Amendment 4 to the Puerto Rico Fishery Management Plan: Reclassification of the Rainbow Runner as a Pelagic Fish

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Abbreviations and Acronyms Used in this Document

ACL	annual catch limit
ACT	annual catch target
AM	accountability measure
CFMC	(Council); Caribbean Fishery Management Council
DAP	District Advisory Panel
DNER	Department of Natural and Environmental Resources (Puerto Rico)
EEZ	exclusive economic zone
FMP	fishery management plan
MSA	(Magnuson-Stevens Act); Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
OFL	overfishing limit
OY	optimum yield
RFA	Regulatory Flexibility Act
RIR	regulatory impact review
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office
SSC	Scientific and Statistical Committee
USVI	United States Virgin Islands

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Chapter 1. Introduction

1.1 What Action is Being Proposed?

The rainbow runner (*Elagatis bipinnulata*; salmón common name in Spanish) is managed under the Comprehensive Fishery Management Plan for the Puerto Rico Exclusive Economic Zone (EEZ) (Puerto Rico FMP) (CFMC 2019). The Caribbean Fishery Management Council (Council) is proposing to reclassify the rainbow runner from the Reef Fish group to the Pelagic Fish group through Amendment 4 to the Puerto Rico FMP. Reclassifying the rainbow runner to the Pelagic Fish group would ensure the species is managed in accordance with its life history characteristics and fishing patterns, and that its federal management is consistent with the Council's management of pelagic species (see Section 1.3. Description of the Rainbow Runner Fishery for additional information).

The two options in this amendment for the Council to consider are (1) continuing to manage the species as part of the Reef Fish group under the Puerto Rico FMP subject to the recreational bag limit, harvest prohibitions in the Bajo de Sico area, and the reef fish-specific accountability measure [AM] that apply to the Reef Fish group (i.e., no action) or (2) reclassifying the species as a Pelagic Fish under the Puerto Rico FMP subject to the specification of an annual catch target (ACT) based on the annual catch limit (ACL) for the species, and a pelagic–specific AM.

1.2 Why is the Council Considering Action?

During the development of the Puerto Rico FMP, the species managed under the FMP were classified into descriptive categories (Reef Fish, Pelagic Fish, Rays, etc.). At that time, the rainbow runner along with two other jack species (the crevalle jack and the African pompano) that were new to federal management under the Puerto Rico FMP, were classified as Reef Fish (see CFMC 2019). As such, since the implementation of the Puerto Rico FMP in October 2022, rainbow runner has been subject to management measures applicable to reef fish in federal waters around Puerto Rico. These waters extend 9-200 nautical miles (17-370 kilometers) from the shoreline to the outer boundary of the EEZ around Puerto Rico. These jack species are an important component of the recreational catch, although, as noted in the Puerto Rico FMP and during recent Council meetings, some catch is reported by commercial fishers but at a lower level (see Section 1.3.3).

Jack species under the Puerto Rico FMP are managed as individual stocks due to differences in the primary location of the recreational catch, as recommended to the Council by the Puerto Rico District Advisory Panel (DAP) and supported by the Council's Scientific and Statistical Committee (SSC) during the development of the Puerto Rico FMP (See Section 1.3.1). For example, the rainbow runner is commonly caught in open water, the crevalle jack is commonly

harvested closer to shore and around mangrove channels, and the African pompano is commonly caught off the beach (CFMC 2019). Although the rainbow runner has some association to deep-water reefs, the description of the species in literature and in the Puerto Rico FMP is more indicative of a pelagic life history and fishing patterns than that of a reef fish (and all other Council-managed fish) under the discontinued Reef Fish FMP (See Section 1.3.1 for additional information).

At the April 2023 Council meeting, the Puerto Rico DAP Chair requested the Council consider reclassifying the rainbow runner as a Pelagic Fish under the Puerto Rico FMP to change the management of this species in a manner that better reflects the way the species is fished, with the methods and techniques used for pelagic fishing in open water, which are different than those used to fish for reef fish. For example, DAP members discussed that in Bajo de Sico and around Desecheo Island (a state-managed marine reserve) off the west coast of Puerto Rico, the rainbow runner is caught in the water column by trolling or with live bait, while reef fish are usually caught off the bottom. In addition, given that reef fish harvest is prohibited during the 6-month area closure in Bajo de Sico (50 CFR 622.439(a)(3)), the current classification of rainbow runner as a reef fish could create enforcement issues if the species is caught in that area during the closure for Council-managed reef fish. DAP members also expressed concern to the Council that continuing to prohibit the harvest of rainbow runner during the Bajo de Sico seasonal closure could potentially increase fishing pressure in waters around the Desecheo Island marine reserve, which is a popular fishing area for this and other pelagic species (see Puerto Rico DAP Report at the 181st CFMC Meeting). At the April 2023 meeting, the Council requested their SSC evaluate the available information on life history and past landings of the rainbow runner and to make a recommendation regarding the classification of rainbow runner. During their May 2023 meeting, the SSC determined that there was sufficient information to support the reclassification of the species as a pelagic fish and recommended the Council reclassify rainbow runner as a Pelagic Fish under the Puerto Rico FMP. At the August 2023 Council meeting, the Council accepted the SSC's recommendation, and decided to move forward with an amendment to the Puerto Rico FMP to make this change.

1.3 Description of the Rainbow Runner Fishery

The Puerto Rico FMP describes the life history of the rainbow runner and is incorporated here by reference and summarized below (CFMC 2019). In terms of habitat, adult and young rainbow runner occur on the outer shelf, around offshore islands and banks, and offshore. Most rainbow runner sightings are around floating, artificial structures, such as fish aggregating devices or drifting vessels. Rainbow runner are usually absent at depths less than 121 ft (37 m). Literature commonly describes the rainbow runner as an inshore pelagic species that feeds on pelagic fish and invertebrates. Fishermen at Council meetings noted that ballyhoo, small flying fish, sardines, goggle-eye, and other fish that commonly inhabit the water column constitute prey items for the rainbow runner (CFMC 181st Meeting, April 2023).

In Puerto Rico, rainbow runner is rarely specifically targeted by commercial fishers, and instead, is primarily bycatch when fishing for other pelagic species offshore such as wahoo and mackerel. Rainbow runner can be caught using a variety of fishing techniques including trolling with lures, with surface poppers, live bait, and jigs.

1.3.1 Management

Management of the rainbow runner in federal waters around Puerto Rico began in October of 2022, with the implementation of the Puerto Rico FMP. As discussed in Section 1.2, rainbow runner was added for management as an economically important species for the recreational sector.

Before the implementation of the Puerto Rico FMP in 2022, all Council-managed fish species in federal waters were included under the Reef Fish FMP, as amended. Coastal pelagic species were not managed in federal waters. The Reef Fish FMP included seven species of jacks, all of which were later removed from management in the Puerto Rico FMP based on the application of specific criteria to determine need for management and conservation. In their place, three new jack species were added to the Puerto Rico FMP: rainbow runner, crevalle jack, and African pompano. These species were added to the Puerto Rico FMP, due to their economic importance to the national or regional economy based on a threshold of landings or value separately determined for each of the recreational and commercial sectors as appropriate (e.g., top 90%) and because they represented an important component of bycatch, as established by expert analysis (i.e., Criterion D for including species for management under the Puerto Rico FMP [CFMC 2019]).

The rainbow runner is managed as an individual stock: Jacks 3 under the Reef Fish group category in the Puerto Rico FMP. It is managed separately from other Jack stocks because of differing fishing patterns and distribution (see Section 1.2). As a result, regulations applicable to the Reef Fish group apply to rainbow runner. These regulations include an aggregate recreational bag limit, gear restrictions, reef fish-specific restrictions in a seasonal area closure, among others that are discussed in detail in Chapter 5 of the Puerto Rico FMP.

As part of the Reef Fish group, the Jacks 3 stock (i.e., rainbow runner) is managed with an ACL for each of the commercial and recreational sectors. The commercial ACL is 913 pounds (lbs) (414.1 kg) whole weight (ww) and the recreational ACL is 8,091 lbs (3,670 kg) ww. However, in the absence of recreational landings, the commercial ACLs are applicable for all harvest. Commercial landings have been infrequently recorded through the Puerto Rico Department of Natural and Environmental Resources (DNER) commercial catch statistics program, and continue to be collected, although there is little commercial interest in rainbow runner. The commercial ACL was established in the final rule implementing the Puerto Rico FMP using

landings information from 1988-2016. As discussed in Section 1.3.3 below, because rainbow runner is not listed on Puerto Rico's DNER paper commercial catch report form, commercial fishermen have to manually write-in the rainbow runner on the forms. The recreational ACL was established in the final rule for the Puerto Rico FMP using landings information from 2000-2016. Recreational landings information has not been collected since 2016, the last year the Marine Recreational Fisheries Statistics Survey (MRFSS)/Marine Recreational Information Program (MRIP) collected recreational catch and effort data, as explained in Section 1.3.4.

As described in the Puerto Rico FMP, the National Marine Fisheries Service (NMFS) compares specific years of landings data to the ACLs and, for pelagic species to the ACTs to monitor compliance. The years of landings are described below.

- In the first year of implementation (2023), NMFS used the most recent single year of landings data.
- In the second year of implementation (2024), NMFS used the next single year of landings data;
- In the third year of implementation (2025), NMFS will use the average of the most recent 2 years of landings data;
- Thereafter, NMFS will use the average of the most recent 3 years of landings data.
- If landings for one sector are not available for comparison to the sector-specific ACL for a comparison period, then the ACL for the sector with available data would be the applicable ACL for the stock or stock complex for that period.

For the Reef Fish group, recreational landings are not currently available for monitoring the recreational ACLs. Therefore, the ACL for the sector with available landings (commercial sector) is the applicable ACL for the stock or stock complex, including the Jacks 3 stock for rainbow runner. If NMFS estimates that available landings for the stock, stock complex, or indicator stock, have exceeded the applicable ACL for the stock or stock complex, NMFS will file a notification with the Office of the Federal Register to reduce the length of the fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent landings from exceeding the ACL, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that the ACL was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season for the stock or stock complex. (50 CFR 622.440(a)(7)).

For the Pelagic fish group, if NMFS estimates that landings have exceeded the applicable ACT for a stock or stock complex, NMFS will determine appropriate corrective action in consultation with the Council (50 CFR 622.440(b)(7)).

The rainbow runner is also subject to a recreational bag limit that applies to an aggregate of reef fish species managed by the Council. The aggregate recreational bag limit includes certain species of angelfish, grunt, jack, surgeonfish, triggerfish, and wrasse[1] and allows for five fish per person per day or, if three or more persons are aboard, 15 per vessel per day, but not to exceed one surgeonfish per person per day or four surgeonfish per vessel per day. The aggregate recreational bag limit was established through the final rule implementing the 2011 Caribbean ACL Amendment, (CFMC 2012; 76 FR 82403), for species, which were not undergoing overfishing. The goal of the aggregate recreational bag limit was to slow the rate of harvest to reduce the probability of exceeding the recreational ACLs for each stock/stock complex. Many of the species included in the aggregate bag limit (including jacks) were later removed from management in the Puerto Rico FMP. Because the recreational bag limit was carried over to the Puerto Rico FMP without modification, it continues to apply to all species classified as reef fish; therefore, it also applies to the new jack species (i.e., rainbow runner, crevalle jack, and African pompano).

In addition, rainbow runner are also subject to the reef fish-specific prohibition on fishing of and possession of Council-managed reef fish during the seasonal closure in the federal portion of the Bajo de Sico in western Puerto Rico. Bajo de Sico is an area shared by state and federal jurisdiction off the west coast of Puerto Rico. As discussed in Section 1.3.3 below, most reported landings of rainbow runner or jacks occur in the west coast of Puerto Rico. The Bajo de Sico seasonal closure only affects federal waters and extends from October 1 through March 31, each year. It was put in place to protect spawning reef fish from fishing activities that can potentially affect spawning activities or aggregating fish (e.g., bycatch of spawning species while fishing for reef fish). The Endangered Species Act-listed Nassau grouper, red hind, as well as other species of snappers and groupers aggregate to spawn in reef habitats within the managed area during the closure period. The seasonal area closure also serves to protect important habitat that supports those aggregations. All bottom tending gear is also prohibited in the area year-round. Fishing for spiny lobster as well as for species that occupy the water column, such as pelagics and highly migratory species, is allowed during the 6-month seasonal closure. The harvest of these species is considered unlikely to affect spawning species and the habitat due to the gear and methods used to harvest pelagic species and spiny lobster (CFMC 2009).

1.3.2 Status of the Stock

Rainbow runner has not been assessed. Per its classification under Tier 4b of the Council's Acceptable Biological Catch Control rule (i.e., no assessment available, species not vulnerable), overfishing status is determined through the monitoring of its sustainable yield level, which acts

[1] This aggregate bag limit applies to the following species: French angelfish, gray angelfish, queen angelfish; white grunt; crevalle jack, African pompano, rainbow runner; blue tang, doctorfish, ocean surgeonfish; gray triggerfish, ocean triggerfish, queen triggerfish; hogfish, puddingwife, Spanish hogfish. Note that a different recreational bag limit applies to species of snapper, grouper, and parrotfish.

as a proxy of the overfishing limit. As of March 2024 (NMFS Quarter 1 2024 FSSI and Non-FSST Stock Status), the stock is not undergoing overfishing and its overfished status is unknown.

1.3.3 Commercial Landings

While the rainbow runner is typically not a target species for the commercial sector, it is incidentally-caught by commercial fishermen while fishing for other species such as wahoo, blackfin tuna, yellowfin tuna, and dolphin (Table 1.3.1). Commercial fishermen that catch rainbow runner do not generally fish at locations where reef fish are targeted or with fishing techniques used to catch reef fish. For example, rainbow runner is usually caught in the water column and by jigging. The rainbow runner is not listed on Puerto Rico's DNER paper commercial catch report form, which is used by approximately 60% of commercial fishermen to enter their landings data. If the species is caught, the landings must be manually written-in on the catch report form. Similarly, the DNER's e-reporting application implemented in 2019 to report commercial landings, which is alternatively used by approximately 40% of commercial fishers, does not have rainbow runner as a featured fish. Rather, rainbow runner is included in a drop-down menu that includes other species. As such, commercial landings for rainbow runner appear to be infrequent. At the time this amendment was drafted, the most recent year of commercial landings available for analysis was 2022. Therefore, a comparison of commercial landings of rainbow runner before and after implementation of the Puerto Rico FMP (i.e., management of the species under the reef fish classification) was not possible at the time this amendment was drafted. For this amendment, commercial landings from 2012-2022 were used in the effects analyses with the assumption that fishing for this species in years 2023 and later would be similar to fishing during the 2012-2022 time period.

From 2012-2022, 46 fishing trips reported a total of 2,763 pounds lbs ww of rainbow runner. More than 98% of those landings were reported from the west coast of Puerto Rico (2,724 lbs ww of 2,763 lbs ww). Gear types/methods used to commercially harvest rainbow runner during this period include rod and reel (35%), hand line (22%), free diving (e.g., with spear) (22%), troll line (11%), bottom line (4%), cast net (2%), and by hand (2%). The number of commercial fishermen who reported landings of rainbow runner each year ranged from 0 (2013, 2018) to 8 (year 2022). Of those landings, approximately 29.8% were reported from state waters, 51.3% from federal waters, and the remaining 18.9% were from an unknown jurisdiction.

Of the 46 commercial fishing trips for which rainbow runner was reported, 10 trips reported rainbow runner only. For the remaining trips, species reported as being landed along with rainbow runner on the same trip included coastal pelagics, deep-water reef fish, other reef fish, and baitfish species (Table 1.3.1). On some trips, multiple gear types were used and not all of the species reported on the same trip as rainbow runner were caught with the same gear.

Table 1.3.1 Total adjusted commercial landings for 2012-2022, in lbs ww, for rainbow runner and other species reported on the same commercial fishing trip, the number of trips for all species reported with rainbow runner, and the number of trips for species reported with the same gear type as rainbow runner.

Species	Adjusted Landings (lbs ww) of Species Caught with Rainbow Runner (2012-2022)	Number of Trips of Species Caught with Rainbow Runner	Number of Trips of Species Caught with Rainbow Runner using the Same Gear Type
Rainbow runner	2,763	46	46
Tuna, yellowfin	1,990	11	11
Tuna, blackfin	743	11	10
Dolphinfish	551	7	6
Wahoo	428	12	12
Snapper, queen	371	3	1
Snapper, black	183	3	2
Mackerel, king	179	6	6
Tunny, little	152	2	2
Snapper, silk	103	4	3
Snapper, yellowtail	57	2	2
Snapper, vermilion	56	1	1
Snapper, blackfin	34	2	2
Triggerfish, ocean	33	1	1
Mackerel, cero	19	1	1
Herring, sardinella	12	1	0
Ballyhoo	6	1	0
Grouper, red hind	6	1	1
Lionfish	4	1	1
Snapper, mutton	4	1	1

Monitoring of Commercial Landings

As described in Section 1.3.1, the rainbow runner has been managed since 2022 and there have been no reductions in the length of the fishing season to date. However, recent monitoring of landings indicates that commercial landings of the most recent year of available data (1,177 lbs ww in 2022) exceeded the commercial ACL of 913 lbs ww for rainbow runner by 264 lbs ww. NMFS determined that the exceedance was due to enhanced or improved data collection or monitoring, and therefore the overage did not trigger AMs for the species.

1.3.4 Recreational Landings

Currently, few data are available for recreational fishing activities in Puerto Rico. MRFSS/MRIP collected recreational catch and effort data from 2000-2016, but was suspended in 2017 and has not resumed to date. When collected, MRFSS/MRIP catch estimates were

reported for each species over 2-month periods (i.e., wave), and no gear-specific information was included. Similar to the commercial data, a comparison of recreational landings of rainbow runner before and after implementation of the Puerto Rico FMP (i.e., management of the species under the reef fish classification) was not possible at the time this amendment was drafted. For this amendment, recreational catch estimates from 2000-2016, excluding years where there were no rainbow runner landings were used in the effects analyses with the assumption that fishing for this species in years 2023 and later would be similar to fishing during the 2000-2016 time period.

Recreational catch of rainbow runner is highly variable from year to year and from wave to wave within a year (Table 1.3.2). The vast majority of that catch (81%), was reported from state waters (0-9 nautical miles from shore). An average of 342 rainbow runner per year were reported from federal waters during the years that rainbow runner was reported(total n = 4,452), which is less than one fish per day.

Monitoring of Recreational Landings

As described in Section 1.3.1, because recreational landings are not currently available for monitoring the recreational ACL, the commercial ACL (the sector with available landings) is the applicable ACL for the stock or stock complex. Although the commercial ACL for the species was exceeded in 2022, which is also the most recent year of available landings data, NMFS determined that the overage was due to enhanced or improved data collection or monitoring, and no AM was implemented for the species.

Table 1.3.2 Estimated whole weight (pounds) and number in parenthesis of rainbow runner caught by anglers in state or federal waters by 2-month wave for years 2000-2016, where rainbow runner was reported.

Year	Jan-Feb		Mar-Apr		May-Jun		Jul-Aug		Sep-Oct		Nov-Dec	
	State	Federal	State	Federal	State	Federal	State	Federal	State	Federal	State	Federal
2000	-	-	-	-	-	-	188 (48)	-	-	-	-	-
2001	-	-	-	188 (48)	-	-	-	-	-	-	-	-
2003	-	-	-	52 (13)	-	-	-	-	26 (7)	1,676 (432)	-	-
2004	-	-	-	-	-	8,517 (2,197)	-	-	-	-	-	-
2005	2,675 (690)	-	-	-	11,028 (2,844)	-	-	-	600 (155)	-	-	-
2007	65 (17)	-	-	-	-	-	-	-	-	-	-	-
2008	-	-	-	-	-	-	7,691 (1,984)	-	1,465 (378)	1,465 (378)	5,480 (1,413)	-
2010	-	-	-	-	-	-	-	-	462 (119)	-	-	-
2011	-	-	-	-	-	-	-	-	-	431 (111)	-	-
2012	-	-	-	-	-	-	-	-	-	-	-	442 (135)
2013	-	-	-	-	-	-	-	-	1,094 (282)	-	-	-
2015	-	-	-	-	-	-	-	-	-	-	44,267 (11,418)	-
2016	-	210 (54)	-	-	-	-	-	-	-	-	-	4,199 (1,083)
Total	2,740 (707)	210 (54)	-	240 (62)	11,028 (2,844)	8,517 (2,197)	7,878 (2,032)	-	3,647 (941)	3,572 (921)	49,747 (12,831)	4,641 (1,218)

Source: Marine Recreational Fisheries Statistics Survey
2002, 2006, 2009, and 2014 had no rainbow runner landings.

1.4 Effects of the Action

1.4.1 General Effects

Reclassifying the rainbow runner from the Reef Fish group to the Pelagic Fish group would change four elements of the species' management: (1) establishing an ACT consistent with management of the Pelagic Fish group; (2) applying the AM that applies Pelagic Fish group under the Puerto Rico FMP, in the event landings exceed the applicable ACT; (3) eliminating the Bajo de Sico six month seasonal closure in western Puerto Rico that applies to reef fish; and 4) eliminating the recreational bag limit that applies to reef fish. The following sections describe the general effects of the action and analyze the biological, economic, and social effects of these four parts.

(1) Establishment of an ACT for Pelagic Species

Pelagic species under the Puerto Rico FMP are managed with an ACT set at 90% of the ACL for each sector. Managing pelagic species with an ACT in addition to an ACL is a precautionary management measure in the final rule implementing the Puerto Rico FMP to address uncertainty in the management of pelagic species (CFMC 2019).

The current commercial ACL for rainbow runner is 913 lbs (414.1 kg) ww and the recreational ACL is 8,091 lbs (3,670 kg) ww. If the species were reclassified to the Pelagic Fish group, sector-specific ACTs for rainbow runner would be calculated at 90% of the sector-specific ACLs, using the same process outlined for pelagic species in the Puerto Rico FMP. The commercial ACT for rainbow runner would be 822 lbs (373 kg) ww and the recreational ACT would be 7,282 lbs (3,303.1 kg) ww.

(2) Application of AMs for Pelagic Species

As discussed in Section 1.3.1, the AM for reef fish compares the sector-specific ACLs (i.e., commercial and recreational) to available sector-specific landings, and if the AM is triggered (i.e., the applicable ACL was exceeded due to increased catch), then a fishing season reduction is calculated and applied to the current fishing year to prevent a similar exceedance of the ACL(s). If landings for one sector are not available for comparison to the sector-specific ACL, as is the current situation for recreational landings, then the sector-specific ACL for the sector with available landings is the applicable ACL for the stock.

The AM for pelagic fish compares the sector-specific ACTs to available sector-specific landings, and similarly, if landings for one sector are not available, then the ACT for the sector with available landings is the applicable ACT for the stock. For pelagic fish, if the AM is triggered, then NMFS in consultation with the Council, will determine appropriate corrective action. A

fishing season reduction could result, but it is not an automatic consequence like it is for reef fish.

Reclassifying the rainbow runner as a pelagic fish removes the potential for an automatic fishing season reduction, which are designed to protect against future overages of the stock. As previously mentioned, rainbow runner is an incidentally-caught species in federal waters around Puerto Rico (i.e., it is not a high priority species). While leaving the species classified as a reef fish could provide protection to the species through the reef fish AM, a reduction in the fishing season would only apply to federal waters, unless the Puerto Rico state government agrees to similarly close their waters to all harvest. A months-long closure period, even if only in federal waters, could shift harvest pressure to the end of the year (based on the reef fish application process described in the Puerto Rico FMP) or to other areas (like state waters).

As discussed in Section 1.3.3, there have been no reductions in the length of a rainbow runner fishing season to date. In 2024, when the most recent commercial landings of rainbow runner (1,177 lbs ww in 2022) were compared to the commercial ACL (Reef Fish AM), the ACL was exceeded by 264 lbs ww. However, an AM was not implemented and the length of the fishing season was not reduced because NMFS determined that the commercial ACL was exceeded because of enhanced and improved data collection and monitoring, rather than by an increased in landings.

Comparing the 2022 landings to the proposed ACT (pelagic fish AM) would result in an overage of 355 lbs ww from the proposed ACT. Under the pelagic fish AM, if NMFS estimates that landings have exceeded the applicable ACT, NMFS, in consultation with the Council, will determine appropriate corrective action. At that time, no corrective action may be needed, if the exceedance is the result of enhanced and improved data collection and monitoring. On the other hand, if corrective action is appropriate, NMFS could apply management measures, such as a closure or trip limit, which would help protect the long-term sustainability of the resource.

In summary, current fishing behavior for the species is not expected to change if it is reclassified as a pelagic species. Reclassifying the species would provide greater flexibility in responding to future exceedances of the applicable ACT.

(3) The Bajo de Sico Seasonal Area Closure Restrictions for Reef Fish Harvest Do Not Apply to Pelagic Fish

Reclassifying the rainbow runner as a pelagic fish would remove the harvest restrictions for reef fish during the Bajo de Sico seasonal area closure. Regulations for the Bajo de Sico seasonal area closure specify that from October 1 through March 31, each year, no person may fish for or possess any Council-managed reef fish in or from those parts of Bajo de Sico that are in the EEZ around Puerto Rico (Figure 1.4.1). This seasonal area closure does not apply to pelagic fish or to

non-federally managed fish. Fishing with pots, traps, bottom longlines, gillnets or trammel nets and anchoring by fishing vessels are prohibited year-round in those parts of Bajo de Sico that are in federal waters.

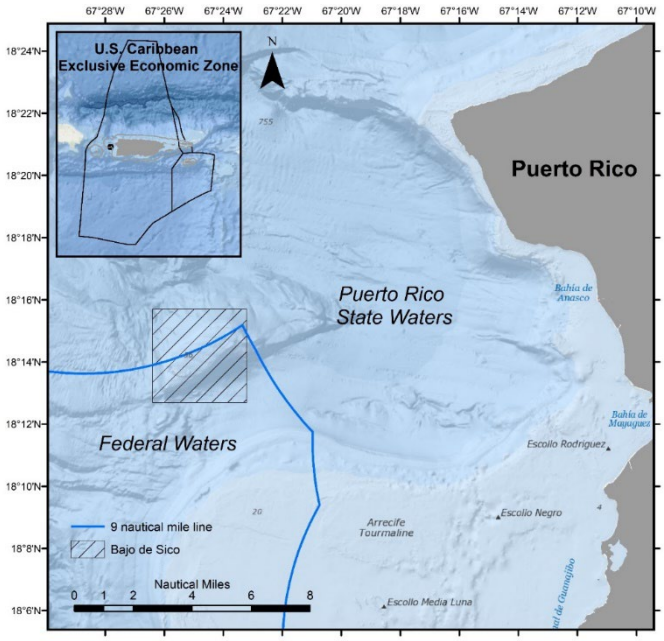

Figure 1.4.1. Location of Bajo de Sico management area (square) off the west coast of Puerto Rico. The blue line represents the boundary between state and federal waters.

If the species is reclassified as a pelagic fish, commercial and recreational fishermen could legally fish for rainbow runner in the Bajo de Sico management area during the seasonal area closure, as is the case with other pelagic species and non-managed species. Because the recreational landings data (Table 1.3) do not record coast-specific information, it is unknown how much of that recreational catch in federal waters (total during the 13 years: 17,180 lbs ww and 4,452 individuals) was from the west coast of Puerto Rico, and specifically from within the Bajo de Sico area. However, approximately half of the estimated landings and number of rainbow runner were reported in the May-June wave (8,517 lbs ww; 2,197 individuals), which does not overlap with the seasonal closure period for Bajo de Sico. This combined with the fact that rainbow runner is generally by-catch while fishing for pelagics (as discussed in Section 1.2), means that an increase in recreational effort during the seasonal closure period is unlikely to result from the proposed action. The proposed action is not expected to change how rainbow runner is currently fished, and the landings would continue to be constrained by the applicable ACL and corresponding ACT.

From 2012-2022, nearly all of commercial landings of rainbow runner (98.6%) were reported from the west coast of Puerto Rico (2,724 of 2,763 lbs ww). The number of commercial

fishermen who reported landings of rainbow runner from the west coast of Puerto Rico each year ranged from 0 (years 2013, 2018-2019) to 8 (year 2022). Of those west coast landings, approximately 29.1% (793 lbs ww) were reported from state waters, 51.7% (1,410 lbs ww) from federal waters, and the remaining (521 lbs ww) were from an unknown jurisdiction. If the landings from the unknown jurisdiction were assumed to also be in federal waters (total landings = 1,931 lbs ww), 80% of those were caught during the October 1 – March 31 period (1,545 lbs ww), which overlaps with the seasonal closure period for Bajo de Sico federal waters. However, like the recreational data available from 2000-2016, the commercial data available from 2012-2022 do not indicate whether those Puerto Rico west coast landings come from the federal portion of the Bajo de Sico area or from another area (landings from the Bajo de Sico area during the 2012-2022 period could have been between 0 and 1,545 lbs ww). As discussed in Sections 1.2 and 1.3, commercial fishing for rainbow runner occurs in the water column with techniques and gear used to fish for pelagic species. Rainbow runner is usually not directly targeted, but is caught as bycatch when targeting other pelagic species, which are allowed to be harvested during the Bajo de Sico seasonal area closure. Therefore, commercial fishing effort for rainbow runner is not expected to increase during the seasonal closure period.

(4) Removal of the Rainbow Runner from the Reef Fish Recreational Bag Limit

Reclassifying the rainbow runner as a pelagic fish would result in the species removal from the aggregate recreational bag limit applicable to the Reef Fish group (see Section 1.3.1). Removing the species from any protection afforded by the aggregate bag limit could result in an increased rate of catch of the species by the recreational sector, though they would still be constrained to the applicable ACL (8,091 lbs ww). However, it is expected that if rainbow runner is removed from the recreational bag limit that recreational fishermen would catch a similar amount of rainbow runner as they did before the species was federally managed (i.e., less than one fish per day).

In conclusion, the effects of removing management restrictions as a whole for the species by reclassifying it as a pelagic fish would not result in an increase in fishing effort based on the above analyses and discussion. The rainbow runner behaves as a pelagic species and it has been historically targeted as a pelagic species with both commercial and recreational catches being infrequent and variable, and this is not expected to change.

1.4.2 Biological Effects

Overall, reclassifying rainbow runner as a pelagic fish would be expected to have minimal biological effects. Per the discussion in Section 1.4.1 (1, 2), based on the current AMs for pelagic fish, removing the species from the Reef Fish group would not provide the biological benefits to the population that an AM for reef fish would provide through a reduction in the fishing season. Under the pelagic fish AM, if NMFS estimates that landings have exceeded the

applicable ACT, NMFS, in consultation with the Council will determine appropriate corrective action. At that time, no corrective action may be needed, if the exceedance is the result of enhanced and improved data collection and monitoring. On the other hand, if corrective action is appropriate, NMFS could apply management measures, such as a closure or trip limit, which would help protect the long-term sustainability of the resource.

Based on the analyses in Section 1.4.1 (3), and how the fishery is prosecuted, removing this species from the list of prohibited species in the Bajo de Sico area during the seasonal closure is expected to have minimal, if any, biological effects to aggregating species or habitat if rainbow runner is fished for during the seasonal closure. Effects, if any, would be similar to those expected from fishing for other pelagic species in the area during the closure. Effects to essential fish habitat in the area are also not expected for the same reasons listed above.

Lastly, based on the discussion in Section 1.4.1 (4), if rainbow runner is removed from the recreational bag limit, it is expected that recreational fishermen would catch a similar amount of rainbow runner as they did before the species was federally managed (i.e., less than one fish per day). Therefore, the biological effects associated with removing rainbow runner from the aggregate reef fish bag limit would be minimal, if any.

1.4.3 Economic Effects

Economic effects are described in Chapter 2.

1.4.4 Social Effects

The Puerto Rico communities that are the most likely to experience the effects of the proposed action are described here. Recent fishery management documents (CFMC 2019 and CFMC 2024) include a description of the social aspects of fishing in Puerto Rico, including a discussion of the small scale or artisanal nature of the majority of fishing in Puerto Rico and a characterization of commercial/artisanal fishing and of recreational fishing, and these descriptions are included herein by reference.

Recreational data for rainbow runner are not available at the coast or community-municipality level; however rainbow runner has been described by DAP members as being caught along the west coast of Puerto Rico, mostly in Bajo de Sico (federal waters) and around the waters of Desecheo Island (state waters). Rainbow runner is mentioned in fishing charter business listings and customer reviews for charters in Puerto Rico, especially those located in communities along the west coast in Rincon and Cabo Rojo, and in San Juan on the northeast coast. Rainbow runner is described by fishing charter websites and customer reviews as tasting great and desirable to charter fishers because they put up a good fight, provide non-stop action due to swimming in large schools, and pulling hard for their size. The limited data and information available points

to rainbow runner being the most important recreationally to communities along the west coast of Puerto Rico, and along the north or northeast coast.

A small number of commercial fishers report landings of rainbow runner (between 0-8 fishers per year from 2012-2022, NMFS SERO 2024). Nearly all of reported commercial landings of rainbow runner came from the west coast of Puerto Rico (98.6% from 2012-2022), followed by the south and north coasts (1.4%, combined because of confidentiality issues).

Figure 1.4.2 shows the community-specific distribution, or "regional quotient" (RQ) of commercial landings for rainbow runner. The RQ is the proportion of landings out of the total landings for the species for both the territorial and federal jurisdiction waters of Puerto Rico during 2012 to 2022. The RQ can also be defined as the share of municipio-specific landings divided by landings accruing to fleets across the archipelago as a whole. A time series is presented because landings of rainbow runner by municipio are confidential for most locations and are highly variable by year with reported landings in only one municipio per year for most years and with no reported commercial landings at all in some years. The top municipio of Rincon included landings for about half of the years during the time series. The majority of reported landings were in the municipio of Rincon (92.4% from 2012-2022, Figure 1.4.2), followed by a small proportion of landings in Cabo Rojo, Aguadilla, Guanica, Barceloneta, and Vega Baja. The top three municipalities of Rincon, Cabo Rojo, and Aguadilla are located along the west coast of Puerto Rico.

Figure 1.4.2. Regional Quotient (pounds) for Puerto Rico communities by rainbow runner landings from 2012 through 2022. The actual RQ values (y-axis) are omitted from the figure to maintain confidentiality.
Source: NMFS SERO 2024.

As described in Section 1.3.3, rainbow runner is caught incidentally by commercial fishermen while fishing for other species and are not typically a target species for commercial fishers.

However, because rainbow runner is not included by name on the paper commercial catch report form or e-reporting application, rainbow runner could be identified as other species in commercial landing records. Figure 1.4.3 shows the community-specific distribution, or "regional quotient" (RQ) of commercial landings for unspecified jacks and rainbow runner which are combined here in order to account for landings that may not be reported as rainbow runner in commercial records. The west coast (47.5% of landings from 2012-2022, NMFS SERO 2024), and north coast (41.1%) of Puerto Rico include the majority of the landings for unspecified jacks combined with reported landings of rainbow runner, followed by the south and east coasts. The majority of the top 15 communities are located on the west and north coasts, with a few of the top communities located along the south coast (Figure 1.4.3). The top four municipios of Aguada (includes about 34.1% of landings, Figure 1.4.3), San Juan (20.8%), Cataño (9%), and Rincón (7.1%) are located on the west and north coasts of Puerto Rico.

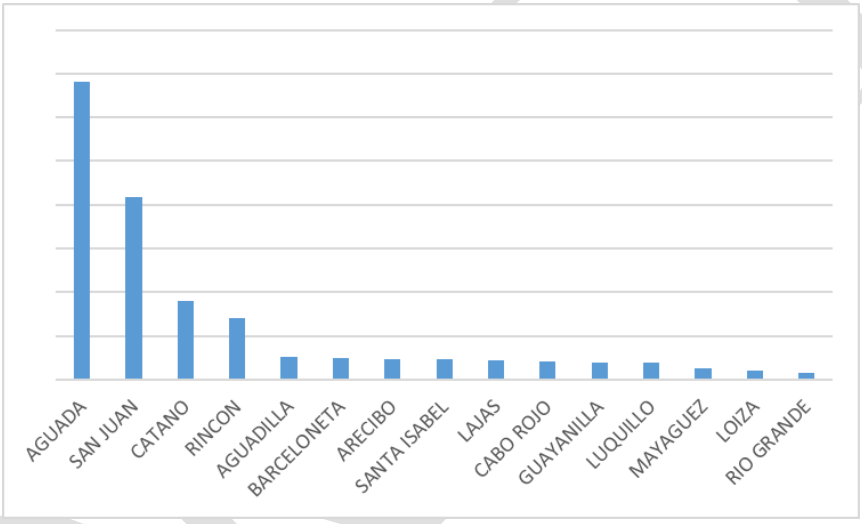

Figure 1.4.3. Regional Quotient (pounds) for top 15 Puerto Rico communities by unspecified jacks and rainbow runner landings from 2012 through 2022. The actual RQ values (y-axis) are omitted from the figure to maintain confidentiality.
Source: NMFS SERO 2024.

Municipalities along the west coast are particularly engaged (Figure 1.4.4) and reliant (Figure 1.4.5) on commercial fishing with mostly high and high to moderate fishing engagement and high and low to moderate fishing reliance. Municipalities on the north coast are engaged and reliant to a somewhat lessor extent with relatively high to moderate engagement and low to moderate reliance.

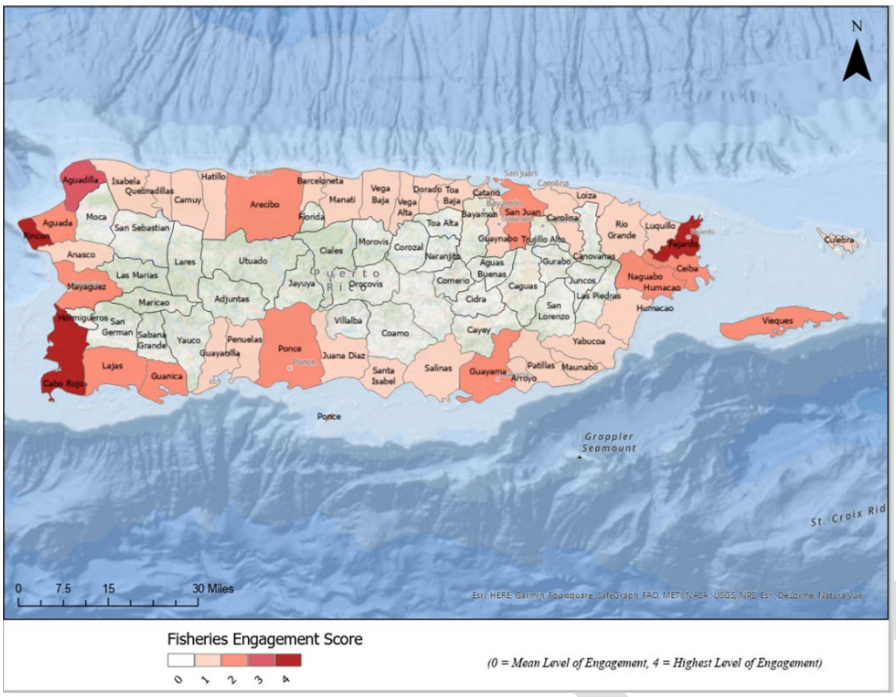

Figure 1.4.4. Commercial/artisanal fisheries engagement: Municipios de Puerto Rico.
Source: SEFSC Community Social Vulnerability Indicators Database, 2020. Graphic produced by T. Seara.

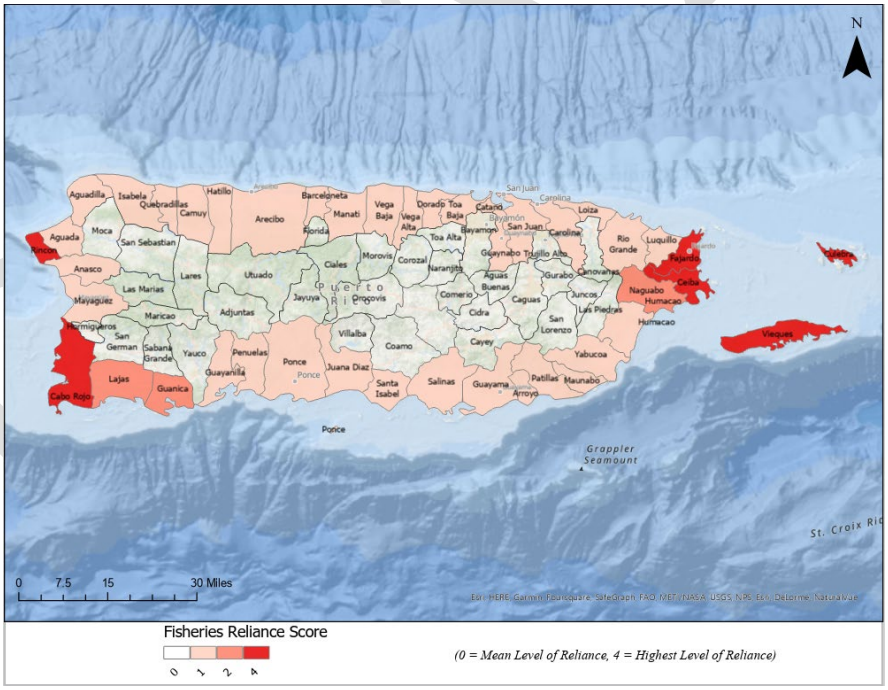

Figure 1.4.5 Commercial/artisanal fisheries reliance: Municipios de Puerto Rico.
Source: SEFSC Community Social Vulnerability Indicators Database, 2020. Graphic produced by T. Seara.

Establishing an ACT consistent with management of pelagic species and applying the pelagic species AM would not have any significant social effects upon commercial and recreational fishers or their communities.

Reclassifying the species as a pelagic fish would mean that both commercial, and recreational fishers would be able to fish legally during the Bajo de Sico closed season, which could impact the long-term sustainability of the species. But because at least half of the reported recreational landings occurred during the months that do not overlap with the closed season there is no expectation of an increase in recreational effort, and thus no significant changes in the fishery are neither expected.

In summary, and based on the existing data for both recreational, and commercial fishers, it is expected that any social effects from reclassifying the species as a pelagic fish would be very minimal, and would mostly impact those fishers on Puerto Rico's west coast. Also, because fishers already use the appropriate fishing techniques and will not be required to adopt new ones, any economic impact resulting from the reclassification of the species will be none to minimal. Overall, removing the rainbow runner from the Bajo de Sico reef fish list for western Puerto Rico will not have any significant potential social or economic impact upon fishers or their communities.

Removing the fish from the aggregate bag limit could potentially increase the fishing effort among recreational fishers. But because it can be predicted that fishers will catch similar amounts to those previously reported, we can expect that the fishing effort will remain the same. Thus, no significant social impacts from removing the rainbow runner from the reef fish recreational bag limit are expected.

In conclusion, the reclassification of the rainbow runner from a reef to a pelagic fish does not expect to produce any significant social impact.

Chapter 2. Regulatory Impact Review

2.1 Introduction

The National Marine Fisheries Service (NMFS) requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest to satisfy the obligations under Executive Order (E.O.) 12866, as amended. In conjunction with the analysis of direct and indirect effects in the "Environmental Consequences" section of this Amendment, the RIR: 1) provides a comprehensive review of the level and incidence of impacts associated with a regulatory action; 2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives which could be used to solve the problem; and 3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are a "significant regulatory action" under certain criteria provided in Executive Order (E.O.) 12866. In addition, the RIR provides some information that may be used in conducting an analysis of the effects on small entities pursuant to the Regulatory Flexibility Act (RFA). This RIR analyzes the effects this regulatory action would be expected to have on the recreational and commercial fishing sectors of Puerto Rico.

2.2 Problems and Objectives

The problems and objectives for the proposed actions are presented in Section 1.4 of this amendment and are incorporated herein by reference.

2.3 Description of the Puerto Rico Fishery

2.3.1 Commercial Sector

The process of reporting commercial landings has changed in Puerto Rico. For decades until 2020 there was only one way that commercial fishermen could report their landings and that was with the commercial catch report form (CCR), which was a paper form. Since 2020 fishermen can opt to report their landings using the E-Reporting system rather than the CCR form. With E-Reporting, fishermen can access the E-Reporting app with their phones, tablets or computers. They collect and submit the required data — such as fish type, time of catch, quantity of catch and more — while they are out on the water, at the dock or back at home. Some continue to use the CCR form, while others are opting to use the E-Reporting app. Unfortunately, price data is not currently available for those who have used the E-Reporting system.

Consequently, because the price data is incomplete after 2019 the following description of the commercial sector uses commercial landings data from 2015 through 2019. All dollar figures are expressed in 2022 dollars.

From 2015 through 2019, an annual average of 785 Puerto Rico commercial fishermen reported combined landings of marine resources of about 2.28 million pounds[2] (lbs) whole weight (ww) from all waters with a value of about $11.96 million. The average of these active fishermen reported annual landings of 2,902 lbs ww and annual revenue from sales of those landings of $15,248. Average median annual landings was 1,431 lbs ww and average median annual revenue was $6,730 per fisherman. The highest annual revenue among any of the active fishermen during this period was less than $600,000 (National Marine Fisheries Service [NMFS] Southeast Fisheries Science Center Online Southeast Fisheries Reporting System, Caribbean Commercial Landings [CCL] edited landings, 2015 through 2019 and Bureau of Economic Analysis (BEA) Gross Domestic Product (GDP) Deflator June 2024).

More information about the commercial sector as a whole can be found in the Puerto Rico FMP and is incorporated herein by reference. Information specific to commercial fishing for rainbow runner can be found in section 1.3.3 above.

2.3.2 Recreational Sector

There is presently no ongoing collection of recreational catch and effort data in Puerto Rico. The survey that collected recreational catch and effort data was suspended in 2017 and has not resumed to date. Consequently, the following description is based on recreational catch and participation data from 2000 through 2016.

An estimated annual average of 167,879 anglers collectively make 0.90 million angler trips and 0.11 million (12.2%) of those trips are in federal waters. They collectively catch and keep an estimated 0.89 million fish and 7.6% are harvested from federal waters annually.

More information about the recreational sector as a whole can be found in the Puerto Rico FMP and is incorporated herein by reference. Information specific to recreational fishing for rainbow runner can be found in section 1.3.4 above.

[2] Reported landings (pounds) are adjusted because of historic underreporting of landings in Puerto Rico. As such, the dollar figures are the product of adjusted pounds and the (dollar) price per pound.

2.4 Effects of Management Measures

The following discussion summarizes the expected economic effects of the Caribbean Fishery Management Council (Council) preferred alternative relative to the No Action alternative (i.e., the status quo).

Rainbow runner is currently the only species included in the Jacks 3 stock of the Jacks family of the Reef Fish group. Reclassifying rainbow runner as a pelagic fish would: 1) remove it from the aggregate recreational bag and possession limit for six families of reef fish, 2) allow fishing for rainbow runner during the Bajo de Sico seasonal closure, 3) establish recreational and commercial annual catch targets (ACTs) for rainbow runner, and 4) subject the rainbow runner to the pelagic fish accountability measure (AM).

If classified as a pelagic fish, rainbow runner would not be subject to the recreational bag and possession limits that apply to reef fish. This change would benefit anglers who want to catch and keep more rainbow runner in federal waters and any charter fishing businesses that sell their services to those anglers. Furthermore, because any rainbow runner that is caught and kept would no longer count against the aggregate bag and possession limit, anglers would be able to catch more reef fish. The aggregate bag and possession limit would not change with this amendment. That could benefit anglers who fish for the species of reef fish included in the aggregate bag limit and charter fishing businesses that sell their services to those anglers since the aggregate bag and possession limit would not change.

Less than one rainbow runner is caught recreationally per day in federal waters off Puerto Rico. Moreover, historical recreational data indicate that catches in federal waters of the species of reef fish that would continue to apply to the aggregate bag and possession limit have not been constrained by the existing limit, and therefore harvest of those species would not be expected to change. That indicates that the current aggregate bag and possession limit does not constrain the numbers of rainbow runner or other fish that anglers catch and keep.

Because the current reef fish recreational bag and possession limit does not constrain the number of rainbow runner and/or other fish that anglers catch and keep, it is expected that there would be no change in the numbers of rainbow runner or other species that anglers catch and keep in federal waters. Moreover, it is expected that there would be no change in those anglers' demand for charter fishing services. Consumer surplus (CS) is the economic (monetary) value of the satisfaction that anglers experience over and above their costs of fishing for a species, such as rainbow runner. Producer surplus (PS) is the economic value that businesses receive for the goods or services they sell less the costs of providing those goods or services. With no expected change in recreational fishing, there would be no change in either CS or PS by removing rainbow runner from the aggregate recreational bag limit for reef fish.

Allowing pelagic fishermen to retain rainbow runner during the Bajo de Sico closed season would directly benefit both the recreational sector (anglers and charter fishing businesses) and the commercial sector (commercial fishing businesses). The magnitude of the potential economic benefit for either sector, however, cannot be quantified.

The economic effect resulting from the establishment of recreational and commercial ACTs for rainbow runner, if any, would depend on the AM determined to be appropriate for rainbow runner, in the event of an overage, and how its landings are evaluated as explained below. Currently, there are no data to evaluate recreational landings of rainbow runner or any other species after 2016. Thus, the following focuses exclusively on commercial landings.
As a reef fish, rainbow runner is currently subject to an AM that is more likely to cause a reduction in the length of the fishing season than if it were a pelagic fish. Currently, the AM for rainbow runner or any reef fish is as follows: At or near the beginning of the fishing year, commercial landings are evaluated relative to the commercial ACL based on a moving multi-year average of landings, as described in the Puerto Rico Fishery Management Plan. If the multi-year average of commercial landings exceeds the commercial ACL (which is the trigger), the length of the fishing season is reduced unless NMFS determines the commercial ACL was exceeded not by an actual increase in landings, but instead by improved data collection or monitoring. In 2022, commercial landings of rainbow runner exceeded its commercial ACL. However, it was determined that the increased landings were indicative of improvement in data collection and monitoring, rather than increased effort, and as such, the fishing season for rainbow runner was not reduced. Nonetheless, if commercial landings continue to exceed the commercial ACL in future fishing seasons, it could lead to a reduction in the length of a future fishing season.

If reclassified as a pelagic fish, the AM for rainbow runner would be as follows: At or near the beginning of the fishing year, commercial landings for rainbow runner will be evaluated relative to the commercial ACT based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that commercial landings have exceeded the commercial ACT, NMFS in consultation with the Council will determine appropriate corrective action.

As a pelagic fish, the AM for rainbow runner would be triggered sooner than if it remained classified as a reef fish because the ACT for pelagic fish is set at 90% of the ACL. If it were determined that increased commercial landings were not due to increased effort but instead to better data collection and monitoring, there would be no corrective action or shortening of the fishing season. There would be no economic effects to the commercial sector. If increased landings are due to increased effort, the AM for rainbow runner as a pelagic fish would require NMFS to consult with the Council if commercial landings exceed 90% of the commercial ACL (i.e., the commercial ACT). If rainbow runner remained managed as a reef fish, the AM would

be triggered, and potentially lead to a reduction in the length of the fishing season for rainbow runner if commercial landings exceed 100% of the commercial ACL. Whereas, the current AM for rainbow runner as a reef fish would require a reduction in the length of the season, the AM for rainbow runner as a pelagic fish would require a consultation to determine the corrective action, which could be an alternative to a seasonal reduction, such as a commercial trip limit. To date, there have been no reductions in the length of a rainbow runner season. Although in 2022, commercial landings exceeded the commercial ACL, it was determined to be indicative of improved data collection and monitoring because of E-Reporting, and as such, there was no reduction of the fishing season or any other corrective action. Thus, there is no expected beneficial or adverse economic impact from establishing the ACTs or changing the AM for rainbow runner.

In summary, no adverse economic effects are expected to occur as a result of reclassifying rainbow runner from a reef fish to a pelagic fish. The proposed action has potential economic benefits to both the recreational and commercial sectors because it would allow fishing for rainbow runner in federal waters of Bajo de Sico when that area is closed to reef fish fishing. Those benefits, however, cannot be quantified with current information. No other economic benefits are expected.

2.5 Public and Private Costs of Regulations

The preparation, implementation, and monitoring of this or any federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Estimated costs associated with this action include:

Council costs of document preparation, meetings, public hearings, and information dissemination……$39,600

NMFS administrative costs of document preparation, meetings and review ….....$56,100

TOTAL ….....$95,700

Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it is likely to result in: 1) an annual effect of $200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) create a serious

inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or 4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. Based on the information provided above, this action has been determined to not be economically significant for the purposes of E.O. 12866.

Chapter 3. Regulatory Flexibility Act Analysis

3.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic effects of various alternatives contained in the regulatory action and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting the goals and objectives of the applicable statutes (e.g., the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)).

The RFA requires agencies to conduct at least a threshold analysis to determine if there would be a significant economic impact on a substantial number of small entities. If the threshold analysis concludes there would not be a significant impact on a substantial number of small entities, the threshold analysis is sufficient. However, if the threshold analysis comes to a different conclusion, then an initial regulatory flexibility analysis (IRFA) is required. The following threshold analysis concludes there would not be a significant economic impact on a substantial number of small entities.

3.2 Statement of the need for, objectives of, and legal basis for the rule

The purpose of this proposed rule is to reclassify rainbow runner from being a fish within the Reef Fish Component of the Puerto Rico Fishery Management Plan (Puerto Rico FMP) to a fish within the Pelagic Fish Component within that Puerto Rico FMP. More information about the need for and objectives of these actions can be found in Chapter 1 of this document. The Magnuson-Stevens Act provides the legal basis for this proposed rule.

3.3 Identification of any federal regulations that may overlap, duplicate or contradict with the proposed rule.

No federal regulations have been identified that may overlap, duplicate or contradict with the proposed rule.

3.4 Description and estimate of the number of small entities to which the proposed action would directly apply

This proposed action directly impacts recreational fishers (anglers) and commercial fishing businesses that harvest rainbow runner in the exclusive economic zone (EEZ) around Puerto Rico. It would have an indirect impact on for-hire fishing businesses. For-hire fishing businesses sell their services to anglers and any change in demand for their fishing services as a result of this action would be dependent upon changes in anglers' behavior.

Recreational Fishers (Anglers)

Recreational fishers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Therefore, estimates of the number of anglers directly affected by the proposed action and any impacts on them are neither required nor assessed here.

Commercial Fishing Businesses that Harvest Rainbow Runner

Estimates of the number of small commercial fishing businesses that are directly affected by a proposed rule are based on the number of commercial fishermen who report their landings. The process of reporting commercial landings has changed in the past eight years in Puerto Rico. For decades until 2020 there was only one way that commercial fishermen could report their landings and that was with the Caribbean commercial landings (CCL) form for Puerto Rico, which was a paper form. Now there is an alternative reporting system. Since 2020, fishermen can opt to report their landings using the E-Reporting system rather than the CCL form. With E-Reporting, fishermen can access the E-Reporting app with their phones, tablets or computers. They collect and submit the required data — such as fish type, time of catch, quantity of catch and more — while they are out on the water, at the dock or back at home. Some continue to use the CCL form, while others are opting to use the E-Reporting app.

Rainbow runner is not and has not been a specific species of fish identified on the CCL form. For a fisherman to report landings of rainbow runner on the CCL form, they have to either include those landings within the broader listed category of jacks or write in rainbow runner and its landings on the form. There is a similar issue with E-Reporting. Fishermen who land rainbow runner have to search for rainbow runner and mark it when using the app or can include its landings under the broader category of jacks. Consequently, it is expected that reported landings, specifically of rainbow runner, do not include all landings of rainbow runner and reported landings, specifically of jacks, include not just rainbow runner but other species as well.

Commercial landings data from 2015 through 2022 is used to estimate the number of small businesses that would be directly affected by the proposed rule. During those years there were some years with no reported landings of rainbow runner harvested from the EEZ or unknown

waters, while every year there were reported landings of jacks from those waters. In some years, there were fishermen who reported landings of both rainbow runner and jacks in general.[3] Because the number of fishermen who reported landings of jacks greatly exceeds those who reported landings of rainbow runner, the following estimates likely inflate both the actual number of fishermen directly affected, their landings of rainbow runner and impacts of the proposed rule on them. Nonetheless, it is estimated that an average of up to 50 commercial fishermen annually land up to 5,025 pounds (lbs) whole weight (ww) of rainbow runner from the EEZ and unknown waters.

All of the following figures are expressed in 2022 dollars. Because price data are unavailable after 2019 as explained in the RIR, prices and revenues are estimated using average prices from 2015 through 2019. Prices for rainbow runner run below $2 per pound, and from 2015 through 2019, the average price was $1.71 per pound. From that it is estimated that, on average, up to 50 commercial fishermen annually land up to 5,025 lbs ww of rainbow runner with a value of up to $8,935 from the EEZ or unknown waters.

For RFA purposes, the National Marine Fisheries Service has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry (North American Industrial Classification Code (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts are no more than $11 million for all of its affiliated operations worldwide.

Each and every of commercial fisherman in Puerto Rico is assumed to represent a unique commercial fishing business. Highest annual total revenue from all landings among any of the fishermen who reported landings of either jacks (as a general category) or rainbow runner from the EEZ and unknown waters was less than $100,000. Therefore, all of the commercial fishing businesses that may harvest rainbow runner and would be directly affected by the proposed rule are small.[4]

3.5 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule and their impacts on small businesses

The proposed regulatory action would not impose any new reporting or record-keeping requirements on any small businesses. The proposed action would reclassify rainbow runner by

[3] Fishermen who reported landings of both rainbow runner and jacks and their landings are not double counted.
[4] Maximum total annual revenue for any commercial fisherman was less than $600,000 from 2015 through 2019. From that it is also expected that all commercial fishing businesses in Puerto Rico are small.

removing it from the Reef Fish group and adding it to the managed fish within the Pelagic Fish group of the Puerto Rico FMP. There are multiple impacts of the reclassification on small commercial fishing businesses that harvest rainbow runner from the EEZ and unknown waters.

First, currently as a reef fish, fishing for and possession of rainbow runner is prohibited from October 1 through March 31, each year, in or from those parts of Bajo de Sico that are in the EEZ around Puerto Rico. This seasonal closure does not apply to pelagic fish. As such, the proposed reclassification of rainbow runner from a reef fish to a pelagic fish could directly benefit small commercial fishing businesses by allowing for them to fish for and possess rainbow runner during the Bajo de Sico closed season. Bajo de Sico is an area of state and federal waters off the west coast of Puerto Rico and most reported landings of rainbow runner or jacks occur on Puerto Rico's west coast. The magnitude of the potential direct benefit, however, cannot be estimated since CCL and E-Reporting landings data are not of sufficient detail to estimate runner landings that derive from fishing in federal waters of Bajo de Sico. Any potential increase in landings would be constrained by the commercial annual catch limit (ACL), which would not change, and a corresponding annual catch target (ACT).

Second, as a reef fish, rainbow runner has a commercial ACL of 913 lbs (414.1 kilograms (kg)) ww and no corresponding commercial ACT. Each pelagic fish under the Puerto Rico FMP has both a commercial ACL and commercial ACT, the latter which is set at 90% of the commercial ACL.[5] The proposed reclassification would keep the commercial ACL for rainbow runner at 913 lbs (414.1 kg) ww and correspondingly establish a commercial ACT at 822 lbs (373 kg) ww. Landings of rainbow runner as a pelagic fish would be compared to its commercial ACT rather than just its commercial ACL to determine if an action had to be taken to limit its landings. The potential impact of this, however, is dependent on the accountability measure (AM) for rainbow runner.

Third, as a reef fish, rainbow runner has an AM that is more likely to cause a reduction in the length of the fishing season than if it were a pelagic fish. Currently, the AM for rainbow runner or any reef fish is as follows: At or near the beginning of the fishing year, commercial landings for reef fish are evaluated relative to the commercial ACL based on a moving multi-year average of landings, as described in the Puerto Rico FMP. If the multi-year average of commercial landings exceeds the commercial ACL (which is the trigger), the length of the fishing season is reduced unless NMFS determines the commercial ACL was exceeded not by an actual increase in landings, but instead by improved data collection or monitoring. In 2022, commercial landings of rainbow runner exceeded its commercial ACL. However, it was determined that the increased landings were indicative of improvement in data collection and monitoring, rather than increased effort, and as such, there would be no reduction in the length of a fishing season for rainbow

[5] An ACT is established to account for management uncertainty.

runner. Nonetheless,, if commercial landings continue to exceed the commercial ACL for rainbow runner, it could lead to a possible reduction in the length of a future fishing season.

If reclassified as a pelagic fish, the AM for rainbow runner would be as follows: At or near the beginning of the fishing year, commercial landings for rainbow runner will be evaluated relative to the commercial ACT based on a moving multi-year average of landings, as described in the Puerto Rico FMP. If NMFS estimates that commercial landings have exceeded the commercial ACT, NMFS in consultation with the Caribbean Fishery Management Council will determine appropriate corrective action. In 2022, commercial landings exceeded the proposed commercial ACT, which indicates there could be more triggering of the AM for rainbow runner as a pelagic fish rather than as a reef fish.[6] As described above, if increased landings were indicative of improvement in data collection or monitoring, rather than increased effort, there would be no corrective action necessary to limit landings. However, if there was an increase in effort, as a pelagic fish, a reduction in the length of the fishing season would be among the kinds of corrective actions that could be used to reduce commercial landings.

There have been no reductions in the length of a rainbow runner fishing season to date. No single year or multi-year average of reported commercial landings of rainbow runner (CCL form) from 2015 through 2019 reached or exceeded the commercial ACL of 913 lbs ww. However, in 2022 with the inclusion of E-Reporting, commercial landings of rainbow runner exceeded its commercial ACL (913 lbs ww) for the first time. As that most recent figure is expected to be indicative of improvement in data collection or monitoring, then there would be no reduction of the fishing season or any other corrective action, and there would be no expected beneficial or adverse impact from establishing the commercial ACT or changing the AM for rainbow runner.

3.6 Conclusion

In summary, the proposed action would reclassify rainbow runner from being a reef fish to a pelagic fish. The establishment of a commercial ACT and changing the AM for rainbow runner is not expected to have an impact on small businesses. It could have a potential beneficial economic impact on small commercial fishing businesses in Puerto Rico by allowing them to fish for rainbow runner in federal waters of Bajo de Sico when it is otherwise closed to reef fish fishing; however, that beneficial impact would be constrained by the commercial ACL, which would not change. Although the beneficial impact cannot be quantified, it is expected that the proposed action would not have a significant economic impact on a substantial number of small businesses.

[6] Because an average of landings would be compared to 90% of the ACL as a pelagic fish versus 100% of the ACL as a reef fish.

Chapter 4. References

CFMC (Caribbean Fishery Management Council). 2009. Regulatory Amendment 3 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands: Modifying the Bajo de Sico Seasonal Closure including a Regulatory Impact Review and an Environmental Assessment. Caribbean Fishery Management Council, San Juan, Puerto Rico. October 22, 2009. 202 pp.
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CFMC. 2024. Framework Action 3 under the Puerto Rico Fishery Management Plan: Modification of Status Determination Criteria and Management Reference Points for the Triggerfish Stock Complex Based on the SEDAR 80 Queen Triggerfish Stock Assessment. Caribbean Fishery Management Council, San Juan, Puerto Rico, 81pp.
https://www.fisheries.noaa.gov/action/framework-action-3-puerto-rico-fishery-management-plan-modification-status-determination.

Appendix A. Management History of the Rainbow Runner

Reef Fish Fishery Management Plan (FMP) of Puerto Rico and the U.S. Virgin Islands

- Established in 1985 and discontinued in 2022.
- Seven species in the Jacks unit: blue runner, horse eye jack, black jack, almaco jack, bar jack, greater amberjack, and yellow jack.
- Annual catch limits (ACL) set for the Jacks unit (2012 Amendment 6): commercial ACL of 86,059 pounds (lbs); recreational ACL of 51,001 lbs.
- Aggregate recreational bag limit for several species including jacks (2012 Amendment 6): 5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.
- Accountability measures (AM) set for Reef Fish (2012 Amendment 6) and revised (2018 Regulatory Amendment 6) to only be triggered when both the sector ACL (recreational or commercial) and the total ACL are exceeded.

Puerto Rico FMP

- Implemented in 2022, transitioned management of federal fisheries to an island-based approach.
- Previously managed jack species excluded from management because they infrequently occur in federal waters.
- Added three new jack species to the FMP (crevalle, African pompano, rainbow runner) due to their economic importance and/or their importance as bycatch.
    - Managed as three individual stocks based on fishing methods and life history (SSC March 2016 transcript, pg 200-204; confirmed SSC Fec. 2017 transcript, pg 281 and SSC July 2018 transcript, pg 215-220).
- Majority of species-specific landings were from recreational data; the commercial catch forms did not list these 3 species (SSC Fec. 2017 transcript, pg 277).
    - Reference years and process used to set ACLs is described in Appendix G: commercial landings 1988-2016 (excluded 2005); recreational landings 2000-2016 (Tables G3 & G4).
    - For the commercial sector, the majority of landings were reported as Jacks. The SSC decided to proportionally partition the unspecified landings to get the species-specific reference points (SSC Feb-Mar. 2018, pg 122-123).

Appendix B. Fishery Impact Statement

Appendix C. Other Applicable Law

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) provides the authority for fishery management in federal waters of the exclusive economic zone. However, fishery management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making are summarized below.

Administrative Procedure Act (APA)

All federal rulemaking is governed under the provisions of the APA (5 U.S.C. Subchapter II), which establishes a "notice and comment" procedure to enable public participation in the rulemaking process. Under the APA, the National Marine Fisheries Service (NMFS) is required to publish notification of proposed rules in the Federal Register and to solicit, consider and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day wait period from the time a final rule is published until it takes effect, which can be waived in certain instances.

The proposed rule associated with this amendment will include a request for public comment, and if approved, upon publication of the final rule, there will most likely be a 30-day wait period before the regulations are effective in compliance with the APA.

Coastal Zone Management Act (CZMA)

The CZMA of 1972 (16 U.S.C. 1451 et seq.) encourages state and federal cooperation in the development of plans that manage the use of natural coastal habitats, as well as the fish and wildlife those habitats support. When proposing an action determined to directly affect coastal resources managed under an approved coastal zone management program, NMFS is required to provide the relevant State agency with a determination that the proposed action is consistent with the enforceable policies of the approved program to the maximum extent practicable at least 90 days before taking final action. NMFS may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the agency's consistency determination and supporting information as required by 15 C.F.R. §930.41(a).

Upon submission to the Secretary of Commerce, NMFS will determine if this amendment is consistent with the Coastal Zone Management programs of Puerto Rico, to the maximum extent possible. Their determination will then be submitted to the responsible agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs.

Information Quality Act (IQA)

The IQA (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by federal agencies. Information includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, cartographic, narrative, or audiovisual forms (includes web dissemination, but not hyperlinks to information that others disseminate; does not include clearly stated opinions).

Specifically, the IQA directs the Office of Management and Budget (OMB) to issue government wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies." Such guidelines have been issued, directing all federal agencies to create and disseminate agency-specific standards to: (1) ensure information quality and develop a pre-dissemination review process; (2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information; and (3) report periodically to OMB on the number and nature of complaints received.

Scientific information and data are key components of fishery management plans (FMP) and amendments and the use of best available information is the second national standard under the Magnuson-Stevens Act. To be consistent with the IQA, FMPs and amendments must be based on the best information available. They should also properly reference all supporting materials and data, and be reviewed by technically competent individuals. With respect to original data generated for FMPs and amendments, it is important to ensure that the data are collected according to documented procedures or in a manner that reflects standard practices accepted by the relevant scientific and technical communities. Data will also undergo quality control prior to being used by the agency and a pre-dissemination review.

Endangered Species Act (ESA)

The ESA of 1973 (16 U.S.C. Section 1531 et seq.) requires that federal agencies must ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify the habitat designated as critical habitat (habitat essential to the species' conservation). The ESA requires NMFS to consult with the appropriate administrative agency (itself for most marine species, and the U.S. Fish and Wildlife Service for all remaining species) when proposing an action that may affect threatened or endangered species or critical habitat. Consultations are necessary to determine the potential impacts of the proposed action. They conclude informally when proposed actions may affect but are "not likely to adversely affect" threatened or endangered species or designated critical habitat. Formal consultations, resulting in a biological opinion, are required when proposed actions may affect and are "likely to adversely affect" threatened or endangered species or designated critical habitat.

NMFS completed a biological opinion on September 21, 2020, evaluating the impacts of the Puerto Rico fisheries on ESA-listed species.

Marine Mammal Protection Act (MMPA)

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas. It also prohibits the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce (authority delegated to NMFS) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea otters, polar bears, manatees, and dugongs.

In 1994, Congress amended the MMPA, to govern the taking of marine mammals incidental to commercial fishing operations. The MMPA requires a commercial fishery to be placed in one of three categories, based on the relative frequency of incidental serious injuries and mortalities of marine mammals. Category I designates fisheries with frequent serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional serious injuries and mortalities; Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities. To legally fish in a Category I and/or II fishery, a fisherman must obtain a marine mammal authorization certificate by registering with the Marine Mammal Authorization Program (50 CFR 229.4) and accommodate an observer if requested (50 CFR 229.7(c)) and they must comply with any applicable take reduction plans.

NMFS has determined that fishing activities conducted under the Puerto Rico FMP will have no adverse impact on marine mammals. The primary gear types used in the island-based fisheries are classified in the 2024 List of Fisheries as a Category III fishery (89 FR 12257), which is unchanged from the 2023 List of Fisheries as a Category III fishery (87 FR 55348). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from any fishery is less than or equal to one percent of the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This amendment does not change the list of authorized gear types in these fisheries and as such would not alter this determination.

Paperwork Reduction Act (PRA)

The PRA of 1995 (44 U.S.C. 3501 et seq.) regulates the collection of public information by federal agencies to ensure that the public is not overburdened with information requests, that the federal government's information collection procedures are efficient, and that federal agencies adhere to appropriate rules governing the confidentiality of such information. The PRA requires NMFS to obtain approval from the Office of Management and Budget before requesting most

types of fishery information from the public. This action does not contain a collection-of-information requirement for purposes of the PRA.

Small Business Act

The Small Business Act of 1953, as amended, Section 8(a), 15 U.S.C. 634(b)(6), 636(j), 637(a) and (d); Public Laws 95-507 and 99-661, Section 1207; and Public Laws 100-656 and 101-37 are administered by the Small Business Administration. The objectives of the act are to foster business ownership by individuals who are both socially and economically disadvantaged; and to promote the competitive viability of such firms by providing business development assistance including, but not limited to, management and technical assistance, access to capital and other forms of financial assistance, business training and counseling, and access to sole source and limited competition federal contract opportunities, to help the firms to achieve competitive viability. Because most businesses associated with fishing are considered small businesses, NMFS, in implementing regulations, must assess how those regulations will affect small businesses.

Essential Fish Habitat (EFH)

The Magnuson-Stevens Act includes EFH requirements, and as such, each existing and new FMPs must describe and identify EFH for the fishery, minimize to the extent practicable adverse effects on that EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of that EFH.

The areas affected by the proposed action have been identified as EFH for managed species, as described under the Puerto Rico FMPs. As specified in the Magnuson-Stevens Act, EFH consultation is required for federal actions, which may adversely affect EFH. Any required consultation requirements will be completed prior to implementation of any new management measures.

National Environmental Policy Act (NEPA)

The NEPA of 1969 (42 U.S.C. 4321 et seq.) requires federal agencies to consider the environmental and social consequences of proposed major actions, as well as alternatives to those actions, and to provide this information for public consideration and comment before selecting a final course of action. This document contains an Categorical Exclusion to satisfy the NEPA requirements.

Executive Orders

E.O. 12630: Takings

The Executive Order on Government Actions and Interference with Constitutionally Protected Property Rights, which became effective March 18, 1988, requires that each federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment. The NOAA Office of General Counsel will determine whether a Takings Implication Assessment is necessary for this amendment.

E.O. 12866: Regulatory Planning and Review

Executive Order 12866, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NMFS prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that either implement a new fishery management plan or significantly amend an existing plan. RIRs provide a comprehensive analysis of the costs and benefits to society associated with proposed regulatory actions, the problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act.

NMFS has preliminarily determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

This Executive Order mandates that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions. Federal agency responsibilities under this Executive Order include conducting their programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination under, such, programs policies, and activities, because of their race, color, or

national origin. Furthermore, each federal agency responsibility set forth under this Executive Order shall apply equally to Native American programs.

E.O. 12962: Recreational Fisheries

This Executive Order requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, it establishes a seven-member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council also is responsible for developing, in cooperation with federal agencies, states and tribes, a Recreational Fishery Resource Conservation Plan, to include a five-year agenda. Finally, the Order requires NMFS and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13089: Coral Reef Protection

The Executive Order on Coral Reef Protection (June 11, 1998) requires federal agencies whose actions may affect U.S. coral reef ecosystems to identify those actions, utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and, to the extent permitted by law, ensure that actions they authorize, fund or carry out not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., federal, state, territorial, or commonwealth waters).

E.O. 13132: Federalism

The Executive Order on Federalism requires agencies, when formulating and implementing policies, to be guided by the fundamental Federalism principles. The Order serves to guarantee the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution. Federalism is rooted in the belief that issues not national in scope or significance are most appropriately addressed by the level of government closest to the people. This Order is relevant to FMPs and amendments given the overlapping authorities of NMFS, the states, and local authorities in managing coastal resources, including fisheries, and the need for a clear definition of responsibilities. It is important to recognize those

components of the ecosystem over which fishery managers have no direct control and to develop strategies to address them in conjunction with appropriate international, state, tribal, and local entities.

No federalism issues have been identified relative to the action proposed in this action.

E.O. 13112: Invasive Species

This Executive Order requires agencies to use their authority to prevent introduction of invasive species, respond to and control invasions in a cost effective and environmentally sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded. Further, agencies shall not authorize, fund, or carry out actions that are likely to cause or promote the introduction or spread of invasive species in the U.S. or elsewhere unless a determination is made that the benefits of such actions clearly outweigh the potential harm; and that all feasible and prudent measures to minimize the risk of harm will be taken in conjunction with the actions.

This action will not introduce, authorize, fund, or carry out actions that are likely to cause or promote the introduction or spread of invasive species in the U.S. or elsewhere.

E.O. 13158: Marine Protected Areas (MPA)

Executive Order 13158 (May 26, 2000) requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area.

This action will not affect any MPAs in federal waters off Puerto Rico.

- In 50 CFR 622.431 (Definitions), remove Jacks—Carangidae, *Elagatis bipinnulata*, Rainbow Runner from Table 3 to § 622.431 (Reef Fish) to Table 1 to § 622.431 (Pelagic Fish).
- In 50 CFR 622.440 (ACLs, ACT, and AMs), remove ACLs for Jacks 3—rainbow runner from Table 1 to §622.440(a)(1), Table 2 to §622.440(a)(2), and Table 3 to §622.440(a)(3) and add the species to §622.440(b).
- In reclassifying rainbow runner as a Pelagic group species, remove rainbow runner from any regulations specific to Reef Fish under the Puerto Rico FMP (e.g., Bajo de Sico area closure §622.439(a)(3), accountability measures §622.440(a)(4)-(7) and §622.440(f), and bag limits §622.444(a)(2)) and include the rainbow runner in those regulations specific to Pelagic Fish (e.g., §622.440(b)(7)).

- As was established by the Council in the Puerto Rico FMP for Pelagic species, establish a commercial and recreational ACT for rainbow runner equal to 90% of the commercial ACL and recreational ACL, respectively, add to §622.440(b).

Table 1. Adjusted commercial landings (in pounds) of unspecified jack species reported for all Puerto Rico waters, for Puerto Rico West Coast waters, and for Puerto Rico West Coast federal waters. Dashes indicate zero landings.

Year	Unspecified Jacks - All Landings		Unspecified Jacks - West Coast		Unspecified Jacks – West Coast, Federal Waters	
	Landings (lbs)	#Fishermen	Landings (lbs)	#Fishermen	Landings (lbs)	#Fishermen
1988	43,689	262	20,412	105	-	-
1989	57,280	316	29,435	119	-	-
1990	43,292	229	25,020	107	-	-
1991	67,478	303	25,796	94	-	-
1992	38,040	265	15,858	86	-	-
1993	47,705	307	23,593	97	-	-
1994	60,927	333	19,188	81	-	-
1995	74,579	523	28,370	154	-	-
1996	68,282	497	29,494	134	-	-
1997	71,018	556	30,608	131	-	-
1998	41,741	390	17,233	82	-	-
1999	34,678	353	4,669	58	-	-
2000	50,475	313	6,532	45	-	-
2001	49,944	323	16,538	60	-	-
2002	32,677	304	6,662	52	-	-
2003	43,527	258	14,007	54	-	-
2004	27,893	193	8,676	43	174	4
2006	20,039	79	3,308	23	Conf	2 or less
2007	10,233	76	2,746	16	-	-
2008	31,603	62	1,205	10	Conf	2 or less
2009	23,674	66	7,023	17	Conf	2 or less
2010	14,783	61	2,330	10	-	-
2011	3,940	68	772	14	-	-
2012	5,826	66	571	6	-	-
2013	5,809	64	2,513	8	-	-
2014	4,463	60	613	9	Conf	2 or less
2015	5,001	70	953	13	458	4
2016	5,005	66	387	13	Conf	2 or less
2017	4,370	59	369	10	Conf	2 or less
2018	4,699	61	1,832	12	Conf	2 or less
2019	17,022	68	13,292	17	155	6

Conf = confidential data

Table 2. Adjusted commercial landings (in pounds) of rainbow runner reported for all Puerto Rico waters, for Puerto Rico West Coast waters, and for Puerto Rico West Coast federal waters. Dashes indicate zero landings.

Year	Rainbow Runner – All Landings		Rainbow Runner – West Coast		Rainbow Runner – West Coast, Federal Waters	
	Landings (lbs)	#Fishermen	Landings (lbs)	#Fishermen	Landings (lbs)	#Fishermen
1988	1,095	14	1,095	14	-	-
1989	1,137	16	1,114	15	-	-
1990	847	18	790	17	-	-
1991	700	17	700	17	-	-
1992	503	14	503	14	-	-
1993	477	12	452	10	-	-
1994	222	15	205	14	-	-
1995	179	5	168	4	-	-
1996	2,735	3	Conf	2 or less	-	-
1997	223	4	223	4	-	-
1998	188	7	150	6	-	-
1999	50	3	Conf	2 or less	-	-
2000	81	4	Conf	2 or less	-	-
2001	171	11	124	9	-	-
2002	64	4	44	3	-	-
2003	569	10	440	8	-	-
2012	Conf	2 or less	Conf	2 or less	-	-
2014	57	3	Conf	2 or less	Conf	2 or less
2015	Conf	2 or less	Conf	2 or less	Conf	2 or less
2016	Conf	2 or less	Conf	2 or less	Conf	2 or less
2017	Conf	2 or less	Conf	2 or less	-	-
2019	Conf	2 or less	-	-	-	-

Conf = confidential data