

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Shark Fins
SPONSOR(S): State Affairs Committee, Jacobs and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 2 N	Mears	Moore
2) Business & Professions Subcommittee	13 Y, 2 N	Thompson	Anstead
3) State Affairs Committee	20 Y, 0 N, As CS	Mears	Williamson

SUMMARY ANALYSIS

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark. 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 United States waters in 2000 under the Shark Conservation Act. However, the trade of lawfully acquired shark fins is not prohibited. Shark fins command a high price and hold significant cultural value in some Asian countries, yielding more value per pound than the shark's body.

In Florida, a fisherman may only catch one shark per day, and each vessel is limited to two sharks per day, even if more than two fishermen are on board. Fishermen may only catch sharks by hook and line gear. All sharks harvested in Florida waters must be brought ashore with the fin attached to the shark's body.

Florida law prohibits the possession of a shark fin separated from the shark unless the Fish and Wildlife Conservation Commission authorizes such possession or the fin was obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.

The bill prohibits the import, export, and sale of shark fins. However, the bill specifies that the prohibitions on the sale and the export of shark fins do not apply to commercial fishermen who possess a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that have been legally landed, handled, processed, and transported. This exception to the prohibitions expires on January 1, 2025.

The bill may have an indeterminate fiscal impact on the state. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Shark Finning

Shark finning is the process of catching a shark, removing its fins, and discarding the rest of the shark.¹ 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.²

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.³

A dramatic shark population plunge poses a threat not only to sharks, but also to 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.⁴

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

The United States Congress banned shark finning in U.S. waters in 2000.⁶ 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.⁷

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.⁸

Import, Export, and Sale of Shark Fins

¹ National Oceanic and Atmospheric Administration (NOAA), *2017 Shark Finning Report to Congress*, available at <https://repository.library.noaa.gov/view/noaa/19769> (last visited Jan. 7, 2019) (herein "NOAA Report").

² Smithsonian National Museum of Natural History, *Shark Finning: Sharks Turned Prey*, available at <https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey> (last visited Dec. 3, 2019).

³ *Id.*

⁴ *Id.*

⁵ NOAA Report at 3.

⁶ NOAA, *Shark Conservation Act*, available at <https://www.fisheries.noaa.gov/national/laws-and-policies/shark-conservation-act> (last visited Jan. 7, 2019).

⁷ 16 U.S.C. § 1857(1)(P), (2015).

⁸ 16 U.S.C. § 1858 (1996).

While the practice of shark finning is prohibited in the U.S., the trade of shark fins is legal. Between 2012 and 2016, the U.S. imported an average of 49 tons of shark fins and exported an average of 25 tons of shark fins per year.⁹ A number of countries from which the U.S. imports shark fins do not have a shark finning ban in place, such as China, Indonesia, and Japan. In response, 12 states have banned the trade of shark fins: California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New York, Oregon, Rhode Island, Texas, and Washington.¹⁰

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.¹¹ Florida residents and visitors must have a freshwater fishing or saltwater fishing license from FWC if they attempt to take or assist in a take of fish or marine organisms,¹² unless they are under the age of 16, are over the age of 65, or meet another licensure exemption.¹³

Shark Fishing Regulations in Florida

In Florida, a fisherman may only catch one shark per day, and each vessel is limited to two sharks per day, even if more than two fishermen are on board.¹⁴ Sharks may only be caught by hook and line gear¹⁵ and may not be caught by using multiple hooks with live or dead natural bait or by snagging.¹⁶

Fishermen must land all sharks harvested in Florida waters¹⁷ in a whole condition.¹⁸ A marine organism is "landed" when the animal is harvested and physically brought ashore. Individuals may not possess a shark that has had the head removed; been divided, filleted, ground, skinned, or finned;¹⁹ or had the caudal fin (tail) 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.²⁰

Florida law imposes restrictions on harvesting sharks based on the species and size of the shark. The following sharks have no minimum size limit for harvest in Florida waters: Atlantic sharpnose shark; blacknose shark; blacktip shark; bonnethead; finetooth shark; and all species of dogfish and smoothhounds within the Genus *mustelus*.²¹ 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.²² 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; bluntnose sixgill 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; sharpnose sevengill shark; silky shark; smalltail shark; smooth hammerhead; spiny dogfish; tiger shark; whale shark; and white shark.²³

⁹ NOAA Report at 23-24.

¹⁰ See CAL. FISH & GAME CODE § 2021; DEL. CODE ANN. tit. 7 § 928A; HAW. REV. STAT. § 188-40.7; 515 ILL. COMP. STAT. 5/5-30; MD. CODE ANN. NAT. RES. § 4-747; MASS. GEN. LAWS ANN. ch. 130, § 106; NEV. REV. STAT. § 597.2-3; N.Y. ENVTL. CONSERV. LAW § 13-0338; OR. REV. STAT. § 509.160; R.I. GEN. LAWS § 20-1-29; TEX. PARKS & WILD. CODE § 66.2161; WASH. REV. CODE § 77.15.770.

¹¹ Art. IV, s. 9, FLA. CONST.

¹² Section 379.352, F.S.

¹³ Section 379.353, F.S.

¹⁴ Rule 68B-44.004(1)-(2), F.A.C.

¹⁵ Rule 68B-44.006(1), F.A.C.

¹⁶ Rule 68B-44.006(2), F.A.C.

¹⁷ Florida's seaward boundary extends nine nautical miles in the Gulf of Mexico and three nautical miles in the Atlantic Ocean. Art. II, s. 1, FLA. CONST.

¹⁸ Rule 68B-44.003(2), F.A.C.

¹⁹ The term "finned" means one or more fins, including the caudal fin (tail), are no longer naturally attached to the body of the shark.

Rule 68B-44.002(1), F.A.C.

²⁰ Rule 68B-44.003(2), F.A.C.

²¹ Rule 68B-44.003(1), F.A.C.; FWC, *Sharks*, <http://myfwc.com/fishing/saltwater/recreational/sharks/> (last visited Jan. 7, 2019).

²² *Id.*

²³ Rule 68B-44.004(3), F.A.C.

While fishermen may not harvest, possess, land, purchase, sell, or exchange these species of shark, including any part of these species, in state waters, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters with fishing gear appropriately stowed.²⁴

Florida law prohibits the possession of a shark fin separated from the shark in Florida waters unless such possession is authorized by FWC or the fin was legally obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.²⁵ An individual who violates this prohibition is subject to the following penalties:

Violations	Type of Criminal Infraction	Civil Penalty and Jail Time	License Restriction	Administrative Fines
1st offense ²⁶	2nd Degree Misdemeanor	Max. \$500 ²⁷ Max. 60 days ²⁸	Suspension of license for six months	\$4,500
2nd Offense ²⁹	2 nd degree Misdemeanor	Max. \$500 ³⁰ Max. 60 days ³¹	Suspension of license for 12 m months	\$9,500
3rd offense and subsequent offenses ³²	1st degree Misdemeanor	Max. \$1000 ³³ Max. 12 months ³⁴	Permanent revocation of all license privileges	\$9,500

Shark Fin Litigation

In 2012, California’s ban on the trade of shark fins was challenged in federal court. On appeal, the plaintiffs alleged that the ban violated the Supremacy Clause by interfering with the federal government’s authority to manage fishing in the ocean, and the Dormant Commerce Clause of the United States by interfering with interstate commerce relating to shark fins.³⁵ The Ninth Circuit Court of Appeals held that states are authorized to regulate “on land activities.” Additionally, the court held that the ban did not violate the Commerce Clause as it did not “interfere with activity that is inherently national or that requires a uniform system of regulation,” and its purpose was to “conserve state resources, prevent animal cruelty, and protect wildlife and public health,” which are matters of local concern.

Effect of the Bill

The bill prohibits the import, export, and sale of shark fins. An individual who violates this prohibition is subject to the penalties outlined in the table above. However, the bill specifies that the prohibitions on the sale and the export of shark fins do not apply to commercial fishermen who possess a valid federal shark fishing permit on January 1, 2020, or to seafood dealers who harvest and possess sharks, shark fins, and associated shark products that have been legally landed, handled, processed, and transported. This exception to the prohibitions expires on January 1, 2025.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.2426, F.S., relating to the possession, import, export, and sale of shark fins.

²⁴ Rule 68B-44.003(4), F.A.C.

²⁵ Section 379.2426(2), F.S.

²⁶ Section 379.2426(3)(a), F.S.

²⁷ Section 775.083(1)(e), F.S.

²⁸ Section 775.082(4)(b), F.S.

²⁹ Section 379.2426(3)(b), F.S.

³⁰ *Id.*

³¹ Section 775.082(4)(b), F.S.

³² Section 379.2426(3)(c), F.S.

³³ Section 775.083(1)(d), F.S.

³⁴ Section 775.082(4)(a), F.S.

³⁵ *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136 (9th Cir. 2015), *cert. denied*, 136 S.Ct. 2448 (2016).

Section 2. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on commercial fishermen and wholesale dealers after January 1, 2025, because they would no longer be able to buy and sell shark fins.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on the state by creating a penalty for the import, export, and sale of shark fins. In addition, the bill may have a negative fiscal impact related to jail bed impacts.

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 expenditure 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:

Dormant Foreign Affairs Doctrine

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,³⁶ maintain a military,³⁷ enter into treaties and other international agreements,³⁸ regulate foreign commerce,³⁹ and hear cases involving foreign states and citizens.⁴⁰ These grants of power have been interpreted to grant the federal government the

³⁶ Section 8, Art. I, U.S. Constitution.

³⁷ *Id.*

³⁸ Section 2, Art. II, U.S. Constitution.

³⁹ Section 8, Art. I, U.S. Constitution.

⁴⁰ Section 2, Art. III, U.S. Constitution.

exclusive power to act in the area of foreign affairs.⁴¹ The federal government's exclusive authority to act in the area of foreign affairs is known as the Dormant Foreign Affairs Doctrine.

When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid as a violation of the dormant foreign affairs doctrine.⁴² If the purpose of the bill is to impact foreign affairs,⁴³ or if the effects of the bill have a sufficiently serious impact on foreign policy,⁴⁴ the bill may be found in violation of the Dormant Foreign Affairs Doctrine.⁴⁵

Commerce Clause

The United States Constitution provides that Congress shall have the power to "regulate commerce...among the states."⁴⁶ The Commerce Clause acts not only as a positive grant of powers to Congress, but also as a negative constraint upon the states.⁴⁷ The Dormant Commerce Clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.⁴⁸

The Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally."⁴⁹ Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se,"⁵⁰ while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."⁵¹

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment created an exception to the prohibitions on the sale and the export of shark fins for certain commercial fishermen and seafood dealers until January 1, 2025.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

⁴¹ *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

⁴² *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

⁴³ *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (pointing out that a congressional invocation of exclusively national powers with respect to addressing human rights violations in Burma precluded Massachusetts from restricting its agencies from purchasing goods or services from companies that did business with Burma; the case, however, was decided on the basis that a federal law preempted the state law.).

⁴⁴ *Clark v. Allen*, 331 U.S. 503, 517-518 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would "have some incidental or indirect effect in foreign countries."); *Zschernig v. Miller*, 389 U.S. 429 (1968).

⁴⁵ Matthew Shaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining, and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 SETON HALL L. REV. 201, 237-239 (2011).

⁴⁶ U.S. Const. art. I, s. 8, cl. 3.

⁴⁷ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

⁴⁸ The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

⁴⁹ *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

⁵⁰ *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001).

⁵¹ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).