New York State Department of Environmental Conservation
Assistant Commissioner
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Joe Martens
Commissioner

August 15, 2014

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

Dear Ms. Sobeck:

I am writing as follow-up to a series of conversations between our respective agencies' legal counsel with regard to the relationship between New York's Environmental Conservation Law (ECL) § 13-0338 and the Magnuson-Stevens Act, as amended by the Shark Conservation Act of 2010 (SCA).[1] The Department of Environmental Conservation (DEC) submits that New York's ECL § 13-0338, which prohibits the possession, sale, trade, and distribution of detached shark fins, will have a minimal impact on federally licensed shark harvesters in New York and is consistent with the Magnuson-Stevens Act, as amended by the SCA.

New York's ECL § 13-0338(3)(a) states that "[n]o person shall possess, sell, offer for sale, trade or distribute a shark fin."[2] However, there are several exceptions listed in the statute which are intended to allow for the harvest and possession of sharks, including the fins.

The first exception provides that: "this prohibition shall not apply to any shark fin that was taken from a spiny dogfish (Squalus acanthias) or a smooth dogfish (Mustelus canis) lawfully caught by a licensed commercial fisherman." According to NMFS's Annual Commercial Landing Statistics on the National Oceanic and Atmospheric Administration's website, dogfish comprise an overwhelming majority of all shark landings in New York—96.4% by weight from 2008 to 2012.[3] The following two tables provide a statistical breakdown of total dogfish landings in comparison to total shark landings in New York.

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[1] *See* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884 (2014); Shark Conservation Act of 2010, Pub. L. No. 111-348, 124 Stat. 3668 (2010).
[2] N.Y. Envtl. Conserv. Law § 13-0338(1)(c) (McKinney 2014) (July 1, 2014). (defining a shark fin as "the raw, dried or otherwise processed detached fin including the tail").
[3] National Marine Fisheries Service, Commercial Fisheries Statistics, National Oceanic and Atmospheric Administration (last visited July 10, 2014), http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index.

Figure 1 illustrates that spiny and smooth dogfish consistently comprise a substantial majority of total shark landings by weight in New York State.

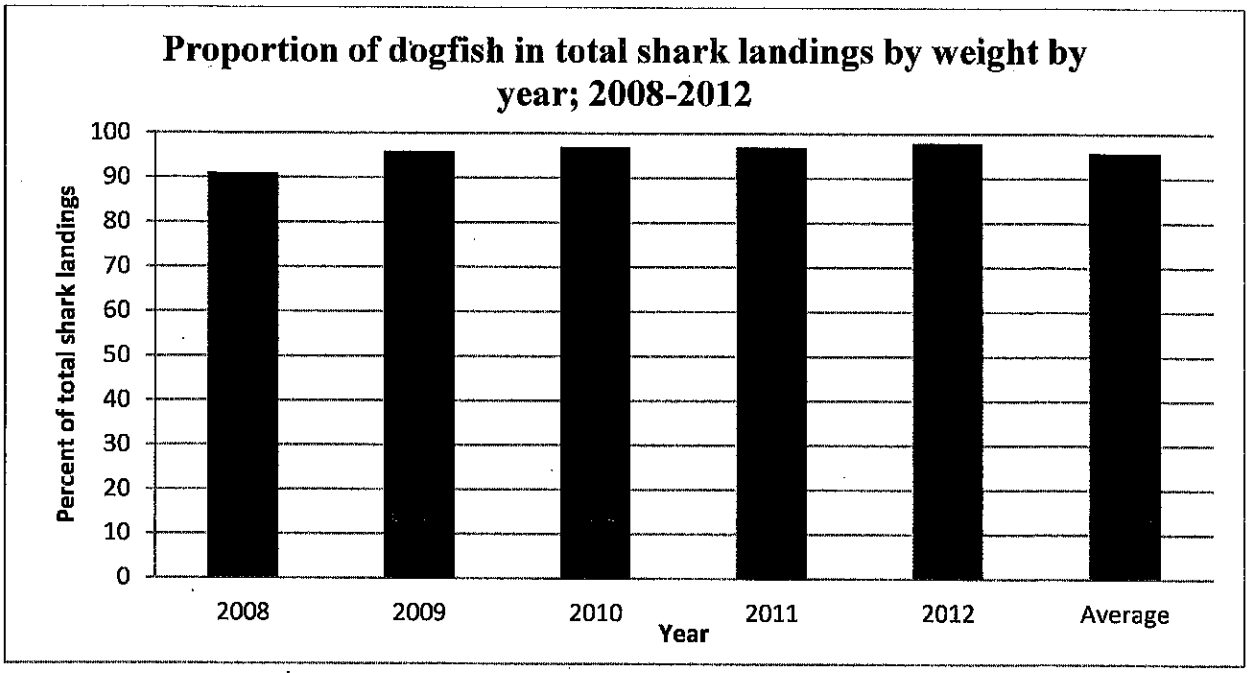

Figure 1[4]

Figure 2 illustrates that spiny and smooth dogfish consistently comprise a significant majority of the total value of sharks landed in New York State.

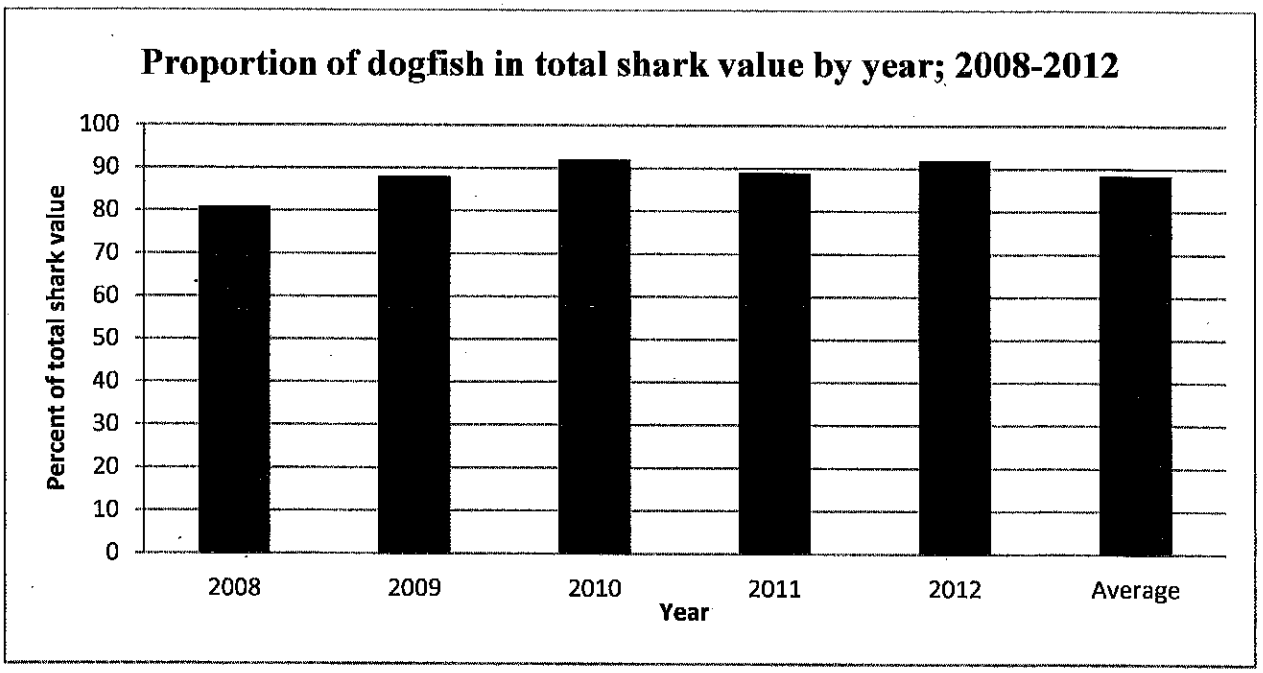

Figure 2[5]

[4] Id.

[5] National Marine Fisheries Service, Commercial Fisheries Statistics, National Oceanic and Atmospheric Administration (last visited July 10, 2014), http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index.

There are two other exceptions that allow for the possession of shark fins. If the shark was "lawfully caught" and "the person has a recreational marine fishing registration," the prohibition does not apply. Likewise, if the person harvesting the shark has either a license or permit from the department for "bona fide scientific research" or for "educational purposes," the prohibition does not apply.[6]

A small percentage of sharks landed in New York will fall outside of these exceptions. However, in such cases, any impact on federally licensed shark harvesters in New York will be minimal because the law does not prohibit federal shark harvesters from landing legally caught sharks. ECL § 13-0338 only prohibits the possession and commercial trade of non-exempt[7] shark fins. The DEC interprets this statute to allow federal shark harvesters to land non-exempt sharks so long as the fins either remain naturally attached to the carcass or are properly disposed of or discarded.

The shark fin law will have no meaningful impact on the attainment of "optimum yield" and will not interfere with the management of federal fisheries.[8] According to NMFS's Annual Commercial Landing Statistics on the National Oceanic and Atmospheric Administration's website, non-exempt sharks comprise only 3.6% of total shark landings in New York by weight from 2008 to 2012.[9] The average annual revenue from non-exempt sharks during the same five-year period was approximately $20,855, or 10.6% of the total revenue from all sharks landed in New York.[10] Because shark harvesters that land non-exempt sharks are allowed to possess and sell the meat of such sharks, the DEC does not anticipate that ECL § 13-0338 will have any substantial economic effect on federally-licensed shark harvesters in New York.

For the above reasons, we anticipate that New York's shark fin law will have a minimal effect on federally licensed shark harvesters and will not unlawfully burden the attainment of "optimum yield" from all landed sharks. Accordingly, we believe that New York's shark fin law does not conflict with the Magnuson-Stevens Act, as amended by the Shark Conservation Act.

If you have any questions, please feel free to contact me at (518) 402-8533.

Sincerely,

Kathleen Moser

Kathleen Moser
Assistant Commissioner
for Natural Resources

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[6] ECL § 13-0338(3)(b).
[7] The term "non-exempt" as used in this letter refers to all sharks other than spiny dogfish and smooth dogfish.
[8] 16 U.S.C. 1851(a)(1) (2014).
[9] National Marine Fisheries Service, Commercial Fisheries Statistics, National Oceanic and Atmospheric Administration (last visited July 10, 2014), http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index.
[10] 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

Ms. Kathleen Moser
Assistant Commissioner for Natural Resources
New York State Department of
Environmental Conservation
625 Broadway
Albany, NY 12233

SEP 30 2014

Dear Ms. Moser:

Thank you for your letter regarding the New York Department of Environmental Conservation's assessment of the impacts to federal shark harvesters of New York's Environmental Conservation Law prohibiting the possession, sale, trade, and distribution of detached shark fins (ECL §13-0338).

Based on the information about the New York law set forth in your letter and the current facts regarding the scale and nature of the shark fishery in New York, we agree with your conclusion that New York's shark fin law will have a minimal impact on federally licensed and permitted shark harvesters in New York. As noted in your letter, spiny and smooth dogfish are exempted from the provisions of this law and they comprise the majority of landed sharks and nearly 90 percent of the value of sharks landed in New York.

We also understand that federally licensed shark harvesters in New York will be able to land and sell the meat of non-exempt sharks so long as the fins remained naturally attached to the carcass or are properly disposed of or discarded after landing. Your letter further explains that, because shark harvesters who land non-exempt sharks are allowed to sell the meat of such sharks, the Department of Environmental Conservation does not anticipate that ECL §13-0338 will have any substantial economic effect on federally licensed shark harvesters in New York.

Based on these facts, we agree with your conclusion that New York's law will have a minimal impact on federally licensed shark fishermen in New York and does not unlawfully burden their ability to achieve the benefits from federal fisheries and is therefore consistent with and not preempted by the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Shark Conservation Act of 2010.

Please contact us if there are significant changes to the facts described in your letter, as those changes may affect our conclusions. We appreciate your willingness to work with us on this important matter.

Sincerely,

Eileen Sobeck

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES