

**MEMORANDUM OF UNDERSTANDING**

**Between**

**THE U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE  
INTERIOR**

**and**

**THE DEPARTMENT OF CONSERVATION AND RECREATION,  
COMMONWEALTH OF VIRGINIA**

**and**

**THE DEPARTMENT OF GAME AND INLAND FISHERIES,  
COMMONWEALTH OF VIRGINIA**

**and**

**The VIRGINIA COASTAL ZONE MANAGEMENT PROGRAM AT THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**and**

**THE NATURE CONSERVANCY**

**RELATING TO THE MANAGEMENT OF CONSERVATION LANDS  
LOCATED ON THE SOUTHERN TIP OF THE EASTERN SHORE IN  
NORTHAMPTON COUNTY, VIRGINIA**

**I. Purpose**

The purpose of this memorandum of understanding (MOU) is to facilitate cooperation between the U.S. Fish and Wildlife Service (FWS), the Commonwealth of Virginia's Department of Conservation and Recreation (DCR), Department of Game and Inland Fisheries (DGIF), Coastal Zone Management Program at the Department of Environmental Quality (CZM), and The Nature Conservancy (TNC) in the protection and management of conservation lands on the Southern Tip of the Eastern Shore in Northampton County, Virginia. Collectively, FWS, DGIF, DCR, CZM and TNC are referred to herein as Parties. The Parties have a common interest in conserving and protecting migratory bird habitat and intact coastal habitats in the Southern Tip. For the purposes of this MOU, the Southern Tip encompasses the mainland portion of Northampton County, Virginia, south of a line running generally east to west from the Village of Oyster on the seaside to the Town of Cape Charles on the bayside.

- FWS is a Federal trustee for migratory birds, endangered species, and interjurisdictional fishes. Its mission is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. FWS, National Wildlife Refuge System, owns and manages the Eastern Shore of Virginia National Wildlife Refuge. The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

- DCR works with Virginians to conserve, protect and enhance their lands and waters, and promotes the stewardship and enjoyment of natural, cultural and outdoor recreational resources. DCR owns a number of properties on the Southern Tip and manages them through the Division of Natural Heritage and the Division of State Parks. The mission of the Division of Natural Heritage is conserving Virginia's biodiversity through inventory, protection and stewardship. The mission of the Division of State Parks is to conserve the natural, scenic, historic and cultural resources of the Commonwealth and provide recreational and educational opportunities consistent with the good stewardship of these lands, waters and facilities that leaves them unimpaired for future generations.
- DGIF's mission is to manage Virginia's wildlife and inland fish to maintain optimum populations of all species to serve the needs of the Commonwealth; to provide opportunity for all to enjoy wildlife, inland fish, boating and related outdoor recreation; to promote safety for persons and property in connection with boating, hunting and fishing. DGIF owns and manages Mockhorn Wildlife Management Area.
- CZM is a network of state agencies and local governments established through Gubernatorial Executive Order and funded through the federal Coastal Zone Management Act. The purpose of CZM is to protect and restore coastal ecosystems and strengthen sustainable coastal economic activities. CZM initiates and funds coastal research and policy development and funds land acquisition. It does not own land itself.
- TNC was first incorporated as a non-profit organization in 1951 and has grown to be the world's largest private land conservation and biodiversity protection organization. The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. TNC owns and manages a number of properties and conservation easements in the Southern Tip.

The management and restoration of fish and wildlife resources is consistent with the program objectives of all of the Parties. The objective of this cooperative effort is to ensure that the Parties cooperate to manage their lands in a manner that is consistent with respect to the common interest of conserving and protecting migratory bird habitat on the Southern Tip. This Agreement provides for the limited interchange of services, personnel, equipment, and funds to achieve this goal.

## **II. Background**

According to the Comprehensive Conservation Plan for the Eastern Shore of Virginia National Wildlife Refuge, the Southern Tip of the Eastern Shore is one of the two most significant bird migration bottlenecks in the Mid-Atlantic region. Stopover habitat in this area is critical to fall migration, and it is considered one of the highest conservation priorities in North America.

Due to geographic configuration, the lower Delmarva Peninsula provides critical habitat for large concentrations of raptors, songbirds, other migrant landbirds, shorebirds, woodcock and waterfowl. It is estimated that five to six million neotropical landbirds and 10 to 12 million temperate landbirds pass through the Southern Tip during their fall migration period. Thousands of raptors, including bald eagles, peregrine falcons, merlins, sharp-shinned hawks, Cooper's hawks, and northern saw-whet owls also migrate through the southern end of the peninsula during migration. Nearly 200 species of neotropical landbirds migrate through the Eastern Shore representing about 70 percent of all breeding bird species in North America. The Southern Tip has been designated an Important Bird Area by the American Bird Conservancy in conjunction with the Partners-In-Flight (PIF) program. Many of these in-transit migrants are priority species breeding in physiographic regions/bird conservation regions throughout the northeast. Protection of habitat at this key stopover site is critical to the conservation of both temperate and neotropical migratory birds.

The importance of the area is also reflected in the following designations for the adjacent barrier island/marsh-lagoon system: North American Waterfowl Management Plan focus area (Atlantic Coast Joint Venture); Western Hemisphere Shorebird Reserve Network site; United Nations Biosphere Reserve and National Natural Landmark (TNC Virginia Coast Reserve); RAMSAR site (Chesapeake Bay); Emergency Wetlands Resources Act priority site (Regional Wetlands Concept Plan). Lower Northampton County was also designated as a Special Area Management Plan (SAMP) site, with funding and support from the Virginia Coastal Zone Management Program and National Oceanic and Atmospheric Administration. SAMP funding provided over \$2 million in funding for wildlife and habitat research projects, policy development projects and another \$2 million for related land acquisitions in the Southern Tip.

In 2005, TNC worked with FWS and DCR to enhance over 300 acres of migratory bird habitat on the Southern Tip and Barrier Islands impacted by invasive *Phragmites*. The work was coordinated with other public and private landowners and resulted in the participation of at least 10 private landowners joining to control *Phragmites* on over 100 acres of privately owned lands in the Southern Tip. It is clear that broad public support exists on the Eastern Shore for habitat enhancement.

Several studies, including the four-state Neotropical Migratory Songbird Coastal Corridor Study, initiated and funded by the CZM Program, have identified habitat protection on the Southern Tip as a critical need. They indicate that the highest concentrations of migrants occur within a 10-kilometer zone from the tip of the peninsula in a 1.5-kilometer wide strip bordering the bayside and seaside coastlines. Because of the concentration effect, protection or restoration of habitat of any size or configuration within this zone is important.

TNC has identified forest habitat restoration on the Eastern Shore's mainland as a top conservation priority through an exhaustive, ecoregional planning process. Largely because of its importance for migratory birds and upon completion of its *Eastern Shore*

*of Virginia Conservation Area Plan* in June 2003, TNC placed a special emphasis on land protection efforts in the triangle of land running from a line between the Town of Cape Charles and the Village of Oyster in the north to Fishermans Island at the very southern end of the Eastern Shore. In addition, the DCR Division of Natural Heritage has deemed land protection efforts imperative within the Delmarva Migratory Bird Stopover Habitat Conservation Site, and DCR has determined protection of migratory bird habitat under the State Natural Area Preserve System as a priority for the Agency. Furthermore, FWS has identified through an approved Land Protection Plan a 6,030 acre acquisition area which will enable the protection and restoration of additional migration habitat within the critical area of the Southern Tip.

DGIF's recently-completed Comprehensive Wildlife Conservation Strategy shows that more than 900 of Virginia's wildlife species are in decline, including 92 bird species. A map of Virginia depicting confirmed and potential habitat for the most imperiled, or "Tier I species," shows that a great concentration of habitat conservation opportunities occur on Virginia's Eastern Shore.

Although most of the Eastern Shore's barrier island and marsh system is protected, studies and experts agree on the urgent need for protection of critical forested and shrub migration habitat on the Southern Tip. Northampton County historically has been a community in which the agriculture and seafood industries have provided the basis of the economy, but recent changes have resulted in a marked increase in development pressure on the Southern Tip. In 2001, the Accomack-Northampton Planning District Commission commissioned a study to predict changes in land use patterns resulting from the adoption of a reduced commuter toll on the Chesapeake Bay Bridge-Tunnel. According to that study, the price of bayfront property has tripled in two or three years, and Northampton County experienced the largest number of land sales in its history in 2000. The study predicted that increases in tourism, second home development, and full-time residential development will impact the carrying capacity of schools, aquifers, septic and sewer systems, road facilities and land resources. The loss of forested habitats on the Shore has contributed to population declines in many neotropical species because migrants are not replenishing fat reserves during stopovers and are increasingly exposed to predation because of a lack of suitable cover.

Based on the possible decline of migratory bird habitat, Northampton County, through its Comprehensive Plan, recognized the importance of protecting critical portions of the Southern Tip. The plan specifically sets out a goal to ensure that critical and unique environmental areas are protected and preserved for the general welfare of Northampton County citizens, and that marine and wildlife populations are conserved for the enjoyment of visitors. To further define and protect these sensitive areas, the County joined with the Virginia Coastal Zone Management Program at the Virginia Department of Environmental Quality to create a Special Area Management Plan which recognizes the tremendous pressures facing the Southern Tip and nearby portions of the Eastern Shore and offers guidance on steps that partners can take to protect sensitive natural areas. The Plan has several goals, but it emphasizes the development of new, enforceable policies to protect bird and fish habitats and control cumulative and secondary impacts of

coastal development by maintaining maximum vegetative cover for wildlife habitat and nutrient uptake, and the development of new sustainable industries and the protection of a sense of place and quality of life, and the development of heritage tourism, aquaculture and other sustainable industries. Much of this work will continue through Virginia CZM's Seaside Heritage Program which currently focuses on the barrier island lagoon system, but will likely move inland in order to deal with land use issues that affect aquatic resources, including migratory birds.

To foster expanded economic development opportunities, Northampton County has approved a tourism plan that includes ecotourism and features birding on the Southern Tip as a way to sustainably grow the local economy and create jobs without compromising the unique ecological attributes to which visitors would be attracted. In addition, the Eastern Shore Chamber of Commerce in cooperation with all the Party members hosts the annual Eastern Shore Birding and Wildlife Festival during the peak of fall migration. The festival, initiated under the Special Area Management Plan, offers numerous field trips and naturalist events through which visitors can learn about the extraordinary diversity and conservation significance of the Southern Tip.

### **III. Authority**

This Memorandum of Understanding between the Parties is hereby entered into by the FWS under authority of the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. Section 661), the Fish and Wildlife Act of 1956 [16 U.S.C. 742f(a)(4)], and the North American Waterfowl Management Plan (31 U.S.C. 6305); and by DCR under the Virginia Natural Area Preserves Act, Code of Virginia § 10.1-209 – 217.

**Note:** The obligations of all Parties herein are subject to the availability of funding, and nothing contained herein shall be construed as binding any Party to expend in any one fiscal year any sum in excess of available private dollars, state or congressional appropriations, or to involve any Party in any contract or other obligation for further expenditure of money in excess of such appropriations or private allocations.

### **IV. Statement of Mutual Agreement**

It is mutually understood and agreed by the Parties that:

1. Only by working together can the Parties achieve shared habitat restoration goals for migratory birds that pass through the Southern Tip.
2. In order to maintain viable populations of migratory birds, it is important to protect more habitat through various means, including but not limited to the Parties purchasing land from willing sellers, conservation easements held by the Parties and others, working with landowners who wish to manage their lands to benefit migratory birds and working with the County government to help develop policies to better protect habitat and water quality.
3. Management of lands for migratory bird habitat is a primary management goal for lands on the Southern Tip.

4. Other management goals for certain properties may, as appropriate, include public recreation, hunting, boating access, research, environmental education, recovery of imperiled species, and wildlife observation. To the maximum extent possible, the Parties agree to manage these activities in a way that is compatible with the protection and restoration of migratory bird habitat.
5. Additional funding will be needed to achieve the goals set forth in this MOU. The Parties shall work together to seek and leverage funding from private, local, state and federal sources such that it can be maximized for the purchase, restoration, and management of critical lands.

## **V. Scope of Work**

The Parties shall, to the best of their abilities, communicate and coordinate in regard to land conservation and management issues important to each Party.

Within six months of the effective date of this Agreement, the Parties shall cooperate to:

1. Compile an inventory of the lands in the Southern Tip held by each Party.
2. Collect documents that describe current management plans for lands held by each Party.
3. Convene experts to determine the desired future condition of the Southern Tip with regard to migratory bird habitat.

Thereafter, at least annually, the Parties shall update and refine the above information and shall:

1. Discuss priorities and opportunities for acquisition of more conservation lands from willing sellers within the Southern Tip.
2. Share information regarding progress on management goals and desired future condition with essential partners and local stakeholders, including but not limited to Northampton County, the Eastern Shore of Virginia Land Trust, the Accomack-Northampton Planning District Commission, and interested organizations.
3. Describe the desired future condition, based on appropriate management goals, of all of the tracts held by any Party.
4. List the tasks that must be completed to achieve the desired future condition for migratory bird habitat for each tract.
5. List the resources (funds, equipment, expertise, personnel) that are needed to accomplish the tasks that can reasonably be expected to be accomplished within one year.
6. Identify the resources that each Party will contribute toward tasks that will be accomplished within one year.

Equipment owned and used by any cooperating agency under this agreement for which the other is responsible will normally be operated, serviced, and repaired by the owning agency. Exceptions to this practice, where needed, will be agreed to, in writing, by both

Parties. Each Party will be responsible for damage to its equipment under its law and rules, except that if equipment is rented without operators, the receiving agency will be responsible under applicable laws of the agency and signed rental agreements. Exceptions to this practice, where needed, will be agreed to in writing, by both Parties.

## **VI. Period of Performance and Termination**

1. This agreement will be effective from the date of final signature for a period of ten years, unless terminated earlier by three of the Parties upon 30 days written notice.
2. Any Party may withdraw from the agreement for any reason, without cause, upon 30 days written notice which shall result only in the termination of that Party's participation in the cooperative effort.
3. This agreement may be modified or amended at any time upon the written agreement of the Parties.
4. It is hereby agreed that the Parties will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the management of their properties.

## **VII. Project Officers**

Project officers, for the purpose of administering this MOU, including receiving and reviewing reports, project proposals, and the handling of termination notices are:

FWS: Marvin Moriarity, Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Department of the Interior

DCR: Joseph H. Maroon, Director, Virginia Department of Conservation and Recreation, 203 Governor Street, Richmond, Virginia 23219

DGIF: W. Gerald Massengill, Director, Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, 23230

Virginia CZM: Laura B. McKay, Manager, Virginia Coastal Zone Management Program, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

TNC: Michael L. Lipford, Virginia Director, The Nature Conservancy in Virginia. 490 Westfield Road, Charlottesville, VA, 22901.

**VIII. EXECUTION AND COUNTERPARTS.** This MOU may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**IX. APPROVALS**

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Title  
U.S. Fish and Wildlife Service, Department  
Of the Interior

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title  
Virginia Department of Conservation  
And Recreation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title  
Virginia Department of Game  
And Inland Fisheries

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Date

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Title  
Virginia Coastal Zone Management Program  
At the Department of Environmental Quality

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Date

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Title  
The Nature Conservancy in Virginia

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Date