PUBLIC NOTICE

US Army Corps of Engineers ®
New England District
696 Virginia Road
Concord, MA 01742-2751

Comment Period Begins: September 5, 2017
Comment Period Ends: October 5, 2017
File Number: NAE-2012-01401
In Reply Refer To: Sarah Wilkinson
Phone: (978) 318-8513
E-mail: sarah.a.wilkinson@usace.army.mil

The U.S. Army Corps of Engineers (Corps) District Engineer has received a permit application to conduct work in waters of the United States from The Pohogonot Trust (Richard Keeler, Trustee) 39 Rich Valley Road, Wayland, MA. This work is proposed in Oyster Pont and Atlantic Ocean at Oyster Watcha Rd., Edgartown, MA. The site coordinates are: Latitude 41.34999, Longitude -70.602817.

Project Description: The work involves excavating a channel from Oyster Pond to the Atlantic Ocean. The excavated channel is proposed to measure 6 feet to 10 feet wide and up to 200 feet long. Twenty cubic yards to 40 cubic yards would be excavated below the mean high water line (MHWL). Excavated sand would be placed adjacent to the created channel with 1,200 to 1,400 square feet of sand being placed below the high tide line (HTL). The Pond is at a higher elevation than the ocean and the applicant expects that sand will be flushed into the ocean after a channel is excavated causing the channel to widen even further. The depth of the resulting channel would be -0.5 feet to -1 feet mean low water (MLW). The applicant is requesting a permit with a 10 year term with up to 4 channel openings occurring per year due to the typical natural closing of the channel within days to a month from opening. The purpose of the work is to reduce flooding risk to properties surrounding the Pond. According to the applicant the Pond water level periodically rises to a level that can flood residential infrastructure surrounding the Pond.

Project History: According to the applicant Oyster Pond has been opened to the sea an average of four or five times a year since 1909 by the Pohogonot Trust and its predecessors and a hundred or more years before. The initial opening is usually in March. It is often opened again in May or June and then again in the summer or fall and as late as November or December, depending on how long it takes for the pond to fill. The timing of the opening is arranged in consultation with the Edgartown Shellfish Constable. The Corps issued a permit for excavation of this channel from the Pond to the Ocean November 27, 2013 under the Massachusetts General Permits.

The work is shown on the attached plans entitled "Proposed Oyster Pond Opening Plan," on 3 sheets, and dated Aug. 4, 2017.

The applicant has provided the following proposed avoidance and minimization: 1) excavation will occur from the upland and at low tide, 2) the area and depth of channel excavation is the minimum in order to create channel opening, 3) excavation will not occur between April 1st to August 31st unless conditions are met to prevent impacts to federally listed bird species that may occur in the project area, and 4) equipment will not traverse dune/beach grass habitat in the project area. The applicant does no proposed the use of turbidity curtains as the sand in the project area is expected to be free of any contaminants and the subsequent flow of sand through the channel is an intended result of the proposed work. The applicant does not propose compensatory mitigation.

AUTHORITY

Permits are required pursuant to:
_X_ Section 10 of the Rivers and Harbors Act of 1899
_X_ Section 404 of the Clean Water Act
____ Section 103 of the Marine Protection, Research and Sanctuaries Act.

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public, federal, state, and local agencies and officials, Native American tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972, as amended.

The alternatives considered in the dredged material disposal analysis fall into four general categories: beneficial use, upland disposal, confined disposal, and open-water disposal. The feasibility of disposal alternatives was analyzed relative to the physical and chemical quality of the dredged material, the volume of material to be dredged, the availability of suitable disposal and beneficial use sites, and the cost of disposal. When applicable, the biological quality of the disposal of the material at the disposal site was also used to evaluate the feasibility of the open-water disposal alternative.

Based on the characteristics of the dredged material, the lack of suitable alternate disposal or beneficial use sites and costs, the most feasible, practical, cost-effective and environmentally acceptable alternative for the disposal of dredged materials from the proposed dredging is disposal at the requested disposal site. Based in part on a review of historical data and a lack of potential sources of contaminants, it is the Corps' preliminary determination that the material is acceptable for disposal at this disposal site; however, physical, chemical, and/or biological analyses may be required if further review deems analyses necessary. There will also be a time

of year restriction included as a special condition which prohibits dredging during ecologically sensitive times of years.

ESSENTIAL FISH HABITAT

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

While the proposed excavation area is sand beach, the sand flushed from the created channel would flow into the Atlantic Ocean potentially impacting approximately 50,000 square feet of Essential Fish Habitat (EFH) for those species and life stages listed on the attached table. Habitat at this site can be described as intertidal and shallow water habitat. Due to the constant shifting of sand by tides and currents in the project area as well as the expected compatibility of the sand flushed from channel, the proposed work is not expected to result in habitat loss. The Corps has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations will be conducted and will be concluded prior to the final Corps decision.

NATIONAL HISTORIC PRESERVATION ACT

The Corps has determined that little likelihood exists for the proposed work to impinge upon properties with cultural or Native American significance, or listed in, or eligible for listing in, the National Register of Historic Places. Therefore, no further consideration of the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. However, this public notice will be sent to the State Historic Preservation Officer and applicable Tribal Historic Preservation Officers. This determination is based upon one or more of the following:

a. The permit area has been extensively modified by previous work (frequent excavation in approximately the same location for several decades).

b. The permit area has been recently created.

c. The proposed activity is of limited nature and scope.

d. Review of the latest published version of the National Register shows that no presence of registered properties listed as being eligible for inclusion therein are in the permit area or general vicinity.

e. Coordination with the State Historic Preservation Officer and Tribal Historic Preservation Officers

ENDANGERED SPECIES CONSULTATION

The Corps has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, which might occur at the project site. It is our preliminary determination that the proposed project would have no effect on the Northern long-eared bat (*Myotis septentrionalis*) as no potential roosting or hibernacula habitat is present in the project area. Several terrestrial federally listed species may be present in the project area and the Corps has determined that the work may effect, but is not likely to adversely affect: piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), roseate tern (*Sterna dougallii dougallii*), and Northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*). By this Public Notice, the Corps is initiating

consultation with the U.S. Fish and Wildlife Service to seek concurrence with the Corps' determination for the above listed species.

Several marine federally listed species may be present in the project area and the Corps has determined that the work may effect, but is not likely to adversely affect: Atlantic salmon (*Salmo salar*), green sea turtle (*Chelonia mydas*), Kemp's ridley sea turtle (*Lepidochelys kempii*), loggerhead sea turtle (*Caretta caretta*), and leatherback sea turtle (*Dermochelys coriacea*). By a programmatic agreement process, the Corps is initiating consultation with the National Marine Fisheries Service to seek concurrence with the Corps' determination for the above listed species.

COASTAL ZONE MANAGEMENT

The state of Massachusetts has an approved Coastal Zone Management Program. Where applicable, the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this Public Notice, the Corps is requesting concurrence or objection from the state to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

(X) Permit, License or Assent from State.
(X) Permit from Local Wetland Agency or Conservation Commission.
(X) Water Quality Certification in accordance with Section 401 of the Clean Water Act.

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Sarah Wilkinson via mail at the letterhead address, via email at sarah.a.wilkinson @usace.army.mil or via phone at (978) 318-8513, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

Barbara Newman

Barbara Newman
Chief, Massachusetts Permits and
Enforcement Branch
Regulatory Division

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here ( ) and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers. 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____
EMAIL ADDRESS: _____
PHONE: _____

EFH Data Notice: Essential Fish Habitat (EFH) is defined by textual descriptions contained in the fishery management plans developed by the regional Fishery Management Councils. In most cases mapping data can not fully represent the complexity of the habitats that make up EFH. This report should be used for general interest queries only and should not be interpreted as a definitive evaluation of EFH at this location. A location-specific evaluation of EFH for any official purposes must be performed by a regional expert. Please refer to the following links for the appropriate regional resources.

NMFS Greater Atlantic Regional Office
NMFS Atlantic Highly Migratory Species Management Division

Query Results
Map Scale = 1:9,028
Degrees, Minutes, Seconds: Latitude = 41°20'54" N, Longitude = 70°36'6" E
Decimal Degrees: Latitude = 41.35, Longitude = -70.60

The query location intersects with spatial data representing EFH and/or HAPCs for the following species/management units.

*** WARNING ***

The list provided below may be incomplete or empty due to current data limitations* (please refer to the help menu for more information on data quality and limitations). For a complete list of EFH designated at this location please consult with the regional office. Regional contact links have been provided above.

Please note under "Life Stage(s) Found at Location" the category "ALL" indicates that one or more life stage of a species (the one or ones listed) is mapped as EFH at the queried location. In cases where "ALL" is the only entry in the table, all life stages of that species share the same map and are designated at the queried location.

EFH

Show	Link	Data Caveats	Species/Management Unit	Life stage(s) Found at Location	Management Council	FMP
			Albacore Tuna	Juvenile ALL	Secretarial	HMS
			Bluefin Tuna	Juvenile Adult	Secretarial	HMS
			White Shark	ALL	Secretarial	HMS
			Smooth Dogfish	ALL	Secretarial	HMS
			Common Thresher Shark	ALL	Secretarial	HMS
			Sandbar Shark	Adult ALL	Secretarial	HMS
			Skipjack Tuna	Adult ALL	Secretarial	HMS
			Winter Skate	Adult Juvenile ALL	New England	Skate
			Little Skate	Adult ALL	New England	Skate
			Winter Flounder	Larvae Eggs Juvenile Adult ALL	New England	Multispecies
			Northern Shortfin Squid	Adult ALL	Mid-Atlantic	Atlantic Mackerel, Squid,& Butterfish Amendment 11
			Atlantic Cod	Adult ALL	New England	Multispecies
			Atlantic Surfclam	Juvenile Adult ALL	Mid-Atlantic	Surfclam and Ocean Quahog
			Summer Flounder	Eggs Larvae Juvenile Adult ALL	Mid-Atlantic	Summer Flounder, Scup, Black Sea Bass
			Scup	Juvenile Adult ALL	Mid-Atlantic	Summer Flounder, Scup, Black Sea Bass
			Black Sea Bass	Juvenile Adult	Mid-Atlantic	Summer Flounder, Scup, Black Sea Bass

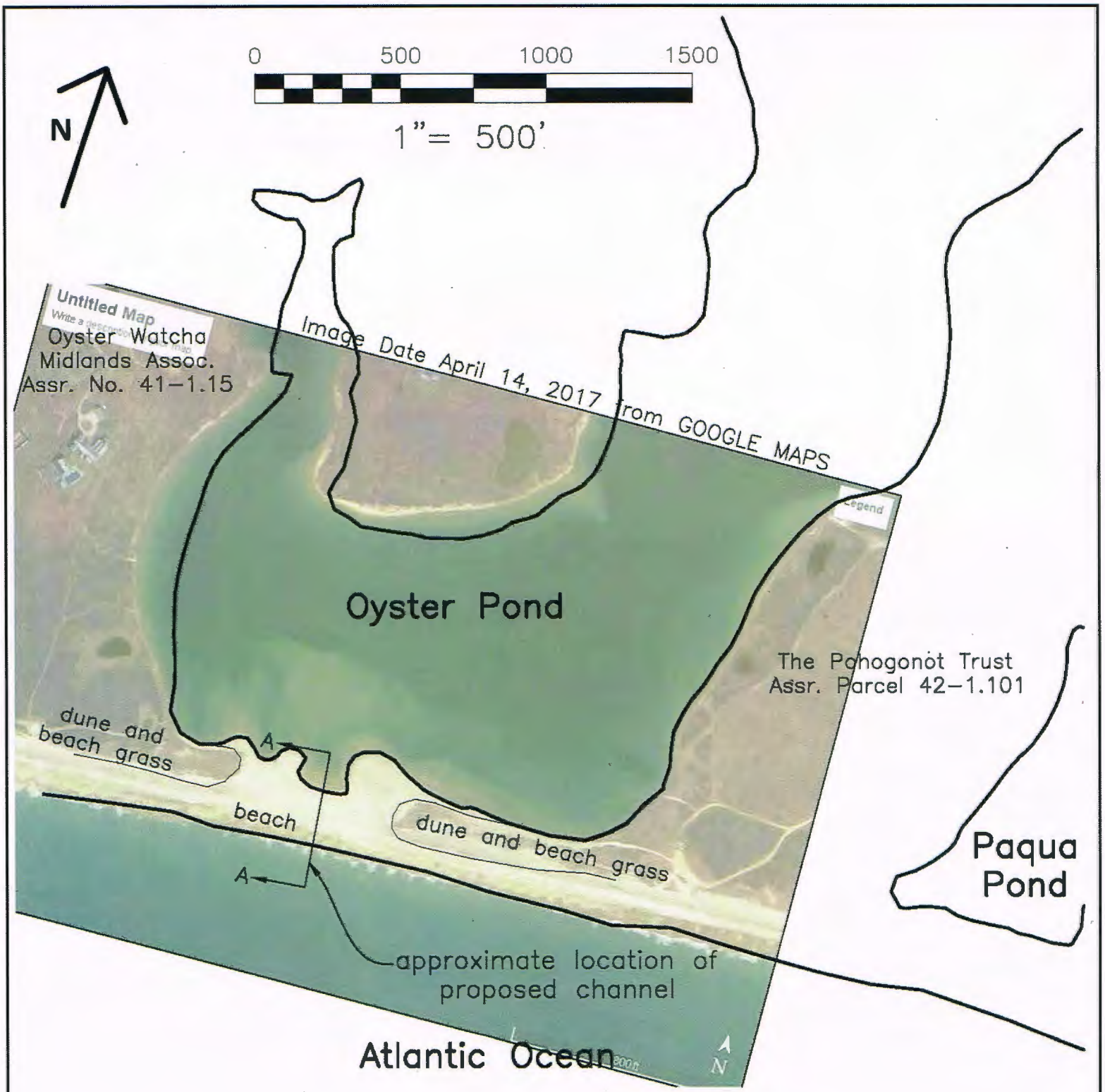
HAPCs

No Habitat Areas of Particular Concern (HAPC) were identified at the report location.

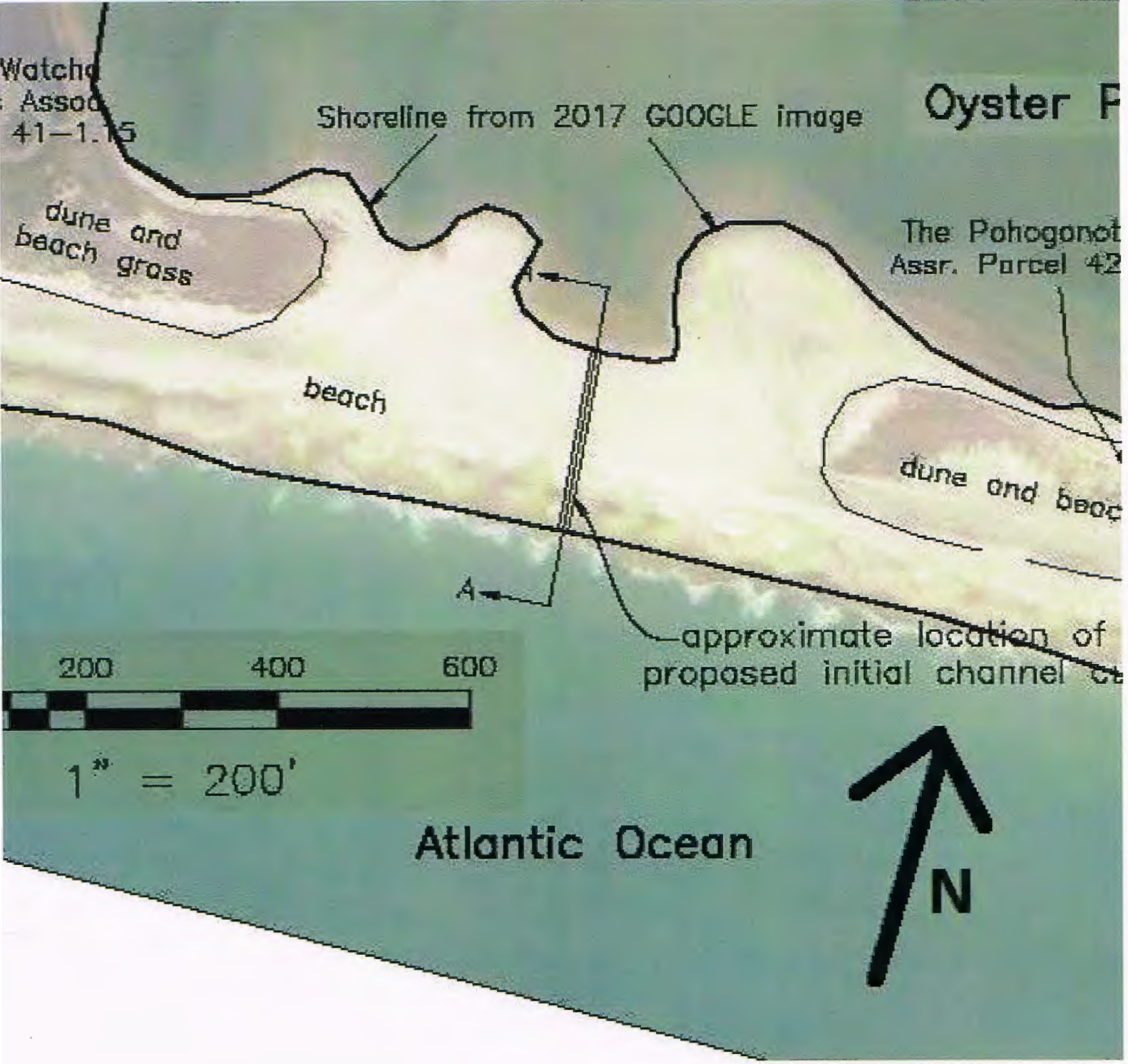
EFH Areas Protected from Fishing

No EFH Areas Protected from Fishing (EFHA) were identified at the report location.


Oyster Watch Rd
Ripley Cove
Oyster Pond
Pohoganet Rd
Project Area
Atlantic Ocean
Google earth
N

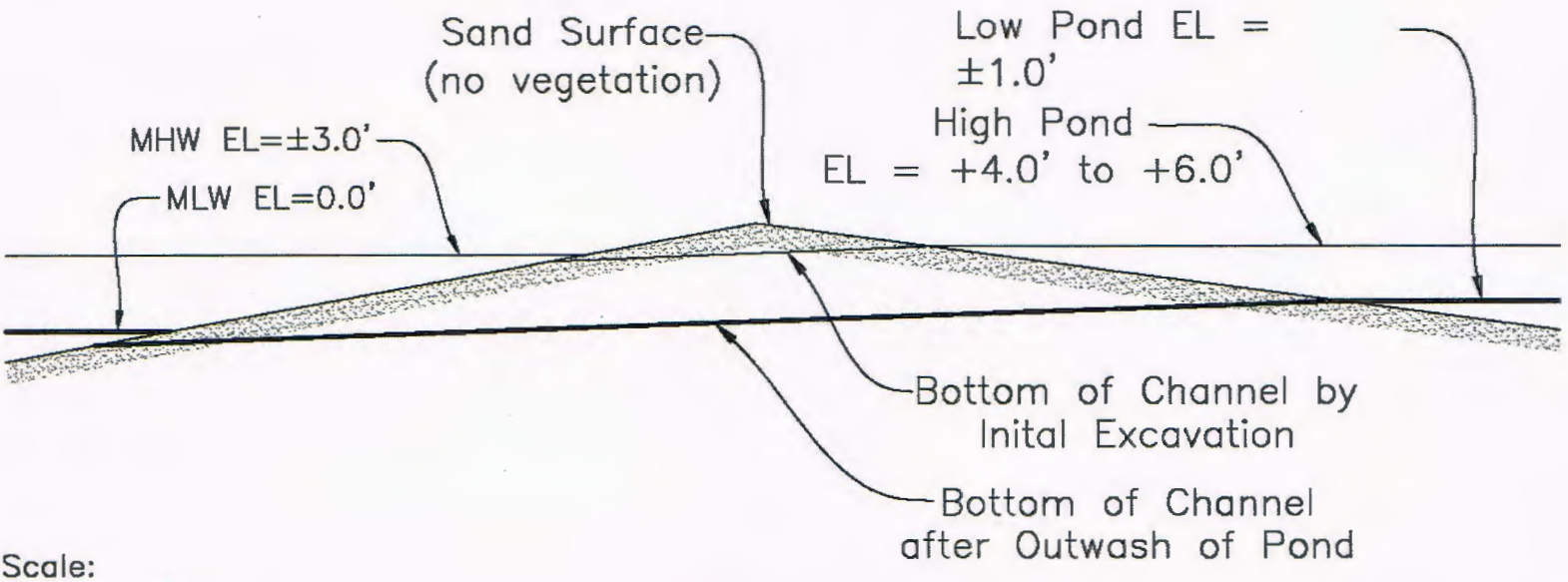


Purpose: Open the Barrier Beach to Oyster Pond Vineyard Land Surveying & Enginering, Inc. P.O. Box 421 West Tisbury, MA 02575 508-693-3774	DREDGING PLAN	Proposed Oyster Pond Opening Plan in Edgartown County of: Dukes, MA Application By: The Pohogonot Trust Aug. 4, 2017 Sheet 2 of 4



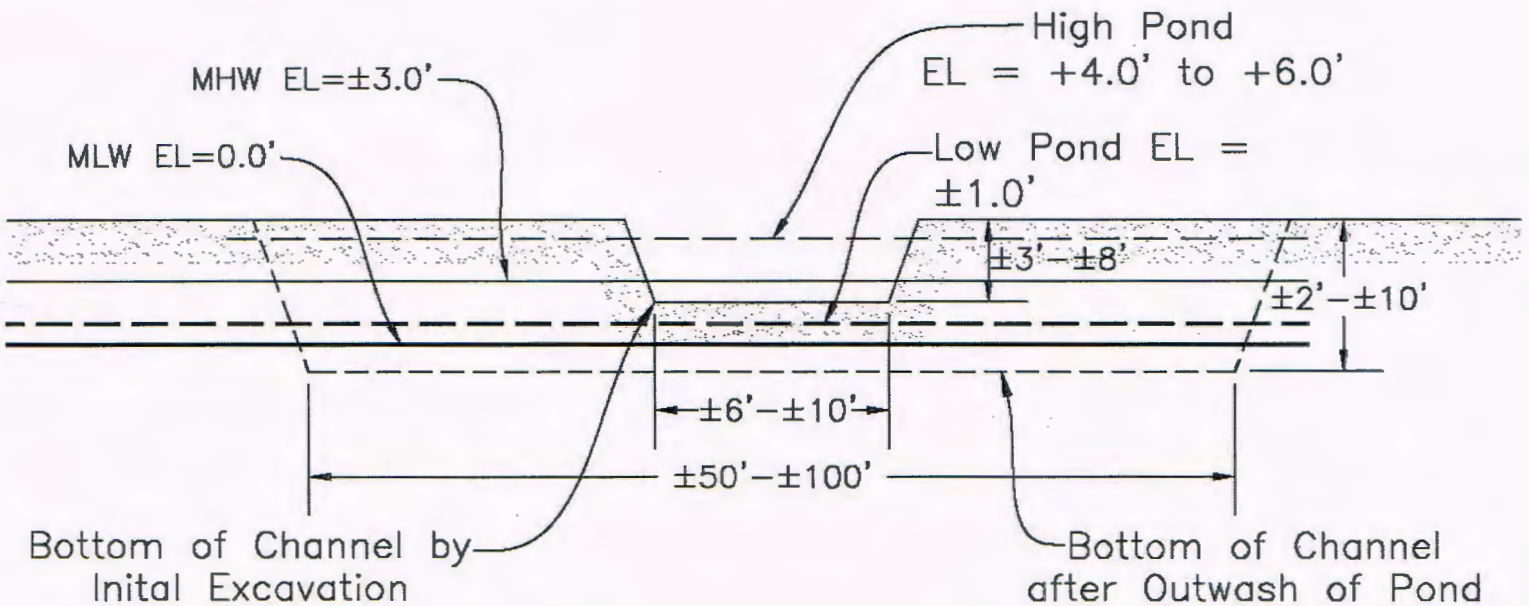
Open the Barrier to Oyster Pond Land Surveying & ginering, Inc. .O. Box 421 sbury, MA 02575 8-693-3774	DREDGING PLAN	Proposed Oyster Pon Plan in Edgartown County of: Dukes, M Application By: The Pohoganot Trust Aug 4, 2017 Sheet

SECTION A–A



Scale:
Vertical 1" = 10'
Horizontal 1" = 50'

TRENCH CROSS SECTION



Not to Scale

Purpose: Open the Barrier Beach to Oyster Pond Vineyard Land Surveying & Enginering, Inc. P.O. Box 421 West Tisbury, MA 02575 508–693–3774	CROSS SECTIONS	Proposed Oyster Pond Opening Plan in Edgartown County of: Dukes, MA Application By: The Pohogonot Trust Aug. 4, 2017 Sheet 4 of 4