

[First Reprint]

SENATE, No. 2905

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Prohibits certain possession, sale, trade, distribution, or offering for sale of shark fins.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on November 26, 2018, with amendments.

AN ACT concerning the sale and possession of shark fins and supplementing Title 23 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. No person shall:
 - (1) sell, trade, or distribute, or offer for sale any shark fin; or
 - (2) possess any shark fin that has been separated from a shark prior to its lawful landing. The burden of proof shall be on the person in possession of the shark fin to demonstrate that it was not separated from the shark prior to its lawful landing.
- b. (1) The provisions of subsection a. of this section shall not apply to: (a) any lawfully-obtained shark fin possessed, sold, traded, distributed, or offered for sale for scientific research or educational purposes; or (b) any lawfully-obtained smooth dogfish or spiny dogfish fin.
- (2) A commercial or recreational fisherman may possess shark fins from sharks that they have lawfully-obtained in a manner consistent with licenses or permits issued to the commercial or recreational fisherman.
- c. (1) Whenever, on the basis of available information, the Commissioner of Environmental Protection finds that a person is in violation of the provisions of subsection a. of this section, or of any rule or regulation adopted pursuant thereto, the commissioner:
 - (a) shall levy a civil administrative penalty in accordance with subsection d. of this section; and

(b) upon a person's third or subsequent violation of the provisions of subsection a. of this section, may petition the Attorney General to bring a criminal action in accordance with subsection e. of this section.

(2) A violation of the provisions of subsection a. of this section by a person or business holding a license or permit issued to a commercial or recreational fisherman shall result in the suspension or revocation of that license or permit.

d. The commissioner is authorized to assess a civil administrative penalty of not less than \$5,000 or more than \$15,000 for a first offense under this section, not less than \$15,000 or more than \$35,000 for a second offense, and not less than \$35,000 or more than \$55,000 for a third or subsequent offense. Each day during which a violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by rule or regulation by the commissioner for violations of similar type, seriousness, duration and conduct, and shall be based, in part, on the number or weight of shark fins that are the subject of the violation; provided, however, that prior to the adoption of the rule or regulation, the commissioner may, on a case-by-case basis, assess a civil administrative penalty up to the maximum identified in this subsection, utilizing the criteria set forth herein. In addition to any civil administrative penalty assessed under this subsection, and notwithstanding the maximum penalties set forth herein, the commissioner may assess an additional penalty equal to any economic benefits from the violation gained by the violator.

Prior to the assessment of a penalty under this subsection, the person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute or regulation violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing, and upon finding that a violation has occurred, the commissioner may issue a final order assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied.

The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that the payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof that remains unpaid, which interest shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who has been assessed a civil administrative penalty, on two or more occasions, pursuant to subsection d. of this section shall be guilty, upon conviction for a subsequent violation of subsection a. of this section, of a crime of the fourth degree. Notwithstanding the provisions of paragraph

(4) of subsection a. of N.J.S.2C:43-6 to the contrary, a person convicted under this subsection shall be subject to a term of imprisonment of not more than one year.

f. In addition to the penalties imposed under subsections d. and e. of this section, a person who violates the provisions of subsection a. of this section shall be liable to the department for the payment of administrative fees and costs and court costs expended in prosecuting the violation, and for the payment of reasonable attorneys' fees.

g. (1) Any shark fins possessed, sold, traded, distributed, or offered for sale in violation of the provisions of subsection a. of this section, or of any rule or regulation adopted pursuant thereto, and any vessels, vehicles, equipment, or other property utilized in the commission of a second or subsequent violation of subsection a. of this section, or of any rule or regulation adopted pursuant thereto, may be confiscated, and shall be subject to forfeiture by summary proceeding, instituted by the Commissioner of Environmental Protection in a court of competent jurisdiction.

(2) Upon viewing a violation of subsection a. of this section, the department, a conservation officer, or any other law enforcement officer may seize and secure, in accordance with the provisions of paragraph (1) of this subsection, any shark fins, vessels, vehicles, equipment, or other property involved in the violation, and the commissioner shall immediately thereafter give notice of the seizure to the court.

(3) In addition to the confiscation procedure identified in paragraph (2) of this subsection, a court may, upon the filing of a verified complaint, issue a warrant directing a conservation officer, or any other law enforcement officer, to: (a) seize, and take into possession, shark fins, vessels, vehicles, equipment, or other property described in the complaint; (b) bring any seized items before the court that issued the warrant; and (c) summon the person named in the warrant, and any other person who may be found in possession of the described items, to appear at the time and place therein specified.

(4) If, after a hearing, the court determines that any shark fin seized pursuant to this subsection was possessed, sold, traded, distributed, or offered for sale in violation of the provisions of subsection a. of this section, the shark fin shall be forfeited and, notwithstanding any other law, rule, or regulation to the contrary, shall be disposed of through destruction.

If, after a hearing, the court determines that any other items seized pursuant to this subsection were utilized in the commission of a violation of subsection a. of this section, the items shall be forfeited and disposed of through destruction, donation, or sale, as the court may direct, but no such item shall be sold contrary to the provisions of any law, or any rule or regulation adopted pursuant thereto. The proceeds of any sale conducted pursuant to this paragraph, less legal costs and charges, shall be paid into the "Endangered and Nongame Species of Wildlife Conservation Fund," established pursuant to section 1 of P.L.1981, c.170 (C.54A:9-25.2), to be used for the same purposes as other monies in that fund.

h. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement the provisions of this section.

i. As used in this section:

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Shark" means any species categorized in the Chondrichthyes taxonomic class (cartilaginous fishes), and belonging to the subclass Elasmobranchii, but shall not include any species in the superorder Batoidea

(commonly known as a ray or a skate).

"Shark fin" means a raw, dried, or otherwise processed fin or tail that has been separated from the body of any species of shark.

2. a. ¹~~【Until January 1, 2019, and notwithstanding】~~ Notwithstanding¹ the provisions of section 1 of ¹~~【P.L. , c. (C.) (pending before the Legislature as this bill)】~~ this act¹, or any other law, rule, or regulation, to the contrary, ¹until January 1 of the year next following the date of enactment of this act,¹ a person may possess, sell, trade, or distribute, or offer for sale any shark fin that is in that person's possession on or before the date of enactment of ¹~~【P.L. , c. (C.) (pending before the Legislature as this bill)】~~ this act¹ .

b. As used in this section:

"Shark" means any species categorized in the Chondrichthyes taxonomic class (cartilaginous fishes), and belonging to the subclass Elasmobranchii, but shall not include any species in the superorder Batoidea (commonly known as a ray or a skate).

"Shark fin" means a raw, dried, or otherwise processed fin or tail that has been separated from the body of any species of shark.

3. This act shall take effect immediately.