENATE | REPORT 104–309

# LAMPREY WILD AND SCENIC RIVER ACT

JUNE 28, 1996.—Ordered to be printed

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

## REPORT

[To accompany S. 1174]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1174) to amend the Wild and Scenic Rivers Act to designate certain segments of the Lamprey River in New Hampshire as components of the National Wild and Scenic Rivers System, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE MEASURE

The purpose of S. 1174 is to designate an 11.5-mile segment of the Lamprey River in New Hampshire as a "recreational" component of the Wild and Scenic Rivers System.

### BACKGROUND AND NEED

The Lamprey River is situated in coastal New Hampshire and includes portions of Strafford and Rockingham counties. It is the largest of the rivers that discharge into Great Bay, a designated National Estuarine Research Reserve consisting of 4,500 acres of tidal waters and wetlands and 100 acres of uplands.

"The Lamprey Wild and Scenic River Study," authorized in 1991 by Public Law 102–214, and completed by the National Park Service in 1995, found that 23.5 miles of the River are eligible for inclusion in the National Wild and Scenic Rivers System based on the free-flowing character and the presence of outstanding ecological, anadromous fish, and historical resources. The eligible portion extends from the Bunker Pond Dam in West Epping to the confluence

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of the Lamprey and Piscassic rivers in the vicinity of the Newmarket-Durham town line.

The Lamprey is considered New Hampshire's most significant river for anadromous fish. River herring (largely alewives), American shad, and Atlantic salmon are the principal anadromous species found in the Lamprey. Sea lamprey, a parasite on other fish, also come upriver to spawn. Common warmwater fish include members of the sunfish, catfish, and pike families. The New Hampshire Fish and Game Department stocks the river with brook, brown, and rainbow trout in Lee and Durham and maintains shad and herring restoration programs along the river.

The National Park Service documented six of New Hampshire's known fresh water mussel species during its study, including one listed as an endangered species by the State, the brook floater (Alismidonta varicosa), which is also a candidate for Federal listing. Its presence is considered a strong indicator of good water quality.

According to the State Architectural Historian, the Lamprey is one of New Hampshire's most historic streams. Archeological remains from one of the ten most significant sites in the state, at the Wadleigh Falls in Lee, date back some 8,000 years. Because the riparian zone has remained undeveloped, it is likely that archeological sites have been well preserved. Among the historical resources on the river is the mill site at Wiswall Falls, which is listed on the National Register of Historic Places.

Recreational use of the upstream portion of the river includes fishing, canoeing, kayaking, and swimming in the summer and cross country skiing, skating and snowmobiling in the winter. In the lower reaches of Durham and Newmarket, the river is deep enough for motor boats.

Except for land holdings by the University of New Hampshire in the town of Lee and the nine town owned parcels on the river, the land on the Lamprey is privately owned by some 268 individuals. One-quarter (65) of all private landowners own 56 percent of the river frontage. Of the public entities with frontage on the river, the University owns the most, with 1.7 miles.

According to the National Park Service study, there is strong local support for the Wild and Scenic River designation of the Lamprey within the towns of Newmarket, Durham, and Lee, New Hampshire. This corresponds to the 11.5 miles of river stretching from the southern Lee town line to the confluence of the Lamprey and Piscassic rivers in the vicinity of the Durham-Newmarket town line.

As part of the River Study, a management plan was developed to create a framework for successful long-term use and protection of the Lamprey River. The plan has been approved by the towns of Newmarket, Durham and Lee. The plan was developed through the consensus of the Lamprey River Advisory Committee (LRAC), a permanent advisory body whose members are nominated by the local communities and appointed by the New Hampshire Department of Environmental Services.

The National Park Service study also identified a preferred management alternative which they feel would best achieve the principal river conservation goals articulated by the LRAC and local

communities. This alternative is reflected in the proposed legislation.

## LEGISLATIVE HISTORY

S. 1174 was introduced by Senators Gregg and Smith on August 10, 1995. A hearing on the bill was held by the Senate Subcommittee for Parks, Historic Preservation and Recreation on May 2, 1996. At the business meeting on June 19, 1996, the Committee on Energy and Natural Resources ordered S. 1174 favorably reported, without amendment.

## COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 19, 1996, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1174 without amendment.

## SECTION-BY-SECTION ANALYSIS

*Section 1* entitles the bill the "Lamprey Wild and Scenic River Act."

*Section 2* contains the Congressional findings, including: (1) the Lamprey River Study Act of 1991 authorized the study of a segment of the Lamprey River for potential inclusion in the National Wild and Scenic Rivers System; (2) the study determined that a specific segment of the river within the study area was eligible for inclusion in the National Wild and Scenic Rivers System; (3) a comprehensive management plan was prepared as part of the study which established objectives, standards and action programs to ensure long-term protection of the river segments; (4) the Lamprey River Advisory Committee has unanimously voted in favor of wild and scenic river designation; (5)(A) the governing bodies of the towns of Newmarket, Durham and Lee have voted to endorse the management plan and are seeking wild and scenic river designation; (5)(B) the upstream town of Epping, which participated in the study on an informal basis, chose not to vote on the management plan or designation.

*Section 3(a)* amends the Wild and Scenic Rivers Act by designating the 11.5 mile segment of the Lamprey River, extending from the southern Lee town line to the confluence of the Piscassic River in the vicinity of the Durham-New Market town line as a recreational river, to be administered by the Secretary of the Interior (Secretary) through cooperative agreements with the State of New Hampshire and the towns of Durham, Lee and Newmarket, New Hampshire. This section directs that the segment be managed in accordance with the general management plan prepared in 1995 as part of the study, and any amendments deemed necessary by the Secretary.

*Section 4(a)* directs the Secretary to coordinate management responsibilities for the designated segment of the river with the Lamprey River Advisory Committee.

*Section 4(b)(1)* states that the zoning ordinances adopted by the towns of Durham, Lee, and Newmarket, including provisions for

conservation of shorelines, flood plains, and wetlands, will satisfy the standards and requirements of the Wild and Scenic Rivers Act.

*Section 4(b)(2)* prohibits the Federal acquisition of land by condemnation, and directs that the acquisition of land by the Secretary be on a willing seller basis only, and subject to the additional criteria set forth in the Lamprey River General Management Plan.

*Section 5* authorizes the Secretary to offer assistance to the upstream town of Epping, New Hampshire, relative to their continued involvement in the implementation of the Lamprey River Management Plan and the potential of the portion of the river within Epping as a future component of the Wild and Scenic River.

*Section 6* authorizes the appropriation of sums as one necessary to carry out the Act.

## COST AND BUDGETARY CONSIDERATIONS

On June 20, 1996 the Committee on Energy and Natural Resources requested a Congressional Budget Office estimate on S. 1174. This estimate had not been received at the time the report on S. 1174 was filed. When this estimate becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

## 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. 1174. 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. 1174, as ordered reported.

## EXECUTIVE COMMUNICATIONS

On June 20, 1996, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1174. These reports had not been received at the time the report on S. 1174 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

### STATEMENT OF KATHERINE H. STEVENSON, ASSOCIATE DIRECTOR FOR CULTURAL RESOURCE STEWARDSHIP AND PARTNERSHIPS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to offer the Department of the Interior's views on S. 1174, a bill to designate cer-

tain segments of the Lamprey River in New Hampshire as components of the National Wild and Scenic Rivers System. We support enactment of S. 1174 as introduced.

Mr. Chairman, S. 1174 would designate 11.5 miles of the Lamprey River in New Hampshire as a recreational river in the National Wild and Scenic Rivers System. The bill directs the Secretary of the Interior to administrator the designated portion of the river through cooperative agreements with the State of New Hampshire and relevant local governments. It limits federal land acquisition to donation or willing seller only, and provides a funding authorization to carry out the purposes of the Act. Mr. Chairman, we strongly support S. 1174.

This bill is based closely on the National Park Service's findings and recommendations as described in the Draft Study Report for the Lamprey River Wild and Scenic River Study, dated June, 1995. This study was authorized by P.L. 102–214, and was conducted in close partnership with the State of New Hampshire, local communities, and the Lamprey River Advisory Committee. All of the principal study partners and affected communities of Durham, Lee, and Newmarket, New Hampshire have signaled their support for the designation as crafted. This support is documented in the Draft Study Report, which has now finished the 90-day review period without any comments in opposition to the proposed designation.

The essence of this legislation is a partnership between the National Park Service, the State of New Hampshire, and local communities designed to ensure the sound stewardship of the Lamprey River and the protection of its outstanding ecological, anadromous fish, and historical values. The provisions of S. 1174 which implement this partnership are similar to those contained in other recent designations, including the Wildcat in New Hampshire, the Maurice and Great Egg Harbor in New Jersey, and, most recently, the Farmington in Connecticut. Critical components of this partnership, all of which are included in S. 1174, include: the adoption of the Lamprey River Management Plan (January 10, 1995) as the comprehensive management plan for the segment required by section 3(d) of the Wild and Scenic Rivers Act; the recognition of local land use authority and the associated prohibition against land condemnation; and the adoption of the Lamprey River Advisory Committee as established under New Hampshire law as a local advisory body to guide river management. We urge the retention of these provisions in S. 1174 to ensure that local expectations are met and that an effective partnership to protect the river is formed.

Investigations during the study period and comments on the Draft Study Report revealed no known water resources projects that would be precluded or otherwise impacted by the designation. The only active project on the segment, a proposed hydroelectric development in the Town of Durham, was withdrawn by the applicant in June of 1995. We

estimate costs associated with the designation at between $50,000 and $75,000 per year, a fraction of the costs of such a protection effort in the absence of the envisioned partnership approach.

This concludes my prepared testimony on S. 1174. At this time, I will be pleased to respond to any questions you may have.

## 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. 1174, 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):

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:

*"( ) LAMPREY RIVER, NEW HAMPSHIRE.—The 11.5 mile segment extending from the southern Lee town line to the confluence with the Piscassic River in the vicinity of the Durham-Newmarket town line (referred to in this paragraph as the 'segment') as a recreational river. The segment shall be administered by the Secretary of the Interior through cooperative agreements between the Secretary and the State of New Hampshire and the towns of Durham, Lee, and New Market, New Hampshire, under section 10(e). The section shall be managed in accordance with the Lamprey River Management Plan dated January 10, 1995, and such amendments to the plan as the Secretary of the Interior determines are consistent with this Act. The plan shall be deemed to satisfy the requirements for a comprehensive management plan pursuant to section 3(d)."*

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