State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

February 3, 2014

Eileen Sobeck
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear ~~Ms. Sobeck~~ Eileen:

We write to memorialize a series of conversations between our respective offices and legal counsel beginning on September 6, 2013, regarding the relationship between California's Shark Fin Prohibition, Cal. Fish & Game Code §§ 2021 & 2021.5, and the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884, as amended by the Shark Finning Prohibition Act of 2000, Pub. L. No. 106-557, 114 Stat. 2772 (2000), and the Shark Conservation Act of 2010, Pub. L. No. 111-348, 124 Stat. 3668 (2010). We appreciate the opportunity to consult with you and believe that this process has been highly productive. This process was initiated after the United States filed an amicus brief in *Chinatown Neighborhood Association et al., v. Brown, et. al.*, Ninth Circuit Case No. 13-15188, and in that filing the United States observed that California's Shark Fin Prohibition may conflict with or obstruct federal law. However, in light of our discussions and the full information and analysis we have provided regarding the scope and effect of California's law, we now agree that California law and federal law are consistent and that there is no basis for finding California's Shark Fin Prohibition to be preempted by the Magnuson-Stevens Act, as amended.

The Magnuson-Stevens Act governs the management of federal fisheries, including shark fisheries. As we have discussed, the Shark Fin Prohibition and the Magnuson-Stevens Act, as amended, share a goal of promoting conservation and ending the practice of shark finning. To this end, the California Shark Fin Prohibition proscribes the possession, sale, trade, and distribution of detached shark fins in California. *See* Cal. Fish & Game Code §§ 2021(a)&(b). Of particular significance here, and unlike federal law, the California Shark Fin Prohibition does not regulate the act of finning or the taking and landing of sharks within the Exclusive Economic Zone (EEZ). Moreover, under California law, a federally-licensed fisher may land a shark in California with the fins attached, as required by the Shark Conservation Act of 2010. *See id.* § 2021(a) (defining "shark fin" as the "raw, dried, or otherwise processed *detached* fin, or the raw, dried, or otherwise processed *detached* tail, of an elasmobranch.") (emphases added).

With respect to your concern regarding the ability of fishers to possess fins (from sharks caught in the EEZ), pursuant to California Fish and Game Code sections 2021(d) and 2021.5(a)(1), properly-licensed fishers are exempt from the ban on possession. Because all fishers, including those who operate in federal waters pursuant to a federal

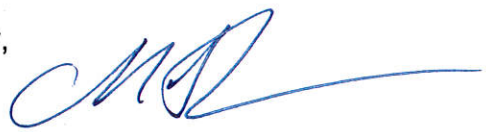
license, are required to hold state licenses in order to land sharks in California, *see id.* §§ 7850, 7881, this exemption applies equally to federal and state fishers.

Finally, California's Shark Fin Prohibition does not interfere with the management of federal fisheries. As you are aware, and as set forth in our reply to your amicus brief, we reject the notion that simply because a state ban might have an effect on fishing within federal waters and consequently on the attainment of "optimum yield," that it conflicts with and/or is preempted by the Magnuson-Stevens Act. While we may continue to disagree on this point, as a practical matter, the California Shark Fin Prohibition has no meaningful effect on fishing behavior or "optimum yield." Relatively few sharks are landed in California. The California-based drift gillnet fleet and the Hawaii-based pelagic longline fleet account for the majority of shark landings in California from federally-managed fisheries. Both of these fleets target swordfish and thus fishing behavior in these fleets is driven primarily by swordfish, and not by sharks.[1] The relative importance of swordfish and sharks is apparent in both landings and revenue. For example, in 2012, according to PacFIN data, shark landings in California (from both federal and state waters) totaled 107.5 metric tons, and represented $189,910 in revenue.[2] By comparison, 402.5 metric tons of swordfish were landed in California in 2012, with an ex-vessel value of $2,092,050.[3] With respect to the relatively small number of sharks that are landed in California, state law permits the sale of all of the parts of a shark caught in federal waters and landed in California, excluding its detached fin and tail. Accordingly, we do not expect an appreciable impact on income to federally-licensed shark harvesters in California as a result of California's law.

For these reasons, we believe that California's Shark Fin Prohibition is consistent with and does not conflict with the Magnuson-Stevens Act, as amended by the Shark Finning Prohibition Act of 2000, and the Shark Conservation Act of 2010.

Please feel free to contact Thomas Gibson, General Counsel, at (916) 654-5295, if you have further questions or concerns.

Sincerely,



Charlton H. Bonham

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[1] The other federally-managed fishery with shark landings in California is the federal groundfish fishery, managed under the Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP). The federal groundfish FMP includes spiny dogfish and leopard shark. According to PacFIN data, in 2012, 0.9 metric tons of spiny dogfish were landed in California, with an ex-vessel value of $575, and 2.8 metric tons of leopard shark were landed, with an ex-vessel value of $5,869. *See* Pacific States Marine Fisheries Commission, Pacific Fisheries Information Network (PacFIN) Report #308 (2012).

[2] *See id.*

[3] *Id.*

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

FEB - 3 2014

Mr. Charlton Bonham
Director
California Department of Fish and Wildlife
1416 Ninth Street
12th Floor
Sacramento CA 95814

Dear Mr. Bonham:

Thank you for your February 3, 2014, letter regarding your assessment of the relationship between the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Finning Prohibition Act of 2000 and the Shark Conservation Act of 2010, and the California Shark Fin Prohibition and the impact of California's law on federal shark harvesters.

NOAA Fisheries West Coast Region confirms that revenue from the sale of sharks harvested in federal waters off California derives mostly from the sale of the meat of the shark, not from the sale of fins sold after the shark is legally harvested and landed with fins naturally attached. Further, you confirm that all federal fishers who land sharks in California, including those who operate in federal waters pursuant to a federal license, are also required to hold state licenses and are therefore exempt from the ban on possession of shark fins. Based on the full information about the California law set forth in your letter, and the current facts specified there regarding the scale and nature of the federal shark fishery in California, we agree with your conclusion that California's Shark Fin Prohibition law will have minimal impact on federally licensed and permitted shark harvesters in California, and does not unlawfully burden their ability to achieve the benefits from federal fisheries provided under the Magnuson-Stevens Fishery Conservation and Management Act, as amended. Accordingly, it is our position, based on the information that you have provided, that California's Shark Fin Prohibition law is not preempted by the Magnuson-Stevens Act, as amended.

We agree that this has been a very productive process. Our consultations have addressed fully our initial concern, as expressed in the amicus brief of the United States *Chinatown Neighborhood Association et al., v. Brown, et al.,* Ninth Circuit Case No. 13-15188, that California's Shark Fin Prohibition might conflict with or obstruct the Magnuson-Stevens Act, as amended. In light of our present conclusion that California law does not conflict with or obstruct the purposes, goals, or methods of the Magnuson-Stevens Act, we do not intend to seek authorization from the Department of Justice to further participate in the case of *Chinatown Neighborhood Association, et al. v. Brown, et al.*, No. CV 12 3759 WHO (N.D. Cal.). We request that you contact us if there are significant changes to the facts described in your letter as this could necessitate further consultation.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

We appreciate your willingness to work with us on this important matter and we hope this letter addresses your concerns.

Sincerely,

Eileen Sobeck
Assistant Administrator
for Fisheries

cc: Alexandra Robert Gordon
Deputy Attorney General, California
Department of Justice