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N. MARTINS, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

19-1-0089(3)

MĀLAMA CHUN,

Plaintiff/Appellant,
vs.

BOARD OF LAND AND NATURAL
RESOURCES, DEPARTMENT OF LAND
AND NATURAL RESOURCES, and STATE
OF HAWAII, and HAWAII LONGLINE
ASSOCIATION;

Defendants/Appellees.

) Civil No. _____
) (Environmental Court)
)
) NOTICE OF APPEAL; STATEMENT OF
) THE CASE; DESIGNATION OF RECORD
) ON APPEAL; ORDER TO CERTIFY AND
) TRANSMIT THE RECORD ON APPEAL
)
)
)
)
)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff/Appellant MĀLAMA CHUN, pursuant to section Hawaii Revised Statutes (HRS) §§ 91-7, 91-14, and 632-1, and Rule 72 of the Hawai'i Rules of Civil Procedure, hereby appeals to the Circuit Court of the Second Circuit from the Findings of Fact, Conclusions of Law, and Order Denying Petition of Mālama Chun for a Declaratory Order, filed February 2, 2019 of Defendant/Appellee BOARD OF LAND AND NATURAL RESOURCES entered on February 2, 2019.

DATED: Wailuku, Maui, Hawai'i

March 12, 2019



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

MĀLAMA CHUN,)	Civil No. _____
)	(Environmental Court)
Plaintiff/Appellant,)	
vs.)	STATEMENT OF THE CASE
)	
BOARD OF LAND AND NATURAL)	
RESOURCES, DEPARTMENT OF LAND)	
AND NATURAL RESOURCES, and STATE)	
OF HAWAI'I, and HAWAII LONGLINE)	
ASSOCIATION;)	
)	
Defendants/Appellees.)	

STATEMENT OF THE CASE

Plaintiff/Appellant MĀLAMA CHUN, individual (Plaintiff) pursuant to Hawaii Revised Statutes (HRS) §§ 91-7, 91-14, and 632-1, appeals to the Circuit Court of the Second Circuit from the final decision of Defendants-Appellees BOARD OF LAND AND NATURAL RESOURCES (Board), DEPARTMENT OF LAND AND NATURAL RESOURCES and STATE OF HAWAI'I, (collectively "Defendants"), in regard to the Findings of Fact, Conclusions of Law, and Order Denying Petition of Mālama Chun for a Declaratory Order, filed February 2, 2019 (Board's Order) under Hawaii Administrative Rules (HAR) §13-1-27. If necessary, this Statement may be construed as an original Complaint pursuant to HRS chapter 632 and *In re Eric G.*, 65 Haw. 219 (1982).

Venue properly lies in the Circuit Court of the Second Circuit pursuant to HRS §§ 604A-2, 603-36(5), and 632-1 because claims for relief arose in this circuit and the Defendants are organs of the State of Hawai'i and operate in all circuits. The claims herein invoke the jurisdiction of the environmental court.

1. Plaintiff/Appellant MĀLAMA CHUN is an individual and resident of Pā'ia, Maui, Hawai'i. Plaintiff is a Native Hawaiian waterman whose cultural practices include fishing. His father was also a fisherman and throughout both of their lives, they have observed a massive decline in fish stocks in Hawai'i waters. In the more than sixty years since he began fishing, Plaintiff has witnessed a reduction in the number and size of fish caught, particularly ahi and aku. The decline in fishery stocks interferes with the ability of Plaintiff and his family to perpetuate their traditional and

customary fishing practices. Defendants' policy and practice of granting commercial marine licenses to persons ineligible to fish in Hawai'i waters, specifically as alien laborers on longline fishing ships, is adverse to Plaintiff's cultural practices of fishing and upholding community standards of public safety.

2. For generations, Plaintiff and his ancestors have engaged in traditional and customary practices of fishing in and beyond Hawai'i waters.

3. Plaintiff seeks to protect his traditional and customary practices by, amongst other things, ensuring Defendants do not improperly permit persons who are not lawfully admitted and cannot easily or legally communicate with conservation enforcement authorities concerning their observations of harmful acts against fisheries, marine species, and any that would otherwise contribute to the decline of Hawaii's fisheries.

4. Plaintiff has interests in Hawaiian traditional and cultural practices of protecting public safety, codified in the Kānāwai Māmalahoe, or law of the Splintered Paddle, which is adopted at Article IX, Section 10 of the Hawai'i State Constitution. The Kānāwai Māmalahoe states that all people have the freedom of movement through public spaces and to remain unharmed in their transit - "a moe i ke ala, 'a'ohē mea nāna e ho'opilikia" [and to sleep by the road without fear of problems].

5. Plaintiff has a right to a clean and healthful environment. This environment includes fisheries that both sustain and are sustained by marine ecosystems of which they are a part. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§91-7, 603-21.5, 603-21.9, 604A-2, and 632-1; and articles I, § 5, XI, §§ 1 and 9, XII §7 of the Hawai'i State Constitution.

6. Defendant/Appellee BOARD OF LAND AND NATURAL RESOURCES, State of Hawai'i, (Board) is the executive board that oversees the Department of Land and Natural Resources and is authorized to conduct rule-making proceedings for the Department of Land and Natural Resources, including its Division of Aquatic Resources (DAR), pursuant to HRS chapter 91. DAR implements rules relating to the issuance of commercial marine licenses under HRS chapter 189.

7. Defendant/Appellee DEPARTMENT OF LAND AND NATURAL RESOURCES, State of Hawai'i (DLNR) is an agency authorized to implement HRS chapter 189 and administrative rules adopted regarding the implementation of that statute.

8. No person shall take marine life for commercial purposes whether the marine life is

caught or taken within or outside of the State, without first obtaining a commercial marine license as provided under HRS § 189-2.

9. Persons not lawfully admitted to the United States are prohibited from taking marine life for commercial purposes in Hawai'i waters under HRS § 189-5.

10. DLNR issues commercial marine licenses to persons not lawfully admitted to the United States without restriction.

11. Commercial marine licenses do not distinguish between those licensees authorized to take marine life for commercial purposes in Hawai'i waters and those licensees that are not.

12. Likewise, DLNR does not impose specific terms or conditions on the commercial marine licenses issued to persons prohibited from fishing within Hawai'i waters.

13. On April 12, 2017, Plaintiff filed his Petition for Declaratory Order (Petition) pursuant to HRS §91-8 and Hawaii Administrative Rule (HAR) §13-1-27 (am. 2009). Plaintiff sought declaratory relief regarding DLNR's practice of issuing commercial marine licenses to ineligible persons.

14. Plaintiff's Petition alleged DLNR's practice of issuing commercial licenses to persons holding a crewmen's landing permit (the I-95 document issued by the Department of Homeland Security and U.S. Customs and Border Protection) stamped with the statement, "Permission to land temporarily at all U.S. ports is refused" or holding a deportation order via the Form I-259 where their request for permission to land has been refused, and are detained on board longline vessels violates prohibitions against persons not been lawfully admitted to the United States from taking marine life for commercial purposes pursuant to HRS §189-5.

15. On or about July 20, 2017, the Board mailed to Plaintiff its Order Denying Petition for Declaratory Order, which concluded Plaintiff was not an "interested person" qualified to bring the Petition.

16. On or about July 27, 2017, Plaintiff appealed the Board's decision to this Court.

17. On or about January 23, 2018, this Court entered its summary disposition order, which determined Plaintiff was an interested person entitled to a declaratory order.

18. On October 26, 2018, the Board heard oral arguments on the Petition.

19. On February 27, 2019, the Board majority issued a decision and order denying the Petition entitled "Findings of Fact, Conclusions of law, and Order Denying Petition of Malama Chun for a Declaratory Order filed April 12, 2017" (Board Decision).¹

¹ Board member Stanley Roehrig issued a minority report, which noted HLA's own plans embrace

20. The Board Decision concluded persons with their Form I-95 stamped “Permission to land temporarily at all U.S. ports is refused” and who are detained on board ships at Honolulu Harbor are lawfully admitted to the U.S. because they “lawfully remain on board ship” and in compliance with HRS § 189-5. *See* Board Decision, Part IV.D.

21. The Board Decision described DLNR’s rules for issuing commercial marine licenses, under which DLNR has: (1) discretion to grant commercial marine licenses to persons who are prohibited from fishing in Hawai’i waters, and (2) authority to grant commercial marine licenses without limiting their effectiveness within Hawai’i waters.

22. Neither Plaintiff nor the general public were afforded an opportunity to participate in rulemaking concerning these rules under HRS §91-3 procedures.

23. Plaintiff has interests in procedures, policies, and rules governing persons eligible for commercial marine licenses and in the ways such licensing is implemented because commercial fishing impacts fisheries that are necessary to his cultural practices.

COUNT I: AGENCY APPEAL

24. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

25. Plaintiff’s Petition sought declaratory relief against DLNR’s issuance of commercial marine licenses to foreign persons on longliner ships on the basis of his interests in constitutional rights to his traditional and customary practices and to a clean and healthful environment.

26. The Board ruled against his Petition by concluding persons denied entry into U.S. ports are “legally admitted to the U.S.” and detained on board ships are legally admitted to the United States for purposes of Chapter 189, HRS.

27. The Board Order concluding persons denied entry to U.S. ports and detained on board ships are legally admitted to the United States for purposes of Chapter 189, HRS was made in excess of statutory authority, in violation of constitutional or statutory provisions, affected by other error of law, clearly erroneous, and arbitrary and capricious or otherwise characterized by abuse of discretion or clearly unwarranted exercise of discretion.

28. Orders disposing of petitions for declaratory rulings under HRS § 91-8 are appealable to the circuit court pursuant to HRS § 91-14.

the input and contribution of kanaka maoli to an international fishing plan that considers effects on local communities.



29. Plaintiff seeks a ruling by this Court reversing the Board's conclusion that persons denied entry to U.S. ports and detained on board ships are legally admitted to the United States for purposes of Chapter 189, HRS.

COUNT II: UNLAWFUL RULE-MAKING

30. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

31. Granting commercial marine licenses to persons who are prohibited from taking marine life for commercial purposes within Hawai'i waters is an exercise of discretion.

32. The granting of commercial marine licenses to persons who are prohibited from taking marine life for commercial purposes within Hawai'i waters is a policy, procedure or practice and constitutes a rule within the meaning of Chapter 91, HRS.

33. The rule regarding the granting of commercial marine licenses to persons who are prohibited from taking marine life for commercial purposes within Hawai'i waters was adopted without complying with the procedures in HRS 91-3 for promulgating rules.

34. Defendants' unwritten policy, procedure, and practice of granting DLNR discretion to issue commercial marine licenses to persons prohibited from commercial fishing in Hawai'i waters constitutes a rule.

35. Plaintiffs seek a declaration invalidating the unwritten policy, procedure or practices by which commercial marine licenses are granted to persons who are prohibited from taking marine life for commercial purposes within Hawai'i waters.

COUNT III: UNLAWFUL RULE-MAKING/EXCEEDING AUTHORITY

36. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

37. HRS § 189-5 provides in relevant part: "[i]t is unlawful for any person who has not been lawfully admitted to the United States to engage in taking marine life for commercial purposes in the waters of the State."

38. DLNR issues commercial marine licenses to persons who are not lawfully admitted to the United States without limiting the effectiveness of those licenses to non-Hawai'i waters.

39. DLNR does not include language limiting the effectiveness of commercial fishing licenses issued to persons not lawfully admitted to the United States to without Hawai'i waters.

40. DLNR's policy, practice, or procedure of issuing commercial fishing licenses to persons not lawfully admitted to the United States without also prohibiting their commercial fishing within Hawai'i waters under the license constitutes a rule.

41. Defendants exceed their authority by implementing a rule permitting issuance of commercial fishing licenses to persons prohibited from fishing within Hawai'i waters.

42. Disregarding the express prohibition of HRS § 189-5 against commercial fishing conducted by persons not lawfully admitted to the U.S. from fishing within Hawai'i waters may adversely impact fisheries upon which Plaintiff's traditional and customary practices depend.

43. Plaintiff is an interested person who seeks declaratory relief against Defendants' exceeding its statutory authority by implementing a rule authorizing issuance of commercial marine licenses to persons ineligible to use them in Hawai'i waters.

COUNT IV: INJUNCTIVE RELIEF

44. Plaintiff realleges and incorporates herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

45. Defendants are engaging in unlawful conduct by continuing to issue commercial marine licenses to persons not lawfully admitted to the United States and prohibited from commercial fishing within Hawai'i waters.

46. Plaintiff's constitutionally protected rights to traditional and customary practices may be irreparably harmed by ongoing overfishing and damage to State fisheries consequent to unlawful issuance of commercial marine licenses.

47. Plaintiff's right to clean and healthful environment and the right to due process has and will be violated by Defendants conduct.

48. There is no adequate remedy at law to protect Plaintiff's constitutional rights.

49. The public interest favors compliance with rulemaking procedures, which afford public input, and protection from overfishing, unlawful fishing operations, and ensuring that State commercial licensing is not premised upon practices that undermine other labor, immigration, and maritime laws.

50. Public policy also strongly supports the protection of native Hawaiian traditional and customary practices and the right to a clean and healthful environment.

51. Plaintiff seeks injunctive relief enjoining Defendants and all persons acting under, in concert with, or for them from any conduct involving issuing a new commercial fishing licenses to

persons not lawfully admitted in the U.S. without having first gone through rule making and by restricting said licenses to without Hawai'i waters.

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Reversing the Board's conclusions that persons denied entry to U.S. ports and detained on board ships are legally admitted to the United States for purposes of Chapter 189, HRS.
2. Enter a declaratory judgment:
 - (a) Declaring that Defendants violated HRS § 91-3 by failing to promulgate rules for DLNR's exercise of discretion in issuing commercial marine licenses to persons prohibited from fishing in Hawai'i waters; and,
 - (b) Declaring that Defendants acted in excess of their authority under HRS § 189-5 by issuing commercial marine licenses that permits commercial fishing in Hawai'i waters to persons prohibited from commercial fishing in Hawai'i waters;
3. For preliminary and permanent injunctions enjoining Defendants, and their employees, agents, and representatives, and any other persons acting in concert with them, under their authority, or with their approval, from issuing further commercial fishing licenses to persons not lawfully admitted to the United States until compliance with all applicable laws occurs;
4. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein.
5. For the costs of suit herein, including reasonable attorneys' fees; and
6. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiff and Defendants.

DATED: Wailuku, Maui, Hawai'i

March 12, 2019



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

MĀLAMA CHUN,)	Civil No. _____
)	(Environmental Court)
Plaintiff/Appellant,)	
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RESOURCES, DEPARTMENT OF LAND)	
AND NATURAL RESOURCES, and STATE)	
OF HAWAI'I, and HAWAII LONGLINE)	
ASSOCIATION;)	
)	
Defendants/Appellees.)	

DESIGNATION OF RECORD ON APPEAL

TO THE CLERK OF THE SECOND CIRCUIT COURT OF THE STATE OF HAWAII

Pursuant to Rule 72(d)(1) of the Hawai'i Rules of Civil Procedure, Plaintiff-Appellant designate as the Record on Appeal the entire file of the Defendant-Appellee BOARD OF LAND AND NATURAL RESOURCES with respect to Petition of Malama Chun for a Declaratory Order filed April 12, 2017 as defined in section 91-9(e), Hawaii Revised Statutes, including all pleadings, transcripts and exhibits.

DATED: Wailuku, Maui, Hawai'i

March 12, 2019



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MĀLAMA CHUN,)	Civil No. _____
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ASSOCIATION;)	
)	
Defendants/Appellees.)	

ORDER TO CERTIFY AND TRANSMIT THE RECORD ON APPEAL

TO: BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII

In accordance with section 91-14(d), Hawai'i Revised Statutes, and Rule 72(d) of the Hawai'i Rules of Civil Procedure, you are hereby ordered to certify and transmit to the Circuit Court of the Second Circuit, within twenty (20) calendar days of the date of this Order, or within such further time as may be allowed by this Court, the entire record as defined by section 91-9(e), Hawaii Revised Statutes, and as set forth in the Designation of Record on Appeal. Any request to enlarge time shall be submitted to the Court prior to the expiration of the above 20-day period.

MAR 12 2019

DATED: Wailuku, Maui, Hawai'i

/SGD/ N. MARTINS (SEAL)

CLERK OF THE ABOVE-ENTITLED COURT