

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii

August 9, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

PETITION FOR A DECLARATORY RULING FROM UNBELIEVABLE  
SPORTFISHING, INC. REGARDING THE EXPIRATION OF THEIR REGULAR MOORING  
PERMIT AND COMMERCIAL USE PERMIT FOR THE HONOKOHAU SMALL BOAT  
HARBOR

BACKGROUND:

Unbelievable Sportfishing, Inc. (USI) held a regular mooring permit and commercial use permit for the Honokohau Small Boat Harbor, Hawaii, with an expiration date of May 31, 2013.

Hawaii Administrative Rule (HAR), §13-231-5, states, “§13-231-5 Period of validity and renewal of use permit. (a) The department may issue or renew a use permit for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate. No use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. (b) If a permittee fails to renew a regular mooring permit on or before the date on which it expires, that person may be granted a thirty (30) calendar day period to reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period has expired.”

USI failed to renew both the regular mooring permit and commercial use permit prior to the expiration date of the permits and was informed by harbor staff that the regular mooring permit could be renewed within the thirty day grace period upon payment of the penalty as well as any other fees due according to HAR § 13-231-5(b), but the commercial use permit could not be renewed according to HAR § 13-231-5(a).

USI then filed a petition for a declaratory ruling with the Board of Land and Natural Resources regarding the automatic termination of the use permits that had been issued to them. They

claimed that the regular mooring permit and commercial use permit are one and the same and that the thirty-day grace period to renew should also apply to the commercial use permit. The petition for a declaratory ruling was forwarded to the Department of the Attorney General, Land Transportation Division, for assistance.

The petition for a declaratory ruling should be denied for two reasons. First, a declaratory ruling is one where any interested person petitions an agency for "a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency." Hawaii Revised Statutes § 91-8; HAR § 13-1-27(a). A declaratory ruling is not intended to review already-made agency decisions. Therefore, the statute and HAR do not allow USI to appeal the Division of Boating and Ocean Recreation's decision not to renew a commercial mooring permit by filing a petition for a declaratory ruling. Second, even if a declaratory ruling was warranted in this instance, HAR § 13-231-5(a) is clear that once the commercial use permit expired all rights of the permittee thereunder, including the ability of the permittee to apply for a renewal of the permit, automatically terminated as well.

RECOMMENDATION:

That the Board:

1. Deny the petition for a declaratory ruling filed by Unbelievable Sportfishing, Inc. for the reasons set forth above.

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson