



US Army Corps
of Engineers
Honolulu District

Public Notice of Proposal to Issue Regional General Permit 2011-001

Regulatory Branch (1145b)
Building 230
Fort Shafter, Hawaii 96858-5440

Public Notice Date: 8 November 2010
Expiration Date: 8 December 2010
Permit File Number: POH-2010-00287

PROPOSED GENERAL PERMIT 2011-001 FOR MAINTENANCE CLEARING OF RIVERS, STREAMS, STORM DRAINS AND BEACH AREAS IN THE STATE OF HAWAII

1. INTRODUCTION:

In accordance with Parts 320, 322, 325, 326 and 329 of Title 33, Code of Federal Regulations, the District Engineer of the U.S. Army Corps of Engineers, Honolulu District (Corps) is proposing to issue General Permit GP2011-001 to authorize maintenance clearing of rivers, streams, and storm drains, and beach areas in waters of the United States, including navigable waters in the State of Hawaii, subject to certain limitations, specifications and conditions.

2. BACKGROUND AND APPLICABLE STATUTORY AUTHORITY:

a. The previous General Permit (GP) authorizing this activity, General Permit GP 96-001 was issued on March 14, 1997 and expired on March 19, 2002. During that five-year period, approximately 100 authorizations were issued. No significant adverse impacts are known to have resulted from the activities authorized under the GP.

b. Issuance of General Permit GP2011-001 is proposed pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and the Corps' permit regulations (33 CFR 320-330).

3. PROJECT PURPOSE AND DESCRIPTION:

Issuance of general permit GP2011-001 would authorize the maintenance removal of sediment at the outlets of storm drains, as well as dredging of constricted portions of, and at the mouths of, streams and rivers, and the removal of seaweed, rubble, or other debris from beach areas in the State of Hawaii, subject to certain limitations, specifications, and conditions. The GP would not authorize any activities involving the placement or discharge of fill material. Work under the proposed permit would result in a reduction of the potential for flooding due to sedimentation and shoaling in these waterways. Work would also improve public safety by preventing stagnation of these waterways by restoring drainageways which have been blocked by shoaling at the ocean and by removal of potentially harmful debris washed onto swimming beaches around the state.

4. NEED FOR A FEDERAL EIS:

The Corps' permit regulation (33 CFR 320-330) provides that GPs can be issued only for activities that are substantially similar in nature, and that cause only minimal individual or cumulative adverse environmental impact. Based on a preliminary assessment of the impacts of the general permit, the District Engineer has determined that issuance of the GP would not result individually or cumulatively in a significant effect on the natural or human environment. Therefore, under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) a Federal Environmental Impact Statement will not be prepared.

5. IMPACTS OF ACTIVITIES AUTHORIZED BY GENERAL PERMIT:

The removal of sediment would occur in areas of constriction in a river or stream where the sediment has accumulated due to past rain events. The activity may also occur at the mouths of the rivers and streams and storm drain outlets where storm or tidal events in the ocean have resulted in closure, or near closure, of the outlets due to shoaling. These work locations are susceptible to quickly changing environmental conditions and the authorized work would restore them to their pre-event conditions. Potential impacts on the marine environment would be limited if performed within the parameters of the GP, including use of Best Management Practices to control impacts, and are not expected to be significant.

6. IMPACT ON HISTORIC PROPERTIES:

The work authorized under this GP would restore the areas to their original specifications, therefore, cultural resources or any property listed in the Hawaii and National Register of Historic Places would not be impacted. Based on the nature and location of the proposed work, it is unlikely that there are historical properties within the Area of Potential Effect of activities which would be authorized under the proposed general permit.

Upon discovery of any previously unknown historic or archaeological remains during accomplishment of an activity authorized under the GP, the permittee will be required to immediately cease work and notify the Corps' Regulatory Branch of what has been found; this is a general condition that would be included in the Department of Army permit. This notice is being sent to the State of Hawaii Historic Preservation Officer and the Advisory Council on Historic Preservation for review; any comments they have regarding historic properties and cultural resources will be considered before a final decision is made on issuance of the GP.

7. IMPACT ON ENDANGERED SPECIES:

The Corps has assessed potential impacts to Federally-listed species, species proposed for listing, and designated critical habitats in Hawaiian waters. Based on the work proposed to be authorized under this GP and listed species expected to be present in or near the proposed action areas, we have determined that the proposed actions may affect but is not likely to adversely affect the following species:

Hawksbill sea turtles (/Eretmochelys imbricate/) endangered
Green sea turtles (/Chelonia mydas/) threatened
Hawaiian monk seals (/Monachus schauinslandi/) endangered

Work authorized under the GP will have no effect on any other ESA-listed marine species or designated critical habitat. The Corps has further determined that the project is within the scope of the

Standard Local Operating Procedures for Endangered Species in the Central and Western Pacific Region (Pac-SLOPES). As such, this project would be covered under the programmatic informal consultation completed with NOAA NMFS PRD, under Section 7 of the Endangered Species Act (ESA), on August 6, 2010.

The GP is proposed to be issued under the Pac-SLOPES, with the inclusion of the general and special conditions and Best Management Practices (BMPs) outlined in Pac-SLOPES and in accordance with the programmatic consultation. The Corps requests confirmation and comments from NOAA NMFS PRD.

This notice is being sent to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in accordance with Section 7 of the Endangered Species Act. Any comments they have concerning effects on listed species or designated critical habitat will be considered before a final decision is made on issuance of the GP.

8. IMPACT ON ESSENTIAL FISH HABITAT:

The proposed work is being evaluated for possible effects to Essential Fish Habitat (EFH) pursuant to the Magnuson Stevens Fishery Conservation and Management Act of 1996 (MSFCMA), 16 U.S.C. et seq., and associated federal regulations found at 50 CFR 600 Subpart K. The Honolulu District includes areas of EFH as Fishery Management Plans. We have reviewed the January 20, 1999, Western Pacific Fishery Management Council's Environmental Assessment to locate EFH area as identified by the National Marine Fisheries Service (NMFS). We have determined that the marine environment lying seaward of the shoreline may include EFH consisting of typical fringing reef components which contribute to maintenance of fisheries. However, activities to be authorized by issuance of GP 2011-001 would only include dredging of existing shoals and would not authorize any discharge of dredged material. Due to their limited scope and based on the required use of Best Management Practices to restrict impacts to the dredge sites, the activities to be authorized are not expected to cause adverse effects, either individually or cumulatively, on any seaward EFH. This notice is being sent to the NMFS to fulfill coordination requirements of the MSFCMA. Any conservation recommendations NMFS makes concerning EFH will be considered before a final decision is made on the proposed issuance of the GP. We request concurrence with our determination from NMFS.

9. FEDERAL CONSISTENCY WITH HAWAII COASTAL ZONE MANAGEMENT PROGRAM:

Issuance of the GP and authorizations of activities under it are consistent with and will be conducted in a manner consistent to the maximum extent practicable with the Hawaii Coastal Zone Management (CZM) Program.

10. REQUEST FOR PUBLIC HEARING:

Any person may request, in writing, within 30 days from the date of this notice that a public hearing be held to consider the issuance of the general permit. Requests for public hearing shall specifically state the reasons for holding a public hearing.

11. AUTHORITY:

This GP will be reviewed under the following authorities:

(X) Perform work in or affecting navigable waters of the United States – Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

12. EVALUATION:

The decision whether to issue this GP will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activities 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 issuance of the GP, 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, historic 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.

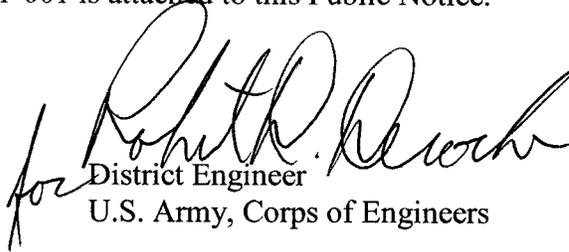
The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of issuance of this GP. Any comments received will be considered by the Corps to determine whether to issue or modify the GP. 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 activity.

13. COMMENT AND REVIEW PERIOD:

Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this GP. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the reference number as shown below. All e-mail comments should be sent to robert.d.deroche2@usace.army.mil. Conventional mail comments should be sent U.S. Army Corps of Engineers, Honolulu District (ATTN: CEPOH-EC-R), Building 230, Ft. Shafter, HI 96848. Both conventional mail and e-mail comments must include the reference number, as shown below, and the commenter's name, address, and phone number. All comments whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration. Please include the following reference number: **POH-2010-00287**.

Please contact Mr. Robert Deroche at (808) 438-2039 if further information is desired concerning this notice.

The proposed General Permit GP 2011-001 is attached to this Public Notice.


for Robert Deroche
District Engineer
U.S. Army, Corps of Engineers

Regulatory Branch

Effective Date:

Expiration Date:

DEPARTMENT OF THE ARMY

GENERAL PERMIT GP 2011-001

**MAINTENANCE CLEARING OF RIVERS, STREAMS,
STORM DRAINS, AND BEACH AREAS IN THE STATE OF HAWAII**

1. INTRODUCTION:

In accordance with Parts 320, 322, 325, 326 and 329 of Title 33, Code of Federal Regulations, the District Engineer of the U.S. Army Corps of Engineers, Honolulu District (Corps) has determined that general permit GP 2011-001 should be issued to authorize maintenance clearing of rivers, streams, and storm drains, and beach areas in waters of the United States, including navigable waters in the State of Hawaii, subject to the specifications and limitations specified below. Authorizations are made pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). This general permit does not authorize any filling activities or maintenance clearing projects when the Corps determines that the public interest requires regulation through an individual permit, nor may this general permit be used to authorize excavation or dredging for the sole purpose of restoring navigation depth for vessels. This general permit replaces GP 96-001.

2. APPLICABLE AREAS:

This general permit applies to waters of the United States, including navigable waters of the United States in main Hawaiian Islands in the State of Hawaii, except for the following excluded areas or locations:

- a. Maintenance clearing in areas of recognized biological importance. These include, but are not limited to, coral reefs, endangered species habitat, areas of harvested or concentrated shellfish production, fish spawning grounds, migratory waterfowl breeding areas, coastal wetlands, mudflats, vegetated shallows, and riffle and pool complexes;
- b. Maintenance clearing that would have more than a minimal adverse effect on any species listed or proposed for listing as threatened or endangered or that would result in significant adverse impacts to an area designated, or proposed for designation, as critical habitat for threatened or endangered species, as identified under the Endangered Species Act (16 U.S.C. 1531 et seq.) or as recognized by the State of Hawaii Department of Land and Natural Resources;
- c. Maintenance clearing in waterways designated as impaired under the current List of Impaired Waters in Hawaii prepared under Clean Water Act Section 303(d) or any area where contamination is known or suspected. The listing can be found at the following URL:
http://hawaii.gov/health/environmental/envplanning/wqm/2006_Integrated_Report/2006_Integrated_Report.pdf;
- d. Within close proximity to a public water supply intake, or prime groundwater recharge area;
- e. Within or adjacent to any stream or waterbody included in a Federal or State Wild and Scenic River system or any designated American Heritage River;

f. In any area upstream or within the boundaries of a wildlife refuge, sanctuary, game management area, or similar facility without written approval by the manager of the facility.

g. Within the Area of Potential Effect of any historic property listed, or eligible for listing, in the National Register of Historic Places, unless the State Historic Preservation Officer, Office of Hawaiian Affairs, and Hui Malama I Na Kupuna `O Hawai`i Nei has been afforded an opportunity to comment on the impacts of the proposed activity and determined that there will be no effect on the known or designated historic and/or traditional or cultural property.

3. SPECIFICATIONS AND LIMITATIONS OF AUTHORIZED WORK:

a. The maintenance clearing of river and stream mouths and channels, storm drains or similar structures, or beach areas by general public, groups, and public agencies is authorized by the general permit, including the following activities:

(1) Removal of siltation shoals, sand plugs, excessive vegetation and debris to restore flow capacities and reduce flooding or other public safety hazards;

(2) Removal of seaweed, rubble or other debris from beach areas to provide safer, more usable beaches;

b. Work performed under this general permit is subject to the following limitations:

(1) Maintenance clearing of river and stream mouths and storm drains and removal of seaweed, rubble or other debris from beach areas shall not extend more than 50 feet seaward of the Mean High Water (MHW) line;

(2) No blasting, new dredging, or dredging that changes the character, scope, or elevation of the original contour, or that previously authorized, shall be permitted under the general permit. If information on the original contour is not available, applicant will indicate the extent or depth of the proposed work in their request for authorization.

(3) Maintenance clearing activities shall be conducted only during periods of low flow and little or no rainfall, except in emergencies where there is imminent threat to life and/or property.

4. CONDITIONS OF THE REGIONAL GENERAL PERMIT:

All projects authorized by this general permit are subject to the following conditions:

a. Procedures for Work Authorization:

(1) All agencies, groups, and individuals planning to perform work under this general permit shall notify the Corps of their intent to complete work under authority of this permit and shall furnish sufficient information to establish location, extent and character of the work;

(2) The Corps will notify the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Department of Land and Natural Resources, the Commission on Water Resources Management, the Department of Business, Economic Development and Tourism, CZM Program Office, the Department of Health, the State Historic Preservation Officer, the Office of Hawaiian Affairs, and Hui Ma lama I Na Ku puna `O Hawai`i Nei of proposed activities at least 20 days prior to the date that an activity is proposed to begin and will consider their comments before deciding whether to authorize the project under GP 2011-001;

(3) If the proposed work is authorized under GP 2011-001, the Corps will provide

written notification to the applicant that the work may proceed under the general permit. No work may commence prior to receiving this notification.

b. The following information and documents shall be submitted to the Corps:

- (1) Applicant name, mailing address, and the name and contact information, i.e., telephone and email address of the individual responsible for adherence to permit conditions;
- (2) Plans that include exact location, latitude and longitude, vicinity and plan maps, profile and cross-sectional views including existing conditions, pre-sedimentation and/or proposed post construction conditions, all in 8.5" x 11" format, with notations legible for reproduction;
- (3) Any available historical data regarding original depths and extents of areas to be cleared;
- (4) Description of the source, type, composition, and quantity of material to be cleared, the method and equipment to be used in the clearing operation, the site plans for disposal of excess excavated material, and de-watering plans;
- (5) Date activity is expected to commence, expected duration of the proposed work, and date activity is expected to be completed;
- (6) Site specific Best Management Practices Plan and appropriate monitoring plan to demonstrate that the proposed activity will be conducted in a manner that complies with all conditions specified in GP 2011-001;
- (7) Name of contractor/company and person(s) doing the work, if known;
- (8) A statement that the applicant has contacted the State Historic Preservation Officer, Office of Hawaiian Affairs, and Hui Malama I Na Kupuna 'O Hawai'i Nei, regarding the presence, absence, or likelihood that designated/potential historic properties and/or traditional or cultural properties are in the permit area which may be affected by the proposed project. The statement should include the available information, response and comments, if any, provided by that agency or organization.

c. General Conditions:

The following general conditions apply to all activities authorized under this general permit:

- (1) The permittee shall make every reasonable effort to execute the work authorized by General Permit GP 2011-001 in a manner so as to minimize any adverse impact of the work on fish, wildlife and natural environmental values;
- (2) The permittee must allow representative(s) from the Corps to make periodic inspection at any timed deemed necessary to ensure that the activity being performed under authority of this permit is in compliance with the terms and conditions of this permit;
- (3) If the property associated with an authorized project is sold or transferred to a third party, the original permittee shall obtain the transferee's written agreement to comply with all terms and conditions of this permit. A copy must be forwarded to the Corps to validate the transfer of authorization;

(4) This permit does not grant any property rights or any exclusive privileges nor does it authorize any injury to property or rights of others. This permit does not obviate the need to obtain other Federal, State, or local approvals required by law;

(5) Permitted maintenance clearing activities must not preclude the use of public right-of-way including, but not limited to, continuous lateral access along the shoreline. Temporary provisions, e.g. detours, shall be made to maintain public access during clearing operations;

(6) This permit does not authorize interference with any existing or proposed Federal project;

(7) In issuing authorization under General Permit GP 2011-001, the Federal Government assumes no liability for the following:

(a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;

(b) Damages to the permitted project or uses thereof as a result of current or future operations undertaken by, or on behalf of, the United States in the public interest;

(c) Damages to persons, property, or to other permitted or unpermitted activities authorized by General Permit GP 2011-001;

(d) Damage claims associated with any future modification, suspension, or revocation of General Permit GP 2011-001 or any individual authorization issued by the Corps;

(8) In determining if an individual project can be authorized by this general permit, the Corps will rely on information and data provided by the applicant in connection with the request for work authorization. If such information or data prove to be false, incomplete or inaccurate, the authorization may be modified, suspended or revoked, in whole or in part;

(9) This general permit may be modified suspended, or revoked in whole or in part, if it is determined that the individual or cumulative impacts of the authorized work are contrary to the public interest. The authorization for an individual project may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the Corps that the project is contrary to the public interest. Any modification, suspension or revocation of the permit shall follow procedures identified in 33 CFR 325.7;

(10) The permittee shall notify the District Engineer of the permittee's intent to proceed with the authorized activity at least 72 hours prior to the date that the authorized activity will commence and of the completion of the authorized activity no later than fourteen (14) calendar days from the date of its completion;

(11) If an individual activity authorized by this general permit is not completed within two years of authorization (the Notice of Authorization will specify expiration date) the authorization, if not previously modified, revoked, or specifically extended, will automatically expire. The permittee may request, in writing, an extension not to exceed an additional two years from the expiration date specified in the original Notice of Authorization. Such a request must be submitted to the Corps within two months of the original expiration date and contain specific reason(s) for the additional time requirement. Failure to submit such an extension request within that time will result in the requirement to submit a new request for authorization under GP 2011-001;

(12) The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States;

(13) The permittee shall install and maintain, at the permittee's expense, any safety lights and signals prescribed by the United States Coast Guard;

(14) If during construction or operation of the authorized activity, the permittee discovers a previously unknown historic property, all work shall immediately cease and the Corps shall immediately be notified. The Corps will initiate the Federal and State coordination to determine the appropriate notification and consultation requirements and to identify appropriate remedial/preservation actions. Based on the circumstances of the public interest, which may include the opinion of the State Historic Preservation Officer, the Office of Hawaiian Affairs, Hui Malama I Na Kupuna `O Hawai'i Nei, and any Native Hawaiian group or individual, the Corps may re-evaluate the individual authorization under this general permit. Further work may not proceed until written notification is received from the Corps.

d. Special Conditions:

The following special conditions apply to all activities authorized under this general permit:

(1) No debris, petroleum projects, or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter any waters of the United States;

(2) All authorized activities shall be done in a manner so as to confine and isolate the construction activity and to control and minimize turbidity. Silt curtains or other appropriate and effective silt containment devices approved by the Corps shall be used to minimize turbidity and shall be properly maintained throughout the entire period of in-water work to prevent the discharge of any material to the downstream aquatic habitat. These devices shall not be removed until the in-water work is completed and the water quality of the affected area has returned to its pre-construction condition;

(3) No sidecasting or stockpiling of excavated materials is authorized. All excavated materials shall be placed above the high tide line (in coastal areas), above the ordinary high water mark at all other waters of the U.S., or disposed of in an upland location. The permittee shall demonstrate that there is no reasonable expectation that disposal locations adjacent to high tide lines on the ocean, or in floodplains adjacent to other rivers or streams, would result in the material being eroded into the nearby waterbody by high tides and/or flood events;

(4) Warning signs shall be properly deployed and maintained until the portion of the in-water work is completed and the affected area water quality has returned to its pre-construction condition and turbidity control devices have been removed from the waterway;

(5) Fueling, repair, and other activities with any potential to release pollutants will occur in a location whereas there is no potential that spills would have an effect on waters of the U.S.;

(6) If a visible plume and/or floating petroleum products are observed outside of the containment area, the following measures shall be taken:

(a) All in-water work shall stop;

(b) The permittee or contractor shall inform the Corps immediately and the Corps will consult with appropriate agencies;

(c) The site shall be inspected by the permittee to ascertain the source of the plume;

(d) Control measures shall be refurbished, modified, and/or improved, e.g., additional silt containment devices will be installed, as necessary to ensure the integrity of the containment area;

(e) Work shall not continue until after the plume or oil sheen is no longer visible.

(7) An individual, designated responsible for environmental monitoring, will be on-site during clearing operations. This individual will conduct visual inspections, perform water quality sampling and other environmental monitoring, as appropriate, and report all results to the Corps on a regular basis during construction;

(8) When the Corps is notified that an authorized activity is detrimental to fish and wildlife resources, the Corps will issue a suspension order until all pertinent issues have been satisfactorily resolved. The permittee shall comply with any Corps-directed remedial measures deemed necessary to mitigate or eliminate the adverse effect;

(9) Unless terminated earlier, the expiration date of this general permit will be five years from the date of issuance. At that time, there will be a re-evaluation and review of the environmental effects of the activities authorized under the general permit. The re-evaluation will incorporate the views of federal, state, and local agencies and the public following issuance of a new public notice. This general permit may be reissued, revised, or revoked, as appropriate. Individual projects authorized under this permit, but not completed prior to the expiration date of the general permit, may proceed in accordance with the terms and conditions of this permit, regardless of the outcome of the re-evaluation and review.

This general permit will become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Douglas B. Guttormsen, P.E.
Lieutenant Colonel, U.S. Army
District Engineer