

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: CS/SB 884

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hutson

SUBJECT: Sharks

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.			AEN	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 884 codifies the prohibition against shark finning, which is established by the Florida Fish and Wildlife Conservation Commission (FWC) by rule and provides enhanced penalties for violations relating thereto.

II. Present Situation:

Pursuant to Article IV, s. 9 of the Florida Constitution, the Florida Fish and Wildlife Conservation Commission exercises the regulatory and executive powers with respect to marine life, including sharks.¹ Florida's shark population is diverse and includes species that range in size from only a few feet to more than 40 feet in total length.² Most species of sharks have slow rates of growth and late age-at-maturity, which limits their ability to withstand fishing pressure and have a longer recovery time in response to overfishing.³

Global shark catches have tripled since 1950 and reached an all-time high of 888,000 tons in 2000.⁴ Because overfishing in some areas of the world's oceans has led to concerns for the

¹ FLA. CONST. art. IV, s. 9.

² University of Florida's Institute of Food and Agricultural Sciences (IFAS), *Common Sharks in Florida*, SGEF-203 (Reviewed Nov. 2016), available at <http://edis.ifas.ufl.edu/pdf/files/SG/SG06200.pdf> (last visited Mar. 9, 2017).

³ United Nations Food and Agriculture Organization of the United Nations (FAO), *International Plan of Action for Conservation and Management of Sharks*, <http://www.fao.org/ipoa-sharks/background/sharks/en/> (last visited Mar. 9, 2017).

⁴ *Id.*

populations of some shark species, adequate conservation and management of shark populations has become increasingly important on a global scale.⁵ In response to concerns about growing shark harvests internationally, many countries have banned shark fishing in their waters in favor of promoting tourism opportunities relating to sharks.⁶

Harvesting Sharks off Florida's Coast

Fishermen harvest sharks primarily for their meat, fins, skin, cartilage, and liver.⁷ Meat from some species of shark is an important dietary component in many developing countries and shark fins, the most valuable of shark products, are used to make traditional shark fin soup, which is a delicacy in the Chinese culture.⁸ However, despite the high value of some shark products, sharks have been historically considered a low-value fish and mostly seen as a by-product of other more profitable fisheries, such as tuna.⁹

Within Florida's seaward boundary, the use of hook and line gear is the only lawful means to harvest sharks in or from the waters of the state.¹⁰ A person may not harvest in or from the waters of the state more than one shark per day.¹¹ The possession of more than two sharks harvested from the state waters aboard any vessel with two or more persons is prohibited.¹² While certain species of shark, including any part of these species, are prohibited under state law from being harvested, possessed, landed, purchased, sold, or exchanged in the state, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters.¹³

Due to Florida's strict regulations, the state's commercial shark fishery occurs mainly in federal waters off Florida's coast.¹⁴ The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) manages commercial shark fishing with a series of quotas that apply throughout the Atlantic Ocean and Gulf of Mexico waters. Florida's commercial fishermen are subject to these quotas. Shark quotas are assigned by species groups and some quotas are linked to other groups. 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

⁵ *Id.*; see Boris Worm, Brendal Davis, Lisa Kettner, Christine A. Ward-Paige, Demian Chapman, Michael R. Heithaus, Steven Kessel, and Samuel H. Gruber, *Global catches, exploitation rates, and rebuilding options for sharks*, Marine Policy 40 (2013) 194-204, available at <http://www.sciencedirect.com/science/article/pii/S0308597X13000055> (last visited Mar. 9, 2017).

⁶ U.S. Department of Commerce National Oceanic and Atmospheric Administration (NOAA), *Shark Finning Report to Congress Pursuant to the Shark Finning Prohibition Act, 2* (2015) available at http://www.nmfs.noaa.gov/sfa/laws_policies/sca/documents/shark-finning-report-2015.pdf (last visited Mar. 10, 2017).

⁷ *Id.*

⁸ *Id.*

⁹ Frans Teutscher, FAO, *Sharks (Chondrichthyes)*, <http://www.fao.org/docrep/006/Y5261E/y5261e08.htm> (last visited Mar. 9, 2017).

¹⁰ Fla. Admin. Code R. 68B-44.003; Florida's seaward boundary extends 9 nautical miles in the Gulf of Mexico and 3 nautical miles in the Atlantic.

¹¹ *Id.*

¹² *Id.*

¹³ Fla. Admin. Code R. 68B-44.008.

¹⁴ See Florida Fish and Wildlife Conservation Commission (FWC), *Sharks and Shark Fins* (Oct. 10, 2016) (on file with the Senate Environmental Preservation and Conservation Committee).

year to year to account for any quotas that were exceeded in the previous year. There are separate quotas for sharks harvested in the Atlantic Ocean and Gulf of Mexico waters.¹⁵

To commercially harvest sharks, an individual must possess a federal annual vessel permit.¹⁶ The commercial harvest season technically spans the entire year, but, as quotas are met, the Marine Fisheries Commission closes waters to harvesting.¹⁷ A commercial harvester may only sell sharks, or any parts thereof, to a holder of a valid federal Atlantic shark dealer permit.¹⁸ Commercial harvesting permits are not “open access,” meaning 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.¹⁹ As of 2014, there were a total of 219 permits issued for the Atlantic Ocean and Gulf of Mexico fisheries, and Florida residents held 129 of them. New Jersey and North Carolina residents held the next highest number with 22 and 18 permits, respectively.²⁰

Shark Finning

Shark finning is the practice of removing and retaining shark fins at sea while discarding the remainder of the shark’s body, often while the shark is still alive, into the waters. In Florida, the practice of shark finning was prohibited in 1992 by requiring sharks harvested to be landed in a whole condition.²¹ Violations of shark finning rules are Level Two offenses, which are second degree misdemeanors, punishable by up to 60 days in jail and up to a \$500 fine.²²

In the United States, shark finning was prohibited in 2000.²³ In 2010, the Shark Conservation Act strengthened the prohibition by improving the ability to enforce the shark finning prohibition by making it unlawful to:

- Remove any of the fins of a shark, including the tail, at sea;
- Have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;
- Transfer any such fin from one vessel to another vessel at sea; or
- Land any such fin that is not naturally attached to the corresponding carcass or land any shark carcass without such fins naturally attached.²⁴

A person who violates these federal 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.²⁵

¹⁵ See NOAA Fisheries, *Shark Landings Updates*, <http://www.nmfs.noaa.gov/sfa/hms/species/sharks/Landings/index.html>, for a current list of quotas. 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.

¹⁶ Fla. Admin. Code R. 68B-44.005.

¹⁷ Fla. Admin. Code R. 68B-44.006.

¹⁸ Fla. Admin. Code R. 68B-44.005.

¹⁹ 50 C.F.R. s. 635.4 (2013).

²⁰ FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

²¹ Fla. Admin. Code R. 68B-44.004.

²² See ss. 379.401(2)5., 775.082, and 775.083, F.S.; note that there are enhanced penalties for subsequent violations.

²³ 16 U.S.C. s. 1857 (2000).

²⁴ 16 U.S.C. s. 1826 (2010).

²⁵ 16 U.S.C. s. 1858 (2014).

While the practice of shark finning is prohibited in the United States, the trade in shark fins is legal. In 2011, the last year for which full global data is available, the total declared value of world exports was \$438.6 million for 17,154 tons imported.²⁶ The United States is both an importer and exporter of shark fins.²⁷ In 2011, the U.S. exported 38 tons of shark fins and imported 58 tons.²⁸ A number of the countries that the U.S. imports shark fins from do not have a ban in place, such as China, Indonesia, and Japan. In response, some U.S. states have passed laws to ban the trade of shark fins, such states include Hawaii, California, Oregon, Washington, Illinois, Maryland, Delaware, New York, Massachusetts, and Texas.²⁹

California's ban on trade in shark fins was challenged in federal court. On appeal, the plaintiffs alleged that the ban violated the Supremacy Clause under Art. VI of the U.S. Constitution and the Commerce Clause under Art. I, s. 8 of the U.S. Constitution.³⁰ The United States District Court held that states are authorized to regulate "on-land activities," as the Magnuson-Stevens Fishery Conservation and Management Act was enacted as a federal-state partnership and expressly preserved the jurisdiction of the states over fishery management within their boundaries.³¹ Additionally, the court held that the ban did not violate the Commerce Clause as it does not "interfere with activity that is inherently national or that requires a uniform system of regulation," and its purpose is to "conserve state resources, prevent animal cruelty, and protect wildlife and public health," purposes which are matters of local concern.³²

III. Effect of Proposed Changes:

CS/SB 884 defines the term:

- "Land" to mean "the physical act of bringing a harvested shark organism, or any part thereof, ashore;"
- "Shark" to mean "any of the species from the superorder *Selachimorpha*;"
- "Shark fin" to mean "the detached fin of a shark, including the caudal or tail fin, or any portion thereof."

The bill codifies the prohibition against shark finning, which is established by the Florida Fish and Wildlife Conservation Commission (FWC) by rule.³³ The bill prohibits the possession of a shark fin in or on the waters of this state which has been separated from a shark or the landing of a separated shark fin in this state, unless:

- Authorized by commission rule; or
- Such fin has been lawfully obtained on land, prepared by taxidermy, and is possessed for the purposes of display.

²⁶ FAO, *State of the global market for shark products*, 1 (2015), available at <http://www.fao.org/3/a-i4795e.pdf> (last visited Mar. 10, 2017).

²⁷ *Id.* at 85.

²⁸ *Id.* at 19, 21.

²⁹ See HAW. REV. STAT. § 188-40.7; CAL. FISH & GAME § 2021; OR. REV. STAT. § 509.160; WASH. REV. CODE § 77.15.770; 515 ILL. COMP. STAT. 5/5-30; MD CODE ANN., NAT. RES. § 4-747; DEL. CODE TIT. 7, § 928A; N.Y. ENVTL. CONSERV. LAW § 13-0338; MASS. GEN. LAWS ch. 130, § 106; and TEX. PARKS & WILD. CODE § 66.2161.

³⁰ *Chinatown Neighborhood Ass'n. vs. Harris*, 794 F.3d 1136 (9th Cir. 2015), *cert. denied*, 136 S.Ct. 2448 (2016).

³¹ *Id.*

³² *Id.*

³³ See Fla. Admin. Code R. 68B-44.004.

The bill subjects commercial harvesters to the following penalties:

- For a first violation, a misdemeanor of the second degree, punishable by up to 60 days in jail or a \$500 fine. In addition, the commission shall assess an administrative fine of \$5,000 and suspend all of the harvester's saltwater license privileges under this chapter for 180 days.
- For a second violation, a misdemeanor of the second degree, punishable by up to 60 days in jail or a \$500 fine. In addition, the commission shall assess an administrative fine of \$10,000 and suspend all of the harvester's saltwater license privileges under this chapter for 180 days.
- For a third and any subsequent violations, a misdemeanor of the first degree, punishable by up to one year in jail or a \$1,000 fine. In addition, the commission shall assess an administrative fine of \$10,000 and permanently revoke all of the harvester's saltwater license privileges under this chapter.

The bill clarifies that while a commercial harvester's license privileges are under suspension or revocation, a person may not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to this chapter; or engage in any other activity requiring a license, permit, or certificate issued pursuant to this chapter.

The bill subjects individuals who are not commercial harvesters to the following penalties:

- For a first violation, a misdemeanor of the second degree, punishable by up to 60 days in jail or a \$500 fine. In addition, the commission shall assess an administrative fine of up to \$5,000.
- For a second violation, a misdemeanor of the first degree, punishable by up to one year in jail or a \$1,000 fine. In addition, the commission shall assess an administrative fine of up to \$10,000.
- For a third and any subsequent violations, a misdemeanor of the first degree, punishable by up to one year in jail or a \$1,000 fine. In addition, the commission shall assess an administrative fine of no less than \$5,000, but not more than \$10,000.

The bill takes effect October 1, 2017.

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:

None.

C. Government Sector Impact:

The bill may have a positive, indeterminate fiscal impact to the state due to revenues derived from the enhanced penalties relating to unlawfully possessing a separated shark fin.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 379.2426 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 14, 2016:

The CS removes the provisions of the bill relating to the prohibition on possession or trade in shark fins and, instead, codifies the current prohibition on shark finning and provides enhanced penalties relating thereto.

B. Amendments:

None.