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VIA E-MAIL

National Marine Fisheries Service
Office of International Affairs and Seafood Inspection
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RE: Identification of Nations Engaged in Shark Catch (RTID 0648-XB934)

I. Introduction

Earthjustice submits evidence and comments in response to the April 14, 2022, request for information regarding nations engaged in fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks without a regulatory program comparable to that of the United States, pursuant to the High Seas Driftnet Fisheries Moratorium Protection Act (“Act” or “Moratorium Protection Act”).

Below we emphasize the urgent need to address the global decline of sharks and discuss the importance of the shark provision of the Act. We also discuss our concerns over the National Marine Fisheries Service’s (“NMFS”) past application of the shark provision and suggest improvements in implementation. Finally, we present evidence of nations that are catching sharks on the high seas but that do not have comparable shark regulatory programs to the United States and thus should be identified and listed pursuant to 16 U.S.C. 1826k(a)(2).

II. Factual Background

We remain deeply concerned about the serious, worldwide depletion of shark and ray populations. In the last fifty years, oceanic sharks and rays have declined in abundance by more than 70%.¹ As of 2021, there were 391 shark and ray species classified as threatened with extinction under IUCN criteria, roughly a third of the world’s total.²

This problem is not merely aesthetic or sentimental. It is a manifestation of biodiversity loss writ large, “probably the most serious environmental problem, because the loss of a species is

¹ Nathan Pacoureau et al., *Half a century of global decline in oceanic sharks and rays*, 589 NATURE 567 (2021).

² Nicholas Dulvy et al., *Overfishing drives over one-third of all sharks and rays toward a global extinction crisis*, 31 CURRENT BIOLOGY 4773, 4774 (2021).

permanent, each of them playing a greater or lesser role in the living systems on which we all depend.”³ These living systems provide human society with the necessities of life, and if they collapsed, human society would too.

Sharks in particular often play a crucial role in the marine ecosystem. Many sharks are large-bodied apex predators, which are “critical to ecosystem function” due to their position at the top of the food web.⁴ Their loss can trigger trophic cascades affecting many other species.⁵

Overfishing is the largest driver of shark decline. The dramatic decline in shark abundance over the last 50 years is due to an 18-fold increase in fishing pressure.⁶ A 2021 scientific study found that “[o]verfishing is the universal threat affecting all 391 threatened species and is the sole threat for 67.3% of species and interacts with three other threats for the remaining third: loss and degradation of habitat (31.2% of threatened species), climate change (10.2%), and pollution (6.9%).”⁷ For pelagic sharks on the high seas, the numbers are more dramatic—75% of them are now threatened.⁸

While the high seas used to be a de facto spatial refuge for these species, as fishing could not reach there, this is no longer the case.⁹ Now, distant water fishing fleets fish extensively on the high seas.¹⁰ Currently, pelagic sharks account for more than 50% of all shark catch worldwide.¹¹

In addition to the ecological harm high seas fishing causes, there are also significant justice and equity concerns caused by high seas fishing. High seas fishing is rife with labor abuses and other illegal practices. Fishing on the high seas requires the input of substantial resources: over half of fishing on the high seas would be unprofitable without subsidies.¹² Even with subsidies, much of high seas fishing would still be unprofitable without very low labor costs,¹³ and indeed, labor abuses within high seas fisheries are well documented.¹⁴

³ Gerardo Ceballos et al., *Vertebrates on the brink as indicators of biological annihilation and the sixth mass extinction*, 117 PNAS 13596 (2020).

⁴ Jonathan L. Payne et al., *Ecological selectivity of the emerging mass extinction in the oceans*, SCIENCE (Sept. 14, 2016), at 2.

⁵ *Id.*

⁶ Dulvy, *supra* note 2.

⁷ *Id.*

⁸ *Id.* at 4779.

⁹ Nuno Queiroz et al., *Global spatial risk assessment of sharks under the footprint of fisheries*, 572 NATURE 461 (2019), <https://www.nature.com/articles/s41586-019-1444-4>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Enric Sala et al., *The economics of fishing the high seas*, 4 SCIENCE ADVANCES 1 (June 6, 2018), <https://advances.sciencemag.org/content/4/6/eaat2504>.

¹³ *Id.*

¹⁴ See e.g., Ian Urbina, *Ship of horrors: life and death on the lawless high seas*, THE GUARDIAN (Sep. 12, 2019), <https://www.theguardian.com/world/2019/sep/12/ship-of-horrors-deep-sea-fishing-oyang-70-new-zealand>; Editorial Board, *Slave Labor on the High Seas*, THE NEW YORK TIMES (Feb. 20, 2016), <https://nyti.ms/1oS2UYo>; *Outlaw Ocean: Exposing Human Rights Abuse on the High Seas*, THE ECONOMIST GROUP WORLD OCEAN INITIATIVE (Nov. 1, 2019), <https://ocean.economist.com/governance/articles/outlaw-ocean-exposing-human-rights-abuse-on-the-high-seas>.

As a result of the economic investment needed, rich countries¹⁵ dominate high seas fishing.¹⁶ Five countries alone are responsible for 86% of fishing effort on the high seas: China, Taiwan, Japan, Spain, and South Korea.¹⁷ The World Bank categorizes all five of these countries as high income or upper-middle income.¹⁸

In contrast, many countries that rely on seafood for 50% or more of their daily protein are low and middle income countries like Bangladesh, Ghana, the Gambia, and Sierra Leone.¹⁹ Fish, including sharks, that are caught in the high seas are highly migratory. Many of these species also spend time in different countries' EEZs and in coastal waters, within reach of small-scale and artisanal fishing fleets.²⁰ But if they are overfished on the high seas, fewer of these species will be available to fishers in low and middle income countries.²¹

This dynamic presents an equity problem. Some even refer to control of ocean resources in the hands of a few rich countries as “marine colonialism.”²²

Although high seas fishing is notorious for illegal practices, such as forced labor and targeting protected species, much of the shark fishing that occurs on the high seas is legal. While certain regional fishery management organizations (“RFMOs”) have jurisdiction to impose fisheries regulations on shark fishing and most have significantly increased shark measures over the last decade, no shark species have robust management at the RFMO level. Shark bycatch—a major cause of shark mortality—is poorly reported and regulated at the RFMO level.

III. The High Seas Driftnet Fisheries Moratorium Protection Act

The United States has a law that precisely addresses the serious and ubiquitous issue of shark fishing on the high seas: 1826k(a)(2) of the High Seas Driftnet Fisheries Moratorium Protection Act (“Act” or “Moratorium Protection Act.”).

This provision allows NMFS to identify and list nations that have vessels that catch sharks, via directed fishing or incidentally, on the high seas if the nation does not have a shark regulatory program comparable to the United States.²³ Once NMFS lists a nation, NMFS enters a negotiation period with that nation to address the issue and help improve the nation’s fisheries

¹⁵ Countries that are classified as high income or upper-middle income by the World Bank.

¹⁶ Sala, *supra* note 12.

¹⁷ Douglas J. McCauley et al., *Wealthy countries dominate industrial fishing*, 4 SCIENCE ADVANCES (Aug. 1, 2018) at 4, <https://www.science.org/doi/10.1126/sciadv.aau2161>.

¹⁸ *Id.*

¹⁹ *The State of World Fisheries and Aquaculture 2020, Sustainability in Action 5*, FAO (2020), <https://www.fao.org/3/ca9229en/ca9229en.pdf>.

²⁰ Richard Schiffman, *A Global Ban on Fishing on the High Seas? The Time is Now: Interview with Daniel Pauly*, YALE ENVIRONMENT 360 (Sep. 27, 2018), <https://e360.yale.edu/features/a-global-ban-on-fishing-on-the-high-seas-the-time-is-now>.

²¹ *Id.*

²² McCauley, *supra* note 17, at 6.

²³ 16 U.S.C. § 1826k(a)(2).

management system.²⁴ If the nation addresses the problem, the process ends.²⁵ If the nation fails to address the problem, NMFS and the U.S. State Department can impose various penalties on the nation, including sanctions.²⁶

The Act thus allows the United States to tackle the current state of unsustainable high seas shark fishing through consultation, cooperation, assistance, and its considerable market forces. Below we discuss the legislative history of the Moratorium Protection Act, NMFS's misapplication of the statute, as well as suggestions to improve implementation of the Act.

A. Legislative History of the Shark Catch Provision

Congress passed the shark provision as an amendment to the Moratorium Protection Act in 2011 specifically to address the dramatic decline of sharks and to protect marine ecosystems that depend on sharks as apex predators.²⁷

Prior to this amendment, the Moratorium Protection Act already allowed NMFS to identify, help cure, and potentially sanction two other types of exploitive fishing behaviors in the international realm: 1) illegal fishing in contravention of RFMO management measures and 2) the bycatch of protected living marine resources if the nation did not have a comparable bycatch regulatory program to the U.S. program.²⁸

Congress, deeming these two provisions inadequate to fully address shark decline, passed the Shark Conservation Act of 2011, amending the Act to list, help cure, and potentially sanction shark catch on the high seas as well.²⁹ The shark catch provision provides a different approach designed to address the systemic issues, rather than individual violations. Even though nations could be listed for shark-related violations under all three prongs of the Act, the shark prong is unique in several ways. First, unlike the IUU prong, it applies to both illegal *and* legal shark fishing on the high seas, thus capturing fishing activity that may be legal but still unsustainable.³⁰ Second, unlike the PLMR prong, it applies to directed fishing in addition to bycatch, again incorporating a much broader swathe of fishing activity.³¹ Third, unlike the IUU prong, the shark

²⁴ 16 U.S.C. § 1826k(b).

²⁵ *Id.* § 1826k(c)(5).

²⁶ *Id.*, see also *id.* § 1826a.

²⁷ See Conservation of Sharks, Pub. L. No. 111-348, 124 Stat. 3668 (Jan. 4, 2011), see also 156 Cong. Rec. H8790-01, H8792 (2010) (“[M]any shark species are threatened or endangered, making the conservation measures set forth by this bill timely and necessary. Sharks are one of the top predators in our oceans, and a loss in their population would lead to permanent and detrimental effects on the entire marine environment. The loss of top predators in the marine environment upsets the balance of our oceans, causing severe and sometimes irreversible consequences. We take so much from our ocean, and yet give nothing back. Protecting and conserving its depleting resources should be a top priority because before long there will be nothing left to take.”).

²⁸ Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. No. 109-479, 120 Stat. 3575 (Jan. 12, 2007).

²⁹ Conservation of Sharks § 102(c).

³⁰ Compare 16 U.S.C. 1826j(a) (which focuses on illegal fishing) with 16 U.S.C. 1826k(a)(2) (which specifies only that a nation must be listed if vessels “target or incidentally catch sharks” in “waters beyond any national jurisdiction.”).

³¹ See 16 U.S.C. § 1826k(a)(2), including “incidentally” caught sharks.

prong applies to the entire high seas, not only to ocean areas governed by an RFMO to which the United States is a party.³² The Indian Ocean thus comes under the purview of the shark prong. Finally, unlike either of the other two prongs, the shark prong operates independently from whether the relevant RFMO is taking regulatory action.³³ RFMO management measures are therefore irrelevant to the comparability determination under the shark prong. Because the shark prong is not duplicative of the first two prongs, and covers additional and unique types of fishing activity and geography, NMFS must implement it robustly and thoroughly, along with the other two prongs. The agency has thus far failed to do so.

B. NMFS's Failure to Implement Shark Catch Provisions

We are concerned that, despite Congress' clear intent that the shark provision was a necessary addition to the Act, NMFS has yet to list a nation for catching sharks on the high seas in the five reports since the 2011 amendment.

NMFS's decision not to use the shark provision stems from at least two related misapplications of the Act. In the 2021 Report, NMFS: 1) used the wrong standard in determining whether a nation's shark regulatory program is comparable to the U.S. shark regulatory program; and 2) contrary to the Act, excluded shark fishing in the Indian Ocean from review.

1. *NMFS Must Compare Nations' Regulatory Programs to the U.S. Regulatory Program Rather than to RFMO Regulatory Programs, as the Act Requires*

The Moratorium Protection Act requires NMFS to list nations for catching sharks on the high seas if the nation has not adopted a regulatory program for the conservation of sharks "that is comparable to that of the United States."³⁴

In the 2021 Report, NMFS did not identify a single nation under the shark provision, which leaves the impression that all nations catching sharks on the high seas have comparable shark regulatory programs.³⁵ However, NMFS only arrived at this conclusion due to a flaw in its analysis. Rather than comparing nations' regulatory programs to the U.S. shark regulatory program, NMFS compared nations' regulatory programs to the relevant RFMO regulatory program. When describing the listing process under the shark prong, NMFS stated:

NMFS considered whether the nation or entity is a party or cooperating non-party to the relevant RFMO where the catch occurred and, if so, whether the nation or entity has implemented the shark conservation and management measures for the respective RFMO.

NMFS analyzed each nation's or entity's laws, regulations, decrees, or other legal mechanism by which an obligation to comply with an RFMO's

³² Compare 16 U.S.C. § 1826j(a)(2)(A) with § 1826k(a)(2).

³³ Compare 16 U.S.C. §§ 1826k(a)(1)(B) and 1826j(a)(2)(A) with § 1826k(a)(2).

³⁴ 16 U.S.C. § 1826k(a)(2)(B).

³⁵ NOAA, *Improving International Fisheries Management, 2021 Report to Congress* 39 (Aug. 2021), <https://media.fisheries.noaa.gov/2021-08/2021ReporttoCongressonImprovingInternationalFisheriesManagement.pdf> [hereinafter 2021 Report].

conservation and management measures is implemented, to determine how that nation or entity requires its vessels fishing on the high seas to comply with an RFMO's management measures.

NMFS' analysis of the remaining 41 nations and entities resulted in the determination that each has a regulatory program comparable to that of the United States.³⁶

Here, NMFS describes an analysis that compares nations' shark regulatory programs to RFMO shark conservation measures. But this is not the analysis the law requires. The Moratorium Protection Act is explicit: a nation must have a shark regulatory program "comparable to that of the United States."³⁷ Whether a nation is complying with RFMO shark measures is irrelevant under the shark provision of the Act. In the future, NMFS must comply with the language of the statute and compare nations' shark regulatory programs to the U.S. regulatory program.

2. NMFS Must Include Shark Fishing in the Indian Ocean in its Review

In part because of the misinterpretation of the Act described above, NMFS incorrectly excluded shark fishing in the Indian Ocean from review in the 2021 Report.

Specifically, NMFS stated that when identifying nations under the shark provision "NMFS limited its review to catch data from those RFMOs to which the United States is a party so that a comparability analysis of the regulatory programs of a nation or entity could be conducted, as described below."³⁸ Since NMFS was comparing nations' shark regulatory programs to RFMOs' shark regulatory programs rather than the U.S. shark regulatory program, NMFS excluded ocean areas where the United States was not a party to an RFMO and thus not subject to RFMO requirements.³⁹ And because the United States is not a party to the Indian Ocean Tuna Commission ("IOTC"), the Indian Ocean was excluded from this review.

However, the shark provision does not cabin review to only areas under the jurisdiction of an RFMO to which the United States is a party.⁴⁰ The omission of this limiting language is in direct contrast to the IUU provision, which *does* limit the application of the listing process to ocean areas under the jurisdiction of an RFMO to which the United States is a party.⁴¹ Common norms of statutory construction require NMFS to read this omission as intentional: "[W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."⁴² Thus, going forward, identification of nations under the shark provision must include vessels fishing on the high seas of the Indian Ocean.

³⁶ *Id.*

³⁷ 16 U.S.C. § 1826k(a)(2)(B).

³⁸ 2021 Report at 37 (listing the seven RFMOs from which it considered shark data).

³⁹ *Id.* at 38.

⁴⁰ *See* Section III(A).

⁴¹ 16 U.S.C. § 1826j(a)(2)(A).

⁴² *Russello v. United States*, 464 US 16, 23 (1983) (citation omitted).

C. NMFS Should Increase Transparency of the HSDFMPA Process

In the 2021 biennial report, NMFS indicated that it had identified 50 nations and entities as catching sharks on the high seas. Of these, NMFS determined 41 had comparable shark regulatory programs, and nine were required to submit additional information on their shark programs before making an assessment.⁴³ To date, this was the most information NMFS had ever provided in an improving international fisheries report about its process to identify shark catch and to determine whether a nation has a comparable shark regulatory program to the United States.

Accordingly, we urge NMFS to continue to add transparency and predictability in the 2023 Report in three ways. First, by naming the nations that have been identified for shark catch and are therefore subject to a comparability analysis.⁴⁴ Second, by spelling out what constitutes a comparable shark regulatory program, including what NMFS considers the minimum necessary to achieve comparability.⁴⁵ Third, by identifying by name the specific nations which have, by NMFS's analysis against the explained criteria, met or not met each component and how.

Increased transparency will help stakeholders and other nations more clearly understand this process. Shedding light on the analysis and process provides a better basis for addressing the identified problems, negotiating resolutions, and staving off accusations that any listing or subsequent sanction is arbitrary. Importantly, such action supports the edict that NMFS should “adopt a presumption in favor of disclosure,” including taking “affirmative steps to make information public.”⁴⁶

IV. Nations Catching Sharks on the High Seas

For the purposes of these comments and the HSDFMPA process, we are assuming that nations that fish extensively on the high seas with longline gear are inevitably catching sharks, at least incidentally. This is a rational assumption and mirrors the logic NMFS employed in the 2021 Report when assuming that nations using longlines in the Atlantic Ocean were inevitably catching sea turtles to evaluate which nations should be listed under the PLMR prong of the Act.⁴⁷ Bycatch is common in longline fisheries and sharks are the most common form of

⁴³ 2021 Report at 39.

⁴⁴ In 2021, NMFS indicated that it identified 50 nations that caught sharks on the high seas and that were subject to a comparability analysis, however, NMFS never disclosed the nations by name.

⁴⁵ Although NMFS provides bullets of criteria for identification in the 2021 Report, they are vague and broad, providing no real metrics against which to compare.

⁴⁶ Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009).

⁴⁷ 2021 Report at 35. In the 2021 Report, NMFS took a new “fishery-by-fishery” approach to listing nations under the PLMR provision of the Act. *Id.* at 32. Instead of looking at all fisheries that bycatch PLMRs, “NMFS examined fisheries where foreign vessels are using the same gear or practices as U.S. vessels that are known to have bycatch, and where foreign vessels are operating in the same areas as U.S. vessels with known incidents of bycatch.” *Id.* Using this approach, NMFS decided to look at the Atlantic longline fishery, as this fishery catches high numbers of sea turtles as bycatch. This fishery-by-fishery approach reduced the evidentiary burden for NMFS in listing nations, as all NMFS needed to know is 1) if the nation has fishing vessels operating in the Atlantic longline fishery over the last three years and 2) whether the nation has a comparable sea turtle bycatch regulatory program to the U.S. program.

bycatch.⁴⁸ So even if nations are not targeting sharks and indeed do not want to catch sharks, longlining inevitably results in shark catch, at least incidentally. In addition, many longline fisheries around the world target sharks, and some longline fisheries have evolved into targeted shark fisheries as tuna and billfish become less available.⁴⁹

To determine which nations were longlining on the high seas, we analyzed Global Fishing Watch data from January 2020 to September 2022.⁵⁰ Global Fishing Watch uses satellite VMS data to determine apparent fishing hours by flag state.

Global Fishing Watch data demonstrates that 70 nations in total fished with longline vessels on the high seas between January 2020 and September 2022.⁵¹ This is twenty more than the 50 nations NMFS identified in the 2021 Report, although it is likely that at least some of the difference in numbers may be the exclusion of fishing in the Indian Ocean described above.

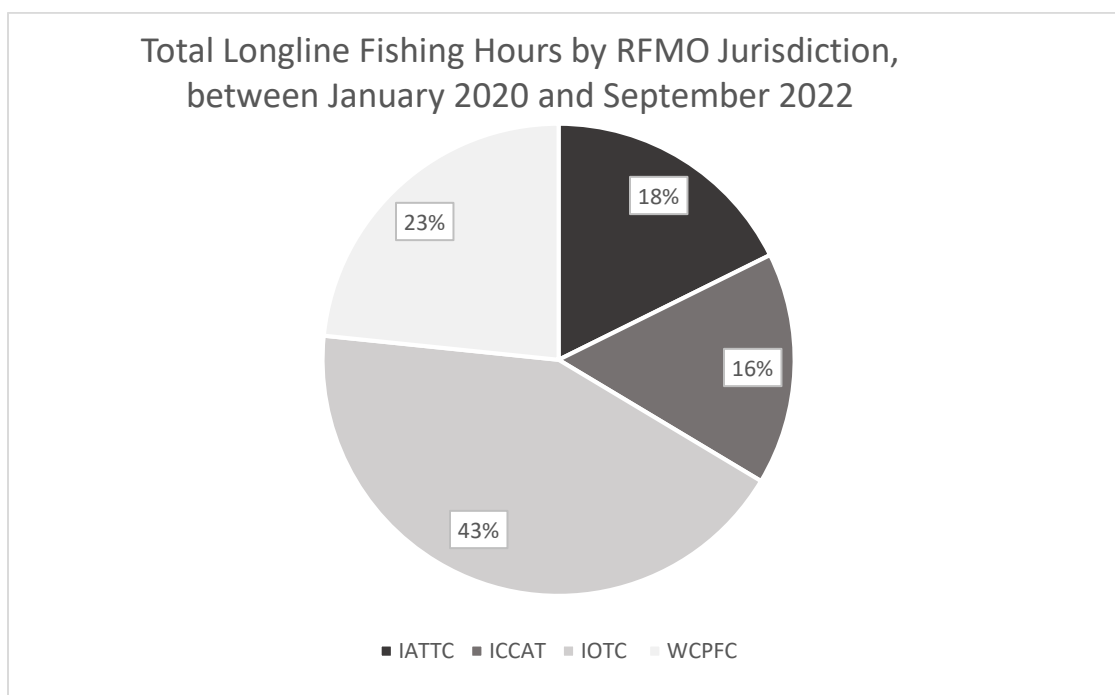
The Global Fishing Watch data shows that longlining occurs on the high seas in every ocean basin, with the largest number of longline high seas fishing hours taking place in the Indian Ocean, as demonstrated in the graph below. As discussed above, however, NMFS has omitted fishing on the high seas within the Indian Ocean from past reviews under the shark provision. NMFS is therefore excluding a large portion of high seas fishing from potential listing and certification contrary to the Act.

⁴⁸See Vanessa Jaiteh et al., *Bycatch Estimates from a Pacific Tuna Longline Fishery Provide a Baseline for Understanding the Long-Term Benefits of a Large, Blue Water Marine Sanctuary*, 8 FRONT. MAR. SCI. at 7 (Oct. 2021), <https://www.frontiersin.org/articles/10.3389/fmars.2021.720603/full> (stating that in a Pacific tuna longline fishery, “[s]harks were the most abundant bycatch species group, with 48,400 individuals estimated to be caught annually . . .”).

⁴⁹ See Nuno Quieroz et al., *Ocean-wide tracking of pelagic sharks reveals extent of overlap with longline fishing hotspots*, 113 PNAS 1582, 1585–86 (2016), <https://www.pnas.org/doi/epdf/10.1073/pnas.1510090113> (stating “Pelagic longliners in the North Atlantic target high value tunas and swordfishes, but given general reductions in abundance of these species, and in view of management measures to limit catches, pelagic sharks are now generally targeted by the longlining fleet.”)

⁵⁰ For purposes of submitting evidence for this letter, we analyzed longline data, although we recognize other forms of fishing on the high seas, such as purse seining—especially on FADs—also, by the nature of their operations, at least incidentally catch sharks.

⁵¹ Global Fishing Watch, www.globalfishingwatch.org. Longline fishing data was downloaded by applying a shapefile to the high seas and a timeframe from January 2020 to September 2022. Excel sheets with the data are available upon request.

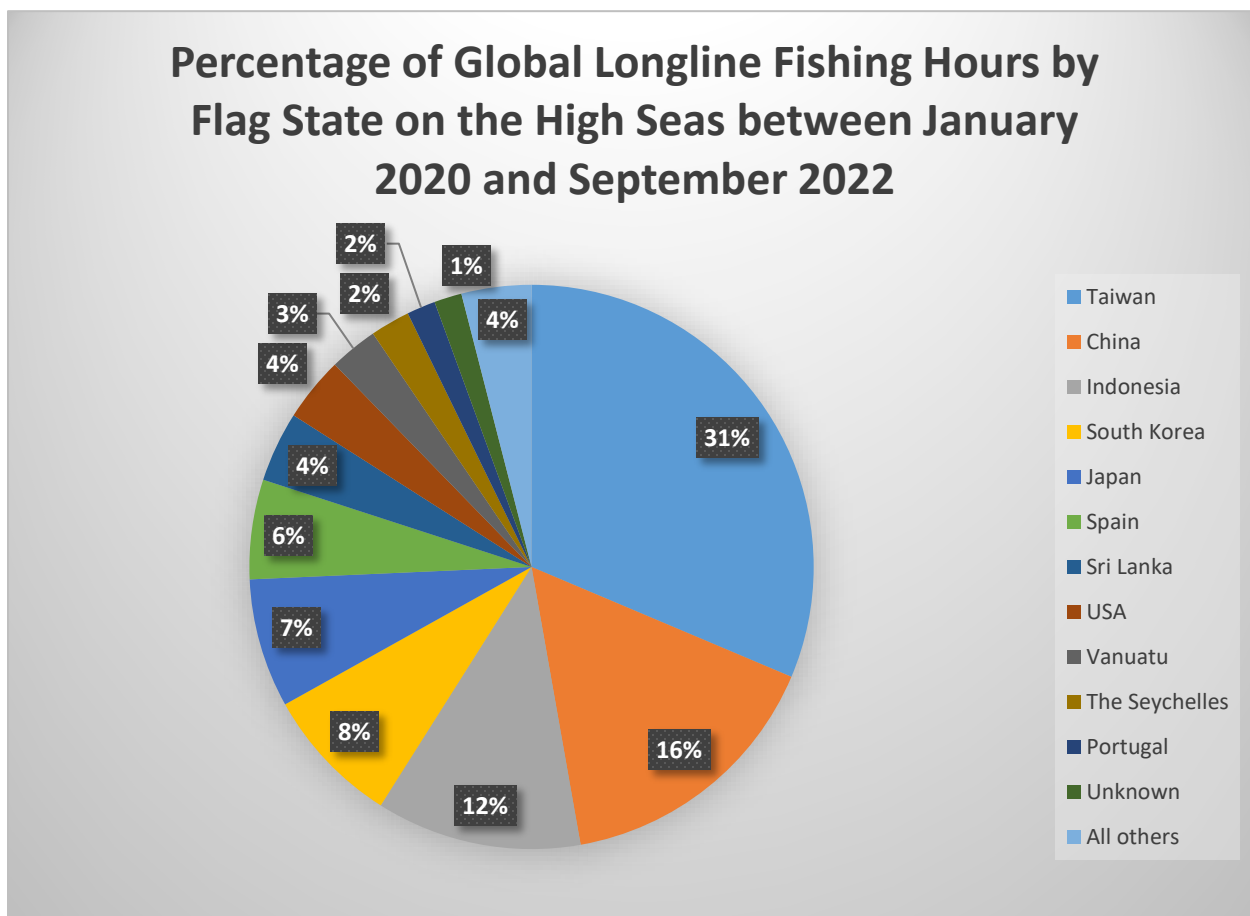


While a total of 70 nations are longlining on the high seas, we will be focusing on the top 10, in addition to the United States, as depicted in the chart below.

Flag	Longline Fishing Hours
Taiwan	4,511,008
China	2,278,980
Indonesia	1,691,104
South Korea	1,140,491
Japan	1,063,265
Spain	820,516
Sri Lanka	578,974
USA	531,585
Vanuatu	399,154
The Seychelles	327,176
Portugal	236,001
Unknown ⁵²	227,506
All other nations	575,565

⁵² Unknown means the Maritime Mobile Service Identity number associated with the fishing vessel was invalid, which means that the flag might not be associated with any nation or that the MMSI is a dummy.

There are several reasons to focus on these top longlining nations. First, these nations, along with the United States, are responsible for over 90% of longline fishing on the high seas, as demonstrated in the graph below. The extent and magnitude of these nations' longline fleets means that these nations are having a larger impact on marine ecology than other nations and thus deserve higher scrutiny.



Second, as discussed in Section II above, most of these top longlining nations are high or upper-middle income nations,⁵³ highlighting justice and equity issues. Finally, these top longlining nations are operating their longline fleets in a similar capacity to the United States. Specifically, all of these nations have conducted more than 200,000 hours of longlining on the high seas within the relevant timeframe.⁵⁴ In addition, many of these nations, including Taiwan, China, South Korea, Japan, Spain, and Vanuatu have longline vessels that fish in every single ocean basin on the high seas, meaning that these nations are fishing across the globe, spanning multiple jurisdictions with little coordinated international oversight. It is thus all the more important to

⁵³ Specifically, Taiwan, China, Japan, South Korea, Spain, and Portugal are all high income nations. *See World Bank Country and Lending Groups*, THE WORLD BANK, <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (last visited Dec. 20, 2022).

⁵⁴ *See* Percentage of Global Longline Fishing Hours Chart, above.

scrutinize the activity of these fleets. For these reasons, we have chosen to highlight these top ten longlining nations, even though there may be additional nations that could or should be listed under the requirements of the shark prong.

V. Nations with Shark Regulatory Programs Comparable to the United States

The following section presents an overview of the basic components of the U.S. shark regulatory program, essential elements under the components, and then examines whether the top longlining nations discussed above have regulatory programs that compare to the essential elements of the U.S. regulatory program. To note, the Moratorium Protection Act previously allowed NMFS to take “into account different conditions” when making the comparability determination under the shark provision.⁵⁵ However, this language was removed in the recently passed National Defense Authorization Act (“NDAA”), limiting NMFS’s discretion in listing nations under the shark prong.⁵⁶ In addition, because we are limiting our review to nations who, like the United States, engage in industrial longlining on the high seas, this review already takes into account differing conditions. Moreover, in the context of high seas longlining, the regulatory components we discuss below are essential to achieve similar effectiveness to the U.S. shark regulatory program.

The U.S. shark regulatory program has three components: laws and regulations aimed at protecting sharks; scientific data collection and monitoring of fisheries; and reliable and effective fisheries enforcement. Each of the three components may be comprised of many different elements. As described below, we focus on core elements that are central to the effectiveness of the U.S. shark regulatory program and thus are essential to the comparability determination under the HSDFMPA.

We recognize that in the 2021 Report, NMFS disagreed that some of these elements were necessary for the comparability determination.⁵⁷ At the time, however, NMFS compared nations’ shark regulatory programs to the RFMO shark regulatory program rather than the U.S. shark regulatory program, contrary to the plain language of the Act. (See Section III(A) above). Given that the law requires NMFS to compare nations’ shark regulatory program to the U.S. program, we again present elements which are core to the U.S. shark regulatory program. If NMFS still finds that these identified elements are not necessary for a comparable shark regulatory program, we reiterate our request that NMFS increase transparency around this process and explain what elements it considers necessary for a regulatory program to be deemed comparable under the Act.

⁵⁵ 16 U.S.C. § 1826k(a)(2)(B).

⁵⁶ See JAMES M. INHOFE NDAA FOR FISCAL YEAR 2023, H.R. 7776, 117th Cong. § 11338(a)(1)(B)(ii) (2022) [hereinafter NDAA], <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR7776EAS-RCP117-70.pdf> (omitting the phrase “taking into account different conditions.”).

⁵⁷ Specifically, we put forward three components as essential to comparable regulatory program, including a fins-naturally-attached rule, sufficient observer coverage, and reliable enforcement of violations, and NMFS responded that they do “not agree that a nation or entity must meet all three of the [commenter’s] stated criteria for a nation’s regulatory program to be deemed comparable.” See 2021 Report at 38.

A. Laws and Regulations to Protect Sharks

The United States has a complex and evolving regulatory structure to protect sharks, which is contained in multiple U.S. laws including the Magnuson-Stevens Fisheries Conservation and Management Act as well as the Endangered Species Act. These laws require the establishment of catch limits for multiple shark species and give heightened protections to shark species listed as endangered or threatened. NMFS should therefore review nations' shark regulatory programs to determine whether nations have equivalent management measures.

In addition to these laws, the United States requires fishermen to land sharks with fins naturally attached to the carcass.⁵⁸ This provision is key to the effectiveness of the U.S. shark regulatory program because it is the most effective method for monitoring finning ban compliance. In addition, under a fins-naturally-attached standard, fishery officials can more easily identify shark catch to the species level, which provides much needed catch data and helps deter retention of prohibited species. It is also impossible to “high-grade” (select the most valuable fins and carcasses from different animals, resulting in greater discards), and harder to hide carcasses (compared to fins), again making violations easier to spot.

In contrast, many other nations and most tuna RFMOs still rely on a complicated 5% fin to carcass ratio, meaning fishermen can land sharks with their fins detached from the body, as long as the total shark meat by weight is 95% carcass and only 5% fins. Fin ratios⁵⁹ are not as effective as a fins-naturally-attached requirement because they allow for high-grading fins and carcasses. Indeed, NMFS's own shark expert states that the fins-attached rule is more effective than other finning prohibitions, partially for this reason:

[F]ishermen must bring a shark to shore with all its fins naturally attached. **That specific requirement is what makes our ban so effective.** For example, it prevents fishermen from finning one shark and using staples or tape to attach the fins to another carcass on the boat. This is a loophole other countries have had to deal with.⁶⁰

Other nations and governing bodies have also acknowledged that the fins-naturally-attached rule is the most effective means of enforcing finning bans. Costa Rica, Brazil, Chile, Sri Lanka, Canada, Australia, and many other nations as well as the EU have followed the United States' lead in requiring fishermen to land sharks with fins naturally attached.⁶¹

⁵⁸ Note that the U.S. law provides an exception to a domestic smooth dogfish fishery, which is inapplicable to this analysis of high seas fishing, where all sharks under U.S. law must be landed with their fins attached.

⁵⁹ Fin to carcass ratios allow fishers to remove fins at sea if the total weight of fins landed does not exceed a certain ratio (typically 5%) of the total weight of shark carcasses landed concurrently.

⁶⁰ *How Our Shark Finning Ban Helps Us Sustainably Manage Shark Fisheries*, NOAA (emphasis added), <https://www.fisheries.noaa.gov/feature-story/how-our-shark-finning-ban-helps-us-sustainably-manage-shark-fisheries> (last updated May 26, 2022).

⁶¹ Amie Bräutigam, *Best Practice in the prevention of Shark Finning, Final Report 7–8*, MARINE STEWARDSHIP COUNCIL (July 7, 2020), <https://www.msc.org/docs/default-source/default-document-library/stakeholders/fsr-consultant-reports/best-practice-in-the-prevention-of-shark-finning-report.pdf>.

Indeed, in an attempt to implement a fins-naturally-attached requirement at the IATTC, the EU submitted a proposed resolution, which stated that “[t]he only way to guarantee that sharks are not finned is to require that the carcasses be landed with the fins attached.”⁶² The EU also stated that the IATTC’s current method for deterring finning (requiring that fishing vessels have no more than a 5% fin to carcass ratio on board) “has no clear scientific basis as a conservation measure for sharks.”⁶³ Likewise, the United States in cooperation with Belize and Brazil has been leading an annual effort to secure a fins-naturally-attached provision at ICCAT since 2009, stating in the most recent proposal that the current “fin-to-carcass-weight ratios is not an adequate means of ensuring that sharks are not finned.”⁶⁴ Whereas the ICCAT proposal has been blocked every year by Japan and China, the United States was successful in securing an international fins-attached rule under the Northwest Atlantic Fisheries Organization (NAFO) in 2016.

The United States itself adopted a fins-naturally-attached rule precisely because it was more effective than, and not comparable to, other methods. Prior to 2010, the United States had a finning ban but not a fins-naturally-attached requirement. In 2010, Congress decided to “simplify and strengthen the existing prohibition on shark finning” by adopting a fins-naturally-attached policy.⁶⁵ Congress did so because it believed the fins-naturally-attached rule was stronger and more effective than a mere ban.⁶⁶

The Act’s legislative history reflects this as well, indicating that Congress had a fins-naturally-attached policy in mind as a key part of the Moratorium Protection Act’s comparability requirement. Congress added the Moratorium Protection Act provisions on shark fishing in the same legislation as the fins-naturally-attached requirement for domestic fisheries.⁶⁷ The Senate report for the Shark Conservation Act of 2010 states this intent clearly:

The bill would . . . strengthen Federal fisheries enforcement capabilities related to shark finning in two important ways. First, it would require that sharks caught in Federal waters or under a Federal fishing permit must be taken and landed with all fins at least partially attached to their corresponding carcasses. Second, it would amend the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826(d)-(k), to provide the United States

⁶² IATTC, *Resolution on the Conservation of Sharks Caught in Association with Fisheries in The IATTC Convention Area Submitted by the European Union 1*, Proposal IATTC-90-C-1 (July 2016), https://www.iatct.org/GetAttachment/5c382ee8-07c4-4e66-8610-1f9e4c4f6c1b/IATTC-90-PROP-C-1_EUR-Conservation-of-sharks.pdf.

⁶³ *Id.*

⁶⁴ ICCAT, *Draft Recommendation by ICCAT Concerning the Conservation of Sharks Caught in Association with Fisheries Managed by ICCAT*, PA4_805_SPONS_4/2022 (Nov. 19, 2022), https://www.iccat.int/com2022/ENG/PA4_805_ENG_SPONS_4.pdf (proposal submitted by Belize, Brazil, the European Union, Norway, South Africa, the United Kingdom, the United States, Gabon, Nicaragua, Canada, and Senegal).

⁶⁵ S. Rep. No. 111-124, at 8 (2010).

⁶⁶ *Id.*

⁶⁷ See Conservation of Sharks, *supra* note 27, at § 102(c).

with the ability to take action against countries that catch sharks if those countries lack comparable shark conservation laws.⁶⁸

Thus, there is strong support for the notion that the Act was specifically designed, at least in part, to promote the fins-naturally-attached standard on the international level.

The information provided above makes it clear that a fins-naturally-attached standard was always meant to be an integral part of the comparability determination under the Act, even though the express language of the Act may have created ambiguity. However, this ambiguity has been removed: in the recently passed NDAA, Congress amended the shark provision to explicitly include the fins-naturally-attached standard within the comparability determination. NMFS is now obligated to incorporate the fins-naturally-attached standard when determining whether a nation has a shark regulatory program that is comparable to that of the United States.⁶⁹ NMFS should therefore immediately implement this language in the 2023 comparability determinations.

Of the top longlining nations fishing on the high seas within the relevant timeframe, the following either do not have a fins-naturally-attached requirement or it is unclear whether they have this requirement: China, Indonesia,⁷⁰ South Korea,⁷¹ Japan,⁷² Sri Lanka, Vanuatu, and The Seychelles.⁷³

NMFS should investigate whether these nations do in fact lack a fins-naturally-attached requirement, and if so, these nations must be identified under the Act for not having shark regulatory programs comparable to the United States.

B. As part of the Scientific Data Collection and Monitoring of Fisheries, Sufficient Observer Coverage Is a Key Component of the U.S. Shark Regulatory Program

Another key characteristic of the U.S. shark regulatory program is the requirement that management be based on sound science. Science-based fisheries management is entirely dependent on good quality data, and observers are crucial for collecting that data. Without quality data, it is difficult for fisheries managers to determine whether a fish population is

⁶⁸ S. Rep. No. 111-124, at 4 (summary of provisions).

⁶⁹ NDAA, Sec. 11338(a)(1)(B)(ii) (stating that a comparable shark regulatory program includes “measures to prohibit removal of any of the fins of a shark, including the tail, before landing the shark in port”).

⁷⁰ Didi Sadili et al., *National Plan of Action, Conservation and Management of Sharks and Rays 2016–2020* at 18, MMAF, Indonesia, <https://www.fao.org/3/bt661e/bt661e.pdf>.

⁷¹ *National Plan of Action for the Conservation and Management of Sharks* 17, MIFAFF, Republic of Korea (Aug. 2011), <https://www.fao.org/3/CA3027EN/ca3027en.pdf>.

⁷² See *Japan’s National Plan of Action for Conservation and Management of Sharks* 2-3, Fisheries Agency, Japan (revised Mar. 2016), <https://www.fao.org/3/bt662e/bt662e.pdf>.

⁷³ See e.g., *National Plan of Action for the Conservation and Management of Sharks 2016–2020* at 8, 11, SFA, Seychelles (2016), <http://extwprlegs1.fao.org/docs/pdf/sey208817.pdf>; see also <http://extwprlegs1.fao.org/docs/pdf/sey63927.pdf>.

overfished or experienced overfishing and thus when protective measures are necessary. As NMFS acknowledges, observer data supports all parts of fisheries management, and “is used for a wide range of assessment and monitoring purposes.”⁷⁴

This is especially true for sharks. As NMFS itself explains: “Observers are the only independent data collection source for some types of at-sea information, such as bycatch, catch composition, protected species interactions, and gear configuration.”⁷⁵ Sharks, both as bycatch and often as protected species, are exactly the type of fishery resources for which observer-collected data is so crucial. Moreover, data deficiency, caused in large part due to lack of sufficient observer coverage, stymies shark management at the RFMO level. As one study states:

Data deficiency is a paramount issue for fisheries management, as stock assessment methods rely largely on catch and effort time series data (Barker and Schleussel, 2005). To date, only a handful of stock assessments have been conducted for pelagic sharks (ICCAT, 2009; Rice and Harley, 2012, 2013). Additionally, the results of these assessments are usually interpreted with considerable caution due to the data deficiencies and the resulting high level of uncertainty of the assessments (Cortés et al., 2010). Until every vessel exploiting the high seas has some form of independent observer or observation system onboard, the reliability of such data will remain questionable.⁷⁶

Many other nations as well as the tuna RFMOs only require observer coverage at very minimal levels, particularly when compared with U.S. standards. For example, to the extent observers are required on longline vessels—a gear type that is well-known to result in high levels of shark bycatch⁷⁷—the tuna RFMOs only require minimal levels, such as 5% coverage.⁷⁸ The scientific committees of the RFMOs themselves admit that this minimal observer coverage is insufficient

⁷⁴ *National Observer Program FY 2019 Annual Report 3*, Tech. Memo. NMFS-F/SPO-215, NMFS (July 2021), <https://spo.nmfs.noaa.gov/sites/default/files/TMSPO215.pdf>.

⁷⁵ *Fishery Observers*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/fishery-observers> (last visited 12/20/2022).

⁷⁶ Mariana Travassos Tolotti et al., *Banning is not enough: The complexities of oceanic shark management by tuna regional fisheries management organizations*, 4 GLOBAL ECOL. & CONSERV. 1, 5 (July 2015), <https://www.sciencedirect.com/science/article/pii/S2351989415000517>.

⁷⁷ See, e.g., A. J. Gallagher et al., *Vulnerability of oceanic sharks as pelagic longline bycatch*, 1 GLOBAL ECOL. & CONSERV. 50 (2014), <https://doi.org/10.1016/j.gecco.2014.06.003>; John W. Mandelman et al., *Shark bycatch and depredation in the U.S. Atlantic pelagic longline fishery*, 18 REVS. IN FISH BIOL. & FISHERIES 427 (2008), <https://doi.org/10.1007/s11160-008-9084-z>; Eric Gilman et al., *Shark Depredation and Unwanted Bycatch in Pelagic Longline Fisheries: Industry Practices and Attitudes, and Shark Avoidance Strategies*, Western Pacific Regional Fishery Management Council (2007), https://www.wpcouncil.org/pelagic/Documents/Shark-Longline_Interactions_Report.pdf.

⁷⁸ See ICCAT, *Recommendation by ICCAT to Establish Minimum Standards for Fishing Vessel Scientific Observer Programs*, Rec. 16-14 (2016), <https://www.iccat.int/Documents/Recs/compendiopdf-e/2016-14-e.pdf>; *Conservation and Management Measure for the Regional Observer Programme*, CMM 2007-01, WCPFC (2007), <https://www.wcpfc.int/doc/cmm-2007-01/conservation-and-management-measure-regional-observer-programme>; IATTC, *Resolution on Scientific Observers for Longline Vessels*, Res. C-19-08 (2019), https://www.iattc.org/GetAttachment/614c5692-74c5-40a7-a8b0-148ec0e52206/C-19-08-Active_Observers-on-longliners.pdf.

for effective shark management,⁷⁹ and recommend a minimum coverage of 20% for large-scale longline fleets.⁸⁰ In contrast to the low observer coverage required by RFMOs, the United States requires and achieves higher coverage. In the Pacific, U.S. longline fleets achieve 15–30% observer coverage. In the Atlantic, pelagic U.S. longline vessels achieve ~13% observer coverage and have 100% electronic monitoring to supplement the human observers.⁸¹

Efforts to expand observer coverage in some RFMOs have been thwarted by member nations,⁸² and data collected with such low coverage is almost certain to be an underestimate.⁸³ When observer data is so minimal, fishery managers are forced to rely on other sources for data, like logbooks. But as NMFS researchers state, “[l]ogbook data consist of industry reported data, which historically underreport bycatch that are discarded, such as sharks.”⁸⁴ Not only do observers provide independent, more accurate data, their mere presence actually improves the quality of logbook data as well,⁸⁵ likely because fishermen are less likely to minimize reported catch with an observer on board.

As NMFS acknowledges, observers are essential to monitor and enforce any fisheries management system, but this is especially true for shark management, as sharks are often discarded at sea and observer data is the only accurate means to know how many of them are caught. An adequate shark regulatory program thus relies on sufficient observer coverage. To have a comparable shark regulatory program to the United States, therefore, a nation must have at least as much independent observer coverage as the United States on its longline vessels.

⁷⁹ See, e.g., IATTC, *Reducing Shark Bycatch In Tuna Fisheries: Adaptive Spatio-Temporal Management Options for the Eastern Pacific Ocean* 9, Doc. BYC-11-04 (May 2022), <https://www.iattc.org/GetAttachment/cf83cb12-adee-4927-bf35-643e73e37148/BYC-11-04> (stating “Unlike the purse-seine fishery, the longline and artisanal fisheries have notably low or non-existent observer coverage . . . which not only are insufficient in representing the overall activities of these fisheries, but also result in only partial geographic and historical coverage of the fisheries’ footprints **Among the challenges identified by the IATTC for the sustainable management of sharks (Siu and Airesda-Silva, 2016), the lack of reliable species-specific shark catch data from longline fisheries was identified as one of the primary roadblocks preventing the creation of adequate stock assessments and/or stock status indicators.**” (emphasis added)).

⁸⁰ *Staff Recommendations (SAC-13-14)* 13, IATTC (2022), <https://www.iattc.org/GetAttachment/577d0f56-6e9a-45d4-ad15-d821b44d80a3/SAC-13-14%20Staff%20recommendations%20to%20the%20Comm>.

⁸¹ 50 C.F.R. § 635.9(a).

⁸² See, e.g., IATTC, *Report of the 10th Meeting of the Scientific Advisory Committee* 19, 23 (May 2019), https://www.iattc.org/Meetings/Meetings2019/SAC-10/Docs/_English/SAC-10-RPT_10th-Meeting-of-the-Scientific-Advisory-Committee.pdf.

⁸³ See, e.g., ICCAT, *Staff Recommendations for Management and Data Collection, 2019* at 9, Doc. IATTC-94-03 (July 2019), https://www.iattc.org/Meetings/Meetings2019/IATTC-94/Docs/_English/IATTC-94-03_Conservation%20recommendations%20by%20the%20Commission%20staff.pdf.

⁸⁴ Mathew J. Carnes et al., *Evaluation of Electronic Monitoring in the Hawai’i-Based Longline Fisheries*, Tech. Mem. NMFS-PIFSC-90, NOAA (Nov. 22, 2019), <https://em4.fish/our-library/evaluation-of-electronic-monitoring-pre-implementation-in-the-hawai%CA%BBi-based-longline-fisheries/>.

⁸⁵ *Draft Report of the Western and Central Pacific Ocean Purse Seine Bigeye Management Workshop* 40, WPRFMC (2015), <http://www.wpcouncil.org/wp-content/uploads/2015/04/WCPO-Purse-Seine-Bigeye-Management-Workshop-report-draft-6-2-2015.pdf>.

The chart below shows the top longlining nations' observer coverage levels in 2020 in the Pacific oceans, within the jurisdictions of the WCPFC⁸⁶ and the IATTC.⁸⁷ The United States achieves far more observer coverage on its longline fleet than any other nation.

Nation	WCPFC	IATTC
United States	25.3%	16.31%
China	3.5%	4.86%
Taiwan	7.8%	10.00%
South Korea	4.7%	2.87%
Japan	2.2%	5.97%
Vanuatu	0.0%	0.00%
Spain (EU)	0.0%	3.80%
Portugal (EU)	0.0%	3.80%
Indonesia	NA	NA
Sri Lanka	NA	NA
Seychelles	NA	NA

While observer coverage levels are not publicly accessible from ICCAT, the United States requires 100% electronic monitoring on pelagic longline vessels in the Atlantic,⁸⁸ which is supplemented with human observer coverage as well (14.9% in 2021).⁸⁹ Thus, all U.S. longline vessels fishing on the high seas have significant observer coverage.

Based on these numbers, a nation must have at least 15% human observer coverage on longline vessels fishing on the high seas, or 100% electronic monitoring supplemented by ~14% human observer coverage to be comparable to the United States. Lower levels of observer coverage such as the 5% required under some RFMO measures—and the even lower levels that nations actually achieve—are simply not capable of accurately capturing how many sharks are being caught and discarded at sea.

It is already clear from the Pacific data alone that China, Taiwan, South Korea, Japan, Vanuatu, Spain, and Portugal do not achieve similar levels of observer coverage in the Pacific. They should therefore be listed under the Act for failing to have a comparable regulatory program to the United States. NMFS should investigate whether the top longlining nations that fish in the Atlantic (China, Taiwan, South Korea, Japan, Vanuatu, Spain, and Portugal) achieve observer coverage similar to U.S. longline fleets. It is likely that they do not. A 2022 Report from Greenpeace stated that while the EU Data Collection Framework requires fishery-independent

⁸⁶ *Status of observer data management Rev.01*, WCPFC (July 29, 2022), <https://meetings.wcpfc.int/node/16234>.

⁸⁷ Shane Griffiths et al., *Update on operational longline observer data required under resolution C-19-08*, Doc. BYC-10 INF-D, IATTC (May 5, 2021), https://www.iattc.org/GetAttachment/98eb9b08-5704-4a2f-bdbe-0152750d4a47/BYC-10-PRES_INF-D-Update-on-operational-LL-observer-data.pdf.

⁸⁸ 50 C.F.R. § 635.9(a).

⁸⁹ *Annual Reports of CPCs 890*, Doc. COC_301/2022, ICCAT, https://www.iccat.int/com2022/TRI/COC_301_TRI.pdf.

data from European longline fleets, “data collection by fisheries observers only takes place on about 1% of fishing days in the North Atlantic.”⁹⁰

The IOTC also does not make observer coverage data available for individual nations. However, the IOTC has noted that “[t]he majority of CPCs with vessels over 24m LOA or with vessels <24m LOA fishing outside their EEZ also continue to report coverage below the minimum level of 5%,”⁹¹ suggesting that most the nations are failing even to abide by international management measures, never mind achieving coverage levels comparable to the United States. NMFS should therefore request information from all the top longlining nations with vessels fishing in the Indian Ocean (China, Taiwan, Japan, South Korea, Spain, Portugal, Vanuatu, Indonesia, Sri Lanka, and Seychelles) to determine how much observer coverage those nations achieve on their high seas longline fleets. If these nations do not achieve at least 15% human observer coverage or 100% electronic coverage with human observer supplementation, they should be listed under the Act.

C. Reliable Enforcement

The success of laws and regulations to protect sharks relies on the infrastructure and ability to enforce those regulations. Thus, the ability to reliably enforce fisheries management is a central component of any fisheries regulatory program. NMFS must therefore look to nations’ fisheries enforcement to determine whether the nation has a comparable shark regulatory program to the United States.

If the nation fails to resolve its enforcement cases, or fails to provide meaningful sanctions to vessels violating its requirements, the regulatory program cannot be deemed “comparable” to that of the United States. In making its comparability determinations, NMFS should review each nation’s record of resolving investigations and issuing sanctions, in considering whether the nation’s regulatory program is “comparable” to that of the United States.

For example, the WCPFC has a filing system for alleged infringements based on observer and other reports. WCPFC parties are supposed to investigate the alleged infringements and impose penalties based on the outcome of that investigation. But many of those alleged infringements go unaddressed, with WCPFC parties failing to investigate the infringement for years. The WCPFC’s Final Compliance and Monitoring Report for 2021 lists outstanding cases (unresolved for two or more years) for each WCPFC party. The United States only has one outstanding case, and that case was closed back in 2020 but was not captured in the filing system due to a data processing error.⁹² In contrast, China has 45 outstanding cases, 12 of them shark related.⁹³ Japan

⁹⁰ *Hooked on Sharks: The EU fishing fleets fueling the global shark trade* 27, GREENPEACE (2022) <https://www.greenpeace.org.uk/wp-content/uploads/2022/07/PTO-Shark-Trade-Report-Final-Web.pdf>.

⁹¹ *Summary of Report on the Level of Compliance* 9, IOTC-2020-CoC17-03_Rev3 [E], IOTC (July 31, 2020), https://iotc.org/sites/default/files/documents/2021/03/IOTC-2020-CoC17-03_Rev3_E-Summary_Report.pdf.

⁹² *2021 Final Compliance Monitoring Report (Covering 2020 Activities)* 40, WCPFC (2021), <https://www.wcpfc.int/file/758490/download?token=ZqA2dTiv>.

⁹³ *Id.*

has 48 outstanding cases, 7 of them shark related.⁹⁴ South Korea has 140 outstanding cases, 117 of them shark related.⁹⁵ Taiwan has 55 outstanding cases, 18 of them shark related.⁹⁶ Although this is not the whole picture—the number of investigations that result in penalties is also a key question—it gives a clue as to how robust enforcement practices are between nations and shows that these nations are failing to adequately investigate, much less enforce, fisheries violations.

Other sources also demonstrate that some of the top longlining nations are failing to enforce fisheries and human rights laws. For example, a 2022 report by EJP analyzed 2019 and 2020 data published by the Chinese Ministry of Agriculture and Rural Affairs, including information detailing China’s various offshore fishery projects, such as vessels approved by the agency to operate outside of Chinese waters, as well as information retrieved from the Criminal Record of Fishing Vessels. Environmental Justice Foundation (“EJF”) stated that review of this data “further build[s] on EJP’s field-based investigations, which have identified a wide range of IUU fishing offences, such as shark finning and fishing in restricted areas, as well as human rights abuses such as physical violence, debt bondage and confiscation of passports.”⁹⁷ EJF stated that “human rights abuses seem to be common amongst” the Chinese distant water fleet.⁹⁸ The report elucidated:

Interviews conducted by EJP with 116 Indonesian crewmembers who have worked on vessels belonging to the CDWF [China distant water fleet] indicate that 99% have experienced or witnessed wages being deducted or withheld, 97% have experienced some form of debt bondage/confiscation of guarantee money and documents, 89% have worked excessive overtime, 85% reported abusive working and living conditions, 70% experienced intimidation and threats, and 58% have seen or experienced physical violence.⁹⁹

These high numbers of human rights violations suggest that human rights laws are not being enforced. Likewise, EJF stated that the Chinese distant water fleet is “frequently associated with illegal fishing. According to the data analysed, fishing without a licence or authorisation is the most common recorded illegal fishing incident, constituting 42% of the total. Using prohibited gear and the capture of prohibited species are the next highest ranking offences, at 11.5% and 10.3%.”¹⁰⁰ Once again high levels of violations suggest that penalties are not enforced or are so weak that they fail to deter violators. Either way, China, as one example, is failing to reliably enforce fisheries violations and therefore does not have a comparable shark regulatory program to the United States.

⁹⁴ *Id.* at 41.

⁹⁵ *Id.*

⁹⁶ *Id.* at 43.

⁹⁷ *The Ever-Widening Net: Mapping the scale, nature and corporate structures of illegal, unreported, and unregulated fishing by the Chinese distant-water fleet* 4, 35, Environmental Justice Foundation (2022), <https://ejfoundation.org/resources/downloads/The-Ever-Widening-Net-2022-final.pdf>.

⁹⁸ *Id.* at 5.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Finally, the low level of observer coverage, described in Section V(B) above, is another indication that many of the top longlining nations are both failing to enforce and unable to enforce fisheries laws and regulations. First, as already discussed, many of these nations are failing to implement international law requiring parties to achieve a minimum of 5% observer coverage, which is a failure to enforce a fishery law in and of itself. Second, without adequate observer coverage, these nations cannot monitor whether their fishing vessels are abiding by the law and therefore cannot enforce the law when it is broken.

The evidence presented above indicates that many of the top longlining nations (China, Taiwan, South Korea, Japan) are failing to investigate, and therefore enforce, fisheries infractions and should therefore be listed under the Act. In addition, China seems to have widespread violations of fisheries and human rights laws with little or no enforcement and should therefore be listed. Finally, China, South Korea, Vanuatu, Spain, and Portugal are failing to meet minimal levels of observer coverage and are thus unable to detect, much less enforce, fisheries violations when they occur. They should therefore be listed under the Act.

VI. Conclusion

The impetus for increased shark conservation is acute. The shark catch prong of the Moratorium Protection Act is a tool that the United States has in its belt to support the improvement of shark conservation globally. It is time to use that tool.

Sincerely,



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