

## **HONOLULU DISTRICT REGIONAL CONDITIONS for the 2017 NATIONWIDE PERMITS (NWP)**

**The Honolulu District Regulatory Office has issued the following Regional Conditions as a means to ensure that activities authorized by NWP in the Honolulu District cause no more than minimal adverse environmental effects, individually and cumulatively. The additional restrictions or requirements imposed by the Regional Conditions avoid and/or minimize adverse impacts to resources of concern in the Honolulu District's area of responsibility. Before the Honolulu District will verify an activity under one or more NWPs, the proposed activity must comply with the NWP terms and all applicable General and Regional Conditions.**

**APPLICABILITY:** The Honolulu District's Area of Responsibility (AOR) consists of the State of Hawaii, including the Northwestern Hawaiian Islands, the territories of American Samoa and Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and the following U.S. Minor Outlying Islands: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Island.

**CORAL REEF ADVISORY:** Coral reefs (as defined at 40 CFR 230.44) are special aquatic sites with complex ecosystems that provide ecologically valuable functions and services. Coral reefs are recognized as a difficult-to-replace resource. Proposed impacts to all aquatic resources, including coral reefs, must first demonstrate avoidance and minimization to the greatest extent practicable before being considered for U.S. Army Corps of Engineers (Corps) authorization. Be advised that compensatory mitigation may be required to ensure no more than minimal impact.

### **RESTRICTIONS:**

#### **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 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 – Limited Use Areas**

When seeking Corps authorization, you must identify in your Pre-Construction Notification (PCN) if any of these resources occur within or in the vicinity of your project area.

- In Honolulu District AOR: National Wildlife Refuges, Hawaii Wildlife Sanctuaries, Hawaii Marine Life Conservation Districts, Guam Marine Preserve Areas and CNMI Marine Protected Areas

- In Hawaii: Anchialine Pools, Montane Bogs, Natural Freshwater and Saline Lakes
- In Guam: Aquatic areas containing Nipa palms (*Nypa fruticans*)
- In Guam, CNMI and American Samoa: Mangroves, Saline Lakes, Sea/Freshwater Caves (Allogenic Streams, Cenotes, Phreatic Zones, Sinkholes, Stream Caves, and Vadose Shafts)

*\*Definitions for these terms and others used throughout the Regional Conditions are provided at the end of the document.*

### **Regional Condition 3 – Acreage Limitation**

The maximum acreage of permanent loss to wetlands, other special aquatic sites and other waters for a single project may not exceed 0.10-acre resulting from any discharge of dredged or fill material.

### **Regional Condition 4 – Stream Channelization and Impoundment Restriction**

NWPs may not be used to authorize permanent stream channelization or for the construction of dams that permanently impound wetlands, other special aquatic sites and other waters

### **CONDITIONS APPLICABLE TO ALL NWPS:**

#### **Regional Condition 5 – NWP Verification**

A written NWP verification must be obtained from the Corps prior to conducting any activity authorized by NWP (excludes NWPs listed in Regional Condition 1).

#### **Regional Condition 6 – Pre-Construction Notification (PCN)**

To obtain a NWP verification, all prospective permittees must submit a written PCN to the Corps that meets NWP General Condition (GC) #32.

#### **Regional Condition 7 – Additional PCN Information**

1. For Federal permittees, your PCN must provide documentation demonstrating compliance with the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Management and Conservation Act. For non-Federal permittees, in addition to the requirements at GC #18, #20 and GC #32, your PCN must contain the following information to demonstrate your avoidance and minimization of adverse impacts to wetlands, other special aquatic sites and other waters, and if applicable, endangered species, essential fish habitat and historic properties, including cultural resources. The level of detail submitted in your PCN shall be commensurate with the anticipated degree of project-related impacts.
  - a. For activities where federally-listed or proposed threatened and endangered species or critical habitat, are known or likely to occur within the project area, the PCN must contain the following information:
    - i. A list of species, both listed and proposed for listing, and critical habitat, known to occur within and in the near vicinity of the project impact area. Information on the location of threatened and endangered species and

their critical habitat and potential project-related impacts to these resources can be obtained directly from the Pacific Islands U.S. Fish & Wildlife Service Office and National Marine Fisheries Service Pacific Islands Regional Office.

- ii. Best Management Practices (BMPs) proposed to be implemented throughout the duration of construction to avoid and/or minimize adverse impacts to threatened and endangered species.
- b. For activities occurring in tidally-influenced nearshore and marine environments, the PCN must contain the following information:
- i. A list of Management Unit Species and associated Essential Fish Habitat (EFH) occurring within and in the near vicinity of the project impact area. Information on the location of EFH and potential project-related impacts to these resources can be obtained directly from your local National Marine Fisheries Service office.
  - ii. A description of the existing environment within and in the near vicinity of the project impact area: characterization of the benthic substrate (seafloor or stream bed e.g., sand, cobbles, silt, etc.), water depth, distance from shore, tidal range (intertidal, subtidal, submerged), general characterization of water quality (temperature range, salinity, water circulation, turbidity).
  - iii. Measures to avoid and/or minimize adverse impacts to EFH and proposed mitigation, if applicable.
- c. For activities that might have the potential to cause effect to historic properties, including cultural resources, listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, the PCN must contain the following information:
- i. A description of any associated upland activities proposed under the same project.
  - ii. A list of any known historic properties within the project area and in the near vicinity listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic places. Information on the location of historic properties including cultural resources and potential project-related impacts to these resources can be obtained directly from your local State Historic Preservation Officer.
  - iii. A list of any Native Hawaiian Organizations, community members, or other parties you think may have an interest in providing comment on the impact the proposed activity may have on cultural resources. Any information you may have related to historic or current cultural use or importance at or near the project site.

- iv. Copies of any correspondence from the State Historic Preservation Officer, any NHO, or other party consulted with regarding the potential impacts of the proposed activity on historic properties, including cultural resources.
  - v. A list of resources, (e.g. published documents, assessments, surveys, etc.) reviewed to provide response to items i-iii, above.
  - vi. BMP measures proposed to be implemented throughout the duration of construction to avoid and/or minimize adverse impacts to historic properties, including cultural resources.
2. For non-Federal and Federal permittees, activities that would result in the permanent loss of wetlands, other special aquatic sites and other waters, you must provide a written discussion of the on-site design configurations that you considered to demonstrate avoidance and minimization of impacts was evaluated and that the proposed permanent loss is unavoidable. Submission of a plan-view sketch depicting the footprint of on-site design configurations overlaying such waters within the project area will assist in the Corps' review of your proposed activity.

### **Regional Condition 8 – Best Management Practices**

To the extent applicable, the following standard BMPs must be implemented for all NWP's to avoid and/or minimize adverse impacts on environmental resources:

1. Pre-construction BMPs:
  - a. Prior to commencement of the authorized work in wetlands, other special aquatic sites and other waters, you must clearly identify (demarcate) in the field the geographic limits of such waters (i.e., High Tide Line, Mean High Water Mark, Ordinary High Water Mark, approved wetland boundary) affected by the authorized work and as approved by the Corps and demarcated on your drawings. The delineation of these geographic bounds may be accomplished by staking, flagging, painting, silt fencing, signage, buoys, etc. and in all cases must be maintained and remain observable throughout the construction period. The permittee must also demarcate in the field the project limits of the Corps-authorized fill footprint to ensure that dredged or fill material is not discharged beyond the authorized limits. The permittee is prohibited from conducting any activity occurring in or affecting wetlands, other special aquatic sites and other waters that requires prior authorization from the Corps, outside of the permitted limits of disturbance (as shown on the permit drawings).
2. During Construction BMPs:
  - a. Turbidity and the suspension or re-suspension of sediment from project-related work must be minimized and contained to the immediate vicinity of the authorized activity through the appropriate use of effective containment devices or measures and based on

- b. project-specific conditions. Silt fences, silt curtains, or other diversion or containment devices must be installed to contain sediment and turbidity at the work site (a) parallel to, and along 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 devices must be installed according to the manufacturer's guidelines and properly maintained throughout the construction period and until the impact area is stabilized and/or elevated turbidity levels have returned to ambient levels.
- c. All project-related materials (e.g., fill, rocks, landscaping, structures, etc.) and equipment (e.g., dredges, barges, backhoes, etc.) authorized to be used or placed in wetlands, other special aquatic sites and other waters, must be free of invasive plant and animal species.
- d. Any temporary tethering, anchoring, mooring or similar in-water structural components must be placed in a manner to avoid direct physical impact to coral and seagrass beds during installation and throughout the duration of its use in wetlands, other special aquatic sites and other waters.
- e. Any temporary in-water structures must be removed of, in their entirety, upon completion of the authorized work in or affecting wetlands, other special aquatic sites and other waters. The authorized work is not complete until these temporary structures are removed.
- f. Unless specifically authorized, stockpiling of project-related materials (e.g., fill, dredged material, revetment rock, pipe, etc.) or unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) in or in close proximity to wetlands, other special aquatic sites and other waters such that the stockpiled materials could be carried into such waters by wind, rain, or high surf is prohibited.
- g. Upland containment areas sited in uplands near wetlands, other special aquatic sites and other waters for the purpose of stockpiling, dewatering, etc. must be bounded by impermeable material to prevent return flows of dewatered effluent into such waters. The runoff or overflow from a contained disposal area into such waters requires separate authorization.

3. Post-Construction BMPs:

- a. 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.

**ACTIVITY-SPECIFIC REGIONAL CONDITIONS:**

**Regional Condition 9 – Bank Stabilization**

- 1. 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.

2. 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 also 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.

## **DEFINITIONS**

**Anchialine pools:** An anchialine pool is an enclosed water body or pond with an underground connection to the ocean often formed in limestone or volcanic rock. Water levels in the pools fluctuate in response to ocean tides.

**Mangroves:** In American Samoa, Commonwealth of the Northern Mariana Islands, and Guam, mangroves are coastal areas dominated by the species *Brueguiera gymnorrhiza* (Oriental Mangrove), *Rhizophora mangle* (Red Mangrove), *Avicennia marina* (Grey Mangrove) and/or *Lumnitzera littorea*.

**Montane Bogs:** An area found in a mountainous region where rainfall exceeds drainage. Dominant vegetation is shrubs, sedges, and grasses.

**Natural Freshwater Lakes:** Standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.25 acre and in which rooted emergent hydrophytes, if present, occupy no more than 30 percent of the surface area. Freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

**Saline Lakes:** Standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or groundwater, or concentrated by evaporation.

### **Sea and Freshwater Caves:**

**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.

**Cenotes:** Sinkholes open to the surface and extending into groundwater.

**Phreatic zones:** 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.

**Special Aquatic Site:** Special aquatic sites are identified in 40 CFR 230 Subpart E as sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

**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 siliceous materials, produced by the vital activities of anthozoan polyps or other invertebrate organisms present in growing portions of the reef.