

Calendar No. 675

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-388 }

SHARK FIN TRADE ELIMINATION ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 793



NOVEMBER 27, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 793]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 793) to prohibit sale of shark fins, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 793 is to prohibit a person from possessing, transporting, offering for sale, selling, or purchasing shark fins or products containing shark fins.

BACKGROUND AND NEEDS

Shark finning is the practice of removing and retaining a shark's fin and discarding the carcass at sea. This practice has led to a growing concern about the status of certain shark species.¹ Shark finning has been prohibited under Federal law since 2000.² The Shark Conservation Act of 2010³ amended section 608 of the High Seas Driftnet Fishing Protection Act⁴ to further prohibit the removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea. The prohibition focuses on

¹ National Oceanic and Atmospheric Administration (NOAA), NOAA Fisheries, “2014 Shark Finning Report to Congress” (http://www.nmfs.noaa.gov/sfa/laws_policies/sca/documents/shark_fin_finning_report_2014.pdf).

² Shark Finning Prohibition Act (16 U.S.C. §1822 note).

³ P.L. 111–348 (124 Stat. 3668).

⁴ 16 U.S.C. §1826i.

the removal and custody of a detached fin aboard a fishing vessel in U.S.-controlled waters. But, there is no Federal ban on the removal and sale of shark fins once the shark is brought ashore. Once a shark fin is detached from the body, it is almost impossible to determine whether the shark was legally caught or the fin lawfully removed. Determination of the species also is difficult, which is problematic given that some species of sharks are threatened with extinction.

In addition to the nationwide prohibition on shark finning, 11 States (Texas, Delaware, Hawaii, Illinois, Massachusetts, Maryland, New York, Oregon, Rhode Island, California, and Washington) and 3 territories (American Samoa, Guam, and the Northern Mariana Islands) have already implemented bans on the sale, and in many cases the possession, of shark fins. A proposed ban is currently pending in New Jersey.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA)⁵ guides management of Federal fisheries resources through the use of fishery management plans within the eight established regional councils. The National Oceanic Atmospheric Administration's National Marine Fisheries Service works with the fishery management councils, commercial and recreational fishermen, and others to conserve and sustainably manage domestic shark fisheries in both the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, and the Pacific Ocean. Sustainably managed shark fisheries, including the selling of legally harvested shark fins, provide opportunities for both commercial and recreational fishermen.⁶

SUMMARY OF PROVISIONS

If enacted, S. 793 would do the following:

- Prohibit a person from possessing, transporting, offering for sale, selling, or purchasing shark fins or products containing shark fins, unless taken lawfully under a State, territorial, or Federal license or permit.
- Establish a maximum penalty for each violation of \$100,000, or the fair market value of the shark fins, whichever is greater.

LEGISLATIVE HISTORY

S. 793 was introduced on March 30, 2017, by Senator Booker (for himself and Senators Capito, Cantwell, McCain, Peters, Inhofe, Whitehouse, Wicker, Blumenthal, Portman, and Schatz) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. There are 29 additional cosponsors. A nearly identical bill, H.R. 1456, was introduced on March 9, 2017, in the House of Representatives. On May 18, 2017, the Committee met in open Executive Session and by voice vote ordered S. 793 reported favorably with an amendment (in the nature of a substitute).

⁵ 16 U.S.C. §1801 et seq.

⁶ NOAA, NOAA Fisheries, "Shark Conservation in the United States and Abroad" (http://www.nmfs.noaa.gov/stories/2013/07/7_15_13shark_conservation_us_and_abroad.html).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 793—Shark Fin Trade Elimination Act of 2017

S. 793 would prohibit the sale, transport, possession, and purchase of shark fins and products containing shark fins. Violators of this prohibition would be subject to a civil penalty pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The bill also would allow for the lawful possession of shark fins obtained via a state, territorial, or federal license or permit if the shark fin is destroyed or discarded, used for noncommercial purposes, or used for display or research purposes by a museum, college, university, or any permitted researcher. The prohibition in the bill would not apply to *Mustelus canis* (smooth dogfish) or *Squalus acanthias* (spiny dogfish).

Because S. 793 would prohibit the sale and purchase of shark fins, CBO estimates that revenues from customs duties collected on imported shark fin products would decline. CBO also estimates that penalty collections resulting from violations of the bill's prohibitions would increase revenues. Therefore, pay-as-you-go procedures apply. However, based on information from the National Oceanic and Atmospheric Administration (NOAA) and from states that ban the possession of shark fins, CBO estimates that the net effect of those revenue changes would not be significant in any year or over the 2018–2027 period. Enacting the bill would not affect direct spending.

CBO estimates that enacting the legislation would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 793 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The prohibitions in S. 793 would impose private-sector mandates as defined in UMRA. The cost of complying with those mandates would include any loss of income from the sale of shark fins and products containing shark fins and the cost to obtain a license or permit for noncommercial takings. Based on information from NOAA about the value of sharks landed in the United States and the value of shark fins imported into the United States, CBO estimates that the loss of income would total less than \$3 million annually. Additionally, CBO estimates that the cost of obtaining a permit for the possession of shark fins for noncommercial purposes would be minimal and would apply to a limited number of entities. Consequently, CBO estimates that the cost of the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jacob Fabian (for federal costs) and Amy Petz (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 793, as reported, would not create any new programs. However, it may impose new regulatory requirements. The prohibition of shark finning would likely be detailed in a rulemaking and may subject individuals or businesses to new regulations.

ECONOMIC IMPACT

The reported bill would not have an adverse economic impact on the Nation.

PRIVACY

The reported bill would not have a negative impact on the personal privacy of individuals.

PAPERWORK

The legislation would not increase paperwork requirements for private individuals or businesses. The bill would require one report from the Secretary of Commerce (Secretary) by January 1, 2027, discussing the impacts, if any, of the exemption allowing for the continued harvest of spiny dogfish and smooth dogfish fins and tails.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the Act may be cited as the “Shark Fin Trade Elimination Act of 2017.”

Section 2. Findings.

This section would provide the sense of Congress that: many shark populations are on the decline and the global trade of shark fins is one of its greatest threats; shark fins are removed primarily to be commercialized as a fungible commodity, and are often removed while the remainder of the shark is discarded; and abolition of the shark fin trade in the United States will remove the United States from the global market and create a stronger position for advocacy internationally.

Section 3. Prohibition on sale of shark fins.

This section would prohibit a person from possessing, transporting, offering for sale, selling, or purchasing shark fins or products containing shark fins, unless taken lawfully under a State,

territorial, or Federal license or permit as authorized by section 4. This section also would align the violation with the penalties under the MSA with a maximum civil penalty for each violation of \$100,000 or the fair market value of the shark fin, whichever is greater.

Section 4. Exceptions.

This section would provide an exception allowing a person to possess a shark fin that was taken lawfully under a State, territorial, or Federal license or permit to take or land sharks, if the shark fin is separated from the shark in a manner consistent with the license or permit and is—

- (1) destroyed or discarded upon separation;
- (2) used for noncommercial subsistence purposes in accordance with State or territorial law;
- (3) used solely for display or research purposes by a museum, college, or university, or other person under a State or Federal permit to conduct noncommercial scientific research; or
- (4) retained by the license or permit holder for a non-commercial purpose.

Section 5. Dogfish.

This section would create an exemption from the prohibition under section 3 for the species known as smooth dogfish and spiny dogfish and allow a person to possess, transport, offer for sale, sell, or purchase a fin or tail from those species. This section also would require the Secretary to review the exemption and submit a report to Congress with recommendations not later than January 1, 2027.

Section 6. Definition of shark fin.

This section would define the term “shark fin” to mean the raw, dried, or otherwise processed detached fin or tail of a shark.

Section 7. State authority.

This section would clarify that nothing in this Act should be construed to preclude or limit the right of a State or territory to adopt or enforce more stringent standards.

Section 8. Severability.

This section would specify that if any provision of the Act is found invalid it would not affect other provisions of the Act which are severable.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.