

SHARK CONSERVATION ACT OF 2008

JULY 8, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5741]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5741) to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shark Conservation Act of 2008”.

SEC. 2. AMENDMENT OF HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.

Section 610(a) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(a)) is amended—

(1) by striking so much as precedes paragraph (1) and inserting the following:

“(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607—

“(1) a nation if—”;

(2) in paragraph (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(3) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(4) by moving subparagraphs (A) through (C) (as so redesignated) 2 ems to the right;

(5) in subparagraph (C) (as so redesignated) by striking the period at the end and inserting “; and”; and

(6) by adding at the end the following:

“(2) a nation if—

“(A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices that target or incidentally catch sharks; and

“(B) the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.”.

SEC. 3. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT.

Section 307(1) of Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)) is amended—

(1) by amending subparagraph (P) to read as follows:

“(P)(i) to remove any of the fins of a shark (including the tail) at sea;

“(ii) to have custody, control, or possession of any shark fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

“(iii) to transfer any shark fin from one vessel to another vessel at sea, or to receive any shark fin in such transfer, without the fin naturally attached to the corresponding carcass; or

“(iv) to land any shark fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without the fins (including the tail) naturally attached;”; and

(2) by striking the matter following subparagraph (R).

PURPOSE OF THE BILL

The purpose of H.R. 5741 is to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

BACKGROUND AND NEED FOR LEGISLATION

Sharks are long-lived apex predators with a life history strategy featuring slow growth, delayed maturation, long gestation, and the production of few young, making them particularly vulnerable to fishing pressure. Sharks have been increasingly exploited in recent decades, both as bycatch in the pelagic longline fisheries from the 1960s onward, and as targets in direct fisheries that expanded rapidly in the 1980s. As a result, scalloped hammerhead, white, and thresher sharks are each estimated to have declined by over 75% in the past 15 years.¹ Globally, large predator species such as sharks are estimated to have declined by as much as 90%.²

Removing these top predators drastically changes the marine food web structure, diversity and ecosystem health. The practice of shark finning—which is driving much of this decline—is fueled by the shark fin trade, which in turn is driven by rapid economic growth in Asia. Reducing shark finning is imperative to conserving sharks and the marine ecosystems of which they are a part.

Congress enacted the Shark Finning Prohibition Act of 2000 to prohibit U.S. fishermen from removing the fins of sharks and discarding the carcass at sea (known as finning), and from landing or transporting shark fins without the corresponding carcass. Since the passage of the U.S. law, many other countries and regional fisheries management organizations have adopted similar bans. Recent developments with respect to application of the U.S. law, how-

¹Baum, Julia K. et al., Collapse and Conservation of Shark Populations in the Northwest Atlantic, *Science*, April 15, 2008.

²Meyer, RA and Boris Worm. *Nature*, May 15, 2003, pp. 280–283.

ever, as well as the ineffectiveness of some international efforts, led to the introduction of the Shark Conservation Act of 2008 to further bolster the conservation of these important predator species.

As originally introduced in 2000, the U.S. prohibition only banned the practice of shark finning, but during consideration of the bill it became clear that the Committee was very concerned with the possibility that vessels could circumvent a ban by going to the high seas and buying fins and then transporting them ashore or to other vessels.

On April 13, 2000, during the legislative hearing of the Subcommittee on Fisheries, Wildlife and Oceans on this Act, Congressman Eni F. H. Faleomavaega (D-AS) expressed this concern, stating, “Many shark fins never make it to port, but are transshipped at sea to foreign fishing vessels. The volume and value of these transshipments are poorly documented * * * I am forced to ask: How are we ever going to eliminate the practice of shark finning if we allow transshipments to take place under our noses * * *?” During the May 8, 2000 Subcommittee markup, Congressman Faleomavaega successfully offered an amendment to address the transshipment concern by prohibiting the custody, control, or possession of shark fins on fishing vessels or the landing of shark fins without the corresponding carcass by any vessel. With this amendment, the Committee assumed that finning, as well as transshipment would be successfully prohibited.

In particular, the Committee believed that the concerns regarding transshipment had been addressed based on the definition of fishing vessel found in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson). Because the Shark Finning Prohibition Act was an amendment to the prohibited acts section of Magnuson, the definitions in Magnuson applied to the prohibitions in the bill. Specifically, Magnuson defines a fishing vessel as “any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—(A) fishing; or (B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, *transportation*, or processing.” (emphasis added) Recent events have made further changes to the law necessary to ensure that the transport vessels, which Congress thought it had encompassed in 2000 are, in fact, subject to the law.

The Shark Conservation Act of 2008 includes several measures to strengthen the implementation and enforcement of the Shark Finning Prohibition Act and to confirm the original intent of Congress to prevent shark finning and the transshipment and landing of shark fins without carcasses.

First, the bill would eliminate an enforcement loophole related to the transport of shark fins by prohibiting the transfer of shark fins from one vessel to another at sea without the corresponding carcass. This loophole was brought to light when the Ninth Circuit Court of Appeals ruled that a U.S. vessel, which had purchased fins from several fishing vessels engaged in finning on the high seas to transport them to Guatemala, was not considered a fishing vessel under the definition of such vessels found in Magnuson (despite what Congress had assumed when they passed the bill in 2000) and therefore not subject to the prohibition on transporting

fins without the corresponding carcasses. H.R. 5741, therefore, adds the new prohibition regarding the transfer of fins from one vessel to another at sea without the corresponding carcass. This would preclude a vessel from circumventing the ban on finning by going out and purchasing the illegally harvested fins on the high seas and then transporting them back to U.S. ports or elsewhere. It would not preclude container vessels or other vessels from transporting fins that were harvested legally and then brought to shore.

Second, the bill would address the difficulty that has become apparent in enforcing the statute's percentage-based standard. It would delete the rebuttable presumption that any shark fins landed were taken, held, or landed in violation of the law if the total weight of shark fins landed or found on board exceeds five percent of the total weight of shark carcasses. This "fin to carcass" ratio was intended to provide a mechanism for enforcing the finning prohibition by ensuring that the amount of fins landed is proportional to the amount of bodies. However, it has proven very difficult to determine whether a given set of fins belong to a particular dressed carcass. Agency law enforcement personnel have reported incidents of fishermen mixing fins and carcasses for maximum profit and continuing to discard less desirable, finned sharks at sea. As an alternative to the rebuttable presumption, H.R. 5741 would require that sharks be landed with fins naturally attached. This "fins attached" requirement also applies to the custody, transfer of fins at sea from one vessel to another, and to the landing of shark fins.

Finally, H.R. 5741 would amend the High Seas Driftnet Fishing Moratorium Protection Act to allow the Secretary of Commerce to identify and list nations that have fishing vessels that have not adopted a regulatory program for the conservation of sharks that is similar to that of the U.S. This amendment would further promote the conservation of sharks internationally and provide a more equal playing field for U.S. fishermen.

COMMITTEE ACTION

H.R. 5741 was introduced on April 9, 2008 by Representative Madeleine Bordallo (D-GU). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On April 16, 2008, the Subcommittee held a hearing on the bill. Dr. Rebecca Lent, Director of NOAA Fisheries' Office of International Affairs expressed concerns about removing the rebuttable presumption absent an alternative enforcement mechanism. Dr. Lent referred to the requirement included in the then-proposed rule for Amendment 2 to the Highly Migratory Species Fishery Management Plan for Atlantic and Gulf of Mexico sharks to require that sharks be landed with fins naturally attached, while noting the absence of such a requirement in the Pacific. Captain Michael Giglio, Chief of the Office of Law Enforcement, U.S. Coast Guard, also supported the fins-attached approach proposed by NOAA in the Atlantic, stating that, "This will significantly aid at-sea enforcement with respect to Atlantic sharks, but we still face challenges in the Pacific due to the current regulatory regime." (Landing sharks with the fins naturally attached has, however, been required under Hawaii state law since 2000.)

On June 4, 2008, the Subcommittee met to mark up the bill. Responding to the concerns raised by the Administration, Congresswoman Bordallo (D-GU) offered an amendment in the nature of a substitute to restore the rebuttable presumption that was eliminated in the bill as introduced. The amendment also tightened the language intended to close the loophole related to vessel transport of fins. It was adopted by voice vote. The bill was then forwarded, as amended, to the Full Committee.

On June 11, 2008, the Full Natural Resources Committee met to consider the bill. Representative Eni Faleomavaega (D-AS) offered an amendment once again striking the rebuttable presumption but providing an alternative enforcement mechanism by requiring that sharks be landed with fins naturally attached. It was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this bill may be cited as the “Shark Conservation Act of 2008”.

Section 2. Amendment of High Seas Driftnet Fishing Moratorium Protection Act

Section 2 authorizes the Secretary of Commerce to list a nation if its fishing vessels are engaged in fishing activities that target or incidentally catch sharks and if the nation has not adopted a regulatory program to conserve sharks, including prohibiting shark finning, that is comparable to that of the U.S.

Section 3. Amendment of Magnuson-Stevens Fishery Conservation and Management Act

Section 3 prohibits shark finning, possessing a shark fin that is not attached to the carcass on a fishing vessel, transferring a shark fin that is not attached to the carcass from one vessel to another at sea, or landing a shark fin that is not attached to the carcass. Section 3 also strikes the rebuttable presumption in section 307(1) of the Magnuson-Stevens Fishery Conservation and Management Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

rying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 5741—Shark Conservation Act of 2008

Summary: H.R. 5741 would prohibit certain activities that may involve shark finning (the practice of removing a shark's fins and discarding its carcass). The legislation also would direct the National Oceanic and Atmospheric Administration (NOAA) to identify foreign nations that do not sufficiently regulate fishing practices that harm sharks.

Based on information provided by NOAA and assuming the availability of appropriated funds, CBO estimates that implementing H.R. 5741 would cost \$5 million over the 2009–2013 period. Enacting the legislation would not affect revenues or direct spending.

H.R. 5741 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.

H.R. 5741 would impose a private-sector mandate, as defined in UMRA, by requiring that shark fins aboard fishing vessels, shark fins transferred or received at sea, and shark fins landed at a U.S. port be naturally attached to the carcass. CBO estimates that the cost of complying with the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5741 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	1	1	1	1	1	5
Estimated Outlays	1	1	1	1	1	5

Basis of estimate: For this estimate, CBO assumes that H.R. 5741 will be enacted by the end of fiscal year 2008 and that the necessary amounts will be appropriated for each year.

H.R. 5741 would require NOAA to identify any nation that has not adopted a conservation program for sharks similar to that of the United States if fishing vessels of that nation catch sharks. The bill also would amend the Magnuson-Stevens Fishery Conservation and Management Act to prohibit fishing vessels from possessing shark fins that are not naturally attached to a carcass. Based on information provided by NOAA, CBO estimates that the agency would need \$1 million for each of fiscal years 2009 through 2013 to expand existing reports on fishing practices, to enforce new prohibitions on possessing shark fins, and to help foreign nations improve their shark conservation efforts by hiring new regulators and developing new laws and enforcement mechanisms.

Estimated impact on state, local, and tribal governments: H.R. 5741 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 5741 would impose a private-sector mandate as defined in UMRA. The bill would make it unlawful to possess shark fins aboard fishing vessels, transfer or receive shark fins at sea, or land shark fins at a U.S. port without the fin naturally attached to the carcass. CBO estimates that the cost to comply with the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation).

Current law prohibits the possession of a shark fin on a fishing vessel and the landing of a shark fin at a U.S. port without the corresponding carcass. By requiring fins to be naturally attached to the shark, the bill would impose an additional mandate on owners and operators of those vessels. Because the National Marine Fisheries Service has issued a final rule with the same requirement for sharks harvested in the Atlantic Ocean, the mandate would apply only to vessels in the Pacific Ocean. If the requirement for Pacific sharks is implemented in a manner similar to the rule for Atlantic sharks, leaving fins attached by a flap of skin would be considered naturally attached and compliant with the mandate. Compared to leaving the fins completely attached, that process would provide for easier storage aboard the vessel and removal of the fin once landed. CBO expects that the mandate in the bill would be enforced in this manner and thus would not impose significant additional costs on owners and operators of vessels.

The bill also would impose a mandate on the owners and operators of certain U.S. vessels by prohibiting the vessels from receiving shark fins at sea that are not naturally attached to the carcass. The cost would be any net loss in income to the owners and operators of those vessels. CBO estimates that the cost would not be significant in relation to the threshold established in UMRA.

Estimate prepared by: Federal Costs: Deborah Reis and Jeffrey Lafave; Impact on State, Local, and Tribal Governments: Neil Hood; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 5741 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 610 OF THE HIGH SEAS DRIFTNET FISHING
MORATORIUM PROTECTION ACT**

SEC. 610. EQUIVALENT CONSERVATION MEASURES.

[(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if—]

(a) *IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607—*

(1) a nation if—

[(1)] (A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;

[(A)] (i) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or

[(B)] (ii) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;

[(2)] (B) the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and

[(3)] (C) the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions[.];
and

(2) a nation if—

(A) *fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices that target or incidentally catch sharks; and*

(B) *the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures*

to prohibit removal any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

* * * * *

SECTION 307 OF THE MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) * * *

* * * * *

[(P)(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;

[(ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or

[(iii) to land any such fin without the corresponding carcass;]

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any shark fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any shark fin from one vessel to another vessel at sea, or to receive any shark fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any shark fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without the fins (including the tail) naturally attached;

* * * * *

【For purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.】

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ADDITIONAL VIEWS

Due to an mistaken court ruling, a loophole was opened in the Shark Finning Prohibition Act of 2000 (Act) which allowed fishermen to transfer fins at sea to transshipment vessels. This was clearly a violation of the Act, but the court ruled otherwise. The primary reason for the Shark Finning Prohibition Act of 2000 was to require fishermen to land the carcasses of the sharks they had caught so that fishery managers could determine the level and type of shark species being harvested.

For fish species such as sharks that have long life histories, good management is critical and in order to have good management for the shark fisheries, we need to have accurate data on the types and numbers of sharks being taken by fishermen. It is also important to respect the expertise of the fishery managers. It is important that those Councils that authorize shark harvests and the National Marine Fisheries Service (NMFS) determine whether this legislation, as amended, works for the fisheries they manage or not. It is important that not only will this legislation produce better information for fishery managers, but also for enforcement purposes.

A proposal to require similar landing requirements for east coast shark fisheries—which are managed by NMFS—has just been finalized; however, the west coast shark fisheries are managed by at least two Councils and we have not heard back from them whether such a requirement would be acceptable. I am concerned that this legislation may be viewed as short-circuiting the ability of people from the industry to comment on the proposal through the normal Council process and that is unfortunate.

The court was clearly wrong in their decision and I am glad that we are overriding the court decision in this case. I hope that the legislation, as amended, will clarify the intent of the original legislation and will not cause unintended consequences that make enforcement more difficult.

DON YOUNG.

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