

**Statement of the Chatham Board of Selectmen regarding the
Monomoy National Wildlife Refuge draft CCP/EIS
June 17, 2014**

On behalf of the Chatham Board of Selectmen and the citizens of Chatham, I appreciate the opportunity to present the position of the Town on the recommendations and proposals contained within the Monomoy National Wildlife Refuge Draft Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) prepared by the US Fish and Wildlife Service (FWS).

First, I'd like to extend a resounding thank you to FWS for the extension of the public comment period to October 10th. Considering the seasonal nature of Chatham's citizenry, the extension will afford all Chatham residents time to thoughtfully review the extensive and complicated document and provide comment. As many of the proposals contained within the CCP may have, for better or worse, impacts on the residents of Chatham, it is imperative that all local stakeholder's have the opportunity to participate in the public comment process.

This process began when the Town was originally alerted that FWS would begin developing a CCP for the Monomoy National Wildlife Refuge in 2001. At that time, and for the better part of the past decade, our focus was almost entirely on preserving our historic rights for traditional hand harvest of shellfish within the intertidal zone of Monomoy. This resulted in many years of mutually cooperative efforts involving extensive scientific studies and supporting documentation undertaken by both the Town and FWS. Those efforts ultimately ratified the Town's original position that our traditional methods of shellfish harvesting are in fact beneficial to the habitat, foraging shorebirds, and the Refuge as a whole. Therefore, we are very pleased to see that the CCP supports the continuance of traditional hand harvesting of shellfish within the intertidal zone of the Refuge as permitted and regulated by the Town.

Nonetheless, the CCP contains many other recommendations that either the Town strongly opposes or has yet to discuss and form an opinion on. Of particular concern are two unexpected and troubling FWS recommendations for expansion of FWS management jurisdiction to additional land and open water areas.

The first relates to a re-interpretation of FWS management jurisdiction to include all areas encompassed by the exterior limits of the original "*Declaration of Taking*" established in 1944. This revised interpretation would exert FWS management jurisdiction over approximately 4,000 acres of open water and submerged lands within Nantucket Sound to the west of Monomoy not previously managed by the FWS. Secondly, the CCP includes an expanded eastern boundary which annexes approximately 717 acres of "South Beach" which is owned and managed by the Town. From both a factual and legal perspective, FWS recommendations in both these areas are extremely concerning. Both the open water and South Beach areas include many state and

locally managed fisheries, and other public uses and activities that are proposed to be placed under the direct management jurisdiction of FWS. The CCP further specifies that many traditional activities, enjoyed by generations of Chatham and Cape residents and visitors, would be either severely curtailed or outright prohibited should the Plan be fully implemented as proposed.

The Town strongly disputes the FWS position that the original 1944 *Declaration of Taking* included the transfer of ownership to the Federal government of the submerged lands within the Taking limits; nor does the Town believe that the FWS has a legal basis to exert jurisdictional and managerial oversight of state and local fishing rights and other activities occurring within open water areas inside the Taking limits. The Town firmly believes that the extent of Federal land ownership and jurisdictional oversight extends only to the upland and intertidal lands to Mean Low Water within the *limits defined* by the Declaration of Taking. I further submit for the record the actions of the Town at the recent May 12, 2014 Special Town Meeting where a resolution opposing the expansion of FWS jurisdiction was overwhelmingly supported by the Chatham citizenry

With regard to the eastern boundary, the Town disagrees with the manner in which the FWS has applied the principles of “equitable apportionment” of accreted lands. Use of a more survey-based and legally defensible approach to this principle would result in a substantially smaller delineated area. The Town is currently investigating legal precedent and accepted surveying practices relative to land accretion rights.

Directly stemming from the boundary and jurisdictional recommendations of FWS are newly proposed limitations on traditional fishing and shellfishing activities within the sub-tidal waters west of Monomoy. These limitations include a proposed prohibition of all forms of fishing activities that may cause “bottom disturbance” including scallop dragging, mussel harvesting, hydraulic shellfishing, and weir fishing. The prohibitions proposed by FWS are ostensibly to protect eelgrass and maintain productive benthic communities yet the methods and nature of our small boat fisheries, coupled with the regulatory safeguards established by the Town, do not cause impacts to the benthic marine habitat assumed by FWS.

Review of the literature cited by FWS as justification for their recommendations limiting these traditional fisheries indicates that much of it is not applicable to the fisheries and methodologies employed by local fishermen within the waters surrounding Monomoy. In addition, there is no support for the FWS assertion that historical harvesting practices have, or will in the future, adversely impact the Refuge’s primary mission relative to the protection of migrating shorebirds.

We reiterate our position that the FWS does not have the legal authority to manage our local and state regulated fisheries in these waters. We further contend that these fisheries have historically, and in our opinion appropriately and effectively, been managed at the state and local level to the

benefit of shorebirds and other species. And we strongly feel that we are the best and most appropriate stewards to continue this management. We have the knowledge and resources to properly and actively manage these fisheries for the benefit of all user groups. In addition, the Town has demonstrated the ability and willingness to amend and modify regulations when necessary to ensure these activities are conducted in a sustainable, safe and environmentally sensitive manner for both the resource and surrounding habitat. We are prepared to continue to engage the FWS, as has been our practice in the past, to review, and amend as appropriate, the regulatory controls to address legitimate concerns of the FWS while ensuring that the resources remain available to local fishermen.

Outside the impacts to our traditional fisheries, the CCP includes many other recommendations that are difficult to fully assess what, if any, positive or negative impact they may have on Chatham. These can generally be grouped into categories related to:

- changes to the infrastructure and operations of the Refuge;
- access and use by the public of the Refuge; and
- other water-related activities.

The legal implications regarding liability over FWS's right-of-way into the Refuge headquarters' on Morris Island is an ongoing and unresolved issue that should be resolved before implementation of expanded programs.

Other examples of these issues include the proposal to establish a new visitor center somewhere in downtown Chatham or Harwich; new shuttle bus service from off-site locations for visitors to Monomoy; acquisition of new property on Stage Island for FWS use; prohibition of organized picnicking on all refuge lands; additional review of town permitted dredging and disposal activities in surrounding waters; opening up large areas of the refuge for waterfowl hunting; and many others.

Many of these proposals have the potential to have direct, tangible impacts to the Town either positive or negative. However, we have not had any discussions with FWS concerning these proposals to assess their potential impacts on our community or surrounding region. Many of these will also require funding and/or additional FWS staffing which, if not forthcoming, may result in many of these recommendations never being implemented. Therefore, it is difficult to provide detailed comment on these recommendations at this time. For the record, we have included a list of the potential issues which we feel may be worthy of future substantive discussion and review. These are included in the printed version of this statement which will be provided to FWS tonight.

As a final statement, I wish to draw attention to what we feel is a fundamental misunderstanding which the FWS has regarding the character, self-image and core values of our community and what truly makes Chatham, *Chatham*. Despite nearly 70 years of coexistence with the Monomoy

Refuge as a valued neighbor of our community, the socio-economic description of Chatham contained within the CCP describes Chatham as “...a resort, retirement and artistic community”. While those are aspects of our and virtually all other Cape communities, this is hardly how we and others characterize our community. This statement clearly indicates a fundamental flaw in FWS’s understanding and recognition of Chatham’s prevailing cultural identity as a traditional New England small town fishing and maritime community. Chatham is a community rooted in marine and fisheries endeavors and these traditions continue today as an integral part of the local economy and community character. This fundamental misunderstanding carries through in many of the CCP recommendations that seek to eliminate, minimize or restrict many of the maritime, fisheries and historic uses of Monomoy and its surrounding waters that have been significant to the local community throughout the history of Chatham and the entire region.

The CCP contains no mention of “fisheries” in either labor or income statistics; it only reflects the potential, and we feel overstated, environmental impact of prohibiting certain fisheries in open water but not the economic impact(s); it fails to recognize that Chatham’s success in remaining a viable New England fishing community, when many others have failed, is our ability to diversify and adapt to whichever resource is most successful in a given year; and it contains only minimal reference to the potential impacts that proposed changes to fisheries activities may have on the ability to sustain our local fishing industry which is so integral to the sustainability of our community as a whole.

As evidenced by our substantial and unprecedented commitment to providing wastewater solutions directed toward the same environmental goals espoused in the CCP, Chatham is and will continue to be, at the forefront of providing environmental protection of our natural environment. We have engaged in responsible and sustainable fishing practices in our local waters for centuries and deem the proposed actions of the FWS regarding our historical fishing rights as proposed in the CCP as unnecessary, inappropriate and outside the legal authority of the FWS.

In addition to this written statement, the Town will be providing more detailed and formal written comments on these, and other, matters later in the public comment period as our reviews are completed.

Thank you,

Florence Seldin, Chairman
Jeffrey Dykens, Vice Chairman
Seth Taylor, Clerk
Timothy L. Roper
Sean Summers
Chatham Board of Selectmen

Other itemized issue areas of potential concern:**1) Infrastructure and Operations**

- Create new visitor center near Main Street, Chatham, or somewhere in Harwich, with parking and shuttle service to reduce parking issues at Morris Island Headquarters.
- Include more directional and informational signage throughout sections of Chatham, Rt. 6 and elsewhere.
- Try to acquire lot adjacent to existing FWS lot on Stage Island for Service use only.
- Explore off-site shuttle service for visitors.
- Increased staffing of up to 7 new positions depending on the Alternative implemented. Also, additional costs for vehicles, boats, fuel, and office renovations to accommodate increased staff. FWS would also need to explore additional off-site housing.
- Pursue new dockage and marine equipment/boat storage and parking facilities
- Encourage town to develop bike/pedestrian path on causeway.
- Use existing rights-of-way on Tisquantum Rd., Wikis Rd., and Stage Harbor Rd. to access Refuge properties.
- Windmill proposal at headquarters facility.
- Require a competitive, private, access concession to provide/manage ferry access, guide services and kayak rentals and other services with passengers to be shuttled from off-site location(s).

2) Access and Use

- No “Organized” picnicking.
- No pets or dogs on lease on any Refuge lands.
- No kiteboarding within the waters of the DOT.
- Begin daytime paid parking at Refuge HQ June 1 to Sept 15.
- Phase out non-Service parking and dinghy storage on Stage Harbor lot 7b.
- Commercial filming and photography to require special permits and only allowed if there is a direct benefit with the Refuge or Service.
- Private commercial guide services will need special use permit to access waters and/or lands of Refuge.
- Work with FAA to increase pilot awareness of 2,000 ft ceiling restriction for aircraft.
- Maintain Inward Point and Powder Hole tracts as designated non-wilderness.
- Open approx. 40% of Refuge for waterfowl hunting.

3) Other Water-Related Proposals

- Reinstall buoys demarking the Declaration of Taking boundary.

- Review all dredging and disposal proposals in open waters.
- Prohibition of moorings within the DOT.
- Consider dredged material reuse in non-wilderness areas.
- Evaluate need for “no-anchoring zones”.