

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 130404331-4577-01]

RIN 0648-BD12

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. George Island, Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify the subsistence harvest regulations for the Eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) based on a petition from the Pribilof Island Aleut Community of St. George Island, Traditional Council (Council). NMFS worked with the Council to develop this proposed rule, which would authorize Pribilovians of St. George Island to harvest up to 150 male young of the year fur seals annually during a new autumn harvest season from all breeding and hauling grounds, consistent with traditional practices, to meet the community's nutritional and cultural needs. Harvests of sub-adult male fur seals would continue during the summer season, as allowed under existing regulations. The total number of fur seals harvested annually would remain within the range of 300–500 male animals that has been in place since 1997. Harvests would be coordinated between NMFS and the Council under an existing co-management agreement.

DATES: Written comments must be received by August 25, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2013–0072, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0072, 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 for Protected Resources, 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, etc.), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the draft supplemental Environmental Impact Statement, scoping report, St. George Tribal Resolution, and other documents prepared are available on the Internet at: <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

St. George Island is a remote island located in the Bering Sea whose residents rely upon marine mammals as a major food source and cornerstone of their culture, and the harvest of sub-adult male northern fur seals has occurred there for well over 200 years. The residents of St. George conduct an annual controlled subsistence harvest from the Northern fur seal stock on the Pribilof Island of St. George under the authority of the Fur Seal Act (FSA) (16 U.S.C. §§ 1155, 1161) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. § 1371(b)). Pursuant to section 119 of the MMPA, NMFS entered into a co-management agreement with the Pribilof Islands Aleut Communities of St. George Island in 2001 (16 U.S.C. § 1388). NMFS is guided by this co-management agreement as it works with St. George to cooperatively implement subsistence harvest activities and monitoring programs. Regulations governing subsistence harvest of fur seals appear at 50 CFR part 216, Subparts F and G.

The United States (U.S.) government began regulating the harvest of northern fur seals by the people of St. George Island in 1867 after the purchase of Alaska. From 1870 through 1890 the U.S. managed the commercial harvest of fur seals under a 20-year lease

arrangement with private companies that were responsible for harvesting fur seals and selling the pelts on the world market. During this period, at least 501,324 fur seals (mean annual harvest = 23,872) were harvested for their pelts from St. George Island during the summer. The lease arrangement also stipulated that the Pribilovians were provided a subsistence food harvest in the autumn, and this subsistence harvest was directed at male young of the year. The subsistence food harvest of young of the year was 28,064 (mean annual harvest = 1,477) for this 20-year period, and the Pribilovians were allowed to keep the pelts from the food harvest for trade and barter. A second 20-year lease arrangement, between the North American Commercial Company and the U.S., required the Pribilovians to collect fresh meat from the commercial harvest during the summer, and did not allow them to obtain their preferred fresh fur seal meat in the autumn from young of the year prior to the fur seals' winter migration from the islands. Consequently, the summer commercial land harvest of sub-adult males became the primary means for Pribilovians to obtain fresh meat for subsistence. The prohibition on harvesting young of the year has been retained to the present day.

In 1910, after the expiration of the second 20-year lease, the U.S. (and no longer commercial lessees) began control of all aspects of the commercial harvests on the Pribilof Islands. The subsistence harvest of northern fur seals is the focus of this regulatory action, but NMFS' understanding of harvest effects on the fur seal population are based on over 100 years of commercial harvest management, population assessment, and behavioral research. The draft Supplemental Environmental Impact Statement (DSEIS; NMFS, 2014) analyzes the available evidence of the effects of the subsistence harvest of male fur seals and concludes that the harvest of up to 350 sub-adult and 150 young of the year male fur seals would have an insignificant effect on the St. George population of about 72,828 fur seals. NMFS has not detected a relationship between the number of sub-adult male fur seals killed or harassed during harvests and the abundance and trend of the population.

NMFS commercially harvested an average of 8,152 sub-adult males annually from 1963–1972. NMFS provided some excess fur seal meat to St. George residents from the St. George commercial harvest due to the harvest prohibition on St. George. In 1972 the U.S. began the first large-scale investigation into the effects of

commercial fur seal harvesting (Gentry, 1998). From 1973 through 1975, the U.S. prohibited the St. George commercial harvest of sub-adult fur seals for their pelts in order to conduct research on the population dynamics and effects of harvesting. Between 1976 and 1979, NMFS authorized subsistence harvests on St. George at Northwest and Staraya Artil hauling grounds. Since 1972, the St. George fur seal population decreased to its present size, showing no positive response to the reduction in the harvest of sub-adult male fur seals. From 1980 to 1984, NMFS allowed subsistence harvests only at the Northeast hauling ground. The current fur seal subsistence harvest regulations authorize harvests on St. George Island at Northeast and Zapadni hauling grounds. These restrictions on St. George Island subsistence harvest locations were intended to preserve experimental and control sites for scientific investigations during the commercial harvest period (Gentry, 1998), which are no longer being pursued.

In 1984 the U.S. did not ratify the protocol to extend the Convention on the Conservation of Fur Seals, which had allowed commercial harvests of fur seals. This action resulted in the termination of the commercial harvest of fur seals on the Pribilof Islands, and inadvertently changed the way either community could obtain fresh fur seal meat. NMFS published an emergency interim rule (50 FR 27914; July 8, 1985) under the FSA and the MMPA to govern the subsistence harvest of northern fur seals on the Pribilof Islands for the 1985 season. NMFS acknowledged in the proposed rule (51 FR 17900; May 15, 1986) that the additional restrictions on St. George may not allow Pribilovians on St. George to satisfy their subsistence needs. On July 9, 1986, NMFS published a final rule that restricted the subsistence harvest of northern fur seals by sex, age, and season for herd management purposes to limit the take to a sustainable level while providing for the legitimate subsistence needs of the Pribilovians (51 FR 24828). NMFS subsequently designated the Pribilof northern fur seal population as depleted under the MMPA in 1988 (53 FR 17888; May 18, 1988). In the preamble to the proposed rule for the depleted designation, NMFS stated that it did not contemplate further rulemaking to restrict Alaska Native subsistence harvest of fur seals as a consequence of a depleted designation (51 FR 47156; December 30, 1986).

In 2001, NMFS and the Council entered into a co-management agreement pursuant to section 119 of the MMPA. The purpose of that agreement

is to conserve northern fur seals and Steller sea lions through cooperative effort and consultation regarding subsistence harvests. The Council has sampled, managed, monitored, and reported the sub-adult male subsistence fur seal harvest independently since the late 1990s, consistent with current regulations.

Population Status

NMFS manages the northern fur seal population as two stocks in the U.S.: the Eastern Pacific and the San Miguel stocks. Neither stock is listed under the Endangered Species Act. The Eastern Pacific stock includes northern fur seals breeding on Sea Lion Rock and St. Paul, St. George, and Bogoslof islands. NMFS designated the Pribilof Islands northern fur seal population as depleted under the MMPA on May 18, 1988 (53 FR 17888) after it had declined to less than 50 percent of levels observed in the late 1950s (about 2.1 million fur seals). Loughlin *et al.* (1994) estimated approximately 1.3 million northern fur seals existed worldwide, and the Pribilof Islands represented about 982,000 (74 percent of the total) in 1992. The 2012 abundance of fur seals on the Pribilof Islands was about 44 percent lower (546,720 fur seals) than the 1992 estimate (Towell *et al.*, 2013). NMFS estimates an annual decline in pup production for the Pribilof Islands of about 4 percent since 1998, and the annual decline for St. Paul (4.84 percent) is higher than for St. George, where the most recent trend (2004–2012) is not significantly different from zero (Towell *et al.*, 2013). The causes of the current fur seal decline on the Pribilof Islands are unknown.

Northern fur seals seasonally occupy specific breeding and non-breeding sites on St. George. The age and breeding status is the main determinant of where male fur seals are found during the breeding and non-breeding season. During the breeding season sub-adult males are excluded from the breeding sites (i.e., rookeries) by adult males and occupy resting sites known as hauling grounds (Figure 1 to part 216). During the non-breeding season beginning about September 1, sub-adult males can be found on both rookeries and hauling grounds.

Current Northern Fur Seal Harvest Regulations

Current northern fur seal harvest regulations for St. George Island (50 CFR 216.72) stipulate an annual harvest season from June 23 to August 8, with harvests occurring at only two of the nine harvestable hauling grounds (i.e., Northeast and Zapadni hauling grounds)

and harvests limited to no more than twice per week from each site. St. George residents are prohibited from taking adults or pups of any sex and from intentionally taking sub-adult females. Only sub-adult male fur seals 124.5 cm or less (the average length of a 4-year-old male seal) may be taken.

On July 12, 1994, NMFS published a final rule making the subsistence harvest estimates applicable for 3 years instead of 1 year (59 FR 16849) based on the consistency of harvest levels and an effort to begin implementation of co-management of the subsistence use of marine mammals, as provided in the 1994 amendments to the MMPA. The allowable harvest ranges for St. George have been maintained at 300–500 sub-adult male fur seals annually since 1997, and have provided the community the ability to meet their subsistence needs. Every 3 years NMFS must publish in the **Federal Register** a summary of the preceding 3 years of harvesting and the expected upper and lower range of annual harvest levels for the next 3 years. The Assistant Administrator for Fisheries must suspend the subsistence harvest of northern fur seals on the Pribilof Islands if NMFS determines that (1) the Pribilovians have satisfied their subsistence needs, (2) the harvest is being conducted in a wasteful manner, or (3) the Pribilovians have reached the lower end of the allowable range of the subsistence harvest level (50 CFR 216.72(b)). In practice, the St. George Council has twice (in 1991 and 1993) requested to exceed the lower end of the allowable range of the harvest on St. George Island. NMFS granted both requests.

Petition for Rulemaking

In September 2006, the Council submitted a tribal resolution to NMFS indicating the Federal government had previously allowed the community to harvest male fur seal young of the year in autumn for subsistence purposes. The Council requested that NMFS change the subsistence harvest regulations to allow residents of St. George the opportunity to return to their historic subsistence harvest patterns, including the harvesting of up to 350 sub-adult males in the summer and the harvesting of up to 150 male young of the year in the autumn each year. NMFS subsequently reviewed the available government records and confirmed the autumn subsistence harvest of male young of the year occurred during the late 1800s. NMFS has provided details of those records in a draft supplemental environmental impact statement (NMFS, 2014). On April 23, 2010,

NMFS published a notice of receipt of a petition (the tribal resolution) from the Council to revise the subsistence regulations for St. George Island to allow taking male northern fur seal young of the year during an autumn season (75 FR 21233). NMFS received no comments on the notice. Subsequently, NMFS worked with the Council to clarify the petition to define the second harvest season from September 16 to November 30, to discuss young of the year harvest methods and areas, and to outline the process to proceed with rulemaking. NMFS held scoping meetings on St. George Island and in Anchorage, AK, and provided a 60-day public comment period to consider possible alternatives. NMFS received scoping input during the St. George Island community meeting, and no one commented during the Anchorage scoping meeting. NMFS received only two letters during the comment period and both supported the Council's petition in the cultural and historic context of traditional and customary uses of marine mammals by Aleuts (NMFS, 2012). NMFS is considering four alternatives in the DSEIS to balance the opportunity for St.

George residents to meet their subsistence need with effects on the fur seal population. This proposed action would change numerous provisions of the current subsistence harvest regulations to allow St. George residents to carry out subsistence harvests as proposed. The proposed regulatory measures also would implement new conservation controls on the St. George subsistence harvest. These include: (1) Suspension of the harvest if two female fur seals are killed and a review of harvest practices by NMFS before the harvest may resume; (2) termination of the harvest for the season if three female fur seals are killed; (3) prohibition of take at any breeding areas when the most recent pup production estimate has fallen below levels capable of sustaining a harvest; and (4) equal geographic distribution of the harvest, based on the most recent estimate of pups born at the various breeding areas.

Proposed Changes to the St. George Northern Fur Seal Harvest Regulations

NMFS' proposed approach to addressing the Council's petition is to revise the subsistence harvest regulations at 50 CFR part 216, subpart

F and subpart G, to allow the harvest of northern fur seals to meet the subsistence needs of Alaska Natives on St. George Island. NMFS proposes to modify the subsistence harvest regulations to provide greater management flexibility in the seasonal and geographical aspects of the harvest, consistent with historical and cultural practices on St. George. The proposed rule would retain the summer harvest restrictions to ensure sub-adult males are the most likely target of subsistence harvests. The proposed rule would improve harvest restrictions by authorizing harvests at a greater number of sites, such that the harvest effort would not be concentrated in time or space, thus minimizing effects on the fur seal population. The proposed rule would clarify the Tribal and Federal responsibilities to co-manage the subsistence harvest of fur seals.

Based upon harvest reports from the Council, NMFS harvest records, and documentation from prior meetings between St. George and NMFS, the proposed rule would revise eight provisions of the current subsistence harvest regulations as follows:

50 CFR Part 216	Revision
§ 216.72(c)	Removed and reserved.
§ 216.72(d)	Revised to create explicit provisions for St. George Island harvests at all breeding areas.
§ 216.72(d)(1)	Added to define harvest methods that reduce animal stress, disturbances, and accidental taking of females.
§ 216.72(d)(2)	Added to prohibit harvesting adult male or female fur seals.
§ 216.72(d)(3)	Added to authorize harvesting of up to 150 male young of the year during additional harvest season from September 16 to November 30 annually on St. George Island and to prohibit harvesting more than 50 male young of the year from each of the three regional pairs of rookeries.
§ 216.72(d)(4)	Added to prohibit taking young of the year from any breeding areas when the most recent annual pup production estimate is below levels capable of sustaining harvest.
§ 216.72(d)(5)	Added to require St. George community members to annually review the harvest implementation and consider best harvest practices.
§ 216.72(e)(1)–(e)(5)	Added to retain for St. Paul Island the current sub-adult male fur seal subsistence harvest provisions.
§ 216.72(f)(1)(i)–(f)(1)(iii)	Redesignated from paragraphs (e)(1)(i)–(e)(1)(iii).
§ 216.72(f)(1)(iv)	Added to suspend the harvest if two female fur seals of any age are killed on St. George Island.
§ 216.72(f)(2) and (f)(3)	Redesignated from paragraphs (e)(2) and (e)(3).
§ 216.72(f)(4)	Added to review and lift suspensions issued under new paragraph (f)(1)(iv) for killing of two females if a remedy can be identified and implemented to prevent additional killings.
§ 216.72(g)	Redesignated from paragraph (f).
§ 216.72(g)(1)	Added to establish termination of sub-adult male harvest on August 8 and the St. George young of the year harvest on November 30.
§ 216.72(g)(2)	Added to terminate the harvest for young of the year when subsistence needs have been satisfied or the upper end of the range has been reached.
§ 216.72(g)(3)	Added to terminate the harvest on St. George when three female fur seals have been killed during harvest.
§ 216.74	Revised to describe the co-management relationship between NMFS and the Council under section 119 of the MMPA and efforts by NMFS to partner with the tribal government consider best harvest practices, data collection, and to coordinate scientific investigations.
§ 216.81(b)	Added to clarify that authorized subsistence harvesters of fur seals are allowed on rookeries from September 16 to November 30.

The proposed rule would create greater flexibility for the community to meet their subsistence needs by authorizing harvests on St. George Island of up to 500 male fur seals of different age classes during the summer

and autumn. The harvests would comprise up to 150 male young of the year from the many areas within and outside habitat used during the breeding season from September 16 through November 30 each year, and would be

based on the current identified subsistence harvest limit of up to 500 male fur seals annually (79 FR 27550, May 14, 2014), and up to 350 sub-adult males at all hauling grounds from June 24 through August 8. If the lower end

of the subsistence harvest range for St. George is reached (currently set at 300; 79 FR 27550), and the Council has not satisfied its subsistence needs, the proposed rule would enable the Council to request in writing that NMFS allow harvest up to the upper end of the harvest range. Thus, at the point when the lower end of the harvest range is reached, NMFS and the Council would have an opportunity to discuss and determine within the co-management structure and the proposed regulatory suspension provisions how the remaining harvest could be apportioned among sub-adult and young of the year males.

The proposed rule would create effective conservation controls for the implementation of the subsistence harvest by distributing the young of the year harvest proportionally to the population size, prohibiting the taking from any breeding areas where annual pup production estimates reach levels determined to be unable to sustain a harvest, suspending the harvest when two females have been killed, and terminating the harvest for the year when three females have been killed during the harvest on St. George Island. The proposed rule would clarify and acknowledge the roles and responsibilities of NMFS and the Council to manage the Pribilovians' subsistence harvest of northern fur seals cooperatively as described in the 2001 agreement.

Taking Male Young of the Year

Historically, Aleut residents in the Pribilof Islands hunted northern fur seal young of the year preferentially among the other available age classes, consistent with their cultural heritage. The Aleut word used as reference to autumn is "Kimadgim tugida," which translates to "time of fur seal hunting." The interest to continue to harvest of young of the year was noted by a U.S. Treasury agent on St. George who wrote, "Today is for pup driving, the greatest day in the life of the Aleuts" (St. George Island Agent Log Book, 1887). On the Pribilof Islands, northern fur seal young of the year were available in high concentration and close proximity to the communities. This access motivated the U.S. government to regulate the number of seals harvested while allowing the subsistence needs of the Pribilovians to be met. Pribilovians would gather, determine the sex of, and harvest male young of the year primarily in October and November, prior to weaning (Jordan, 1898). St. George, with an approximate population of 89 residents, annually harvested an average of 1,477 (range 978–2,446) northern fur seal

young of the year from 1870 through 1890.

The Russian and American island agents maintained the subsistence harvest of young of the year from the period prior to the sale of Alaska until 1890. International pelagic sealing in the Bering Sea was the primary cause of the fur seal decline in the late 19th century due to female deaths, which have a disproportionate impact on the population (see below). The termination of the harvest of young of the year on both islands in 1891 was implemented prior to the Fur Seal Treaty of 1912 and was proposed to help the recovery of the northern fur seal herd. That year, a village meeting about the termination of the young of the year harvest was held on St. Paul with the Alaska Natives agreeing to forego the harvest "if by so doing they, would aid the government to protect seal life on the islands" (St. Paul Island Agent Log book, 1891). Although they agreed to the U.S. government's proposition, the Pribilovians believed the termination of the young of the year harvest on both islands caused them greater hardship than others. In his deposition as the only Pribilovian representative during the Fur Seal Arbitration (Volume 3, 1893 p. 101) Chief Kerrick Artomanof of St. Paul said, "The pup seals are our chicken meat, and we used to be allowed to kill 3,000–4,000 male pups every year in November, but the Government agent forbade us to kill any more, and he gave us other meat in place of pup meat; but we do not like any other meat as well as pup-seal meat." The prohibition on pelagic sealing under the Fur Seal Treaty resulted in the recovery of the fur seal population. The U.S. Treasury agents allowed a few thousand sub-adult males to be harvested annually for food from 1912–1917, but they never re-initiated the young of the year harvest. The U.S. resumed the full-scale commercial harvest of sub-adult male fur seals on land in 1918 until 1984.

Following receipt of the Council's 2006 petition, NMFS began evaluating the biological and regulatory consequences of a harvest of male northern fur seal young of the year on St. George Island. Under this proposed rule, the total subsistence harvest would not increase. The proposed rule would authorize a change in the age-class of males to include young of the year during a second season after September 15. The proposed harvest of male young of the year has not been considered in previous subsistence harvest rulemaking even though it was identified as part of the rationale for the level of subsistence need of Pribilovians in the July 8, 1985

emergency interim rule (50 FR 27917) and requested previously by St. George (62 FR 17774; April 11, 1997). The estimated annual total subsistence harvest level for St. George Island would remain consistent with the subsistence harvest range estimates of 300 to 500 male animals that NMFS evaluated in 2005 under the preferred alternative in the environmental impact statement for setting annual subsistence harvest levels (NMFS 2005). The harvest level would also remain consistent with NMFS' most recent estimate of the annual subsistence needs of Alaska Natives on St. George (79 FR 27550; May 14, 2014).

NMFS does not expect that the harvest of young of the year males will have adverse effects on the fur seal population. As noted in the DSEIS (NMFS 2014), direct evidence of the population effects of a young of the year harvest is available from Russian islands, where fur seals have been harvested for commercial and subsistence purposes since 1985. The Russians harvested northern fur seal young of the year from Bering Island from 1987–2006 (Ream and Burkanov pers. comm.). The Russians commercially harvested about 4,300 young of the year fur seals, representing about 11 percent of annual pup production on Bering Island each year during this 20-year period. The proposed male young of the year harvest on St. George is 0.9 percent of the 2012 pup production estimate (150/16,000) and represents an insignificant proportion of the pup production. The Bering Island commercial harvest included only male fur seal young of the year from 1987–1992, and averaged over 6,000 annually (14.6 percent of annual production). Ten years after the initiation of the male young of the year harvest, there were no observable effects on pup production at Bering Island; the trend in pup production during this time period was not statistically different from zero. These results support a determination that a male young of the year harvest of at least 14 percent of annual production does not have any detectable direct or indirect population level effects. From 1993–1998 Russians harvested approximately equal proportions of male and female young of the year at a similar rate of 14 percent of annual production on Bering Island. During the time period beginning four years after females were first harvested on Bering Island until four years after the harvest of females stopped, the population trend was negative (~ 6 percent annual decline, Ream and Burkanov pers. comm.). NMFS analyzed the trend for females at

four years after the harvest because that is the age at which female fur seals first reach sexual maturity and indirect effects could occur. Kuzin (2010) reported that the harvest of 16,180 female young of the year from Bering Island substantially affected the reproductive core of the population and ultimately the population trend. The direct evidence from young of the year harvests on Bering Island confirms the results of NMFS' modeling of the proposed male young of the year on St. George as having insignificant effects on the population (see DSEIS, section 3.7.4).

In summary, the proposed harvest of up to 500 males, which would include up to 150 male young of the year, will likely affect less than 1 percent of the St. George Island fur seal population. Whether using direct evidence of the harvest of northern fur seal pups from their Russian breeding islands (Kuzin 2010, Ream and Burkanov pers. comm.), survival models (Towell 2007, Fowler *et al.*, 2009), or simplified direct additive losses (which assume all harvested males four years and younger would have survived to become reproductively active harem males), no population level effects of the subsistence harvest of sub-adult and young of the year males are anticipated. In contrast, the harvest of female fur seals, whether or not they are sexually mature, has been repeatedly shown to have direct adverse effects on fur seal populations. NMFS determined the measures in the proposed rule (keeping the accidental mortality of females as close to zero as practical) are the best measures to minimize adverse effects on the population.

Establishment of Two Harvest Seasons

The current regulations require the termination of the sub-adult male harvest no later than August 8 of each year. One approach to allowing the take of male young of the year would be to extend the current season from August 8 to cover the period when young of the year would be present and could be harvested. Creating one longer harvest season to accommodate the taking of two age-classes of male fur seals, however, would result in unnecessary regulatory complexity and would increase the probability of taking sub-adult females during the sub-adult male harvest. The intentional taking of sub-adult female fur seals is currently prohibited. The current end date of the sub-adult male harvest minimizes the chance of accidentally taking young female fur seals that occupy the same hauling grounds as sub-adult males at this time of year (Bigg, 1986; Baker *et al.*, 1995). As noted above, female fur

seals are disproportionately important to the breeding population, and thus efforts to minimize taking of females have been incorporated into the commercial and subsistence harvest methods over time (57 FR 33900; July 31, 1992). The proposed rule would create two seasons, and would retain all the relevant regulatory provisions and conservation benefits of the well-regulated sub-adult male subsistence harvest on St. George, while providing for a separate young of the year harvest during the non-breeding season.

Distinguishing between male and female sub-adult fur seals is difficult. Male fur seals between two and four years old overlap significantly in their size, such that a large two-year-old male seal can weigh more than a small three-year-old male seal (Fowler *et al.*, 1994; Baker *et al.*, 1994). Male fur seal pups statistically are heavier than female pups (~9.5 kg vs. 8.5 kg; Towell *et al.*, 2012) and the size difference in the sexes continues with the greatest difference between eight and eleven year olds, when adult males are nearly five to six times heavier than females of the same age (Gentry and Kooyman, 1986). Thus, a three-year-old female fur seal might be mistaken as a two-year-old male based on size alone. Handling sub-adult fur seals in order to determine sex is dangerous even for experienced handlers because of the seals' quickness, strength, and aggression. Two- to three-year-old female fur seals arrive on the Pribilof Islands during August (Bigg 1986), and are the most likely to be killed during sub-adult harvests beginning in August. The current practice of terminating the sub-adult male harvest on August 8 allows harvesters access to two-year-old males and minimizes the probability of encountering young, difficult to detect two- and three-year-old female fur seals mixed with similarly aged males (Bigg, 1986).

Sub-adult female fur seals arrive on the hauling grounds later than similarly-aged males (Bigg, 1986). Because they are sexually immature, they are not always herded by adult males into the breeding grounds as occurs with sexually mature females. A subsistence harvest of sub-adult fur seals on St. Paul Island in September 1986, when the regulations allowed the subsistence harvest season to be extended, resulted in the accidental taking of 16 females (NMFS unpublished data) and NMFS' termination of the harvest. Based on the high probability of taking sub-adult female fur seals, NMFS revised the fur seal harvest regulations to eliminate the regulatory option for the Secretary to extend the subsistence harvest of fur

seals on the Pribilof Islands beyond August 8 each year (57 FR 33900; July 31, 1992).

Young of the year are smaller than sub-adults and their canine teeth are just completing their emergence, allowing harvesters to more safely handle them than the older seals. Experienced harvesters can safely handle and distinguish male from female young of the year seals prior to harvest. Therefore, NMFS proposes two separate harvest seasons for St. George Island, the first to allow the harvest of sub-adult males until August 8, as has been implemented for over 100 years, and the second season from September 16 until November 30 to allow harvest of male young of the year that can be reliably distinguished from females when handled. NMFS has proposed the schedule of the second harvest season based on the request of the Council for a harvest in the autumn. In order to set the start of the second subsistence harvest season, NMFS considered that the end of the breeding season occurs in August, and determined that harvests as early as mid-September would protect late-breeding young fur seals and allow the flexibility in timing for harvests to occur. The second season would allow time for young of the year to begin using alternative sites separate from those used by lactating adult female and sub-adult fur seals, thereby providing the opportunity to reduce incidental harassment during the harvest season for male young of the year. The end date of the proposed second subsistence harvest season is based on the absence of the majority of the fur seal population due to their migration from the Pribilof Islands by early December.

Distributing the Harvest

NMFS' intent in allowing harvests at all St. George breeding areas is to avoid concentrating harvest pressure on a subset of the population and to provide adequate opportunity for the community to satisfy their subsistence needs. The U.S. government harvested sub-adult male fur seals commercially during the breeding season at all nine road-accessible hauling grounds on St. George Island from 1918 until 1972. The distribution of the subsistence harvest effort under the existing regulations, in contrast, has been limited to either one or two hauling grounds in any year. As a result, the current harvest regulation concentrates sub-adult male mortality at Northeast and Zapadni hauling grounds. These restrictions on St. George Island subsistence harvest locations were the result of an effort to preserve experimental and control sites for scientific investigations during the

commercial harvest period (Gentry, 1998), which are no longer being pursued. The Council reported in their 2008 and 2009 harvest reports that sufficient numbers of harvestable sub-adult males are not always available at the Northeast and Zapadni hauling grounds, but are likely available on other sub-adult male hauling grounds. NMFS harvest and population records corroborate the lack of availability of sub-adult males when harvests are limited to a subset of the accessible hauling grounds (62 FR 1774; April 11, 1997). The proposed rule would remedy this circumstance by authorizing sub-adult male harvests at all hauling grounds except those that NMFS determines to be at risk of reaching unsustainable population levels (as discussed in more detail below). The proposed rule would avoid concentration of effects on specific hauling grounds and reduce the potential for sub-adult male seals to be unavailable for subsistence harvests due to their absence from just one or two hauling grounds.

NMFS considered the availability and effects of harvests from alternative hauling grounds for sub-adult males on St. George Island separate from those for young of the year because the sub-adult males and male young of the year occupy almost exclusively non-overlapping habitat on land. The sub-adult male harvest occurs during the breeding season on the hauling grounds. The proposed young of the year harvest would occur during the non-breeding season, but while young are still suckling in those areas that earlier in the year were breeding and non-breeding areas. Young of the year harvests could occur in any areas occupied by young of the year. By imposing management measures to ensure that harvest of young of the year is evenly distributed, the proposed rule would minimize the concentration of young of the year harvest effort and possible associated sub-lethal effects that might otherwise occur in locations closer to the village or with easier road access. NMFS proposes to distribute the young of the year harvest into three regions (North, East, and South) of fur seal breeding. The North region includes two separate and adjacent breeding areas (North and Staraya Artil rookeries) which make up 32.9 percent of the island population. The East region includes East Reef and East Cliffs rookeries, which account for 33.3 percent, and the South region includes South and Zapadni rookeries account for the remaining island production (33.7 percent). Under the proposed rule, up to 50 male pups could

be harvested from each region, reducing the possibility for concentration of lethal or sub-lethal effects in particular areas.

Prohibition on Taking Young of the Year From Small Breeding Areas

Approximately 16,000 pups were born on St. George Island in 2012; however, the numbers born at each breeding area vary widely (Towell *et al.*, 2013). Northern fur seals exhibit strong site fidelity (i.e., repeatedly return to a site over years) and philopatry (i.e., return to the place of birth) (Gentry, 1998). These two behavioral tendencies have allowed humans to harvest and study fur seals for many decades and are described more fully in the DSEIS (NMFS, 2014). In summary, adult female fur seals return to a 20-meter diameter area of the breeding site to give birth, breed, and suckle their young during the breeding season (Gentry, 1998). Baker *et al.* (1995) reported that female fur seals return to their place of birth at a younger age than males, but both sexes show greater philopatry as they age. Baker *et al.* (1995) reported that within one season males showed a tendency to be found at their natal site after their initial landing on the island. In addition, satellite telemetry data has shown that fur seals tagged and tracked from specific breeding areas use similar marine foraging areas and have similar diets (Robson *et al.*, 2004; Sterling and Ream, 2005; and Zeppelin *et al.*, 2006).

NMFS proposes a new conservation control to prohibit young of the year harvests at breeding locations determined to be at risk of reaching unsustainable population levels. Biennial estimates of the number of pups born (i.e., pup production) at each breeding area will be integrated, as the data become available, to evaluate the statistical probability of pup production falling below a level that is necessary for long-term stability. To determine a sustainable population level, NMFS first evaluated models that consider the maintenance of genetic diversity in a population (effective population size, N_e) and the effects of demography and environmental variability on population persistence (minimum viable population size, MVP). Adapting model estimates from Olesiuk (2012), NMFS calculated minimum sustainable pup production levels for the breeding sites, and these ranged from 300 (N_e model) to 600 (MVP model) pups born (Johnson, 2014). NMFS then evaluated historical pup production data from 1912–1922, when the population was recovering from its lowest levels in recorded history, to provide an empirical estimate of minimum viable

pup production. NMFS identified four rookeries that during the 1912–1922 period had declined to (or below) the range of 300 to 600 pups born; of these, three rookeries increased and remained above that range, and one went extinct. Lagoon Rookery reached a low of 388 pups born and had begun to increase during the 1912–1922 period. Despite reaching 500 pups born, however, the rookery eventually went extinct. Based on this information about rookery persistence and extinction at all-time-low recorded levels of fur seal abundance, and in consideration of the range calculated from models (300–600 pups), NMFS proposes to use 500 as the pup production threshold for the quasi-extinction or minimum sustainable pup production size. As new fur seal data become available, NMFS may refine this threshold.

To evaluate whether the smallest breeding areas are susceptible to extinction, NMFS will project estimated biennial pup production at each breeding area 10 years into the future (see Johnson, 2014). If the projections indicate a greater than 5 percent probability that pup production at a breeding site will fall below 500 within the ten-year time horizon, harvest will not be allowed at that site. The ten-year time horizon allows for natural variability of pup production into the future. Pup production for each rookery is estimated separately every two years, and therefore rookery specific young of the year harvests can be managed separately during this period. For example, using 2012 data the quasi-extinction analysis of pup production and trend for Staraya Artil rookery indicates the population at that rookery has over a 65 percent probability of falling below 500 during the next 10 years, and none of the other breeding areas have greater than a 5 percent probability of reaching 500 (Johnson, 2014). NMFS adopted a 5 percent probability of low pup production within ten years based on thresholds from Gerber and DeMaster (1999). Based on the quasi-extinction analysis using methods from Johnson (2014), NMFS would prohibit all harvests at Staraya Artil rookery until pup production from that rookery increases to a level at which there is a 5 percent or lower probability of pup production being below 500 during the next 10 years.

The proposed rule would distribute the young of the year harvest limit equally across the three regions of two rookeries each. Thus, while Staraya Artil rookery remains closed, harvesters could take up to 50 male young of the year from the remaining rookery in the North Region and sub-adult males as

available from the three hauling grounds located at North Rookery. This geographic dispersion of effort and prohibition on the taking of young of the year from areas with small population size would allow NMFS and the Council to ensure individual breeding locations do not reach population sizes low enough that recovery is highly uncertain. NMFS and the Council will review and update the statistical analysis, as new data are available, and annually during the co-management meeting will determine the locations where harvests can occur based on the updated analysis.

Suspension or Termination of the Harvest

Historically, the northern fur seal population has declined during periods with no prohibitions on intentional or un-intentional harvest of females. The northern fur seal population declined through 1979 as a result of female harvests, and well beyond expectations of the member nations to the treaty (York and Hartley, 1981). Trites and Larkin (1989) estimated that a 2–5 percent reduction in adult female survival was the most likely contributor to the lack of recovery by the Pribilof fur seal population. NMFS' population modeling indicates female young of the year may have at least five to six times higher reproductive value than male young of the year (NMML unpublished data), primarily due to their reproductive ecology whereby one male inseminates many females.

The current regulations prohibit the intentional taking of sub-adult female fur seals and any taking of adult fur seals. Since 1985, five sub-adult females have been accidentally harvested on St. George Island out of a total harvest of 4,994 seals (0.1 percent accidental sub-adult female harvest rate).

The proposed rule would suspend the harvest in the event of two female mortalities and terminate the harvest in the event of a third female mortality. These measures would create a powerful incentive for harvesters to spend adequate time to identify females correctly and avoid killing them. NMFS' intent in defining the upper limit of female mortalities at three per year is to encourage harvesters to develop best practices as part of the young of the year harvest to ensure that the accidental female harvest rate under the new regulations remains close to zero.

If two females are killed and NMFS suspends the harvest, NMFS could reverse the suspension upon review of the circumstances of the female mortalities and identification by St. George and NMFS of a remedy to

minimize the risk of additional accidental mortality of any female fur seals. If the harvest is resumed and another female is killed, then the harvest would be terminated for the year.

Cooperative Management of the Subsistence Harvest

The current regulations at 50 CFR 216.74 describe data collection needs and other requirements that do not reflect the current status of cooperative management of subsistence harvests with Alaska Natives under section 119 of the MMPA. The Council and NMFS regularly meet to share information and discuss cooperative management of the subsistence harvest of marine mammals. The intent of co-management is for NMFS to work jointly with Alaska Native interests (in this case the Council) to develop such measures as best harvest practices, which balance conservation, sustainability, and cultural interests. Under the proposed rule the best harvest practices developed after harvest experience is gained for young of the year would be posted on the NMFS Alaska Region Web site.

The best harvest practices will include a description of jointly agreed-upon measures to consider before each young of the year harvest. These measures would include criteria such as whether adult females are present at the harvest location and, if so, how harvesters can reduce activity, reduce duration on site, avoid harvest locations where downwind seals will be unintentionally harassed or displaced, or choose an un-harvested location where adult females are not present. To effectively address the detection of female young of the year, the best practices may specify a minimum number of independent handlers who would sex every young of the year seal prior to the harvest, or the number of times a young seal must be sexed as male before it could be harvested.

Alternatively, a best harvest practice may be to release all young of the year not positively identified as male on their first handling. Harvesters will maintain as a best practice a record of previous harvest attempts to compare with future harvest locations where young have been observed to ensure the harvest is not concentrated at any location where sub-adult male and female or adult female fur seals are present. The community and harvesters will identify their individual needs for meat and handicraft materials and any cultural preference for various parts of the young seal to encourage full utilization of the edible and non-edible

portions of each harvested seal. The Council and NMFS representatives who will be present at each young of the year harvest will share, in advance, harvest plans and schedules to ensure opportunities to sample tissues and measure young during and after the harvest.

The specific measures to be included in the best harvest practices are uncertain because an autumn young of the year harvest has not occurred for over 120 years, and the harvest methods were not documented. In addition, the habitat occupied by fur seals in the autumn is highly variable depending on the prevailing weather and many unknown factors. As a result, NMFS expects that best harvest practices will be identified through harvest experience and adaptation of recent research efforts to tag young of the year over the past 7 years, as well as changes in the fur seal population and community needs. NMFS and the Council intend to describe the best harvest practices in a document that will be improved annually after review and consideration in accordance with the co-management agreement. NMFS and the Council agree that the best harvest practices must include a description of field measures intended to: (1) Reduce impacts to lactating females; (2) ensure the detection of female young of the year; (3) distribute the harvest proportionally among all the breeding areas; (4) ensure full utilization of harvested young of the year; and (5) describe opportunities for coordination of sampling and measuring harvested young of the year during the harvest season.

The Council coordinates the sub-adult male harvest under the existing Federal regulations and tribal resolutions for their tribal members on St. George. The Council organizes a crew that capture and herd sub-adult males from their resting grounds to the inland subsistence harvest areas near public road access. Tribal members choose and harvest seals for their families and elders from those herded to the subsistence areas. The community of St. George views every harvest as an opportunity to pass on the skills and knowledge of fur seal behavior and harvest methods to the next generation. For the proposed young of the year harvest, the Council has expressed its intention to utilize the same harvest methodology it uses for the existing sub-adult harvest, whereby a crew is organized in advance and assesses those locations most likely to be harvested. From those likely harvest locations the crew would consider the prevailing weather conditions, presence of harvestable young of the year,

accessibility and space for harvest, presence of non-harvestable seals, and the impact those non-harvestable seals would have on the implementation of the harvest. As noted above, under the proposed rule, NMFS and the Council during the co-management process would consider best harvest practices based on actual experience to ensure the young of the year harvest is consistent with the regulations and long term conservation of northern fur seals.

Visits to Fur Seal Rookeries

50 CFR Part 216.81 prohibits, from June 1 to October 15 of each year, the unauthorized approach or entry of any person into any fur seal rookery or hauling ground or past any posted sign forbidding passage. Based on the latest scientific evidence, fur seals continue to use portions of the breeding and hauling grounds after October 15. The current regulations allow the public to pass beyond the posted signs and gates into fur seal habitat after October 15, but do not authorize incidental harassment of resting seals who occupy a smaller, but undefined area previously restricted and posted. The proposed rule would authorize St. George subsistence fur seal harvesters to enter the posted rookeries and hauling grounds of northern fur seals from September 16 to November 30 (i.e., during the proposed new second season).

Request for Comments

NMFS developed the proposed northern fur seal harvest regulations to accomplish the intent of the Council's petition and enhance the conservation of northern fur seals. NMFS solicits public comment on the proposed regulations.

Classification

National Environmental Policy Act

NMFS prepared a DSEIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals on St. George Island.

Executive Order 12866 and Regulatory Flexibility Act

This proposed action has been determined not to be a significant rule under Executive Order (E.O.) 12866.

NMFS prepared an analysis under the Regulatory Flexibility Act (RFA) that carefully examined the potential impacts, including possible economic benefits and costs, and potential adverse economic burdens that may accrue uniquely to small entities, attributable to the action described above. NMFS affirms that the analysts have used the best available scientific data and commercial information to examine the

possibility that a small entity, directly regulated by the proposed action, may potentially incur a significant adverse economic impact attributable to its adoption. For the reasons set out below, we certify that this rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The proposed action would change the management of the subsistence harvest on St. George Island in response to the three significant aspects of the petition: (1) Allow for the taking of male young-of-the-year northern fur seals during a separate autumn season each year, within the already established upper harvest level of 500 fur seals; (2) reduce the harvest concentration at designated breeding areas or hauling grounds on St. George Island by dispersing subsistence effort more broadly; and (3) eliminate obsolete requirements for subsistence harvesters to cooperate with scientists during the subsistence harvest. The proposed action would also incorporate new conservation controls, intended to reduce female harvest mortality, prohibit harvests at breeding locations when the most recent pup production estimate has fallen below a level which can sustain a harvest, reduce concentration of harvest effort at locations closer to the village or road access, and encourage the development of best harvest practices through the existing co-management structure.

This action directly regulates the subsistence harvest of northern fur seals by Alaska Natives residing in the community of St. George. NMFS has identified two small entities that may be directly regulated by this action—the Aleut Community of St. George Island, Traditional Council (a federally-recognized tribal government), and the St. George Tanaq Corporation (an Alaska Native village corporation organized under 43 U.S.C. 1601), both of which have populations/memberships of fewer than 200. The harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only and limited exclusively to Pribilovians. The estimates of subsistence need are derived based on historical harvest levels and direct consultation with the Tribal Government from St. George. Neither of the two small entities impacted by this rule will experience any adverse economic impacts as a result of this rule. Indeed, this action regulates only behavior and practices of individual subsistence hunters residing on St. George Island, and does not alter, in any way, the existing regulatory environment pertaining to the identified small entities.

This action regulates only the practices and behavior of individual subsistence fur seal hunters on St. George Island, none of whom meet the definition of “small entity” under SBA criteria. Because this action only addresses subsistence harvests of fur seals, and imposes no additional burdens or requirements on those regulated, NMFS believes this rule will not have a significant economic impact on a substantial number of small entities.

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 the city and tribal governments on St. George Island in response to a petition by the tribal government of St. George.

Executive Order 13175—Native Consultation

Executive Order 13175 of November 6, 2000, the executive Memorandum of April 29, 1994, the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination Policy Statement (78 FR 33331; June 4, 2013) outline NMFS's responsibilities in matters affecting tribal interests. Section 161 of P.L. 108–100 (188 Stat. 452) as amended by section 518 of P.L. 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS contacted the tribal government of St. George Island and their local Native corporation (Tanaq) about revising the regulations regarding the subsistence harvest of northern fur seals on St. George Island and their input is incorporated herein.

Collection-of-Information Requirements

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the best harvest practices and harvest reporting is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information.

NMFS seeks public comment regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

References Cited

A list of all the references cited in this proposed rule may be found on www.alaskafisheries.noaa.gov/protectedresources/seals/fur.htm (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Alaska, Marine Mammals, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: July 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for 50 CFR part 216 continues to read as follows:

Authority: 16 U.S.C. 1151–1175. 16 U.S.C. 1361–1384.

■ 2. In § 216.72:

- a. Remove and reserve paragraph (c);
- b. Revise the section heading and paragraphs (d), (e), and (f); and
- c. Add paragraph (g) to read as follows:

§ 216.72 Restrictions on subsistence fur seal harvests.

* * * * *

(c) [Reserved]

(d) *St. George Island*—Sub-adult male fur seals may be harvested from the hauling grounds associated with the following breeding areas beginning after June 23 each year: North, Staraya Artil, East Reef, East Cliffs, South and Zapadni (see Figure 1 for details).

(1) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested and un-harvested fur seals and minimize the take of female fur seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. No fur seal may be taken except by sealers using the harvesting methods implemented to reduce disturbance, injury, and accidental take of female fur seals. The harvesting method shall include organized drives of fur seals from congregating areas to inland killing fields, followed by stunning and immediate exsanguination unless the NMFS representatives, in consultation with the Pribilovians conducting the harvest, determine that alternative methods will not result in increased stress to harvested and un-harvested fur seals, increased disturbance or injury to resting fur seals, or the accidental take of female seals.

(2) Intentional harvest of adult male fur seals or female fur seals is prohibited.

(3) Pribilovians may harvest up to 150 male fur seal young of the year annually from September 16 through November 30 on St. George Island as described in paragraph (d)(1) and shown in Figure 1 to part 216. No more than 50 male young of the year may be harvested from each of the following regions where fur seals congregate: East region includes the breeding areas known as East Reef and East Cliffs rookeries and the associated non-breeding hauling grounds; South region includes the breeding areas known as Zapadni and South rookeries and the associated non-breeding hauling grounds; and North region includes the breeding areas known as North and Staraya Artil rookeries and associated non-breeding hauling grounds.

(4) No young of the year fur seals may be taken from any designated breeding area where the most recent NMFS analysis projects that pup production has greater than a 5 percent probability of falling below a level capable of sustaining a harvest in 10 years.

(5) No more than 120 days after the final subsistence harvest each calendar year, NMFS representatives and St. George Island community members must review the implementation of the

harvest and consider best harvest practices and determine if implementation can be improved to better meet the subsistence needs of the St. George Island community or reduce negative effects on fur seals.

(e) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week

(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(f) *Harvest suspension provisions*—(1) The Assistant Administrator is required to suspend the take provided for in § 215.31 when:

- (i) (S)He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied; or
- (ii) (S)He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached; or

(iv) Two female fur seals have been killed on St. George Island.

(2) A suspension based on a determination under paragraph (f)(1)(ii) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (f)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine

if a finding under paragraph (f)(1)(i) of this section is warranted. If the harvest is not suspended under paragraph (f)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(4) A suspension based on a determination under paragraph (f)(1)(iv) of this section may be lifted by the Assistant Administrator if (s)he finds that the conditions that led to the killing of two female fur seals have been remedied and additional or improved methods to detect female fur seals in the harvest are being implemented.

(g) *Harvest termination provisions*—
 (1) The Assistant Administrator shall terminate the annual take provided for in § 216.71 on August 8 for sub-adult males on St. Paul and St. George Islands and on November 30 for male young of the year on St. George Island.

(2) The Assistant Administrator shall terminate the take provided for in § 216.71 when (s)he determines under paragraph (f)(1)(i) or (f)(1)(iii) of this section that the subsistence needs of the Pribilovians on the island have been satisfied or the upper end of the harvest

range has been reached, whichever occurs first.

(3) The Assistant Administrator shall terminate the take if a total of three female fur seals are killed during the season.

■ 3. Section 216.74 is revised to read as follows:

§ 216.74 Cooperation between fur seal harvesters, Tribal and Federal Officials.

Federal scientists and Pribilovians cooperatively manage the subsistence harvest of northern fur seals under § 119 of the Marine Mammal Protection Act (16 U.S.C. 1388). The Federally recognized tribes on the Pribilof Islands have signed agreements describing a shared interest in the conservation and management of fur seals and the designation of co-management councils that meet and address the purposes of the co-management agreements for representatives from NMFS, St. George and St. Paul tribal governments. NMFS representatives are responsible for compiling information related to sources of human-caused mortality and serious injury of marine mammals. The Pribilovians are responsible for reporting their subsistence needs and actual level of subsistence take. This information is used to update stock

assessment reports and make determinations under § 216.72. Pribilovians who take fur seals for subsistence uses collaborate with NMFS representatives and the respective Tribal representatives to consider best harvest practices under co-management.

■ 4. Revise § 216.81 to read as follows:

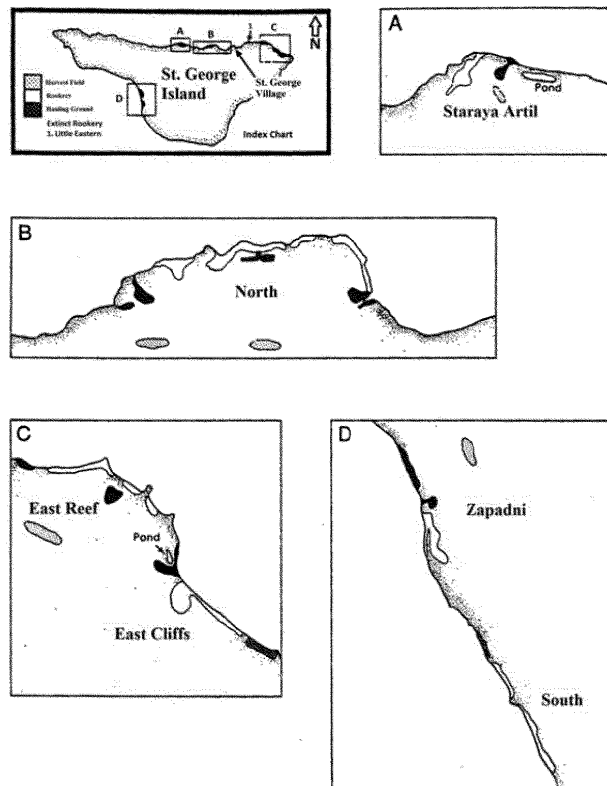
§ 216.81 Visits to fur seal rookeries.

(a) From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

(b) The presence of fur seals on the rookeries extends before and after the dates described in § 216.81(a) on the Pribilof Islands and taking by harassment is still prohibited under § 216.11. From September 16 to November 30 of each year access is allowed to the rookeries or hauling grounds on St. George Island for the purpose of authorized harvests of northern fur seals.

■ 5. Add Figure 1 to part 216 as follows:

Figure 1. Northern fur seal breeding areas (rookeries) and hauling grounds on St. George Island, Alaska.



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BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 660**

RIN 0648-XD344

Fisheries Off West Coast States; Pacific Bluefin Tuna

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

ACTION: Notice of receipt of rulemaking petition to prohibit Pacific bluefin tuna fishing and request for comments.

SUMMARY: NMFS announces the receipt of, and request public comment on, a petition for rulemaking under the Administrative Procedure Act. The Center for Biological Diversity (CBD), a non-governmental organization, has petitioned the U.S. Department of Commerce to promulgate regulations to prohibit fishing for Pacific bluefin tuna and to identify specific reference points used to determine if overfishing is occurring or if the stock is overfished. The petition asserts that Pacific bluefin tuna are not adequately protected under the existing Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The petition also states that more robust international actions are necessary for ending overfishing of the stock. The petition seeks that NMFS take action to amend the HMS FMP and its implementing regulations for addressing domestic fishing on Pacific bluefin tuna. The petitioner also requests that NMFS develop recommendations to the Secretary of State to end overfishing of Pacific bluefin tuna at the international level, which would not be a rulemaking action.

DATES: Comments will be accepted through September 22, 2014.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0076, by any 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-2014-0076, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Mark Helvey, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long

Beach, CA 90802. Attn: Pacific Bluefin Tuna.

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 to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the petition are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2014-0076 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or *Regional Administrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mark Helvey, NMFS, 562-980-4040, mark.helvey@noaa.gov.

SUPPLEMENTARY INFORMATION:**Petition for Rulemaking**

The petition submitted to the Department by CBD states that Pacific bluefin tuna is a highly migratory pelagic fish primarily distributed through the North Pacific Ocean. The petition notes that most of the stock occurring in the eastern side of the Pacific are juveniles. The petition also notes that the major countries fishing Pacific bluefin since 1952 are Japan, Mexico, Chinese-Taipei, and Korea while the U.S. participation has declined. The petition acknowledges that while the U.S. catch represents only a small portion of Pacific bluefin catch, that NMFS still has a duty to take the steps it can to slow or reduce overfishing. The petition argues that without immediate domestic protections, Pacific bluefin face irreversible and irreparable harm from ongoing overfishing. Further, the petitioner states that their proposed domestic actions can make an important contribution to ending overfishing of Pacific bluefin tuna.

The petition cites specific legal responsibilities of NMFS for addressing the overfishing and overfished status the agency has determined the stock is experiencing under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and cites the stated international overfishing provisions at section 304(i). This provision of the MSA applies to a fishery that the Secretary of Commerce has determined to be overfished, thereby requiring the appropriate fishery management council to develop recommendations for domestic regulations addressing the relative impact of U.S. fishing vessels on the stock and, if developed by a council, the council shall submit such recommendations to the Secretary. The petition asserts that Pacific Fishery Management Council has failed to meet its statutory duty to develop recommendations for domestic regulation in response to NMFS' determination. The petition also lists three specific international actions and requests that NMFS make recommendations regarding these actions to the Secretary of State and Congress. These actions fall outside the petitioner's request for rulemaking but are included in this notice as an opportunity to solicit public comment.

The petition specifically requests that NMFS promptly initiate rulemaking to amend the HMS FMP to address the impact of U.S. fishing vessels on Pacific bluefin tuna by taking the following measures:

"1. Prohibit fishing for Pacific bluefin tuna under 50 CFR 660.711(a). In the alternative, establish annual catch limits for bluefin tuna and a permanent minimum size requirement to protect age classes 1-2 from fishing mortality; and

"2. Identify specific values for reference points used to determine if overfishing is occurring or if the stock is overfished, such as maximum fishing mortality threshold and the minimum stock size threshold. 50 CFR 600.310(h)(2)(ii)."

If NMFS determines that rulemaking is appropriate, NMFS will notify the Pacific Fishery Management Council and recommend rulemaking through the council process.

Additional Requests Beyond Rulemaking

The Petitioner also requests that NMFS make recommendations to the Secretary of State and Congress (not a rulemaking) regarding international actions to end overfishing in the fishery and rebuild Pacific bluefin tuna