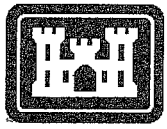
ENCLOSURE 2

Supplemental Decision Documents
for the
2007 Nationwide Permits Re-Issuance



MASTER

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

EXECUTIVE SUMMARY

This document is a supplement to the national decision documents for the 2007 Nationwide Permits (NWPs), and addresses the regional modifications and conditions for these NWPs. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of these NWPs in the Honolulu District area of responsibility, including the need for additional modifications of these NWPs by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of these NWPs from certain geographic areas or specific waterbodies. These regional conditions are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified in this document. These regional conditions are being required to ensure that these NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which these NWPs should be regionally conditioned or excluded from NWP eligibility, as described in the following text, to further ensure that these NWPs do not authorize activities that may exceed the minimal adverse effects threshold.

To reduce paperwork and minimize redundant discussions that are common to all the NWPs, and their associated Regional Conditions (RCs), the Honolulu District (POH) has organized the supplemental decision documents for all 49 re-issued and new 2007 NWPs as follows:

NWP 3: Maintenance
NWP 5: Scientific Measuring Devices
NWP 6: Survey Activities
NWP 12: Utility Line Activities
NWP 13: Bank Stabilization
NWP 14: Linear Transportation Projects
NWP 18: Minor Discharges
NWP 33: Temporary Construction, Access and Dewatering
NWP 35: Maintenance Dredging of Existing Basins
NWPs 1, 2, 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 50

A master, or umbrella document, attached to this executive summary addresses elements common to all the NWPs in the Pacific Islands region, including the State of Hawaii, Territory of Guam, Commonwealth of the Northern Mariana Islands, and the Territory of American Samoa. Individual supplemental decision documents have been prepared for NWPs 3, 5, 6, 12, 13, 14, 18, 33, and 35 to address issues specific to these more commonly used NWPs. The other remaining NWPs that are less commonly authorized in the POH are combined and discussed in one additional supplemental decision document. For each of the aforementioned individual SDDs, the analysis of alternatives, public

interest review, compliance with the 404(b)(1) Guidelines (when applicable), and compliance with other federal, state and local laws contained herein is incorporated by reference.

1.0 PROPOSED NATIONWIDE PERMITS AND REGIONAL CONDITIONS

1.1 Public Noticing

On September 26, 2006, the Corps of Engineers (Corps) published its proposal in the Federal Register to reissue and modify the existing NWPs, general conditions (GC), and definitions, and issue six new NWPs. To obtain feedback on its proposed regional conditions for the re-issuance of the NWPs, the Honolulu District (POH) issued a Public Notice (PN) on October 2, 2006 requesting public review and comments. In addition, on October 11, 2006 the POH held a general coordination meeting to discuss the proposed nationwide permits and the draft regional conditions (RCs) with interested agency stakeholders, including the U.S. Fish and Wildlife Service (USFWS); the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS); State of Hawaii, Department of Health (DOH), Clean Water Branch; State of Hawaii, Office of Planning; the Guam Environmental Protection Agency (GEPA), Guam Department of Agriculture (GDA); and the U.S. Environmental Protection Agency (EPA). A follow-up meeting to discuss the proposed regional conditions in detail was held on November 6, 2006 and included participation from the Corps, USFWS, NMFS, DOH, and EPA. The issuance of the final NWPs was announced in the March 12, 2007 Federal Register notice (72 FR 11092) and the final NWPs became effective March 19, 2007. The POH issued a Public Notice on March 19, 2007 announcing the final NWPs and its proposed final regional conditions. HED will issue a public notice announcing the final RCs once they have been approved. The POH findings are discussed below:

1.2 Proposed POH Regional Conditions

The Pacific Ocean Division (POD) Engineer has considered the cumulative adverse effects on the aquatic environment that could result from the use of the NWPs, including the need for additional modifications of the NWPs by the establishment of regional conditions (RCs) to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of the NWPs from certain geographic areas or specific waterbodies. These RCs are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified and discussed in this document. These RCs are being required to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters as well as other geographic areas in which these NWPs should be regionally conditioned or excluded from NWP eligibility as described below, to further ensure that these NWPs do not authorize activities that may exceed the minimal adverse effects threshold. Fourteen RCs and one regional advisory

were proposed by POH, which were detailed in the October 2, 2006 PN (see Appendix A). As a result of comments received during the public notice period, the POH proposed regional conditions were revised to include thirteen RCs and three regional advisories, as outlined in the PN dated March 19, 2007 (see Appendix B).

1.3 Final NWPs

The Final Nationwide Permits for 2007 became effective March 19, 2007. The text of the final 2007 NWPs can be found in Part II of the Federal Register (72 FR 11092), at the Honolulu District Regulatory Branch Office, Building 214, Ft. Shafter, Hawaii, or on-line at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf. The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_final.htm and Corps district offices.

2.0 CONSIDERATION OF PUBLIC COMMENTS

2.1 General Comments:

A total of five comment letters were received in response to POH's October 2, 2006 PN. Four of these letters represented federal agency interests and comments, including the EPA, USFWS, NMFS and the Department of the Navy. One comment letter was received from DOH which expressed concerns related to water quality, the State water quality certification process, and compliance/enforcement matters. While the majority of the comment letters submitted to POH did not articulate issues specific to the nationwide permits or the NWPs general conditions, all provided recommendations for specific revisions to the POH proposed RCs. These comments and POH responses are discussed below.

2.2 Comments on Proposed POH Regional Conditions:

In general, all commenters supported the concept of the Division Engineer imposing RCs. The majority of the commenters suggested specific revisions to the proposed RCs and one commenter recommended changes to our advisory definition for coral reefs. The comments received in response to our PN are categorized below according to each regional condition, as applicable. POH received a number of duplicative or similar comments pertaining to several of the RCs; therefore, in these instances we combined the comments and provided a common response.

2.2.1 Proposed Regional Condition 1 (Geographical Exclusions): Comments received on this regional condition requested that POH impose additional geographical exclusions (e.g., lakes, riffle-and-pool complexes, coral reefs, and fish spawning areas); expand the list of aquatic resources that constitute "Designated Critical Resource Waters"; and make minor edits/corrections relating to the numbering cross-referenced for certain NWPs and general conditions. Two commenters requested we add a geographic

exclusion for reference streams and waters within state parks and state wildlife refuges to improve consistency with the Hawaii Administrative Rules (HAR).

POH agreed to include "natural freshwater lakes and saline lakes" (in Hawaii) to the list of geographical exclusions for the NWPs listed in the proposed RC to ensure consistency with the HAR, and we agreed there is merit to the expansion of the applicability of this restriction to include activities proposed under NWPs 29 and 43 (RC No. 1.1). However, we believe adding reference streams and waters located within state parks and state wildlife refuges to the list of prohibited areas would result in an unnecessary regulatory burden with no demonstrated additional benefit to the nation's aquatic environment. Moreover, we contend a water of the U.S. does not necessarily warrant special consideration solely on the basis of its location within a state park. Limiting the utility of the NWPs for projects within these waters may lead to undue burdens on the regulated community, particularly the State's Division of Parks that maintains these parks and their infrastructure.

Commenters also recommended a new geographical exclusion for riffle pool complexes, prohibiting bank stabilization projects within these resources. The Corps recognizes that riffle pool complexes are identified by regulations at 40 CFR 230 as a special aquatic site; however, adding a geographical exclusion to prohibit the use of NWPs for impacts to riffle pool complexes will not result in added environmental benefit because it duplicates protections already in place within the existing general and regional conditions of the NWPs. For instance, the notification requirements of General Condition (GC) #27 and RC #2 for activities proposing impacts under NWP 13 will provide the opportunity for resource agencies to comment on the project. GC #27 requires delineation of special aquatic sites as part of the information provided in the Pre-Construction Notice (PCN). Further, GC #20 of the proposed NWPs requires compliance with the 404(b)(1) Guidelines, mandating that activities be designed and constructed to avoid and minimize discharges of dredged or fill material into waters of the U.S. (to include special aquatic sites) to the maximum extent practicable on the project site, and outlines the requirements for compensatory mitigation for unavoidable adverse impacts.

Commenters recommended a new geographical exclusion prohibiting the use of NWP 35 within coral reefs, seagrass beds, fish spawning areas, or wetlands. The Corps believes this condition is unnecessary as it duplicates protections already in place within the existing GC and RC, and is not appropriate in light of the type of work authorized by this NWP. The Corps acknowledges that NWP 19 (Minor Dredging) prohibits impacts to these resources; however, NWP 35 authorizes maintenance of existing facilities to their original design depth. It does not authorize new work, unlike NWP 19. Further, GC#3 states that activities in spawning areas during spawning season must be avoided to the maximum extent practicable, and permanent destruction of important spawning areas is not authorized. Also, the text of NWP 35 requires proper siltation controls be employed to minimize potential adverse effects of dredging to surrounding waters that may support these resources.

Further, areas to be maintained under NWP 35 are existing harbors where the existence of wetlands and fish spawning areas is expected to be extremely unlikely. While it is conceivable that corals and seagrasses could colonize within a harbor environment in the time between maintenance events, the Corps does not support a unilateral prohibition against activities in waters that may contain individuals or small colonies that have established themselves. Finally, the Corps notes that a PCN requirement is proposed for any activity requesting verification pursuant to this NWP and involving a discharge of fill, thus allowing resource agencies to provide input as appropriate for special cases in which additional scrutiny is warranted.

In response to comments, a new geographic exclusion prohibits authorization of yards and recreation facilities in Hawaii under NWP 29. Likewise, recreational facilities cannot be authorized pursuant to NWP 39 in Hawaii unless the project purpose is recreation. The rationale for such an exclusion is that these types of facilities are not typically considered water-dependent.

Again, based on public comments, we had proposed to add new shrimp aquaculture (NWP D) to the list of geographical exclusions in Hawaii, Guam, CNMI and American Samoa. Subsequently, however, the final NWP D, enumerated in the final Federal Register notice as NWP 48 (Existing Commercial Shellfish Aquaculture Activities) does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. Although POH believes the commenters' concerns regarding shrimp pond aquaculture in Hawaii are primarily centered on the potential for new, or the expansion of existing, facilities to pose impacts to wetlands, the regional prohibition concerning shrimp farming (RC 1.7) activities will still be imposed to address those potential impacts from ancillary activities and/or discharges of fill associated with operation of existing shrimp farm facilities, which may pose impacts different from bivalve culture. This, of course, does not restrict the subsequent modification of this regional condition in future NWP reauthorizations, especially as reasonable limits for such ancillary activities can be identified. This regional prohibition applies to only shrimp pond aquaculture, not other commercial shellfish aquaculture operations.

2.2.2 Proposed Regional Condition 2 (Notification): Similar to RC 1, many comments were received on modifying the scope of the notification for particular nationwide permits. More specifically, commenters recommended POH expand the applicability of this RC to include NWPs 28, 29, 35, B[46] and D[48]. (NWP 48 has subsequently been removed from this RC because it is geographically prohibited in the Pacific Region.) Two commenters suggested we eliminate the 1/20-acre threshold for pre-construction notification (PCN) and require all applicable NWPs be reporting, regardless of an impact threshold.

We agree that these modifications would likely result in an overall benefit to the aquatic ecosystem by providing increased pre-construction notification that in turn would help to ensure adverse impacts resulting from the use of the NWPs are less than minimal, individually and cumulatively. It also facilitates greater ease in administering the NWP

program, as many of the same NWPs as those listed above have reporting requirements in Guam, American Samoa and the CNMI (with no acreage threshold). POH has determined that eliminating the acreage threshold for notification for those above-referenced NWPs will not have an adverse impact on the regulated community. No comments have been received from the regulatory community requesting either the acreage threshold for notification remain the same or be increased. The majority of project proponents and/or consultants in Hawaii submit permit applications for all their projects with the reliance that the Corps will make the determination of applicable permitting requirements. Thus, the necessary information for a PCN has most likely already been submitted, regardless of the acreage of discharge, without solicitation from regulatory project managers. Further, POH estimates that removing the acreage threshold for notification will not result in a significant impact to the District's permit workload. The potential additional workload appears to be offset by the enhanced agency participation, which will serve to engender trust in our permit program.

2.2.3 Proposed Regional Condition 3 (Acreage Limitation): Three commenters requested we modify this RC by additionally imposing a 1/3-acre regional acreage limitation on NWPs 3, 43, A[45] and B[46] and a 1/4-acre limitation on NWP 29 for projects within Hawaii. The new acreage limitation for NWP 29 is a result of transferring the residential component of the 2002 NWP 39, which authorized discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential buildings and including multiple and single unit developments, to the 2007 NWP 29. Discharges for residential, commercial and industrial purposes under the 2002 NWP 39 had an acreage limitation of 1/4-acre in the 2002 RCs. The 2002 NWP 29, which authorized discharges of fill into non-tidal waters of the U.S., including non-tidal wetlands, for single-family residence construction, had a ¼-acre limitation. Therefore, POH does not believe this change to the 2007 RCs results in any change to the acreage limitations for the types of activities previously authorized under either NWP 29 or 39. Note: This rationale can also be applied to the additional geographic, acreage, and length limitations, as well as the compensatory mitigation requirement, applied to NWP 29 for the 2007 NWP RCs.

The acreage limitation for NWP 3 arose out of agency concern that NWP 3 could be used to authorize an expanded project footprint beyond the intent of the NWP 3, therefore, this is a safeguard against using the NWP 3 to authorize what is more properly considered new work. Based on the extent of impacts typically authorized pursuant to the 2002 NWP 3, this acreage limitation will not result in an undue burden on the regulated community, as the majority of projects verified pursuant to the 2002 NWP 3 resulted in losses of less than 1/3 acre of waters of the US. NWP 43 has not been verified even once within the time period of the 2002 NWPs, so it is not likely that the imposition of an acreage threshold will result in an unacceptable administrative burden to the regulated community, yet it will provide assurance that if such work is proposed pursuant to the 2007 NWPs, it will not result in an adverse impact, either individually or cumulatively, to the aquatic resources of the region. Likewise, both NWP 45 and 46 are new to the 2007 NWPs. Recalling that NWP 45 was formerly a portion of NWP 3, the same concerns enumerated above for NWP 3 would apply to this NWP. For NWP 46,

the national acreage limitation is one acre of waters of the U.S. Based on the much smaller scale of aquatic resources in the Pacific Region, imposing a 1/3 acre limitation for this NWP appears to be reasonable. Again, based on the types of projects typically reviewed by the Regulatory Branch, such an acreage limitation is not expected to pose a significant burden on the regulated public, yet adds a greater level of protection for regional aquatic resources.

2.2.4 Proposed Regional Condition 4 (Length Limitation): We received comments that this RC should more clearly define the methodology for calculating the 200 linear feet threshold associated with several of the NWPs, and the recommendation that NWPs 29, 40, 43, A[45] and B[46] be included under this limitation. The additional NWPs were included in the revised RCs, as the POH has determined that doing so would afford greater protection of the region's aquatic resources without imposing an unfair burden on the regulated community.

While we did not change the language in this RC, we did provide clarification in our official response to comments. The length of stream bed impacts is determined to be a maximum of 200 linear feet within the Ordinary High Water Mark (OHWM) of the water feature. If a project proposes to affect both banks, such as a road crossing with support walls extending below the OHWM on both sides of a stream, the total length of impacts is not the sum of each bank, but rather the total linear footage below the OHWM.

2.2.5 Regional Condition 5 (Bank Stabilization): More than one commenter recommended that placement of new or additional riprap to protect the existing structure be prohibited under NWP 3. It was further stated the use of word "riprap" within the text of this NWP can be interpreted as an endorsement to use this material.

The Corps recognizes there are bioengineering materials available that are less damaging to the aquatic environment and encourages their use when appropriate. POH also maintains that such bioengineering materials are not appropriate in all situations, and flexibility must be maintained within our permitting program to allow necessary engineering remedies to fix infrastructure effectively to ensure the protection of public safety.

Further, GC #20 of the final 2007 NWPs requires compliance with the 404(b)(1) Guidelines, mandating that activities be designed and constructed to avoid and minimize discharges of dredged or fill material into waters of the U.S. (to include special aquatic sites) to the maximum extent practicable on the project site, and outlining the requirements for compensatory mitigation for unavoidable adverse impacts. Minimizing discharges includes consideration and, if practicable, implementing alternative methodologies and materials that accomplish the project purpose with less adverse impacts to aquatic resources. Therefore, POH did not revise the RC 5 because we determined that it is adequate as originally proposed and other components of the NWP authorizations already address commenters' concerns.

2.2.6 Regional Condition 8 (Stream Modification): POH received a number of comments related to this proposed regional condition. The primary concern expressed by the majority of the commenters related to the use of embedded or bottomless arch culverts in lieu of conventional culverts. Commenters also requested this RC apply to NWPs 18 and 43 in Hawaii.

The POH supports the use of bottomless or embedded arch culverts in new construction or to replace existing culverts that are chronically constrained by sediment and/or debris and/or are likely undersized. The Corps does not, however, believe it is appropriate to restrict availability of NWPs only to those projects that use this construction method in lieu of replacing an existing culvert with a similar culvert. In order to enforce such a condition, a determination must be made regarding the appropriate size of a culvert, which is an engineering design responsibility beyond the authority of the Corps' Regulatory Branch and is an inappropriate role in light of our regulatory mission. It is typically the local permitting agencies, such as the City and County of Honolulu's Planning and Permitting Department, that make these types of determinations, and accordingly, we believe it is appropriate for the Corps to defer to these agencies on such technical matters. Nonetheless, the language provided by the commenters has been included as a regional advisory statement to encourage project proponents to consider this alternative.

The POH has included NWPs 18 and 43 within this RC. Doing so would afford greater protection of the region's aquatic resources without imposing an unfair burden on the regulated community.

2.2.7 Regional Condition 9 (Compensatory Mitigation): Some commenters seemed to recommend outright prohibition of use of vegetated buffers for these NWPs.

We believe such a prohibition is unreasonable and contrary to the recommendations set forth in the National Research Council's report in 2001 entitled "Compensating for Wetland Losses Under the Clean Water Act". Precluding the use of vegetated buffers would impede our ability to provide flexible and watershed-based approaches to compensatory mitigation for wetlands and non-wetland losses. Buffers are appropriate if used in conjunction with other forms of in-kind mitigation, and in fact in certain circumstances are known to protect and/or improve overall ecological functions when appropriately located. The latter is consistent with current Corps policy on compensatory mitigation for aquatic resources (Regulatory Guidance Letter No. 02-2, dated December 24, 2002), and the proposed Corps/EPA "Compensatory Mitigation for Losses of Aquatic Resources" (i.e. "Mitigation Rule") regulation, first published in the Federal Register on March 28, 2006.

The RC was revised to clarify that vegetated buffers could still be used in Hawaii, but cannot be the primary or sole method to offset permanent losses of wetlands or aquatic areas. The prohibition against use of vegetated buffers under any circumstance for NWPs in the CNMI, Guam and American Samoa was part of this RC for the 2002 NWPs. No comments or feedback has been received requesting this condition be reconsidered for the territories; therefore, this portion of the RC will remain unchanged.

2.2.8 Regional Condition 10 (Mitigation Measures): More than one commenter recommended that a new requirement be added that applicants submit a site-specific BMP plan explaining measures to control erosion and prevent pollutant discharge during construction.

Site-specific BMPs are generally required as part of the State of Hawaii Department of Health (DOH) Section 401 Water Quality Certification and the Section 402 NPDES permit application, as applicable to a specific project. The Corps does not believe it is appropriate to require site-specific BMPs as part of a complete Section 404 Clean Water Act (CWA) permit application and review because it would ostensibly serve to extend Corps regulatory purview beyond the limits of our authority pursuant to Section 404 of the CWA. Inclusion of such site-specific water quality and pollutant discharge BMPs in essence would federalize the CWA program (both Sections 401 and 402) delegated to the State of Hawaii. The Corps cannot legally assume responsibility for compliance with Section 402 of the CWA. However, to acknowledge that site-specific BMPs are a necessary part of the DOH review, the Corps included language to that effect in a regional advisory. The regional advisory language is intended to encourage applicants to furnish the necessary information in their 401 applications to facilitate the permit review processes, as well as to avoid the situation in which a contractor providing the site-specific BMPs identifies activities that may fall under Corps jurisdiction but were not part of the original scope identified by the applicant.

2.2.9 Proposed Regional Condition 12 (Endangered Species): As part of these endangered species BMPs, USFWS recommended that a survey of the project area be performed *by a qualified biologist* just prior to commencement or resumption of construction activity to ensure that no protected species are in the project area (RC #12.1). We do agree that a person should be dedicated solely to the task of biological monitoring on a job site, rather than designating someone who must perform multiple tasks/jobs on a given project that could in turn distract from the monitoring. The Corps does not believe, however, that a survey by a qualified biologist was the intent of the language adopted from standardized construction BMPs routinely provided by NOAA's Protected Resources Division in response to PCNs. Subsequent clarification provided by Mr. Jeff Zimpfer of the USFWS on January 29, 2007 pointed out that the marine species targeted by the NOAA BMPs are more readily identified by a lay person using informational literature provided by the agency, in contrast to the terrestrial and stream species under the USFWS' trust. The Corps contends that requiring a survey by a qualified biologist for every authorized activity is an excessive requirement to place on the regulated community; particularly for NWP projects, however, projects that could potentially affect listed species under the USFWS' purview will be identified through the PCN process, and more stringent special conditions could thus be imposed on a specific project as warranted. Also, GC #17, Endangered Species, prohibits authorization under any NWP activities which are likely to jeopardize the continued existence of a listed species or which will destroy or adversely modify the critical habitat of such species.

2.2.10 Additional Agency Comments: EPA and NMFS recommended that NWP 32 be expanded to include not just EPA 309(a) consent orders, but all EPA enforcement

settlements under Section 404 of the CWA. This appears to be a less restrictive regional standard compared to the limitations imposed at the national level, and this is not permissible as stated in the September 26, 2006 Federal Register notice for the proposed NWPs.

EPA and NMFS also recommended incorporating appropriate monitoring and assessment measures to determine compliance with the NWPs. This was also a recommendation of the Hawaii DOH. The Corps acknowledges the importance of monitoring and compliance to our program goals and consequently, we have already proposed to work with DOH on this programmatic issue. We have also invited NOAA, EPA and any other appropriate agencies with special expertise or jurisdiction by law to participate in these discussions to ensure there is a holistic approach to establishing appropriate monitoring and assessment measures for aquatic resources.

2.2.11 Regional Advisory on Definition of Coral Reefs: The Department of the Navy, Naval Facilities Engineering Command, Pacific, commented that the definition of a coral reef as stated in the regional advisory was scientifically imprecise and open to interpretation. It should be noted that this definition was included as a regional advisory to the 2002 RCs at the request of our federal resource agency partners in response to the heightened focus on coral reefs in light of the 2000 Presidential Executive Order #113089, Protection of Coral Reefs. POH recognizes that this definition is broadly worded in such a manner that it could encompass much more area than should be reasonably included under the term "coral reef" from a regulatory perspective. The Corps has included language in the updated regional advisory definition to allow us discretion to make the final call on what constitutes a coral reef, and will recommend that the Pacific Region Interagency Working Group (PRIWG) for coral reef mitigation again consider what constitutes an appropriate definition. (The POH determined it was not feasible to thoroughly examine and resolve the issues associated with developing a scientifically sound, widely accepted definition of coral reefs within the time limits associated with the NWP renewal process.)

POH remains committed to its responsibilities under Executive Order #13089, Coral Reef Protection, and its continued role as an active member of the PRIWG, whose goal is to cooperatively work together to improve the effectiveness and efficiency of the compensatory mitigation process for coral reef resources in the Pacific. Our goals to protect corals, however, must be balanced with the regulatory program's goal to provide the regulated public with fair, reasonable and timely decisions.

2.3 Consideration of Regional Conditions Specific to the NWPs

Ten additional and separate supplemental decision documents have been developed for NWPs 3, 5, 6, 12, 13, 14, 18, 33 and 35, and the remaining, less commonly used NWPs, to address in more detail applicable aspects of the regional conditions without producing unnecessary duplication of common elements of our decision document template. Please refer to the individual supplemental decision documents to understand how consideration of the RCs was given to each of the NWPs.

3.0 SUPPLEMENT TO NATIONAL IMPACT ANALYSIS

3.1 Alternatives (33 CFR 320.4(b), 40 CFR 230.10):

3.1.1 No Regional Conditions: With no RCs, activities authorized under these NWPs could result in more than minimal impacts in some or all of the POH. In the absence of regional conditions that would require pre-construction notification and/or exclusion from valuable regional aquatic resources such as anchialine pools, natural freshwater and saline lakes, montane bogs, the Kihei Wetlands, and state marine life conservation districts, impacts to these relatively rare and functionally valuable aquatic resources could occur without mitigation. Further, without RCs, many proposed activities that could be authorized under these NWPs would not be subject to POH review and consequently subject to our discretionary authority to evaluate projects on a case-by-case basis to determine whether a more rigorous review would be warranted under a standard individual permit. As a result, there likely would be more than minimal adverse impacts, both individually and cumulatively to these important areas and aquatic features occurring within the Pacific region.

3.1.2 Alternative Regional Limits or Notification Thresholds: A review of the POH regulatory databases indicates the majority of the activities authorized under these NWPs resulted in only minor impacts to waters of the U.S. Consequently, these data tend to suggest the proposed regional limits and notification thresholds are appropriate to ensure minimal adverse effects.

In the POH, the climate and island topography limits the amount and extent of special aquatic sites that occur throughout the region. Many watersheds within the POH are relatively small and steep, which tend to create high peak discharges and velocities in storm events. Therefore, because of the small size of these watersheds relative to other regions of the U.S., acreage and linear length thresholds lower than the national standard are appropriate and necessary to ensure the NWPs verified in the POH region do not result in more than minimal individual or cumulative adverse effects to the aquatic resources of the region. This same rationale applies to lowered pre-construction notification thresholds for POH. A discussion of the consideration of additional and/or lowered regional limits and notification threshold can be found in Section 2.2.

3.1.3 Alternative Regional Nationwide Permit Conditions: A discussion of the consideration of alternative regional conditions can be found in Section 2.2.

3.2 Public Interest Review Factors (33 CFR 320.4(a)(a)):

In addition to the discussion in the national decision documents for the NWPs, the POH has considered the local and regional impacts expected to result from the regulated activities authorized by the NWPs, including the reasonably foreseeable cumulative effects of those activities. In doing so, we have evaluated and considered the following

public interest review factors to determine the use of the NWPs and regional conditions is not contrary to the public interest.

(a) Conservation: Same as discussed in the National Decision Documents.

(b) Economics: Same as discussed in the National Decision Documents.

(c) Aesthetics: One of Hawaii's major economic factors is tourism. Aesthetics play an important role in determining which sites are utilized by tourists. Impacts to aesthetics can be subjective; therefore, mitigating measures vary greatly. Activities authorized by these NWPs are not expected to have more than minimal impacts on aesthetics.

(d) General environmental concerns: Same as discussed in the National Decision Documents.

(e) Wetlands: The U.S. Geological Survey estimates that in the 1980's roughly 52,000 acres of wetlands existed on Hawaii. Montane Bogs and coastal wetlands comprise approximately 95% of that acreage. The remainder is deepwater habitats. Other estimates from the U.S. Fish and Wildlife Service's National Wetlands Inventory (NWI) maps indicate about 58,000 acres of wetlands occur within the State of Hawaii. NWI estimates that approximately 14,000 acres of wetlands occur on Guam, 740 acres within the CNMI, and that approximately 240 acres of wetlands occur on American Samoa. For this reason, many projects authorized by the NWPs within POH could potentially impact wetlands. As indicated in the National Decision Document, GC 20 (Mitigation) addresses avoidance and minimization of impacts to wetlands and compensatory mitigation (ratio of 1:1) that may be necessary to offset losses of wetland functions and values. Additionally, RCs 1, 2, 3, 4, 6, 9, 10, 11 and 13 were developed to minimize adverse impacts to wetlands. Therefore, projects authorized by these NWPs are not expected to have more than minimal impacts to wetlands within the State of Hawaii and the Pacific Islands.

(f) Historic properties: Pursuant to Section 106 of the National Historic Preservation Act, no activity resulting from a permit may affect an historical or archeological site until the District Engineer or his designee has complied with the terms of 33 CFR 325, Appendix C, the Regulatory Program's regulation implementing Section 106. A determination of effect is made, and if necessary, appropriate mitigation measures are developed, by the Corps in consultation with SHPO. In addition, under GC 18, (Historic Properties), a prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places. They shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.

(g) Fish and wildlife values: In addition to the restrictions provided by GCs 2, 3, 4, and 5, many species of fish and waterfowl use the lakes, rivers and streams of Hawaii and the Pacific Islands. The proposed NWPs and RCs were coordinated with the State of Hawaii, the USFWS, the NMFS and the U.S. Territorial Governments of the Pacific Islands to identify appropriate measures to minimize potential impacts to these important resources. In light of the referenced GCs and POH's RCs, projects authorized by these NWPs are not expected to have more than minimal impacts on fish and wildlife values in the State of Hawaii nor on the Pacific Islands.

(h) Flood hazards: Same as discussed in the National Decision Documents.

(i) Floodplain values: Same as discussed in the National Decision Documents.

(j) Land use: Same as discussed in the National Decision Documents.

(k) Navigation: Similar to that discussed in the National Decision Documents. Projects authorized by NWPs pursuant to Section 10 of the Rivers and Harbors Act could result in positive impacts on navigation (e.g., aids to navigation). No adverse impacts to navigation are anticipated as a result of these NWPs.

(l) Shore erosion and accretion: Same as discussed in the National Decision Documents.

(m) Recreation: Same as discussed in the National Decision Documents.

(n) Water supply and conservation: Same as discussed in the National Decision Documents.

(o) Water quality: In addition to the information discussed in the National Decision Documents, POH has included as part of the PCN requirement under RC 2 identification of any "Impaired Waters" that may be affected by the proposed project. This addition to RC 2 was a result of coordination with the U.S. Environmental Protection Agency and the State Department of Health during the 2002 NWP reauthorization process to help address concerns over the CWA Section 303(d) list of impaired waterbodies. RCs 1, 6, 8, 10, 11 and 13 also aid in minimizing impacts to water quality. As a result of the PCN requirement, POH has the option to add special conditions to address water quality concerns and ensure the impacts to the aquatic environment are minimal.

(p) Energy needs: Same as discussed in the National Decision Documents.

(q) Safety: Same as discussed in the National Decision Documents.

(r) Food and fiber production: Same as discussed in the National Decision Documents.

(s) Mineral needs: Same as discussed in the National Decision Documents.

(t) Considerations of property ownership: Same as discussed in the National Decision Documents.

3.3 404(b)(1) Guidelines Impact Analysis (Subparts C-F):

(a) Substrate: Same as discussed in the National Decision Documents.

(b) Suspended particulates/turbidity: Same as discussed in the National Decision Documents.

(c) Water: Same as discussed in the National Decision Documents.

(d) Current patterns and water circulation: Same as discussed in the National Decision Documents.

(e) Normal water level fluctuations: Same as discussed in the National Decision Documents.

(f) Salinity gradients: Same as discussed in the National Decision Documents.

(g) Threatened and endangered species: Virtually all wetlands in Hawaii and the Pacific Islands, with the exception of American Samoa's wetlands, support federally protected species. Hawaii's wetlands support four endemic waterbirds, all listed as endangered. They include the Hawaiian duck (*Anas wyvillianna*), Hawaiian coot (*Fulica alai*), Hawaiian moorhen (*Gallinula chloropus sandvicensis)* and Hawaiian stilt (*Himantopus mexicanus knedseni*). On Guam, the endangered Mariana common moorhen (*Gallinula chloropus guami*) is found in the island's southern and central wetland areas, many of which are threatened by development. In the CNMI, the freshwater wetlands of Saipan and Tinian are essential to the survival and recovery of the endangered Mariana common moorhen, and on Saipan, the endangered nightingale reed warbler (*Acrocephalus luscinia luscinia*) utilizes reedy marshes and wetland edges.

Coordination procedures under Section 7 of the ESA would be implemented in accordance with the SLOPES for any NWP project(s) that may affect the aforementioned species or adversely affect their designated critical habitat. Other concerns are the same as those discussed in the national decision documents. No comments were received specifically addressing listed species within the Pacific Region with regard to the NWPs; however, standard BMPs for listed marine species that had been routinely provided by the NMFS in response to PCNs for the existing 2002 NWPs have been incorporated into the 2007 RCs to facilitate

compliance with Section 7 of the ESA. Additional language was provided by the USFWS to address potential impacts to terrestrial species and their critical habitat, and this was also incorporated into the 2007 RCs to ensure that impacts to endangered and/or threatened species would be minimal. We do not anticipate more than minimal individual or cumulative impacts to threatened or endangered species, provided projects comply with all required NWP terms and conditions. For additional information on this topic see Section 5.3 of this document.

(h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web:

(1) *General*: Aquatic species could be adversely affected by these NWP activities through the release of contaminants which could affect one or more life stages (e.g., adults, juveniles, larvae or eggs). If this occurs, the reduction of food chain organism populations may decrease the overall productivity and nutrient export capability of the affected ecosystem. Impacts to established plant and animal communities could occur if structures or fills bury, crush or shade the substrate along with any bottom-dwelling organisms. The National Decision Document discusses other potential impacts and describes GCs that have been imposed to reduce them. We do not anticipate more than minimal individual or cumulative impacts to fish, etc., provided projects comply with all applicable terms and conditions.

(2) *Essential Fish Habitat (EFH)*: The National Decision Document discussed the expected impacts to EFH under a programmatic consultation with the NMFS pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that there would be minimal individual and cumulative adverse impacts to EFH. Specifically, NWP GC 2 (Aquatic Life Movements), GC 3 (Spawning Areas), GC 5 (Shellfish Beds) and GC 19 (Designated Critical Resource Waters) all provide protection for EFH. In addition, POH's inclusion of RC 1 Geographical Exclusions, RC 2 Notification, RC 13 Standard Best Management Practices and the Regional Advisories on Coral Reefs and Use of Embedded or Bottomless Arch Culverts provide additional protection for streams and other waters supporting EFH.

By letter dated October 3, 2006, the Corps determined that the reissuance of the NWPs will not have an adverse effect on EFH within the State of Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands, based on implementation of the proposed regional conditions intended to minimize any potential adverse effects to the aquatic environment through use of construction BMP's and requirements for compensatory mitigation. Based on NMFS' comments/recommendations in their November 16, 2006 letter regarding the POH RC's, the Corps believes it has satisfied its obligations under the EFH consultation regulations at 50 CFR 600.920, and stated such in its February 12, 2007 response to NMFS' comment letter. Based on the above-referenced GCs and RCs, the POH has determined that

EFH will be adequately protected such that no adverse effect to EFH will occur under these NWPs.

(i) Other wildlife: Same as discussed in the National Decision Documents.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:

(1) Sanctuaries and refuges: Same as discussed in National Decision Documents.

(2) Wetlands: The USFWS National Wetland Inventory estimates that approximately 105,222 acres of the State of Hawaii is comprised of wetlands. Using NWI maps, the Guam Department of Parks and Recreation (1988) estimated a total of 14,000 acres of wetlands on Guam. Likewise, the American Samoa Department of Parks and Recreation used surveys by USFWS to estimate 240 acres of wetlands exist on American Samoa. The CNMI Wetlands Report (June 2005) prepared for the CNMI Coastal Resources Management Office indicated that approximately 740 acres of wetlands are estimated for the islands of Saipan, Tinian, Rota and Pagan based on NWI maps for the CNMI. However, due to the terms and conditions instituted nationally and regionally, projects authorized by these NWPs are not expected to have more than minimal individual or cumulative impacts to wetlands.

(3) Mud flats: Same as discussed in National Decision Documents.

(4) Vegetated shallows: Potential direct and indirect impacts to freshwater or marine vegetated shallows could occur, which could smother vegetation and benthic organisms. Undesirable effects include added chemicals (e.g., paint) that may affect plants and animals, increased shading that lowers photosynthesis, and impacts to bottom sediments and benthic organisms. The placement of anchors may also impact or reduce the values of vegetated shallows and/or bury or crush plants and animals present at the site.

(5) Coral reefs: A Regional Advisory has been included to help address potential impacts to coral reefs.

(6) Riffle and pool complexes: Same as discussed in National Decision Documents.

(k) Municipal and private water supplies: Same as discussed in National Decision Documents.

(l) Recreational and commercial fisheries: Hawaii's fish streams, aquaculture lakes and marine waters are extremely high value habitats and their commercial and ecological value is recognized worldwide. For this reason, the terms and conditions instituted both nationally and regionally will help to insure that projects authorized by the NWPs do not have more than minimal impacts on recreational or commercial fisheries within the State of Hawaii nor on those of the Pacific Islands.

(m) Water-related recreation: Same as discussed in the National Decision Documents.

(n) Aesthetics: Same as discussed in the National Decision Documents, and Section 3.2(c) of this supplemental decision Documents.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in the National Decision Documents.

3.4 Cumulative Effects Analysis

The cumulative impacts of these NWPs on the aquatic environment are dependent upon the number of times the NWPs are used, the location and juxtaposition of the work in consideration of the frequency, and the quantity and quality of waters of the United States lost due to the activities authorized by the NWPs. To insure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, POH may require restoration, rehabilitation or an in-lieu fee (etc.) as compensatory mitigation to offset the authorized losses of waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

A search of our databases for the period 2002 through 2006, indicates the POH verified approximately 307 different nationwide permits, either individually or in combination, to authorize work and activities occurring within waters of the U.S. The NWPs most commonly used in POH included NWPs 3, 5, 6, 12, 13, 14, 18, 33, and 35. The cumulative impacts and usage data is discussed in more detail in each of the nationwide permit-specific supplemental decision documents developed by POH for these NWPs.

On average, 0.085-acre of waters of the U.S. was impacted (including both temporary and permanent impacts). Compensatory mitigation was typically not required to compensate for lost waters of the U.S. based on the small scale of impacts and nature (ecological function) of the impacted waters. BMPs are the primary means to reduce a project's potential adverse impacts to the aquatic environment, and ensure that the authorized project will result in minimal individual and cumulative adverse impacts to the aquatic environment. Temporary impacts generally result from construction-related activities, such as cut and fill, stockpiling of fill material, stream diversions, access roads, and staging and storage areas for equipment and materials. Permanent impacts typically

encompass the footprint of the crossing and any associated grade stabilizers, such as rock rip-rap or wing deflectors. Overall, the review of the existing data indicates the proposed NWPs would continue to affect only a small amount of waters of the U.S. with the authorized work resulting in minor permanent impacts, both individually and cumulatively, to waters of the U.S. in the POH.

The terms and conditions of the NWPs will insure that these NWPs authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in GCs like 2, 3, 4, 5, 8, 9, 12, 15, 19, 20, and 21, as well as the RCs discussed in this document. Additionally, the PCN requirements of these NWPs by GC 27 and RC 2 will help to identify aquatic resources of importance. The District Engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, both individually and cumulatively. The District Engineer may also exercise discretionary authority and require an individual permit for those activities that may result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that any of these NWPs would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used to modify, suspend or revoke the NWP.

4.0 FINAL POH REGIONAL CONDITIONS AND ADVISORIES

Based on public comments, POH modified a number of its proposed regional conditions. Section 2.0 of this document summarizes the nature and scope of the comments, as well as describes the general responses provided to the written feedback received through the public noticing process.

4.1 Regional Conditions

Regional Condition 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs.

1. Anchialine pools, montane bogs, natural freshwater lakes and saline lakes (Hawaii only) (NWPs 7, 12, 14, 18, 29, 39, 40, 41, and 42).

2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 19), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts (including Marine Preserve Areas in Guam). However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 15 or in designated critical habitats for Federally listed threatened or endangered species if the activity

complies with General Condition 17 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).

3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 29, 39, 40, 41, and 42).

4. State of Hawaii (NWP 43 and 44).

5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

6. State of Hawaii – Yards and recreation facilities such as playgrounds, playing fields, and golf courses (NWP 29); Recreational facilities, unless the project purpose is recreation (NWP 39).

7. Shrimp pond aquaculture – NWP 48. Commercial operations in Hawaii, the Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa should be permitted individually because of the scale, frequency of siting in existing wetlands, and potential for impacts different from bivalve culture. Note: This regional prohibition refers only to new activities, not routine maintenance activities.

Regional Condition 2 (Notification)

Pursuant to the final 2007 NWPs, all activities conducted under the following NWPs require pre-construction notification, regardless of acreage impacted: 7, 8, 17, 21, 29, 31, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 49 and 50. In Hawaii and the Pacific Islands, the following additional NWPs require notification to the District Engineer in accordance with General Condition 27* for all discharges of dredged or fill material into waters of the U.S. or work within Section 10 navigable waters of the U.S.: 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 28, 35, 36, 41 and 48.

*Note: For projects directly impacting "Impaired Waters" as identified on the most recent CWA Section 303(d) list for the State of Hawaii, the PCN will identify the waterbody as an Impaired Water and, where practicable, shall identify any mitigating measures or BMPs required/recommended by the State for work in these areas.

Regional Condition 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWPs 3, 7, 40, 41, 42, 43, 45 and 46 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 29 and 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

Regional Condition 4 (Length Limitation)

The maximum length of fill within waters of the U.S. is limited to 200 linear feet under NWPs 12, 13, 14, 29, 39, 40, 42, 45 and 46. Note: This limit applies to intermittent and ephemeral streams as well as perennial waters.

Regional Condition 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

Regional Condition 6 (Sidecasting)

For NWPs 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

Regional Condition 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

Regional Condition 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWPs 7, 12, 14, 18, 39, 40, 41, and 42 in Hawaii, CNMI, Guam and American Samoa.

Regional Condition 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used as the primary or sole method to offset permanent losses of wetland and aquatic areas authorized under NWPs 12, 14, 29, 39, 40, and 42 in Hawaii; they cannot be used for this purpose under any of the NWPs within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or, under exceptional circumstances, preservation of wetland and aquatic areas shall be at a minimum ratio of 1:1 (acres, square feet, etc.).

Regional Condition 10 (Mitigation Measures)

A plan employing the techniques listed below shall 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 shall be provided and remain in place until the soil is permanently stabilized.

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

*Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

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

2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

*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 should 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 should be used only when native species are not available. The following species are known to be highly invasive and may 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).

Regional Condition 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

Regional Condition 12 (Endangered Species)

1) A survey of the project area should be performed just prior to commencement or resumption of construction activity to ensure that no protected species are in the project area. If protected species are detected, construction activities must be postponed and the Services must be notified.

2) If any listed species enters the area during conduct of construction activities, all activities should cease until the animal(s) voluntarily depart the area.

3) All on-site project personnel shall be apprised of the status of any listed 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 .

4) Any incidental take of marine mammals should be reported immediately to NOAA Fisheries' 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.

5) Pursuant to the Endangered Species Act, any take of federally protected 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.

Regional Condition 13 (Standard Best Management Practices)

The following measures (as applicable) shall be incorporated into projects to minimize the degradation of water quality and impacts to fish and wildlife resources:

1) Turbidity and siltation from project-related work shall be minimized and contained to the immediate vicinity of the project through the appropriate use of effective silt containment devices and the curtailment of work during adverse tidal and weather conditions.

2) The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as much as possible.

3) Dredging/filling in the marine/aquatic environment shall be scheduled to avoid coral spawning and recruitment periods.

4) Dredging and filling in the marine/aquatic environment shall be designed to avoid or minimize the loss of special aquatic sites (coral reefs, wetlands, riffle-pool complexes, etc.) and compensatory mitigation shall be implemented for the unavoidable loss of special aquatic sites.

5) All project-related materials and equipment (dredges, barges, backhoes etc) to be placed in the water shall be cleaned of pollutants prior to use.

6) No project-related materials (fill, revetment rock, pipe etc.) shall be stockpiled

in the water (intertidal zones, reef flats, stream channels, wetlands etc.).

7) All debris removed from the marine/aquatic environment shall be disposed of at an approved upland or ocean dumping site.

8) No contamination (trash or debris disposal, alien species introductions etc.) of adjacent marine/aquatic environments (reef flats, channels, open ocean, stream channels, wetlands etc.) shall result from project-related activities.

9) Fueling of project-related vehicles and equipment should take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.

10) Any under-layer fills used in the project shall be protected from erosion with suitable material (such as pre-cast concrete armor or mat units) as soon after placement as practicable.

11) Any soil exposed near water as part of the project shall be protected from erosion (with suitable material such as plastic sheeting, filter fabric etc.) after exposure and stabilized as soon as practicable (with vegetation matting, hydroseeding etc.).

12) 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 soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

4.2 Regional Advisories

Use of Embedded or Bottomless Arch Culverts:

Use of embedded or bottomless arch culverts is encouraged for NWPs 3, 12, 14, 27, 29, 37, 39, 40, 41, 42, and 45, especially where frequent culvert maintenance or replacement is needed. Many undersized conventional culverts contribute to flooding and degrade the aquatic environment by causing channel incision, bank destabilization, and/or prevent fish passage.

Site-Specific Best Management Practices (BMPs):

To facilitate efficient review of a project, the Corps strongly recommends submittal of site-specific BMPs as part of the Pre-Construction Notification (PCN) for any project involving the discharge of dredged and/or fill material into waters of the U.S. Site-specific BMPs are generally a requirement of the State of Hawaii's Department of Health Section 401 Water Quality Certification, which is required for the Corps to issue a valid verification that work can begin on an activity regulated pursuant to Section 404 of the Clean Water Act. Further, submitting site specific BMPs as part of the PCN allows the Corps to evaluate all potential regulated activities. Project proponents risk delays, or, worse, enforcement action, should their contractor commence work pursuant to a contractor-submitted site specific BMP plan that includes regulated activities, such as temporary access fills or stream diversions, not reviewed and/or permitted under the original request for NWP authorization. Please also note the permittee is liable for such actions even if site-specific BMPs have been approved by the DOH.

Definition of Coral Reefs:

For the geographic area regulated by the Honolulu Engineer District, coral reefs are defined as structures made of and by living coral and other animals and plants (including, but not limited to, their calcareous remains, reef flats, slopes, lagoon bottoms, pinnacles, and other coral reef features). This definition is strictly advisory in nature and the Corps will make the final determination on the applicability of this definition to the presence or absence of coral reefs for projects proposing work in accordance with any of the NWPs.

5.0 COMPLIANCE WITH OTHER FEDERAL, STATE AND LOCAL LAWS

5.1 401 Water Quality Certification

At the time these document were prepared, the final state certification for the Hawaii Section 401 WQC had not been received, although on March 28, 2007, a representative of the Department of Health (the office that issues Section 401 Water Quality Certifications) indicated that a blanket certification would likely be issued for approximately 16 NWPs, the same ones that received blanket certification for the 2002 NWP reauthorization. It is anticipated that the conditions associated with this blanket certification will be similar to those imposed for the 2002 NWPs, which were found by the Honolulu District to be reasonable and not result in a denial of any one or number of NWPs for the State of Hawaii. Outside of specific coordination with the DOH in regard to the NWP renewal, the DOH has not imposed any special conditions to individual verifications during the 2002-2007 period in such a manner to indicate that those special conditions would become additional conditions of the blanket certification.

The Corps will generally defer to states regarding conditions for WQCs. Any conditions of the WQC provided by the state become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at

33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

By letter dated January 11, 2007, Guam Environmental Protection Agency (GEPA) provided its final WQC determinations for the 2007 NWPs in Guam, indicating which NWPs are denied, approved conditionally, approved without conditions, excluded by Regional Condition, or not applicable to activities in Guam. American Samoa and CNMI were undecided as to final certification of the NWPs at the time of this writing. As is the case with any DA authorization, verification of a NWP does not obviate the need for any other Federal, State or local authorization.

5.2 Coastal Zone Management Act Consistency Determination

On March 28, 2007, a representative of the State of Hawaii, Department of Business, Economic Development & Tourism, Office of Planning (the office that administers the Coastal Zone Management Program) indicated via telephone that their office would issue a general concurrence for some NWPs and require PCNs on others, similar to the determination made for the 2002 NWP reauthorization. At the time of this writing, the final State certification for the State of Hawaii CZM had not been received. No CZM determination has been received from the Guam Bureau of Planning. American Samoa and CNMI were non-committal in their review of the NWPs at this time. For the above reasons, NWPs 7, 15, 17, 18, 20, 21, 23, 27, 29, 30, 32, 34, 37, 39, 40, 41, 42, 43, and 44 are denied without prejudice in the State of Hawaii and Territory of Guam. As is the case with any DA authorization, verification of a NWP does not obviate the need for any other Federal, State or local authorization.

Table 5-1
Anticipated and/or Known Status of WQC and CZMA Consistency

			HAWAII		GUAM		SAMOA		CNMI	
NWP #	DESCRIPTION	PCN	WQ	CZM	WQ	CZM	WQ	CZM	WQ	CZM
1	Aids to Navigation		N/A	C	N/A	D	N/A	D	N/A	N1
2	Structures in Artificial Canals		N/A	C	N/A	D	N/A	D	N/A	N1
3	Maintenance	Y	C	PC	D	D	PD	D	PD	N1
4	Fish Harvesting Device	Y	C	C	C	D	PD	D	PD	N1
5	Scientific Measuring Devices	Y	C	PC	NC	D	PD	D	PD	N1
6	Survey Activities	Y	C	C	NC	D	PD	D	PD	N1
7	Outfall Structures	Y	D	PC	D	D	PD	D	PD	N1
8	Oil & Gas Structures	Y	N/A	D	N/A	D	N/A	D	N/A	N1
9	Anchorage Area Structures		N/A	PC	N/A	D	N/A	D	N/A	N1
10	Mooring Buoys		N/A	PC	N/A	D	N/A	D	N/A	N1
11	Temporary Recreational Structures		N/A	PC	N/A	D	N/A	D	N/A	N1
12	Utility Line Activities	Y	C	PC	D	D	PD	D	PD	N1
13	Bank Stabilization	Y	C	D	D	D	PD	D	PD	N1
14	Linear Transportation	Y	C	D	D	D	PD	D	PD	N1

15	USCG Approved Bridges			D	PC	NC	D	PD	D	PD	N1
16	Return Water from Dredged Matl		Y	C	C	D	D	PD	D	PD	N1
17	Hydropower Projects		Y	D	PC	D	D	PD	D	PD	N1
18	Minor Discharges (<25 CY)		Y	C	PC	D	D	PD	D	PD	N1
19	Minor Dredging (<25 CY)		Y	C	PC	D	D	PD	D	PD	N1
20	Oil Spill Cleanup			D	C	NC	D	PD	D	PD	N1
21	Surface Coal Mining		Y	D	D	N/A	D	PD	D	PD	N1
22	Removal of Vessels		Y	C	PC	NC	D	PD	D	PD	N1
23	Approved Categorical Exclusions			D	PC	D	D	PD	D	PD	N1
24	State Administered 404 Programs			N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
25	Structural Discharges		Y	C	PC	NC	D	PD	D	PD	N1
26	Reserved						D		D		N1
27	Wetland & Riparian Restoration		Y	D	PC	C	D	PD	D	PD	N1
28	Marina Modification		Y	N/A	C	N/A	D	N/A	D	N/A	N1
29	Single Family		Y	D	D	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
30	Moist Soil Management			D	PC	NC	D	PD	D	PD	N1
31	Maintenance of Exstg Flood Control		Y	C	PC	D	D	PD	D	PD	N1
32	Completed Enforcement Actions			D	D	NC	D	PD	D	PD	N1
33	Temporary Construction & Access		Y	C	PC	D	D	PD	D	PD	N1
34	Cranberry Production Activities		Y	D	N/A	D	D	PD	D	PD	N1
35	Maintenance Dredging of Basins		Y	N/A	PC	N/A	D	N/A	D	N/A	N1
36	Boat Ramps		Y	C	PC	D	D	PD	D	PD	N1
37	Emergency Watershed Projects		Y	D	PC	NC	D	PD	D	PD	N1
38	Toxic Waste Cleanup		Y	C	PC	NC	D	PD	D	PD	N1
39	Residential, Etc.		Y	D	D	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
40	Agricultural Actvities		Y	D	PC	D	D	PD	D	PD	N1
41	Reshaping Existing Ditches		Y	D	PC	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
42	Recreational Facilities		Y	D	D	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
43	Stormwater Mng't Facilities		Y	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
44	Mining Activities		Y	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
45	Repair of Storm-damaged Uplands		Y	D	D	D	D	PD	D	PD	N1
46	Discharges in Ditches		Y	D	D	D	D	PD	D	PD	N1
47	Pipeline Safety Program Repairs			D	D	D	D	PD	D	PD	N1
48	Existing Shellfish Aquaculture			EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL	EXCL
49	Coal Remining Activities		Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
50	Underground Coal Mining Activities		Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Y = Activities which require NOTIFICATION to the Corps prior to start of work (no acreage threshold).										
	PD = Provisionally Denied, to be reviewed on a case by case basis by resource agency										
	D = Individual review required by State agencies										
	C = 401 or CZM issued with conditions attached which must be followed (BMP's & WQMP, if applicable)										
	N = CZM concurs, however, need to notify OP to see if additional conditions are to be imposed										
	N1 = NOTIFICATION by ACOE required to CRM (Northern Mariana) upon authorization										
	N/A = Not Applicable										
	EXCL = Excluded due to regional conditions										
	PC = Conditional concurrence, PCN required										
	* = See original concurrence for specific details										

	Note: For Guam WQC, "NC" means certified unconditionally					

5.3 Section 7 of the Endangered Species Act

5.3.1 General Considerations: In accordance with GC 17, "Endangered Species," no activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Language has been added to clarify that no activity which may affect a listed species or critical habitat is authorized by the NWP unless Section 7 consultation has been completed. Non-federal permittees are required to notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The GC language also clarifies that the Corps will determine whether the project "may affect" or have "no effect" on listed species.

As discussed in the National Decision Documents, authorization of an activity by these NWPs does not authorize the "take" of a threatened or endangered species as defined under the Federal ESA. In the absence of separate authorization from the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), both lethal and non-lethal "takes" of protected species would be in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained from the USFWS or NMFS. See also Section 3.3(g) for a general discussion of listed species found within the Pacific Islands region.

5.3.2 Local Operating Procedures for Endangered Species: POH established Standard Local Operating Procedures for Endangered Species (SLOPES) with USFWS on March 30, 2000. We have agreed to consultation on a case-by-case basis, as needed, with NMFS. The SLOPES outline procedures to eliminate the potential for adverse impacts to federally listed/proposed listed species and federally designated/proposed critical habitats, assist the Corps in meetings its obligations under Section 7 of the ESA, and improve coordination between the Corps and the USFWS in the review of general permit applications (including those under the NWP program).

5.3.3 Regional Consultation Pursuant to Section 7 of the ESA: The re-issuance of these NWPs and the issuance of the six new NWPs has been coordinated with USFWS and NMFS. By letters dated October 3, 2006 and

February 12, 2007, POH requested the general concurrence of USFWS and NMFS that the re-issuance/issuance of the NWPs would not adversely affect federally threatened and endangered species or adversely destroy or modify designated critical habitat. No specific comments were received concerning threatened or endangered species in response to the POH's special public notices or during interagency meetings, other than those regarding the proposed RC concerning BMPs for ESA-listed species (discussion of this can be found in Section 2.2.9).

To ensure activities authorized by the proposed NWPs would not have an adverse effect on listed species found within our area of responsibility, POH has included two additional regional conditions over those approved with the 2002 NWPs that would further avoid and/or minimize potential effects on listed species and designated critical habitat. These two additional regional conditions were drawn from standard best management practices (BMPs) routinely recommended by the local offices of the USFWS and NOAA in response to the Corps' requests for comments on individual projects requiring NWP verification. Specifically, Regional Condition 12 (Endangered Species) requires an applicant to: perform visual surveys just prior to commencement of work in the project area for the presence/absence of protected species; postpone commencement of construction activities if protected species are present until the animal(s) voluntarily vacate the area; cease all activities if during the conduct of construction a listed species enters the project area; educate all on-site personnel of the status of any listed species potentially occurring in the project area and the legal protections afforded to those species; notify NOAA Fisheries within 24 hours of any incidental take of marine mammals; and, notify the USFWS Office of Law Enforcement in Honolulu of any take of federally protected species (other than marine mammals).

Similarly, Regional Condition 13 (Best Management Practices) requires an applicant implement pre- and post-construction measures, as applicable, to minimize degradation of water quality and impacts to fish and wildlife species.

The Honolulu offices of both consulting federal agencies (NOAA and USFWS) have declined to provide written concurrence to POH that the use of the NWP program and implementation of the POH regional conditions would not be expected to result in any adverse impacts to listed species or their critical habitat within the Pacific region, primarily because a programmatic ESA consultation at the national level, with resultant biological opinions anticipated from both NOAA and USFWS Headquarters, will most likely address processes and tools that will assist in ESA compliance. Nonetheless, species-level consultation will still need to be completed at the district level.

Based on the nature of the NWPs activities, the general conditions, and the proposed final regional conditions, the Corps reaffirms its determination that re-issuance of the proposed 2007 NWPs may affect, but is not likely to adversely affect federally threatened and endangered species and/or adversely modify

designated critical habitat and that initiation of formal consultation is not required. Further, review of verifications issued during the 2002-2007 period indicates that no formal consultations had been initiated for any NWP projects in the Honolulu District, nor has any elevated level of concern regarding compliance with Section 7 been communicated to the POH during this time by the resource agencies. The 2007 NWPs have not been modified in such a manner, nor have regional circumstances surrounding listed species concerns changed such over the past five years, that POH would anticipate a change in the number of formal consultations conducted in association with the NWP program.

5.4 Magnuson-Stevens Fishery Management & Conservation Act (Essential Fish Habitat)

By letter dated October 3, 2006, the Corps determined that the reissuance of the NWPs will not have an adverse effect on EFH within the State of Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands, based on implementation of the proposed regional conditions intended to minimize any potential adverse effects to the aquatic environment through use of construction BMP's and requirements for compensatory mitigation. Based on NMFS' comments/recommendations in their November 16, 2006 letter regarding the POH RC's, the Corps believes it has satisfied its obligations under the EFH consultation regulations at 50 CFR 600.920, and stated such in its February 12, 2207 response to NMFS' comment letter. Based on the GCs and RCs referenced in Section 3.3(h)(2) of this document, the POH has determined that EFH will be adequately protected such that no adverse effect to EFH will occur under these NWPs.

5.5 Section 106 of the National Historic Preservation Act:

By Public Notice dated October 2, 2006, the POH initiated consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA) with the applicable state and territory historic preservation offices. No responses were provided during the comment period of this PN, and no subsequent correspondence has been received regarding the 2007 NWPs and their potential to impact historic and cultural resources in Hawaii and the Pacific Island territories. GC 18 states that in cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the NHPA have been satisfied. Further, the notification requirements of RC 2 provide additional visibility of projects the POH is considering under the NWP program. These projects are routinely coordinated with the State of Hawaii Historic Preservation Division (SHPD), even for a "no effect" determination. Based on the GC and RC referenced above, the POH has determined that the 2007 NWPs and associated RCs will not have an adverse effect to historic or cultural resources in the Pacific Islands region.

6.0 FINAL DETERMINATION

Based on the considerations discussed in the attached decision Documents, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that these NWPs, including the terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.

APPENDIX A

POH Public Notice
October 2, 2006

Public Notice

Public Notice No. **POH-2006-351**	Date: **October 2, 2006**
Reply to: U.S. Army Engineer District, Honolulu Regulatory Branch, CEPOH-EC-R Building 230 Fort Shafter, Hawaii 96858-5440	Respond by: **November 16, 2006**

U.S. Army Corps of Engineers
Honolulu District

NATIONWIDE PERMIT REISSUANCE
REQUEST FOR COMMENTS

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its Nationwide Permits (NWPs).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the District Engineer before commencing the work to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs:

The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov . Instructions for submitting comments are provided in the September 26, 2006 Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning:

In conjunction with the Federal Register notice, Corps Districts will be announcing proposed regional conditions for these NWPs for public comment. Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) contains the proposed regional conditions currently under consideration by the Pacific Ocean Division for the State of Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands. The Honolulu District is seeking comments on the proposed regional conditions and comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of

Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands.

Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to the Honolulu District at the letterhead address or to CEPOH-EC-R@usace.army.mil. Comments relating to regional conditions are due by November 16, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other Division or District offices.

When the final NWPs are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWPs. After that 60-day period, the NWPs and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs, are available for viewing at the Honolulu District, Regulatory Branch Office, Building 214, Ft. Shafter, Hawaii or on the Internet at www.regulations.gov (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWPs that are issued. In addition, supplemental decision documents will be issued by Division Engineers to address their determinations concerning regional conditions for the NWPs.

Enclosed is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below. Interested parties who do not have Internet access should contact Ms. Connie Ramsey at (808) 438-2039 for a copy of the proposed NWPs and/or regional conditions.

Internet addresses:
Copies of the Federal Register notice and the draft decision documents will also be available at http://www.regulations.gov in docket ID number COE-2006-0005.
The Corps home page is: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/ .
As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at http://www.gpoaccess.gov/fr/index.html .

Proposed Nationwide Permits

D. Commercial Shellfish Aquaculture Activities
E. Coal Remining Activities
F. Underground Coal Mining Activities

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Enhancement
Ephemeral stream
Establishment (creation)
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

Enclosure 1

Honolulu Engineer District
Proposed Regional Conditions
(2007 Re-issuance of the Nationwide Permits)

REGIONAL CONDITION 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs.

1. Anchialine Pools and Montane Bogs (NWPs 7, 12, 14, 18, 39, 40, 41, and 42).

2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 25), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts (including Marine Preserve Areas in Guam). However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 7 or in designated critical habitats for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).

3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 39, 40, 41, and 42).

4. State of Hawaii (NWP 43 and 44).

5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

REGIONAL CONDITION 2 (Notification)

Notification to the District Engineer in accordance with General Condition 13* is required for all discharges of fill into the waters of the U.S. exceeding 1/20 acre under NWPs 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 31, 33, 36, 38, 39, 40, 41, and 42.

Within the CNMI, Guam and American Samoa, notification to the District Engineer in accordance with General Condition 13 is required for all discharges into the waters of the United States (NWPs 12, 13, 14, 27, 28, 35, 36, 38, and 40). Notification is required for all other NWPs where the loss of waters of the United States for a single and complete project exceeds 1/20 acre.

*Note: For projects directly impacting "Impaired Waters" as identified on the most recent CWA Section 303(d) list for the State of Hawaii, the PCN will identify the waterbody as an Impaired Water and, where practicable, shall identify any mitigating measures or BMPs required/recommended by the State for work in these areas.

REGIONAL CONDITION 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWPs 7, 40, 41, and 42 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

REGIONAL CONDITION 4 (Length Limitation)

The maximum length of fill crossing waters of the U.S. is limited to 200 linear feet under NWPs 12, 13, 14, 39 and 42.

REGIONAL CONDITION 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

REGIONAL CONDITION 6 (Sidecasting)

For NWPs 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

REGIONAL CONDITION 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

REGIONAL CONDITION 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWPs 7, 12, 14, 39, 40, 41, and 42. This condition also applies to NW #18 within the CNMI, Guam and American Samoa.

REGIONAL CONDITION 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used to offset permanent losses of wetland and aquatic areas authorized under NWPs 12, 14, 39, 40, 42, 43 and 44; they cannot be used for this purpose under any of the NWPs within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or under exceptional circumstances, preservation of wetland and aquatic areas shall be at a minimum ratio of 1:1.

REGIONAL CONDITION 10 (Mitigation Measures)

A plan employing the techniques listed below shall 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 shall be provided and remain in place until the soil is permanently stabilized.

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

*Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

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

2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

*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 should 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 should be used only when native species are not available. The following species are known to be highly invasive and may 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).

REGIONAL CONDITION 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

REGIONAL CONDITION 12 (Project Timing)

NWP activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as

much as possible. 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 soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

REGIONAL CONDITION 13 (Endangered Species)

1) A survey of the project area should be performed just prior to commencement or resumption of construction activity to ensure that no protected species are in the project area. If protected species are detected, construction activities should be postponed until the animal(s) voluntarily leave the area.

2) If any listed species enters the area during conduct of construction activities, all activities should cease until the animal(s) voluntarily depart the area.

3) All on-site project personnel should be apprised of the status of any listed species potentially present in the project area and the protections afforded to those species under Federal laws. A brochure 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.

4) Any incidental take of marine mammals should be reported immediately to NOAA Fisheries' 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.

REGIONAL CONDITION 14 (Standard Best Management Practices)

The following measures (as applicable) shall be incorporated into projects to minimize the degradation of water quality and impacts to fish and wildlife resources:

1) Turbidity and siltation from project-related work shall be minimized and contained to within the vicinity of the site through the appropriate use of effective silt containment devices and the curtailment of work during adverse tidal and weather conditions.

2) Dredging/filling in the marine/aquatic environment shall be scheduled to avoid coral spawning and recruitment periods.

3) Dredging and filling in the marine/aquatic environment shall be designed to avoid or minimize the loss special aquatic site habitat (coral reefs, wetlands etc.) and the unavoidable loss of such habitat shall be compensated for.

4) All project-related materials and equipment (dredges, barges, backhoes etc) to be placed in the water shall be cleaned of pollutants prior to use.

5) No project-related materials (fill, revetment rock, pipe etc.) should be stockpiled in the water (intertidal zones, reef flats, stream channels, wetlands etc.).

6) All debris removed from the marine/aquatic environment shall be disposed of at an approved upland or ocean dumping site.

7) No contamination (trash or debris disposal, alien species introductions etc.) of adjacent marine/aquatic environments (reef flats, channels, open ocean, stream channels, wetlands etc.) shall result from project-related activities.

8) Fueling of project-related vehicles and equipment should take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.

9) Any under-layer fills used in the project shall be protected from erosion with stones (or core-loc units) as soon after placement as practicable.

10) Any soil exposed near water as part of the project shall be protected from erosion (with plastic sheeting, filter fabric etc.) after exposure and stabilized as soon as practicable (with vegetation matting, hydroseeding etc.).

REGIONAL ADVISORY (Definition of Coral Reefs)

For the geographic area regulated by the Honolulu Engineer District, coral reefs are defined as structures made of and by living coral and other animals and plants (including, but not limited to, their calcareous remains, reef flats, slopes, lagoon bottoms, pinnacles, and other coral reef features). This advisory applies to all NWPs.

APPENDIX B

POH Public Notice
March 19, 2007

Public Notice

Public Notice No. **POH-2006-351**	Date: **March 19, 2007**
Reply to: U.S. Army Engineer District, Honolulu Regulatory Branch, CEPOH-EC-R Building 230 Fort Shafter, Hawaii 96858-5440	Respond by: N/A

U.S. Army Corps of Engineers
Honolulu District

PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE ANNOUNCING NEW NATIONWIDE PERMITS

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers (Corps) announced the reissuance of all existing Nationwide Permits (NWPs), general conditions, and definitions with some modifications. The Corps has also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs will be effective on March 19, 2007.

In addition, the Honolulu Engineer District has developed Regional Conditions (RCs) in order to provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Draft proposed Regional Conditions were first published by Public Notice dated October 2, 2006. Comments received during the aforementioned public notice comment period have been incorporated into the attached proposed final RCs for the Honolulu District. Regional conditions will help ensure protection of high value waters within the District.

The publication of this *Federal Register* notice also begins the 60-day period for states and territories to complete their water quality certification (WQC) process for the NWPs. This *Federal Register* notice also provides a 60-day period for coastal states and territories to complete their Coastal Zone Management Act (CZMA) consistency determination processes. This 60-day period will end on May 11, 2007.

While the states and territories complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, while states and territories complete their CZMA consistency determination processes, the use of an NWP to authorize an activity within, or outside, a state's or territory's coastal zone that will affect land or water uses or natural resources of that state's or territory's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The March 12, 2007, *Federal Register* notice is available for viewing at the Honolulu District Regulatory Branch Office, Building 214, Fort Shafter, Hawaii, or on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf . As an alternative, World Wide Web users can access the *Federal Register* through the U.S. Government Printing Office at http://www.gpoaccess.gov/fr/index.html .

The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_final.htm and Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

For your use and information, attached are an index of the final 2007 NWPs, General Conditions and Definitions, and the proposed final Honolulu District Regional Conditions which must be complied with in order for your project to be verified under the NWPs. A subsequent Public Notice will be posted announcing the final RCs and WQC/CZMA determinations.

Index of Nationwide Permits, Conditions, and Definitions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering

34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification
28. Single and Complete Project

Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Discharge
Enhancement
Ephemeral stream
Establishment (creation)
Historic property
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

REGIONAL ADVISORIES

Use of Embedded or Bottomless Arch Culverts:
Use of embedded or bottomless arch culverts is encouraged for NWPs 3, 12, 14, 27, 29, 37, 39, 40, 41, 42, and 45, especially where frequent culvert maintenance or replacement is needed. Many undersized conventional culverts contribute to flooding and degrade the aquatic environment by causing channel incision, bank destabilization, and/or prevent fish passage.

Site-Specific Best Management Practices (BMPs):
To facilitate efficient review of a project, the Corps strongly recommends submittal of site-specific BMPs as part of the Pre-Construction Notification (PCN) for any project involving the discharge of dredged and/or fill material into waters of the U.S. Site-specific BMPs are generally a requirement of the State of Hawaii's Department of Health Section 401 Water Quality Certification, which is required for the Corps to issue a valid verification that work can begin on an activity regulated pursuant to Section 404 of the Clean Water Act. Further, submitting site-specific BMPs as part of the PCN allows the Corps to evaluate all potential regulated activities. Project proponents risk delays, or, worse, enforcement action, should their contractor commence work pursuant to a contractor-submitted site-specific BMP plan that includes regulated activities, such as temporary access fills or stream diversions, not reviewed and/or permitted under the original request for NWP authorization. Please also note the permittee is liable for such actions even if site-specific BMPs have been approved by the DOH.

Definition of Coral Reefs:
For the geographic area regulated by the Honolulu Engineer District, coral reefs are defined as structures made of and by living coral and other animals and plants (including, but not limited to, their calcareous remains, reef flats, slopes, lagoon bottoms, pinnacles, and other coral reef features). This definition is strictly advisory in nature and the Corps will make the final determination on the applicability of this definition to the presence or absence of coral reefs for projects proposing work in accordance with any of the NWPs.

REGIONAL CONDITION 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs.

1. Anchialine pools, montane bogs, natural freshwater lakes and saline lakes (Hawaii only) (NWPs 7, 12, 14, 18, 29, 39, 40, 41, and 42).

2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 19), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts (including Marine Preserve Areas in Guam). However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies

with General Condition 15 or in designated critical habitats for Federally listed threatened or endangered species if the activity complies with General Condition 17 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).

3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 29, 39, 40, 41, and 42).

4. State of Hawaii (NWP 43 and 44).

5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

6. State of Hawaii – Yards and recreation facilities such as playgrounds, playing fields, and golf courses (NWP 29); Recreational facilities, unless the project purpose is recreation (NWP 39).

7. Shrimp pond aquaculture – NWP 48. Commercial operations in Hawaii should be permitted individually because of the scale, frequency of siting in existing wetlands, and potential for impacts different from bivalve culture. Note: This regional prohibition refers only to new activities, not routine maintenance activities.

REGIONAL CONDITION 2 (Notification)

Pursuant to the final 2007 NWPs, all activities conducted under the following NWPs require pre-construction notification, regardless of acreage impacted: 7, 8, 17, 21, 29, 31, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 49 and 50. In Hawaii and the Pacific Islands, the following additional NWPs require notification to the District Engineer in accordance with General Condition 27* for all discharges of dredged or fill material into waters of the U.S. or work within Section 10 navigable waters of the U.S.: 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 28, 35, 36, 41 and 48.

*Note: For projects directly impacting "Impaired Waters" as identified on the most recent CWA Section 303(d) list for the State of Hawaii, the PCN will identify the waterbody as an Impaired Water and, where practicable, shall identify any mitigating measures or BMPs required/recommended by the State for work in these areas.

REGIONAL CONDITION 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWPs 3, 7, 40, 41, 42, 43, 45 and 46 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 29 and 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

REGIONAL CONDITION 4 (Length Limitation)

The maximum length of fill within waters of the U.S. is limited to 200 linear feet under NWPs 12, 13, 14, 29, 39, 40, 42, 43, 45 and 46. Note: This limit applies to intermittent and ephemeral streams as well as perennial waters.

REGIONAL CONDITION 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

REGIONAL CONDITION 6 (Sidecasting)

For NWPs 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

REGIONAL CONDITION 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

REGIONAL CONDITION 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWPs 7, 12, 14, 18, 39, 40, 41, 42 and 43 in Hawaii, CNMI, Guam and American Samoa.

REGIONAL CONDITION 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used as the primary or sole method to offset permanent losses of wetland and aquatic areas authorized under NWPs 12, 14, 29, 39, 40, and 42 in Hawaii; they cannot be used for this purpose under any of the NWPs within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or, under exceptional circumstances, preservation of wetland and aquatic areas shall be at a minimum ratio of 1:1 (acres, square feet, etc.).

REGIONAL CONDITION 10 (Mitigation Measures)

A plan employing the techniques listed below shall 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 shall be provided

and remain in place until the soil is permanently stabilized.

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

*Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

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

2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

*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 should 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 should be used only when native species are not available. The following species are known to be highly invasive and may 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).

REGIONAL CONDITION 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

REGIONAL CONDITION 12 (Endangered Species)

1) A survey of the project area should be performed just prior to commencement or resumption of construction activity to ensure that no protected species are in the project area. If protected species are detected, construction activities must be postponed until the animal(s) voluntarily leave the area.

2) If any listed species enters the area during conduct of construction activities, all activities should cease until the animal(s) voluntarily depart the area.

3) All on-site project personnel shall be apprised of the status of any listed 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 .

4) Any incidental take of marine mammals should be reported immediately to NOAA Fisheries' 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: Conditions 12.1-12.4 pertain to projects within waters that may support listed marine mammals and/or sea turtles. Additional requirements may be designated by the Corps as appropriate for specific projects.

5) Pursuant to the Endangered Species Act, any take of federally protected 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.

REGIONAL CONDITION 13 (Standard Best Management Practices)

The following measures (as applicable) shall be incorporated into projects to minimize the degradation of water quality and impacts to fish and wildlife resources:

1) Turbidity and siltation from project-related work shall be minimized and contained to the immediate vicinity of the project through the appropriate use of effective silt containment devices and the curtailment of work during adverse tidal and weather conditions.

2) The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as much as possible.

3) Dredging/filling in the marine/aquatic environment shall be scheduled to avoid coral spawning and recruitment periods.

4) Dredging and filling in the marine/aquatic environment shall be designed to avoid or minimize the loss of special aquatic sites (coral reefs, wetlands, riffle-pool complexes, etc.) and compensatory mitigation shall be implemented for the unavoidable loss of special aquatic sites.

5) All project-related materials and equipment (dredges, barges, backhoes etc) to be placed in the water shall be cleaned of pollutants prior to use.

6) No project-related materials (fill, revetment rock, pipe etc.) shall be stockpiled in the water (intertidal zones, reef flats, stream channels, wetlands etc.).

7) All debris removed from the marine/aquatic environment shall be disposed of at an approved upland or ocean dumping site.

8) No contamination (trash or debris disposal, alien species introductions etc.) of adjacent marine/aquatic environments (reef flats, channels, open ocean, stream channels, wetlands etc.) shall result from project-related activities.

9) Fueling of project-related vehicles and equipment should take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.

10) 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.

11) Any soil exposed near water as part of the project shall be protected from erosion (with suitable material such as plastic sheeting, filter fabric etc.) after exposure and stabilized as soon as practicable (with vegetation matting, hydroseeding etc.).

12) 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 soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

NWP 3: Maintenance

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 3

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 3, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*" (Master SDD).

The NWP considered in this supplemental document authorizes:

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer

under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

2.0 Consideration of HED Regional Conditions and Evaluation of Concerns Specific to NWP 3

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 3 (Acreage Limitation), RC 5 (Bank Stabilization), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 3 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

Many activities authorized under NWP 3 are utilized for projects that impact a relatively small amount of waters of the US and/or occur in areas adjacent to existing structures that have been previously disturbed and exhibit relatively low physical and biological

functions. As a result, many of the NWP 3 permit actions in POH do not impact areas that support habitat for endangered species and, as a result, NWP 3 is resulting in minimal direct, indirect and cumulative impacts to aquatic resources and riparian habitat in POH. RC 2 requires a PCN for any discharges of dredged and/or fill material proposed under this NWP, regardless of the amount of the proposed discharge, and RC 3 limits the maximum loss of waters for any one project under this NWP to 1/3 acre. The requirements of both these RCs ensure that NWP 3, as implemented in Hawaii and the Pacific Island territories, results in only minimal individual and cumulative adverse effects on the aquatic environment.

3.0 Cumulative Effects of NWP 3

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified one hundred fifty-four (154) times during the past five years resulted in the aggregate loss of approximately 1.432 acres of waters of the U.S., which represents an approximate .0007 percent loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the maintenance activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 1.432 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately twenty (20) times per year, resulting in the aggregate loss of approximately 1.5 acres of waters of the United States. (It is noteworthy to mention the high number of verifications, i.e., 154, within the previous five year period appears to be an anomaly specific to one particular year, and, in examining the other four years, an estimate of twenty verifications per year appears to represent a more appropriate estimate of useage. The acreage of impacts associated with the use of this NWP is not anticipated to increase or decrease significantly, considering even the anomalous number of verifications in fiscal year 2003, which may likely be more a reflection of data entry discrepancies than actual number of verifications. As a further note, it is not clear in our acreage estimates if the numbers reflect the net loss of waters or simply represent the actual project footprint within waters which may have already been impacted by previous activities such as stream channelization, a common feature of many of the waters within urbanized watersheds, particularly in Hawaii.)

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the

Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 Final Determination

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 5: Scientific Measuring Devices

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 5

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 5, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes: *Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)*

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 5

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 5 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

RC 2 requires pre-construction notification for any discharges of dredged and/or fill material proposed under this NWP, regardless of the amount of the proposed discharge, ensuring that NWP 5, as implemented in Hawaii and the Pacific Island territories, results in only minimal individual and cumulative adverse effects on the aquatic environment.

3.0 CUMULATIVE EFFECTS OF NWP 5

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted

from POH Regulatory Branch internal databases, the NWP considered in this document which was verified fourteen (14) times during the past five years resulted in the aggregate loss of approximately 0.003 acres of waters of the U.S., which in practical terms represents an immeasurable loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.003 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

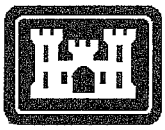
Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately fourteen (14) times during the next five years, resulting in the loss of approximately 0.003 acres of waters of the United States.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.



NWP 6: Survey Activities

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT NATIONWIDE PERMIT 6

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 6, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 6

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 6 in the State of Hawaii and the Pacific

Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

RC 2 requires pre-construction notification for any discharges of dredged and/or fill material proposed under this NWP, regardless of the amount of the proposed discharge, ensuring that NWP 6, as implemented in Hawaii and the Pacific Island territories, results in only minimal individual and cumulative adverse effects on the aquatic environment.

3.0 CUMULATIVE EFFECTS OF NWP 6

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified thirteen (13) times during the past five years resulted in the aggregate loss of approximately 0.0006 acres of waters of the U.S., which in practical terms represents an immeasurable loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.0006 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately thirteen (13) times in the next five years, resulting in the aggregate loss of approximately 0.0006 acres of waters of the United States.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 12: Utility Line Activities

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 12

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 12, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody. Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-

greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 12

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 1(Geographical Exclusions), RC 2 (Notification), RC 4 (Length Limitation), RC 6 (Sidecasting), RC 8 (Stream Modification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 12 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

NWP 12 could have more than minimal impacts to certain habitat types and watersheds that exhibit a cumulative loss of wetland and riparian functions and/or support habitat that exhibits relatively high physical and biological functions and, as a result, POH has included NWP 12 in several of the regional conditions to address these concerns. RC 1 would preclude discharges of dredged or fill material in jurisdictional anchialine pools, montane bogs, natural freshwater lakes and saline lakes (Hawaii only), Designated Critical Resource Waters and adjacent wetlands.

With the inclusion of the above restrictions, the aforementioned short- and long-term adverse impacts to aquatic resources in POH would be further reduced and/or mitigated.

3.0 CUMULATIVE EFFECTS OF NWP 12

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified twenty-eight (28) times during the past five years resulted in the aggregate loss of approximately 0.05 acres of waters of the U.S., which in practical terms represents an immeasurable loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.05 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu Districtduring previous years, the Honolulu District estimates that this NWP will be used approximately twenty-eight (28) times over the next five years, resulting in the aggregate loss of approximately 0.05 acres of waters of the United States.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only

those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 13: Bank Stabilization

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 13

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 13, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;

(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 13

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in

minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 4 (Length Limitation), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 13 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

3.0 CUMULATIVE EFFECTS OF NWP 13

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified twelve (12) times during the past five years resulted in the aggregate loss of approximately 0.098 acres of waters of the U.S., which represents an approximate .0002 percent loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.098 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately twelve (12) times over the next five years, resulting in the aggregate loss of approximately 0.1 acres of waters of the United States.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 14: Linear Transportation Projects

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 14

1.0 INTRODUCTION

This document serves as a supplement to the national decision document for Nationwide Permit 14, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in detail in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 14

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 4 (Length Limitation), RC 7 (Runways and Taxiways), RC 8 (Stream Modification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 14 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

Waters of the U.S., including special aquatic sites, within Honolulu District are often considered rare, sensitive and/or fragile. A number of these aquatic resources have declined significantly compared to their historic distribution and abundance due to urbanization and other development projects. Some of the more sensitive aquatic habitats include tidal and non-tidal wetlands, anchialine pools, riffle and pool complexes, montane bogs, and coral reefs. Based on the U.S. Fish and Wildlife Service's (USFWS) National Wetlands Inventory (NWI) maps, approximately 52,000 acres of wetlands occur in the State of Hawaii, understanding that these maps are relatively antiquated and likely do not represent the full range or extent of wetlands within the state. According to the NWI data, the Territory of Guam supports approximately 5,000 acres of wetlands, which constitute about four percent of the total land area of the island. The wetlands of Guam fall into four major classifications: palustrine, forested; palustrine, emergent; lacustrine; and estuarine. For CNMI, it is reported that approximately 740 acres of wetlands currently exist on the island. No published data were found to estimate the recent acreages of existing wetlands on American Samoa.

The nature of linear transportation projects often involves long-term impacts to these sensitive aquatic habitats, particularly to the channel substrate in the immediate vicinity of the transportation structure. Short-term construction impacts also tend to occur in the immediate project area, generally attributed to the staging of construction equipment, temporary access ramps and roads, and other ancillary features needed during construction. Consequently, linear transportation projects have the potential to increase downstream sedimentation and erosion, degrade adjacent vegetation that functions to provide shading habitat which in turn regulates water temperatures, and/or alter the hydrodynamics through the installation of project features (e.g., culverts). Linear transportation project features and designs, such as culverts, hardened/engineered bank

stabilization, wing walls, bridge abutments and bridge piers are generally unsuitable for stream passage of fish or the fulfillment of other life requisite activities for other aquatic wildlife species. A number of regional conditions were developed to consider the potential direct and indirect effects on the aquatic environment that could result from the use of NWP 14 and to ensure the use of this NWP in Hawaii and the Pacific Islands results in minimal adverse impacts on the aquatic environment.

To ensure minimal impacts to the substrate of special aquatic sites and other sensitive aquatic resources, specific areas and types of aquatic resources were excluded from authorization under NWP 14 in Hawaii and the Pacific Island territories. With the inclusion of the regional conditions, the proposed NWP 14 would result in minimal impacts, both individually and cumulatively, to channel substrate. The General Conditions would provide further limitations on the use of NWP 14 in waters of the US. Specifically, General Condition 19 prohibits authorization of activities under NWP 14 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters, except for the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System which then must comply with General Condition 15. A regional advisory on use of embedded or bottomless arch culverts encourages that all road crossings employ a design that ensures passage of native species is not hindered in any way. In these areas, designs that span the watercourse, or employ a bottomless arch culvert simulating the natural stream bed are encouraged to minimize impacts to aquatic species.

In addition, RC 1 would preclude discharges of dredged or fill material in jurisdictional anchialine pools, montane bogs, natural freshwater lakes and saline lakes (Hawaii only), Designated Critical Resource Waters and adjacent wetlands. With the inclusion of the above restrictions, the aforementioned short- and long-term adverse impacts to channel substrate in POH would be further reduced and/or mitigated.

Many activities authorized under NWP14 are utilized for projects that impact a relatively small amount of non-tidal waters of the US (less than ½-acre) and/or occur in areas adjacent to existing structures that have been previously disturbed and exhibit relatively low physical and biological functions. As a result, many of the NWP14 permit actions in POH do not impact areas that support habitat for endangered species and, as a result, NWP14 is expected to result in minimal direct, indirect and cumulative impacts to aquatic resources and riparian habitat in POH. Furthermore, RC 2 (Notification) requires each proposed linear transportation project be submitted to the Corps prior to construction and, if the proposed project results in greater than minimal impacts, the POH would process an individual permit for the proposed road crossing. Non-linear transportation projects would be individually reviewed and, if due to more than minimal impacts to habitat that supports high physical and biological functions, the POH could require an individual permit. However, NWP14 could have more than minimal impacts to certain habitat types and watersheds that exhibit a cumulative loss of wetland functions and/or support habitat that exhibits relatively high physical and biological functions and, as a result, have proposed the aforementioned regional conditions to address these concerns.

3.0 CUMULATIVE EFFECTS OF NWP 14

The cumulative impacts of this NWP on the aquatic environment are generally dependent on the number of times the NWP is used and the quantity and quality of waters of the U.S. lost due to the activities authorized by the NWP. Past and current permitting information extracted from our internal databases indicates NWP 14 has been verified 22 times in the past five years for linear transportation activities occurring in Hawaii, Guam, American Samoa and the CNMI. These 22 authorizations resulted in the aggregate loss of approximately 0.36 acres of waters of the U.S., which represents an approximate .0006 percent loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.36 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years and our current knowledge of local development trends, existing regional economics, and reasonably foreseeable future projects, the Honolulu District estimates that this NWP will be used approximately ten (10) times over the next five years, resulting in the aggregate loss of 0.36 acres of waters of the U.S.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that these NWPs, including the terms and conditions, all regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 18: Minor Discharges

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 18

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 18, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 18

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 8 (Stream Modification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 18 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional

conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

RC 2 requires pre-construction notification for any discharges of dredged and/or fill material proposed under this NWP, regardless of the amount of the proposed discharge, ensuring that NWP 18, as implemented in Hawaii and the Pacific Island territories, results in only minimal individual and cumulative adverse effects on the aquatic environment.

3.0 CUMULATIVE EFFECTS OF NWP 18

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified ten (10) times during the past five years. While we were unable to retrieve any quantitative data from our databases to report the resultant aggregate loss of waters of the U.S. from the use of this nationwide permit, based on our best professional judgment we do not believe the ten authorizations under NWP 18 has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately ten (10) times over the next five years.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 33: Temporary Construction, Access & Dewatering

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMIT 33

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 33, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 33

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) affect the use of NWP 33 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. No public comments were received specifically in relation to the implementation of NWP 33 in the Pacific region. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

Many activities authorized under NWP 33 tend to impact a relatively small amount of waters of the U.S. and/or occur in areas adjacent to existing structures that have been previously disturbed and exhibit relatively low physical and biological functions. The impacts of the NWP 33 are anticipated to be only temporary in nature, as the text of NWP 33 requires that, "*Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations.*" Further, the primary permitted activities that NWP 33 supports have their own terms, conditions and restrictions to further protect the aquatic environment. A pre-construction notice (PCN) is required for all activities pursuing verification subject to NWP 33. With the inclusion of the regional conditions referenced above, the proposed NWP 33 would result in minimal impacts, both individually and cumulatively, to the aquatic environment.

3.0 CUMULATIVE EFFECTS OF NWP 33

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified ten (10) times during the past five years resulted in the aggregate loss of approximately 0.0176 acres of waters of the U.S., which in practical terms represents an immeasurable loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 0.0176 acres of waters of the U.S. has resulted in a significant cumulative adverse impact.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately

ten (10) times over the next five years, resulting in the loss of approximately 0.02 acres of waters of the United States.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP 35: Maintenance Dredging of Existing Basins

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT NATIONWIDE PERMIT 35

1.0 NATIONWIDE PERMIT

This document serves as a supplement to the national decision document for Nationwide Permit 35, and addresses the regional conditions developed to ensure the use of this NWP results in minimal impacts to the aquatic environment. The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions and exclusions are discussed in the "*Supplement to the National Nationwide Permit Decision Document for Honolulu District*".

The NWP considered in this supplemental document authorizes:

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWP 35

Thirteen regional conditions were developed for use in the Honolulu District to ensure the authorization of proposed activities in waters of the U.S. under the NWPs result in minimal adverse impacts on the aquatic environment, individually and cumulatively. RC 2 (Notification), RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) either explicitly or indirectly affect the use of NWP 35 in the State of Hawaii and the Pacific Island territories. Public comments received on these regional conditions in response to the October 2, 2006 Public Notice were fully considered by the POH and incorporated into revised RCs as appropriate. A full discussion of the comments received can be found in Section 2.0 of the master SDD.

Commenters recommended a new geographical exclusion prohibiting the use of NWP 35 within coral reefs, seagrass beds, fish spawning areas, or wetlands. The Corps believes this condition is unnecessary as it duplicates protections already in place within the existing GC and RC, and is not appropriate in light of the type of work authorized by this NWP. The Corps acknowledges that NWP 19 (Minor Dredging) prohibits impacts to these resources; however, NWP 35 authorizes maintenance of existing facilities to their original design depth. It does not authorize new work, unlike NWP 19. Further, GC#3 states that activities in spawning areas during spawning season must be avoided to the maximum extent practicable, and permanent destruction of important spawning areas is not authorized. Also, the text of NWP 35 requires proper siltation controls be employed

to minimize potential adverse effects of dredging to surrounding waters that may support these resources.

Further, areas to be maintained under NWP 35 are existing harbors where the existence of wetlands and fish spawning areas is expected to be extremely unlikely. While it is conceivable that corals and seagrasses could colonize within a harbor environment in the time between maintenance events, the Corps does not support a unilateral prohibition against activities in waters that may contain individuals or small colonies that have established themselves. Finally, the Corps notes that RC 2 requires pre-construction notification for any activity requesting verification pursuant to this NWP, regardless of the scope of activity proposed, thus allowing resource agencies to provide input as appropriate for special cases in which additional scrutiny is warranted and ensuring that NWP 35, as implemented in Hawaii and the Pacific Island territories, results in only minimal individual and cumulative adverse effects on the aquatic environment. This PCN requirement was already in place for projects in the CNMI, American Samoa and Guam for the 2002 NWPs, and is only a new requirement for project in Hawaii. The Honolulu District has determined that adding this requirement is not anticipated to result in an overwhelming additional burden on the regulated community of Hawaii.

3.0 CUMULATIVE EFFECTS OF NWP 35

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on information extracted from POH Regulatory Branch internal databases, the NWP considered in this document which was verified fourteen (14) times during the past five years resulted in impacts to approximately 6.58 acres of waters of the U.S., which represents an approximate .0127 percent loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these impacts, which may be temporary and/or permanent, no compensatory mitigation was required based on case-specific evaluations of the nature and scope of the activity in relation to the type of waters impacted. As further clarification, it is not clear in our acreage estimates if the numbers reflect a net loss of waters or simply represent the actual project footprint within waters that have been impacted by previously authorized activities, as is often the case with maintenance dredging of existing facilities.

Based on an analysis of the types of activities authorized by the Honolulu District during previous years, the Honolulu District estimates that this NWP will be used approximately fourteen (14) times over the next five years, resulting in impacts to approximately 6.6 acres of waters of the United States. It is anticipated that the impacts to waters will primarily be temporary in nature, as marine organisms often re-colonize dredged areas following the activity. BMPs to minimize impacts of turbidity to surrounding waters are required as part of the terms of this NWP, and are addressed as well with the general and regional conditions.

The terms and conditions of this NWP, including the pre-construction notification requirements and the regional conditions listed in Section 4.0 of the master document,

cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 19, the geographic exclusions of the regional conditions, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Honolulu District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including the terms and conditions, all applicable regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

NWPs:
1, 2, 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 50

SUPPLEMENTAL DECISION DOCUMENT

2007 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Honolulu District

April 2007

SUPPLEMENT TO THE NATIONAL DECISION DOCUMENT
NATIONWIDE PERMITS
1, 2, 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 50

1.0 INTRODUCTION

This document serves as a supplement to the national decision document for the thirty-nine (39) Nationwide Permits (NWPs) listed herein, and addresses the regional conditions developed to ensure the use of these NWPs results in minimal impacts to the aquatic environment.

Past and current permitting information extracted from the Honolulu District (POH) Regulatory Branch internal databases indicates there is a low frequency of use, or verification, of the aforementioned NWPs in Hawaii, Guam, American Samoa and the Commonwealth of the Northern Marianna Islands (CNMI). In fact, of these 39 NWPs, 25[1] have not been verified or used by the Honolulu District in the past five years. The remainder of the NWPs were used relatively infrequently (i.e., less than 10 times during the past five years) and, on average, were verified only twice a year during the period 2002 through 2007.

Based on our current knowledge of local development trends, existing regional economics, and reasonably foreseeable future projects, we do not anticipate there to be substantial fluctuation in the future use of these NWPs when compared to their current and past use over last five years. Similarly, in our review of the newly approved NWPs (i.e., NWPs 46, 47, 48, 49 and 50), the nature of activities that may be authorized under the terms and conditions is such that the Honolulu District does not predict any will be routinely used. For example, coal mining (NWP 49) and underground coal mining (NWP 50) are activities that do not take place in the Honolulu District due to the absence of coal as a naturally occurring resource within the State of Hawaii and the Pacific Islands. Therefore, based on the infrequent use of these NWPs and the follow-on presumption that the probability of their future use will remain similarly low, the resultant individual and cumulative effects to waters of the U.S. will be negligible. As such, the analysis contained in this supplemental document is intended to apply universally to each of the NWPs listed above.

The Pacific Ocean Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of these NWPs, including the need for additional modifications by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of the one or more of the NWPs from certain geographic areas or specific waterbodies. These regional

[1] NWPs 46, 47, 48, 49 and 50 are newly developed authorizations that were approved as part of the 2007 re-issuance of the NWPs, and have not been available for use by the regulated public until their effective date of March 19, 2007. Consequently, no prior data are available regarding their historic use.

conditions and exclusions are discussed in detail in the "*Master Supplemental Decision Document for the Honolulu District*".

The NWPs considered in this supplemental document authorize the activities as documented below.

2.0 CONSIDERATIONS OF HED REGIONAL CONDITIONS AND EVALUATION OF CONCERNS SPECIFIC TO NWPs 1, 2, 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 50

Pre-construction notification (PCN) to the Corps is required for all activities conducted under NWPs 7, 8, 17, 21, 29, 31, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 49 and 50. Honolulu District Regional Condition #2 (Notification) requires that in addition, prospective Permittees notify the District Engineer in accordance with general condition 27 (Pre-construction notification) for all discharges of dredged or fill into waters of the U.S. and work in Section 10 navigable waters under NWPs 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 28, 35, 36, 41, 45, and 47 in Hawaii and the Pacific Islands. As a result, 25 of the 39 NWPs evaluated in this supplemental decision document will require pre-construction notification to the Corps regardless of acreage impacted. That is, 64% of these NWPs will require the prospective Permittee to notify the Corps of his/her proposed activity prior to commencing work. Notification to the Corps will provide the opportunity for individual review and the decision whether to incorporate special conditions on a case-by-case basis, including the requirement for compensatory mitigation, to ensure the resultant impacts are minimal, individually and cumulatively. The PCN process for these NWPS will also enable the District Engineer to exercise his discretionary authority to evaluate a proposed activity under an individual permit should the adverse effects be more than minimal. Collectively, these administrative procedures and requirements will afford various levels of regulatory review and protection of aquatic resources occurring throughout the POH jurisdictional boundaries.

In addition, Honolulu District Regional Conditions #1 (Geographical Exclusions), #12 (Endangered Species), and #13 (Best Management Practices) are expected to further minimize impacts to the aquatic environment as well as provide added protections to special status species and water quality. A number of geographic areas and waters of the U.S. are excluded from coverage by certain NWPs. Specifically, NWPs 29, 39, 43, 44 and 48 are excluded from use in the State of Hawaii. Similarly, NWPs 29, 39, 41, 42, 43 and 44 are excluded from use in Guam, American Samoa and the Commonwealth of the Mariana Islands. Additionally, particular NWPs are prohibited from use in certain waterodies or types of aquatic resources that are considered sensitive, rare, or fragile within Hawaii and/or the Pacific Islands. These resources include the following: anchialine pools, montane bogs, natural and freshwater lakes in Hawaii, designated critical resource waters, American Heritage Rivers, National Wildlife Refuges, State Marine Life Conservation Districts, and the Kihei Wetlands. NWP 48 is excluded from use in Hawaii

Several other regional conditions were developed to facilitate avoidance and minimization of adverse impacts on the aquatic environment, such as RC 4 (Length Limitation), RC 5 (Bank Stabilization), and RC 13 (Best Management Practices). These three regional conditions help to lessen the adverse effects that are typically associated with many project design features that create or exacerbate poor water quality, changes in flow velocities, and loss of wetland habitat.

While there are no RCs that specifically address NWPs 1, 10, 11, 20, 30 and 32, RC 9 (Compensatory Mitigation), RC 10 (Mitigation), RC 11 (Site Identification), RC 12 (Endangered Species) and RC 13 (Standard BMPs) affect the use of these six NWPs in the State of Hawaii and the Pacific Island territories and serve to ensure these NWPs, though verified infrequently, do not have a significant individual or cumulative adverse impact on the aquatic environment in the event they are used.

3,0 CUMULATIVE EFFECTS OF NWPs 1, 2, 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49 and 50

The cumulative impacts of these NWPs on the aquatic environment are generally dependent on the number of times the NWPs are used and the quantity and quality of waters of the U.S. lost due to the activities authorized by the NWPs. Past and current permitting information extracted from our internal databases indicates there is a low frequency of use of the aforementioned NWPs in Hawaii, Guam, American Samoa and the CNMI. In fact, 25 of these 39 NWPs were not verified or used by the Honolulu District in the past five years. The remainder of the NWPs was used relatively infrequently (i.e., less than 10 times during the past five years) and, on average, was verified only twice a year during the period 2002 through 2007. The table below provides a summary of each NWP, the number of times it was used to verify activities in the past five years, and the resulting total estimated impact to waters of the U.S, if such information is available.

NWP No.	TOTAL # OF TIMES VERIFIED FOR THE 2002 THRU 2007	TOTAL ESTIMATED IMPACTS TO WATERS OF THE U.S.
NWP 1 (Aids to Navigation)	2	0.35 acre
NWP 2 (Structures in Artificial Canals)	1	No data available
NWP 4 (Fish & Wildlife Harvesting, Enhancement, and Attraction Devices & Activities)	0	No data available
NWP 7 (Outfall Structures and Associated Intake Structures)	2	No data available
NWP 8 (Oil and Gas Structures on the Outer Continental Shelf)	0	No data available
NWP 9 (Structures in Fleeting and Anchorage Areas)	0	No data available
NWP 10 (Mooring Buoys)	5	No data available
NWP 11 (Temporary Recreational Structures)	2	No data available
NWP 15 (U.S. Coast Guard Approved	0	No data available

Bridges)		
NWP 16 (Return Water from Upland Contained Disposal Areas)	0	No data available
NWP 17 (Hydropower Projects)	0	No data available
NWP 19 (Minor Dredging)	3	No data available
NWP 20 (Oil Spill Cleanup)	1	No data available
NWP 21 (Surface Coal Mining Operations)	0	No data available
NWP 22 (Removal of Vessels)	3	No data available
NWP 23 (Approved Categorical Exclusions)	0	No data available
NWP 24 (Indian Tribe or State Administered Section 404 Programs)	0	No data available
NWP 25 (Structural Discharges)	1	No data available
NWP 27 (*Stream and Wetland Restoration Activities*)	3	7.06 acres[1]
NWP 28 (Modifications of Existing Marinas)	1	No data available
NWP 29 (Residential Developments)	0	No data available
NWP 30 (Moist Soil Management for Wildlife)	1	
NWP 31 (Maintenance of Existing Flood Control Facilities)	1	1,400 linear feet
NWP 32 (Completed Enforcement Actions)	2	No data available
NWP 34 (Cranberry Production Activities)	0	No data available
NWP 36 (Boat Ramps)	0	No data available
NWP 37 Emergency Watershed Protection & Rehabilitation)	0	No data available
NWP 38 (Cleanup of Hazardous and Toxic Waste)	0	No data available
NWP 39 (Commercial & Institutional Developments)	0	No data available
NWP 40 (Agricultural Activities)	0	No data available
NWP 41 (Reshaping Existing Drainage Ditches)	0	
NWP 42 (Recreational Facilities)	0	
NWP 43 (Stormwater Management Facilities)	0	
NWP 44 (Mining Activities)	0	
NWP 45 (Repair of Uplands Damaged by Discrete Events)	0	No data available
NWP 46 (Discharges in Ditches)	0	
NWP 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs)	0	
NWP 48 (Existing Commercial and Shellfish Activities)	0	
NWP 49 (Coal Mining Activities)	0	
NWP 50 (Underground Coal Mining Activities)	0	

[1] NWP 27 authorizes stream and wetland restoration activities and typically does not require compensatory mitigation provided the authorized work results in a net increase in aquatic resource functions and values in the project area.

Based on our current knowledge of local development trends, regional economics, and reasonably foreseeable future projects, we do not anticipate there to be substantial fluctuation in the future use of these NWPs when compared to their current and past use over last five years. However, assuming that it is likely one or more of these NWPs will be used or verified in the next five years, General Condition 20 (Mitigation) will require prospective permittees to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable on the project site. The use of all NWPs, whether or not they require pre-construction notification, mandate that the prospective permittee fulfill his or her affirmative responsibility to adhere to all applicable terms and conditions, including the requirement to demonstrate avoidance and minimization to the maximum extent practicable. This provision is an important safeguard in ensuring the use of the NWPs considered in this supplemental decision document result in minimal adverse effects.

Although infrequently verified in Honolulu District, the authorization or verification of activities that comply with the terms and conditions of NWP 27 (Aquatic Resources Restoration Activities) and NWP 38 (Hazardous and Toxic Waste Clean-up) generally provide environmental benefits. Accordingly, the future use of these two NWPs is not expected to result in an appreciable or measurable adverse impact to the aquatic environment given the nature of the work allowed under the terms and conditions of these NWPs.

A majority of the NWPs activities addressed in this supplemental decision document require coordination with other Federal and/or State agencies, which provides an additional level of environmental review and protection to aquatic ecosystems existing within Hawaii and the Pacific Islands. More specifically, 25 of these NWPs require a PCN] require a pre-construction notification to the Corps and coordination with appropriate resource agencies, including but not limited to: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency (EPA), State of Hawaii Department of Health, Department of Land and Natural Resources, State of Hawaii Office of Planning, Guam EPA, American Samoa Government, the Commonwealth of the Northern Mariana Islands Division of Environmental Quality, and the Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management. Review and technical input by these agencies and entities help to ensure the cumulative effects resulting from the work authorized under these NWPs for discharges of dredged or fill material into waters of the U.S. and/or work in Section 10 navigable waters of the U.S. are adequately considered and meaningfully addressed, whenever applicable.

The ability for the Corps to impose case-specific special conditions with its NWP authorizations, including compensatory mitigation for unavoidable impacts, helps to ensure impacts resulting from the use of these NWPs are minimal, individually and cumulatively. Furthermore, the ability of the District Engineer to exercise discretionary

authority to review proposed activities under an individual permit process provides an added assurance of aquatic resource protection in that an individual permit encompasses a more thorough and rigorous review for those activities that would result in more than minimal adverse impacts on the aquatic environment.

The USFWS National Wetland Inventory (NWI) maps estimate that approximately 105,222 acres of the State of Hawaii is comprised of wetlands. Using NWI maps, the Guam Department of Parks and Recreation estimated a total of 14,000 acres of wetlands occurred on Guam. Likewise, the American Samoa Department of Parks and Recreation used surveys by USFWS to estimate 240 acres of wetlands exist on American Samoa. No published figures could be found on acreages of wetlands on the CNMI. Based on information extracted from POH Regulatory Branch internal databases, the NWPs considered in this document which were verified during the past five years resulted in the aggregate loss of approximately 7.41 acres of waters of the U.S., which represents a .0001 percent loss of the total acreage of wetlands occurring on Hawaii and the Pacific Islands. For these unavoidable losses of waters of the U.S., no compensatory mitigation was required through the inclusion of special conditions on a case-specific basis. We have no scientific evidence, anecdotal or empirical, to suggest the loss of 7.41 acres of waters of the U.S. has resulted in a significant cumulative adverse impact. Moreover, 7.06 acres of the reported aggregate loss of waters of the U.S. are attributed to NWP 27, which authorizes stream and wetland restoration activities and typically results in a net increase in aquatic resource functions and values in the project area. Additionally, we postulate that the implementation of standard best management practices (BMPs) and other regional conditions has and will continue to provide appropriate measures to ensure the individual and cumulative impacts on the aquatic environment are minimal. From a cumulative perspective, we predict that based on likely foreseeable future projects that could affect jurisdictional waters of the U.S. the use of these NWPs will continue to be infrequent and therefore, the cumulative effects to the aquatic environment will remain minimal.

4.0 FINAL DETERMINATION

Based on the considerations discussed above and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that these NWPs, including the terms and conditions, all regional conditions, and other limitations will authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.