



**U. S. Army Corps
of Engineers**

Honolulu District

Public Notice

Public Notice No.
POH-2007-365

Date:
December 14, 2007

Reply to:
Regulatory Branch (CEPOH-EC-R)
U.S. Army Engineer District Honolulu
Building 230
Fort Shafter, Hawaii 96858-5440

Respond by:
January 14, 2008

**PROPOSED ISSUANCE OF GENERAL PERMIT GP2008-01 FOR
BOAT DOCKS IN THE HAWAII KAI MARINA,
HONOLULU, HAWAII**

1. INTRODUCTION:

In accordance with Parts 320, 322, 324, 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 GP2008-01 to allow riparian proprietors to install and maintain boat docks in the navigable waters of the United States at the Hawaii Kai Marina, Honolulu, Hawaii, subject to certain limitations, specifications and conditions.

2. BACKGROUND AND APPLICABLE STATUTORY AUTHORITY:

a. The previous general permit for boat docks in the Hawaii Kai Marina, General Permit GP2002-01, was issued on November 28, 2002 and expired on November 29, 2007. During that five-year period, approximately 146 authorizations were issued to install docks under GP2002-01. No significant adverse impacts are known to have resulted from the activities authorized under the general permit.

b. Issuance of General Permit GP2008-01 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 GP2008-01 would continue the general authorization for installation and maintenance by riparian proprietors of boat docks in navigable waters of the United States at the Hawaii Kai Marina, Honolulu, Hawaii, subject to certain limitations, specifications, and conditions. The general permit would not authorize any dredging or filling activities. For purposes of the general permit, riparian proprietors (potential permittees) would include lessees or owners of single family detached dwelling waterfront parcels, entities holding development rights to unsold waterfront parcels, or other owners or lessees who have obtained prior approval from the Hawaii Kai Marina Community Association (HKMCA).

4. NEED FOR A FEDERAL EIS:

The Corps' permit regulation (33 CFR 320-330) provides that general permits 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 general permit 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 installation of new docks within the Hawaii Kai Marina would be limited to one such structure per single-family dwelling, waterfront parcel, multiple-family dwelling waterfront unit, or commercial entity. In addition, all docks authorized under the general permit would have to conform to the Boat Dock Policy Guidelines established by the HKMCA and comply with their mooring restrictions which control the extent to which any dock or boat may intrude into the marina. Thus, both the number of structures and their potential interference with navigation within the marina would be limited. Potential impacts on the marine environment both inside and outside the marina, including cumulative impacts, would be correspondingly limited and are not expected to be significant.

6. IMPACT ON HISTORIC PROPERTIES:

Much of the project area was subjected to dredging and filling activities during the 1950s and does not include any property listed in the Hawai'i and National Register of Historic Places. 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 general permit, the permittee will be required to immediately 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 has been sent to the State Historic Preservation Officer and the Federal Secretary of the Interior 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 general permit.

7. IMPACT ON ENDANGERED SPECIES:

Federally protected sea turtles are known to be present in Hawaiian waters and may occasionally enter the Hawaii Kai Marina entrance channel. No suitable sea turtle nesting areas are present within the marina. The proposed general permit includes a special condition requiring temporary cessation of an authorized activity when a federally protected species enters the work area. Based on the relative isolation and limited scope of dock installations in relation to the seaward fringing reefs, and with inclusion of the above special condition, issuance of the general permit is not likely to affect sea turtles or any other federally protected species.

This notice has been 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 general permit.

8. IMPACT ON ESSENTIAL FISH HABITAT:

Although no areas within the Hawaii Kai Marina have been designated as Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) the marine environment lying seaward of the marina entrance channel includes coral reef EFH, consisting of typical fringing reef components which contribute to maintenance of fisheries. However, activities to be authorized by issuance of GP 2008-01 would not include any dredging or any discharge of dredged material. Due to the relative isolation and limited scope of activities to be authorized, they are not expected to cause adverse effects, either individually or cumulatively, on any seaward EFH. This notice has been sent to the National Marine Fisheries Service pursuant to coordination requirements of the MSFCMA. Any conservation recommendations they make concerning EFH will be considered before a final decision is made on the proposed issuance of the general permit.

9. FEDERAL CONSISTENCY WITH HAWAII COASTAL ZONE MANAGEMENT PROGRAM:

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

10. EVALUATION FACTORS:

The decision whether to issue the general permit will be based on an evaluation of the probable impacts, including cumulative impacts, on the public interest of activities authorized under the permit. That decision will reflect the national concern for both protection and utilization of important resources. The benefit 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 the cumulative effects thereof: among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic values, 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.

11. COMMENTS AND INQUIRIES:

Interested parties may submit in writing any comments that they have on the proposed issuance of the general permit. Comments should be forwarded so as to reach this District by the response date indicated on the first page of this notice. Mailed comments should cite this public notice and should be addressed to: Regulatory Branch (CEPOH-EC-R/P. Galloway); U.S. Army Engineer District, Honolulu; Building 230; Fort Shafter, Hawaii 96858-5440. If needed, further

information may be obtained from Peter Galloway via telephone at (808) 438-8416 or via FAX at (808) 438-4060. This notice is posted on the Honolulu Engineer District web site (www.poh.usace.army.mil).

12. 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.

Attachment:

General Permit GP2008-01 [Proposed]

Regulatory Branch

Effective Date:

Expiration Date:

**DEPARTMENT OF THE ARMY
GENERAL PERMIT GP2008-01 [Proposed],
BOAT DOCKS IN THE HAWAII KAI MARINA,
HONOLULU, HAWAII**

1. INTRODUCTION:

In accordance with Parts 320, 322, 324, 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 GP2008-01 should be issued to authorize riparian proprietors to install and maintain boat docks in the navigable waters of the United States at the Hawaii Kai Marina, Honolulu, 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 dredging or filling activities. This general permit replaces GP2002-01, which expired on November 29, 2007.

2. APPLICABLE AREAS:

This general permit applies only to the area of the Hawaii Kai Marina on the Island of Oahu, State of Hawaii.

3. SPECIFICATIONS AND LIMITATIONS OF AUTHORIZED WORK:

a. This general permit authorizes the construction, installation, and maintenance of boat docks in the Hawaii Kai Marina by riparian proprietors, hereinafter referred to as permittees. For purposes of this general permit, permittees shall include lessees or owners of single family detached dwelling waterfront parcels, entities holding development rights to unsold waterfront parcels, or other owners or lessees who have obtained prior approval from the Hawaii Kai Marina Community Association (HKMCA).

b. No dock shall be authorized under this general permit unless it conforms to the current Boat Dock Policy Guidelines established by HKMCA and complies with the applicable HKMCA mooring restrictions which control the extent to which any dock or boat may intrude into the marina (e.g., Exhibit "C"). The current Boat Dock Policy Guidelines are available from the Hawaii Kai Marina Community Association Office, Hawaii Kai Shopping Center, 377 Keahole Street, Suite D1-C, Honolulu, Hawaii 96825 [telephone (808) 396-2469, fax (808) 396-2470].

c. Dredging or the placement of permanent or temporary fill in waters of the United States is not authorized under this general permit. If dredging or filling is needed, the applicant should contact the Corps' Regulatory Branch [telephone (808) 438-9258; fax (808) 438-4060] for a determination of Department of the Army permit requirements; requests for determinations should

be mailed to Regulatory Branch (CEPOH-EC-R), U.S. Army Engineer District Honolulu, Building 230, Fort Shafter, Hawaii 96858-5440.

d. Any dock installed under this general permit and the vessels moored thereto shall not impede or obstruct the waterway access of adjacent proprietors, or impede or obstruct general navigation, or otherwise hinder the access to and use of the waterway by those persons entitled to such use.

e. No boat repair or other operation which might allow any substance regulated by federal law or regulation to enter the marina waters shall be allowed on structures authorized under this general permit.

f. No petroleum pumping or dispensing apparatus shall be installed on structures authorized under this general permit.

g. Only one boat dock structure per single-family dwelling, waterfront parcel, multiple-family dwelling waterfront unit, or commercial entity shall be authorized under this general permit.

h. Any individual work activity authorized under this general permit shall be completed within two years of the date of the Corps' written notice of authorization of the activity.

4. REQUIRED SUBMITTALS:

The permittee shall submit to the Corps Regulatory Branch, through the Hawaii Kai Marina Community Association (HKMCA), a completed Department of the Army (DA) permit application (Eng Form 4345). The application shall describe the proposed activity and shall include drawings or plans of the proposed work on 8.5x11 inch sheets, clearly specifying dimensions and the location of the proposed dock structure. The application shall include confirmation by the HKMCA that the proposed activity conforms to the Boat Dock Policy Guidelines established by HKMCA and complies with their mooring restrictions which control the extent to which any dock or boat may intrude into the marina.

5. GENERAL CONDITIONS:

a. All activities authorized by this permit shall be executed in a manner so as to minimize degradation of water quality and shall be consistent with applicable water quality standards and standards of performance, pursuant to the Clean Water Act and applicable State law.

b. The permittee must maintain any structure authorized by this general permit in good condition and in conformance with all terms and conditions. The permittee is not relieved of this requirement by abandonment of the permitted activity, but may make a good faith transfer to a third party in compliance with General Condition c, below. Should the permittee wish to cease to maintain the authorized structure or to abandon it without a good faith transfer, the permittee must obtain authorization from the Corps, which may require restoration of the area.

c. If the permittee sells the property or interest associated with an authorization under this

permit, the permittee must obtain the transferee's written agreement to comply with all terms and conditions of the authorization. A copy must be forwarded to the Corps' Regulatory Branch to validate the transfer of the authorization.

d. Upon discovery of any previously unknown historic or archaeological remains while accomplishing an activity authorized by this permit, the permittee must immediately notify the Corps' Regulatory Branch of what has been found. The Corps will initiate the Federal and State of Hawaii coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

e. The permittee must allow the District Engineer or his authorized representative(s) to inspect the authorized activity at any time deemed necessary to ensure that the activity is being or has been accomplished in accordance with the terms and conditions of this permit.

f.. This permit does not obviate the need to obtain other Federal, State or local authorizations required by law.

g. This permit does not grant any property rights or exclusive privileges and does not authorize any injury to the property or rights of others.

h. This permit does not authorize interference with any existing or proposed Federal project.

i. In issuing this general permit or individual authorizations under it, the Federal Government does not assume any liability for the following:

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

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension or revocation of this general permit or any individual authorization made under it.

j. In determining whether an individual project can be authorized by this general permit, the Corps will rely on information provided by the permittee. If such information should prove to be false, incomplete or inaccurate, the authorization may be modified, suspended or revoked, in whole or in part.

k. As provided for in Federal regulations at 33 CFR 325.7, the Corps may reevaluate the circumstances and conditions of this general permit and may initiate action to modify, suspended, or revoke it, or authorizations of individual activities under it, in whole or in part, as may be made

necessary by considerations of the public interest.

6. SPECIAL CONDITIONS:

a. The permittee shall take care to ensure that no debris, petroleum products or other deleterious materials or wastes will be allowed to fall, flow, leach or otherwise enter the water as a result of the permitted activity.

b. If any individual of a Federally protected species (e.g., green sea turtle) enters the work area, the permittee shall cease construction activities until the animal leaves the work area.

c. The permittee must notify the Corps of the start of work at least 72 hours prior to the date that the authorized activity will commence.

d. The permittee must install and maintain, at the permittee's expense, any safety lights and signals prescribed by the United States Coast Guard.

e. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

f. If an individual activity authorized by this general permit is not completed within the time limit specified in the Corps' notice of authorization, the authorization, if not previously modified, revoked or specifically extended, will automatically expire.

g. 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 reevaluation and review of the environmental effects of activities authorized under the general permit. The reevaluation will incorporate the views of the public following issuance of a new public notice. The general permit may be reissued, revised, or revoked, as appropriate. Individual projects authorized under this permit, but not completed by the expiration day, can proceed in accordance with the terms and conditions of this permit, regardless of the reevaluation 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:

Charles H. Klinge
Lieutenant Colonel, U.S. Army
District Engineer

Date