

MEMORANDUM OF UNDERSTANDING

Between

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

And

Town of Chatham, Massachusetts

Whereas, the U.S. Fish and Wildlife Service, herein referred to as the Service, finalized the Comprehensive Conservation Plan (CCP) for the Monomoy National Wildlife Refuge (Refuge) on March 18, 2016, and;

Whereas, the Service indicated in the CCP that the limit of Federal ownership, and the Refuge's western boundary, was defined by a series of coordinates specified in the 1944 Declaration of Taking, and that the Federal Government owned all land and waters within the specified western boundary, both above and below Mean Low Water, and;

Whereas, the Service received many comments during the public review process about the Declaration of Taking, including comments from the Town of Chatham, herein referred to as the Town, and from the Commonwealth of Massachusetts, herein referred to as the Commonwealth, that the Service's interpretation of the Refuge's western boundary was incorrect, and that Federal ownership was limited to lands within the bounds of the Declaration of Taking that lie above Mean Low Water, and;

Whereas, the Service and the Town (hereinafter "Parties") recognize that they disagree about the ownership of lands and waters within the bounds of the Declaration of Taking below Mean Low Water ("Disputed Area"), but intend to maintain the management "status quo" as described in the CCP (see below) in the Disputed Area until and unless the disagreement is resolved or both Parties agree to change the status quo, and;

Whereas, the status quo includes continuing to allow the management of recreational and commercial fisheries presently delegated by the Commonwealth of Massachusetts to the Town of Chatham (specifically clams, oysters, and scallops) hereafter referred to as "fisheries", and as noted in the CCP, and;

Whereas, the parties agree to continue to prohibit the harvest of mussels within the Disputed Area, and;

Whereas, there is also a desire of both Parties to continue working together for the purposes of resource conservation and protection, and sustainable management of fisheries within the Disputed Area, and;

Whereas, it is understood by both Parties that the underlying principle of this Memorandum of Understanding (MOU) is that joint management of fishery resources, as noted in the CCP, within the Disputed Area will ensure resource protection, and that no changes to approved fishing techniques or the creation of a Town-managed fishery for a new species and/or new harvest methods, not previously evaluated in the CCP, may occur in the Disputed Area without agreement of both Parties hereto, and;

Whereas, it is understood by both Parties that the Town will continue to implement regulations on current fisheries noted in the CCP;

Therefore, the Parties agree to the following terms, as defined below, for joint fisheries management and exchange of information within the Disputed Area.

ARTICLE I – Authority

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

ARTICLE II – Statement of Joint Management

Both Parties agree that, while this MOU is in effect, commercial and recreational fisheries, specifically clams, oysters, and scallops, will continue to be administered by the Town consistent with past practices and as evaluated in the CCP.

Both parties agree that all activities on lands within the western bounds of the Declaration of Taking which lie *above* Mean Low Water are not part of this MOU.

Both Parties agree to meet annually, and as needed, to share information and discuss joint fisheries management issues.

In the event that additional information is needed to assess the effect of any proposed change(s) to approved fishing techniques or the establishment of a new Town-managed fishery, within the Disputed Area, the Parties agree to initiate discussion within 30 days of transmittal of a proposal, to share relevant available information, and to obtain additional information from subject matter experts. If necessary, the parties will also consider jointly funding research designed to provide information needed to determine whether the proposed changes or new fisheries can proceed.

ARTICLE III – Term of Agreement

This MOU shall be in effect from the date of its execution through the expiration of the CCP or until replaced by future management plans. Prior to the expiration date, the MOU shall be reviewed by the Parties to determine whether or not it should be renewed, modified, or terminated. Renewal may be accomplished by a simple memorandum of reaffirmation, signed by both Parties. This MOU shall terminate as moot if and when the disagreement over ownership of the Disputed Area is resolved.

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 Select Board of the Town of Chatham, 549 Main Street, Chatham, MA 02633, 508-945-5105, are the key officials for purposes of this Memorandum of Understanding. Any required notices hereunder shall be addressed to said, “key officials.”

ARTICLE V – Effective Date and Termination

This MOU shall become effective when signed by both Parties hereto and shall continue in force through its term unless terminated by mutual agreement or as otherwise provided in ARTICLE III, herein.

ARTICLE VI – Special Provisions

1. **Liability.** Each Party agrees to be responsible for its own acts pursuant to this MOU, and the results and/or ramifications thereof, and each respective Party shall not be responsible for the acts of the other party and the results and/or ramifications thereof. Each party therefore agrees that, to the extent, and in the manner, provided for under applicable Federal or State law, 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 MOU, 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 MOU.
2. **Anti-Deficiency Act.** This MOU 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 MOU 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 MOU is subject to the laws, regulations, and policies governing the Service whether now in force or hereafter enacted.

3. 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 ownership of the Disputed Area, or with respect to their legal authority over fisheries within the contested waters within the western boundary Disputed Area, all rights and recourse relative thereto being hereby expressly reserved. This MOU may not be introduced by either Party in any administrative or judicial proceeding to determine the legal western boundary of the Refuge.

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.



3/9/2021

Linh Phu, Project Leader
Eastern Massachusetts NWR Complex
North Atlantic Appalachian Region
U.S. Fish and Wildlife Service

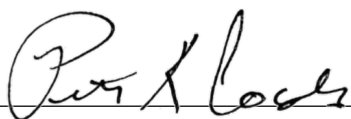
Date



3/9/2021

Chair, Select Board
Town of Chatham

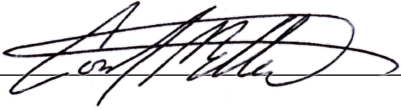
Date



3/9/2021

Member, Select Board
Town of Chatham

Date



Member, Select Board
Town of Chatham

3/9/2021

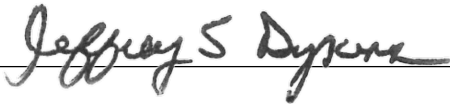
Date



Member, Select Board
Town of Chatham

3/9/2021

Date



Member, Select Board
Town of Chatham

3/9/2021

Date