[Federal Register: March 25, 1994]

DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675 [Docket No. 930652-4028; I.D. 012694E]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to reduce the proportion of pollock roe that may be retained onboard a vessel during a fishing trip in the Alaska groundfish fisheries. This action is necessary to implement a statutory prohibition against the wasteful use of pollock by stripping roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing, commonly known as pollock roe stripping, and to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area with respect to groundfish management off Alaska.

DATES: This rule is effective April 25, 1994.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI) is managed by the Secretary of Commerce (Secretary) under the FMPs for Groundfish of the GOA and for the Groundfish Fisheries of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

This action reduces the proportion of pollock roe that may be retained onboard a vessel relative to other pollock products on board the vessel during a fishing trip from 10 to 7 percent. A reduction in the proportion of pollock roe that may be retained is one of several measures contained in a proposed rule, which invited comment through September 23, 1993 (58 FR 44643, August 24, 1993). The measure proposed at that time would have reduced the retainable roe proportion specified in the regulations from 10 percent to 5 percent. Seven letters of comments were received that addressed the retainable pollock roe proportion. They are summarized and responded to in the Comments Received section of this preamble.

Other measures contained in the proposed rule published on August 24, 1993, would establish standard product types and recovery rates for groundfish products. Those measures are still under review by NMFS and will be covered in a separate final rule.

Changes From the Proposed Rule

The proposed rule would have amended Secs. 672.20(i) and 675.20(j) of

title 50 CFR to specify 0.05, rather than 0.10, as the allowable ratio of pollock roe to the round weight equivalents of other pollock products that may be onboard a vessel during a trip. NMFS has determined that the current 10 percent proportion of roe that is allowed to be retained when harvesting pollock is too high, given actual proportions that resulted during the 1991, 1992, and 1993 pollock fisheries in the BSAI, and that it should be reduced to 7 percent rather than to 5 percent as proposed. Under a roe retention rate of 10 percent, processors could ``top off'' with amounts of pollock roe by stripping roe from subsequent pollock catches and discarding the carcasses.

Actual amounts of roe produced during the 1992 and 1993 pollock roe seasons show that processors typically produced pollock roe as an ancillary product as intended by the BSAI FMP. Roe production resulted in an overall proportion of less than 4 percent of pollock primary products. However, NMFS recognizes that this proportion represents an overall average proportion. Although NMFS acknowledges variation in pollock production throughout a season, individual processors may achieve higher proportions by topping off retained amounts of pollock round-weight equivalents with additional pollock roe. To allow too high a proportion could encourage this ``topping of'' practice.

In determining that 7 percent should be the applicable limit, NMFS reviewed 1993 roe recovery information during the roe pollock fishing season, which was conducted between January 20 and April 15. These vessels were typically participating under Community Development Quotas during 1993 and achieved roe recoveries during a time when roe recovery was optimal. Data from 12 participating vessels, which produced 1,422 mt of pollock roe from 31,772 mt of retained pollock catch, show that the average roe recovery was 0.045 during the roe pollock fishing season. The highest average roe proportion achieved by any one vessel participating under Community Development Quotas was 0.072. The lowest proportion achieved by one of the 12 vessels was 0.020. An allowable proportion of 0.07 (rounded to the nearest 100th) would minimize amounts of roe that might be discarded as a result of regulations, while still complying with the intent of the Magnuson Act to prohibit roe stripping. Therefore, NMFS is implementing 0.07 as the allowable proportion of roe as measured against other pollock products rather than 0.05 as proposed.

Response to Comments

This action responds to concerns expressed in public testimony that the previously allowed retainable roe proportion of 10 percent does not successfully prohibit roe stripping. No additional comments to that effect were received during the comment period provided by the proposed rule. Seven comments were received from industry participants, primarily expressing concern that the proposed reduction to 5 percent would result in unnecessary economic loss to the industry.

Comment 1: The proposed reduction from 0.10 to 0.05 of allowable pollock roe that may be retained is too low and will result in substantial economic loss. Average roe recoveries have been substantially lower than 0.10, which means that the average vessel is not topping off its retained pollock production with pollock roe. The average vessel, therefore, is not stripping pollock roe, and the reduction is not necessary.

Response: NMFS has decided to reduce the limit to 7 percent rather than 5 percent. Seven percent is the highest average roe proportion achieved by any one vessel for which NMFS has records during the 1993 directed fishery for roe-bearing pollock. NMFS does not concur that substantial economic loss will result. Maintaining the existing 10 percent limit could encourage roe stripping when the average recovery is substantially less. This would be

inconsistent with the Magnuson Act, which prohibits roe stripping.

Comment 2: The proposed reduction in the amount of retainable pollock roe will discriminate against the offshore fleet.

Response: When the Council developed Amendments 14 and 19 to the FMPs for the BSAI and GOA, it considered several options for implementing the Magnuson Act's ban on roe stripping. The Council's recommended alternative was based, in part, on the fact that the agency's ability to regulate on shore processing is limited under the Magnuson Act. Shorebased processing facilities may be subject to a State of Alaska policy that pollock roe stripping be eliminated to the fullest extent possible (AS 16.10.164).

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is necessary to promote compliance with the Magnuson Act prohibition of stripping pollock of its roe and discarding the flesh of the pollock (16 U.S.C. 1857(1)(N)).

The Alaska Region, NMFS, prepared a final regulatory flexibility analysis as part of the EA/RIR/FRFA prepared for final rulemaking, which concludes that this rule will have significant effects on a substantial number of small entities. The FRFA concludes that reducing the allowable proportion to 0.07 for retained pollock roe is superior to the status quo alternative in which the allowable proportion is 0.10. In 1992, actual roe recovery rates achieved by shore-based and at-sea processors were 0.037 and 0.034, respectively. In 1993, the actual roe recovery rate achieved by shorebased processors was 0.026. Some at-sea processors achieved roe recoveries of 0.072 during a time when roe maturation was likely optimum. The recovery rate of 0.07 is not expected to be constraining and will better achieve the intent of the Council and the Magnuson Act to prohibit pollock roe stripping. A copy of the EA/RIR/FRFA may be obtained from NMFS (see ADDRESSES).

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 21, 1994. Charles Karnella, Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows: PART 672--GROUNDFISH OF THE GULF OF Alaska

1. The authority citation for part 672 continues to read as follows:

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

2. In Sec. 672.20, paragraphs (i)(1) and (i)(6) are revised to read as follows:

Sec. 672.20 General limitations.

* * * * *

(i) * * *

(1) For purposes of this paragraph (i), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (i). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel may not be used to

determine the allowable retention of pollock roe for that vessel.
* * * * *

(6) Calculation of the amount of retainable pollock roe. To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product- recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.07. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph (i)(6). If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.07 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.
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PART 675--GROUNDFISH FISHERY OF THE Bering SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

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

5. In Sec. 675.20, paragraphs (j)(1) and (j)(6) are revised to read as follows:

Sec. 675.20 General limitations.
* * * * *

(j) Allowable retention of pollock roe.

(1) For purposes of this paragraph (j), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 7 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (j). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel may not be used to determine the allowable retention of pollock roe for that vessel.
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(6) Calculation of the amount of retainable pollock roe. To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.07. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph (j)(6). If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.07 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two

or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

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