

usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer its fisheries and to establish its own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

Dated: April 28, 2004.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

■ 1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 2. In § 300.63, paragraph (b)(3)(ii) is revised to read as follows:

**§ 300.63 Catch sharing plans and domestic management measures in Area 2A.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53'18" N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

\* \* \* \* \*

[FR Doc. 04–10071 Filed 4–29–04; 4:27 pm]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 031217320–4126–02; I.D. 112403D]

**RIN 0648–AR66**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Marine Reserves**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final regulations to implement Amendment 21 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 21) prepared by the Gulf of Mexico Fishery Management Council (Council). These final regulations modify the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves in the eastern Gulf of Mexico and extend the period of effectiveness of those restrictions through June 16, 2010. The intended effect of these final regulations is to protect the spawning aggregations of species within these areas, prevent overfishing, and aid in the evaluation of the effectiveness of marine reserves as a management tool.

**DATES:** This final rule is effective June 3, 2004.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) and Regulatory Impact Review (RIR) may be obtained from Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5305, fax: 727–570–5583, e-mail: phil.steele@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: phil.steele@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

The Madison and Swanson sites and Steamboat Lumps are located in the eastern Gulf of Mexico and encompass a total area of approximately 219 square nautical miles (751 km<sup>2</sup>). The boundaries of the two areas are:

**MADISON AND SWANSON SITES**

NW corner ..	29°17' N. lat., 85°50' W. long.
NE corner ...	29°17' N. lat., 85°38' W. long.
SW corner ...	29°06' N. lat., 85°50' W. long.
SE corner ....	29°06' N. lat., 85°38' W. long.

**STEAMBOAT LUMPS**

NW corner ..	28°14' N. lat., 84°48' W. long.
NE corner ...	28°14' N. lat., 84°37' W. long.
SW corner ...	28°03' N. lat., 84°48' W. long.
SE corner ....	28°03' N. lat., 84°37' W. long.

This final rule modifies the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves and extends the period of effectiveness of those restrictions through June 16, 2010. Specifically, within these marine reserves, this final rule: (1) prohibits the possession of Gulf reef fish year-round, except for possession aboard a vessel in transit with fishing gear appropriately stowed; (2) during November through April, prohibits all fishing and possession of any fish species, with exceptions for highly migratory pelagic species (billfish, sharks, swordfish and tunas other than blackfin tuna) and for fish possessed aboard a vessel in transit with fishing gear appropriately stowed; and (3) during May through October, restricts fishing activity to surface trolling only. Additional discussion of these measures and the rationale for them is provided in Amendment 21 and in the preamble to the proposed rule and is not repeated here.

On December 10, 2003, NMFS announced the availability of Amendment 21 and requested comments on it (68 FR 68854). NMFS published the proposed rule to implement Amendment 21 and requested comments on the proposed rule through February 19, 2004 (69 FR 310, January 5, 2004). NMFS approved Amendment 21 on March 3, 2004.

**Comments and Responses**

NMFS received 14 comments on Amendment 21 supporting the continuation of the Madison-Swanson sites and Steamboat Lumps marine reserves. Additionally, three Council members jointly submitted a minority report objecting to various aspects of Amendment 21. Six comments were received on the proposed rule, including a minority report submitted by one Council member.

**Comment 1:** Several commenters expressed concerns regarding the enforceability of the measures in Amendment 21 and the proposed rule. The principal enforcement concerns included the following: (1) the proposed fishing restrictions within the marine reserves would require at-sea enforcement and are, therefore, unenforceable; (2) allowing any fishing activity, i.e., seasonal surface trolling or fishing for HMS, in the marine reserves would render the applicable fishing restrictions unenforceable; (3) the definition of “surface trolling” is itself unenforceable because it defines the activity by criteria that enforcement agents cannot adequately monitor and assess, e.g., boat speed, visible wake; (4) allowing reef fish aboard a vessel

transiting the marine reserves would make the general prohibition on fishing for or possessing reef fish unenforceable; and (5) allowing any fishing activity in the marine reserves would not adequately prevent overfishing and would make achievement of optimum yield impossible.

*Response:* At-sea enforcement is inherent in establishing marine reserves, regardless of the suite of restrictions applied, because area-specific determinations of violations are required. NMFS acknowledges the difficulty associated with at-sea enforcement and that some of the measures can be enforced more effectively than others; however, NMFS believes that, on balance, the combination of proposed measures is reasonably enforceable and will achieve the intended conservation benefits.

The primary protective measures, i.e., restrictions on fishing for and possessing reef fish, can be enforced adequately. Specifically, the year-round prohibition on possession of reef fish can be enforced by a presence or absence determination. The only exception to the year-round prohibition (i.e., for a transiting vessel) is conditioned on specific requirements for non-stop progression through the area and gear-specific requirements for stowing any fishing gear. The year-round prohibition on possession of all reef fish in the marine reserves, except aboard a vessel that is strictly transiting, is a key measure for protection of reef fish species and is a measure that is enforceable by U.S. Coast Guard (USCG) surface assets at sea. Similarly, during the November through April peak spawning periods, except for HMS species, the reserves are closed to all fishing and the possession of any fish species is prohibited, except for vessels that are only transiting the reserves. NMFS believes these measures can be adequately enforced by USCG surface assets at sea and will protect reef fish and the spawning aggregations during the period of greatest vulnerability. As to the claim that allowing HMS fishing activity would render the provisions unenforceable, the Council has requested, and NMFS's HMS Division is in the process of considering, options for the development of fishing restrictions consistent with those implemented by the Council. When adopted, such measures would further enhance enforceability by eliminating some of the exceptions to the Council's fishing restrictions and would provide protections that do not currently exist in the reserves.

NMFS disagrees with the comments that allowance of limited surface trolling would render other restrictions unenforceable. Allowing seasonal surface trolling will have virtually no effect on the enforcement of some of the key protective measures, e.g., closure of the reserves to all fishing during the 6-month peak spawning period and year-round prohibitions on fishing for or possessing reef fish. The decision to allow limited surface trolling for 6 months of the year was supported by a majority of the Council members, who opposed a complete closure of the marine reserves to all fishing. Although allowing seasonal surface trolling will complicate enforcement somewhat during that 6-month period, NMFS believes that provision represents a reasonable balance of ensuring adequate conservation benefits while minimizing regulatory effects on an activity that is not expected to adversely affect reef fish species.

NMFS believes that the definition of surface trolling is functional despite the fact that not all aspects of the definition may be easily observed by enforcement officers in all situations. Although the boat speed and visible wake are admittedly difficult to gauge from a distance, the definition also describes prohibited trolling gear that potentially would be readily observable by enforcement officers inspecting fishing vessels.

NMFS does not believe that allowing reef fish aboard a vessel transiting the reserves will unduly compromise the general prohibition on fishing for or possessing reef fish. The stipulations requiring non-stop progression through the area and detailed requirements for stowage of fishable gear are sufficiently stringent to prevent the fishing restrictions from being easily circumvented. Allowing vessels with reef fish and other fish species aboard to transit the reserves minimizes disruptions to the activities of vessels that do not fish in the reserves and alleviates potential safety-at-sea issues that could arise from requiring such vessels to spend extra time circumnavigating the reserves.

NMFS disagrees with the comment that allowing any fishing activity in the reserves would result in a failure to prevent overfishing or to achieve optimum yield. Given the small size of the reserves and the minimal proportion of the overall fishing mortality that would be expected to occur there, it is very unlikely, even under a worst-case scenario, that fishing under the proposed restrictions would jeopardize the prevention of overfishing or achievement of optimum yield. The

Madison and Swanson sites and Steamboat Lumps marine reserves were established to provide extended protection of spawning aggregations of gag in order to prevent overfishing and improve spawning success; provide protection for a portion of the offshore population of male gag, which has been substantially reduced in proportion to female gag since the 1970s; and allow for the continued evaluation of the effect and usefulness of marine reserves as a fishery management tool. Testimony from NMFS's scientists and other members of the scientific community indicates that fish populations have increased in the closed areas even though trolling for HMS has been allowed. After evaluating all available information, the Council determined that the effects of surface trolling on deep-reef fish species within the marine reserves would be minimal, as the surface trolling activities allowed in the proposed rule have been demonstrated generally to not interact with such species. NMFS believes that the combination of restrictive measures applied in the marine reserves can be enforced adequately and that such measures will contribute to the prevention of overfishing and to the achievement of optimum yield from the fishery.

*Comment 2:* Several commenters suggested that the Council's action is inconsistent with the recommendations provided by its Scientific and Statistical Committee (SSC), Reef Fish Advisory Panel (AP), Law Enforcement Panel (LEP), and several environmental organizations to prohibit all fishing within the marine reserves.

*Response:* In addition to considering the recommendations of the AP, SSC, LEP, and various non-governmental organizations, the Council is required to consider the mandates of the Magnuson-Stevens Act and all other applicable law. After evaluating all of these factors and the best scientific information available, the Council determined that allowing surface trolling only during those months outside the peak spawning periods of the relevant reef fish species and subject to reasonable restrictions designed to minimize potential impacts on reef fish would best balance the various mandates under the Magnuson-Stevens Act and other applicable law. This approach is designed to meet the conservation objectives while minimizing regulatory impacts to the extent practicable.

*Comment 3:* Several commenters suggested that allowing surface trolling within the marine reserves ignores the interrelationship with the ecosystem and is inconsistent with NMFS's

emphasis on ecosystem-based management

*Response:* NMFS's ecosystem-oriented management goals include maintaining biodiversity and ecological processes, maintaining and restoring habitats essential for fish and their prey, and maintaining system sustainability and sustainable yields for human consumption and non-extractive uses. Benefits of continuing the marine reserves at Madison-Swanson and Steamboat Lumps include protection of spawning aggregations of gag and other species from intervention by fishing gear, and protection of a portion of the male gag population year-round. Further, protection of both spawning aggregations and a portion of the male population is an integral part of rebuilding gag populations to optimum yield levels. Additionally, the continued evaluation period proposed for the marine reserves will allow more research to be conducted into their effectiveness as a fishery and ecosystem management tool. As such, NMFS's support for the continuation of the marine reserves, including modification to the fishing restrictions within the marine reserves, reflects the agency's commitment to ecosystem-based fisheries management.

*Comment 4:* Some commenters stated that the preferred alternative regarding the seasonal allowance of surface trolling in the marine reserves was stated in a confusing, unclear manner and, therefore, the implications were not adequately understood or analyzed prior to adoption by the Council.

*Response:* Examination of the minutes from the Council's July 2003, meeting indicates that the adopted alternative (Alternative 6.2.1 as revised) was thoroughly analyzed by Council members before adoption. The draft amendment before Council members at the time of adoption contained a range of alternatives both more restrictive and less restrictive than the eventual preferred alternative. Consequently, members were aware of the potential impacts of their decision prior to selecting the alternative. The specific alternative was fully analyzed in the document submitted by the Council to NMFS. It was then subject to additional analysis by NMFS and extensive public comments via the plan amendment approval and proposed rule processes.

*Comment 5:* Several commenters noted that the proposed regulations on fishing activities within the marine reserves would have a more restrictive effect on fishermen pursuing reef fish, which exhibit strong site fidelity, than on surface trollers targeting migratory

pelagic species. There was concern that this was inequitable.

*Response:* NMFS acknowledges the potential disparate effect of the closure on reef fish fishing activities compared to fishing activities associated with the harvest of migratory species. Surface trolling activity will be the only legal fishing activity during the part of the year when any fishing activity is allowed, and in that regard favors that type of fishing over other activities not allowed. However, any person who seeks to engage in such legal fishing activity during the fishing season may do so. Further, the closures were originally established specifically for the protection of reef fish species, which is adequately accomplished via the proposed alternative.

*Comment 6:* Two commenters claimed that because the only allowed fishing activity within the marine reserves is surface trolling, the regulations would not allow fishers to fight or boat a fish caught while surface trolling.

*Response:* The definition of "surface trolling" describes the only allowable method of fishing in the reserves as adopted by the Council. It does not directly address subsequent actions taken by fishermen that might include fighting or catch-and-release of fish species. However, the regulation does not make it illegal to boat, fight, or release fish caught while engaging in a legal fishing activity.

#### Classification

The Assistant Administrator for Fisheries, NOAA, determined that Amendment 21, which this final rule implements, is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a FRFA for this final rule. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the final rule. The rule will extend the designation of the Madison and Swanson sites and Steamboat Lumps as marine reserves for another 6 years from the current sunset date of June 16, 2004. Within the designated areas the rule will: prohibit possession of Gulf reef fish, except for possession aboard a vessel in transit with fishing gear appropriately stowed; prohibit fishing for and possession of any fish species during November through April, with exceptions for highly migratory species and for

possession of fish aboard a vessel in transit with gear appropriately stowed; allow only surface trolling during May through October; and require vessels transiting the marine reserves in possession of fish, subject to an exemption, to comply with gear stowage requirements.

The objectives of the final rule are to provide continued protection to spawning aggregations for gag, male gag, and other species within the reserves. A subsidiary objective of the final rule is to allow additional time for research to be conducted on the effectiveness of the two marine reserves as a fishery management tool. The Council believes that the achievement of these objectives can be best accomplished through an extension of the marine reserve designation for another 6 years.

No significant issues were raised by public comments in response to the IRFA or related to the economic impacts of the proposed rule. Therefore, no changes were made in the final rule as a result of such comments.

The final rule will not impose any changes in record-keeping for affected entities. Compliance requirements will change slightly by allowing the use of troll gear within the reserves and allowing vessels to transit the reserves. These changes will mitigate revenue losses from fishing restrictions within the reserves and reduce travel costs for vessels passing through the reserves.

No duplicative, overlapping, or conflicting Federal rules have been identified. However, fishing restrictions within the reserves may pose coordination problems with respect to fishing provisions affecting highly migratory species.

This final rule will impact both the commercial and recreational participants that traditionally harvested fish, provided recreational trips, or received harvested fish from these areas, or would be expected to do so upon sunset of the current designation. The specific fishing activities that historically occurred within the two marine reserves are unknown because no data have been collected at such a fine level of a geographic specificity. However, some characteristics of fishing activities can be inferred from fishing activities historically conducted in Statistical Areas 6 and 8, where the marine reserves are located. This approach likely overestimates the impacts of the final rule because participants likely have adjusted their fishing patterns. Adjustments in the estimation procedures incorporating consideration of water depth have been introduced to partially address this problem.

Of the 1,338 boats that reported in their logbooks to have historically landed fish in the Gulf of Mexico, 356 boats harvested fish in Statistical Areas 6 or 8. These 356 boats include 59 vessels that harvest reef fish using fish traps. These trap vessels are not believed to have historically operated in the marine reserve areas since trap vessels generally operate in shallower waters. Eighty-seven dealers received fish that were harvested in Statistical Areas 6 or 8. There are 1,515 for-hire vessels with Gulf reef fish or coastal migratory pelagics permits. It cannot be determined, however, how many of these vessels actually fished in Statistical Areas 6 or 8. The rule is, thus, expected to directly affect 297 commercial fishing vessels, 87 fish dealers/processors, and an unknown number of for-hire vessels.

Average gross receipts of vessels in the eastern Gulf (those that likely fished in Statistical Areas 6 or 8) are estimated to range from \$24,588 for low-volume vessels that fish with vertical line gear to \$116,989 for high-volume vessels that fish with longline gear. Total employment by reef fish processors in the Southeast is estimated at 700 individuals, both part and full time. Given that fish dealers are smaller business operations than processors, employment by any of the affected dealers is assumed less than 500 individuals. Average gross receipts for charterboats is estimated at \$68,000 and \$324,000 for headboats. A fishing business is considered a small entity by the Small Business Administration if it is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of \$3.5 million in the case of commercial harvesting entities or \$6 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. All business entities directly affected by the rule are, therefore, considered to be small business entities.

Assuming alternative sources of revenue have not been located during the current closure, the final rule is expected to continue to reduce total gross revenues of commercial fishing vessels by \$352,000 annually, based on pre-closure fishing information. This represents approximately 2 percent to 5 percent of gross revenues if equally divided among the 297 affected vessels. The revenue and profit profile for dealers is unknown. The projected reduction in ex-vessel sales (\$352,000) as a result of the final rule equals approximately 11 percent of total shallow-water grouper revenues

generated from harvests in Statistical Areas 6 and 8. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests from just these areas. Although there is some information on the revenues of for-hire vessels, information on for-hire vessel profits is unavailable, and the extent of for-hire vessel participation within the marine reserves is unknown. It is, therefore, not possible to provide an estimate of the impacts of the two marine reserves on the revenues and profits of for-hire vessels.

The final rule is expected to produce unquantifiable lower impacts than current fishing restrictions because the rule will allow surface trolling within the two reserves for the months of May through October and will allow commercial and recreational vessels to transit the reserves, two activities that are not allowed under current regulations. This will allow both increased fishing activity for vessels that wish to fish the area and lower costs for vessels for vessels that wish to transit the restricted areas.

Seven alternatives were considered for the continuation of the two marine reserves. The alternatives differ mainly on the sunset date of the marine reserve designation, with four alternatives identifying a specific sunset date and three alternatives establishing an indefinite sunset date. For any given set of fishing restrictions accompanying the continuation of the marine reserve designation, adverse impacts are greater the longer the restrictions remain in place. It is not possible to determine the relative impacts of the alternatives that specify an indeterminate duration since they lack a terminal point. With respect to those alternatives that have specific time durations, two alternatives provide shorter time horizons, and two provide longer time horizons than the final rule. Costs to small entities would be reduced under the no-extension or 4-year extension alternatives, whereas costs would increase under the longer extensions. The shorter extensions, however, would not provide sufficient time to assess the effects of the two marine reserves as a management tool and would not, therefore, achieve the Council's objectives.

Six alternatives to the harvest restrictions were considered. In terms of impacts on revenues of small entities, these alternatives may be grouped into two groups, with the final alternative intermediate in severity of fishing restriction. The final rule will allow trolling within the reserves for 6 months of the year. Four alternatives were more restrictive than the final rule and would

not reduce the adverse impacts. Two alternatives were less restrictive than the final rule and would allow trolling year-round. These alternatives would reduce the negative impacts of the rule but also would reduce the protection of gag spawners during the spawning months. Prohibition of all trolling, however, was determined to be excessive. The final rule is expected to best achieve the Council's objectives at the lowest possible cost.

Two alternatives were considered relative to the seasonal duration of the fishing restrictions. These two alternatives would reduce the seasonal duration of the fishing restrictions and, therefore, reduce the negative effects of the fishing restrictions within the reserves. However, reducing the seasonal duration of the fishing restrictions reduces stock protection and increases the likelihood that the restrictions will not capture the seasonal variability of the spawning months for the target species. Annual application of the fishing restrictions is, therefore, necessary to achieve the objectives of the rule.

Copies of the RIR and FRFA are available from NMFS (see ADDRESSES).

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 28, 2004.

**Rebecca Lent**

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.34, paragraph (k) is revised to read as follows:

#### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(k) *Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps.* (1)(i) The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A .....	29°17'	85°50'
B .....	29°17'	85°38'
C .....	29°06'	85°38'

Point	North lat.	West long.
D .....	29°06'	85°50'
A .....	29°17'	85°50'

(ii) Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A .....	28°14'	84°48'
B .....	28°14'	84°37'
C .....	28°03'	84°37'
D .....	28°03'	84°48'
A .....	28°14'	84°48'

(iii) The provisions of paragraphs (k)(2) through (6) of this section apply within the Madison and Swanson sites and Steamboat Lumps through June 16, 2010.

(2) Possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section.

(3) During November through April, all fishing is prohibited, and possession

of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(4) of this section. The provisions of this paragraph, (k)(3), do not apply to highly migratory species.

(4) For the purpose of paragraph (k) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means -

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait)

must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(5) During May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (k)(5), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(6) For the purpose of paragraph (k) of this section, fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*).

\* \* \* \* \*

[FR Doc. 04-10072 Filed 5-3-03; 8:45 am]

BILLING CODE 3510-22-S