



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

PUBLIC NOTICE

Comment Period Begins: 12/15/20
Comment Period Ends: 01/14/21
File Number: NAE-2012-02315
In Reply Refer To: Ruth Brien
Phone: (978) 318-8054
E-mail: ruthann.a.brien@usace.army.mil

The District Engineer has received a permit application to conduct work in waters of the United States from Gary Esper. This work is proposed in two adjacent locations in the Atlantic Ocean off the Cape Cod National Seashore near the Nauset Light in Eastham, MA. The central site coordinates for the first location are Latitude 41.881788 and Longitude -69.947030. The central site coordinates for the second location are Latitude 41.859093 and Longitude -69.939380.

The proposed work involves the removal and nearby redeposition of subtidal bottom in association with the recovery of potential submerged artifacts. The applicant would notify the Massachusetts Board of Underwater Archaeological Resource (MBUAR) once an area of interest was identified and prior to any recovery work. The applicant would then perform all recordation and recovery work in accordance with MBUAR permits 12-005 and 12-006.

In terms of substrate removal, hand fanning would be used for shallow items that are less than a foot below the sand. An airlift and/or a water lift would be used for objects approximately 1 to 3 feet below the sand. An airlift pumps air into a tube and when the air rises the sand rises with it. The sand is then deposited directly next to the location of where the digging is occurring. The water lift system uses suctioning to draw the sand up. The sand is then deposited down-current of the digging location. Airlift and water lift tools are tubes that are typically between 2 to 3 inches in diameter. Thus, they move very little material.

In rare instances, prop wash deflection would be used for submerged objects with more than 3 feet of overburden. When using this system, it would not be employed for more than a few minutes at a time. The amount of material movement is well controlled by the speed of the propellers deflecting the water downward. At most the area cleared with a propwash system would be between 3 to 5 feet in diameter and only a few inches of sand would be removed at a time. A diver would be in the area to relay information to the vessel operator on when to deflect more or less water or to stop. Once enough material was removed then hand fanning or airlift/water lift excavation methods would resume. A second more common use of the propwash deflection system would be to deliver clear surface water down to the work area to improve visibility. This is often needed because of rough waters and high bottom turbidity at the recovery sites.

The proposed work locations are labelled "New Permit Area 1" and "New Permit Area 2" on the enclosed plan entitled "Esper Survey Plan" dated "March 11, 2013."

The proposed work would be done slowly and methodically which is anticipated to minimize impacts to aquatic resources.

AUTHORITY

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act
- Section 103 of the Marine Protection, Research and Sanctuaries Act.
- Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408)

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 U.S. Army Corps of Engineers, New England District (Corps), is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. The Corps will consider all comments received 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.

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). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

This project will impact up to 1 acre of EFH. This habitat consists of sand with intermittent clay layering. Loss of this habitat may adversely affect species that use these waters and substrate. However, the District Engineer 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 is being conducted and will be concluded prior to the final decision.

NATIONAL HISTORIC PRESERVATION ACT

Based on his initial review, the District Engineer has determined that the proposed work may impact properties listed in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfil requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the permit review process.

ENDANGERED SPECIES CONSULTATION

The Corps has reviewed the application for the potential impact on Federally-listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. It is our preliminary determination that the proposed activity for which authorization is being sought is designed, situated or will be operated/used in such a manner that it is not likely to adversely affect a listed species or their critical habitat. We are coordinating with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service on listed species under their jurisdiction and the ESA consultation will be concluded prior to the final decision.

OTHER GOVERNMENT AUTHORIZATIONS

The states of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. 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, we are requesting the State concurrence or objection 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.

COMMENTS

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 Ruth Brien at (978) 318-8054, (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.

CENAE-R
FILE NO. NAE-2012-02315

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

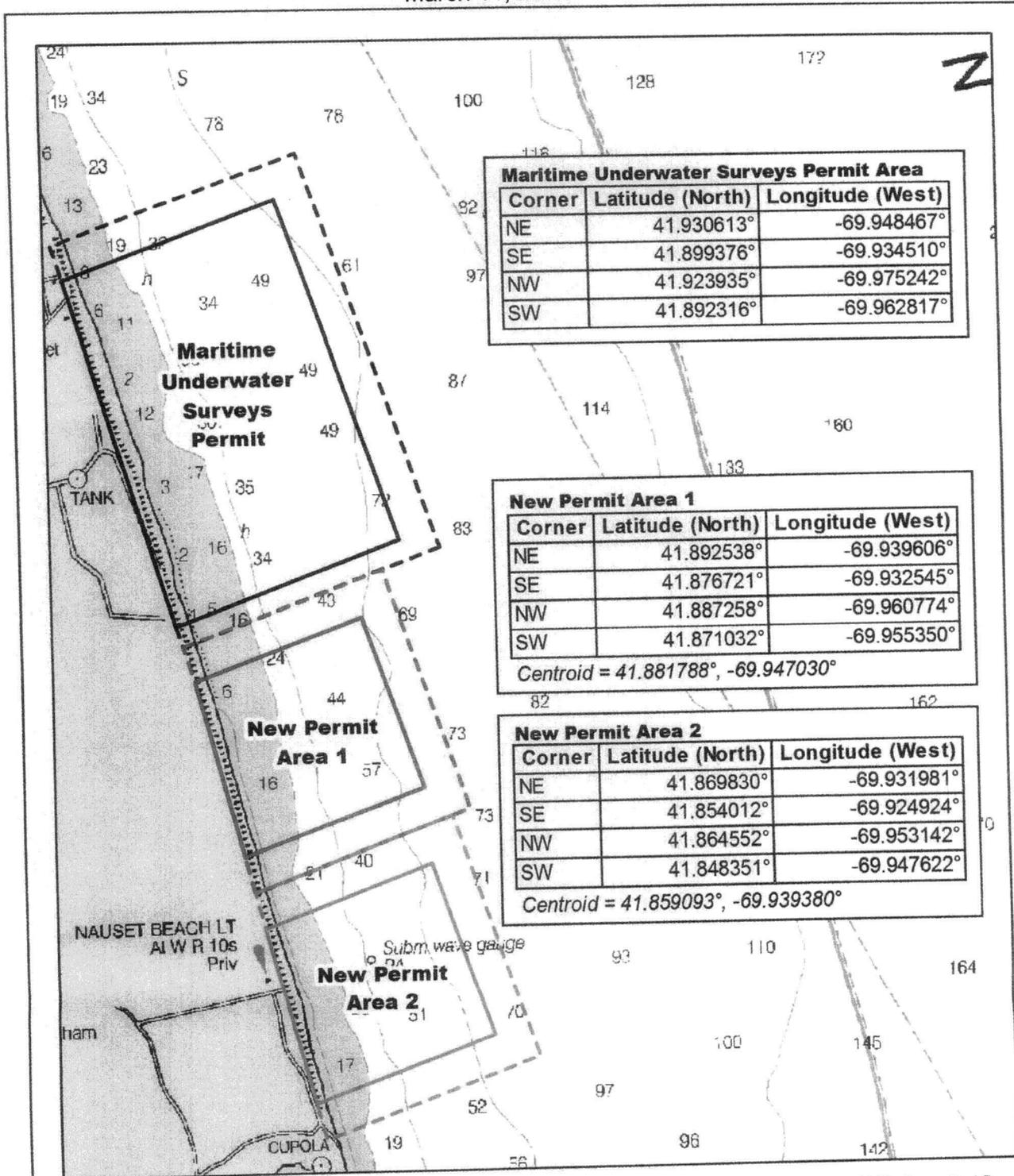
Christine Jacek
Acting Chief, Permits and Enforcement Branch
Regulatory Division

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: _____
ADDRESS: _____
PHONE: _____

Esper Survey Plan

March 11, 2013



Maritime Underwater Surveys Permit Area

Corner	Latitude (North)	Longitude (West)
NE	41.930613°	-69.948467°
SE	41.899376°	-69.934510°
NW	41.923935°	-69.975242°
SW	41.892316°	-69.962817°

New Permit Area 1

Corner	Latitude (North)	Longitude (West)
NE	41.892538°	-69.939606°
SE	41.876721°	-69.932545°
NW	41.887258°	-69.960774°
SW	41.871032°	-69.955350°

Centroid = 41.881788°, -69.947030°

New Permit Area 2

Corner	Latitude (North)	Longitude (West)
NE	41.869830°	-69.931981°
SE	41.854012°	-69.924924°
NW	41.864552°	-69.953142°
SW	41.848351°	-69.947622°

Centroid = 41.859093°, -69.939380°

- Maritime Underwater Surveys Permit Area
- Maritime Underwater Surveys Permit Buffer Zone
- New Permit Area 1
- New Permit Area 1 Buffer Zone
- New Permit Area 2
- New Permit Area 2 Buffer Zone

Base map: NOAA Chart 13246, Cape Cod Bay, 39th Ed., Oct. 2010.

Map coordinate system: North American Datum of 1983 (NAD83), Massachusetts State Plane Coordinate System, Mainland Zone (FIPS zone 2001), meters.

