

**Questions Relating to the Protection
of Mako Sharks and Trade Restrictions
(Federal States of Alopias/Republic of
Rhincodon)**

RECORD
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Stetson International Environmental
Moot Court Competition
2014–2015



STETSON LAW

NOTIFICATION, DATED 23 JUNE 2014, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ALOPIAS
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RHINCODON

The Hague, 23 June 2014.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 16 June 2014. I have the further honor to inform you that the case of Questions Relating to the Protection of Mako Sharks and Trade Restrictions (Federal States of Alopias/Republic of Rhincodon) has been entered as 2014 General List No. 119. The written proceedings shall consist of memorials to be submitted to the Court by 21 November 2014. Oral proceedings are scheduled for 16–18 April 2015.

/s/

Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 16 JUNE 2013, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 16 June 2014.

On behalf of the Federal States of Alopias and the Republic of Rhincodon, and in accordance with Article 40, paragraph 1, of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Alopias and the Republic of Rhincodon for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to the Protection of Mako Sharks and Trade Restrictions, signed at George Town, Cayman Islands, on 16 June 2014.

For the Federal States of Alopias:

/s/

P. Benchley
Minister of Foreign Affairs

For the Republic of Rhincodon:

/s/

G. Ramsay
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF ALOPIAS
AND
THE REPUBLIC OF RHINCODON
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE OF DIFFERENCES
BETWEEN THEM CONCERNING
QUESTIONS RELATING TO THE PROTECTION OF MAKO SHARKS
AND TRADE RESTRICTIONS

The Federal States of Alopias and the Republic of Rhincodon,

Recalling that the Federal States of Alopias and the Republic of Rhincodon are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that mako sharks spend parts of their life cycles in the waters of the Federal States of Alopias and the Republic of Rhincodon,

Recognizing that differences have arisen concerning the manner in which mako sharks are harvested,

Noting that the Federal States of Alopias and the Republic of Rhincodon have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as “the Court,” consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Alopias and the Republic of Rhincodon, hereinafter referred to as “the Parties,” shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.

3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules of the 2014–2015 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the Regional Round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at George Town, Cayman Islands, this 16th day of June 2014, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Alopias:

For the Republic of Rhincodon:

/s/

P. Benchley
Minister of Foreign Affairs

/s/

G. Ramsay
Minister of Foreign Affairs

Annex A

1. The Federal States of Alopias (hereinafter Alopias) and the Republic of Rhincodon (hereinafter Rhincodon) are located in the Varium Sea region. The range of the longfin mako shark (*Isurus paucu*) and the shortfin mako shark (*Isurus oxyrinchus*) includes the Varium Sea. Both species are found within the territorial seas and exclusive economic zones of Alopias and Rhincodon.
2. Alopias is a developing nation with a population of approximately 5 million people. Rhincodon is its largest trading partner, with approximately 30% of its exports being sent to Rhincodon. Agriculture and fishing are the two most significant economic activities in Alopias.
3. Rhincodon is a developed nation with a population of approximately 250 million people. It has a diversified, industrial economy.
4. Alopias and Rhincodon are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
5. Alopias and Rhincodon are Parties to the Vienna Convention on the Law of Treaties.
6. Alopias and Rhincodon are Contracting Parties to the Convention on Biological Diversity (CBD).
7. Alopias and Rhincodon are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Neither species of mako shark is listed in any CITES Appendix.
8. Alopias and Rhincodon are States Parties to the United Nations Convention on the Law of the Sea (UNCLOS).
9. Alopias and Rhincodon are Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and are signatories to the Memorandum of Understanding on the Conservation of Migratory Sharks.
10. High-level representatives from Alopias and Rhincodon attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro.

11. Rhincodon is a Member of the World Trade Organization. Alopias is an Observer to the World Trade Organization.
12. In 1999, Alopias and Rhincodon signed and ratified a bilateral trade agreement, entitled Trade Agreement between Rhincodon and Alopias (TARA).
13. The relevant portions of the TARA provide:

The Federal States of Alopias and the Republic of Rhincodon, hereinafter referred to as “the Parties,” resolved to:

Strengthen the special bonds of friendship and cooperation among their peoples;

Contribute to the harmonious development and expansion of regional trade and to provide a catalyst to broader international cooperation;

Ensure a predictable commercial framework for business planning and investment;

Undertake each of the preceding in a manner that is consistent with environmental protection and conservation;

Enhance and enforce environmental laws and regulations, and to strengthen cooperation on environmental matters;

Promote sustainable development;

Encourage enterprises operating within their territory or subject to their jurisdiction, to respect internationally recognized corporate social responsibility standards and principles and to pursue best practices;

Promote broad-based economic development in order to reduce poverty;

Preserve their flexibility to safeguard the public welfare;

Have agreed as follows:

* * *

Article 5: Quantitative Restrictions

No prohibitions or restrictions (other than duties, taxes, or similar charges), whether made effective through quotas, import or export licenses, or other measures shall be instituted or maintained by any Party regarding the importation of any product from the territory of any other Party.

* * *

Article 15: General Exceptions

Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures, so long as such measures are made effective in conjunction with restrictions on domestic production or consumption:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;

* * *

- (g) relating to the conservation of exhaustible natural resources;

* * *

Article 25: Settlement of Disputes

- 1. Any differences between the Parties concerning the interpretation or application of this Agreement or any arrangements arising therefrom, shall, as far as possible, be settled amicably between the Parties. Wherever necessary an appropriate body shall be designated for the settlement of disputes.
 - 2. Decisions by GATT and WTO panels or appellate bodies shall be considered subsidiary sources of law with respect to the interpretation of terms of this Agreement.
14. The TARA has been registered in accordance with Article 102 of the Charter of the United Nations.
15. In 2001, the Rhincodon Parliament enacted the Humane Fishing Act. The Act provides in pertinent part:

SECTION 1. SHARK FINNING DEFINED.

In this Act, the term “shark finning” means the taking of a shark, removing the fin or fins (whether or not including the tail) of a shark, and returning the remainder of the shark to the sea.

SECTION 2. PROHIBITED ACTS.

It is unlawful for any person under the jurisdiction of the Republic of Rhincodon:

- (i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;
- (ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or
- (iii) to land any such fin without the corresponding carcass.

SECTION 3. INTERNATIONAL NEGOTIATIONS AND TRADE SANCTIONS.

The Minister of Foreign Affairs shall initiate discussions as soon as possible for the purpose of encouraging other nations to enact similar legislation, developing bilateral or multilateral agreements with other nations for the prohibition on shark-finning and seek agreements calling for an international ban on shark finning and other fishing practices adversely affecting these species through the United Nations Food and Agriculture Organization's Committee on Fisheries, Convention on the Conservation of Migratory Species of Wild Animals, and appropriate regional fishery management bodies. The President is hereby authorized to impose appropriate trade restrictions, including an embargo on all fish and fish products, when it is determined that nationals of a foreign country are engaging in shark finning.

16. Shark fin soup is legal in Rhincodon, so long as the entire body of the shark is landed.
17. After Rhincodon initiated negotiations with Alopias, the Alopias Congress enacted a law entitled the Shark Finning Prohibition Act in 2002. The Act stated that shark fins could only be landed in Alopias territory if the fins were "naturally attached" to the shark.
18. On 2 February 2010, the following diplomatic note was forwarded to the Government of Alopias:

The Embassy of the Republic of Rhincodon presents its compliments to the Government of the Federal States of Alopias and has the honor to request that the Federal States of Alopias enter into consultations with the Republic of Rhincodon concerning shark finning.

The Government of the Republic of Rhincodon notes with concern the continued reports of shark finning conducted by nationals of Alopias. Such actions are wasteful, unsustainable, and inhumane. We would welcome the opportunity to offer educational programs to modify the actions of the Alopias fishers to bring their actions into accord with international norms.

Please accept the assurance of my highest consideration.

/s/
L. Sapodorado
Ambassador

19. On 10 March 2010, the following diplomatic note was forwarded to the Government of the Republic of Rhincodon:

The Embassy of the Federal States of Alopias presents its compliments to the Government of the Republic of Rhincodon and has the honor to acknowledge receipt of the diplomatic note dated 2 February 2010.

At the outset, the Government of the Federal States of Alopias shares the concern regarding shark finning by its nationals. It cannot be viewed as an educational matter; rather, it is an economic matter. The shark fins are by far the most lucrative part of the shark, and our fishing fleets earn significantly more money by finning and not storing the entire shark. As you are aware, the shark fins landed in Alopias are largely destined for consumption in other regions.

While the offer to provide educational programs is noted, the Government of the Federal States of Alopias respectfully declines such programs at this time. We would welcome, however, development assistance to bolster our law enforcement efforts. Shark finning is illegal in Alopias, but we lack the resources to rigorously enforce this prohibition. We also encourage you to pursue this matter in multilateral fora, focusing on the demand for shark fins, through, for example, CITES or through the CMS Memorandum of Understanding on the Conservation of Migratory Sharks, which Alopias and Rhincodon recently signed.

Please accept the assurance of my highest consideration.

/s/
S. Quint
Ambassador

20. Rhincodon is prohibited by its domestic laws from providing funding to foreign law enforcement agencies and therefore declined to provide such funding.
21. In June 2010, environmental and animal welfare non-governmental organizations (NGOs) sent a petition to the Rhincodon Ministry of Foreign Affairs. The petition expressed concern and moral outrage over continued finning of mako sharks by Alopias fishing vessels. The petition also reported that some Alopias fishing operations were now openly “spining” sharks in an effort to comply with Alopias domestic law. The NGOs contended that there is no practical difference between finning and spining, and

the groups urged that the Ministry enter into further negotiations with Alopias to halt shark finning and spining. If such negotiations were unsuccessful, the NGOs advocated that trade sanctions should be imposed.

22. Shark spining involves leaving the fins attached to the shark's spine, rather than removing them completely. The Alopias fishing vessels that employed this technique argued that spining did not violate the Shark Finning Prohibition Act. [Photographs of spining can be found at <https://news.vice.com/article/gruesome-spining-loophole-aids-criminal-shark-finning-in-costa-rica>].
23. After negotiations between Rhincodon and Alopias, Alopias agreed to prosecute any known instances of shark spining.
24. In February 2011, criminal charges were brought against the captain of the Alopias fishing vessel *Orca* when it brought into an Alopias port mako sharks that had been spined. The trial judge ruled that the fins of “spined” sharks remained “naturally attached” to the shark and that therefore spining was not prohibited under Alopias law. The Alopias Supreme Court affirmed this ruling in July 2012.
25. On 30 August 2012, the Government of the Republic of Rhincodon sent a diplomatic note to the Government of the Federal States of Alopias that stated in part:

It is our position that the spining is the practical, legal, and moral equivalent of finning. Much of the shark is wasted, and the living, finless shark is cruelly dumped back into the sea to die. We respectfully request that the Federal States of Alopias amend its Shark Finning Prohibition Act to expressly include spining.

26. The Alopias Congress declined to amend the Shark Finning Prohibition Act, citing economic development and budget concerns as more pressing priorities.
27. After additional negotiations between Rhincodon and Alopias, on 15 January 2014, the Government of the Republic of Rhincodon sent a diplomatic note to the Government of the Federal States of Alopias that stated in part:

The failure to enforce the Shark Finning Prohibition Act and the allowance of spining violate Alopias’s international obligations under UNCLOS and CBD. Moreover, Alopias is violating the CMS MOU on Sharks. Alopias is ignoring the UN General Assembly, which has repeatedly called upon States

to take immediate and concerted action to improve the implementation of and compliance with existing regional fisheries management organization or arrangement and national measures that regulate shark fisheries and incidental catch of sharks, in particular those measures which prohibit or restrict fisheries conducted solely for the purpose of harvesting shark fins and, where necessary, to consider taking other

measures, as appropriate, such as requiring that all sharks be landed with each fin naturally attached[.]

G.A. Res. 68/71, ¶15, U.N. Doc. A/RES/68/71(Dec. 9, 2013).

In light of these breaches of international law, please be advised that we will consider imposing trade restrictions on the importation of fish and fish products from Alopias unless this matter is addressed satisfactorily.

28. In response, on 20 January 2014, the Government of the Federal States of Alopias sent a diplomatic note that stated in part:

Alopias has not violated international law. The fin harvesting is taking place within our exclusive economic zone and we have satisfied our UNCLOS and CBD obligations. By its own terms the CMS MOU is not legally binding.

* * *

Furthermore, the use of unilateral trade sanctions has long been discouraged. As Principle 12 of the Rio Declaration states, “Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.”

29. On 2 February 2014, the Rhincodon Minister of Foreign Affairs announced the imposition of trade sanctions on Alopias fish and fish products. The sanctions prohibited the importation of all fish and fish products from Alopias until Alopias implemented a program that effectively bans shark finning. “Shark finning is cruel and inhumane,” he stated. “It is plundering of the seas. The prohibition of shark finning is a common feature of regional fisheries management organizations and is thus part of customary international law. The failure of Alopias to prevent shark finning and so-called shark spining is a violation of its treaty and customary legal obligations. We are therefore imposing these sanctions in accordance with our domestic laws and our responsibilities under international law.”
30. On 3 February 2014, the Alopias Minister of Foreign Affairs held a press conference in which she criticized the trade sanctions as a violation of TARA. She also accused Rhincodon of hypocrisy and unequal treatment, noting that concentrated animal feeding operations are a common (and legal) practice in Rhincodon. “Rhincodon needs to clean up its own inhumane treatment of animals before it starts dictating to others,” she said.
31. Rhincodon asserts that its trade sanctions are justified under TARA Article 15(a).
32. After consultations and negotiations failed to resolve the matter, in March 2014 Rhincodon and Alopias agreed to enter into mediation pursuant to TARA Article 25.
33. The mediation failed to resolve the dispute, and after continued discussion, Rhincodon and Alopias signed an agreement on 16 June 2014 that submitted the matter to the International Court of Justice.

34. Alopias opposes the claims in paragraph 35 of this Annex and seeks an order declaring that (1) Alopias has not violated international law with respect to finning and spining of mako sharks by its nationals within its territorial waters and exclusive economic zone, and (2) Rhincodon has violated international law by banning the importation of fish and fish products from Alopias.

35. Rhincodon opposes the claims in paragraph 34 of this Annex and seeks an order declaring that (1) Alopias has violated international law for its failure to prevent its nationals from finning and spining mako sharks, and (2) Rhincodon has not violated international law by banning the importation of fish and fish products from Alopias.