Appendix L

Kate Iaquinto/USFWS

Monomoy National Wildlife Refuge

Memorandum of Understanding with Town of Chatham

MEMORANDUM OF UNDERSTANDING

Between

U.S. Fish and Wildlife Service
Monomoy National Wildlife Refuge

And

Town of Chatham, Massachusetts

Whereas, the United States, by a Declaration of Taking in 1944 (Miscellaneous Civil No. 6340 -, United States of America v 3,000 acres, more or less of land situate in Barnstable County, Commonwealth of Massachusetts, Susie H. Kosak, et. al, signed on February 10, 1944 by Secretary of the Interior Harold L. Ickes) acquired lands for management as Monomoy National Wildlife Refuge (Monomoy NWR), and;

Whereas, the U.S. Fish and Wildlife Service, herein referred to as the Service, has the responsibility for the protection and management of lands and resources within the boundaries of Monomoy NWR, which is situated within the Town of Chatham, and;

Whereas, the Town of Chatham, herein referred to as the Town, acquired land in Nauset/South Beach from Nickerson (Deed from Joshua A. Nickerson to the Inhabitants of the Town of Chatham, signed May 19, 1951), and;

Whereas, the Town has responsibility for the protection and management of Town resources, and;

Whereas, the lands included within Monomoy NWR and Nauset/South Beach were formerly separated by land below mean low water belonging to neither the United States nor the Town but belonging to the Commonwealth of Massachusetts, and;

Whereas, due to shifting landforms in the areas now known as Nauset/South Beach and South Monomoy Island, the two landforms have become joined, and accordingly, a boundary has developed between lands owned by the United States and those owned by the Town, and;

Whereas the precise location of said boundary is unsettled and resolution of title may be time-consuming and expensive for both parties, and;

Whereas, there is a mutual desire of both Parties to work cooperatively and jointly for the purposes of resource protection and management on the upland portions of the area known as Nauset/South Beach, and;

Whereas, it is understood by both Parties that the underlying principle of this agreement is that public access, public use, and resource protection will be served best by the joint, coordinated, and mutual efforts of both Parties hereto, and;

Therefore, the Parties agree to the following terms for the coordination and exchange of resource management services between the Parties in the area as defined below.

ARTICLE I – Authority

Authority for the execution of this agreement is contained in 16 U.S.C. § 668dd,

ARTICLE II – Statement of Cooperative Effort

1. Both Parties hereto agree to establish a boundary between their respective lands in the dynamic area between Nauset/South Beach and Monomoy Islands. The administratively determined boundary (Exhibit 1: Point A to Point B) between the Parties will follow:

> Bearings, distances, and coordinates in the following description are based on the Massachusetts Mainland State Plane Coordinates System NAD 83 (1996).
>
> Beginning at the intersection of the easterly mean low water line of Morris Island and the extension of the southerly boundary of a tract of land that was revested to Samuel Cabot and Elizabeth C. Lyman by stipulation recorded at the Barnstable County Registry of Deeds, Barnstable, Massachusetts in Deed Book 886, Page 508, having a coordinate value in U. S. Survey Feet of N 2,702,924.62, E 1,076,675.08 (Point A), from which a concrete monument found at the westerly end of said revested tract bears
> N66° 43' 58"W, 2,361.87 feet and from which "Chatham USCG," a published mark of the National Geodetic Survey Integrated Database, having a Permanent Identifier of AB2630, bears N26° 29' 15"E, 6,754.78 feet;
>
> Thence from the Point of Beginning, S13° 19' 17"W, generally through the channel commonly referred to as the "Southway," (See Exhibit 1) 19,165.95 feet to the easterly mean low water line under current geomorphic conditions, having a coordinate value in U.S. Survey Feet of N 2,684,274.37, E 1,072,259.03, being the southerly terminus of the Administratively Determined Boundary (Point B), from which "Monomoy Point Lighthouse," a published mark of the National Geodetic Survey Integrated Database, having a Permanent Identifier of UT0581, which mark is coincident with the present location of said lighthouse, bears S13° 19' 17"W, 16,635.22 feet.

In the event of a conflict between the above coordinates and the description thereof on Exhibit 1, the above coordinates shall control.

Service management of lands and resources extends to the mean low water line of the Atlantic Ocean South of the southerly terminus of the administratively determined boundary (Exhibit 1, Point B).

The mean low water line described above is relative to the Tidal Datum at Chatham, MA, Stage Harbor, Station ID 8447505, Tidal Epoch 1983-2001, established by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service.

The Service will manage lands west of this administratively determined line (Point A to Point B) as part of the Monomoy NWR, and the Town will manage lands east of this line as Town lands. The Town, in accordance with Massachusetts General Law, will continue to manage shellfish resources 1) above mean low water in and around the "Southway" as depicted on Exhibit 1 subject to Refuge regulations and policies; 2) below mean low water in the "Southway" not subject to Refuge regulation and policies, and; 3) east of the administratively determined boundary line (A-B) not

subject to Refuge regulation and policies. This administrative boundary does not supersede existing legislative boundary definitions or land ownership. This boundary will remain in place as the points of physical connection at mean low water fill in with sand and become dry at higher stages of the tide. See Exhibit 1 illustrating the location of the administrative boundary on May 4, 2015 (Point A to Point B).

2. Both Parties hereto agree to render all reasonable assistance to the other, consistent with their respective statutory authorities, whenever necessary to accomplish the goals of this agreement. This agreement is formulated to support and strengthen the protection of natural resources important to both Parties.

3. Both parties hereto agree to negotiate in good faith during the term of this agreement towards a boundary line agreement to formally resolve the boundary between their lands on the eastern shore of Monomoy.

ARTICLE III – Term of Agreement

This agreement shall have a term of 15 years. Prior to the expiration date of this agreement it shall be reviewed to determine whether or not it should be renewed, modified, or terminated. If all Parties agree that the agreement should be renewed and it does not need to be modified, renewal may be accomplished by a simple memorandum of reaffirmation. If a reaffirmation memorandum is signed, the agreement is automatically continued another 15 years.

ARTICLE IV – Key Officials

The Project Leader, Eastern Massachusetts National Wildlife Refuge Complex, 73 Weir Hill Road, Sudbury, MA 01773, 978-443-4661, and the Board of Selectmen of the Town of Chatham, 549 Main Street, Chatham, MA 02633, 508-945-5105, are the key officials for this Memorandum of Understanding. Any required notices hereunder shall be addressed to the "key officials."

ARTICLE V – Effective Date and Termination

This agreement shall become effective when signed by both Parties hereto and shall continue in force for its term unless terminated by mutual agreement or by either party, upon 60 days written notice to the others of its intent to do so.

V – Special Provisions

The following Special Provisions apply to this agreement:

1. Officials Not to Benefit. No member of Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend this Agreement if made with a corporation for its general benefit.

2. Liability. Both Parties agree that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from conduct of its own operations, and the operations of its agents, or employees, under this Agreement, and for any loss, cost, damage, or

expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to this agreement.

3. Anti-Deficiency Act. This Agreement and the obligations of the Service hereunder shall be subject to the availability of funding, and nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations. This Agreement is subject to the laws, regulations, and policies governing the Service whether now in force or hereafter enacted.

4. This MOU represents an accommodation between the parties and, nothing herein may be construed to operate as a waiver or admission with respect to the parties' respective positions on the boundary between federal and municipal lands. This MOU may not be introduced by either party in any administrative or judicial proceeding to determine the legal boundaries between property held by the Town and the United States on the eastern side of Monomoy NWR.

5. Nothing in this MOU may be construed as an agreement, waiver or admission with respect to the parties' continuing dispute over boundaries and rights on the western side of Monomoy NWR.

IN WITNESS WHEREOF, both Parties have caused this instrument to be executed by their respective duly authorized representatives on the day and year indicated below.

Elizabeth A Herkel — 6/9/2015
Project Leader — Date
Eastern Massachusetts National Wildlife Refuge Complex
Region 5, U.S. Fish and Wildlife Service

Jeffrey S. DeGroot — 6/9/15
Chair, Board of Selectmen — Date
Town of Chatham, MA

09-June-2015
Board of Selectmen — Date
Town of Chatham, MA

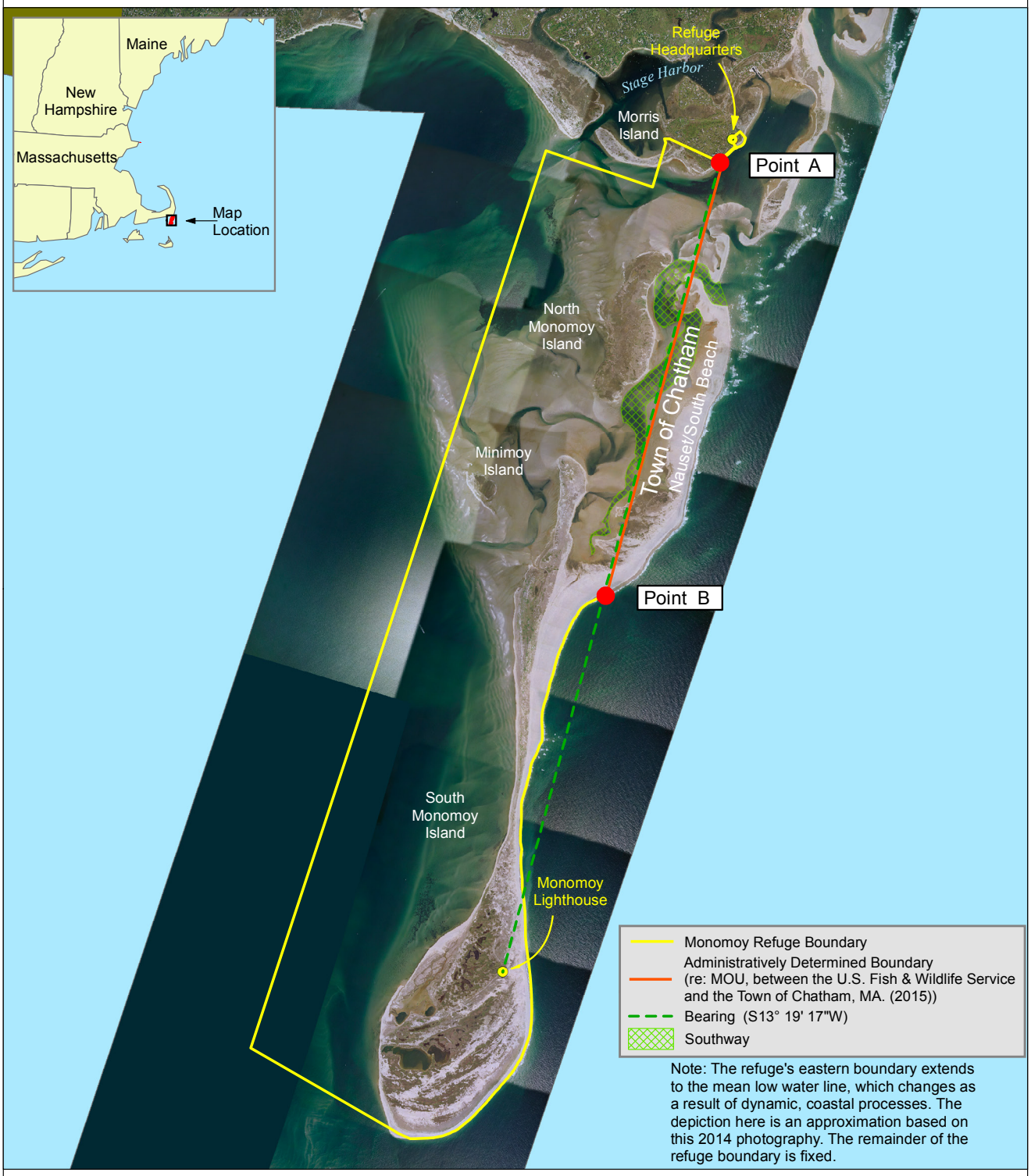
6-9-15
Board of Selectmen — Date
Town of Chatham, MA

Board of Selectmen — Date
Town of Chatham, MA

Board of Selectmen — Date
Town of Chatham, MA

Monomoy National Wildlife Refuge

Exhibit 1 - Memorandum of Understanding between the U.S. Fish & Wildlife Service (USFWS) and the Town of Chatham, Massachusetts (2015)



Sources:
Refuge boundaries from USFWS.
Background photo from
Town of Chatham, Massachusetts (2014)

0 1 2 3 Miles

0 1 2 3 4 Kilometers

1:70,000