

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