

United States Senate

WASHINGTON, DC 20510

July 29, 2013

Dr. Kathryn Sullivan, Acting Administrator National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Dr. Sullivan,

We are writing to bring your attention to a discrepancy in a National Marine Fisheries Service (NMFS) proposed rule regarding the Shark Conservation Act of 2010 [P.L. 111-348, Docket No. 111014628-3329-01]. As you know, the Shark Conservation Act established the United States as a leader in global shark conservation and recovery. In addition, many states and territories have enacted statutes to restrict the possession, trade and sale of shark fins within their jurisdiction. We support NMFS's actions to implement the Shark Conservation Act, but we are very concerned that the state preemption provision undermines valid and essential state and territorial statutes, and disagree with NMFS's interpretation that the state statutes contradicts the Magnuson-Stevens Fishery Conservation and Management Act. We urge you to withdraw the provision in the proposed rule which would preempt state and territorial shark fin trade laws.

Shark finning is a major contributor to the decline in global shark populations. Scientists estimate that between 26 and 73 million sharks are killed every year to supply the global demand for shark fins. Within the proposed rule, NMFS indicates that state and territorial statutes that are designed to combat finning by prohibiting the possession, sale, and distribution of detached shark fins after the point of landing could be preempted. The preemption provision in the draft rule would take away a much-needed tool to protect and recover dwindling shark populations.

The Magnuson-Stevens Fishery Conservation and Management Act's shark finning provisions, as most recently amended by the Shark Conservation Act of 2010, address the landing and possession of sharks and shark fins at sea and in our federal waters. The Act was not constructed to directly address the trade in detached and processed shark fins within the United States. Addressing this trade is vital, as there is currently no global mechanism in place that requires detailed record keeping on species, origin, and chain of custody for shark fins. It is almost impossible to tell, further down the chain of consumer demand, whether a shark fin or shark fin product came from a federally managed legal fishery, or was imported from a country with little or no regulations on shark finning. While sustainable domestic fisheries, like the spiny dogfish fishery in New England, should continue to be supported by NOAA, states must have the ability to regulate other illegal shark finning activity in their jurisdictions.

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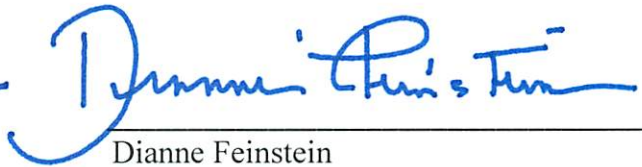
There are a growing number of state and territorial statutes that are designed to address shark finning by reducing the demand for shark fin products. These statutes are not a conflict of interest, and are well within the jurisdiction and authority of the States to regulate. Furthermore, the Magnuson-Stevens 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)].

The controversial state preemption provision in this rulemaking has generated significant concerns from stakeholders around the country. Thank you for continuing to engage our states and territories as you move forward with this rule making process. To address the problem of shark-finning head on and continue to work towards conservation of shark species, we must allow state and territorial statutes to complement the federal regulations. To that end, we again urge you to withdraw the preemption provision in the proposed rule. Thank you for attention to this urgent matter. We look forward to your reply.

Sincerely,



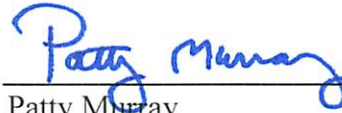
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