Public Notice

Public Notice No.	Date:
N/A	**October 15th, 2012**

U.S. Army Corps of Engineers
Honolulu District

Reply to: Respond by: N/A
U.S. Army Corps of Engineers, Honolulu District
Regulatory Branch, CEPOH-EC-R
Building 230
Fort Shafter, Hawaii 96858-5440
Phone: (808) 835-4303 Email: CEPOH-EC-R@usace.army.mil

PUBLIC NOTICE REVISION
FEDERAL REGISTER NOTICE
ANNOUNCING NEW NATIONWIDE PERMITS

On March 19, 2012, the Honolulu District Corps of Engineers published a Public Notice announcing the February 21, 2012, *Federal Register* notice of the U.S. Army Corps of Engineers reissuance of all existing nationwide permits (NWPs), general conditions, and definitions with some modifications; and the issuance of two new NWPs, three new general conditions, and three new definitions. The Public Notice also provided the final Regional Conditions developed by the Honolulu District to ensure that NWP authorizations would result in no more than minimal individual and cumulative impacts to aquatic resources within its designated area of responsibility and regulatory jurisdiction.

Minor revisions have been made to the Honolulu District's final Regional Conditions. The revised Regional Conditions are attached to this public notice for informational purposes. All other information contained in the previous notice remains the same. Please contact Ryan H. Winn at (671) 339-2108 or by email at ryan.h.winn@usace.army.mil if further information is desired concerning this notice.

District Commander
U.S. Army, Corps of Engineers

2012 NATIONWIDE PERMIT HONOLULU DISTRICT REGIONAL CONDITIONS

Honolulu District has adopted the following Regional Conditions as a means to ensure no more than minimal impacts, on an individual and/or cumulative basis, will occur in waters of the United States by projects authorized by nationwide permit (NWP). The following Regional Conditions are applicable unless the Honolulu District makes a written determination, based on project-specific information, that omitting or deviating from a particular Regional Condition is both merited and would not result in more than minimal impacts to the aquatic environment.

Coral Reef Advisory: Please be advised that coral reefs are special aquatic sites with complex ecosystems that may consist of many contributing biological assemblages, including sponges, macroalgae, seagrass, soft corals, gorgonians, etc., in addition to reef-building coral colonies. It should not be assumed that low live coral cover or the absence of live coral colonies in a particular sample or location indicates the absence of potential impacts to a coral reef by a given project. The Honolulu District determines, after coordinating with the appropriate resource agencies, the presence and magnitude of impacts to coral reef special aquatic sites, as well as appropriate and practicable compensatory mitigation requirements, commensurate with the scope and scale of specific authorized activities.

Regional Condition 1 – Exclusions

1. **Revoked Permits.**

The following NWPs may not be used to authorize activities within the geographic areas subject to the regulatory jurisdiction of the Honolulu District:

NWP 21 - Surface Coal Mining Activities
NWP 24 - Indian Tribe or State Administered Section 404 Programs
NWP 29 - Residential Developments
NWP 34 - Cranberry Production Activities
NWP 39 - Commercial and Institutional Developments
NWP 42 - Recreational Activities
NWP 44 - Mining Activities
NWP 49 - Coal Remining Activities
NWP 50 - Underground Coal Mining Activities
NWP 52 - Water-Based Renewable Energy Generation Pilot Projects

2. **Kihei Wetlands**.

The following NWPs may not be used to authorize activities on the island of Maui, Hawaii, within the area bounded by Mokulele Highway to the north, Kilohana Drive to the south, Piilani Highway to the east, and extending to the Pacific Ocean to the west:

NWP 7 – Outfall Structures and Associated Intake Structures
NWP 13 – Bank Stabilization

NWP 14 – Linear Transportation Projects
NWP 40 – Agricultural Activities
NWP 41 – Reshaping Existing Drainage Ditches
NWP 43 – Stormwater Management Facilities

3. **National Wildlife Refuges, Hawaii State Wildlife Sanctuaries, Hawaii Marine Life Conservation Districts, and Guam Marine Preserve Areas**.

NWPs may not be used to authorize activities within or directly affecting national wildlife refuges, Hawaii state wildlife sanctuaries, Hawaii marine life conservation districts, or Guam marine preserve areas, including wetlands adjacent to such designated areas, unless the Honolulu District determines after coordination with appropriate resource agencies that the activity would result in not more than minimal adverse impacts to aquatic resources.

4. **Anchialine pools, montane bogs, natural freshwater lakes and saline lakes**.

The following NWPs may not be used to authorize activities within anchialine pools, montane bogs, natural freshwater lakes, or saline lakes:

NWP 3 – Maintenance
NWP 7 – Outfall Structures and Associated Intake Structures
NWP 12 – Utility Line Activities
NWP 13 – Bank Stabilization
NWP 14 – Linear Transportation Projects
NWP 18 – Minor Discharges
NWP 19 – Minor Dredging
NWP 33 – Temporary Construction, Access, and Dewatering
NWP 40 – Agricultural Activities
NWP 41 – Reshaping Existing Drainage Ditches
NWP 43 – Stormwater Management Facilities

5. **Mangroves and Sea and Freshwater Caves, including Vadose Shafts, Sink Holes, Allogenic Streams, Stream Caves, Phreatic Zones, and Cenotes, in the Territories of Guam and American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI)**.

The following NWPs may not be used to authorize any activity in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (CNMI) within mangroves or sea or freshwater caves, including vadose shafts, sink holes, allogenic streams, stream caves, phreatic zones, and cenotes:

NWP 3 - Maintenance
NWP 7 - Outfall Structures and Associated Intake Structures
NWP 12 - Utility Line Activities
NWP 13 - Bank Stabilization
NWP 14 - Linear Transportation Projects
NWP 18 - Minor Discharges
NWP 19 - Minor Dredging

NWP 33 - Temporary Construction, Access, and Dewatering
NWP 40 - Agricultural Activities
NWP 41 - Reshaping Existing Drainage Ditches
NWP 43 - Stormwater Management Facilities

6. **Coral Reefs**.

No activity that directly results in a permanent loss of coral reef may be authorized by NWP if the District Engineer determines, after coordinating with appropriate resource agencies, that compensatory mitigation is required.

7. **Stream Modification**.

The following NWPs may not be used to authorize permanent stream channelization or the construction of dams that impound waters of the United States:

NWP 7 - Outfall Structures and Associated Intake Structures
NWP 12 - Utility Line Activities
NWP 14 - Linear Transportation Projects
NWP 18 - Minor Discharges
NWP 25 - Structural Discharges
NWP 40 - Agricultural Activities
NWP 41 - Reshaping Existing Drainage Ditches
NWP 51 - Land-Based Renewable Energy Generation Facilities

Regional Condition 2 – Regional Conditions that apply to all NWPs in the Honolulu District

1. **Pre-Construction Notification (PCN)**.

Notification to the Honolulu District is required, in accordance with General Condition 31, for any activity authorized by NWP that will take place within any of the geographic areas subject to the regulatory jurisdiction of the Honolulu District. You must obtain a written NWP verification from the Honolulu District before commencing the authorized activity.

2. **Compensatory Mitigation**.

Upland vegetation buffers may not be used as the primary or sole method to offset permanent losses of wetland or aquatic resources within the geographic areas subject to the regulatory jurisdiction of the Honolulu District. However, use of vegetated upland buffers is strongly encouraged as part of a compensatory mitigation plan that replaces lost aquatic resource functions through restoration, enhancement, and creation or, under exceptional circumstances, preservation of wetland and aquatic areas. Compensatory mitigation shall provide a minimum ratio of 1:1 replacement of unavoidable aquatic resource function losses or area. (Note: The

actual ratio may be larger in order to account for the impact plus temporal loss of area/functions and/or uncertainty of mitigation success.)

3. **Minimization Measures**

A plan employing the techniques listed below must be implemented to avoid or minimize disturbance to wetlands, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided. Areas disturbed during project construction must be revegetated as soon as possible. Erosion protection must be provided and maintained until the soil is permanently stabilized.

a. Avoidance and minimization techniques may vary with site conditions and include, but are not limited to, the following:

(1) Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

(2) Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.

(3) Insuring that anchorage of construction barges, equipment, and their anchor lines avoid coral reefs and seagrass beds.

b. Revegetation techniques may vary with site conditions and include, but are not limited to seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote re-establishment of natural plant communities. Species to be used for seeding and planting, preferably those that provide the same functions as those species they are replacing, shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state; 4) non-native non-invasive, species. Note: non-native species shall be used only when native species are not available. The following species are known to be highly invasive and shall not be used under any circumstances for revegetation under these NWPs: 1) species included on the USDA APHIS Plant Protection and Quarantine, Federal Noxious Weed List as of 6/7/99; 2) species included on the Hawaii Department of Agriculture, List of Plant Species Designated as Noxious Weeds for Eradication or Control Purposes (6/18/92); and 3) the University of Hawaii, Department of Botany, Distribution Maps of Alien Plants in Hawaii by island, Hawaiian Ecosystems at Risk (HEAR) Project (1/16/01); and 4) plants that score >1 and evaluated as ‘Accept’ on the Hawaii Weed Risk Assessment.

4. **Site Identification**

Prior to clearing and construction, project limits of authorized sites must be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) to ensure that impacts to waters of the United States (including wetlands) beyond project footprints are avoided. Such identification of project limits must be properly maintained until construction is completed and the soils have been stabilized.

5. **Protected or Endangered Species**

a. Constant vigilance shall be kept for the presence of protected species during all aspects of the proposed action. Protected species include plants and animals listed or proposed for listing as threatened or endangered under Endangered Species Act (ESA), birds covered under the Migratory Bird Conservation Act, as well as all marine mammals. Although the protected species potentially affected would be determined on a project-specific basis, protected species typically of concern in Hawaii include: Hawaiian stilt, Hawaiian coot, Hawaiian moorhen, Hawaiian duck, Hawaiian goose, green sea turtle, hawksbill sea turtle, and Hawaiian monk seal. In the Territory of Guam or the Commonwealth of the Northern Mariana Islands species include: nightingale wee-warbler, Mariana common moorhen, green sea turtle, and hawksbill sea turtle. In American Samoa species also include: green sea turtle and hawksbill sea turtle.

b. All on-site project personnel, irrespective of their employment arrangement or affiliation (e.g. employee, contractor, etc.), shall be apprised of the status of any protected species potentially present in the project area and the protections afforded to those species under Federal laws. Brochures explaining the laws and guidelines for listed species in Hawaii, American Samoa, and Guam may be downloaded from http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm and http://www.fws.gov/pacificislands/wesa/endspindex.html#Hawaiian.

c. The project foreman shall designate an appropriate number of competent observers to survey the area adjacent to the proposed action for protected species. The project foreman shall also have in his/her possession at the jobsite a handout with photographs of protected species that may enter the construction site to assist with identification of the protected species. (U.S. Fish and Wildlife Service – Pacific Islands Fish and Wildlife Office (PIFWO) will provide the informational handout).

d. Surveys of the project area shall be made prior to the start of work each day, and prior to resumption of work following any break of more than one half hour, to ensure that no protected species are in the project area (typically within 50 yards of the proposed work). All work shall be postponed or halted when protected species are present, and shall only begin/resume after the animals have voluntarily departed the area. In the case of sessile species, a conservation plan shall be developed and approved between the Regulatory Branch, U.S. Army Corps of Engineers and PIFWO and/or National Marine Fisheries Service Pacific Islands Regional Office (PIRO).

e. If an onsite protected species does not depart the area on its own for 3 days or more, we recommend that the permittee, or responsible contractor, contact PIFWO for further technical assistance and guidance (808) 792-9400.

f. Any interaction with or incidental take of protected species shall be reported immediately to the Regulatory Branch, U.S. Army Corps of Engineers (808) 438-9258. Additionally, pursuant to the ESA, any take of ESA-listed species (other than marine

mammals) must be reported to the U.S. Fish and Wildlife Office of Law Enforcement in Honolulu at 1-808-861-8525. Any incidental take of marine mammals shall be reported immediately to the National Oceanic and Atmospheric Administration's (NOAA) 24-hour hotline at 1-888-256-9840. Information reported must include the name and phone number of a point of contact, location of the incident, and nature of the take and/or injury.

Note: Additional requirements may be designated by the Honolulu District as appropriate for specific projects, including all conservation measures and/or best management practices (BMPs) required by any ESA consultation for the project.

6. **Standard Best Management Practices (BMPs)**

Site-specific BMPs are generally a requirement of NWP verifications, either directly or by state water quality certification conditions, which are incorporated by reference. A permittee risks delays or enforcement action if work is commenced pursuant to a site-specific BMP plan that includes regulated activities, such as temporary access fill or stream diversions, that were not authorized under the NWP verification. To facilitate efficient review of a project, site-specific BMPs must be submitted as part of the PCN required for any activity requiring authorization under a NWP.

To the extent applicable, the following BMPs must be implemented to minimize the degradation of water quality and impacts to fish, coral reefs, and other aquatic resources:

a. Turbidity and sediment from project-related work must be minimized and contained to the immediate vicinity of the authorized activity through the appropriate use of effective sediment containment devices.

b. To the extent practicable, the work must be conducted in the dry season or when any affected stream has minimal or no flow. The site must be stabilized to prevent erosion and runoff and work must stop during flooding, intense rainfall, storm surge, or high surf conditions. To the extent practicable, shoreline work must be done during low tides.

c. To the extent practicable, work in the aquatic environment must be scheduled to avoid coral spawning and recruitment periods and sea turtle nesting and hatching periods. Coordination with federal resource agencies (U.S. Fish and Wildlife Service and/or NOAA) can assist in identifying these time periods.

d. Dredging and filling in the aquatic environment must be designed to avoid or minimize adverse impacts to or the loss of special aquatic sites (wetlands (swamps, marshes, bogs, etc.), mudflats, vegetated shallows/seagrass beds, coral reefs and/or riffle and pool complexes).

e. All project-related materials (fill, landscaping, etc.) and equipment (dredges, barges, backhoes, etc.) to be placed in any aquatic environment shall be inspected and cleaned of pollutants, organic matter, and invasive species (including snakes, frogs, and marine plants and animals, etc.) prior to use in any aquatic environment.

f. No project-related materials (fill, revetment rock, pipe etc.) shall be stockpiled in the aquatic environment (intertidal zones, reef flats, stream channels, wetlands etc.) or in close proximity such that materials could be carried into waters by wind, rain, or high surf.

g. All construction debris and material removed from the marine/aquatic environment shall be disposed of at an approved upland or alternative disposal site.

h. No contamination (by trash, debris, sediment, non-native species introductions, attractions of non-native pests, etc.) of adjacent waters of the United States, including special aquatic sites, shall result from project-related activities. Special attention must be paid to the fouling level on barges, vessels, and equipment whereas to minimize the transport and potential introduction and spread of aquatic non-native species. In addition, if dredged or excavated material or structural members are removed from the water or placed in the water, measures must be taken to prevent the spread or introduction of any aquatic non-native species. This shall be accomplished by implementing a litter-control plan and on a site or project specific need basis, developing a Hazard Analysis and Critical Control Point Plan (HACCP – see http://www.haccp-nrm.org/Wizard/default.asp) to prevent attraction and introduction of non-native species.

i. Fueling of project-related vehicles and equipment shall take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. The plan shall be retained on site with the person charged with the responsibility of compliance with the plan. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.

j. To minimize turbidity in the aquatic environment, any under-layer fills used in the project shall be protected from erosion with suitable material (such as precast concrete armor or mat units) as soon after placement as practicable.

k. Any soil exposed near water as part of the project shall be protected from erosion (with suitable material such as geotextile, filter fabric, etc.) after exposure and stabilized as soon as practicable (with vegetation matting, hydroseeding etc.). Revegetation should follow the established standards in Regional Condition #10 (Minimization Measures).

l. Silt fences, silt curtains, or other diversion or containment structures shall be installed to contain sediment and turbidity at the work site (a) parallel to, and within 10 feet of, the toe of any fill or exposed soil which may introduce sediment to an adjacent aquatic site; and (b) adjacent to any fill placed or soil exposed within an aquatic site. All silt fences, curtains, and other structures shall be installed properly and maintained in a functioning manner for the life of the construction period and until the impact area is permanently stabilized, self sustaining, and/or turbidity levels, elevated due to construction, have returned to ambient levels.

m. When the discharge of fill material results in the replacement of wetlands or waters of the US with impervious surfaces, the authorized activity must not result in more than minimal degradation of water quality (in accordance with General Condition 25). To ensure NWPs do not cumulatively degrade water quality from increasing impervious area, projects should incorporate **low impact development stormwater practices** (e.g. native landscaping, bioretention and infiltration techniques, buffers, green roofs, and green spaces) to the extent practical to retain stormflows and pollutants on-site. More information including low impact stormwater concepts and definitions is available at: http://www.epa.gov/owow/NPS/lid/.

7. **State of Hawaii, Department of Health, Clean Water Branch (DOH) Requirements (Projects in the State of Hawaii Only)**

a. You must obtain a Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) from the DOH before the Honolulu District can issue verification for proposed work requiring authorization under CWA Section 404. All conditions of a Section 401 WQC issued for a project are hereby incorporated into the project's NWP verification and are subject to discretionary enforcement by the Honolulu District. The permittee is strongly encouraged to submit a DOH WQC application to DOH, with site-specific BMPs, applicable monitoring plan, and any dredge spoils management plans.

b. You must contact the DOH to determine if a National Pollutant Discharge Elimination System (NPDES) permit is required. For work authorizations requiring verification solely under Section 10 of the Rivers and Harbors Act of 1899, any best management practices (BMPs) required or recommended by the DOH for purposes of avoiding and minimizing the discharge of pollutants, other than dredged or fill material, into state waters, including 303(d)-listed impaired waters, are hereby incorporated into the NWP verification. These conditions are subject to discretionary enforcement by the Honolulu District.

c. For projects directly impacting "Impaired Waters" as listed on the most recent CWA Section 303(d) list (*http://hawaii.gov/health/environmental/env-planning/wqm/wqm.html*), the PCN shall:

(1) Identify the waterbody as an "Impaired Water" and,

(2) Identify mitigating measures or BMPs necessary to avoid further degradation of the impaired water.

d. You may dispose of dredged spoils at state permitted landfills, provided you comply with the landfill's acceptance criteria. Preapproval by the DOH-Solid and Hazardous Waste Branch is not required for this action. The generator shall provide documentation to DOH upon request. You may use dredge spoils at off-site locations, provided the dredged spoils meet the Hawaii DOH Soil Environmental Action Levels for unrestricted use. You must adequately characterize the dredged spoils, including conducting sampling and analysis in accordance with the HEER Office Technical Guidance Manual

and other relevant guidance documents. Sampling methodology and analytical results shall be documented, including a comparison to EALs, and maintained by the generator. The spoils shall also meet the definition of inert fill material, which generally includes "…earth, soil, rocks, and rock-like materials... [that do not] contain vegetation or other organic material, or other solid waste." The generator shall provide the documentation to the DOH upon request. Offsite placement of dredged spoils that do not meet the above criteria or occur without adequate records may be considered illegal dumping, subject to enforcement action.

Regional Condition 3 – Acreage Limitation

The maximum acreage loss of waters of the United States for the total project may not exceed 1/10-acre resulting from any discharge of dredged or fill material in a special aquatic site, including wetlands, if authorized by the following NWPs, or a combination of any of these NWPs:

NWP 3 - Maintenance
NWP 7 - Outfall Structures and Associated Intake Structures
NWP 40 - Agricultural Activities
NWP 41 - Reshaping Existing Drainage Ditches
NWP 43 - Stormwater Management Facilities
NWP 45 - Repair of Uplands Damaged by Discrete Events
NWP 46 - Discharges in Ditches
NWP 51 - Land-Based Renewable Energy Generation Facilities

Regional Condition 4 – Length Limitation

Any discharge of dredged or fill material in any stream, including intermittent and ephemeral streams, may not exceed 200 linear feet if authorized by the following NWPs:

NWP 12 - Utility Line Activities
NWP 13 - Bank Stabilization
NWP 14 - Linear Transportation Projects
NWP 40 - Agricultural Activities
NWP 45 - Repair of Uplands Damaged by Discrete Events
NWP 46 - Discharges in Ditches
NWP 51 - Land-Based Renewable Energy Generation Facilities

Regional Condition 5 – Sidecasting

Except for activities authorized under NWP 12, no activity may sidecast material into waters of the United States.

For any activity authorized under NWP 12, no material may be sidecast into flowing waters or waters subject to tidal action. Any material removed from an area suspected to contain

contamination may not be sidecast for re-use, but must be disposed of in an upland location. All sidecast material must be completely removed at the earliest practicable date but no later than 30 days after its placement in waters of the United States.

Regional Condition 6 – Road Crossings

Use of embedded or bottomless arch culverts is required when practicable, especially where frequent culvert maintenance or replacement is needed, for any activity authorized under the following NWPs:

NWP 3 - Maintenance
NWP 14 - Linear Transportation Projects
NWP 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 37 - Emergency Watershed Protection and Rehabilitation
NWP 40 - Agricultural Activities
NWP 41 - Reshaping Existing Drainage Ditches
NWP 45 - Repair of Uplands Damaged by Discrete Events

Culverts must maintain the original and natural full bank capacity (cross-sectional volume) of the channel. If a bottomless culvert cannot be used, a rock apron with an appropriate slope (determined on a site or project specific basis), or other appropriate measures must be incorporated to prevent perching of the culvert or scouring that could obstruct up- and downstream native stream species migration. To preserve a natural stream bed, bridge designs that span the stream or river, including pier or pile supported spans, are encouraged.

Regional Condition 7 – Bank Stabilization.

Vertical walls and/or non permeable rigid structures such as pre-cast concrete, concrete rubble masonry, and cast-in-place structures may not be used for bank stabilization authorized under the following NWPs:

NWP 13 - Bank Stabilization
NWP 14 - Linear Transportation Projects
NWP 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 45 - Repair of Uplands Damaged by Discrete Events

Regional Condition 8 - Mooring Buoys.

Within 7 days of installation of a mooring buoy authorized by NWP 10, you must provide the as-built coordinates of its location to the Honolulu District and the U.S. Coast Guard.

Regional Condition 9 – Runways and Taxiways.

NWP 14 may not be used to authorize runways or taxiways.

DEFINITIONS

Allogenic streams - streams flowing from an impervious surface, such as volcanic rock into porous limestone. Example: in Northern Guam, such streams will percolate into the ground and can flow into the marine environment from subsurface channels.

Anchialine pools – marine or brackish water bodies that have no surface connection but that, through permeable substrates, have subsurface hydrologic connection to the ocean.

Cenotes - sinkholes open to the surface and extending into groundwater.

Coral Reefs - As defined at 40 CFR 230.44 (Clean Water Act, Section 404(b)(1) Guidelines), coral reefs consist of the skeletal deposit, usually of calcareous or silicaceous materials, produced by the vital activities of anthozoan polyps or other invertebrate organisms present in growing portions of the reef.

Phreatic zones - the zones along a coast where freshwater and saltwater mix usually causing rapid dissolution of limestone with a resulting cave formation

Sinkholes - caves formed when a water formed cave either collapses or is opened up by adequate dissolution of limestone by water.

Stream caves - a series of caves formed by water flowing through limestone usually structurally complex.

Vadose Shafts - vertical shafts in limestone that allows rapid passage of water into the ground water lens.