

Improving the Conservation and Protection of Sharks Through the Power and Development of International Treaties and Non-Binding Instruments

For the purposes of this paper:

- *The term “shark” includes all species of sharks, rays, and chimaeras.*
- *The terms “country” and “State” are interchangeable. Capitalized State has the equal meaning of the term “country.” In other cases, “state” would mean one of 50 states of the United States of America.*
- *The term “fishing” includes any type of fishing, such as direct, bycatch, commercial, recreational, etc.*
- *The terms “international waters” and “high seas” are interchangeable.*
- *The terms “convention” and “treaty” are interchangeable.*

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Abstract

Having arisen approximately 400 million years ago, sharks are one of the oldest species inhabiting the marine environment, and for that period of time, they have faced both mass extinction and population growth. Sharks are an integral part of ocean life and play a significant role in the marine ecosystem, and lots of species are at risk of extinction.¹ However, given that sharks possess ecological and intrinsic value to the marine environment, they still receive less consideration and protection under the law. Threats towards them are being increased nowadays, especially due to anthropogenic activities.² Perhaps, among marine species sharks receive the least attention and care from humans compared to marine mammals, the reason for which might be only several people encountering them,³ even though sharks inhabit all four oceans. Sharks have been among those animals having been considered to have so-called “negative charisma,” and they have been considered those animals whom people should be afraid of.⁴ Humans’ attitudes towards sharks are important because when there is no public concern about certain species of animals, as in this case, “it is more difficult to create the necessary momentum to induce government action.”⁵ Economic interests outweigh the good environmental governance and the entire marine ecosystem. Apart from those factors, such as

¹ ERIKA J. TECHERA & NATALIE KLEIN, INTERNATIONAL LAW OF SHARKS: OBSTACLES, OPTIONS AND OPPORTUNITIES 2 (2017).

² Iain C. Field, Mark G. Meekan, Rik C. Buckworth & Corey J.A. Bradshaw, *Susceptibility of Sharks, Rays and Chimaeras to Global Extinction*, in 56 ADVANCES IN MARINE BIOLOGY 275 (David W. Sims ed., 2009).

³ ERIKA J. TECHERA & NATALIE KLEIN, SHARKS: CONSERVATION, GOVERNANCE AND MANAGEMENT 89 (2014).

⁴ John Dobson, *Shark! A New Frontier in Tourist Demand for Marine Wildlife*, in MARINE WILDLIFE AND TOURISM MANAGEMENT: INSIGHTS FROM THE NATURAL AND SOCIAL SCIENCES 51 (James Higham & Michael Luck eds., 2008).

⁵ Romney Philpott, *Why Sharks May Have Nothing to Fear More than Feat Itself: An Analysis of the Effect of Human Attitudes on the Conservation of the Great White Shark*, 13 COLORADO JOURNAL OF INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 445, 469 (2002).

habitat degradation and climate change, sharks receive threats mostly from humans, and the main problems of the conservation and management of sharks are fishing, food consumption, fin trade, and other activities, which bring profit to lots of communities. This paper will discuss how anthropogenic factors affect the population of sharks, as well as a brief example of how different countries treat sharks within their jurisdictions. It will analyze the international legal framework for sharks and present the discussion on the level of protection of these species. Ultimately, the paper will propose solutions to improve the protection of sharks through the sources of international law and legally non-binding instruments.

Introduction

Being the indicator of the level of ocean health and maintaining the species below them in the food chain, sharks are important to the entire marine environment and ecosystem. A great example of why sharks are important to the ocean is the case when the decline in the population of sharks in Northern Australia affected other marine species, such as the octopus and ray. The declining population of sharks led to the increase in the population of cephalopods and rays and thus them eating more shellfish, and as a result, the prawns disappeared.⁶ Moreover, the declining population of sharks lead to the loss of seagrass beds and coral reefs because sharks indirectly maintain these habitats through spatial control. Taking sharks out of the coral reef habitat can lead to the growth of the larger predatory marine species and feed on the herbivores, whereas less number of herbivores influences on the expansion of macroalgae and the inability for corals to compete because the ecosystem shifts to one of algae dominance, and it affects the reef habitats.⁷

Approximately 100 million sharks are killed annually for different purposes, and tens of millions of them are caught for food consumption, which is one of the most expensive seafood products in the world.⁸ In 2009, the IUCN in its Red List included 64 species of sharks as the

⁶ Sean Pascoe, Tomas A. Okey & Shane Griffiths, *Economic and Ecosystem Impacts of Illegal, Unregulated and Unreported (IUU) Fishing in Northern Australia*, 52 AUSTRALIAN JOURNAL OF AGRICULTURAL AND RESOURCE ECONOMICS 433, 434 (2008).

⁷ PREDATORS AS PREY: WHY HEALTHY OCEANS NEED SHARKS 1 (2008), https://oceana.org/sites/default/files/reports/Predators_as_Prey_FINAL_FINAL1.pdf.

⁸ *Id.*

ones being at risk of extinction due to such factors as fishing and shark finning.⁹ Currently, the IUCN Red List includes 43 critically endangered species, 62 endangered species, 112 vulnerable species, 115 near threatened species, 383 least concern species, and 421 data deficient species of sharks.¹⁰ For instance, species of great hammerhead are now listed as a critically endangered species, and there is neither an action recovery plan exists, nor does the systematic monitoring scheme, nor does the area based regional management plan, nor does the harvest management plan, etc.¹¹ But this species is included in international legislation and is subject to any international management and/or trade controls.¹² In 2019, professor Nicholas Dulvy, Sharks Specialist Group Co-Chair based at Simon Fraser University, said that species of shortfin mako shark is recognized as an endangered species according to the IUCN Red List, and the decline in the Atlantic Ocean estimates 60% for the last 75 years.¹² Species of longfin mako shark, for instance, are considered a migratory species because they swim long distances and their reproduction period does not usually start until their late teens, yet these species have high demand in many countries because of shark meat and shark fins.¹³

⁹ Merry D. Camhi, Sarah V. Valenti, Sonja V. Fordham, Sarah L. Fowler & Claudine Gibson, *The Conservation Status of Pelagic Sharks and Rays*, IUCN SPECIES SURVIVAL COMMISSION'S SHARK SPECIALIST GROUP 1, 34 (2007), http://www.sharkadvocatesinternational.org/ssg_pelagic_report_final.pdf.

¹⁰ SHARKS IN THE IUCN RED LIST, <https://www.iucnredlist.org/search?query=sharks&searchType=species> (last visited Mar. 30, 2020).

¹¹ *Id.*

¹² *Id.*

¹² IUCN Shark Specialist Group, *Shark Overfishing Reflected in Updated IUCN Red List*, PROJECT AWARE (Mar. 21, 2019, 09:25 AM), <https://www.projectaware.org/news/shark-overfishing-reflected-updated-iucn-red-list>.

¹³ *Id.*

Threats to sharks

Sharks are smart creatures, but the evaluation of an animal's intelligence might be vague because different species have different level of intelligence. Dr. Kara Yopak, an assistant professor at UNC Wilmington who is specialized in studying sharks' brains, said that sharks have a relatively bigger brain size compared to their bodies. Moreover, Dr. Yopak's research showed that sharks can exercise complex behavior, such as the capability of long-distance repeated migrations and complicated hunting behavior, as well as socializing and learning new behavior.¹⁴

Sharks, like many other species of aquatic animals, suffer from threats and abuse mostly from anthropogenic activities. Using small or medium size in food consumption is something that one is used to seeing, however, at this time, sharks are also being caught for the market and food. While sharks are at the top of the food chain in the marine environment, they do have predators too, and they are humans. Every year a large number of sharks are killed either for the fin trade or food, or both, which undoubtedly affects the marine environment. The disappearance of sharks in the ocean certainly modifies the population of other aquatic species. Some countries around the world have already banned shark finning but some of them still practice this conduct.

Shark finning

One of the most widespread anthropogenic activities related to sharks is shark finning where shark fins are removed, and sharks are then released back to the ocean. Having been

¹⁴ David Shiffman, *How Smart Are Sharks*, SPORT DIVER (Jul. 30, 2020), <https://www.sportdiver.com/how-smart-are-sharks>.

released back to the waters without fins, sharks remain alive, but they are not able to swim. As a result, they sink to the bottom of the ocean and are eaten by other aquatic animals or die from suffocation. The activity of shark finning arose approximately in the late 1990s because of the increased demand for shark fins for the purpose of using them in shark fin soups, which are popular mostly in Asian countries. The Shark Specialist Group of the International Union for Conservation of Nature (IUCN) proclaimed that shark finning is a widespread issue, and that “the rapidly expanding and largely unregulated shark fin trade represents one of the most serious threats to shark populations worldwide.”¹⁵ Shark fins are considered the most expensive seafood products, approximately costing \$400 per two pounds.¹⁶ The activity of shark finning causes huge harm to the entire marine ecosystem, and about 73-100 million sharks are killed annually.¹⁷ Moreover, some critically endangered species of sharks, such as the scalloped hammerhead shark, are subjected to be threatened to become extinct due to shark finning.¹⁸

As was mentioned above, shark finning may have a great impact on the overall population of sharks. By their nature, sharks tend to grow slowly and have low reproductive rates.¹⁹ These factors make sharks more vulnerable to overfishing activities, such as shark finning. Some organizations affirm that one of the main reasons for the decline of some shark

¹⁵ THE END OF THE LINE? GLOBAL THREATS TO SHARKS 21 (2007), https://oceana.org/sites/default/files/reports/EndoftheLine_Spread_sm1.pdf.

¹⁶ *Id.*

¹⁷ Ker Than, *Shark Slaughter: 73 Million Killed Each Year*, LIVE SCIENCE (Sep. 26, 2006), <https://www.livescience.com/1027-shark-slaughter-73-million-killed-year.html>.

¹⁸ Caty Fairclough, *Shark Finning: Sharks Turned Prey*, SMITHSONIAN OCEAN (Aug., 2013), <https://ocean.si.edu/ocean-life/sharks-rays/shark-finning-sharks-turned-prey>.

¹⁹ Lynette Biery & Daniel Pauly, *A global review of species-specific-shark-fin-to-body-mass ratios and relevant legislation*, 80 JOURNAL OF FISH BIOLOGY 1643, 1650 (2012).

species' population is shark finning or bycatch,²⁰ while others think that the demand for shark fin soup in the market plays a bigger role in the population of sharks.²¹

Shark fin soup

Another threat that sharks face is the traditional shark fin soup made of shark fins and broth, mostly popular in Asian countries. While people may have heard that fish species are commonly used in the food market and consumption, for one it may be surprising that even sharks are being consumed by humans. It is commonly unlike consuming sharks' meat and fin, yet it is considered a delicacy and luxury meal, especially in China, although this meal is mostly used on special events, such as weddings, banquets, etc.²² However, in China, although from the very beginning when consuming shark fin soup appeared in the 14th century during the Ming dynasty, this was a very rare delicacy, in several centuries, it began to be consumed by more people and communities.²³ Because of the increased activity of commercial fishing and international trade, shark fin soup is becoming more available nowadays.

The process of preparation starts with removing the skin and denticles and then trimmed into pieces or shapes.²⁴ The fins themselves have no taste, and the taste of the soup is entirely based on the broth. Shark fins are also used in traditional Chinese medicine, and they

²⁰ WILDAID, <https://web.archive.org/web/20060521181303/http://www.wildaid.org/index.asp?CID=3&PID=352&SUBID=&TERID=490> (last visited Apr. 28, 2020).

²¹ Laura Marquez, *Rising Demand For Fins Contributes To Decline In Shark Population, Critics Charge*, ICHTHYOLOGY (Oct. 30, 2006), <https://web.archive.org/web/20071102230904/http://www.flmnh.ufl.edu/fish/sharks/InNews/critics2006.html>.

²² Michael Rogers, *The Shameful History of Shark Fin Soup*, SHARK SIDER (Apr. 29, 2016), <https://www.sharksider.com/shameful-history-shark-fin-soup/>.

²³ *Id.*

²⁴ SHARK UTILIZATION, MARKETING AND TRADE, <http://www.fao.org/3/x3690e/x3690e1g.htm> (last visited Apr. 20, 2020).

are considered to help enhance appetite, nourish the blood, and that they are good for the kidney, lungs, bones, and other body organs.²⁵ Rather, consuming shark meat can cause the risk of getting dementia and mercury poisoning.²⁶ Furthermore, WildAid, an environmental organization focusing its work on reducing the demand for wildlife products, warned that the excessive consumption of shark fins can cause sterility because shark meat contains high levels of mercury and methylmercury salts,²⁷ and the United States Food and Drug Administration also proclaimed that it is detrimental for pregnant women, nursing mothers, and young children to consume fish high in mercury.²⁸

Some species of sharks are also susceptible to the practice of bycatch. Fishermen sometimes set nets in a place near whale sharks due to the prone of tuna floating nearby. At the beginning of 2019, the Western and Central Pacific Fisheries Commission, a regional fisheries management organization, proposed a Draft Conservation and Management Measures for Sharks, which suggests a requirement for full utilization of sharks, a requirement for fins not being more than 5% of the weight of a shark on board, and a requirement for member countries to have their vessels landed with sharks fins attached.²⁹ This Draft was based on the

²⁵ *Supra* note 22.

²⁶ Al Hinman, *Beware of shark meat, FDA warns*, CNN (Apr. 26, 1996), <http://edition.cnn.com/HEALTH/indepth.food/meat/seafood/shark.mercury/index.html>;
Liang Qiwen, *Watch out for shark fin soup*, CHINADAILY (May 21, 2005, 06:55 AM), http://www.chinadaily.com.cn/english/doc/2005-05/21/content_444520.htm.

²⁷ *Id.*

²⁸ FISH AND SHELLFISH ADVISORIES AND SAFE EATING GUIDELINES, <https://www.epa.gov/choose-fish-and-shellfishwisely/fish-and-shellfish-advisories-and-safe-eating-guidelines> (last visited Apr. 19, 2020).

²⁹ Chris Loew, *CITES lists 18 more shark and ray species*, SEAFOODSOURCE (Sep. 6, 2019), <https://www.seafoodsource.com/news/environment-sustainability/cites-listing-for-18-more-shark-and-rayspecies#:~:text=The%20inclusion%20of%20these%2018,protect%20endangered%20plants%20and%20animals>.

FAO International Plan of Action for the Conservation and Management of Sharks (IPOA), which would be discussed in details later in this paper.

Legal framework

The level of protection of sharks in different jurisdictions

Different countries around the world established marine protected areas, sometimes over the entire exclusive economic zones (EEZ), such as the Marshall Islands and Honduras.³⁰ Palau³¹ and Madagascar created shark sanctuaries, otherwise known as shark parks.³² To address the issues of the global protection, conservation and management of sharks, it is crucial to pay attention to how different countries treat sharks within their jurisdictions, especially if there is an urgent need to implement the global legally binding instrument. This section will briefly mention countries that have already enacted certain bans on the activities related to sharks but will also discuss the particular jurisdictions in detail.

In Australia, live shark finning, the conduct when the fins are cut from live sharks and released to the ocean, is illegal.³³ Australian Fisheries Management Authority (AFMA) has conducted an analysis of shark catch landings and export, as well as investigated cases of improper conduct of shark finning and assessed the market demand data and potential black

³⁰ Jeremy Hance, *Marshall Islands creates world's biggest shark park*, MONGABAY (Oct. 3, 2011), <http://news.mongabay.com/2011/10/marshall-islands-creates-worlds-biggest-shark-park/>.

³¹ Chris Mooney & Juliet Eilperin, *Palau: Tiny Pacific island declares world's sixth largest marine reserve*, THE INDEPENDENT (Oct. 26, 2015), <http://www.independent.co.uk/environment/palau-tiny-pacific-island-declares-worlds-sixth-largest-marine-reserve-a6709071.html>.

³² *Madagascar creates shark park*, SCIENCE DAILY (Feb. 4, 2015), <https://www.sciencedaily.com/releases/2015/02/150204125556.htm>.

³³ SHARKS, <https://www.marineconservation.org.au/save-our-sharks/> (last visited Mar. 31, 2020).

market practice. It is prohibited to have shark fins on board without an animal, and the evidence obtained by AFMA suggested that illegal shark finning at-sea has a low risk.

Shark finning practice has been prohibited in Canada since 1994. In 2019, the country passed the bill banning the import and export of shark fins.³⁴ Canada, at the same time, is a non-party to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), which is one of the most important sources of international law related to sharks and their conservation and management. While Canada has enacted the ban on shark finning and the trade of shark fins, it is still allowed to do shark fishing. Shark fishing allows recreational shark fishery activity through obtaining a license to operate it, after which fishermen participate in the tournament. For instance, on the last tournament 77 sharks have been caught just in Canada.³⁵

In New Zealand, over 113 species of sharks are found in territorial waters. Since October 2014, it is prohibited to remove fins from the shark and release the shark back to the waters.³⁶ With regard to certain species of sharks, they must be landed with fins naturally or artificially attached. For instance, fins of blue sharks can be removed given that they are landed attached to the shark to minimize waste.³⁷ Some species of sharks can be returned to the waters, if fishers accidentally caught a shark they are not interested in and have no market value.³⁸ New

³⁴ John Paul Tasker, *After years of legal wrangling, Ottawa moves to ban imports of shark fins*, CBC (Jun. 5, 2019, 04:00 AM), <https://www.cbc.ca/news/politics/tasker-shark-fin-ban-1.5161870>.

³⁵ *Recreational shark fishery and tournaments*, FISHERIES AND OCEANS CANADA, <https://www.dfo-mpo.gc.ca/speciesespecies/sharks/info/tournament-tournois-eng.html>.

³⁶ CONSERVATION AND MANAGEMENT OF NEW ZEALAND SHARKS 1 (2014), https://www.inshore.co.nz/fileadmin/Documents/Sharks/Shark_finning-FS1-0814-web.pdf.

³⁷ LANDING SHARKS WITH FINS ATTACHED 1 (2020), <https://www.mpi.govt.nz/dmsdocument/3643-landing-sharkswith-fins-attached>.

³⁸ Fisheries Act (1996), sch 6 (N.Z.).

Zealand has regulations in relation to certain species of sharks, such as rig and school sharks – they may be released to the sea alive, if they are likely to survive, as soon as practicable.³⁹

Mako shark, porbeagle shark, spiny dogfish, and blue shark can be returned to the sea alive – if they are likely to survive – or dead, if they are unlikely to survive, with appropriate reports.⁴⁰

New Zealand is an island country and the authority responsible for fisheries in New Zealand monitors the health of its fisheries through the long-term scientific assessments and relies on the information that will assist in ensuring in the enough number of species in New Zealand’s waters. More than 1000 commercial vessels are inspected and investigated annually by the Fisheries New Zealand that leads to hundreds of prosecutions.⁴¹ Because the country takes the health of its waters seriously, certain authorities monitor both the health of the waters and the population of aquatic species to prevent the poor state of some species.

In the United States, on the federal level, sharks are protected by the Shark Finning Prohibition Act,⁴² which entered into force in 2000. This Act was passed to amend the Magnuson-Stevens Fishery Conservation and Management Act with the purpose of eliminating the wasteful and unsportsmanlike practice of shark finning.⁴³ The Act prohibits finning on any fishing vessel within the territorial waters of the United States and on all U.S.-flagged fishing vessels in international waters. Later on, in 2011, the Shark Conservation Act⁴⁴ was signed⁴⁵ by

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *The health of New Zealand’s fisheries*, FISHERIES NEW ZEALAND, <https://www.fisheries.govt.nz/protection-andresponse/sustainable-fisheries/the-health-of-new-zealands-fisheries/>.

⁴² 16 U.S.C. § 1857 (2000).

⁴³ *Id.*, Preamble.

⁴⁴ 16 U.S.C. §§ 1826i, 1826k, 1857, 4107a (2011).

⁴⁵ Andrew Restuccia, *Obama signs two energy/environment bills into law*, THE HILL (Jan. 5, 2011, 02:17 PM), <https://thehill.com/policy/energy-environment/136039-obama-signs-two-energyenvironment-bills-into-law>.

President Barack Obama to fill in the gaps of the existing legislation. The Act bans any vessel to carry shark fins without the number and weight of carcasses, as well as the provisions imposing obligations that all sharks must be brought with their fins attached.⁴⁶ However, although the federal legislation prohibits shark finning in the territorial waters of the United States, there is no federal law banning the sale or purchase of shark fins, but the bill banning the sale of shark fins was proposed at the end of 2019.⁴⁷

As for the state level, several states have passed their laws prohibiting the possession of shark fins. Hawaii was the first state that banned the possession, sale, and distribution of shark fins in 2011.⁴⁸ Similar laws have been passed in Washington,⁴⁹ Oregon,⁵⁰ California,⁵¹ the territory of Guam,⁵² and the Commonwealth of the Northern Mariana Islands.⁵³ In 2013,

⁴⁶ Krista Mahr, *A Happier Year in Store for America's Sharks?*, TIME (Dec. 21, 2010), <https://science.time.com/2010/12/21/a-happier-year-in-store-for-america%E2%80%99s-sharks/>.

⁴⁷ Steve Bittenbender, *US House passes bill banning sale of shark fins*, SEAFOODSOURCE (Nov. 26, 2019), <https://www.seafoodsource.com/news/environment-sustainability/us-house-passes-bill-banning-sale-of-sharkfins>.

⁴⁸ The Associated Press, *Hawaii: Shark Fin Soup Is Off the Menu*, THE NEW YORK TIMES (May 28, 2010), https://www.nytimes.com/2010/05/29/us/29brfs-SHARKFINSOUP_BRF.html.

⁴⁹ Emily Fisher, *Washington State Passes Shark Fin Trade Ban*, OCEANA (Apr. 6, 2011, 3:29 PM), <https://usa.oceana.org/blog/washington-state-passes-shark-fin-trade-ban>.

⁵⁰ David Kracke, *Oregon ban helps protect sharks from extinction*, OREGONLIVE (Jan. 4, 2012), https://www.oregonlive.com/opinion/2012/01/oregon_ban_helps_protect_shark.html.

⁵¹ *Banning the Shark Fin Trade in California*, CALIFORNIA ACADEMY OF SCIENCES (2011), <https://www.calacademy.org/explore-science/shark-finning-legislation>.

⁵² WildAid, *Guam Moves to Protect Sharks - Governor Calvo Signs Shark Fin Ban Into Law in Guam*, PR NEWSWIRE (Mar. 9, 2011, 08:26 AM), <https://www.prnewswire.com/news-releases/guam-moves-to-protect-sharks---governor-calvo-signs-shark-fin-ban-into-law-in-guam-117703253.html>.

⁵³ Daily Mail Reporter, *Northern Mariana Islands become first U.S. territory to ban shark fin trade - as study finds a third of species on brink of extinction*, DAILY MAIL (Feb. 1, 2011, 11:26 AM), <https://www.dailymail.co.uk/news/article-1352538/Northern-Mariana-Islands-First-US-territory-ban-shark-fintrade.html>.

Maryland also enacted a law prohibiting shark finning.⁵⁴ Texas,⁵⁵ Illinois,⁵⁶ Delaware,⁵⁷ Rhode Island,⁵⁸ and Massachusetts⁵⁹ joined other states in enacting such a ban. In 2017, Nevada passed a bill prohibiting the possession or sale of body parts from sharks and banning shark fin soup.⁶⁰ In 2020, New Jersey passed a bill prohibiting shark fins.⁶¹ Recently, in September 2020, Florida has joined other states passing the bill SB680,⁶² later renamed as the Kristen Jacobs Ocean Conservation Act, that prohibits the import, export, and sale of shark fins within the state. The Bill requires the Fish and Wildlife Conservation Commission to evaluate the potential economic impacts on the commercial shark fishing market within the state and authorizes the Legislature to impose a ban on the domestic production of shark fins upon findings of the reports.

The European Union (EU) is one of the largest exporters of shark fins to Asia having one of the weakest protections in the world despite being signatory of the CMS and Code of Conduct for Responsible Fisheries. The EU prohibits the general practice of shark finning, where

⁵⁴ *Maryland Joins East Coast Movement to Ban Shark Fin Trade*, OCEANA (Feb. 2, 2012), <https://oceana.org/presscenter/press-releases/maryland-joins-east-coast-movement-ban-shark-fin-trade>.

⁵⁵ *Texas Becomes 10th State to Ban Trade of Shark Fins*, OCEANA (Jun. 22, 2015), <https://usa.oceana.org/pressreleases/texas-becomes-10th-state-ban-trade-shark-fins>.

⁵⁶ *Illinois Shark Fin Ban: First Inland State Adopts Policy Against Fin Sale, Trade*, HUFFPOST (Feb. 7, 2012, 01:36 PM), https://www.huffpost.com/entry/illinois-shark-fin-ban-fi_n_1643587.

⁵⁷ Francesca Koe, *A Big Move for a Small State - Delaware Bans Shark Fins*, HUFFPOST (May 17, 2013, 08:27 PM), https://www.huffpost.com/entry/shark-fin-ban-delaware_b_3295514.

⁵⁸ Associated Press, *Shark fin sales banned in Rhode Island*, 10 WJAR (Jun. 14, 2016), <https://turnto10.com/politics/shark-fin-sales-banned-in-rhode-island>.

⁵⁹ Dina Zawaski, *Massachusetts Passes Ban on Shark Fins*, THE MSPCA-ANGELL (Jul. 23, 2014), <https://www.mspca.org/news/massachusetts-passes-ban-on-shark-fins/>.

⁶⁰ Johnathan L. Wright, *Shark fin soup now illegal in Nevada*, RENO GAZETTE-JOURNAL (Jan. 5, 2018, 06:42 AM), <https://www.rgj.com/story/life/food/2018/01/05/shark-fin-soup-now-illegal-nevada/1004894001/>.

⁶¹ Dustin Racioppi, *Murphy signs law banning shark fins in New Jersey starting in 2021*, NORTHJERSEY (Jan. 9, 2020, 12:52 PM), <https://www.northjersey.com/story/news/new-jersey/2020/01/09/new-jersey-law-bans-shark-finsstart-2021/4420139002/>.

⁶² <2020> FLA. SB 680.

shark fins are removed and thrown out to waters afterward.⁶³ In 2009, the EU developed a Plan of Action for the Conservation and Management of Sharks establishing protective measures and policies with regard to shark fishing. In 2013, the European Parliament and Council of Fisheries Ministers issued an official document regarding shark finning, which prohibited the conduct of EU fishing vessels since 2003. Although it is prohibited to exercise shark finning in EU waters and on EU vessels, it is still allowed to remove shark fins from the carcasses, otherwise called on-board processing.⁶⁴ The goal the Commission tried to achieve was to require that any sharks caught by EU vessels in any waters or within EU waters should be landed with their fins naturally attached, and no exceptions should be made to this rule.⁶⁵ Shark finning and the fin trade are one of the main practices that is wasteful and unethical because of releasing live sharks after cutting their fins off. The EU ban is considered weak because of its export and the actual demand in some countries. Currently, animal welfare organizations and citizens require the EU to strengthen the legislation with regard to protection of sharks and calling for following other countries' examples. The EU Citizens' Initiative, in particular, was registered by the European Commission, which was called "Stop Finning – Stop the Trade."⁶⁶ The aim of the Initiative is "end the trade of fins in the EU including the import, export and transit of fins other than if naturally attached to the animal's body."

⁶³ Regulation (EU) 2013/605, 2013 O.J. (L 181) 1 (EC).

⁶⁴ *Id.*

⁶⁵ "SHARK FINNING": THE COUNCIL REGULATES AGAINST THE PRACTICE 1 (2013), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/137392.pdf.

⁶⁶ *European Citizens' Initiative*: Commission registers 'Stop Finning - Stop the trade' initiative, EUROPEAN COMMISSION (Dec. 17, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6783.

Status of sharks in international law

Because the natural habitat of sharks is huge, the starting point of the discussion would be the division of the waters into smaller particular areas and their rules of regulation respectively. Since sharks are subjected to a lot of activities exercised by humans, it would be appropriate to address the issues related to the protection of sharks by means of law. Sharks are one of the aquatic species of animals going to and coming from international waters, otherwise called high seas, the specific feature of which is that this territory does not belong to any State's jurisdiction, thus, it becomes challenging to regulate the movement and management of sharks. The area of oceans, where sharks usually inhabit, is subjected to regulation by international law. But the ocean itself is divided into different maritime zones and therefore it establishes the rights and duties of each State attached to these particular zones.⁶⁷ International law provides rules and principles regarding both the general access, rights, and duties of States, and some legal instruments regulate the relationship between States and its activities towards sharks. This section will analyze each instrument and its application, particularly to sharks.

UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) contains the provisions regarding regulation in high seas and establishes general duties to "protect and preserve the marine environment in the maritime zones and high seas areas."⁶⁸ UNCLOS is binding to all

⁶⁷ Techera et al., *supra* note 3, at 27.

⁶⁸ Techera et al., *supra* note 1, at 13.

States, independent of whether they adopted the treaty or not⁶⁹ because it has the effect of customary law enshrined in the treaty. Moreover, UNCLOS sets out the requirement for all States to exercise a “‘total allowable’ catch based upon an established ‘maximum sustainable yield’ in achieving ‘optimum utilization’ of marine living resources.”⁷⁰ General rules of public international law provide that the coastal State has the greater authority over the closest maritime area,⁷¹ this maritime zone is also called territorial waters, the breadth of which shall not exceed 12 nautical miles from the baseline.⁷² Beyond the territorial waters, States have limited and balanced with other States’ rights and duties over the maritime zone, such as the contiguous zone, which is up to 24 nautical miles from the baseline.⁷³ The next area is the EEZ, which is up to 200 nautical miles from the baseline,⁷⁴ where the coastal State has a right to manage and conserve marine living resources.⁷⁵ Finally, there are high seas, the area not belonging to any State, but where States have “exclusive authority over vessels flying their flag, or otherwise registered in their State.”⁷⁶ It is also allowed for all States to exercise fishing in the high seas, although an effort has been made to amend the regulations with the purpose of protecting marine living beings under UNCLOS.⁷⁷ The concept of maritime zones, their breadth, and regulations are important for the purpose of having a better understanding of how

⁶⁹ Techera et al., *supra* note 3, at 28.

⁷⁰ Techera et al., *supra* note 67.

⁷¹ Techera et al., *supra* note 68.

⁷² United Nations Convention on the Law of the Sea (‘UNCLOS’) art. 3, Dec. 10, 1982.

⁷³ *Id.*, art. 33(2).

⁷⁴ *Id.*, art. 57.

⁷⁵ *Id.*, art. 56(1)(a).

⁷⁶ Techera et al., *supra* note 68.

⁷⁷ Techera et al., *supra* note 3, at 29.

different States can exercise their jurisdiction over the shark species and what actions can be taken by States in relation to the conservation and management of sharks. However, it becomes more challenging to manage and establish conservation of highly migratory sharks, or of those swimming between the EEZs of different States, or between the high seas and the EEZs.⁷⁸ In this regard, UNCLOS contains only broad provisions and requires States to cooperate directly or through international organizations.⁷⁹ Despite the high seas allowing all States to enjoy the freedom in those areas, States shall take necessary steps for the conservation and management of living resources while exercising any activity.⁸⁰ Therefore, if any vessel violates the conservation and management requirements on the high seas, it is considered a vessel, against which the action shall be taken, and other States cannot interfere with a foreign-flagged vessel unless such flag vessel State has given its consent.⁸¹ The International Tribunal for the Law of the Sea in its *Advisory Opinion for the Sub-Regional Fisheries Commission* concluded that “the flag State is under the ‘due diligence obligation’ to take all necessary measures to ensure compliance and to prevent unregulated and unreported fishing by fishing vessels flying its flag.”⁸²

UNCLOS entirely is not an animal-focused treaty, rather it is centered on the regulation of actions exercised by all States within particular maritime zones. Treaties are one of the primary sources of international law, and apart from UNCLOS, States adopted a number of

⁷⁸ *Id.*

⁷⁹ *Supra* note 72, art. 63-64.

⁸⁰ *Id.*, art. 117.

⁸¹ *Id.*, art. 110;

Natalie Klein, *The Right of Visit and the 2005 Protocol on the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 35 DENVER JOURNAL OF INTERNATIONAL LAW & POLICY 287, 288 (2005).

⁸² Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (No. 21), Case No. 21, Order of Apr. 2, 2015, 4 ITLOS Rep. 129.

treaties to focus on the conservation and management of marine living beings.⁸³ Some treaties that will be mentioned below are generally related to the protection of sharks, but the last two are non-binding international instruments addressing specific issues of sharks.

While there might not be problems with States being bound by this convention because of the customary law enshrined in this convention, this international instrument is not animal focused and not even shark focused. However, it establishes the rules and regulations according to which States can exercise their jurisdiction over a particular maritime zone. These rules are directly related to sharks and the activities that are usually conducted by humans. For the reasons above, UNCLOS plays an important role in the issue of conservation and management of sharks. Especially while fishing is one of the widespread threats for shark species, and there are some highly migratory species of sharks that swim long distances, UNCLOS is a good source to regulate the activities of States attempting to catch sharks.

The Straddling Fish Stocks Agreement

The Straddling Fish Stocks Agreement (Agreement) is a multilateral treaty that was created by the United Nations in 1995. The Agreement is shown in a way that it fills the gaps left by UNCLOS regarding straddling stocks and highly migratory species. It imposes obligations regarding fishing activities outside the EEZ of any coastal State, but at the same time coastal States shall conduct cooperative mechanisms with straddling stocks and highly migratory species within their EEZ and “adhere to the precautionary principle in decision making relating to fishing in their EEZ.”⁸⁴ The Agreement relies upon the governance of regional fishery

⁸³ Techera et al., *supra* note 76.

⁸⁴ Techera et al., *supra* note 3, at 30;

management organizations (RFMOs), which are aimed at managing particular marine species, and targets to improve the existing RFMOs. However, this approach is challenging due to the fact that not every State will become a member of a certain RFMO and establish the requirement for flag States to manage their fishing vessels.⁸⁵ And, obviously, States, which express persistent objection in time, will not be bound by these requirements, and that again will create a loophole in protecting sharks at the international level. The Agreement does not encourage flag States to authorize vessels for fishing in the high seas unless they are members of the RFMOs. States that are party to the RFMOs shall “agree on and comply with conservation and management measures,” “agree on participatory rights,” “adopt and apply international minimum standards for the responsible conduct of fishing operations,” “obtain and evaluate scientific advice,” “agree on standards for collection, reporting, verification and exchange of data,” “compile and disseminate accurate and complete statistical data,” “promote and conduct scientific assessments,” “establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement,” “have appropriate institutional mechanisms in place,” and “give due publicity to the conservation and management measures.”⁸⁶

The Agreement contains the regime of inspection that would help enhance the enforcement of some provisions. If the vessel conducts fishing on the high seas or conducts any actions, which are beyond the law provisions of the Agreement, one State party may board and inspect that vessel flagged to another State, and the results must be referred to the flag State.

The Straddling Fish Stocks Agreement (‘Agreement’) art. 6, Dec. 4, 1995.

⁸⁵ *Id.*, Agreement, art. 17-19.

⁸⁶ *Id.*, art. 10.

Most of the responsibility falls on the flag State because it should prosecute, monitor, and enforce relevant to the Agreement conservation and management provisions. Some States choose to avoid international agreements, and instead register their vessels with these “flag of convenience” or “open registry” States.⁸⁷

CITES

Convention on International Trade in Endangered Species (CITES) is a multilateral treaty, which protects endangered plants and animals and is intended to regulate, control, prohibit, or limit international trade of endangered or threatened species. CITES protects approximately 5800 species of animals and 30 000 species of plants against over-exploitation through international trade.⁸⁸ CITES lists each species under one of the three Appendices dependent on the level of being threatened by international trade, thus, those Appendices provide different levels of protection for species listed under the particular Appendix.

With that being said, Appendix I lists threatened with extinction species or species that may be affected by international trade. These species cannot be used in commercial trade but permitted only in exceptional cases with the approved license. Any other trade of the species of Appendix I requires export and import permits. Each party of the CITES has its own appointed Management Authority, Scientific Authority, Enforcement Focal Point, and other executive bodies exercising their duties. With regard to Appendix I, the Management Authority of the exporting country monitors whether the import permit has been obtained, while the Scientific

⁸⁷ Techera et al., *supra* note 3, at 31.

⁸⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora (‘CITES’) Appendices I, II, III, Mar. 3, 1973.

Authority of the exporting country shall ensure that such export of species will not affect the wild population.⁸⁹

Appendix II contains the list of species that may not be necessarily threatened with extinction but may become so if the trade is not strictly regulated. International trade of species listed in Appendix II can be authorized by the export permit or re-export certificate, and the export permit is required by the exporting country. The import permit is not required, however, some parties in accordance with their domestic legislation may request such a permit.⁹⁰ Moreover, species of animals listed in Appendix I that are bred in captivity for commercial purposes are treated as those from Appendix II.⁹¹

If one of the Parties requests other CITES Parties to assist in controlling the trade of some species, these species are included in Appendix III. These species should not be necessarily threatened with extinction globally, but trade is allowed only with an export permit and a certificate of origin from the country which listed these species.⁹²

With regard to sharks, Appendix I contains strict control provisions regarding the international trade of species, including their body parts.⁹³ It includes five species of sawfishes, and they were listed there in 2013. Species included in Appendix II are allowed to be used in trade through import and export permits to prevent them from being threatened with extinction. Initially, only three species of sharks were listed in Appendix II of CITES, such as the great white, basking, and whale sharks. In 2010, at the CITES Conference, the effort was made

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*, art. VII.

⁹² *Id.*

⁹³ *Id.*, art. III.

to include 8 species of sharks in Appendix II, however, it was unsuccessful because the consensus and the majority of votes could not be reached. In the same year, at the Conference of the Parties (CoP) the United States and Palau suggested the option to require countries to regulate certain species of sharks, such as scalloped hammerhead, oceanic whitetip, and spiny dogfish sharks, within their jurisdiction, but despite the fact that the majority voted for supporting this proposal, the required two-thirds of votes were absent. In 2013, at the CoP, States came to a conclusion to list the oceanic whitetip, porbeagle, scalloped hammerhead, greater hammerhead, and smooth hammerhead in Appendix II. At the latest CoP in 2019, 183 parties to the Convention voted for adding 18 more species of sharks and rays to Appendix II, which bans the international trade in shortfin mako shark, longfin mako shark, 10 species of wedgefish, and 6 species of giant guitarfish, unless they are proven to be sustainable and legal.⁹⁴ Such decision is explained by the decline of the sharks' population due to such practices as shark finning. There is a waste to the marine environment, where sharks after dying contain in their cells urea, which leads to the decomposition of foul-smelling and toxic ammonia. Currently, Appendix II includes 41 species of sharks. Finally, Appendix III lists 23 species of freshwater stingrays.

From the history of how different species of sharks were included in the CITES Appendices, it is seen that for many of them it took a certain period of time to get included there. Although it is impossible to ignore the fact that many States cooperate and take all necessary measures and vote for the species to be included in the particular Appendix of the convention, even when sometimes there is a strong objection from some countries, for which

⁹⁴ *Supra* note 33.

the business of shark meat and shark fin trade seems beneficial. Nevertheless, a great effort was made by some States to establish a balanced market of sharks and their body parts and their inclusion in Appendix I. There are only five species listed in Appendix I, which has the strictest provisions, but it is not clear whether it would be more beneficial to include more species there because of the possibility of a black market, which exists now, for instance, with well-known elephant tusks, and imposing strict provisions towards shark species may lead to the illegal activity and market where the entire marine ecosystem and sharks' population will suffer even more than now. Nevertheless, it would be a better idea to list endangered, threatened, or threatened with extinction species of sharks in Appendix I according to the IUCN Red List.

CMS

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) is an international treaty aimed at the conservation of migratory species within their migratory ranges. This treaty was signed under the auspices of the United Nations Environment Programme with the main purpose of conservation of wild animals and their habitats on a global level. One of the fundamental principles is to acknowledge the importance of migratory species and the necessity to take actions to improve the conservation status, which would be favorable for the species of wild animals and their habitat.⁹⁵ As in the CITES, CMS has Appendices with different levels of protection. Appendix I lists migratory species threatened with extinction where State Parties' are bound by the duty to ensure strict protection of

⁹⁵ Convention on the Conservation of Migratory Species of Wild Animals ('CMS') art. II, Nov. 6, 1979.

species.⁹⁶ State Parties shall also prevent the taking of animals belonging to such species, except for the taking for scientific purposes, for accommodating the needs of traditional subsistence users of such species, for enhancing the propagation or survival of the affected species, and extraordinary circumstances.⁹⁷ Appendix II includes migratory species that have unfavorable conservation status and that would significantly benefit from international cooperation, and these species serve as the basis for the establishment of regional or global instruments under the treaty.⁹⁸ Therefore, State Parties shall strive to conclude agreements that would be beneficial and would “give priority to the species in an unfavorable conservation status.”⁹⁹

As for the shark species, it is focused on sharks crossing national boundaries. Appendix I lists endangered migratory species, and State parties shall endeavor to protect the habitat of these species, take actions to prevent any impact leading to the endangerment of species. It includes the basking, great white, and whale sharks. This convention contains beneficial provisions related to sharks, although it is based on the rights and duties of State parties and their scope of activities towards shark species. However, because migratory species of sharks are usually swimming between different maritime zones, this instrument may be challenging to establish sustainable protection, conservation, and management of sharks. Another issue is that the entire convention is not limited to shark species in scope but applies to all migratory

⁹⁶ *Id.*, art. III(1).

⁹⁷ *Id.*, art. III(5).

⁹⁸ *Id.*, art. IV(1).

⁹⁹ *Id.*, art. IV(3).

species, and with the least public concern about sharks the regulations are not improved and challenged by State parties or interested parties.

CMS is another international instrument that actually concerns animals, but it has a special relation to sharks due to their tendency to migrate. While one of the fundamental principles of this convention is to strive to provide immediate protection to those species listed under the convention, it is crucial for the countries mostly operating the activity related to sharks to be signatories of this agreement. Although 131 States are parties to the CMS, there are still those important countries that have not signed and ratified this convention yet. For instance, as was pointed out above, shark finning is banned only in one-third of the United States, and the country is not a signatory of the CMS. Similarly, Indonesia is a non-party to the CMS and it allows catching some endangered species of sharks for domestic consumption.¹⁰⁰ Similarly, Canada and China have not signed the convention and the latter still have shark fin soup on the menu. While the majority of countries are parties to the convention, some of them have domestic law prohibiting shark finning, but it may not be efficient because there should be a distinction between shark finning and shark fishing. The convention would have a better effect if some so-called “important” countries ratified CMS due to the provision of parties to cooperate and endeavor to manage and conserve the population of sharks. So-called “important” countries are indicated as those who have the interest and a “better location” for such practice as shark fishing. Those countries would include the territory surrounded by the oceans, while the majority of the population inhabit those areas.

¹⁰⁰ *Investigation reveals loopholes for illegal shark fins export from Indonesia*, MONGABAY (Feb. 12, 2020), <https://news.mongabay.com/2020/02/indonesia-shark-fin-export-china-illegalexport/#:~:text=Indonesia%20allows%20the%20catch%20of,leave%20the%20fish%20to%20die>.

Non-binding instruments

Fortunately, there are already some international instruments that are shark-focused and aimed at the conservation of these species. Unfortunately, these instruments are not legally binding but voluntary, and any State can ratify the instrument and follow its regulations.

The 1995 Code of Conduct for Responsible Fisheries (CCRF) establishes international principles and standards to ensure the protection, efficient conservation and management, development of living aquatic resources. It calls for conservation of biodiversity, discusses the impact of ecosystems on fisheries, and the impact of fishing on ecosystems. The CCRF is related to members and non-members of the United Nations Food and Agriculture Organization (FAO), fishing entities, both governmental and non-governmental regional, subregional, and global organizations, and anyone who is concerned about the issues of conservation, management, and development of fisheries.¹⁰¹ Since its creation in 1997, it still remains a key element in achieving such goals as establishing sustainable fisheries and aquaculture, and for nearly 20 years 4 international plans of action, 2 strategies, and 28 technical guidelines have been created under the FAO supervision.¹⁰² The CCRF is a non-legally binding instrument and some parts of it are based on the sources of international law, e.g, UNCLOS. The CCRF mentions the “sustainable and integrated use” and “effective conservation and management” of marine resources and includes the “integration of fisheries into coastal area management.”¹⁰³

¹⁰¹ CODE OF CONDUCT FOR RESPONSIBLE FISHERIES, <https://www.fisheries.noaa.gov/national/internationalaffairs/code-conduct-responsible-fisheries> (last visited May 1, 2020).

¹⁰² *Id.*

¹⁰³ FAO Code of Conduct for Responsible Fisheries art. 6, 7, 8, and 10 in part, Oct. 31, 1995.

The International Plan of Action for Sharks

The main international and shark-focused instrument is the International Plan of Action for Sharks (IPOA Sharks), which was adopted under the auspices of the FAO and was encouraged by the resolution of the CITES meeting,¹⁰⁴ and it provides that the conservation and management of sharks and their long-term sustainable use shall be ensured. It also discusses the practice to monitor the threats to shark populations, protection of critical habitats, and implementation of strategies in accordance with the principles of biological sustainability and rational long-term economic use. Some plans were implemented in 1999 and supported by the FAO Council in 1999 and 2000 respectively, such as the International Plans of Action adopted on Reducing Incidental Catch of Seabirds in Longline Fisheries, for the Management of Fishing Capacity, and for the Conservation and Management of Sharks.¹⁰⁵ Although IPOA Sharks is an international instrument, it is legally non-binding, yet it has attempted to trigger national and regional responses and has made international efforts to improve the conservation and management of sharks.

IPOA Sharks covers all species of sharks and addresses the issue of shark catch, including directed, bycatch, commercial, recreational, and other forms of catching. It covers target species and bycatch, but unlike other international instruments, IPOA Sharks is not limited to critically endangered species, and it applies both to “States in the waters of which sharks are

¹⁰⁴ Resolution 917, adopted at the ninth Conference of the Parties to CITES, called on the FAO and RFMOs to collect data and cooperate in data collection efforts. Decision 10.48, which was adopted at the tenth Conference of the Parties to CITES in 1997, required CITES parties to reduce bycatch and record the data collected under Resolution 917;

Paula Walker, *Oceans in the Balance: As the Sharks Go, So Go We*, 17 ANIMAL LAW 97, 116 (2010).

¹⁰⁵ Techera et al., *supra* note 1, at 32.

caught by their own or foreign vessels and to States the vessels of which catch sharks on the high seas.”¹⁰⁶ States, under IPOA Sharks, are called on to monitor the status of sharks and adopt regional and national Plans of Action for the conservation and management of sharks.¹⁰⁷ The Plan of Action of each State should have goals to “ensure that shark catches from directed and non-directed fisheries are sustainable” by monitoring the shark population or those particular species that are caught with the assistance of special agencies and make sure that the species that are subject to catch are not endangered or threatened; to “assess threats to shark populations, determining and protecting critical habitats, and implementing harvesting strategies consistent with the principles of biological sustainability and rational long-term economic use;” to “identify and provide special attention, in particular to vulnerable or threatened shark stocks” by implementing national regulations, which would ensure the stricter protection towards vulnerable shark species and spots where they usually inhabit; to “improve and develop frameworks for establishing and coordinating effective consultation involving all stakeholders in research, management, and education initiatives within and between States;” to “minimize unutilized incidental catches of sharks” because due to the practice of shark finning, sharks are returned to the waters after their fins are cut, and this creates a waste for the marine environment; to “contribute to the protection of biodiversity and ecosystem structure and function;” to “encourage full use of dead sharks” by not throwing away dead bodies of sharks back to the waters; lots of fishers in the Indian Ocean used to tow dead sharks behind their boats to protect their catch because the scent of dead sharks is usually

¹⁰⁶ International Plan of Action for the Conservation and Management of Sharks (‘IPOA’) para. 17, 1999.

¹⁰⁷ *Id.*, para. 18.

repelling;¹⁰⁸ and to “facilitate improved species-specific catch and landings data and monitoring of shark catches.”¹⁰⁹ IPOA Sharks also requires States to report on the progress made of the development and implementation of each State’s shark plans.¹¹⁰

The role of the FAO in this international instrument is to support States, which voluntarily express the desire to implement the IPOA Sharks and to prepare Shark-plans and Shark assessment reports. The Shark Plan under the IPOA Sharks suggests addressing the issues of shark species in terms of taxonomy, lack of funds for research and management, difficulties in achieving shark management goals, etc.¹¹¹ The technical guidelines also should be included, under the development and implementation of the Shark-plan by the FAO, which would be provided on monitoring, research, data collection and analysis, implementation of management measures.¹¹² The Shark assessment report should include the information about the status of stocks, control and surveillance, and possible alterations of management measures.¹¹³

Although IPOA Sharks contains beneficial provisions that would contribute to the conservation and management of sharks, there is still “slow rate of implementation of the IPOA Sharks; the extent to which actions purportedly taken under its name were consistent with its provisions; and, as a result, about the plan’s effectiveness in improving the conservation and management of sharks.”¹¹⁴

¹⁰⁸ Tom Ward, *The smell of dead sharks is helping to keep surfers safe from attack*, WIRED (Jun. 22, 2018), <https://www.wired.co.uk/article/shark-attacks-2018-smell-podi>.

¹⁰⁹ *Supra* note 103, para 22.

¹¹⁰ *Id.*, para 28.

¹¹¹ *Id.*, Appendix A.

¹¹² *Id.*

¹¹³ *Id.*, Appendix B.

¹¹⁴ Mary Lack, *Challenges for International Governance*, in SHARKS: CONSERVATION, GOVERNANCE AND MANAGEMENT 48 (Erika Techera & Natalie Klein eds., 2014);

Memorandum of Understanding on the Conservation of Migratory Sharks

The creation of the Memorandum of Understanding on the Conservation of Migratory Sharks (Sharks MoU) under the CMS, which came into force in 2010, has become the first global instrument of law that aims at conservation and management of migratory sharks, although it is legally non-binding.¹¹⁵ Its objective is “to achieve and maintain a favourable conservation status for migratory sharks based on the best available scientific information, taking into account the socio-economic and other values of these species for the people of the Signatories.”¹¹⁶ Sharks MoU is focused on the migratory species of sharks because they can travel long distances in the oceans. For instance, the whale shark was recorded swimming around 14 000 miles.¹¹⁷ This Memorandum includes all species of Chondrichthyes, which cover sharks, rays, skates, and chimaeras. Currently, Annex I of the Sharks MoU lists 37 species of sharks, but the list can be edited by the consensus of parties.¹¹⁸ Sharks MoU also has the Conservation Plan, which is included in Annex III with the main objectives. Those objectives are to improve “the understanding of migratory shark populations through research, monitoring, and information exchange,” to ensure that “directed and non-directed fisheries for sharks are sustainable,” to ensure “to the extent practicable the protection of critical habitats and migratory corridors and critical life stages of sharks,” to increase “public awareness of threats

Holly Edwards, *When Predators Become Prey: The Need for International Shark Conservation*, 12 OCEAN AND COASTAL LAW JOURNAL 305, 323-324 (2006).

¹¹⁵ Memorandum of Understanding on the Conservation of Migratory Sharks (‘Sharks MoU’) section 1, Mar. 1, 2010.

¹¹⁶ *Id.*

¹¹⁷ Hector M. Guzman, Catalina G. Gomez, Alex Hearn & Scott A. Eckert, *Longest recorded trans-Pacific migration of a whale shark (*Rhincodon typus*)*, 11 MARINE BIODIVERSITY RECORDS 8, 11 (2018).

¹¹⁸ *Supra* note 115, Annex I.

to sharks and their habitats, and enhance public participation in conservation activities,” and to enhance “national, regional, and international cooperation.”¹¹⁹ 48 countries signed the Memorandum, and 28 national reports on the conservation of sharks were published. Those reports have been done by Ecuador, Senegal, Guinea, Australia, EU, Brazil, Yemen, United States, Côte d’Ivoire, Saudi Arabia, Vanuatu, Colombia, New Zealand, Congo, Costa Rica, Samoa, Romania, and the UK.¹²⁰

Moreover, there were several projects under the Sharks MoU. Among completed there are “Raising awareness on threats to migratory sharks”¹²¹ in the region of Oceania in 2014, “Shark conservation training workshops in Northern Africa and the Middle East”¹²² in the region of Africa and South-West Asia in 2014, and “Development of an illustrated identification guide ‘Sharks of the Arabian Seas’”¹²³ in the region of Africa, Indian Ocean, and South-West Asia in 2015. There are two ongoing projects, such as “Migratory sharks in the Gulf of Gabes: by-catch, ecology and critical habitats”¹²⁴ in the region of Africa and “Connectivity between the populations of the Giant Manta Ray in the Galapagos Islands and coastal Ecuador and Peru”¹²⁵

¹¹⁹ *Id.*, Annex III.

¹²⁰ For more information visit: <https://www.cms.int/sharks/legalinstrument/sharks-mou>.

¹²¹ RAISING AWARENESS ON THREATS TO MIGRATORY SHARKS, <https://cms.int/sharks/en/project/raising-awarenessthreats-migratory-sharks> (last visited Apr. 30, 2020).

¹²² SHARK CONSERVATION TRAINING WORKSHOPS IN NORTHERN AFRICA AND THE MIDDLE EAST, <https://cms.int/sharks/en/project/shark-conservation-training-workshops-northern-africa-and-middle-east> (last visited Apr. 30, 2020).

¹²³ DEVELOPMENT OF AN ILLUSTRATED IDENTIFICATION GUIDE “SHARKS OF THE ARABIAN SEAS”, <https://www.cms.int/sharks/en/project/development-illustrated-identification-guide-sharks-arabian-seas> (last visited Apr. 30, 2020).

¹²⁴ MIGRATORY SHARKS IN THE GULF OF GABES: BY-CATCH, ECOLOGY AND CRITICAL HABITATS, <https://cms.int/sharks/en/project/migratory-sharks-gulf-gab%C3%A8s-catch-ecology-and-critical-habitats> (last visited Apr. 30, 2020).

¹²⁵ CONNECTIVITY BETWEEN THE POPULATIONS OF THE GIAN MANTA RAY IN THE GALAPAGOS ISLANDS AND COASTAL ECUADOR AND PERU, <https://www.cms.int/sharks/en/project/connectivity-between-populations-giant-manta-ray-galapagosislands-and-coastal-ecuador-and> (last visited Apr. 30, 2020).

in the region of South and Central America and The Caribbean. Finally, there is one project in preparation “Study: Conservation Priorities for Shark and Ray Species included and proposed for inclusion in Annex 1 to the CMS Sharks MoU”¹²⁶ in the region of Africa, Asia, Europe, North America, Oceania, South and Central America and The Caribbean, Atlantic Ocean, Eastern Atlantic, Indian Ocean, North Pacific, South Pacific, South-East Asia, South-West Asia, South-Western Atlantic, West Africa, and Western Pacific.

Generally, the provisions contained in the Shark MoU are beneficial for the species of sharks listed in its Annex I. If the Memorandum was a legally binding instrument, it would help improve the conservation and management of sharks, although not all countries signed this instrument. However, there is no need for signing by all countries in the world because the main problem with the protection of sharks relates to the coastal countries. For instance, such countries as Kazakhstan, Laos, or Central African Republic are considered landlocked and have access neither to the ocean, nor to the international waters. Thus, these and other 41 landlocked countries of the world potentially have no interest in adopting or ratifying such a treaty. Landlocked countries may have an interest in sharks in a case if they send their vessels to the ocean or high seas, but some countries are definitely not interested in catching sharks or participating in the market of shark fins or shark meat. If Sharks MoU becomes legally binding and requires countries to ratify the instrument, it would need cooperation and support from other agencies and conventions, such as CITES, which regulates the trade of particular species of sharks. CITES in this case would assist in the regulation of the trade of shark species from

¹²⁶ STUDY: CONSERVATION PRIORITIES FOR SHARK AND RAY SPECIES INCLUDED AND PROPOSED FOR INCLUSION IN ANNEX 1 TO THE CMS SHARKS MOU, <https://www.cms.int/sharks/en/project/study-conservation-priorities-shark-and-rayspecies-included-and-proposed-inclusion-annex-1> (last visited Apr. 30, 2020).

those countries which adopted the legally binding convention on sharks to those countries which have no interest and did not ratify the convention. This would help preserve the marine environment and develop the conservation of sharks. With already existing conventions like UNCLOS or Straddling Fish Stocks Agreement, the implementation of the new shark-focused treaty should not be challenging because those conventions have already had provisions regarding the ability of countries to exercise their vessels in certain maritime zones and therefore the ways they can do so. From what it already exists, the shark-focused legal instrument would only propose the regulations related to sharks and what measures ratified the convention countries should take to prevent the decline of sharks' population and the methods to preserve their habitat, environment, and species themselves.

Conclusion

The analysis on the legal protection of sharks in different jurisdictions and the protection set out by the sources of international law shows that despite the implementation of the legislation with regard to sharks and establishment of the balanced conservation, there is no unifying framework yet that would aim to protect sharks on a global level. It is necessary to amend laws and institutions to improve the global protection of sharks that would lead to the conservation and management of these aquatic animals. The issues addressed in this paper might be very controversial because there are many factors and different angles to discuss the conservation and management of shark species. For instance, from an environmental point of view there might be some statements made that there should be full utilization of sharks, either for the sale of meat, or shark fins, but on the other hand, from animal right activists and

advocates view, they would stand against the conduct of using sharks for food consumption. But the urgent action that is certainly needed now is the improved efforts on a global level in terms of environmental law and conservation.

Since the analysis was based entirely on global efforts to improve the protection of sharks and the existing legally binding and non-binding instruments, it was crucial to mention how far countries all over the world went in the current issue. The majority of countries have already enacted bans within their jurisdiction on the practice of shark fishing, shark finning, shark fin trade, and etc., while other countries are on the way to prohibit all of the above mentioned practices, or at least to enact such bans partially. Sharks are protected at the national level in certain States, but there is no unifying and global rule of law that would protect sharks, as well as the provisions that could be binding on all States. The issue with creating additional provisions to some international treaties or drafting new legislation is that States would have to ratify this particular treaty. Customary law enshrined in a particular treaty would have been more effective so that almost all States could obey this rule, but even for that, there should be two elements present, which are State practice and *opinio juris*. The challenging part of involving customary law to protect sharks is the treatment of sharks all over the world because such actions as fishing, food consumption, and fin trade are still practiced nowadays. But from the statistics mentioned in the above sections, there are already some changes being made by different countries, most influential ones, such as the United States, the European Union, Australia, New Zealand. One-fourth of the country, for example, in the United States have already enacted bans on shark finning, and the number of states is growing, especially taking into account the most recent ban in New Jersey. Although there is still no

federal legislation prohibiting the exploitation of sharks, one may notice that states are striving to vote for such a ban on a federal level.

Another way to improve the protection, conservation, and management of sharks is the possibility to sue countries for the violation of the law. With the existence of the shark-focused treaty or customary rule of law on sharks, States could sue each other in a case of breach of obligations of certain provisions. Since the rules of international criminal law cannot be applied because of individual criminal responsibility, violating the provisions of law related to sharks might be conducted through the court between States, for example, the International Court of Justice (ICJ) could become the institution considering those cases. Although the ICJ is mostly based on public international law cases, even in the absence of the shark-focused treaty, there are other treaties that exist, which are directly related to the scope of jurisdiction of this court. Strict regulation of fishing is another possible solution to improve the protection of sharks. The amendments to the existing law and regulations should be made to establish certain rules in terms of fishing or shark catch. Because of the Straddling Fish Stocks Agreement provisions and its cooperation with RFMOs, the rules of management on fisheries should be made through these organizations. The discussion above demonstrates how many countries are concerned about sharks and their conservation and what steps those countries have already taken. The key thing that should be done or the starting point should be the call for action and raising awareness about aquatic animals in general. Aquatic animals include not only marine mammals or fish, but also includes hundreds of million species, and sharks are one of those deserving consideration and protection under the law, especially due to their intrinsic value. Therefore, the best way to expand the public concern – where the possibility of creating a certain law is

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born – is to do that through education and social media, distribution of the information, demonstration of threats and abuse by all possible means to show the importance of these issues and to involve more individuals and both governmental and non-governmental organizations.