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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 170303228-7228-01]

RIN 0648-BG71

Subsistence Taking of Northern Fur Seals on the Pribilof Islands; Summary of Fur Seal Harvests for 2014-2016 and Proposed Annual Subsistence Harvest Needs for 2017-2019

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

ACTION: Notice of availability; request for comments.

SUMMARY: Pursuant to the regulations governing the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) (northern fur seals), this document summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) in Alaska for 2014-2016 and proposes annual estimates of northern fur seal subsistence harvest on the Pribilof Islands for 2017-2019. The proposed number of fur seals expected to satisfy the subsistence requirements of Alaska Natives residing on the Pribilof Islands (Pribilovians) during the years 2017-2019 is 300 to 500 for St. George and 1,645 to 2,000 for St. Paul. These harvest levels are unchanged from the levels established for 2014-2016. NMFS solicits public comments on the proposed subsistence harvest needs for 2017-2019.

DATES: Comments must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by

NOAA-NMFS-2017-0018 by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0018*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Two Final Environmental Impact Statements and one Draft EIS are available on the Internet at the following address under the NEPA Analyses tab:

<https://alaskafisheries.noaa.gov/pr/fur-seal>.

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS Alaska Region, 907-271-5117, *michael.williams@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Eastern Pacific stock of northern fur seals (fur seals) is considered depleted under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, *et seq.* The subsistence harvest from this stock on the Pribilof Islands is governed by regulations found in 50 CFR part 216, subpart F, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151, *et seq.* The regulations authorize Pribilovians to take fur seals on the Pribilof Islands if such taking is for subsistence uses and not accomplished in a wasteful manner. Since 1997, the allowable harvest level for St. George has been 300 to 500 fur seals and the allowable harvest level for St. Paul has been 1,645 to 2,000 fur seals. On both islands, if the harvest reaches the lower level and the Pribilovians have not met their subsistence harvest needs they must obtain the concurrence of NMFS before harvesting up to the upper level.

NMFS has restricted the subsistence harvest of fur seals on the Pribilof Islands to sub-adult male fur seals less than 124.5 cm in length during a 47-day season (from June 23 to August 8) on the Pribilof Islands. In 2014, NMFS created a second harvest season on St. George Island (from September 16 to November 30), authorizing the harvest of up to 150 male pups (79 FR 65327; November 4, 2014). The authority to harvest 150 male pups on St. George Island did not change the lower or upper harvest level established previously (79 FR 45728; August 5, 2014). The purposes of these regulations are to (1) limit the take of fur seals to a sustainable level that provides for the subsistence requirements of Pribilovians, and (2) restrict taking by sex, age, location, and season to ensure conservation of the species.

Pursuant to subsistence harvest regulations at 50 CFR 216.72(b), every three years NMFS

must publish in the **Federal Register** a summary of the Pribilovians' fur seal harvest for the previous three-year period. NMFS is also required to include an estimate of the number of fur seals expected to satisfy the subsistence requirements of Pribilovians in the subsequent three-year period. Since 2000, NMFS estimated the number of seals necessary to satisfy the subsistence requirements of Pribilovians based on discussions with the St. Paul and St. George Tribal Governments (Tribal Governments) as established in their respective co-management agreements pursuant to Section 119 of the MMPA. NMFS works with the Tribal Governments to estimate a lower and upper number of fur seals to be harvested annually to satisfy the subsistence requirements of the Pribilovians.

Other Actions Potentially Affecting the Fur Seal Subsistence Harvest Estimates

In response to a petition from the Aleut Community of St. Paul Island, NMFS recently published a Draft Supplemental Environmental Impact Statement to evaluate the effects relevant to environmental concerns of potential changes to the regulations governing subsistence harvest of fur seals on St. Paul Island (82 FR 4336; January 13, 2017). Based on review of the public comments, NMFS is considering whether to undertake proposed and final rulemaking to revise fur seal subsistence harvest regulations at 50 CFR 216.72. Should NMFS undertake such rulemaking the triennial process of assessing the Pribilovians' subsistence needs and setting lower and upper levels for the maximum allowable harvest of fur seals may be modified or removed from the regulations. NMFS is not seeking comment on these potential proposals here.

Fur Seal Status and Subsistence Needs

Based on the most recent fur seal stock assessment report (2016), NMFS estimates that the current abundance of the eastern Pacific fur seals stock is 648,534. The potential biological

removal (PBR) level (*i.e.*, the maximum number of animals, not including natural mortalities, that may be removed from the stock while allowing the stock to reach or maintain its optimum sustainable population level) is 11,802 animals (Muto *et al.*, 2016). Harvest of the maximum allowable level on both St. George and St. Paul Islands (2,500 sub-adult male fur seals; a level that the Pribilovians have not reached since 1985) would amount to 21.2 percent of the PBR level. However, the population-level effect of the harvest on the stock is lower than 21.2 percent of the PBR because PBR assumes random mortality across all ages and both sexes, and the subsistence harvest is regulated to select sub-adult male fur seals (including male pups on St. George). Fur seal reproduction depends disproportionately on females, so harvesting males has much less influence on the population. Limiting the harvest of fur seals to males that have not reached adulthood has been the basis of sustainable harvests on the Pribilofs for over 100 years.

The mortality from the subsistence harvest is in addition to other sources of known human-caused mortality that are described in the annual stock assessment reports (Muto *et al.*, 2016), including bycatch in commercial fisheries, entanglement in derelict fishing gear and marine debris as well as accidental death during research. The 5-year average (2009-2013) annual estimates of the sources of known human-caused mortality of fur seals, as identified in the 2016 stock assessment report (Muto *et al.*, 2016), are: fisheries bycatch (average = 1.1); entanglement (average = 12); research (average < 1); and subsistence harvests (average = 432). These sources of known human-caused mortality of fur seals are less than 4 percent of PBR. During the past 5 years, there have been no reports of illegal shooting by fishermen, and one seal was killed in 2015 when it was struck by a car on St. Paul. NMFS Office of Law Enforcement has been unable to identify suspects in cases where illegal harvest of fur seals is suspected.

The 1985 and subsequent estimates of the number of fur seals required to meet subsistence needs were based on pounds of meat estimated to have been consumed by Pribilovians from the turn of the century (50 FR 27914, July 4, 1985; 51 FR 17896, May 15, 1986). The short seasons required by the regulations forced employers, employees, and fishermen to choose between wage earning jobs and volunteer participation in the subsistence harvest. Public comments on those notices of the number of fur seals required to meet their subsistence need suggested that NMFS should reduce the lower level of the subsistence need because the actual harvest seldom reached the lower level established in the early years of the subsistence regulations (51 FR 17896, May 15, 1986; 51 FR 24828, July 9, 1986; 53 FR 28886, August 1, 1988; 56 FR 25066, June 3, 1991). NMFS responded by reducing the estimates of Pribilovians' subsistence need to its lowest level in 1990 and 1991 (1,326-2,300), and in 1991 both islands made written requests to exceed the lower end of the range and ultimately harvested the highest number of fur seals allowed under the subsistence regulations (Table 1). NMFS increased the estimated subsistence need through 1997, and the harvest has not reached the lower level established for either island since 1993 (Table 1). The lower level may only be exceeded if the Assistant Administrator (1) reviews the harvest data, (2) determines that additional harvest is necessary to satisfy Pribilovians' subsistence needs, and (3) provides a revised estimate of the number of seals required to satisfy subsistence needs in accordance with 50 CFR 216.72(f). Exceedance of the upper harvest level is not authorized. The current lower harvest level of 1,945, while higher than actual harvest levels in the past decade, provides a degree of flexibility that allows for environmental changes and accommodates unanticipated community needs.

The communities of St. Paul and St. George Islands rely on marine mammals as a major

food source and a cornerstone of their culture. Several factors affect both the subsistence harvest of northern fur seals and the number of fur seals required to meet subsistence needs. Weather conditions and availability of subsistence resources and store-bought foods vary annually. The availability of wage-earning jobs affects the time available for community members to harvest fur seals and other subsistence resources. For example, the subsistence harvest season is concurrent with the Pacific halibut commercial fishing season. Individual community members may choose to participate in wage-earning jobs rather than volunteer to participate in the subsistence harvest fur seals. In addition, some seasonal employment opportunities, such as commercial crab fishing, may interfere with community members' ability to harvest Steller sea lions, increasing their reliance upon the northern fur seal as a subsistence food source.

Summary of Harvest Operations and Monitoring from 2014 to 2016

The harvests of sub-adult male fur seals from 2014 to 2016 were conducted in the established manner and employed the standard harvest methods required under 50 CFR 216.72. NMFS personnel, a harvest observer contracted by NMFS, and tribal government staff monitored the harvests during the period of 2014 through 2016. The NMFS personnel, harvest observer, and tribal government staff communicated during and after the harvests to further improve the efficiency of the annual harvest, encourage full utilization of the animals taken, and reduce stress to unharvested seals. NMFS received annual harvest reports from the tribal governments of both islands and the harvest observers. These reports were reviewed and verified by NMFS prior to finalization and public distribution. Through co-management, the tribal governments on both St. Paul and St. George Islands have taken responsibility for ensuring the subsistence harvest of male fur seals from the age classes authorized on the respective islands is not accomplished in a wasteful

manner, minimizes the accidental take of females, and does not result in increased disturbance to the fur seals on rookeries. The Pribilovians have requested more autonomy to undertake and monitor the fur seal harvest themselves via co-management, and NMFS continues to balance that request with the need to independently observe a portion of the harvests on both islands each year (see 51 FR 17896; May 15, 1986, 53 FR 28886; August 1, 1988, 58 FR 42027; August 6, 1993, 79 FR 65327; November 4, 2014).

The reported fur seal subsistence harvest for St. Paul was 266 animals in 2014, 314 in 2015, and 309 in 2016 (Lestenkof *et al.*, 2015, Lestenkof *et al.*, 2016, Melovidov *et al.*, 2017). The reported total subsistence harvest of fur seals on St. George Island in 2014, 2015, and 2016 was 158, 118, and 83, respectively, of which the sub-adult harvest was 104 in 2014, 61 in 2015, and 37 in 2016 (Kashevarof 2015, Kashevarof 2016, Lekanof 2017) and the pup harvest was 54 in 2014, 57 in 2015, and 46 in 2016 (Testa 2016, IAG 2016, and IAG 2017). From 1986 to 2016, the reported number of sub-adult male fur seals harvested on St. Paul and St. George ranged from 266-1704 and 37-319, respectively (Table 1). The average number of male seals harvested annually during the past decade on St. Paul was 318 (range: 262 to 383), and on St. George was 119 (range: 63 to 206) including pups.

TABLE 1. Harvest Levels and Actual Subsistence Harvest Levels of Sub-Adult Male Northern Fur Seals on the Pribilof Islands, 1986-2016 (Accidental female harvests and the pup harvest from 2014-16 are not included).

Year	Harvest Levels		Actual Harvest	
	St. Paul	St. George	St. Paul	St. George
1986	2,400-8,000	800-1,800	1,299	124
1987	1,600-2,400	533-1,800	1,704	92
1988	1,800-2,200	600-740	1,145	113
1989	1,600-1,800	533-600	1,340	181
1990	1,145-1,800	181-500	1,077	164

1991	1,145-1,800	181-500	1,644	281
1992	1,645-2,000	281-500	1,480	194
1993	1,645-2,000	281-500	1,518	319
1994	1,645-2,000	281-500	1,615	161
1995	1,645-2,000	281-500	1,263	259
1996	1,645-2,000	281-500	1,588	232
1997	1,645-2,000	300-500	1,153	227
1998	1,645-2,000	300-500	1,297	256
1999	1,645-2,000	300-500	1,000	193
2000	1,645-2,000	300-500	754	121
2001	1,645-2,000	300-500	595	184
2002	1,645-2,000	300-500	646	202
2003	1,645-2,000	300-500	522	132
2004	1,645-2,000	300-500	493	123
2005	1,645-2,000	300-500	466	139
2006	1,645-2,000	300-500	396	212
2007	1,645-2,000	300-500	269	206
2008	1,645-2,000	300-500	328	170
2009	1,645-2,000	300-500	341	113
2010	1,645-2,000	300-500	357	78
2011	1,645-2,000	300-500	322	120
2012	1,645-2,000	300-500	383	63
2013	1,645-2,000	300-500	298	80
2014	1,645-2,000	300-500	262	103
2015	1,645-2,000	300-500	312	61
2016	1,645-2,000	300-500	308	37

A single accidental harvest of a sub-adult female fur seal occurred during 2014-2016 on St. George. On St. Paul harvesters accidentally killed seven sub-adult females during 2014-2016. The average annual accidental harvest of females is two on St. Paul and less than one on St. George since 1986.

Under section 119 of the MMPA, NMFS signed agreements with St. Paul in 2000 and with St. George in 2001 for the cooperative management of subsistence uses of northern fur seals and

Steller sea lions. The processes described in the cooperative agreements have facilitated a collaborative working relationship between NMFS and tribal authorities to manage efficient harvests for food and to promote full utilization for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73 (Melovidov *et al.*, 2017, IAG 2016, IAG 2017).

Estimate of Subsistence Need for 2017 through 2019

For the 3-year period from 2017 through 2019, NMFS proposes no change to the current allowable harvest ranges of 1,645-2,000 sub-adult male fur seals for St. Paul Island and 300-500 sub-adult male fur seals for St. George Island (including up to 150 male pups). Retaining the allowable harvest levels at the current range provides for fur seal conservation, flexibility that accommodates environmental changes, and unanticipated community needs. NMFS will continue to work with the Tribal Governments of St. Paul and St. George under section 119 of the MMPA to ensure their subsistence needs are met in a manner that is consistent with the sustainable use and conservation of fur seals. NMFS seeks public comments on these proposed estimates of the annual number of fur seals expected to satisfy the subsistence requirements of Pribilovians from 2017 through 2019.

NMFS will continue to monitor the harvest on St. Paul and St. George Islands during 2017, 2018, and 2019, and coordinate regular monitoring and reporting through the agreements signed for cooperative management of the subsistence use of fur seals.

Classification

National Environmental Policy Act

NMFS prepared an Environmental Impact Statement (EIS) evaluating the impacts on the human environment of the subsistence harvest of northern fur seals, which is available on the

NMFS website (see *Reviewing Documents*). A draft EIS was available for public review (69 FR 53915; September 3, 2004), and NMFS incorporated the comments into the final EIS (May 2005). A draft Supplemental EIS (SEIS) was prepared regarding the management of the subsistence harvest of northern fur seals on St. George Island, made available for public review (79 FR 31110; May 30, 2014), and NMFS incorporated the public comments into the final SEIS (79 FR 49774; August 22, 2014). A draft Supplemental EIS (SEIS) was prepared regarding the management of the subsistence harvest of northern fur seals on St. Paul Island, made available for public review (82 FR 4336; January 13, 2017), and NMFS is reviewing those public comments separate from the action considered here.

An SEIS should be prepared if 1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or 2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the 2005 EIS and 2014 SEIS, the Regional Administrator has determined that 1) approval of the proposed 2017-2019 fur seal subsistence harvest notice does not constitute a change in the action; and 2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Additionally, the proposed 2017-2019 fur seal subsistence harvest levels will result in environmental impacts within the scope of those analyzed and disclosed in the previous EIS. Therefore, supplemental NEPA documentation is not necessary to implement the 2017-2019 fur seal subsistence harvest levels proposed in this document.

Executive Order 12866 and 13563

This proposed action is authorized under 50 CFR 216.72(b) and is not significant for the

purposes of Executive Orders 12866 and 13563.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. The harvest of fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only. This action directly regulates the subsistence harvest of northern fur seals by Pribilovians. The estimates of subsistence need are derived based on historic harvest levels and direct consultation with the Tribal Governments from each community. NMFS has identified two small entities that may be affected by this action—the communities of St. Paul and St. George, both of which have populations less than 500.

Estimate of Economic Impacts on Small Entities

This action would have no adverse economic impact and may provide a net economic benefit for the communities of St. Paul and St. George. The upper limit of the estimated subsistence harvest need is unlikely to restrict the number of animals taken by subsistence users. NMFS compared historic harvest levels on each island to the upper and lower harvest limits. The total annual harvests on each island have never exceeded the upper limit of the proposed subsistence need, and have only exceeded the lower limit three times; in 1991 on both islands and in 1993 on St. George. The regulated entities will not experience any change from the status quo since the proposed allowable subsistence harvest levels remain unchanged since 1997.

The subsistence harvest of fur seals provides a local, affordable source of fresh and frozen meat for the communities' consumption. Fresh store-bought meat is not available on either St. Paul or St. George Islands. Subsistence hunting and fishing are the primary means by which the

communities meet their dietary needs. No other fish and wildlife species are predictably available to replace fresh fur seal meat. Livestock meat shipped to the islands is extremely expensive, represents a dietary alternative rather than a replacement for fur seal meat, and is only available when air or barge service can deliver it. In addition, marine mammals such as fur seals are the culturally-preferred meat resource for Aleuts and other coastal Alaska Natives.

Explanation of the criteria used to evaluate whether the action would impose “significant economic impacts”

The proposed action will not place any small entities at a disadvantage relative to large entities or impose significant economic impacts on any small entities.

The criteria recommended to determine the significance of the economic impacts of the action are profitability and disproportionality. The guidance states that “the concept of profitability may not be appropriate for a non-profit small organization or a small government jurisdiction.” Based on this guidance NMFS believes disproportionality is the appropriate standard given that the regulated entities are small government jurisdictions. No large entities are allowed to harvest northern fur seals; therefore the regulatory allowance for the small entities on St. Paul and St. George to harvest northern fur seals does not create a disproportionate impact that would disadvantage them.

Explanation of the criteria used to evaluate whether the action would impose impacts on a “substantial number” of small entities

The proposed action would not impose adverse economic impacts on any small entities. Because this action will not impose significant economic impacts on any small entities, it will not impose impacts on a substantial number of small entities. This action may have beneficial

economic impacts on the directly regulated Alaska Native residents of St. Paul and St. George and will not have an adverse economic impact on any small entities. Therefore, a regulatory flexibility analysis is not required and none was prepared.

Paperwork Reduction Act

This proposed action does not require the collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 13132–Federalism

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence use and need were prepared by the local governments in St. Paul and St. George, with assistance from NMFS officials.

Executive Order 13175–Native Consultation

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 Note), the executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995), the Department of Commerce’s Tribal Consultation Policy (including the Department of Commerce Administrative Order 218-8, April 26, 2012), and the NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations (November 12, 2013) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Pub. L. 108-100

(188 Stat. 452) as amended by section 518 of Pub. L. 108-447 (118 Stat. 3267) extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS has contacted the tribal governments of St. Paul and St. George Islands and their respective local Native corporations (Tanadgusix and Tanaq) about setting the next three years' harvest estimates and received and considered their input.

Dated: May 15, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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