

IN THE
Supreme Court of the United States

CHINATOWN NEIGHBORHOOD ASSOCIATION, *et al.*,
Petitioners,

v.

KAMALA D. HARRIS, IN HER OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF CALIFORNIA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF SUSTAINABLE FISHERIES
ASSOCIATION, INC., RHODE ISLAND
FISHERMAN'S ALLIANCE, LONG ISLAND
COMMERCIAL FISHING ASSOCIATION, INC.,
GARDEN STATE SEAFOOD ASSOCIATION, INC.,
NORTH CAROLINA FISHERIES ASSOCIATION,
INC., VIRGINIA SEAFOOD COUNCIL, INC. AND
AMERICAN SCALLOP ASSOCIATION, INC. AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Sustainable Fisheries Association, Inc. (“SFA”) is a Massachusetts-based nonprofit organization whose members include three seafood processors: Marder Trawling, Inc., Seatrade International Company, Inc. and Cape Ann Seafood Exchange, Inc. The members of the SFA work with federal and state fishery management and regulatory bodies overseeing the U.S. Atlantic spiny dogfish and skate fisheries, advocating sustainable fishery practices and the production and release of timely and accurate scientific research. The SFA’s members conduct international trade of U.S. Atlantic spiny dogfish and skate. The members of the SFA employ a combined total of over 900 people.

The SFA was granted Marine Stewardship Council (MSC) certification that the U.S. Atlantic spiny dogfish (*Squalus acanthias*) fishery is a sustainable and well-managed fishery. The scope of certification is such that all U.S. Atlantic spiny dogfish landed in state and federal waters from Maine to North Carolina are certified by MSC as sustainable.

The Rhode Island Fishermen’s Alliance is a non-profit trade association of independent commercial

¹ Pursuant to this Court’s Rule 37.6, no counsel for a party authored this brief in whole or part. No person other than *amici*, their members, and their counsel made any monetary contribution to its preparation or submission. This brief is filed with the written consent of all parties pursuant to this Court’s Rule 37.2(a). Copies of the requisite consent documents have been filed with the Clerk.

fishermen, vessel owners, crewmembers and small business owners who are committed to protecting the integrity of Rhode Island's marine ecosystems by working with federal and state fisheries management agencies, the fishing industry, and the scientific community to find ways to promote sustainable, successful commercial fishing.

The Long Island Commercial Fishing Association, Inc. is a not-for-profit trade association of commercial fishermen representing 11 different gear types at 15 different commercial ports on Long Island, New York. The Association was formed to: promote commercial fishing on Long Island, which represents more than 90% of the wild-caught seafood landed in the State of New York; advocate for sustainable commercial fishing practices by actively engaging with local, state and federal agencies; and support commercial fishermen, their families and the fishing communities of Long Island. The Association has more than 100 members who employ over 400 people.

The Garden State Seafood Association, Inc. is a statewide trade association of commercial fishermen and fishing companies, related businesses, and individuals working together to promote the sustainable development of the commercial fishing industry and the long-term interests of New Jersey's coastal communities and seafood consumers. The Association's primary goal is to ensure that fishery resources are managed responsibly and that the people of New Jersey, whether they are harvesters, anglers or consumers, will be able to enjoy the bounty

of New Jersey's rich coastal and offshore waters for generations to come. The Association was formed in 1999 and there are now more than 170 members who employ a combined total of over 1,000 people.

The North Carolina Fisheries Association, Inc. ("NCFA") was established as a professional trade association in 1952 to organize various aspects of the commercial seafood industry in North Carolina. Since that time the NCFA has represented the interests of the industry at both the state and federal levels. The NCFA represents approximately 2000 members: fishermen and their families, seafood processors, and various related businesses throughout North Carolina and other parts of the country. The NCFA's primary responsibility is to see that regulatory agencies understand the importance of the seafood industry to the coastal regions of the state. The NCFA also highlights the significance of the seafood industry as a truly American industry, bringing a vital food source to people throughout the United States and the world, as NCFA members conduct domestic and international trade through import and export of a myriad of seafood products.

The Virginia Seafood Council, Inc. founded in 1955, is a non-profit trade association, whose members employ over 300 people involved in all facets of the seafood industry. For over sixty (60) years, the Virginia Seafood Council has remained a true champion of the Mid-Atlantic seafood industry, which is why it is recognized as the premier voice of Virginia's seafood industry by state and federal

officials, regulatory bodies, universities, government agencies and the seafood industry itself.

The American Scallop Association, Inc. (“ASA”) is a Massachusetts-based nonprofit organization founded in 1992 to represent the interests of the domestic, U.S. wild-caught, Atlantic sea scallop fishery through effective dialogue and participation in the Federal fishery management process. ASA members are the undisputed leaders of domestic and transglobal trade in scallops. Their headquarters are located from Maine to Virginia and collectively they have over 4,000 employees.

ARGUMENT**A. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE THE NINTH CIRCUIT'S DIVIDED OPINION THAT IS IN CONFLICT WITH TWO OTHER CIRCUITS' DECISIONS THAT STATES MAY NOT DEFEAT THE PURPOSES OF THE MAGNUSON-STEVENSON ACT BY PROHIBITING THE SALE, TRADE, AND DISTRIBUTION OF FINS FROM ANY SHARKS.**

California's shark fin ban, Cal. Fish & Game Code § 2021, is in conflict with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1801, *et seq.*

A primary purpose of the MSA is "to promote domestic commercial fishing." 16 U.S.C. § 1801(b)(3). The MSA defines "commercial fishing" as "fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade." 16 U.S.C. § 1802(4).

California's shark fin ban frustrates the purpose of the MSA because it states, in relevant part, that "it shall be unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark fin." Cal. Fish & Game Code § 2021(b). The term "shark fin" is defined by the law as "the raw, dried, or otherwise processed detached fin, or the raw, dried, or otherwise processed detached tail, of an elasmobranch." Cal. Fish & Game Code § 2021(a).

The *amici* and others are engaged in commercial

fishing of numerous species including U.S. Atlantic spiny dogfish (*Squalus acanthias*) (“Dogfish”) and winter skate (*Leucoraja ocellata*) (“Skate”), which are both elasmobranches. Both Dogfish and Skate are harvested from federally-managed commercial fisheries subject to the MSA, and each has a Fishery Management Plan (“FMP”) implemented and amended by the Mid-Atlantic Fishery Management Council and the New England Fishery Management Council, in cooperation with the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service. *Dogfish FMP* §1.1.3 (1976), as amended (available at <http://www.mafmc.org/fisheries/fmp/dogfish>); *Skate FMP* §3.0 (2003), as amended (available at <http://www.nefmc.org/management-plans/detail/skates>).

California’s shark fin ban does not directly prohibit the *amici* from *catching* Dogfish and Skate in the waters of the Mid-Atlantic and New England. However, the California ban prohibits the *amici* and others from putting the fins of Dogfish and Skate in the stream of domestic and international commerce in and through the State of California. In doing so, the California ban is similar to the state laws preempted in *Southeastern Fisheries Association v. Mosbacher*, 773 F. Supp. 435, 440 (D.D.C. 1991).² The court in *Southeastern Fisheries* found that the federal law authorizing the harvest of redbfish, i.e., the MSA, preempted state laws that prohibited the landing,

² *Southeastern Fisheries* was decided prior to the 2007 amendments to the MSA, Pub. L. No. 109-479, but the relevant statutory provisions in the case remain unchanged.

possession or sale of redfish. *Id.* The court recognized the obvious conflict preemption where, “because at least four of the five Gulf states prohibit or restrict the landing, possession, or sale of redfish, the state laws conflict with the federally imposed quota” *Id.* As the court explained in holding the state laws to be preempted, “Defendants, in effect, have told commercial fishermen that they may catch the fish, but that they may not land them. This makes no sense, and creates a conflict that is impermissible under the [MSA].” *Id.* The same is true here, as the California law tells commercial fishermen, like the *amici*, that they may catch and land Dogfish and Skate, but they may not ship the fins through or to the State of California. This also does not make sense as it creates an impermissible conflict by frustrating a primary purpose of the MSA.

The California ban is in conflict with and preempted by the MSA since conflict preemption may occur even when “Congress did not necessarily intend preemption of state regulation in a given area but the particular state law conflicts directly with federal law or stands as an obstacle to the accomplishment of federal objectives.” *City of Charleston, South Carolina v. A Fisherman’s Best, Inc.*, 310 F.3d 155, 169 (4th Cir. 2002); *Hillsborough County v. Automated Med. Labs.*, 471 U.S. 707, 713 (1985); *Hines v. Davidowitz*, 312 U.S. 52, 78–79, (1941).

The California ban has closed the channels and instrumentalities of international and interstate commerce by prohibiting fins from Dogfish and Skate

unimpeded passage through the ports and airports of California. Cal. Fish & Game Code § 2021. As a result, the shark fin possession ban is not only “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000), but it frustrates treaties and overtly blocks international trade. *Fouke Co. v. Mandel*, 386 F. Supp. 1341, 1360 (D. Md. 1974) (holding Maryland statute banning importation and sale of sealskins preempted because it frustrated operation of and conflicted with federal statutes and treaty).

For over two hundred years the United States has made treaties with other governments regulating international commerce. See *Treaty of Amity and Commerce Between the United States and France* (signed on February 6, 1778) (establishing commercial alliance and encouraging trade between the United States and France). The California law conflicts with existing treaties between the United States and foreign countries by intentionally stopping fins from Dogfish and Skate at the California border and barring access to the ports and airports of California, thereby prohibiting the *amici* from conducting international trade. See *Transatlantic Declaration on EC-US Relations* (November 23, 1990); *Singapore Free Trade Agreement* (January 1, 2004); and others cited in the United States Department of State document: *Treaties in Force — A List of Treaties and Other International Agreements of the United States in Force on January 1, 2013*.

In summary, the California shark fin ban directly conflicts with the basic purpose of commercial fishing — allowing commercial fishermen to possess, and to place in the stream of domestic and international commerce, legally harvested fish. *See* 16 U.S.C. § 1802(4).

CONCLUSION

For the foregoing reasons, the Court should grant this petition for certiorari.

Respectfully submitted,
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