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Cal. No. 1043

I N S E N A T E

February 8, 2012

Introduced by Sens. GRISANTI, AVELLA, BONACIC, BRESLIN, DILAN, DUANE, HUNTLEY, KRUEGER, LARKIN, LAVALLE, LITTLE, OPPENHEIMER, PERKINS, RITCHIE, ROBACH, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, in relation to prohibiting the possession, sale, offer for sale, trade or distribution of shark fins

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 13-0338 of the environmental conservation law, as
2 added by chapter 231 of the laws of 1992, paragraph a of subdivision 1
3 as amended by chapter 308 of the laws of 1999 and subdivision 4 as
4 amended by chapter 428 of the laws of 2011, is amended to read as
5 follows:

6 S 13-0338. Sharks; finning prohibited.

7 1. For purposes of this section:

8 a. "Shark" means any species of the [order Squaliformes except species
9 in the suborder Batoidea, and] SUBCLASS ELASMOBRANCHII EXCEPT SPECIES IN
10 THE SUPER ORDER BATOIDEA;

11 b. "Finning" means the removal of a fin[, other than the caudal fin,]
12 from a shark and not retaining the remainder of the shark's carcass[.];
13 AND

14 C. "SHARK FIN" MEANS THE RAW, DRIED OR OTHERWISE PROCESSED DETACHED
15 FIN INCLUDING THE TAIL.

16 2. No person shall engage in finning on the waters of the marine and
17 coastal district.

18 3. [No person shall possess shark fins in the marine and coastal
19 district unless the proper proportion of species, number, and size of
20 shark carcasses is also possessed.

21 4. The department may, until December thirty-first, two thousand thir-
22 teen, fix by regulation measures for the management of sharks, including

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 size limits, catch and possession limits, open and closed seasons,
2 closed areas, restrictions on the manner of taking and landing, require-
3 ments for permits and eligibility therefor, recordkeeping requirements,
4 requirements on the amount and type of fishing effort and gear, and
5 requirements relating to transportation, possession and sale, provided
6 that such regulations are no less restrictive than requirements set
7 forth in this chapter and provided further that such regulations are
8 consistent with the compliance requirements of applicable fishery
9 management plans adopted by the Atlantic States Marine Fisheries Commis-
10 sion and with applicable provisions of fishery management plans adopted
11 pursuant to the Federal Fishery Conservation and Management Act (16
12 U.S.C. S1800 et seq.).] NO PERSON SHALL POSSESS, SELL, OFFER FOR SALE,
13 TRADE OR DISTRIBUTE A SHARK FIN PROVIDED; HOWEVER, THAT THIS PROHIBITION
14 SHALL NOT APPLY TO ANY LEGALLY TAKEN SHARK FIN THAT MEETS THE FOLLOWING
15 CRITERIA:

16 A. WAS TAKEN FROM A SPINY DOGFISH (SQUALUS ACANTHIAS) OR A SMOOTH
17 DOGFISH (MUSTELUS CANIS) CAUGHT BY A LICENSED COMMERCIAL FISHERMAN; OR

18 B. WAS TAKEN FROM A SHARK CAUGHT BY A RECREATIONAL FISHERMAN WHO HAS
19 COMPLIED WITH THE RECREATIONAL MARINE FISHING REGISTRATION REQUIREMENTS.

20 S 2. The environmental conservation law is amended by adding a new
21 section 13-0338-a to read as follows:

22 S 13-0338-A. SHARKS; DEPARTMENT AUTHORITY.

23 1. FOR PURPOSES OF THIS SECTION, "SHARK" MEANS ANY SPECIES OF THE
24 ORDER SQUALIFORMES EXCEPT SPECIES IN THE SUPERORDER BATOIDEA.

25 2. THE DEPARTMENT MAY, UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND
26 THIRTEEN, FIX BY REGULATION MEASURES FOR THE MANAGEMENT OF SHARKS,
27 INCLUDING SIZE LIMITS, CATCH AND POSSESSION LIMITS, OPEN AND CLOSED
28 SEASONS, CLOSED AREAS, RESTRICTIONS ON THE MANNER OF TAKING AND LANDING,
29 REQUIREMENTS FOR PERMITS AND ELIGIBILITY THEREFOR, RECORDKEEPING
30 REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND TYPE OF FISHING EFFORT AND
31 GEAR, AND REQUIREMENTS RELATING TO TRANSPORTATION, POSSESSION AND SALE,
32 PROVIDED THAT SUCH REGULATIONS ARE NO LESS RESTRICTIVE THAN REQUIREMENTS
33 SET FORTH IN THIS CHAPTER AND PROVIDED FURTHER THAT SUCH REGULATIONS ARE
34 CONSISTENT WITH THE COMPLIANCE REQUIREMENTS OF APPLICABLE FISHERY
35 MANAGEMENT PLANS ADOPTED BY THE ATLANTIC STATES MARINE FISHERIES COMMIS-
36 SION AND WITH APPLICABLE PROVISIONS OF FISHERY MANAGEMENT PLANS ADOPTED
37 PURSUANT TO THE FEDERAL FISHERY CONSERVATION AND MANAGEMENT ACT (16
38 U.S.C. S1800 ET SEQ.).

39 S 3. Paragraphs a and b of subdivision 1 of section 13-0339 of the
40 environmental conservation law, as amended by chapter 156 of the laws of
41 2003, are amended to read as follows:

42 a. The taking of fish with nets in the marine and coastal district is
43 governed by sections 13-0333, 13-0335, 13-0341, 13-0343, 13-0347 and
44 11-1521, and regulations adopted pursuant to sections 11-0303, 11-1303,
45 [13-0338] 13-0338-A, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b,
46 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chap-
47 ter. The taking of fish by other means, in the marine and coastal
48 district, is governed by title 13 of article 11 of the Fish and Wildlife
49 Law, subject to restrictions in section 13-0343 as to certain waters,
50 and to provisions of sections 13-0347 and 11-1521 and regulations
51 adopted pursuant to section 11-0303 of this chapter as to striped bass
52 and sections 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b,
53 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g as to other
54 species of marine fish. The taking, and sale or taking for sale, of
55 certain bait fish are governed by section 11-1315 of this chapter.

1 b. Open seasons, minimum size limits and catch limits for fish other
2 than the marine species named in subdivisions 2 and 3 of this section
3 are specified by regulations adopted pursuant to sections 11-0303,
4 11-1303, [13-0338] 13-0338-A, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b,
5 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chap-
6 ter. All shortnose sturgeon irrespective of size and all Atlantic stur-
7 geon under the size limits prescribed by regulations adopted pursuant to
8 section 11-1303 of this chapter taken in gill nets shall be immediately
9 returned to the water without unnecessary injury. Other fish named by
10 regulations adopted pursuant to sections 11-0303, 11-1303, 13-0338,
11 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c, 13-0340-d,
12 13-0340-e, 13-0340-f and 13-0340-g of this chapter and under the size
13 limits prescribed in such regulations, shall not be bought, sold or
14 trafficked in.

15 S 4. The opening paragraph of subdivision 8 of section 71-0923 of the
16 environmental conservation law, as amended by chapter 284 of the laws of
17 2004, is amended to read as follows:

18 8. Any violation of sections 13-0329, 13-0330, 13-0331, 13-0333,
19 13-0334, 13-0335, subdivision one of section 13-0337, 13-0338,
20 13-0338-A, 13-0339, 13-0339-a, 13-0340, 13-0340-a through 13-0340-g,
21 13-0341, 13-0342, 13-0343, 13-0347, and 13-0349 of this chapter, or of
22 any regulation adopted pursuant to the foregoing sections, shall be
23 punishable by imprisonment of not more than fifteen days or by a fine of
24 the greater of two hundred fifty dollars or:

25 S 5. The opening paragraph of subdivision 7 of section 71-0925 of the
26 environmental conservation law, as amended by chapter 284 of the laws of
27 2004, is amended to read as follows:

28 7. If the violation was a violation of sections 13-0329, 13-0330,
29 13-0331, 13-0333, 13-0334, 13-0335, subdivision one of section 13-0337,
30 13-0338, 13-0338-A, 13-0339, 13-0339-a, 13-0340, 13-0340-a through
31 13-0340-g, 13-0341, 13-0342, 13-0343, 13-0347, and 13-0349 of this chap-
32 ter, or of any regulation adopted pursuant to the foregoing sections,
33 the greater of two hundred fifty dollars or:

34 S 6. This act shall take effect July 1, 2013.