

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, a 7-percent limit would have required that catcher/processors discard a total of 185.6 mt of roe product, or 61.9 mt annually.

This action also would affect 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 100-percent retention requirements at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental catch of pollock up to the 20-percent limit, and such vessels are also allowed to recover roe from their incidental catch of pollock. The proposed 9-percent roe retention limit also would govern the amount of pollock roe these vessels could retain. In 2001, 58 non-AFA catcher/processors retained and processed pollock in the BSAI. These 58 vessels processed a round-weight equivalent of 11,837 mt of primary pollock products and 199 mt of pollock roe. The roe retention rates of non-AFA catcher/processors ranged from zero to 5.5 percent with an average rate of 1.5 percent. From these data, NMFS concludes that non-AFA catcher/processors are less able to maximize pollock roe recovery than AFA catcher/processors.

Based on these data, NMFS has concluded that, when conditions for roe

recovery are ideal in mid to late March, some catcher/processors are able to achieve recovery rates that exceed 7 percent and that 9 percent is a standard that is sufficiently high to accommodate these peak periods of roe recovery without forcing vessels to discard excess roe. NMFS considered and rejected the alternative of eliminating the roe retention limit for several reasons. First, the AFA cooperatives that have produced a more rationalized fishery are not permanently established in regulation. 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. 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 prevent such vessels from roe stripping, even though the practice is also prohibited by IR/IU regulations. Therefore, the Council and NMFS believe that 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 choose to dissolve and to continue to limit the practice in non-AFA fisheries.

#### Elements of the Proposed Rule

This proposed rule would amend 50 CFR 679.20(g) by raising the maximum allowable roe retention percentage from 7 to 9 percent. For pollock harvested in the Gulf of Alaska (GOA), the maximum retainable percentage would remain at 7 percent. This distinction is made because the AFA applies only to the BSAI and the conditions that have led to an increase in roe recovery rates in the BSAI do not exist in the GOA. No other regulatory changes are proposed.

#### Classification

This proposed 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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: Two groups of vessels currently harvest pollock in the BSAI and retain roe product from the pollock harvested in the BSAI: (1) AFA catcher/processors and motherships that engage in directed

fishing for pollock, and (2) non-AFA catcher/processors that encounter pollock as incidental catch in other fisheries.

Under the AFA, 21 catcher/processors and 3 motherships are eligible to engage in directed fishing for pollock in the BSAI. NMFS reviewed the size of these entities in the Environmental Impact Statement (EIS) prepared for AFA-related Amendments 61/61/13/8 to the fishery management plans for the groundfish, crab, and scallop fisheries off Alaska. The EIS concluded that all AFA-eligible catcher/processors are large entities under SBA size criteria because their annual receipts exceed \$3.5 million. The 21 individual catcher/processors are owned by 12 companies with annual receipts that are estimated to range from \$5 million for the smallest entity to several billion dollars for the largest entities. All three motherships engaged in the directed pollock fishery are also classified as large entities under SBA criteria because the companies that own these three motherships employ more than 500 individuals in their worldwide operations.

In 2001, 58 non-AFA catcher/processors harvested pollock incidentally while engaged in directed fishing for other species. Many of these vessels also retained pollock roe from their incidental catch of pollock. Although we do not have comprehensive knowledge of the ownership characteristics and gross receipts of the companies that own these 58 catcher/processors, we assume that many are small entities.

AFA catcher/processors and mothership production data from 2000–2001 indicate that roe recovery rates generally average between 3 and 5 percent. Vessels only rarely exceed the current 7 percent standard. From 2000–2002 the total annual production of roe in excess of 7 percent averaged 61.88 mt for the fleet, which represents 0.68 percent of the 9,166 mt average total annual roe production for those years. The effect of this action, therefore, is to allow catcher/processors and motherships to retain an additional 61.88 mt of pollock roe that existing regulations require to be discarded.

This action also would potentially affect 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 regulations at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental