

TO CLARIFY THE UNITED STATES INTEREST IN CERTAIN SUBMERGED
LANDS IN THE AREA OF THE MONOMOY NATIONAL WILDLIFE REFUGE,
AND FOR OTHER PURPOSES

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FEBRUARY 2, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1157]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1157) to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1157 is to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge.

BACKGROUND AND NEED FOR LEGISLATION

Established in 1944, Monomoy National Wildlife Refuge is a 7,600-acre stretch of wetland and tidal habitat located off the elbow of Cape Cod. Nearly half of the Refuge is designated wilderness, which serves as a habitat for two federally-protected migratory bird species.¹ Created from an old Air Force training ground, the Refuge serves as the northernmost boundary of the Nantucket Sound, and

¹U.S. Fish and Wildlife Service, Monomoy National Wildlife Refuge. "About the Refuge." Last updated September 23, 2013. <https://www.fws.gov/refuge/Monomoy/about.html>.

is situated near historic fishing grounds and popular tourist destinations.²

At its creation in 1944, the western boundary of the Refuge was set at the mean low-water level around the peninsula. This boundary includes many small islands, sand bars, and tidal flats exterior to the mainland, but crucially omits the submerged intertidal zones and open ocean between these features and the Refuge.³

In the 2014 draft management plan, citing a ruling from the 1944 court case *United States v. 3,000 Acres of Land* (Misc. Civil Action No. 6340), the U.S. Fish and Wildlife Service (FWS) proposed to expand the Refuge by including submerged acres within the original boundary. In the plan, FWS pointed to shifting tides exposing new critical habitat and the need to begin conserving submerged horseshoe crab habitat as reasons justifying the expansion beyond the previously outlined mean low-water mark.⁴

Despite sizable local outcry in opposition to FWS's action, and public comment from the Massachusetts Attorney General's office disputing FWS's reading of *United States v. 3,000 Acres of Land*, FWS finalized the management plan in March 2016. Shortly thereafter, Massachusetts's Governor Charles Baker joined 18 Cape Cod townships in a written request for legislation to rescind the boundary expansion.⁵ Further, in October 2016, the Attorney General of Massachusetts announced her intention to sue FWS if the boundary expansion was not revoked.⁶ From this, Congressman William Keating introduced H.R. 6075 in the 114th Congress to undo the boundary adjustment, and subsequently reintroduced the bill as H.R. 1157 in the 115th Congress.

This bill would not only prevent FWS from negatively impacting Massachusetts communities and the local fishing industry, but would also prevent FWS from incurring legal fees brought on by litigation from the State of Massachusetts.

Groups Supporting the Legislation

Association to Preserve Cape Cod
Barnstable County Assembly of Delegates Resolution
Barnstable County Commissioners
Cape Cod Chamber of Commerce
Cape Cod Commercial Fishermen's Alliance
Cape and Islands Selectmen/Councilors' Association
Chatham Chamber of Commerce
Chatham Summer Residents Advisory Committee
City of New Bedford
Commonwealth of Massachusetts-Governor Baker

²U.S. Fish and Wildlife Service, Monomoy National Wildlife Refuge. "Refuge Map." Last updated December 9, 2015. <https://www.fws.gov/refuge/Monomoy/map.html>.

³Comments on Monomoy National Wildlife Refuge . . . Exhibit A. Massachusetts Office of the Attorney General to Libby Herland, Eastern Massachusetts National Wildlife Refuge Complex. December 7, 2015. <http://www.mass.gov/ago/docs/environmental/massag-cmts-on-fws-fnl-ccp-ets-for-monomoy-refuge-15-12-07.pdf>.

⁴U.S. Fish and Wildlife Service, Monomoy National Wildlife Refuge. "Draft Comprehensive Conservation Plan and Environmental Impact Statement Executive Summary." Pages 4–6. April 2014. https://www.fws.gov/uploadedFiles/Latest%20Executive%20Summary%20for%20Draft%20CCPEIS_27May2014.pdf.

⁵Wood, Tim. "Boundary Change Could Cut Monomoy Refuge Area By Half." Cape Cod Chronicle. July 13, 2016. <http://www.capecodchronicle.com/en/5128/chatham/337/Boundary-Change-Could-Cut-Monomoy-Refuge-Area-By-Half.htm>.

⁶Leggett, Doreen. "Attorney general may sue over Monomoy Refuge." Wicked Local Cape Cod. October 06, 2016. <http://capecod.wickedlocal.com/news/20161009/attorney-general-may-sue-over-monomoy-refuge>.

Gail Eldredge
 Town of Bourne
 Town of Brewster
 Town of Chatham
 Town of Falmouth
 Town of Harwich
 Town of Nantucket
 Town of Orleans
 Town of Provincetown
 Town of Sandwich
 Town of Wellfleet
 The West Chatham Association, Inc.

COMMITTEE ACTION

H.R. 1157 was introduced on February 16, 2017, by Congressman William R. Keating (D–MA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. On April 5, 2017, the Subcommittee held a hearing on the bill. On December 12, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by voice vote on December 13, 2017.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, January 18, 2018.

Hon. ROB BISHOP,
 Chairman, Committee on Natural Resources,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1157, a bill to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL,
 Director.

Enclosure.

H.R. 1157—A bill to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge, and for other purposes

H.R. 1157 would express a finding by the Congress regarding the location of the western boundary of the Monomoy National Wildlife Refuge in Massachusetts. Although the bill would not change current law, enacting the bill could cause the agency to change its determination of the refuge's boundary, which would reduce the size of the refuge by about 3,000 acres. However, using information provided by the agency, CBO estimates that any such change would have a minimal effect on the cost of administering the refuge.

Enacting H.R. 1157 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1157 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1157 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill is to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

We strongly oppose H.R. 1157 because it revokes any federal interest in the submerged lands and water of Nantucket Sound, Massachusetts. This conveys to the Commonwealth of Massachusetts ownership and control over 3,900 acres of submerged land within the boundary of Monomoy National Wildlife Refuge (“Monomoy”).

Monomoy was established in 1944 to protect habitat for migratory birds. In the process of updating its 15-year conservation plan, Monomoy initially proposed to limit some commercial (fishing) and recreational (kite surfing) activities in the open water area of Nantucket Sound that fall within the refuge boundary. The nearby Town of Chatham, Massachusetts, opposed these changes, which resulted in a final conservation plan that did not limit existing activities.

In the meantime, however, the Massachusetts Attorney General became involved and is disputing the Fish and Wildlife Service’s (FWS) valid, legal claim to the open waters and submerged lands within the Refuge boundary, even though the area has been under valid federal control since 1944 under the Migratory Bird Conservation Act. Despite efforts by the Fish and Wildlife Service to work with the Town of Chatham and other concerned stakeholders, H.R. 1157 attempts to “clarify” that Massachusetts retains ownership of and jurisdiction over the disputed area despite effective federal oversight.

Supporters of the bill claim that this congressional “fix” will save taxpayers money by stopping a costly court battle. In this case, we believe that decisions regarding the Monomoy boundary are best left to the courts. We cannot support this bill because it would undermine the federal management of public lands, especially when there is no evidence that points to better management under state control.

RAÚL M. GRIJALVA,
Ranking Member.
GRACE F. NAPOLITANO.
JARED HUFFMAN.

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