

SHARK FIN SALES ELIMINATION ACT OF 2019

NOVEMBER 8, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 737]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 737) to prohibit the sale of shark fins, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 737 is to prohibit the domestic sale, possession, and purchase of shark fins and products containing shark fins.

BACKGROUND AND NEED FOR LEGISLATION

Chondrichthyan fishes (sharks, rays, and chimaeras) face a significantly higher extinction risk than most other vertebrates.¹ Globally, one-quarter of sharks and their relatives are threatened with extinction, with large-bodied, shallow-water species facing the highest risk.² Sharks are caught and killed, on average, 30 percent faster than they can reproduce.³

¹Nicholas K. Dulvy et al., *Extinction Risk and Conservation of the World's Sharks and Rays*, at 1, *ELIFE* (Jan. 21, 2014), <https://elifesciences.org/articles/00590>.

²*Id.*

³Boris Worm et al., *Global Catches, Exploitation Rates, and Rebuilding Options for Sharks*, 40 *MARINE POL'Y* 194, 198 (2013), <https://dx.doi.org/10.1016/j.marpol.2012.12.034>.

Sharks are important to the ocean ecosystem and local tourism economies. Shark tourism is a growing industry in the United States. In 2016, shark diving in Florida resulted in \$221 million in direct expenditures and contributed to more than 3,700 jobs.⁴ The concern for declining shark populations and the impact this decline has on the ecosystem and tourism industries has led to increased efforts to conserve sharks globally, including through no-take marine reserves, species-specific fishing bans, and shark fin trade bans.

The greatest threat facing sharks is overfishing, which is driven by the incidental catch of sharks, known as bycatch, and the demand for their fins to fuel the global shark fin trade.⁵ The fins of sharks and shark-like rays are used for shark fin soup, a delicacy in some cuisines going back to the Chinese Song Dynasty.⁶ Of the fourteen most common shark species involved in the Hong Kong fin trade, more than 70 percent of the species are considered to be at high or very high risk of extinction, such as the scalloped hammerhead and oceanic whitetip.⁷ The fins from 26–73 million sharks make it into the global shark fin trade each year.⁸ The global shark fin trade is often unmonitored and unregulated.⁹

To address shark finning—the practice of removing a fin and throwing the dead or dying shark back overboard to drown—Congress passed the Shark Finning Prohibition Act¹⁰ (SFPA) in 2000 and then augmented it with the Shark Conservation Act (SCA) of 2010.¹¹ The SFPA banned shark finning.¹² The SFPA also imposed a fin-to-carcass ratio requirement, meaning that the weight of landed fins on a vessel had to be within a certain ratio of the weight of the rest of landed shark carcasses on board in order to avoid a presumption that the fins on board were detached from illegally discarded carcasses rather than from the legally retained carcasses still on board.¹³ However, enforcing the fin-to-carcass ratio was difficult, and the SFPA allowed American vessels to deliver shark fins to a foreign port for resale, so Congress passed the SCA to make it illegal to remove any fins (including the tail) from a shark at sea, transfer such a fin from one vessel to another vessel, or land any fin that is not naturally attached to the corresponding carcass.¹⁴

Although shark finning is illegal in U.S. waters, the buying and selling of fins is still legal, which results in enforcement and conservation challenges. The U.S. continues to import shark fins from countries that do not have regulations against shark finning. According to DNA tests and other genetic forensics techniques, fins

⁴ ANTHONY J. FEDLER, PH.D., OCEANA, THE ECONOMIC IMPACT OF SHARK DIVING IN FLORIDA 11 (2017), https://usa.oceana.org/sites/default/files/economic_impact_of_shark_diving_in_florida_report.pdf.

⁵ See Dulvy et al., *supra* note 1.

⁶ See, e.g., Lauren Smith, *Shark Fin Soup: A Dangerous Delicacy for Humans and Sharks Alike*, THE GUARDIAN (Mar. 10, 2016), <https://www.theguardian.com/science/blog/2016/mar/10/shark-fin-soup-a-dangerous-delicacy-for-humans-and-sharks-alike>.

⁷ PATRICK MUSTAIN, MARIAH PFLEGER & LORA SNYDER, OCEANA, SHARK FIN TRADE: WHY IT SHOULD BE BANNED IN THE UNITED STATES 9 (2016), https://usa.oceana.org/sites/default/files/shark_fin_ban_announcement_report_final_low-res.pdf.

⁸ Shelley C. Clarke et al., Letter, *Global Estimates of Shark Catches Using Trade Records from Commercial Markets*, 9(10) ECOLOGY LETTERS 1115 (2006), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1461-0248.2006.00968.x>.

⁹ See, e.g., Dulvy et al., *supra* note 1.

¹⁰ Pub. L. No. 106–557, 114 Stat. 2772 (2000) (codified at 16 U.S.C. § 1822 note).

¹¹ Pub. L. No. 111–348, tit. 1, 124 Stat. 3668 (2011) (codified at 16 U.S.C. § 1801 note).

¹² Pub. L. No. 106–557, § 3, 114 Stat. 2772, 2772.

¹³ *Id.*

¹⁴ Pub. L. No. 111–348, § 103(a)(1), 124 Stat. 3668, 3670 (codified at 16 U.S.C. § 1857).

entering and leaving the U.S. may be from sharks that are threatened with extinction.¹⁵ In addition, the estimates of how many shark fins are entering and leaving the U.S. varies greatly depending on the source. In 2007, other countries reported to the Food and Agriculture Organization of the United Nations that they exported more than 1,000 metric tons of shark fins to the U.S.,¹⁶ but NOAA reported only 29 metric tons of shark fin imports.¹⁷ These discrepancies make it difficult to monitor and enforce shark fin imports.

To address these issues and to further conserve sharks, twelve states and three territories passed laws banning the trade of shark fins, including: Hawaii, Oregon, Washington, California, Illinois, Maryland, Delaware, New York, Massachusetts, Texas, Rhode Island, Nevada, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. In addition, more than forty airlines, including all three of China's state-owned airlines; twenty major international shipping companies, including UPS; and other corporations such as Amazon, Disney, Hilton, and GrubHub, all have policies in place to not allow the trade of shark fins.

However, shark fins are now being imported and exported out of states with fin trade bans, in potential violation of state laws. Although the state of Texas ended the trade of shark fins in 2016, the National Marine Fisheries Service's Fisheries Statistics and Economics Division database on foreign trade indicates that in 2017, \$473,000 worth of shark fins were exported from customs districts in Texas to Mexico.¹⁸ In 2017, \$528,000 worth of shark fins entered through customs districts in California from New Zealand.¹⁹ H.R. 737 seeks to address these challenges.

COMMITTEE ACTION

H.R. 737 was introduced on January 23, 2019, by Representative Gregorio Kilili Camacho Sablan (D-CNMI). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On March 26, 2019, the Subcommittee held a hearing on the bill. On September 18, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Rep. Daniel Webster (R-FL) offered and withdrew an amendment in the nature of a substitute. No additional amendments were offered, and the bill was adopted and ordered favorably

¹⁵ Debra L. Abercrombie, Shelley C. Clarke & Mahmood S. Shivji, *Global-Scale Genetic Identification of Hammerhead Sharks: Application to Assessment of the International Fin Trade and Law Enforcement*, 6(5) CONSERVATION GENETICS 775 (2005), <https://doi.org/10.1007/s10592-005-9036-2>; J.E. Magnussen et al., *Genetic Tracking of Basking Shark Products in International Trade*, 10(2) ANIMAL CONSERVATION 199 (2007), <https://doi.org/10.1111/j.1469-1795.2006.00088.x>; Mahmood S. Shivji et al., *Genetic Profiling Reveals Illegal International Trade in Fins of the Great White Shark*, *Carcharodon Carcharias*, 6(6) CONSERVATION GENETICS 1035 (2006), <https://doi.org/10.1007/s10592-005-9082-9>.

¹⁶ FELIX DENT & SHELLEY CLARKE, FOOD & AGRIC. ORG. OF THE UNITED NATIONS, FAO FISHERIES & AQUACULTURE TECHNICAL PAPER NO. 590, STATE OF THE GLOBAL MARKET FOR SHARK PRODUCTS 185 (2015), <http://www.fao.org/3/a-i4795e.pdf>.

¹⁷ NAT'L MARINE FISHERIES SERV., NAT'L OCEANIC & ATMOSPHERIC ADMIN., 2011 SHARK FINNING REPORT TO CONGRESS 29 (2011).

¹⁸ NAT'L MARINE FISHERIES SERV., FISHERIES STATS. & ECON. DIVISION (no longer available). This statistic has since been replaced on the division's website with a dramatically lower number, without explanation.

¹⁹ NAT'L MARINE FISHERIES SERV., FISHERIES STATS. & ECON. DIVISION, <https://www.st.nmfs.noaa.gov/apex/f?p=213> (follow "Annual Trade Data" hyperlink; then follow "Trade through All U.S. Customs Districts" hyperlink; then search within 2017 for Trade Type: "IMPORTS" and Products type: "Shark") (last visited Oct. 29, 2019).

reported to the House of Representatives by a roll call vote of 16 yeas and 13 nays,²⁰ as follows:

²⁰Rep. Darren Soto (D-FL), an original cosponsor of H.R. 737, requested, after the closing of the vote, that the record reflect that had he been present he would have voted in favor of ordering the bill favorably reported.

Date: September 18, 2019

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 737

Amendment:

Disposition: Final Passage: H.R. 737 was adopted and ordered favorably reported to the House of Representatives a roll call vote of 16 yeas and 13 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD			
2	Mr. Cartwright, PA			
3	Mr. Case, HI	X		
4	Mr. Clay, MO	X		
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO			
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ			
11	Mr. Grijalva, AZ (Chair)	X		
12	Ms. Haaland, NM	X		
13	Mr. Horsford, NV			
14	Mr. Huffman, CA	X		
15	Mr. Levin, CA	X		
16	Mr. Lowenthal, CA	X		
17	Mr. McEachin, VA			
18	Ms. Napolitano, CA	X		
19	Mr. Neguse, CO	X		
20	Mr. Sablan, CNMI	X		
21	Mr. San Nicolas, GU	X		
22	Mr. Soto, FL			
23	Mr. Van Drew, NJ		X	
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY			
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY			
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID			
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA			
10	Mr. Hern, OK		X	
11	Mr. Hice, GA			
12	Mr. Johnson, LA			
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL			
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA		X	
19	Mr. Young, AK		X	
	TOTALS	16	13	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of section 103(i) of H.Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 737: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on March 26, 2019.

SECTION-BY-SECTION ANALYSIS

Section 2. Prohibits the domestic sale of shark fins and creates a violation penalty under the Magnuson-Stevens Fishery Conservation and Management Act.

Section 3. Exempts possession of shark fins taken lawfully under a state, territory, or federal license or permit that meets certain requirements.

Section 4. Exempts dogfish species and requires that the Secretary of Commerce report by 2027 on whether this exemption should be continued or terminated.

Section 5. Defines shark and shark fin.

Section 6. Clarifies that states and territories may adopt or enforce more stringent regulations or standards.

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.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 2019.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 737, the Shark Fin Sales Elimination Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 737, Shark Fin Sales Elimination Act of 2019			
As ordered reported by the House Committee on Natural Resources on September 18, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 737 would prohibit the sale, possession, and purchase of shark fins and products containing shark fins. Violators of this prohibition would be subject to a civil penalty pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The bill also would allow for the lawful possession of shark fins obtained via a state, territorial, or federal license or permit if the shark fin is used for noncommercial purposes, or used for display or research purposes by a museum, college, university, or any permitted researcher. The prohibition in the bill would not apply to *Mustelus canis* (smooth dogfish) or *Squalus acanthias* (spiny dogfish).

Because H.R. 737 would prohibit the sale and purchase of shark fins, CBO estimates that revenues from customs duties collected on imported shark fin products would decline. CBO also estimates that penalty collections resulting from violations of the bill's prohibitions would increase revenues. However, based on information from the National Oceanic and Atmospheric Administration (NOAA) and from states that ban the possession of shark fins, CBO estimates that the net effect of those revenue changes would not be significant in any year or over the 2020–2029 period.

H.R. 737 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by prohibiting the sale of shark fins or products containing shark fins or the possession of shark fins for noncommercial purposes unless those fins were taken under a state, territorial, or federal license or permit. The cost of the mandates would include any loss of income from the sale of shark fins and products containing shark fins and the cost to obtain a license or permit for noncommercial takings.

Based on information from NOAA about the value of shark fins landed in the United States, CBO estimates that the loss of income would total less than \$3 million annually. Additionally, CBO estimates that the cost of obtaining a permit for the possession of shark fins for noncommercial purposes would be minimal and apply to a limited number of entities. CBO estimates that the cost of the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$164 million in 2019, adjusted annually for inflation).

H.R. 737 contains no intergovernmental mandates as defined in UMRA.

On May 23, 2019, CBO transmitted a cost estimate for S. 877, the Shark Fin Sales Elimination Act of 2019, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 3, 2019. The two pieces of legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Lilia Ledezma (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to prohibit the domestic sale, possession, and purchase of shark fins and products containing shark fins.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

H.R. 737 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by prohibiting the sale of shark fins or products containing shark fins or the possession of shark fins for noncommercial purposes unless those fins were taken under a state, territorial, or federal license or permit. The cost of the mandates would include any loss of income from the sale of shark fins and products containing shark fins and the cost to obtain a license or permit for noncommercial takings.

Based on information from NOAA about the value of shark fins landed in the United States, CBO estimates that the loss of income would total less than \$3 million annually. Additionally, CBO estimates that the cost of obtaining a permit for the possession of shark fins for noncommercial purposes would be minimal and apply to a limited number of entities. CBO estimates that the cost of the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$164 million in 2019, adjusted annually for inflation).

H.R. 737 contains no intergovernmental mandates as defined in UMRA.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 737 bans the possession or purchase of shark fins in an attempt to stop the practice of killing sharks solely for their fins. This practice is contemptible because of the obvious wanton waste of a valuable resource. But this practice is already illegal under U.S. law. Shark fishing is highly regulated to assure sustainable shark fisheries, and shark fishermen must already account for both the fins and the carcass of every shark landed. This bill actually mandates the shark fin be thrown away, which is the most valuable part of the shark. How ironic that it mandates what it purports to abhor: the deliberate wastage of our shark resources. It does nothing to enhance conservation and a great deal of harm to American shark fishermen.

According to testimony provided by the National Oceanic and Atmospheric Administration last Congress on identical legislation: *“We cannot support the Shark Fin Sale Elimination Act because the bill’s negative impact on U.S. fishermen would outweigh its minimal benefit to shark conservation . . . This would hurt U.S. fishermen who currently harvest and sell sharks and shark fins in a sustainable manner under strict federal management.”*¹

This legislation is opposed by the Florida Fish and Wildlife Commission,² the State of Louisiana,³ commercial fishing groups, and a number of scientists including the Director of Mote Laboratory’s Center for Shark Research.⁴

Opponents of this legislation argue that it “unfairly [punishes] highly regulated American fishermen” and “rewards bad actors in other nations by taking sustainably sourced U.S. shark fins out of the global market.”⁵ Further, a requirement to discard shark fins before processing the shark for sale violates the “full use” directive in the Food and Agriculture Organization of the United Nations’ International Plan of Action for Conservation and Management of Sharks.⁶

To the contrary, Congressman Webster (R-FL) has introduced H.R. 788, which improves international shark fisheries management by allowing imports only from countries with conservation management laws and enforcement measures comparable to the U.S. Unfortunately, Democrats refused to include Congressman Webster’s bill in this hearing and instead insisted on hearing only

¹Written testimony of Alan Risenhoover, Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, to the House Committee on Natural Resources, April 17, 2018.

²Politico: Florida wildlife officials won’t support federal shark fin ban, Bruce Ritchie, July 10, 2017.

³Jack Montoucet, Secretary of the Department of Wildlife and Fisheries for the State of Louisiana, letter to Mr. Acy Cooper, President of the Louisiana Shrimp Association, July 7, 2017.

⁴Dr. Robert Hueter, Mote Laboratory, to Congressman Daniel Webster, April 21, 2017.

⁵U.S. Shark Fishermen and Dealers Support H.R. 5248, *“The Sustainable Shark Fisheries and Trade Act of 2018.”*

⁶FAO International Plan of Action for Conservation & Management of Sharks.

H.R. 737, despite opposition from stakeholders and top scientists in the field.⁷

H.R. 737 is a misguided, albeit transparent, attempt by Oceana to put American fishermen out of business. Many experts in the field of shark management and biology have affirmed that this legislation would do nothing to improve U.S. or international shark populations. As such, we oppose this legislation.

TOM MCCLINTOCK.
DANIEL WEBSTER (FL).



⁷Dr. Robert Hueter, Mote Laboratory, to Congressman Daniel Webster, April 21, 2017.