

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

December 11, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff – Brandon Miller
Subcommittee on Federal Lands (x6-7736)

Mark-Up: **H.R. 1157 (Rep. William Keating)**, To clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge, and for other purposes.
December 12 & 13, 2017; 1324 Longworth House Office Building

Summary of the Bill

H.R. 1157, introduced by Representative William Keating (D-MA), would reverse the Fish and Wildlife Service's (FWS) erroneous claim of jurisdiction over nearly 3,600 acres of submerged lands off the coast of Massachusetts, as outlined in Monomoy National Wildlife Refuge's 2016 Final 15-year Comprehensive Conservation Plan (CCP). The bill would clarify the 1944 civil ruling which FWS is utilizing to justify the boundary expansion, and would set the western boundary of the Refuge back to the mean low-water mark.

Cosponsors

None.

Background

Established in 1944, Monomoy National Wildlife Refuge is a 7,600 acre stretch of wetland and tidal habitat located off the elbow of Cape Cod. Nearly half of the Reserve is designated wilderness, which serves as a habitat for two federally protected migratory bird species.¹ Created from an old Air Force training ground, the Refuge serves as the northernmost boundary of the Nantucket Sound, and is situated in close proximity to historic fishing grounds and popular tourist destinations.²

At its creation in 1944, the western boundary of the Refuge was set at the mean low-water level around the peninsula. This boundary includes a large number of small islands, sand

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

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

bars, and tidal flats exterior to the mainland, but crucially omits the submerged intertidal zones and open ocean between these features and the Reserve.³

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

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

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

Support for the Legislation

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

³ "Comments on Monomoy National Wildlife Refuge..." Exhibit A. Massachusetts Office of the Attorney General to Libby Herland, Eastern Massachusetts National Wildlife Refuge Complex. December 7, 2015.

<http://www.mass.gov/ago/docs/environmental/massag-cmts-on-fws-fnl-ccp-eis-for-monomoy-refuge-15-12-07.pdf>.

⁴U.S. Fish and Wildlife Service, Monomoy National Wildlife Refuge. "Draft Comprehensive Conservation Plan and Environmental Impact Statement Executive Summary." Pages 4-6. April 2014.

https://www.fws.gov/uploadedFiles/Latest%20Executive%20Summary%20for%20Draft%20CCPEIS_27May2014.pdf

⁵ Wood, Tim. "Boundary Change Could Cut Monomoy Refuge Area By Half." Cape Cod Chronicle. July 13, 2016.

<http://www.capecodchronicle.com/en/5128/chatham/337/Boundary-Change-Could-Cut-Monomoy-Refuge-Area-By-Half.htm>.

⁶ Leggett, Doreen. "Attorney general may sue over Monomoy Refuge." Wicked Local Cape Cod. October 06, 2016.

<http://capecod.wickedlocal.com/news/20161009/attorney-general-may-sue-over-monomoy-refuge>.

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

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

The Administration's position is currently unknown.

Anticipated Amendments

- Rep. Rob Bishop (R-UT) – clarifying amendment.

Effect on Current Law (Ramseyer)

None.