

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

October 10, 2014

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Approval of Special Activity Permit 2015-33 for
Mr. Timothy Brown, Mokupapapa Discovery Center,
to Take Regulated Live Corals From the East Hawaii coastline around Hilo, Hawaii

The applicant proposes to conduct activities relating to take of a number of live corals and live rocks for placement into the Mokupapapa Discovery Center in Hilo, Hawaii for the purposes of public display and educational programs. The Center is the education and outreach facility for the Papahānaumokuākea Marine National Monument. The exhibits would provide educational opportunities to the public to see and learn about the unique coral reef ecosystem in the Monument.

RECOMMENDATION:

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

- 1) That the actions covered by this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
- 2) To delegate the Chairperson to sign the declaration of exemption on behalf of the Board, for purposes of recordkeeping requirements of chapter 343, HRS, and chapter 11-200, HAR; and
- 3) To authorize the Chairperson to approve, with stated conditions, the proposed special activity permit.

Respectfully submitted,



FRAZER MCGILVRAY
Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 10, 2014

TO: Division of Aquatic Resources File

THROUGH: William J. Aila, Jr., Chairperson

FROM: Frazer McGilvray, Administrator
Division of Aquatic Resources

SUBJECT: Declaration of Exemption from the Preparation of an Environmental Assessment under the Authority of Chapter 343, HRS, and Chapter 11-200, HAR, for a Special Activity Permit to Mr. Timothy Brown, Mokupapapa Discovery Center for public educational displays of stony coral in Hilo, Hawaii island.

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title: Special Activity Permit to Mr. Timothy Brown, Mokupapapa Discovery Center, for public educational displays in Hilo, Hawaii island.

Permit Number: SAP 2015-33.

Project Description: The education permit, as described below, would allow for collection of small amounts (15 different species, no more than 10 fragments each, no more than 3 cm³ each) of common Hawaiian coral species from the vicinity of Hilo Bay and Keaukaha, East Hawaii Island ONLY). The applicant has requested to collect these live corals for placement into a public display at the Mokupapapa Discovery Center, supported by NOAA, to educate the public about the coral reefs in the Papahānaumokuākea Marine National Monument.

The permit would allow the applicant to prove their ability to maintain common live corals in a captive display. If shown that they can maintain these corals in good health, then subsequent collections of rare stony corals from the Papahānaumokuākea Marine National Monument may be considered.

Exemption Determination: After reviewing HAR § 11-200-8, including the criteria used to determine significance under HAR § 11-200-12, DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment, and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with this permit have been evaluated as a single action. Since this permit involves an activity that is precedent to a later planned activity, i.e., the continuing maintenance of aquatic life in public displays, the categorical exemption determination here will treat all planned activities as a single action under §11-200-7, HAR.

2. The Exemption Class #1 for Operations and maintenance of existing facilities with no change of use beyond that previously existing Appears to Apply. §11-200-8(a)(1), HAR, exempts the class of actions which involve “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;” This exemption class has been interpreted to include the maintenance of display aquarium, such as that being proposed.

The proposed activities relating to public aquarium displays in an existing facility here appear to fall squarely under the exemption class identified under §11-200-8(a)(1), HAR, and as described under the 1976 exemption list class items. As discussed below, no significant disturbance to any environmental resource is anticipated. Thus, so long as the below considerations are met, an exemption class should include the action now contemplated.


3. Cumulative Impacts of Actions in the Same Place and Impacts with Respect to the Potentially Particularly Sensitive Environment Will Not be Significant. Even where a categorical exemption appears to include a proposed action, the action cannot be declared exempt if “the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.” HAR § 11-200-8(b) To gauge whether a significant impact or effect is probable, an exempting agency must consider every phase of a proposed action, any expected primary and secondary consequences, the long-term and short-term effects of the action, the overall and cumulative effect of the action, and the sum effects of an action on the quality of the environment. HAR § 11-200-12.

Significant cumulative impacts are not anticipated as a result of this modified activity from the proposed action, and numerous safeguards further ensure that the potentially sensitive environment of the project area will not be significantly affected. All activities will be conducted in a manner that does not diminish marine resources, qualities, and ecological integrity, or have any indirect, secondary, cultural, or cumulative effects.

Since no significant cumulative impacts or significant impacts with respect to any particularly sensitive aspect of the project area are anticipated, the categorical exemptions identified above should remain applicable.

4. Overall Impacts will Probably have a Minimal or No Significant Effect on the Environment. Any foreseeable impacts from the proposed activity will probably be minimal, and further mitigated by general and specific conditions attached to the permit. Specifically, all research activities covered by this permit will be carried out with strict safeguards for the natural, historic, and cultural resources, other applicable law and agency policies and standard operating procedures.

Conclusion. Upon consideration of the permit to be approved by the Board of Land and Natural Resources, the potential effects of the above listed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, have been determined to be of probable minimal or no significant effect on the environment and exempt from the preparation of an environmental assessment.



William J. Aila, Jr.
Chairperson,
Board of Land and Natural Resources



Date

SPECIAL
ACTIVITY PERMIT SAP 2015-33

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

Issued: October 10, 2014

Expires October 9, 2015

The Board of Land and Natural Resources hereby grants permission for certain collection of organisms belonging to the people of Hawai'i under the authority of Section 187A-6, Hawai'i Revised Statutes, and all other applicable laws, to:

Mr. Timothy Brown (permittee)
Mokupapapa Discovery Center
76 Kamehameha Avenue
Hilo, Hawaii 96720

This permit is issued with attached conditions to authorize collection and possession of marine flora and fauna, including coral, for educational public display.

This permit, signed by authorized representative of the Department of Land and Natural Resources (the Department), authorizes the permittee, and assistants designated on the final page(s) of, or attachments to, this permit, to engage in activities otherwise prohibited by law, subject to the conditions, which **TAKE, CATCH, POSSESS, TRANSPORT, OR DISPLAY** certain aquatic life from waters of the State, as follows:

TYPES	DESCRIPTION	LIMIT	LOCATIONS
Corals	<i>Montipora capitata</i>	no more than 5; no larger than 10 cm longest diameter	East Hawaii ONLY , Leleiwi, Richardson's, & Keaukaha coasts
Coral	<i>Fungia scutaria</i>	no more than 2 individuals; no larger than 20 cm longest diameter	"
	<i>Pocillopora damicornis</i>	no more than 5; no larger than 10 cm longest diameter	"

	<i>Pocillopora meandrina</i>	no more than 5; no larger than 10 cm longest diameter	"
	<i>Pocillopora eydouxi</i>	no more than 1; no larger than 10 cm longest diameter	"
	<i>Montipora flabellata</i>	no more than 2; no larger than 10 cm longest diameter	"
	<i>Montipora patula</i>	no more than 2; no larger than 10 cm longest diameter	"
	<i>Porites compressa</i>	no more than 5; no larger than 20 cm longest diameter	"
	<i>Porites lobata</i>	no more than 5; no larger than 20 cm longest diameter	"
	<i>Porites evermanni</i>	no more than 1; no larger than 20 cm longest diameter	"
	<i>Porties rus</i>	no more than 1; no larger than 20 cm longest diameter	"
	<i>Pavona duerdeni</i>	no more than 2; no larger than 10 cm longest diameter	"
	<i>Pavona varians</i>	no more than 2; no larger than 10 cm longest diameter	"
	<i>Leptastrea purpurea</i>	no more than 2; no larger than 10 cm longest diameter	"
	<i>Tubastrea coccinea</i>	no more than 5 individuals;	"
	<i>Live rock</i>	No more than 100 kg	"

CONDITIONS

PART I. **GENERAL**

A. This permit becomes effective when the following process is completed.

1. Each assistant must be listed at the end of this permit.

2. The permittee and each assistant must read the permit completely; and must acknowledge understanding of and agreement to abide by conditions of the permit, by signing *both* copies of the permit in the spaces provided.
 3. *Both* copies of the permit with permittee's and assistants' signatures must be returned to the Division of Aquatic Resources (the Division).
 4. **The permit becomes valid when signed by an authorized representative** of the Department; the Department will return one validated copy to the permittee.
 5. The permittee agrees to notify the Division immediately of any change in assistants. Additional persons may be added as assistants by validation: each must sign an "Attachment" form, which must be returned to the Division for validation; once approved, such persons are added to the permit.
- B. The permittee agrees to obtain written approval of the Division prior to conducting any activity which would be prohibited under the permit (i.e. request in advance changes to permit conditions).
- C. This permit does not make the Board of Land and Natural Resources or State of Hawai'i liable in any way for claim of personal injury or property damage which may result from activity authorized by this permit; the permittee and all assistants agree to hold the Board and State harmless against any and all claims of injury, death or damage resulting from actions or omissions under this permit.
- D. This permit conveys authority **ONLY** of the Department relating to the Division's jurisdiction over aquatic resources: the permittee remains responsible for obtaining all other prior permission from other applicable authorities (such as owners of and tenants upon private lands; other divisions of the Department; other local, State and Federal agencies--this permit authorizes collecting organisms protected by Federal law only with appropriate Federal authorization).
- E. The permittee and also each assistant is individually responsible and accountable for his or her actions while performing activities authorized by this permit; the permittee is additionally responsible and accountable for the actions of each assistant.
- F. This permit is neither transferable nor assignable to another person.

- G. The permittee or assistant must carry a copy of this permit on location while performing activities authorized by this permit.
- H. 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 Collecting Report completed for the full duration of this permit**, reporting results of *all* collecting under this permit on the form provided with this permit.
- I. 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.
- J. 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.
- K. 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**

- 1. **GENERAL STATEMENT:** This permit authorizes collecting, possessing, transport and display of live stony coral and live rock, from the eastern side of the island of Hawai'i **ONLY**, subject to the other conditions of this permit.
- 2. **LOCATIONS:** Collecting activities under this permit is limited to waters of East Hawai'i, Island of Hawai'i (primarily Hilo Bay, Lelewi, Richardson's, and Keaukaha coasts) **ONLY** and is expressly prohibited at the following locations.

<u>ISLAND OF MAUI</u>	<u>ISLAND OF O'AHU</u>	<u>ISLAND OF HAWAI'I</u>
Kahului Harbor FMA ¹	Ala Wai Canal FMA	Hilo Bay FMA
Honolua-Mokuleia MLCD ²	Coconut Island MLR	Kealakekua Bay MLCD
Molokini MLCD	Diamond Head SFMA	Kailua Bay FMA
Ahihi-Kinau NAR ³	Haleiwa Harbor FMA	Kawiahae Harbor FMA
	Hanauma Bay MLCD	Old Kona Airport MLCD
<u>ISLAND OF LANA'I</u>	Heeiea Kea FMA	Lapakahi Bay MLCD
Manele Harbor FMA	Kapalama Canal FMA	Puako FMA
Manele-Hulopoe MLCD	Paiko Lagoon Wildlife Refuge	Waiakea PFA ⁴
	Pupukea MLCD	Wailea Bay MLCD
<u>ISLAND OF MOLOKA'I</u>	Waialua Bay FMA	Wailuku River FMA
Kaunakakai Harbor FMA	Waikiki MLCD	Wailoa River FMA
<u>ISLAND OF KAUA'I</u>		Waiopae Tidepools MLCD
Ahukini Pier FMA		West Hawaii Regional Fishery Management Area (comprising 9 Fish Replenshment Areas)
Hanamaulu Bay FMA		
Kapaa Canal FMA		
Waikaena Canal FMA		
Waimea Pier & Bay FMA		

¹ FMA - Fisheries Management Area; ² MLCD - Marine Life Conservation District; ³ NAR - Natural Area Reserve; ⁴ PFA - Public Fishing Area

3. **COLLECTING PRACTICES:** The permittee is responsible for persons engaging in activities under this permit behaving professionally and

responsibly, in a manner which does not generate conflict with public or private sectors, including fishing and dive-tour industries and local communities.

- a. Collecting activities under authority of this permit must be supervised directly, on site, by either Tim Brown or his appointed representative (who must be a signatory of this permit).
- b. An approved alien species protocol will be filed with DAR prior to initiation of collection activities in Hilo Bay. Protocol will include mechanisms for ensuring that the individuals listed on this permit do NOT serve as vectors for the transport or introduction of alien species through their activities.
- c. Pre-collection and post-collection photos with a size scale marker will be taken of all impacted coral colonies, along with site-specific GPS. Data and photos will be provided to DAR with the collection report.
- d. Specific efforts will be made to avoid damage to any large (>0.5 m) colonies of coral.
- e. Except as specified expressly in an approved collecting plan, no organism unlawful for taking or possession by reason of size, under law or administrative rule, may be collected or utilized under this permit.
- f. No coral species other than those listed on this permit will be collected or impacted by any activities conducted under this permit.
- g. Collection of Live Rock will occur only areas where live coral is not immediately present and will be documented as provided for under Section 3c above. Live rock containing visible non-native species will **NOT** be collected.
- h. The Division may require the permittee to accommodate presence of an observer specified by the Division during collection and research activities. A record will be kept of each collection comprising specific location, date, species and amount collected; and in cases of return to ocean, the same information along with notification to DAR prior to the return activity. These records will be made available to the Division upon request.

4. **NOTICE:**

- a. Collecting generally - the permittee must give notice, in form specified by the Department, to DAR neighbor island offices and to the neighbor island office of the Department's Division of Conservation and Resources Enforcement (DOCARE), at least 2 hours prior to initial commencement of any collection activity under this permit to take place on a neighbor island outside of the island of Oahu.
- b. Targeted collection - the permittee is allowed to collect fragments from coral colonies less than 0.5 m in longest diameter or the entire colony up to the size limit for each species. Each collection activity will follow the GPS and photo-documentation requirements listed under Section 3c (Collecting Practices) above.
- c. Mass mortality - the permittee must notify DAR O'ahu (808-587-0318) within one day of:
 - 1) Any instance of major damage caused to coral or other marine natural resources as a result of collection or other research activities conducted under this permit.
 - 2) Any death or major health occurrence with any individual coral colony or fragment, or live rock, held in captivity or under display.
- d. Fragmentation - This permit provides for collection and manipulation of live coral and provides for selective breakage of portions of a live colony (fragmentation) in the field and later on, with colonies under display. Fragmentation in such a manner as does not result in **any additional harm** to the remainder of the colony is required. Fragmentation of corals in captivity must be documented and such documentation submitted with the required bi-monthly report.
- e. Rare Species - The following *Porites* species require special permission from DAR prior to collection under this permit: *Porites pukoensis*, *Porites duerdeni*, *Porites studeri*. The following *Pocillopora* species require special permission from DAR prior to collection under this permit: *Pocillopora ligulata*, *Pocillopora molokensis*. The following *Montipora* species require special permission from DAR prior to collection under this permit: *Montipora dilitata*.
- f. Holding of Regulated Organisms for Display Purposes - Without the expressed written permission of the Department, any organisms placed into any public display, quarantine tank, or holding tank containing the regulated organisms listed on this permit

must be from the Main Hawaiian Islands. No organisms will be returned to the ocean if the above condition is modified or changed. No discharge of any type into State waters will occur if the above condition is modified or changed.

5. **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.** Corals and live rock collected under this permit are to be collected by hand **only.**

6. **USE OF ORGANISMS:** Organisms and live rock taken from Hawai'i waters under authority of this permit may be used only for public display on Hawai'i Island, except as authorized by prior written approval of the Division:

- a. Organisms collected 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;
- b. Written approval must be obtained from the Division prior to
 - 1) Purchasing or any other acquisition of regulated organisms (regardless of origin) alive from any other party;
 - 2) Transporting any live organism (regulated or not) between islands;
 - 3) Exchanging or donating any organisms collected under this permit to any other person, party or organization;
- c. The permittee may not convey in any fashion (including, but not limited to, selling, trading, or giving) any coral or live rock to any person or party in Hawai'i which does not already have a permit from the Department authorizing possession of same and without direct, written approval from the Division;

7. **COLLECTION AND BI-MONTHLY REPORTS:** After initial collection activities, a collection report will be submitted to the Division containing collection information (date, location, GPS, size and identification of organism collected (along with size of parent colony if fragmented during collection), pre-collection photos, post-collection photos, and photos of the same organism in aquaria, and health state of each organism collected. Bi-Monthly reports will be submitted to the Division photo-documenting the state of the corals collected (these bi-monthly photos can contain clusters of coral in aquaria and are purposed to show their health state over time) along with a synopsis of live organisms in captivity and

if additional fragmentation occurs, documentation of such activity and disposition.

8. **ANNUAL REPORT:** Upon expiration, the permittee must provide to the Division a final written 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 of a fully-protected marine species for scientific study 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,
 - 1) Names and total numbers/quantities of all specimens collected under this permit,
 - 2) Their dispositions (e.g. on display; released/returned to the ocean; died),
 - 3) **Description of any additional benefits** beyond the scientific analysis provided to the Division or the public during the period;
 - c. An inventory 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 one calendar month after expiration of the permit,** and is required prior to any renewal of this permit.

VALIDATING SIGNATURE

WILLIAM J. AILA, JR., Chairperson

Board of Land and Natural Resources

cc: DLNR Division of Conservation and Resources Enforcement

Special Agent in Charge, US Fish and Wildlife Service Honolulu

ACKNOWLEDGING SIGNATURES

By signature below, I attest that I have read and understand the General and Special Conditions of Special Activity Permit SAP 2015-33 and that, further, I agree to comply with all of these conditions when collecting under authority of this permit.

Timothy Brown

Permittee

Designated Assistants

Sign Print name Nakoa Goo	Sign Print name Stephen Brown
Sign Print name	Sign Print name
Sign Print name	Sign Print name
Sign Print name	Sign Print name
Sign Print name	Sign Print name
Sign Print name	Sign Print name