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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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LAND
STATE PARKS

December 18, 2014

Eileen Sobeck
The Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Sobeck:

On July 28, 2013, the Hawaii Department of Land and Natural Resources (DLNR) submitted a comment letter on the National Marine Fisheries Service's (NMFS's) proposed rule implementing the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Shark Conservation Act of 2010 (SCA), regarding the potential preemption of Hawaii state shark fin laws and regulations. DLNR worked with NMFS and consulted our Attorney General's Office to clarify the relationship of the proposed federal rule to State law regulating the possession, sale, offer for sale, trade, and distribution of shark fins. For the reasons set forth below, DLNR concludes that the Hawaii shark fin law will have minimal impact on any federally-managed shark fisheries in Hawaii under the new federal regulations and is consistent with the MSA as amended by the SCA.

Hawaii's shark fin law, Hawaii Revised Statutes (HRS) § 188-40.7, makes it unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins, defined as "the raw or dried fin or tail of a shark." DLNR does not construe the law to prohibit the possession and landing of sharks with fins that are naturally attached to the carcass, as allowed under the proposed federal rule.

Persons participating in any federally-managed commercial fishery outside of state waters, who harvest, possess, or land sharks with fins naturally attached to the carcass are not in violation of HRS § 188-40.7, but only provided the fins are removed after landing and disposed of prior to the sale of the shark meat or any portion of the carcass. During the fleeting possession of detached shark fins during processing, fish processors in Hawaii are given an opportunity to discard and dispose of the fins before they will be prosecuted.

The proposed federal rule requires that shark fins be attached to the carcass at the time of landing, but is otherwise silent on any requirement or prohibition regarding the possession or sale of shark fins after landing. HRS § 188-40.7 regulates any possession, sale, or distribution of shark fins after landing. Thus, implementation and enforcement of HRS §188-40.7 has no direct conflict with the federal rule.

Since the enactment of HRS § 188-40.7 in 2010, there has been virtually no sale of shark fins in Hawaii. As a result, shark fins have little economic value in Hawaii. In 2010, the average ex-vessel revenue from shark landings by the Hawaii-based pelagic longline fishery was only \$1,020 per vessel out of an estimated average total revenue of \$427,000 per vessel. As shark landings represent such a small portion of the ex-vessel revenue for Hawaii-based longline vessels, had shark fins remained legally marketable any implementation or enforcement of HRS § 188-40.7 would represent only a minimal impact to federally-managed shark fisheries in Hawaii, and would not substantially diminish Hawaii fishers' income from the federal shark fishery.

Based on these factors, we conclude that Hawaii's shark fin law, as interpreted and applied, is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010. Further, implementation and enforcement of the Hawaii shark fin law will have a minimal impact on federally-authorized shark harvesters and does not unlawfully burden their ability to achieve the benefits from federal fisheries provided under the MSA and SCA.

We hope this letter adequately addresses the concerns raised by NMFS with regard to the proposed rule. Please feel free to contact Mr. Alton Miyasaka of the State of Hawaii Division of Aquatic Resources, at 808-587-0092, if you have any further questions or concerns.

Sincerely,



William J. Aila, Jr.
Chairperson
Board of Land and Natural Resources
State of Hawaii



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

Mr. Carty Chang
Acting Director
Hawaii Department of Land and
Natural Resources
P.O. Box 621
Honolulu, HI 96809

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Dear Mr. Chang:

Thank you for your Department's letter regarding Hawaii's shark fin law, Hawaii Revised Statutes (HRS) § 188-40.7, which makes it unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins, defined as "the raw or dried fin or tail of a shark."


Based on the information about the Hawaii law set forth in the letter and the current facts regarding the scale and nature of the shark fishery in Hawaii, we agree with your conclusion that enforcement of the Hawaii shark law will have a minimal impact on federally managed fishermen in Hawaii. As noted in your letter, the Hawaii Department of Land and Natural Resources does not interpret the law to prohibit the possession and landing of sharks with fins that are naturally attached to the carcass, as allowed by the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010. You also noted that the revenue for shark landings represents only a small portion of the ex-vessel revenue for Hawaii-based longline vessels; in 2010 the average ex-vessel revenue from shark landings by this fishery was \$1,020 per vessel out of an estimated total revenue of \$427,000 per vessel.

We also understand from your letter that fishermen who participate in any federally managed fishery outside of Hawaii state waters, who harvest, possess, or land sharks with fins naturally attached to the carcass are not in violation of HRS § 188-40.7, provided the fins are removed after landing and disposed of before any sale of meat or other parts of the carcass from the shark occurs. Hawaii's law regulates possession, sale, or distribution of shark fins after landing has occurred, so the implementation and enforcement of HRS § 188-40.7 has no direct conflict with the federal rule.

Based on these facts, we agree with your conclusion that Hawaii's law will have a minimal impact on federally managed fishermen in Hawaii and does not unlawfully burden their ability to achieve the benefits from federal fisheries and is therefore consistent with and not preempted by the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010.

Please contact us if there are any significant changes to the facts described in your letter, as those changes may affect our conclusions. We appreciate your willingness to work with us on this important matter.

Sincerely,



Eileen Sobeck

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

