
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2021 - 2022 Regular

Bill No:	AB 2109	Hearing Date:	June 20, 2022
Author:	Bennett		
Version:	May 23, 2022 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Katharine Moore		

Subject: White sharks: prohibition on use of attractants

BACKGROUND AND EXISTING LAW

White sharks – also called great white sharks – (*Carchadon carcharias*) are the earth’s largest ocean predatory fish and are a subject of fascination to many. White sharks, however, remain one of the least understood ocean animals despite the enormous public and scientific interest in them.

White sharks are widely distributed around the world, mostly in cold, temperate waters. White sharks live along the Northern California coast from September to February. The balance of the year is spent either at or swimming 1,500 miles to or from an area of water between Mexico and Hawaii known as “the (white) shark cafe.” White sharks are often observed at the ocean surface, and juvenile white sharks are frequently seen in shallow nearshore waters off Southern California, especially in the summer and during warm water periods. Southern California waters are considered a nursery ground for white sharks. Pregnant sharks give birth in warm calm waters offshore, and juvenile sharks spend significant time in shallow water where there are abundant food sources. White sharks are also increasingly found in Monterey Bay due to warming ocean waters caused by climate change.

White sharks play a crucial role in the marine ecosystem by feeding on pinniped populations, such as seals and sea lions. Primary threats to white sharks are their intrinsically low reproductive rate (a female shark may give birth every 1 – 2 years), vulnerability to direct and indirect fishing mortality, and predation by killer whales occasionally. Current estimates of the Northeast Pacific white shark populations range from just a few hundred to greater than 3,000 individuals. About 300 white sharks are thought to have their primary home off the Central California Coast. All current population estimates include some degree of uncertainty as there are significant gaps in knowledge.

Apparently there is a growing business of “viewing” white sharks by boats and cage-diving operations. White shark viewing tours by boat are offered in the state’s waters. In order to help guarantee that one or more white sharks participate in these activities, some operators have sought to use attractants – such as bait and chum — to attract white sharks in areas where there are both white sharks and ocean users. This has the potential to put members of the public at risk. In addition to the risk of adverse human-shark interactions, the increased interaction may well have potential negative effects on habitat use, surface behavior, bio energy utilization, and conditioning of the white shark.

It has been illegal to fish for or catch white sharks in California waters since 1994.

Existing law:

- 1) States that the fish and wildlife resources of the state are held in trust for the people of the state by and through the California Department of Fish and Wildlife (CDFW). (Fish and Game Code (FGC) §711.7)
- 2) Makes it unlawful to take any white shark, except under permits issued for scientific or educational purposes. (FGC §5517)
- 3) Makes it unlawful to take white sharks for recreational or commercial purposes except under a permit issued by the CDFW for scientific or educational purposes, or if taken incidentally by commercial fishing operations using certain types of nets. (FGC §8859)
- 4) Defines chumming to mean the placing in the water of fish, or other material upon which fish feed, for the purpose of attracting fish to a particular area in order that they may be taken. (FGC §27)
- 5) Defines take to mean to hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture or kill. (FGC §86)
- 6) Makes any violation of the Fish and Game Code – with certain exceptions - or any violation of any rule, regulation or order made or adopted under the Fish and Game Code, a misdemeanor, unless expressly provided otherwise. (FGC §12000)

PROPOSED LAW

This bill would make it unlawful to use any bait, lure, or chum to attract any white shark, as provided. Specifically this bill would:

- 1) Make it additionally unlawful to:
 - a) Use any bait, lure, or chum to attract any white shark.
 - b) Place any shark bait, shark lure, or shark chum into the water within one nautical mile of any shoreline, pier or jetty when a white shark is either visible or known to be present.
- 2) Define “shark bait, shark lure, or shark chum” to be any product or device used to attract sharks by taste, smell, or sight, as specified.

ARGUMENTS IN SUPPORT

According to the author, “People who attend our beaches should feel safe entering the water. When companies use bait or decoys to lure sharks, they are putting everyone and the shark at enormous risk. The use of attractants, which are feeding cues for white sharks, may increase their reactivity to other things in the water, such as swimmers and surfers. This bill ensures the safety of everyone, including marine life.

ARGUMENTS IN OPPOSITION

None received

COMMENTS

Proactive step. This bill is a proactive step to help protect both ocean users and white sharks from each other.

Ongoing stakeholder negotiations. Committee staff are aware that the author is continuing to negotiate technical amendments with stakeholders to help, among other things, ensure that existing inadvertent take of white sharks authorized under state law is not affected by this bill. The Committee may wish to direct the author to work with Committee staff as the bill moves forward in order to ensure that the amendments remain consistent with the Committee's interests.

Just when you thought it was safe to get back in the water (white shark management in Pacific waters). The white shark is prohibited species in all US waters and fisheries. This means that white sharks are not allowed to be caught, and, if caught, must be immediately released. In the Pacific, the white shark is managed by the Pacific Fishery Management Council under the West Coast Highly Migratory Species Fishery Management Plan. The white shark is also protected internationally under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendix II, the Convention on the Conservation of Migratory Species of Wild Animals (CMS) Appendix II, the United Nations Convention on the Law of the Sea, and other international regional fisheries management organizations, primarily due to threats from the shark fin trade.

On June 14, 2014, consistent with the recommendation of CDFW, the California Fish and Game Commission determined, based on the best available science, that listing the Northeastern Pacific populations of white shark as a threatened or endangered species under the California Endangered Species Act was not warranted. According to the National Oceanic and Atmospheric Administration (NOAA) Fisheries status review and recent research, the population of white sharks appears to be increasing and is not at risk of becoming endangered in US waters. Increasing population numbers may be due to increasing pinniped populations, regulatory protections primarily enacted in the 1990s, including state and federal prohibitions on the take of white shark, and progressively restrictive regulations on gillnet gear to reduce the take of white shark as bycatch.

Shark incidents. A shark incident, according to CDFW, is defined as any documented case where any shark species approaches and touches a person in the water or touches a person's surfboard, kayak, paddle board or other equipment. Data compiled by CDFW shows 202 documented shark incidents in state waters from 1950 – 2017. At least 179 of those incidents involved white sharks. Seventy-nine of the incidents resulted in no injury, 108 resulted in non-fatal injuries and there were 15 fatalities. The fraction of incidents that result in no injury to the person has increased over the decades. Since these data were compiled, there have been two additional fatalities linked to white shark attacks on surfers in 2020 (Santa Cruz) and 2021 (Morro Bay).

Cage diving businesses and white shark tours can continue in state waters should this bill become law. It is estimated that there are less than 10 of these business operations in California. It is unknown if any currently use attractants, or if any of the boats is named "Orca." Those businesses that operate in the Greater Farallones National Marine Sanctuary are already prevented by sanctuary regulations from the use of bait or

chum to attract sharks. Any state-based businesses that operate in Mexican waters would not be bound by state law.

Recent related legislation

AB 2191 (O'Donnell, 2018) would have required the Ocean Protection Council to develop and implement a program to award white shark research grants and public safety grants relating to white shark sightings on California beaches. (*This bill was held without hearing in the Senate Natural Resources and Water Committee.*)

SB 1017 (Allen, Chapter 844, Statutes of 2018) requires CDFW to develop a program by March 31, 2020 to voluntarily transition the holders of drill gill net permits out of that fishery.

SR 44 (Jackson, 2017) declares that the United States' Marine Sanctuaries are national treasures that belong to all Americans and should be maintained for future generations.

SUGGESTED AMENDMENTS: none

SUPPORT

California Fish and Game Wardens Supervisors and Managers Association
Defenders of Wildlife
Monterey Bay Aquarium
Oceana
The Honorable Eleni Kounalakis, Lieutenant Governor of California

OPPOSITION

None Received

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