

# H. R. 15081

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## IN THE HOUSE OF REPRESENTATIVES

MAY 29, 1974

Mr. STUBBS (for himself, Mr. BOLAND, Mr. BURKE of Massachusetts, Mr. COSTE, Mr. DOWDIE, Mr. DEAN, Mr. HARRINGTON, Mr. MOAKLEY, and Mrs. HECKLER of Massachusetts) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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## A BILL

To establish the Nantucket Sound Islands Trust in the Commonwealth of Massachusetts, to declare certain national policies essential to the preservation and conservation of the lands and waters in the trust area, and for other purposes.

1     *Be it enacted by the Senate and House of Representa-*  
2     *tives of the United States of America in Congress assembled,*

3                                   FINDINGS AND STATEMENTS OF POLICY

4     SECTION 1. The Congress finds and declares—

5                   (a) that the Nantucket Sound Islands in the Com-  
6     monwealth of Massachusetts, known generally as the  
7     Islands of Nantucket, Tuckernuck, Muskeget, Martha's  
8     Vineyard, Noman's Land, and the group of islands

1 known collectively as the Elizabeth Islands, possess  
2 unique natural, scenic, ecological, scientific, cultural,  
3 historic, and other values;

4 (b) that there is a national interest in preserving  
5 and conserving these unique values for the present and  
6 future well-being of the Nation and for present and  
7 future generations;

8 (c) that in some portions of the Nantucket Sound  
9 Islands these unique values are being irretrievably  
10 damaged and lost through ill-planned development, and  
11 that such development threatens heretofore successful  
12 local government and private voluntary preservation  
13 and conservation efforts;

14 (d) that the present State, regional, and local  
15 powers and authorities for controlling land and water  
16 uses are inadequate to preserve and conserve the unique  
17 values of the said islands;

18 (e) that the key to more effective preservation  
19 and conservation of the unique values of the Nantucket  
20 Sound Islands is a program encouraging coordinated  
21 action by Federal and State governments to assist local  
22 governments, in partnership with private individuals,  
23 groups, organizations, and associations, to administer  
24 sound acquisition and management policies regulating  
25 ill-planned development;

1 (f) that such a program can protect the natural  
2 character and cultural and historic heritage of the Nan-  
3 tucket Sound Islands consistent with maintenance of  
4 sound local economies and private property values, thus  
5 preserving and conserving their unique values; and

6 (g) that because expanded access to the said  
7 islands would seriously impair their unique values and  
8 be in contravention to the purposes of this Act, it shall  
9 be national policy that no bridge, causeway, tunnel, or  
10 other direct vehicular access be constructed from the  
11 mainland to the islands.

#### 12 NANTUCKET SOUND ISLANDS TRUST

13 SEC. 2. (a) In order to provide for the preservation  
14 and conservation in the national interest of the unique nat-  
15 ural, scenic, ecological, scientific, cultural, historic, and other  
16 values of the Nantucket Sound Islands, there is established  
17 in the Commonwealth of Massachusetts the Nantucket Sound  
18 Islands Trust (hereinafter referred to as the "trust"), com-  
19 prising the area described in section 4 herein.

20 (b) Guidelines contained in this Act shall be the basis  
21 for programs and policies to preserve and conserve the unique  
22 values of the trust area, and when such programs and  
23 policies have been adopted by the Islands Trust Commissions  
24 as hereinafter provided, they shall be administered by those  
25 commissions. Such policies and programs shall protect the

1 unique values of the trust area through land use controls  
2 designed to encourage wise and prudent stewardship of land  
3 and water resources consistent with maintenance of sound  
4 local economies.

5 NANTUCKET SOUND ISLANDS TRUST COMMISSIONS

6 SEC. 3. (a) There are hereby established the Nan-  
7 tucket Trust Commission, the Martha's Vineyard Trust  
8 Commission, and the Elizabeth Islands Trust Commission, to  
9 be known collectively as the Nantucket Sound Islands Trust  
10 Commissions (hereinafter referred to as the "commissions").

11 (b) NANTUCKET TRUST COMMISSION.—The Nan-  
12 tucket Trust Commission shall have the responsibilities as  
13 established herein over the lauds and waters in Nantucket  
14 County, and shall be composed of seven members serving  
15 three-year staggered terms which shall commence on the  
16 first Monday in April. Members shall be selected as follows:

17 (1) a member appointed by the Secretary of the  
18 Interior (hereinafter referred to as the "Secretary");

19 (2) a member appointed by the Governor of the  
20 Commonwealth of Massachusetts (hereinafter referred  
21 to as the "Governor");

22 (3) two members appointed by the Board of Select-  
23 men of the town of Nantucket within two weeks after  
24 the annual town meeting, one of whom shall be a sea-  
25 sonal resident property owner;

1           (4) two members who shall be qualified voters of  
2     the town and shall be elected at the annual election  
3     which is a part of the annual town meeting; and  
4           (5) a member appointed by the Nantucket Plan-  
5     ning Board within two weeks after the annual town  
6     meeting, who shall be a qualified voter of said town.  
7     Not more than one member of the commission may serve  
8     simultaneously in any elective town or county office.

9           (c) MARTHA'S VINEYARD TRUST COMMISSION.—The  
10    Martha's Vineyard Trust Commission shall have the respon-  
11    sibilities as established herein over the lands and waters in  
12    Dukes County, excepting the Elizabeth Islands, and shall  
13    be composed of twenty-two members serving two-year stag-  
14    gered terms which shall commence on January 1 of each  
15    year. Members shall be selected as follows:

- 16           (1) a member appointed by the Secretary;
- 17           (2) a member appointed by the Governor;
- 18           (3) a member appointed by the board of select-  
19    men of each town on Martha's Vineyard who may be  
20    a selectman, a member of a planning board, or of any  
21    other municipal agency board, department, or office of  
22    that town;

23           (4) a member appointed by the Dukes County  
24    commissioners, who may or may not be a Dukes County  
25    commissioner;

1           (5) nine members elected at large in an island-  
2 wide election, with not less than one member nor more  
3 than two members to be elected from any one town on  
4 Martha's Vineyard; elections held subsequent to the ini-  
5 tial election of members shall be held concurrent with  
6 the biannual elections for State and county offices;

7           (6) four members whose principal residence is not  
8 on Martha's Vineyard but who pay taxes on property  
9 owned by them on Martha's Vineyard, two of such  
10 members to be appointed by the Secretary and two by  
11 the Governor: *Provided*, That such members shall have  
12 voice but no vote in deciding matters before the com-  
13 mission. Only the members selected under paragraphs  
14 (3) and (4) of this subsection may hold elective town  
15 or county office during their terms of office as com-  
16 mission member,

17 In the event that the laws of the Commonwealth of Massa-  
18 chusetts either before or after enactment of this Act provide  
19 for a new regional agency with planning or regulatory  
20 responsibilities for all or a part of trust lands and waters on  
21 Martha's Vineyard, such agency will, upon a majority vote  
22 of its members, serve as the Martha's Vineyard Commission  
23 herein established.

24           (d) ELIZABETH ISLANDS TRUST COMMISSION.—The  
25 Elizabeth Islands Trust Commission shall have the respon-

1 sibilities as established herein over the lands and waters of  
2 the Elizabeth Islands, and shall be composed of seven mem-  
3 bers serving three-year staggered terms which shall com-  
4 mence on the first Monday in April. Members shall be  
5 selected as follows:

6 (1) a member appointed by the Secretary;  
7 (2) a member appointed by the Governor;  
8 (3) a member elected at the annual election which  
9 is a part of the annual town meeting;

10 (4) two members appointed by the board of select-  
11 men to represent the island of Cuttyhunk, one of whom  
12 shall be a permanent resident of Cuttyhunk and one of  
13 whom shall be a seasonal resident of Cuttyhunk; and  
14 (5) two members appointed by the board of select-  
15 men to represent the other islands in the Elizabeth  
16 Islands, one of whom shall be a permanent resident of  
17 one of such other islands, and one of whom shall be a  
18 seasonal resident of one of such other islands.

19 (e) GENERAL PROVISIONS APPLICABLE TO COMMISS-  
20 SION.—

21 (1) Each commission shall have a chairman. The  
22 chairmen of the commissions shall each be elected by the  
23 membership thereof for a term of not to exceed two  
24 years. Any vacancy in the commissions shall be filled  
25 in the same manner in which the original selection was

1 made, except that interim appointments may be made  
2 by the remaining members of the commission.

3 (2) All members of the commission shall be paid  
4 at the rate of \$50 per diem when actually serving. The  
5 Secretary is authorized to pay the expenses reasonably  
6 incurred by the commissions in carrying out their re-  
7 sponsibilities under this Act on the presentation of  
8 vouchers signed by the chairmen.

9 (3) The commissions shall publish and make avail-  
10 able to the Secretary and to the public an annual report  
11 reviewing matters relating to the trust, including acqui-  
12 sition of lands, progress toward accomplishment of the  
13 purposes of this Act, and administration, and shall make  
14 such recommendations thereto as they deem appro-  
15 priate to the Secretary, Governor, and the towns.

16 (4) The commissions may employ such perma-  
17 nent or part-time professional, clerical, or other person-  
18 nel as they find are required, and may engage such  
19 other professional services as they may reasonably re-  
20 quire. Each commission shall have an office and a mail-  
21 ing address at a central location in the area of its juris-  
22 diction, and such office shall be where its ordinary busi-  
23 ness is conducted and its maps and records kept.

24 (5) The commissions shall each have the authority  
25 to appoint commission advisory committees in their own



1 discretion. Each commission shall designate three mem-  
2 bers to serve on a coordinating committee with members  
3 of the other commissions to treat matters of common  
4 concern.

5 (6) At its first meeting each commission shall  
6 adopt bylaws and rules of procedure, which may include  
7 dates of meetings, public distribution of information re-  
8 lating to commission activities, disclosure of ownership  
9 interest in trust lands by commission members, and any  
10 other matters normal to the operation of such bodies  
11 and consistent with the purposes of this Act. The com-  
12 missions shall comply with the provisions of the Massa-  
13 chusetts open meetings law, and they shall be  
14 deemed to be "boards" within the meaning of said law.  
15 In exercising their management and administrative respon-  
16 sibilities under this Act the commissions shall not adopt  
17 regulations which are less restrictive than regulations in force  
18 and effect in the Commonwealth of Massachusetts or the re-  
19 spective towns within the trust area.

20 TRUST AREA

21 SEC. 4. (a) The area comprising the trust shall encom-  
22 pass the following lands and waters in the Commonwealth of  
23 Massachusetts:

24 (1) Nantucket Island, and the island to westward

1 called variously Smith's Island or Esther Island;  
2 (2) Tuckernuck Island;  
3 (3) Muskeget Island;  
4 (4) Martha's Vineyard Island, and various islands  
5 appurtenant to it;  
6 (5) Noman's Land Island;  
7 (6) the Elizabeth Islands, including but not limited  
8 to the islands of Cuttyhunk, Nonamasset, Naushon,  
9 Pasque, Nashawena, Uncatena, Penikese, and the  
10 Weepeckets; and  
11 (7) any other lands and waters in Nantucket  
12 County and Dukes County in the Commonwealth of  
13 Massachusetts.  
14 (b) The area included in the trust may be changed only  
15 by an amendment to this Act, and only after petition therefor  
16 by the commissions with the concurrence of—  
17 (1) the town or towns affected expressed by vote  
18 of a town meeting or meetings;  
19 (2) the Governor; and  
20 (3) the Secretary.  
21 (c) NOMAN'S LAND.—The lands and waters of  
22 Noman's Land Island are hereby declared part of the Na-  
23 tional Wildlife Refuge System and the Secretary is directed  
24 to prepare and execute forthwith the necessary documenta-  
25 tion to give effect to such declaration. The Secretary and the

1 Secretary of Defense shall, within twelve months after the  
2 date of enactment of this Act, survey Noman's Land Island  
3 and the surrounding waters for unexploded military ordnance  
4 and render such ordnance, wherever it may be found, harm-  
5 less; and thereafter, Noman's Land Island shall be adminis-  
6 tered pursuant to the National Wildlife Refuge System  
7 Administration Act (16 U.S.C. 668dd).

8 CLASSIFICATION OF TRUST LANDS

9 SEC. 5. (a) Lands and waters within the trust area shall  
10 all be assigned to the classifications established in subsection  
11 (b) of this section. Upon the date of enactment of this Act,  
12 such lands and waters shall be assigned to classifications as  
13 set forth in section 6 and section 17 of this Act.

14 (b) CLASSIFICATIONS OF TRUST LANDS.—

15 (1) CLASS A: OPEN LANDS.—Lands and waters so  
16 classified shall remain forever free of improvements, as de-  
17 fined hereinafter, of any kind except as provided herein. If  
18 improvements exist on any lands so classified on the date  
19 of enactment of this Act, then there shall be permitted a  
20 right of use and occupancy to the legal or beneficial owner  
21 or owners thereof, or their successors or assigns, for so long  
22 as such successors or assign are members of the same family  
23 or families as the legal and beneficial owner or owners. If,  
24 however, the legal or beneficial owner or owners seek to  
25 sell or otherwise convey the improvement with or without

1 the land thereunder to others than legal or beneficial owners  
2 or members of the same family or families as the legal or  
3 beneficial owner or owners, then the commissions and the  
4 Secretary shall have an exclusive option to purchase said  
5 improvement with or without the land thereunder at full  
6 and fair market value, which shall be promptly determined,  
7 and such option shall exist for sixty days after such deter-  
8 mination. If such option is exercised, then the improvement  
9 may be moved or removed; if such option is not exercised,  
10 then the sale or other conveyance may proceed in the ordi-  
11 nary course. For the purposes of this paragraph, family shall  
12 mean siblings of a legal or beneficial owner or owners, lineal  
13 descendants natural or adopted, or relatives by marriage.  
14 Any change in access to and/or use of lands classified as  
15 "Class A: Open Lands" must first be approved by the  
16 commissions and the Secretary, except that uses shall be in  
17 a manner not less restrictive than permitted by general pur-  
18 pose local ordinances, bylaws, and regulations from time to  
19 time in effect. Owners of improvements may make neces-  
20 sary repairs, and may make replacements or extensions  
21 thereto which shall not alter the basic character of the lands,  
22 with the approval of the commissions and the applicable  
23 local government agency.

24 (2) CLASS B: RESOURCE MANAGEMENT LANDS.—

25 Lands and waters so classified shall not be developed beyond

1 their present intensity of use, except as provided in this  
2 paragraph. Owners of such lands, or of improvements  
3 thereon, or of both, may transfer, sell, assign, or demise  
4 such land or improvements, or both. Reasonable replacement  
5 and extension of improvements shall be permitted, under  
6 regulations issued by the commissions. Development on lands  
7 so classified beyond their present intensity of use shall be  
8 permitted only under regulations consistent with the follow-  
9 ing guidelines:

10 (i) the overall intensity must take into account the  
11 capability of the land for such development, which shall  
12 include consideration of existing land use, intensity of  
13 uses in the immediate vicinity, areawide water quality  
14 and quantity, soil conditions, roadway utilization, and  
15 visual and topographic conditions;

16 (ii) the overall intensity guidelines shall not be  
17 translated into uniform lot sizes and applied to the land  
18 so classified, but shall be applied with flexibility to  
19 encourage sound land use planning respecting the vary-  
20 ing natural values of the different geographical areas of  
21 land; and

22 (iii) the area upon which intensity is calculated  
23 shall not include bodies of water or wetlands classified  
24 as such under Massachusetts Wetlands Protection Act  
25 (131 M.G.L. 40).

1 Regulations consistent with these guidelines shall be issued  
2 by each commission within three months, and shall become  
3 effective only after a public hearing or hearings thereon to  
4 be held within thirty days of issuance and after approval by  
5 the Governor and the Secretary. After such regulations have  
6 become effective, the provisions of section 16 herein as they  
7 apply to the lands covered by the regulations shall no longer  
8 apply; and construction of improvements on such lands shall  
9 thereafter be permitted so long as the appropriate commis-  
10 sion has issued a permit therefor indicating satisfaction of  
11 the conditions of this paragraph.

12 (3) CLASS C: TOWN LANDS.—Lands and waters so  
13 classified shall remain under the jurisdiction of the town in  
14 which located for purposes of planning and zoning ordinances  
15 and other land use regulations: *Provided*, That such planning  
16 and zoning ordinances and other land use regulations shall  
17 be reviewed and commented upon by the commissions and  
18 the Secretary as to consistency with the purposes of this Act  
19 prior to the adoption of such ordinances or regulations or  
20 amendments thereto: *And provided further*, That the com-  
21 missions may review and comment upon variances proposed  
22 to be granted pursuant to any local zoning ordinance.

23 ASSIGNMENT OF TRUST LANDS

24 SEC. 6. (a) Assignment of lands and waters within  
25 the trust area to the classifications established by section 5

1 of this Act shall be as depicted on official Nantucket County  
2 and Dukes County Nantucket Sound Island Trust maps on  
3 file and available for public inspection in—

4 (1) the offices of the selectmen of the towns within  
5 the trust area;

6 (2) the offices of the commissions;

7 (3) the offices of the Massachusetts Secretary of  
8 Communities and Development; and

9 (4) the offices of the National Park Service, De-  
10 partment of the Interior.

11 (b) Changes to the maps indicating changes in such  
12 assignments to classifications shall be made after the date  
13 of enactment of this Act as follows—

14 (1) minor corrective adjustments in the location  
15 of boundary lines due to technical or clerical errors may  
16 be made within one hundred and eighty days after the  
17 first official meeting of a commission by vote of such  
18 commission and with the concurrence of the board of  
19 selectmen of the town affected;

20 (2) other changes in the location of boundary lines  
21 between classifications may be made by a commission  
22 acting pursuant to an affirmative vote thereon by a  
23 town meeting or meetings of the town or towns affected,  
24 with the concurrence of the Governor and the Secre-  
25 tary: *Provided*, That should either the Governor or the

1 Secretary, or both, not concur, then such change shall  
2 become effective upon a subsequent two-thirds vote by  
3 the commission: *And provided further*, That no vote  
4 upon a proposed change shall be made at a town  
5 meeting until after a public hearing on such change  
6 has been held.

7 (c) Any changes to the maps changing the location of  
8 boundary lines between classifications shall be recorded on  
9 the official maps within seven days after such changes become  
10 effective, by the officials responsible for posting said maps.

#### 11 ACQUISITION OF LANDS

12 SEC. 7. (a) GENERAL AUTHORITY.—(1) Within the  
13 area of the trust, the Secretary is authorized to acquire lands  
14 and waters and interests therein at fair market value for the  
15 purpose of this Act (i) by donation or transfer from any  
16 Federal agency, (ii) by purchase with donated or appro-  
17 priated funds or transfer funds, or (iii) by exchange: *Pro-*  
18 *vided*, That after the date of enactment of this Act, the Sec-  
19 retary may not purchase any lands or waters or interests  
20 therein without being authorized to do so by the majority  
21 affirmative vote thereon by the commission within whose  
22 jurisdiction the lands or waters or interests therein are lo-  
23 cated. In exercising his authority to acquire property under  
24 the terms of this Act, the Secretary shall conform to the  
25 requirements of the Uniform Relocation Assistance and Real



1 Property Acquisition Policies Act (42 U.S.C. 4601). Any  
2 voting member of a commission may recommend an area for  
3 purchase, and at a regular meeting of the commission shall  
4 be able to obtain a record vote on such recommendation.

5 (2) Any lands or waters or interests therein, owned  
6 by the Commonwealth of Massachusetts or any political sub-  
7 division thereof, may be acquired only by donation. Not-  
8 withstanding any other provision of law, any property  
9 owned by the United States of America on the date of en-  
10 actment of this Act, located within the trust area may, with  
11 the concurrence of the agency having custody thereof, be  
12 transferred without consideration to the administrative juris-  
13 diction of the Secretary for use by him in carrying out this  
14 Act pursuant to its provisions.

15 (3) In exercising authority to acquire property under  
16 the terms of this Act, the commissions and the Secretary  
17 shall give immediate and special consideration to any offer  
18 made by an owner or owners of unimproved Class A: Open  
19 Lands or Class B: Resource Management Lands within the  
20 trust area to sell such lands to the Secretary. An owner or  
21 owners may notify the commissions and the Secretary that  
22 the continued ownership of those lands would result in hard-  
23 ship to such owner or owners, and the commissions shall  
24 immediately consider such evidence; and the Secretary

1 shall, within six months following the majority affirmative  
2 vote thereon by the appropriate commission, and subject  
3 to the then current availability of funds, purchase the lands  
4 offered at the fair market value prior to April 11, 1972.

5 (4) In exercising his authority to acquire property by  
6 exchange, the Secretary may accept title to any non-Federal  
7 property located within such area and upon the majority  
8 affirmative vote of the appropriate commission, may con-  
9 vey to the grantor of such property and federally owned  
10 property held as in trust by the commission and the Secre-  
11 tary within such area. The properties so exchanged shall be  
12 approximately equal in fair market value: *Provided*, That  
13 the Secretary may accept cash from or pay cash to the  
14 grantor in such an exchange in order to equalize the values  
15 of the properties exchanged.

16 (b) TRANSFER TO COMMISSIONS.—(1) Upon acqui-  
17 sition by him of any lands or waters or interests therein, the  
18 Secretary shall concurrently or as soon as is practicable  
19 thereafter transfer without consideration an undivided one-  
20 half interest in such acquisition to the commission within  
21 whose jurisdiction the lands or waters or interests therein  
22 are located.

23 (2) Thereafter, such lands or waters or interests shall  
24 be held jointly by the appropriate commission and the Secre-  
25 tary as in a public trust.

1           (3) The lands or waters or interests therein so held as  
2 in trust shall be administered as described in this Act, and the  
3 Secretary and the commissions may exchange any such lands  
4 or interests so held as in trust pursuant to the provisions of  
5 this section.

6           (c) TAXATION.—(1) Nothing in this Act shall be con-  
7 strued to exempt any real property or interest therein held  
8 by the commissions and the Secretary under this Act from  
9 taxation by the Commonwealth of Massachusetts or any  
10 political subdivision thereof to the same extent, according to  
11 its value, as other real property is taxed.

12           (2) Nothing contained in this Act shall be construed as  
13 prohibiting any governmental jurisdiction in the Common-  
14 wealth of Massachusetts from assessing taxes upon any inter-  
15 est in real estate retained under the provisions of this Act to  
16 the nonexempt owner or owners of such interest, nor from  
17 establishing and collecting fees in lieu of taxes upon any non-  
18 governmental use of lands acquired pursuant to this Act.

#### 19           LIMITATIONS AND DEFINITIONS

20           SEC. 8. Not later than one hundred and eighty days  
21 after the enactment of this Act, the commissions and the  
22 Secretary shall notify an owner or owners of Class B: Re-  
23 source Management Lands, other than property designated  
24 for fee acquisition, of the minimum regulations on use and  
25 development of such property under which such property

1 may be retained in a manner compatible with the purpose  
2 for which the trust was established. If the owner or owners  
3 of any such lands agree to the use and development of the  
4 property in accordance with such regulations, the Secretary  
5 may not acquire, without the consent of such owner or  
6 owners, such property or interests therein for so long as the  
7 property affected is used in accordance with such regula-  
8 tions, unless the commissions determine that such prop-  
9 erty, or any part thereof, is needed for other purposes as  
10 described in this Act. Such lands shall be included in the  
11 area upon which intensity is calculated for purposes of sec-  
12 tion 5(b) (2) herein.

13 (b) With respect to that property which the Secretary  
14 is authorized by the commissions to acquire without the con-  
15 sent of the owner under the terms of this Act, the Secretary  
16 shall initiate no proceedings therefor until after he has made  
17 every reasonable effort to acquire such property or interest  
18 therein by negotiation and purchase at the fair market value  
19 prior to April 11, 1972. The certificate of the determina-  
20 tion by the Secretary or his designated representative  
21 (which may be the commissions) that there has been com-  
22 pliance with the provisions of this paragraph shall be prima  
23 facie evidence of such compliance: *Provided*, That nothing  
24 in this Act shall be construed to prohibit the use of eminent

1 domain as a means of acquiring a clear and marketable  
2 title, free of any and all encumbrances.

3 (c) The commissions and the Secretary shall furnish to  
4 any interested person requesting the same a certificate indi-  
5 cating, with respect to any property which the Secretary  
6 has been prohibited from acquiring without the consent of  
7 the owner in accordance with the provisions of this Act, that  
8 such authority is prohibited and the reasons therefor.

9 (d) DEFINITIONS.—As used in this Act, the term “im-  
10 provement” means a detached, residential one-family dwell-  
11 ing, construction of which was begun before April 11, 1972,  
12 or such a dwelling for which a certificate of need was voted  
13 pursuant to section 16 (a) herein, together with—

14 (1) so much of the land on which the dwelling is  
15 situated, the said land being in the same ownership as  
16 the dwelling, as the commissions and the Secretary shall  
17 designate to be reasonably necessary for the enjoyment  
18 of the dwelling and land for noncommercial residential  
19 or agricultural purposes, and

20 (2) any structures accessory to the dwelling which  
21 are situated on such land.

22 The amount of the land subject to such designation in Class  
23 A: Open Lands and Class B: Resource Management Lands  
24 shall in every case be at least three acres in area, or all of  
25 such lesser acreage as may be held in the same ownership as

1 the dwelling. In making such designations, the commissions  
2 and the Secretary shall take into account the manner of non-  
3 commercial residential use in which the dwelling and land  
4 have customarily been enjoyed: *Provided*, That the commis-  
5 sions and the Secretary may exclude from the land so desig-  
6 nated any beach lands, together with so much of the land ad-  
7 joining such beach lands, as they may deem necessary for  
8 public access thereto. If they make such exclusion, an appro-  
9 priate buffer zone shall be provided between any dwelling  
10 and the public access or beach.

11 (e) As used in this Act, the terms "development" and  
12 "developed" shall mean the construction of an improvement.

13 (f) Should a commercial use in existence prior to April  
14 11, 1972, be included as part of such a dwelling, it shall be  
15 considered a nonconforming use.

16 (g) The commissions shall establish regulations consist-  
17 cut with the purpose of this Act governing the status of boat-  
18 houses, camps, piers, and other nonresidential structures.

#### 19 EROSION CONTROL AND POLLUTION

20 Sec. 9. (a) The commissions, together with the Sec-  
21 retary, the Governor, and the Secretary of the Army, shall  
22 cooperate in a study and shall formulate plans for beach  
23 and shoreline erosion control and restoration projects on  
24 the Nantucket Sound Islands, especially in those areas,  
25 most immediately threatened. Any protective works, in-

1 eluding water resource developments and navigation im-  
2 provements, for such control undertaken by the Department  
3 of the Army shall be carried out only in accordance with  
4 a plan that is mutually acceptable to the commissions, the  
5 Governor, and the Secretary, and is consistent with both  
6 the purposes of this Act and the purposes of existing statutes  
7 dealing with water and related resource development.

8 (b) The commissions together with the Governor and  
9 the Secretary shall undertake a program of dune and head-  
10 land erosion control, beginning with those dunes and head-  
11 lands most immediately threatened and in need thereof.  
12 Such dune and headland erosion may be that caused by  
13 natural wind and water action, by motor vehicle passage, or  
14 by other factors, and such programs may have the purposes  
15 of restoring past and present damage and of preventing  
16 further damage.

17 (c) The commissions, together with the Governor and  
18 the Secretary, shall cooperate with the appropriate Federal,  
19 State, and local agencies to provide safeguards against pol-  
20 lution of the waters in and around trust lands. Such safe-  
21 guards shall include an immediate survey of the quality of  
22 ground water conditions in all or any part of the area of  
23 the trust, and the necessary funds therefor may be drawn  
24 from the appropriations authorized by section 20 herein.

## BEACHES

1           SEC. 10. (a) All beach lands within the trust area, with  
2     the exception of beach lands classified as "Class C: Town  
3     Lands", shall be classified as "Class A: Open Lands", not-  
4     withstanding that such beach lands may be classified as  
5     "Class B: Resource Management Lands" by other provisions  
6     of this Act.  
7

8           (b) As used in this Act, the term "beach lands" shall  
9     mean the wet and dry sand area lying between the mean  
10    low water line and the base of the headlands or the visible  
11    line of upland vegetation, whichever shall be closed to the  
12    mean low water line, and shall include dunes, rock beaches,  
13    wetlands, marshes, and estuarine areas adjoining tidal waters.

14          (c) There is herewith established a nonvehicular right  
15    of passage—

16           (1) in Class A: Open Lands, at the high water  
17    line of sufficient width for a person to pass and repass;  
18    and

19           (2) in Class C: Town Lands, at the high water  
20    line of sufficient width for a person to pass and repass,  
21    but only in those specified areas which each commission  
22    shall, within six months after its first meeting, establish  
23    as right of passage beach lands.

24    The rights of owners of residential improvements on beach  
25    lands as of April 11, 1972, shall be respected; and the com-



1 missions shall not permit the right of passage created in  
2 paragraphs (1) and (2) of this subsection where such  
3 right would interfere with the use and enjoyment of such  
4 improvements by the owners thereof.

5 (d) Upon agreement therefor by the commissions and  
6 the Secretary, the Secretary may acquire in any manner au-  
7 thorized by this Act lands and waters and interests therein in  
8 the trust area for the purposes of—

9 (1) establishing public beaches open to public use  
10 and enjoyment; and

11 (2) establishing access to such beaches.

12 Such public beaches may or may not be enlargements of  
13 existing public beaches, but in any case shall to as great an  
14 extent as possible be located so as to be consistent with the  
15 conservation and preservation purposes of this Act. Access  
16 to such public beaches shall respect the rights of private prop-  
17 erty owners in the immediate vicinity, and shall be designed  
18 to protect the natural features of the land. The commissions  
19 shall establish limitations on the number of vehicles to be  
20 parked at public beach areas. Within twelve months after its  
21 first meeting, the Martha's Vineyard Commission shall design-  
22 ate two new public beaches on the southern or southwestern  
23 shoreline of Martha's Vineyard; neither of such new areas  
24 shall, however, be enlargements of existing beaches open to  
25 public use.

1 (c) Six months after the first meeting of each commis-  
2 sion, motor vehicles, open fires, and camping shall be pro-  
3 hibited from beach lands within the area of its jurisdiction:  
4 *Provided*, That each commission may designate beach land  
5 areas open to such uses, and shall adopt regulations speci-  
6 fying the conditions of use within six months after its first  
7 meeting: *And provided further*, That until such regulations  
8 are adopted use of beach lands shall be as determined by  
9 existing State and local laws.

10 (f) The commission shall, within thirty days, develop  
11 plans for the protection and litter prevention on beach areas.  
12 These plans will be implemented by funds as provided in  
13 section 20 of this Act.

#### 14 ADMINISTRATIVE PROVISIONS

15 Sec. 11. (a) As to the responsibilities assigned to the  
16 Secretary by this Act, the same shall be administered in  
17 accordance with the provisions of this Act and the Act of  
18 August 25, 1916 (16 U.S.C. 1 et seq.), as amended and  
19 supplemented, except that the Secretary may utilize any  
20 other statutory authority available to him for the conserva-  
21 tion, preservation and management of natural resources to  
22 the extent he finds such authority will further the purposes  
23 of this Act.

24 (b) The Secretary is authorized to provide technical  
25 assistance to the commissions and the towns and regional

1 governmental entities, and to provide the same to private  
2 organizations and associations, for the purposes of establish-  
3 ing sound land use planning and zoning bylaws and other  
4 ordinances and regulations to carry out the purposes of this  
5 Act. Such assistance may include payments for professional  
6 services.

7 TRANSPORTATION AND GENERAL USES

8 SEC. 12. (a) The commissions, together with the Gov-  
9 ernor and the Secretary, shall make an immediate survey of  
10 public and private water and air access to lands in the trust  
11 area, including that by the Woods Hole, Martha's Vineyard,  
12 and Nantucket Steamship Authority, and by other public and  
13 private water and air carriers, and shall make such recom-  
14 mendations to the appropriate body or bodies for legislative  
15 or administrative action as they deem consistent with the  
16 preservation and conservation purposes of this Act. Such rec-  
17 ommendations shall include specific measures to limit the  
18 number of motor vehicles and passengers such carriers might  
19 otherwise transport to the Nantucket Sound Islands. There-  
20 after, regular and frequent surveys of such access shall be  
21 conducted, and such recommendations shall be made as are  
22 deemed appropriate to maintain the unique values of lands  
23 and waters in the trust area. Such recommendations may in-  
24 clude in-aisland transportation programs and policies.

25 (b) No development or plan for the convenience of visi-

1 tors to trust lands or waters shall be undertaken which would  
2 be incompatible with the preservation and conservation of  
3 the unique values thereof: *Provided*, That the commissions,  
4 the Governor, and the Secretary may jointly provide for the  
5 public enjoyment and understanding of the value of the  
6 Nantucket Sound Islands by establishing such public trans-  
7 portation systems, trails, bicycle paths, observation points,  
8 and exhibits, and by providing such services as they may  
9 deem desirable for such public enjoyment and understanding,  
10 consistent with the preservation and conservation of such  
11 values.

12 (c) In any such provision for public enjoyment or un-  
13 derstanding, the commissions, the Governor and the Secre-  
14 tary shall not unreasonably diminish for its owners or occu-  
15 pants the value or enjoyment of any improved property with-  
16 in the trust lands.

17 PRIVATE NONPROFIT ORGANIZATIONS

18 SEC. 13. (a) In order to encourage and provide an  
19 opportunity for the establishment of natural and scenic  
20 preserves by voluntary private action of owners of lands and  
21 waters in the trust area, and notwithstanding any provision  
22 in this Act or in any other provision of law, the authority  
23 established by this Act to acquire lands or interests therein  
24 without the consent of the owner shall be suspended when—

25 (i) lands or waters or interests therein which are

1 designated as being presently or from time to time  
2 needed to carry out the purposes of this Act are irrevocably  
3 cally in the ownership of private nonprofit conserva-  
4 tion, preservation, historic, or other organizations or  
5 associations, and the restrictions against the development  
6 of such lands meet the standards referred to herein; or

7 (ii) lands or waters or interests therein which are  
8 designated as being presently or from time to time  
9 needed to carry out the purposes of this Act are, to the  
10 satisfaction of the commissions, the Governor, and the  
11 Secretary and within twenty-four months after enact-  
12 ment of this Act, irrevocably committed to be sold, do-  
13 nated, demised, or otherwise transferred to such orga-  
14 nizations or associations.

15 (b) Section 19 of this Act shall be suspended with  
16 respect to those lands and waters and interests to which sub-  
17 section (a) of this section applies; and section 10 of this Act  
18 shall be similarly suspended whenever in the judgment of the  
19 commissions its applicability will contravene the purposes  
20 of this Act or any provision of law of the Commonwealth of  
21 Massachusetts.

22 (c) The provisions of this section shall be applied only  
23 to those organizations and associations which are determined  
24 to be bona fide and general purpose.

25 (d) All of the provisions of this Act, except sections 1,

1 2. and 3. shall be suspended with respect to any lands, waters,  
2 or interests therein so long as such lands, waters, or interests  
3 therein are within twenty-four months of the enactment  
4 of this Act irrevocably subject to a conservation restriction  
5 created, approved, and recorded under sections 31 through  
6 33 of chapter 184 of the General Laws of Massachusetts,  
7 which forbids, or in the judgment of the commissions and  
8 the Secretary, as evidenced by their written approval of  
9 such restriction, substantially limits all or a majority of the  
10 land uses referred to in clauses (a) through (g) of the first  
11 paragraph of said section 31. Such conservation restriction  
12 shall be irrevocable unless notice of the intention to revoke  
13 is given to the commissions and the Secretary not less than  
14 twelve months prior to the proposed effective date of the  
15 revocation or unless the lands, waters, or interests therein  
16 are in whole or in part made subject to a taking by eminent  
17 domain.

#### 18 COMPENSABLE LAND USE REGULATIONS

19 Sec. 14. The Secretary, after consultation with the com-  
20 missions and the Governor and within six months after the  
21 date of enactment of this Act, shall issue proposed com-  
22 pensable land use regulations applicable to the trust, and  
23 after due notice shall cause public hearings to be held on  
24 such regulations. Thereafter, he shall issue compensable land  
25 use regulations applicable to the trust which shall—

1 (a) establish the manner in which the fair market  
2 value of lands or waters affected by the classifications  
3 established in sections 5(b) (1) and 5(b) (2) and by  
4 the right of passage in section 10(c) shall be calcu-  
5 lated where such classifications have caused a decrease  
6 in such value, and where the provisions of section  
7 7(a) (3), 8(a), or 13(a) do not apply; and  
8 (b) set forth the manner by which an owner or  
9 owners may pursue a right of action in any court of  
10 competent jurisdiction.

11 NEW EMPLOYMENT OPPORTUNITIES

12 SEC. 15. (a) The commissions are authorized and di-  
13 rected to examine the lands and waters and other resources  
14 of the trust area forthwith for the purposes of identifying and  
15 developing new employment opportunities of any kind for  
16 residents of the trust area appropriate to the purposes of this  
17 Act.

18 (b) As part of such examination, the commissions shall  
19 survey the lands and waters of the trust area for opportunities  
20 to experiment with and to encourage the development of  
21 aquaculture of all kinds, including but not limited to fish and  
22 shellfish and other associated activities.

23 (c) As soon as practicable but in no case later than six  
24 months after the date of enactment of this Act, each commis-  
25 sion shall prepare a plan for the development of new employ-

1 ment opportunities which shall be adopted or amended only  
2 after public hearings have been held on the proposed plan  
3 or amendment. Such plan shall include—

4 (1) an identification of industries which should be  
5 established or enlarged to provide employment oppor-  
6 tunities and of any training or retraining or public em-  
7 ployment programs which should be established to fur-  
8 ther the goal of a sound local economy and the other pur-  
9 poses of this Act; and

10 (2) a schedule of specific activities to be under-  
11 taken to implement the goals included in the plan.

12 (d) The Secretary of the Interior, the Secretary of  
13 Commerce, and the Secretary of Labor are hereby author-  
14 ized and directed to cooperate with the commissions in the  
15 implementation of the plans adopted in accordance with sub-  
16 section (c) and in their other activities pursuant to the pro-  
17 visions of this section, and to provide technical assistance at  
18 the request of a commission, and are authorized to make  
19 available to the commissions for the purposes of this Act any  
20 funds appropriated to their respective departments under the  
21 authority of this or any other law without restriction.

22 (e) Any other provision of law to the contrary notwith-  
23 standing, the Nantucket Trust Commission, the Martha's  
24 Vineyard Trust Commission, and the Elizabeth Islands Trust  
25 Commission are hereby declared to be eligible applicants



1 for any grant program administered by the Department of  
2 the Interior, the Department of Commerce, or the Depart-  
3 ment of Labor, for which applicants other than States are  
4 eligible; and the commissions may either carry out the activi-  
5 ties under such grants themselves or arrange for activities  
6 under such grants to be carried out by other entities in the  
7 trust area.

8 (f) The commissions shall to as great an extent as pos-  
9 sible in the development of any regulations pursuant to this  
10 Act encourage the maintenance and commencement of agri-  
11 cultural uses of lands within the trust area.

12 FREEZE DATE

13 SEC. 16. (a) Beginning on April 11, 1972, no construc-  
14 tion of any improvement, whether for residential, commer-  
15 cial, industrial, or any other purpose, shall be permitted to  
16 commence on any lands classified herein as "Class A: Open  
17 Lands". Construction of improvements shall be permitted on  
18 any lands classified as "Class C: Town Lands", only upon  
19 the granting of specific approval therefor by the board of se-  
20 lectmen of the particular town, after a showing of the need  
21 therefor. Construction of improvements shall be permitted on  
22 any lands classified as "Class B: Resource Management  
23 Lands", only upon the granting of specific approval therefor  
24 by the board of selectmen of the particular town, after a show-  
25 ing of the need therefor. Approvals granted by a vote of

1 board of selectmen pursuant to a finding of need therefor and  
2 pursuant to a statement of justification therefor, shall subse-  
3 quently be deemed valid by the commissions, the Governor,  
4 and the Secretary.

5 (b) In the case of any hardship caused by the provisions  
6 of subsection (a) of this section, the commissions and the  
7 Secretary shall, on the basis of rules and regulations issued  
8 by the commissions and the Secretary, make a valuation  
9 thereof and shall award fair recompense to any individual  
10 for whom hardship is demonstrated.

#### 11 INDIAN COMMON LANDS

12 **SEC. 17. (a)** The Martha's Vineyard Commission is  
13 directed to establish forthwith an orderly program for de-  
14 termining the precise extent of Indian Common Lands on  
15 Martha's Vineyard. The program shall include a survey or  
16 surveys, and such other research or fieldwork as may be  
17 necessary to establish the boundaries of the Common Lands  
18 belonging to the Wampanoag Tribe of Indians and known  
19 generally as the Cranberry Bogs, the Clay Cliffs, and Her-  
20 ring Creek. The commission is further directed to deter-  
21 mine the location, boundaries, and owners of record title of  
22 the monuments and burial grounds of the Wampanoag Tribe  
23 of Indians on Martha's Vineyard. Funds to carry out the  
24 program may be drawn from those authorized to be appro-  
25 priated by section 20.

1 (b) Upon completion of the program described in sub-  
2 section (a) of this section, lands determined to be Indian  
3 Common Lands shall be acknowledged as an Indian reser-  
4 vation owned by the Wampanoag Tribe of Indians, pur-  
5 suant to confirmed Indian title and entitled to the full pro-  
6 tection of Federal laws pertaining to Indian lands: *Provided*,  
7 That the provisions of section 5 (b) (2) of this Act shall  
8 apply to such Indian reservation land, subject however to  
9 the sole administration and control of the Wampanoag Tribal  
10 Council of Gay Head. Lands determined to be Indian monu-  
11 ments or burial grounds which are found to be in private  
12 ownership shall be classified as "Class A: Open Lands",  
13 and such lands found to be in public ownership shall be  
14 transferred to the ownership of the Wampanoag Tribe of  
15 Indians and classified as "Class A: Open Lands".

16 (c) Nothing contained in this Act shall be construed  
17 to prejudice or limit any claims which the Wampanoag  
18 Tribe of Indians, or any member of that tribe, may have for  
19 past violations of their rights as Indians, including but not  
20 limited to claims arising under the Indian Trade and Inter-  
21 course Act (25 U.S.C. 177).

22 RESIDENT HOMESITES

23 SEC. 18. (a) Upon petition therefor by any town, acting  
24 pursuant to a vote of a town meeting, the appropriate com-  
25 mission shall, with the advice and assistance of the Governor

1 and the Secretary and the Secretary of Housing and Urban  
2 Development, prepare a resident homesite plan.

3 (b) A resident homesite plan shall—

4 (1) state the reasons for the establishment of the  
5 plan;

6 (2) delineate the land area or land areas in the  
7 town intended to be utilized for carrying out the plan;

8 (3) define the criteria by which town residents  
9 may avail themselves of the plan;

10 (4) project the total number of sites envisioned by  
11 the plan; and

12 (5) establish the fair purchase value of such sites for  
13 qualified residents.

14 (c) Upon approval of a resident homesite plan by the  
15 appropriate town, and by the Governor and the Secretary,  
16 the Secretary is authorized to acquire for fair market value  
17 the land area or land areas specified in the plan by any man-  
18 ner authorized by this Act. The Secretary and the appro-  
19 priate commission shall thereafter make resident homesites  
20 available for sale to qualified residents at the fair purchase  
21 value established in the plan. The difference between the fair  
22 market value and the fair purchase value shall be borne by  
23 the Secretary out of funds appropriated pursuant to section  
24 20 of this Act.

25 (d) Any resident homesite sold under the authority of

1 this section shall be subject to a right of first refusal in the  
2 Secretary and the appropriate commission.

3 (e) For the purposes of this section, the term “qualified  
4 residents” shall mean year-round residents who qualify for the  
5 plan under criteria established by the appropriate commis-  
6 sion; and the terms “fair market value” and “fair purchase  
7 value” shall be determined by the criteria set forth by the  
8 appropriate commission.

#### 9 HUNTING AND FISHING

10 Sec. 19. Hunting, fishing, and trapping on lands and  
11 waters within the trust area shall be permitted in accordance  
12 with the applicable laws of towns in the trust area, the Com-  
13 monwealth of Massachusetts, and the United States, except  
14 that the commissions, the Governor, and the Secretary may  
15 designate zones where, and establish periods when, no hunt-  
16 ing, no fishing, and no trapping shall be permitted for rea-  
17 sons of public health, public safety, fish or wildlife manage-  
18 ment, administration, or public use and enjoyment. Except in  
19 emergencies, any regulations prescribing any such restric-  
20 tions shall be issued only after consultation with the appro-  
21 priate agency of said Commonwealth and any political sub-  
22 division thereof which has jurisdiction over such activities.

#### 23 APPROPRIATIONS

24 Sec. 20. There are hereby authorized to be appropriated  
25 such sums as may be necessary to carry out the provisions of

1 this Act; not to exceed, however, \$20,000,000 for the ac-  
2 quisition of lands and interests therein, and not to exceed  
3 \$5,000,000 for development, both in April 1972 prices, for  
4 the first three years of the operation of the trust, plus or  
5 minus such amounts, if any, as may be justified by reason of  
6 ordinary fluctuations in construction costs as indicated by en-  
7 gineering cost indices applicable to the types of construction  
8 involved herein: *Provided*, That there shall, within the total  
9 amounts authorized to be appropriated, be made available  
10 \$300,000 for the development of the shellfish industry pur-  
11 suant to section 15 of this Act, \$500,000 for studies con-  
12 ducted pursuant to section 9 (c) of this Act, and \$1,000,000  
13 for resident home site programs pursuant to section 18 of  
14 this Act, and \$100,000 for the implementation of plans to  
15 protect and provide litter prevention for all beach areas.

16 SEVERABILITY CLAUSE

17 SEC. 21. The provisions of this Act are hereby declared  
18 to be severable, and if any of its provisions are held to be  
19 invalid by any court of competent jurisdiction, the decision of  
20 such court shall not affect or impair any of the remaining  
21 provisions.