

STANDING COMMITTEE REPORT NO. 18-275

RE: C.B. NO. 18-134/R&D

SUBJECT: PROHIBITING THE TARGETING OF SHARKS
AND SHARK FIN

FEBRUARY 02, 2015

The Honorable Dohsis Halbert
Speaker, Eighteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2015

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred C.B. No. 18-134, entitled:

"A BILL TO AMEND SECTIONS 102 AND 913 OF TITLE 24 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS ENACTED BY PUBLIC LAW NO. 12-34, TO PROHIBIT THE TARGETING OF SHARKS, BY ADDING THE DEFINITIONS OF "SHARK" AND "SHARK FIN", AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the resolution are expressed in its title.

The introduced bill (C.B. No. 18-134) contains two proposed amendments to section 102 and of title 24 of the FSM Code. The first proposed amendment is in subsection 102(59), which defines 'Shark', as "all animals in the orders of Hexanchiformes, Pristiophoriformes, Squatiniformes, Heterodontiformes, Orectobolobiformes, Lamniformes and Carcharhiniformes. The second proposed amendment is in subsection 102(60), which defines 'Shark Fin' as "the raw or dried fin or tail of a shark, whether or not such shark fin has been severed from the shark or remains un-severed from the body of the shark or portion of the body of the shark".

There are two existing subsections under section 913 of title 24. The said bill proposes several amendments to section 913 of title 24.

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First proposed amendment to section 913 is to create a new subsection 913(2), which states that "*It shall be unlawful for any person to intentionally capture, possess, collect, receive, sell, offer to sell, buy, transfer, transport, transship, export, import, trade, distribute or consume shark or any part thereof within the FSM Exclusive Economic Zone regardless of where captured, bought, transported from, bartered for, traded, or obtained. Any shark that is inadvertently caught or captured shall be immediately release, whether the shark is dead or alive. No shark shall be retained even if caught as by-catch.*" Another proposed amendment to section 913 is to create a new subsection 913(3), which states that "*Any person who holds a license or permit from the Authority to conduct scientific research on sharks and carries out activities in accordance with that license or permit shall not be subject to the penalties in this section.*"

The final proposed amendment to section 913 is to clarify that each shark or shark fin shall be fined an additional \$250 dollars. Furthermore, all sharks or shark fins seized and forfeited pursuant to this section shall be destroyed by incineration.

Your Committee held a public hearing on C.B. No. 18-134 on Friday, March 28, 2014 at 8:30 a.m. in the Congress hearing room. In attendance were Secretary Lorin Robert, Secretary Marion Henry, Executive Director of NORMA, Mr. Patrick Mackenzie, staff of NORMA, Kembo Mida Jr., Douglas Kusto from the Micronesia Conservation Trust, and a representative from the President's Office, Pelsesar Petrus.

Chairman Panuelo welcome the witnesses and gave an opportunity to the witnesses to comment on the said bill.

Patrick Mackenzie, the Executive Director of NORMA explained that NORMA requires every fishing vessels to bring their by-catch, including sharks, to port. Assuming this bill becomes law, NORMA is very concerned that it may violate the law when it requires fishing vessels to bring their by catch to port to be recorded. So there is a need to discuss this practicality issue with the local or foreign fishing companies. MR. Mackenzie testified that the two shark species that NORMA had data on are the silky shark and the oceanic deep shark.

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Your Committee inquired on the collective effort undertaken in the region on the protection of shark. Mr. Mackenzie explained that under the Third Implementation Arrangement (3IA), Purse Seine fishing vessels are required to bring in their by catch, like sharks, to port. So vessels that are registered by Parties to the Nauru Agreement (PNA) are to abide by this requirement. In fact, vessels that are licensed with NORMA are not suppose to catch any other species, aside from what they are licensed to fish. Every Purse Seine fishing vessels need to comply with the 3IA requirement at the same time comply with the proposed legislation if signed into law.

Secretary Lorin Robert stated that there is discussion to create a marine sanctuary for sharks, rays, dolphins and whales, and this is an international and regional issue. As a Pacific island nation, we are duty bound to protect these species. A shark legislation has already being passed by the Republic of Palau. He further explained that in the Republic of Palau, the revenue from fisheries is around \$5 million or close, compared to what they received from its tourism sector. So the shark sanctuary in Palau is part of the tourism effort since they get more revenue from tourism.

From the conservationist perspective, it has been observed that thirty percent (30%) of sharks in the world are declining in population. This observation is based on scientific information. On the campaign of the protection of sharks, some of the members of the Association of Pacific Island Legislators (APIL) have passed shark legislation because of the alarming rate in the decline of sharks. In addition, there were 11,000 signatures from students across the five jurisdictions in the FSM petitioning for the protection of sharks.

Your Committee inquired about the practice that causes the most decline of sharks. According to a representative from the PEW Foundation, about 100 million sharks are killed every year because of shark fins. These sharks were kept by Long Line fishing vessels, as by catch and those sharks caught could be prevented by letting them go. Simply, there is no education and enforcement on the matter. If sharks are separated from the tuna species and let go, the declining of sharks can be prevented.

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A staff member of NORMA indicated that in the area of the WCPFC, sharks are caught incidentally as by-catch, especially by the Long Line fishing vessels. Some countries already ban landing of sharks in their ports. In the FSM, NORMA depended on fishing vessels to report their by catch, which is a measure NORMA used to measure shark mortality. Since NORMA is redrafting the Tuna Management Plan, NORMA is asking the Department of Justice to review whether there is any inconsistency with the shark legislation in each state to the proposed Tuna Management Plan.

Your Committee inquired on some of the unintended consequences if this nation is not moving forward with the bill. Your Committee was informed that when the States passed their shark legislation, the Long Line vessels were very concerned, especially on the implications and practicality of the legislation.

Your Committee understands that the FSM has the biggest fisheries and should have been the first to enact legislation on sharks. But this is not the case. The Republic of Palau and the Republic of the Marshall Islands have already enacted shark legislation. Your Committee understands that at the Micronesian Chief Executive Summit, a resolution calling for all members to enact shark legislation was signed by the Principals of the MCES.

Your Committee was informed that the reason why the conservationists (Micronesian Conservation Trust and The Nature Conservancy, as well as other Conservation groups), show full support on the proposed legislation is because they want to protect these species from declining before it becomes more extreme. This is the type of stances conservation groups are coming forth and campaign in favor about this kind of issue.

On the industry side, Marco Kamber from Caroline Fisheries Corporation commented that putting such a law is good for scientific data. If a small shark is caught with the fish unintentionally, is this a violation. Also if the shark is caught outside the EEZ, it is not illegal because the shark is caught in the high seas? The industry is concerned on the practicality of enforcing this kind of legislation.

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After a series of public hearings on the said bill, your Committee on Resources and Development had tasked a working group to meet and produce a compromise bill on shark. A broad coalition of local stakeholders (MCT, TNC, the Conservation Society of Pohnpei, NORMA, the FSM Department of Resources and Development, the FSM Department of Foreign Affairs, the FSM Department of Justice, the local fishing industries, a private law firm and others) met as a group three times in person and had extended e-mail correspondence and negotiations regarding the content of the bill.

During the discussions of the stakeholders, the background information on shark was shared. A general background reveals that the FSM's waters cover about 3 million square kilometers of ocean. A shark sanctuary would end commercial shark fishing in the FSM waters, not only allowing shark populations to rebuild, but also contribute to maintaining the healthy marine ecosystem. Finning prohibitions do not reduce overall shark mortality. Shark finning bans regulate how a shark is killed, not how many are killed. With many shark species near extinction, this bill is a good measure that reduces shark mortality. Healthy oceans and shark populations are also important to the ecosystems. All four States of the FSM have passed laws prohibiting commercial fishing of sharks in their waters. It is time we follow suit at the National level. In addition, there were several signatures from FSM students showing their support on passing the proposed shark legislation. Importantly, the Traditional Leaders of Pohnpei had endorsed a resolution, which is in support of the passing of the proposed legislation.

On Wednesday, January 28, 2015, your Committee conducted another hearing on the same bill. At the hearing, your Committee learned that the FSM Department of Justice has not transmitted a revised shark proposed legislation. It was revealed that there were three versions of the proposed shark legislation, the introduced C.B. No. 18-134 (which is considered as the PEW version), the version 9, which is a work product of the local stakeholders and the new version, which is being drafted by the FSM Department of Justice.

As a compromise, it was decided that the draft version by the FSM Department of Justice will be used and the appropriate staff will have

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to incorporate the recommendations in the new version of the bill as drafted by the Department of Justice and produce a report, although the local stakeholders may provide comments if needed.

With this understanding, your Committee would like to offer the following amendments to the bill as follows:

1. Title, delete the entirety of the title, and replace it with "To further amend chapters 1, 5, and 9 of title 24 of the Code of the Federated States of Micronesia, as amended, by adding "Shark" and "Shark Fin" to the Definition section in chapter 1; by adding a new section 503 and by renumbering existing sections 503 as section 504 in chapter 5, for the purpose of requiring that all vessels land their by catch at port; by amending section 913 in chapter 9 to prohibit the practice of shark finning and extend civil penalties to apply to such violations, by modifying what is considered as destruction of evidence, and for other purposes.""
2. Page 13, line 9, delete "all animals in the orders of", and insert "any fish of the taxon Elasmobranchii" in lieu thereof.
3. Page 13, lines 10, 11 and 12, delete them in their entirety.
4. Page 13, line 13, delete "the raw or dried fin or tail of", and insert "any fin of a shark including caudal fins" in lieu thereof.
5. Page 13, lines 14, 15 and 16, delete them in their entirety.
6. Page 14, between lines 21 and 22, insert the following:
"Section 2. Chapter 5 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby amended by adding a new section 503 to read as follows: Section 503. Compulsory landing of by-catch by fishing vessels.
(1) By-catch caught by a fishing vessel may be landed at a transshipment port in the Federated States of Micronesia in

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accordance with any regulation promulgated pursuant to this act.

- (2) It shall be unlawful for fishing vessels to retain, discard or otherwise dispose of by-catch in contravention of this section.
- (3) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$100,000 and not more than \$500,000.
- (4) Any by-catch pursuant to this title may be disposed of in such manner as prescribed by regulation."

Section 3. Chapter 5 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby amended by renumbering section 503 as section 504.

Section 4. Chapter 5 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby amended by renumbering section 504 as section 505.

- 7. Page 14, line 22, delete "Section 2", and insert "Section 5.", and after "Section 913", insert "of Chapter 9"
- 8. Page 15, line 2, after "knowingly", insert "capture".
- 9. Page 15, lines 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, delete them in their entirety.
- 10. Page 15, line 7, insert "(2) It shall be unlawful to remove shark fins from sharks on board fishing vessels, and to retain on board, transship or land sharks or shark fins, subject to subsections (4) and (6).
- 11. Page 15, lines 17, 18, 19, 20 and 21, delete them in their entirety.
- 12. Page 15, line 17, insert "(3) It shall be unlawful for fishing vessels to possess wire leaders, steel trace, or wire trace."
- 13. Page 15, between lines 21 and 22, insert "(4) All sharks caught by a fishing vessel shall be either: (a) if still alive,

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immediately released back into the ocean. Fishing vessels must ensure that sharks are released whole, and that sharks are not unnecessarily harmed during the release process; or (b) if dead, landed at a transshipment port in the Federated States of Micronesia. Fishing vessels must ensure that sharks are landed whole with all shark fins attached to the carcass.

(5) It shall be unlawful to purchase, offer for sale or sell sharks or shark parts, including shark fins which have been removed on board a vessel, transshipped or landed in contravention of this section."

(6) Any person who holds a license or permit from the Authority to conduct scientific research on sharks and carries out activities in accordance with that license or permit shall not be held in contravention of this section."

14. Page 15, line 22, delete "[4]", and insert "(7)", in lieu thereof.

15. Page 15, line 24, after "250,000.", delete "In addition to such fines, for sharks or shark fins each shark or fin shall be fined an additional \$250.00 per shark or fin. All shark or shark fins seized and forfeited pursuant to this title shall be destroyed by incineration."

16. Page 16, between lines 4 and 5, insert the following:
"(8) It shall be a rebuttable presumption that any sharks caught or shark fins possessed by a fishing vessel originated from the EEZ of the Federated States of Micronesia.

(9) All shark or shark fins seized and forfeited shall be destroyed by incineration."

Section 5. Section 914 of chapter 9 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby further amended to read as follows:

Section 914. Destruction of evidence

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- (1) No person shall destroy, dispose of, conceal, tamper with or abandon any fish, shark, shark fin, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offense against this subtitle.
- (2) Any person who commits an act in violation of this section is subject to a civil penalty of not less than \$100,000 and not more than \$500,000."

17. Page 16, line 5, delete "Section 3", and insert "Section 7" in lieu thereof.

Your Committee notes that the offered amendments have been shared with the stakeholders, and this is the final work of the stakeholders, which was tasked to finalize the introduced shark proposed legislation.

Recommendations of your committee

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 18-134 and recommends its passage on First Reading and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 18-134, C.D.1.

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Respectfully submitted,

/s/ David W. Panuelo
David W. Panuelo, chairman

/s/ Victor Gouland
Victor Gouland, vice chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

/s/ Florencio S. Harper
Florencio S. Harper, member

/s/ Berney Martin
Berney Martin, member

Joseph J. Urusemal, member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, member

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