



**Griffith Journal**  
of Law & Human Dignity

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GRIFFITH JOURNAL OF  
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# OBSTRUCTION IS JUSTICE: THE JUSTIFICATION OF OBSTRUCTION FOR THE OCEANS, AND AN INSIGHT INTO THE WESTERN AUSTRALIAN SHARK CULL

MADISON STEWART\*

*Madison Stewart has known sharks all her life. Being certified to scuba dive at 12 years old instead of learning to ride a push-bike, she has always had a passion for the ocean and exploring the great reefs off the coast of Australia. The ocean became her home, and sharks her family, but not everyone can understand the placidity of sharks like Madison. When her family was threatened to be killed by shark culling laws introduced by the Western Australian Government, she was quick to retaliate and defend the innocent creatures. This is her story about the battle against the laws that seek to destroy what she loves and how the law can sometimes lead to injustice.*

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\*Madison Stewart is a prominent Australian shark activist known as ‘Shark Girl’. She has travelled the world sharing her love for the oceans and diving whenever she can. She has been filming in the vast seas since she was 14 and has committed her life to documenting the great apex predators and advocating for their protection. As Madison’s narrative is inherently personal, it was not possible to completely redact her identity during peer review. As a result, this manuscript underwent blind review with the author’s identity known to referees.

## I INTRODUCTION

Injustice thrives in the cracks of our society, with cruelty to animals remaining legal as long as it is profitable. We live under the illusion of trust and believe that only low-life criminals break the law, when really they are bent for large corporations. We lace our beaches with nets that kill protected species because we expect impunity when entering another animal's hunting grounds. After years of attacking the system in order to change and enforce the law for the good of the oceans I love, I came to a sudden realisation. I realised that laws are created to justify the destruction of our last wild things, because it is profitable, and because no public pressure has changed them. It was with this realisation that I understood that I might need to break the law.

My most recent short film contains the line: 'I want your children to grow up to be criminals, because the world they are growing up in is unjust, and they may hope to maintain some grasp of the natural world, by fighting the laws that allow its destruction'.<sup>1</sup> I am not promoting fire starters, or advocating cheap vandalism, or driving without a seat belt. However, examine the laws I refer to in this story, and perhaps you will agree I was in the right when I broke them. I have broken laws that I will not talk about openly in this narrative. I have also broken these laws with no regrets and with the understanding that the law and justice are sometimes two different things.

The story I've chosen to share with you today, however, is a story of an animal that did not get the justice she deserved. This is a story of an animal betrayed by the very laws meant to protect her and the very people assigned to enforce them. This is the story of one of the many tiger sharks killed off the Western Australian coast during the shark cull, and to this date, my most confrontational interaction with the law.

## II EXAMPLE ONE: DISREGARD OF NATIONAL AND INTERNATIONAL LAW AND TREATIES

For millions of years, sharks have roamed the vast seas of the world.<sup>2</sup> However, only through our interference in their habitat and identifying their importance in our way of

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<sup>1</sup> *My World* (a film by Madison Stewart, 2014), 0:3:54.

<sup>2</sup> Thomas P. Peschak, *Sharks and People: Exploring Our Relationship with the Most Feared Fish in the Sea* (University of Chicago Press, 2014) 28.

life,<sup>3</sup> sharks, including the great white shark, are claimed to be protected by both national and international law. The great white shark is listed as vulnerable under the *Environment Protection and Biodiversity Conservation Act*.<sup>4</sup> As a result of being classified as vulnerable, the Commonwealth Government has enacted an Australian National Recovery Plan for the white shark that aims to increase population growth, thus, lifting its classification as vulnerable.<sup>5</sup> Furthermore, the shark is also protected under the *Convention on International Trade in Endangered Species of Fauna and Flora* ('CITES').<sup>6</sup> CITES was adopted in 1973 to address the unsustainable international trade of wildlife.<sup>7</sup> To date, around 166 countries have become parties to this Treaty, making it 'one of the world's most important agreements on species conservation and non-detrimental use of wildlife'.<sup>8</sup> Again, the great white shark is also protected by international conventions as it is also listed under Appendices I and II of the *Convention on Migratory Species* ('CMS').<sup>9</sup> Even though Australia was seen as the one of the forerunners in shark conservation by identifying great white sharks as vulnerable in 1997 and becoming advocates for shark protection,<sup>10</sup> the Western Australian government still implemented systems to hunt and kill the great white shark.

Following a series of shark attacks in Western Australia, the State government made the decision to cull great white sharks. The word 'cull' means to slaughter, kill, destroy, reduce the numbers of, or thin out the population of.<sup>11</sup> In 2014, Greg Hunt declared that

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<sup>3</sup> Sharks are immensely important in relation to marine preservation, tourism and our economy. Also, we have an undeniable moral duty to protect these great creatures from destruction. See Stijn van Osch, 'Save our Sharks: Using International Fisheries Law within Regional Fisheries Management Organizations to Improve Shark Conservation' (2012) 33(2) *Michigan Journal of International Law* 383, 386-7.

<sup>4</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Pt 13, s 178; see also Australian Government (Department of Environment), White Shark (*Carcharodon carcharias*) <<https://www.environment.gov.au/marine/marine-species/sharks/whiteshark>>.

<sup>5</sup> Department of Sustainability, Environment, Water, Population and Communities, Australian Government, *Recovery Plan for the White Shark (Carcharodon carcharias)* (2013) 17.

<sup>6</sup> *Convention on International Trade in Endangered Species of Fauna and Flora*, opened for signature 3 March 1973, UNTS No. 14537 (entered into force 1 July 1975) app II.

<sup>7</sup> CITES, *Governments propose new CITES trade rules for dozens of wildlife species* (12 May 2004) <[https://cites.org/eng/news/pr/2004/040512\\_cop13\\_prop.shtml](https://cites.org/eng/news/pr/2004/040512_cop13_prop.shtml)>.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Convention on Migratory Species*, opened for signature 22 June 1980, [1991] ATS 32 (entered into force 11 January 1983) app 1 and 2.

<sup>10</sup> Romney Philpott, 'Why Sharks May Have Nothing to Fear More Than Fear Itself: An Analysis of the Effect of Human Attitudes on the Conservation of the Great White Shark' (2002) 13(2) *Colorado Journal of International Environmental Law and Policy* 445, 455-6.

<sup>11</sup> Oxford Dictionary, The definition of 'cull' <<http://www.oxforddictionaries.com/definition/english/cull>>.

the shark cull would operate under an exemption from Part 3 of the federal *Environment Protection and Biodiversity Conservation Act (1999)* (Cth).<sup>12</sup> Section 158 of the Act was used to justify the shark cull by declaring it a matter of ‘national interest’.<sup>13</sup> However, ‘national interest’ has not been defined in the Act.<sup>14</sup> Exemptions that have been issued include vegetation clearance in response to the Black Saturday Bushfires in 2009,<sup>15</sup> and the release of water from Lake Crescent Tasmania to supplement human resources.<sup>16</sup> Protection of species under the law is evidently an illusion.

### III EXAMPLE TWO: IRRATIONAL SHARK CULLING LAWS

It was a routine day for me on 20 March 2014. My life was put on hold as I travelled to the other side of the country to be amongst the blood and hooks offshore. Like all previous mornings, we woke before dawn to speed across the beachfront to check what had been captured by the hooks that night. Many of us hadn’t slept in four weeks. Throughout those weeks numerous people had left their jobs and bills behind to help the sharks that were exposed to actions against nature, the likes of which I thought were reserved for third world countries. What we experience would ultimately shape the way we felt about our oceans and our government. There was conflict between the boats on the water that day. Everyone struggles to do things their way, and this causes debate. However, this time, we would all work together, as one enemy had united us.

We checked many drum lines before we found our first dead shark at Scarborough Beach. A drum line was the government’s chosen method for killing sharks. It is a flotation buoy with a long chain and a giant hook on the bottom, usually baited with fish. They are anchored to the ocean floor and the hook dangles a few meters below the surface. As soon as we came across something, I would enter the water to film it. Under the Western Australia shark culling laws, people are not allowed within 50 meters of the

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<sup>12</sup> Commonwealth, *Statement of Reasons for Granting an Exemption Under s 158 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, Parl Paper (15 January 2014).

<sup>13</sup> *Ibid.*

<sup>14</sup> See *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

<sup>15</sup> Commonwealth, *Exemption Under Section 158 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, Parl Paper (11 February 2009).

<sup>16</sup> Commonwealth, *Exemption Under Section 158 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, Parl Paper (7 November 2007); see also Australian Government (Department of the Environment), *Exemption Notices* (5 November 2014) EPBC Act Public Notices <<https://www.environment.gov.au/epbc/notices/exemptions.html>>.

drum lines.<sup>17</sup> However, in order to film the dead sharks and check the hooks, we must be next to them. Without breaking this law, no dead sharks or other victims would be filmed. Thus, we broke it on a daily basis.

I filmed this one particular tiger shark for a while; the sound of her teeth clashing on the chain links in the murky water still resonates with me. After filming, I got out and we waited a good hour for Fisheries to show up. They would stop at every drum line, and we had to sit and wait until they reached ours. We retreated and watched from a distance as Fisheries hauled the dead tiger shark onto their boat. Then, the chase began immediately. Before Fisheries could dump sharks offshore after the processing was done, they would try and outrun us and zigzag so we could not film it happening. We had done this many times. We knew their movements and the unforgettable sight of a shark falling into the abyss.

The suspense of hearing their engines shut off, and knowing at that time we would only have a few split seconds to get into the water, was a familiar feeling. However, this time, it would be different. Fisheries' boat came to a halt far offshore with us trailing just behind them. The shark's body was then tossed off the long metal platform that was once used to hold a spare boat but was now used to haul suffering animals on and off their deck. We jumped in immediately, as the white wash cleared to reveal the sight of the abyss. On this occasion, however, we knew something wasn't right; we saw no shark falling to the ocean floor. It was then I looked up at the surface, only to see that the shark did not sink to the bottom because one of our own had caught it.

We pulled it up beside her small rib, with rope wrapped tightly around its tail. The shark was so big she exceeded the boat length. She just hung there, moving with the water. From here we all gathered around and watched her. I don't know what sparked the inspiration to grab her. I guess we wanted to know either if she was pregnant, or to film her up close, or, quite possibly, we wanted to defy the authorities in some way. Whatever it was, we now had in reaching distance a graphic sight of what had just taken place at the hands of Western Australian Fisheries officers. A hook was still lodged in her throat, her eyes were pale without life, and scars covered her body from the struggle.

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<sup>17</sup> Western Australia, *Government Gazette*, No 171, 24 October 2014; see also *Western Australia Marine Act 1982* (WA) s 66.



That shark was like all the others we had witnessed being killed, but I had no idea how significant she was.

#### IV EXAMPLE THREE: DISREGARD OF MARITIME LAW AND OBSTRUCTION OF JUSTICE

She was the first up-close proof of the disgrace and inhumanity that was fueled by our fear. Australians were happy to see the evil man-eaters culled for our own safety, purely because what is out of sight is out of mind. I think Fisheries had reached the same conclusion. Now, since we were filming that mutilated shark, the cull was no longer out of sight, and this made them angry. I was so wrapped up with being in choppy water, and face to face with a dead tiger shark, I failed to notice how much danger we were in. The giant metal-hulled Fisheries vessel was descending on us, and I could hear the engines reversing from under the water. I realised that they had seen us, and they were coming back. Two uniformed Fisheries officers were on the front of the boat, which was now only meters from our tiny rib. They started yelling at us.

Fisheries had broken the law by approaching an idle vessel with divers in the water. Under Western Australian maritime law, a vessel must not approach within 50 metres,<sup>18</sup> but we were only meters away from their steel hull. This showed me how adamant they were in keeping this atrocious act out of the public eye. They began to yell 'let go of the shark, you are interfering with our fishing operations'. Our crew yelled back, 'we're not keeping it'. It became a screaming match on the water. My inability to hear anything and the ability to shut off the logical part of my brain was strong at this point. As I eventually turned around to see their hull, the motto of the Western Australian Fisheries was right in my face. The words 'Fish for the Future' were spread across the hull of a boat that had just dumped a breeding sized female tiger shark into the abyss.

Those few minutes felt like seconds, it all happened so fast. Eventually, after ignoring Fisheries cries, we let her go. I watched as if the rest of the world had stopped completely and nothing else required my attention. Those few minutes watching her white belly disappear into the deep, deep green were surreal; this tragedy and the shock of what had just happened rushed over me. We got back into the boat, and Fisheries were hanging around but now keeping their distance. After minutes of tears shed and

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<sup>18</sup> *Western Australian Marine (Infringements) Regulation 1985 (WA)* sch 1, s 10A.

comprehending what had just happened we headed back to the marina, and each boat went their separate way.

On the way back in, one of the officials on the boat demanded I take my memory card out of my go pro. Now, I may be young, but I've seen and done this numerous times already. As a result, my attitude was at a place that needed adjusting. I thought the idea was laughable, but I humored her and gave her my camera's memory card. It went into a pile with all the others. Before boarding the Fisheries' vessel, however, all our footage was placed in a small ziplock bag and tucked into the bra of one of our crew.

As soon as our boat hit the marina, Fisheries officers were waiting for us. This was the moment I realised we were about to be in a lot of trouble. Up until that moment, I had not taken our actions or the Fisheries opposition seriously. First of all, I did not even know how Fisheries knew where we docked. Somehow they managed to be there, waiting for us. The officer in possession of our memory cards got off the boat. The officers then said something to her I did not hear. Suddenly, amidst their conversation, she just said, 'talk to them' while pointing to us. She then walked away immediately. Then the two Fisheries officers, in full uniform and notebooks in hand, turned their attention to us.

The rest is a blur. I remember quickly setting my phone to video record in case I needed to refer to it later. They told us they had pictures of us in the water, and evidence of what we had done. At this point, one other person and I stepped forward to confess to being the ones in the water, and I didn't think much of it. I was well trained to what my rights were, and I knew I had to tell them my name and address and nothing else. Therefore, they asked me questions to which I did not respond. Something hit a nerve during the questioning though; why would they need evidence, and what was it we had done? It was then Fisheries officers dropped the ball. They were about to charge us with possession of a protected species.<sup>19</sup> The protected species laws are in place to stop people profiting from the deaths of marine animals, such as tiger sharks. Thus, when we caught that shark, we were in possession of a protected species. However, the irony is that we were being accused of possession of a protected species by the very people that just killed it.

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<sup>19</sup> *Wildlife Conservation Act 1950 (WA)* s 16A.

They demanded our memory cards be given to them, because apparently we had footage that was considered evidence of what we had done. We, of course, refused. They then told us they had the right to search the boat, and us. I replied, 'you are more than welcome to', knowing they wouldn't find anything. I took my jacket off and handed it to the Fisheries officer as if to say, 'go ahead, search'. He just stood and looked at me. I never lied to them. I had no idea where my memory cards were at that point. I remember being asked if I had any interactions with the shark. I started to sort my backpack and ignore the Fisheries officer; he knew I had no obligation to answer. He then said something along the lines of, 'that was a potentially dangerous animal and interaction'. I stopped and looked at him sarcastically. Having had multiple interactions with six meter tiger sharks before my 16<sup>th</sup> birthday, I was wondering if it was worth pointing out to him that the shark was dead, and that every single interaction I've had with sharks has been safer than being in the water with a Fisheries driven vessel. Fisheries told me that if the footage we shot that day was released we would be going to court for obstruction of justice.

According to Western Australian law, the charge of obstruction of justice, that is attempting to pervert etc. the course of justice, gives rise to a maximum penalty of 7 years imprisonment.<sup>20</sup> Obstruction of justice charges are usually reserved for serious offences like continuing to contravene bail,<sup>21</sup> providing information that falsely convicts another<sup>22</sup> and interfering with a witness.<sup>23</sup> We claimed to have no footage. Therefore, if we released it after refusing to supply it as evidence, it would amount to an obstruction of justice. At the same time, if we gave it to Fisheries, they would have the right to destroy it. We were not about to lose the most powerful footage we had ever obtained. Fisheries did not want us to release this footage, but their idea of stopping us from doing so was to use the law and to make us think our footage contained evidence of a crime. The truth is that the footage showed them breaking the law by presenting a close depiction of a defenseless animal, dead, as a result of their actions.

Shortly after this confrontation, we gave our SD cards with all our footage to our lawyer.

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<sup>20</sup> *Criminal Code Act 1913 (WA)* s 143.

<sup>21</sup> See *Murphy v The State of Western Australia* [2013] WASCA 178.

<sup>22</sup> See *Penny v The State of Western Australia* [2010] WASCA 65.

<sup>23</sup> See *Librizzi v State of Western Australia* [2006] WASCA 237.

I was now faced with a dilemma: I could either release the footage and go to court for obstruction of justice, or never release it and keep the victims of the shark cull and actions of the government hidden from public eyes. A week later my film was online, receiving more than 100,000 views overnight.<sup>24</sup> It grabbed the attention of those who had never previously cared about sharks. They were shocked to witness the battle taking place in their defense. It was one of the most powerful films I've ever made; it is shown in schools and has been seen around the world. To this day, the footage brings tears to my eyes. Being the smart ass I am, I called the film *Obstruction is Justice*, in honor of the law we could have been charged with.

#### IV CONCLUSION

The Fisheries Department later dropped their investigation, and we were out of the woods. I will never forget that tiger shark, the amazing people on the boat with me, or our willingness to go to jail for my film. The shark cull has now stopped, and they did not catch a single great white. However, more than 100 tiger sharks were caught, and many died in the atrocity,<sup>25</sup> although tiger sharks have not been responsible for a fatality in WA in over 80 years.<sup>26</sup> We, as a society, have lost our direction, and our foundation of fear and ignorance causes desolation. Sometimes we are not the dominant species, and in a world where we rely on nature to survive, why are the laws not in place to prevent her destruction or protect her apex predators? I hope your children do grow up to be criminals, because if I was not fighting for the species I love, our government would be silently killing them with no one seeing it. Through breaking the unjust laws, we have gained entry into our future by protecting our greatest inheritance: the natural world. Animals will die, but they will not die in vain if we are willing to break the laws for them. In this case, obstruction was justice.

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<sup>24</sup> See *Obstruction is Justice* (a film by Madison Stewart, 2014).

<sup>25</sup> Courtney Bembridge and David Weber, 'WA shark cull: 172 caught on drum lines off popular beaches', ABC News (online), 7 May 2014 <<http://www.abc.net.au/news/2014-05-07/shark-catch-and-kill-data-released/5435682>>.

<sup>26</sup> Government of Western Australia, 'Western Australian Shark Hazard Mitigation Drum Line Program 2014-17: Response to Submissions on Public Environmental Review' (Assessment Paper EPA Assessment No. 2005, August 2014) 23.

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