

Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132 ("Federalism"). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this final rule is not a "significant energy action" under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this rulemaking as a significant energy action.

List of Subjects in 49 CFR Part 192

Gas, Natural gas, Pipelines, Pipeline safety.

■ For the reasons provided in the preamble, PHMSA amends 49 CFR Part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

■ 2. Revise § 192.121 to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined by either of the following formulas:

$$P = 2S \frac{t}{(D - t)} (DF)$$

$$P = \frac{2S}{(SDR - 1)} (DF)$$

Where:

P = Design pressure, gauge, psig (kPa).
S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73°F (23°C), 100 °F (38 °C), 120 °F (49

°C), or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR-3/2004, *HDB/PDB/SDB/MRS Policies* (incorporated by reference, see § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa). [Note: Arithmetic interpolation is not allowed for PA-11 pipe.]

t = Specified wall thickness, inches (mm).
D = Specified outside diameter, inches (mm).
SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

DF = 0.32 or
= 0.40 for nominal pipe size (IPS or CTS) 4-inch or less, SDR-11 or greater (*i.e.*, thicker pipe wall), PA-11 pipe produced after January 23, 2009.

■ Amend § 192.123 by revising paragraph (a) introductory text and adding a new paragraph (f) to read as follows:

§ 192.123 Design limitations for plastic pipe.

(a) Except as provided in paragraph (e) and paragraph (f) of this section, the design pressure may not exceed a gauge pressure of 100 psig (689 kPa) for plastic pipe used in:

* * * * *

(f) The design pressure for polyamide-11 (PA-11) pipe produced after January 23, 2009 may exceed a gauge pressure of 100 psig (689 kPa) provided that:

(1) The design pressure does not exceed 200 psig (1379 kPa);

(2) The pipe size is nominal pipe size (IPS or CTS) 4-inch or less; and

(3) The pipe has a standard dimension ratio of SDR-11 or greater (*i.e.*, thicker pipe wall).

Issued in Washington, DC, on December 17, 2008.

Carl T. Johnson,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080723890-81590-02]

RIN 0648-AX03

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes the annual quotas for the 2009 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks managed under Amendment 2 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). This final rule also establishes the opening date for the commercial Atlantic shark fisheries. This action is expected to have minimal negative impacts on commercial fishermen in the Atlantic commercial shark fishery as only a small overharvest occurred in the porbeagle shark fishery in 2008.

DATES: This final rule is effective on January 23, 2009. The 2009 Atlantic commercial shark fishing season and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz by phone: 301-713-2347, or by fax: 301-713-1917, or Jackie Wilson by phone: 240-338-3936.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations outlined in the 2006 Consolidated HMS FMP and its amendments are implemented at 50 CFR part 635.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP. That final rule established annual base quotas for SCS and pelagic

sharks and adjusted base annual quotas for non-sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under- and overharvests for future years' adjusted quota calculations and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual base quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non-sandbar LCS quota outside of the shark research fishery. The non-sandbar LCS adjusted base annual quota outside the research fishery is split between the Atlantic Ocean and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

The June 2008 final rule established a process of issuing a proposed and final rule for notification of fishing season and quotas. On October 27, 2008, NMFS published a proposed rule (73 FR 63668) announcing the fishing season for 2009 and the 2009 proposed quotas based on shark landings information as of September 15, 2008. One comment from the public was received on the proposed rule. This final rule serves as notification of the 2009 fishing season and 2009 quotas, based on shark landings updates as of November 15, 2008, pursuant to 50 CFR 635.27(b)(1)(vii). This action does not change the annual base and adjusted base annual commercial quotas as established under Amendment 2 to the 2006 Consolidated HMS FMP and its June 24, 2008 final rule.

Response to Comments

Comments on the October 27, 2008 proposed rule (73 FR 63668) received during the public comment period are summarized below, together with NMFS's responses.

Comment 1: Fishermen are not reporting accurate landings, so NMFS does not have accurate records for determining the next year's fishing quotas. NMFS should include an extra 40 percent in the landings to account for underreporting of catch by fishermen.

Sandbar sharks are vanishing due the lack of management measures to protect this species.

Response: NMFS relies on HMS dealer reports to monitor the shark quotas. However, NMFS also has scientific observer data from the shark research fishery that can be used to assess the accuracy of reported landings in dealer reports. In the future, as NMFS gathers more information in the shark research fishery, NMFS can determine whether or not underreporting is occurring and the appropriate approach to account for underreporting, as necessary. NMFS also uses scientific observer data in the stock assessments to verify, among other things, disposition of discards, interactions with protected resources, and fishing practices within the commercial shark fisheries. Through the NMFS observer program data, assessment scientists are able to account for non-reported mortality, such as sharks used for bait and dead discards of sharks.

NMFS implemented the final rule for Amendment 2 to the 2006 Consolidated HMS FMP on July 24, 2008 (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008). This final rule put in place a rebuilding plan for sandbar sharks, which includes a reduced quota for sandbar sharks that accounts for mortality of sandbar sharks in other fisheries as well as the directed shark fishery to ensure that the level of mortality for sandbar sharks remains below the total allowable catch recommended by the latest LCS stock assessment. This, in addition to other measures implemented under Amendment 2 to the 2006 Consolidated HMS FMP, such as the establishment of a shark research fishery and the requirement that all sharks be offloaded with their fins naturally attached, will help rebuild this species.

Changes from the Proposed Rule

1. At the time the proposed rule published, shark landings updates (through September 15, 2008) indicated there were no overharvests for any of the shark species/complexes in the 2008 fishing year. Thus, the proposed 2009 shark quotas were the annual base quotas and adjusted base annual quotas established in Amendment 2 to the 2006 Consolidated HMS FMP. However, on November 18, 2008, NMFS closed the porbeagle shark fishery as it had reached 116 percent (2.0 mt dw; 4,349 lb dw) of its quota. As of November 15, 2008, 2.0 mt dw were landed, which exceeds the 1.7 mt dw (3,748 lb dw) annual base porbeagle shark quota. Therefore, the 2009 annual commercial porbeagle quota will be reduced by 0.3

mt dw (601 lb dw) to account for this overharvest (1.7 mt dw annual base quota – 2.0 mt dw of 2008 landings = –0.3 mt dw overharvest). The 2009 adjusted annual commercial porbeagle quota will be 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota – 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota).

Available Quotas

The calculations and details for establishing the individual shark species/complexes quotas are described in the proposed rule (73 FR 63668, October 27, 2008) and are not repeated here. The quotas for the 2009 Atlantic commercial shark fishing season by species and species group are summarized in Table 1. If any additional quotas are exceeded between November 15, 2008 (the landings update used in this final rule), and December 31, 2008 (the end of the fishing season), the available 2009 quotas will be adjusted accordingly in a separate notice per 635.27(b)(1)(vii)(A), which states that overharvests will be adjusted for in the following fishing season. However, NMFS does not expect additional overharvests for the 2008 fishing year because there has not been a traditional shark fishery this late in the season in the past and because of the reduced trip limits imposed with the implementation of Amendment 2 to the 2006 Consolidated HMS FMP. Catch rates are also expected to decline as water temperatures decrease in the winter months and many shark species move farther offshore.

Currently, blacknose sharks, within the SCS complex, and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks other than porbeagle or blue sharks have an unknown stock status. In 2006 blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks currently are managed in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual base quotas or adjusted base annual quotas. Thus, with the exception of porbeagle sharks, the 2009 quotas will be equal to the base annual quotas

for SCS, blue sharks, and pelagic sharks other than porbeagle or blue sharks and the adjusted base annual quotas for sandbar sharks and non-sandbar LCS as established under Amendment 2 to the 2006 Consolidated HMS FMP.

TABLE 1. 2009 QUOTAS FOR NON-SANDBAR LCS, SANDBAR SHARKS, SCS, BLUE SHARKS, PORBEAGLE SHARKS, AND PELAGIC SHARKS OTHER THAN PORBEAGLE OR BLUE SHARKS FOR THE 2009 COMMERCIAL SHARK FISHING SEASON. THE 2009 COMMERCIAL SHARK FISHING SEASON WILL OPEN ON JANUARY 23, 2009.

Species Group	Region	2008 Base Annual Quota	2008 Landings ²	Overharvest	2009 Annual Quota
Non-Sandbar Large Coastal Sharks ¹	Gulf of Mexico	390.5 (860,896 lb dw)	268.4 (591,682 lb dw)	–	390.5 (860,896 lb dw)
	Atlantic	187.8 (414,024 lb dw)	127 (279,998 lb dw)	–	187.8 (414,024 lb dw)
Non-Sandbar LCS Research Quota ¹	No regional quotas	37.5 (82,673 lb dw)	5.9 (13,106.7 lb dw)	–	37.5 (82,673 lb dw)
Sandbar Research Quota ¹		87.9 (193,784 lb dw)	63.3 (139,583 lb dw)	–	87.9 (193,784 lb dw)
Small Coastal Sharks		454 (1,000,888 lb dw)	245.5 (541,120 lb dw)	–	454 (1,000,888 lb dw)
Blue Sharks		273 (601,856 lb dw)	1.5 (3,212 lb dw)	–	273 (601,856 lb dw)
Porbeagle Sharks		1.7 (3,748 lb dw)	2 (4,349 lb dw)	0.3 (601 lb dw)	1.4 (3,147 lb dw)
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	101 (222,774 lb dw)	–	488 (1,075,856 lb dw)

¹Annual base quotas for these species/complexes are the quotas being implemented from July 24, 2008, until December 31, 2012.

²Landings are from January 1, 2008, until November 15, 2008, and are subject to change.

³All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

1. 2009 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

Since no overharvests of the non-sandbar LCS and sandbar shark quotas within the shark research fishery occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quotas within the shark research fishery will be 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

2. 2009 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

Since no overharvests of the non-sandbar LCS quota for the Gulf of Mexico region occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region will be 390.5 mt dw (860,896 lb dw).

3. 2009 Quotas for the Non-Sandbar LCS in the Atlantic Region

Since no overharvests of the non-sandbar LCS quota for the Atlantic region occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009

adjusted base annual quota for non-sandbar LCS in the Atlantic region will be 187.8 mt dw (414,024 lb dw).

4. 2009 Quotas for SCS and Pelagic Sharks

Since no overharvests of small coastal sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks occurred during the 2008 fishing year, pursuant to Amendment 2 to the 2006 Consolidated HMS FMP, the 2009 annual base quotas for small coastal sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks will be 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

However, as of November 15, 2008, reported landings of porbeagle sharks was 2.0 mt dw (4,349 lb dw) (116 percent of the 2008 1.7 mt dw (3,748 lb dw) annual base quota). Therefore, to date, an overharvest of 0.3 mt dw (601 lb dw) occurred during the 2008 fishing season (1.7 mt dw annual base quota – 2.0 mt dw 2008 landings = –0.3 mt dw of overharvest). Per 50 CFR 635.27(b)(1)(vii)(A), if the available quota is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the

overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. Given the small overharvest of 0.3 mt dw (601 lb dw) in 2008 (16 percent of the annual base porbeagle quota), NMFS will deduct the entire 2008 overharvest from the 2009 annual base commercial porbeagle quota. This results in a 2009 adjusted annual commercial porbeagle quota of 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota – 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota).

Fishing Season Notification for the 2009 Atlantic Commercial Shark Fishing Season

The 2009 Atlantic commercial shark fishing season for non-sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, and pelagic sharks other than porbeagle and blue sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 23, 2009. The fishery will remain open until December 31, 2009, unless NMFS calculates that the fishing season landings for sandbar shark, non-sandbar LCS, SCS, blue shark, porbeagle shark, or pelagic sharks other than porbeagle or blue sharks has reached, or is projected to reach, 80 percent of the available

quota. At that time, consistent with 50 CFR 635.28(b)(2), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for the shark species group and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with 50 CFR 635.28(b)(2).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.27(b)(1)(vii), the purpose of this action is to adjust the Atlantic shark annual quotas based on over- and/or underharvests from the 2008 commercial shark fishing season. This final rule will not increase the overall quotas or landings for non-sandbar LCS, sandbar sharks, SCS, blue, porbeagle, or pelagic sharks other than porbeagle or blue sharks, and is not expected to increase fishing effort or protected species interactions.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658 on July 15, 2008) for Amendment 2 to the 2006 Consolidated HMS FMP that established adjusted base annual quotas for non-sandbar LCS and sandbar sharks. The final rule also established annual base quotas for SCS, porbeagle sharks, blue sharks, and pelagic sharks other than porbeagle or blue sharks. A final regulatory flexibility analysis (FRFA) conducted for the final rule for Amendment 2 to the Consolidated HMS FMP indicated that, as of October 2007, there were approximately 231 directed commercial shark permit holders, 296 incidental commercial shark permit holders, and 269 Atlantic shark dealer permit holders, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity. As of November 2008, there were approximately 221 directed commercial shark permit holders, 285 incidental commercial shark permit holders, and 108 commercial shark dealers. The FRFA concluded that the economic impacts on these small entities, resulting from adjusting the quotas for under- or overharvests in subsequent years via proposed and final rulemaking, were expected to be minimal.

This final rule will not change the adjusted base annual non-sandbar LCS

and sandbar shark quotas or the annual base quotas for SCS, blue, porbeagle, or pelagic sharks other than porbeagle or blue sharks established in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP nor will it implement any new management measures not previously considered, and it is not expected to increase fishing effort or protected species interactions. This final rule will adjust the quotas for each species/species complex based on any overharvests from the 2008 Atlantic commercial shark fishing season consistent with 50 CFR 635.27(b)(1)(vii). Since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2008 Atlantic commercial shark fishing season will be applied to the 2009 annual quotas or adjusted base quotas.

As of November 15, 2008, reported landings of porbeagle sharks was 2.0 mt dw (4,349 lb dw) (116 percent of the 2008 annual base quota of 1.7 mt dw (3,748 lb dw)). Therefore, an overharvest of 0.3 mt dw (601 lb dw) occurred during the 2008 fishing season. Per 50 CFR 635.27(b)(1)(vii)(A), NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. This results in a 2009 adjusted annual commercial porbeagle quota of 1.4 mt dw (3,147 lb dw) (1.7 mt dw annual base quota - 0.3 mt dw 2008 overage = 1.4 mt dw 2009 adjusted annual quota). Based on 2007 ex-vessel prices of \$0.66 per pound for porbeagle flesh and \$13.84 per pound for fins, this will result in net economic impact of -\$793.37 during the 2009 fishing season as the 2009 annual base commercial porbeagle quota will be reduced by 601 lb dw (0.3 mt dw) to account for the 2008 overharvest (\$0.66 per pound x 570.9 pounds of porbeagle flesh + \$13.84 per pound for fins x 30.1 pounds of porbeagle fins [assuming 5 percent of the dressed weight is fin weight] = \$793.37). The net economic impact of approximately -\$793.37 represents a small fraction of the overall gross revenues for the Atlantic commercial shark fishery (approximately \$8.1 million in 2006) and does not represent a significant negative economic impact.

Since the other individual species/complexes' 2009 quotas will be the same as those implemented in the final rule for Amendment 2 to the 2006

Consolidated HMS FMP, there are no expected economic impacts to fishermen other than those already analyzed in Amendment 2 to the 2006 Consolidated HMS FMP. Thus, the Chief Counsel for Regulation at the Department of Commerce certified at the proposed rule stage to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities beyond those considered in Amendment 2 to the 2006 Consolidated HMS FMP and its final rule (73 FR 35778, corrected at 73 FR 40658). NMFS provided prior notice and an opportunity for public comment on the proposed rule (73 FR 63668, October 27, 2008) to establish the 2009 Atlantic commercial shark quotas and fishing season.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: December 18, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226-6322-02]

RIN 0648-AX46

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while