

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 Environmental Preservation and Conservation

BILL: SB 540

INTRODUCER: Senator Simmons and others

SUBJECT: Sharks

DATE: March 4, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Hinton | Uchino | EP | Pre-meeting |
| 2. | | | CJ | |
| 3. | | | AGG | |
| 4. | | | AP | |

I. Summary:

SB 540 prohibits the possession, sale, trade, purchase, shipment, barter, exchange, or distribution of detached shark fins in Florida or on its territorial waters, with limited exceptions. It defines shark fins and provides penalties for violations of the provisions of the bill. It directs the Fish and Wildlife Conservation Commission (FWC) to destroy any shark fins seized in violation of this act and authorizes the FWC to adopt rules.

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 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

Shark Finning in State and Federal Waters

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

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.

⁴ See s. 379.401(2)(a), F.S.

- 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

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

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. 4, 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).

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 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

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. 4, 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).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

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

Shark Fin Legislation in Other States

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.²² 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.²³

III. Effect of Proposed Changes:

Section 1 creates s. 379.2427, F.S., addressing prohibited activities, penalties, and fines relating to shark fins.

The bill defines the terms "shark" and "shark fin." It prohibits a person from possessing, selling, offering for sale, trading, purchasing, offering to purchase, shipping for the purpose of sale, bartering, exchanging, or otherwise distributing a shark fin in Florida or on Florida waters.

The bill provides that a violation will result in a second degree misdemeanor, seizure and destruction of the shark fin, an administrative fine of at least \$5,000, but not more than \$15,000, and the possible assessment of administrative fees and attorney fees and costs.

The bill exempts:

- a restaurant that possesses, sells, or offers for sale a shark fin for the purpose of consumption on the premises if the restaurant possessed the shark fin before July 1, 2014;
- a person who detaches a shark fin or tail from a lawfully landed shark during the ordinary course of preparing the shark's body or body parts, if the fin is disposed of immediately and not sold, exchanged, or distributed;
- a person or entity that has a valid scientific permit for the possession of a shark fin for bona fide research or educational purposes; or
- the possession or transportation of a shark fin through the state for a purpose other than sale, if it is taken or caught outside the state and transported from a point outside the state by common carrier, without being unloaded in Florida, to a point of delivery outside the state.

The bill authorizes the FWC to adopt rules.

²¹ *Id.*

²² *Id.*

²³ 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).

Section 2 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:

There may be a loss in tax revenue generated from the sale of shark fins and shark fin products at restaurants and retail establishments, as well as tax revenue from fuel sales and other shark fishing related expenditures. Revenues to city governments can also be affected if any of the current commercial shark fishing permit holders moor their vessels at city-owned marinas.

B. Private Sector Impact:

According to the FWC, the bill will likely reduce shark landings, but this may come at the expense of limiting financial opportunities for current and future Florida shark fishermen, regardless of the population status of the various shark species.

The bill has a significant negative fiscal impact on Florida's commercial shark fishermen who harvest sharks in federal waters adjacent to state waters and who currently land sharks caught legally in Florida. Shark fins are, by a large margin, the most valuable parts of the shark. Prohibiting the sale of fins will likely impact fishermen's revenues. It is likely there will also be a negative financial impact on wholesale fish dealers, restaurants, and retail establishments that sell shark fin products, as well as to other industry related businesses, including marinas, tackle suppliers, vessel mechanics, and bait fishermen who supply fishermen with the resources to fish for sharks.

The bill will likely cause a shift in commercial shark fishing from Florida to other states where the sale of fins from legally landed sharks is permitted. Florida shark fishermen who have the ability to transport their catch and land it in a different state will likely have higher costs for fuel and other expenses. Given that Florida fishermen hold the majority of federal shark fishing permits, an economic shift out of the state would likely impact businesses that depend partially on expenditures made by shark fishermen.

C. Government Sector Impact:

The bill is unclear as to what constitutes an administrative fee. If these fees are for court costs, those costs are typically directed to a local fine and forfeiture fund pursuant to s. 142.01, F.S. If these fees are to be directed to the FWC, amounts for marine violations are typically deposited into the Marine Resources Conservation Trust Fund. According to the FWC, clarifying language that specifies where the funds are deposited may be helpful to determine the impact.

VI. Technical Deficiencies:

There are several ambiguities in the bill. There is no guidance for assessing administrative fees and fines, and the bill provides no guidance as to where those funds should be deposited. It is unclear what constitutes a single violation, whether it is one violation per trip, regardless of the number of illegally harvested fins, or one violation per fin. It is also unclear whether possession of one fin or multiple fins constitutes a single or multiple violations. The bill provides rulemaking authority to the FWC but does not require it, so ambiguities could be left unaddressed.

VII. Related Issues:

As written, the bill directs that shark fins transported through Florida from outside the state to a point outside the state are subject to an exemption from the provisions of the bill unless the fins are being transferred through Florida for the purpose of sale. This could become the subject of litigation.

VIII. Statutes Affected:

This bill creates section 379.2427 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.