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〈Articles〉

My Last Bowl of *Fukahire*: Recent Laws in the United States that Prohibit Shark Fin Soup

Daryl Masao Arakaki

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I. Introduction

At Chinese cuisine restaurants in Japan, one of the popular menu items is the “fukahire”, a dish prepared from dried shark fins. At one of Osaka’s most up-scale hotels, a full-course dinner featuring shark fin soup can

cost from ¥8500 to ¥25,000. Even at a more moderately-priced restaurant, ala carte shark fin dishes range from ¥1470 for a small bowl of “fukahire” soup featuring only thin strips of shark fin, to ¥6300 for a larger bowl containing a large wedge of fin.¹⁾ Sometimes, at the entrance of a restaurant that serves “fukahire”, there will be a display of dried shark fins which serves as a visual appeal regarding the authenticity and quality of the product. Without question, the image of shark fin soup in Japan is one of a luxurious delicacy.

Meanwhile, in the United States, the image of shark fin soup is quite different. The use of shark fins is gradually being seen as a wasteful use of natural marine resources and a threat to the ocean ecology. In an effort to curb the overharvesting of sharks, the United States federal government enacted the Shark Finning Prohibition Act of 2000²⁾ and later the Shark Conservation Act of 2010³⁾. At a more local level, states have targeted the consumer outlets for shark fins, with Hawaii in 2010 becoming the first state to make it illegal for restaurants to serve shark fin dishes.⁴⁾ Similar laws were subsequently adopted in Washington, Oregon, and California.

In this article, I will first discuss the background of the shark finning problem and the overharvesting of sharks. I will then discuss international initiatives for shark conservation and federal and state legislation enacted in the United States. Finally, I will discuss trends in other countries which

1) These prices were found on restaurant web pages in January 2012.

2) Act Dec. 21, 2000, Pub. L. 106-557, 114 Stat. 2772.

3) Act Jan. 4, 2011, Pub. L. 111-348, 124 Stat. 3668.

4) Hawaii Revised Statutes, Section 188-40.7 Shark fins; prohibited (2010).



A small bowl of shark fin soup at a Chinese restaurant in Osaka. (7 Dec. 2011).

seek to eliminate the consumption of shark fin soup, and their possible effects on shark fin consumption in Japan.

II. Shark Finning and the Overharvesting of Sharks

For more than 400 million years, sharks have been one of the oceans' dominant predators.⁵⁾ Sitting at the top of the food chain, they were usually the hunters, not the hunted. But that was before man learned how

5) X.N. Verlecar, Snigdha, S.R. Desai and V.K. Dhargalkar, *Shark hunting—an indiscriminate trade endangering elasmobranchs to extinction*, CURRENT SCIENCE, vol. 92, no. 8, (25 April 2007) at 1078.

to fish, and especially before man learned how to make shark fin soup. While man has historically made use of many parts of the shark (meat for food, skin for leather, teeth for ornaments or weapons), sharks are now primarily caught for their fin export value, with the most valuable fins being the first dorsal fin, the pair of pectoral fins, and the lower part of the tail.⁶⁾

And while shark fin has long been a part of traditional Chinese cuisine (the use of shark fin in royal banquets dates back at least to the Ming Dynasty), consumption of shark fin was generally reserved for the elite and the wealthy because the product was difficult and dangerous to obtain.⁷⁾ But with the Asian economic boom of the mid-1980's and early 1990's, the demand for shark fins increased dramatically as greater numbers of people found themselves with more disposable income.⁸⁾ Previously limited to the southern provinces of Guangdong and Fujian, and the major cities of Hong Kong, Beijing, and Shanghai, shark fin cuisine is now available in most, if not all major cities in China.⁹⁾ Also popular in Singapore, Macao, and other countries with large ethnic Chinese populations, shark fin has become one of the most valuable food items in the world. Researchers report that, in 1998, the average retail

6) Ibid at 1080.

7) Shelley Clarke, E.J. Milner-Gulland, Trond Bjørndal, *Social, Economic, and Regulatory Drivers of the Shark Fin Trade*, MARINE RESOURCE ECONOMICS, vol. 22 (2007) at 307.

8) J.A. Musick, G. Burgess, G. Calliet, M. Camhi, and S. Fordham, *Management of Sharks and Their Relatives (Elasmobranchii)*, FISHERIES, vol. 25, no. 3 (March 2000) at 9-10.

9) Clarke, et. al. *supra note 7*, *Social, Economic, and Regulatory Drivers of the Shark Fin Trade*, at 308.

price in Hong Kong for dried processed caudal fins 25.4 cm in length was US\$415.¹⁰⁾ In 2001, Hong Kong retail prices reached as high as US\$740 per kilogram.¹¹⁾

The global increase in demand and resulting higher prices served as a greater incentive for fishing fleets to further increase their catch of shark. Between 1950 and 2000, the reported catches increased fourfold (220%).¹²⁾ Global landings of sharks grew from an annual average of 405,000 tons in the 1960's to 630,000 tons in the 1980's, to 830,000 tons in the 2000's, with a peak of about 900,000 tons in 2003.¹³⁾

This aggressive harvesting of sharks becomes problematic because most sharks that have been studied have slow growth and late sexual maturity. They also produce very few offspring when compared to bony fishes. (Two examples are the sand tiger shark which produces only two young, probably every other year, and the dusky shark which takes 20

10) Quentin S.W. Fong, James L. Anderson, *International shark fin markets and shark management: an integrated market preference-cohort analysis of the blacktip shark (Carcharhinus limbatus)*, ECOLOGICAL ECONOMICS vol. 40 (2002) at 118.

11) Clarke, S., *Shark Product Trade in Hong Kong and Mainland China and Implementation of the CITES Shark Listings* (TRAFFIC East Asia, Hong Kong, China) (2004) at 6.

12) Mary Lack, Glenn Sant, *World Shark Catch, Production & Trade 1990-2003*, available at (<http://environment.gov.au/coasts/publications/trends-shark.html>) and at: (www.traffic.org/species-reports/traffic_species_fish22.pdf) (downloaded Feb. 14, 2012).

13) Camhi, M.D., Valenti, S.V., Fordham, S.V., Fowler, S.L. and Gibson, C., *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop. IUCN Species Survival Commission Shark Specialist Group*, (2009) at 15.

years to reach maturity.) These attributes result in very low intrinsic rates of population increase and very low resilience to fishing mortality.¹⁴⁾ As a result, once a population of sharks is decimated by overfishing, it takes many years before the population can recover.

Already, some populations of shark are in trouble. Examples of shark populations that have been overfished in the past include the Porbeagle fishery (*Lamna nasus*) in the North Atlantic, the Soupfin Shark fishery (*Galeorhinus galeus*) off California and Australia, various Basking Shark (*Cetorhinus maximus*) fisheries, the Spiny Dogfish (*Squalus acanthias*) fisheries in the North sea and off British Columbia, and the large coastal shark fishery off the East Coast of the United States.¹⁵⁾ In a 2007 report, the International Union for Conservation of Nature (IUCN), stated that twenty species (32%) of pelagic sharks and rays are considered “Threatened” with extinction (6% endangered, 26% vulnerable) and fifteen species (24%) are assessed as being “Near Threatened”.¹⁶⁾

Although not all overfishing can be attributed solely to the demand for shark fins (the Porbeagle, for example, has long been fished for its meat), the lucrative nature of the shark fin market has triggered an explosive increase in the number of sharks harvested. That is because in order to maximize their profits on each fishing excursion, shark fishing

14) J.A. Musick, et. al., *supra* note 8, *Management of Sharks and Their Relatives (Elasmobranchii)*, at 9-10.

15) *Ibid* at 9.

16) Camhi, M.D., et. al., *supra* note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop. IUCN Species Survival Commission Shark Specialist Group*, at 7-8.

crews developed the technique known as “finning”. Shark finning is the practice of catching a shark, cutting off the highly valued fins and tail, and discarding the less valuable remaining carcass into the ocean.¹⁷⁾ (Data taken from reported catches suggests that while shark fins account for only 7% of the volume of the shark product trade, they represent 40% of the value of that trade.¹⁸⁾) By keeping only the valuable fins, the boat expends less fuel costs hauling around a load of heavy unwanted carcasses, and it has more space to store the valuable fins of a greater number of sharks. This practice results in an increase in the number of individual sharks actually harvested. Estimates based on data from the shark fin trade indicate that between 26 and 73 million sharks are traded annually, with a global value of between US\$400 to \$550 million¹⁹⁾, about half of which passes through Hong Kong.²⁰⁾

The possible demise of sharks is a matter of concern for everyone because sharks not only represent an important food source, they also play an important role in the ocean ecosystem.²¹⁾ As top predators, they remove unhealthy and weak prey fish from the reproductive gene pool. As scavengers, they keep the waters clean by consuming carcasses of dead

17) Shark–Finning Defined 106 P.L. 557; 114 Stat. 2772 (2000), Section 9.

18) Mary Lack, Glenn Sant, *Illegal, unreported and unregulated shark catch: A review of current knowledge and action*, (Department of the Environment, Water, Heritage and the Arts and TRAFFIC, Canberra) (2008) at 12 and 38.

19) Clarke, et. al. *supra*, note 7, *Social, Economic, and Regulatory Drivers of the Shark Fin Trade*, at 306.

20) Clarke, S., *supra*, note 11, *Shark Product Trade in Hong Kong and Mainland China and Implementation of the CITES Shark Listings*, at 8.

21) See X.N. Verlecar, et. al., *supra*, note 5, *Shark hunting—an indiscriminate trade endangering elasmobranchs to extinction*, at 1082.



Shark fins on display at a Chinese Restaurant in Osaka. (7 Dec. 2011)

ocean animals. Significant reductions in the numbers of sharks are likely to have impacts on other elements of those ecosystems, and the extent and nature of those impacts are largely unknown.²²⁾

III. International Initiatives for Shark Conservation and Management

Growing worldwide concern regarding the stability of shark populations led to a 1994 resolution by the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

22) Mary Lack, Glenn Sant, *Confronting Shark Conservation Head On!*, (TRAFFIC International) (2006) at 1.

(CITES). CITES is an international agreement that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.²³⁾ (In 2012, there are 175 member countries that have joined the Convention and agreed to be legally bound by its terms.²⁴⁾ CITES Resolution Conference 9.17, Status of International Trade in Shark Species, called upon the United Nations Food and Agriculture Organization (FAO) and other international fisheries management organizations to “establish programmes to further collect and assemble the necessary biological and trade data on shark species” and upon all nations utilizing and trading specimens of shark species to “cooperate with FAO and other international fisheries management organizations, and to assist developing States in the collection of species-specific data”.²⁵⁾

The subsequent work completed by the FAO Committee on Fisheries (COFI) led to the 1999 adoption of the International Plan of Action for the Conservation and Management of Sharks (IPOA–Sharks).²⁶⁾ The objective of IPOA–Sharks “is to ensure the conservation and management of sharks and their long-term sustainable use”.²⁷⁾ The plan further stated

23) CITES web-site at <http://www.cites.org/eng/disc/what.php> (Viewed on 17 Feb. 2012).

24) CITES web-site at <http://www.cites.org/eng/disc/parties/index.php> (Viewed on 17 Feb. 2012).

25) Text of CITES Resolution Conference 9.17 available at <http://www.cites.org/eng/res/all/09/E09-17.pdf> (Viewed on 18 Feb. 2012).

26) FAO web-site at <http://www.fao.org/fishery/ipoa-sharks/legal-text/en> (Viewed on 17 Feb 2012).

27) See IPOA–Sharks, paragraph 16, available at <http://www.fao.org/fishery/ipoa-sharks/legal-text/en> (Viewed on 18 Feb. 2012).

that shark fishing states “should adopt a national plan of action for conservation and management of shark stocks (Shark-plan) if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks in non-directed fisheries.”²⁸⁾ Among other things, Shark-plans should aim to: ensure that shark catches are sustainable, minimize waste and discards from shark catches, and encourage the full use of dead sharks.²⁹⁾ In other words, the shark plans should discourage the practice of finning.

One weakness of the IPOA-Sharks is that participation is voluntary.³⁰⁾ As of January 2011, only 13 of the top 20 shark catching nations were known to have a National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks).³¹⁾ This is significant because the top 20 shark-catching nations account for nearly 80% of total worldwide reported shark catch, and the top four countries: Indonesia, India, Spain and Taiwan, account for more than 35%.³²⁾ (As of January 2011, Indonesia’s NPOA-Sharks was still in draft form and India’s was still in the development stage.) In 2005, the FAO conducted an evaluation regarding the implementation of IPOA-Sharks. The evaluation concluded that “a few countries had made excellent progress in the implementation of national plans”, but “the majority of countries have not made progress in

28) IPOA-Sharks, paragraph 18.

29) IPOA-Sharks, paragraph 22.

30) IPOA-Sharks, paragraph 10.

31) Mary Lack and Glenn Sant, *The Future of Sharks: a Review of Action and Inaction*. (TRAFFIC International and the Pew Environmental Group) (2011) at 2.

32) *Ibid* at 2 and 6.

implementing effective fisheries management and conservation of their elasmobranch (shark) resources.”³³⁾

Interestingly, three countries that were not among the top 20 shark catching nations have taken strong initiatives to protect sharks. In 2009, Palau announced that it would create a shark sanctuary by banning all commercial shark fishing within its territorial waters. In 2010, Honduras announced a moratorium on shark fishing and export of shark products until research for a responsible management plan had been completed. Also in 2010, the Maldives extended a ban on shark fishing in all of its waters and a ban on all shark products.³⁴⁾ The Maldives’ action was apparently based on a realization that live sharks as a tourist attraction were worth more money than dead sharks as products. In the Maldives, direct, annual revenue from ecotourism based on manta rays was estimated to top US\$9 million.³⁵⁾

In terms of protections for sharks under international treaties, ten species are listed in the appendices of CITES: six in Appendix I and four in Appendix II. Species listed in CITES Appendix I are those that are threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized

33) Ibid at 9.

34) Ibid at 10.

35) Camhi, M.D., et. al., *supra*, note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop*. IUCN Species Survival Commission Shark Specialist Group, at 30.

in exceptional circumstances.³⁶⁾ Trade of Appendix I species requires both an export permit from the country of export as well as an import permit from the country of import.³⁷⁾ All but one of the species of sawfishes (family Pristidae) are listed in Appendix I.³⁸⁾

Species listed in CITES Appendix II are those that, although not necessarily presently threatened with extinction, may become so unless trade in specimens of these species is subject to strict regulation in order to avoid utilization incompatible with their survival.³⁹⁾ Trade of Appendix II species requires an export permit from the country of export⁴⁰⁾, but doesn't require an import permit from the country of import. At present, four shark species: the Basking Shark (*Cetorhinus maximus*), the Great White Shark (*Carcharodon carcharias*), the Whale Shark (*Rhincodon typus*), and the Freshwater sawfish (*Pristis microdon*⁴¹⁾) are presently listed in Appendix II of CITES.⁴²⁾

Besides CITES, a second international treaty which provides some protection for sharks is the Convention on the Conservation of Migratory Species of Wild Animals (CMS).⁴³⁾ The CMS, an intergovernmental

36) CITES Article II (1).

37) CITES Article III (1)-(3).

38) CITES Appendices, available at web-site at <http://www.cites.org/eng/app/appendices.php> (Viewed on 16 February 2012).

39) CITES Article II (2).

40) CITES Article IV (1)-(2).

41) *Pristis microdon* is listed in Appendix II for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable aquaria for primarily conservation purposes.

42) See CITES Appendix II.

43) See Convention of Migratory Species home page at <http://www.cms.int/>

treaty concluded under the United Nations Environment Programme, aims to conserve terrestrial, aquatic and avian migratory species throughout their range of habitat.⁴⁴⁾ The CMS acts as a framework Convention under which member states can conclude agreements to protect specific species. Species to be protected by CMS are listed in two appendices.

Species listed in Appendix I are species which are threatened with extinction.⁴⁵⁾ Nations that sign the CMS “shall endeavour to provide immediate protection” for species included in Appendix I.⁴⁶⁾ This includes conserving or restoring the places where they live, mitigating obstacles to migration and controlling other factors that might endanger them.⁴⁷⁾ Furthermore, nations that are “Range States”⁴⁸⁾ of a migratory species listed in Appendix I “shall prohibit the taking of animals belonging to such species”.⁴⁹⁾ Exceptions to this prohibition are allowed only for scientific purposes, for enhancing the propagation or survival of the affected species, to accommodate the needs of traditional subsistence users of the species, or when extraordinary circumstances so require.⁵⁰⁾ The Basking

(Viewed on 18 Feb. 2012).

44) CMS web-site at <http://www.cms.int/about/intro.htm> (Viewed on 18 Feb. 2012).

45) CMS Article III (1).

46) CMS Article II (3) (b).

47) CMS web-site at <http://www.cms.int/about/intro.htm> (Viewed on 18 Feb. 2012).

48) A “Range State” is defined in Article I (h) of the CMS as “any State... that exercises jurisdiction over any part of the range of (the) migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking (the) migratory species”.

49) CMS Article III (5).

50) CMS Article III (5) (a)–(d).

Shark and the Great White Shark are currently listed in Appendix I of the CMS.⁵¹⁾

Species listed in CMS Appendix II are “migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international co-operation that could be achieved by an international agreement”.⁵²⁾ Nations that are Range States of a migratory species listed in Appendix II “shall endeavour to conclude agreements where these would benefit the species”.⁵³⁾ These agreements may range from legally binding treaties to less formal instruments such as “Memoranda of Understanding”.⁵⁴⁾ The Basking Shark and the Great White Shark, already listed in Appendix I, are again listed in Appendix II.⁵⁵⁾ Other sharks listed in Appendix II of the CMS are the Whale Shark (*Rhincodon typus*), the Longfin Mako (*Isurus paucus*), the Shortfin Mako (*Isurus oxyrinchus*), the Porbeagle (*Lamna nasus*) and the Northern Hemisphere population of the Spiny Dogfish (*Squalus acanthias*).⁵⁶⁾

51) Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals (CMS). Available at http://www.cms.int/documents/appendix/Appendices_COP9_E.pdf (Viewed on 18 Feb. 2012).

52) CMS Article IV (1).

53) CMS Article IV (3).

54) CMS web-site at <http://www.cms.int/about/intro.htm> (Viewed on 18 Feb. 2012).

55) This is allowed pursuant to CMS Article IV (2).

56) CMS Appendix II, available at http://www.cms.int/documents/appendix/cms_app1_2.htm#appendix_II (Accessed on 18 Feb. 2012).

At the 8th meeting to the Conference of the Parties to the CMS, a “Memorandum of Understanding on the Conservation of Migratory Sharks” was adopted with respect to the shark species listed in Appendix I and Appendix II.⁵⁷⁾ In the Memorandum of Understanding, the signatories agreed to “strive to adopt, implement and enforce such legal, regulatory and administrative measures as appropriate to conserve and manage migratory sharks and their habitat.”⁵⁸⁾ Although the Memorandum of Understanding is a “non–legally binding” instrument⁵⁹⁾, it is intended to contribute to the enhanced conservation of migratory sharks by: strengthening the political will to implement conservation measures, bridge fisheries and conservation interests, contribute to the implementation of FAO’s IPOA–Sharks, and add expertise to global conservation efforts in many necessary areas (such as science, research, monitoring, compliance, enforcement, education and public awareness).⁶⁰⁾

The Memorandum of Understanding was opened for signature on 12 February 2010 and took effect on 1 March 2010. Unfortunately, despite the Memorandum of Understanding being open for signature for two years, 15 of the top 20 shark–catching nations (Indonesia, India, Taiwan, Argentina, Mexico, Pakistan, Japan, Malaysia, Thailand, Brazil, Sri Lanka, New Zealand, Nigeria, Iran and South Korea) have still not signed the

57) “Memorandum of Understanding on the Conservation of Migratory Sharks”, available at http://www.cms.int/species/sharks/sharks_mou.htm (Accessed on 18 Feb. 2012).

58) Memorandum of Understanding, Section 4.

59) Memorandum of Understanding, Section 1.

60) Memorandum of Understanding at 2.

memorandum.

Sharks are also subject to some protection under Regional Fisheries Management Organizations (RFMO's). RFMO's are intergovernmental bodies responsible for developing and implementing fishery management and regulations for international waters.⁶¹⁾ Four examples of RFMO's are: The International Commission for the Conservation of Atlantic Tuna (ICCAT)⁶²⁾, The Inter-American Tropical Tuna Commission (IATTC)⁶³⁾, The Indian Ocean Tuna Commission (IOTC)⁶⁴⁾, and the Western and Central Pacific Fisheries Commission (WCPFC)⁶⁵⁾. Although no RFMO has been established specifically for sharks and rays⁶⁶⁾, most RFMO's have some form of binding conservation and management measure in place for sharks. The measures most commonly in place include:

- retaining all parts of any retained sharks (except head, guts and skin) to the first point of landing,
- controlling shark finning by requiring that the weight of fins at

61) Camhi, M.D., et. al., *supra*, note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop*. IUCN Species Survival Commission Shark Specialist Group, at viii.

62) ICCAT web-page at <http://www.iccat.es/en/> (Viewed on 22 Feb. 2012).

63) IATTC web-page at <http://www.iattc.org/HomeENG.htm> (Viewed on 22 Feb. 2012).

64) IOTC web-site at <http://www.iotc.org/English/index.php> (Viewed on 22 Feb. 2012).

65) WCPFC web-site at <http://www.wcpfc.int/> (Viewed on 22 Feb. 2012).

66) Camhi, M.D., et. al., *supra*, note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop*. IUCN Species Survival Commission Shark Specialist Group, at 11.

the first point of landing or transshipment does not exceed 5% of the weight of shark carcasses on board,

- prohibiting the retention, transshipment, landing or trading of fins in contravention of the finning controls,
- reporting data on shark catch,
- encouraging release of live sharks taken as by-catch,
- encouraging members to implement the IPOA-Sharks through development of an NPOA-Sharks.⁶⁷⁾

In terms of CITES, CMS, and the RFMO's, the United States of America has been very proactive in terms of promoting new conservation initiatives. In the next sections, I will discuss United States federal and state legislative initiatives related to the practice of shark finning.

IV. United States Federal Legislation Shark Finning Prohibition Act of 2000

As mentioned earlier, the Asian economic boom of the mid-1980's and early 1990's sparked a dramatic increase in the world-wide demand for shark fins and a resultant increase in the practice of shark finning.

67) Lack, M., et. al., supra, note 31, *The Future of Sharks: A Review of Action and Inaction*, TRAFFIC International and the Pew Environmental Group at 11.

Awareness of this problem in the United States led to the passage of the Shark Finning Prohibition Act of 2000.⁶⁸⁾ The purpose of the Shark Finning Prohibition Act (SFPA) was “to eliminate shark-finning by addressing the problem comprehensively at both the national and international levels.”⁶⁹⁾ The SFPA was enacted as a set of three small amendments to the already existing Magnuson–Stevens Fishery Conservation and Management Act.⁷⁰⁾ The new act prohibited any person under United States jurisdiction from (1) engaging in the finning of sharks; (2) possessing shark fins aboard a fishing vessel without the corresponding carcass; and (3) landing shark fins without the corresponding carcass.⁷¹⁾

In addition to the prohibition of shark finning, the SFPA further called for the Secretary of Commerce, acting through the Secretary of State, to initiate international negotiations with other nations for the prohibition of shark finning.⁷²⁾ The Secretary was also to urge other nations to collect biological and trade data about shark species, and to prepare and submit their National Plan of Action for the Conservation and Management of Sharks (NPOA–Sharks) as set forth in the International Plan of Action for the Conservation and Management of Sharks (IPOA–Sharks). The

68) Act Dec. 21, 2000, Pub. L. 106–557, 114 Stat. 2772.

69) Pub. L. 106–557, Section 2.

70) Magnuson–Stevens was originally enacted as the Fishery Conservation and Management Act of 1976, Act Apr. 13, 1976, Pub. L. 94–265, 90 Stat. 331, the law serves to conserve and manage United States fishery resources. The original act has been amended numerous times.

71) Pub. L. 106–557, Section 3 (codified within 16 USC Section 1857 (1) (P)).

72) Pub. L. 106–557, Section 5.

act also specified that the Secretary of Commerce would submit an annual report that included a list of nations whose fishing vessels conducted shark finning and a plan of action to adopt international measures for the conservation of sharks.⁷³⁾

At first review, the SFPA appears to be a solid piece of legislation that should have ended the practice of shark finning in the oceans subject to United States jurisdiction. Unfortunately, there was a loophole in the new law that was just big enough for 64,695 pounds of shark fin to sail through. Although the SFPA prohibited the possession of shark fin aboard a “fishing vessel” without the corresponding carcass⁷⁴⁾, the law did not specifically outlaw the possession of shark fin aboard a boat that was not a “fishing vessel”. This distinction became very important in the case of *United States v. Approximately 64,695 Pounds of Shark Fins*.⁷⁵⁾

The case of *US v. Approximately 64,695 Pounds of Shark Fins*, involved a United States vessel named the *King Diamond II* (“*KDII*”). The *KDII* was owned by Tran & Yu, a Hawaii corporation, and chartered by a Hong Kong company, Tai Loong Hong Marine Products, Ltd. (“*TLH*”). *TLH* ordered the *KDII* to meet foreign fishing vessels on the high seas, purchase shark fins from those vessels, transport the fins to Guatemala, and deliver them to *TLH*. After the United States government seized the *KDII*'s cargo of shark fins, *TLH* argued that the *KDII* was not a “fishing

73) Pub. L. 106-557, Section 6.

74) 16 USC Section 1857 (1) (P).

75) *United States v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (2008, CA9 Cal).

vessel”, and that the seizure of the shark fins violated due process because TLH did not have fair notice that its actions would constitute a violation of the SFPA. This argument was based on the fact that the law current at the time (16 USC Section 1802 (18)) defined a “fishing vessel” as:

“any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for——

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.”⁷⁶⁾

TLH argued that the *KDII* was not a “fishing vessel” because it did not aid or assist the foreign fishing vessels that actually caught the sharks; it merely bought the fins from those foreign vessels. The district court ruled against TLH, finding that the *KDII*’s “purchase, storage, and transport” of the shark fins aided and assisted the foreign fishing vessels.⁷⁷⁾ This ruling was reversed by the United States Court of Appeals for the Ninth Circuit based on the reasoning that the plain meaning of the words “aiding” or

76) 520 F.3d at 978.

77) 520 F.3d at 980.

“assisting” generally connote doing an act for the benefit of another. In the subject case, the appellate court ruled that:

...the charterers of the *KDII* did not purchase, store or transport shark fins for the benefit of the foreign fishing vessels. Instead, they purchased the fins for their own commercial purposes. The foreign fishing vessels had no interest in the shark fins after selling them to the *KDII*. As a result, the *KDII*'s subsequent post-purchase storage and transport of the shark fins did not benefit the foreign vessels any more than the purchase of any other product aids and assists the seller by storing the goods it has acquired in a warehouse or transporting them to the location at which it intends to resell them. Nor does the mere act of purchasing constitute an act of aiding and assisting a seller...unlike storing and transporting, “purchasing” is not listed in the statute as one of the acts that constitutes aiding and abetting.⁷⁸⁾

The ruling in *US v. Approximately 64,695 Pounds of Shark Fins* essentially gutted the SFPA of its enforceability. As long as shark fin traders purchased the shark fins from foreign vessels while the ships were still at sea, they would be free to land the fins without the carcass.

78) 520 F.3d at 980, 981.

Shark Conservation Act of 2010

In order to close the legal loophole that was identified in *US v. Approximately 64,695 Pounds of Shark Fins*, the United States Congress passed the Shark Conservation Act of 2010.⁷⁹⁾ The Shark Conservation Act (SCA) amended the Magnuson–Stevens Fishery Conservation and Management Act⁸⁰⁾ by expanding the ban to include: 1) the possession of fins, 2) the transfer of fins from one vessel to another, and 3) the landing of fins, unless the fins were still naturally attached to the corresponding carcass.⁸¹⁾ The SCA appears to close the SFPA loophole, but it still allows for fishermen to land sharks as long as they bring the entire fish to port. Even under the SCA, a person living in the United States who really wants to eat shark fin soup can still do so—as long as they import the entire carcass. In other words, the SCA doesn't make shark meat or fins unavailable, it just makes it more expensive. In the next section, I will discuss recent state legislation which attempt to eliminate the end-user market demand for shark fins.

79) Act Jan. 4, 2011, Pub. L. 111-348, 124 Stat. 3668.

80) At 16 USC Section 1857 (1) (P).

81) Pub. L. 111-348, Section 103 (2011).

V. State Laws Banning Shark Fin Soup

Hawaii

In May 2010, Hawaii Governor Linda Lingle signed into law Act 148, “An Act Relating to Shark Fins”,⁸²⁾ which made it unlawful to “possess, sell, offer for sale, trade, or distribute shark fins.”⁸³⁾ Penalties for a first offense include an administrative fine of “not less than \$5,000 and not more than \$15,000”. A second offense results in a fine of “not less than \$15,000 and not more than \$35,000”, and a possible seizure or forfeiture of shark fins, commercial marine licenses, vessels, fishing equipment, and other property involved in the violation. A third offense brings a fine of “not less than \$35,000 and not more than \$50,000”, and the possibility of one year in jail.⁸⁴⁾ Exceptions are available for persons holding a license or permit for research or educational purposes.⁸⁵⁾ The purpose of this act was to eliminate shark finning by constraining the consumer demand of shark fins in Hawaii (primarily at Chinese restaurants and their suppliers). Section 1 of the act mentioned that “(s) harks are an essential element of the ocean’s ecosystem, and by reducing the demand for shark fins, Hawaii

82) 2010 Hawaii Session Laws, Act 148 (Codified at Hawaii Revised Statutes, Section 188–40.7; “Shark fins; prohibited”) available at Hawaii State Legislature web–page at: http://www.capitol.hawaii.gov/session2010/bills/GM606_.pdf (Viewed 25 Feb. 2012) .

83) Hawaii Revised Statutes, Section 188–40.7 (a) .

84) Hawaii Revised Statutes, Section 188–40.7 (d) .

85) Hawaii Revised Statutes, Section 188–40.7 (b) .

can help ensure that sharks will not become extinct.”⁸⁶⁾ Although the law became effective on July 1, 2010, it allowed restaurants one year until July 1, 2011 to sell off their remaining inventories of shark fin.⁸⁷⁾

What should be noted about this new law is that, although it specifically only mentions a ban on shark fins, the ambiguous language of the statute effectively creates an absolute ban of the taking of sharks, regardless of species, in Hawaiian waters. That is because, under the new law, “shark fin” is simply and broadly defined as “the raw or dried fin or tail of a shark”.⁸⁸⁾ This broad language can easily be interpreted by the courts to mean that even the possession of a shark fin that is still attached to the shark would result in a violation of the statute.

Looking at the legislative history of the statute, it seems that the legislature may have concluded that it would be easier to enforce the new law if the language were broad and all-inclusive.⁸⁹⁾ An earlier draft of the bill provided an exception in cases where the shark was “landed whole”,⁹⁰⁾ but this exception was eventually removed. An alternative draft proposed by the State of Hawaii Department of Land and Natural Resources sought

86) 2010 Hawaii Session Laws, Act 148, Section 1.

87) Hawaii Revised Statutes, Section 188-40.7 (c).

88) Hawaii Revised Statutes, Section 188-40.7 (g).

89) Standing Committee Report Number 2168 issued by Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs regarding S.B. 2169 entitled “A Bill for an Act Relating to Shark Fins”, 25th State Legislature, Regular Session of 2010.

90) Conference Committee Report Number 66-10 issued by Conference Committee regarding S.B. 2169 S.D. 2 H.D. 2 C.D. 1 entitled “A Bill for an Act Relating to Shark Fins”, 25th State Legislature, Regular Session of 2010.

to create an exception for the noncommercial catch of sharks by shoreline fishermen,⁹¹⁾ but this suggestion was apparently ignored. Finally, the act in final form specifically repealed the previous Hawaii shark finning prohibition law which included a definition of a “shark fin” as “the raw or dried fin of a shark *with the shark carcass removed.*” (Emphasis added.)⁹²⁾

As a result of the broad definition of “shark fin”, if a local sport fisherman lands a shark intact in one piece, he may arguably be found in violation of the statute’s prohibition on the “possession” of shark fins. This ambiguity in the legislation has created an interpretation and enforcement problem for the Department of Land and Natural Resources. Despite the passage of almost two years since the enactment of the new law, the DLNR was still undecided as to how to rewrite the Hawaii fishing rules and what advice to give to recreational fishermen.⁹³⁾

How this extremely broadly-defined piece of legislation was enacted makes for an interesting case study in political science. First of all, Hawaii restaurants apparently had relatively few local consumers of shark fin soup. At the time the ban was adopted, news media reported that only about a dozen restaurants in Hawaii served the delicacy, and that most of

91) Testimony of Laura H. Thielen, Chairperson, State of Hawaii Department of Land and Natural Resources, dated March 30, 2010, in consideration of Senate Bill 2169, Senate Draft 2, House Draft 2, Relating to Shark Fins, available at Hawaii State Legislature home-page at http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2169&year=2010 (Accessed on 27 Feb 2012).

92) Hawaii Revised Statutes, Section 188-40.5 (Repealed).

93) March 5, 2012 conversation with Aquatic Biologist, State of Hawaii Department of Land and Natural Resources, Division of Aquatic Resources.

the customers who ordered shark fin soup were Japanese tourists.⁹⁴⁾ (While most local customers considered the dish too expensive, it was still much cheaper than one would pay in a restaurant in Japan or Asia.) Thus, legislators were free to enact an absolute ban on the possession of shark fins (sharks) without offending too many local consumers.

Secondly, because traditional Hawaiian culture regards sharks as “aumakua” (gods that protect the family or individual), many in the Hawaiian community would easily be offended by the media images of fishermen cutting off a shark’s fins and throwing the rest of the carcass into the sea. Enactment of the legislation thus would fit neatly into the larger scheme of protecting and supporting Hawaiian culture, and in fact, a number of testimonies in support of the proposed shark fin ban used the word “aumakua”, and cited traditional Hawaiian beliefs as a reason to protect sharks.⁹⁵⁾ During the floor debate in the House of Representatives, Representative Sagum rose to disclose a possible conflict of interest, stating that the shark was his family *aumakua*.⁹⁶⁾

Third, because Hawaii does not have the type of large shark meat fishery that exists off the United States East Coast or coast of California,

94) *Shark fin ban debuts with mixed reactions*, HONOLULU STAR ADVERTISER, http://www.staradvertiser.com/business/20110704_Shark_fin_ban_debuts_with_mixed_reactions.html?id=124960329 (Posted 4 July 2011).

95) See testimonies for SB2169 SD2 HD2 CD1, available at Hawaii State Legislature home — page at http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2169&year=2010 (Accessed on 27 Feb 2012).

96) See House Journal, 25th Legislature, Regular Session 2010 at 824.

there were no well-financed fisheries lobbyists to extract species-specific exceptions like those later seen in Oregon. Since most shark fins obtained in the Pacific Ocean near Hawaii were eventually shipped to Asia, many testimonies argued that the new law would have little or no adverse impacts on the Hawaiian economy.⁹⁷⁾ With respect to the voice of the sport fishermen, at the Final Reading of the bill in the House of Representatives, Representative Karamatsu (who was also the Chairman of the Judiciary Committee), spoke in opposition to the bill, partially on the grounds that it was unfair to recreational fishermen and exposed them to prosecution even in cases of unintended catches. Despite his arguments, the broadly-worded measure subsequently passed Final Reading by a vote of 50 to 1 with Representative Karamatsu being the sole “no” vote.⁹⁸⁾

The fourth, and possibly most important, factor was that there was strong public support of the bill from conservation lobbyists and elements of the tourism industry. Hawaii, as a marine sports tourism destination, has strong economic incentives to protect sharks. Written testimony submitted regarding the shark fins proposal was overwhelmingly in favor of passing the bill, and included many pre-formatted testimonies from supporters of conservation groups, scuba divers, underwater photographers, and persons from outside of Hawaii who stated that they

97) See note 95.

98) See House Journal, 25th Legislature, Regular Session 2010 at 822. Unfortunately, the Senate Journal for the same period (which would reveal floor debate comments on the bill in the Senate) was not yet been published and was not yet available on the internet at the time of this article.

had previously dived in Hawaiian waters or had enjoyed Hawaii's water sports.⁹⁹⁾

Washington

One year after the enactment of the Hawaii law¹⁰⁰⁾, Washington State also enacted a shark fin ban on May 12, 2011.¹⁰¹⁾ Similar to the Hawaii law, the rationale for the Washington law was stated largely in terms of ecosystem preservation and species conservation.¹⁰²⁾ Different from the Hawaii law, the Washington law defined “shark fin” as “a raw, dried, or otherwise processed detached fin or tail of a shark”.¹⁰³⁾ The Washington law describes two separate levels of violation. A person is guilty of second degree unlawful trade in shark fins if:

- the person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative

99) See note 95.

100) It should be mentioned that two United States' territories, the Commonwealth of the Northern Mariana Islands and Guam also enacted shark fin prohibitions in January 2011 and March 2011, respectively. This paper will not discuss these laws. The CNMI law, Public Law 17-27, can be accessed at http://www.cnmilaw.org/pdf/public_laws/17/pl17-27.pdf (Viewed 29 Feb. 2012). A search on 29 Feb. 2012 for the text of the Guam law through the Supreme Court of Guam's home page was unsuccessful. The new law was not listed in the Guam Code Annotated, and the Guam Administrative Rules and Regulations was current only as of April 2004. Further search through LEXIS was also unsuccessful. LEXIS' Guam Code was current only to the 2010 Legislature.

101) 2011 Washington Session Laws, Chapter 324, codified as Revised Code of Washington 77.15.770 “Unlawful trade in shark fins-Penalty”.

102) Ibid.

103) 2011 Washington Session Laws, Chapter 324, Section 3, codified as Revised Code of Washington 77.08.010 (50).

product for commercial purposes; or

- the person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes.¹⁰⁴⁾

A person is guilty of first degree unlawful trade in shark fins if:

- the person commits the act described by subsection (1) (second degree unlawful trade in shark fins) and the violation involves shark fins or a shark fin derivative product with a total market value of two hundred fifty dollars or more; or
- the person commits the act described by subsection (1) (second degree unlawful trade in shark fins), and acted with knowledge that the shark fin or shark fin derivative product originated from a shark that was harvested at an area or at a time where or when the harvest was not legally allowed or by a person not licensed to harvest the shark; or
- the person commits the act described by subsection (1) (second degree unlawful trade in shark fins) and the violation occurs within five years of entry of a prior conviction.¹⁰⁵⁾

104) Revised Codes of Washington, Section 77.15.770 (1) (a) and (b).

105) Revised Code of Washington, Section 77.15.770 (2) (a), (b) and (c).

Unlawful trade in shark fins in the second degree is a gross misdemeanor.¹⁰⁶⁾ Gross misdemeanors in the State of Washington are subject to imprisonment in the county jail for up to 364 days, by a fine of up to five thousand dollars, or both.¹⁰⁷⁾ Unlawful trade in shark fins in the first degree is a class C felony.¹⁰⁸⁾ Class C felonies in the State of Washington are subject to confinement in a state correctional institution for five years, a fine of ten thousand dollars, or both.¹⁰⁹⁾

Comparing the two laws, it is clear that the Washington law more specifically achieves the unique intent of eliminating the market outlets of shark fin products. Since the statute specifically prohibits activities that are commercial in nature and does not include a broad prohibition of the mere act of “possession”, a sport fisherman in Washington who catches a shark and takes it home for his personal use will not be in violation of the statute.

Oregon

The third state to enact a shark fin ban was Oregon, which enacted its law on June 16, 2011.¹¹⁰⁾ Under Oregon Revised Statutes, Section 509.160, “a person may not possess, sell or offer for sale, trade or distribute a shark fin in this state.”¹¹¹⁾ Violations of this law range from a fine up to \$2,500 for

106) Revised Code of Washington, Section 77.15.770 (3) (a) .

107) Revised Code of Washington, Section 9A.20.021 (2) .

108) Revised Code of Washington, Section 77.15.770 (3) (b) .

109) Revised Code of Washington, Section 9A.20.021 (1) (c) .

110) 2011 ALS 371; 2011 Ore. Laws 371; 2011 Ore. HB 2838.

111) Oregon Revised Statutes, Section 509.160 Prohibition on possession, sale,

a first conviction to a fine up to \$25,000 for fourth and subsequent convictions that occur within a 10–year period.¹¹²⁾

Similar to the Hawaii law, the Oregon law defines “shark fin” as “the raw or dried fin or tail of a shark”.¹¹³⁾ Unlike the Hawaii law, the Oregon law makes an exception for shark fins taken from Spiny Dogfish (sharks of the family *Squalidae*) that are legally landed pursuant to Oregon’s Fish and Wildlife laws.¹¹⁴⁾ Fishermen and fish processors who hold the proper licenses and permits issued by the State of Oregon are also exempted.¹¹⁵⁾ These exceptions are apparent concessions to the large Pacific Spiny Dogfish fishery which exists off the United States’ west coast. Landings of pacific spiny dogfish between 1990 and 2008 have varied from a high of 1,392 metric tons in 1994 to a low of 250 metric tons in 1996.¹¹⁶⁾

California

California became the fourth state to enact a shark fin ban on October 7, 2011.¹¹⁷⁾ The California law defines a “shark fin” to mean “the raw, dried, or otherwise processed detached fin, or the raw, dried, or otherwise

trade or distribution of shark fins.

112) Oregon Revised Statutes, Section 506.991 Criminal Penalties (Commercial Fishing and Fisheries).

113) Oregon Revised Statutes, Section 509.160 (1) (a).

114) Oregon Revised Statutes, Section 509.160 (3) (a).

115) Oregon Revised Statutes, Section 509.160 (3) (b) and (c).

116) See web–site of National Oceanic and Atmospheric Administration, National Marine Fisheries Service, at http://www.nmfs.noaa.gov/fishwatch/species/pac_spiny_dog.htm (Viewed on 27 Feb. 2012).

117) 2011 Cal ALS 524, 2011 Cal AB 376, 2011 Cal Stats. Ch. 524, codified at California Codes, Fish and Game Code, Section 2021.

processed detached tail of an elasmobranch”.¹¹⁸⁾ (Elasmobranch is the name of the subclass of animals that includes sharks and rays.) The law makes it unlawful for any person to “possess, sell, offer for sale, trade, or distribute a shark fin”.¹¹⁹⁾ Violations of this law constitute misdemeanors¹²⁰⁾, and are punishable by a fine of not more than \$1000, imprisonment in the county jail for no more than 6 months, or both.¹²¹⁾

Exceptions to the shark fin ban are made for persons who hold the proper license relating to scientific, educational, or propagation purposes¹²²⁾, for persons who hold the proper license or permit for taking or landing sharks for recreational or commercial purposes¹²³⁾, and for “the sale or possession of a shark carcass, skin, or fin for taxidermy purposes.”¹²⁴⁾ It appears that, under the California law, a sport fisherman who has the proper license may not only catch a shark, he may also have it stuffed and hung on his wall.

Other states that are now considering shark fin bans are New York¹²⁵⁾, Maryland¹²⁶⁾, Virginia¹²⁷⁾, New Jersey¹²⁸⁾, and Illinois¹²⁹⁾.

118) Section 2021 (a).

119) Section 2021 (b).

120) Section 12000 (a).

121) Section 12002 (a).

122) Section 2021 (c).

123) Section 2021 (d).

124) Section 2021.5 (a) (3).

125) Elisabeth Rosenthal, *New York May Ban Shark Fin Sales, Following Other States*, NEW YORK TIMES web-site, available at: <http://www.nytimes.com/2012/02/22/nyregion/bill-in-albany-would-ban-sale-of-shark-fins.html> (Published February 21, 2012).

126) *Maryland senators to hear shark fin ban bill, House committee has already heard bill*, THE WASHINGTON POST web-site, available at: <http://www>.

VI. Trends in other countries

Like the United States, many other countries, such as Australia, Brazil, Canada, Cape Verde, Colombia, Costa Rica, Ecuador, Egypt, El Salvadore, the European Union (27 Member states), French Polynesia, Israel, Japan, Mexico, Nicaragua, Oman, Palau, Panama, Seychelles, South Africa, and Spain, have already enacted laws featuring some level of ban or restrictions on shark finning.¹³⁰⁾

In terms of specific bans against shark fins and shark fin products such as shark fin soup, the Hawaii law appears to be the first. But governments and private groups around the globe seem to be making progress towards effecting bans.

On October 25, 2011, the Canadian city of Toronto banned the possession, sale, trade, and distribution of shark fins and their byproducts

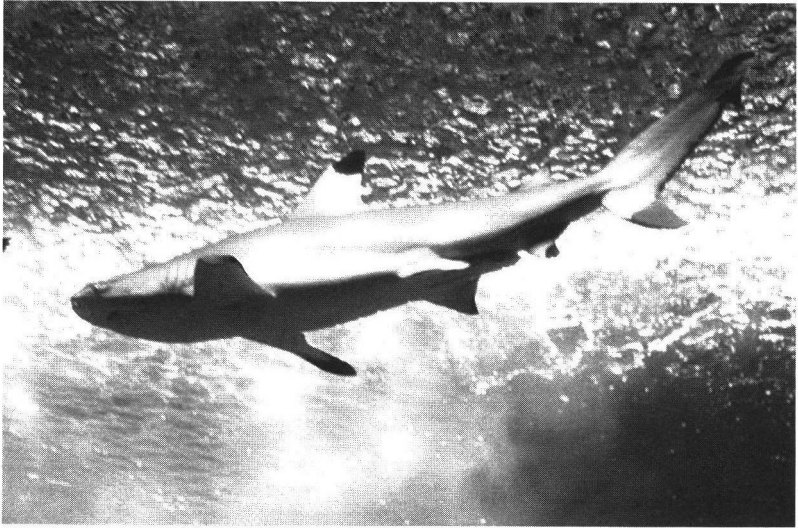
washingtonpost.com/local/maryland-senators-to-hear-shark-fin-ban-bill-house-committee-has-already-heard-bill/2012/02/28/gIQAwbsgFR_story.html (Posted on February 28, 2012).

127) Jupp Baron Kerckerinck zur Borg, *Shark Fin Legislation—Long Overdue*, HUFFINGTON POST web-site, available at http://www.huffingtonpost.com/jupp-kerckerinck/shark-fin-legislation-lon_b_1300301.html (Posted on February 24, 2012).

128) Ibid.

129) *Illinois Shark Fin Ban Bill Introduced In State Legislature*, HUFFINGTON POST web-site, available at http://www.huffingtonpost.com/2012/02/01/illinois-shark-fin-ban-bi_n_1247125.html (Posted on February 1, 2012).

130) Camhi, M.D., et. al., *supra*, note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop*. IUCN Species Survival Commission Shark Specialist Group, at 25.



Blacktip Reef Shark (*Carcharhinus melanopterus*) at Waikiki Aquarium (8 Mar. 2012).

within Toronto City limits.¹³¹⁾ A Federal law has been proposed in Canada that would ban the import of shark fins and prohibit shark finning in Canadian waters.¹³²⁾

In China, celebrities such as professional basketball player Yao Ming and actor Jackie Chan have lent their fame and popularity to public service announcements which advocate that people stop eating shark fin soup.¹³³⁾

131) City of Toronto By-Law 1247-2011.

132) Meagan Fitzpatrick, *Shark fin imports targeted by MP's bill*, CBC NEWS web-page at: <http://www.cbc.ca/news/politics/story/2011/12/08/pol-ndp-shark-fins.html> (Posted on Dec. 8, 2011).

133) Jonathan Kaiman, *In China, banning shark fin is uphill battle*, LOS ANGELES TIMES web-page at: <http://articles.latimes.com/2012/jan/31/world/la-fg-china-shark-fin-20120201> (Posted Jan. 31, 2012).

Their efforts to change public attitudes among the Chinese population aim to eliminate the market demand for shark fin soup.

The Peninsula Hotel group, a prestigious hotel chain with hotels in Hong Kong, Shanghai, Beijing, Tokyo, and New York, announced that from January 2012, it would no longer serve shark fin.¹³⁴⁾ Large retailing chain Carrefour stated that it would cease sales of shark fin products at its Singapore outlets after its current stocks were sold out.¹³⁵⁾

VII. Concluding comments

Since the Asian economic boom of the 1980's, disposable incomes throughout Asia have fueled a greater demand for shark fin soup. This increase in demand has resulted in an explosive increase in the number of sharks harvested from the ocean, and the development of shark finning, an especially cruel and wasteful method of fishing. Overfishing of sharks has reduced shark populations to the point where 32% of pelagic sharks are now considered “threatened” with extinction and another 24% are considered “near threatened”.

Concern for shark species survival has led many countries to enact laws regarding commercial fishing of sharks, whether as primary targets or as by-catch of other fishing activities. In the United States, the Federal government enacted the Shark Finning Prohibition Act of 2000, and later,

134) *Peninsula Hotels ends shark fin sales*, THE JAPAN TIMES, November 23, 2011 at 8.

135) *Carrefour to end sales of shark fins*, THE JAPAN TIMES, January 8, 2012 at 3.

the Shark Conservation Act of 2010 to ban shark finning. The states of Hawaii, Washington, Oregon, and California have passed even stricter laws aimed to eliminate the consumer demand for shark products. Even in China, the birthplace of shark fin soup, famous celebrities are trying to change public attitudes and reduce the consumption of shark fin soup. Clearly, the international trend seems to be moving toward discouraging the consumption of shark fin soup. How will this international trend affect Japan? Will Japan be an early adopter of a shark fin soup ban? Or will Japan consider such a restriction only after the other Asian nations, including China, have already adopted such laws?

One might think that because shark fin soup is most often associated with Chinese food culture and countries with large populations of ethnic Chinese, Japan would not be particularly adverse to the adoption of a ban on shark fin soup. In fact, if the Japanese government adopted a ban similar to those adopted by Hawaii, Washington, Oregon, and California, it might be able to build for itself an international image as a conservation-friendly nation. One might imagine that such an initiative could at least partially offset the bad public relations that Japan has received from its whaling activities in the Antarctic Ocean and the dolphin harvests criticized in the controversial movie “The Cove”.¹³⁶⁾

Ironically, the international criticism directed at Japan’s whaling activities and the Taiji dolphin harvests will probably stand as an obstacle

136) Oceanic Preservation Society (2009). See <http://www.thecovemovie.com/>

to Japan enacting a ban on shark fin soup. This is because “traditional food culture” is one of the justifications that Japan’s Ministry of Foreign Affairs uses in defense of its whaling activities.¹³⁷⁾ If Japan took the position that Chinese food culture could be sacrificed for the purpose of conserving sharks, it would be vulnerable to arguments that Japanese food culture should also be sacrificed for the conservation of whales.

It should also be noted that, although Japan already has a National Plan of Action for Conservation and Management of Sharks (NPOA–Sharks)¹³⁸⁾, Japan has not yet signed the Memorandum of Understanding on the Conservation of Migratory Sharks. One of the shark species included for protection in the MOU is the Shortfin Mako (*Isurus oxyrinchus*). The Shortfin Mako, along with the Blue Shark (*Prionace glauca*), and the Salmon Shark (*Lamna ditropis*), are mentioned in “Japan’s Report on Trade in Shark Species and Implementation of the National Action Plan for Conservation and Management of Sharks”¹³⁹⁾ as the primary three shark species landed at Japan ports. (Incidentally, the Blue Shark has been designated by the International Union for Conservation of Nature (IUCN) as a “near threatened” pelagic shark

137) See Ministry of Foreign Affairs Japan web–site, *Japan and the management of Whales*, at <http://www.mofa.go.jp/policy/economy/fishery/whales/japan.html> (Viewed 14 March 2012).

138) See, Food and Agricultural Organization of the United Nations, Fisheries and Aquaculture Department home–page at: <http://www.fao.org/fishery/ipoa-sharks/publications/en> (viewed 14 March 2012).

139) See *Japan’s Report on Trade in Shark Species and Implementation of the National Action Plan for Conservation and Management of Sharks*, available at: <http://www.cites.org/common/com/AC/25/E25-17A2-JP.pdf> (Viewed 14 March 2012).

species, indicating that they are close to qualifying for a threatened category and could be reclassified as “threatened” in the near future. The Salmon Shark has been designated as being of “least concern” status, meaning that the species is not considered to be at threat of extinction now or in the near future.¹⁴⁰⁾

Reviewing Japan’s NPOA–sharks report, one strongly senses that the government strictly views sharks as a marine resource that is conserved solely for the purpose of ensuring a future supply of food. There is no mention of the importance of preserving biodiversity or of the shark’s role in the aquatic environment. Accessing the Food and Agricultural Organization of the United Nations, Fisheries and Aquaculture Department home–page¹⁴¹⁾, one finds that the United States’ NPOA–Sharks report is 57 pages long, the United Kingdom report is 66 pages, Canada’s is 23 pages, and even Taiwan’s is 5 pages in length. Japan’s report is a mere 4 pages.

Further complicating matters is the fact that most of the sharks caught by Japanese longline fishing vessels were landed at Kesenuma, a small fishing community in Miyagi prefecture. Kesenuma suffered a tremendous amount of destruction as a result of the earthquake and tsunami that hit Northeastern Japan on March 11, 2011, and the number of sharks landed in Japan after the disaster have declined significantly.

140) Camhi, M.D., et. al., supra, note 13, *The Conservation Status of Pelagic Sharks and Rays: Report of the IUCN Shark Specialist Group Pelagic Shark Red List Workshop*. IUCN Species Survival Commission Shark Specialist Group, at 8–9.

141) <http://www.fao.org/fishery/ipoa-sharks/npoa/en> (viewed 14 March 2012).

Before the earthquake and tsunami, Kesenuma was criticized by some conservationists as being the center of Japan's shark fin trade, handling about 90% of Japan's shark fins.¹⁴²⁾ After the disaster, nationwide sympathy for the earthquake and tsunami victims will likely result in economic recovery funds being used to rebuild the area's fisheries, including the shark meat (and shark fin) industry. If a conservationist were to now suggest that the post-disaster shark fishery could be reduced in size, or perhaps even phased out, he would undoubtedly be attacked as being grossly insensitive to the suffering of the Kesenuma residents.

In addition to the above, if one also considers the extent to which traditional Japanese cuisine features seafood items, the fact that Japanese fisheries do in fact utilize most of the shark and not just the fins, and Japan's knee-jerk opposition to proposed protections for the Atlantic Tuna, it is hard to imagine any lawmaker in Japan having the political courage to push for a ban on shark fin soup. In all likelihood, we will see a shark fin soup ban enacted somewhere in mainland China long before we see one enacted in Japan.

But, regardless of whether the Japan government decides to be a leader or a follower on the issue of reducing the market demand for shark fins, individual consumers are able to exercise their own judgment when making their purchase decisions. After having viewed numerous photos of

142) *Shark Fishing in Japan—a messy blood-splattered business*, THE GUARDIAN available at: <http://www.guardian.co.uk/environment/2011/feb/11/shark-fishing-in-japan> (Posted 11 February 2011).

finless shark torsos for this article, I somehow get the feeling that I have already consumed my last bowl of *fukahire*.