



May 13, 2022

To: Chair Case and Members of the Board of Land and Natural Resources

Re: COMMENTS ON ITEM F. 2; RECONSIDERATION OF PRIOR BOARD ACTION OF DECEMBER 10, 2021 TO APPROVE HOLDING PUBLIC HEARINGS TO AMEND AND COMPILE HAWAII ADMINISTRATIVE RULES (HAR) CHAPTER 13-75, “RULES REGULATING THE POSSESSION AND USE OF CERTAIN FISHING GEAR”;

For the Fishes, dedicated to the protection of coral reef wildlife, and Moana Ohana/Malama Mano, dedicated to the protection of mano and their cultural significance to kanaka maoli, provide the following comments regarding the Board’s reconsideration of proposed rule amendments to Chapter 13-75.

For nearly seven years, our organizations led legislative efforts resulting in the enactment of the Hawaii Shark Protection Act, Act 51, which became law on January 1, 2022, now referenced as HRS 188-40.8 (below). In summary, this law prohibits the intentional or knowing capture, killing or entanglement of sharks in state marine waters, with limited exceptions. The bill also requested DLNR enact rules limiting and regulating gear, especially gill nets, in shark pupping areas, given there have been numerous cases, over many years, where gill/lay nets were responsible for the death of dozens, and in some cases possibly hundreds, of shark pups (see below articles).

Process Issues

For the Fishes testified before DAR at the March 15th public hearing requesting that regulation on the use of gill and lay nets in shark pupping areas be added to the proposal. This seemed most appropriate given DAR was opening up the same sections of rules that related to fishing gear, specifically lay/gill nets, and DAR’s proposal also included amending rules to explicitly prohibit killing sharks with firearms, which also became illegal under the new law. In addition, DAR’s proposal included maps which could easily be amended to reflect those areas where nets would be further regulated and/or prohibited during certain months/seasons due to the high probability of interaction with shark pups.

We were the only person/organization testifying at the public hearing, although DAR had posted the appropriate hearing notices, in accordance with Sunshine law requirements. Shortly after the public hearing, a few persons from the commercial fishing community claimed they were not notified of the rule proposal, and felt their concerns/objections had not been considered by DAR prior to their proposing the rules. They were specifically concerned with the proposed rule change by DAR that added reference to “lobster nets.”

A few days after the public hearing a fishers group posted that DAR had privately informed them they would be holding another round of public hearings in late May and was conducting additional outreach to fishers. However, it was only last Friday that the public learned of the current request for another round of public hearings, which the Board is only today considering.

Lack of equity in stakeholder input

When we saw today's agenda posted we immediately contacted DAR, requesting their consideration of the recommendations we provided at the initial March 15th public meeting, given we were the only stakeholder who had testified during that formal process. We also noted the reference to "lobster nets" which was the greatest point of contention from fishers, was suddenly being removed from the proposal.

DAR's response was simply that it was not considering our public input, that additional shark related rules would be enacted at an unknown later date, through a separate and completely unrelated non-commercial take permit process (note law explicitly separates gear and nets in section (h) from section (i)). When we questioned their consideration of the recent input from fishers as to lobster nets, DAR simply responded that was an internal decision.

In closing, stakeholder input should carry equal weight and be subject to the same equitable processes. We think it is inappropriate for DAR to provide advance notification and solicit input privately from only one stakeholder group (commercial and recreational interests) but not from subsistence fishers and cultural practitioners, or those in the community who seek to extend protections to our collective marine resources, held in the public trust for all the peoples of Hawaii.

Thank you for your consideration of these comments and our request of DAR to include proposed regulations on the use of gill/lay nets in known pupping areas.

Sincerely,

Inga Gibson, Pono Advocacy
On behalf of For the Fishes

Mike Nakachi, Moana Ohana
Malama Mano

National news on shark pupping incidents (Sand Island)

<https://www.newsweek.com/nearly-100-baby-hammerhead-shark-pups-found-dead-fishing-gear-suspected-1002095>

<https://apnews.com/article/hawaii-north-america-sharks-honolulu-fish-735554f6b03c485ab33675e0e77c134c>





[\$188-40.8] Sharks; mano; prohibitions; exceptions; penalties and fines. (a) Except as provided in subsection (f), or as otherwise provided by law, no person shall intentionally or knowingly capture or entangle any shark, whether alive or dead, or kill any shark, within state marine waters.

(b) Any person violating this section or any rule adopted pursuant to this section shall be guilty of a misdemeanor; provided that the fine for violating this section shall be:

- (1) \$500 for a first offense;
- (2) \$2,000 for a second offense; and
- (3) \$10,000 for a third or subsequent offense.

(c) A person convicted of violating this section may be sentenced to pay a civil fine not exceeding \$10,000 per offense.

(d) In addition to any other penalty imposed under this section, a person violating this section shall be subject to:

- (1) An administrative fine of no more than \$10,000 for each shark captured or entangled, whether alive or dead, or killed in violation of this section;
- (2) Seizure and forfeiture of any captured sharks or any part or product therefrom, commercial marine license, vessel, and fishing equipment; and

(3) Assessment of administrative fees and costs, and attorney's fees and costs.

(e) The criminal penalties and administrative fines, fees, and costs shall be assessed per shark captured or entangled, whether dead or alive, or killed in violation of this section.

(f) This section shall not apply to:

(1) Special activity permits issued under section 187A-6;

(2) The department of land and natural resources or its designated agent if the capture or entanglement, whether alive or dead, or killing is for the protection of public safety;

(3) Sharks taken outside of state marine waters and possessed on a vessel in state marine waters pursuant to any federally managed fishery, with the required documentation of the location where the capture occurred;

(4) Any person if the capture or entanglement, whether alive or dead, or killing is the result of self-defense, or the defense of another, against death or bodily harm; and

(5) Any person who captures or kills a shark pursuant to a permit issued by the department of land and natural resources under subsection (i).

(g) Nothing in this section shall be construed to restrict the exercise of traditional and customary rights protected pursuant to article XII, section 7, of the Hawaii State Constitution.

(h) The department of land and natural resources may adopt rules pursuant to chapter 91 to implement this section for purposes including but not limited to:

(1) Ensuring that the incidental capture and release of sharks while targeting other species is not a violation;

(2) Preventing the wanton waste of sharks; and

(3) Limiting gear, such as gill nets, in areas identified as shark nursery habitats.

(i) The department of land and natural resources may issue a non-commercial permit for the take of sharks, subject to permit conditions that shall include native Hawaiian cultural protocol, size and species restrictions, and a prohibition on species listed as endangered or threatened pursuant to section 195D-4.

(j) For the purposes of this section, "shark" means any species of shark within the subclass Elasmobranchii. [L 2021, c 51, §2]