Oregon
John A Kitzhaber MD., Governor

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April 18, 2014

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

Dear Ms. Sobeck,

I am writing in follow-up to telephone conversations between our respective legal counsel in the last few weeks regarding Oregon's law prohibiting the possession, sale, trade and distribution of detached shark fins under certain circumstances. For the following reasons, the Oregon Department of Fish and Wildlife (ODFW) submits that Oregon's shark fin law will have a minimal impact on federally licensed shark harvesters in the State of Oregon, and hence in Oregon's view our shark fin law is consistent with the Magnuson-Stevens Act (MSA), as amended by the Shark Conservation Act (SCA) of 2010.

Oregon law prohibits possession, sale, trade and distribution of shark fins within state boundaries. Oregon House Bill 2838, enacted in 2011, provides that "[a] person may not possess, sell or offer for sale, trade or distribute a shark fin in this state." ORS 498.257(2); ORS 509.160(2). Oregon law defines shark fin as "the raw or dried fin or tail of a shark." ORS 498.257(1)(a).

There are two exceptions in the Oregon statutes. First, the prohibition of possession, sale, trade or distribution of shark fins within Oregon does not apply to spiny dogfish, a recognized food fish found in Oregon waters. ORS 498.257(3)(a). Second, ODFW may issue a license or permit or adopt rules allowing possession, sale or trade of a shark fin. ORS 498.257(3); ORS 509.160(3) ("This section does not apply to: * * * A person who holds a license or permit issued by the State Department of Fish and Wildlife under the commercial fishing laws to take a shark and who possesses, sells or offers for sale, trades or distributes a shark fin consistent with the terms of that license or permit[.]"). Because the shark fishery, apart from spiny dogfish, is mostly a result of by-catch, no permits as yet have been issued under this Oregon authority, but the state could legally establish a shark fishery.

Oregon does not maintain a record of sale of shark fins in Oregon or elsewhere for any species of shark. By state law, commercially landed shark must be in the round (i.e.,

whole fish; exception is thresher shark). Round weight is what is reported on the fish ticket. The fish body sans fin can be sold in Oregon for all shark species. Because a detached non-exempt shark fin cannot be sold or distributed in Oregon, it must be discarded or otherwise disposed of. Were the non-exempt shark fishery to expand, a permit system could be formed that would then be exempt under Oregon's shark fin law. The following data regarding value is for whole fish.

Table 1 depicts the landings in pounds and value in thousands of dollars of total shark landings and the proportion of landing and value for spiny dogfish from 2005 to 2013. Since 2008, the overwhelming majority of the shark fishery is for spiny dogfish (98% to 100%).

	Landings (thousands of lbs)			Value (thousands of $)		
Year	Total sharks	S. dogfish	(%) S. dogfish	Total sharks	Spiny dogfish	(%) S. dogfish
2005	15	9	57%	2.0	1.0	49%
2006	26	21	79%	1.0	0.1	7%
2007	24	19	83%	1.6	0.2	12%
2008	95	92	96%	33.7	33.1	98%
2009	128	127	99%	33.6	33.5	100%
2010	332	277	83%	41.5	40.9	99%
2011	441	428	97%	45.8	45.8	100%
2012	339	297	87%	15.8	15.6	99%
2013	71	66	93%	0.6	0.6	98%
Total	1472	1335	91%	175.6	170.7	97%

TABLE 1

Figure1 reflects that the proportion of *landings* of spiny dogfish has remained constant preceding and after enactment of Oregon's shark fin law in 2011.

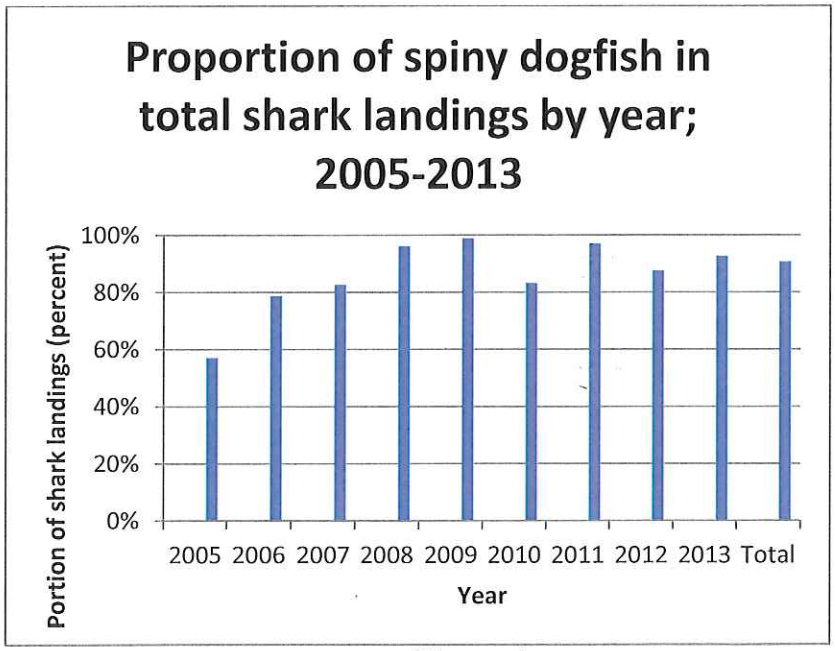

Figure 1

Figure 2 reflects that the proportion of the *value* of spiny dogfish landings compared to other sharks has remained constant preceding and after enactment of Oregon's shark fin law in 2011.

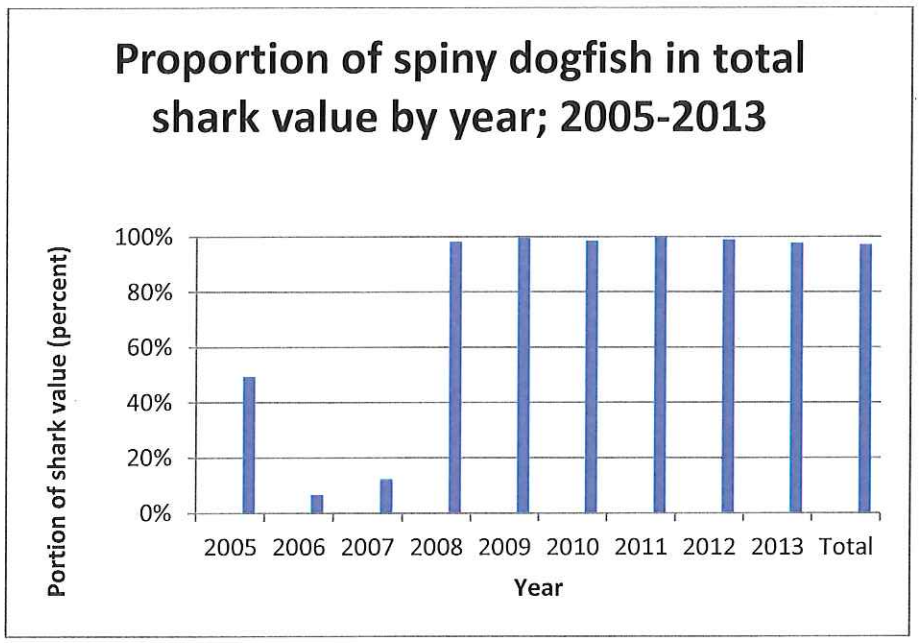

Figure 2

As reflected in Figures 1 and 2, spiny dogfish comprise the overwhelming majority of shark landings in Oregon both in terms of volume and value. Landings of non-spiny dogfish shark species are extremely low and often with little or no value. This is because there is no significant market for these species in Oregon, and catch is infrequent. With few exceptions, landings of sharks, including spiny dogfish are the result of by-catch. Trawl gears are the predominant gear for harvesting sharks, including spiny dogfish. Fish captured with mid-water trawl gear are required to be retained regardless of value.

While overall shark landings have decreased in 2012 and 2013, the proportion of spiny dogfish has remained constant. The overall decline may be due to the loss of a specific market (past purchases of significant amounts of dogfish, frozen whole, to sell to educational facilities), coupled with trawl reforms implemented since 2011 resulting in by-catch reduction in trawl fisheries, reduced target catch in trawl fisheries, and trawlers shifting to other fisheries such as pink shrimp. The effect of trawl reforms is also suggested by some degree of decline in Oregon landings in the same period for all species, including groundfish caught using trawl gear. See Figure 3.

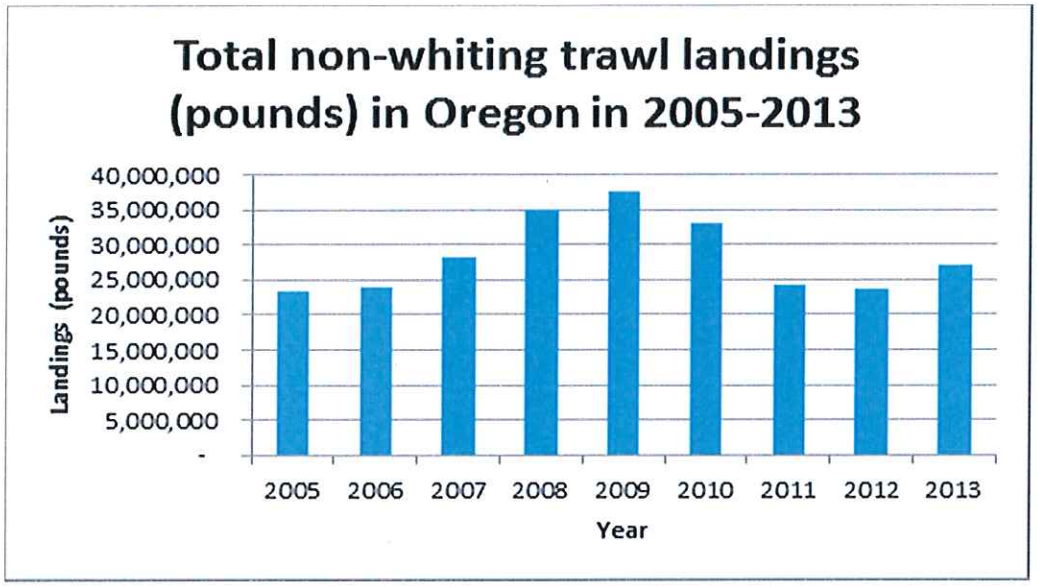

Figure 3

In light of the foregoing, ODFW submits that Oregon's prohibition on shark fin possession has had, and will continue to have, a minimal impact on federally licensed and permitted shark harvesters, does not unlawfully burden efforts to obtain "optimum yield" in the commercial shark fishery, and meets MSA purposes and objectives, including promoting commercial fishing under sound conservation and management principles. Hence, ODFW submits that Oregon's shark fin law is consistent with the Magnuson-Stevens Act, as amended by the Shark Conservation Act of 2010.

We hope that this letter serves to address NOAA's preemption concerns with respect to the Oregon shark fishery. Please feel free to contact me at (503) 947-6206 if you have any questions in regard to this issue.

Sincerely,

Ed Bowles

Ed Bowles
Fish Division Administrator
Oregon Department of Fish & Wildlife

cc: Lois Schiffer, NOAA General Counsel
Curt Melcher, ODF
Gway Kirchner, ODFW
Jas. Jeffrey Adams, Oregon DOJ
Aaron Knott, Legislative Director, Oregon DOJ

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

THE DIRECTOR

APR 29 2014

Mr. Ed Bowles
Fish Division Administrator
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

Dear Mr. Bowles:

Thank you for your letter regarding your assessment of the impacts to federal shark harvesters of Oregon law prohibiting the possession, sale, trade, and distribution of detached shark fins (Oregon House Bill 2838, enacted in 2011).

Based on the information about the Oregon law set forth in your letter and the current facts regarding the scale and nature of the shark fishery in Oregon, we agree with your conclusion that Oregon's shark fin law will have minimal impact on federally licensed and permitted shark harvesters in Oregon. As noted in your letter, spiny dogfish are exempted from the provisions of this law and they comprise nearly 100 percent of the value of sharks harvested and landed in Oregon.

We also understand that, for all shark species landed in Oregon, the body (without the fins) can lawfully be sold. We also understand that the detached fin from a non-exempted shark, for the small percentage of non-exempted shark species landed, cannot be sold and must be discarded or otherwise disposed of. Your letter further explains that Oregon's Department of Fish and Wildlife could issue a license or permit or adopt rules allowing possession, sale, or trade of a shark fin under appropriate circumstances.

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

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