



PUBLIC NOTICE

U.S. Army Corps of Engineers, Honolulu District

Regulatory Branch (CEPOH-RO)
Building 230
Fort Shafter, Hawaii 96858-5440

Public Notice Date: February 1, 2022

ANNOUNCING THE HONOLULU DISTRICT'S REGIONAL CONDITIONS TO THE 2021 NATIONWIDE PERMITS

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 73522) announcing the reissuance of 40 existing nationwide permits (NWP) and one new NWP. These 41 NWP will go into effect on February 25, 2022, and they will expire on March 14, 2026:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife

- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

The new NWP 59 authorizes discharges of dredged or fill material into waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities.

Subsequent to the December 27, 2021 *Federal Register* notice, the Honolulu District finalized 4 regional conditions for the new and reissued NWPs and prepared supplemental decision documents to the Corps' final decision documents for the new and reissued NWPs. These supplemental decision documents address regional conditioning of the NWPs. The regional conditions will provide additional protection for the aquatic environment and will help ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects. This public notice announces the approval of 4 regional conditions by the Pacific Ocean Division Commander.

Regional Condition 1 – Revoked Permits

The following NWPs are revoked within the Honolulu District's AOR:

- NWP 21 - Surface Coal Mining Activities
- NWP 24 - Indian Tribe or State Administered Section 404 Programs
- NWP 30 – Moist Soil Management for Wildlife
- NWP 34 - Cranberry Production 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

Regional Condition 2 – Acreage Limit

The maximum acreage of permanent loss to special aquatic sites for a new project (excludes NWP-3 and NWP-27 activities) may not exceed 0.10-acre resulting from any discharge of dredged or fill material. Special aquatic sites include wetlands, coral reefs, riffle and pool complexes, vegetated shallows, mud flats, sanctuaries and refuges as defined in 40 CFR 230.3.

Regional Condition 3 - Revegetation

Native plants appropriate for current site conditions must be used for re-vegetation for the purposes of restoring areas temporarily disturbed by the authorized work.

Regional Condition 4 – Bank and Shoreline Stabilization Activities

- a. For new bank stabilization projects in streams with vegetated slopes and/or natural bed and bank, vegetative and environmentally sensitive stabilization practices must be used whenever practicable. Documentation of consideration of environmentally sensitive bank stabilization practices must be included in the PCN to demonstrate whether the use of environmentally sensitive stabilization techniques is practicable given site-specific circumstances. Environmentally sensitive stabilization techniques incorporate organic materials to produce functional structure, provide wildlife habitat, and/or provide areas for re-vegetation. Examples of environmentally sensitive bank stabilization practices include, but are not limited to, the use of the following: adequate sized armoring keyed into the toe of the slope with native plantings, or other suitable vegetation, on the banks above; vegetated geogrids; coconut fiber coir logs; live woody vegetated cuttings; fascines or stumps; brush layering; soil lifts. In situations where the use of these stabilization techniques are not practicable (due to high stream flow velocities, for example) stream bank armoring should be designed to incorporate environmentally friendly natural features, if possible. Examples include: vegetated gabions, vegetated gabion mattresses, live cribwalls and joint plantings.
- b. For new shoreline stabilization projects, environmentally sensitive designs that provide wave dissipation, interstitial spaces for fish, crustacean and invertebrate habitat, and other environmental benefits must be used whenever practicable. Documentation of consideration of environmentally sensitive shoreline stabilization practices must be included in the PCN to demonstrate whether the use of environmentally sensitive stabilization techniques is practicable.

The Honolulu District has attached a matrix for the Water Quality Certifications (WQC) and the Coastal Zone Management Act Consistency Determinations for the State of Hawaii, and the territories of Guam, Commonwealth of the Northern Marianas and American Samoa for the 41 NWP's that will go into effect on February 25, 2022:

The 40 existing NWP's published in the December 27, 2021 final rule replace the 2017 versions of these NWP's. The 2017 versions of NWP's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54 expire on February 24, 2022.

The NWP general conditions and definitions that were issued in the final rule that was published in the January 13, 2021, issue of the *Federal Register* (86 FR 2744) apply to the 40 reissued NWP's and the new NWP 59 that were published in the *Federal Register* on December 27, 2021.

Interested parties can access the December 27, 2021, and January 13, 2021, final rules and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

The Corps and EPA will be hosting a virtual meeting for prospective applicants on February 24, 2022, 1:00–2:30 pm Hawaii-Aleutian Standard Time to discuss the 2021 NWRPs, Clean Water Act 401 implementation, and Waters of the U.S. regulation changes. If you wish to attend, please register by February 22, 2022, at <https://usace1.webex.com/usace1/j.php?RGID=rb64fe8aa4f0a2b9339afca26a5afa2bf>

Attached are the WQC & CZMA matrix by geographic region.

Current Water Quality Certificate				
NWP #	2021 NWPs			
	Individual WQC Required?			
	Hawaii	Guam	CNMI	American Samoa
1	No	Maybe	Yes	No
2	No	No	Yes	No
3	No	Yes	No	No
4	No	Maybe	Yes	No
5	No	No	No	No
6	No	Yes	No	No
7	No	Yes	Yes	No
8	No	No	Yes	No
9	No	Maybe	No	No
10	No	Yes	No	No
11	No	Yes	No	No
12	Yes	No	Yes	No
13	No	Yes	Yes	No
14	No	Yes	No	No
15	Yes	Yes	Yes	No
16	No	Yes	Yes	No
17	No	Yes	Yes	No
18	No	Yes	Yes	No
19	No	Yes	Yes	No
20	No	No	Yes	No
22	No	No	No	No
23	No	No	Yes	No
25	No	Yes	Yes	No
27	No	Yes	No	No
28	No	No	No	No
29	No	No	Yes	No
31	No	Yes	Yes	No
32	No	No	Yes	No
33	No	Yes	Yes	No
35	No	Yes	Yes	No
36	No	Yes	Yes	No
37	No	No	Yes	No
38	No	Yes	Yes	No
39	No	No	Yes	No
40	No	No	Yes	No
41	No	Yes	Yes	No
42	No	No	Yes	No
43	No	No	Yes	No
45	No	No	Yes	No
46	No	Yes	Yes	No
48	No	No	Yes	No
51	No	No	Yes	No
53	No	Yes	Yes	No
54	No	Yes	Yes	No
(A) 55	No	No	Yes	No
(B) 56	No	No	Yes	No
(C) 57	No	No	No	No
(D) 58	No	No	No	No

POH CZM Consistency for 2021 NWP's

Individual CZM Concurrence Required?

NWP #	Hawaii	Guam	CNMI	American Samoa
1	No	No	Yes	No
2	No	No	Yes	No
3	Maybe	No	Maybe	No
4	No	No	Yes	No
5	No	No	Maybe	No
6	No	No	Maybe	No
7	Maybe	No	Yes	No
8	Yes	Yes	Yes	No
9	No	No	Maybe	No
10	No	No	Maybe	No
11	No	No	Maybe	No
12	Maybe	Maybe	Yes	No
13	Maybe	Maybe	Yes	No
14	Maybe	Maybe	Maybe	No
15	No	No	Yes	No
16	No	No	Yes	No
17	No	Yes	Yes	No
18	Maybe	No	Yes	No
19	No	No	Yes	No
20	No	No	Yes	No
22	No	No	Maybe	No
23	No	No	Yes	No
25	No	No	Yes	No
27	No	No	Maybe	No
28	No	No	Maybe	No
29	Maybe	Yes	Yes	No
31	No	No	Yes	No
32	No	No	Yes	No
33	No	No	Yes	No
35	No	No	Yes	No
36	Maybe	No	Yes	No
37	No	No	Yes	No
38	No	No	Yes	No
39	Maybe	Yes	Yes	No
40	Maybe	Maybe	Yes	No
41	No	No	Yes	No
42	Maybe	Yes	Yes	No
43	Maybe	No	Yes	No
45	Maybe	Maybe	Yes	No
46	No	No	Yes	No
48	Maybe	No	Yes	No
51	Maybe	Yes	Yes	No
53	No	No	Yes	No
54	Yes	No	Yes	No
(A) 55	Maybe	Yes	Yes	No
(B) 56	Maybe	Yes	Yes	No
(C) 57	Maybe	Maybe	Maybe	No
(D) 58	Maybe	Maybe	Maybe	No