

by the Secretary, of all property within the boundaries of the seashore which is situated within the town adopting such bylaw; and (2) promoting the preservation and development, in accordance with the purposes of sections 459b to 459b-8 of this title, of the area comprising the seashore, by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning bylaw consistent with the laws of Massachusetts.

**(c) Adverse provisions and absence of notice for variance as requiring disapproval of local by-laws**

No zoning bylaw or amendment of a zoning bylaw shall be approved by the Secretary which (1) contains any provision which he may consider adverse to the preservation and development, in accordance with the purposes of sections 459b to 459b-8 of this title, of the area comprising the seashore, or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under and any exception made to the application of such bylaw or amendment.

**(d) Termination of suspension of authority for acquisition by condemnation because of non-conforming variances and uses; agreements concerning exercise of authority**

If any improved property with respect to which the Secretary's authority to acquire by condemnation has been suspended by reason of the adoption and approval, in accordance with the foregoing provisions of this section, of a zoning bylaw applicable to such property (hereinafter referred to as "such bylaw")—

(1) is made the subject of a variance under or an exception to such bylaw, which variance or exception fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in the regulations issued pursuant to this section and in effect at the time of the passage of such bylaw, or

(2) is property upon or with respect to which there occurs any use, commencing after the date of the publication by the Secretary of such regulations, which fails to conform or is in any manner opposed to or inconsistent with any applicable standard contained in such regulations (but no use which is in conformity with the provisions of such bylaw shall be held to fail to conform or be opposed to or inconsistent with any such standard),

the Secretary may, at any time and in his discretion, terminate the suspension of his authority to acquire such improved property by condemnation: *Provided, however,* That the Secretary may agree with the owner or owners of such property to refrain from the exercise of the said authority during such time and upon such terms and conditions as the Secretary may deem to be in the best interests of the development and preservation of the seashore.

(Pub. L. 87-126, § 5, Aug. 7, 1961, 75 Stat. 290.)

**§ 459b-5. Certificate of suspension of authority for acquisition by condemnation**

The Secretary shall furnish to any party in interest requesting the same, a certificate indicat-

ing, with respect to any property located within the seashore as to which the Secretary's authority to acquire such property by condemnation has been suspended in accordance with the provisions of sections 459b to 459b-8 of this title, that such authority has been so suspended and the reasons therefor.

(Pub. L. 87-126, § 6, Aug. 7, 1961, 75 Stat. 291.)

**§ 459b-6. Administration of acquired property**

**(a) Utilization of authority for conservation and management of natural resources**

Except as otherwise provided in sections 459b to 459b-8 of this title, the property acquired by the Secretary under such sections shall be administered by the Secretary subject to the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535),<sup>1</sup> as amended and supplemented, and in accordance with laws of general application relating to the national park system as defined by the Act of August 8, 1953 (67 Stat. 496);<sup>1</sup> except that authority otherwise available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of sections 459b to 459b-8 of this title.

**(b) Preservation of seashore; incompatible visitor conveniences restricted; provisions for public enjoyment and understanding; developments for recreational activities; public use areas**

(1) In order that the seashore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing or with the preservation of such historic sites and structures as the Secretary may designate: *Provided,* That the Secretary may provide for the public enjoyment and understanding of the unique natural, historic, and scientific features of Cape Cod within the seashore by establishing such trails, observation points, and exhibits and providing such services as he may deem desirable for such public enjoyment and understanding: *Provided further,* That the Secretary may develop for appropriate public uses such portions of the seashore as he deems especially adaptable for camping, swimming, boating, sailing, hunting, fishing, the appreciation of historic sites and structures and natural features of Cape Cod, and other activities of similar nature.

(2) In developing the seashore the Secretary shall provide public use areas in such places and manner as he determines will not diminish for its owners or occupants the value or enjoyment of any improved property located within the seashore.

**(c) Hunting and fishing regulations; navigation**

The Secretary may permit hunting and fishing, including shellfishing, on lands and waters under his jurisdiction within the seashore in

<sup>1</sup> See References in Text note below.

such areas and under such regulations as he may prescribe during open seasons prescribed by applicable local, State and Federal law. The Secretary shall consult with officials of the Commonwealth of Massachusetts and any political subdivision thereof who have jurisdiction of hunting and fishing, including shellfishing, prior to the issuance of any such regulations, and the Secretary is authorized to enter into cooperative arrangements with such officials regarding such hunting and fishing, including shellfishing, as he may deem desirable, except that the Secretary shall leave all aspects of the propagation and taking of shellfish to the towns referred to in section 459b of this title.

The Secretary shall not interfere with navigation of waters within the boundaries of the Cape Cod National Seashore by such means and in such areas as is now customary.

(Pub. L. 87-126, §7, Aug. 7, 1961, 75 Stat. 291.)

#### REFERENCES IN TEXT

The Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535), referred to in subsec. (a), is act Aug. 25, 1916, ch. 408, 39 Stat. 535, known as the National Park Service Organic Act, which enacted sections 1, 2, 3, and 4 of this title and provisions set out as a note under section 100101 of Title 54, National Park Service and Related Programs. Sections 1 to 4 of the Act were repealed and restated as section 1865(a) of Title 18, Crimes and Criminal Procedure, and section 100101(a), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of Title 54 by Pub. L. 113-287, §§3, 4(a)(1), 7, Dec. 19, 2014, 128 Stat. 3094, 3260, 3272. For complete classification of this Act to the Code, see Tables. For disposition of former sections of this title, see Disposition Table preceding section 100101 of Title 54.

The Act of August 8, 1953 (67 Stat. 496), referred to in subsec. (a), is act Aug. 8, 1953, ch. 384, 67 Stat. 496, which enacted sections 1b to 1d of this title. The Act, except for section 1(3), was repealed and restated in sections 100501, 100755, 100901, 101901, 102711, and 103102 of Title 54, National Park Service and Related Programs, by Pub. L. 113-287, §§3, 7, Dec. 19, 2014, 128 Stat. 3094, 3272. Section 1(3) of the Act was transferred and is set out as a note under section 407a of this title. For complete classification of this Act to the Code, see Tables. For disposition of former sections of this title, see Disposition Table preceding section 100101 of Title 54.

### § 459b-7. Cape Cod National Seashore Advisory Commission

#### (a) Establishment; termination

There is established a Cape Cod National Seashore Advisory Commission (hereinafter referred to as the "Commission"). The Commission shall terminate September 26, 2018.

#### (b) Membership; term

The Commission shall be composed of ten members each appointed for a term of two years by the Secretary as follows:

(1) Six members to be appointed from recommendations made by each of the boards of selectmen of the towns referred to in section 459b of this title, one member from the recommendations made by each such board;

(2) One member to be appointed from recommendations of the county commissioners of Barnstable County, Commonwealth of Massachusetts;

(3) Two members to be appointed from recommendations of the Governor of the Commonwealth of Massachusetts; and

(4) One member to be designated by the Secretary.

#### (c) Chairman; vacancies

The Secretary shall designate one member to be Chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

#### (d) Compensation and expenses

A member of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the Commission in carrying out its responsibilities under sections 459b to 459b-8 of this title upon vouchers signed by the Chairman.

#### (e) Majority vote

The Commission established by this section shall act and advise by affirmative vote of a majority of the members thereof.

#### (f) Consultation of Secretary with Commission

The Secretary or his designee shall, from time to time, consult with the members of the Commission with respect to matters relating to the development of Cape Cod National Seashore and shall consult with the members with respect to carrying out the provisions of sections 459b-3 and 459b-4 of this title.

#### (g) Advice of Commission for commercial or industrial use permits and establishment of public use areas for recreational activities

No permit for the commercial or industrial use of property located within the seashore shall be issued by the Secretary, nor shall any public use area for recreational activity be established by the Secretary within the seashore, without the advice of the Commission, if such advice is submitted within a reasonable time after it is sought.

#### (h) Exemption from other provisions of law

(1) Any member of the Advisory Commission appointed under sections 459b to 459b-8 of this title shall be exempted, with respect to such appointment, from the operation of sections 281, 283, 284, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)<sup>1</sup> except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(i) to the receipt or payment of salary in connection with the appointee's Government service from any sources other than the private employer of the appointee at the time of his appointment; or

(ii) during the period of such appointment, and the further period of two years after the termination thereof, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter concerning which the appointee had any responsibility arising out of his appointment during the period of such appointment.

<sup>1</sup> See References in Text note below.