

COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

A BILL to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

United States Senate Bill S. 850 – Shark Conservation Act of 2009

Sponsor: Kerry

Cosponsors: Cantwell, Merkley, Sanders, Whitehouse

THE LEGISLATION IS APPROVED

1. Summary of the proposed law and existing law

Senate Bill 850 amends the High Seas Driftnet Fishing Moratorium Protection Act,¹ which prohibits the U.S. from entering into any international agreement relating to fisheries, marine resources, trade in fish or fish products, or the use of the high seas, if that agreement would prevent full implementation of the global moratorium on large-scale driftnet fishing, as embodied by a United Nations resolution.² The amended bill requires the Secretary of Commerce to include a nation in the biennial report on international compliance if that nation's fishing vessels "are or have been engaged in fishing activities that target or incidentally catch sharks," where the nation has not adopted a shark conservation program that is comparable to that of the United States (taking into account different conditions), "including measures to prohibit removal [of] any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea."³

This bill also amends the Magnuson-Stevens Fishery Conservation and Management Act,⁴ which provides for the management of fish and other species in the Exclusive Economic Zone ("EEZ") of the U.S., and requires the implementation of "national fishery conservation and management standards."⁵ The bill would make it a prohibited act to: "(1) remove any shark fin (including the tail) at sea; (2) have a fin aboard a fishing vessel unless the fin is naturally attached to the carcass; (3) transfer a fin from one vessel to another or receive a fin unless it is naturally attached; or (4) land a fin that is not naturally attached to a carcass or land a carcass without fins naturally attached."⁶ In addition, the bill revises the current rebuttable presumption

¹ 16 U.S.C. §§ 1826d – 1826g (2009).

² *Summary of S. 2569: High Seas Driftnet Fishing Moratorium Protection Act*, CONGRESSIONAL RESEARCH SERVICE, available at <http://www.govtrack.us/congress/bill.xpd?bill=s103-2569&tab=summary> (last visited July 25, 2009).

³ *Summary of S. 850*, THOMAS, The Library of Congress, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN00850:@@D&summ2=m&> (last visited June 14, 2009).

⁴ 16 U.S.C. §§ 1801 *et seq.* (2009).

⁵ *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service, Fishery Conservation and Management Act of 1976*, available at <http://www.fws.gov/laws/lawsdigest/fishcon.html> (last visited July 25, 2009).

⁶ *Summary of S. 850*, *supra* note 3.

provision concerning shark fins on fishing vessels, so that there is a rebuttable presumption that, “if any shark fin (including the tail) is aboard a non-fishing vessel without being naturally attached, the fin was transferred from a fishing vessel in violation.”⁷

The Shark Finning Prohibition Act of 2000 banned shark finning in the United States, but enforcement of the ban is complex.⁸ In addition, although the U.S. Department of Commerce implemented regulations in 2008 requiring that sharks be landed with fins attached to their bodies, the regulations only apply to the U.S. Atlantic Ocean and Gulf of Mexico.⁹

The House of Representatives passed its version of the Shark Conservation Act, H.R. 81, in March 2009.¹⁰

2. Justification for the proposed law

According to a 2006 estimate, demand for shark fin meat has led to the killing of about 38 million sharks a year.¹¹ Shark fin meat is primarily used to make shark fin soup, for which there has been rising demand in recent years.¹² In fact, a recent study found that hammerhead sharks are threatened with extinction, in part due to “[g]rowing appetites for shark meat and for the Asian delicacy shark-fin soup.”¹³

The process of shark finning involves cutting off the shark’s fin and tossing the live shark back into the ocean; at that point, the shark can no longer swim properly, and either suffocates or is killed by predators.¹⁴ Thus, shark finning is clearly objectionable because of the inhumane method by which shark fins are obtained. In addition, regulation of shark finning is desirable because of its deleterious effect on the ocean ecosystem, which can include the decline of other fish populations.¹⁵

Currently, there are several gaps in the U.S. laws restricting shark finning. Specifically, the law does not prohibit a vessel from transporting fins that were obtained illegally if the fins were not caught aboard that vessel. The proposed bill would close that loophole.¹⁶ In addition, the bill extends to the U.S. Pacific Ocean the requirement that sharks be landed with fins

⁷ *Id.*

⁸ *Bill to Protect Sharks Introduced in Senate*, available at www.hsus.org/press_and_publications/press_releases/bill_to_protect_sharks_introduced_in_senate_042309.html (last visited June 11, 2009).

⁹ 50 C.F.R. § 600.1204(j) (2009) (“No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the fins being naturally attached to the corresponding carcass(es), although sharks may be dressed at sea.”); *Bill to Protect Sharks Introduced in Senate*, *supra* note 8.

¹⁰ *H.R. 81 – Major Actions*, THOMAS, The Library of Congress, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR00081:@@R> (last visited July 16, 2009).

¹¹ Nicholas Bakalar, *38 Million Sharks Killed for Fins Annually, Experts Estimate*, NAT’L GEOGRAPHIC NEWS, Oct. 12, 2006.

¹² *See id.*

¹³ Frank Pope, *Hammerhead Shark Faces Extinction Over Hunger for Shark Fin Soup*, TIMES ONLINE, June 25, 2009, available at <http://www.timesonline.co.uk/tol/news/environment/article6571490.ece> (last visited July 16, 2009).

¹⁴ Ralph Jennings & Cheong Kah Shin, *Young Asians Saying No to Shark Fin Soup*, CALGARY HERALD, Apr. 12, 2009.

¹⁵ *Id.* (“Sharks are apex predators that dominate many oceanic food webs. Far from depleting fish stocks that could otherwise feed humans, their presence ensures the balance that keeps ecosystems productive.”); *Shark Finning Mystery*, GREENPEACE NEWS, Oct. 4, 2006, available at <http://www.greenpeace.org/international/news/shark-fin-mystery> (last visited July 25, 2009).

¹⁶ Shark Conservation Act of 2009, S. 850, 111th Cong. 1st Sess. (2009); *Bill to Protect Sharks Introduced in Senate*, *supra* note 8.

attached to their bodies.¹⁷ Finally, the bill creates a rebuttable presumption that a shark fin found aboard a non-fishing vessel, where the fin is not attached to the shark carcass, was transferred in violation of the statute, and that “if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation” of this statute.¹⁸

3. Summary

The bill will close the loophole that currently allows transport of fins that were illegally obtained as long as the fins were not obtained aboard that vessel. It will also correct the current shortcomings in the application of the finning ban to the U.S. Pacific Ocean. Both of these components will strengthen the ban on shark finning and are necessary to effective enforcement of the ban.

¹⁷ Shark Conservation Act of 2009, *supra* note 16; *Bill to Protect Sharks Introduced in Senate*, *supra* note 8.

¹⁸ Shark Conservation Act of 2009, *supra* note 16.