



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 622**

**[Docket No. 240920-0248]**

**RIN 0648-BM94**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendment 2**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 2 to the Puerto Rico Fishery Management Plan (FMP), Amendment 2 to the St. Croix FMP, and Amendment 2 to the St. Thomas and St. John FMP (jointly Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). If implemented, this proposed rule and Amendment 2 would prohibit and restrict the use of certain net gear in U.S. Caribbean Federal waters and would require a descending device to be available and ready for use on vessels when fishing for federally managed reef fish species in U.S. Caribbean Federal waters. The purpose of this proposed rule and Amendment 2 is to protect habitats and species from the potential negative impacts associated with the use of certain net gear and to enhance the

survival of released reef fish in U.S. Caribbean Federal waters.

**DATES:** Written comments must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0084>. You may submit comments on this document, identified by "NOAA-NMFS-2024-0084" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type "NOAA-NMFS-2024-0084" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Maria Lopez-Mercer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive

information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

An electronic copy of Amendment 2, which includes a fishery impact statement, an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/amendment-2-puerto-rico-st-croix-and-st-thomas-and-st-john-fishery-management-plans-trawl>.

**FOR FURTHER INFORMATION CONTACT:** Maria Lopez-Mercer, NMFS Southeast Regional Office, 727-824-5305, [maria.lopez@noaa.gov](mailto:maria.lopez@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS, with the advice of the Council, manages the Puerto Rico, St. Croix, and St. Thomas and St. John fisheries in U.S. Caribbean Federal waters under the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs. The Council prepared the FMPs, which the Secretary of Commerce approved, and NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## **Background**

The Magnuson-Stevens Act requires NMFS and the regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. The Magnuson-Stevens Act authorizes the Council and NMFS to regulate fishing activity to support the conservation and management of federally managed fish fisheries, which may include regulations that pertain to fishing for non-managed species (*i.e.*, species that are not managed under an FMP).

On September 22, 2020, the Secretary of Commerce approved the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs under section 304(a)(3) of the Magnuson-Stevens Act. The FMPs took effect on October 13, 2022, after NMFS published the final rule to implement the FMPs (87 FR 56204, September 13, 2022). Each FMP contains management measures applicable for Federal waters in the respective island management area, including allowable fishing gear and harvest methods for species managed under each FMP. Federal regulations at 50 CFR Part 622, subparts S, T, and U describe management measures for Puerto Rico, St. Croix, and St. Thomas and St. John, respectively. Federal waters around Puerto Rico extend seaward from 9 nautical miles

(nmi) or 16.7 kilometers (km) from shore to the offshore boundary of the U.S. Caribbean exclusive economic zone (EEZ). Federal waters around St. Croix and St. Thomas and St. John extend seaward from 3 nmi (5.6 km) from shore to the offshore boundary of the U.S. Caribbean EEZ.

In addition to regulations specific to each FMP, Federal regulations at 50 CFR 600.725(v) identify the fishing gear authorized for federally-managed fisheries and non-managed fisheries of each fishery management council (see part V for the Caribbean Fishery Management Council). Employing fishing gear or engaging in fishing in a fishery that is not included on the list of authorized fisheries and authorized gear types is prohibited. However, an individual fisherman may notify the Council of the intent to use a fishing gear or participate in a fishery that is not on the authorized list (50 CFR 600.725(v)). Ninety days after such notification to the Council, the individual may use such fishing gear or participate in the fishery unless regulatory action is taken to prohibit the use of the gear or participation in the fishery.

In Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John, gillnets are listed as an authorized gear type for the commercial federally-managed and non-federally managed pelagic fisheries, as well as all other commercial non-federally managed fisheries located in U.S. Caribbean Federal waters. Trawl nets are listed as an

authorized gear type for the commercial non-federally managed fisheries, other than the non-managed pelagic fisheries. Purse seines and trammel nets are not listed as authorized fishing gear for any fishery (managed or non-managed) in U.S Caribbean Federal waters.

At its December 2021 meeting, the Council discussed prohibiting the use of trawl gear, trammel nets, purse seines, and gillnets for all fishing in U.S. Caribbean Federal waters as a precautionary approach to prevent potential negative impacts from the use of these fishing gear types on sensitive habitats present in U.S. Caribbean Federal waters and to eliminate the potential for bycatch associated with each of these types of fishing gear. During the development of Amendment 2, when considering the use of gillnet gear, the Council recommended restricting the use of gillnets such that it would only be allowed for fishing in non-managed fisheries to accommodate fishermen who use gillnet gear at the surface of the water to catch baitfish.

Currently, gear-specific regulations in U.S. Caribbean Federal waters prohibit the use of gillnets and trammel nets in the federally-managed reef fish and spiny lobster fisheries. These regulations require that any gillnet or trammel net used to fish for any other species must be tended at all times (50 CFR 622.437(a)(3) and (c)(2); 50 CFR 622.477(a)(3) and (c)(2); 50 CFR 622.512(a)(3) and (c)(2)). Gillnets and trammel nets are also prohibited for

use year-round in the seven federally-managed seasonally closed areas: Puerto Rico - (1) Abrir La Sierra Bank (50 CFR 622.439(a)(1)(ii)), (2) Tourmaline Bank (50 CFR 622.439(a)(2)(ii)), (3) Bajo de Sico (50 CFR 622.439(a)(3)(ii)); U.S. Virgin Islands (USVI) - (4) Mutton Snapper Spawning Aggregation Area (50 CFR 622.479(a)(1)(ii)), (5) Red Hind Spawning Aggregation Area east of St. Croix (50 CFR 622.479(a)(2)(ii)), (6) Grammanik Bank (50 CFR 622.514(a)(1)(ii)), and (7) Hind Bank Marine Conservation District (50 CFR 622.514(a)(2)). Though trawl gear, trammel nets, purse seines, and gillnets are used infrequently, if at all, by commercial or recreational fishermen in Federal waters around Puerto Rico, St. Croix, or St. Thomas and St. John, the Council recommended being proactive in protecting marine resources and recommended regulatory action to prohibit or restrict the use of these fishing gear types in U.S. Caribbean Federal waters.

Currently, trawl gear, which includes bottom and mid-water trawls, is listed as an authorized fishing gear type for commercial non-federally-managed fisheries, other than the non-managed pelagic fisheries under each FMP (part V of the table to 50 CFR 600.725(v)). As described in Amendment 2, there is no evidence that commercial fishermen use or have ever used trawl gear in Federal waters around any of the island management areas, except for limited exploratory

research (e.g., for commercial fishing purposes) conducted in the early 1900s.

As discussed, the use of trammel net gear is currently prohibited in the federally-managed reef fish and spiny lobster fisheries in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. Trammel nets are not listed in part V of the table to 50 CFR 600.725(v) as an authorized fishing gear type in any managed or non-managed fisheries in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. As described in Amendment 2, some trammel net landings of non-managed species such as baitfish, have been reported from fisheries located in Federal waters around Puerto Rico. There is no evidence of the use of trammel nets in fisheries located in Federal waters around the USVI.

Similar to trammel net gear, purse seine is not identified in part V of the table to 50 CFR 600.725(v) as an authorized fishing gear type for any fishery in any of the island management areas. As discussed in Amendment 2, purse seines are not used in any fishery located in Federal waters around Puerto Rico or the USVI.

As discussed in Amendment 2, the use of gillnets is prohibited in the federally-managed reef fish and spiny lobster fisheries, and they are rarely used by commercial fishermen in non-managed fisheries in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John due to

depth and distance from the coast. However, gillnets are allowed and used in Puerto Rico territorial waters to fish for certain non-managed species, including baitfish. Gillnets are prohibited in USVI territorial waters, except for gillnets used at the surface for the harvest of certain species of baitfish.

In addition to impacts associated with the use of certain types of fishing gear discussed above, there is a concern about the mortality of reef fish that are released after capture by commercial and recreational fishermen, particularly reef fish caught in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John that experience injuries related to barotrauma. Barotrauma in fish is the rapid expansion of gases inside a fish as it is rapidly retrieved from depth. Barotrauma generally occurs when retrieving fish from depths of 90 feet (27.4 meters) or greater, though it can occur in waters as shallow as approximately 33 feet (10 meters) deep. Fishermen can help increase the survivability of fish showing signs of barotrauma that are released by using a descending device. A descending device lowers a fish back to a depth where internal gases recompress and the fish can be released unharmed. Descending devices are not currently required to be on any fishing vessels in U.S. Caribbean Federal waters.

#### **Management Measures Contained in This Proposed Rule**

This proposed rule would (1) prohibit the use of trawls, trammel nets, and purse seines in all fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John, (2) prohibit the use of gillnets in federally-managed fisheries in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John, and restrict the use of gillnets in non-managed fisheries to a gillnet that meets specified requirements, and (3) require a descending device to be available and ready for use on each fishing vessel when fishing in federally-managed reef fish fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John.

*Trawl, Trammel Net, and Purse Seine Gear Prohibition*

In Amendment 2, the Council recommended a precautionary approach to management that would prevent the future use of trawl, trammel net, and purse seine gear by any sector (*i.e.*, commercial and recreational) in any fishery (*i.e.*, managed and non-managed) located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. With respect to non-managed fisheries, the Magnuson-Stevens Act gives the fishery management councils and NMFS authority to regulate fishing activity to support the conservation and management of fisheries, which can include regulations that pertain to non-managed fisheries. Through this precautionary action, the Council seeks to prevent potentially negative effects on habitats and

species associated with the use of certain types of fishing gear.

This proposed rule would prohibit the use of trawl, trammel net, and purse seine gear for all fishing in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. If this proposed rule is implemented, and the gear types are specifically prohibited, fishermen would not be able to petition the Council to use trawl, trammel net, and purse seine gear in Federal waters.

#### *Gillnet Gear Prohibition and Restriction*

This proposed rule would implement a precautionary approach to prohibit the use of gillnets in all federally-managed fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. The proposed rule would also restrict the use of gillnets in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John to commercial non-managed fisheries only. In those commercial non-managed fisheries, gillnets may be used only so long as they meet the following specifications and requirements: (1) the gillnet mesh size must be exactly 0.75 inches (1.9 centimeters) square or 1.5 inches (3.8 centimeters) stretched; (2) one gillnet up to 600 feet (182.9 meters) in length is allowed on board a vessel; (3) the gillnet must be used 20 feet (6.1 meters) or more above the bottom; and (4) the gillnet must be tended at all times.

The current use of gillnets in the commercial non-managed fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John is minimal, due to the water depth and distance from the coast. This proposed rule and Amendment 2 would establish specific requirements for gillnets used in these fisheries to prevent or minimize potential negative ecological and biological effects (e.g., bycatch of undersized individuals or protected species), and to prevent physical effects on habitats in the U.S. Caribbean Federal waters, which may occur if a gillnet is attached to or makes contact with the bottom. These specific gillnet requirements were developed to reflect how the gear is currently used by commercial fishermen in territorial waters around Puerto Rico and the USVI to harvest baitfish.

#### *Descending Devices*

This proposed rule would require that a descending device be on board a commercial or recreational vessel and be readily available for use while fishing for or possessing species of reef fish managed under the FMPs. The list of reef fish managed by the Council that would be affected by this proposed rule is included in each FMP and can be found in table 3 to 50 CFR 622.431 (Puerto Rico), table 2 to 50 CFR 622.471 (St. Croix), and table 2 to 50 CFR 622.506 (St. Thomas and St. John).

For this proposed requirement, a descending device means an instrument that is attached to a minimum of 16-ounces (454-grams) of weight and length of line that will release the fish at the depth from which it was caught, or a minimum of 60 feet (18.3 meters). The descending device attaches to the fish's mouth or is a container that will hold the fish. The device must be capable of releasing the fish automatically, by the actions of the operator of the device, or by allowing the fish to escape on its own. Since minimizing surface time is critical to increasing survival, a descending device must be readily available for use while engaged in fishing for federally-managed reef fish.

#### **Request for Comments**

NMFS is requesting comments on Amendment 2 and the measures in this proposed rule. In addition, NMFS is requesting comments on whether a 30-day delay in the date of effectiveness for the final rule would be sufficient for implementation of the descending device requirement. To comply with the Administrative Procedures Act, the effective date of measures implemented in a final rule would be not less than 30 days after publication of the final rule in the **Federal Register** (5 U.S.C. 553(d)) (unless one of three exceptions applied). NMFS is considering whether a delay in implementation for a time period greater than 30 days is warranted for the proposed descending device requirement. Therefore, NMFS is also seeking

comments on whether 30 days is sufficient to allow the Council the opportunity to conduct outreach and education activities and for fishermen to obtain the required descending device.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 2, the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have

been identified. In addition, no new reporting or record-keeping requirements are introduced by this proposed rule.

This proposed rule, if implemented, would change the requirements associated with five types of gear. First, the proposed rule would prohibit the use of trawl gear for all fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. Next, the proposed rule would prohibit the use of gillnets for all federally managed fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. It would also limit the use of gillnets for non-federally managed fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John to gillnets that meet the following requirements: (a) the mesh size of the gillnet must be exactly 0.75 inches (1.9 centimeters) square or 1.5 inches (3.8 centimeters) stretched, (b) one gillnet up to 600 feet (182.9 meters) in length is allowed on board a vessel, (c) the gillnet must be used 20 feet (6.1 meters) or more above the bottom, and (d) the gillnet must be tended at all times. Additionally, the proposed rule would prohibit the use of trammel nets for all fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. Furthermore, it would prohibit the use of purse seines for all fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. Finally, the proposed rule would require that a descending device be on board a commercial or

recreational vessel and be readily available for use while fishing for or possessing federally managed reef fish in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John.

These proposed actions would apply to all commercial fishing businesses, for-hire fishing businesses (charter boat operators who take customers out to fish), and recreational fishers (anglers) who fish in U.S. Caribbean Federal waters. None of the proposed changes would directly apply to fish dealers. Any change in the supply of fish available for purchase by dealers as a result of the proposed action, and associated economic effects, would be an indirect effect of the proposed regulatory action and would therefore fall outside the scope of the RFA. Additionally, the RFA does not consider recreational anglers to be entities, so they are also outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. Thus, only the impacts on commercial and charter (for-hire) fishing businesses will be discussed. All monetary values presented in this analysis are expressed in 2021 dollars.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their

affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System [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 has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

From 2014 through 2019, the Puerto Rico commercial fishery as a whole generated average annual revenues of approximately \$11.26 million. During the 6 years from 2014 through 2019, there were an average of 796 commercial fishermen who reported landings. The remainder of this analysis uses the 2014 through 2019 figures to estimate the impacts of the proposed regulatory action on Puerto Rico's commercial fishermen.

NMFS estimates that from 2014 through 2019, the average commercial fisherman in Puerto Rico had annual revenue of \$9,100. Maximum annual revenue from reported landings for any of them was less than \$60,000 and minimum annual revenue was about \$200. That range in individual annual revenues illustrates the difference between part-time fishermen and those that are full-time. Nonetheless, whether full-time or part-time, each active Puerto Rico Department of Natural and Environmental Resources (DNER)-licensed commercial fisherman is assumed for the purposes

of this RFA analysis to represent a unique commercial fishing business, and all active commercial fishing businesses in Puerto Rico are small, based on the NMFS size standard.

Not all of Puerto Rico's active commercial fishing businesses operate in Federal waters. From 2014 through 2019, an average of 309 (38.8 percent) of the 796 annually active commercial fishermen reported that they operated in Federal waters. Consequently, the proposed regulatory action would apply to 309 small commercial fishing businesses in Puerto Rico.

From 2014 through 2019, the USVI commercial fishery as a whole generated average annual revenues of \$4.71 million. Therefore, all commercial fishing businesses in the USVI (St. Croix, St. Thomas, and St. John) are small, based on the NMFS size standard.

From 2014 through 2019, there was an annual average of 59 active commercial fishermen in St. Croix and 67 in St. Thomas and St. John, for a total of 126 active commercial fishermen in the USVI. Each of the 126 active commercial fishermen represents a unique small commercial fishing business. The average active small St. Croix commercial fisherman had annual revenue from all landings of approximately \$33,800, while the average active small St. Thomas and St. John commercial fisherman had annual revenue from all landings of approximately \$39,000. Annual revenue,

however, varies considerably by active fisherman. The maximum average annual revenue among the active St. Croix commercial fishermen was about \$376,000, while the minimum average annual revenue was \$315. The maximum average annual revenue for any of the St. Thomas and St. John commercial fishermen was about \$239,000, while the minimum average annual revenue was \$22.

Thirty-seven (62.3 percent) of St. Croix's average annual 59 active commercial fishermen and 48 (67.0 percent) of St. Thomas and St. John's average annual 67 active commercial fishermen operated in Federal waters from 2014 through 2019. Because this proposed rule directly affects commercial fishermen who operate in U.S. Caribbean Federal waters, it would apply to 85 USVI commercial fishing businesses: 37 active small commercial fishing businesses in St. Croix and 48 active small commercial fishing businesses in St. Thomas and St. John. However, from 2001 to September 2021, there was a moratorium on new commercial fishing licenses issued by the USVI's Department of Planning and Natural Resources (DPNR). In September 2021, the DPNR ended the 20-year old commercial fishing license moratorium. The decision to remove the moratorium was made, in part, after examining the 40 percent decrease in participation in the commercial fishery since 2001. The lifting of the moratorium does not mean there is no limit on the number of new licenses; the cap is 200 for St. Croix

and 200 for St. Thomas and St. John. In October 2021, a limited entry license program for hook-and-line fishing was created by the DPNR to allow entry for fishers who were not able to commercially fish during the 20-year moratorium. Sixty-six new commercial fishing licenses were granted for the 2022-2023 fishing year. Every newly licensed fisherman is expected to represent a small business. If all of the 66 newly licensed commercial fishermen are active, all operate in Federal waters, and all are small businesses, a total of 151 small commercial fishing businesses in the USVI would be directly affected by the proposed rule.

In summary, estimated averages of 309 small commercial fishing businesses in Puerto Rico and from 85 to 151 small commercial fishing businesses in the USVI would be directly affected by this proposed rule annually.

The proposed prohibitions and restrictions on the use of net gear (trawl, gillnet, trammel, and purse seine) in Federal waters would apply to charter (for-hire) fishing businesses that take anglers into U.S. Caribbean Federal waters. However, charter (for-hire) fishing businesses do not harvest fish with any of the types of net gear that would be affected by this proposed rule. Most, if not all, charter (for-hire) fishing businesses that operate in U.S. Caribbean Federal waters sell billfish, coastal pelagics, reef fish, or deep-water species angler trips, and all anglers are provided rod-and-reel gear. Therefore, no

charter (for-hire) fishing businesses would be directly affected by the proposed changes to allowable gear types in Federal waters. The proposed requirement that a descending device be on board a commercial or recreational vessel and be readily available for use while fishing for or possessing federally managed reef fish in Federal waters would directly affect charter (for-hire) fishing businesses that take anglers into U.S. Caribbean Federal waters where they may catch reef fish.

A business involved in the operation of a charter (for-hire) fishing boat is included within the broader scenic and sightseeing transportation, water industry (NAICS code 487210). Charter (for-hire) fishing operations make up just part of the broader industry, which includes dinner cruises, whale watching excursions, and harbor and other sightseeing boat tours, among other businesses. A business primarily involved in scenic and sightseeing transportation, water industry 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 \$14 million for all of its affiliated operations worldwide. In 2021, there were 16 establishments in Puerto Rico classified under NAICS 487210, and 18 such establishments in the USVI (U.S. Census Bureau, County Business Patterns 2021). All but one in the USVI were

located in St. Thomas and St. John. This analysis assumes all 16 establishments in Puerto Rico and all 18 in the USVI are unique charter (for-hire) fishing business and all are small. Information that is more recent shows there were 58 valid charter (for-hire) vessel permits issued by the Puerto Rico DNER in 2023. Therefore, NMFS assumes 16 to 58 small charter (for-hire) fishing businesses in Puerto Rico, one small charter (for-hire) fishing business in St. Croix, and 17 small charter (for-hire) fishing businesses in St. Thomas and St. John would be directly affected by the descending device requirement of the proposed rule. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would prohibit the use of trawl gear in all fisheries in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. Under current regulations, trawls are not an authorized gear type for federally-managed reef fish fisheries, pelagic species fisheries, or spiny lobster fisheries (50 CFR 600.725 (v)). Trawl gear is also not an authorized gear type for pelagic fisheries that are not managed by the Council; however, it is an authorized gear for other fisheries that are not managed by the Council. An unauthorized gear is not a prohibited gear. Although trawl gear is not authorized for use in federally-managed fisheries, a commercial fisherman could petition the Council to use it when harvesting

federally-managed species in the future. This proposed rule would eliminate any such future petitions to use trawl gear in any fishery located in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. It would also eliminate trawl gear as an authorized gear for use in other commercial fisheries that are not managed by the Council.

Puerto Rico territorial fishing regulations prohibit the use of trawl nets and there is no evidence that the commercial sector in Puerto Rico uses (or has used) trawl gear, except for exploratory research in U.S. Caribbean Federal waters. Additionally, both bottom trawling and midwater trawling are likely cost prohibitive activities for the U.S. Caribbean's small-scale (artisanal) commercial fishing businesses. The USVI do not have specific regulations prohibiting the use of trawling gear in territorial waters off of St. Croix, St. Thomas, and St. John, and there is no evidence that trawling gear is or has been used by commercial fishermen in Federal waters around these islands. For these reasons, there is expected to be no economic impact on any small business in the U.S. Caribbean from the proposed prohibition on the use of trawl gear in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John.

This proposed rule would also prohibit the use of gillnets in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John for all federally managed

fisheries, and limit the use of gillnets in non-federally managed fisheries located in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John to gillnets that meet the following specifications and requirements: (a) mesh size of the gillnet must be exactly 0.75 inches (1.9 centimeters) square or 1.5 inches (3.8 centimeters) stretched; (b) one gillnet up to 600 feet (182.9 meters) in length is allowed on board a vessel; (c) the gillnet must be used 20 feet (6.1 meters) or more above the bottom; and (d) the gillnet must be tended at all times. Under current Federal regulation, gillnets are prohibited when fishing for federally-managed reef fish or spiny lobster around Puerto Rico (50 CFR 622.437 (a) (3) and (c) (2)), St. Croix (50 CFR 622.477(a) (3) and (c) (2)), and St. Thomas and St. John (50 CFR 622.512(a) (3) and (c) (2)). Gillnets are an authorized gear for federally-managed pelagic fisheries and other fisheries not managed by the Council (e.g., other pelagics and baitfish, such as ballyhoo or flying fish).

Puerto Rico fishing regulations (Article 14, parts f and g) prohibit the use of gillnets with less than 2 inches (5.1 centimeters) from knot to knot or with a mesh size greater than 6 inches (15.2 centimeters). An annual average of 121 of Puerto Rico's commercial fishermen reported using gillnets in territorial waters from 2014 through 2019, and 16 (13.2 percent) of them used gillnets in Federal waters. Annual landings (2014 through 2019) from the use of

gillnets in all waters averaged 122,100 pounds (lb; 55,338.6 kilograms [kg]). During this period, an annual average of 10 gillnet fishermen landed 1,900 lb (861.8 kg) of federally managed species from Federal waters that were not reef fish or spiny lobster. The 1,900 lb (861.8 kg) of landed fish represent approximately 0.1 percent of all reported marine resources landed by weight and by value, and the 10 fishermen represent 1.3 percent of the average 796 commercial fishermen with annual landings from all waters or 3.2 percent of the 309 commercial fishing businesses that reported fishing in Federal waters around Puerto Rico. The average fisherman who uses gillnet gear generates annual revenue of approximately \$41,000, which is significantly higher than the average revenue for fishermen that use any gear. The proposed restrictions on the use of gillnets in Federal waters around Puerto Rico would be expected to affect 10 commercial fishing businesses and result in an average annual loss in landings per business of 190 lb (86.2 kg), worth \$670 (approximately 1.6 percent of the average gillnet fisherman's annual revenue). This individual annual loss would be expected to occur over three to four trips with a reduction in revenue of \$168 to \$223 per trip. NMFS expects that these fishermen would act to mitigate for the loss by shifting those trips into territorial waters where about 97 percent of gillnet harvests occur.

USVI regulations (V.I.R.R., title 12, chapter 9A, section 321) prohibit the use of all gillnets in territorial waters, with the exception of single-wall surface gillnets for the baitfish ballyhoo (Family *Hemiramphidae*), gar (Family *Belonidae*), and flying fish (Family *Exocoetidae*). These USVI-allowed surface gillnets must be tended at all times, and possession of an illegal gillnet on board a vessel is prohibited in USVI waters. Any commercial fishing vessel that operates in Federal waters must pass through USVI waters to make its landings in St. Croix, St. Thomas, or St. John. From this it follows that gillnets that may be currently used in Federal waters off St. Croix, St. Thomas, and St. John must comply with USVI regulations and be limited to catching baitfish. Therefore, the proposed restrictions on the use of gillnets in Federal waters around St. Croix, St. Thomas, and St. John would be expected to have no economic impact on any small businesses.

In addition to the changes mentioned above, this proposed rule would prohibit the use of trammel nets in all fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. Under current regulations, the use of trammel nets is prohibited in the reef fish and spiny lobster fisheries located in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John, and they are not an authorized gear for any

fishery in U.S. Caribbean Federal waters. Although not authorized, a commercial fisherman can petition the Council to use trammel nets in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John, when fishing in fisheries other than reef fish or spiny lobster. However, to date, there have been no petitions to use trammel nets in Federal waters around Puerto Rico or the USVI. Trammel nets are used in Puerto Rico territorial waters to fish for managed species such as spiny lobsters and mackerels. In comparison, USVI regulations prohibit the use of trammel nets in territorial waters, and possession of trammel nets on board vessels in territorial waters is prohibited (V.I.R.R., title 12, chapter 9A, section 321). Any small business in St. Croix, St. Thomas, and St. John that operates a commercial fishing vessel in Federal waters must pass through territorial waters to make its landings in the USVI and would need to comply with USVI regulations. Therefore, there is no incentive for small commercial fishing businesses in the USVI to petition the Council for the use of trammel nets in Federal waters. In summary, the proposed action to prohibit the use of trammel nets in Federal waters around Puerto Rico and the USVI is expected to have no economic impact on any small businesses.

This proposed rule would also prohibit the use of purse seines for all fishing in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John. Purse

seines are not an authorized gear under current Federal regulation, but a commercial fisherman can petition the Council to use a purse seine in U.S. Caribbean Federal waters. To date, there have been no such petitions.

Therefore, the proposed prohibition on the use of purse seines in Federal waters around Puerto Rico, St. Croix, St. Thomas, and St. John is expected to have no economic impact on any small businesses.

Finally, this proposed rule would require a descending device to be on board a commercial or recreational vessel and be readily available for use while fishing for or possessing federally managed reef fish in Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John. A descending device means an instrument to which is attached a minimum of a 16-ounce (454-gram) weight and a length of line that will release the fish at the depth from which the fish was caught or a minimum of 60 feet (18.3 meters). The descending device attaches to the fish's mouth or is a container that will hold the fish. The device must be capable of releasing the fish automatically, by the actions of the operator of the device, or by allowing the fish to escape on its own. Since minimizing surface time is critical to increasing survivability, a descending device shall be readily available for use while engaged in fishing for managed reef fish in Federal waters. A descending device can be either purchased from a fishing supplies

business or made at home. The price of a commercially available descending device ranges from \$21 to \$60. The cost of a homemade device can be negligible, depending on the availability of materials at hand and the time spent building such a device. For example, one can make a descending device from a milk crate or heavy gauge aluminum wire with a weight. Therefore, the cost of a descending device is estimated to range from \$0 to \$60.

From 2014 through 2019, an annual average of 719 (90.2 percent of active) commercial fishermen in Puerto Rico reported landings of reef fish and 222 of them reported landings of reef fish harvested from Federal waters. Therefore, the proposed requirement that a descending device be on board a commercial or recreational vessel and readily available for use while fishing for or possessing federally managed reef fish in Federal waters would have an average annual direct impact on at least 222 small commercial fishing businesses in Puerto Rico. However, some commercial fishermen who have not historically reported landings of reef fish from Federal waters may choose to do so in the future, and thus, would be required to have a descending device. As discussed earlier, an annual average of 309 commercial fishermen reported landings from Federal waters. Therefore, a range of 222 to 309 small commercial fishing businesses in Puerto Rico would be directly affected by the proposed descending device requirement.

As stated previously, 37 of St. Croix's commercial fishermen and 48 of St. Thomas and St. John's commercial fishermen reported landings of marine resources harvested from Federal waters from 2014 through 2019, and NMFS assumes that all of these commercial fishermen may catch reef fish in Federal waters. Additionally, there were 66 new commercial hook-and-line fishing licenses issued by the USVI's DPNR for the 2022-2023 fishing year in the USVI. Therefore, 85 to 151 small commercial fishing businesses in the USVI would be directly affected by the proposed descending device requirement.

In addition, 16 to 58 small charter (for-hire) fishing businesses in Puerto Rico, one small charter (for-hire) fishing business in St. Croix, and 17 small charter (for-hire) fishing businesses in St. Thomas and St. John would be directly affected by the proposed descending device requirement.

The cost of a descending device represents from 0.0 to 0.87 percent of the average annual revenue of the average small commercial fishing business in Puerto Rico. Similarly, it represents from 0.0 to 0.2 percent of the average annual revenue generated by a small commercial fishing business in the USVI (St. Croix or St. Thomas and St. John). Revenue information for individual charter (for-hire) fishing businesses is not available to make a similar comparison. NMFS assumes, however, that all small

commercial fishing businesses and charter (for-hire) fishing businesses would choose the least costly device (retail or homemade) when factoring in explicit and implicit costs, and, therefore, the economic impact on each affected small entity from the proposed descending device requirement would be negligible.

In summary, the proposed prohibitions on the use of trawl gear, trammel nets, and purse seines in Federal waters off Puerto Rico, St. Croix, and St. Thomas and St. John would be expected to result in no or minimal economic impacts on affected small entities. The proposed restrictions on the use of gillnets in U.S. Caribbean Federal waters would be expected to negatively impact 10 commercial fishing businesses in Puerto Rico, by reducing annual ex-vessel revenue by \$670 per vessel (approximately 1.6 percent of the average gillnet fisherman's annual revenue). These 10 commercial fishing businesses comprise approximately 1.3 percent of all commercial fishing businesses in Puerto Rico and 3.2 percent of the commercial fishing businesses that reported fishing in Federal waters around Puerto Rico. Furthermore, NMFS expects that these fishermen would act to mitigate for the loss by shifting forgone trips into territorial waters where about 97 percent of harvest with gillnets occur. No other impacts are expected from the proposed gillnet restrictions. Finally, the proposed descending device requirement is

expected to result in negligible costs to affected small commercial fishing businesses and charter (for-hire) fishing businesses. In conclusion, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects**

##### **50 CFR Part 600**

Caribbean, Fish, Fisheries, Fishing.

##### **50 CFR Part 622**

Caribbean, Commercial, Fisheries, Fishing, Fishing gear, Recreational.

Dated: September 20, 2024.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 600 and 622 as follows:

#### **PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725(v), in the table under heading V. Caribbean Fishery Management Council, revise the entries for 1.B.i, 1.G, 2.B.i, 2.G, 3.B.i, and 3.G to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(v) \* \* \*

<b>Fishery</b>	<b>Authorized gear types</b>
* * * * *	
V. Caribbean Fishery Management Council	
1. Exclusive Economic Zone around Puerto Rico	
* * * * *	
B. Puerto Rico Pelagic Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
* * * * *	
G. Puerto Rico Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, gillnet, cast net, spear.
* * * * *	
2. Exclusive Economic Zone around St. Croix	
* * * * *	
B. St. Croix Pelagic Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
* * * * *	
G. St. Croix Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, gillnet, cast net, spear.
* * * * *	

3. Exclusive Economic Zone around St. Thomas and St. John	
* * * * *	
B. St. Thomas and St. John Pelagic Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
* * * * *	
G. St. Thomas and St. John Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, gillnet, cast net, spear.
* * * * *	

\* \* \* \* \*

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

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

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

4. In § 622.437:

- a. Revise the section heading;
- b. Revise the introductory text;
- c. Revise paragraph (a);
- d. Add paragraph (b);
- e. Revise paragraph (c) (2); and
- f. Add paragraph (d).

The revisions and additions read as follows:

**§ 622.437 Prohibited and required gear and methods.**

Trawl, trammel net, and purse seine gear are  
prohibited for use to fish in the EEZ around Puerto Rico.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish* means the species as defined in § 622.431.

(1) *Poisons*. A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around Puerto Rico.

(2) *Powerheads*. A powerhead may not be used in the EEZ around Puerto Rico to fish for reef fish.

(3) *Gillnets*. A gillnet may not be used in the EEZ around Puerto Rico to fish for reef fish.

(4) *Descending device*. At least one descending device is required to be on a vessel and be ready for use while fishing for or possessing reef fish. Descending device means an instrument capable of releasing the fish at the depth from which the fish was caught, and to which is attached a minimum of 16 ounces (454 grams) of weight and a minimum of a 60-foot (ft; 18.3-m) length of line. The descending device may either attach to the fish's mouth or be a container that will retain the fish while it is lowered to depth. The device must be capable of releasing the fish automatically, by actions of the operator of the device, or by allowing the fish to escape on its own when at depth.

(b) *Pelagic fish* means the species as defined in § 622.431. A gillnet may not be used in the EEZ around Puerto Rico to fish for pelagic fish.

(c) \* \* \*

(2) *Gillnets*. A gillnet may not be used in the EEZ around Puerto Rico to fish for spiny lobster.

(d) *Gillnet restrictions*. A gillnet may be used by commercial fishermen in the EEZ around Puerto Rico to fish for species not listed in § 622.431 if the gillnet meets the following requirements:

(1) At all times when the gear is in the water, a gillnet must be tended or supervised by the fisherman that deployed the gear.

(2) The mesh size must be exactly 0.75 inches (1.9 cm) square or 1.5 inches (3.8 cm) stretched.

(3) No more than one gillnet is allowed on board a vessel, counting any gear on the vessel and in the water.

(4) The maximum length of a gillnet measured at the head rope, foot rope, or float line cannot exceed 600 ft (182.9 m).

(5) When a gillnet is deployed in the water, the floats or buoys attached to the gillnet (head rope or float line) must maintain contact with the surface at all times, and the gillnet must not be used within 20 ft (6.1 m) of the bottom and must not be anchored to the bottom.

5. In § 622.477:

- a. Revise the section heading;
- b. Revise the introductory text;
- c. Revise paragraph (a);
- d. Add paragraph (b);
- e. Revise paragraph (c) (2); and
- f. Add paragraph (d).

The revisions and additions read as follows:

**§ 622.477 Prohibited and required gear and methods.**

Trawl, trammel net, and purse seine gear are prohibited for use to fish in the EEZ around St. Croix. Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish* means the species as defined in § 622.471.

(1) *Poisons*. A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around St. Croix.

(2) *Powerheads*. A powerhead may not be used in the EEZ around St. Croix to fish for reef fish.

(3) *Gillnets*. A gillnet may not be used in the EEZ around St. Croix to fish for reef fish.

(4) *Descending device*. At least one descending device is required to be on a vessel and be ready for use while fishing for or possessing reef fish. Descending device means an instrument capable of releasing the fish at the depth from which the fish was caught, and to which is

attached a minimum of 16 ounces (454 grams) of weight and a minimum of a 60-foot (ft; 18.3-m) length of line. The descending device may either attach to the fish's mouth or be a container that will retain the fish while it is lowered to depth. The device must be capable of releasing the fish automatically, by actions of the operator of the device, or by allowing the fish to escape on its own when at depth.

(b) *Pelagic fish* means the species as defined in § 622.471. A gillnet may not be used in the EEZ around St. Croix to fish for pelagic fish.

(c) \* \* \*

(2) *Gillnets*. A gillnet may not be used in the EEZ around St. Croix to fish for spiny lobster.

(d) *Gillnet restrictions*. A gillnet may be used by commercial fishermen in the EEZ around St. Croix to fish for species not listed in § 622.471 if the gillnet meets the following requirements:

(1) At all times when the gear is in the water, a gillnet must be tended or supervised by the fisherman that deployed the gear.

(2) The mesh size must be exactly 0.75 inches (1.9 cm) square or 1.5 inches (3.8 cm) stretched.

(3) No more than one gillnet is allowed on board a vessel, counting any gear on the vessel and in the water.

(4) The maximum length of a gillnet measured at the head rope, foot rope, or float line cannot exceed 600 ft (182.9 m).

(5) When a gillnet is deployed in the water, the floats or buoys attached to the gillnet (head rope or float line) must maintain contact with the surface at all times, and the gillnet must not be used within 20 ft (6.1 m) of the bottom and must not be anchored to the bottom.

\* \* \* \* \*

6. In § 622.512:

- a. Revise the section heading;
- b. Revise the introductory text;
- c. Revise paragraph (a);
- d. Add paragraph (b);
- e. Revise paragraph (c)(2); and
- f. Add paragraph (d).

The revisions and additions read as follows:

**§ 622.512 Prohibited and required gear and methods.**

Trawl, trammel net, and purse seine gear are prohibited for use to fish in the EEZ around St. Thomas and St. John. Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish* means the species as defined in § 622.506.

(1) *Poisons*. A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around St. Thomas and St. John.

(2) *Powerheads*. A powerhead may not be used in the EEZ around St. Thomas and St. John to fish for reef fish.

(3) *Gillnets*. A gillnet may not be used in the EEZ around St. Thomas and St. John to fish for reef fish.

(4) *Descending device*. At least one descending device is required to be on a vessel and be ready for use while fishing for or possessing reef fish. Descending device means an instrument capable of releasing the fish at the depth from which the fish was caught, and to which is attached a minimum of 16 ounces (454 grams) of weight and a minimum of a 60-foot (ft; 18.3-m) length of line. The descending device may either attach to the fish's mouth or be a container that will retain the fish while it is lowered to depth. The device must be capable of releasing the fish automatically, by actions of the operator of the device, or by allowing the fish to escape on its own when at depth.

(b) *Pelagic fish* means the species as defined in § 622.506. A gillnet may not be used in the EEZ around St. Thomas and St. John to fish for pelagic fish.

(c) \* \* \*

(2) *Gillnets*. A gillnet may not be used in the EEZ around St. Thomas and St. John to fish for spiny lobster.

(d) *Gillnet restrictions.* A gillnet may be used by commercial fishermen in the EEZ around St. Thomas and St. John to fish for species not listed in § 622.506 if the gillnet meets the following requirements:

(1) At all times when the gear is in the water, a gillnet must be tended or supervised by the fisherman that deployed the gear.

(2) The mesh size must be exactly 0.75 inches (1.9 cm) square or 1.5 inches (3.8 cm) stretched.

(3) No more than one gillnet is allowed on board a vessel, counting any gear on the vessel and in the water.

(4) The maximum length of a gillnet measured at the head rope, foot rope, or float line cannot exceed 600 ft (182.9 m).

(5) When a gillnet is deployed in the water, the floats or buoys attached to the gillnet (head rope or float line) must maintain contact with the surface at all times, and the gillnet must not be used within 20 ft (6.1 m) of the bottom and must not be anchored to the bottom.

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