

Dated: July 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 021212307 3037-02; I.D. 070203B]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 3,238 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is

establishing a directed fishing allowance of 2,938 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Eastern Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030128023-3158-02; I.D. 011503D]

**RIN 0648-AQ44**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Increase in Roe Retention Limit for Pollock Harvested in the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule increases from 7 to 9 percent the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the Bering Sea and Aleutian Islands Management Area. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act (AFA) through cooperative fishing practices and more precise timing of fishing activity. This action is intended to be consistent with the environmental and socioeconomic objectives of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) and other applicable laws.

**DATES:** Effective August 8, 2003.

**ADDRESSES:** Copies of the Categorical Exclusion and Regulatory Impact Review prepared for this action may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907-586-7247

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228, or [jay.ginter@noaa.gov](mailto:jay.ginter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

#### Background

NMFS published a proposed rule to raise the maximum retainable percentage of pollock roe from 7 to 9 percent on February 11, 2003 (68 FR 6865), with comments invited through March 13, 2003. Two letters of comment were received by the end of the comment period and are responded to in the response to comments section. Additional background on the development of roe stripping regulations and the purpose and need for this action are contained in the preamble to the proposed rule.

This final rule raises the maximum retainable percentage of pollock roe

from 7 to 9 percent to accommodate increased roe recovery rates that have been attained by industry since the passage of the American Fisheries Act (AFA). Under the AFA, vessels in the BSAI pollock fishery have formed voluntary cooperatives that have eliminated the open access race for fish that characterized the BSAI pollock fishery before the AFA. Under these AFA cooperatives, participating catcher/processors and motherships have been able to dramatically improve product recovery rates by slowing down their operations, using more refined production techniques, and fishing more selectively. This increase in productivity under the AFA was examined in detail in the final Environmental Impact Statement prepared for AFA-related Amendments 61/61/13/8 to the FMPs for the groundfish, crab, and scallop fisheries off Alaska.

In addition to these general gains in productivity, catcher/processors and motherships have achieved higher roe recovery rates under the AFA through an increased ability to time their fishing activity to coincide with periods of peak roe recovery and through an increased ability to selectively target schools of large mature pollock. When circumstances are ideal, some catcher/processors and motherships have reached or exceeded the current 7-percent limit.

In 1999, the Council examined roe recovery rates by catcher/processors in the BSAI and concluded that sufficient rationale existed to raise the maximum retainable roe amount to 9 percent. After reviewing data on roe recovery rates, NMFS agreed with the Council's rationale.

To determine the appropriate roe retention limit under the AFA, NMFS examined roe recovery information from the 2000, 2001, and 2002 roe seasons, which were managed under AFA cooperatives. During this time period, AFA catcher/processors and motherships processed 26,286 mt of pollock roe and 826,913 mt round-weight equivalent of primary pollock products for an aggregate roe recovery rate of 3.2 percent for the 2000–2002 roe seasons. However, during each of the 3 years, certain vessels were able to achieve roe recovery rates that exceeded 7 percent during weeks of peak roe recovery. In 2000, one catcher/processor achieved roe recovery rates of 8.0 and 9.0 percent during two reporting weeks in March. In 2001, seven catcher/processors exceeded the 7-percent limit during the week of March 24. During that week, these seven catcher/processors achieved an aggregate roe

recovery rate of 8.4 percent. In 2002, only one catcher/processor exceeded the 7-percent limit, with a roe recovery rate of 8.3 percent during the week of March 17. During this 3-year time period, these excesses totaled 185.6 mt of roe product, or 61.9 mt annually.

This action also affects non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing requirements at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain all incidental catch of pollock up to the 20-percent maximum retainable percentage limit. Such vessels also are allowed to recover roe from their incidental catch of pollock. Under this final rule, catcher/processors that are engaged in directed fishing for species other than pollock also are allowed to retain pollock roe up to the 9-percent limit.

#### Response to Comments

NMFS received two comment letters by the end of the comment period on the proposed rule, both in favor of this action, but questioning the need for any retention limit. These comments are summarized and responded to here.

*Comment 1:* The United States Surimi Commission (USSC) supports the proposed increase in the roe-retention limit but would prefer a total removal of the roe retention restriction on the grounds that such a limit is redundant and unnecessary in light of subsequently adopted management measures that more effectively govern utilization rates onboard at-sea processing vessels in the BSAI pollock fishery. Since the passage of the AFA, the catcher/processors represented by USSC are producing nearly 50 percent more processed pollock per ton of catch than they were prior to the passage of the AFA. While overall roe recovery rates still average less than 7 percent, it is not unusual for vessels to encounter schools of fish at certain times of the year and in certain areas where the actual roe content of the catch exceeds 7 percent. In such instances, fishermen are faced with the dilemma of having to throw away the most valuable product they make in order to comply with an antiquated rule that was designed over a decade ago to discourage wasteful fishing and processing practices that are no longer extant in the fishery. An increase in the retention limit from 7 to 9 percent would help reduce the number of such instances. It would not,

however, completely eliminate the possibility of vessels having to discard roe as roe recovery rates sometimes exceed 9 percent.

The better solution would be to eliminate the roe retention limit altogether. Although a roe retention limit may have been necessary in the past, it has long since outlived its usefulness insofar as the avoidance of wasteful fishing practices are concerned. Furthermore, all AFA catcher/processors now carry 2 full-time federal observers, must weigh all their catch on NMFS certified flow scales, and must comply with the requirements of the improved retention/improved utilization (IR/IU) program, which mandates 100 percent retention of pollock. Each of these measures are more than adequate to ensure that vessels are complying with the statutory ban on roe-stripping. For these reasons, the USSC would prefer to see the roe retention limit eliminated altogether rather than an upwards adjustment of an arbitrary limit that could still result in fishermen having to throw away portions of the most valuable product they produce. Such a result would seem to be dictated by National Standard 7's mandate that management measures "minimize costs and avoid unnecessary duplication."

*Response:* As noted in the preamble to the proposed rule, the Council and NMFS considered and rejected the alternative of eliminating the roe retention limit for two reasons:

First, AFA cooperatives that have produced a more rationalized fishery are not necessarily permanent. AFA cooperatives, which are voluntary organizations, could dissolve at any point in the future if the members no longer believe that remaining in cooperatives is in their interest. The fishery then could potentially return to a race-for-fish in which wasteful practice could again emerge. By raising the retention limit so that it does not exceed 9 percent, this rule provides a direct incentive to continue participation in the AFA cooperatives which have contributed to the higher utilization of raw product and the increased efficiency of higher roe yields.

Second, non-AFA catcher/processors engaged in directed fisheries for other species are required to retain incidental catch of pollock up to the 20-percent maximum retainable percentage. The 9 percent maximum retainable roe percentage is an additional measure to reduce incentives by vessel operators to sort incidental catch of pollock for roe bearing fish. Such activity could increase discard amounts in a manner inconsistent with the intent of

regulations intended to prevent roe stripping and reduce discard amounts under IR/IU. Therefore, maintaining a regulatory limit on roe retention is prudent to prevent the potential for a return to the practice of roe stripping in the event that the current AFA cooperatives chose to dissolve and to continue to limit the practice of roe stripping by vessels in non-AFA fisheries.

NMFS examined roe recovery data from 2000 to 2002 demonstrating that recovery rates have increased during some weekly periods from less than 7 percent to 8 and 9 percent. This data suggests that a recovery rate of 9 percent represents a current upper limit for AFA catcher processors and motherships. This rate of 9 percent is sufficient to capture the benefits of a higher recovery rate while avoiding the costs associated with discarding roe. Therefore, NMFS has determined that establishing a 9 percent roe retention limit is consistent with National Standard 7.

*Comment 2:* The At-sea Processors Association (APA) questions the need for any limit on the percentage of roe that may be retained in the BSAI pollock fishery given that: (1) There is no economic or other incentive for vessels in the directed pollock fishery to conduct roe stripping under the current management regime, (2) other rules and regulations now make roe stripping illegal and impractical, and (3) even a 9 percent cap could still result in the undesirable consequence of forcing fishermen to discard their most valuable product. For all of these reasons, APA would prefer to see the pollock roe retention cap eliminated altogether in the directed pollock fishery. On the other hand, if elimination of the cap is not an option in the context of the current rulemaking, it is essential that the cap be raised to the maximum extent possible. The current 7 percent cap is unrealistically low. It unnecessarily forces fishermen to discard a very valuable product and thwarts efforts to extract more value (and more edible

protein) out of the nation's limited fishery resource.

*Response:* See response to comment 1.

**Elements of the Final Rule**

This final rule amends 50 CFR 679.20(g) by raising the maximum allowable roe retention percentage from 7 to 9 percent for pollock harvested in the BSAI. No changes were made from the proposed rule.

**Classification**

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 1, 2003.

**Rebecca Lent,**

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

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

■ 2. In § 679.20, paragraphs (g)(1)(i), (g)(4)(i)(B), and (g)(4)(ii)(B) are revised to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed the following percentages of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip:

(A) 7 percent in the Gulf of Alaska, and

(B) 9 percent in the Bering Sea and Aleutian Islands.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

\* \* \* \* \*

(ii) \* \* \*

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

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