

Guard certifies that it will not have significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.963 is revised to read as follows:

§ 117.963 Colorado River.

The draw of the highway bridge, mile 10.7 at Wadsworth need open on signal Monday through Friday only, and then only from 8 a.m. to 5 p.m. At least 48 hours notice is required.

Dated: December 27, 1990.

T.D. Fisher,
Captain, U.S. Coast Guard, Commander,
Eighth Coast Guard District, Acting.
[FR Doc. 91-198 Filed 1-4-91; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Charleston, SC Regulation 90-130]

Safety/Security Zone Regulations; Cooper River, Ordinance Reach and Port Terminal Reach, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combined safety and security zone in the Cooper River in the vicinity of Ordinance Reach and Port Terminal Reach from Buoy 63 to Daymarker 58. The zone extends across the entire width of the Cooper River. The zone is needed to safeguard personnel, vessels, facilities, and the environment against injury destruction or loss from sabotage or other

subversive acts, accidents or other causes of a similar nature, and protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense cargo loading operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATE: This regulation becomes effective at approximately 12 o'clock p.m. Eastern Standard Time (EST), December 15, 1990. It terminates at the conclusion of vessel loading operations, at approximately 4 o'clock p.m. EST, January 30, 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:

LT Steven J. Boyle, (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard personnel, vessels, waterfront facilities, and the environment against injury, loss, or destruction.

Drafting Information

The drafters of this regulation are LT Steven J. Boyle, project officer for the Captain of the Port, and LT Genelle Tanos, project attorney, Seventh Coast Guard District.

Discussion of Regulation

The incident requiring this regulation will occur on December 15, 1990 through January 30, 1991 when military cargo will be loaded at the Army T.C. Dock and the State Ports Authority North Charleston Terminal. The protection of vital United States assets as well as the safety of unwary boaters and onlookers necessitates the establishment of both a safety and security zone. Coast Guard and other security vessels will patrol and enforce the zone and manage vessel traffic as necessary. Other vessels will not be permitted to enter, transit, or loiter in the safety/security zone without the permission of the Captain of the Port or his on-scene representatives. Only minor delays to mariners are foreseen.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of 33 CFR part 165.

Federalism

The action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. A new section number 165.T07130 is added to read as follows:

§ 165.T07130 Safety/Security Zone: Establishment of Temporary Safety and Security Zone, Cooper River, Ordinance Reach and Port Terminal Reach, Buoy 63 to Daymarker 58, Charleston, South Carolina.

(a) *Location.* The following area is a safety/security zone zone: An area encompassing the entire width of the Cooper River, between buoy 63 and daymarker 58.

(b) *Effective date.* This regulation becomes effective on December 15, 1990 at approximately 12 o'clock p.m. est. It terminates at the conclusion of vessel loading operations, approximately 4 o'clock p.m. est, on January 30, 1991 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) The COTP Charleston will activate this zone or specific portions thereof by means of locally promulgated broadcast notice to mariners. Once implemented, all vessels and persons are prohibited from entering unless authorized by the Captain of the Port, Charleston, SC.

(2) The general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 apply.

Dated: December 12, 1990.

Robert L. Storch, Jr.,
Captain, U.S. Coast Guard, Captain of the
Port, Charleston, South Carolina.

[FR Doc. 91-200 Filed 1-4-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration**49 CFR Part 396**

[FHWA Docket No. MC-89-3]

RIN 2125-AC25

**Inspection, Repair and Maintenance;
Brake Inspection****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final rule.

SUMMARY: The FHWA is amending part 396, Inspection, Repair and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs) to require motor carriers to ensure that brakes and brake systems of commercial motor vehicles (CMVs) are properly maintained and inspected by appropriate employees. This action is required by section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act). These regulations establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems. This rule will ensure that brakes on CMVs are properly inspected and maintained.

DATES: *Effective date:* January 1, 1991. Motor carriers must implement this rule by January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

On November 18, 1988, the President signed the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, 4531). Section 9110 of the Act requires the Secretary, not later than December 31, 1990, to "issue regulations for the purpose of adopting improved standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. At a minimum, such regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems."

On February 3, 1989, the FHWA published an advance notice of proposed rulemaking (ANPRM) (54 FR 5518) concerning the development and implementation of Federal standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. After careful review of the comments received in response to the ANPRM, the FHWA published a notice of proposed rulemaking (NPRM) on July 25, 1990 (54 FR 30254).

The FHWA proposed in the July 25, 1990 NPRM that motor carriers be held responsible for ensuring that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles are properly performed. To accomplish this, the proposed rule required motor carriers to ensure that their employees who are responsible for inspecting, repairing, maintaining or adjusting the brakes on commercial motor vehicles be sufficiently trained to understand and undertake such tasks.

The NPRM included standards for experience or training that would meet the requirements of the rule. The training requirement could be satisfied by successfully completing an apprenticeship or training program sponsored or approved by a State, Canadian Province, or Federal agency; or a labor union apprenticeship program. Training programs sponsored by brake or vehicle manufacturers or similar commercial programs would also meet the training requirements. Individuals would meet the standard if they had one year of experience performing brake maintenance or inspection, similar to the assigned brake service or inspection task, in a motor carrier maintenance program or at a commercial garage, fleet leasing company, or similar facility.

Furthermore, the proposed rule included a requirement that evidence of the qualifications required under this section for each person responsible for the service or inspection of brakes be maintained by the motor carrier at its principal place of business.

Comments Submitted to the Docket

The FHWA received seventeen comments to the NPRM. The commenters included industry associations, one trailer manufacturer, one equipment manufacturer, one safety and compliance consultant, two motor carriers, one State department of transportation and one testing institute.

One of the major concerns of the commenters was the proposal to limit the applicability of the regulation to employees of motor carriers. Ten

commenters emphasized that many motor carriers use commercial garages or similar facilities for brake system repairs and maintenance, and the employees of those garages should meet the same requirements as the mechanics employed by motor carriers. One commenter recommended expanding the qualification requirements to cover anyone who inspects, repairs, or maintains brakes on CMV's, including government inspectors. One commenter recommended the proposed regulations should apply only to employees of motor carriers.

As stated in the ANPRM and reiterated in the NPRM, the FHWA believes section 9110 applies only to persons who are employees of motor carriers. The FHWA believes Congress did not intend to include under Section 9110 and the implementing regulations persons who are not employees of motor carriers, even if they inspect or maintain the brakes or brake systems of commercial motor vehicles.

The FHWA also believes this section does not apply to governmental inspectors at any level of government because the definitions of "employee" and "employer" in section 204 of the Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. App. 2501-2520) specifically exclude governmental employees. Section 9110 of the Act amended the MCSA of 1984, but did not change its definitions of "employee" or "employer".

Another concern of the commenters was the requirement that the evidence of the brake mechanics or inspectors' qualifications be kept at the motor carrier's principal place of business. Five commenters—the Truck Renting and Leasing Association (TRALA), the American Trucking Associations (ATA), the National Private Truck Council (NPTC), the American Petroleum Institute (API) and the Phillips Petroleum Company—recommended motor carriers be given the option of keeping the evidence of the brake mechanics or inspectors' qualifications at the location where the vehicle is housed or maintained. The FHWA proposed the documentation be maintained at the motor carrier's principal place of business. The ATA stated "It would be a tremendous paperwork burden to require that all fleets, which presently maintain mechanic's records at local shops, now must create, and then maintain, duplicate records at the corporate headquarters."

Based on these comments, the FHWA has concluded motor carriers should be allowed to keep evidence of the brake

mechanic or inspectors' qualifications at locations other than the principal place of business. However, the FHWA believes that maintaining the evidence of qualifications at the location at which the vehicle is housed or maintained will complicate enforcement of the rule, because brakes are sometimes repaired at a terminal where the vehicle is not housed or maintained. We believe the commenters' intent was to allow motor carriers the option of maintaining the person's records at the location or terminal where the person is employed. Such an option would give motor carriers added flexibility, without compromising the enforceability of the rule.

Section 396.25(c) of the NPRM required motor carriers to retain evidence of the "responsible" person's qualifications. This requirement mandates that proof or evidence be available for inspection upon demand by any authorized Federal, State or local official. Governmental reviews of motor carriers are normally conducted at the motor carriers' principal place of business. If the qualification records are maintained in a location other than the principal place of business, the NPRM would have made the motor carrier responsible for sending the records to the principal place of business for review. In response to comments to the NPRM, the FHWA has changed the final rule to allow motor carriers the option of maintaining the evidence of the brake inspector's qualifications at the motor carrier's principal place of business or the location at which the inspector is employed.

The FHWA anticipates that some motor carriers will opt to use the same individuals who perform the periodic inspections to perform inspections and maintenance of the brakes on their commercial motor vehicles. After the implementation date of this rule (January 1, 1992), those motor carrier employees who are responsible for the inspection of the brakes of CMV's in order to comply with the periodic inspection requirements, must also meet the requirement of this final rule.

It is important to note that only motor carrier employees are subject to this rule. Therefore if a CMV is inspected under the periodic inspection rule by a person other than an employee of a motor carrier, (i.e., commercial garage mechanics or a State inspector) then the requirements of this final rule do not apply.

The Illinois Farm Bureau and the American Farm Bureau Federation believe that the requirements of this rule would place a burden on farmers. Both associations contend that farmers and

owner-operators who perform their own maintenance will be required to "take time away from their major livelihood (farming) in order to spend time and money for brake maintenance certification programs." The American Farm Bureau Federation stated "The proposed regulations should be modified or amended to recognize the limitations and actual practices of owner-operator carriers including farmers and ranchers. If truck owners choose not to perform their own brake service work, they should be permitted to rely on a garage mechanic to perform the task."

The FHWA is aware that many owner-operators perform their own brake maintenance. The rule requires that motor carriers, regardless of the number of employees or vehicles, must ensure that each employee who is responsible for servicing or inspecting brakes is qualified to do so. If an owner-operator meets the minimum qualifications of Section 396.25, and maintains evidence of those qualifications, the requirements of the rule will be satisfied. This rule does not require or prohibit motor carriers the use of commercial garages, fleet leasing companies, or similar facilities for brake service or inspection. In these situations documentation is not required.

In the NPRM, the FHWA indicated that the person actually performing the brake maintenance and inspection functions need not be the responsible person who ensures that the task is properly performed. The responsible person could be the supervisor, shop foreman, or other person who is responsible to ensure the quality of the work performed. It is the motor carrier's responsibility to ensure that the task is either performed by a qualified person, or that a qualified person is responsible for ensuring the proper performance of the task. In order to clarify this distinction, we have adopted the term "brake inspector" and defined that person as the employee who is responsible for ensuring that service or inspections meet this rule.

Several commenters suggested the training standards include certification as a brake mechanic or completion of an apprenticeship program certified by a training institution such as the National Institute for Automotive Service Excellence (NIASE), or a community college. The FHWA does not consider it necessary to make special provision for training institutions or community colleges. However, certification from those institutions which actually train and certify commercial motor vehicle brake mechanics would be satisfactory evidence of a person's qualifications.

The ATA and the National School Transportation Association (NSTA) argued that passing the CDL air brake tests might qualify a driver to inspect the brake system, but passing these tests should not be considered proof the tested individual is qualified to perform brake adjustments. One commenter recommended that the FHWA develop an air brake test to certify mechanics and inspectors.

In response to the concerns expressed by the ATA and NSTA, § 396.25(d)(3)(i) is revised to allow passage of the Commercial Driver's License (CDL) air brake tests to serve as proof of a driver's qualifications to inspect brakes, but will not serve as proof of qualification to perform brake adjustments. The FHWA has taken this position as the CDL air brake tests do not require that the driver demonstrate the knowledge and skills required to properly adjust brakes. The FHWA does not intend to develop an air brake test or examination for the sole purpose of certifying brake inspectors or mechanics.

Discussion of Final Rule

Upon review of the comments submitted in response to the NPRM, an analysis of the final rule is provided as follows:

Section 396.25 Qualifications of Brake Inspectors

Section 396.25(a) makes the motor carrier responsible for ensuring that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles are properly performed.

Section 396.25(b) defines a "brake inspector" as any employee of the motor carrier who is responsible for ensuring that inspections, maintenance, repairs or service to the brakes of the motor carrier's CMV's meet the applicable safety standards.

Section 396.25(c) places the responsibility upon the motor carrier to assign only qualified persons as brake inspectors and responsible for the proper inspections, repairs, or service to the CMV's brakes.

Section 396.25(d) makes the motor carrier responsible for ensuring that brake inspectors are sufficiently trained to understand and undertake the brake tasks assigned. Consistent with the FHWA's interpretation of section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988, the qualification requirements would not apply to persons who are not employed by a motor carrier.

The FHWA believes that there are similarities between the qualifications

for an individual performing the annual inspection and the brake inspection. There is one major difference between the two sets of qualifications. Under § 396.19, those who actually perform periodic inspections for the motor carrier must meet the qualifications. On the other hand, it is not necessary for the person performing the brake repair, adjustments, inspections or service to meet the requirements of § 396.25, if the brake inspector who is responsible for the work, e.g., shop foreman or supervisor, meets those minimum standards.

Section 396.25(d) establishes specific training or experience qualifications for brake inspectors who are to be responsible for the various brake maintenance or inspection tasks. These requirements can be met by completing an apprenticeship or a training program approved by a State, a Canadian Province, or the Federal government or by being certified by a State or a Canadian Province as qualified to perform the assigned brake task(s). Another way that a person may qualify is to have training or experience, or a combination thereof, that totals one year. This training or experience can be obtained in several ways, e.g., on-the-job training at a motor carrier's facility; a training program sponsored by a brake systems manufacturer; completing an apprentice program sponsored by a labor union; experience gained from performing brake related tasks; or any combination of these methods of obtaining the necessary expertise.

Section 396.25(e) clearly requires motor carriers to maintain evidence of each brake inspector's qualifications at its principal place of business or at the location at which the brake inspector is employed and to use only those employees as inspectors who have the required documentation on file by the motor carrier. This evidence must be maintained for the period during which the brake inspector is employed in that capacity for the motor carrier and for one year thereafter. In addition this section permits the use of those drivers who have passed the CDL air brake proficiency test to be responsible for inspecting air brake equipped vehicles without any additional proof of their qualifications.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant action under the Department of Transportation's regulatory policies and procedures. This rulemaking was initiated in order to implement provisions mandated by the Truck and

Bus Safety and Regulatory Reform Act of 1988. A regulatory evaluation is not required because of the ministerial nature of this action. To the extent that any economic impacts would occur, they would be positive in that safety benefits would outweigh any additional costs for implementation. Implementation costs will be minimal in the case of most motor carriers, in that implementation will consist of documenting the qualifications of persons already employed and responsible for vehicle maintenance, including brakes and brake systems.

The benefits to be derived from implementation will be an increased emphasis on proper brake maintenance and an anticipated reduction in accidents resulting from defective brakes and from commercial motor vehicles being placed out of service because of defective brakes.

For this reason and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB No. 2125-0037).

Federalism Impact

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

This regulation amends part 396 of the FMCSRs pertaining to vehicle inspection, repair, and maintenance, as required by the Truck and Bus Safety and Regulatory Reform Act of 1988. Nothing in this document directly preempts any State law or regulation.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 31, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 396 as follows:

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

1. The authority citation for 49 CFR part 396 continues to read as follows:

Authority: Section 210 of Pub. L. 96-554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Part 396 is amended by adding § 396.25 to read as follows:

§ 396.25 Qualifications of brake inspectors.

(a) The motor carrier shall ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, "brake inspector" means any employee of a motor carrier who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's control, meet the applicable Federal standards.

(c) No motor carrier shall require or permit any employee who does not meet the minimum brake inspector qualifications of § 396.25(d) to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier shall ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province

which qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier shall employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section is maintained by the motor carrier at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

[FR Doc. 91-165 Filed 1-4-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 900244-0317]

RIN 0648-AC80

Foreign Fishing; Groundfish of the Gulf of Alaska, Bering Sea, and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues final rules to implement (1) Amendment 14 to the Fishery Management Plan for Bering

Sea/Aleutian Islands Groundfish (Bering FMP), and (2) Amendment 19 to the Fishery Management Plan for Gulf of Alaska Groundfish Fishery (Gulf FMP). These amendments prohibit the stripping of roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing and require issuance of regulations limiting this practice to the maximum extent practicable. The Magnuson Fishery Conservation and Management Act (Magnuson Act), as recently amended by the Fishery Conservation Amendments of 1990 (Pub. L. 101-627), prohibits the stripping of pollock of its roe and discarding the flesh of pollock. These implementing regulations (1) limit to the maximum extent practicable the practice of roe stripping and (2) seasonally allocate the total allowable catch (TAC) of pollock in commercial fisheries for groundfish in the U.S. Exclusive Economic Zone (EEZ) adjacent to Alaska. This action is necessary to reduce wastage of the pollock resource, prevent possible adverse effects on the marine ecosystem and reproductive potential of pollock, and provide for an equitable distribution of the pollock resource among its users. The intended effect of this action is to promote the conservation and management objectives of the FMPs.

EFFECTIVE DATE: January 1, 1991.

ADDRESSES: Copies of Amendments 14 and 19 to the FMPs, and the environmental assessment, regulatory impact review, and final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ off Alaska are managed in accordance with the Gulf and Bering FMPs. Both FMPs were developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Act. The Gulf FMP is implemented by regulations appearing at 50 CFR 611.92 and part 672, and the Bering FMP by regulations appearing at 50 CFR 611.93 and part 675.

The Council adopted Amendment 14 to the Bering FMP and Amendment 19 to the Gulf FMP at its meeting of June 26-30, 1990, for Secretarial review, approval, and implementation under sections 304(a) and 305(c) of the Magnuson Act. The official receipt date of Amendments 14 and 19 from the Council was August 12, 1990 (five days

after the Council transmitted the Amendments). The Secretary immediately began a review to determine whether the Amendments were consistent with the Magnuson Act and other applicable law. The Director, Alaska Region, NMFS (Regional Director), made a preliminary determination that the Amendments were consistent with the Magnuson Act and other applicable law. A notice of availability and request for public comment on Amendments 14 and 19 was published on August 17, 1990 (55 FR 33737).

Public comment on the Amendments was invited until October 24, 1990. Proposed implementing rules were published on September 14, 1990 (55 FR 37907, correction at 55 FR 39352, September 26, 1990) and invited comments until October 29, 1990. The corrected notice of proposed rulemaking changed the date for comments to October 26, 1990. Because of potential confusion concerning the dates for comment, all comments received through October 29, 1990, were considered.

Seven letters commenting on the Amendments and their proposed implementing rules were received. After careful consideration of all comments, the Secretary chose to make no changes in the final rule in response to comments; however, some minor changes were made for clarification and technical reasons. A summary of and response to all comments appears later in this preamble.

On November 15, 1990, the Assistant Administrator for Fisheries, NOAA, concurred with the Regional Director in the approval of Amendments 14 and 19. On November 28, 1990, the President signed the Fishery Conservation Amendments of 1990 (Pub. L. 101-627), which amend the Magnuson Act to prohibit stripping pollock of its roe and discarding the flesh of pollock. This final rule limits this practice to the maximum extent practicable.

The fisheries for walleye pollock (*Theragra chalcogramma*) off Alaska are described in the EA/RIR/FRFA and in the preamble to the proposed rule (55 FR 37907, September 14, 1990). The following describes the purposes of Amendments 14 and 19, and how this action will achieve these purposes.

Description

The Council recommended Amendments 14 and 19 to the Secretary for the following reasons:

(a) Roe stripping is a wasteful use of the pollock resource;

(b) Roe stripping causes an inappropriate and unintended allocation of the pollock TAC among seasons and between industry sectors (i.e., at-sea versus shore-based processing);

(c) Roe stripping may adversely affect the ecosystem; and

(d) Roe stripping may adversely affect the future productivity of pollock stocks.

In addition to these reasons, the rapid pace at which pollock may be harvested increases the difficulty of accurately monitoring the pollock TAC. High rates of harvest also increase the risk of exceeding the TAC possibly the risk of overfishing. This problem is exacerbated at low levels of TAC, such as those in the Gulf of Alaska (GOA) in recent years.

A discussion of these fishery conservation and management problems and an analysis of the effects of various alternative management measures considered by the Council to resolve these problems are contained in the EA/RIR/FRFA, which is available from the Council at the above address.

In approving Amendments 14 and 19, the Secretary recognizes these problems. Hence, this action is an attempt to resolve these problems and comply with the statutory prohibition of stripping roe and discarding the flesh of pollock. Two management measures are taken: (1) Pollock TAC is seasonally allocated, and (2) to the maximum extent practicable, the prohibition on the practice of roe stripping is regulated by setting standards for the amount of pollock product that must be processed.

1. Seasonal Allocation of TAC

For fisheries in the GOA, the pollock TAC for the Central and Western Regulatory Areas will be divided into four equal seasons. Each allowance will be available for harvest during each quarterly reporting period. These quarterly allowances will be specified during the annual groundfish TAC specification process, which involves prior public notice and comment (§ 672.20(a)). Attainment of a quarterly allowance of pollock before the end of a quarterly reporting period would cause the Secretary to prohibit directed fishing for pollock until the beginning of the next quarterly reporting period. Authority is provided to prohibit directed fishing for pollock prior to complete attainment of a quarterly allowance if pollock are likely to be taken incidental to catch of other species of groundfish. In this event, the bycatch of pollock could be retained up to prescribed limits (§ 672.20(g)(3)).

If a quarterly allowance of pollock in the GOA is exceeded, the regulations would provide for the deduction of the

excess equally from the remaining quarters of a fishing year. Likewise, the regulations would provide for any uncaught quarterly allowance to be added equally to the remaining quarters of a fishing year. However, the deduction of over-harvests or the addition of under-harvests in the fourth quarter of one fishing year from or to the first quarter of the following fishing year will not be allowed.

For fisheries in the Bering Sea and Aleutian Islands (BSAI) management area, the reserve is subtracted from pollock TAC for each subarea (see § 675.20(a)(3)), and the remainder is divided into separate allowances for the roe season and non-roe season. The amount of pollock specified for each allowance will be determined during the annual groundfish TAC specification process, which involves prior public notice and comment (§ 675.20(a)(7)).

In the BSAI Management area, the roe-season allowance will be available for harvest from January 1 through April 15, and the non-roe-season allowance will be available from June 1 through the end of the fishing year. Attainment of an allowance before the end of a season will cause the Secretary to prohibit directed fishing for pollock until the beginning of the following season. As in the GOA, authority is provided to prohibit directed fishing for pollock in the BSAI Management area before complete attainment of a seasonal allowance if pollock are likely to be taken incidentally in fisheries for other species of groundfish. In this event, the bycatch of pollock could be retained up to prescribed limits (§ 675.20(h)(1)).

If the roe-season allowance of pollock is exceeded, the excess amount will be deducted from the non-roe season of the same fishing year. Likewise, any uncaught roe-season allowance will be added to the non-roe-season allowance of the same fishing year. However, the subtraction of over-harvests or the addition of under-harvests in the non-roe season of one fishing year from or to the roe season of the following fishing year will not be allowed.

The purpose of seasonal allocations of the pollock TAC in the BSAI Management area is to ensure that the fishery will not exhaust the pollock TAC during the roe season when it has its highest value. This could happen when a limited amount of pollock is harvested annually by a virtually unlimited amount of fishing effort. The seasonal allowance preserves a predetermined amount of the pollock TAC for those operations that do not intend to fish for or process pollock early in the fishing year. By itself, a seasonal allocation of the pollock TAC does not prevent roe

stripping but will prevent a disproportionate harvest of the pollock TAC during the roe season.

The purpose of the quarterly allocation of pollock TAC in the GOA is primarily the same as that stated in the inseason adjustment notice issued early in 1990 (55 FR 3223, January 31, 1990); that is, to prevent excessive harvesting of pollock in the first quarter. The quarterly allocation also is expected to slow the pollock fishery, attract fewer participants, and thus enable NMFS to monitor harvests more accurately than otherwise would be possible and thereby reduce the risk of over-harvesting the pollock TAC. Valuable biological data also are expected since harvested fish can be sampled over a broader time period than otherwise would occur. Quarterly allocations of the pollock TAC may preclude a roe fishery if the TAC is low and fishing effort is high because the first quarter allocation could be harvested before the roe becomes most valuable.

2. Standard Limit for Pollock Roe

This rule limits the amount of pollock roe, relative to other products, that can be retained onboard a vessel during a fishing trip. Basically, this rule establishes a standard that, if exceeded, would constitute roe stripping. In addition, it ensures that products other than roe will be produced from pollock thereby reducing the likely amount of discard. The product-recovery rates (PRRs) and standard limit are the same for the GOA and the BSAI management area.

The limit for pollock roe product is 10 percent of the total round-weight equivalent of pollock and other pollock products onboard a vessel at any time during a fishing trip. A vessel with more roe product onboard than 10 percent of the calculated round-weight equivalent would be in violation of the roe limit and could be cited for roe stripping. This roe limit is higher than the 7-percent limit used in an emergency interim rule to control roes stripping early in 1990 (55 FR 6396, February 23, 1990). That rate approximated an overall average recovery rate based on foreign fisheries observer data from 1983 through 1985. Also, it assumed that the sex ratio of pollock was 1:1. Roe-recovery rates are highly variable and may range from 3 percent to 17 percent, depending on the sex ratio of the catch, size and maturity of fish, area, time of year, hydration of roe sac, and size of catch. Lastly, the 7-percent limit proved to be too restrictive and resulted in some pollock roe being discarded, which was not the intent of the emergency interim rule. For these

reasons, a 10-percent roe limit is used in this rule, a limit that should restrict roe stripping but not result in discard of roe.

The PRRs that will be used to extrapolate round-weight equivalents from product weights are as follows:

Pollock product type	PRR (percent)
Fillet.....	18
Surimi.....	15
Mince.....	17
Meal.....	17
Headed and gutted.....	50

Except for the PRR for pollock meal, all these PRRs are lower than those used in the emergency rule. The rates in this rule are based on more recent data from the domestic processor fleet; however, these PRRs may differ from average annual recovery rates for the same products because flesh quality varies with season. If pollock are processed into primary products other than those listed above, extrapolated round-weight equivalents will be deemed to equal or exceed the PRR for pollock surimi. Additional data on the PRRs will be collected by observers on domestic processor vessels. These data will contribute to possible future refinements in the management of roe stripping according to PRRs.

Examples of the procedure that would be used to derive allowable pollock-rope retention during roe-season fisheries follow.

Allowable Pollock Roe in a Pollock Surimi Operation

If the total amount of pollock surimi on board is 200 metric tons (mt), then the round-weight equivalent is 200 mt divided by the surimi PRR of 0.15, or 1,333.3 mt. The allowable roe retention is then calculated as 1,333 mt times 0.10, or 133.3 mt of pollock roe.

Allowable Pollock Roe in a Pollock Mince or Meal Operation

If the total amount of pollock mince or meal product on board is 200 mt, then the round-weight equivalent is 200 mt divided by the mince or meal PRR of 0.17, or 1,176.5 mt. The allowable roe retention is then calculated as 1,176.5 mt times 0.10, or 117.6 mt of pollock roe.

Allowable Pollock Roe in an Operation Producing Headed-and-Gutted (H&G) Pollock

If the total amount of pollock H&G product on board is 200 mt, then the round-weight equivalent is 200 mt divided by the PRR for H&G of 0.50, or 400 mt. The allowable roe retention is

then calculated as 400 mt times 0.10, or 40 mt of pollock roe.

Allowable Pollock Roe in an Operation Producing More Than One Primary Pollock Product

If the more than one primary product is produced from pollock, fillets from large fish and meal from small fish, for example, then the total round-weight equivalent would be calculated separately for each product, and the round-weight equivalents added. The sum of the round-weight equivalents then would be multiplied by the maximum roe-recovery rate (0.10) to determine the amount of roe that could be retained onboard.

If more than one product is produced from the same pollock, for example, surimi from the muscle tissue and meal from bones and viscera, then the maximum roe-recovery rate would be based on primary pollock product, which in this case is surimi. Ancillary products include, but are not limited to, meal, heads, internal organs, pectoral girdles, or any other product that is made from the same fish from which the primary product is made.

3. Enforcement of the Roe-Stripping Prohibition

Enforcement of this roe-stripping prohibition relies on pollock product information recorded in the mandatory daily cumulative production logbooks, weekly production reports that provide cumulative weekly production information from the logbooks, product transfer logs, and on-site inspection of product inventory. The mandatory logbook program implemented under Amendments 13 to the Bering FMP and 18 to the Gulf FMP (54 FR 50386, December 6, 1989) requires that species product types and product weights be recorded on a daily basis and that primary and ancillary products from the same fish be identified.

Specific Changes from the Proposed Rule in the Final Rule

No substantive changes were made in the final rule as a result of comments on the proposed rule. However, five minor wording changes were made in the final regulatory text for clarification and technical purposes.

The first change clarifies the proposed rule text at §§ 672.20(i) and 675.20(j), which in the proposed rules read, "Pollock roe must equal no more than 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product, retained onboard a vessel at any time during a fishing trip." NOAA considered this language potentially confusing because

it did not specifically describe the accounting of retained pollock or pollock products. NOAA's intention is to measure the amount of pollock roe onboard a vessel during a fishing trip against the amount of other pollock products produced during the same fishing trip. The technique for making this measure remains unchanged. The round-weight equivalent will be calculated from the primary pollock products, and pollock roe must not exceed 10 percent of the total round-weight equivalent. The changed language clarifies that the pollock roe and other pollock-product amounts used in this calculation are to be only those amounts produced during the same fishing trip. Hence, non-roe pollock products from a previous fishing trip cannot be used for calculating the permissible amount of pollock roe that may be onboard a vessel during a later fishing trip.

The second change is related to the first by improving the definition of "fishing trip." The proposed rule stated that a fishing trip begins "when commencing fishing." The Magnuson Act defines fishing as operations at sea in support of catching or attempting to catch fish. Therefore, NOAA clarifies the beginning of a "fishing trip" in the final rule as "commencing or resuming harvesting, receiving, or processing of pollock." The end of a fishing trip, defined in the final rule as in the proposed rule, is the time when any pollock or pollock product is transferred or offloaded, or the time when the vessel leaves the reporting area where fishing activity commenced, whichever comes first.

These changes are intended to clarify that, for purposes of these rules, accounting of pollock roe onboard a vessel at any time will be based on a fishing trip. The vessel will begin a fishing trip when it first harvests pollock, or when it first receives pollock from another vessel, or starts to process pollock within a reporting area. Pollock roe onboard the vessel during the fishing trip must not exceed the standard limit based on other pollock products produced during the same trip. A fishing trip will end when any pollock or pollock product is transferred or offloaded, or when the vessel leaves the reporting area, whichever comes first. When the fishing trip ends, the amount of non-roe pollock onboard becomes zero for roe accounting purposes, regardless of the actual amount of non-roe product that may remain onboard from trip to trip. Operators of vessels that do not actually fish for pollock but process or transport pollock products

under a Federal fishing permit have the same obligation to comply with these rules as these vessels that fish for pollock.

The third change is necessary for technical reasons. At about the same time that the Council submitted Amendments 14 and 19 for Secretarial review, it also submitted Amendments 16 and 21 to the same FMPs. The proposed rules for Amendments 16 and 21 were published on September 18, 1990 (55 FR 38347). The implementation schedule for the approved parts of Amendments 16 and 21 requires filing of the final rules for these amendments with the *Federal Register* before filing of the final rules for Amendments 14 and 19.

Since Amendments 16/21 and Amendments 14/19 will make different changes to the same regulatory text and will be effective on the same day, the final rule for Amendments 16/21 must be integrated into the final rule for Amendment 14/19. Hence, NOAA is changing the rule for Amendment 14/19 at §§ 672.20(c) and 675.20(a)(7) in the final rule to integrate the earlier changes made to these paragraphs by the final rule implementing Amendments 16/21. These changes are entirely editorial and do not make substantive changes to either Amendments 16/21 or Amendments 14/19.

The fourth change substitutes the term "quarterly reporting periods" for the term "calendar quarter" at § 672.20(a)(2)(ii). This change is made because a "quarterly reporting period" is a specific period of time defined at § 672.2 and "calendar quarter" is a generic term. In addition, the use of "quarter" and "quarterly" in the final rule text of § 672.20 (a) and (c) means the same as "quarterly reporting period."

Finally, editorial changes are made to the final rule text at §§ 672.20(c) and 675.20(a)(7) to delete unnecessary verbiage. The term "after October 1 of each year" is deleted in each section because the preceding phrase "as soon as practicable" is sufficient to require the Secretary to publish the proposed specifications without delay after consulting with the Council. This deletion also allows the consultation to be scheduled at any time without constraining publication of the proposed specifications to occur "after October 1."

A similar editorial change in both sections is the deletion of text requiring the specification of DAP and JVP as "the amounts harvested during the previous year plus any additional amounts * * *." This text, reflecting the Magnuson Act provisions for domestic

harvesting and processing preference, originally served the interests of growing JVP and DAP fisheries at the expense of foreign fisheries. Domestic fisheries now have completely replaced the earlier foreign fisheries in the GOA and BSAI Management area, yet the text implied the potential for unlimited growth in the DAP and JVP catch limits. Understanding the basis for the specifications is improved by deleting this anachronistic text while not prohibiting the potential for foreign and JVP fisheries based on "projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year."

Among the specifications in the proposed rule at § 675.20(a)(7) is the "reserve." This term is deleted from the final rule because the reserve is not species specific. The term "initial TAC" is substituted for "reserve" to indicate the establishment of the reserve, as provided under § 675.20(a)(3), by subtracting 15 percent of the TAC of each species category. The initial TAC also is routinely published in the proposed and final specifications.

A new paragraph (j)(5) is added to § 675.20 in the final rule text to describe the calculation of retainable pollock roe by example. The same paragraph was used in the proposed rule at § 672.20(i)(5), but was omitted from the proposed rule at § 675.20 by oversight. Additional editorial changes were made in this description at §§ 672.20(i)(5) and 675.20(j)(5) to clarify that the accounting of permissible amounts of pollock roe onboard will be done on the basis of a fishing trip, which is defined in the respective paragraphs. The description was changed also to emphasize that only one primary product, other than roe, can be used to calculate the round-weight equivalent from multiple products made from the same fish, but that multiple primary products may be used for this calculation if they are produced from different fish.

Comments Received

The Regional Director received seven letters of comment on the proposed rule. Issues and concerns raised by these comments are summarized and responded to below.

Comment 1: This comment has four parts. (a) The starting date for the roe season should be flexible. The pollock biomass, annual TAC, percent of the TAC allocated to the roe fishery, timing of roe maturity, and harvesting/processing capacity of the fleet are all dynamic variables. Unless there is flexibility to adjust the beginning of the roe fishery, Amendments 14/19 could

produce unnecessarily low economic benefits from the pollock resource. For example, a low percentage of the TAC allocated to the roe fishery beginning on January 1 could be nearly harvested, given the substantial domestic harvesting capacity that exists, before the period of maximum value occurs. Historically, the highest value for pollock roe from the Bering Sea occurs during the mid-January to mid-February period when the fish are in their pre-spawning condition. Pollock in the GOA usually mature later. As an alternative, the Regional Director should have authority to increase the roe pollock allocation to a level necessary to sustain the fishery through mid-February in the BSAI Management area and through the prime pollock roe season in the GOA.

(b) The allocation of pollock TAC between roe and non-roe seasons should not be left undecided until the December Council meeting. Uncertainty to industry not knowing how much pollock TAC will be available for harvest until 3 weeks before the start of the roe season will disrupt the market and the domestic fishery. Buyers and sellers of pollock products negotiate agreements for supply and distribution. Negotiated prices are partially based on a reasonable anticipation of total product supply. The proposed rule will allow participants less than a month to make contractual arrangements for U.S. supplied product. As a consequence, markets available to U.S. producers will seek alternative sources of whitefish. For maximum benefit from this fishery, more predictability and stability in allocating harvest quota is required than is proposed. The roe-season percentage should be established no later than September of the preceding year.

(c) Actual PRRs should be used instead of the standard roe limit. Processing operations should be allowed to establish their actual PRRs during the fishing season as a measure of roe retention. The proposed rule will cause vessels with a higher PRR for roe than the standard to discard the overage of roe. The proposed rule, which is attempting to prevent waste, could ultimately require wastage of the most valuable of all pollock products. Actual PRRs will be highly variable. Omitted from consideration in the proposed rule notice was variance due to efficiency of machinery, skill among processors, and knowledge among fishermen in targeting larger pollock. Instead, observers could check to ensure that unused pollock are not being discarded, and thus allow efficient operators full benefit from the roe produced in a given operation. The waste problem will be compounded if

the proposed PRRs are used for quota-management purposes. Quotas should be monitored through observers and the established data-collection system currently employed. Finally, the amendment proposal assumes that any new pollock products should conform to a PRR equal to pollock surimi. It is impossible to predict PRRs of future products. The proposed rule dictates product forms by limiting options. Using actual PRRs that prevent wasteful discards is the best way to avoid limitation of product options.

(d) The Regulatory Impact Review (RIR) wrongly concludes that disruptions to the fishery, if the rule is adopted as proposed, are not likely to exceed \$100 million. The RIR assumes away potential negative impacts on domestic pollock operations. If an arbitrarily low roe-fishery allocation (i.e., 25 percent of the TAC) is made, the current option of producing surimi, fillets, and blocks together with pollock roe will be prohibited. Also, the proposed management could cost \$130 million in forgone pollock roe product if the TAC allocation to the roe fishery is 25 percent instead of 50 percent.

Response: (a) NOAA agrees that there are a large number of variables that will affect the overall value of pollock harvested during the roe-season fishery. However, increased flexibility in setting opening dates for the roe-season fishery presents more technical and allocative problems that can be solved with current experience in managing roe fisheries. Although a January 1 opening may result in closure of the roe-season fishery before the period of prime value for pollock roe, waiting too late to start the roe-season fishery may also result in loss of value because the roe becomes too mature. NOAA does not now know the magnitude of all variables and how they will interact. Conducting a test fishery to determine product quality, as in the Alaska herring-roe fisheries, is impractical given the large area over which fecund pollock occur off Alaska. Changing the opening date of the roe season in the Bering Sea also may have unintended allocation effects if it is not coordinated with the opening of the roe-season fishery in the GOA. If these opening dates are not concurrent, resolution of the allocation problem listed above would be undermined. Selecting an alternative opening date for the roe-season fishery may be possible in the future with more data and experience with the performance of the roe-season fishery.

(b) NOAA appreciates the planning and logistical problems that the September-to-December specification

process causes for the fishing industry. Disapproval of the seasonal allocation part of Amendments 14 and 19 would not entirely solve these problems. These problems are caused by the late availability of scientific information on which the Council must base TAC and apportionment decisions. Redefinition of the fishing year should be explored as a possible solution.

(c) NOAA understands that actual PRRs are highly variable. The purpose of the PRRs in this action is to determine if and when a pollock processor conducts roe stripping. For this purpose a roe limit is set that, if exceeded, will indicate the possibility of roe stripping. The overall average recovery rate for pollock roe is about 7 percent, assuming an equal mix of male and female fish. The roe stripping standard allows up to 10 percent recovery of pollock roe. In adopting this more liberal standard, NOAA is attempting to accommodate the higher recovery rate anticipated during the peak of the roe season so that little or no legitimate roe harvest needs to be discarded. If experience with this standard indicates that it is too high or too low, it could be changed by regulatory amendment. For now, the limit and PRRs provide a reasonable balance between production of roe and other pollock products and the prevention of roe stripping. Observer information will be helpful in refining this standard, but the principal purpose of observers is to collect biological and fishery performance data (to monitor quotas), not to collect fish processing data.

(d) Some of the forgone revenue to the pollock fishery due to limitations on the amount of roe that can be harvested under this rule is likely to be offset by increased revenue from pollock fishing during the non-roe season. NOAA has reviewed the RIR and found its conclusions to be defensible. Based on the RIR, NOAA expects a negative revenue impact on the pollock fishery of about \$15 million because of foregone opportunity to harvest roe. This cost could be offset by the benefits of increased protection of the ecosystem and the future productivity of pollock stocks.

Comment 2: The proposed PRRs, especially for surimi, are too high and could cause an inaccurate assessment of the amount of pollock actually harvested. Pollock should be weighed prior to processing to assess accurately the amount harvested.

Response: The purpose of the PRRs implemented by this action is to regulate the production of pollock roe and limit roe stripping. These PRRs will be used

only to determine if the amount of pollock roe onboard at any time during a fishing trip is within the roe stripping standard, rather than determine the total amount of pollock harvested for quota monitoring purposes. Although actual recovery rates for a particular product may vary from its published PRR, using PRRs generally as a means of estimating the round-weight equivalent of harvested fish is reasonably accurate overall and has the added advantage of allowing tracking of product forms for enforcement purposes.

Comment 3: The seasonal allowance provision of Amendment 14 to the Bering FMP should be disapproved because it places too great of a burden on the fishing industry. The decision process for determining the proportion of the pollock TAC to be allocated for roe-season harvesting provides too short notice to allow industry preparation. Months, not weeks, are needed to schedule vessel operations; contract for crews; order and transport supplies; arrange for fuel, provisioning, and storage; and find and commit to markets for finished products. The publication of preliminary specifications for public comment does not help because preliminary figures have no real meaning.

The allowable retention of pollock roe should be based on actual PRRs, not a standard limit. Actual PRRs vary widely between vessels and on an individual vessel from day to day and area to area. There should be a provision to substitute the actual recovery rates of an individual vessel for the standard rates when the vessel can substantiate those rates. This would result in more accurate estimates of harvest and would preclude wastage of valuable roe at certain times. The proposed roe limit is liberal over the entire season. Roe recovery is less than 10 percent except during the peak of the season when roe recovery may exceed 10 percent. In this event, the roe onboard should be allowed to exceed 10 percent if a higher rate can be substantiated.

Response: NOAA appreciates the planning and logistical problems that the September-to-December specification process causes for the fishing industry. Disapproval of the seasonal allocation part of Amendments 14 and 19 would not entirely solve these problems. These problems are caused by the brief period of time (about 7 weeks) between the availability of scientific information on which the Council must base TAC and apportionment decisions and the beginning of a new fishing year on January 1. Redefinition of the fishing

year should be explored as a possible solution.

NOAA understands the high variability of actual recovery rates in different processing operations and in different times and places. However, the standard roe limit and PRRs in this action provide a practical definition of roe stripping that is to be avoided. The alternative, not having these standards, places enforcement officers in the position of deciding, on a case-by-case basis, whether roe stripping occurred. This would be impractical and unfair to processing operations as each case-by-case decision would be arbitrary. However, processing operations should carefully document their actual recovery rates, especially if they are higher than the 10-percent standard rate. With more experience and data on actual roe-recovery rates, NOAA may propose revisions to the standard.

Comment 4: Prohibiting pollock trawling during the pollock roe-bearing season is the best way to conserve pollock stocks and to provide for the viability of predatory species, such as the Steller sea lions, other marine mammals, and sea birds. Roe-bearing pollock are a protein-rich and high energy-content prey for pregnant sea lions and weaned pups. The proposed rule with multiple season allowances would be more costly, complex, and ineffective than a single non-roo season. The decline in the population of Steller sea lions, leading to its protection under the Endangered Species Act, may be linked with declines in availability of pollock. Localized declines in pollock populations could cause nutritional stress on pregnant females, young pups, and juveniles during winter months. The Steller sea lion is only one of numerous marine mammal and bird species that prey on pollock, and the decline in sea lion populations could be one indication of the potential adverse impacts of a large roe fishery on the North Pacific marine ecosystem.

Response: Shifting fishing effort to later quarters may reduce competition for pollock between the fishery and Steller sea lions whose populations have been declining in recent years. A hypothesis that pollock roe fisheries and other pollock fisheries may be contributing to these declines has not been tested, and current data are insufficient to link sea lion population declines with declines in prey availability. However, in consideration of the recent listing of Steller sea lions as "threatened" under the Endangered Species Act, as conservative course of action is prudent.

Limiting the amount of pollock that may be harvested during the roe season

is a conservative course of action. In taking this action, NOAA is balancing competing uses of the pollock resource. While shifting the pollock fishery to later in the fishing year may be beneficial to Steller sea lions and other prey species, this shift also may increase bycatches of crabs, halibut, herring, and other species of commercial and ecosystem importance. Pollock harvested during the roe season usually are taken with mid-water trawl gear that has low bycatch rates of these other species. Later in the year, pollock are more likely to be harvested with trawl gear that operates near the bottom and typically has higher bycatch rates. Prohibiting pollock fishing during the roe season also would have much more severe economic impacts on the pollock fishery than will occur under this action.

Comment 5: The proposed rule does not go far enough to assure a year-round supply of pollock products. The proposed two-season allocation of TAC in the BSAI Management area will help spread effort over the year but, given the rate of harvest in 1990 plus additional harvesting and processing vessels entering the fishery, early closure of the seasons appears likely. Division of the BSAI pollock TAC into smaller temporal units, such as calendar quarters or even months, would assure a constant supply of raw materials from the fishery.

Response: NOAA agrees that the pollock fishery in the BSAI Management area probably will be closed before the April 15 end of the roe season or the December 31 end of the non-roo season. Early closures result from a limited TAC and an increasing amount of fishing effort. Spreading the harvest over the year is not an objective of seasonal allocations in the BSAI Management area as it is in the GOA where the pollock TAC is apportioned quarterly. If spreading the harvest over the year becomes an objective in managing the pollock fishery in the BSAI Management area, the Bering FMP may be amended again. Although this objective may be desirable to fish wholesalers and consumers, frequent opening and closing of a fishery during the year can be costly to the fishing industry. Alternatively, controlling the amount of fishing effort (i.e., limiting entry to the fishery) to that needed to fish for pollock year round may not be effective because fishing effort would focus on the time period that yields the greatest economic value, in this case, the roe season.

Comment 6: The seasonal allocation portions of Amendment 14 and 19 should be disapproved, and only the constraints on roe stripping should be implemented. The purpose of seasonal allocations is to address concerns of

onshore processors resulting from competition with the at-sea processors. Onshore processors are using the Amendments for economic protection by precluding participation of the at-sea processors. In the GOA, the seasonal allocation will reduce the value of the harvest because it reduces the roe-season fishery. This year, the roe fishery was practically nonexistent because most of the fish taken in the first quarter were harvested before the roe was of prime quality. In the BSAI Management area, the split season will increase costs of at-sea processors because they will have to discontinue operations two times a year, after the roe season and after the non-roo season.

The EA/RIR/FRFA analysis does not provide a basis for the premise that fishing during the roe season has a negative impact on pollock stocks. The analysis fails to identify the results of the one-time experiment for data collection purposes to conduct the GOA pollock fishery with quarterly allocations. In addition, the analysis fails to evaluate the costs and benefits of the alternatives on different user groups, in particular, the costs to the at-sea fleet resulting from the split season and that the split season favors onshore processors.

The Amendments violate Magnuson Act National Standard 4 because their implementation is not fair and equitable to at-sea processors and is not reasonably calculated to promote conservation. The Amendments violate National Standards 5 and 7 because their implementation does not minimize costs and avoid unnecessary duplication.

Response: The purpose of seasonal allocations is only partly to address the issue of competition between onshore and offshore processing. In the GOA, quarterly allowances of the pollock TAC also limit the amount of pollock that can be harvested during the roe-bearing period and spread the fishery over the year. Biological data from a fishery operating over a broad time period reveal better information about the stock structure of the species being harvested than data from a short, intensive fishery. These data are especially important for the GOA pollock fishery, given the relatively low biomass of pollock in the GOA and the rate at which it could be harvested without seasonal controls. Limits on the amount of pollock that can be harvested during the roe season are a reasonable way to limit roe stripping. Of course, these limitations will impose costs in terms of forgone revenues from a fishery that would have occurred only during

the roe season. The Council and the Secretary reviewed these costs and concluded that they were justified when weighed against the benefits being sought. The analysis does not conclusively find that a roe-season fishery will have harmful effects on the pollock resource. It describes a variety of possible circumstances that could increase the risk of biological harm and overfishing. Assessing potential negative biological impacts on the pollock resource was not the only subject of the analysis. The analysis also discussed potential effects on the ecosystem of fishing effort focused on the roe season. The analysis did not consider data from the 1990 quarterly allocation of pollock in the GOA because those data were incomplete when the analysis was being written.

One objective of Amendments 14 and 19 is to prevent the unintended full harvest of the GOA pollock TAC by one segment of the fishing industry (i.e., at-sea catcher/processors). Quarterly allowances of the pollock TAC in the GOA are designed, in part, to achieve this objective. To this end, this management measure is clearly allocative; however, the shore-based industry is as limited in its potential production of pollock roe by this measure as the at-sea industry. NOAA finds that this allocation measure does not violate National Standard 4 because: (a) It does not discriminate between residents of different states, (b) it equitably distributes the regulatory burden to all pollock fishermen, (c) it is reasonably calculated to promote conservation of pollock and other living marine resources, and (d) it can be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the harvesting privileges.

With respect to National Standards 5 and 7, NOAA finds that the Amendments will promote efficient use of the pollock resource by severely limiting the discard of usable pollock flesh that occurs during roe stripping. If the roe season were not limited, greater economic revenues to the pollock fishery may be realized possibly at a cost to other pollock users, such as marine mammals and producers of pollock flesh products, and at an increased potential risk of over-harvesting the pollock TAC. Although the Amendments will be implemented at a cost in forgone revenues from potential pollock roe, these costs are minimized by allowing the harvest of pollock roe yet providing a practical standard by which roe stripping is determined. More costly ways of

limiting roe stripping were considered in the analysis. Finally, the management in Amendments 14 and 19 are not redundant with any other state or Federal regulations, hence, duplication is avoided.

Comment 7: It is not clear in the proposed rule language at § 675.20(i) [sic, reference is to paragraph (j)] how "retained onboard a vessel" would be interpreted for a vessel that does not have fish meal processing capabilities but is tied up at sea to a vessel that does have that capability. This paragraph should be revised to read "caught and retained on board the same vessel at any time during a fishing trip."

Response: The suggested alternative wording would prevent a mothership operation, which receives whole fish from a catcher vessel, from producing pollock roe and other products. The phrase, "retained onboard" with respect to pollock roe in §§ 672.20(i) and 675.20(j), will be interpreted in the context of a fishing trip. For purposes of this action, fishing trip is defined at §§ 672.20(i)(4) and 675.20(j)(4) as ending when any pollock or pollock product is transferred or offloaded. In the example of a sister vessel producing fish meal or other products from pollock caught by another vessel, the vessel offloading pollock to the sister vessel would end its fishing trip (and the sister vessel would begin its fishing trip) by that activity. Any pollock roe or other pollock retained onboard the catcher vessel would not count for purposes of determining whether the roe stripping standard was exceeded. When the catcher vessel resumed fishing, it would begin a new fishing trip for purposes of pollock roe accounting and compliance with these rules.

Classification

The Regional Director determined that Bering FMP Amendment 14 and Gulf FMP Amendment 19 are necessary for the conservation and management of the groundfish fisheries in the BSAI management area and the GOA, respectively, and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact

analysis (RIR) under Executive Order 12291. This determination is based on the EA/RIR/final regulatory flexibility analysis (FRFA) prepared by the Council. A copy of the RIR may be obtained from the Council at the previously cited address.

The Assistant Administrator concludes that this rule will have significant effects on a substantial number of small entities. Thus, an FRFA has been prepared. A copy of the FRFA may be obtained from the Council at the previously cited address.

The Assistant Administrator determined that this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator determined that this rule is not likely to adversely affect endangered or threatened marine mammals. Reduced pollock harvest during the winter-spring season could increase the local availability of prey to Stellar sea lions (a "threatened species" under the Endangered Species Act) and thus may be beneficial to Stellar sea lions. Since pollock is only a minor component of the endangered cetaceans' diets, adoption of this rule is not likely to affect these species.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the Federally approved coastal zone management program of Alaska. This determination was submitted to the responsible State agencies for review under section 307 of the Coastal Zone Management Act. The State declined to comment on the consistency determination within the statutory time period, and consistency is presumed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule must be effective no later than January 1, 1991, to achieve orderly management of the groundfish fishery off Alaska for the 1991 fishing season and to derive meaningful conservation benefits from this rule. A later effective date would be contrary to the public interest; consequently, the Assistant Administrator, pursuant to section 553(d)(3) of the Administrative Procedure Act, finds that good cause exists for making this rule effective January 1, 1991, prior to 30 days after the date of publication.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries, Foreign fishing, Reporting and recordkeeping requirements.

Dated: December 31, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611, 672 and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

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

2. In § 611.92, paragraph (c)(3) is added to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(3) *Allowable retention of pollock roe.* See 50 CFR 672.20(i) for procedures used to determine the allowable amount of pollock roe that can be retained onboard a foreign processor vessel at any time during a fishing trip.

* * * * *

3. In § 611.93, paragraph (c)(6) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(6) *Allowable retention of pollock roe.* See 50 CFR 675.20(j) for procedures used to determine the allowable amount of pollock roe that can be retained onboard a foreign processor vessel at any time during a fishing trip.

* * * * *

PART 672—GROUND FISH OF THE GULF OF ALASKA

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

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

5. In § 672.7, a new paragraph (e) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(e) Retain pollock roe onboard a vessel in violation of paragraph 672.20(i) of this part.

6. In § 672.20, the text of paragraph (a)(2) is redesignated (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).*

* * * * *

(ii) The TAC of pollock for the Central and Western regulatory areas will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of a quarterly allowance will be added in equal proportions to the quarterly allowances of the following quarters. Within any fishing year, harvests in excess of a quarterly allowance will be deducted in equal proportions from the quarterly allowances of the following quarters of that fishing year.

* * * * *

7. In § 672.20, paragraphs (c) (1) and (2) are revised, and new paragraph (i) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(c) *Notices.*

(1) *Notice of proposed specifications and interim harvest limits.*

(i) As soon as practicable after consultation with the Council, the Secretary will publish a notice in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC amounts for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves; halibut prohibited species catch amounts; and quarterly allowances of pollock. This notice also will include the dates that directed fishing may commence for each quarterly allowance of pollock. The preliminary specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock) and one-fourth of the halibut prohibited species catch amounts will be in effect on January 1 on an interim basis and will remain in effect until superseded by a **Federal Register** notice of final specifications.

(ii) *Notice of final specifications.* The Secretary will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final halibut prohibited species catch amounts, and final quarterly allowances of pollock. These final specifications

will supersede the interim specifications.

(2) *Notices prohibiting directed fishing.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is the amount in Table 1 or, if applicable, Table 2, as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, he will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

(i) *Allowable retention of pollock roe.* Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 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. Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. No person may include pollock or pollock products from previous fishing trips that are retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

(1) For purposes of this paragraph, only one primary product per fish, other than roe, may be used to calculate the round-weight equivalent. The primary product must be distinguished from ancillary products in the daily cumulative production logbook required under § 672.5 of this part. Ancillary products are those, such as meal, heads, internal organs, pectoral girdles or any other product which may be made from the same fish as the primary product.

(2) *Product-recovery rates used to extrapolate round-weight equivalents.* The following product-recovery rates will be used to calculate round weight equivalents of primary pollock products:

- (i) Pollock surimi—15 percent;
- (ii) Pollock fillets—18 percent;
- (iii) Pollock minced product—17 percent;
- (iv) Pollock meal—17 percent; and
- (v) Pollock headed and gutted—50 percent.

(3) *Other product-recovery rates.* Recovery rates for products not listed under paragraph (i)(2) of this section must equal or exceed the product-recovery rate established for pollock surimi.

(4) *Fishing trip.* For purposes of this paragraph, a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the regulatory area where fishing activity commenced, whichever comes first.

(5) *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 0.10. 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. 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 0.10 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.

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

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

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

9. In § 675.7, a new paragraph (f) is added to read as follows:

§ 675.7 Prohibitions.

(f) Retain pollock roe onboard a vessel in violation of paragraph 675.20(j) of this part.

10. In § 675.20, the text of paragraph (a)(2) is redesignated as (a)(2)(ii), a new paragraph (a)(2)(i) is added, the newly designated paragraph (a)(2)(ii) is revised, paragraphs (a)(7) and (a)(8) are revised, and new paragraph (j) is added to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).*

* * *

(i) The TAC of pollock in each subarea will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from January 1 until noon, Alaska local time (A.L.T.), April 15. The second allowance will be available for directed fishing from noon, A.L.T., June 1 through the end of the fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

(ii) The annual determination of the TAC for each target species and the "other species" category, the division of the pollock TAC into seasonal allowances, the exceeding of these species' TACs through the apportionment of reserves, and the reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based on and be consistent with two types of information:

* * * * *

(7) Notices.

(i) *Notice of proposed specifications and interim harvest amounts.* As soon as practicable after consultation with the Council, the Secretary will publish a notice in the *Federal Register* specifying, for the succeeding fishing year, proposed annual TAC and initial TAC amounts for each target species and "other species" category and apportionments thereof among DAP,

JVP, and TALFF; prohibited species catch allowances established under § 675.21(b) of this part; and seasonal allowances of pollock. The initial TAC for each target species and the "other species" category will be 85 percent of the TAC as provided under paragraph (a)(3) of this section. The proposed specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year. The Secretary will accept public comment on the proposed specifications for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of each proposed initial TAC and apportionment thereof, one-fourth of each prohibited species catch allowance established under § 675.21(b) of this part, and the first seasonal allowance of pollock will be in effect on January 1 on an interim basis and will remain in effect until superseded by a *Federal Register* notice of final specifications.

(ii) *Notice of final specifications.* The Secretary will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish a notice in the *Federal Register* specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch allowances established under § 675.21(b) of this part, and final seasonal allowances of pollock. These final specifications will supersede the interim specifications.

(8) If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or a seasonal allowance of pollock, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount annually specified under paragraph (a)(7) of this section, as revised by in-season adjustments, for that species or species group, or seasonal allowance of pollock as identified by subarea and as further identified according to any allocation for TALFF, the apportionment for JVP, the apportionment for DAP and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same subarea. If the

Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the fishing season, he will prohibit directed fishing for that species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

(j) *Allowable retention of pollock roe.*

Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 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. Determination of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. No person may include pollock or pollock products from previous fishing trips that is retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

(1) For purposes of this paragraph, only one primary product per fish, other

than roe, may be used to calculate the round-weight equivalent. The primary product must be distinguished from ancillary products in the daily cumulative production logbook required under § 675.5 of this part. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product which may be made from the same fish as the primary product.

(2) *Product-recovery rates used to extrapolate round-weight equivalents.* The following product-recovery rates will be used to calculate round-weight equivalents of primary pollock products:

- (i) Pollock surimi—15 percent;
- (ii) Pollock fillets—18 percent;
- (iii) Pollock minced product—17 percent;
- (iv) Pollock meal—17 percent; and
- (v) Pollock headed and gutted—50 percent.

(3) *Other product-recovery rates.* Recovery rates for products not listed under paragraph (j)(2) of this section must equal or exceed the product-recovery rate established for pollock surimi.

(4) *Fishing trip.* For purposes of this paragraph, a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the

subarea where fishing activity commenced, whichever comes first.

(5) *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 0.10. 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. 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 0.10 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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