

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 823 Sharks

**SPONSOR(S):** Careers & Competition Subcommittee and Natural Resources & Public Lands Subcommittee, Miller and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	15 Y, 0 N, As CS	Gregory	Shugar
2) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Anstead	Anstead
3) Government Accountability Committee	21 Y, 0 N	Gregory	Williamson

### SUMMARY ANALYSIS

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark. Shark fins command a high price and hold significant cultural value in some Asian countries. Considered a symbol of status in Chinese culture, shark fin soup is a popular dish at weddings and other special occasions. Shark fins yield more value per pound than the shark's body. Shark finners often throw the shark back into the ocean alive once they have removed the fins. Unable to swim properly, the shark either bleeds to death or suffocates. This practice decimates shark populations around the world.

Congress banned shark finning in U.S. waters in 2000 under the Shark Conservation Act. However, the trade of lawfully acquired shark fins is not prohibited.

In Florida, fisherman may only catch one shark per day and a maximum of two sharks per vessel per day even if more than two fishermen are on board. Fishermen may only take sharks by hook and line gear. All sharks harvested in Florida waters must be landed in a whole condition. Individuals may not possess a shark that has had the head removed; been divided, filleted, ground, skinned, or finned; or had the caudal (tail) fin removed, while in or on the waters of the state, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed. Fishermen may eviscerate or gut the shark or slice the base of the caudal fin to bleed the carcass as long as the caudal fin remains attached before landing.

The bill prohibits individuals from possessing shark fins separated from the shark in or on waters of this state and the landing of shark fins separated from the shark, unless authorized by the Fish and Wildlife Conservation Commission. The bill also creates penalties for violations of the prohibition.

The Criminal Justice Impact Conference has not yet considered this bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

###### Shark Finning

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark.<sup>1</sup> Shark fins command a high price and hold significant cultural value in some Asian countries. Considered a symbol of status in Chinese culture, shark fin soup is a popular dish at weddings and other special occasions. Shark fins yield more value per pound than the shark's body.<sup>2</sup>

Shark finners often throw the shark back into the ocean alive once they have removed the fins. Unable to swim properly, the shark either bleeds to death or suffocates. This practice decimates shark populations around the world. Humans kill approximately 100 million sharks globally each year, and one major reason is the shark fin trade. A shark's slow growth and low reproductive rates make sharks highly susceptible to extinction because they cannot replenish their populations as quickly as they are being destroyed.<sup>3</sup>

A dramatic shark population plunge poses a threat to not only sharks, but the entire ecosystem. When shark populations decrease, a ripple effect may spread throughout the rest of the ecosystem creating an imbalance. For example, the loss of the smooth hammerheads caused their prey, rays, to increase. The larger ray population now can eat more scallops, clams, and other bivalves. This not only hurts the bivalve populations and, therefore, the biodiversity of the ecosystem, it also harms human fisheries.<sup>4</sup>

In response to concerns about growing shark harvests internationally, many countries banned shark fishing in their waters. In addition, many other nations adopted finning bans, including the Bahamas, Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, the Maldives, Nicaragua, Palau, Panama, and Taiwan.<sup>5</sup>

The United States Congress banned shark finning in U.S. waters in 2000.<sup>6</sup> The Shark Conservation Act makes it unlawful for any person:

- To remove any of the fins of a shark (including the tail) at sea;
- To have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;
- To transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or
- To land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached.<sup>7</sup>

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.<sup>8</sup>

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<sup>1</sup> National Oceanic and Atmospheric Administration (NOAA), *Shark Finning Report to Congress*, [http://www.nmfs.noaa.gov/sfa/laws\\_policies/sca/shark\\_finning\\_reports.html](http://www.nmfs.noaa.gov/sfa/laws_policies/sca/shark_finning_reports.html) (last visited February 27, 2017).

<sup>2</sup> Smithsonian National Museum of Natural History, *Sharking Finning: Sharks Turned Prey*, <https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey> (last visited February 27, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> NOAA, *2015 Shark Finning Report to Congress*, [http://www.nmfs.noaa.gov/sfa/laws\\_policies/sca/documents/shark-finning-report-2015.pdf](http://www.nmfs.noaa.gov/sfa/laws_policies/sca/documents/shark-finning-report-2015.pdf) (last visited February 27, 2017).

<sup>6</sup> NOAA, *Shark Conservation Act*, [http://www.nmfs.noaa.gov/sfa/laws\\_policies/sca/index.html](http://www.nmfs.noaa.gov/sfa/laws_policies/sca/index.html) (last visited February 27, 2017).

<sup>7</sup> 16 U.S.C. 1857(1)(P).

While the practice of shark finning is prohibited in the United States, the trade of shark fins is legal. Between 2000 and 2011, the United States imported an average of 36 tons of shark fins and exported an average of 171 tons of shark fins.<sup>9</sup>

### Shark Fishing Regulations in Florida

In Florida, fishermen may only catch one shark per day and a maximum of two sharks per vessel per day even if more than two fishermen are on board.<sup>10</sup> Fishermen may only take sharks by hook and line gear.<sup>11</sup> Sharks may not be taken by using multiple hooks with live or dead natural bait or by snagging.<sup>12</sup>

All sharks harvested in Florida waters must be landed in a whole condition.<sup>13</sup> A marine organism is “landed” when the animal is harvested and physically brought ashore.<sup>14</sup> Individuals may not possess a shark that has had the head removed; been divided, filleted, ground, skinned, or finned;<sup>15</sup> or had the caudal (tail) fin removed, while in or on the waters of the state, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed. This appears to be consistent with the federal Shark Conservation Act. Fishermen may eviscerate or gut the shark or slice the base of the caudal fin to bleed the carcass as long as the caudal fin remains attached before landing.<sup>16</sup>

The following sharks have no minimum size limit for harvest in Florida waters:<sup>17</sup> Atlantic sharpnose shark; blacknose shark; blacktip shark; bonnethead; finetooth shark; and all species of dogfish and smoothhounds within the Genus *mustelus*.<sup>18</sup> The following sharks must be at least 54 inches long to harvest in Florida waters: bull shark; nurse shark; spinner shark; blue shark; oceanic whitetip shark; porbeagle; shortfin mako shark; and thresher shark.<sup>19</sup>

No person may harvest the following sharks in Florida waters: Atlantic angel shark; basking shark; bigeye sand tiger; bigeye sixgill shark; bigeye thresher; bignose shark; Caribbean reef shark; Caribbean sharpnose shark; dusky shark; Galapagos shark; great hammerhead; lemon shark; longfin mako; narrowtooth shark; night shark; sandbar shark; sand tiger; scalloped hammerhead; sevengill shark; silky shark; sixgill shark; smalltail shark; smooth hammerhead; tiger shark; whale shark; white shark; largetooth sawfish; smalltooth sawfish; spiny dogfish; manta ray; and spotted eagle ray.<sup>20</sup>

While fishermen may not harvest, possess, land, purchase, sell, or exchange these species of shark, including any part of these species, in the state, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters.<sup>21</sup>

The National Oceanic and Atmospheric Administration (NOAA) manages commercial shark fishing with a series of quotas that apply throughout the Atlantic Ocean and Gulf of Mexico waters. Commercial fishermen in Florida are subject to these quotas. Commercial fishermen must possess a federal annual

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<sup>8</sup> 16 U.S.C. § 1858.

<sup>9</sup> Food and Agriculture Organization of the United Nations, *State of the global market for shark products*, p. 85, <http://www.fao.org/3/a-i4795e.pdf> (last visited March 15, 2017).

<sup>10</sup> Rule 68B-44.003(1), F.A.C.; FWC, *Sharks*, <http://myfwc.com/fishing/saltwater/recreational/sharks/> (last visited February 27, 2017).

<sup>11</sup> Rule 68B-44.003(2), F.A.C.

<sup>12</sup> Rules 68B-44.003(3) and (4), F.A.C.

<sup>13</sup> Rule 68B-44.004(1), F.A.C.

<sup>14</sup> Rule 68B-44.002(5), F.A.C.

<sup>15</sup> “Finned” is defined in r. 68B-44.002(1), F.A.C.

<sup>16</sup> Rule 68B-44.004(1), F.A.C.

<sup>17</sup> Florida’s seaward boundary extends nine nautical miles in the Gulf of Mexico and three nautical miles in the Atlantic. art. II, s. 1, Fla. Const.

<sup>18</sup> Rule 68B-44.007, F.A.C.; FWC, *Sharks*, <http://myfwc.com/fishing/saltwater/recreational/sharks/> (last visited February 27, 2017).

<sup>19</sup> *Id.*

<sup>20</sup> Rule 68B-44.008(1), F.A.C.

<sup>21</sup> Rule 68B-44.008(2), F.A.C.

vessel permit to commercially harvest sharks.<sup>22</sup> The commercial harvest season lasts all year or until the commercial season is closed in the federal Exclusion Economic Zone or the Atlantic States Marine Fisheries Commission closes the harvest for Atlantic waters.<sup>23</sup> NOAA assigns shark quotas by species groups and some quotas are linked to other groups. For example, once a quota for one species group is reached, all the species groups linked to that one will also close. NOAA adjusts quotas from year to year to account for any quotas that fishermen exceeded in the previous year. There are separate quotas for sharks harvested in the Atlantic Ocean and Gulf of Mexico waters.<sup>24</sup>

Individuals who violate Florida’s shark fishing regulations commit a Level Two violation.<sup>25</sup> The penalties for Level Two violations are described below:

Level Two Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense <sup>26</sup>	2 <sup>nd</sup> Degree Misdemeanor	Max. \$500 <sup>27</sup> or Max. 60 days <sup>28</sup>	None
2 <sup>nd</sup> offense within 3 years of previous Level Two violation (or higher) <sup>29</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$250; Max. \$1000 <sup>30</sup> or Max. 1 year <sup>31</sup>	None
3 <sup>rd</sup> offense within 5 years of two previous Level Two violations (or higher) <sup>32</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$500; Max. \$1000 or Max. 1 year	Suspension of license for 1 year
4 <sup>th</sup> offense within 10 years of three previous Level Two violations (or higher) <sup>33</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Suspension of license for 3 years

### Fish and Wildlife Conservation Commission

The Florida Constitution authorizes the Fish and Wildlife Conservation Commission (FWC) to enact rules and regulations regarding the state's fish and wildlife resources.<sup>34</sup> Florida residents and visitors need a Florida freshwater fishing or saltwater fishing license from FWC if they attempt to take or assist in a take of fish or marine organisms, unless they are under the age of 16 or over the age of 65.<sup>35</sup>

### **EFFECT OF THE PROPOSED CHANGES**

The bill prohibits the possession of shark fins separated from the shark in or on waters of this state and the landing of shark fins separated from the shark, unless authorized by FWC rule.

The bill defines the terms:

- “Conviction” as any disposition other than acquittal or dismissal;

<sup>22</sup> Rule 68B-44.005, F.A.C.

<sup>23</sup> Rule 68B-44.006, F.A.C.

<sup>24</sup> NOAA, *Commercial Shark Fishing*, [http://www.nmfs.noaa.gov/sfa/hms/compliance/guides/documents/14\\_shark.pdf](http://www.nmfs.noaa.gov/sfa/hms/compliance/guides/documents/14_shark.pdf) (last visited March 15, 2017).

<sup>25</sup> Section 379.401(2)(a)2. and 5., F.S.

<sup>26</sup> Section 379.401(2)(b)1., F.S.

<sup>27</sup> Section 775.083(1)(e), F.S.

<sup>28</sup> Section 775.082(4)(b), F.S.

<sup>29</sup> Section 379.401(2)(b)2., F.S.

<sup>30</sup> Section 775.083(1)(d), F.S.

<sup>31</sup> Section 775.082(4)(a), F.S.

<sup>32</sup> Section 379.401(2)(b)3., F.S.

<sup>33</sup> Section 379.401(2)(b)4., F.S.

<sup>34</sup> FLA. CONST. art. IV, s. 9.

<sup>35</sup> Sections 379.352 and 379.353, F.S.

- "Separated" as a shark fin which is not naturally attached to the corresponding shark body through some portion of uncut skin; and
- "Shark fin" as any of the fins of a shark (including the tail), or a portion thereof.

The bill creates penalties for violations of the prohibition. Individuals convicted of violating the prohibition must be punished as follows:

Violations	Type of Criminal Infraction	Criminal Fines and Jail Time	FWC License Restrictions	FWC Administrative Fines
1 <sup>st</sup> violation	2 <sup>nd</sup> Degree Misdemeanor	Max. \$500 Max. 60 days	Suspension for 6 months	\$4,500
2 <sup>nd</sup> violation	2 <sup>nd</sup> Degree Misdemeanor	Max. \$500 Max. 60 days	Suspension for 12 months	\$9,500
3 <sup>rd</sup> violation and subsequent	1 <sup>st</sup> Degree Misdemeanor	Max: \$1,000 Max: 12 months	Permanent revocation of all license privileges	\$9,500

During the period of suspension or revocation of license privileges imposed for violating the prohibition, a violator may not participate in the taking or harvesting, or attempt the taking or harvesting, of saltwater products<sup>36</sup> from any vessel within the waters of the state; be aboard any vessel on which a commercial quantity<sup>37</sup> of saltwater products is possessed through an activity requiring a commercial license issued by FWC; or engage in any other activity requiring a license, permit, or certificate issued by FWC.

The suspension times for commercial harvester license holders that violate the prohibition are longer than suspension times for major violations associated with finfish fishing regulations.<sup>38</sup>

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 379.2426, F.S., prohibiting possession of separated shark fins on waters of this state or landing of separated shark fins and providing penalties.

**Section 2.** Provides an effective date of October 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state by creating a penalty for possessing shark fins separated from the shark in or on waters of this state and the landing of shark fins separated from the shark.

##### 2. Expenditures:

The Criminal Justice Impact Conference has not yet considered this bill.

<sup>36</sup> "Saltwater products" are defined in s. 379.101(36), F.S.

<sup>37</sup> "Commercial quantities" are defined in s. 379.361(2)(i), F.S.

<sup>38</sup> See ss. 379.407(1)(h) and 379.401(2)(b)4., F.S.; Sharks belong to the Chondrichthyes class and, therefore, are finfish. Section 379.101(12), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative fiscal impact on individuals who violate the prohibition for possessing shark fins separated from the shark in or on waters of this state and the landing of shark fins separated from the shark by imposing a criminal fine and administrative fine, in addition to possible jail time.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide rulemaking authority or require executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Natural Resources & Public Lands Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment prohibited fishermen from possessing shark fins separated from the shark in or on Florida waters and the landing of shark fins separated from the shark, unless authorized by the FWC. The amendment also creates penalties for violations of the prohibition. The penalties for commercial fishermen are different than other fishermen. The amendment also removed:

- The prohibition of the possession, selling, offering for sale, trading, or distributing of a shark fin or shark tail;
- The authorization for a person who possesses a license or permit to take or land sharks to separate the shark fin or shark tail from a lawfully taken or landed shark during the ordinary course of preparing the body of the shark for consumption, sale, trade, or distribution;
- The requirement to immediately destroy the shark fins and shark tail removed from a shark unless used for taxidermy or subsequent display;

- The authorization to allow FWC to permit the possession of a shark fin or shark tail for conducting noncommercial, scientific research;
- The requirement for the FWC to destroy shark fins and shark tails seized during enforcement of the prohibition;
- The penalties for the possession, selling, offering for sale, trading, or distributing of a shark fin or shark tail; and
- The authorization for the FWC to adopt rules to administer the prohibition of the possession, selling, offering for sale, trading, or distributing of a shark fin or shark tail.

On March 28, 2017, the Careers & Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined “separated;”
- Removed the distinction between commercial harvesters and other people for disciplinary purposes;
- Reduced the criminal fine for a first offense from \$5,000 to \$500, creates an administrative fine of \$4,500, and specifies that a first offense is punishable as provided in ss. 775.082 or 775.083, F.S.;
- Reduced the criminal fine for a second offense from \$10,000 to \$500, and from a first degree to a second degree misdemeanor; and specifies that a second offense is punishable as provided in ss. 775.082 or 775.083, F.S., and created an administrative fine of \$9,500; and
- Reduced the criminal fine for a third and any subsequent offense from \$10,000 to \$1,000, and specified that a third and any subsequent offense is punishable as provided in ss. 775.082 or 775.083, F.S.

This analysis is drawn to the committee substitute reported favorably by the Careers & Competition Subcommittee.