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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. Michele K. Culver
Regional Director
Washington Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Dear Ms. Culver:

Thank you for your December 12, 2013 letter regarding your assessment of the impacts to federal shark harvesters of Washington State's law prohibiting the sale and other actions related to detached shark fins (Revised Code of Washington 77.15.770).

Based on the information about the Washington law set forth in your letter and the current facts regarding the scale and nature of the shark fishery in Washington, we agree with your conclusion that Washington State's shark fin law will have minimal impact on federally licensed and permitted shark harvesters in Washington. As noted in your letter, spiny dogfish harvested by the west coast groundfish fishery is the only shark landed in Washington from federally managed commercial fisheries. You noted in your letter that the ex-vessel value from spiny dogfish is small (an average of less than $30,000 per year since 2009), and also that the value of spiny dogfish fins is estimated to be only 10 percent of the total ex-vessel value.

We also understand from your letter that Washington's law does not prohibit a federal fisherman from landing a legally caught shark with fins naturally attached, but rather prohibits the commercial trade and processing of shark fins. We thus understand that federal fishermen can land a shark with fins naturally attached and sell the non-fin parts of the shark in Washington. In effect, federal fishermen can legally possess a detached shark fin, but cannot sell that fin.

Based on these facts, we agree with your conclusion that Washington's law will have minimal impact on federally licensed shark fishermen in Washington 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.

We request that you 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,

for Eileen Sobeck

cc: Mike Grossman, Washington Attorney General's Office
Phil Anderson, Washington Department of Fish and Wildlife
Corey Niles, Washington Department of Fish and Wildlife

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

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December 12, 2013

Mr. Sam D. Rauch, III
Acting Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Rauch:

In July, the Washington Department of Fish and Wildlife (WDFW) submitted a comment letter on the National Marine Fisheries Service's (NMFS's) proposed rule implementing the provisions of the Shark Conservation Act of 2010, which proposes to preempt state shark finning laws and regulations. Since then, WDFW has worked with NMFS and NOAA General Counsel and consulted our Attorney General's Office about the effects of Washington's laws and regulations on shark fisheries authorized under the Magnuson-Stevens Fisheries Conservation and Management Act (MSA). As a result of those discussions, WDFW believes that our state laws are having a minimal impact on MSA-authorized shark fisheries.

Washington's shark finning law (Revised Code of Washington 77.15.770) went into effect on July 22, 2011. The statute provides, in part, as follows: a person is guilty of unlawful trade in shark fins in the second degree if: (a) The person sells, offers for sale, purchases, offers to purchase, or otherwise exchanges a shark fin or shark fin derivative product for commercial purposes; or (b) The person prepares or processes a shark fin or shark fin derivative product for human or animal consumption for commercial purposes. In summary, the law does not prohibit the landing of sharks, but rather regulates the commercial sale and processing of shark fins. Specifically, the law prohibits the commercial trade or processing of shark fins standing alone as a product. The law includes exemptions for shark fins and derivative products that are used for bona fide research or educational purposes.

Under RCW 77.15.770, harvested sharks may be landed whole with fins attached, which we believe is consistent with Section 307 of the MSA. There is only one shark species that is landed in commercial quantities into Washington's ports—Pacific spiny dogfish (*Squalus suckleyi*). Considering the ex-vessel value of spiny dogfish landings in Washington State, we do not believe Washington's laws are fairly characterized as having a significant economic impact downstream in the chain of commerce from landings of whole sharks to the later sale and processing of shark parts (fins).

The value of spiny dogfish landings into Washington have dropped steadily and consistently since the 1980s and now exist at very low levels. In terms of 2012 dollars, spiny dogfish brought in over $2 million in ex-vessel revenue at its peak, which was in 1987. Yet, since the latest drop in ex-vessel value that occurred in 2009, ex-vessel revenues for spiny dogfish have averaged less than $30,000 per year. Our best estimate is that the value of the dogfish fins could be about ten percent of that.

For context, spiny dogfish is one of over 90 species managed as part of the Pacific Fishery Management Council's (PFMC's) fishery management plan for groundfish. The ex-vessel revenues into Washington from all groundfish landings, except Pacific whiting, have averaged $13 million per year since 2009, with an additional $5 million, on average, from shoreside landings of Pacific whiting. The at-sea fleets targeting Pacific whiting, also Washington-based, can produce another $20 million in annual ex-vessel revenues, on average. And the expected ex-vessel revenues from PFMC's groundfish can average $70-$90 million in total coastwide. Therefore, from the national, coastwide, and even statewide perspective, the economic value of spiny dogfish is very small, and the value of the dogfish fins in the context of the broader groundfish fishery is miniscule.

For these reasons, we do not believe that Washington's regulation of the sale or processing of shark fins removed from landed sharks has an appreciable indirect effect on MSA-authorized shark fisheries.

While we reserve our ability to address other issues associated with your basis for the proposed preemption, we hope that this letter satisfies the primary concerns raised by NMFS in the proposed rule. As stated in our previous comments, we believe that the PFMC process provides the best avenue for coordination and discussions about the interactions and effects of applicable state and federal laws and regulations on MSA-authorized fisheries.

If you have any questions, please feel free to contact me at (360) 249-1211.

Sincerely,

Michele K. Culver
Regional Director

cc: Mike Grossman, AG's Office
Phil Anderson, WDFW
Corey Niles, WDFW