SUMMARY: Under the Clean Water Act (“CWA”), the Environmental Protection Agency (EPA) intends to conduct a rulemaking to potentially revise certain best available technology economically achievable (“BAT”) effluent limitations and pretreatment standards for existing sources (“PSES”) for the steam electric power generating point source category, which were published in the Federal Register on November 3, 2015. EPA is, accordingly, postponing the associated compliance dates for the 2015 Rule. In particular, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for flue gas desulfurization (“FGD”) wastewater and bottom ash transport water in the 2015 Rule for a period of two years. At this time, EPA does not intend to conduct a rulemaking that would potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources (“PSES”) for the steam electric power generating point source category.
water until EPA completes its next rulemaking concerning those wastestreams, and it thus does not otherwise amend the effluent limitations guidelines and standards for the steam electric power generating point source category.

DATES: The final rule is effective September 18, 2017. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern Standard Time on October 2, 2017. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–OW–2009–0819. All documents in the docket are listed on the https://www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through https://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 566–1003; email address: jordan.ronald@epa.gov. Electronic copies of this document and related materials are available on EPA’s Web site at https://www.epa.gov/eg/steam-electric-power-generating effluent-guidelines-2015-final-rule. Copies of this final rule are also available at http://www.regulations.gov.

SUPPLEMENTARY INFORMATION:

I. Background


A letter dated March 24, 2017, the Utility Water Act Group (“UWAG”) 1 submitted a petition for reconsideration of the 2015 Rule which requested that EPA suspend the Rule’s approaching deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (“SBA”) Office of Advocacy sent EPA a second petition for reconsideration of the 2015 Rule, which expressly supports UWAG’s petition and raises issues that SBA considers to be pertinent to small businesses. The petitions raise wide-ranging objections to the Rule. Among other things, the UWAG petition points to new data which they believe show that plants burning subbituminous and bituminous coal cannot comply with the 2015 Rule’s limitations and standards for FGD wastewater and questions EPA’s characterization of bottom ash transport water. UWAG also requested that EPA suspend or delay the “rule’s fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current rule.”

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the Administrator announced his decision to reconsider the 2015 Rule. See DCN SE06612. As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. On April 14, 2017, EPA requested that the Fifth Circuit hold the case in abeyance while the Agency undertook reconsideration. On April 24, 2017, the Fifth Circuit granted the motion and placed the case in abeyance.

On June 6, 2017 (82 FR 26017), EPA proposed to postpone the compliance dates for the new, more stringent, BAT effluent limitations and PSES in the 2015 Rule for each of the following wastestreams: FGD wastewater, bottom ash transport water, fly ash transport water, flue gas mercury control wastewater, and gasification wastewater, while reconsideration of the 2015 Rule was underway. EPA explained that this postponement would preserve the regulatory status quo with respect to wastestreams subject to the 2015 Rule’s new, and more stringent, limitations and standards during reconsideration and that postponement of compliance dates is intended to prevent the unnecessary expenditure of resources until EPA finalizes any rulemaking as a result of its reconsideration of the 2015 Rule. EPA also solicited comments on whether this postponement should be for a specified period of time, for example, two years.

On August 11, 2017, EPA sent a second letter to those who had requested reconsideration of the 2015 Rule, announcing the Administrator’s decision to conduct a new rulemaking to potentially revise the new, more stringent BAT limitations and PSES in the 2015 Rule that apply to two wastestreams: FGD wastewater and bottom ash transport water. See DCN SE06670. On August 14, 2017, EPA filed a motion to govern further proceedings in the U.S. Court of Appeals for the Fifth Circuit, which explained that EPA intends to conduct further rulemaking to potentially revise the new, more stringent BAT/PSES requirements in the 2015 Rule applicable to FGD wastewater and bottom ash transport water, and requested, in part, that the Court sever and hold in abeyance all judicial proceedings concerning portions of the 2015 Rule related to those particular requirements. On August 22, 2017, the Court granted EPA’s motion.

In an earlier action, EPA administratively postponed certain compliance dates that had not yet passed in part of the 2015 Rule pursuant to Section 705 of the Administrative Procedure Act (“APA”), 5 U.S.C. 705, which states that “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial action.” 82 FR 19005 (April 25, 2017). EPA had postponed the compliance dates as a
Commenters that oppose the postponement of compliance dates argue that the agencies have not sufficiently considered the costs required to implement technology to achieve the 2015 Rule, and the Administrator deems appropriate.” and that the Agency is afforded considerable discretion in deciding how much weight to give each factor. See, e.g., Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1045 (D.C. Cir. 1978). In this case, where EPA has decided to undertake a new rulemaking, which may result in substantive changes to the 2015 Rule, that is an appropriate factor to consider and one that warrants the postponement of compliance dates for the new, more stringent BAT and PSES requirements for two wastestreams in the 2015 Rule, until such a rulemaking is complete (i.e., EPA issues any final rule that substantively revises the 2015 Rule or EPA decides not to issue such a final rule). This will prevent the potentially needless expenditure of resources during a rulemaking that may ultimately change the 2015 Rule in these respects.

As mentioned, some commenters stated that the record for the 2015 Rule demonstrates that the technologies underlying the new, more stringent requirements for FGD wastewater and bottom ash transport water are widely available and affordable. Notwithstanding statements in the 2015 Rule record, certain parties have raised serious concerns about the availability and affordability of the technology basis for the FGD wastewater and bottom ash transport water requirements in the 2015 Rule, and the Administrator wishes to take some time to carefully review these requirements in light of those concerns and ensure any such requirements are technologically available and economically achievable within the meaning of the statute. EPA has discretion in determining the technology basis and economic achievability and is not constrained by the CWA to make the same policy decision as the former Administration, so long as its decision is reasonable. As explained above, the Agency may
reconsider past policy decisions consistent with the Clean Water Act and other applicable law. The Agency may also reconsider technical determinations in light of new information submitted to the Agency that was not in the record for the 2015 Rule. EPA intends to fully evaluate all of the issues raised in the petitions, including concerns about: Cost and impacts to steam electric facilities, public availability of information on which the rule is based, lack of data for plants that burn certain types of coal, and validity of certain pollutant data used in EPA’s 2015 Rule analysis. For example, petitioners raised concerns about the numerical BAT limitations and PSES applicable to FGD wastewater in the 2015 Rule. They assert that there are differences among coal types that affect the performance and costs of biological treatment and that EPA did not have data to demonstrate the performance of biological treatment on all coal types. To resolve this concern, following the rulemaking, industry collected (and continues to collect) additional data on the performance of biological treatment for different coal types. As another example, petitioners raised questions about the inclusion and validity of certain data due, in part, to what they assert are flaws in data acceptance criteria, obsolete analytical methods, and the treatment of non-detect analytical results, which petitioners believed resulted in an overestimation of pollutant loadings for bottom ash transport water. EPA agrees that these are important issues that warrant further consideration in conjunction with the statutory factors for determining BAT for these wastestreams. EPA thus intends to re-evaluate these and other concerns raised in the petitions in the next rulemaking. EPA acknowledges that postponement of certain of the 2015 Rule’s compliance dates may be disruptive to vendors and treatment technology suppliers. EPA, however, must also consider the substantial investments required by the steam electric power industry to comply with the BAT limitations and PSES, and that certainty regarding the limitations and standards deserves prominent consideration by the Agency when these limitations and standards may change. As UWAG pointed out in its April 13, 2017 letter, “a rule of this magnitude and complexity requires substantial time to come into compliance for multiple wastestreams. Detailed studies and planning, followed by large capital expenditures and subsequent installation and testing, are time-consuming.” Companies have been evaluating their compliance options and are reaching the point at which they will be committing funds, incurring costs, or commencing construction to install technologies. As part of the 2015 Rule, EPA estimated the costs associated with compliance with the 2015 Rule’s new requirements. For all applicable wastestreams, EPA assessed the operations and treatment system components, identified equipment and process changes that the plant would likely make to meet the 2015 Rule, and estimated the cost to implement those changes. This includes, among other things, the capital costs of installing the technology (based on estimates of the technology selected as representing the level of control) and the operation and maintenance costs of operating the technology. See Technical Development Document (“TDD”), pp. 9–1 through 9–52. EPA estimated that the total post-tax annualized compliance costs would be $339.6 million/year. See Regulatory Impact Analysis (“RIA”), Table 3–2 (Option D).4

The 2015 rulemaking record also describes evaluation of the initial capital costs that regulated parties would incur in the near term (if a stay were not in place) to meet the 2015 Rule’s effluent limitations and standards. For the purpose of analysis, in the RIA, EPA assumed that all capital costs are incurred concurrently with technology installation according to discharge permit renewal schedules, but EPA realizes that feasibility studies and planning may need to be completed in advance of that date. Specifically, plants would incur engineering design costs, costs to acquire equipment, freight shipping costs to transport equipment from manufacturers to the installation site, costs for actions to prepare the site (such as installing concrete foundations and buildings for the new equipment), and construction expenses associated with connecting electrical and piping systems to new equipment. See TDD, p. 9–3. EPA estimated post-tax annualized capital costs of $204.4 million/year. See RIA, Table 3–2 (Option D). Although there is a wide degree of variability among the costs particular plants would expend, EPA estimates that the average post-tax annualized capital compliance costs for a plant would be approximately $1.5 million/year. See TDD, Table 9–19 (plants with compliance costs); RIA, Table 3–2 (Option D). To the extent that these costs are associated with the 2015 Rule requirements for FGD wastewater and bottom ash transport water, and in the event that EPA revises these requirements in a future rulemaking, these are costs that would be incurred for activities that ultimately might not be necessary. In that case, this would reflect costs incurred by facilities and potentially passed on to utility rate payers that ultimately did not need to be spent.

In light of these imminent planning and capital expenditures that facilities incurring costs under the 2015 Rule would need to undertake in order to meet the earliest compliance deadlines for the new, more stringent limitations and standards in the 2015 Rule, and the fact that the Agency is conducting a new rulemaking regarding the appropriate technology bases and associated limits for BAT limitations and PSES applicable to FGD wastewater and bottom ash transport water, the Agency views it as appropriate to postpone the earliest compliance dates that have not yet passed for these wastestreams in 2015 Rule. This will preserve the regulatory status quo with respect to requirements for FGD wastewater and bottom ash transport water until the new rulemaking is complete.

Some commenters also express concerns that postponement of compliance dates would hinder technology advancements. EPA’s experience does not support this concern. The record for the 2015 Rule demonstrates that technology advancements were not hindered during that rulemaking. Rather, as explained in the preamble to the final 2015 Rule, vendors continued to improve existing technologies and to develop new technologies during the rulemaking leading up to the 2015 Rule. EPA acknowledges that postponement of the compliance dates could lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule required that steam electric power plants would comply with the new, more stringent requirements no later than 2023, with plants expected to implement new control technologies over a five-year compliance period of 2019–2023 according to their permit renewal schedule. In the record for the 2015 Rule, EPA estimated the value of certain benefits linked to reduced pollutant

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4 EPA analyzed both pre-tax and post-tax costs. Pre-tax costs provide insight on the total expenditures as initially incurred by the plants. Post-tax costs are a more meaningful measure of compliance impact on privately owned for-profit plants, and incorporate approximate capital depreciation and other relevant tax treatments in the analysis. RIA, p. 3–6.
discharges that could be monetized for the period 2019 through 2042. Based on the 2015 Rule data and methodology and depending on the inclusion of the Clean Power Plan, EPA estimates that foregone annualized benefits for a two-year delay would be between $26.6 million and $33.6 million.\footnote{The calculations are based on the benefits and costs estimated for the 2015 Rule, which were detailed in the “Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (BCA) and “Regulatory Impact Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (RIA) reports.} EPA similarly estimates that plants would experience annualized cost savings of between $27.5 million and $36.8 million as a result of a two-year delay. See DCN SE06668 for additional details, including calculations of the foregone benefits and cost savings. EPA understands that these estimates have uncertainty due to, for example, the possibility of unexpected implementation approaches, and thus that the actual cost savings could have been somewhat higher or lower than estimated. Similarly, due to data and analysis limitations, the foregone monetized benefits are likely underestimated. These estimates, however, are consistent with and reflect the best data and analysis available at the time of the 2015 Rule.

EPA notes that, as explained earlier, there is uncertainty as to the FGD wastewater and bottom ash transport water BAT/PSES requirements while EPA conducts a new rulemaking. If EPA did not postpone the compliance dates, industry would likely incur costs as it prepares to comply with the 2015 Rule, irrespective of what EPA ultimately determines to be BAT/PSES for FGD wastewater and bottom ash transport water. By contrast, under the 2015 Rule, even if permits were written today, the earliest those permits would have required compliance with the limitations and standards at issue are “as soon as possible beginning November 1, 2018.” So, while some companies would have to plan to comply and spend money right away, the benefits would not begin to accrue until 2018, at the earliest. Also, these benefits may not be lost if a permitting authority requires similar effluent limitations where necessary to meet applicable water quality standards, under CWA section 301(b)(1)(C). EPA has carefully weighed the concerns about potentially foregone benefits with the consideration of the costs that could needlessly be incurred should the requirements be changed, as well as the overall uncertainty and potential confusion that would be caused by imposing the 2015 Rule requirements while simultaneously undertaking rulemaking that may change those requirements. On balance, EPA has concluded the more reasonable approach is to postpone the compliance dates in the 2015 Rule. Thus, EPA agrees with commenters who argue that it should postpone the new, more stringent BAT/PSES requirements for FGD wastewater and bottom ash transport water in the 2015 Rule until it completes a new rulemaking on these wastestreams. After reflecting on the time it typically takes the Agency to propose and finalize revised effluent limitations guidelines and standards, and in light of the characteristics of this industry and the anticipated scope of the next rulemaking, EPA projects it will take approximately three years to propose and finalize a new rule (Fall 2020). See DCN SE06667. Consequently, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for FGD wastewater and bottom ash transport water for a period of two years (November 1, 2020).\footnote{If EPA does not complete a new rulemaking by November, 2020, it plans to further postpone the compliance dates for the 2015 Rule.} To the extent that commenters believe a postponement under this rule should last beyond the time it takes EPA to complete its new rulemaking, such comments are appropriately considered as part of, and in light of, that new rulemaking and not this action. As explained, this rule is intended only as a relatively short-term measure until EPA completes the next rulemaking, and EPA anticipates that the next rulemaking will necessarily address compliance dates in some fashion. Although EPA proposed to postpone the compliance dates for the new, more stringent requirements applicable to fly ash transport water, gasification wastewater, and flue gas mercury control (FGMC) wastewater, in addition to the requirements for FGD wastewater and bottom ash transport water, this final rule does not postpone those former compliance dates. Commenters stated that EPA has no basis to postpone compliance dates for requirements that parties have not expressly argued should be reconsidered, such as those for fly ash transport water and FGMC wastewater. EPA agrees that the final rule should postpone only those requirements that the Agency plans to potentially revise in the next rulemaking. Because EPA is not conducting a new rulemaking concerning any of the other issues addressed by the 2015 Rule, including requirements for fly ash transport water, gasification wastewater, and FGMC wastewater, EPA is not changing the compliance dates for these wastestreams or any of the other compliance dates for the requirements in that Rule. The record for the 2015 Rule demonstrates that changes associated with converting a fly ash system are unrelated from an engineering perspective to conversions/upgrades for bottom ash transport water and FGD treatment systems. Converting a fly ash system requires installing a silo to capture the dry fly ash, which is subsequently transported offsite to beneficial reuse markets (e.g., cement plants) or landfilled. Bottom ash is handled separately, regardless of whether it is wet or dry. The same is true for FGD wastes. EPA recognizes however, that from a financing and long-term planning perspective, there are advantages to a facility in knowing the full suite of requirements it will need to comply with over a longer term planning horizon.

Some facilities commented that they may need to know what the ultimate requirements will be for bottom ash transport water and FGD wastewater to assist them in considering alternatives for meeting the requirements for the other waste streams (fly ash transport water and FGMC wastewater) for which EPA is not postponing the earliest compliance dates. EPA notes that there continues to be discretion under the 2015 Rule for permitting authorities to consider: Time needed to “expeditiously plan (including time to raise capital), design, procure, and install equipment” to comply with the rule; changes being made at the plant to comply with several other rules; and “other factors as appropriate” in determining exactly when, within a specified compliance period, the 2015 Rule’s new, more stringent limitations apply to any given plant. See 40 CFR 423.11(l).

In light of the compliance date postponements being finalized today, in determining the “as soon as possible date,” EPA believes it would be reasonable for permitting authorities to consider the need for a facility to make integrated planning decisions regarding compliance with the requirements for all of the wastestreams currently subject to new, more stringent requirements in the 2015 Rule, as well as the other rules identified in §423.11(l) to the extent that a facility demonstrates such a need. This could include harmonizing schedules to the extent provided for.
under the 2015 Rule for meeting the 2015 Rule requirements for fly ash transport water and FGMC wastewater to allow time for a facility to have certainty regarding what their ultimate requirements will be under the steam electric ELGs, as well as the requirements under the other rules listed in § 423.111(i).

This rule is effective immediately upon publication. Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that publication of a substantive rule must be made no less than 30 days before its effective date, subject to several exceptions. Section 553(d)(1) establishes for “a substantive rule which grants or recognizes an exemption or relieves a restriction.” The exception in Section 553(d)(1) reflects the purpose of the 30-day notice requirement, which is to give affected entities time to prepare for the effective date of a rule or to take any other action which the issuance of a rule may prompt. This rule fits within Section 553(d)(1) because it postpones certain requirements on steam electric power plants to control their pollutant discharges by two years, and as a result, it relieves a restriction on regulated entities for that period.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review; and, Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA’s analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act

This final rule does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 et seq.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action maintains the 2015 Rule as a whole at this time, with the only change being to postpone specific compliance deadlines for two wastestreams. As described above, EPA estimates that steam electric plants, including some small entities, would experience annualized cost savings of $27.5 million as a result of this two-year delay. We have therefore concluded that this action will relieve regulatory burden for some directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA previously determined that the environmental health risks or safety risks addressed by the requirements EPA is finalizing do not present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This is a final rule to delay action, and it does not change the requirements of the effluent limitations guidelines and standards published in 2015. While the postponement in compliance dates could delay the protection the 2015 Rule would afford to all communities, including those impacted disproportionately by the pollutants in certain wastewater discharges, this action would not change any impacts of the 2015 Rule upon implementation. The EPA therefore believes it is more appropriate to consider the impact on minority and low-income populations in the context of possible substantive changes as part of any future rulemaking.

L. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: September 12, 2017.

E. Scott Pruitt,

Administrator.

For reasons stated in the preamble, EPA amends 40 CFR part 423 as set forth below:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

§ 423.1111 Exception to 2015 Rule requirements.

1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act...
DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Americas] 2017 Atlantic Bluefin Tuna Reserve Category Quota, 2017 North and Atlantic Highly Migratory Species; [Docket No. 170602535–7835–01] [FR Doc. 2017–19821 Filed 9–15–17; 8:45 am]

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

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the northern albacore tuna annual baseline quota for 2017 with available underharvest of the 2016 adjusted U.S. northern albacore quota. NMFS also adjusts the North and South Atlantic swordfish baseline quotas for 2017 based on available underharvest from the 2016 adjusted U.S. quotas and international quota transfers. NMFS also augments the 2017 Atlantic bluefin tuna Reserve category quota with available underharvest of the 2016 adjusted U.S. bluefin tuna quota. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).


ADDRESSES: Supporting documents such as Environmental Assessments and Fishery Management Plans and their Amendments described below may be downloaded from the HMS Web site at www.nmfs.noaa.gov/sfa/hms/. These documents also are available upon request from Sarah McLaughlin, Steve Durkee, or Gray Redding at the telephone numbers below.


SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of northern albacore, swordfish, and bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(e) describes the northern albacore annual quota recommended by ICCAT and the annual northern albacore quota adjustment process. Section 635.27(c) describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) subdivides the ICCAT-recommended U.S. bluefin tuna quota among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and describes the annual bluefin tuna quota adjustment process. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quotas.

The northern albacore quota implementation and quota adjustment processes, along with the bluefin tuna quota adjustment process, were previously analyzed in Amendment 7, which published in August 2014 and included a Final Environmental Impact Statement, Final Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Final Social Impact Statement. ICCAT conducted another bluefin tuna stock assessment update in 2014, and, after considering the scientific advice in the stock assessment, adopted a recommendation regarding western Atlantic bluefin tuna management that increases the U.S. bluefin tuna quota for 2015 and 2016 (ICCAT Recommendation 14–05). NMFS published a final rule to implement that baseline annual U.S. bluefin tuna quota on August 28, 2015 (80 FR 52198), and prepared an Environmental Assessment (EA), RIR, and FRFA for that action. ICCAT Recommendation 16–08 extended the U.S. bluefin tuna allocation established in Recommendation 14–05 through 2017.

The North Atlantic swordfish quota adjustment process was previously analyzed in the EA, RIR, and FRFA that were prepared for the 2012 Swordfish Quota Adjustment Rule (July 31, 2012; 77 FR 45273). The South Atlantic swordfish quota adjustment process was previously analyzed in the EA, RIR, and FRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929). In the 2016 North and South Atlantic Swordfish Quotas Adjustment Final Rule (July 26, 2016, 81 FR 48719), after taking public comment on the issue, NMFS announced its intent to no longer issue proposed and final specifications/rules for North and South Atlantic swordfish quotas adjustments in cases where the quota adjustment follows previously codified and analyzed formulas. Therefore, beginning this year, NMFS is instead issuing a temporary final rule to adjust the quota, in a similar process to northern albacore and bluefin tuna quota adjustments. NMFS will continue to undertake notice and comment rulemaking when adopting new quotas, quota formulas, or otherwise altering conservation and management measures.

Note that weight information for northern albacore and bluefin tuna below is shown in metric tons (mt) whole weight (ww), and both dressed weight (dw) and ww is shown for swordfish.

Northern Albacore Annual Quota and Adjustment Process

Since 1998, ICCAT has adopted recommendations regarding the northern albacore fishery. The current