

ADOPTED

AMERICAN BAR ASSOCIATION

INTERNATIONAL LAW SECTION

CRIMINAL JUSTICE SECTION

SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

TORT TRIAL AND INSURANCE PRACTICE SECTION

WASHINGTON STATE BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial and tribal
2 governments to enact and enforce legislation that prohibits and penalizes the possession,
3 sale, and trade of shark fins.
4
- 5 FURTHER RESOLVED, That the American Bar Association urges that all nations enact
6 laws that prohibit and penalize the possession, sale, and trade of shark fins, if they
7 have not already adopted such laws; and
8
- 9 FURTHER RESOLVED, That the American Bar Association encourages all
10 international, regional, national, and state bar associations, and international
11 organizations, to promote policies and laws that prohibit and penalize the possession,
12 sale, and trade of shark fins.

REPORT

Introduction

The Value of Sharks

In 2017 the United Nations proclaimed 2021 to 2030 as the “Decade of Ocean Science for Sustainable Development.”¹ The goal of this Decade is to ensure sustainable management of our oceans. The Decade will focus on the health of our oceans and attempt to reverse unhealthy cycles that may be induced as a result of human activity. The Decade will bring about an unprecedented opportunity for the international community to take action to protect a critical aquatic predator – the shark.

Sharks are considered “apex predators” and are vital to marine ecosystems for numerous reasons.² Sharks maintain other species through “spatial controls,” by removing the weak and sick as well as maintaining balance to “ensure species diversity.”³ Studies suggest that sharks also indirectly maintain seagrass and coral reef habitats.⁴ A decline in shark populations can also hurt the fishing industry as the elimination of an apex predator, like the shark, would allow room for “mid-level” predators to emerge and therefore deplete the fishing industry’s normal target species.⁵ The mid-level predators (e.g., cownose rays) become more abundant as a result of the decrease in the population of the top-level predators (sharks). They, in turn, consume the supply of the fishing industry’s target species (scallops, oysters, clams), often before the human beings can harvest it.⁶ Small marine life is “vital to sustaining the entire marine system” as it is estimated to provide 70% of our oxygen.⁷ In addition to causing direct harm to the fisheries industry, loss of sharks has other knock-on economic effects, including on industries that purchase from commercial fisheries (e.g, restaurants, hospitality) and the insurers who write policies for them.⁸

¹ G.A. Res. 72/73, Agenda item 77 (a) (Dec. 5, 2017).

² E. Griffin, K.L. Miller, *Predators as Prey: Why Healthy Oceans Need Sharks*, OCEANA (2008), [https://oceana.org/sites/default/files/reports/Predators as Prey FINAL FINAL1.pdf](https://oceana.org/sites/default/files/reports/Predators%20as%20Prey%20FINAL%20FINAL1.pdf).

³ Oceana, *The Importance of Sharks*, <https://eu.oceana.org/en/importance-sharks-0/> (last visited on Jan. 30, 2020).

⁴ Mark Meekan, *Killing sharks is killing coral reefs too*, THE CONVERSATION (Sept. 18, 2013), <https://theconversation.com/killing-sharks-is-killing-coral-reefs-too-18368>.

⁵ Patrick Mustain, Mariah Pflieger, Lora Snyder, *Shark Fin Trade; Why it Should be Banned in the United States*, OCEANA 5 (2016),

⁶ Ransom A. Myers, et al., *Cascading Effects of the Loss of Apex Predatory Sharks from a Coastal Ocean*, SCIENCE (Mar. 2007).

⁷ Joseph Hincks, *Peace Boat passengers consider the cost of shark fin soup*, NATIONAL GEOGRAPHIC (Mar. 7, 2015), <https://blog.nationalgeographic.org/2015/03/07/peace-boat-passengers-consider-the-cost-of-shark-fin-soup/>.

⁸ Although perhaps less well-known than insurance for other food industries, capture fisheries do utilize insurance. See, e.g., UNITED NATIONS FOOD & AGRICULTURAL ORGANIZATION, GUIDELINES FOR INCREASING ACCESS OF SMALL-SCALE FISHERS TO INSURANCE SERVICES IN ASIA: A HANDBOOK FOR INSURANCE AND FISHERIES STAKEHOLDERS (2019), <http://www.fao.org/3/ca5129en/ca5129en.pdf>. Interestingly, arguments have been made that an increase in the use of insurance for capture fisheries could itself

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Oceana, an international advocacy organization dedicated entirely to ocean conservation, has reported that the eastern coast of the United States which was once abundant with sharks has now “declined to levels of functional elimination.”⁹ Sharks are “slow to mature and only have a small number of pups a year (or every other year); thus, population sizes of sharks don’t recover easily once they have been decimated.”¹⁰ Experts suggest that even if all commercial fishing of sharks were to cease at this moment, most large shark species would not recover within 50 years.¹¹ This is attributed to the reproductive cycles of sharks. Therefore, protecting these apex predators must be done with urgency.

The Problem of Shark Finning

This worldwide decline in the diversity of species of sharks is a result of shark finning. Shark finning occurs when a shark’s fin is sliced off and the rest of the still-living body is discarded into the ocean.¹² The shark, still conscious, dies from shock, blood loss, starvation, or predation.¹³ Finned sharks have a 100% mortality rate.¹⁴ Every year, 73 million sharks are reportedly killed in this way¹⁵ (and the inclusion of unreported killings would likely bring that figure closer to 100 million¹⁶). Sharks are generally caught through illegal operations or as bycatch. Bycatch refers to fish or other marine life that are caught while commercial fishing for other species. Essentially, while legal fishing expeditions may intend to catch tuna or billfish, sharks invariably end up in these nets and are then finned.¹⁷ A single shark fin fetches a significant sum of money, estimated anywhere between \$100 to \$10,000 depending on the type of shark, the buyer, and market it is sold in.¹⁸ However, the United Nations Food and Agriculture Organization has reported that “knowledge of the specific characteristics of domestic markets is . . . very limited, and there is little concrete information on such things as the types of

have a positive ecological effect by “protect[ing] revenue and encourage[ing] increased sustainability of fisheries and improv[ing] compliance with and enforcement of fisheries regulation.” J. Mumford, et al., *Insurance Mechanisms to Mediate Economic Risks in Marine Fisheries*, 66 ICES J. MARINE SCI., 950, 950 (June 5, 2009).

⁹ Griffin & Miller, *supra* note 2.

¹⁰ Shark Allies, *Why are Sharks Important?*, <https://www.sharkallies.com/shark-knowledge-1/2018/4/12/why-we-need-sharks> (last visited Jan. 28, 2020).

¹¹ *Id.*

¹² Caty Fairclough, *Shark Finning: Sharks Turned Prey*, OCEAN, <https://ocean.si.edu/ocean-life/sharks-rays/shark-finning-sharks-turned-prey>.

¹³ *Shark Fin Sales, Trading Becomes Illegal in New Jersey*, CAPE MAY COUNTY HERALD (Jan. 9, 2020), https://www.capemaycountyherald.com/news/environment/article_93820c96-3305-11ea-be13-f3149cb49cd5.html.

¹⁴ Worm, et al., *Global Catches, Exploitation Rates, and Rebuilding Options for Sharks*, Marine Policy 40.C 194-204 (2013).

¹⁵ Shark Research Institute, *Ending the Shark Fin Trade in the USA*, <https://oceanconference.un.org/commitments/?id=19799> (last visited on Jan. 29, 2020).

¹⁶ See *Shark Fin Sales*, *supra* note 13.

¹⁷ The University of Hong Kong, *Appetite for shark fin soup serious risk to threatened sharks*, SCIENCE DAILY (Sept. 13, 2018), www.sciencedaily.com/releases/2018/09/180913113841.htm.

¹⁸ Jared R. Wigginton, *Governing a Global Commons: Sharks in the High Seas*, 25 VILL. ENVTL. L.J. 431 (2014); available at <https://digitalcommons.law.villanova.edu/elj/vol25/iss2/2>.

products being marketed, the prices of these products at different points in the supply chain, the profile of the typical consumer, and the major demand drivers."¹⁹

The bulk of the demand comes from Asian markets that consider the shark fin valuable for various reasons. Shark fins are considered a “luxury” food item and served in high-end restaurants for wealthy people.²⁰ Shark fins are also alleged to have medicinal value. One of the driving factors for demand is the belief that shark fins contain anti-cancer properties.²¹ However, no such nutritional or medicinal values are known to be scientifically proven.²² The high value of shark fins is a major driver of shark mortality.²³ Regardless of specific types of quotas that may be in place to prevent overfishing, shark catches are largely unreported and fly under the radar.

There are several human rights violations associated with shark finning. “The global shark fin industry is rife with criminal activity and cannot be trusted to police itself effectively.”²⁴ According to a recent study, criminal activity specifically related to shark fins has risen because of the demand from Asia. This has resulted in illegal fishing and overseas illicit markets.²⁵ Crime groups involved in illegal fishing activities inevitably link to other industries as the market becomes more lucrative. This allows for other illegal activities such as drugs, arms sales, people smuggling, and sex slavery to flourish.²⁶ The human rights abuses on the high seas have intensified as a result of “lax maritime labor laws and an insatiable global demand for seafood even as fishing stocks are depleted.”²⁷

The shark is a prized catch in the ocean, as it has an 80 percent illegal catch rate.²⁸ The practice of illegally catching seafood, known as fish piracy, is a major factor in the destruction of the world’s oceans. “It contributes to the overfishing of stocks around the globe by circumventing management systems and undermining the sustainability of all

¹⁹ FAO Fisheries and Aquaculture Technical Paper 590, *State of the global market for shark products* (2015), <http://www.fao.org/3/a-i4795e.pdf>.

²⁰ See Sebastien Strangio, *Rich Chinese are literally eating this exotic mammal into extinction*, PRI (Oct. 20, 2014), <https://www.pri.org/stories/2014-10-20/rich-chinese-are-literally-eating-exotic-mammal-extinction>. See also Shairp, Rachel, et. al, *Understanding Urban Demand for Wild Meat in Vietnam: Implications for Conservation Actions*, PLoS ONE (11)1 (2016), <https://doi.org/10.1371/journal.pone.0134787>.

²¹ Mark Tutton, *Traditional medicines continue to thrive globally*, CNN (June 24, 2009), <http://www.cnn.com/2009/HEALTH/06/24/traditional.treatment/index.html>.

²² Worm et. al., *supra* note 14.

²³ Shelley Clarke, et al., *Population Trends in Pacific Oceanic Sharks and the Utility of Regulations on Shark Finning*, 27.1 CONSERVATION BIOLOGY 197-209 (2013).

²⁴ University of Hong Kong, *supra* note 17.

²⁵ *Australia links organized crime to illegal fishing*, N.Y. TIMES (May 26, 2008), <https://www.nytimes.com/2008/05/26/world/asia/26iht-fish.1.13211096.html>.

²⁶ *Id.* See also *Sharks, fins and the migrants made to fish them*, REVEAL NEWS (June 30, 2018), <https://www.revealnews.org/article/sharks-fins-and-the-migrants-made-to-fish-them/>.

²⁷ Ian Urbina, *Sea Slaves: The Human Misery that Feeds Pets and Livestock*, N.Y. TIMES (July 27, 2015), <https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>

²⁸ Marine Resources and Fisheries Consultants, *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries* (2005).

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fisheries, the communities that depend on them, and food security.”²⁹ Joint enterprises or other “symbiotic relationships” between various state governments and the perpetrators of these illegal acts only serve to encourage such behavior. It is reported that in February 2018, Argentina caught Chinese boats in Argentina’s waters poaching a vast amount of seafood. The boats inevitably escaped back to international waters before Argentina could make appropriate arrests.³⁰

Current International Regime on Sharks

The international community attempts to protect oceanic life through various means. The main instrument is the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), which is the only global treaty that aims to regulate the trade of threatened or endangered species. The parties to the treaty are obligated to “monitor the global trade in wildlife and wildlife products and take action on behalf of species that may be headed for trouble as a result of international trade.”³¹ The United States ratified the treaty in 1973.

CITES contains three appendices. If a species appears on any of the appendices, then parties to the treaty are obligated to implement import and/or export controls in listed species. Appendix I lists species threatened with extinction. Appendix II lists species that are not threatened with extinction but can become so without regulating trade. Appendix III allows parties to list their own native species to further protect those species globally.³²

Despite the fact that scientists have repeatedly called upon CITES to protect sharks and list them within the appendices, state parties continue to block efforts to afford all sharks protections.³³ Therefore, as of 2016, out of an estimated 500³⁴ species of sharks known to exist, twelve species of sharks and all manta rays³⁵ have been included in

²⁹ Jane Dalton, *World’s biggest ‘fish factory’ pirate ship ‘activity’*, THE INDEPENDENT (June 8, 2018), <https://www.independent.co.uk/news/world/americas/fish-factory-pirate-ship-seized-illegal-fishing-damanzhao-worlds-biggest-peru-belize-mackerel-a8390321.html>

³⁰ *Surface forces: China Subsidizes Pirates*, STRATEGY NEWS (Mar. 25, 2018), <https://www.strategypage.com/htmw/htsurf/articles/20180325.aspx>. See also Matthew Sedacca, *China has fished itself out of its own waters, so Chinese fishermen are now sticking their rods in other nations’ seas*, QUARTZ (Apr. 4, 2017), <https://qz.com/948980/china-has-fished-itself-out-of-its-own-waters-so-chinese-fishermen-are-now-sticking-their-rods-in-other-nations-seas/>.

³¹ Ginette Hemley, *International Wildlife Trade*, A CITES SOURCEBOOK (1994).

³² *Id.*

³³ See John Platt, *Shark fin soup : CITES fails to protect 5 species of sharks from overfishing and finning*, SCIENTIFIC AMERICAN (Mar. 25, 2010), <https://blogs.scientificamerican.com/extinction-countdown/shark-fin-soup-cites-fails-to-protect-5-species-of-sharks-from-overfishing-and-finning/>. See also Jessica Spiegel, *Even Jaws Deserves to Keep His Fins: Outlawing Shark Finning Throughout Global Waters*, 24 B.C. INT’L & COMP. L. REV. 409 (2001), <https://lawdigitalcommons.bc.edu/iclr/vol24/iss2/8>.

³⁴ Ocean Portal Team, *Sharks*, SMITHSONIAN, <https://ocean.si.edu/ocean-life/sharks-rays/sharks>, (last visited on Jan. 28, 2020).

³⁵ “For the purposes of this Resolution, the term ‘shark’ is taken to include all species of sharks, skates, rays and chimaeras, in alignment with the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks).” See UN FAO, International Plan of Action for Conservation and

Appendix II.³⁶ The CITES parties were instructed through Resolution Conference 12.6 to increase protections to preserve the shark species.³⁷ As a result, the import, export, and re-export of products derived from those twelve species of sharks all require permits granted by the Government.³⁸ It is important to highlight that this merely regulates legal fishing. "Even with the progress made since 2013, only 3.9 to 17.8 percent of the global fin trade is regulated" as a result of CITES.³⁹ During the August 2019 session of CITES Conference of Parties, a Consideration of Proposal was introduced to amend Appendices I and II to include regulation of one more shark species - the short fin and long fin Mako shark.⁴⁰ This was accepted by CITES parties and the Mako shark species is now listed in CITES Appendix II.⁴¹

The *United Nations Convention on the Law of the Sea* (UNCLOS)⁴² is a comprehensive legal framework that governs the world's oceans and seas and use of all its resources. The United States, while not a party, recognizes much of the treaty as customary international law.⁴³ "The real work of UNCLOS was to establish the final sea zone of jurisdiction, known as the exclusive economic zone (EEZ)."⁴⁴ UNCLOS also requires that coastal states protect against "over-exploitation" and "imposes a duty on coastal states to responsibly manage the living resources within its waters."⁴⁵ However, as one scholar notes, UNCLOS is silent with regards to fishing processes and does not define

Management of Sharks, <http://www.fao.org/ipoa-sharks/background/about-ipoa-sharks/en/> (last visited on Feb. 3, 2020).

³⁶ CITES, *Sharks and manta rays*, <https://www.cites.org/eng/prog/shark/more.php> (last visited on Jan. 28, 2020).

³⁷CITES, *Conservation and management of sharks*, Conf. 12.6 (Rev. CoP17), <https://www.cites.org/sites/default/files/document/E-Res-12-06-R17.pdf>.

³⁸ *Id.* Art. 4.

³⁹ Jen Sawada, *Global Progress on Shark, Ray CITES Listings*, PEW (Mar. 19, 2019), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/03/global-progress-on-shark-ray-cites-listings>.

⁴⁰ See CITES, "Consideration of proposals for amendment of appendices I and II" Eighteenth Meeting of the Conference of Parties, COP18, Prop 42, CoP18 update, <https://cites.org/sites/default/files/eng/cop/18/prop/060319/E-CoP18-Prop-42.pdf>.

⁴¹ Project Aware, "Success for Mako Sharks at CITES CoP 18" August 29, 2019, <https://www.projectaware.org/news/success-mako-sharks-cites-cop18>.

⁴² United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁴³ Wigginton, *supra* note 18, at 437. The U.S. recognizes the EEZ provisions as customary law, "Under international law, each coastal State controls the waters and seafloor . . . This control is recognized by the international community and has its basis in the United Nations Convention on the Law of the Sea ("UNCLOS") and customary international law . . . Under the UN Convention on the Law of the Sea, every State has a right to establish a territorial sea . . . Within its territorial seas, a coastal State exercises sovereignty over the waters, airspace, and bed and subsoil. UNCLOS Art. 2. Beyond the territorial sea of a coastal State lies the EEZ. A State's EEZ extends from the outer limit of the State's territorial sea to 200 nautical miles from the coast. UNCLOS Art. 55." *Massachusetts Lobstermen's Association v. Ross* (Docket No. 1:17-cv-00406-JEB).

⁴⁴ Crystal Green, *An International SOS (Save Our Sharks): How the International Legal Framework Should Be Used to Save Our Sharks*, 27 PACE INT'L L. REV. 701 (2015); available at <https://digitalcommons.pace.edu/pilr/vol27/iss2/7>.

⁴⁵ *Id.* at 710.

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the term over-exploitation.⁴⁶ The *United Nations Fish Stock Agreement (UNFSA)*⁴⁷ is a related international treaty and ensures conservation of highly migratory fish stocks. The UNFSA, to which the United States is a party, creates regional fishery management organizations (RFMO) which are meant to ensure that “stocks are fished sustainably” and “an ecosystem based approach” is utilized.⁴⁸ In the 2010 UNFSA Review Conference, member states agreed to increase conservation and management of sharks. “Shark conservation is not only an important responsibility for the RFMOs, but it also serves as a proxy for determining whether obligations to implement the ecosystem approach are fulfilled.”⁴⁹

Sadly, during the 2016 review, it was clear zero progress was made. “Four of the five RFMOs also have not taken sufficient steps to better protect threatened shark species found in the fisheries under their management. None has yet implemented science-based management plans for all shark species associated with its region’s fisheries.”⁵⁰ UNCLOS and UNFSA are two international treaties that are ineffective thus far at protecting the shark species.

U.S. Law

In the United States there is national legislation in place to protect sharks. In 2000, legislation titled the *Shark Finning Prohibition Act* was passed, which required the National Marine Fisheries Service to prohibit shark finning by any person under U.S. jurisdiction. The National Marine Fisheries Service was required to work with other nations to develop international agreements and collect data on shark finning.⁵¹

Shark finning was banned in 2000 within the United States. However, there was a loophole in the 2000 Act allowing transshipment of shark fins by American-flagged ships; i.e., vessels that merely bought fins that had been taken by other vessels could not be prosecuted. The loophole was identified during a Congressional debate on the 2000 bill, and theoretically resolved through an amendment to the definition of the term “fishing vessel.”⁵² However, in 2008, the Ninth Circuit Court of Appeals ruled that a vessel carrying shark fins that it had purchased from other vessels did not come under the act, and therefore the fins had been purchased legally.⁵³

⁴⁶ *Id.*

⁴⁷ United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, July 24–Aug. 4, 1995, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, U.N. DOCA/Conf. 164/37.

⁴⁸ *Global Progress Toward Implementing the United Nations Fish Stocks Agreement*, Pew (May 23, 2016), <https://www.pewtrusts.org/en/research-and-analysis/reports/2016/05/global-progress-toward-implementing-the-united-nations-fish-stocks-agreement>.

⁴⁹ *Id.* See also ERIKA TECHERA AND NATALIE KLEIN, INTERNATIONAL LAW OF SHARKS: OBSTACLES, OPTIONS AND OPPORTUNITIES (LEGAL ASPECTS OF SUSTAINABLE DEVELOPMENT) (Martinus Nijhoff Pub., Apr. 2017).

⁵⁰ *Id.*

⁵¹ NOAA Fisheries, 2016 *Shark Finning Report to Congress*, <https://repository.library.noaa.gov/view/noaa/17060>.

⁵² See Mustain, et al., *supra* note 5, at 6-11.

⁵³ See *U.S. v. Approximately 64,695 Pounds of Shark Fins*, 520 F. 3d 976 (9th Cir. 2008).

So in 2011, *the Shark Conservation Act of 2010* was passed into law, which increased protections to stop shark finning and to specifically close the loophole in the 2000 Act. The 2010 Act requires that all sharks in the United States be brought to shore with their fins naturally attached. After the passage of this Act, several states, in addition to the American Samoa, Guam and North Mariana Islands territories, have passed local legislation that prohibit fin possession and fin retention even if the shark was legally caught.⁵⁴ The problem with the 2010 Act is that it does not prohibit catching sharks, bringing them ashore and then harvesting their fins.

The current laws allow the shark fin practice to continue. To address these shortcomings, in November 2019, the U.S. House of Representatives passed the *Shark Fin Sales Elimination Act*. This is an important step, but it remains unclear whether the Act will become law as the Senate has not yet passed similar legislation. Further, the international community must be encouraged to take appropriate action, considering the final destination of most shark fin products are outside of the United States.⁵⁵

States have also taken initiatives to close the loopholes where possible to prevent further decimation of the shark species. The most recent example is in Florida, where the state legislature in March 2020 passed legislation responding to the growing threat of shark finning in Florida.⁵⁶

World Landscape on Fins

The United States is an “important transit hub for shark fin shipments, with fins passing through U.S. ports via air, sea, and land. Some nations in Central America ship as much as one – third to one-half of all their shark fin exports through U.S. ports.”⁵⁷ Researchers found that between 2010 and 2017, “a minimum of 591 to 701 metric tons” possibly as high as 859 metric tons of shark fins pass through the US from Latin America.⁵⁸ Simply put, one metric ton of dried shark fins are equivalent to 1,500 sharks. While the United States has been a leader within the international community with regards to shark fin

⁵⁴ There has been some question as to federal preemption with respect to shark finning laws. Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) -- the primary law to which both the Shark Finning Prohibition Act (2000) and the Shark Conservation Act of 2010 were both amendments -- NOAA Fisheries is authorized to manage sharks in U.S. federal waters. In 2014, NOAA Fisheries challenged the states' local laws, claiming that federal regulations preempted them. After heavy public campaigning from advocacy groups, however, NOAA Fisheries agreed to review each of the laws individually and found that none of them conflicted with the MSA. See NOAA Fisheries, *Ongoing MSA Reauthorization Activities*, <https://www.fisheries.noaa.gov/national/laws-and-policies/ongoing-msa-reauthorization-activities> (accessed February 6, 2020).

⁵⁵ Jason Bittel, *The Surprise Middleman in the Illegal Shark Fin Trade: The United States*, NRDC (Nov. 20, 2019), <https://www.nrdc.org/onearth/surprise-middleman-illegal-shark-fin-trade-united-states>.

⁵⁶ See Danielle Ivanov, “Florida Moves to Ban Imports of Shark Fins; Bill Awaits Governor’s Signature” WUFT (March 13, 2020), <https://www.wuft.org/news/2020/03/13/florida-moves-to-ban-imports-of-shark-fins-bill-awaits-governors-signature/>

⁵⁷ Elizabeth Murdock and Vanessa Villanueva, *Unintentional Partner: How the United States Helps the Illegal Shark Fin Market*, NRDC REPORT 6 (Oct. 2019).

⁵⁸ *Id.* at 19.

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legislation, laws which prohibit finning completely is the only way to protect remaining shark species and finally sanction those who are illegally harvesting fins.

Throughout the international community the response to bans on shark fins has been mixed. The first “G7” country to ban shark fins was Canada in the summer of 2019.⁵⁹ The inconsistent response by the international community has made it impossible for shark populations to rebound from human consumption, the main driver of extinction.

The European Union passed similar restrictions to that of the United States prohibiting shark finning since 2003. However, special permits were given to allow fisher people to remove fins at sea.⁶⁰ This created a loophole allowing fisher people to fin sharks unnoticed.⁶¹ In Europe, since the start of 2017, the United Kingdom has exported “more than 50 tonnes of shark fins” and the majority of the fins were exported to Spain.⁶² One expert states “when you consider that Spain, France, Portugal and Britain feature in the top 25 shark fishing nations in the world it’s clear that European fishing fleets are making the most of the fact that there is still no catch limits...”⁶³ Several organizations have launched an initiative in the European Union to stop the import, export, and transport of shark fins. The Commission has registered the “Stop finning – stop the trade” initiative as of January 2, 2020.⁶⁴

Finally, concerns have been raised that this EU resolution would result in World Trade Organization (WTO) violations. The WTO recently ruled on a case regarding dolphin free tuna. The WTO ruled in favor of the United States and this may give some guidance on what the response to a possible challenge regarding shark fins may be.⁶⁵ It can be argued that there is a precedent for WTO trade law to support a shark finning ban initiative. As one legal scholar notes, “the United States should adopt a nationwide ban on all sale and possession of shark fins...such a ban would quell the potential for WTO violations, set a positive example in the international community that could help to encourage other countries to take affirmative action to conserve sharks, and serve as a good domestic policy.”⁶⁶

⁵⁹ Leyland Cecco, *Canada becomes first G7 country to ban shark fin imports*, THE GUARDIAN (June 21, 2019), <https://www.theguardian.com/world/2019/jun/21/canada-bans-shark-fin-imports-sale>.

⁶⁰ Mark Kinver, *Shark finning continues despite EU ban, says report*, BBC (Dec. 9, 2010), <https://www.bbc.com/news/science-environment-11951562>.

⁶¹ *Id.*

⁶² Joe Sandler Clarke, *Britain has exported more than 50 tonnes of shark fins since 2017*, UNEARTHED (July 29, 2019), <https://unearthed.greenpeace.org/2019/07/29/shark-fin-soup-uk/>.

⁶³ *Id.*

⁶⁴ Government Europa, *Shark Fin trade initiative aims to end finning industry* (Dec. 18, 2019), <https://www.governmenteuropa.eu/shark-fin-trade-initiative/95893/>.

⁶⁵ *US – Tuna II (Mexico)*, United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products - Appellate Body Report and Panel Reports pursuant to Article 21.5 of the DSU - Action by the Dispute Settlement Body – Revision (Jan. 17, 2019), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm#bkmk381abr2.

⁶⁶ Elizabeth Neville, *Shark Finning: A Ban to Change the Tide of Extinction*, 25 COLO. NAT. RESOURCES, ENERGY & ENVTL.L. REV. 387, 417 (2014).

The American Bar Association Resolution comes at a critical time. The American Bar Association should urge the enactment of legislation to help to ensure that sharks are protected from the threat of extinction. Jurisdictions should consider whether civil sanctions, criminal penalties or some combination of both would be most appropriate to ensure such protection. This resolution calls upon the ABA House of Delegates to emphasize the importance of sharks particularly in light of the United Nations Decade of Ocean Science for Sustainable Development 2021- 2030. As the United Nations has succinctly stated, “the marine realm is the largest component of the Earth’s ecosystem.” Sharks, a critical component of that ecosystem are in need of any and all support to continue to allow this ecosystem to flourish.

Respectfully submitted,

Lisa Ryan
Chair, International Law Section
August 2020

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GENERAL INFORMATION FORM

Submitting Entity: International Law Section

Submitted By: Lisa Ryan, Chair, International Law Section

1. Summary of Resolution(s).

Sharks are threatened by extinction as a result of the shark fin trade. The ABA can assist to end the shark fin trade by advocating for a consistent and comprehensive legal regime in the US and throughout the world to stop illicit trade of shark fins in addition to preventing sharks from becoming extinct. The resolution specifically calls for penalties for the possession, sale, and trade of shark fins.

2. Approval by Submitting Entity.

The International Law Section Council voted to approve the resolution and report on February 14, 2020.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

Not applicable.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation. (If applicable)

Shark Fin Sales Elimination Act of 2019 has passed the House and is currently in the Senate, S. 877

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Ensuring that there is continued education, working with US government, state governments, and international community to ensure protection of the shark species. Further, working with non-governmental groups to ensure that ABA policy is promoted and utilized.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

This Report and Recommendation is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

11. Contact Name and Address Information. (Prior to the meeting)

Regina Paulose
reginapaulose@aol.com

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

Penalizes the sale, trade, possession of shark fins

2. Summary of the issue that the resolution addresses.

Shark fin trade in all forms contributes to the decimation of the shark population worldwide. The sharks represent a critical resource to oceanic ecosystems and therefore the continued decimation of sharks could lead to severe consequences in the marine ecosystem and fishing industries. The laws which prohibit the sale, trade, and possession of shark fins are not uniform and have been adopted in only certain jurisdictions. The current federal law has a loophole that is constantly exploited by those interested in conducting illegal business trade of shark fins.

3. Please explain how the proposed policy position will address the issue.

This resolution advocates for consistent and comprehensive laws that penalize shark fin possession, sale, and trade in the US and abroad to protect sharks and stop organized crime from exploiting loopholes in the existing national, regional, and international laws.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

Shark populations are not threatened.