

ANIMAL LAW COMMITTEE

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Public Comments Processing Attn: NOAA-NMFS-2014-0100 Margo Schulze-Haugen, Division Chief NMFS/SF1 National Marine Fisheries Service, SSMC3 1315 East-West Highway Silver Spring, MD 20910

RE: Docket Number NOAA-NMFS-2014-0100

Dear Ms. Schulze-Haugen,

The Committee on Animal Law of the New York City Bar Association¹ submits this comment on the rule proposed by the National Marine Fisheries Service ("NMFS"), National Oceanic and Atmospheric Administration ("NOAA") and published in 79 Federal Register 46217-46233 (Aug. 7, 2014).²

We limit our comment to that portion of the proposed rule that would implement the smooth dogfish shark (*Mustelus canis*) exemption to the Shark Conservation Act of 2010 ("SCA"), thereby permitting the practice of shark finning with respect to this species. The NMFS has submitted that the exemption is justified by the adverse socioeconomic impacts of the fins attached requirement "since federal management of this species would establish restrictions in what is now a largely unregulated fishery."³

¹ The NYCBA is an independent non-governmental organization of more than 24,000 lawyers, law professors and government officials, predominantly from New York City and also from throughout the United States and fifty other countries. The Animal Law Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local anti-cruelty legislation, including legislation concerning the sale of shark fins. *See* Report on NYS A.1769-A/S.1711-A, http://www2.nycbar.org/pdf/report/uploads/5_20072358Prohibitingthesaletradeorpossessionofsharkfins.p

² 79 FR 46217-46233 (pub. August 7, 2014) (last visited November 6, 2014).

³ Proposed Rule, Section 4.1.2.

We respectfully submit that NMFS's articulated justification for implementing the exemption fails to properly consider the animal welfare and environmental impacts of the exemption. We oppose the practice of shark finning as inhumane and inconsistent with shark conservation practices and therefore oppose the implementation of the smooth dogfish shark exemption to the SCA. We note that currently eight States (New York, California, Hawaii, Illinois, Maryland, Delaware, Oregon and Washington) have shark fin bans in place to address the animal welfare and environmental concerns associated with this practice.⁴

The Practice of Shark Finning is Cruel to Animals.

Shark finning is inhumane and wasteful. The process of shark finning involves cutting off the shark's fin and tail, often while the shark is alive, and then tossing the live shark into the ocean.⁵ The shark can no longer swim or force water through her gills for oxygen, and may starve to death, be slowly eaten by predators or suffocate and drown, suffering a slow and painful death. All sharks, regardless of species, deserve protection from this inhumane practice.

Sharks Finning is Inconsistent with Shark Conservation and the SCA.

Sharks are vital to maintaining the health of the entire marine ecosystem because they are top-level predators; when their population is decimated, the whole ocean suffers. Each year, approximately 100 million sharks are killed primarily for their fins. 8 As their numbers continue to be decimated, many species are threatened with extinction. Sharks live a long time, take seven to twelve years to reach sexual maturity, and have very low reproductive potential. 10 Nearly 50 per cent of the shark species assessed by scientists for the International Union for Conservation of Nature are threatened or near-threatened with extinction. ¹¹ The smooth dogfish

⁴ Philip Ross, Shark Fin Ban New York: Gov. Cuomo Signs Law Prohibiting "Inhumane" Shark Fin Trade, INTERNATIONAL SCIENCE TIMES, (July 27, 2013), http://www.isciencetimes.com/articles/5739/20130727/shark-fin-ban-new-york-governor-cuomo.htm (Last visited November 6, 2014).

⁵ See Humane Society International Web page, Shark Finning, http://www.hsi.org/issues/shark_finning (Last visited November 12, 2014). Animal Welfare Institute Web page, Shark Finning, https://awionline.org/content/shark-finning (Last visited November 8, 2010).

⁶ Fish are capable of feeling pain. See, e.g., L.U. Sneddon, et al, Do fish have nociceptors: evidence for the evolution of a vertebrate sensory system, 270 PROC ROYAL SOCY LONDON B: BIOLOGICAL SCI. 1115, 1115-21 (2003), http://www.lpda.pt/vegetarianismo/FishesPain.pdf (last visited Nov. 9, 2014), cited in Taimie Bryant, Animals Unmodified: Defining Animals/Defining Human Obligations to Animals, U. CHI, LEGAL FORUM 137, n.80 (2006).

⁷ National Oceanic and Atmospheric Administration Web page, Ocean as Lab: Shark Finning, video of Mahmood Shivil, Ph.D., Director of the Guy Harvey Research Institute, Nova Southeastern University, http://oceantoday.noaa.gov/oceanasalab sharkfinning/. (Last visited November 11, 2014).

⁸ The Pew Charitable Trusts Web page, Pew Environment Group, Global Shark Conservation, http://www.pewtrusts.org/en/projects/global-shark-conservation (Last visited November 11, 2014).

⁹ Sharks are particularly vulnerable to overfishing. International Union for Conservation of Nature Web Third Sharks Threatened of Ocean with Extinction (June 25, 2009), http://www.iucn.org/?3362/Third-of-open-ocean-sharks-threatened-with-extinction. (Last visited November 11, 2014).

¹⁰ *Id*.

¹¹ The Pew Charitable Trusts Web page, Pew Environment Group, Global Shark Conservation, op cit.

shark is nearly threatened, ¹² and therefore, as recognized by NMFS, smooth dogfish sharks are in need of conservation. ¹³

The NMFS has recognized that the "ecological impacts of the fins attached requirement [for all species] were beneficial since this requirement would prevent shark finning at sea, would aid in the enforcement of shark finning regulations and greatly enhance species-specific data collection that would allow for more robust stock assessments and sustainable management of the fishery." Therefore, retaining the fins attached requirement for all shark species, including for the smooth dogfish shark, is the most environmentally sound approach.

The SCA, which was enacted with the purpose of enhancing shark conservation and protecting sharks from the inhumane practice of shark finning,¹⁵ generally prohibits shark finning and shark fin possession.¹⁶ Shark finning is inconsistent with conservation objectives for any species of shark. Allowing the inhumane and wasteful practice of shark finning to be carried out on the smooth dogfish shark will put this species at risk. We also note that, due to the difficulty in distinguishing between different species of smoothhound sharks, permitting the practice of shark finning with respect to the smooth dogfish shark may inadvertently expose other shark species to the inhumane and environmentally unsound practice of shark finning.

For the foregoing reasons, we oppose implementation of the smooth dogfish shark exemption to the SCA.

Sincerely,

Christine Mott

CNAS

Chair, Committee on Animal Law

¹² The IUCN Red List of Threatened Species: Mustelus canis, International Union for Conservation of Nature and Natural Resources, http://www.iucnredlist.org/details/39359/0.

¹³ Final Environmental Impact Statement (EIS) for Amendment 3, National Marine Fisheries Service, March 2010, http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/am3/am3 feis/executive summary.pdf. ¹⁴ Proposed Rule, Section 4.1.1.

¹⁵ 16 U.S.C. 1826i(1)(f) (directing the Secretary to "adopt shark conservation measures, 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").

¹⁶ 111 Pub. L. 348. 124 STAT. 3670 Jan. 4, 2011 (last revisited Nov. 9, 2014).