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August 6, 2015

Eileen Sobeck, Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
United States Department of Commerce
1315 East-West Highway
Silver Spring, Maryland 20910

Subject: Guam's Shark Fin Law; codified at Title 5, Guam Code Annotated, § 63114.1.; AG Reference No. AG 15-0409

Dear Ms. Sobeck,

Buenas yan Hafa Adai. This Office is in receipt of your letter dated June 29, 2015 concerning the interpretation of Guam's Shark Fin Law, 5 GCA § 63114.1. I note your concern that this law may be interpreted in such a manner as to conflict with the proposed rule to implement the Shark Conservation Act of 2010, 78 FR 25685, May 2, 2013. I have included the full text of 5 GCA 63114.1(a) here for your easy reference. 5 GCA § 63114.1 is entitled "Shark Fins" and states at subsection (a):

It shall be unlawful for any person to possess, sale, offer for sale, take, purchase, barter, transport, export, import, trade or distribute *shark fins* in Guam. Restaurants in possession of *shark fins* which are prepared for consumption upon the enactment of this Act, may sell or offer for sale such *shark fins* for a period of ninety (90) days after the enactment of this Act.

5 GCA 63114.1(a) (emphases added).

Although at first glance this provision appears to prohibit the sale of any shark fins, whether the fins are attached to a shark or detached from a shark, Guam has also adopted a particularized legal definition of the term "shark fin," located at 5 GCA § 63101(z). This definition states: "[s]hark Fin is defined, for the purpose of this Act, as the fin or tail of a shark that has been removed from the body." In keeping with this particularized definition, the statute further defines "shark finning" as the "taking of a shark, removing the fin or fins (whether or not including the tail) of a shark, and returning the remainder of the shark to the sea." 5 GCA § 63101(bb). These definitions were adopted simultaneously with 5 GCA § 63114.1, as part of Public Law 31-10, on March 9, 2011.

Letter to Eileen Sobeck, National Oceanic and
Atmospheric Administration
Re: Guam's Shark Fin Law; codified at Title 5,
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The statute's reference to "shark fins" specifically refers only to any fin that has already been removed from the body of a shark when the body of the shark has been returned to the sea at the time of the removal. This statutorily excludes the possibility of prosecution in Guam for the possession, sale, import, export, or landing of intact shark carcasses, wherever harvested. It also excludes prosecution for the incidental removal of a shark fin after landing of the intact carcass.

It is noteworthy that the Shark Conservation Act of 2010 (SCA) was drafted and introduced to the U.S. House of Representatives on April 9, 2008, by Congresswoman Madeleine Z. Bordallo (D-GU), the representative from Guam. *See* H.R. 5741, 110th Cong. (2008). Guam adopted its Shark Fin Law in 2011, after the passage of the SCA in 2010, in order to be consistent with the federal law drafted by Guam's own representative. As stated by Governor Eddie Baza Calvo, signing P.L. 31-10 into law on March 9, 2011:

It is also understood and acknowledged that this law is not directed to any incidental or eventual removal of a fin after a local fisherman has legally and appropriately landed a whole shark. Of course, the practice this law seeks to stop is strictly that of landing a shark, cutting off its dorsal fin, and then tossing the shark back into the water to suffer a slow and painful death. This law should now complement existing federal statutes prohibiting the landing of sharks without fins attached. As such, I am pleased to uphold the intent of this legislation by signing it into law.

P.L. 31-10 (March 9, 2011)(letter of Eddie Baza Calvo, Governor of Guam).

Although structured differently, the statutory definitions and prohibitions contained in Title 5, Chapter 63 of the Guam code are consistent with the definitions and prohibitions contained within the proposed 50 CFR §§ 600.1202 and 600.1203 of May 2, 2013.

It is therefore confirmed that Guam's Shark Fin Law does not prohibit the possession, sale, import, export, and/or landing of sharks with fins that are naturally attached to the shark carcass and are harvested by federally managed commercial fisheries outside of Guam's waters; nor does it prohibit the possession, sale, import, export, and/or landing of intact shark carcasses and shark carcasses from which the fins are later removed, so long as the body is not disposed in the sea without fins at or around the time of capture.

This Office cannot confirm the economic impact of the prohibitions under 5 GCA § 63114.1. This Office does not garner factual data, and can only appropriately address the legal aspects of your request. Please refer any factual or economic impact questions to those agencies within the Government of Guam that collect such information. However, it should be noted that 5 GCA § 63114.1, when read with its statutory definitions, does not prohibit the possession, sale, purchase, or transport of shark fins that have been removed from an intact shark carcass after landing. Thus, it appears that this request for confirmation is inapposite.

Letter to Eileen Sobeck, National Oceanic and
Atmospheric Administration
Re: Guam's Shark Fin Law; codified at Title 5,
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This letter is to confirm and support the effective and accurate implementation of Guam's shark fin law, the intent of which is to prohibit only the possession, sale, import, or export of shark fins that have been removed from a shark carcass which has been disposed at sea. Based on the specific definition of "shark fins" and "shark finning" located at 5 GCA § 63101(z) and (bb), this statute does not conflict with the May 2, 2013 proposed rule to implement the Shark Conservation Act of 2010. Please do not hesitate to contact Deputy Attorney General Karl Espaldon of my office if we may be of further assistance in this matter. Mr. Espaldon can be reached at 475-3324 x 3115 or care of Marie L. Cruz at mlcruz@guamag.org. Thank You for your attention to this matter.

Sinceramente,

A handwritten signature in black ink, appearing to read "E. Barrett-Anderson". The signature is fluid and cursive, with a large loop at the end.

ELIZABETH BARRETT-ANDERSON
Attorney General of Guam



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

The Honorable Leonardo M. Rapadas
Attorney General of Guam
Suite 706, ITC Building
590 S. Marine Corps Drive
Tamuning, Guam 96913

JUN 29 2015

Dear Mr. Attorney General:

This letter documents the April 9, 2014, discussion between Monty May, Assistant Attorney General of Guam, and Frederick Tucher, NOAA Office of General Counsel, regarding the impact of Guam's shark fin law (5 GCA § 63114.1) on the ability of commercial fishermen to harvest, possess, and land sharks in federally managed fisheries. We have reviewed the comment letter submitted by Mariquita Taitague, Director of the Guam Department of Agriculture, regarding the proposed rule implementing the Shark Conservation Act of 2010 (SCA) (78 FR 25685, May 2, 2013).

We understand that the Attorney General's Office, on behalf of the Territory of Guam, has preliminarily determined that § 63114.1 is consistent with the SCA because it regulates fins that have been removed from the shark, and does not prohibit the retention or landing of shark fins that are naturally attached.

Accordingly, we are writing to request your confirmation in the following:

1. Guam's shark fin law, 5 GCA § 63114.1, does not prohibit the possession, import, and/or landing of sharks with fins that are naturally attached to the shark carcass and are harvested by federally managed commercial fisheries outside of Territory waters;
2. Following landing of intact shark carcasses by federally managed fisheries, 5 GCA § 63114.1 does not prohibit the removal and disposal of shark fins and the possession, purchase, sale, or transport of the shark carcass; and,
3. Prohibitions under § 63114.1 with respect to the possession, sale, purchase, or transport of shark fins that have been removed from the carcass after landing will have a minimal impact on federally managed fisheries in Guam, and will not diminish income to Guam fishermen from the incidental harvest of sharks. We understand that based on creel surveys conducted since 2008, the Guam Division of Aquatic and Wildlife Resources has not observed sharks taken in fisheries conducted in federal waters, or in commercial markets.

If you confirm that this letter accurately reflects the legal interpretations and commitments of the Attorney General's Office on behalf of the Territory of Guam, NOAA agrees with your



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THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

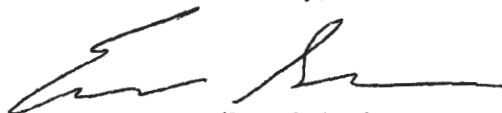


conclusion that Guam's shark fin law, 5 GCA § 63114.1, will not have a material impact on federally authorized shark harvesters, and will not be preempted by, and does not unlawfully burden their ability to achieve the benefits from federal fisheries provided under the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010.

We request that you confirm that this letter reflects your interpretation and application of the Guam shark fin law. We further request that you contact us if there are significant changes to the facts described herein. Also, please let us know in the future if there is any change in the facts outlined here.

We appreciate your willingness to work with us on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eileen Sobeck', written in a cursive style.

Eileen Sobeck
Assistant Administrator
for Fisheries