

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 680

INTRODUCER: Commerce and Tourism Committee and Senator Hutson and others

SUBJECT: Shark Fins

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dyson</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 680 prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who hold 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 are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 1, 2020.

II. Present Situation:

Pursuant to Article IV, s. 9 of the Florida Constitution, the Florida Fish and Wildlife Conservation Commission exercises the regulatory and executive powers with respect to marine life, including sharks.¹ Florida's shark population is diverse and includes species that range in size from only a few feet to more than 40 feet in total length.² Most species of sharks have slow

¹ FLA. CONST. ART. IV, S. 9.

² University of Florida's Institute of Food and Agricultural Sciences (IFAS), *Common Sharks in Florida*, SGEF-203, available at <http://edis.ifas.ufl.edu/pdf/SG/SG06200.pdf> (last visited Feb. 18, 2020).

rates of growth and late age-at-maturity, which limits their ability to withstand fishing pressure and means they have a longer recovery time in response to overfishing.³

Global shark catches have tripled since 1950 and reached an all-time high of 888,000 tons in 2000.⁴ Because overfishing in some areas of the world's oceans has led to concerns for the populations of some shark species, adequate conservation and management of shark populations has become increasingly important on a global scale.⁵ In response to concerns about growing shark harvests internationally, many countries have banned shark fishing in their waters in favor of promoting tourism opportunities relating to sharks.⁶

Harvesting Sharks off Florida's Coast

Fishermen harvest sharks primarily for their meat, fins, skin, cartilage, and liver.⁷ Meat from some species of shark is an important dietary component in many developing countries, and shark fins, the most valuable of shark products, are used to make traditional shark fin soup, which is a delicacy in the Chinese culture.⁸ However, despite the high value of some shark products, sharks historically have been considered a low-value fish and mostly seen as a by-product of other more profitable fisheries, such as tuna.⁹

Within Florida's seaward boundary, the use of hook and line gear is the only lawful means to harvest sharks in or from the waters of the state.¹⁰ A person may not harvest in or from the waters of the state more than one shark per day.¹¹ The possession of more than two sharks harvested from the state waters aboard any vessel with two or more persons is prohibited.¹² While certain species of shark, including any part of these species, are prohibited under state law from being harvested, possessed, landed, purchased, sold, or exchanged in the state, the prohibition does not apply to sharks harvested lawfully in federal waters when the shark is transported directly through state waters.¹³

To commercially harvest sharks, an individual must possess both a valid saltwater products license and any applicable federal permit for sharks.¹⁴ The commercial harvest season

³ United Nations Food and Agriculture Organization of the United Nations (FAO), *International Plan of Action for Conservation and Management of Sharks*, available at <http://www.fao.org/ipoa-sharks/background/sharks/en/> (last visited Feb. 18, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ National Oceanic and Atmospheric Administration (NOAA), 2017 *Shark Finning Report to Congress*, 3 (2017), available at <https://www.fisheries.noaa.gov/resource/document/2017-shark-finning-report-congress> (last visited Feb. 18, 2020).

⁷ NOAA, 2015 *Shark Finning Report to Congress*, 2, 6, 78, 93 (2015) available at <https://repository.library.noaa.gov/view/noaa/15645> (last visited Feb. 18, 2020).

⁸ Smithsonian National Museum of Natural History, *Sharking Finning: Sharks Turned Prey*, available at <https://ocean.si.edu/ocean-news/shark-finning-sharks-turned-prey> (last visited Feb. 18, 2020).

⁹ Frans Teutscher, FAO, *Sharks (Chondrichthyes)*, available at <http://www.fao.org/docrep/006/Y5261E/y5261e08.htm> (last visited Feb. 18, 2020).

¹⁰ Fla. Admin. Code R. 68B-44.006(1); Florida's seaward boundary extends 9 nautical miles in the Gulf of Mexico and 3 nautical miles in the Atlantic.

¹¹ Fla. Admin. Code R. 68B-44.004(1).

¹² *Id.*

¹³ Fla. Admin. Code R. 68B-44.003(4).

¹⁴ Fla. Admin. Code R. 68B-44.009.

technically spans the entire year, but can be closed if any adjacent federal waters are closed. Additionally, if the Atlantic Marine fisheries commission deems the need for closure, all waters between the Florida–Georgia border and Miami-Dade county will also be closed to commercial harvesting.¹⁵

Shark Finning

Shark finning is the practice of removing and retaining shark fins at sea while discarding the remainder of the shark’s body, often while the shark is still alive, into the waters. In Florida, the practice of shark finning was prohibited in 1992 by requiring sharks harvested to be landed in a whole condition.¹⁶ Additionally, the prohibition on shark finning was codified into Florida Statutes in 2017.¹⁷ The statute 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.¹⁸

An individual who violates the prohibition is subject to the following penalties:

Violations	Type of Criminal Infraction	Civil Penalty and Jail Time	License Restrictions	Administrative Fines
1 st offense ¹⁹	2 nd Degree Misdemeanor	Max: \$500 ²⁰ Max: 60 days ²¹	Suspension of license for 180 days	\$4,500
2 nd offense ²²	2 nd Degree Misdemeanor	Max \$500 ²³ Max: 60 days ²⁴	Suspension of license for 365 days	\$9,500
3 rd offense and subsequent offenses ²⁵	1 st Degree Misdemeanor	Max: \$1,000 ²⁶ Max: 1 year ²⁷	Permanent revocation of all license privileges	\$9,500

In the United States, shark finning was prohibited in 2000.²⁸ In 2010, the Shark Conservation Act strengthened the prohibition by improving the ability to enforce the shark finning prohibition by making it unlawful to:

- Remove any fins of a shark, including the tail, at sea;
- Have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

¹⁵ Fla. Admin. Code R. 68B-44.005.

¹⁶ Fla. Admin. Code R. 68B-44.004.

¹⁷ Section 379.2426(2), F.S.

¹⁸ *Id.*

¹⁹ Section 379.2426(3)(a), F.S.

²⁰ Section 775.083(1)(e), F.S.

²¹ Section 775.082(4)(b), F.S.

²² Section 379.2426(3)(b), F.S.

²³ *Id.*

²⁴ Section 775.082(4)(b), F.S.

²⁵ Section 379.2426(3)(c), F.S.

²⁶ Section 775.083(1)(d), F.S.

²⁷ Section 775.082(4)(a), F.S.

²⁸ 16 U.S.C. s. 1857 (2000).

- Transfer any such fin from one vessel to another vessel at sea; or
- Land any such fin that is not naturally attached to the corresponding carcass or land any shark carcass without such fins naturally attached.²⁹

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.³⁰

While the practice of shark finning is prohibited in the United States, the trade of shark fins is legal. In 2011, the last year that full global data is available, the total declared value of world exports was \$438.6 million for 17,154 tons imported.³¹ The United States is both an importer and exporter of shark fins.³² In 2011, the U.S. exported 38 tons of shark fins and imported 58 tons.³³ A number of the countries that the U.S. imports shark fins from do not have a ban in place, such as China, Indonesia, and Japan. In response, some U.S. states have passed laws to ban the trade of shark fins, such states include Hawaii, California, Oregon, Washington, Illinois, Maryland, Delaware, Nevada, New York, Massachusetts, Rhode Island, and Texas.³⁴

Many other countries have also banned shark fishing in their waters. Nations that have adopted finning bans include the Bahamas, Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, the Maldives, Nicaragua, Palau, Panama, and Taiwan.³⁵ Additionally, Canada, the largest importer of shark fins outside of Asia, banned the importation and exportation of shark fins in June of 2019.³⁶

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 under Art. VI of the U.S. Constitution and the Commerce Clause under Art. I, s. 8 of the U.S. Constitution.³⁷ The 9th Circuit Court of Appeals held that states are authorized to regulate "on-land activities," as the Magnuson-Stevens Fishery Conservation and Management Act was enacted as a federal-state partnership and expressly preserved the jurisdiction of the states over fishery management within their boundaries.³⁸ Additionally, the court held that the ban did not violate the Commerce Clause as it does not "interfere with activity that is inherently national or that requires a uniform system of regulation," and its purpose is to "conserve state resources, prevent animal cruelty, and protect wildlife and public health," purposes which are matters of local concern.³⁹

²⁹ *Id.*

³⁰ 16 U.S.C. s. 1858 (2014).

³¹ FAO, *State of the global market for shark products*, 1 (2015), available at <http://www.fao.org/3/a-i4795e.pdf> (last visited Feb. 18, 2020).

³² *Id.* at 85.

³³ *Id.* at 19, 21.

³⁴ See HAW. REV. STAT. § 188-40.7; CAL. FISH & GAME § 2021; OR. REV. STAT. § 509.160; WASH. REV. CODE § 77.15.770; 515 ILL. COMP. STAT. 5/5-30; MD CODE ANN., NAT. RES. § 4-747; DEL. CODE TIT. 7, § 928A; NEV. REV. STAT. § 597.905; N.Y. ENVTL. CONSERV. LAW § 13-0338; MASS. GEN. LAWS ch. 130, § 106; R.I. GEN LAWS §20-1-29; and TEX. PARKS & WILD. CODE § 66.2161.

³⁵ NOAA, *2017 Shark Finning Report to Congress*, available at <https://repository.library.noaa.gov/view/noaa/19769> (last visited Feb. 17, 2020).

³⁶ Fisheries Act, S.C. ch. 18.1 §32(1).

³⁷ *Chinatown Neighborhood Ass'n. v. Harris*, 794 F.3d 1136 (9th Cir. 2015), *cert. denied*, 136 S.Ct. 2448 (2016).

³⁸ *Id.*

³⁹ *Id.*

III. Effect of Proposed Changes:

The bill prohibits the sale of shark fins in Florida, and the import and export of shark fins to and from Florida. However, the prohibition on sale and export does not apply to commercial fishermen who hold 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 are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

The bill takes effect on October 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Commerce Clause of the United States Constitution states that the United States Congress has the power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.⁴⁰ If an exercise of local power serves a legitimate local interest but simultaneously burdens commerce, the courts will undertake a balancing test.⁴¹ California's shark ban was challenged in the 9th Circuit Court of Appeals, and the court held that the shark ban does not violate the Commerce Clause.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

⁴⁰ U.S. CONST. art. I, s. 8.

⁴¹ *Great Atlantic & Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366 (1976).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 379.2426 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on February 3, 2020:

- Changes the bill to prohibit importing and exporting shark fins to and from Florida.
- Changes the statute’s title to read “Regulation of shark fins; penalties.”

CS by Commerce and Tourism Committee on February 18, 2020:

- Provides an exception to the sale and export prohibition by establishing that the prohibition does not apply to commercial fishermen who hold 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 are legally landed, handled, processed, and transported. This exception expires on January 1, 2025.

- B. Amendments:

None.