



Paul J. Diodati
Director

Commonwealth of Massachusetts

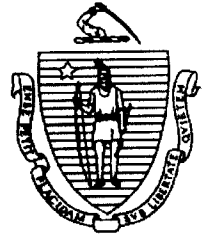
Division of Marine Fisheries

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Deval Patrick
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August 22, 2014

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

Dear Ms. Sobeck:

The Massachusetts Division of Marine Fisheries (*Marine Fisheries*) has examined the potential for Chapter 187 of the Acts of 2014 (Chapter 187), the recently enacted Massachusetts law banning shark fins, to burden the ability of federally licensed shark fishermen in Massachusetts to achieve the benefits from federal fisheries. For the reasons discussed below, *Marine Fisheries* believes that Chapter 187 does not conflict with the Magnuson-Stevens Act, as amended by the Shark Conservation Act of 2010.

Chapter 187, which takes effect on September 1, 2014, prohibits a person from possessing, selling, attempting to sell, trading and distributing a shark fin. "Shark" is defined as "any species of the subclass Elasmobranchii", excluding "smooth hounds, spiny dogfish or any other species in the order Batoidea." "Shark fin" is defined as "the raw, dried or otherwise processed detached fin...or tail, of a shark." Chapter 187 allows any person with a state or federal license or permit to take or land sharks for recreational or commercial purposes to separate a shark fin from a lawfully landed shark during the ordinary course of preparing the body of the shark for consumption, sale, trade or distribution, provided that the shark fin is immediately destroyed unless used by the person for the purposes of taxidermy.

To put the expected effect of this new state law in perspective, commercial landings of sharks in Massachusetts are heavily dominated by spiny dogfish. For example, according to dealer reported data from the Standard Atlantic Fisheries Information System (SAFIS) for 2013, spiny dogfish landings in Massachusetts totaled over 6.2 million pounds, with an ex-vessel value of roughly \$943,000. SAFIS dealer records of other shark species purchased in 2013 were limited to shortfin mako, smooth dogfish, and porbeagle, of which only the first was landed by enough harvesters (three or more) to render the landings information non-confidential. Shortfin mako landings totaled 35,742 pounds, with an ex-vessel value of just over \$45,000. Landings of smooth dogfish and porbeagle were both under 500 pounds each.

The exclusion of smooth hounds and spiny dogfish from the definition of "shark" in Chapter 187, combined with the law's specified allowance for permitted harvesters to remove shark fins from legally landed sharks will minimize the law's impacts on the value of legally landed sharks in the Commonwealth. Chapter 187 does not restrict the harvest, possession, and sale of fins and

carcasses from our dominant shark species, spiny dogfish. Sharks of other species that are caught less frequently in Massachusetts may still be fished for, landed, and finned after landing by permitted harvesters in accordance with existing regulations and Chapter 187, and the carcasses sold to any eligible dealer. *Marine Fisheries*' existing regulations already restrict the disposition of sharks landed by commercial and recreational fishermen. Specifically, 322 CMR 6.37(3)(d) prohibits any recreational or commercial fisherman from possessing on board or landing any sharks (excluding spiny dogfish) whose heads, tails, and fins are not attached naturally to the carcass, although commercial fishermen may cut fins as long as the fins remain attached to the carcass with a least a small portion of uncut skin.

In conclusion, *Marine Fisheries* believes that Chapter 187 will have a minimal impact on federally licensed and permitted harvesters in Massachusetts, and will not unlawfully burden their ability to achieve the benefits from federal fisheries provided under the Magnuson-Stevens Act.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Diodati". The signature is written in a cursive style with a distinct loop at the end of the last name.

Paul Diodati
Director

Cc: Lois Schiffer, General Counsel, National Oceanic & Atmospheric Administration
Emily Menashes, Deputy Director, Office of Sustainable Fisheries, NOAA Fisheries
Richard Lehan, General Counsel, MA Department of Fish and Game
Alicia Pradas-Monne, Assistant Attorney General, MA Office of the Attorney General



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

Mr. Paul Diodati
Director, Massachusetts Division of
Marine Fisheries
251 Causeway Street, Suite 400
Boston, MA 02114

SEP 30 2014

Dear Mr. Diodati:

Thank you for your letter regarding your assessment of the impacts to federal shark harvesters of the recently passed legislation in Massachusetts, Chapter 187 of the Act of 2014 (Chapter 187), prohibiting the possession, sale, and trade of shark fins under certain circumstances.

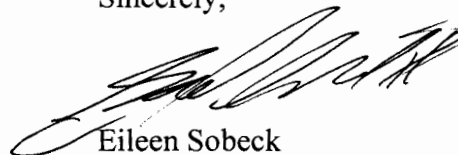
Based on the information about the Massachusetts law set forth in your letter and the current facts regarding the scale and nature of the shark fishery in Massachusetts, we agree with your conclusion that Massachusetts' shark fin law will have a minimal impact on federally licensed and permitted shark harvesters in Massachusetts. As noted in your letter, spiny dogfish are exempted from the provisions of this law and they comprise the majority of landed sharks by weight and value in Massachusetts.

For other non-exempted sharks, we understand that Chapter 187 allows any person with a state or federal license or permit to take or land sharks for recreational or commercial purposes to separate a shark fin from a lawfully landed shark during the course of preparing the body of the shark for consumption, sale, trade, or distribution, provided the fin is immediately destroyed unless used by the person for purposes of taxidermy. We also understand that, under Chapter 187, the carcasses of non-exempt sharks may be sold to any eligible dealer.

Based on these facts, we agree with your conclusion that Massachusetts' law will have a minimal impact on federally licensed shark fishermen in Massachusetts 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 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

