

[Federal Register: October 5, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration  
50 CFR Parts 672 and 675 [Docket No. 921058-4257; I.D. 090892B] RIN 0648-AD44

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.

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SUMMARY: NMFS implements a regulatory amendment to establish standard groundfish product types and standard product recovery rates (PRRs) for purposes of managing the groundfish fisheries off Alaska and specify certain product types and PRRs that may be used to calculate round-weight equivalents of pollock for purposes of calculating amounts of pollock roe that may be retained onboard a vessel during the pollock fishery. These actions are necessary to facilitate enforcement of existing regulatory measures and 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. The intended effect of this action is to promote the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: November 4, 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, 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 management area (BSAI) is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the 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.

An explanation of, and reasons for, the establishment and specifications of standard product types and standard PRRs are contained in the notice of proposed rulemaking (58 FR 44643, August 24, 1993). The notice invited comments through September 23, 1993. It also proposed a regulatory amendment to reduce the proportion of pollock roe that may be retained onboard a vessel while participating in the directed pollock fishery. That regulatory amendment has already been implemented by a final rule (59 FR 14121, March 25, 1994). Six letters of comments were received that addressed standard product types and standard PRRs. They are summarized and responded to in the Comments Received section, below. Changes in the Final Rule From the Proposed Rule Table 2 is redesignated as Table 1 in 50 CFR 672.20(j)(1), (2) and (3)(i) and (3)(ii).

The newly designated Table 1 in 50 CFR 672.20(j)(2) is revised as follows.

1. Product codes and standard PRRs are established for rex sole in the GOA to accommodate a new target species category at 50 CFR 672.20(a) resulting from 1994 groundfish specifications.

2. The standard PRR for rockfish fillets/no skin (code 22) is changed from 0.35 to 0.33, and the standard PRR for sculpins, headed & gutted with roe (code 4) is changed from 0.88 to 0.87. These changes are insignificant and are made to reflect information contained in the literature for these product types.

3. A standard PRR for pollock surimi of 0.14 was proposed. That rate does not reflect seasonal variations experienced in this product. Seasonal variations are caused by changes in the physical condition of pollock flesh during the spawning season. This season generally occurs from January through June, followed by a recuperation period. Starting in July, the condition of pollock flesh improves, becoming optimum during the late summer months. For this reason, the BSAI pollock non- roe season was changed by regulation from June 1 to August 15, beginning in 1993.

To investigate seasonal differences in pollock products, NMFS reviewed data from the 1993 pollock roe and non-roe seasons, which occurred January 20-March 8 and August 15-September 22, respectively, for the ``offshore component.'' NMFS also reviewed data from the ``offshore component'' from the 1994 pollock roe season, which occurred January 20-February 18. These data contained estimates of total retained pollock catches as reported by NMFS observers and amounts of surimi produced from the retained pollock as reported by vessels. During the 1993 roe season, 20,934 metric tons (mt) of surimi were produced from a retained pollock catch of 134,558 mt resulting in a average PRR of 0.155. During the 1994 roe season, 23,267 mt of surimi were produced from a retained pollock catch of 144,134 mt, resulting in an average recovery rate of 0.161. During the non-roe season, 29,878 mt of surimi were produced from a retained pollock catch of 171,320 mt, resulting in an average recovery rate of 0.17.

From these data, NMFS has determined that sufficient information exists to demonstrate seasonal differences in surimi recovery rates. Therefore, NMFS is establishing a standard PRR of 0.16 for the period January through June and a standard PRR of 0.17 for the period July through December.

4. The standard PRR for pollock skinless/boneless fillets (product code 23) is revised from 0.22 to 0.21. This revision is based on results of recovery tests conducted by NMFS observers.

5. The target species category ``flathead sole'' had been proposed to be referenced in Sec. 675.20(a), which was an error. It is now correctly referenced in Sec. 672.20(a).

6. The target species category ``other flatfish'' had been proposed to be referenced in Sec. 672.20(a), which was an error. It is now correctly referenced in Sec. 675.20(a).

7. The standard PRR for Atka mackerel, headed and gutted western cut (code 7) is changed from 0.61 to 0.64, and the standard PRR for Atka mackerel, headed & gutted eastern cut (code 8) is changed from 0.64 to 0.61 to correct a transposition error in the proposed rule.

8. The product codes 95 for discards and 99 for dockside discards have been removed, because they serve no useful purpose. Section 672.20(j)(3) is revised to limit the aggregate adjustments of any standard PRR during a calendar year that the Regional Director may make without providing opportunity for prior public comment to no more than 15 percent of the standard PRR specified for a preceding calendar year. Aggregate adjustments

greater than 15 percent may be made after providing notice and opportunity for prior public comment.

#### Comments Received

NMFS received six letters of comments on the proposed rule. Some comments addressed standard PRRs for specific products (e.g., surimi and deep-skin fillets made from pollock). Other comments focused on concerns about being accountable for the standard PRRs that would be different from actual recovery rates.

Comment 1. A vessel that achieves an actual recovery rate for a product that varies from the standard PRR could be prosecuted for violating a directed fishing closure or Vessel Incentive Program (VIP) rate, or be subject to higher fees under the North Pacific Fisheries Research Plan (Research Plan), even though irrefutable evidence existed to demonstrate that the vessel's actual recovery rate was real.

Response. NMFS concurs that a vessel could be prosecuted as stated in the comment. A vessel may have to adjust the amounts of products retained onboard to comply with the regulations that depend on round-weight equivalents calculated from processed products. A vessel would not be in violation if it has amounts of products onboard that are consistent with standard PRRs. Although NMFS considered means by which a vessel could claim it was achieving a recovery rate that differed from a standard PRR at any particular time, NMFS does not have the ability to determine whether a vessel's claimed recovery rate was representative of its processing operations or whether it had claimed a particular recovery rate as a means of justifying amounts of fish onboard to avoid violations of directed fishing closures or VIP definitions, or being charged higher fees under the Research Plan.

Comment 2. A vessel that achieves a higher recovery rate for a particular product receives no benefit under a program that uses standard PRRs, thereby discouraging the use of more efficient and productive equipment.

Response. Standard PRRs are used to determine the amount of fish caught because their use is the best practicable method of doing so available at this time. Economic incentives outside the regulatory management scheme exist for vessels to increase their product recovery efficiency. As overall fleet efficiency in producing any particular product increases, NMFS will revise the standard PRR for that product.

Comment 3. By establishing one standard PRR for each product form, the rule ignores seasonal, area, and vessel-by-vessel variation in actual recovery rates.

Response. NMFS has considered variation in determining that standard PRRs are necessary to enforce certain management measures. Where NMFS has been able to determine a variation in a PRR over a wide area or season, as in pollock used for surimi (See response to Comment 4, below.), a separate PRR is specified. NMFS does not have the means to account for vessel-by-vessel, seasonal, and area variations from a standard PRR that may occur at any particular time.

Comment 4. Proposed standard PRRs for certain products are inaccurate. These are listed as follows:

1. The standard PRR for pollock surimi of 0.14 is too low, given that data used by NMFS during the 1992 non-roe season reflected product recovery from small-sized pollock and that actual recovery rates achieved by vessels, by season, shows product recoveries that range from 0.12 to 0.30. Data from the 1993 fishery should be a more reliable source of information;

2. The standard PRR for deep skin pollock is too low, given that data submitted to NMFS suggest that the standard PRR is closer to 0.16 or even

0.18;

3. The standard PRR for headed-and-gutted Pacific cod is too low, given that other sources of published information indicate that the standard PRR should be in the range of 0.56-0.75 or 0.58-0.64; and

4. Other standard PRRs may be in error as well.

Response. With respect to the standard PRR for pollock surimi, NMFS has reviewed 1993 production information on a seasonal basis and notes that the average recovery rate for the period January through June is 0.16 (see discussion under the section on Changes In the Final Rule From the Proposed Rule). The average recovery rate for the period July through December is 0.17. The final rule establishes these two recovery rates to accommodate seasonal differences.

NMFS has reviewed information with respect to PRRs for deep skin pollock and headed-and-gutted Pacific cod. Deep skin pollock is such a new product that few data exist to demonstrate the extent of annual variation. On the basis of information available, NMFS concludes that 0.13 is an appropriate standard PRR. With respect to headed-and-gutted Pacific cod, many independent observers' tests onboard vessels have demonstrated PRRs averaging 0.47 and 0.57, respectively, for eastern and western cut products made from Pacific cod. Other changes made to PRRs are as noted in the section on Changes In the Final Rule From the Proposed Rule for the reasons given. NMFS does not have information that indicates any of the other proposed standard PRRs are in error; therefore, NMFS is establishing them as proposed.

Comment 5. The 15 percent leeway provided to the Regional Director to make adjustments in standard PRRs without further rulemaking is inadequate.

Response. Changes in management measures sometimes have effects that are not anticipated. Notice-and-comment procedures provide the agency and the public the opportunity to determine what such effects might be. There is no limit to the change in a PRR that may be made in any one year. The Regional Director may make changes to a PRR without providing opportunity for prior public comment as long as the aggregate change in any one year does not exceed 15 percent. Changes to a PRR which, when aggregated with all other changes made during that same calendar year, are greater than 15 percent require notice and opportunity for prior public comment to ensure that all data and all possible effects are considered.

NMFS, having reviewed the purpose of this rule and comments received, has determined that it is necessary for fishery conservation and management. Standard PRRs, rather than recovery rates provided by vessel operators, are necessary to estimate the round-weight equivalent of retained species: (1) To assign vessels to fisheries for purposes of monitoring fishery specific bycatch allowances of prohibited species; (2) to monitor vessel compliance with fishery specific bycatch rate standards set forth under the VIP to reduce prohibited species bycatch rates; and (3) to calculate round-weight equivalents for purposes of assessing fees under the Research Plan. This rule is also necessary to promote compliance with regulations that prohibit pollock roe stripping as intended by the Magnuson Act.

#### Classification

The Alaska Region, NMFS, prepared a final regulatory flexibility analysis as part of the EA/RIR/FRFA, which concludes that this rule will have a significant economic impact on a substantial number of small entities. A copy of the EA/RIR/FRFA may be obtained from the Regional Director (see ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 29, 1994. Gary Matlock, 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--GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

2. In Sec. 672.2, a new definition of "Round-weight equivalent" is added to read as follows:

Sec. 672.2 Definitions.

\* \* \* \* \*

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in Sec. 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

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Sec. 672.20 General limitations.

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(i) \* \* \*

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Standard Product code	Product description	Product recovery rate
07.....	Headed and gutted, western cut.....	0.65
08.....	Headed and gutted, eastern cut.....	.56
10.....	Headed and gutted, without tail.....	.50
20.....	Fillets with skin & ribs.....	.35
21.....	Fillets with skin on, no ribs.....	.30
22.....	Fillets with ribs no skin.....	.30
23.....	Fillets, skinless, boneless.....	.21
24.....	Deep skin fillets.....	.13
30.....	Surimi.....	.16
31.....	Mince.....	.22
32.....	Meal.....	.17

\* \* \* \* \*

(j) Standard product types and standard product recovery rates (PRRs)--

(1) Calculating round-weight equivalents from standard PRRs. Round-weight equivalents for groundfish products shall be calculated using the product codes and standard PRRs specified in Table 1 of this section.

(2) Adjustments to Table 1 of this section. The Regional Director may adjust standard PRRs and product types specified in Table 1 of this section if he determines that existing standard PRRs are inaccurate or if new product

types are developed.

(3) Procedure. Adjustments to any standard PRR listed in Table 1 that are within and including 15 percent of that standard PRR may be made without providing notice and opportunity for prior public comment. Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, may not exceed 15 percent of the standard PRR listed in Table 1 of this section at the beginning of that calendar year and no new product type may be announced until NMFS has published notice of the proposed adjustment and/or new product type in the Federal Register and provided the public with at least 30 days opportunity for public comment. Any adjustment of a PRR that acts to further restrict the fishery shall not be effective until 30 days after the date of publication in the Federal Register. If NMFS makes any adjustment or announcement without providing notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its publication in the Federal Register.

Table 1 to Sec. 672.20.--Target Species Categories, Product Codes and Descriptions, and Standard Product Recovery Rates for Groundfish Species  
672.20(a)(1) and/or 50 CFR 675.20(a)(1)

Referenced in 50 CFR

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Product Code																		
2	4	and	and	and	6	7	8	10	FMP species				code	Species 1				
gutt	gutt	gutt	gutt	Kirimi	Headed	Headed	Headed	Headed	12	fish	fish	food	Whole	Whole				
w/o	gutt	gutt	gutt	and	11	11	13	12		roe	bait	3 Bled	Gutted	Gutted				
			split		Wings	Salted	Roe			cut	cut	cut	with	western				
													cut	eastern				
														tail				
-----																		
Pacific																		
cod.....					110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05	Arrowtooth
flounder.....					121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	
Rockfish\1\.....						1.00	1.00	0.98	0.88	.....	.....	0.60	0.50	.....	.....	.....	.....	
Sculpins.....					160	1.00	1.00	0.98	0.87	.....	.....	0.50	0.40	.....	.....	.....	.....	Atka
mackerel.....					193	1.00	1.00	0.98	0.87	0.67	0.64	0.61	.....	.....	.....	.....	.....	
Pollock.....					270	1.00	1.00	0.98	0.80	0.70	.....	0.65	0.56	0.50	.....	.....	.....	0.04
Smelts.....					510	1.00	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	
Eulachon.....					511	1.00	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	
Capelin.....					516	1.00	1.00	0.98	0.89	.....	.....	0.78	.....	.....	.....	.....	.....	
Sharks.....					689	1.00	1.00	0.98	0.83	.....	.....	0.72	.....	.....	.....	.....	.....	
Skates.....					700	1.00	1.00	0.98	0.90	.....	.....	.....	0.32	.....	.....	.....	0.32	.....
Sablefish.....					710	1.00	1.00	0.98	0.89	.....	.....	0.68	0.63	0.50	.....	.....	.....	
Octopus.....					870	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....	
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Target Species Categories Only at 50 CFR 672.20(a)																		
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Deep water																		
flatfish.....					118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Flathead
sole.....					122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Rex
sole.....					125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Shallow water
flatfish.....					119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Thornyhead
rockfish.....					143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	.....	.....	.....	.....	.....	
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Target Species Categories Only at 50 CFR 675.20(a)																		
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Other																		
flatfish.....					120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Rock
sole.....					123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Yellowfin
sole.....					127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	Greenland
turbot.....					134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08	
Squid.....					875	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....	
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\1\Rockfish means																		
all species of Sebastes and Sebastolobus.																		

Table 1 to Sec. 672.20 (continued).--Target Species Categories, Product Codes and Descriptions, and Standard Product Recovery Rates for Groundfish  
 Species Referenced in 50 CFR 672.20(a)(1) and/or 675.20(a)(1)

Product code															
With Skin on ribs no boneless	Filletlets: no skin	20		22		24	30	31	32	FMP species code	Pectoral Heads	Species 16	15	17	
		Filletlets: Deep	Filletlets: With Skinless/	Filletlets: Mince	Filletlets: Surimi										23
														Pacific	
cod.....	110	0.05	0.05	0.01	0.45	0.35	0.25	0.25	0.15	0.50	0.17	Arrowtooth flounder.....	0.17		
121				0.32	0.27	0.27	0.22	0.17	Rockfish.....						
0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	0.17	Sculpins.....	160					
								0.17	Atka mackerel.....	193					
				0.15		0.17	Pollock.....	270	0.15				0.35	0.30	
0.30	0.21	0.13	\1\0.1												\2\0.1
6														7	
Smelts.....	510						0.38						0.22	0.17	
Eulachon.....	511						0.38						0.22		
Capelin.....	516												0.22		
Sharks.....	689						0.30	0.30	0.25				0.17		
Skates.....	700												0.17		
Sablefish.....	710			0.05			0.35	0.30	0.30	0.25			0.22		
Octopus.....	870												0.17		

Target Species Categories Only at 50 CFR 672.20(a)

Deep water														
flatfish.....	118				0.32	0.27	0.27	0.22				0.17	Flathead sole.....	
122				0.32	0.27	0.27	0.22		0.17	Rex sole.....		125		
		0.32	0.27	0.27	0.22				0.17	Shallow water flatfish....	119			
0.40	0.30	0.35	0.25			0.17	Thornyhead rockfish.....	143		0.20	0.05	0.05	0.05	

Target Species Categories Only at 50 CFR 675.20(a)

Other														
flatfish.....	120				0.32	0.27	0.27	0.22				0.17	Rock	
sole.....	123				0.32	0.27	0.27	0.22				0.17	Yellowfin	
sole.....	127				0.32	0.27	0.27	0.22		0.18		0.17	Greenland Turbot.....	
134				0.32	0.27	0.27	0.22		0.17	Squid.....		875		
								0.17						

pollock surimi rate during January through June.  
 during July through December.

\1\Standard  
 \2\Standard pollock surimi rate





PART 675--GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

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

5. In Sec. 675.2, a new definition of ``Round-weight equivalent'' is added to read as follows:

Sec. 675.2 Definitions.

\* \* \* \* \*

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in Sec. 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

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6. In Sec. 675.20, paragraph (j)(4) is removed, paragraphs (j)(5)-(j)(7) are redesignated as paragraphs (j)(4)-(j)(6), paragraph (j)(3) is revised, and a new paragraph (k) is added to read as follows:

Sec. 675.20 General limitations.

\* \* \* \* \*

(j) \* \* \*

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Product description	Standard Product product code	recovery rate
07..... Headed and gutted, western cut.....		0.65
08..... Headed and gutted, eastern cut.....		.56
10..... Headed and gutted, without tail.....		.50
20..... Fillets with skin & ribs.....		.35
21..... Fillets with skin on, no ribs.....		.30
22..... Fillets with ribs no skin.....		.30
23..... Fillets, skinless, boneless.....		.21
24..... Deep skin fillets.....		.13
30..... Surimi.....		.16
31..... Mince.....		.22
32..... Meal.....		.17

\* \* \* \* \*

(k) Standard product types and standard product recovery rates (PRRs). Standard product types and standard PRRs pertaining to this section are governed by provisions set forth in Sec. 672.20(j).