

# ASSEMBLY, No. 4845

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 15, 2019

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman JOHN ARMATO**

**District 2 (Atlantic)**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**Co-Sponsored by:**

**Assemblywoman Jasey**

**SYNOPSIS**

Prohibits certain possession, sale, trade, distribution, or offering for sale of shark fins.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/26/2019)**

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

3

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

6

7 1. a. No person shall:

8 (1) sell, trade, or distribute, or offer for sale any shark fin; or

9 (2) possess any shark fin that has been separated from a shark  
10 prior to its lawful landing. The burden of proof shall be on the  
11 person in possession of the shark fin to demonstrate that it was not  
12 separated from the shark prior to its lawful landing.

13 b. (1) The provisions of subsection a. of this section shall not  
14 apply to: (a) any lawfully-obtained shark fin possessed, sold, traded,  
15 distributed, or offered for sale for scientific research or educational  
16 purposes; or (b) any lawfully-obtained smooth dogfish or spiny  
17 dogfish fin.

18 (2) A commercial or recreational fisherman may possess shark  
19 fins from sharks that they have lawfully-obtained in a manner  
20 consistent with licenses or permits issued to the commercial or  
21 recreational fisherman.

22 c. (1) Whenever, on the basis of available information, the  
23 Commissioner of Environmental Protection finds that a person is in  
24 violation of the provisions of subsection a. of this section, or of any  
25 rule or regulation adopted pursuant thereto, the commissioner:

26 (a) shall levy a civil administrative penalty in accordance with  
27 subsection d. of this section; and

28 (b) upon a person's third or subsequent violation of the  
29 provisions of subsection a. of this section, may petition the Attorney  
30 General to bring a criminal action in accordance with subsection e.  
31 of this section.

32 (2) A violation of the provisions of subsection a. of this section  
33 by a person or business holding a license or permit issued to a  
34 commercial or recreational fisherman shall result in the suspension  
35 or revocation of that license or permit.

36 d. The commissioner is authorized to assess a civil  
37 administrative penalty of not less than \$5,000 or more than \$15,000  
38 for a first offense under this section, not less than \$15,000 or more  
39 than \$35,000 for a second offense, and not less than \$35,000 or  
40 more than \$55,000 for a third or subsequent offense. Each day  
41 during which a violation continues shall constitute an additional,  
42 separate, and distinct offense. Any amount assessed under this  
43 subsection shall fall within a range established by rule or regulation  
44 by the commissioner for violations of similar type, seriousness,  
45 duration and conduct, and shall be based, in part, on the number or  
46 weight of shark fins that are the subject of the violation; provided,  
47 however, that prior to the adoption of the rule or regulation, the  
48 commissioner may, on a case-by-case basis, assess a civil

1 administrative penalty up to the maximum identified in this  
2 subsection, utilizing the criteria set forth herein. In addition to any  
3 civil administrative penalty assessed under this subsection, and  
4 notwithstanding the maximum penalties set forth herein, the  
5 commissioner may assess an additional penalty equal to any  
6 economic benefits from the violation gained by the violator.

7 Prior to the assessment of a penalty under this subsection, the  
8 person committing the violation shall be notified by certified mail  
9 or personal service that the penalty is being assessed. The notice  
10 shall identify the section of the statute or regulation violated; recite  
11 the facts alleged to constitute a violation; state the basis for the  
12 amount of the civil penalties to be assessed; and affirm the rights of  
13 the alleged violator to a hearing. The ordered party shall have 35  
14 days from receipt of the notice within which to deliver to the  
15 commissioner a written request for a hearing. After the hearing,  
16 and upon finding that a violation has occurred, the commissioner  
17 may issue a final order assessing the amount of the fine specified in  
18 the notice. If no hearing is requested, the notice shall become a  
19 final order after the expiration of the 35-day period. Payment of the  
20 assessment is due when a final order is issued or the notice becomes  
21 a final order. The payment of any assessment shall not be deemed  
22 to affect the availability of any other enforcement provisions in  
23 connection with the violation for which the assessment is levied.

24 The department may compromise any civil administrative  
25 penalty assessed under this section in an amount and with  
26 conditions the department determines appropriate. A civil  
27 administrative penalty assessed, including any portion thereof  
28 required to be paid pursuant to a payment schedule approved by the  
29 department, which is not paid within 90 days of the date that the  
30 payment of the penalty is due, shall be subject to an interest charge  
31 on the amount of the penalty, or portion thereof that remains  
32 unpaid, which interest shall accrue as of the date payment is due. If  
33 the penalty is contested, no additional interest charge shall accrue  
34 on the amount of the penalty until 90 days after the date on which a  
35 final order is issued. Interest charges assessed and collectible  
36 pursuant to this subsection shall be based on the rate of interest on  
37 judgments provided in the New Jersey Rules of Court.

38 e. Any person who has been assessed a civil administrative  
39 penalty, on two or more occasions, pursuant to subsection d. of this  
40 section shall be guilty, upon conviction for a subsequent violation  
41 of subsection a. of this section, of a crime of the fourth degree.  
42 Notwithstanding the provisions of paragraph (4) of subsection a. of  
43 N.J.S.2C:43-6 to the contrary, a person convicted under this  
44 subsection shall be subject to a term of imprisonment of not more  
45 than one year.

46 f. In addition to the penalties imposed under subsections d. and  
47 e. of this section, a person who violates the provisions of subsection  
48 a. of this section shall be liable to the department for the payment of

1 administrative fees and costs and court costs expended in  
2 prosecuting the violation, and for the payment of reasonable  
3 attorneys' fees.

4 g. (1) Any shark fins possessed, sold, traded, distributed, or  
5 offered for sale in violation of the provisions of subsection a. of this  
6 section, or of any rule or regulation adopted pursuant thereto, and  
7 any vessels, vehicles, equipment, or other property utilized in the  
8 commission of a second or subsequent violation of subsection a. of  
9 this section, or of any rule or regulation adopted pursuant thereto,  
10 may be confiscated, and shall be subject to forfeiture by summary  
11 proceeding, instituted by the Commissioner of Environmental  
12 Protection in a court of competent jurisdiction.

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

20 (3) In addition to the confiscation procedure identified in  
21 paragraph (2) of this subsection, a court may, upon the filing of a  
22 verified complaint, issue a warrant directing a conservation officer,  
23 or any other law enforcement officer, to: (a) seize, and take into  
24 possession, shark fins, vessels, vehicles, equipment, or other  
25 property described in the complaint; (b) bring any seized items  
26 before the court that issued the warrant; and (c) summon the person  
27 named in the warrant, and any other person who may be found in  
28 possession of the described items, to appear at the time and place  
29 therein specified.

30 (4) If, after a hearing, the court determines that any shark fin  
31 seized pursuant to this subsection was possessed, sold, traded,  
32 distributed, or offered for sale in violation of the provisions of  
33 subsection a. of this section, the shark fin shall be forfeited and,  
34 notwithstanding any other law, rule, or regulation to the contrary,  
35 shall be disposed of through destruction.

36 If, after a hearing, the court determines that any other items  
37 seized pursuant to this subsection were utilized in the commission  
38 of a violation of subsection a. of this section, the items shall be  
39 forfeited and disposed of through destruction, donation, or sale, as  
40 the court may direct, but no such item shall be sold contrary to the  
41 provisions of any law, or any rule or regulation adopted pursuant  
42 thereto. The proceeds of any sale conducted pursuant to this  
43 paragraph, less legal costs and charges, shall be paid into the  
44 "Endangered and Nongame Species of Wildlife Conservation  
45 Fund," established pursuant to section 1 of P.L.1981,  
46 c.170 (C.54A:9-25.2), to be used for the same purposes as other  
47 monies in that fund.

1 h. The department shall adopt, pursuant to the “Administrative  
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
3 regulations necessary to implement the provisions of this section.

4 i. As used in this section:

5 “Commissioner” means the Commissioner of Environmental  
6 Protection.

7 “Department” means the Department of Environmental  
8 Protection.

9 “Shark” means any species categorized in the Chondrichthyes  
10 taxonomic class (cartilaginous fishes), and belonging to the  
11 subclass Elasmobranchii, but shall not include any species in the  
12 superorder Batoidea (commonly known as a ray or a skate).

13 “Shark fin” means a raw, dried, or otherwise processed fin or tail  
14 that has been separated from the body of any species of shark.

15

16 2. a. Notwithstanding the provisions of section 1 of this act, or  
17 any other law, rule, or regulation, to the contrary, until January 1 of  
18 the year next following the date of enactment of this act, a person  
19 may possess, sell, trade, or distribute, or offer for sale any shark fin  
20 that is in that person’s possession on or before the date of enactment  
21 of this act.

22 b. As used in this section:

23 “Shark” means any species categorized in the Chondrichthyes  
24 taxonomic class (cartilaginous fishes), and belonging to the  
25 subclass Elasmobranchii, but shall not include any species in the  
26 superorder Batoidea (commonly known as a ray or a skate).

27 “Shark fin” means a raw, dried, or otherwise processed fin or tail  
28 that has been separated from the body of any species of shark.

29

30 3. This act shall take effect immediately.

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33

#### STATEMENT

34

35 This bill prohibits: (1) the sale, trade, or distribution, or the  
36 offering for sale, of any shark fin; and (2) the possession of any  
37 shark fin that has been separated from a shark prior to its lawful  
38 landing. The bill’s prohibitions do not apply to lawfully obtained  
39 shark fins possessed, sold, traded, or distributed for scientific  
40 research or educational purposes, or to lawfully obtained smooth  
41 dogfish or spiny dogfish fins. The bill allows commercial and  
42 recreational fishermen to possess shark fins from sharks if obtained  
43 lawfully in a manner consistent with the fisherman’s license or  
44 permit. Under the bill, a person is authorized, until January 1 of the  
45 year next following the date of enactment of the bill, to possess,  
46 sell, trade, or distribute, or offer for sale, any shark fin that is in that  
47 person’s possession on or before the date of enactment of this bill.

1 A person who violates the bill's prohibitions against the  
2 possession, sale, trade, distribution, or offer for sale of shark fins is  
3 subject: (1) for a first offense, to a civil administrative penalty of  
4 not less than \$5,000 or more than \$15,000; (2) for a second offense,  
5 to a civil administrative penalty of not less than \$15,000 or more  
6 than \$35,000; and (3) for a third or subsequent offense, to a civil  
7 administrative penalty of not less than \$35,000 or more than  
8 \$55,000, or by imprisonment of not more than one year, or both.  
9 Each day during which a violation continues constitutes an  
10 additional, separate, and distinct offense. The Commissioner of  
11 Environmental Protection may assess an additional penalty for an  
12 amount up to the value of the economic gain from violating the  
13 bill's provisions. Shark fins possessed in violation of the bill's  
14 provisions, and vessels, vehicles, equipment, or other property  
15 utilized in the commission of a second or subsequent violation of  
16 the bill's provisions, are subject to seizure and forfeiture by a  
17 summary proceeding. Shark fins determined by a court to be  
18 possessed, sold, traded, distributed, or offered for sale in violation  
19 of the provisions of the bill would be destroyed. The bill also  
20 provides that a person or business holding a commercial or  
21 recreational fishing license or permit that violates the provisions of  
22 the bill would have their license or permit suspended or revoked.