



**US Army Corps of Engineers, Honolulu District**  
**DEPARTMENT OF THE ARMY PERMIT**

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File Number: POH-2013-173

Project Title: Henderson Airfield, Midway Atoll National Wildlife Refuge Revetment

Project: Pacific Ocean, Sand Island, Midway Atoll

Subject: Department of the Army Permit

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**PERMITTEE:**        **Mr. Robert Peyton, Refuge Manager, Midway Atoll National Wildlife Refuge**

**PERMIT NO.:**        **POH-2013-173**

**ISSUING OFFICE:** **U.S. Army Corps of Engineers Honolulu District  
Regulatory Branch (CEPOH-RO)**

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

**PROJECT DESCRIPTION:**

The U.S. Fish and Wildlife Service (USFWS) will repair and replace a maximum of 5,720 feet of seawall on the southern end of Midway Atoll's Sand Island at the Midway Atoll National Wildlife Refuge in accordance with project plans dated May 2018 (Attachment 1). Repairs will be conducted as needed over a 10-year period of time.

The existing deteriorating sheet pile bulkhead will be replaced with a rock revetment. Approximately 50 feet of rock will be placed in uplands, extending a maximum of 50 feet into marine waters. A keyed in toe will consist of a shallow trench excavated to 1-foot depth and filled with granular fill. Geotextile fabric will be placed over the base layer and the entire footprint of the revetment to keep the finer materials in place. An approximately 2-foot-thick layer of medium-sized rock (about 150 pounds each) will be placed directly on the geotextile fabric. An approximately 4-foot-thick layer of larger armor rock (about 1,500 pounds each and roughly two square feet) will be placed over the medium-sized rock layer. A silt containment boom will be placed to enclose any in-water work. If the total length of the 5,720-foot seawall is replaced, a total of 101,100 cubic yards of fill covering 6.63 acres will be placed waterward of the high tide line.

**PROJECT LOCATION:**

The project site is in the Pacific Ocean at the Midway Atoll National Wildlife Refuge adjacent to Henderson Airfield, on the southeast side of Sand Island, Midway Atoll. The site is located within the Papahānaumokuākea Marine National Monument.

## **PERMIT CONDITIONS:**

### **General Conditions:**

1. The time limit for completing the work authorized ends on **December 31, 2028**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided on the last page of this permit and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
6. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Fourteenth Coast Guard District, Commander (dpw), 300 Ala Moana Boulevard, Room 9-216, Honolulu, Hawaii 96850. You can contact the USCG via email at [SecHonoWaterWays@uscg.mil](mailto:SecHonoWaterWays@uscg.mil).
7. The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required upon due notice from the Corps of Engineers to remove, relocate, or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alternation.

In addition to the General Conditions listed above, you must comply with the project-specific Special Conditions.

**Special Conditions:**

1. You shall provide a copy of the permit transmittal letter, permit form, and permit drawings to all contractors involved in the authorized work. Copies of all documents listed in special conditions 2 – 5 below shall also be provided. A copy of the conditions shall be retained on-site and made available to any U.S. Army Corps of Engineers regulatory representative during an inspection of the project site.
2. You must ensure compliance with the *Midway Atoll National Wildlife Refuge Seawall Repair Project – Conservation Measures Plan* dated September 27, 2018 (Attachment 2).
3. You must ensure compliance with the *Implementation Plan, Seawall Long-term Maintenance Program, Henderson Field Airport, Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial* dated April 2018 (Attachment 3).
4. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the *Biological Assessment Seawall Long-Term Maintenance Project, Henderson Field Airport, Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial* dated April 2018 (Attachment 4). Failure to comply with the commitments made during the Section 7 consultations constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit.
5. In order to protect the Essential Fish Habitat (EFH) for Coral Reef Ecosystem, Bottomfish, Crustacean, and Pelagic management unit species listed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), any conservation recommendations as agreed to by the U.S. Fish and Wildlife Service and coordinated with the National Marine Fisheries Service are incorporated by reference in this permit. Failure to comply with the commitments made in this negotiation constitutes non-compliance with the MSA and your U.S. Army Corps of Engineers permit.
6. By December 31<sup>st</sup> of each year, you shall submit a signed certification regarding the completed work. The “Compliance Certificate” is provided (Attachment 5). Your signature on this form certifies that you have completed the work in accordance with the permit terms and conditions. The Compliance Certificate shall be accompanied by a status report on the implementation of the authorized work completed during the calendar year. The Compliance Certificate and the report shall be submitted to the U.S. Army Corps of Engineers, Honolulu District, Regulatory Office (Corps) by December 31<sup>st</sup> annually until construction and coral translocation monitoring efforts are complete. You shall notify the Corps if no work and/or coral translocation monitoring was completed during the calendar year. The annual report must prominently display the reference number POH-2013-173. Reports may be emailed to: CEPOH-RO@usace.army.mil or submitted to: Honolulu District US Army Corps of Engineers, Regulatory Branch, Building 230, CEPOH-RO, Fort Shafter, HI 96858-5440.

## Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
3. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
4. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 3 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any

corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

5. Extensions: General Condition #1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as a permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
**(PERMITTEE SIGNATURE)**

\_\_\_\_\_  
**(DATE)**

Acting Refuge Manager

\_\_\_\_\_  
**(PRINTED NAME)**

\_\_\_\_\_  
**(TITLE)**

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**REVIEWED AND APPROVED FOR THE COMMANDER, KATHRYN P. SANBORN,  
PhD, PE, PMP, LIEUTENANT COLONEL, U.S. ARMY DISTRICT ENGINEER:**

\_\_\_\_\_  
**(FOR DISTRICT COMMANDER)**

Karen M. Urelus  
Senior Project Manager

\_\_\_\_\_  
**(DATE)**



## US Army Corps of Engineers, Honolulu District

### DEPARTMENT OF THE ARMY PERMIT

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File Number: POH-2013-173

Project Title: Henderson Airfield, Midway Atoll National Wildlife Refuge Revetment  
Project, Pacific Ocean, Sand Island, Midway Atoll

Subject: **Department of the Army Permit Property Transfer**

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**PROPERTY TRANSFER:** When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

#### PERMIT TRANSFEREE:

\_\_\_\_\_  
Permittee/Transferee Signature

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Permittee Name (Please Print)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip Code

#### NEW PROPERTY OWNER:

\_\_\_\_\_  
New Permittee/Property Owner Signature

\_\_\_\_\_  
DATE

\_\_\_\_\_  
New Permittee/Property Owner Name (Please Print)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip Code