

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

April 22, 2016

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Approval of Special Activity Permit 2017-20 for
Dr. Kim Holland, Hawaii Institute of Marine Biology, University of Hawaii at Manoa, to
Cause Limited Damage to Corals and Live Rocks in Those Instances When a Fish
Aggregating Device Breaks Free of Its Mooring and Comes Ashore

The Division of Aquatic Resources (DAR), in cooperation with the University of Hawaii, have been maintaining a system of Fish Aggregating Devices (FAD) to help fishers in the main Hawaiian Islands increase their catch and reduce time and fuel spent searching for fish schools. The network of 54 fish aggregating devices (FADs) has been proven to provide long-term benefits by promoting continued fishing success in an economic environment where prices for fuel and other commodities are rapidly increasing.

The locations of the 54 FADs are based on recommendations from fishers throughout the State and are designed to accommodate as many types of anglers as possible (from small non-motorized vessels to large offshore sport fishing boats) and to reduce competition at any one site. Deployment sites range from 2 to 15 miles offshore.

The applicant is seeking an exemption to the stony corals and live rock laws found in sections 13-95-70 and 13-95-71, Hawaii Administrative Rules (HAR), respectively, that prohibit damage to any stony coral or live rock within the Hawaiian Islands. Damage of less than ½ meter squared of stony corals and less than one meter squared of live rock is not a violation, if such damage was unintentional or accidental.

During the course of a year, an average of five FADs may break free of its mooring and may either become grounded or beached. For the purposes of this permit, grounding is when an unattached FAD comes close enough to shore where the remnant mooring equipment becomes entangled on the bottom but the buoy component is still free floating. A beached FAD is when the buoy floats all the way to the shore and is deposited at or above the wash of the waves.

When a grounded or beached FAD causes damage to stony corals or live rocks, and such damage is in excess of the stated minimum amounts allowed, these events would be in violation of state laws. To mitigate the FAD program from these potential violations, a State special activity permit is being issued.

Since it is impossible to predict how many FADs may break free of its mooring in any given year, how many may become grounded or beached, and how many of these may cause damage in violation of State laws, we are seeking this special activity permit as a precautionary and preventative measure. As we gather more information on these kinds of events in the future, we will be revising these permits to more accurately describe the number of incidents and the amount of coral and live rock damage per incident.

The Division prepared the first Environmental Assessment for the FAD project in August 1984. Subsequently, a Programmatic Environmental Assessment (PEA) entitled "Hawaii Fish Aggregating Device System, April 2012" and a Supplemental Programmatic Environmental Assessment (SPEA) entitled "Hawaii Fish Aggregating Device System, May 2014" were prepared. The 2012 PEA was published on May 8, 2012 and the 2014 SPEA was published on December 23, 2014 in the Environmental Notice and found to have no significant impact by the Department. Since these documents have been duly filed, no exemption is needed.

RECOMMENDATION: The Department Recommends

Based on the Departments determination (attached) and the application and record in this matter, the Board DECLARES, FINDS, and DECIDES:

- 1) To authorize and approve, with stated conditions, the proposed special activity permit;
- 2) To delegate the Chairperson to sign the special activity permit on behalf of the Board; and
- 3) To concur with the determination of compliance for purposes of recordkeeping requirements of chapter 343, HRS, and chapter 11-200, HAR.

Respectfully submitted,



Bruce S. Anderson
Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 22, 2016

TO: Division of Aquatic Resources File

THROUGH: Suzanne D. Case, Chairperson

FROM: Bruce S. Anderson, Administrator
Division of Aquatic Resources

SUBJECT: Declaration of Compliance with Chapter 343, HRS, and Chapter 11-200, HAR, for a Special Activity Permit to Dr. Kim Holland, Hawaii Institute of Marine Biology, University of Hawaii at Manoa.

The following permitted activities are covered under a Programmatic Environmental Assessment entitled "Hawaii Fish Aggregating Device System, April 2012" and a Supplemental Programmatic Environmental Assessment (SPEA) entitled "Hawaii Fish Aggregating Device System, May 2014." The 2012 PEA was published on May 8, 2012 and the 2014 SPEA was published on December 23, 2014 in the Environmental Notice and found to have no significant impact by the Department.

Project Title: Special Activity Permit to Dr. Kim Holland, Hawaii Institute of Marine Biology, University of Hawaii at Manoa, for the unplanned damage to corals and live rocks by Fish Aggregating Devices that have come loose of their moorings.

Permit Number: PMAL 2017-20

Project Description: The management permit, as described below, would authorize the limited damage to corals and live rocks, from April 22, 2016 through April 21, 2017. Sections 13-95-70 and 13-95-71, Hawaii Administrative Rules (HAR), respectively, prohibit damage to any stony coral or live rock within the Hawaiian Islands. Damage of less than ½ meter squared of stony corals and less than one meter squared of live rock is not a violation, if such damage was unintentional or accidental.

During the period of a year, an average of five FADs may be involved in events where they either become grounded or beached. In those cases where the FADs cause damage to stony corals or live rocks, in excess of the stated minimum amounts described previously, such damages would be in violation of state laws. To mitigate the FAD program from these potential violations, a State special activity permit is being issued.

Because the SPEA was found to be of no significant impact, we are not required to declare an exemption to Chapter 343, Hawaii Revised Statutes (HRS). We are filing this notice of determination to document our compliance with the requirements of Chapter 343, HRS.

State of Hawai'i
 Department of Land & Natural Resources
 Division of Aquatic Resources
 1151 Punchbowl Street, Room 330
 Honolulu, Hawai'i 96813

SPECIAL ACTIVITY PERMIT
 (SAP) 2017-20
 Issued: 4/22/16
 Expires: 4/21/17

The State of Hawaii BOARD OF LAND AND NATURAL RESOURCES ("Board") through its DEPARTMENT OF LAND AND NATURAL RESOURCES ("Department") hereby grants and issues a SPECIAL ACTIVITY PERMIT (SAP) 2017-20 ("Permit") to:

DR. KIM HOLLAND ("Permittee")
 University of Hawaii at Manoa
 Hawaii Institute of Marine Biology,
 P.O. Box 1346
 Kaneohe, HI 96744
 (808) 236-7410

For damage to and taking or killing of regulated stony corals and live rock, subject to the numbers, sizes, and locations as listed in the table below resulting from Fish Aggregating Device (FAD) that have broken free of its mooring system;

COMMON NAME	SPECIES	LIMITS see Special Conditions	LOCATIONS see Special Conditions
Live Rock	<i>n/a</i>	up to 8 events, up to 10 meters ² per event	Main Hawaiian Islands
Live corals	<i>All common species</i>	up to 8 events up to 10 meters ² per event	Main Hawaiian Islands

This Permit authorizes the Permittee and assistants designated through this Permit to engage in activities otherwise prohibited by law, which DAMAGE OR KILL certain aquatic life from waters of the State, but subject to the conditions stated here.

This Permit is authorized pursuant to Hawaii Revised Statutes, § §171-6 and -7, §§187A-2 and -6, §188-68, §§190-1 and -4, other applicable laws, and the Hawaii Administrative Rules (“HAR”) implementing these statutes.

This Permit is subject to the following terms and conditions.

CONDITIONS

Part I. GENERAL

- A. This Permit is effective when the following processes have been completed.
1. Each assistant must be listed at the end of this Permit.
 2. The Permittee and each assistant must read the Permit completely; acknowledge that he or she understands and agrees to abide by the conditions of the Permit, and sign both copies of the Permit as provided.
 3. The Permit becomes valid when signed by an authorized representative of the Department and the Department returns one validated copy to the Permittee.
 4. The Permittee agrees to notify the Division of Aquatic Resources (“Division”) immediately of any change in assistants. Additional persons may be added as assistants in the manner provided in this Permit.
 5. The Permittee agrees to obtain the Division's prior written approval before conducting any activity which would be prohibited if not authorized under this Permit (i.e. request in advance changes to permit conditions).
 6. This Permit does not in any manner render the Department or the State of Hawai'i liable in any way for claims of personal injury or property damage which may arise or result from activity authorized by this Permit. The Permittee or all assistants agree to hold the Board and State harmless against any and all claims of injury, death or damage resulting from acts or omissions under this Permit.
 7. This Permit conveys authority ONLY of the Department's jurisdiction over aquatic resources: The Permittee is and remains responsible for obtaining all other permission from other applicable authorities, including owners of and tenants of private lands; other divisions of the Department; other local, State and Federal agencies. This permit authorizes activities

involving aquatic organisms protected by Federal law only with appropriate Federal authorization.

8. The Permittee and each assistant are individually responsible and accountable for his or her actions while performing activities authorized by this Permit. The Permittee is also responsible and accountable for the actions of each assistant.
9. This Permit is not transferrable and not assignable to another person.
10. The Permittee or assistant must carry a copy of this permit on location while performing activities authorized by this Permit.
11. Authority granted by this Permit ends on the "Expiration Date" on the first page of this permit; within one month of the expiration date, the Permittee agrees to return this permit to the Division with a printed and PDF version of a Final Report (**See Section G. Final Report**) completed for the full duration of this permit, reporting results of all activities under this permit in the form provided with this permit.
12. The Permittee and assistants agree to provide access to data obtained under this permit upon request of the Division, to provide the Division one copy of each report prepared with such data and published for distribution, and to allow Department staff to inspect on Permittee's premises organisms collected under this permit.
13. Violation of any condition of this permit by any person may be cause for immediate revocation of the permit; the person responsible may be subject to penalty as provided by law; violation may be cause also for denial of future permit applications.
14. The Permittee may request change of a condition or conditions of this permit by writing to the Division; if approved by the Department, the Division will issue an attachment ("Amendment") which shall become part of, and amend terms of, this permit. The Department may impose additional conditions to, or restrictions of, this permit by written notice to the Permittee.

Part II. SPECIAL CONDITIONS

- A. **General Statement:** This permit authorizes damaging, killing, and possessing live rock with various crustose coralline, micro and macro algae attached and corals, as listed in the table on page 1 and subject to the other conditions of this permit. For the purposes of this permit, grounding is when an unattached FAD

comes close enough to shore where the remment mooring equipment becomes anchored to the bottom but the buoy component is still free floating. A beached FAD is when the FAD buoy becomes hauled out on the shore at or above the wash of the waves.

- B. Locations:** All activity will occur within State waters as listed in the table on page 1.
1. Damage activities under this permit is limited to waters of the State of Hawaii.
 2. Should an unattached FAD become grounded or beached within any of the areas listed below, the permittee shall follow the procedures in F.1.

<p><u>Island of MAUI</u> Kahului Harbor FMA¹ Honolua-Mokuleia MLCD² Molokini MLCD Ahihi-Kinau NAR³</p> <p><u>Island of LANA'I</u> Manele Harbor FMA Manele-Hulopoe MLCD</p> <p><u>Island of MOLOKA'I</u> Kaunakakai Harbor FMA</p> <p><u>Island of KAUA'I</u> Ahukini Pier FMA Hanamaulu Bay FMA Kapaa Canal FMA Waikaena Canal FMA Waimea Pier & Bay FMA</p>	<p><u>Island of O'AHU</u> Ala Wai Canal FMA Coconut Island MLR Diamond Head SFMA Haleiwa Harbor FMA Hanauma Bay MLCD Heiea Kea FMA Kapalama Canal FMA Paiko Lagoon Wildlife Refuge Pupukea MLCD Waialua Bay FMA Waikiki MLCD</p>	<p><u>Island of HAWAI'I</u> Hilo Bay FMA Kealakekua Bay MLCD Kailua Bay FMA Kawiahae Harbor FMA Old Kona Airport MLCD Lapakahi Bay MLCD Puako FMA Waiakea PFA⁴ Wailea Bay MLCD Wailuku River FMA Wailoa River FMA Waiopae Tidepools MLCD West Hawaii Regional Fishery Management Area (comprising 9 Fish Replenishment Areas)</p>
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C. Activities.

Activities under this permit shall abide by the following conditions.

1. Activities under authority of this permit must be supervised directly, on site, by either the permittee or their appointed representative (who must be a signatory of this permit).
2. Specific efforts will be made to avoid damage to any colony of living coral measuring larger than 1 m x 1 m x 1 m.

3. The Division may require the Permittee to accommodate the presence of an observer specified by the Division during permitted activities. A record will be kept of each collection comprising specific location (GPS), date, species and amount collected. Photo-documentation will be made prior to and immediately after collection. These records will be made available to the Division upon request.

F. Notice:

1. Impacts generally - the Permittee must give notice, in form specified by the Department, to DAR (808-587-2270) and to the Department's Division of Conservation and Resources Enforcement (DOCARE, 808-643-3567), at least 12 hours prior to initial commencement of any activities taken place under this permit, provided that if the permittee determines that immediate action is necessary to prevent further damage from occurring, the permittee may take immediate action upon verbal approval from DAR.
2. The Permittee must notify DAR O'ahu (587-2270) within one day of any instance of major damage caused to coral or other marine natural resources as a result of a FAD grounding or beaching under this permit.
3. Gear and Methods: Use of any chemical substances pursuant to Section 188-23, Hawai'i Revised Statutes, electrical shocking devices, or explosives remains expressly prohibited.
4. Use of Organisms: Any corals or live rock in possession under authority of this permit may not be used for personal consumption or sale; organisms collected under this permit may not be traded, bartered or loaned to other individuals, institutions or entities;
 - a. Written approval must be obtained from the Division prior to
 - i. Purchasing or any other acquisition of regulated organisms (regardless of origin) alive from any other party,
 - ii. Transporting any live organism (regulated or not) between islands.
 - iii. Exchanging or donating any organisms collected under this permit to any other person, party or organization;
 - b. The permittee may not convey in any fashion (including, but not limited to, selling, trading, or giving) any coral (live or dead) to any person or party in Hawai'i that does not already have a permit from

the Department authorizing possession of same and without direct, written approval from the Division;

- G. **Annual Report:** Upon expiration, the permittee must provide to the Division a printed and PDF version of a final report summarizing results of collecting activity carried out under this permit and the analysis of the data:
- a. The annual report should provide a written explanation as to how the collection (and other activities) of a fully-protected marine species is benefiting the State of Hawai'i in general and specifically, the improved management of the species.
 - b. The final report must describe, in form specified by the Department,
 - i. **Species name and total quantities and sizes** of all regulated and non-regulated specimens collected under this permit.
 - ii. **Results of chemical, genetic, physiological, histological, pathological or statistical analysis of data** (if possible/applicable).
 - iii. **GPS coordinates/documentation** of location of each sample or action conducted (only one GPS point needed per 100 m sampling radius)
 - iv. **Photo-documentation** of a representative sample of each species
 - a. Photo-documentation of 1 representative sample of coral and live rock from each location and photo-documentation of habitat where each sample is collected from at each location. Each sample should include the actual coral or live rock piece with scale for size.
 - c. An inventory (species list) of organisms (dead or alive) present at the facility or with the permittee the end of the report period, in form acceptable to the Division, must accompany the annual report;

- d. The annual report is due at the Division's Honolulu office within three months (90 days) after expiration of the permit or as otherwise instructed by the Division.

H. Use of Tissue Samples and Biogenetic Resources. The permittee may not convey in any fashion (including, but not limited to, selling, trading, or giving) any tissue samples to any person or party in Hawai'i that does not already have a permit from the Department authorizing possession of same and without written approval from DAR.

I. Use of Biopsies or Tissue Samples: Tissue samples taken under authority of this permit may be used only for scientific study or educational purposes **ONLY**, except as authorized by prior written approval of DAR.

VALIDATING SIGNATURE

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

cc: DLNR Division of Conservation and Resources Enforcement
DAR (Oahu)

ACKNOWLEDGING SIGNATURES

By signature below, I attest that I have read and understand the General and Special Conditions of Special Activity Permit SAP 2017-20 and that, further, I agree to comply with all of these conditions when collecting under authority of this permit.

DR. KIM HOLLAND
Primary Permittee

Designated Assistants

Sign Type name	Sign Type name
Sign Type or print	Sign Type or print
Sign Type or print	Sign Type or print
Sign Type or print	Sign Type or print
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