



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

**A.1769-A
S.1711-A**

**M. of A. Maisel
Sen. Grisanti**

AN ACT to amend the environmental conservation law in relation to prohibiting the possession, sale, offer for sale, trade or distribution of shark fins.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

SUMMARY OF THE PROPOSED LAW

A.1769-A/S.1711-A would amend section 13-0338 of the Environmental Conservation Law to provide that "no person shall possess, sell, offer for sale or trade or distribute a shark fin" unless the fin was taken from a spiny dogfish (*Squalus acanthias*) or a smooth dogfish (*Mustelus canis*) caught by a licensed commercial fisherman or was taken from a shark caught by a recreational fisherman who complied with recreational marine fishing registration requirements. The legislation defines shark fin as a "raw, dried or otherwise processed detached fin or the raw dried or otherwise processed detached tail, of a shark." It also expands the definition of shark to cover all animals in the subclass elasmobranchii except species in the super order batoidea. The proposed law's effective date is July 1, 2014.

USE OF SHARK FINS

Shark fins are typically consumed by New Yorkers either in shark fin soup or as medicines that are illegally marketed to cure health problems such as HIV, cancer, osteoporosis, and diabetes.¹ Dried shark fins sell from \$100 to over \$500 per pound and a bowl of shark fin soup sells for \$30 to \$100 in New York City.²

¹ E.g., *United States v. Lane Labs, Inc.*, 427 F.3d 219, 221 (3rd Cir. 2005); Susan Walker, Director, Division of Dietary Supplement Programs, FDA, letter to Michael Kellet/Health-marketplace.com, regarding violations of the Federal Food, Drug and Cosmetic Act involving the marketing of shark cartilage capsules (Jan. 30, 2006), available at http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/CyberLetters/ucm056388.pdf?utm_campaign=Google2&utm_source=fdaSearch&utm_medium=website&utm_term=shark%20fin&utm_content=4. (Last visited January 17, 2013).

² Elisabeth Rosenthal, *New York May Ban Shark Fin Sales, Following Other States*, NEW YORK TIMES, (Feb. 21, 2012).

JUSTIFICATION FOR NEW LAW

a) The Practice of Shark Finning is Cruel to Animals.

Shark finning is cruel and inhumane. The process of shark finning involves cutting off the shark's fin and dumping the shark back into the ocean, often still alive.³ In the ocean, they suffer a slow and painful death.⁴ De-finned sharks may starve to death, be slowly eaten by other marine animals, or drown because they are unable to keep moving, which is necessary to force water through their gills for oxygen.⁵

b) Sharks are Vital to Marine Ecosystems and Many Species are Threatened with Extinction.

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.⁶ Each year, approximately 73 million sharks are killed primarily for their fins.⁷ Sharks are particularly vulnerable to overfishing.⁸ Sharks live a long time, take seven to twelve years to reach sexual maturity, and have very low reproductive potential.⁹ In the past 60 years, their population has been severely depleted.¹⁰ At least 30% of species of shark and ray assessed by the International Union for Conservation of Nature are threatened or near-threatened with extinction, primarily due to overfishing.¹¹

³ Humane Society International Web page, Shark Finning, available at http://www.hsi.org/issues/shark_finning. (Last visited January 17, 2013).

⁴ 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), available at <http://www.lpda.pt/vegetarianismo/FishesPain.pdf> (last visited January 17, 2013), cited in Taimie Bryant, *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*, U. CHI, LEGAL FORUM 137, n.80 (2006).

⁵ Washington Laws of 2011, Chapter 324, § 1(2).

⁶ National Oceanic and Atmospheric Administration Web page, Ocean as Lab: Shark Finning, video of Mahmood Shivji, Ph.D., Director of the Guy Harvey Research Institute, Nova Southeastern University, available at http://oceantoday.noaa.gov/oceanasalab_sharkfinning/. (Last visited January 17, 2013).

⁷ The Pew Charitable Trusts Web page, Pew Environment Group, Global Shark Conservation, available at www.pewenvironment.org/campaigns/global-sharkconservation/id/8589941059. (Last visited January 17, 2013).

⁸ International Union for Conservation of Nature Web page, *Third of Ocean Sharks Threatened with Extinction* (June 25, 2009), available at <http://www.iucn.org/?3362/Third-of-open-ocean-sharks-threatened-with-extinction>. (Last visited January 17, 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

c) Consumption of Shark Fins Poses a Threat to Human Health.

Shark fins contain bioaccumulate toxins that may pose health risks to consumers of shark products, including high concentrations of a neurotoxin linked to Alzheimer's disease and other neurodegenerative diseases.¹² The consumption of shark cartilage can cause nausea, indigestion, fatigue, fever, and dizziness and it may slow down recovery after surgery.¹³ Shark meat also contains high levels of mercury and the FDA recommends that women of childbearing age who may become pregnant limit their consumption of shark meat.¹⁴ Shark cartilage may also disrupt growth in children.¹⁵ According to an FDA Import Alert, "Insect, rodent or other animal filth has long been a problem with dried shark fins of all types and dried fish maws."¹⁶

In addition to the direct threat to human health, the illegal marketing of shark cartilage as a medicine to treat serious illness can indirectly affect human health if individuals choose to replace FDA-approved medicine with shark cartilage pills.¹⁷ Most shark cartilage medicine has not been tested for safety or effectiveness and there is no scientific evidence to support claims that shark cartilage is an effective treatment for cancer or any other disease.¹⁸

STATE, FEDERAL, AND INTERNATIONAL LAWS PROHIBIT SHARK FINNING

Federal law prohibits shark finning and throwing the shark's body back into U.S. waters.¹⁹ In 2000, Congress enacted the Shark Finning Prohibition Act to "eliminate the wasteful and unsportsmanlike practice of shark finning."²⁰ Congress stated that "the purpose of this Act is to eliminate shark finning by addressing the problem comprehensively at both the national and

¹² K. Mondo *et al.*, *Cyanobacterial Neurotoxin β -N-Methylamino-L-alanine (BMAA) in Shark Fins*, MARINE DRUGS (Feb. 21, 2012), available at <http://www.mdpi.com/1660-3397/10/2/509/pdf>. (Last visited January 17, 2013).

¹³ American Cancer Society Web page available at <http://www.cancer.org/Treatment/TreatmentsandSideEffects/ComplementaryandAlternativeMedicine/PharmacologicalandBiologicalTreatment/shark-cartilage>. (Last visited January 17, 2013).

¹⁴ FDA, Consumer Advisory, *An Important Message for Pregnant Women and Women of Childbearing Age Who May Become Pregnant About the Risks of Mercury in Fish*, (March 2001), available at http://www.fda.gov/OHRMS/DOCKETS/ac/02/briefing/3872_Advisory%201.pdf. (Last visited January 17, 2013).

¹⁵ American Cancer Society, *supra* n. 13.

¹⁶ FDA Import Alert No. 16-02, Detention Without Physical Examination of All Dried Shark Fins and Dried Fish Maws Due to Filth (Aug. 1, 2011), available at http://www.accessdata.fda.gov/cms_ia/importalert_12.html?utm_campaign=Google2&utm_source=fdaSearch&utm_medium=website&utm_term=shark%20fin&utm_content=1. (Last visited January 17, 2013).

¹⁷ American Cancer Society, *supra* n. 13.

¹⁸ *Id.*

¹⁹ The Magnuson-Stevens Fishery Conservation and Management Act provides that no person shall remove any of the fins (including the tail) of a shark and discard the carcass at sea; have custody of shark fin on board a fishing vessel without the corresponding carcass; or land a shark fin without the corresponding carcass. 16 U.S.C. § 1857(1)(P).

²⁰ Pub. L. 106-557, 114 Stat. 2772 (2000).

international levels."²¹ In 2011, the Shark Fin Conservation Act was enacted to further protect sharks.²² Numerous other countries ban the practice of shark finning, including, but not limited to, the United Kingdom, the European Union,²³ Colombia, and Taiwan.²⁴ And several others ban shark fishing altogether including, but not limited to, Israel, the Bahamas, and Honduras.²⁵

Although shark finning is banned in U.S. waters, there is no federal law that bars the sale or possession of a shark's fin on land; therefore, trade connected with shark finning continues to remain an issue. Five states ban the sale, possession and distribution of shark fins: Hawaii,²⁶ Washington,²⁷ Illinois,²⁸ Oregon,²⁹ and California.³⁰ Two additional states are currently considering bills to ban the sale or possession of a shark fin: Virginia³¹ and New Jersey.³²

RECOMMENDATION

The Committee on Animal Law recommends the bills be amended to omit the exemption for spiny dogfish and smooth dogfish. The spiny dogfish (*Squalus acanthias*), one of the sharks exempted from the ban, is listed as "vulnerable" on the International Union for Conservation of Nature's (IUCN) Red List of Threatened Species.³³ Although the National Oceanic and Atmospheric Administration has established catch limits for spiny dogfish caught in U.S. waters,³⁴ this does not protect their populations in international waters. The smooth dogfish (*Mustelus canis*) is listed as

²¹ Pub. L. 106-557, 114 Stat. 2772 (2000).

²² 111 Pub. L. 348, 124 Stat. 3668 (2011).

²³ The E.U. allows shark finning with a special permit; however, the European Parliament is now considering legislation to end the permit program. Tim Hull, *Europe May Toss Finning Permit to Protect Sharks*, Courthouse News Service (Mar. 19, 2012), available at <http://www.courthousenews.com/2012/03/19/44813.htm>. (Last visited January 17, 2013).

²⁴ Humane Society International, *National laws, multi-lateral agreements, regional and global regulations on shark protection and shark finning* (Mar. 2012) available at http://www.hsi.org/assets/pdfs/Sharks_HSIEU_overviewsharkfishingandfinningregulations.pdf. (Last visited January 17, 2013),

²⁵ *Id.*

²⁶ HRS. § 188-40.7.

²⁷ Rev Code Wash. § 77.15.770.

²⁸ § 515 ILCS 5/5-30.

²⁹ OR ORS § 509.160.

³⁰ CA Fish and Game Code § 2021.

³¹ VA House Bill No. 1159-2012.

³² NJ Assembly Bill No. 2719-2012/Senate Bill No. 1764.

³³ Fordham, S., Fowler, S.L., Coelho, R., Goldman, K.J. & Francis, M. 2006. *Squalus acanthias*. In: IUCN 2012. IUCN Red List of Threatened Species. Version 2012.2 (2006), available at <http://www.iucnredlist.org/details/39326/0>. (Last visited January 17, 2013).

³⁴ 50 CFR Part 648.

"near threatened" on the IUCN Red List.³⁵ In 2012, a Pew Environment Group study tested the DNA of fins in shark fin soup served in U.S. restaurants and found that spiny dogfish is used in shark fin soup despite being a species that is vulnerable to extinction.³⁶ Consumers are rarely aware what kind of shark fin they are eating and whether the species they are eating "is in serious trouble."³⁷ In addition, according to the Environmental Defense Fund, consumption of spiny dogfish poses a health threat due to elevated levels of mercury and it is recommended that women and children avoid eating spiny dogfish altogether.³⁸

SUMMARY

For the reasons stated above, the Animal Law Committee approves this legislation and urges the adoption of its recommendation to omit exemptions for spiny dogfish and smooth dogfish.

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³⁵ Conrath, C. *Mustelus canis*. In: IUCN 2012. IUCN Red List of Threatened Species. Version 2012.2 (2005), at <http://www.iucnredlist.org/details/39359/0>. (Last visited January 17, 2013).

³⁶ Pew Charitable Trusts, Pew Environmental Group, Press Release: New DNA Study Reveals Fins of Endangered Shark in U.S. Soups (Aug. 9, 2012), available at <http://www.pewenvironment.org/news-room/press-releases/new-dna-study-reveals-fins-of-endangered-shark-in-us-soups-85899409748>. (Last visited January 17, 2013).

³⁷ *Id.*

³⁸ Environmental Defense Fund, Shark Health Alert, available at <http://apps.edf.org/page.cfm?tagID=16301>. (Last visited January 17, 2013).