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REPORT ON LEGISLATION BY THE ANIMAL LAW COMMITTEE

H.R. 737 **Rep. Sablan**

AN ACT to prohibit the sale of shark fins, and for other purposes.

The Shark Fin Sales Elimination Act

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

I. SUMMARY OF THE PROPOSED LEGISLATION

The Shark Fin Sales Elimination Act ("Act")[1] prohibits any person(s) from possessing, offering for sale, selling or purchasing any shark fin or product containing any shark fin. Violations of the Act will be treated as prohibited by the Magnuson-Stevens Fishery Conservation Act (the "MSA")[2] and will result in penalties pursuant to the MSA.[3] The Act exempts persons who possess a shark fin that was lawfully taken consistent with a license or permit under specific circumstances.[4] The Act also exempts the possession, offering for sale, sale or purchase of raw fin or tail from smooth dogfish and spiny dogfish.

II. BACKGROUND

Sharks' fins are essential to their lives, allowing them to navigate through the waters by propelling and stabilizing them.[5] Yet some fishermen, placing a high monetary value on the fins, engage in "shark finning" — the practice of slicing off the live shark's fin while at sea and dumping the de-finned and bleeding shark back into the ocean.[6] The fins are typically eaten in shark fin soup (considered by some to be a delicacy) and otherwise taken as dietary

[1] H.R. 737, "Shark Fin Sales Elimination Act of 2019" (Jan. 23, 2019). The full text of the bill is available at https://www.congress.gov/116/bills/hr737/BILLS-116hr737ih.pdf. (All websites cited in this report were listed visited on February 14, 2019.)

[2] 16 U.S.C. § 1801, ch. 38, https://www.law.cornell.edu/uscode/text/16/chapter-38.

[3] 16 U.S.C. §§ 1857-58.

[4] H.R. 737, § 3.

[5] Melissa Cristina Márquez, *A Recent Win for Sharks against the Cruel Act of Shark Finning*, FORBES (Nov. 7, 2018), https://www.forbes.com/sites/melissacristinamarquez/2018/11/07/a-recent-win-for-sharks-against-the-cruel-act-of-shark-finning/.

[6] Caty Fairclough, *Shark Finning: Sharks Turned Prey*, Smithsonian Institution (Aug. 2013), https://ocean.si.edu/ocean-life/sharks-rays/shark-finning-sharks-turned-prey.

supplements.[7] Shark fin products have been touted as medicines and illegally marketed and promoted to treat and cure cancer and other health problems.[8]

Federal law prohibits shark finning, as well as possessing separated shark fins on a fishing vessel or transferring or landing such fins.[9] In particular, Congress enacted the Shark Finning Prohibition Act in 2000 "to eliminate shark-finning by addressing the problem comprehensively at both the national and international levels."[10] In 2011, the Shark Conservation Act of 2010 was enacted to further protect sharks.[11] Twelve U.S. states (California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New York, Oregon, Rhode Island, Texas and Washington) and three U.S. territories (American Samoa, Guam and Northern Mariana Islands) now also ban the sale or possession of shark fins.[12]

For the reasons below, a federal law that prohibits the sale or possession of a shark's fin on land is necessary to eliminate any legal trade connected with shark finning that continues to exist. Dozens of other countries — including the United Kingdom, Brazil, Venezuela, Israel, Honduras, Fiji, and the Bahamas — already have partial or full bans on the practice of shark finning, as does the European Union.[13]

III. JUSTIFICATION

The New York City Bar Association's Animal Law Committee (the "Committee") supports the Act, subject to the recommendations in Section IV below, because shark finning (i) is cruel and inhumane; (ii) harms marine ecosystems; (iii) reduces the population of a species already threatened with extinction; (iv) negatively impacts economies; and because (v) consuming shark fins poses risks to human health.

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[7] *Id.* In the United States, dietary supplements are not subject to FDA review for safety and effectiveness before they are marketed to the public. The FDA can take the finished products off the market if they are later found to be unsafe or if claims on the products are false or misleading. U.S. Food & Drug Administration, Food Facts: Dietary Supplements, at 2 (May 2017), https://www.fda.gov/Food/DietarySupplements/UsingDietarySupplements/ucm109760.htm.

[8] *E.g.*, *United States v. Lane Labs, Inc.*, 427 F.3d 219, 221 (3rd Cir. 2005); Charles M. Breen, District Director, Dept. of Health and Human Services, FDA, Warning Letter to Vitapurity (May 20, 2008), http://casewatch.net/fdawarning/prod/2008/vitapurity.shtml.

[9] The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1857(1)(P).

[10] Pub. L. 106-557, 114 Stat. 2772 (2000).

[11] Pub. L. 111-348, 124 Stat. 3668 (2011).

[12] Animal Welfare Institute, Shark Finning Legislation (2018), https://awionline.org/content/shark-finning-legislation. This website also includes citations to the bans.

[13] Animal Welfare Institute, *International Shark Fining Bans and Policies* (2018), https://awionline.org/content/international-shark-finning-bans-and-policies.

a. Shark Finning Is Cruel and Inhumane

A de-finned shark suffers a slow and painful death. No longer able to swim properly, the shark often suffocates, as many species of sharks breathe by moving and forcing water through their gills.[14] The shark may also starve, bleed to death or be eaten by other animals.[15]

b. Shark Finning Harms Marine Ecosystems

The health of our oceans depends upon sharks, a keystone species. As apex predators, sharks are integral to maintaining the biodiversity of the oceans' ecosystems.[16] Sharks regulate all species below them directly and indirectly through the entire food web.[17] They feed on the weak or sick members of prey populations, thus preventing disease that could devastate marine life and strengthening the gene pools of prey species, which results in larger numbers of healthier fish.[18] The presence of sharks also shifts the spatial distribution of prey and prevents them from overgrazing vital habitats.[19] As a result, sea grass beds and coral reefs can thrive and provide essential food sources to marine life and ensure the diversity of species.[20]

c. Shark Finning Reduces the Population of a Species Already Threatened with Extinction

Around 100 million sharks are estimated to be killed in fisheries[21] each year, with many of those millions killed for their fins.[22] Sharks are exceptionally vulnerable to overfishing; they live a long time, take seven to twelve years to sexually mature, and have a long gestation period

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[14] Melissa Cristina Márquez, *A Recent Win for Sharks Against the Cruel Act of Shark Finning*, FORBES, note 5 above.

[15] Caty Fairclough, *Shark Finning: Sharks Turned Prey*, Smithsonian Institution, note 6 above; Animal Welfare Institute, Keeping Shark Fins in the Ocean and Out of the Soup, https://awionline.org/awi-quarterly/2016-fall/keeping-shark-fins-ocean-and-out-soup.

[16] Shark Savers, Sharks' Role in the Ocean, http://www.sharksavers.org/en/education/the-value-of-sharks/sharks-role-in-the-ocean/.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] A fishery is an entity engaged in "an activity leading to harvesting of fish, [which] may involve capture of wild fish or raising of fish through aquaculture." Food and Agriculture Organization of the United Nations, FAO Term Portal, "fishery" definition, http://www.fao.org/faoterm/viewentry/en/?entryId=98327.

[22] Boris Worm et al., *Global Catches, Exploitation Rates, and Rebuilding Options for Sharks*, 40 MARINE POLICY 194, 199 (July 2013) (estimating ~100 million in 2000 and ~97 million in 2010 and referencing an upper estimate of mortality from the fin trade of 73 million (citing Shelley C. Clarke et al., *Global Estimates of Shark Catches Using Trade Records from Commercial Markets*, 9 ECOL. LETT. 1115-26 (2006))), http://wormlab.biology.dal.ca/publication/view/worm-etal-2013-global-catches-exploitation-rates-and-rebuilding-options-for-sharks/.

and few offspring.[23] For many shark species, their rates of being killed exceed their rates of population replenishment, resulting in the diminishment and extinction of species.[24]

Around 50% of shark and ray species assessed by scientists for the International Union for Conservation of Nature (IUCN) are threatened or near threatened with extinction.[25] Findings by the IUCN Shark Specialist Group global analysis showed that sharks and their relatives are facing increased risks of extinction that are substantially higher than most other groups of animals.[26] A team of U.S. and Hong Kong scientists recently completed a study of the species composition of the shark fin trade in Hong Kong.[27] The data show that about 30 species account for the majority of the fin trade and approximately one-third of those species are listed by the IUCN as threatened with extinction.[28]

d. Shark Finning Negatively Impacts Economies

The top-down trophic cascade caused by the decimation of shark populations has unpredictable and catastrophic consequences for the oceans.[29] One result is that medium-sized predators no longer controlled by sharks rapidly increase in number and consume more marine life.[30] They harm and deplete those populations (that include commercially important fish and shellfish species), reduce the essential variability of the ecosystems, and cause the decline in coral reefs and sea grass beds.[31] Such disruptions in marine ecosystems have major adverse impacts on worldwide economies, contributing to the collapse of industries that rely on the oceans for their income.[32]

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[23] International Union for Conservation of Nature Third of Open Ocean Sharks Threatened with Extinction (June 25, 2009), http://www.iucn.org/?3362/Third-of-open-ocean-sharks-threatened-with-extinction; José I. Castro, Christa M. Woodley and Rebecca L. Brudek, FAO Fisheries Technical Paper: A Preliminary Evaluation of the Status of Shark Species (1999), http://www.fao.org/docrep/003/X2352E/x2352e06.htm.

[24] Jean-Michel Cousteau's Ocean Futures Society, Sharks at Risk (Oct. 3, 2011), http://www.oceanfutures.org/news/blog/sharks-risk.

[25] The Pew Charitable Trusts (PEW), Global Efforts to Protect Sharks (June 7, 2018), https://www.pewtrusts.org/en/research-and-analysis/video/2018/global-efforts-to-protect-sharks.

[26] International Union for Conservation of Nature, Table: IUCN Red List Assessment Results (Jan. 2014), http://cmsdata.iucn.org/downloads/fact_sheets.pdf.

[27] Philip Chou, *Groundbreaking Shark Research Reveals Stark Data on Global Fin Trade*, PEW (Oct. 31, 2017), https://www.pewtrusts.org/en/research-and-analysis/articles/2017/10/31/groundbreaking-shark-research-reveals-stark-data-on-global-fin-trade.

[28] *Id.*

[29] Amanda Gangwish, Undergraduate Thesis: *Oceanic Top-Down Trophic Cascades and the Link to Anthropogenic Effects* 3-4 (Dec. 2016), http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1188&context=envstudtheses. A top-down trophic cascade is where a top predator is removed from a food web, causing cascading effects in lower levels of the food web. *Id.* at 2.

[30] Shark Savers, Sharks' Role in the Oceans, note 16 above.

[31] *Id.*

[32] Between 1970 and 2012 the oceans' fish population declined by 50 percent and almost 75 percent of critical fish species disappeared. Alister Doyle, *Ocean Fish Numbers Cut in Half Since 1970*, SCIENTIFIC AMERICAN (Sept. 15, 2016), http://ogoapes.weebly.com/uploads/3/2/3/9/3239894/ocean_fish_numbers_cut_in_half_since_1970_-_scientific_american.pdf.

As an economic resource, sharks are worth far more alive in the ocean than dead.[33] Coastal communities around the world are benefiting from the rising demand for ecotourism.[34] One 2013 study projected that shark ecotourism will soon be worth more than global shark fisheries, and its continued growth and expansion gives even more reason to increase shark conservation.[35]

e. Consuming Shark Meat Poses Risks to Human Health

Shark fin consumption is a threat to human health. Toxins and mercury bioaccumulate in shark fins as a result of the animals' long lives as top predators in the oceanic food web and may pose health risks to consumers of shark products.[36] A neurotoxin linked to Alzheimer's disease and other neurodegenerative diseases and high levels of methylmercury are absorbed in shark fins and muscles.[37] The FDA recommends that children, women of childbearing age who are or may become pregnant, and nursing mothers limit consumption of shark meat because of its high levels of mercury.[38] The consumption of shark cartilage can cause nausea, indigestion, hypotension, hypoglycemia, general weakness and hypercalcemia.[39] A 2017 FDA Import Alert also notes that "[i]nsect, rodent, or other animal filth has long been a problem with dried shark fins of all types and dried fish maws."[40] In addition, the illegal marketing of shark cartilage as medicine may lead consumers to replace FDA-approved medicine with shark cartilage.

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[33] For instance, a hammerhead shark in Costa Rica is valued at $1.6 million to tourism and at $200 if caught and sold. *See* National Geographic, Dead or Alive: The Promise of Tourism for Shark Conservation, https://blog.nationalgeographic.org/2013/05/08/dead-or-alive-the-promise-of-tourism-for-shark-conservation/; PEW, Million-Dollar Reef Sharks (May 2, 2011), https://www.pewtrusts.org/en/research-and-analysis/reports/2011/05/02/milliondollar-reef-sharks.

[34] Researchers estimate that over $300 million dollars is spent every year on shark ecotourism and that number will reach $780 million dollars in the next 20 years. *See* Oceana, Press Release: "Congress Introduces Legislation to Ban Trade of Shark Fins in U.S." (June 23, 2016), https://oceana.org/press-center/press-releases/congress-introduces-legislation-ban-trade-shark-fins-us.

[35] Andrés M. Cisneros-Montemayor et al., *Global Economic Value of Shark Ecotourism: Implications for Conservation*, 47 ORYX 381, 383 (May 30, 2013), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/DF79E85184E9EEA051BFA8B232835352/S0030605312001718a.pdf/global_economic_value_of_shark_ecotourism_implications_for_conservation.pdf.

[36] Neil Hammerschlag et al., *Cyanobacterial Neurotoxin BMAA and Mercury in Sharks*, 8 TOXINS 238 at 2 (2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4999854/pdf/toxins-08-00238.pdf.

[37] *Id.*

[38] U.S. Food & Drug Administration, *Eating Fish: What Pregnant Women and Parents Should Know* (Dec. 4, 2018), https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm393070.htm.

[39] NIH, National Cancer Institute, Cartilage (Bovine and Shark) (PDQ®)–Health Professional Version (Aug. 23, 2018), https://www.cancer.gov/about-cancer/treatment/cam/hp/cartilage-pdq#section/_57.

[40] FDA Import Alert No. 16-02, Detention Without Physical Examination of All Dried Shark Fins and Dried Fish Maws Due to Filth (June 7, 2017), https://www.accessdata.fda.gov/cms_ia/importalert_12.html.

IV. RECOMMENDATIONS

The Committee recommends removing the Act's exemption for dogfish in Section 4. That section, which was not in the last version of the bill,[41] exempts from the Act's ban the possession, offering for sale, sale or purchase of raw fin or tail from smooth dogfish shark (*Mustelus canis*) and spiny dogfish shark (*Squalus acanthias*).[42] Yet the rationales for the ban apply to these animals too. Removing these sharks' fins while alive — a practice that the Act's exemption will encourage — is still cruel and inhumane.[43] Further, the spiny dogfish is listed as "vulnerable" on the Red List of Threatened Species published by the International Union for Conservation of Nature (IUCN), [44] while the IUCN lists the smooth dogfish as "near threatened."[45] Several state health authorities have also specifically cautioned against dogfish consumption because of the shark's high mercury levels.[46] And in addition to these rationales, the presence of legal dogfish fins in the market may hinder law enforcement in identifying similar-looking *illegal* fins from other sharks.[47]

The Committee also recommends that Section 2(a) of the Act be amended as follows:

> Except as provided in section 3, no person shall possess, transport, offer for sale, sell, ~~or~~ purchase, trade or distribute shark fins or products containing shark fins.

V. CONCLUSION

For the reasons above, the New York City Bar Association's Animal Law Committee supports the proposed legislation and urges the adoption of its recommendations.

Animal Law Committee
Christopher Wlach, Chair

March 2019

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[41] H.R. 1456, "Shark Fin Sales Elimination Act of 2017" (March 9, 2017), https://www.congress.gov/115/bills/hr1456/BILLS-115hr1456ih.pdf.

[42] H.R. 737, § 4.

[43] Section III.A; *see also* Amanda Keledjian, *Spiny Dogfish Catch a Break — No More Shark Finning in the U.S.!*, Oceana (Nov. 15, 2014), https://oceana.org/blog/2014/11/spiny-dogfish-catch-a-break-no-more-shark-finning-in-the-us. For further discussion of the concerns with finning the smooth dogfish shark in particular, see the Animal Law Committee's November 13, 2014 letter to the National Marine Fisheries Service and National Oceanic and Atmospheric Administration. NYC Bar Association, Animal Law Committee, Letter re: Docket Number NOAA-NMFS-2014-0100 (Nov. 13, 2014), https://www2.nycbar.org/pdf/report/uploads/20072806-CommentonSmoothDogfishSharkexemptiontotheSharkConservationActof2010.pdf.

[44] Sonja Fordham et al., *Squalus acanthias*, The IUCN Red List of Threatened Species (2016), https://www.iucnredlist.org/species/pdf/2898271.

[45] Christina L. Conrath, *Mustelus canis*, The IUCN Red List of Threatened Species (2005), https://www.iucnredlist.org/species/pdf/10215463.

[46] Ret Talbot, *The Mercury-Laden Fish Floated for School Lunches*, DISCOVER (June 25, 2014), http://discovermagazine.com/2014/julyaug/50-dogfish-mercury.

[47] *Id.*