

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:

Assemblywomen Jasey, Murphy, Assemblymen Zwicker, McKeon and Calabrese

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/26/2019)

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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32

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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.