



THE COMMONWEALTH OF MASSACHUSETTS
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December 7, 2015

**BY FIRST CLASS & ELECTRONIC
MAIL (northeastplanning@fws.gov)**

Libby Herland, Project Leader
Eastern Massachusetts National
Wildlife Refuge Complex
73 Weir Hill Road
Sudbury, MA 01776

**Subj: Comments on Monomoy National Wildlife Refuge, Chatham, MA; Final
Comprehensive Conservation Plan and Environmental Impact Statement
(FWS-R5-R-2013-N265; BAC-4311-K9).**

Dear Ms. Herland:

We appreciate the opportunity to comment on the U.S. Fish and Wildlife Service's (FWS) Final Comprehensive Conservation Plan and Environmental Impact Statement for the Monomoy National Wildlife Refuge (Final CCP/EIS).¹

Our overriding concern is that the Final CCP/EIS erroneously asserts that the FWS holds title to the submerged lands under Nantucket Sound that are owned by the Commonwealth of Massachusetts. We have reviewed the Final CCP/EIS, the FWS's responses to comments on the Draft CCP/EIS, and the documents that the agency relied on to support its position on the location of the Refuge's western boundary. Based on our review, we unfortunately continue to disagree strongly with the FWS's assertions that the 1944 Judgment on the Declaration of Taking (Judgment) (1) effected a taking of the Commonwealth's submerged land in Nantucket Sound and (2) eliminated the public trust rights in the condemned tidelands. As we discuss below, the FWS did not acquire any submerged land under Nantucket Sound pursuant to the 1944 Judgment, and the Commonwealth has always, and continues to, lay claim to all of the submerged land below the mean low water line on the Refuge's western side. While we believe that there is a way to resolve the public trust rights issue, which we propose at the end of this letter, there does not yet appear to be common ground with regard to the property line on the

¹ Volume I of the Final CCP/EIS is cited as "I Final CCP/EIS at ___" and Volume II of the Final CCP/EIS is cited as "II Final CCP/EIS at ___."

Refuge's western side.² If the FWS refuses to revise its position regarding its erroneous claim to ownership of the submerged lands on the Refuge's western side, then the Commonwealth will be forced to consider all of its available legal remedies to prevent the FWS's unlawful impingement on the Commonwealth's valuable property rights and jurisdiction.

A. THE TEXT OF THE 1944 JUDGMENT AND THE HISTORICAL DOCUMENTS
DEMONSTRATE THAT THE FWS DID NOT ACQUIRE ANY OF THE COMMONWEALTH'S
SUBMERGED LANDS IN NANTUCKET SOUND.

It is well settled that courts will not rely on extrinsic evidence to determine the meaning of a deed or other devise where the text of the instrument is unambiguous on its face. *See Sheftel v. Lebel*, 44 Mass. App. Ct. 175, 179 (1998). In our earlier comments, we explained in detail why the four corners of the Judgment demonstrate the FWS's unambiguous intention to acquire only "land lying above mean low water" within the coordinate based line on the Refuge's western side.³ In response, FWS asserts that "[t]he Declaration of Taking includes a detailed written description of an extensive area containing upland, intertidal flats, and submerged ocean waters [sic], as well as a map generally outlining th[e] exterior limits and describing them as the 'Limits of Area to be Taken.'" II Final CCP/EIS, at K-7. The detailed written description, however, does not ever use the term "submerged land" in Nantucket Sound or any other term that might refer to land under the Sound's waters (e.g., land under navigable waters). *See* Judgment Sched. A. Instead, the "five discrete descriptors of monuments and features to be acquired" all describe features lying above mean low water within the coordinate based line. II Final CCP/EIS, at K-7.⁴ If FWS had intended also to acquire the submerged land, the agency

² We commend the agency for reaching agreement with the Town of Chatham regarding the Refuge's eastern boundary.

³ Cmts. of the Commonwealth on Monomoy Nat'l Wildlife Refuge, Chatham, MA; Draft Comprehensive Conservation Plan & Eenvtl. Impact Stmt. 1-4 (Oct. 10, 2014) (Mass. Cmts.). Those comments are reinforced by, *inter alia*, the plan the FWS provided to us as Schedule B of the 1944 Judgment, which is dated June 1, 1944 (the same date the Judgment was entered), and includes a "LEGEND" that defines the line appearing as "---" on the plan as the "LIMITS OF THE DECLARATION OF TAKING ON LANDS TO MEAN LOW WATER." Exhibit 1 (emphasis added). That plan is itself reinforced by another FWS plan, also dated June 1, 1944, that identified the tracts of land the FWS acquired under the 1944 Judgment and their owners. *See* Plan Showing Tract Owners, U.S. FWS, U.S. Dep't of Interior, Monomoy Nat'l Wildlife Refuge, Chatham, Mass. (June 1, 1944). Significantly, the tracts the FWS identified on that Plan are all located above the mean low water line and nowhere does the Plan assign a tract number to the submerged lands (or identify their owner—the Commonwealth) in Nantucket Sound. This plan appears to be the one that the Court referred to in its Final Judgment Fixing Just Compensation, Exhibit 2, and we request that the FWS include the Plan in the administrative record for this matter.

⁴ The only references to features in Nantucket Sound—"islands, islets, sand bars and tidal flats lying in Nantucket Sound"—all refer to features that lie above the mean low water line. Mass. Cmts. at 2. Significantly, this interpretation is also consistent with the FWS's apparently long-held view that the Refuge's sand and mud flats are within the "intertidal zone," i.e., the area

would surely have described that feature too, since it would have represented the *largest* land feature within the coordinate based western line (approximately 4,000 acres, which would have more than *doubled* the size of the land area the Declaration of Taking claimed to acquire, i.e., 3,000 acres).⁵

Even if the text of the 1944 Judgment were ambiguous and resort to extrinsic evidence were thus “necessary” to determine the extent of the lands taken, *see Sheftel*, 44 Mass. App. Ct. at 179, the pre-taking evidence and “attendant circumstances” also demonstrate that the FWS did not intend to acquire any submerged land under Nantucket Sound within the coordinate-based western line. In that regard, the July 10, 1938 Report on which the Chief of Wildlife Refuges based his August 12, 1938 recommendation to acquire land to create the Refuge is instructive.⁶ In that report, Mr. Griffith described the proposed refuge as consisting of “300 acres of marsh, 1600 acres of sand beach, [and] 1800 acres of shoal water.” 1938 Griffith Report at 1; *see also id.* at 2. But, in the subsequent section describing the cost to acquire the lands necessary to create the Refuge, he only provided an estimate for the cost to acquire the “1900 acres of beach and marshland recommended for inclusion within the refuge boundaries” and, significantly, made no mention at all to acquiring the previously referenced 1800 acres of shoal water (or the lands under them). *Id.* at 2. Moreover, in the Report’s section regarding ownership of the lands, Mr. Griffith identifies the Town of Chatham and the Coast Guard as the only entities that held title to the lands he proposed for acquisition to create the Refuge and made no mention to the Commonwealth, which held title to the submerged lands under the referenced 1800 acres of shoal waters and would thus have been the largest single affected landowner. *Id.*⁷ Chief Salyer’s Approval Memorandum explains why: the FWS believed mistakenly that acquisition of the “land area,” i.e., the Island, would allow “the Bureau [to] close off the water area immediately west of

between mean low and mean high water. U.S. FWS, U.S. DEP’T OF THE INTERIOR, FINAL ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY NAT’L WILDLIFE REFUGE 39 & 43-45 Figs. 8a - 8c (Feb. 1988) (“1988 FINAL MONOMOY MASTER PLAN”) (Exhibit 3).

⁵ Based on a survey completed in 2000, the FWS estimated that the total area within what the agency has labelled Refuge Boundary on Map 1.1 (I Final CCP/EIS at 1-2) was 7,604 acres of which 3,599 acres were above the mean low water line and 4,005 acres were lands below the mean low water line or submerged lands. I Final CCP/EIS at 2-107 to -108. There, the FWS has also acknowledged that the 3,000 acres the agency referenced in the Declaration of Taking “roughly corresponded to the land area above mean high water.” *Id.* at 2-107.

⁶ Richard E. Griffith, Jr. Biologist, Bureau of Biological Survey, Division of Wildlife Refuges, *Proposed Monomoy Island Migratory Waterfowl Refuge*, Cape Cod, Mass. (July 10, 1938) (“1938 Griffith Report”), *attached to* Mem. from J. Clark Salyer II, Chief, Division of Wildlife Refuges, to Dr. Gabrielson, re Proposing the Monomoy Island Migratory Waterfowl Refuge (Aug. 12, 1938) (“Salyer II Approval Mem.”) (Exhibit 4).

⁷ In fact, none of the pre-taking documents refer at all to the Commonwealth’s property interests in the submerged lands under Nantucket Sound, which is further evidence that the FWS did not intend to acquire them. Again, that omission is particularly significant, because the Commonwealth would have been the single largest landowner affected by the taking had the FWS intended to acquire those lands.

the island.” Salyer II Approval Mem. at 2. Chief Salyer thus recommended that FWS “acquire title to [only] the *land* area.” *Id.* (emphasis added). While these historical documents may also highlight the value of submerged vegetation to migratory waterfowl, that fact alone cannot serve as a vehicle for the FWS to claim—71 years after the fact—title to lands the 1944 Judgment clearly did not include.

The post-1944 Judgment legislative record for the designation of the Refuge as a Wilderness Area, judicial precedent, and the FWS’s positions all confirm that the FWS did not acquire any of the Commonwealth’s submerged lands under Nantucket Sound pursuant to the 1944 Judgment.

- First, the 1968 and 1969 reports of the U.S. Senate Committee on Interior and Insular Affairs on bills to designate a Monomoy Wilderness Area described the proposed “exterior boundaries of the wilderness proposal” as “all lands on Monomoy Island to the line of low tide which coincides with the national refuge boundary around the island.”⁸ Despite the U.S. Department of Interior’s involvement in the deliberations that resulted in the designation of the Monomoy Wilderness Area,⁹ there is no evidence that the Department ever objected to this description.
- Second, the 1979 Finding of the U.S. District Court for the District of Massachusetts in *United States v. Taylor*, Crim. A. No. 79-319-MC (D. Mass. 1979) found Mr. Taylor not guilty of willfully letting his dogs go unleashed on Refuge land. Mass. Cmts. at 5-6 & Exhibit 11. That finding was based on the Court’s conclusion that the 1944 Judgment only gave the FWS title to lands lying above mean low water and thus Mr. Taylor’s actions occurred outside of the Refuge’s boundaries. *Id.* at Ex. 11, at 2. While the FWS disagrees with the Court’s interpretation of the 1944 Judgment, *see* Final CCP/EIS at K9, the *Taylor* Finding is not inconsistent with the Court’s later Judgment in *Assocs. of Cape Cod, Inc. v. Babbitt*, C.A. No. 00-10549-RMZ (D. Mass. June 26, 2001). That Judgment made clear that the Court did not make any “ruling as to the boundaries of the Refuge.” Judgment at 2 ¶ 5 (Exhibit 7).
- Third, the FWS’s 1986 Draft and 1988 Final Environmental Assessments for the Master Plan for the Refuge state that the “Declaration of Taking which created the refuge in 1944 established a boundary line to the west of Monomoy . . . and provided for inclusion in the refuge of *all land which may accrete* within the boundary”— not, significantly, *all lands* within that boundary.¹⁰ FWS then explained that “[u]nder Massachusetts law

⁸ SEN. REP. NO. 91-198, at 2 (1969); SEN. REP. NO. 90-1368, at 5 (1968) (Exhibit 5).

⁹ *Designation of Wilderness Areas: Hearings on H.R. 486 and H.R. 987 Before the Subcomms. on Public Lands and Nat’l Parks and Recreation of the House Comm. on Interior and Insular Affairs*, 91st Cong. 2-3, 9-30 (1970) (Serial 91-27) (Exhibit 6).

¹⁰ 1988 FINAL MONOMOY MASTER PLAN at 39 (emphasis added); *see also id.* at 7; U.S. FWS, U.S. DEP’T OF THE INTERIOR, DRAFT ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY NAT’L WILDLIFE REFUGE 7, 45 (Nov. 1986) (“1986 DRAFT MONOMOY MASTER PLAN”) (Exhibit 8). Coincidentally, FWS also described the size of the Refuge in 1984 as being “approximately

derived from the Great Colonial Ordinance of 1641, an upland landowner's property extends to the low water mark or 100 rods (1,650 feet) from the ordinary high water mark, whichever is less."¹¹ Despite the fact that these prior FWS statements are incongruous with the FWS's current position, the FWS makes no mention of them at all.

Taken together, these examples—covering the forty-four year period immediately following entry of the 1944 Judgment—demonstrate that the 1944 Judgment meant what it clearly said: the FWS acquired title only to those lands lying above mean low water within the western coordinate based line and any lands it may acquire through accretion within that defined area after 1944.

Finally, we write briefly to respond to the FWS's response regarding the Submerged Lands Act and its relevance to the FWS's ownership of the submerged lands lying under Nantucket Sound and within the western coordinate-based line. In its response, the FWS states—without citation—that the “Supreme Court expressly held that the submerged lands west of Monomoy Point were not Massachusetts' internal waters at the time of the formation of the Union.” II Final CCP/EIS at K-9. That assertion is wrong. As we explained in our earlier comments, based on the United States' well taken concession in the *Massachusetts Boundary Case*, the U.S. Supreme Court's 1996 Supplemental Decree decreed that the waters in the bay formed landward of a line between Monomoy Point and Point Gammon and the submerged lands under them (i.e., the waters in Nantucket Sound on the western side of Monomoy) are historic internal waters of the Commonwealth. Mass. Cmts. at 5. For this reason, the United States never held title to those submerged lands, and thus the Submerged Lands Act did not relinquish them to the Commonwealth. Instead, the Submerged Lands Act extended the Commonwealth's title to the submerged lands three miles seaward of the Commonwealth's historic internal waters. *See id.* Accordingly, the only way the FWS could have acquired title to the submerged land under those internal waters is if the 1944 Judgment condemned them, which, as stated above, it clearly did not do.

B. THE CONTINUED EXISTENCE OF PUBLIC TRUST RIGHTS IN REFUGE TIDELANDS DOES NOT INTERFERE WITH FWS'S ABILITY TO REGULATE PUBLIC USE OF THOSE LANDS.

In our 2014 comments, we asked FWS to either eliminate the text in the Draft CCP/EIS asserting that the 1944 Judgment eliminated the public trust rights embodied by the public trust doctrine and the Colonial Ordinance of 1641-47 or to revise it to reflect the analysis set forth in our comments. Mass. Cmts. at 6-8. We made that request for three reasons: (1) the 1944 Judgment did not eliminate the public trust rights in the acquired tidelands, *see id.* at 6-7; (2) the U.S. District Court for the District of Massachusetts had previously held that the United States

2750 acres, including about 750 acres of intertidal marine mud and sand flats,” which closely approximates the “3,000 acres, more or less” the agency described as the area being taken under the 1944 Judgment. Declaration of Taking at 2 in *United States v. 3,000 acres, more or less of land situate in Barnstable County*, C.A. No. 6340 (Feb. 10, 1944).

¹¹ 1988 FINAL MONOMOY MASTER PLAN at 7.

takes title to tidelands in a condemnation action subject to the same public trust responsibilities as the Commonwealth, *see id.*; and (3) the continued existence of the public trust rights does not interfere with the FWS's right to regulate the use of the acquired tidelands in a manner it deems necessary to fulfill its obligations under the National Wildlife Refuge System Administration Act of 1996 (as amended) and the Wilderness Act of 1964, *see id.* at 7 n.17.¹²

Despite these settled principles, the FWS neither eliminated nor altered the relevant text in the Final CCP/EIS or responded to the Commonwealth's comments on the issue. While we do not fault the agency for failing to address this issue given the number of other issues the agency was faced with addressing before publishing the Final CCP/EIS, it is an overarching and important issue that the FWS must correct in the final version to avoid future confusion and implications that would undermine the public interest. For example, as we explained in our earlier comments, if the FWS ever decided to sell the Refuge lands (including the acquired tidelands) to a private party, that party could rely on the current text in the Final CCP/EIS to argue that it could develop those lands for its sole and exclusive use (e.g., a private beach resort) free from the Commonwealth's approval and regulation under the Massachusetts Waterways Act, Mass. Gen. L. c. 91, §§ 1-63, and its regulations.. *See* Mass. Cmts. at 7 n.17. The licensing scheme established by that Act is the primary means by which the Commonwealth protects and preserves the public's right to access and use tidelands for, among other things, fishing, fowling, and navigation. *See Moot v. Dep't of Environmental Protection*, 448 Mass. 340, 342 (2007). That result, as we also noted in our earlier comments, is assuredly not desirable from either sovereign's perspective. Mass. Cmts. at 7 n.17.

We understand that the FWS now agrees generally with the Commonwealth on this issue and that the agency is prepared to make changes to the Final CCP/EIS's text so that the text is consistent with the principles set out above. We offer the following changes to the relevant text, which are consistent both with existing case law and with what we believe is our common understanding on this issue:

Colonial Ordinance. A number of commenters, including the Town and members of the Massachusetts legislature, have asked about the applicability of the public trust doctrine and the Colonial Ordinances of 1641 and 1647, which bestow public access for free fishing (including shellfishing) and fowling on all lands below [the mean high water line](#)~~high tide~~. ~~While All the public trust rights in to the tidelands the United States acquired under and waters within~~ the Declaration of Taking, ~~including~~

¹² To the extent there is any doubt about the third point, we add here that it is well settled that the federal government, just like the Commonwealth, may impose restraints on the public's exercise of public trust rights in tidelands. *E.g.*, *Weston v. Sampson*, 62 Mass. (8 Cush.) 347, 352 (1851) (stating "that this public right may be regulated and abridged by the legislature, who have the control and guardianship of all public rights"); *see also White Dove Inc. v. Div. of Marine Fisheries*, 380 Mass. 471, (1980) (upholding Massachusetts regulation that prohibited a fishing vessel from catching Atlantic Blue fin tuna in Massachusetts waters); *City of Boston v. Boston Port Development Co.*, 308 Mass. 72, 80 (1941) (stating that a private party's use of tidal flats "is subject to regulation by State and Federal authorities").

~~those covered by the Colonial Ordinance, were not eliminated by as a result of the condemnation establishing the refuge, the FWS has the same right as the Commonwealth of Massachusetts to regulate the public's use of those tidelands in any manner necessary to fulfill the agency's statutory obligations, including, if necessary, the adoption of a plan or regulations that prohibit completely the public's right to exercise their public trust rights in those tidelands. Federal law under the Supremacy Clause of the U.S. Constitution provides authority in maritime matters and has been recognized by the courts, including the U.S. Supreme Court. The Colonial Ordinance does not apply at Monomoy NWR.~~

I Final CCP/EIS at 1-42. The FWS's adoption of this language in the Final CCP/EIS would resolve the Commonwealth's concerns on this point. If the FWS has any questions or concerns about this proposed language, we request that the agency confer with us so that those questions or concerns may be resolved prior to making final the Final CCP/EIS.

* * *

For the foregoing reasons, the Commonwealth respectfully requests that the FWS revise its position regarding the lands the agency acquired under the 1944 Judgment so that it is consistent with the Judgment's plain text (as described above), and adopt the revisions we have proposed above regarding the Colonial Ordinances of 1641 and 1647.

Sincerely,

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Exhibits:

(1) Plan of Monomoy National Wildlife Refuge prepared by U.S. FWS, U.S. Dep't of the Interior (June 1, 1944);

(2) Final Judgment Fixing Just Compensation in *United States v. 3,000 acres, more or less of land situate in Barnstable County, Commonwealth of Massachusetts, Susie H. Kosak, et al.*, Misc. C.A. No. 6340 (D. Mass. filed July 5, 1955);

(3) U.S. FWS, U.S. DEP'T OF THE INTERIOR, FINAL ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY NAT'L WILDLIFE REFUGE (Feb. 1988) ("1988 FINAL MONOMOY MASTER PLAN") (selected pages);

(4) Mem. from J. Clark Salyer II, Chief, Division of Wildlife Refuges, to Dr. Gabrielson, re Proposing the Monomoy Island Migratory Waterfowl Refuge (Aug. 12, 1938) ("Salyer II Approval Mem.") and Richard E. Griffith, Jr. Biologist, Bureau of Biological Survey, Division of Wildlife Refuges, *Proposed Monomoy Island Migratory Waterfowl Refuge*, Cape Cod, Mass. (July 10, 1938) ("1938 Griffith Report");

(5) SEN. REP. NO. 91-198 (1969) and SEN. REP. NO. 90-1368 (1968);

(6) *Designation of Wilderness Areas: Hearings on H.R. 486 and H.R. 987 Before the Subcomms. on Public Lands and Nat'l Parks and Recreation of the House Comm. on Interior and Insular Affairs*, 91st Cong. 1 (1970) (Serial 91-27) (selected pages);

(7) Judgment in *Assocs. of Cape Cod, Inc. v. Babbitt*, C.A. No. 00-10549-RMZ (D. Mass. June 26, 2001); and

(8) U.S. FWS, U.S. DEP'T OF THE INTERIOR, DRAFT ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY NAT'L WILDLIFE REFUGE (Nov. 1986) ("1986 DRAFT MONOMOY MASTER PLAN") (selected pages)

Exhibit 1

Plan of Monomoy National Wildlife Refuge
prepared by U.S. FWS, U.S. Dep't of the Interior
(June 1, 1944)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Petitioner,)
v.)
3,000 ACRES OF LAND, MORE OR LESS,)
SITUATE IN BARNSTABLE COUNTY,)
COMMONWEALTH OF MASSACHUSETTS,)
SUSIE H. KOSAK, ET AL.,)
Defendants.)

MISC. CIVIL NO. 6340

JUDGMENT ON THE DECLARATION OF TAKING

(June 1, 1944.)

HEALEY, J. This cause coming on for hearing upon motion of Edmund J. Brandon, United States Attorney in and for the District of Massachusetts, and Philip P. A. O'Connell, Special Assistant to the United States Attorney in and for the said District, attorneys for the petitioner herein, to enter a Judgment on the Declaration of Taking filed herein and upon consideration thereof and of the petition and the declaration of taking filed herein and statutes in such cases made and provided, and it appearing to the satisfaction of the Court:

FIRST, that the United States of America is entitled to acquire property by condemnation under judicial process for the purposes as set forth and prayed for in said petition;

SECOND, that the declaration of taking filed herein contains or has annexed thereto a statement of the authority under which and the public use for which the lands hereinafter described are taken, a description of the said lands taken sufficient for the identification thereof, a statement of the estate or interest taken for the said public use, a plan showing the lands taken, and a statement of the sum of money estimated by the Secretary of the Interior of the United States of America, to be just compensation for the land taken in the sum of \$27,560.14 and that said amount has been deposited into the registry of the Court for the use and benefit of the persons entitled thereto;

THIRD, that the said declaration of taking filed herein contains a statement that the Secretary of the Interior of the United States of America, head of the acquiring agency, is of the opinion that the ultimate award of just compensation will be within the limits prescribed by Congress as the price to be paid therefor;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the fee simple title to said lands together with all accretion and reliction and all and singular the water rights, riparian rights and other rights, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, vested in the United States of America upon the filing of the said declaration of taking and the depositing into the

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registry of this Court of the amount of estimated just compensation, which land is situate in the Town of Chatham, County of Barnstable, and Commonwealth of Massachusetts, and more particularly described in Schedule "A" attached hereto and made a part hereof, and defined in map marked Schedule "B" attached to and made a part of the declaration of taking herewith filed.

Said land is deemed to be condemned and taken for the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of such just compensation shall be ascertained and awarded in this proceeding and established by judgment herein pursuant to law, and

This cause is held open for such further and other orders, judgments and decrees as may be necessary in the premises.

Entered this 1st day of June, 1944 at Boston, Massachusetts.

BY THE COURT:

/s/ Joseph J. Duwan

Deputy Clerk

ENTERED:

June 1, 1944

Arthur D. Healey, J.

SCHEDULE "A"

All that part of Cape Cod in the Town of Chatham, Barnstable County, Massachusetts, more particularly described as being all those tracts or parcels of land lying above mean low water, including a portion of Morris Island; all of Monomoy Beach, Monomoy Island, and Monomoy Point; Sheeters Island; together with all land covered by the waters of land locked ponds; and all islands, islets, sand bars and tidal flats lying in Nantucket Sound, Chatham Bay, and Stage Harbor; all lying within the following described exterior limits: Beginning at the westerly corner of the Chatham Coast Guard Station property on Morris Island, at approximate latitude $41^{\circ} 39' 25''$, longitude $69^{\circ} 57' 30''$, which corner is marked with a U.S.B.S. standard concrete post "2 COR 1 1940"; thence with the southwesterly boundary of the said Chatham Coast Guard Station, S. $39^{\circ} 40' E.$, 6.36 chains to the southerly corner thereof; thence continuing in the range of the southwesterly boundary of the said Coast Guard Station, S. $39^{\circ} 40' E.$, 2.83 chains to a point on the easterly side of Morris Island at the mean high water line on the Atlantic Ocean shore; thence, S. $39^{\circ} 40' E.$, to the mean low water line on the Atlantic Ocean shore; thence southwesterly with the mean low water line on the Atlantic Ocean shore, along the easterly side of Morris Island, Monomoy Beach, Monomoy Island, and Monomoy Point, to the southernmost extremity of Monomoy Point, at the mean low water line on the Atlantic Ocean Shore, at the entrance to Nantucket Sound; thence westerly in Nantucket Sound, to a point in the said sound, at latitude $41^{\circ} 33'$, longitude $70^{\circ} 02'$; thence northeasterly in Nantucket Sound and Chatham Bay, to a point in Chatham Bay at latitude $41^{\circ} 39' 20''$, longitude $69^{\circ} 59' 20''$; thence continuing in Chatham Bay, southeasterly to a point in the said bay near the mouth of Stage Harbor at latitude $41^{\circ} 39' 05''$, longitude $69^{\circ} 58' 20''$; thence northeasterly in Chatham Bay and Stage Harbor to a point, at the mean low water line on the easterly shore of Stage Harbor, on the westerly side of Morris Island, at approximate latitude $41^{\circ} 39' 25''$, longitude $69^{\circ} 58' 10''$; thence EAST, to a point at the mean high water line on the shore of Stage Harbor; thence EAST, 0.606 chain to a U.S.B.S. standard concrete post marked "1 1940"; thence on Morris Island EAST, 39.30 chains to the place of beginning. Excepting therefrom, however, all that tract or parcel of land, known as the Old Monomoy Lighthouse site, bounded by the following described lines: Beginning at a stake 360 feet from the high water mark, and running from thence, southwest, 20 rods to a stake; thence northwest 32 rods to a stake; thence northeast 20 rods to a stake; thence southeast 32 rods to the first named stake; the same containing 4 acres, more or less.

A true copy:

ATTEST: /s/ Arthur M. Brown Deputy Clerk.
(Seal)

Barnstable, ss., Received June 8, 1944, at 9 h. 00 m. A.M., and is entered with
Barnstable County Deeds in Book 614, Page 93.

Attest:-

(Notary)

/s/ Benjamin D. Sears

Notary Public in and for the State of Massachusetts

Register.

PLATE COPY:

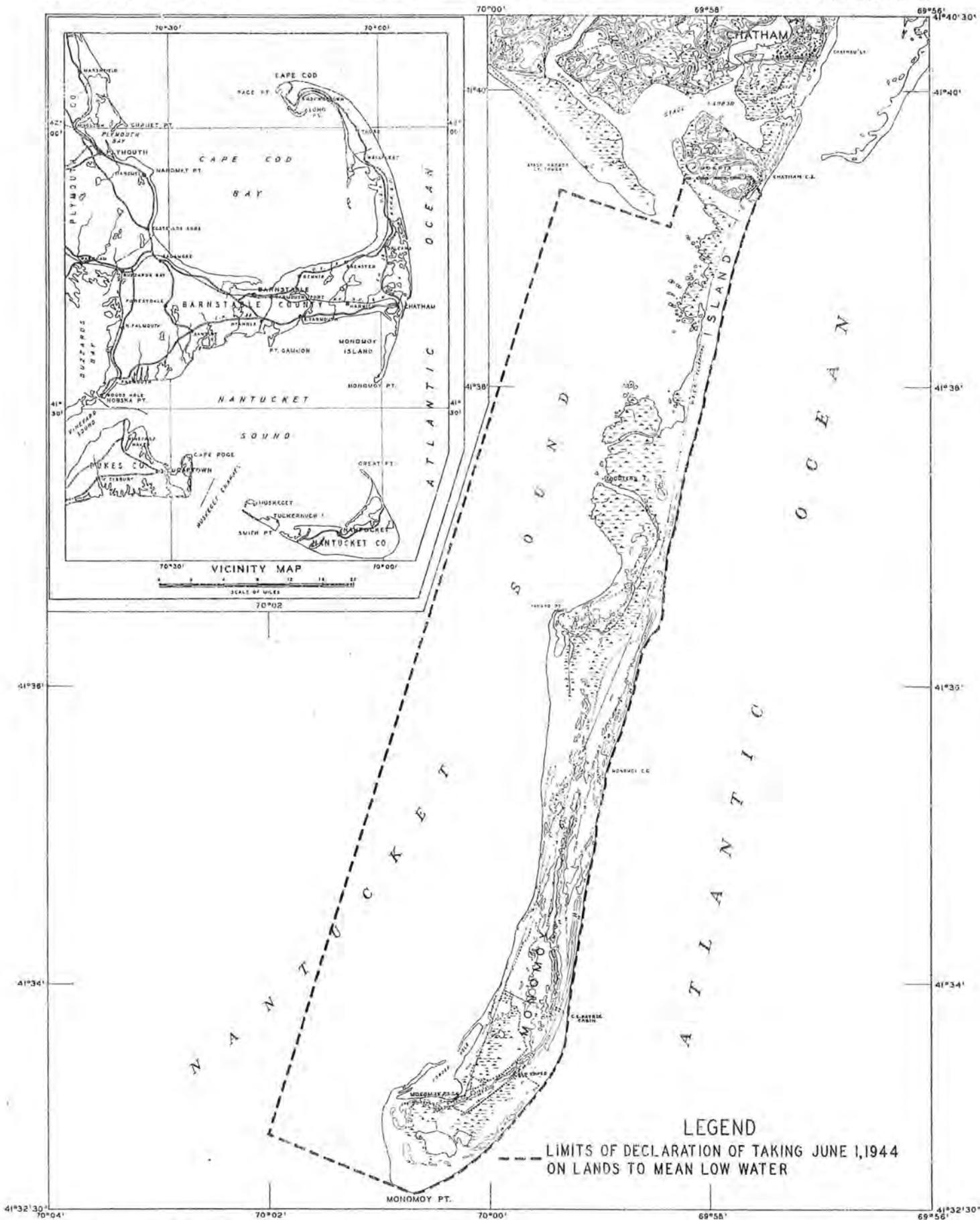
[The body of the document contains several paragraphs of text that are extremely faint and difficult to read. The text appears to be a legal document, possibly a deed or a contract, but the specific details are illegible due to the quality of the scan. The text is arranged in a standard block format with some indentation.]

MONOMOY NATIONAL WILDLIFE REFUGE

U.S. DEPARTMENT OF THE INTERIOR

BARNSTABLE COUNTY, MASSACHUSETTS

FISH AND WILDLIFE SERVICE



LEGEND
--- LIMITS OF DECLARATION OF TAKING JUNE 1, 1944
ON LANDS TO MEAN LOW WATER

COMPILED IN THE DIVISION OF LANDS FROM SURVEYS BY U.S.G.S.

WASHINGTON, D.C.
-5-52

APRIL 1941



CONTOUR INTERVAL: 10 FEET DATUM IS MEAN SEA LEVEL

MEAN DECLINATION 1941

Exhibit 2

Final Judgment Fixing Just Compensation
in *United States v. 3,000 acres, more or less of land situate in
Barnstable County, Commonwealth of Massachusetts, Susie H.
Kosak, et al.*, Misc. C.A. No. 6340 (D. Mass. filed July 5, 1955)

Map w/this record

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

3,000 ACRES OF LAND, MORE
OR LESS, SITUATE IN BARN-
STABLE COUNTY, COMMONWEALTH
OF MASSACHUSETTS, AND
SUSIE H. KOSAK, ET AL.,
Defendants.

MISC. CIVIL NO. 6310

FINAL JUDGMENT FIXING JUST COMPENSATION

JUPY 5-1958

4:00 PM 7/4

J. The above entitled action having come on for trial before this Court in the United States District Court for the District of Massachusetts on June 21, 1955 for the purpose of determining and adjudicating the just compensation to be paid by the United States of America for the taking by condemnation proceedings of certain tracts of land included in the description contained in the Petition for Condemnation and Declaration of Taking filed herein together with certain buildings thereon, not otherwise excluded or settled by agreement between the parties hereto, as more particularly described hereinafter by tract and building numbers and as shown on the map annexed hereto; and notice of this hearing having been given to all defendants of record; and additional notice having been posted in a conspicuous public place in the Clerk of Court's office; and all defendants known or unknown who failed to appear and answer having been defaulted; and all parties appearing and answering having waived a jury; and no evidence as to the issue of just compensation having been offered by any parties other than the United States of America; and this Court, on all the evidence and stipulations

of certain parties, having made Finding of Facts heretofore filed in this action;

It is ORDERED, ADJUDGED, and DECREED:

1. That the fair value and just compensation to be paid by the United States of America for all interests in the land designated by the following tract numbers and as shown and located on the map annexed hereto are:

Tract No. 20	-	\$ 221.00
Tract No. 22	-	62.00
Tract No. 23	}	- 190.00
Tract No. 23a		
Tract No. 23b	}	- 43.00
Tract No. 24		
Tract No. 25	-	29.00
Tract No. 26	-	1,063.00
Tract No. 27	}	- 3,634.00
Tract No. 27a		
Tract No. 27b		
Tract No. 27c		
Tract No. 27d	}	- 1,815.00
Tract No. 28		
Tract No. 29	}	- 363.00
Tract No. 29a		
Tract No. 29b	}	- 3,767.00
Tract No. 30		

2. That the amount of just compensation for each of the above-named tracts is allocated in accordance with the valuation analysis hereinafter set forth as more particularly located on the said annexed map by color identification:

<u>TRACT NUMBER</u>	<u>COVER TYPE</u>	<u>ACRES</u>	<u>VAL./ACRE</u>	<u>TOTAL VALUE</u>
20	Fresh Marsh	2.00	\$ 20.00	\$ 40.00
	Beach Grass	28.00	3.00	84.00
	Beach Sand	16.00	3.00	48.00
	Sand	11.00	3.00	33.00
	Tidal Flats	6.00	1.00	6.00
	Submerged (fresh)	1.00	10.00	10.00
	Subtotals	<u>64.00</u>		<u>\$ 3.45</u>
			Total	<u>\$ 221.00</u>
22	Beach Grass	14.00	\$ 3.00	\$ 42.00
	Beach Sand	2.00	3.00	6.00
	Sand	2.00	3.00	6.00
	Hudsonia	4.00	2.00	8.00
	Subtotals	<u>22.00</u>		<u>\$ 2.82</u>
			Total	<u>\$ 62.00</u>

TRACT NUMBER	COVER TYPE	ACRES	VAL./ACRE	TOTAL VALUE
23, 23a, 23b	Fresh Marsh	3.00	\$ 20.00	\$ 60.00
	Beach Grass	33.00	3.00	99.00
	Beach Sand	4.00	3.00	12.00
	Sand	3.00	3.00	9.00
	Hudsonia	5.00	2.00	10.00
	Subtotals	<u>48.00</u>	<u>\$ 3.96</u>	<u>\$ 190.00</u>
	Total			<u>\$ 190.00</u>
24	Fresh Marsh	2.00	\$ 20.00	\$ 40.00
	Beach Grass	1.00	3.00	3.00
	Subtotals	<u>3.00</u>	<u>\$ 14.33</u>	<u>\$ 43.00</u>
	Total			<u>\$ 43.00</u>
25	Fresh Marsh	1.00	\$ 20.00	\$ 20.00
	Beach Grass	3.00	3.00	9.00
	Subtotals	<u>4.00</u>	<u>\$ 7.25</u>	<u>\$ 29.00</u>
	Total			<u>\$ 29.00</u>
26	Fresh Marsh	34.00	\$ 20.00	\$ 680.00
	Beach Grass	108.00	3.00	324.00
	Beach Sand	12.00	3.00	36.00
	Hudsonia	10.00	2.00	20.00
	Tidal Flats	3.00	1.00	3.00
	Subtotals	<u>167.00</u>	<u>\$ 6.37</u>	<u>\$1,063.00</u>
	Total			<u>\$1,063.00</u>
27, 27a, 27b, 27c, 27d	Fresh Marsh	57.00	\$ 20.00	\$1,140.00
	Beach Grass	416.00	3.00	1,248.00
	Beach Sand	86.00	3.00	258.00
	Sand	47.00	3.00	141.00
	Brush	8.00	3.00	24.00
	Hudsonia	195.00	2.00	390.00
	Tidal Flats	13.00	1.00	13.00
	Submerged (fresh)	42.00	10.00	420.00
	Subtotals	<u>864.00</u>	<u>\$ 4.21</u>	<u>\$3,634.00</u>
	Total			<u>\$3,634.00</u>
	28	Fresh Marsh	48.00	\$ 20.00
Salt Marsh		5.00	4.00	20.00
Beach Grass		153.00	3.00	459.00
Beach Sand		22.00	3.00	66.00
Sand		1.00	3.00	3.00
Brush		29.00	3.00	87.00
Hudsonia		106.00	2.00	212.00
Submerged (salt)		8.00	1.00	8.00
Subtotals		<u>372.00</u>	<u>\$ 4.88</u>	<u>\$1,815.00</u>
Total				<u>\$1,815.00</u>

<u>TRACT NUMBER</u>	<u>COVER TYPE</u>	<u>ACRES</u>	<u>VAL./ACRE</u>	<u>TOTAL VALUE</u>
29, 29a, 29b	Fresh Marsh	4.00	20.00	\$ 80.00
	Beach Grass	72.00	3.00	216.00
	Beach Sand	8.00	3.00	24.00
	Sand	4.00	3.00	12.00
	Brush	1.00	3.00	3.00
	Hudsonia	14.00	2.00	28.00
	Subtotals	<u>103.00</u>		<u>\$ 352</u>

Total \$ 363.00

30	Fresh Marsh	51.00	\$ 20.00	\$ 1,020.00
	Salt Marsh	318.00	4.00	1,272.00
	Beach Grass	197.00	3.00	591.00
	Beach Sand	65.00	3.00	195.00
	Sand	166.00	3.00	498.00
	Brush	14.00	3.00	42.00
	Hudsonia	1.00	2.00	2.00
	Tidal Flats	47.00	1.00	47.00
	Submerged (fresh)	30.00	10.00	100.00
	Subtotals	<u>869.00</u>		<u>\$ 4,33</u>

Total \$ 3,767.00

3. That the fair value and just compensation for each of the following buildings is as hereinafter set forth:

<u>Building No.</u>	<u>Owner</u>	<u>Tract No.</u>	<u>Just Compensation</u>
B Pa	Frédéric A. Crafts	30	\$ 40.00
3 "	Creighton Nickerson	20	10.00
18 "	Lester W. Robinson	27c	100.00
19 ^{ret}	Warren Delano	27c	90.00
20 "	George Bassett	27c	50.00
21	Dr. Neil F. MacDonald	27c	150.00
27	Monomoy Fish & Game Club	4a	175.00
39 "	Frédéric A. Crafts	30	150.00
57 "	Rubin C. O. Eldredge	30	25.00

4. That the defaults entered against all known and unknown defendants not appearing and answering at the aforementioned trial shall not prejudice the rights of such defendants to share in the distribution of the awarded amounts of just compensation upon the proof of their claims thereto.

5. That this action may be held open for the entry of such further orders, decrees, and judgments as may be necessary to effect distribution of the funds deposited by the United States of America in the Registry of Court.

William J. McCarty, Jr.
UNITED STATES DISTRICT JUDGE

Dated July 5, 1955.

Exhibit 3

U.S. FWS, U.S. DEP'T OF THE INTERIOR, FINAL
ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY
NAT'L WILDLIFE REFUGE (Feb. 1988) ("1988 FINAL MONOMOY
MASTER PLAN") (selected pages)

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WEIR HILL ROAD
SUDBURY, MA 01776



ENVIRONMENTAL ASSESSMENT

February 1988

Master Plan

**MONOMOY
NATIONAL WILDLIFE REFUGE
Chatham, Massachusetts**



United States Department of the Interior

FISH AND WILDLIFE SERVICE
ONE GATEWAY CENTER, SUITE 700
NEWTON CORNER, MASSACHUSETTS 02158

FEB 16 1988

FINDING OF NO SIGNIFICANT IMPACT

Based on a review and evaluation of the information contained in the attached Environmental Assessment, I have determined that the proposed master plan for the Monomoy National Wildlife Refuge is not a major Federal Action which would significantly affect the quality of the human environment within the meaning of Section 102 (2) (c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on the proposed action is not required.

I have also determined that this proposal is consistent with Executive Orders 11988 entitled "Floodplain Management" and 11990 entitled "Protection of Wetlands," and conforms to all applicable state and local floodplain protection standards in that implementation of the proposed action will help maintain and preserve natural and beneficial floodplain and wetland values. A list of other agencies and individuals contacted in the planning of this proposal is included in the Assessment.

Howard M. Loren
Regional Director

ENVIRONMENTAL ASSESSMENT

Master Plan

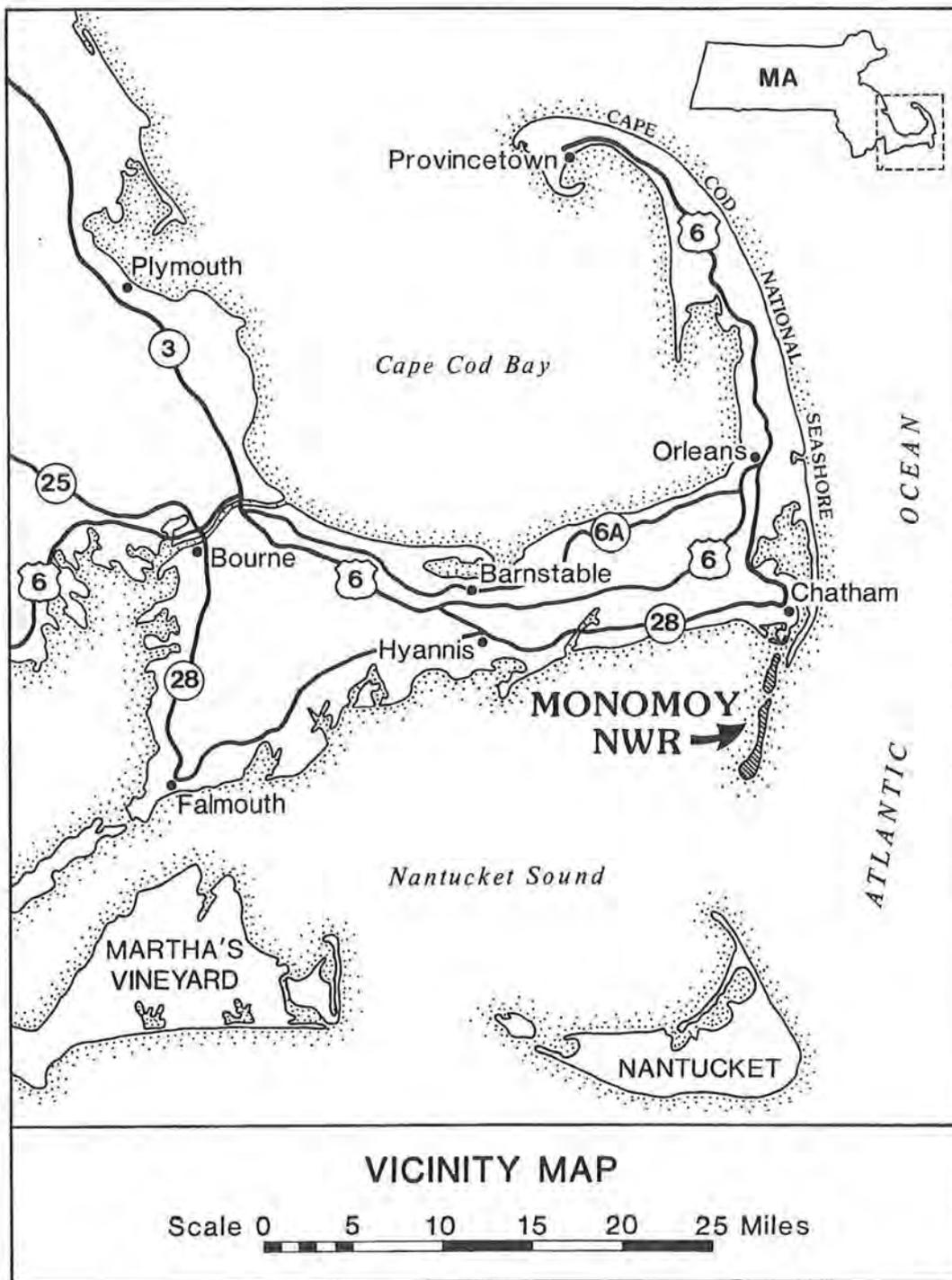
for

Monomoy National Wildlife Refuge

Chatham, Massachusetts

February 1988

U.S. Department of the Interior
Fish and Wildlife Service
Region 5
Newton Corner, Massachusetts



PREFACE TO THE FINAL ENVIRONMENTAL ASSESSMENT

Monomoy National Wildlife Refuge Master Plan

This preface is intended to facilitate public review of the final Environmental Assessment (EA). The preface contains a description of changes incorporated in the final EA and a summary of the Proposed Action. It also discusses the reasons for the selection of the Proposed Action.

Monomoy National Wildlife Refuge was established in 1944 under the Migratory Bird Conservation Act for the protection and perpetuation of migratory waterfowl. In 1970, Congress designated 2600 of the refuge's approximately 2750 acres as Wilderness Area. Monomoy's isolated beach, dune, and marsh habitats support at least ten bird species that nest in few other Massachusetts locations. The refuge boasts the largest variety of breeding waterfowl species in the state, including mallard, northern pintail, American black duck, American widgeon, blue-winged teal, and several others. Between 1965 and 1980, Monomoy was the site of one of the largest common and roseate tern nesting colonies in the Northeast. Monomoy's strategic location on the Atlantic Flyway makes it a major staging area for fall populations of migrating waterfowl, passerine, and shorebird species. Large numbers of sea ducks winter on the waters around Monomoy, and peregrine falcons and bald eagles pass through the refuge during migration.

Changes from the Draft Environmental Assessment

Since the close of the public comment period on the draft Environmental Assessment (EA), which extended from November 10, 1986 to January 9, 1987, the U.S. Fish and Wildlife Service has re-evaluated its proposals in light of public comments received. Changes reflected in this document include:

- Modifications and additions to public use management efforts in the Proposed Action:
 - Prohibition of night fishing on the Monomoy Islands during the nesting season, April 1 to August 31.
 - Revision of the starting date for piping plover nesting area closures to April 1.
 - Intention of the Service to work with the U.S. Coast Guard to inform boaters of the potential effects of nearby boat traffic on nesting birds and encourage boaters to adopt practices that minimize disruption of wildlife.
 - Change in the maximum size of group tours to 14 people.
 - Provision for area closures to protect identified short eared owl nesting territories.
 - Extension of the ban on pets on the Monomoy Islands to include the Morris Island portion of the refuge during the spring and summer.

- Expansion of the list of research topics that will provide information for refuge management decisions.
- Direction in the Proposed Action to seek a cooperative agreement with an independent organization for rehabilitation and maintenance of the entire Monomoy lighthouse complex.
- Clarification of the history of complex interactions among terns, herring and great black-backed gulls, and avian predators that have affected the nesting success of terns on Monomoy during the last decade.

Many of the comments received on the draft EA, along with the Service's responses have been reproduced in Appendix C. These letters and responses form an important part of the record documenting the Monomoy master planning process.

Summary of the Proposed Action

The Proposed Action responds to two significant trends in the refuge environment:

- Increasing public use on the Refuge: The growing number of visitors are increasing disturbance to the refuge ecosystem, particularly to many wildlife species that are sensitive to disturbance by people and dogs. Opportunities for solitude, an important wilderness characteristic, are decreasing. Without careful management, the increasing quantity of public use may also affect the quality of wildlife observation opportunities. The lighthouse complex has been subjected to repeated vandalism in recent years.
- The drastic increase in nesting herring and great black-backed gulls and decreases in other nesting species: Prior to 1920, these large gulls were unknown as "nesters" in Massachusetts. Subsidized by human-supplied food sources, they have expanded their nesting range south from Maine. The Monomoy gull colony, which started with five pairs in 1963, now numbers more than 19,000 pairs. The spectacular growth of their populations has reduced available nest sites for other species that utilize similar habitat.

The Fish and Wildlife Service is especially concerned about threats that gulls and human disturbance pose to two species - the piping plover and the roseate tern - that have experienced very serious declines throughout their ranges. The piping plover, classified as threatened along the Atlantic Coast, is sensitive to human disturbance. Invading gulls may prevent establishment of piping plover nest territories or prey on their young. The roseate tern is a candidate for listing as an endangered species.* Between 1965 and 1980, Monomoy supported one of the largest roseate tern colonies in the Northeast, but only a few pairs have nested there during the last five years.

Other nesting birds that may be especially vulnerable to human disturbance and gulls include common terns, arctic terns, least terns, and laughing gulls. The short-eared owl, a State endangered species, migrating shorebirds, and harbor

*The roseate tern is protected under the Endangered Species Act as of December 2, 1987.

seals are also sensitive to disturbance. Monomoy is currently the site of the largest aggregation of harbor seals at a single haulout site in the eastern United States.

Public use management activities in the Proposed Action are designed to mitigate the impacts of visitors on refuge wildlife, wilderness character, and recreational opportunities. Some critical habitat will be closed to the public during periods of use by nesting, roosting, or resting wildlife. Visitors to the Monomoy Islands will be required to obtain written permits, which will be accompanied by information about closed areas, refuge regulations, and suggested practices to lessen environmental impacts. Refuge staff will be increased to issue permits, provide visitor information, and enforce regulations. In addition, this alternative proposes to ban pets year-round on the Monomoy Islands, and during the spring and summer on the Morris Island portion of the refuge. It will also prohibit night fishing on the Monomoy Islands during the nesting season.

The Proposed Action calls for both long-term, regional measures and short-term, local activities to reduce the impacts of nesting gulls on other refuge wildlife. The long-term solution lies in correcting the environmental conditions that favor maintenance and growth of the Monomoy gull colony. Therefore, the Service will work with appropriate authorities and interested groups to pinpoint the gulls' food sources and will encourage implementation of measures to make human-supplied food unavailable to the gulls. Because of the gulls' long life-span and because implementation of these measures is beyond the direct control of the Fish and Wildlife Service, short-term activities may also be required to ensure that some suitable nesting habitat is available for other species. This alternative specifies the amount of suitable habitat to be maintained for species that cannot compete successfully with gulls for nest sites. If, at any time, the minimum acreage of gull-free habitat for any of these species is unavailable, gulls will be removed from potentially suitable habitat using the technique which will cause the least disturbance to other resources, including wilderness.

Information about the historic lighthouse complex will be recorded to ensure its permanent availability for historical interpretation. The Service will also seek a cooperative agreement with an independent organization for rehabilitation and maintenance of the lighthouse complex. The headquarters facility on Morris island will be upgraded, and a self-guided interpretive walking tour will be developed on the Morris Island portion of the refuge. Designation of short-term parking spots at the headquarters will assure easy access for visitors seeking permits and information.

Reasons for the Selection of the Proposed Action

Selection of Alternative C as the Proposed Action for the Monomoy master plan reflects a long-term commitment by the Service to maintaining the integrity of Monomoy's environment. Major goals of the Proposed Action are: to re-establish and maintain a natural diversity and abundance of wildlife on the refuge; to protect the wilderness character of the Monomoy Islands; and to ensure a quality wildlife-oriented experience for refuge visitors. The Proposed Action is premised on the belief that these goals are interdependent and that they can best be achieved through protection of the refuge ecosystem from degradation by adverse external influences.

The master planning process identified two significant threats to the refuge environment: increasing public use and the large nesting herring and great black-backed gull populations. A responsible plan for long-term management must respond to both of these threats. The Proposed Action combines (1) management activities to ensure that visitors can enjoy the refuge's wildlife and wilderness without damaging their quality with (2) proposals to mitigate, and eventually eliminate, effects of gulls on nesting opportunities of other wildlife.

Potential benefits of the Proposed Action include: reduced human disturbance to wildlife; protection of naturalness and solitude of the wilderness; maintenance of limited gull-free nesting habitat for competing species; increased average production of common terns, roseate terns, arctic terns, least terns, laughing gulls, piping plovers, and short-eared owls; decreased disturbance to migrating shorebirds and harbor seals; enhanced visitor information services; and a reduction in human-supplied feeding opportunities for gulls.

These potential benefits must be weighed against the attendant trade-offs and risks. The two most significant trade-offs contained in the Proposed Action are: (1) Inconvenience to visitors who will be required to obtain written permits as a strategy to decrease disturbance to wildlife, reduce wilderness impacts, and enhance recreational experience. Permitting procedures, which are the discretion of the refuge manager, will be designed to maximize visitor convenience within the limits of efficient administration and the need to achieve the original goals of the permit requirement. (2) A short-term intervention into the refuge's wildlife population dynamics will be created by any on-site gull control efforts. However, it must be recognized that these current population dynamics are the unnatural result of human activities that subsidize gull expansion. Further, gull control activities contemplated in the Proposed Action will create far less disturbance to wildlife and wilderness qualities than did gull control activities conducted on the refuge between 1978 and 1984.

Examination of other risks contained in the Proposed Action reveal the proposal's truly conservative approach to wildlife management. The "worst case scenario" is that no additional wildlife will take advantage of decreased human disturbance or gull-free habitat. There is no potential for adverse impacts on wildlife, other than the gulls, from any proposed management activity. While implementation of any management activity should be monitored to ascertain its site-specific consequences, this proposal contains no activities that have not received extensive testing elsewhere. No irreversible consequences or irretrievable commitments of resources have been identified.

One of the challenges to which the master plan for Monomoy Refuge responds is the need to provide meaningful management direction without compromising the flexibility needed to react to rapid habitat changes caused by geomorphological processes. The Proposed Action achieves this flexibility by describing the types of areas for which area closures will be established and the types and amounts of habitat to be maintained gull-free. The task of identifying the specific locations of each type of area at any given time is left to the Refuge Manager.

The Proposed Action recognizes the value of Monomoy as a site for wildlife research and the important role of research in providing information to guide refuge management decisions. It lists research topics that the Service has identified as having potential to assist management. However, the complex and dynamic nature of the wildlife environment dictates that there will always be unanswered questions about any wildlife situation. It is appropriate to move from study and analysis of the Monomoy Refuge to cautious management accompanied by careful monitoring of consequences. Research should not stop, but neither should it stop needed management.

The Proposed Action also redeems the Service's responsibility for protecting the historic resources of the Monomoy lighthouse complex. Recording of information about construction of the buildings will assure its permanent availability for historical interpretation. The Service will seek the expertise and commitment of an outside cooperator to rehabilitate and maintain the lighthouse complex in its historic context. This will not be an easy task, given the remoteness of the site and the need to meet the exacting standards for rehabilitating historic structures without disturbing wildlife or compromising wilderness values.

At a time when human activities in coastal areas are causing a constriction in available wildlife habitat, it is important to affirm the Service's commitment to protecting habitat wherever possible. Nowhere is that commitment more important than on Service-owned lands. The continued well-being of wildlife populations is dependent on preservation of sufficient well-distributed habitat, and Monomoy Refuge provides important habitat for many species.

The Proposed Action for the Monomoy master plan establishes a framework for managing the refuge during the next 10 to 20 years. It leaves to the Refuge Manager the task of developing the specific procedures and short-term management plans needed to implement the master plan. Important examples include procedures for issuing written permits to visitors, direction of efforts to identify gull food sources, identification of habitat for seasonal area closures, and implementation of direction for maintenance of gull-free habitat. Successful implementation is contingent on close monitoring of the refuge environment and adjustment of management techniques in response to habitat changes and feedback from on-going management efforts. The Service is committed to these tasks and to maintaining open communication to keep interested organizations and individuals apprised of its planned management activities.

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PURPOSE AND NEED

The purpose of the proposed master plan is to provide overall guidance for protection, use, and development of Monomoy National Wildlife Refuge during the next ten to twenty years. The proposed plan sets major goals for refuge management and describes the activities needed to attain these goals. The master plan establishes a comprehensive framework for refuge management which will:

- respond to current and anticipated threats to the refuge environment.
- ensure that management of Monomoy Refuge is consistent with national and regional Fish and Wildlife Service policy and direction.
- ensure coordination among various refuge activities.
- provide continuity in refuge management.
- guide inventory and research efforts on the refuge.
- support refuge funding requests.

Monomoy's strategic location on the Atlantic Flyway makes it a major staging area for fall populations of many migratory waterfowl, passerine, and shorebird species. A 1984 report of the International Shorebird Survey cites Monomoy among the five most important of 454 autumn shorebird stopover areas studied east of the Rocky Mountains (Harrington 1984). The refuge's specialized habitat supports at least ten bird species that nest in few other locations in Massachusetts. Between 1965 and 1980, Monomoy was the site of one of the largest colonies of nesting common and roseate terns in the Northeast. Large numbers of sea ducks winter on the waters around Monomoy, and peregrine falcons and bald eagles pass through the refuge during migration. Monomoy is noted for sightings of bird species far from their normal range.

The largest aggregation of harbor seals at a single haulout site in the eastern United States occurs at the refuge (Payne et al. 1985).

About 2,600 acres on the Monomoy Islands comprise the Monomoy Wilderness Area. Designated by Congress in 1970, Monomoy is the only Wilderness Area in Massachusetts.

The primary impetus for master planning of Monomoy Refuge at this particular time comes from growing awareness, both within the Fish and Wildlife Service and among the public, of two significant trends:

- Increasing public use on the refuge: Although the virtually unlimited number of refuge access points makes accurate count of refuge visitors difficult, the upward trend in visitation is unmistakable. Projected increases in year-round and seasonal residents on Cape Cod, easy highway access to the Cape from several metropolitan areas in the Northeast, rising interest in wildlife and wildlands recreation, and relative scarcity of other nearby areas affording similar recreational opportunities suggest that this trend

will continue. Many Service employees and refuge users are concerned about potential long-term effects of increased human activity on the refuge ecosystem, particularly on its wildlife and wilderness qualities.

- The drastic increase in the populations of nesting herring and great black-backed gulls over the last twenty years: Prior to 1920, nesting herring and great black-backed gulls were unknown in Massachusetts. Subsidized by human-supplied food sources, these gulls have extended their breeding range south from Maine and the Atlantic Provinces of Canada (Drury 1973-74). The Monomoy gull colony, which started with five pairs of herring gulls in 1963 (Kadlec and Drury 1968), expanded to more than 19,000 pairs of the two species in 1984, despite gull control efforts between 1979 and 1984. The spectacular growth of Monomoy's gull populations has reduced available nesting sites for several other species which utilize similar habitat, most notably common terns, arctic terns, roseate terns, and piping plovers.

Concern about both of these trends acquired a new dimension with the January 1986 listing of the piping plover as a species protected under the Endangered Species Act. Designation of the Atlantic Coast population of the piping plover as a threatened species transformed general concern for a declining species into a legal obligation on the part of federal agencies to protect and restore the plover. Invading gulls have been linked with declining populations of nesting piping plovers elsewhere (Cartar 1976 and Raithel 1984) and are suspected contributors to decreases in the nesting plover population on Monomoy. Many researchers have documented the adverse effect of human disturbance on nesting piping plovers (Cairns 1977, Cairns and McLaren 1980, Flemming 1984, and others).

Master planning also provides a forum for public participation in the formulation of goals and general management direction of the refuge. As the long record of public involvement in issues related to Monomoy attests, the refuge has an active public constituency. This public recognizes Monomoy's importance for wildlife and its unique wilderness environment. Many individuals feel an intense personal connection with Monomoy. As a public problem solving process, master planning affords opportunities for Service managers and the public to communicate while setting a future management course for Monomoy Refuge.

This Environmental Assessment (EA) presents and compares alternatives for the long-term management of Monomoy Refuge, as prescribed in the National Environmental Policy Act of 1969 (NEPA). The EA will serve as the basis for the decision as to whether an Environmental Impact Statement should be prepared for this plan.

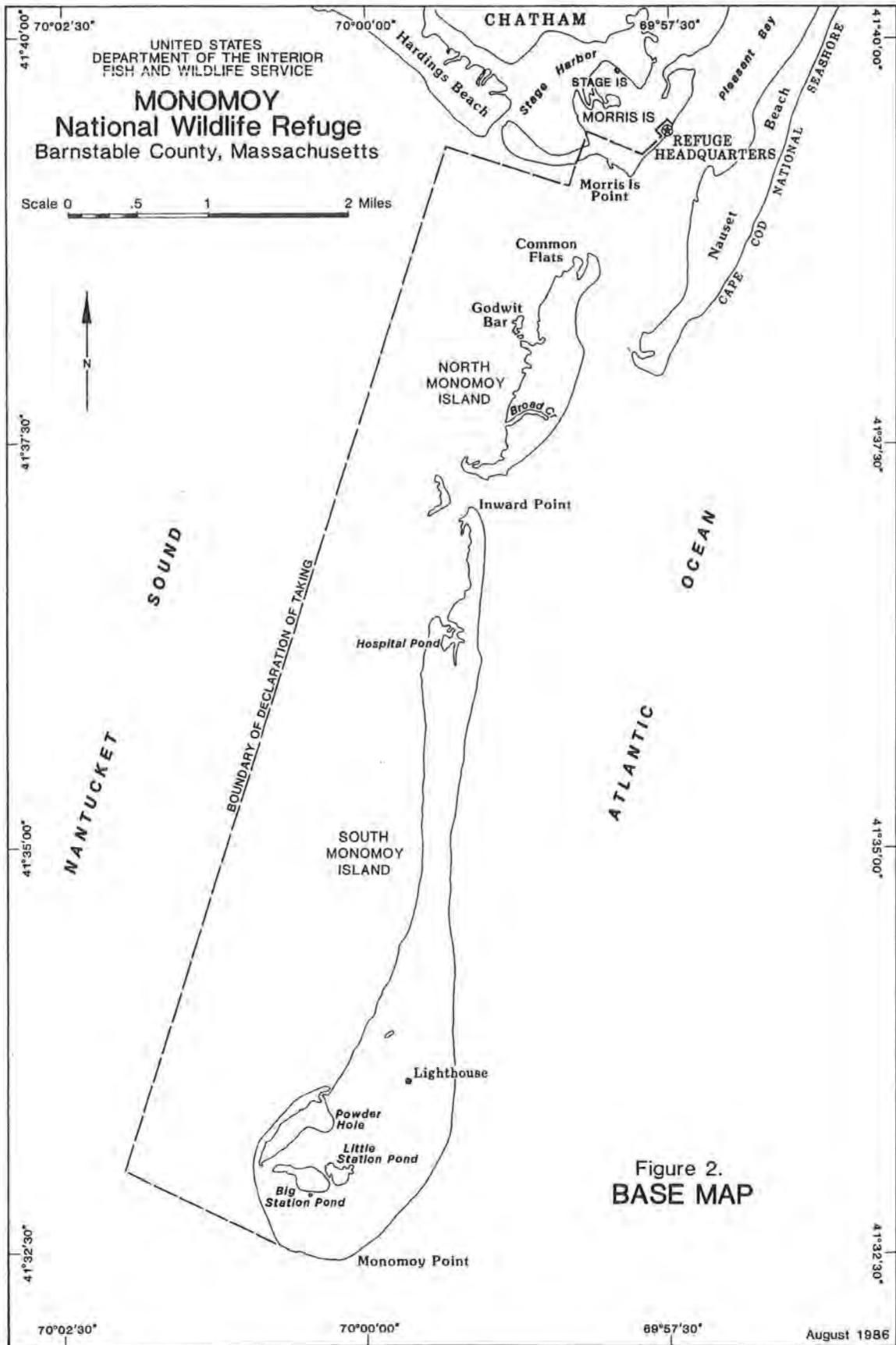


Figure 2.
BASE MAP

DEVELOPMENT OF ALTERNATIVES

PROCESS OVERVIEW

Refuge master planning is a comprehensive system of resource management planning which provides long-range guidance for protection, use, and development of a wildlife refuge. It is an opportunity to study present and future demands on the refuge and analyze the capability of the refuge to meet those demands. Master planning requires taking a step back from the day-to-day problems of running a refuge to consider resolution of many issues in a context that recognizes the complex interactions of refuge activities.

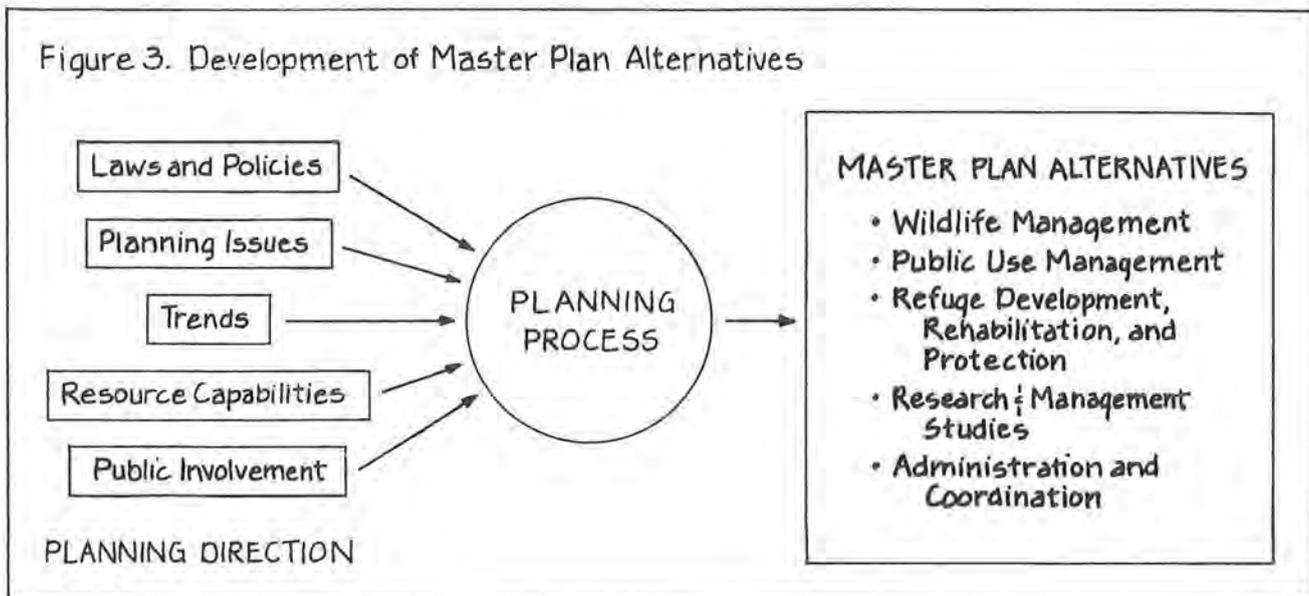
Master plan alternatives are shaped by the legal authorities and agency policies which guide management of national wildlife refuges and Monomoy Refuge in particular. Planners also look to the planning issues - concerns about present conditions on the refuge and potential future problems suggested by apparent trends in the refuge environment - to define the content and range of alternatives. Other factors considered during alternative formulation are trends in refuge use by wildlife and the public and the basic capability of refuge resources to support use by wildlife and visitors.

Public participation is a fundamental component of the planning process. In the early stages of planning, the Service requested the public to help identify the issues to be addressed by the plan. During the analysis phase, the Service consulted with many outside agencies and organizations about various aspects of refuge management, and much of their counsel is incorporated in the alternatives presented in this Environmental Assessment (EA). Following release of this document, the public will be asked to review and comment on the proposed plan and alternatives.

Comprehensive strategies for refuge management entail the coordination of a wide range of activities. Each alternative includes a "package" of management activities. For ease of discussion and comparison, each alternative groups management activities into five programs: (1) wildlife management; (2) public use management; (3) refuge development, rehabilitation, and protection; (4) research and management studies; and (5) administration and coordination.

The Monomoy master plan alternative development process is diagrammed in Figure 3.

Figure 3. Development of Master Plan Alternatives



The remainder of this section provides information about various components of the alternative formulation process:

- important legal authorities and agency policies shaping the alternatives
- public involvement activities conducted during master planning
- issues addressed by the plan
- funding considerations
- refuge management programs

Refuge resource capabilities and wildlife population trends are discussed in the Affected Environment section of this EA.

LEGAL AUTHORITIES AND POLICY DIRECTION

Laws

The legal authority for management of Monomoy and other national wildlife refuges derives from the Migratory Bird Treaty Act of 1918 and the Migratory Bird Conservation Act of 1929. These acts provide for Federal protection of all migratory birds and acquisition of land and water for conservation of the migratory bird resource. Refuge management is further guided by the National Wildlife Refuge Administration Act of 1966 which defines the National Wildlife Refuge System and states that national refuges may be opened to various public uses, provided that each use is compatible with the major purposes for which the refuge was established.

The Endangered Species Act of 1973 instructs Federal agencies to carry out programs for the conservation of endangered and threatened species and to conserve the ecosystems upon which these species depend. Migrating bald eagles and peregrine falcons, both endangered species, utilize Monomoy as a stopover, and bald eagles have been known to winter on the refuge. The piping plover, which nests on Monomoy, is designated a threatened species along the Atlantic Coast. Between 1963 and 1980, Monomoy supported one of Massachusetts' largest colonies of roseate terns, now proposed for listing as an endangered species.

Monomoy National Wildlife Refuge was established on June 1, 1944, through a Declaration of Taking under the Migratory Bird Conservation Act. The refuge includes all lands which may accrete within the boundary of the declaration of taking, shown in Figure 2. Under Massachusetts law derived from the Great Colony Ordinance of 1641, an upland landowner's property extends to the extreme low water mark or 100 rods (1,650 feet) from the ordinary high water mark, whichever is less. Life use permits were granted to owners of camps on Monomoy at the time of refuge establishment; only one of these camps remains in use today.

In 1970 Public Law 91-504 designated the Monomoy Wilderness, comprising about 2,600 acres on what was then Monomoy Island*, to be managed in accordance with the Wilderness Act of 1964 (P.L. 88-577). See Figure 4. Section 4(b) of the Wilderness Act states:

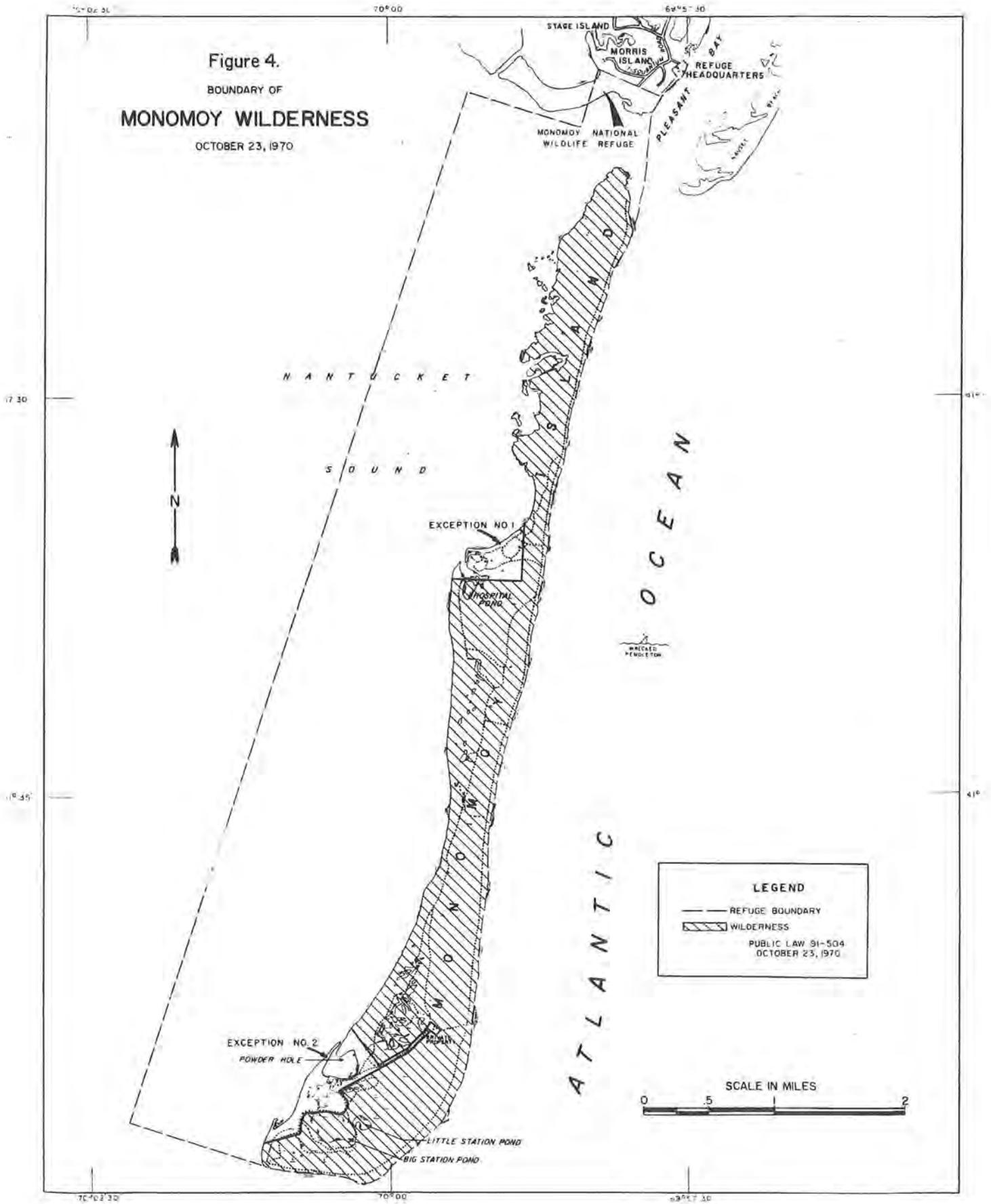
Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such areas for such other purposes for which it may have been established so as also to preserve its wilderness character.

Thus, the Service is mandated to manage the Monomoy Wilderness for the conservation of migratory birds in accordance with the provisions of the Wilderness Act. Specific prohibitions in the Wilderness Act apply to use of motor vehicles and motorized equipment, landing of aircraft, and structures.

The Monomoy wilderness legislation excluded two areas, 90 acres at Inward Point and 170 acres near Powder Hole, from the Wilderness Area. On these exclusions were located ten life use permits for summer camps, three private tracts totalling four acres, and two former Coast Guard buildings. U.S. House of Representatives Report 91-1441 stated that the exclusions were to be managed in a manner consistent with the concept of wilderness. Since passage of the Act, the private inholdings have been acquired, the Coast Guard buildings have been destroyed by fires or dismantled, and nine of the ten camp permits have expired.

* As explained in the Affected Environment Section, Monomoy has, within recent history, been a peninsula, a single island, and two islands. In this document Monomoy Island, the Monomoy Islands, North and South Monomoy (but not Monomoy Refuge, which includes part of Morris Island) all refer to essentially the same area.

Figure 4.
 BOUNDARY OF
MONOMOY WILDERNESS
 OCTOBER 23, 1970



House of Representatives Report 91-1441 also states that the Monomoy lighthouse, built around 1850, should be preserved. In 1979 the lighthouse and the nearby keeper's house and generator building were listed on the National Register of Historic Places. The National Historic Preservation Act of 1966 (as amended) requires the Service to consider these historic resources when managing the refuge.

Policy Direction

As a unit of the National Wildlife Refuge System, Monomoy is managed in keeping with Refuge System objectives:

1. To preserve, restore, and enhance in their natural ecosystem (when practicable) all species of animals and plants that are endangered or threatened with becoming endangered.
2. To perpetuate the migratory bird resource.
3. To preserve a natural diversity and abundance of fauna and flora on refuge lands.
4. To provide an understanding and appreciation of fish and wildlife ecology and people's role in their environment, and to provide refuge visitors with high quality, safe, wholesome, and enjoyable recreational experiences oriented toward wildlife to the extent these activities are compatible with the purposes for which the refuge was established. (U.S. Fish and Wildlife Service 1982)

Regional Resource Plans link national policy direction to on-the-ground Service activities in specific geographic areas. The Northeast Regional Resource Plan (1985) directs implementation of the following strategies to support tern breeding at Monomoy:

- Prevent physical disturbance and alteration of nesting colonies by humans.
- Control competition for nesting space and predation by other species.

It is the informal policy of the Service to confer about refuge plans which may affect species of concern to a state. The short-eared owl, listed by the Commonwealth of Massachusetts as endangered, and the northern harrier and roseate tern, both state threatened species, nest on Monomoy. Nesting species of special concern to Massachusetts are the common tern, arctic tern, and least tern. The sharp-shinned hawk, cooper's hawk, and gray seal are species of special concern occasionally found on the refuge. In 1971, a state-list plant species, the American Sea-blite (Suaeda americana) was identified on what is now South Monomoy Island.

Administrative responsibility for Monomoy Refuge rests with the Manager of the Parker River National Wildlife Refuge in Newburyport, Massachusetts.

AFFECTED ENVIRONMENT

LOCATION

Monomoy Refuge is located about 75 miles southeast of Boston, in the Town of Chatham, Barnstable County, Massachusetts. The refuge consists of North and South Monomoy Islands, as well as about 40 acres on Morris Island, which is connected to the mainland by a causeway. Monomoy separates the stormy North Atlantic on the east from the more sheltered waters of Nantucket Sound on the west. The ephemeral configuration of the Monomoy Islands makes it impossible to accurately state the refuge size. In 1984, the islands encompassed approximately 2750 acres, including about 750 acres of intertidal marine mud and sand flats. North and South Monomoy are roughly 2.0 and 5.5 miles long, respectively; South Monomoy is nearly 1.5 miles across at the widest point. The Declaration of Taking which created the refuge in 1944 established a boundary line to the west of Monomoy (shown in Figure 2 on page 3) and provided for inclusion in the refuge of all land which may accrete within the boundary (U.S. District Court 1944). The Morris Island portion of the refuge includes the refuge headquarters site, an undeveloped area called the Point, and a 0.2 acre tract on the north side of adjoining Stage Island.

GEOMORPHOLOGY, SOILS, AND WATER RESOURCES

Monomoy Islands

Formed through deposition of the eroding glacial deposits of Outer Cape Cod, Monomoy is continually reshaped by wind and waves. Geise (1978) traced the evolution of Monomoy since the 1770's. The southern end has migrated to the south and west, while the north end has alternately connected with and separated from the mainland of Cape Cod (see Figure 7). The most recent break transforming Monomoy from a peninsula to an island occurred in April 1958. A 1978 storm severed Monomoy into two islands, North and South.

Traveling east to west on North Monomoy, one traverses a narrow beach, dunes, and intertidal estuarine marsh to reach a wide, intertidal sand and mud flat. The flood-tidal delta which fans westward between the two islands is presently divided by a narrow "cut," passable only by small boats at high tide. The northern two-thirds of South Monomoy is flanked by sandy beaches on the east and west with north-south trending dunes between. The southern third of the south island is typical of a dune-ridge island with a high scarped dune line along the eroding eastern side and distinctive dune ridges running southwest in the direction of accretion (Leatherman 1979).

Although the littoral currents are the dominant force configuring Monomoy, dune vegetation, which traps sand moved by the prevailing winds, plays an important role in dune formation and maintenance. While most dune vegetation is adapted to withstand the ravages of wind and waves, it may be destroyed by concentrated foot trampling which, in turn, leads to erosion of the dunes.

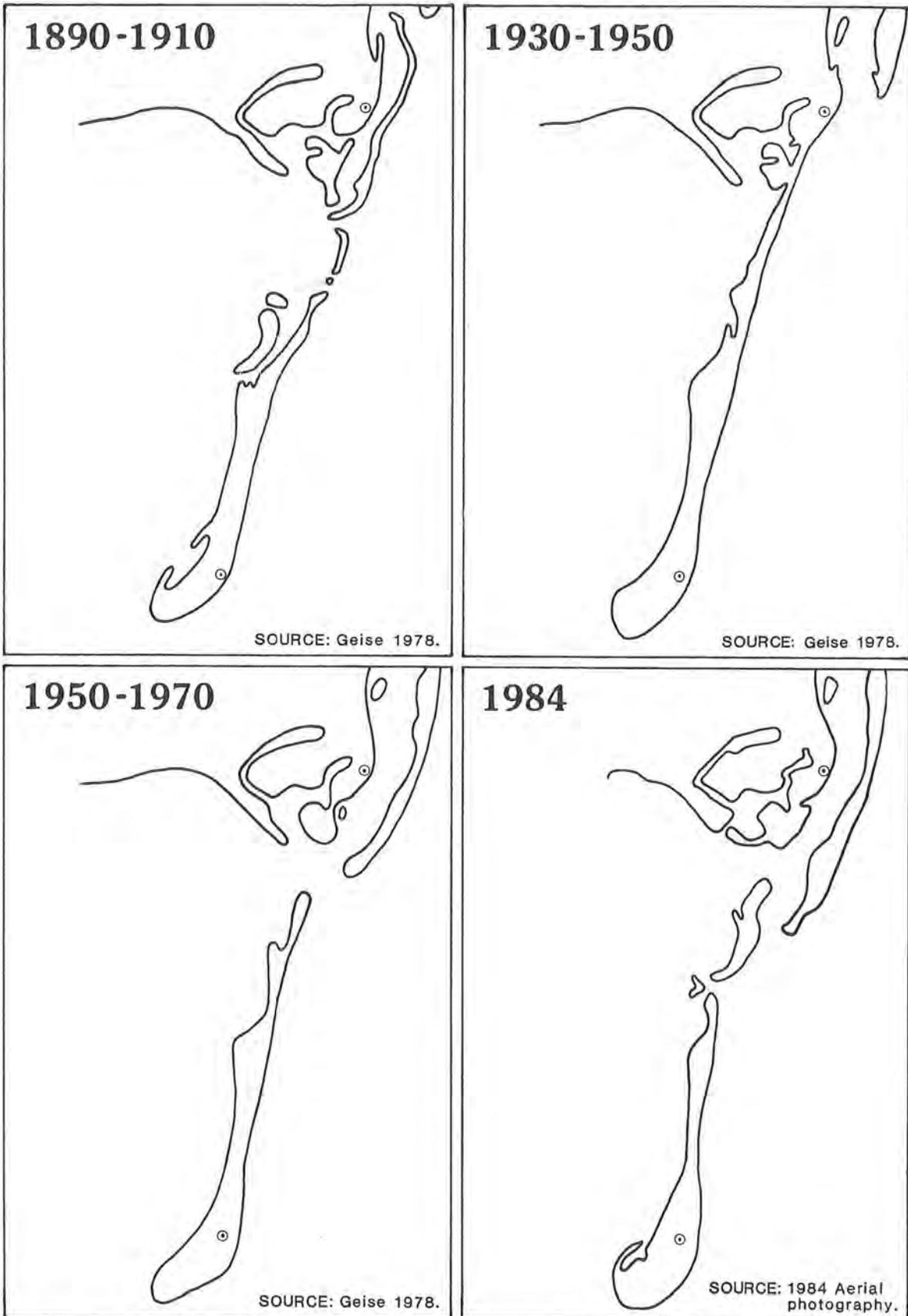


Figure 7. SCHEMATICS OF GEOMORPHOLOGICAL CHANGES.

Most soils on the Monomoy Island are classified as beaches and Udipsamments, sandy soils that are stabilized by vegetation, but deposited so recently that there is no soil development (U.S. Soil Conservation Service 1980). Exceptions include Ipswich mucky peat found in the estuarine marshes and Freetown muck located in freshwater potholes and depressions. Both are poorly drained soils formed in organic deposits.

Big and Little Station Ponds, 27 and 11 acres respectively, are freshwater ponds on South Monomoy originally formed when a bay was closed off by the growth of a recurved spit. Other small freshwater ponds and wetlands dot South Monomoy. Most are natural, but a few lie in depressions bulldozed by the Service in the early 1950's in an effort to increase waterfowl habitat. Almost 25 acres of saltmarsh surround the 11 acre estuarine Hospital Pond at the northern end of the south island. Powder Hole, which in the mid-1800's was a deep and extensive harbor, is now a shallow estuarine water body on the southwest end of the refuge. Table 2 shows the approximate acreage by water regime on the Monomoy Islands:

Table 2. Approximate Acreage by Water Regime, Monomoy Islands

<u>Water Regime</u> (from Cowardin et al. 1979)	<u>Acres</u>
Marine	750
Estuarine	230
Lacustrine	30
Palustrine	110

Morris Island

The Morris Island portion of the refuge is situated on outwash plain deposits. Ongoing erosion of the east side of the island, which rises about 30 meters from a narrow beach to the headquarters site has reduced the strip of refuge land between the headquarters and the southern tip of the island so that it is passable only at low tide. Land at the Point of Morris Island slopes down moderately to an intertidal salt marsh, dunes, and the beach.

CLIMATE

The surrounding ocean is an important influence on Monomoy's climate. Both winter and summer temperatures are more moderate than nearby inland areas, averaging 67°F in July and 32°F in January. Precipitation, mostly in the form of rain, is approximately 45 inches per year. Heavy winds and high seas often accompany storms.

NOISE

Surf and wind are the dominant noises on Monomoy, and they tend to drown out other sounds. Low flying aircraft cause the most intrusive human-caused noises on Monomoy. An agreement between the Federal Aviation Administration and the Service provides a 2,000 foot minimum altitude advisory for all aircraft over the refuge, but numerous violations cause disturbance to wildlife and recreationists. Boat motors are also audible. Noise from night fishing adjacent to the tern colony is a suspected contributor to adult nest desertion;

in 1984, 75% of the newly hatched tern chicks in three study plots died from exposure when adults deserted the colony during a very noisy, nearby fishing party (Humphrey pers. comm.).

VEGETATION

Monomoy Islands

Nearly a third of the upland area on Monomoy is devoid of vegetation. Beachgrass (Ammophila breviligulata), noted for its ability to form, and grow up with, dunes, is the most common plant on the refuge. Seaside goldenrod (Solidago sempervirens), dusty miller (Artemisia caudata), beach pea (Lathyrus japonicus), sea rocket (Cakile edentula), and other coastal plants are scattered through the beachgrass. False heather (Hudsonia tomentosa) and lichens (Cladonia spp.) cover many level areas. Woody vegetation is largely restricted to poison ivy (Rhus radicans), bayberry (Myrica pensylvanica), and beach plum (Prunus maritima). A few pitch pines (Pinus rigida), black pines (Pinus thunbergii), and beaked willows (Salix bebbiana), none more than 15 feet high, grow on South Monomoy. There are many large clumps of the exotic salt-spray rose (Rosa rugosa). Table 3 displays the approximate acreage of upland covertypes on Monomoy.

Table 3. Approximate Acreage of Upland Covertypes, Monomoy Islands

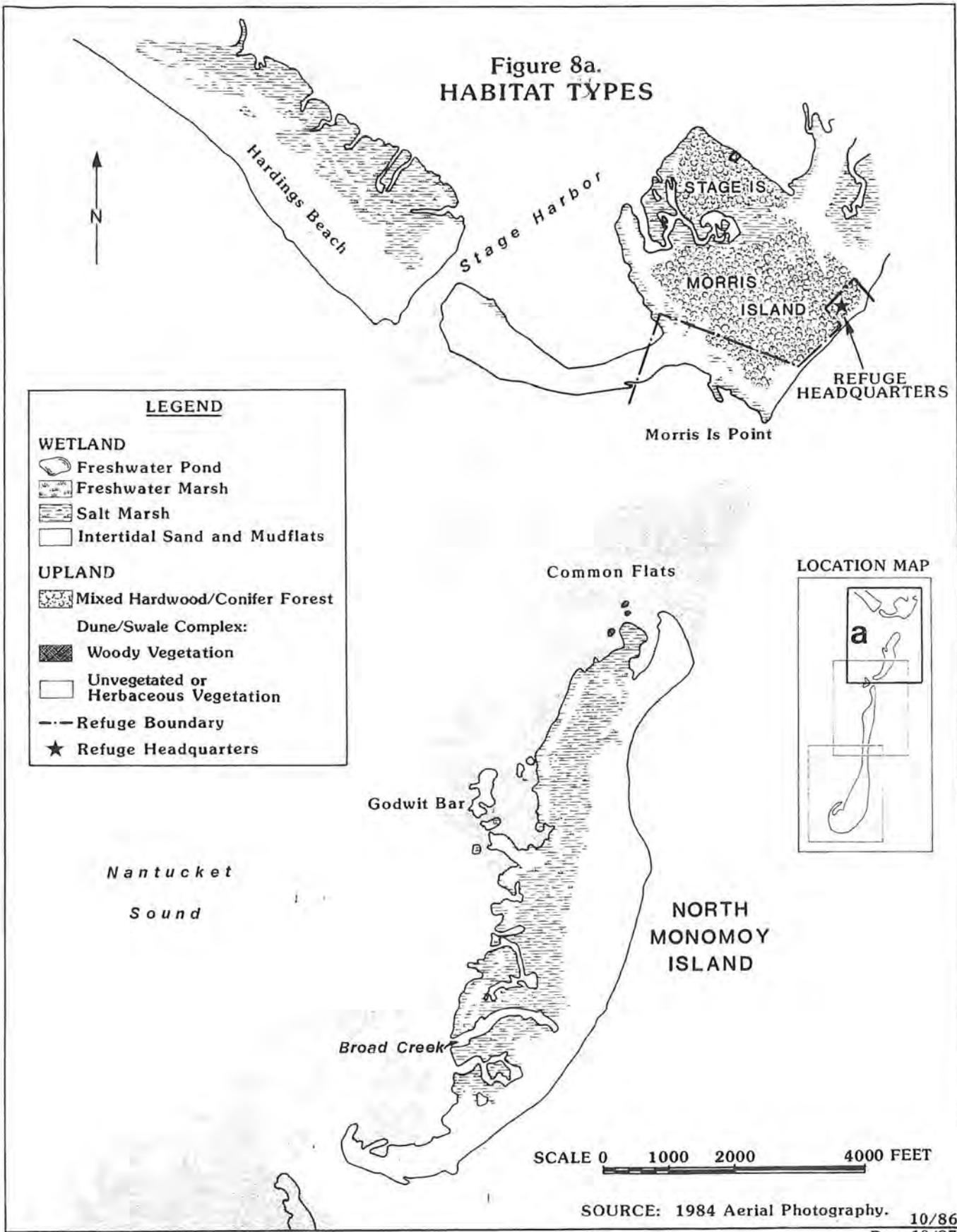
<u>Covertype</u> (from Norton et al. 1984)	<u>Approximate Acres</u>
Dune - Unvegetated	490
Dune - Pioneer Vegetation	30
Dune - Herbaceous Vegetation	
Dominance Type - <u>Ammophila</u>	700
Dominance Type - <u>Hudsonia</u>	260
Dune - Woody Vegetation	150
	1,630

Saltmarshes, totalling about 150 acres, are located at the north end of South Monomoy (adjacent to Hospital Pond) and along the west side of the north island. Vegetation consists of regular and short-form saltmarsh cordgrass (Spartina alterniflora) with a broad border of saltmarsh hay (Spartina patens) mixed with saltgrass (Distichlis spicata), black grass (Juncus Gerardi) and other occasional herbaceous species.

The freshwater ponds and marshes, which cover more than 135 acres on South Monomoy, host cat-tail (Typha angustifolia and Typha latifolia), pond lilies (Nymphaea odorata), and phragmites (Phragmites communis).

In 1971 the American Sea-blite (Suaeda americana), a plant of Special Concern to the Commonwealth of Massachusetts, was identified on what is now South Monomoy Island. Future botanical studies may confirm the presence of this species on the refuge.

Figure 8a.
HABITAT TYPES



**Figure 8b.
HABITAT TYPES**

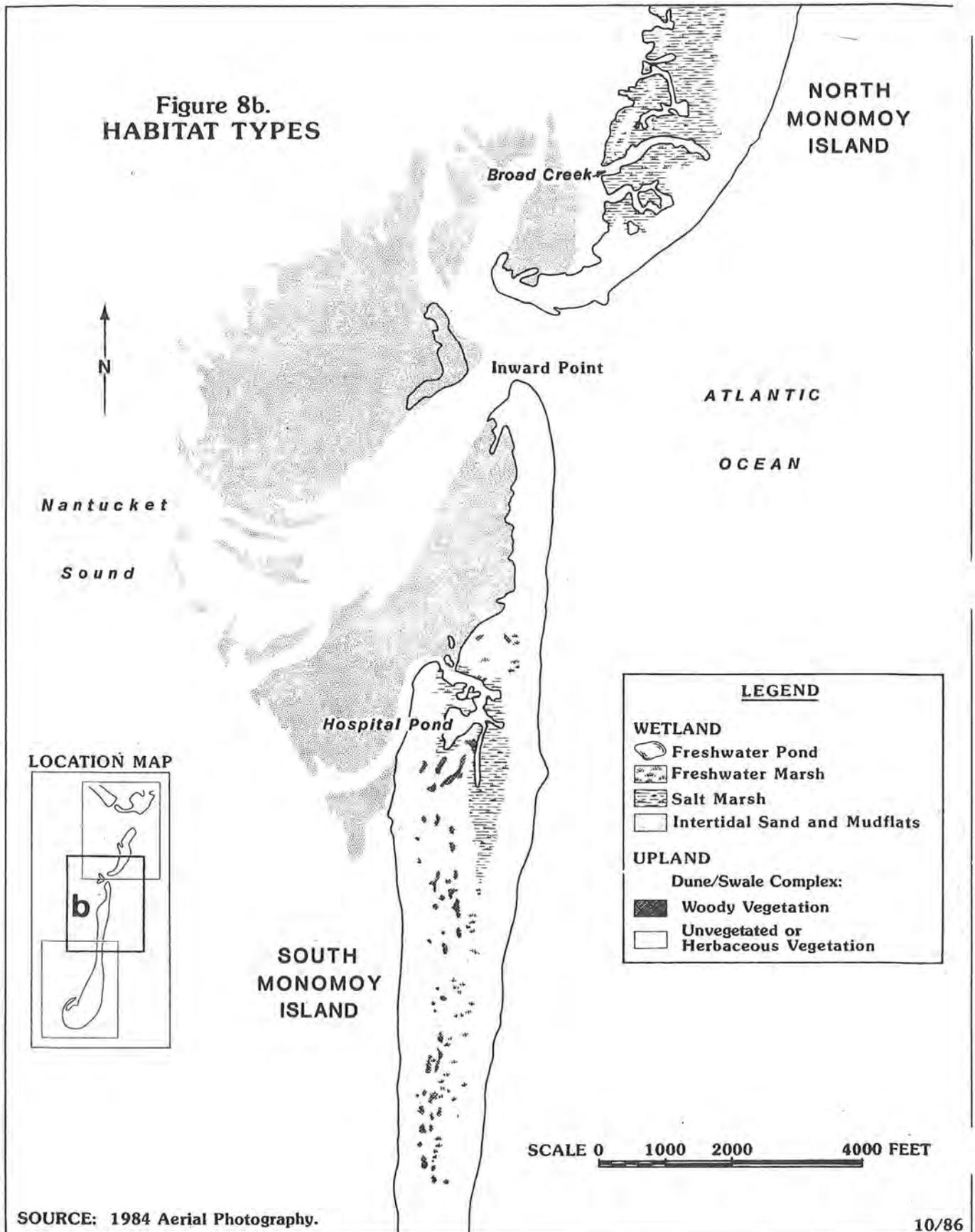


Figure 8c.
HABITAT TYPES

LEGEND

WETLAND

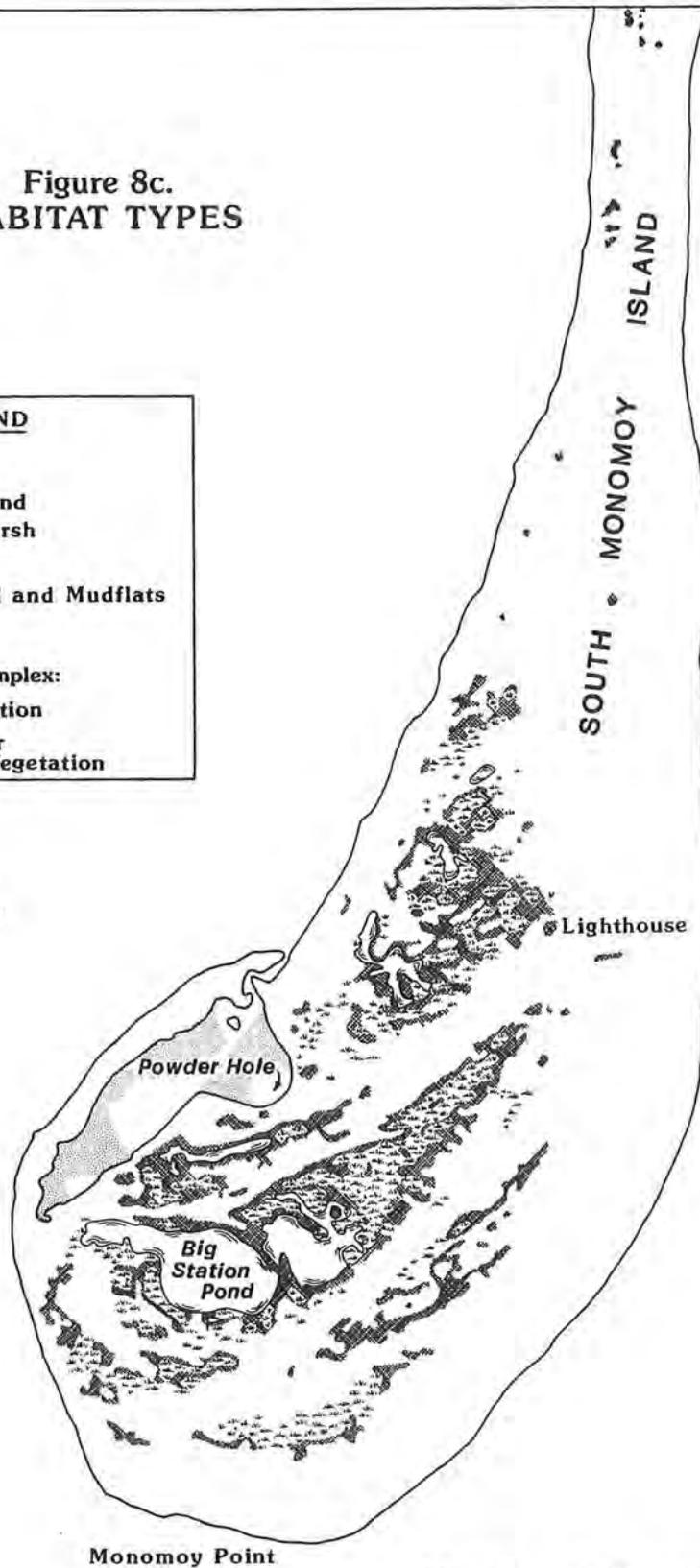
-  Freshwater Pond
-  Freshwater Marsh
-  Salt Marsh
-  Intertidal Sand and Mudflats

UPLAND

Dune/Swale Complex:

-  Woody Vegetation
-  Unvegetated or Herbaceous Vegetation

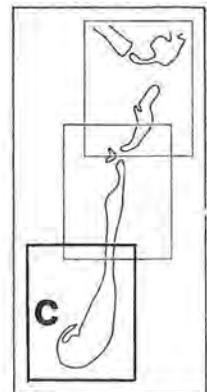
Nantucket
Sound



ATLANTIC
OCEAN



LOCATION MAP



SCALE 0 1000 2000 4000 FEET

SOURCE: 1984 Aerial Photography.

10/86

Exhibit 4

Mem. from J. Clark Salyer II, Chief, Division of Wildlife Refuges, to Dr. Gabrielson, re Proposing the Monomoy Island Migratory Waterfowl Refuge (Aug. 12, 1938) (“Salyer II Approval Mem.”) and Richard E. Griffith, Jr. Biologist, Bureau of Biological Survey, Division of Wildlife Refuges, *Proposed Monomoy Island Migratory Waterfowl Refuge*, Cape Cod, Mass. (July 10, 1938) (“1938 Griffith Report”)

August 12, 1938.

COPY

MEMORANDUM TO DR. GABRIELSON

Proposing the Monomoy Island Migratory Water-
fowl Refuge

Cape Cod has been an outstanding gap in our chain of waterfowl and migratory bird refuges along the Atlantic Flyway. For the past two years, we have kept the winter movements of the birds in the whole Cape Cod area under close observation and are now able to recommend a refuge area which appears to be within the financial range of the Bureau's acquisition program and at the same time is an outstanding waterfowl area.

The important factors governing the choice of this area are set forth in the attached reconnaissance report, dated July 10, 1938, by Richard E. Griffith and in the attached comparative study between the Martha's Vineyard area and Monomoy Island with respect to their relative merits as waterfowl areas. The comparative report was made because of the local feeling in Massachusetts that the Bureau should take some of the ponds on Martha's Vineyard as a waterfowl refuge. An examination report made by Messrs. Hotchkiss and Ekvall on August 16, 1929 is also attached, which is rather negative in character. However, it should be emphasized that our whole waterfowl refuge philosophy and undertakings have changed drastically from the viewpoint of the Bureau at the time Mr. Hotchkiss examined the areas; and, furthermore, the time he examined the area (August, 1929) did not permit him to fully evaluate it from a waterfowl standpoint. It was only by studying the birds intensively for the past two winters that we have been able to come to the conclusion that Monomoy Island is the outstanding area.

I should further point out that one or two areas on Cape Cod are perhaps of equal value with the Monomoy Island area, but their values are so pyramided by resort developments and complicated by the mosquito control situation as to effectually arrest any move the Bureau might make to acquire the areas for refuge purposes. All in all, it is the opinion of the Bureau technicians who have considered this problem in recent years that Monomoy Island will winter greater numbers and varieties of birds and will increase in value as time goes on due to the fact that it is actively building-up. In the building-up process, new ponds are inevitably formed.

Resort development is practically non-existent in the Monomoy Island area, with the exception of a few squatters' shacks and a few low-cost cabins in the immediate vicinity of the Monomoy Point Coast Guard Station

There is one old lighthouse on the area which has been purchased by a citizen and converted into a summer home. This particular property does not necessarily have to be purchased from the standpoint of successful refuge administration.

The outstanding value of Monomoy Island, over and above the excellent marsh ponds now found on it, is that by ownership of the land area, the Bureau can close the water area immediately west of the island which can be re-established. The area is also one of the finest shorebird beaches in North America.

It should be emphasized that it would be difficult to acquire an area on Martha's Vineyard of sufficient size to justify establishing a Federal refuge there because of the extreme resort value of this land, which ranges in price from \$100 to \$200 per acre. Furthermore, the wintering population there is quite limited and confined mostly to local birds. The Martha's Vineyard area does not present the variety of habitat to be found on Monomoy Island, nor does it give the promise of continued usage which is the case with the latter area.

It is recommended, therefore, that the Bureau acquire title to the land area enclosed within the red line on the attached Coast Guard chart.

H JCS

J. Clark Salyer II,
Chief,
Division of Wildlife Refuges.

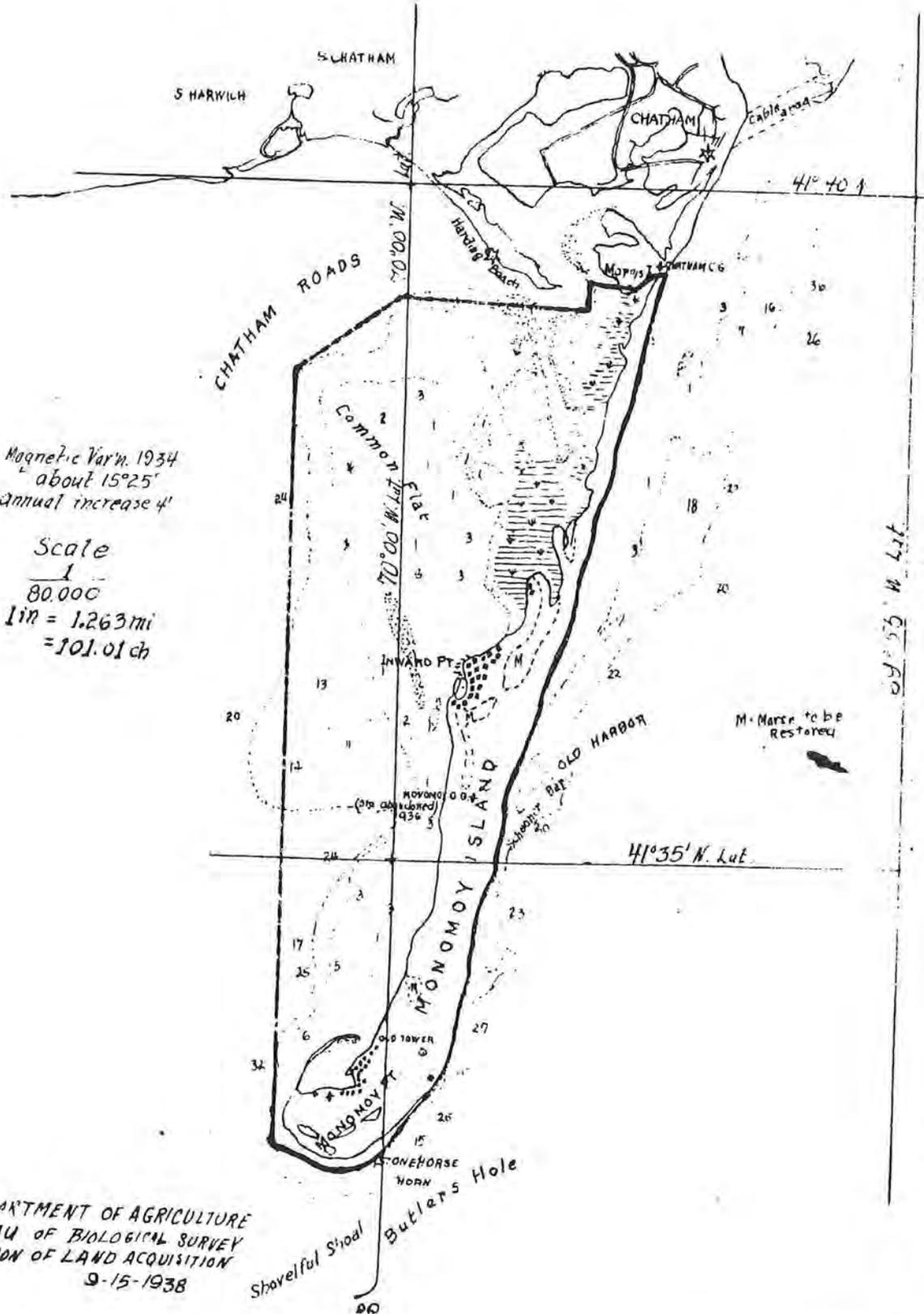
APPROVED: *by Dr. Gabrielsen*

Wc Henderson
Acting Chief

attached

MONOMOY ISLAND MIGRATORY WATERFOWL REFUGE
 BARNSTABLE COUNTY, MASSACHUSETTS

SECTION OF U.S.C. & G.S. CHART 1209
 Published Nov. 1933.



Magnetic Var'n. 1934
 about 15° 25'
 annual increase 4'

Scale
 $\frac{1}{80,000}$
 1 in = 1.263 mi
 = 101.01 ch

U.S. DEPARTMENT OF AGRICULTURE
 BUREAU OF BIOLOGICAL SURVEY
 DIVISION OF LAND ACQUISITION
 9-15-1938

PROPOSED
MONOMOY ISLAND
MIGRATORY WATERFOWL REFUGE
CAPE COD, MASSACHUSETTS

Bureau of Biological Survey
Division of Wildlife Refuges

Reported July 10, 1938

By
Richard E. Griffith
Jr. Biologist

SUMMARY

Location

Southeastern Tip of Cape Cod.

Purpose

Migrating and wintering waterfowl.

Size

300 acres of marsh, 1600 acres of sand beach, 1800 acres of shoal water.

Ownership

Town of Chatham, U. S. Coast Guard and squatters.

Cost

Estimated \$5.00 per acre - \$40,000.

Present Use

Black ducks, geese, scoters, eider ducks, terns, formerly brant.

Factors of Usefulness

All satisfactory.

Development Necessary

Restore drained marshes - Est. \$1,000. Establish three brackish feeding pools 125 acres, \$5,000. Remodel Monomoy Coast Guard Station for Headquarters Building, Est. \$3,000.

Recommendations

That all of Monomoy Island be set aside as a sanctuary.

Location

Monomoy Island lies in Barnstable County, Massachusetts, at the southeastern tip of Cape Cod, immediately south of Chatham Village.

Purpose

The purpose of the proposed Monomoy Refuge is to provide a feeding and resting area protected from gunners; to preserve one of the last natural wildlife areas on Cape Cod, particularly a migratory bird habitat; from destruction and exploitation; and to provide adequate protection for shore birds and black ducks breeding in this vicinity.

Size

The proposed area as outlined on the accompanying map includes an area of about 3700 acres. Three hundred acres of the total is marshland most of which lies between Romp Hole and Morris Island. A small part of this salt marsh extends into the beach south of Romp Hole. There are 1600 acres of sand beach included, also 1800 acres of shoal water which were formerly used by brant and geese.

Ownership

Most of the land area on Monomoy Island is owned by the town of Chatham. Three small parcels of land are owned by the Coast Guard Service. The squatters having shacks or cottages on the beach have no title to the land upon which their buildings are located.

Cost

The cost of acquisition is estimated at \$5.00 per acre, a total of \$9500 for the 1900 acres of beach and marshland recommended for inclusion the refuge boundaries.

General Description

Monomoy, formerly an island, is now connected to the mainland by a sand bar. The beach from the Chatham Coast Guard Station to Monomoy Point is about 6 1/3 miles long, and varies from 1/4 to 7/8 of a mile in width. The body of the island from Inward Point north to Morris Island, is a low, flat barren sand beach frequently awash during storms.

There are extensive *Spartina alterniflora* flats and shoal water areas west of this section of the beach. It is this area which constitutes the major feeding and resting ground on Monomoy.

South of Inward Point to the tip of Monomoy, the island is about 7/8 of a mile wide. The sand dunes on this section of the island are much higher, elevations running up to 20 ft. above sea level. The dunes are rather stable and partially covered with a growth of *Ammophila*, *Hudsonia*, *Artemisia*, *Rhus* and *Myrica*. There is marshland, about 50 acres, and small

pools on the west side of the lower beach and also at Monomoy Point, all of which have been ditched by the Cape Cod Mosquito Control Commission.

There are twenty summer camps located near the Monomoy Point Coast Guard Station, and twenty-one shacks on Inward Point. These buildings are owned by squatters who do not have title to the ground upon which their camps are located, but pay taxes to the town of Chatham for the use of the ground.

The tip of Monomoy is continually building around to the west, enclosing a considerable area of shoalwater which will in time support a good growth of marsh vegetation and *Ruppia*, becoming an excellent feeding and resting ground.

The bottom of the bay on both sides of Monomoy is hard sand except the flats between Inward Point and Morris Island where the bottom is soft, and slightly muddy.

The mean tide range is about 3.5 feet.

Vegetation

The composition of the marsh vegetation is as follows:

<i>Spartina alterniflora</i>	50%
<i>Spartina patens</i>	10%
<i>Distichlis spicata</i>	20%
<i>Salicornia</i>	10%
<i>Scirpus americanus</i>	10%

Ruppia is generally distributed throughout the beach ponds and in the shoal waters north to Romp Hole, though it is nowhere abundant.

Zostera beds still exist on the Common Flats northwest of Inward Point. The present beds are somewhat scattered and cover a total area of about 50 acres.

Ulva and *Enteromorpha* both grow on the protected and sand flats on the west side of Monomoy but not in great abundance.

Melampus, *Modiolus* and *Palaemonetes* are common and no doubt contribute largely to the local food supply for waterfowl.

Past History

Formerly large numbers of brant and many geese stopped here in late winter and early spring enroute northward. These birds were attracted by the extensive eel grass beds on the Common Flats west of Monomoy Island. All three species of scoters and the American eider have wintered in large numbers on nearby shoal areas where they feed upon the extensive mussel

beds. Black ducks have been common the Island marshes but not so abundant as at other points on the Cape.

Present Use

Black ducks and geese frequent the marshes on the west side of the Island. The Common and Roseate Terns breed on the beach. Some Black ducks breed on the marshes.

No Brant have stayed here during the past winter, nor were any found on the flats during the spring migration.

Eider ducks and scoters were very abundant in this vicinity last winter. A few golden-eye, bufflehead, old squaw and mergansers are commonly found on the shoals south and west of Monomoy. (See waterfowl inventory attached).

Development Necessary

The ponds and marshes which have been drained by mosquito control ditches can be readily restored by placing sills and gates in the drainage channels to hold those areas. The planting of widgeon grass, sago pondweed, redhead grass is recommended for the ponds to which these plants are adapted.

About 75 acres of marshland could be permanently flooded by constructing a 1,000 ft. and dyke across the tide gut and marsh at the mouth of Romp Hole. This would establish a brackish feeding pool covering about 20 acres. A smaller portion of the same area, about 30 acres, could be flooded by installing a 30 ft. tide gate in the channel of Romp Hole gut.

Water can be held on two smaller areas by constructing about 200 linear feet of sod dyke to flood 50 acres of marsh.

Other small feeding pools could be established by blowing holes in existing marshes on the Island.

A minimum of \$3,000 is necessary to remodel and repair the now abandoned Monomoy Coast Guard Station for use as a headquarters building.

Recommendations

This area is recommended for acquisition because; (1) Monomoy Island has been subjected to no development except by squatters. (2) This area can no doubt be acquired more easily than any other location on Cape Cod. (3) A Coast Guard Station abandoned in 1936 could probably be transferred to the Bureau for their use as a refuge headquarters. (4) It is possible to make substantial biological improvements at a relatively low cost.

5 - Monomoy Island

For the above reasons and because it is necessary to set aside, at an early date, some natural habitat on Cape Cod to prevent further exploitation and destruction of suitable waterfowl areas, it is recommended that all of Monomoy Island be set aside as a sanctuary and that such a sanctuary be kept open for public recreation insofar as such usage does not interfere with the purpose for which the sanctuary is designed.

The following facts are presented for a comparative analysis of the refuge value of the fresh water ponds on Martha's Vineyard, especially Squibnocket and Monomoy Island, Cape Cod.

Topography

Martha's Vineyard

Less than 75 years ago all of the ponds on the south shore were united and formed one great lagoon, from Katama Bay to the western end of Chilmark Pond. In the past fifty years additional ponds have been cut off by the continuous advance of the south beach northward. More recently several of the small ponds have been entirely obliterated. A small pond just east of Edgartown Great Pond has been filled up, Phogonot Pond, just west of Jobs Neck Pond was a cove of the larger pond less than 35 years ago. A cove on the west shore of Oyster Pond is now cut off by the advancing beach, forming a separate pond.

The long cove which appears on some maps as a part of the eastern extremity of Tisbury Pond, is no longer a cove but a separate pond cut off by Long Point. This has occurred within the past twenty years. Thus, it is evident that unless the present forces of nature are brought under control, the area of these ponds will be greatly reduced within the next generation.

Squibnocket is well protected on the beach side by fairly high clay banks, hence this pond will remain many years after the others have been obliterated. However, some natural filling has already occurred on the east and southwest corners of Squibnocket.

Monomoy Island

Monomoy Island is continually building up. Formerly an island, Monomoy is now connected to the mainland by a substantial barrier beach extending southward from Chatham to Morris Island.

Wave borne sands are being constantly deposited on the south and extreme southwest side of Monomoy resulting in the formation of a large natural lagoon which will eventually become enclosed and furnish an excellent marsh and pond feeding ground for shore birds and waterfowl. The marshes on the west side of the upper half of Monomoy are slowly building out into the bay, thus increasing the area of this type of habitat.

Ownership and Cost

Martha's Vineyard

Much of the land surrounding the ponds on the Vineyard is in estate or club ownership. The current market value of such property ranges from

\$100 to \$200 per acre.

The larger part of the shore property and upland adjacent to Squibnocket are owned by Mr. Ralph Hornblower of Boston. Three other parties have small holdings which include some shore frontage.

Present ownership and land values of shore property would not permit the acquisition of sufficient land and water area to make a federal refuge program feasible.

Monomoy Island

Monomoy Island and beach land bordering waterfowl wintering areas to the north are owned by the respective towns in which the areas are located. Resort development is limited to squatters who have constructed shacks on town land. An annual tax is paid to the town for use of the property. Thus, it is probable that acquisition of such lands could be accomplished at a relatively low cost. Furthermore, it is probable that other desirable areas nearby could be added to the Monomoy property to round out an excellent refuge area.

Use by Waterfowl

Martha's Vineyard ponds have undoubtedly in the past furnished the best gunning in Massachusetts. This is explained by the abundance of sago, pondweed, widgeon grass, wild celery, redhead grass and others found in the ponds. The species taken here in greatest abundance are in the order of their importance (1) Black ducks, (2) widgeon and (3) scaup. Formerly ruddy ducks, redheads and canvasbacks were common on the island ponds.

Squibnocket was formerly a good pond for black ducks and widgeon but not diving ducks.

Edgartown Pond is still the best water area on the island, being used equally by all species and by geese and diving ducks more than the other ponds. (See waterfowl inventory attached).

Monomoy Island

The shore marsh and salt ponds on the west side of Monomoy are used by black ducks and geese. Thousands of scoters and eiders and many other species of diving ducks feed in the nearby shoal waters. All species of shore birds common to the north Atlantic flyway stop here, many staying to nest.

Brant were formerly very plentiful on the west side of the island above Inward Point where they feed on the extensive beds of eel grass. This feeding ground was more extensively used during the late winter and early spring than during the late fall. (See waterfowl inventory attached).

Development

Martha's Vineyard

The use of Squibnocket and adjoining ponds cannot be increased. Development work on these areas would consist of stabilizing the beach dunes to prevent the natural filling of the ponds.

Monomoy Island

No extensive development work is necessary. The drained marshes and ponds can be readily restored by placing sills in the drainage ditches. Two brackish ponds having an aggregate of 125 acres can be established by building 1200 linear feet of low sod dykes.

A coast guard station, in good repair, abandoned in 1936, could probably be transferred to the Bureau for use as a headquarters building.

Conclusion

Monomoy Island is recommended for a refuge rather than Squibnocket Pond or other Vineyard areas for the following reasons:

- (1) Monomoy Island has greater utility and more permanent values as a refuge than Squibnocket.
- (2) Acquisition costs would be within reason.
- (3) Monomoy Island is continually building up; the marsh and water areas available for feeding grounds are increasing. The Vineyard ponds are rapidly approaching a land climax.
- (4) The feeding grounds on Monomoy can be greatly improved at a slight cost.

Exhibit 5

SEN. REP. NO. 90-1368 (1968)

and

SEN. REP. NO. 91-198 (1969)

1968

Jul '68

Calendar No. 1345

90TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1368

DESIGNATING MONOMOY WILDERNESS AREA

JULY 8, 1968.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 3425]

The Committee on Interior and Interior Affairs, to which was referred the bill (S. 3425) to designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Mass., as wilderness having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The bill, S. 3425, would designate as wilderness Monomoy Island, which is located within the Monomoy National Wildlife Refuge in Barnstable County, Mass., under provision of the Wilderness Act of September 3, 1964 (78 Stat. 890).

BACKGROUND

Monomoy Island is a 2,600-acre roadless island extending about 9 miles south from the elbow of Cape Cod, in the town of Chatham, Barnstable County, Mass. It was established on June 1, 1944, as part of the Monomoy National Wildlife Refuge, all but some 4 acres of the island having been acquired by the Secretary of the Interior under authority of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715 et seq.). Boston, Mass., and Providence, R.I., are about 100 miles from Monomoy Island.

DESCRIPTION

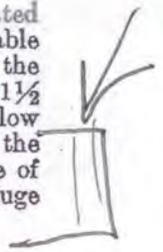
The Monomoy Wilderness proposal is a barrier beach island located 9 miles south of Cape Cod in the town of Chatham, Barnstable County, Mass. Bounded on the west by Nantucket Sound and on the east by

July 1968

passed Senate in 1968 but no
House action
S. 3425

B. Description

The Monomoy Wilderness proposal is a barrier beach island located 9 miles south of Cape Cod in the town of Chatham, Barnstable County, Mass. Bounded on the west by Nantucket Sound and on the east by the Atlantic Ocean, the island varies from $\frac{1}{4}$ to $1\frac{1}{2}$ miles in width and is separated from the mainland by a shallow waterway about one-half mile wide. The exterior boundaries of the wilderness proposal are all lands on Monomoy Island to the line of mean low tide which coincides with the national wildlife refuge boundary around the island.



C. Management requirements

The Monomoy National Wildlife Refuge has been managed as a wild area since its establishment. There are no improved roads on the island. No changes in management are envisioned if the island is designated as wilderness. The laws and regulations of the Secretary of the Interior governing the management and administration of the island as a national wildlife refuge will continue to apply. Such laws and regulations provide for public uses such as hunting and other wildlife oriented forms of outdoor enjoyment, as well as other necessary wildlife refuge management programs.

The Department of the Army is currently studying the feasibility of a project for navigation for Pleasant Bay and tributary waters, Massachusetts. The proposed project would include the closing of the gap between Monomoy Island and Nauset Beach. The wilderness proposal would not preclude the planning and construction of this project. The Department of the Interior would expect to work closely with the Department of the Army if the project is authorized.

Of the approximately 4 acres of Monomoy Island in private ownership, 2 acres contain private summer camps and 2 acres are owned by the Massachusetts Audubon Society. These inholdings will be acquired. Until they are acquired it will be necessary to allow access to the inholdings via over-the-sand vehicles. National wildlife refuge administration of the island will require the retention of two existing buildings and the use of an over-the-sand vehicle for administrative and public safety purposes.

A permanent staff is required to administer the Monomoy National Wildlife Refuge. Present and future staffing requirements for the refuges will not be adjusted because of designation of Monomoy Island as wilderness.

If the island should join the mainland at some future date, the Monomoy Wilderness would be delineated by a fence.]*

D. The wilderness record

In accordance with section 3(d)(1)(B) of the Wilderness Act, a public hearing was held at Chatham, Mass., between 9:00 a.m. and 9:35 p.m. on January 11, 1967. Mr. Daniel H. Janzen, former Director, Bureau of Sport Fisheries and Wildlife, was hearing officer. Mr. Richard E. Griffith, Regional Director, Bureau of Sport Fisheries and Wildlife, Boston, Mass., represented the Bureau.

Communications received before and after the hearing from citizens, organizations, elected officials, State agencies, and Federal agencies totaled 615 statements in the form of letters, notes, and cards.

1969

May '69

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Calendar No. 188

91st CONGRESS }
1st Session

SENATE }

REPORT
91-198

DESIGNATING MONOMOY WILDERNESS AREA IN MASSACHUSETTS

MAY 22, 1969.—Ordered to be printed
Filed under authority of the order of the Senate of
May 20, 1969

Mr. JACKSON, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 1652]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1652) to designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Mass., as wilderness, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

This bill, S. 1652, is the same as S. 3425 of the 90th Congress which the committee favorably reported and the Senate passed without opposition. The bill did not receive House consideration. S. 1652 would designate the 2,600-acre Monomoy Island, located in the Monomoy National Wildlife Refuge in Barnstable County, Mass., as part of the National Wilderness Preservation System.

BACKGROUND

Monomoy is a roadless island extending about 9 miles south from the elbow of Cape Cod, in the town of Chatham, Barnstable County, Mass. It was established on June 1, 1944, as part of the Monomoy National Wildlife Refuge, all but some 4 acres of the island having been acquired by the Secretary of the Interior under authority of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715 et seq.). Boston Mass., and Providence, R.I., are about 100 miles from Monomoy Island.

DESCRIPTION

The Monomoy Wilderness proposal is a barrier beach island located 9 miles south of Cape Cod in the town of Chatham, Barnstable County, Mass. Bounded on the west by Nantucket Sound and on the east by the Atlantic Ocean, the island varies from one-fourth to 1½ miles in width and is separated from the mainland by a shallow waterway about one-half mile wide. The exterior boundaries of the wilderness proposal are all lands on Monomoy Island to the line of mean low tide which coincides with the national wildlife refuge boundary around the island.

MANAGEMENT REQUIREMENTS

The Monomoy National Wildlife Refuge has been managed as a wild area since its establishment. There are no improved roads on the island. No changes in management are envisioned if the island is designated as wilderness. The laws and regulations of the Secretary of the Interior governing the management and administration of the island as a national wildlife refuge will continue to apply. Such laws and regulations provide for public uses such as hunting and other wildlife oriented forms of outdoor enjoyment, as well as other necessary wildlife refuge management programs.

The Department of the Army is currently studying the feasibility of a project for navigation for Pleasant Bay and tributary waters, Massachusetts. The proposed project would include the closing of the gap between Monomoy Island and Nauset Beach. The wilderness proposal would not preclude the planning and construction of this project. The Department of the Interior would expect to work closely with the Department of the Army if the project is authorized.

Of the approximately 4 acres of Monomoy Island in private ownership, 2 acres contain private summer camps and 2 acres are owned by the Massachusetts Audubon Society. These inholdings will be acquired. Until they are acquired it will be necessary to allow access to the inholdings via over-the-sand vehicles. National wildlife refuge administration of the island will require the retention of two existing buildings and the use of an over-the-sand vehicle for administrative and public safety purposes.

A permanent staff is required to administer the Monomoy National Wildlife Refuge. Present and future staffing requirements for the refuges will not be adjusted because of designation of Monomoy Island as wilderness.

If the island should join the mainland at some future date, the Monomoy Wilderness would be delineated by a fence.

THE WILDERNESS RECORD

In accordance with section 3(d)(1)(B) of the Wilderness Act, a public hearing was held at Chatham, Mass., between 9 a.m. and 9:35 p.m. on January 11, 1967. Mr. Daniel H. Janzen, former Director, Bureau of Sport Fisheries and Wildlife, was hearing officer. Mr. Richard E. Griffith, Regional Director, Bureau of Sport Fisheries and Wildlife, Boston, Mass., represented the Bureau.

Exhibit 6

*Designation of Wilderness Areas: Hearings on H.R. 486 and H.R. 987 Before the Subcomms. on Public Lands and Nat'l Parks and Recreation of the House Comm. on Interior and Insular Affairs, 91st Cong. 1 (1970) (Serial 91-27)
(selected pages)*

DESIGNATION OF WILDERNESS AREAS

584-5

HEARINGS
BEFORE THE
SUBCOMMITTEES ON PUBLIC LANDS AND
NATIONAL PARKS AND RECREATION
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

H.R. 486 and H.R. 987
May 27, 1969

H.R. 850, S. 713, H.R. 3687, and S. 714
June 9 and 10, 1969

H.R. 12081, H.R. 12240, S. 126, H.R. 149, H.R. 585, H.R. 4275, H.R. 9545, and
S. 826
July 14, 1969

H.R. 4275, H.R. 149, H.R. 585, and H.R. 9545
July 15, 1969

H.R. 16258, H.R. 12732, H.R. 13153, H.R. 12444, and S. 3222
May 25 and 26, 1970

H.R. 16258, H.R. 18044, H.R. 16212, and S. 3014
June 22, 1970

H.R. 13103, H.R. 13232, H.R. 16821, H.R. 16822, and S. 1732
June 20, 1970

Serial No. 91-25

Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1970

DESIGNATION OF WILDERNESS AREAS

H.R. 486 AND H.R. 987, TO DESIGNATE CERTAIN LANDS IN THE MONOMOY NATIONAL WILDLIFE REFUGE, BARNSTABLE COUNTY, MASS., AS WILDERNESS

TUESDAY, MAY 27, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC LANDS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, the Honorable Walter S. Baring (chairman of the subcommittee) presiding.

Present: Representatives Baring, Aspinall, Johnson, Udall, Saylor, Steiger, Clausen, Camp, and Lujan.

PROCEEDINGS

Mr. BARING. The Subcommittee on Public Lands will come to order. Our first order of business of the day is H.R. 486 by Mr. Keith, and also Mrs. Heckler, and H.R. 987 by Mr. Boland, to designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Mass., as wilderness.

The Department of the Interior also recommends enactment, if amended as suggested in its report.

I ask unanimous consent at this time to have H.R. 486 and H.R. 987, along with Department report from the Department of the Interior, dated May 26, 1969, and signed by Russell E. Train, Under Secretary of the Interior, placed in the record at this point.

(The documents referred to follow:)

[H.R. 486, 91st Cong., first sess.]

A BILL To designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Massachusetts, as wilderness

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 3(c) of the Wilderness Act of September 3, 1964 (78 Stat. 800, 802; 16 U.S.C. 1182(c)), certain lands in the Monomoy National Wildlife Refuge, Massachusetts, which comprise about two thousand six hundred acres and which are depicted on a map entitled "Monomoy Wilderness—Proposed" and dated August 1967, are hereby designated as wilderness. The map shall be on file and available for public inspection in the offices of the Bureau of Sport Fisheries and Wildlife, Department of the Interior.

SEC. 2. The area designated by this Act as wilderness shall be known as the Monomoy Wilderness and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act.

[H.R. 987, 81st Cong., first sess.]

A BILL To designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Massachusetts, as wilderness

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 3(c) of the Wilderness Act of September 3, 1964 (78 Stat. 890, 892; 16 U.S.C. 1132(c)), certain lands in the Monomoy National Wildlife Refuge, Massachusetts, which comprise about two thousand six hundred acres and which are depicted on a map entitled "Monomoy Wilderness—Proposed" and dated August 1967, are hereby designated as wilderness. The map shall be on file and available for public inspection in the offices of the Bureau of Sport Fisheries and Wildlife, Department of the Interior.

SEC. 2. The area designated by this Act as wilderness shall be known as the Monomoy Wilderness and shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act.

SEC. 3. Except as necessary to meet minimum requirements in connection with the purposes for which the area is administered (including measures required in emergencies involving the health and safety of persons within the area), there shall be no commercial enterprise, no temporary or permanent roads, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of motorized transport, and no structure or installation within the area designated as wilderness by this Act.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., May 26, 1969.

Hon. WAYNE N. ASPINALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 486, a bill "To designate certain lands in the Monomoy National Wildlife Refuge, Barnstable County, Massachusetts, as wilderness," and a similar bill H.R. 987.

We recommend the enactment of H.R. 486, if amended as suggested herein.

The bill provides that a portion of the Monomoy National Wildlife Refuge in Massachusetts, a 2,000-acre island near Cape Cod, be designated as wilderness in accordance with section 3(c) of the Wilderness Act of September 3, 1964 (78 Stat. 890, 892; 16 U.S.C. 1132(c)). It also provides that the area be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act.

Located in the populous northeast part of the country, Monomoy Island contains outstanding wilderness resources. It is a natural area of barren or sparsely vegetated dunes and sand flats, numerous fresh water ponds, marshes and meadows brushy hollows, and extensive salt marshes. The island shows little evidence of man's use. Those who visit the island will find its unblemished beauty and ideal sanctuary from the surrounding areas dominated by man and his works.

All except four acres of Monomoy Island were acquired as part of the Monomoy National Wildlife Refuge on June 1, 1944. These four acres, the site of a former lighthouse, belong to the Massachusetts Audubon Society and two private owners. The Bureau of Sport Fisheries and Wildlife of this Department maintains two small service buildings on the island for the purposes of administration. There are no roads on the island.

The United States Geological Survey and the United States Bureau of Mines have examined the proposed Monomoy Wilderness and have determined that the area has no known mineral resources other than the sands from which the island is made.

We recommend that H.R. 486 be amended on page 2, by adding a new section after line 6 to read as follows:

"Sec. 3. Except as necessary to meet minimum requirements in connection with the purposes for which the area is administered (including measures required in emergencies involving the health and safety of persons within the area), there shall be no commercial enterprise, no temporary or permanent roads, no use of motor vehicles, motorized equipment or motorboats,

no landing of aircraft, no other form of mechanical transport, and no structure or installation within the area designated as wilderness by this Act." This provision is similar to section 4(c) of the Wilderness Act which is applicable to wilderness areas designated under that Act.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

RUSSELL E. TRAIN,
Under Secretary of the Interior.

Mr. BARING. Our first witness this morning will be the Honorable Hastings Keith, author of H.R. 486.

Mr. KERRI. Thank you, Mr. Chairman.

Mr. BARING. We are very happy to welcome you before the committee, Mr. Keith.

Mr. SAYLOR. Mr. Chairman, I would like to say we are happy to see Mr. Keith. These are strange times when we see Mr. Keith before this committee. But we always see him when we have things affecting Massachusetts. The last time, as I recall, we had Cape Cod when Congressman Keith testified before our committee.

Mr. KERRI. I don't want you to think I am uninterested in other legislation before this committee, but your handling of your responsibilities is such that I need have no worries. I leave it in your hands.

Mr. ASPINALL. We are glad to see you here.

Mr. KERRI. The last time I was here the topic was a subject of much more controversy than the present measure. I am somewhat reminded of a story that my father told when he was in the State senate in Massachusetts and Cal Coolidge was the president of that senate. One of his colleagues on the Republican side of the aisle was talking at great length about a bill that was before the senate, and Mr. Coolidge sent word down and asked him if he had the votes. The man nodded, and then Cal said, "Well, sit down, then."

Mr. ASPINALL. With that in mind, we again welcome you.

**STATEMENT OF HON. HASTINGS KEITH, A REPRESENTATIVE IN
CONGRESS FROM THE 12TH CONGRESSIONAL DISTRICT OF THE
COMMONWEALTH OF MASSACHUSETTS, AND AUTHOR OF H.R.
486**

Mr. KERRI. I would like to make one point, if I may.

A cursory interpretation of an amendment that may be offered by the Department of the Interior might indicate that there would be no hunting or fishing or motorboating in the area. I have discussed this with Mr. Glasgow, who is going to testify this morning, and he assures me that all the Interior Department wants to do is administer these lands in accordance with the philosophy of the Wilderness Act, and with the present administration of the island. Accordingly, there are times when hunting might be permitted, and I would not want some local objector to be able to cite the statute and say, no hunting is permitted. I would hope that if there is a clause prohibiting hunting or motor boating that there would be an exception to the effect that such activities would be prohibited except as under the regulations of the Department of the Interior.

There is, generally speaking, extraordinarily fine support for this in all parts of my district, and I believe nationwide. It is a wonderful

Mr. KEITH. There are heirs, but they do not have titles which could be passed to their heirs.

Mr. CLAUSEN. Thank you, Mr. Chairman.

Mr. BARING. The gentleman from Oklahoma.

Mr. CAMP. No questions. Thank you, Mr. Chairman.

Mr. BARING. The gentleman from New Mexico.

Mr. LUJAN. Mr. Chairman, I am just wondering; it is now a national wildlife refuge, and as such these people can remain there. What is really the advantage of it becoming a wilderness area rather than a national wildlife preservation?

Mr. KEITH. A number of conservation groups and most of the townspeople feel that it would be even more sympathetically managed than it has been, that it would have more prestige as a part of the wilderness inventory than under its present management.

Mr. LUJAN. Better for it to be a wilderness generally?

Mr. KEITH. The Department of the Interior wanted to abandon this island some time ago. They felt that it wasn't big enough to manage as a wildlife refuge, and for economy reasons, I believe, wanted to abandon it at that time. I think they feel that the cost of operating it as a wilderness refuge would be a little less expensive.

Mr. LUJAN. Thank you very much.

No more questions.

Mr. BARING. Are there any other questions?

Mr. ASPINALL. No.

Mr. BARING. Thank you very much, Mr. Keith.

The next witness is Dr. Leslie Glasgow, Assistant Secretary for Fish, Wildlife, Parks, and Marine Resources, Department of the Interior.

Mr. Secretary, you may proceed. We welcome you before this committee.

STATEMENT OF HON. LESLIE L. GLASGOW, ASSISTANT SECRETARY FOR FISH AND WILDLIFE, PARKS AND MARINE RESOURCES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY RICHARD E. GRIFFITH, REGIONAL DIRECTOR, BUREAU OF SPORT FISHERIES AND WILDLIFE, BOSTON, MASS.

Dr. GLASGOW. Thank you, Mr. Chairman.

I have with me Mr. Richard Griffith, the Regional Director for the Bureau of Sport Fisheries and Wildlife from our Boston office.

Mr. BARING. I didn't get the name.

Dr. GLASGOW. Mr. Richard Griffith.

Mr. Chairman, members of the committee, it is with pleasure that I appear before you today to speak for the Department of the Interior in support of legislation to designate the Monomoy Wilderness within Monomoy National Wildlife Refuge, a roadless island of approximately 2,600 acres, in Massachusetts. We recommend the enactment of H.R. 486 with the amendment suggested in our Department's report.

The Department of the Interior is vitally interested in the Wilderness Act and its implementation. Our preliminary reviews indicate that almost 47 million acres of the National Wildlife Refuge and

National Parks Systems qualify for study under the act. The areas comprising this vast acreage span the Nation, and contain a wide variety of ecological, biological, geological, scenic, scientific, educational, and historical features managed to benefit mankind. Many of these areas will provide a significant contribution to the National Wilderness Preservation System.

In the 90th Congress, your committee supported legislation which became Public Law 90-532, approved September 28, 1968, which established the Great Swamp National Wildlife Refuge Wilderness Area, N.J. This was the first wilderness to be established on lands administered by the Department of the Interior. I think it is appropriate that I review the background and progress of the refuge wilderness study program with specific reference to island refuges such as Monomoy National Wildlife Refuge.

The National Wilderness Preservation System was established by the Wilderness Act of 1964. The act included immediately in the System certain areas within national forests, administered by the U.S. Department of Agriculture. For consideration of areas as wilderness, the act also set forth criteria and procedures for reviews of lands within the National Park System, National Wildlife Refuge System, and additional lands within national forests. Specifically, section 3(c) of the Wilderness Act directs the Secretary of the Interior to review, within 10 years of the effective date of the act, every roadless area of 5,000 acres or more and every roadless island within the National Wildlife Refuge System as to the suitability or unsuitability of each such area or island as wilderness.

Section 4(a) of the Wilderness Act states that the purposes of the act are within and supplemental to the purposes for which national wildlife refuges are established and administered. Further, section 4(b) states that wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use. These sections, along with the statement of wilderness policy stated in section 2, have provided excellent guidance in our deliberations and studies of potential wilderness within the National Wildlife Refuge System.

Initial reviews reveal that, scattered over the United States within the National Wildlife Refuge System there are nearly 50 island refuges which qualify for study to determine suitability or unsuitability as wilderness. Studies have been completed on 21 of this total, and they have been recommended to the Congress for inclusion in the National Wilderness Preservation System. The remainder are still under study.

Located off the shores of the United States, from Alaska to California, from Louisiana and Florida to Maine, and in the Great Lakes, these island refuges vary in size from massive land areas such as the million-acre Nunivak National Wildlife Refuge, Alaska, to Shell Keys National Wildlife Refuge, an 8-acre refuge off the coast of Louisiana. These island refuges contain some of the most diverse and fragile environmental features in this Nation. Many of them are small, but their values cannot be measured in size. Their value lies in the ecological, biological, scenic, scientific, and historic features they contain. Many are vitally essential to the preservation of rare flora and fauna, and some represent ecological features which will be preserved as wilderness nowhere else in the country.

Diverse in all forms of climate, ecology, and living organisms, the islands represent undisturbed segments of America's past and, in the eyes of our citizens, the perpetual realization of respect and importance for nature's treasures. Their riches are manifold in history, wildlife, and natural beauty. There are sand beaches that once echoed the cannon fire of Commodore Perry's warships and faint remains of a trail used by men who crossed the Bering Sea by land. One refuge, off the coast of Georgia, was frequented by the pirate Blackbeard, while others are located where thousands of birds still nest and rear their young just as during the days when Spanish galleons explored the nearby coast.

Public uses will continue as in the past. At some, in remote island splendor, one may pause and become detached from the complexity and challenge of modern-day responsibilities to obtain personal renewal by viewing a muskox on windswept tundra, or in warm sunlight watching gulls gliding amid tropical foliage over green sea waters. Other refuges are reserved for scientific purposes, including environmental research. Still others offer opportunities for fishing, bird watching, and similar forms of wildlife oriented recreation. But the public values in the future of most island refuges will be in assuring that they remain in a natural condition as samples of our environmental heritage. The preservation of these unique environments under the Wilderness Act as part of the national wildlife refuge system is of importance, not only to us as a nation, but to present and future generation of mankind.

Mr. Chairman, this concludes my general statement. With your permission, I will now describe the Monomoy Wilderness Proposal.

Monomoy Island is an unstable coastal barrier beach, located in the town of Chatham, Barnstable County, Mass. The island is bounded on the west by Nantucket Sound and on the east by the Atlantic Ocean. The island is 9 miles long and varies from $\frac{1}{4}$ mile to $1\frac{1}{2}$ miles wide. It is separated from the mainland by a shallow channel about one-half mile wide. The metropolitan centers of Boston, Mass., and Providence, Rhode Island, are approximately 100 miles away.

Monomoy Island is formed and constantly changed by tides, currents, and wind. It is approximately 2,600 acres in size, and at its highest point is only 30 feet above sea level. During major storms, the forces of nature have often caused drastic changes in its size, shape, and character, particularly at the north end.

All except four acres of Monomoy Island was acquired as part of the Monomoy National Wildlife Refuge which was established on June 1, 1944. These four acres, the site of a former lighthouse, belong to the Massachusetts Audubon Society and two private owners. These inholdings will be acquired.

There are 10 cabins occupied seasonally by persons holding life occupancy permits, issued by court order at the time the refuge was established. All buildings will be removed from the area when the life tenures are concluded. Two small service buildings are maintained by the Bureau for purposes of administration. These will also be removed when the area is designated as wilderness.

Since its establishment as part of the Monomoy National Wildlife Refuge, the island has been managed as a wild area. The island today shows little of man's influence. Physical development, always minor

in nature, has not been carried on in recent years. There has been no permanent modifications of the environment. Plantings of native vegetation in the past to control erosion and provide food for wildlife have merged into the local floristic pattern. Potholes and low dikes constructed in earlier years have not altered the natural character of the island. There are no roads on the island.

The ocean dunes are mostly devoid of vegetation, while interior dunes are covered with stabilizing beach grass and false hether. In the hollows and depressions are bayberry, beach plum, poison ivy, and patches of pitch pine. All of these natural plant associations are characteristic of coastal dunes of the region; and low, cordgrass marshes along Nantucket Sound blend into extensive salt marsh flats. There are numerous small potholes and natural freshwater ponds. Habitat is provided for a wide variety of migrating birds and upland game, including white-tailed deer.

Monomoy Island and its surrounding waters have an interesting history in which man's struggle against the ocean furnished the central theme. The list of ships wrecked on the treacherous shoals off Monomoy is formidable.

At times in the past, the island itself has been alternately attached and then separated from the mainland—such is the nature of barrier beaches of the Atlantic coast. The ocean current, storms, and winds constantly alter and change the landscape. The Department of the Army is currently studying the feasibility of a project for navigation of Pleasant Bay and tributary waters in Massachusetts. The proposed project would include the possible closing of the gap between Monomoy Island and Nauset Beach and would not be incompatible with the wilderness. The Department of the Interior would expect to work closely with the Department of the Army if the project is authorized.

Previously permitted as well as future recreational uses of the proposed wilderness includes surf fishing, hiking, bird watching, nature study, picnicking, and photography. The island provides boat visitors a landing place at any location on the shores. Public hunting is not permitted, but the Secretary of the Interior has authority to permit this form of resource management if such is needed in future years.

This historic and scenic Monomoy Island will make a significant contribution to the national wilderness preservation system, and I am pleased to recommend this to you.

I would like to make one small change in the recommendation that we sent over from the Department. On page 2 under section 3, I would like to change line 2 and state, "With the purpose for which the area is established."

That concludes my statement, Mr. Chairman.

Mr. BARING. Mr. Saylor:

Mr. SAYLOR. Mr. Chairman, for the record, you would eliminate the word "administer"?

Dr. GLASGOW. Yes; and substitute "establish."

Mr. BARING. Mr. Aspinall, chairman of the full committee.

Mr. ASPINALL. Mr. Chairman, members of the committee, I have studied this ever since it was introduced in the last session in the last Congress. If we can make it a wilderness as such, then of course I

feel very friendly toward what is proposed. So that the record will be complete, I want to read the first part of the definition of a wilderness. This comes from Public Law 88-577, 88th Congress.

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which.

The rest of it I will not read because it is simply an explanation.

Now, you are familiar with this definition, are you not, Dr. Glasgow?

Dr. GLASGOW. Yes; and I had to resolve this myself.

Mr. ASPINALL. And our understanding is that you support this legislation when it fits into that definition?

Dr. GLASGOW. I would support it as is, and I believe that it does need the requirements. There are, I believe, areas designated as wilderness that do have similar situations where people now live on them, but they are to be closed out and acquired as quickly as possible. This seems to me to be a similar situation, and that's how I resolved this problem.

Mr. ASPINALL. The original act provided for the acquisition of certain lands, which were designated as wilderness where there was human habitation, and these lands are being secured at the present time and the buildings, whatever they may be, are being torn down?

Dr. GLASGOW. Yes, sir.

Mr. ASPINALL. This committee usually holds pretty much to the parent act. We very seldom deviate, and we see to it that the authorization brings an area in that, whatever its category is to be, in our recreational program before we permit it. We name that as such.

Now, the other body in this report made this suggestion, and I quote from page 2, middle of the page:

These inholdings will be acquired. Until they are acquired, it will be necessary to allow access to the inholdings via over-the-sand vehicles.

Now, this is true with any of the area where we find these facilities have to be taken away from the area.

In the report of the Great Swamp National Wildlife Refuge we made the following suggestion, and we found a good bit of inholdings on that, and I quote from the bottom of page 2 of that report, Report No. 1813, 90th Congress, second session:

"Of the 2,400 acres in the M. Hartley Dodge unit, 388 acres are yet to be acquired, while in the Harding unit, 602 acres out of a total of 1,350 acres are still in private ownership. Present plans call for the Department of the Interior to acquire this acreage by 1970," and so forth.

So we are not establishing a precedent, especially by the acquisition of lands in order to make this a wilderness area.

Now, the next question I have, Mr. Secretary, is who will administer this tract as a wilderness area if it becomes designated as a wilderness area?

Dr. GLASGOW. The Department of the Interior, Refuge Division. First it is a wildlife refuge. Secondly, it is a wilderness area, and we must manage it as a wilderness tract.

Mr. ASPINALL. As I understand it, the Department of the Interior doesn't any longer try to administer as a wildlife refuge. That was the testimony that I gleaned from Mr. Keith.

Now, does this mean that you have in the Department under the Wildlife section, or whoever is administering the Wildlife Refuge Area, that you have practically forsaken the administration of this area at this time?

Dr. GLASGOW. No, not at all. We manage this area as a natural area. We do have a headquarters, and I would like for that to be pointed out on the map. We own a small tract of land on the next island, Morris Island, and that is the refuge headquarters there, and we do maintain a personnel at that site on a seasonal basis.

Mr. ASPINALL. If this is designated as a wilderness area and that gap is closed, then the definition, as I understand it, which will be offered by the representative of the Sierra Club, could be something like this—as designating the boundaries to consist of Monomoy Island, defined as a body of land surrounded by water with the water's edge its boundary.

Is that satisfactory?

Dr. GLASGOW. When the Corps of Engineers, if they do close that gap, that statement would be no longer true.

Mr. ASPINALL. You would be willing to meet it half way, then?

Dr. GLASGOW. We would maintain it as a wilderness area even after the gap might be closed.

Mr. ASPINALL. If the gap is closed where will the boundary to the north be? Will it be including your headquarters or halfway in between?

Dr. GLASGOW. Its water boundary would serve as it is. Now, if the Army closes the gap we will have to work with the Army in determining—

Mr. ASPINALL. We are not going to permit that in this committee, I can tell you right now. You will have to make up your mind as to half of that gap over the present boundaries will be the wilderness area.

Dr. GLASGOW. Mr. Chairman, we will maintain the boundary as is. If additional land is added, that will be excluded from the wilderness area.

Mr. ASPINALL. Thank you very much.

What do you figure would be the cost of acquisition if you acquired this—whatever inholdings there are at present?

Dr. GLASGOW. May I add a little in clearing up those 10 sites?

Mr. ASPINALL. I know what the inholdings are, this campground, and they will be phased out as soon as the life deeds run out.

Dr. GLASGOW. We now own the land that those camps are on. The rest, at the lighthouse site, a 4-acre tract—that 2 acres is owned by the Audubon Society, 1 acre each in two different private ownerships.

Mr. ASPINALL. What will you do with that area?

Dr. GLASGOW. We will acquire it as quickly as possible. The Audubon Society has said they are willing to sell. One other camp owner has indicated a willingness, and we will acquire the area.

Mr. ASPINALL. What would be your position if this committee and the House of Representatives should say that that this should become a wilderness area only after you secure the properties?

Dr. GLASGOW. If it were impossible to have it designated as wilderness prior to securing it, then we would go along with designation after securing it.

Mr. ASPINALL. You designate it before, but it wouldn't become effective as a wilderness area until that has taken place, because we are going to try to keep this within the definition of wilderness area as that is what the people want.

Dr. GLASGOW. Mr. Chairman, there is the lighthouse on the island, and I would hope to retain it because of its historical value. It is an unusual lighthouse. It has a long history and an important one, and we would like to retain it.

Mr. ASPINALL. For what purpose?

Dr. GLASGOW. For its historical significance.

Mr. ASPINALL. Well, I understand that, but what other purpose, for people to visit it?

Dr. GLASGOW. For anyone who used the island to see it. I am sure we would get a great objection to removal.

Mr. ASPINALL. Can this be retained as a part of the wilderness area and still continue the area within the definition that I suggested? In other words, are you going to be using trip hammers and noisy instruments around this area in order to keep it in repair? Are you going to have automotive or other machinery in there to—

Dr. GLASGOW. I don't think that this would ever occur, Mr. Chairman.

Mr. ASPINALL. Well, would you see to it that it doesn't occur?

Dr. GLASGOW. Yes; it would be a requirement.

Mr. ASPINALL. You suggest in your statement that the 10 cabins are occupied seasonally. These are the ones that I have in mind as well as the lighthouse. I don't see any difference in having a lighthouse and a promontory on a mountain as far as a place to visit. This is all right. But if there is any development around that lighthouse other than what there is at the present time, or if there is anything done to preserve that other than just the natural repair that is necessary, which shouldn't be very much, then I think we invade the idea of a wilderness area.

Dr. GLASGOW. The camps that are presently there would be removed as quickly as possible. These 10 camps are there only because of court order, not because we want them, but they do have a court order.

Mr. ASPINALL. That part I understand. Also, we have a lot of people that seemingly want this as a wilderness area, and when there are only 10 people that want to continue their rights we have some obligation to the public as well as those 10 people.

Dr. GLASGOW. I would remove those camps tomorrow if I had the authority.

Mr. ASPINALL. Now, if I understand, the Audubon Society has suggested that they might donate their lots, and you would be willing to have them donated, wouldn't you?

Dr. GLASGOW. Certainly.

Mr. STEIGER. Mr. Chairman, would you yield?

Just to further reinforce the chairman's line of questioning, Dr. Glasgow, the Forest Service required an inholding in a town—the National forest and wilderness areas there—at the cost of \$1,800,000, including some significant historic improvements which have been destroyed. This is not an order to comply with the law. What the

chairman is raising here is not a matter of caprice on his part. This is a very serious problem, and when we do start to make exceptions, then it opens up the whole ball of wax, so it is a very big problem.

Mr. GLASGOW. I realize it. I had to resolve it in my own mind before I felt it would qualify.

Mr. ASPINALL. Mr. Secretary, I have hastily examined the Senate bill. You didn't suggest in your report to the other body this inclusion of section 3; did you?

Dr. GLASGOW. I am sorry; I don't recall, sir. I am sure you must be right, though.

Mr. ASPINALL. Apparently the other body acted upon the recommendation of a report from the last administration.

Dr. GLASGOW. Yes; I believe that is correct.

Mr. ASPINALL. What is the real reason for this suggestion that you incorporate section 3 if you already have the authority and you intend to administer it under the authority of the Fish and Wildlife Service?

Dr. GLASGOW. I was advised that incorporation would strengthen it.

Mr. ASPINALL. Who advised you?

Dr. GLASGOW. Our legislative counsel.

Mr. ASPINALL. Is he present in the room?

Dr. GLASGOW. I am sorry; he is not.

Mr. ASPINALL. Sometimes this committee looks with a rather dim view upon some of these solicitors' recommendations. They don't know whether they will strengthen the acts for the purposes of the bureaucracy, for the purposes of establishing it. If we should have to leave that out of the act do you think that you would be embarrassed in any way in your administration of the area.

Dr. GLASGOW. No, sir.

Mr. ASPINALL. Mr. Chairman, at this time I would ask unanimous consent that House Document No. 292, part 13, 90th Congress, second session—be noted. I don't see any reason to make it part of the record.

Mr. BARING. Without objection, so ordered.

Mr. ASPINALL. Have you read, Mr. Secretary, the statement and material in House Document No. 292, part 13, of the 90th Congress, second session, that is this?

Dr. GLASGOW. No, sir.

Mr. ASPINALL. Well, do you know whether or not there are any mineral values present in this area?

Dr. GLASGOW. I have statements from the Geological Survey that there are no minerals present except the sand which makes up the island.

Mr. ASPINALL. Is there any titanium or other materials of mineral values in the sand?

Dr. GLASGOW. I don't believe so, sir. The geologist's report was very conclusive that there were no minerals involved in this, and his recommendation was very strong that this would not be a problem.

Mr. ASPINALL. Do you have a report that the Geological Survey sent to you personally, other than the one that is in the document that I just had placed in the files?

This, too, comes from the other administration. I want to be sure that this administration is underwriting the findings of the other administration.

Dr. GLASGOW. I have the same report that was submitted to the other administration, sir.

Mr. ASPINALL. That is all, sir.

Mr. SAYLOR. Mr. Secretary, you heard the chairman of the full committee read to you the definition of wilderness. I just want to tell you that as the author of these words—and I hear them read back to me—this is where I am stuck with my own words and using the French expression "c'est la guerre." We are going to have to live with it in establishing units of the wilderness system.

Now, I am a little concerned with the report that you have presented to us. In the report that was presented and made a part of the record, describing of the area in Monomoy Island, it was established on June 1, 1944, as a part of Monomoy National Wildlife Refuge. Then on page 5 of your statement there are 10 seasonal cabins—cabins occupied seasonally by persons holding life permits issued by court order at the time the refuge was established. Can you tell us what court order, or furnish for us the court order that established—authorized the life permits?

Dr. GLASGOW. Mr. Saylor, I don't have that information. I think Mr. Griffith could add to that.

Mr. SAYLOR. Mr. Griffith, could you give us that information?

Mr. GRIFFITH. The land was taken by declaration by the U.S. Government following a period of negotiation with some of the land owners. The declaration was at the request of the Department of Defense, since the area had value for military training and the Department of Defense wished to use it for bombing target practice. So there was a declaration of taking.

During the course of the court proceeding, it was established that the people occupying the cabins did not have title to the land. The court considered their request for privileges of occupancy and granted those privileges as a part of the official action. It provided for the continued use of the cabins, subject to military requirements at that time—continued use for the duration of the lives of the claimants.

Some of the cabins that have been occupied in the past have been eliminated. When the occupancy ceased, the cabins were removed by the government. There are several cabins in a poor state of repair now, and the government has followed up each year to determine whether or not the conditions of the court order have been satisfied and that they can find a basis for removing the remnants of cabins.

So the government is moving as rapidly as possible under the existing conditions to clear the scene of buildings.

Mr. SAYLOR. Were there 10 originally or are there still 10?

Mr. GRIFFITH. There are still 10. Originally there were more. Two cabins were eliminated within the last 18 months as a result of nonuse.

Mr. SAYLOR. Are these cabins occupied seasonally during the summer when they can get to the island?

Mr. GRIFFITH. Well, they are occupied intermittently, largely during the summer season. However, there are limited tenancy during other seasons, even during the winter.

Mr. SAYLOR. Well, if this was acquired in 1944, that is 25 years ago. This does not extend to the children. The court order does not extend to the children of those persons, only to those who owned the buildings at the time?

Mr. GRIFFITH. That is correct, sir. There have been—well, we will say, claims, that the court order did extend to the decedents, and these claims have been refuted by the Department of Interior, and there

are no decedents that have any residual rights in the property. Decedents, along with the original owners of the buildings, of course, do occupy the cabins, but the occupancy is extremely limited.

Mr. SAYLOR. Mr. Chairman, for the purposes of the record I would ask permission to have Mr. Griffith furnish for the file a copy of the court order for our staff to review to determine that the position of the Department of Interior is correct and this is only a life tenancy and does not extend to any of the children or heirs or is a transferable right.

Those are the only questions I have, Mr. Chairman.

Mr. BARING. Without objection, so ordered. The request of the gentleman from Pennsylvania.

Mr. SAYLOR. One other thing.

Mr. Secretary, if the Department of the Army project of making Pleasant Bay navigable becomes a reality, do the people in your Department believe it will in any way affect Monomoy Island except for possible closing of the gap between the present island and where you have your headquarters and Monomoy Island?

Dr. GLASGOW. I think that this would just be an improvement to the harbor. It is now navigable. It might possibly result in more visitors to the island.

Mr. SAYLOR. Is it possible, Mr. Griffith, since your headquarters are there, for small boats to now navigate to that area between Pleasant Bay and Nantucket Sound?

Mr. GRIFFITH. It is, sir.

Mr. SAYLOR. What is the approximate depth of the water at low tide?

Mr. GRIFFITH. At low tide, the last time I crossed from Morris Island to the north end of Monomoy in a small, 12-foot pram, which drew about 7 inches of water with a load, we actually scraped on the bottom. So we have some difficulty in navigating the channel.

Mr. SAYLOR. In other words, any changes, then, in the area, might cause the two islands to become one?

Mr. GRIFFITH. Well, it is entirely possible that it could become re-attached through natural forces. I think the prospects, though, are much greater for its remaining detached from the land, and building on the lower island has occurred for a long period of years.

Mr. SAYLOR. Whereas it seems that the natural wave action causes more sand at the lower end of the island than at the northern end?

Mr. GRIFFITH. That is correct, sir.

Mr. SAYLOR. That is all. Thank you, Mr. Chairman.

Mr. BARING. The gentleman from California.

Mr. JOHNSON of California. Thank you, Mr. Chairman.

Mr. Secretary, is there any fee paid by these people for the use of this property?

Dr. GLASGOW. Yes; they pay a fee.

Mr. JOHNSON of California. What is the fee?

Dr. GLASGOW. Mr. Griffith has informed me that it is \$2.50 per year for ground rent.

Mr. JOHNSON of California. Is what?

Dr. GLASGOW. \$2.50 per year for ground rent.

Mr. JOHNSON of California. Is that subject to be reconsidered every 5 years, similar to other Federal lands and special-use permits?

Dr. GLASGOW. Again, Mr. Griffith says that this fee has been in force for more than 20 years. I am not sure of the status of review.

Mr. JOHNSON of California. There has never been an increase in the special use permit fee?

Dr. GLASGOW. It is reviewed, but no change has ever been made.

Mr. JOHNSON of California. Now, in the permit—and I presume this protects the improvements upon the lands—does the present permittee or holder of the permit have the right to bring other people within the facility?

Dr. GLASGOW. Yes, sir.

Mr. JOHNSON of California. Say I was a father and a mother, could I bring my uncle and aunt and a few other things in and they could occupy it during the summer season?

Dr. GLASGOW. Yes; they could occupy the cabin.

Mr. JOHNSON of California. Well, I think this is just a little far fetched from the ordinary procedures in establishing a wilderness area. I would pretty much agree with the chairman of the full committee that it wouldn't become a wilderness until these were eliminated as such.

Now, I notice on the island you people have done a certain amount of erosion control like plantings. I presume this would all cease, too, it would become a wilderness area?

Dr. GLASGOW. That is correct. It would be managed——

Mr. JOHNSON of California. And nature would take its course there as far as what the island would look like after a certain storm, or——

Dr. GLASGOW. I don't believe there has been any planting there for at least 20 years.

Mr. JOHNSON. Well, I have watched—been able to look at a number of areas where plantings have been carried on for erosion control, and I see nothing wrong with them because that is one means of stabilizing property. But in the wilderness area they are so restrictive in certain areas that we can't do anything. You might say it is left to nature.

Dr. GLASGOW. I think in the statute which permits the setting up of wilderness areas and refuges, first refuge management applies, secondly the provisions of the Wilderness Act.

Mr. JOHNSON. Now, that is one part that I want to get into, too, just a little bit.

As I understood there were areas within it which would come under your jurisdiction as far as administration, but it would be a wilderness area under the concept of the Wilderness Act. Now, this applies to the Park Service, Forest Service, and to the Fish and Wildlife Service?

Dr. GLASGOW. These areas that are proposed as refuges would be managed as natural areas, which would conform to wilderness requirements.

Mr. JOHNSON of California. Of course, here again I don't know what the legislative history was in that regard, but it was my understanding at the time that these areas would be brought in; they would be brought in under the Wilderness Act in consonance, and under the jurisdiction of the Fish and Wildlife Service, Park Service, and Forest Service. So I think here you have just about a summer home tract.

In my area where permittees are allowed and summer homes permitted on national forest land and Bureau of Land Management land, the permittees are allowed to bring whoever he wishes into the

area. Now, if he rents this facility he must get the permission of the administering agency, and he can sell its improvements, as restricted here, with the approval of the agencies.

Dr. GLASGOW. It is my understanding that on some of the national forest areas that have been designated as wilderness that there are inholdings, there are people living on them now.

Mr. JOHNSON of California. They are being acquired, they are being wiped out, and they have no tenure there. It is just a matter of when the Federal Government can get the necessary financing to eliminate it.

Here there is a definite court order that grants the rights of these people to remain, but they remain there and they operate as more or less a summer home tract as we do on the forest tracts or on BLM properties.

Now, these people do not own the land, and these other private inholdings, the people do own them. The fee is taken. Everything is gone.

That is all, Mr. Chairman.

Mr. BARING. Mr. Steiger of Arizona.

Mr. STEIGER. Is the lighthouse still working, Doctor?

Dr. GLASGOW. No.

Mr. STEIGER. Is the purpose—or what is the purpose of changing the language from “administer,” to “establish”? What is the reason for that in section 3?

Dr. GLASGOW. It was felt that that would strengthen the fact that—

Mr. STEIGER. You know you mentioned that?

Dr. GLASGOW. That it was first a refuge and then wilderness.

Mr. STEIGER. The semantics of that escapes me. It is your feeling or the feeling of counsel that advised you that the word “establish,” is a stronger word than the word “administer”?

Dr. GLASGOW. That is correct.

Mr. STEIGER. Again to get back to what is apparently going to be a very sticky wicket, on the ownership of the two private tracts, are we dealing with two separate individuals?

Dr. GLASGOW. Yes.

Mr. STEIGER. Do they have improvements on their two tracts?

Dr. GLASGOW. They have camps.

Mr. STEIGER. Have you any idea what they are asking for the property?

Dr. GLASGOW. There have been no negotiations. Mr. Griffith estimates that it might be worth \$10,000 each.

Mr. STEIGER. Do you have any kind of indication from the Audubon Society that they are either—they will either make a gift or place a reasonable value on their property?

Dr. GLASGOW. Yes.

Mr. STEIGER. Do they have an improvement on their property also?

Dr. GLASGOW. They maintain a building there; yes.

Mr. STEIGER. And you don't know what the value of that would be?

Dr. GLASGOW. It would be—Mr. Griffith again says it might be equal to the other camps, maybe \$10,000.

Mr. STEIGER. For the purposes of the record, do we have any written negotiations from the Audubon Society or written indication that they are willing to make a gift of this land?

Dr. GLASGOW. I don't have myself. Now, there is the possibility that someone in the Interior does, but I do not have that. I think the previous hearings—they indicated this in public hearings.

Mr. STEIGER. With regard to the Great Swamp area of New Jersey that your Department administers, it was the requirement when that was established that it would totally be abandoned, and that such practices, even as banding bird life for the purposes of education, would cease, that there would be no more construction, no more improvements of any kind.

Now, I gather that you don't feel quite the same way about this island. You would like to retain the lighthouse?

Dr. GLASGOW. Yes; that is true, only the lighthouse.

Mr. STEIGER. You have indicated you don't contemplate any construction.

What does it cost you now, Doctor? What does it cost the Department to maintain Monomoy Island as a wildlife refuge? What was the budget amount for fiscal 1969?

Dr. GLASGOW. About \$5,000.

Mr. STEIGER. About \$5,000.

What will be the approximate cost of administering it as a wilderness area?

Dr. GLASGOW. The same cost.

Mr. STEIGER. The same.

So really the gentleman from New Mexico has raised a very germane point when he said, "Why would it be better as a wilderness area than as a refuge?" It would appear, at least superficially, to this member that here the problem that they are raising would be all eliminated if they simply retained this as a national wildlife refuge. The problem of ownership, acquisition of land, access, et cetera—

Dr. GLASGOW. Do I understand your question correctly to say that they would be eliminated if they retained it in refuge status?

Mr. STEIGER. Yes, sir.

Dr. GLASGOW. Well, we would hope under refuge status to acquire these inholdings.

Mr. STEIGER. Yes; you indicated that, that you planned to require them regardless of what the wilderness status was, but then there would be no problem about retaining the lighthouse and there would be no—

Dr. GLASGOW. We would retain the lighthouse.

Mr. STEIGER. There would be no difference in the cost of administration and really the only difference then would be a rather ethereal one of prestige, if there be such a thing as prestige, because of being part of a national wilderness program rather than a national wildlife refuge program; is that correct?

Dr. GLASGOW. I think this is quite advantageous, to have it wilderness area in that it would strengthen the retention of it as a wilderness island.

Mr. STEIGER. Is it in some jeopardy now to be retained as a wildlife refuge?

Dr. GLASGOW. Not to my knowledge; no.

Mr. STEIGER. And there is no policy within the wildlife refuge management itself that would tend to dispel—it would not be permitted under your management?

Dr. GLASGOW. No; there is not.

Mr. STEIGER. Well, I have yet to be convinced that it would be strengthened then. Perhaps you can convince me that it would be strengthened by the other designation. What would strengthen it?

Dr. GLASGOW. Well, this may be—well, not as significant as I feel, but I think that you would give it a high priority by designating it as a wilderness area.

Mr. STEIGER. Well, for funding.

Dr. GLASGOW. In the people's minds and in the actual retention of that piece of land in its present state.

Mr. STEIGER. So it would be more of a public relations situation?

Dr. GLASGOW. Well, that would be part of it, but also I think that you would have greater strength to maintain as wilderness by being designated wilderness.

Mr. STEIGER. Do you currently permit sand buggies to use the island?

Dr. GLASGOW. No; those people who have those cabins have a permit to have a vehicle on the island; that is all. Access only.

I think this, as a refuge we could go in there and throw dikes around it, we could manage it any way we please as a refuge. Designating it as a wilderness area means we have to retain it as a wilderness and manage it as a national area, and that is what we would like.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. BARING. The gentleman from Arizona, Mr. Udall.

Mr. UDALL. I appreciate your appearance and your statement. I just have a couple of questions.

I strongly feel that broad program you discussed in the first part of your statement—to put these islands into the wilderness system—is important. I think it is crucial to have some of these very important values in preservation, and represented in the system.

You encounter here some objections, of the kind we will encounter on some of these other islands as they come up. I think maybe this is a kind of trial run for the sort of difficulties we will have down the road.

Let me ask you a couple of questions about this one.

I understand that the Corps of Engineers—and there are those in this country who don't fully trust and approve of every kind of change in nature that the Corps wants to make—the Corps has a plan which would involve filling in in some fashion between the north end of the island and the mainland there. Is this correct?

They would actually fill it in with a dike or fill it in with a causeway or fill it in with what?

Dr. GLASGOW. I think that they would deepen that harbor there and use the bottom material, sand, to pump out and fill in this area.

Mr. UDALL. To some height so that at typical tide levels there would be a continuous strip of sand present at the present north edge of the island and the—

Dr. GLASGOW. I assume there would be a barrier in there sufficient to stand up against natural forces.

Mr. UDALL. Who has the power to make this decision? Can the Corps of Engineers, disregarding any views that Interior might have, that Congress might have, the local residents might have; can some major or lieutenant colonel or someone down at the Corps of Engineers say this will be done? who has the say—so whether this particular change will be made?

Dr. GLASGOW. Well, it is my understanding that it could be made by administrative decision.

Mr. UDALL. Let me go into one other thing.

Assuming we pass this bill and after it is established as a wilderness area—there is some reference in one of these statements to the fact that camping would be prohibited.

It is my understanding of the general wilderness law that camping is permitted as long as you didn't get in there through the use of vehicles, airplanes, and whatnot. Suppose this is established, and I take my boat and I leave the mainland there and row over to the island and take out my sleeping bag and camp? Would this be permitted or not?

Dr. GLASGOW. No, sir; it would not.

Mr. UDALL. Why?

Dr. GLASGOW. That is a common practice now. Camping is permitted in wilderness areas. We would regulate camping to this extent: We do not want beer parties and this sort of thing, the island littered with cans and rubbish and so forth. So we would regulate it to prevent that type of thing.

Mr. UDALL. Under your power to manage wildlife refuges or your power to manage wilderness areas?

Dr. GLASGOW. To manage wildlife refuges.

Mr. UDALL. Could someone—maybe we covered this earlier—but could someone tell me about this court order that established the life estates? Is this a Federal court, State court? What was the basis of the order?

Dr. GLASGOW. Again, Mr. Griffith, who is more familiar than I—

Mr. GRIFFITH. This land was acquired by declaration of taking. During the court proceedings the Federal—this was handled by Federal court—it was determined that the people who had camps on the island had invested money in buildings, did not have title to the land, would be granted life estate privileges and those would extend only to the owner of record for the particular building at that time and did not extend to the other members of the family or decedents.

Mr. UDALL. Well, this was the Federal court which determined, the Federal Government moved in with a procedure to establish title to this?

Mr. GRIFFITH. That is correct.

Mr. UDALL. And these people resisted it on the ground they had an ownership in these properties, they had erected structures, and they were using it for their homes?

Mr. GRIFFITH. That is correct.

Mr. UDALL. And the court held they had interests in the nature of life estates, or was this a compromise if they would give up their claim?

Dr. GLASGOW. I believe this was a compromise because there were questions of title evidence. Yet the people who were occupying the land could not produce evidence of title nor could they convey title to the land that they had claimed.

Mr. UDALL. Well, these are the main questions that I have. Certainly this is a rugged and very beautiful area and deserves careful treatment and consideration.

Thank you, Mr. Chairman.

Mr. BARING. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. Dr. Glasgow, could you tell me how many vehicles are now on the island?

Mr. GRIFFITH. I believe, sir, that there are perhaps half a dozen at the present time. All of the vehicles that are used on the island for access are under permit issued by Department of Interior through the Bureau of Sport Fisheries and Wildlife. The permit restricts the use of the vehicle for access from the point of a boat landing to the cabin which is occupied by an individual having the life estate privilege. The vehicles do not have access to the entire property.

The Bureau maintains a vehicle on the island and it is removed periodically for other purposes, but generally we have a vehicle on the island which is used for access from the northerly end of the island where boats are landed to the southern tip where there is a building which is used for storage of equipment and which has been used in the past as a field headquarters.

The Audubon Society also has a vehicle which they use for access to their property, and the vehicle has served as a conveyance for people who are accompanying members of the Audubon staff to see the Audubon property and also view the birdlife by walking along the beach and through the interior of the island.

Mr. CLAUSEN. Are there improved landing facilities or are they just natural?

Mr. GRIFFITH. No, sir; there are no improvements that could be identified as landing facilities, although boat landings are on the beach and the boat landings are—the location of landings are subject to change, depending upon water conditions and sanding of the channel.

Mr. CLAUSEN. But you have sufficient authority to control the landings on the island either if it was managed as a refuge or under the current administration under the wilderness system?

Mr. GRIFFITH. That is correct.

Mr. CLAUSEN. There were some comments made earlier with respect to the position of the Audubon Society, and I recall Dr. Glasgow, you were not familiar with the correspondence from the Audubon Society relating to what they could guarantee in the way of transfer of their interests on the island should it go to a wilderness area designation.

It would seem to me, Mr. Chairman, that it would be in the public interest to have either—if there is a document available—that it would be made a part of the record at this point, and if not, I think that we should have some correspondence or some communication from the Audubon Society indicating their specific position. I think it should be part of the record so there can't be any doubt as far as the future is concerned, because you know personalities change both in the administration and in society. I think this would be helpful.

Dr. GLASGOW. I will request a written statement from them for the record.

Mr. CLAUSEN. May I ask that it be made a part of the record at this point.

Mr. BARING. Without objection, so ordered.

(The document referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 9, 1969.

HON. WALTER S. BARING,
*Chairman, Subcommittee on Public Lands of the Committee on Interior and
Insular Affairs, House of Representatives, Washington, D.C.*

DEAR MR. BARING: During the May 27 hearings on H.R. 486 and H.R. 978, bills to designate a part of Monomoy National Wildlife Refuge as wilderness, questions arose as to the acquisition of privately owned inholdings, including those owned by the Massachusetts Audubon Society. The enclosed letter from Mr. Allen Morgan, Executive Vice President of the Massachusetts Audubon Society, relative to the inholding of the Society controls on Monomoy Island clarifies the attitude of the Society in this matter. We believe the position of the Society, as presented in the letter, is realistic and compatible with the objectives of Monomoy National Wildlife Refuge and the proposed wilderness area.

I am instructing the Director, Bureau of Sport Fisheries and Wildlife, to move forward as rapidly as possible to acquire the private lands on Monomoy Island, including those owned by the Massachusetts Audubon Society.

I would like to reaffirm the Department's recommendation on the Monomoy Wilderness Proposal, and again urge your favorable action in this matter.

Sincerely yours,

CHARLES G. CAROTHERS, III,
Deputy Assistant Secretary of the Interior.

MASSACHUSETTS AUDUBON SOCIETY,
Lincoln, Mass., June 17, 1969.

Re H.R. 486 and H.R. 987 to designate Monomoy National Wildlife Refuge as wilderness.

DR. LESLIE GLASGOW,
*Assistant Secretary, Fish, Wildlife, Parks, and Marine Resources, Department
of the Interior, Washington, D.C.*

DEAR DR. GLASGOW: During my testimony before the Sub-committee on Public Lands on May 27, 1969, I was asked to confirm in writing the Society's intent relative to our property inholding at Monomoy—the old Monomoy Light, its accompanying Coast Guard Light Keeper's Station and its surrounding two acres of sand and dunes.

Our position is basic on the question of Monomoy's protection—we are in favor to the extent that we will do whatever we can to see that it is protected as a wild natural area whether as a Wildlife Refuge, Wilderness, or whatever best accomplishes this purpose.

We will relinquish our ownership whenever the Department of the Interior feels that this is appropriate and necessary. We would like to be allowed to continue to own it (and to use it infrequently, as we now do) until the other inholdings are acquired. When these other private, individually owned camps and lots are all finally acquired by the government this would seem the appropriate time for the government to acquire ours if the Congress does indeed designate the area as wilderness.

In my oral testimony in response to the Committee's questions, I said I could not answer as to whether or not we would give our property to the Government. As I expressed it to the Committee, there are several important considerations:

1. The technical—perhaps legal—question as to whether or not this Society as a tax exempt corporation with quiet specific purposes, can or should give away any of its assets, even under extenuating circumstances;
2. The wishes of the substantial number of donors who gave us the money with which to purchase and repair the property;
3. The fact that we acted on behalf of the Department of the Interior, at its request, and under the circumstances whereby it was unable to act, in order to guarantee that the property would come under ownership that was friendly and sympathetic to the objectives of the Department of the Interior at Monomoy.

I feel that it is essential that we follow the wishes of the people who donated the money, and yet I hesitate to raise the question with them until the Department of the Interior is ready to act. The Society's president, Mr. Richard Borden, and the chairman of the Board of Directors, Mr. Francis S. Moulton, Jr., advise me that they feel the Society's Board of Directors likewise should not be asked to commit itself without knowledge of the wishes of the donors, and until the Department is ready to act. However, they do confirm and endorse my belief as expressed herein as to the Society's desire to cooperate with the Department of the Interior and its willingness to give up our property at Monomoy as soon as all other inholdings have been liquidated and Monomoy indeed becomes wilderness.

The purchase price for the Light and house, and 2 acres of land, was \$18,000 in 1964. The house had suffered damage due to neglect and vandalism, and we invested the additional sum of \$2,998.95 to make repairs. It is now in excellent condition.

In closing let me reiterate our strong feeling that Monomoy Light should never be destroyed. Monomoy has played an important role in history—its shifting sands and offshore shoals are the grave of hundreds of shipwrecks. On every trip down Monomoy the visitor sees one or more of these hulks as tide and wind cover and uncover them. The present Light, built in 1823, played an important part in history. It should continue to play a role in its future wilderness state just as it has in its past wilderness state. This evidence of man's history, representing as it does his struggle with wilderness, should be preserved as part of the Monomoy Wilderness for future generations to appreciate. The Department of the Interior can never remove all of the old shipwrecks—the wind will still be uncovering them centuries hence; historic Monomoy Light should accompany them until time itself takes its final toll.

Sincerely,

ALLEN H. MORGAN,
Executive Vice President.

Mr. CLAUSEN. Thank you.

Mr. BARING. Is that all?

The gentleman from Oklahoma.

Mr. CAMP. Dr. Glasgow, it has been mentioned many times this morning that there are two inholders. One is the Audubon Society and is the other one—

Dr. GLASGOW. No, Mr. Camp, there are three, the Audubon Society plus two private camps, occupying 1 acre each at that same area where you see that little square.

Mr. CAMP. The point I am trying to make here is the other two, then, are composed of more than two people?

Dr. GLASGOW. There are two camps.

Mr. CAMP. In other words, there are 10?

Dr. GLASGOW. There are 10 camps plus these people.

Mr. CAMP. Plus these people?

Dr. GLASGOW. Yes.

Mr. CAMP. Now, if I understand right, do they have a life estate?

Dr. GLASGOW. Ten of them do. The others are owners that we would have to acquire the property.

Mr. CAMP. How many of them are there?

Dr. GLASGOW. There are two private owners plus the Audubon Society.

Mr. CAMP. Now, on the one side have the life estates, could you say or make the statement of how long it might be or what their life expectancy might be before it would revert back?

Dr. GLASGOW. I haven't checked the age of those people but this was acquired in 1944. So that they certainly must be elderly people by this time, and it is likely that they will not occupy the area much longer.

Mr. CAMP. You are thinking in a short period of time it would revert back and there would be no problem?

Dr. GLASGOW. Yes; I would like to have Mr. Griffith comment on it, because he has been on this island many times and has seen these people. I have not.

Mr. GRIFFITH. Well, Dr. Glasgow's comments are essentially correct. The people are past middle age. Some of them have reached a point of being somewhat infirm and find it difficult to travel back and forth to the island, and there is every indication that within the next 10 years that most, if not all, the life-estate privileges will have expired.

Mr. CAMP. Is it in the court order that if they abandon the property then it automatically reverts?

Mr. GRIFFITH. I don't believe it is in the court order, sir, but it has been the position of the Department that when the property is no longer used for the purposes authorized by the court that the property in effect has been abandoned and the Federal Government has jurisdiction and is in position then to proceed with removal of the building.

Mr. CAMP. You are thinking it would be just only a short time for the land to be available to make it—

Mr. GRIFFITH. I am of that opinion; yes.

Mr. CAMP. You don't think we will have any problem?

Mr. GRIFFITH. I don't think we will have a problem; no, sir.

Mr. CAMP. With the land acquisition?

Mr. GRIFFITH. That is correct.

Mr. CAMP. Thank you, Mr. Chairman.

Mr. BARING. The gentleman from New Mexico.

Mr. LUTAN. As I see the thing in the final wrapup here, we have three alternatives, and I would like to cover those three alternatives and see what your feeling is about them.

First of all, we could pass it—the committee could find and pass the bill exactly as he asked—and then you would proceed to clear the land both from the standpoint of title and the buildings on it. That would be the first one and acceptable to you.

The second alternative would be that the committee find that it could pass the bill only with an amendment and says it will become a wilderness at such time as all of these things are cleared. What would be your feeling on that?

Dr. GLASGOW. If I could not get your first alternative I would take your second.

Mr. LUTAN. And the third one, having mentioned the lighthouse, but if the committee felt that with the lighthouse on the island, it could not come within the definition of a wilderness, and that in order to properly be a wilderness that the lighthouse would have to be done away with, would you then say forget about it or would you say the lighthouse would be demolished?

Dr. GLASGOW. I have a strong feeling for history. I have a strong feeling for history and historical areas and sites, and I cannot speak for the Department of the Interior. We would have to review this proposition again, but personally I favor keeping the lighthouse. It is an unusual one. It is cast iron, and would be almost indestructible. And so it would remain there for many, many years with no care whatsoever.

Mr. BARING. Will the gentleman yield at this point?

I don't believe this has come into the record yet.

Mr. Secretary, is the lighthouse in use now?

Dr. GLASGOW. No; it is not.

Mr. BARING. Go ahead. I am sorry.

Mr. LUJAN. Your feeling, then, would be that unless the lighthouse remains, then just leave it as a wildlife refuge pretty much?

Dr. GLASGOW. Not altogether. The local people, I am sure, would voice a very strong objection if we were to remove that lighthouse. I think I would have to go back and try to reassess our position as far as local people are concerned as far as our historical people are concerned, and come back with an answer. I would hesitate to give you a definite reply.

Mr. LUJAN. I have no further questions.

Mr. BARING. Thank you.

I call upon the chairman of the full committee for the remainder of the witnesses.

Mr. ASPINALL. Mr. Chairman, and in a few minutes we must go into session, but we have four witnesses here from outside of Washington; and it is necessary for us to have them today so that they won't have to come back tomorrow. I would suggest that our testimony this afternoon—and I will make a suggestion then—the first Mr. McNeece and then Mr. Marshall, then Mr. Morgan and Mrs. Avery. That will leave us—if we can get through with them this afternoon that will be all right—that will leave Mr. Wright, Washington, Brandborg, Washington, Mrs. Harrigan of Bethesda.

How long, Mr. McNeece, is your statement?

Mr. MCNEECE. I will submit a statement and make some brief remarks.

Mr. ASPINALL. What do you mean by brief remarks?

Mr. MCNEECE. Not more than 15 minutes I would say.

Mr. ASPINALL. That is not brief according to our rules. You should make it in 5 minutes.

But with that understanding I would ask unanimous consent that we now recess until this afternoon and that we meet as soon as the final vote on the Agriculture appropriation bill is had. So that means that these witnesses still remaining will have to be here not later than 2:30 o'clock. We won't be able to get to the vote before 2:30. You may have to sit here until 3:30, but we will do our best to see that at least the four of you are able to return to your homes in New England this evening.

Our rules provide for 5-minute oral presentations. So we must keep that in mind. That is the reason I asked Mr. McNeece. I know he is very much interested in this and would like to talk perhaps all afternoon. We don't have all afternoon. Your statements will be included in the record and we, of course, will go through your statements as you give them. You will be surprised how many of us can read a 15-minute statement within four or five minutes.

Mr. Chairman, with that in mind, if it is all right with you—

Mr. CAMP. Do you anticipate we won't have the post office bill?

Mr. ASPINALL. We will have it, but we will be able to meet during general debate this afternoon, but we can't meet during 5 minutes rules on the Agriculture Committee.

Mr. BARING. Dr. Glasgow, counsel wishes to ask you a question.

Mr. McELVAIN. I just have one question.

The indication is that each of the permittees with the life estate has a right under his permit to also have some sort of mechanical vehicle to get to and from his cabin or cabin site.

If this legislation is enacted would they still retain that right to have a mechanical vehicle to get to and from within the wilderness area?

Dr. GLASGOW. Yes, I believe so, as long as they occupy the cabin they would have the privilege of going to and from it in a vehicle under a permit system.

Mr. McELVAIN. Is there any evidence that they have used their vehicles for any other purpose than just access to and from there?

Dr. GLASGOW. May I ask Mr. Griffith to answer?

Mr. GRIFFITH. No, sir. The use of the vehicle is controlled by conditions of permits that is subject to revocation, and the vehicle use is policed to a degree through the Bureau representative who is in residence at the refuge office on Morris Island for all of the recreation season, and we have periodic patrol at other times of the year to provide a basis for assuring ourselves that the terms of the permit are complied with. This extends to the occupancy of the buildings as well, the access across the refuge by vehicle.

The access routes are limited and the vehicle can only be used for transportation from the point of boat landing to the cottage.

Mr. McELVAIN. Could you provide the committee with copies of the permits that you issued to these people for the transportation purposes?

Mr. GRIFFITH. Yes.

Mr. McELVAIN. Are they reviewed annually or at any regular interval?

Mr. GRIFFITH. The permits are issued annually. Of course, there are annual permits issued for the majority of the camps. Some permits, open-ended permits without terminal dates, I believe, were issued in 1954 by a member of the Department of Interior staff. The permit for the other cabins have been issued on an annual basis, and they terminate as of December 31 of each year. At the time of renewal the requirements, the obligations of the permittee are reviewed with the permittee. He has the responsibility for maintaining the grounds in an orderly condition and being responsible for the action of the guests who may occupy the cabin in his company. The cabins cannot be occupied by friends or relatives of the permit holder except in his company. So the use of the area and the use of vehicles for access is reviewed on an annual basis.

Mr. McELVAIN. On the one permit for the Audubon Society, is that a bus or just a regular automobile, or what kind of vehicle is that?

Mr. GRIFFITH. Well, it is an overland vehicle which might be called—I was going to say a suburban type of conveyance—but it is capable of hauling, I believe, 15 people. So it is larger than the overland vehicles that are used by the cabin occupants.

Mr. McELVAIN. Could you provide us for the file with some pictures of the cabins?

Mr. GRIFFITH. I would be glad to do that, sir.

Dr. GLASGOW. All of them or just part of them.

Mr. McELVAIN. There are only 10. I think all of them.

That is all, Mr. Chairman.

Mr. BARING. The chairman wishes to repeat, we will meet again right after the vote on the agriculture bill.

We will stand in recess until that time.

Dr. GLASGOW. Mr. Chairman, would you feel that I should be present?

Mr. BARING. I believe that your testimony is completed, Dr. Glasgow.

Dr. GLASGOW. I have other work.

Mr. BARING. I believe everybody has questioned you.

(Whereupon, at 11:50 a.m., a luncheon recess was taken, to reconvene at 2:30 p.m., this same day.)

AFTERNOON SESSION

Mr. BARING. The subcommittee will come to order.

Schedule of witnesses will come in a little different order for the convenience of some of our out-of-town witnesses.

We will take Mr. Robert Marshall, Cambridge, Mass., director of the Sierra Club, first.

The reason for this is that Mr. Marshall has to catch a 4 p.m. plane.

STATEMENT OF ROGER MARSHALL, CAMBRIDGE, MASS., REPRESENTING THE SIERRA CLUB

Mr. MARSHALL. Thank you, Mr. Chairman.

I would like to hit the important part of my statement and hope that the full statement, which you have a copy of, can be included in the record as if read.

Mr. BARING. Without objection, it is so ordered.

Mr. MARSHALL. I am Roger Marshall, citizen conservationist, appearing to present the Sierra Club's support for legislation to provide protection for Mononoy Island, under the wilderness law.

This little jewel of a habitat, constantly being lashed by the wind and the sea which have purged and renewed it through the years, can represent for our times and for future generations an example of the pure and unspoiled to compare with the ravages of civilization, while affording respectful explorers the awesome experience of communing with the wildness of nature away from the daily pressures of civilization.

Although the Sierra Club's National Headquarters is in San Francisco, over 8,000 members lives in the Northeast region of the United States, where wilderness is all too rapidly becoming extinct as man and his machines are frantically consuming the land.

As the great megalopolis spreads along the Atlantic seaboard, open space is forever losing out to the continuous concentration of urban sprawl with an ever-increasing density of humanity and its critical problems of crime, drugs, and other psychoses.

Just as man the animal needs relief from the pressures of his society, man the highly developed being needs the opportunity to enjoy and find delight somewhere in his environment.

Exhibit 7

Judgment in *Assocs. of Cape Cod, Inc. v. Babbitt*,
C.A. No. 00-10549-RMZ (D. Mass. June 26, 2001)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10549-RWZ

ASSOCIATES OF CAPE COD, INC. and JAY HARRINGTON,

v.

BRUCE BABBITT IN HIS OFFICIAL CAPACITY AS SECRETARY
OF THE DEPARTMENT OF THE INTERIOR, et al.

JUDGMENT

June 25, 2001

DOCKETED

ZOBEL, D. J.

The Court having fully considered the issues contained in the parties' cross motions for summary judgment, now issues the following order pursuant to its Memorandum of Decision dated May 22, 2001.

I. MONOMOY NATIONAL WILDLIFE REFUGE

1. The United States Fish and Wildlife Service's ("FWS") decisions in invalidating a 1994 Compatibility Determination ("CD") and denying the Plaintiffs' special use permit for the 2000 season to commercially harvest horseshoe crabs within the Monomoy National Wildlife Refuge ("Refuge") are hereby set aside as being arbitrary and capricious.

2. The FWS is hereby enjoined from prohibiting the plaintiffs from harvesting horseshoe crabs within the Refuge in the manner described in the 1994 CD unless the FWS either (1) makes a valid non-arbitrary determination that the plaintiffs' activities

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lack compatibility with the purposes of the Refuge, or (2) has another valid non-arbitrary reason for denying plaintiffs' permit.

3. The plaintiffs must apply for a special use permit to conduct their commercial activity within the Refuge. The FWS is hereby ordered to issue a permit for the balance of the 2001 season based upon the 1994 CD remaining in effect pursuant to the Court's decision.

4. The Court's May 18, 2000 injunction is vacated.

5. Pursuant to the Wilderness Act, the FWS may prohibit the plaintiffs from harvesting horseshoe crabs within the boundaries of the Wilderness Area. The FWS's year 2000 determination as to the boundaries of the Wilderness Area is hereby remanded to the FWS for review of the potential infirmities raised by plaintiffs. Until that review is complete, the operative boundaries for the Wilderness Area are those drawn on the maps accompanying the annual permits issued to plaintiff Harrington from 1991-99. The Court makes no ruling as to the boundaries of the Refuge.

II. CAPE COD NATIONAL SEASHORE

The Court orders that the National Park Service has jurisdiction over the horseshoe crab within the boundaries of the Cape Cod National Seashore, and has full and complete authority to prohibit the harvesting of horseshoe crabs within the boundaries of the Cape Cod National Seashore.

June 26, 2001
DATE

Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

Exhibit 8

U.S. FWS, U.S. DEP'T OF THE INTERIOR, DRAFT
ENVIRONMENTAL ASSESSMENT: MASTER PLAN - MONOMOY
NAT'L WILDLIFE REFUGE (Nov. 1986) ("1986 DRAFT
MONOMOY MASTER PLAN") (selected pages)

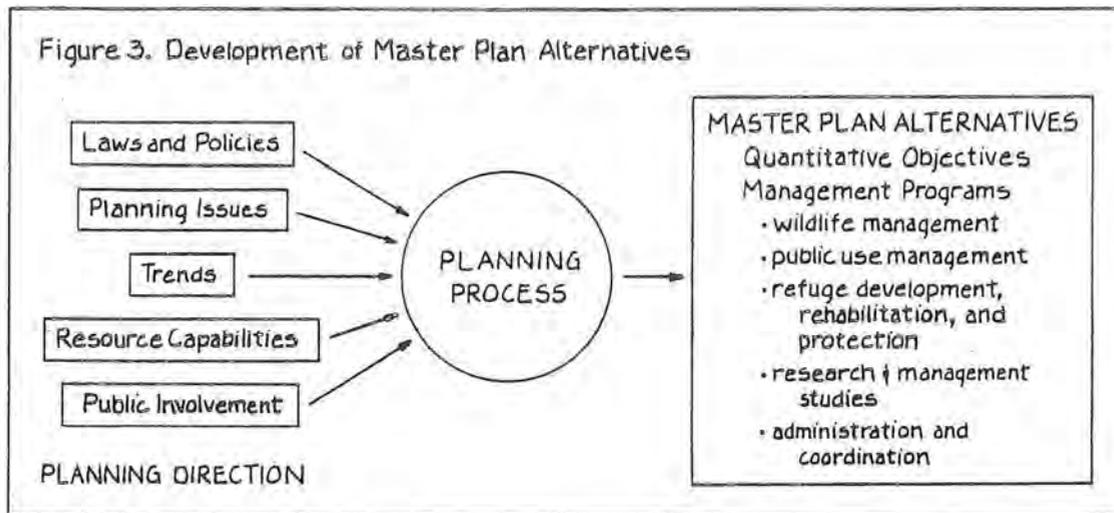


Draft Environmental Assessment

November 1986

Master Plan

**MONOMOY
NATIONAL WILDLIFE REFUGE
Chatham, Massachusetts**



The remainder of this section provides information about various components of the alternative formulation process:

- o important legal authorities and agency policies shaping the alternatives
- o public involvement activities conducted during master planning
- o issues addressed by the plan
- o funding considerations
- o refuge objectives
- o refuge management programs

Refuge resource capabilities and wildlife population trends are discussed in the Affected Environment section of this EA.

LEGAL AUTHORITIES AND POLICY DIRECTION

Laws

The legal authority for management of Monomoy and other national wildlife refuges derives from the Migratory Bird Treaty Act of 1918 and the Migratory Bird Conservation Act of 1929. These acts provide for Federal protection of all migratory birds and acquisition of land and water for conservation of the migratory bird resource. Refuge management is further guided by the National Wildlife Refuge Administration Act of 1966 which defines the National Wildlife Refuge System and states that national refuges may be opened to various public uses, provided that each use is compatible with the major purposes for which the refuge was established.

The Endangered Species Act of 1973 instructs Federal agencies to carry out programs for the conservation of endangered and threatened species and to conserve the ecosystems upon which these species depend. Migrating bald eagles and peregrine falcons, both endangered species, utilize Monomoy as a stopover, and bald eagles have been known to winter on the refuge. The piping plover, which nests on Monomoy, is designated a threatened species along the Atlantic Coast. Between 1963 and 1980, Monomoy supported one of Massachusetts' largest colonies of roseate terns, now a candidate for listing as an endangered species.

Monomoy National Wildlife Refuge was established on June 1, 1944, through a Declaration of Taking under the Migratory Bird Conservation Act. The refuge includes all lands which may accrete within the boundary of the declaration of taking, shown in Figure 2. Under Massachusetts law derived from the Great Colony Ordinance of 1641, an upland landowner's property extends to the extreme low water mark or 100 rods (1,650 feet) from the ordinary high water mark, whichever is less. Life use permits were granted to owners of camps on Monomoy at the time of refuge establishment; only one of these camps remains in use today.

In 1970 Public Law 91-504 designated the Monomoy Wilderness, comprising about 2,600 acres on what was then Monomoy Island*, to be managed in accordance with the Wilderness Act of 1964 (P.L. 88-577). See Figure 4. Section 4(b) of the Wilderness Act states:

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such areas for such other purposes for which it may have been established so as also to preserve its wilderness character.

Thus, the Service is mandated to manage the Monomoy Wilderness for the conservation of migratory birds in accordance with the provisions of the Wilderness Act. Specific prohibitions in the Wilderness Act apply to use of motor vehicles and motorized equipment, landing of aircraft, and structures.

The Monomoy wilderness legislation excluded two areas, 90 acres at Inward Point and 170 acres near Powder Hole, from the Wilderness Area. On these exclusions were located ten life use permits for summer camps, three private tracts totalling four acres, and two former Coast Guard buildings. U.S. House of Representatives Report 91-1441 stated that the exclusions were to be managed in a manner consistent with the concept of wilderness. Since passage of the Act, the private inholdings have been acquired, the Coast Guard buildings have been destroyed by fires or dismantled, and nine of the ten camp permits have expired.

* As explained in the Affected Environment Section, Monomoy has, within recent history, been a peninsula, a single island, and two islands. In this document Monomoy Island, the Monomoy Islands, North and South Monomoy (but not Monomoy Refuge, which includes part of Morris Island) all refer to essentially the same area.

AFFECTED ENVIRONMENT

LOCATION

Monomoy Refuge is located about 75 miles southeast of Boston, in the Town of Chatham, Barnstable County, Massachusetts. The refuge consists of North and South Monomoy Islands, as well as about 40 acres on Morris Island, which is connected to the mainland by a causeway. Monomoy separates the stormy North Atlantic on the east from the more sheltered waters of Nantucket Sound on the west. The ephemeral configuration of the Monomoy Islands makes it impossible to accurately state the refuge size. In 1984, the islands encompassed approximately 2750 acres, including about 750 acres of intertidal marine mud and sand flats. North and South Monomoy are roughly 2.0 and 5.5 miles long, respectively; South Monomoy is nearly 1.5 miles across at the widest point. The Declaration of Taking which created the refuge in 1944 established a boundary line to the west of Monomoy (shown in Figure 2 on page 3) and provided for inclusion in the refuge of all land which may accrete within the boundary (U.S. District Court 1944). The Morris Island portion of the refuge includes the refuge headquarters site, an undeveloped area called the Point, and a 0.2 acre tract on the north side of adjoining Stage Island.

GEOMORPHOLOGY, SOILS, AND WATER RESOURCES

Monomoy Islands

Formed through deposition of the eroding glacial deposits of Outer Cape Cod, Monomoy is continually reshaped by wind and waves. Geise (1978) traced the evolution of Monomoy since the 1770's. The southern end has migrated to the south and west, while the north end has alternately connected with and separated from the mainland of Cape Cod (see Figure 8). The most recent break transforming Monomoy from a peninsula to an island occurred in April 1958. A 1978 storm severed Monomoy into two islands, North and South.

Traveling east to west on North Monomoy, one traverses a narrow beach, dunes, and intertidal estuarine marsh to reach a wide, intertidal sand and mud flat. The flood-tidal delta which fans westward between the two islands is presently divided by a narrow "cut," passable only by small boats at high tide. The northern two-thirds of South Monomoy is flanked by sandy beaches on the east and west with north-south trending dunes between. The southern third of the south island is typical of a dune-ridge island with a high scarp dune line along the eroding eastern side and distinctive dune ridges running southwest in the direction of accretion (Leatherman 1979).

Although the littoral currents are the dominant force configuring Monomoy, dune vegetation, which traps sand moved by the prevailing winds, plays an important role in dune formation and maintenance. While most dune vegetation is adapted to withstand the ravages of wind and waves, it may be destroyed by concentrated foot trampling which, in turn, leads to erosion of the dunes.