

# ASSEMBLY, No. 1145

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman JACK M. CIATTARELLI**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Co-Sponsored by:**

**Assemblywoman Jasey and Assemblyman Benson**

**SYNOPSIS**

Prohibits possession and sale of shark fins.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning shark fins, and supplementing Title 23 of the  
2 Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. The Legislature finds and declares that sharks are apex  
8 predators in the marine food chain, and play an important role in the  
9 ocean's ecosystem; that the characteristics of sharks make them  
10 more vulnerable to overfishing than most fish, and that state,  
11 federal, and international agency data shows a decline in shark  
12 populations both at the local level and worldwide; that, unlike other  
13 fish species, most sharks do not reach sexual maturity until seven to  
14 12 years of age, and then only give birth to a small litter of young,  
15 making it difficult to quickly rebuild their populations once they are  
16 overfished; that the practice of shark finning – where a shark is  
17 caught, the fins cut off, and the shark returned to the water – causes  
18 tens of millions of sharks to die a slow and painful death each year;  
19 that a shark immobilized by finning practices will slowly starve to  
20 death, due to its inability to swim and seek out or capture prey, or  
21 will drown, due to its inability to obtain oxygen through the  
22 movement of water over its gills, or will be eaten alive by other  
23 fish; that shark fins are the principle ingredient in shark fin soup – a  
24 delicacy in some cultures – and the demand for this delicacy has  
25 skyrocketed in recent years; that commercial fishermen, despite the  
26 enactment of federal, and several state, prohibitions on the practice  
27 of shark finning, continue to engage in shark finning on a massive  
28 scale; that, since 1972 – for various reasons, including finning – the  
29 number of blacktip sharks has fallen by ninety-three percent, tiger  
30 sharks by ninety-seven percent, and bull sharks, dusky sharks, and  
31 smooth hammerheads by ninety-nine percent – a rapid and  
32 significant reduction in the shark population that is disrupting the  
33 ocean's equilibrium; and that by eliminating the commercial market  
34 for shark fins in New Jersey, the State can help ensure that sharks  
35 will not become extinct.

36 The Legislature therefore declares that it is reasonable and  
37 necessary, and in the best interests of the State's and the world's  
38 marine environment, to curtail the cruel and inhumane practice of  
39 shark finning, and to thereby prevent the ultimate extinction of the  
40 shark population, by prohibiting the possession, sale, trade, or  
41 distribution of shark fins in the State.

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43 2. (New section) a. No person shall:

44 (1) sell, trade, or distribute, or offer or expose for sale, trade, or  
45 distribution, any shark fin; or

46 (2) possess any shark fin that has been separated from a shark  
47 prior to its lawful landing.

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1 A person may separate a shark fin from a lawfully-landed shark  
2 during the ordinary course of preparing the shark's body, or body  
3 parts other than the fins, for consumption, sale, trade, or  
4 distribution, except that any shark fins so separated from a landed  
5 shark shall be immediately disposed of through destruction, in  
6 accordance with rules and regulations adopted by the department  
7 pursuant to subsection j. of this section.

8 b. Whenever, on the basis of available information, the  
9 commissioner finds that a person is in violation of the provisions of  
10 subsection a. of this section, or of any rule or regulation adopted  
11 pursuant thereto, the commissioner: (1) shall levy a civil  
12 administrative penalty in accordance with subsection c. of this  
13 section; and (2) upon a person's third or subsequent violation of the  
14 provisions of subsection a. of this section, may petition the Attorney  
15 General to bring a criminal action in accordance with subsection d.  
16 of this section.

17 c. The commissioner is authorized to assess a civil  
18 administrative penalty of not less than \$5,000 or more than \$15,000  
19 for a first offense under this section, not less than \$15,000 or more  
20 than \$35,000 for a second offense, and not less than \$35,000 or  
21 more than \$50,000 for a third or subsequent offense. Each day  
22 during which a violation continues shall constitute an additional,  
23 separate, and distinct offense. Any amount assessed under this  
24 subsection shall fall within a range established by rule or regulation  
25 by the commissioner for violations of similar type, seriousness,  
26 duration and conduct, and shall be based, in part, on the number or  
27 weight of shark fins that are the subject of the violation; provided,  
28 however, that prior to the adoption of the rule or regulation, the  
29 commissioner may, on a case-by-case basis, assess a civil  
30 administrative penalty up to the maximum identified in this  
31 subsection, utilizing the criteria set forth herein. In addition to any  
32 civil administrative penalty assessed under this subsection, and  
33 notwithstanding the maximum penalties set forth herein, the  
34 commissioner may assess any economic benefits from the violation  
35 gained by the violator.

36 Prior to the assessment of a penalty under this subsection, the  
37 person committing the violation shall be notified by certified mail  
38 or personal service that the penalty is being assessed. The notice  
39 shall identify the section of the statute or regulation violated; recite  
40 the facts alleged to constitute a violation; state the basis for the  
41 amount of the civil penalties to be assessed; and affirm the rights of  
42 the alleged violator to a hearing. The ordered party shall have 35  
43 days from receipt of the notice within which to deliver to the  
44 commissioner a written request for a hearing. After the hearing,  
45 and upon finding that a violation has occurred, the commissioner  
46 may issue a final order assessing the amount of the fine specified in  
47 the notice. If no hearing is requested, the notice shall become a

1 final order after the expiration of the 35-day period. Payment of the  
2 assessment is due when a final order is issued or the notice becomes  
3 a final order. The payment of any assessment shall not be deemed  
4 to affect the availability of any other enforcement provisions in  
5 connection with the violation for which the assessment is levied.

6 The department may compromise any civil administrative  
7 penalty assessed under this section in an amount and with  
8 conditions the department determines appropriate. A civil  
9 administrative penalty assessed, including any portion thereof  
10 required to be paid pursuant to a payment schedule approved by the  
11 department, which is not paid within 90 days of the date that the  
12 payment of the penalty is due, shall be subject to an interest charge  
13 on the amount of the penalty, or portion thereof that remains  
14 unpaid, which interest shall accrue as of the date payment is due. If  
15 the penalty is contested, no additional interest charge shall accrue  
16 on the amount of the penalty until 90 days after the date on which a  
17 final order is issued. Interest charges assessed and collectible  
18 pursuant to this subsection shall be based on the rate of interest on  
19 judgments provided in the New Jersey Rules of Court.

20 d. Any person who has been assessed a civil administrative  
21 penalty, on two or more occasions, pursuant to subsection c. of this  
22 section shall be guilty, upon conviction for a subsequent violation  
23 of subsection a. of this section, of a crime of the fourth degree.  
24 Notwithstanding the provisions of paragraph (4) of subsection a. of  
25 N.J.S.2C:43-6 to the contrary, a person convicted under this  
26 subsection shall be subject to a term of imprisonment of not more  
27 than one year.

28 e. In addition to the penalties imposed under subsections c. and  
29 d. of this section, a person who violates the provisions of subsection  
30 a. of this section shall be liable to the department for the payment of  
31 administrative fees and costs and court costs expended in  
32 prosecuting the violation, and for the payment of reasonable  
33 attorneys' fees.

34 f. Whenever a person violates the provisions of subsection a.  
35 of this section, the department may suspend or revoke the license to  
36 fish, which has been issued to that person in accordance with  
37 R.S.23:3-1 et seq.

38 g. (1) Any shark fins possessed, sold, traded, or distributed in  
39 violation of the provisions of subsection a. of this section, or of any  
40 rule or regulation adopted pursuant thereto, and any vessels,  
41 vehicles, equipment, or other property utilized in the commission of  
42 a second or subsequent violation of subsection a. of this section, or  
43 of any rule or regulation adopted pursuant thereto, may be  
44 confiscated, and shall be subject to forfeiture by summary  
45 proceeding, instituted by the Commissioner of Environmental  
46 Protection in a court of competent jurisdiction.

1 (2) Upon viewing a violation of subsection a. of this section, the  
2 department, a conservation officer, or any other law enforcement  
3 officer may seize and secure, in accordance with the provisions of  
4 paragraph (1) of this subsection, any shark fins, vessels, vehicles,  
5 equipment, or other property involved in the violation, and the  
6 commissioner shall immediately thereafter give notice of the  
7 seizure to the court.

8 (3) In addition to the confiscation procedure identified in  
9 paragraph (2) of this subsection, a court may, upon the filing of a  
10 verified complaint, issue a warrant directing a conservation officer,  
11 or any other law enforcement officer, to: (a) seize, and take into  
12 possession, shark fins, vessels, vehicles, equipment, or other  
13 property described in the complaint; (b) bring any seized items  
14 before the court that issued the warrant; and (c) summon the person  
15 named in the warrant, and any other person who may be found in  
16 possession of the described items, to appear at the time and place  
17 therein specified.

18 (4) If, after a hearing, the court determines that any shark fin  
19 seized pursuant to this subsection was possessed, sold, traded, or  
20 distributed in violation of the provisions of subsection a. of this  
21 section, the shark fin shall be forfeited and, notwithstanding any  
22 other law, rule, or regulation to the contrary, shall be disposed of  
23 through destruction.

24 If, after a hearing, the court determines that any other items  
25 seized pursuant to this subsection were utilized in the commission  
26 of a violation of subsection a. of this section, the items shall be  
27 forfeited and disposed of through destruction, donation, or sale, as  
28 the court may direct, but no such item shall be sold contrary to the  
29 provisions of any law, or any rule or regulation adopted pursuant  
30 thereto. The proceeds of any sale conducted pursuant to this  
31 paragraph, less legal costs and charges, shall be paid into the  
32 "Endangered and Nongame Species of Wildlife Conservation  
33 Fund," established pursuant to section 1 of P.L.1981, c.170  
34 (C.54A:9-25.2), to be used for the same purposes as other monies in  
35 that fund.

36 h. The provisions of subsection a. of this section shall not  
37 apply to any shark fin possessed, sold, traded, or distributed for  
38 scientific research or educational purposes.

39 i. As used in this section, "shark fin" means a raw or dried fin  
40 or tail that has been separated from the body of any species of  
41 shark.

42 j. The department shall adopt, pursuant to the "Administrative  
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
44 regulations necessary to implement the provisions of this act.

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46 3. This act shall take effect immediately.

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STATEMENT

This bill would prohibit the sale, trade, or distribution, or the offering for sale, trade, or distribution of any shark fin, and the possession of any shark fin that has been separated from a shark prior to its lawful landing. The bill would authorize the removal of shark fins from the body of a shark only if the shark has been lawfully-landed and the fins are removed during the ordinary course of preparing the shark's body, or body parts other than the fins, for consumption, sale, trade, or distribution. Moreover, the bill would require any shark fins so separated from a landed shark to be immediately disposed of through destruction.

Shark fins are used as the primary ingredient in shark fin soup – a delicacy in some cultures – and the demand for this delicacy has skyrocketed in recent years. The practice of shark finning, however – where a shark is caught, the fins cut off, and the shark returned to the water – is a cruel and inhumane practice that fully immobilizes sharks and causes them to suffer a slow and painful death by suffocation, starvation, or live consumption by other fish. Tens of millions of sharks are killed each year as a result of finning practices, and since 1972 – for various reasons including finning – the number of blacktip sharks has fallen by ninety-three percent, tiger sharks by ninety-seven percent, and bull sharks, dusky sharks, and smooth hammerheads by ninety-nine percent. This rapid and significant reduction in the shark population is disrupting the ocean's equilibrium, and, despite the enactment of federal, and several state, prohibitions on the practice of shark finning, commercial fishermen continue to engage in shark finning on a massive scale. This bill would attempt to curtail shark finning enterprises, and thereby protect against extinction of the shark population, by eliminating the commercial market for shark fins in the State.

Any person who violates the bill's prohibitions against the possession, sale, trade, or distribution of shark fins would be subject: (1) for a first offense, to a civil administrative penalty of not less than \$5,000 or more than \$15,000; (2) for a second offense, to a civil administrative penalty of not less than \$15,000 or more than \$35,000; and (3) for a third or subsequent offense, to a civil administrative penalty of not less than \$35,000 or more than \$50,000, or imprisonment of not more than one year, or both. Any shark fins possessed in violation of the bill's provisions, and any vessels, vehicles, equipment, or other property utilized in the commission of a second or subsequent violation of the bill's provisions, would be subject to immediate seizure and ultimate forfeiture by summary proceeding. Any forfeited shark fins would be disposed of through destruction.

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1       The bill's prohibitions would not apply to shark fins possessed,  
2 sold, traded, or distributed for scientific research or educational  
3 purposes.