US Army Corps of Engineers

PUBLIC NOTICE

Applicant:
Robert Outten
Dare County

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Wilmington District
Permit Application No. SAW-2025-02129

TO WHOM IT MAY CONCERN: The Wilmington District of the U.S. Army Corps of Engineers (Corps) has received an application for a Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) **and** Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403). The purpose of this public notice is to solicit comments from the public regarding the work described below:

APPLICANT: Mr. Robert Outten
Dare County
945 Marshall Collins Drive
Manteo, North Carolina 27954

AGENT: Mr. Patrick Barrineau
Coastal Science & Engineering, Inc.
160 Gills Creek Parkway
Columbia, South Carolina 29209

WATERWAY AND LOCATION: The project would affect navigable waters of the United States associated with the Atlantic Ocean. The review area is an approximate 5-acre project area and construction corridor located just east of Lighthouse Road, in Buxton at Latitude 35.254521N and Longitude -75.519930W; Dare County, North Carolina.

EXISTING CONDITIONS: The Village of Buxton encompasses approximately 3.8 miles of ocean shoreline on a barrier island located on North Carolina's Outer Banks. The width of the dry beach and the island's dune system varies considerably with location along the Town's beach and with the season.

Beach and terrestrial communities are considered sparsely populated due to the harsh conditions, including salt spray, wind, shifting sands, and soils with low water retention. Extensive coastal development is another factor that could limit species diversity and abundance. Vegetation along the uppermost portions of the dry beach includes beach spurge, sea rocket, and pennywort. The upper dune areas are more stabilized with vegetation consisting of American beach grass, panic grass, sea oats, broom straw, and salt meadow hay.

Organisms in the high-energy, sandy inter-tidal zones include mole crabs, coquina clams, amphipods, isopods, and polychaetes. These species are not commercially important but serve as an important food source for surf-feeding fish and shore birds. According to data collected from the project area, the invertebrate community of the inter-tidal beaches is strongly seasonal.

In 1969, three groins were constructed adjacent to the Naval Facility Cape Hatteras (Buxton Beach Access) for the purpose of protecting Navy infrastructure. These groins had a total length of 1,670 linear feet and consisted of sheet piles. In 1982, an additional 300 feet of sheet pikes were installed at the landward end of the southernmost groin. Armor stone protection was added in 1984 to help reduce scour during storm events. Most recently, repairs were made to the structures in 1994 consisting of new sheet piles and additional scout protection at the base of the structure. As of October 2024, sheet piles remain in place along approximately 410 feet of the linear footprint of the southernmost groin. An additional ~20 feet of buried sheet piles remain at the landward tie-in of repairs constructed following the 1980 storm.

PROJECT PURPOSE:

Basic: Repair 640 linear feet of the southernmost groin.

Overall: The purpose is to repair the deteriorated groin to increase sand-trapping capability and work in conjunction with the ongoing beach nourishment projects to enhance shoreline protection along the southern end of Buxton Village.

PROPOSED WORK: The applicant requests authorization repair approximately 640 linear feet of a damage and dilapidated groin by replacing sheet piles and adding stone armor scout protection as well as a marine filter fabric mat. The footprint of the structure will be approximately 17,000 square feet along the ocean bottom in the surf zone. The proposed repair will take place within a portion of the beach and adjacent inshore waters that have been previously modified by shoreline stabilization and maintenance activities. Construction equipment is limited to excavators, trucks, and cranes and will require a temporary use of an approximate 300-foot section of beach and nearshore area adjacent to the existing groin.

The maximum crest elevation of the proposed repairs is 8 ft NAVD, matching the original permitted design. The elevation will slope along the intertidal beach section to reduce the exposure of the structure. This will improve the aesthetics of the groin, reduce the likelihood of damage during storms, and allow for overpassing of sand to maintain sediment transport to the south. The groin elevation section will include (1) a horizontal berm section that should remain mostly buried on the northern side during typical weather conditions, (2) an upper beach section that slopes from +7.5 ft to +5.5 ft NAVD and will have varying levels of reveal depending on temporary changes in sand supply from the north, (3) an intertidal beach section sloping 1 on 19 between +5.5 ft and +2.0 ft NAVD (~still water mean high tide line), and a low-tide section sloping between +2.0 and 0.0 ft NAVD. At these elevations, the majority of the seaward third of the structure will sit at an elevation where only 1-2 ft of structure is exposed at a normal low-tide. Armor stone will be placed adjacent to the seaward portion of the sheeting and extending to station 6+40 to reduce scour and protect the sheets from storm waves. The stone section includes a core section of 1-3 ton stone, covered by the main protective stone ranging between 10-15 tons. Stone will slope at 1:1.5 on the northern and south side of the structure, while the seaward slope will be 1:2. Armor stone will be placed over marine gabion mattresses to prevent settlement of stone into the ocean bottom. Mattresses will extend beyond the limits of armor stone up to 20 ft to reduce the potential for scouring and slumping of the stone.

Construction is expected to take 2-3 months to complete. If practicable, work will be completed prior to the peak of sea turtle nesting season to minimize potential impacts to endangered species. The proposed work will be completed by land-based equipment during daylight hours.

AVOIDANCE AND MINIMIZATION: The applicant has provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: To prevent and minimize potential adverse impacts associated with the proposed project, certain management and avoidance/minimization measures would be implemented during construction. 1) Should work overlap with sea turtle nesting season, continuous nightly beach patrols would be performed by certified monitors to locate any turtles that are stranded on the beach and relocate them to the waters' edge or deal with them according to directives by and in consultation with USFWS and North Carolina Wildlife Resources Commission (NCWRC). 2) Construction is planned to occur during daylight hours. However, with NPS and CAMA approval, any work that is allowed during nighttime hours to take advantage of weather or tide conditions will minimize lighting in the Action Work Area to conform with USFWS requirements for beach lighting. 3) Should any nighttime work occur, vehicle ingress and egress at night would be with escorts by certified, endangered species observers. 4) Work will be accomplished in close coordination with NPS officials so that there will be the least practicable disruption to bird-nesting activities along Seashore lands. 5) No-work buffers along the beach would be established around the turtle or bird nests in coordination with USFWS, NCWRC, and NPS officials.

COMPENSATORY MITIGATION: The applicant has provided the following explanation why compensatory mitigation should not be required: The proposed project would not impact a special aquatic site as described in Subpart E of the Section 404(b)(1) Guidelines and no compensatory mitigation is proposed.

CULTURAL RESOURCES:
The Corps is evaluating the undertaking for effects to historic properties as required under Section 106 of the National Historic Preservation Act. This public notice serves to inform the public of the proposed undertaking and invites comments including those from local, State, and Federal government Agencies with respect to historic resources. Our final determination relative to historic resource impacts may be subject to additional

coordination with the State Historic Preservation Officer, federally recognized tribes and other interested parties.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

ENDANGERED SPECIES: The Corps has performed an initial review of the application, the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC), National Marine Fisheries Service Section 7 Mapper, and the NMFS Critical Habitat Mapper to determine if any threatened, endangered, proposed, or candidate species, as well as the proposed and final designated critical habitat may occur in the vicinity of the proposed project. Based on this initial review, the Corps has made a preliminary determination that the proposed project may affect species and critical habitat listed below. No other ESA-listed species or critical habitat will be affected by the proposed action.

West Indian manatee: Not likely to adversely affect. The proposed project is not likely adversely affect the West Indian manatee as habitat does not exist for this species within the defined project area, which is highly energetic and has little to no vegetation. Vessel strikes are unlikely to occur due to the land-based construction methods. However, the applicant will follow the USFWS Manatee guidelines to help minimize impacts to the species.

Piping Plover: May affect, not likely to adversely affect. The closest, documented piping plover nest was 1.38 miles away from the project area, and no NPS migratory bird transects are near project boundaries. While it is reasonable that piping plovers may use the area during migration, neither individuals nor breeding behaviors have been documented in the project area since the July-May weekly migratory bird surveys began in 2010. No direct effects are expected as a result of the construction activity, and activities on the beach will occur outside of NPS-established buffers designed to minimize disturbance effects for breeding, nesting, foraging, and roosting behaviors. Additionally, this species is less likely than other species to occur in the area and is very unlikely to nest in the project area. However, if the bird occurs outside of established closures, direct effects for foraging, roosting, or nesting adults would include disruptions and disturbance from movements of support vehicles. Even so, for non-nesting adults, the effects would be minimal as the project will occur in a very small beach area available for foraging and roosting; these mobile adults can move to more favorable habitat. However, in the unlikely event that there are any chicks in the project area, direct effects would include disturbance and interruptions in foraging activities since the chicks are unable to fly elsewhere to forage .

Rufa Red knot: Potential impacts to the red knot would be similar to those of the piping plover therefore it was determined that this project may affect, not likely to adversely affect this species. The decline in this species population is linked to climate change and the commercial harvest of horseshoe crabs in Delaware Bay which has the likelihood of being exacerbated from increasing development activities including this and other beach nourishment projects in Dare County. Ultimately, conservation measures were developed and finalized in a Biological Opinion to minimize adverse effects to this species. These measures would be included as special conditions of this permit authorization.

Roseate tern: The proposed project was determined to not likely to adversely affect this species based on its unlikely occurrence within the action area.

Seabeach Amaranth: Groin construction activities could potentially impact the seabeach amaranth. The typical habitat where this species is found includes the lower foredunes and upper beach strands on the ocean side of the primary sand dunes and over wash flats at accreting spits or ends of barrier islands. Seabeach amaranth has been and continues to be threatened by destruction or adverse alteration of its habitat. As a fugitive species dependent on a dynamic landscape and large-scale geophysical processes, it is extremely vulnerable to habitat fragmentation and isolation of small populations. Because seabeach amaranth plants may be present on the beach between April and January, individual plants may be affected during construction activities. Construction activities may bury or destroy existing plants, resulting in mortality, or bury seeds to a depth that would prevent future germination, resulting in reduced plant populations. Heavy equipment will be required to re-distribute the sand to the original natural beach template. This equipment will have to traverse the to reach the project area, and along the route may crush, bury, or break plants, bury seeds, or otherwise degrade seabeach amaranth habitat. Therefore, it was determined that this project may affect, likely to adversely affect this species.

Sea Turtles: The proposed action may affect not likely adversely affect sea turtles. While the proposed project does not occur in sea turtle foraging habitat such as hard bottom or areas of submerged aquatic vegetation, there is a likelihood that swimming and nesting sea turtles could be present during construction activities. During construction activities, the primary direct effects on sea turtles that may nest on the beach include disturbance during nesting, by blocking a sea turtle from access to nesting areas or cause a turtle to lay eggs in a location subject to overwash. Other effects of construction activities include noise, construction lighting, and the potential for a nest to be crushed if missed by NPS regular patrols. While the presence of sea turtles in the vicinity of the project is likely, construction will be limited to a ~300 ft length of beach on either side of an existing groin. The beach condition in the action area is highly eroded and not suitable for turtle nesting. Work will be completed in daylight hours and by land-based equipment. Protection measures such as daily morning patrols and nest relocations will be incorporated into the construction plan.

Atlantic and Shortnose Sturgeon: Due to the unlikely occurrence of the species in the project area and land based construction methods proposed by the applicant, no adverse impacts to the species are anticipated.

Pursuant to Section 7 ESA, any required consultation with the Service(s) will be conducted in accordance with 50 CFR part 402. The USACE is the lead Federal agency for ESA consultation for the proposed action. Any required consultation will be completed by USACE.

This notice serves as request to the U.S. Fish and Wildlife Service and National Marine Fisheries Service for any additional information on whether any listed or proposed to be listed endangered or threatened species or critical habitat may be present in the area which would be affected by the proposed activity.

ESSENTIAL FISH HABITAT: Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act 1996, the Corps reviewed the project area, examined information provided by the applicant, and consulted available species information.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action may adversely affect EFH and/or fisheries managed by Fishery Management Councils and the National Marine Fisheries Service (NMFS). Implementation of the proposed project would directly impact approximately 1 acre of nearshore marine water columns. The effects of the project are determined to be substantial and permanent.

Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

NAVIGATION: The proposed structure or activity is not located in the vicinity of a federal navigation channel.

SECTION 408: The applicant will not require permission under Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408) because the activity, in whole or in part, would not alter, occupy, or use a Corps Civil Works project.

WATER QUALITY CERTIFICATION: The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within 180 days of the date of this public notice. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments should do so in writing, within 30 days of the issue date of the notice by emailing comments to publiccomments@deq.nc.gov with the subject line of “401 Water Quality Certification” or by mail to:

NCDWR Central Office
Attention: Stephanie Goss, 401 and Buffer Permitting Branch
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(Physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

NOTE: This public notice is being issued based on information furnished by the applicant. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program. The geographic extent of aquatic resources within the proposed project area that either are, or are presumed to be, within the Corps jurisdiction has been verified by Corps personnel.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to 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 cumulative impacts thereof; among these are conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people. Evaluation of the impact of the activity on the public interest will also include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act or the criteria established under authority of Section 102(a) of the Marine Protection Research and Sanctuaries Act of 1972. A permit will be granted unless its issuance is found to be contrary to the public interest.

COMMENTS: The 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. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this determination, comments are used to assess impacts to 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 (EA) and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The Wilmington District will receive written comments on the proposed work, as outlined above, until December 22, 2025. Comments should be submitted electronically via the Regulatory Request System (RRS) at https://rrs.usace.army.mil/rrs or to Josh Pelletier at josh.r.pelletier@usace.army.mil. Alternatively, you may submit comments in writing to the Commander, U.S. Army Corps of Engineers, Wilmington District, Attention: Josh Pelletier, 2407 W. 5th Street, Washington, North Carolina, 27889. Please refer to the permit application number in your comments.

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 public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.