



# Association of Pacific Island Legislatures

American Samoa  
Commonwealth of the Northern Mariana Islands  
FSM, State of Chuuk  
FSM, State of Kosrae  
FSM, State of Pohnpei  
FSM, State of Yap  
Island of Guam  
Republic of Kiribati  
Republic of the Marshall Islands  
Republic of Nauru  
Republic of Palau  
State of Hawaii

Resolution No. 55-BOD-10

## A RESOLUTION

**“Calling on the National Marine Fisheries Service (NMFS) to confirm that the shark fin ban statutes of Guam and the Commonwealth of the Northern Mariana Islands are not preempted by the NMFS’s May 2013 Proposed Rule Implementing the Shark Conservation Act of 2010, and to further confirm the self-governing authority of APIL member jurisdictions to enact legislation relative to the protection of sharks within their respective territories.”**

1           **WHEREAS**, The Association of Pacific Island Legislatures (APIL) has consistently and vigorously  
2 called for regional shark protections beginning in 2011, resulting in *inter alia* the world’s largest shark  
3 sanctuary, marine area enforcement capacity building in the islands and increased exposure for their respective  
4 marine stewardship campaigns in the global media, and the enactment of statutes prohibiting the sale, trade, and  
5 possession of shark fins in several APIL jurisdictions; and

6           **WHEREAS**, On May 2, 2013, the National Marine Fisheries Service (NMFS) put forth a Proposed  
7 Rule implementing the Shark Conservation Act of 2010, in particular its restrictions concerning the practice of at-  
8 sea shark finning. Said rule, however, contained unnecessary and indeed unfounded preemption language to the  
9 effect that the shark fin ban statutes of several states and territories, including those of Guam and the  
10 Commonwealth of the Northern Mariana Islands (CNMI), are preempted as inconsistent with federal law; and

11           **WHEREAS**, The NMFS recently formally reversed its preemption position, at least with respect to the  
12 shark fin ban statutes of California, Maryland, Washington, and Delaware, with NMFS now concluding that said  
13 state shark fin ban statutes are not inconsistent with federal law and therefore are not preempted by the same. *See*  
14 Letter from Eileen Sobeck, Asst. Adm’r for Fisheries, Nat’l Oceanic & Atmospheric Admin. to Charlton H.  
15 Bonham, Director, Cal. Dep’t of Fish & Wildlife (Feb. 3, 2014); and

16           **WHEREAS**, Federal courts have confirmed that state statutes like California’s, prohibiting the  
17 in-state sale, trade, and possession of shark fins, are not inconsistent with the Magnuson-Stevens Act, as amended

by the Shark Conservation Act of 2010, and therefore are not preempted by the same. *See Chinatown Neighborhood Ass'n et al. v. Brown, et al.*, 2013 WL 60919 (N.D. Cal. Jan. 2, 2013) (*Brown I*); *Chinatown Neighborhood Ass'n et al. v. Brown et al.*, 539 F. App'x 761 (9th Cir. 2013) (*Brown II*); and

**WHEREAS**, California's Shark Fin Prohibition statute, which itself is nearly identical to both the Guam and CNMI shark fin ban statutes, has conclusively withstood a preemption challenge. Accordingly, as a matter of law, Guam and CNMI's shark fin ban statutes warrant a similar finding against preemption; and


**WHEREAS**, the peoples of the Pacific are without doubt leading the world in taking considered and decisive action to provide for the protection of sharks, and federal agencies ought not engage in the business of advancing speculative theories of preemption where such claims would normatively undermine the self-governing authority of U.S. affiliated Pacific Island states and territories such as Guam and the CNMI; now, therefore

**BE IT RESOLVED** by the Association of Pacific Island Legislatures, Fifty-Fifth Board of Directors, Federated States of Micronesia State of Yap, December 3-5, 2014, that APIL hereby declares that it stands by its members Guam and CNMI in calling for the formal acknowledgement by the NMFS that their respective shark fin ban statutes are not inconsistent with federal law and therefore are not preempted by the same; and

**BE IT FURTHER RESOLVED** that the APIL President shall certify, and the APIL Secretary shall attest to the adoption of this Resolution, and that copies of the same shall be transmitted to the Pacific Islands Forum Secretariat, Federated States of Micronesia President, H.E. Emanuel Manny Mori, United States President, H.E. Barack Obama, and to the Chief Executives and Legislative Presiding Officers of each member jurisdiction of the Association of the Pacific Island Legislatures.

DULY AND REGULARLY ADOPTED ON THE 5<sup>TH</sup> DAY OF DECEMBER, 2014

  
JUDITH T. WON PAT, ED. D.  
ACTING PRESIDENT

  
CHANG B. WILLIAM  
SECRETARY

