

Land Board Approves West Hawai`i Fishing Rules

BOARD TALK

After hearing hours of testimony lasting into the early evening of June 28, the state Board of Land and Natural Resources narrowly approved a ban on scuba spearfishing in West Hawai`i. Afterward, a small cadre of fishermen, most of them from O`ahu, huddled outside the Kalanimoku building, where the Land Board met, to discuss what had just happened.

Worried that such a ban would spread to other islands, they had presented the board with video showing large schools of a variety of fish in waters off West Hawai`i, suggesting that fish stocks aren't as bad as state aquatic biologist William Walsh says they are. Maybe researchers had just surveyed a bad patch of reef, they suggested.

Commercial fisherman Carl Jellings of Nanakuli, former Western Pacific Fishery Management Council chair Frank Farm, Aha Moku council head for O`ahu's Kona district Makani Christensen, and Phil Fernandez of the newly formed Hawai`i Fishermen's Alliance for Conservation and Tradition, Inc., among others, all testified against the ban.

But the Land Board also received information from Walsh that fish stocks in the area, across the board, have seen dramatic declines over the past few decades -- as much as 94 percent for some species. And while no studies have been done linking the decline to scuba spear-fishing, the practice has proved devastating in other parts of the world and is by and large banned throughout the Pacific.

What's more, Big Island Land Board member Rob Pacheco just couldn't get past the discrepancy in some of the testimony in opposition to the ban: One fishermen said banning scuba spear-fishing would put him out of business, although he said later that scuba spear-fishing accounted for only five percent of his catch.

After public testimony ended, Pacheco moved to approve a recommendation by the Department of Land and Natural Resources' Division of Aquatic Resources that it accept a rule package drafted by the West Hawai`i Fishery Advisory Council, which included the scuba spear-fishing ban, to prevent overfishing.

Outgoing Maui member Jerry Edlao, outgoing O`ahu member John Morgan, and at-large member Sam Gon joined Pacheco in supporting the motion. Land Board chair William Aila and at-large member David Goode did not.

Nearly a month later, the status of those rules -- whether they had been sent to the state Department of Attorney General for review before going to the governor's office for signing -- was a mystery to members of the public, as well as DAR staff. DLNR public information officer Deborah Ward did not respond to an inquiry by press time.

A number of people have been asking about the status of the rule package because the most controversial part -- the scuba spear-fishing ban -- nearly didn't make it to the Land Board. Aila, who is also DLNR director, had initially pulled it. Although the rules were the product of more than a decade of work by the West Hawai`i Fisheries Council and DAR staff, Aila was not convinced there was enough data to support a scuba spear-fishing ban.

When Walsh briefed the Land Board on the rules package on May 23, Aila announced the ban would not be part of the package that came to the board in June. (He also did not allow the public to testify on the matter that day, in apparent violation of the state Sunshine Law. The state Office of Information Practices is investigating.) However, after a number of Land Board members expressed their discomfort with Aila's decision, he changed his mind.

When the rules finally did come to the board, commercial fishermen attacked them for not being based on local data. They argued that scuba spear-fishing is one of the

most selective methods of fishing and that those who use the gear don't try to take every fish off the reef. They also said scuba divers need to be able to have spears with them to ward off aggressive eels or sharks.

The Nature Conservancy's Chad Wiggins said that while there are areas of healthy fish populations in West Hawai`i, overall, they're declining.

"There was a time when you could fish all day and make a living fishing off Kona. Somebody said nobody is going to take every fish off the reef. We tried, with roi [an introduced species]. ... We used scuba spear-fishing. It was very effective. In 11 days, our dive team -- who is not half as good as the people in this room -- we were able to catch 95 percent of the roi on that reef," he said. "No one is trying to make the fish go away, but it's happening."

"Something is missing there for me in the testimony"

— Robert Pacheco, Land Board

He recalled how one scuba spear-fisherman he met at Puako had filled two and a half coolers with fish in just one day.

Wiggins added, "If anyone leaves this meeting thinking a spear is a good way to stop a shark that would be a dangerous thing. There are documented events of people being [injured] after spearing a shark."

Concerned about the impact of a complete ban on scuba spear-fishing, board member Morgan asked whether a two-year ban would be long enough to provide data on its effect.

At-large board member David Goode asked Walsh how long he would need to

gather enough data to determine the impact of the ban.

Walsh said that some species don't reach sexual maturity until they are several years old and it may take another several years for populations to build. Based on that, he proposed a 10-year ban, at minimum.

In any case, he added, his division needs to have a better ability to know what's being caught.

"We can't inspect coolers. Unless that aspect is addressed, you can see changes, but can you link it to spear-fishing," he asked.

Aila suggested that instead of imposing a ban, DAR develop a permit for anybody in West Hawai'i who spear-fishes. That way, "we know who they are and what they catch. I'm very concerned about unintended consequences. I would much prefer seeing what is going on," he said.

Pacheco, however, already seemed convinced that scuba spear-fishing had at least the potential to devastate West Hawai'i's reefs.

"It struck me as curious ... the fishermen, they all seemed to downplay the amount of fish being taken through scuba with spear-fishing. In one area, they're saying it's not that big a take, then they say this is going to make it so we can't fish anymore," he said. Given that scuba spear-fishing allows divers to go deeper and stay underwater longer, "they can go out and do some serious damage to a reef population," he added, pointing to Wiggins' comment about a fisherman taking two and a half coolers worth of fish in one dive, as well as evidence from around the world.

"Something is missing there for me in the testimony. This is a pretty potent way for people to remove fish," he said.

To Aila's suggestion of developing a spear-fishing permit, Walsh said that already, many of the people who have permits are not reporting their catches. A recent study comparing coral-reef dealer reports with catch reports from commercial license holders (CML) found that for the year studied, CML holders reported catching 71,000 pounds of uhu, while dealers reported purchasing 191,000 pounds. That's more than 100,000 pounds of unreported catch, Walsh said. "That's the kind of issue you're going to face with a permit ... and that's just uhu."

"I personally think we need to have some data. Whatever we have in place, you're not going to [see results for 10 years] we might as well know what they're catching," Aila responded.

In any case, because a sunset date on the proposed scuba spear-fishing ban had not been discussed during any public meetings or in public testimony, the Land Board could not add one in without taking the rule back out to public hearings, deputy attorney general Linda Chow said.

When it came time to vote on the ban, it passed, 4-2.

