

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 540

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simmons and others

SUBJECT: Sharks

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 540 provides enhanced penalties for the possession of separated shark fins on Florida waters by a commercial harvester. Penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms.

II. Present Situation:

Shark finning is the practice of removing and retaining shark fins at sea while the remainder of the living shark is discarded and left to die in the ocean. A landed shark is a harvested shark that has been brought to shore.

Sharks are managed in Florida waters by the Fish and Wildlife Commission (FWC).¹ The practice of finning in state waters was prohibited in 1992.² Removing fins from sharks harvested in state and federal waters once a shark has been landed is allowed. Commercial and recreational fishermen fishing in state waters are limited to one shark per person, per day, and may not exceed two sharks per vessel, per day, when two or more persons are onboard.³

¹ See Rule 68B-44, F.A.C.

² See Rule 68B-44.004, F.A.C.

³ Rule 68B-44.003, F.A.C.

Shark Finning in State and Federal Waters

Violations of shark finning rules are Level Two offenses.⁴ Penalties are as follows:

- A person who commits a Level Two violation, but who has not been convicted of a Level Two or higher violation within the past three years, commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.
- A person who commits a Level Two violation within three years after a previous conviction for a Level Two or higher violation commits a first degree misdemeanor, punishable by a minimum mandatory fine of \$250, not to exceed \$1,000, and up to one year in jail.
- A person who commits a Level Two violation within five years after two previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of \$500, up to \$1,000, up to one year in jail, and suspension of any recreational license or permit for one year.
- A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of \$750, up to \$1,000, up to one year in jail, and suspension of any recreational license or permit for three years.⁵

Federal law prohibits the practice of finning in federal waters.⁶ A shark must be landed with all of its fins attached,⁷ and the total weight of any fins from landed sharks must be five percent or less of the total weight of the landed shark carcasses.⁸ A person who violates these laws may be subject to a civil penalty of up to \$100,000 for each violation, as determined by the U.S. Secretary of Commerce.⁹

State and Federal Regulations

Florida imposes gear restrictions that limit fishermen to harvesting sharks by hook and line only. The state prohibits the harvest, possession, landing, purchase, sale, or exchange of 25 shark species in state waters, and further prohibits the landing and sale of those species if harvested from state waters.¹⁰

Commercial shark fishermen operating in state and federal waters are required to hold a federal shark permit. The permits are not “open access.” The permit must be transferred from someone who currently holds a permit and chooses to sell that permit and leave the fishery. No new permits are being issued.¹¹ There are currently a total of 219 permits issued for the Atlantic and Gulf of Mexico fisheries, and Florida residents hold 129 of them. New Jersey and North Carolina residents hold the next highest number with 22 and 18 permits, respectively.¹²

⁴ See s. 379.401(2)(a), F.S.

⁵ See ss. 379.401(2), 775.082, and 775.083, F.S.

⁶ 16 U.S.C. s. 1857(1)(P) (2014).

⁷ 16 U.S.C. s. 1857(1)(P)(iv) (2014).

⁸ 16 U.S.C. s. 1857(1) (2014).

⁹ 16 U.S.C. s. 1858 (2014).

¹⁰ FWC, *Shark Regulations*, <http://myfwc.com/fishing/saltwater/recreational/sharks/> (last visited Mar. 19, 2014).

¹¹ 50 C.F.R. s. 635.4 (2013).

¹² FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).

The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) manages commercial shark fishing with a series of quotas that apply throughout U.S. Atlantic and Gulf waters. Florida's commercial fishermen are subject to those quotas. Shark quotas are assigned by species groups and some quotas are linked to others. For example, if a quota for one species group is reached, all the species groups linked to that one will also close. Quotas are also adjusted from year to year to account for any quotas that were exceeded in the previous year. There are separate quotas for sharks harvested in Gulf and Atlantic waters.¹³ Current quotas are available from the NOAA Highly Migratory Species Division.¹⁴

Shark Fishery Statistics

Given the limited commercial bag limits for sharks in state waters, Florida's shark fishery operates almost exclusively in federal waters.¹⁵

From 2010 to 2012, total shark landings in Florida declined from 998,015 to 851,919 pounds. The weight of fins sold rose slightly from 2010 to 2011 (from 28,662 pounds to 28,926 pounds), then fell to 18,422 pounds in 2012.¹⁶

Total shark landings in the Atlantic and the Gulf of Mexico have risen from 2010 to 2012 from 2,276,702 pounds in 2010 to 2,427,182 pounds in 2012. Meanwhile, the weight of fins sold separately from the meat following landings in the Atlantic Ocean or the Gulf of Mexico has dropped each year over that same time period from 65,970 pounds in 2010 to 56,063 pounds in 2012.¹⁷

The average price of shark meat paid to Florida fishermen from 2010 to 2012 was about \$0.46 per pound. In contrast, from 2010 to 2012, the average price for shark fins ranged from \$18.76 to \$21.37 per pound.¹⁸

Sale of harvested sharks to Florida's wholesale dealers and fish houses over the last three years resulted in an estimated annual income to Florida's commercial shark fishermen ranging from \$393,556 to \$466,063, with additional estimated values of \$345,563 to \$618,279 generated by fishermen from the sale of shark fins during that same time period.¹⁹

From 2010 to 2012, 16 wholesale fish dealers sold shark fins in Florida, with seven dealers accounting for 91.8 percent of the fins that were sold. During the same time period, 97

¹³ *Id.* at 3.

¹⁴ NOAA Fisheries, *Atlantic Highly Migratory Species: Sharks: Landings Updates* (Feb. 20, 2014), http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/sharks.htm (Updated reports are available by clicking the "Landings Updates" tab near the top of the webpage) (last visited Mar. 19, 2014). NOAA Fisheries publishes reported shark landings on a monthly basis. The landings reports list updated total landings for the year and yearly quotas for various shark species in Atlantic and Gulf waters.

¹⁵ FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

commercial fishermen sold shark fins harvested from state and federal waters. Of those fishermen, 24 harvesters accounted for 90.2 percent of the fins.²⁰

According to the NOAA Fisheries trade database and the United Nations Food and Agriculture Organization, the United States as a whole accounts for less than one percent of the world's shark fin imports and exports.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 379.407, F.S., providing enhanced penalties for commercial fishermen who are in possession of separated shark fins on Florida waters. Possession of separated shark fins on Florida waters is classified as a major violation.

Commercial fishermen found to be in violation of this ban on possession of separated shark fins on Florida waters are subject to the following penalties:

- **First violation** – Second degree misdemeanor and the possibility of license suspension for up to 30 days.²²
- **Second violation** – First degree misdemeanor and the possibility of license suspension for up to 90 days.²³
- **Third violation** – First degree misdemeanor with a six-month mandatory minimum prison term.²⁴ The violator may be assessed a civil penalty of up to \$2,500 and the possibility of license suspension for up to six months.
- **Third violation within one year of second violation** – Third degree felony with a one-year mandatory minimum prison term.²⁵ The violator is also assessed a civil penalty of \$5,000 and all license privileges are permanently revoked.
- **Fourth or subsequent violation** – Third degree felony with a one-year mandatory minimum prison term.²⁶ The violator is assessed a civil penalty of \$5,000 and all license privileges are permanently revoked.

Section 2 amends s. 379.401, F.S., making conforming changes.

²⁰ *Id.*

²¹ *Id.*

²² Currently, this act would be a Level Two violation, punishable by up to 60 days in county jail. Under the bill this act could be punished by up to 90 days in county jail, the maximum penalty for a second degree misdemeanor. Section 775.082, F.S.

²³ Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had a prior Level Two or higher conviction that occurred within 3 years of the commission of the current Level Two violation. This bill dispenses with the 3-year time window.

²⁴ Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had two prior Level Two or higher convictions that occurred within 5 years of the commission of the current Level Two violation. This bill dispenses with the 5-year time window. Further, the bill provides for a 6-month mandatory minimum term, which is not available under current law.

²⁵ Current law does not provide for either a third degree felony or a 1-year mandatory minimum term. Section 921.0024(2), F.S., provides that any sentence to state prison must exceed 1 year. Therefore, if the court only imposes the 1-year mandatory minimum term, this term would be served in county jail. A third degree felony is punishable by to 5 years in state prison, a fine of up to \$5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is a non-forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public.

Id.

²⁶ *Id.*

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A commercial fisherman convicted of possessing separated shark fins while on Florida waters will be subject to increased penalties.

C. Government Sector Impact:

Because the bill increases monetary penalties for possession of separated shark fins on Florida waters, and those funds are deposited into the Marine Resources Conservation Trust Fund, there could be a small increase in the amount of money deposited into the trust fund. The FWC Division of Law Enforcement has issued eight citations for shark finning and seven citations for failing to land a shark in whole condition, which may or may not have included finning, since January 2009, so the effect will likely be minimal.²⁷

Mandatory minimum terms provided by the bill could have an indeterminate impact on county jails.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, a preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have an insignificant prison bed impact.

²⁷ *Supra* note 15, at 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Legislation prohibiting the possession, sale, and distribution of shark fins was passed by several states in recent years. Hawaii was the first state to pass such a ban in 2010. Washington, Oregon, Illinois, and California have implemented similar laws. New York's ban is scheduled to go into effect July 1, 2014. Maryland and Delaware also passed laws prohibiting the sale of shark fins (with the exception of spiny dogfish and smoothhound in Delaware), but allow fishermen to possess them for personal use. Other states have considered, but not passed, similar legislation.²⁸ California's shark fin ban has been challenged in court. The lawsuit contends the ban would have a negative effect on business interests, and that it is unconstitutional because it has a disproportionate effect on Chinese-Americans.²⁹

VIII. Statutes Affected:

This bill substantially amends section 379.407 and conforms a cross reference in section 379.401 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 6, 2014:

The committee substitute removes provisions creating s. 379.2427, F.S., which made it illegal to possess, sell, offer for sale, trade, purchase, offer to purchase, ship for the purpose of sale, barter, exchange or otherwise distribute shark fins, with limited exceptions. The CS also deletes penalties associated with violations of those prohibited activities.

The CS amends s. 379.407, F.S., adding enhanced penalties for commercial fishermen who are convicted of possessing separated shark fins on Florida waters. The penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms. Lastly, the CS contains conforming changes.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁸ *Id.*

²⁹ See *Chinatown Neighborhood Ass'n v. Brown*, 2013 WL 60910, (N.D.Cal. 2013). See also *Chinatown Neighborhood Ass'n v. Brown*, 539 Fed.Appx. 761, (2013) (denying injunctive relief).