

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

FINAL HOUSE FLOOR ACTION: 119 Y's 1 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 401 passed the House on March 9, 2020, as CS/CS/CS/SB 680 as amended. The Senate concurred in the House amendments and subsequently passed the bill as amended on March 12, 2020.

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 (FWC) authorizes such possession or the fin was obtained on land, was prepared by taxidermy, and is possessed for the purposes of display.

The bill names the act the Kristin Jacobs Ocean Conservation Act.

The bill prohibits the import, export, and sale of shark fins. However, the prohibitions do not apply to any of the following:

- The sale of shark fins by any commercial fishermen who harvested sharks from a vessel holding a valid federal shark fishing permit on January 1, 2020;
- The export and sale of shark fins by any wholesale dealer holding a valid federal Atlantic shark dealer permit on January 1, 2020; or
- The export and sale of domestically sourced shark fins by any shark fin processor that obtains fins from a wholesale dealer holding a valid Atlantic shark dealer permit on January 1, 2020.

The bill requires FWC to evaluate the potential economic impact to the commercial shark fishing industry associated with the prohibition of the import, export, and sale of shark fins in the state and report its findings to the Governor and the Legislature by December 31, 2021.

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

The bill was approved by the Governor on September 18, 2020, ch. 2020-172, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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).

Import, Export, and Sale of Shark Fins

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;

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.*

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

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

²³ Rule 68B-44.004(3), F.A.C.

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).

resources, prevent animal cruelty, and protect wildlife and public health,” which are matters of local concern.

Effect of the Bill

The bill names the act the Kristin Jacobs Ocean Conservation Act.

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 do not apply to any of the following:

- The sale of shark fins by any commercial fishermen who harvested sharks from a vessel holding a valid federal shark fishing permit on January 1, 2020;
- The export and sale of shark fins by any wholesale dealer holding a valid federal Atlantic shark dealer permit on January 1, 2020; or
- The export and sale of domestically sourced shark fins by any shark fin processor that obtains fins from a wholesale dealer holding a valid Atlantic shark dealer permit on January 1, 2020.

The bill requires FWC to evaluate the potential economic impact to the commercial shark fishing industry associated with the prohibition of the import, export, and sale of shark fins in the state. Based on any identified negative economic impacts to the commercial shark fishing industry, FWC must identify actions to lessen or offset impacts on the industry to the extent practicable. FWC must also review the potential impact on shark populations associated with the prohibition of the import, export, and sale of shark fins in the state. The bill further authorizes FWC to review and include any other information it believes is relevant to the management of shark fisheries. FWC must report its findings to the Governor and the Legislature by December 31, 2021.

The bill specifies that the Legislature may, based upon the findings of the report, impose a ban on the domestic production of shark fins.

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 wholesale dealers or processors because the bill prohibits the import of shark fin. The bill may also have a negative fiscal impact on commercial fishermen and wholesale dealers if they do not meet one of the exemptions to the prohibition on the export and sale of shark fins 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.