



Animal Welfare Institute

900 Pennsylvania Ave., SE, Washington, DC 20003

June 27, 2013

BY ELECTROIC AND REGULAR MAIL

Submitted via <http://www.regulations.gov>

Kim Marshall
National Marine Fisheries Service, NOAA
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Marshall:

Re: Comments on Implementation of the Shark Conservation Act of 2010

The Animal Welfare Institute (“AWI”) submits these comments in response to National Marine Fisheries Service’s (“NMFS”) proposed rule to implement provisions of the Shark Conservation Act of 2010 (“SCA”), as it amends the Magnuson-Stevens Fishery Conservation and Management Act. We also incorporate by reference the comments of Humane Society International.

The AWI supported and campaigned for the passage of the SCA and fully supports its implementation. However we are concerned with the proposed rule’s interpretation that federal law may preempt State or territorial shark fin laws with regard to prohibiting the possession, sale and distribution of detached shark fins and shark fin products.¹

The purpose of the SCA was to protect sharks from finning- a hugely wasteful and inhumane practice whereby sharks are caught, finned and discarded, sometimes while still alive, back into the ocean. The SCA therefore requires that, except for smooth dogfish, all sharks in the United States be brought to shore with their fins “naturally attached.” In particular, the SCA closed loopholes in existing regulations to prohibit any person from removing, possessing, transferring, or landing a fin that is “not naturally attached to the corresponding carcass.”²

The U.S. has been a leader in shark conservation for decades. With upwards of 73 million sharks believed to be killed for their fins annually, the SCA paralleled and likely promoted similar conservation efforts to curb shark finning and trade in shark fins in other countries as well as among multi-lateral organizations. Most recently in March of this year, the U.S. co-championed and supported successful proposals to restrict trade in several species of sharks through the International Trade in Endangered Species of Wild Fauna and Flora.³

¹ 78 Fed. Ref. 25686 (“State or territorial shark fin laws are preempted if they are inconsistent with the Magnuson-Stevens Act as amended by the SCA, implementing regulations for the statutes, or applicable federal fishery management plans or regulations.”)

² 78 Fed. Ref. 25686.

³ NOAA, “Sharks and Manta Rays Receive Protection Under CITES” (March 14, 2013) available at http://www.nmfs.noaa.gov/ia/slider_stories/2013/02/cites_cop16.html

It seems incongruous for NMFS to be now withdrawing from its long-held commitment to conserve sharks and end shark finning, by suggesting that the requirement for sharks to be landed with fins attached in the U.S., preempts U.S. states and territories' laws that prohibit the possession, sale and distribution of fins.

We interpret the federal rule as enhancing any state law rather than preempting one and it seems we are not alone.⁴ Shark fins that are imported and sold in the U.S. can come from any fishery in the world, including from countries where finning is legal. Individual states and territories therefore play a vital role in shark conservation and an end to finning, by placing restrictions on the movement and trade in fins within their boundaries. Thus, U.S. state and territorial bans on the possession, distribution and sale of shark fins can make a huge impact on the global supply and demand for shark fins, as well as set an important example for other countries to follow. In each case, the state and territorial bans were implemented based on substantial input from both the public and affected stakeholders.

We disagree with NMFS' interpretation that the SCA does not "suggest that Congress intended to amend the Magnuson-Stevens Act to prohibit the possession or sale of shark fins," and that the SCA is meant to "preserv[e] opportunities to land and sell sharks harvested consistent with the Magnuson-Stevens Act" at the expense of state shark and territorial shark fin laws.⁵

For example, we note the following statements from the Congressional Record of 21 December 2010, which we interpret to indicate Congressional intent relating to the Shark Conservation Act of 2010 was one of conservation taking precedence over commerce:

"Economic profits have fueled high demands for shark fins and have led to the exploitation of our marine ecosystem. Exploiters remove only shark fins and dump carcasses at sea. It is Congress' responsibility to maintain prohibition of shark finning in order to preserve the conservation of sharks and their corresponding ecosystems."

And:

*"Shark-finning is the removal of any fins of a shark (including the tail), and discarding the carcass of the shark at sea. The practice has egregious effects on shark populations worldwide and the fins remain in high demand for use in `shark fin soup'--an Asian delicacy.... In short, this practice takes a tremendous toll on shark populations. In addition, many shark species are threatened or endangered, making the conservation measures set forth by this bill timely and necessary."*⁶

Furthermore, we disagree with NMFS' interpretation of Section 4 of Executive Order 13132, which expressly set forth special requirements for preemption—mandating that a "statute contain an express preemption provision or ...some other clear evidence that the Congress intended

⁴ See Pekew, Charles, "Rules Proposed to Ban Cutting off Shark Fins," Washington Examiner (May 3, 2013) available at <http://www.examiner.com/article/rules-proposed-to-ban-cutting-off-shark-fins> ("The regulations would not preempt stricter state laws but would supersede state laws that allow fins to be cut off.")

⁵ 78 Fed. Reg. 25686

⁶ 156 Cong. Rec. H8790-H8792 (daily ed. December 21, 2010)

preemption of State law....”⁷ Neither the Magnuson Stevenson Act nor the SCA contains an express preemption provision, but rather the opposite. Specifically, the Magnuson-Stevens Act clearly states that “. . . nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.” 16 U.S.C. 1856(a)(1). Likewise, a search through the legislative history of both federal laws does not indicate congressional intent to preempt state or territorial bans on the possession, sale and distribution of shark fins.

The Animal Welfare Institute contends that the SCA was not intended to put commercial interests ahead of the need to conserve shark populations that are at such great risk. We therefore urge NMFS to issue rules to implement the SCA that will complement and enhance state and territory measures, especially those measures aimed at prohibiting the possession and sale of shark fins, not preempt them.

Sincerely,



Susan Millward
Executive Director

⁷ 64 Fed. Reg. 43255