

Subsector or industry code	Exceptions and/or limitations
562211—Hazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562212—Solid Waste Landfill .....	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562213—Solid Waste Combustors and Incinerators.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562219—Other Nonhazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562920—Materials Recovery Facilities.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>

■ 4. Amend § 372.38 by revising paragraph (h) to read as follows:

**§ 372.38 Exemptions.**

\* \* \* \* \*

(h) *Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212230 or 212299, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 170303228-7752-02]

RIN 0648-BG71

**Subsistence Taking of Northern Fur Seals on the Pribilof Islands; Final Annual Subsistence Harvest Levels for 2017-2019**

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

**ACTION:** Notice; Final annual fur seal subsistence harvest levels.

**SUMMARY:** Pursuant to the regulations governing the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) (northern fur seals), NMFS is publishing the expected harvest levels from 2017-2019 on St. George and St. Paul Islands, Alaska (the Pribilof Islands) to satisfy subsistence requirements of the Alaska Natives residing on the Pribilof Islands (Pribilovians). NMFS is establishing the 2017-2019 harvest levels at 1,645 to

2,000 fur seals for St. Paul Island and 300 to 500 fur seals for St. George Island.

**DATES:** Effective September 18, 2017.

**ADDRESSES:** Two Final Environmental Impact Statements (EISs), one Draft EIS, annual subsistence harvest reports, and other references are available on the Internet at the following address: <https://alaskafisheries.noaa.gov/pr/fur-seal>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Williams, NMFS Alaska Region, 907-271-5117, [michael.williams@noaa.gov](mailto: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.* Pursuant to 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. After a 30-day comment period, NMFS must publish a final notification of the expected annual harvest levels for the next three years.

On May 18, 2017 (82 FR 22797), NMFS published the summary of the 2014-2016 fur seal harvests and provided a 30-day comment period on the estimates of the number of fur seals expected to be taken annually to satisfy the subsistence requirements of the Pribilovians of each island for 2017-2019. In that notice, NMFS estimated the annual subsistence needs for 2017-2019 would be 1,645 to 2,000 fur seals for St. Paul Island and 300 to 500 fur seals for St. George Island and provided

background information related to these estimates.

**Summary of Changes From Proposed Annual Harvest Estimates**

NMFS did not make any changes from the proposed notice of annual harvest levels. The harvest levels for each island remain the same and therefore the annual harvest levels remain 1,645 to 2,000 fur seals for St. Paul Island and 300 to 500 fur seals for St. George Island.

**Comments and Response**

NMFS received nine distinct comments from four parties on the notice of the 2017-2019 proposed annual harvest estimates (82 FR 22797; May 18, 2017). A summary of the comments received and NMFS's responses follows.

*Comment 1:* In an effort to stabilize the ecosystems, only indigenous people should be allowed to take part in these kills and every effort should be made to establish a line of communication with indigenous leaders regarding concerns of human influence and its effects on the ecosystem. Removing fur seals could result in an increase in lower trophic levels and a decrease in higher trophic levels.

*Response 1:* Pursuant to the Fur Seal Act, 16 U.S.C. 1152, "it is unlawful, except as provided in the chapter or by regulation of the Secretary, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States . . ." Regulations issued under the authority of the Fur Seal Act authorize Pribilovians to take fur seals on the Pribilof Islands if such taking is for subsistence uses and not accomplished in a wasteful manner (50 CFR 216.71). NMFS works in partnership with the Pribilovians under co-management agreements pursuant to the Marine Mammal Protection Act to discuss human influences on the ecosystem and issues of concern for the northern fur seal population on the

Pribilof Islands in particular. NMFS prepared an Environmental Impact Statement for Setting the Subsistence Harvest of Northern Fur Seals (NMFS 2005), which analyzed the effects of the subsistence harvest of fur seals on the Pribilof Islands. That analysis indicated that trophic level changes were not expected to occur, and NMFS has not observed trophic level changes resulting from the harvests in the intervening years. NMFS recently prepared a Supplemental Environmental Impact Statement for the Management of Subsistence Harvest of Northern Fur Seals on St. George, (NMFS 2014) and a Draft Supplemental Environmental Impact Statement for the Management of Subsistence Harvest of Northern Fur Seals on St. Paul (NMFS 2017). Both analyses indicate that trophic level changes still are not expected to occur.

*Comment 2:* The currently authorized harvest is higher than is justifiable given that actual harvest numbers have been lower than authorized harvest levels since 1985 and given the continued decline in fur seal pup production.

*Response 2:* NMFS disagrees. NMFS authorizes the harvest levels in order to satisfy the subsistence requirements of Alaska Natives on each island. NMFS evaluated the complexities of establishing an annual subsistence requirement in the EIS for the subsistence harvest of northern fur seals on the Pribilof Islands (NMFS 2005). The estimates of the number of seals expected to be taken annually over the next three years to satisfy the subsistence requirement reflects a combination of nutritional (food security), social, and cultural needs. The actual amount harvested in a given year may be less than the subsistence requirement and is dependent upon the seasonal availability of fur seals and other food resources as well as other factors such as environmental variability and the availability of harvesters. Through the co-management process NMFS and the Tribal governments have discussed the estimation of subsistence requirements and importance to community members to ensure the subsistence harvest levels are sufficient to account for environmental changes and changing needs of the Pribilovians.

NMFS arrived at the authorized harvest level of 1,645 to 2,000 fur seals for St. Paul Island and 300 to 500 fur seals for St. George Island after considering these factors, consulting with Tribal representatives, and reviewing information in the environmental analyses which indicated that harvests up to this level will not have significant consequences for the

fur seal population (NMFS 2005, 2014, and 2017). While NMFS acknowledges a decline in pup production, NMFS explained in the proposed notice that fur seal reproduction depends disproportionately on females. Consequently, the subsistence harvest of fur seals is limited to males that have not reached adulthood. Further, harvest at the maximum allowable level on St. George and St. Paul Islands would amount to 21.2 percent of the Potential Biological Removal (PBR) level (*i.e.*, 21.2 percent of the maximum number of animals, not including natural mortalities, that may be removed from the stock while allowing the stock to reach or maintain the optimum sustainable population level). However, PBR assumes random mortality across all ages and both sexes. Because the subsistence harvest is regulated to select only sub-adult male fur seals (including pups on St. George) the population-level effect of the subsistence harvest on the stock is lower than 21.2 percent of PBR.

*Comment 3:* The Pribilovians have managed to feed themselves and increase their own local population for over 30 years without the need of killing thousands of fur seals annually.

*Response 3:* NMFS disagrees that the local populations on St. Paul and St. George have increased over the past 30 years. Both the Alaska Native population and total population on St. Paul and St. George are smaller today than 30 years ago (NMFS 2017). In recent years fur seal harvests on both islands have been lower than the allowable harvest levels NMFS is identifying here (1,645 to 2,000 fur seals for St. Paul Island and 300 to 500 fur seals for St. George Island). As noted above in response to Comment 2, the actual amount harvested may be less than the full subsistence requirement due to factors such as environmental variability, availability of fur seals and other food resources, and the availability of harvesters.

*Comment 4:* NMFS should cap the harvest levels at the highest number killed in the most recent five year period.

*Response 4:* This comment is beyond the scope of this action. NMFS has developed the proposed and final notice pursuant to current regulations at 50 CFR 216.72(b). These regulations dictate that NMFS provide a summary of the preceding three years of harvesting and a discussion of the number of seals expected to be taken annually over the next three years to satisfy the subsistence requirements of St. George and St. Paul Islands. Through this notice NMFS is neither proposing nor

seeking comment on alternative ways to set harvest caps.

*Comment 5:* NMFS should refrain from relying on the PBR level as the basis for its conclusion that the proposed harvest levels will not have adverse effects on the Eastern North Pacific Stock of fur seals. Instead NMFS should be using an approach that assesses the impact of losses to the population from subsistence harvests in addition to the population decline that already is occurring and that may continue to occur.

*Response 5:* NMFS disagrees. Evaluating harvest levels relative to PBR is a valuable means to use the best available scientific information to evaluate the consequences of human caused mortality. As stated in response to Comment 2, harvest at the maximum allowable level on St. George and St. Paul Islands would amount to 21.2 of the PBR, and PBR assumes random mortality across all ages and both sexes. Because the subsistence harvest is regulated to select only sub-adult male fur seals (including pups on St. George) the population-level effects of the subsistence harvest on the stock is lower than 21.2 percent of PBR.

In addition, NMFS has modeled and analyzed the population consequences of various harvest levels and age and sex restrictions on the harvest using alternative methods besides PBR, and has come to a similar determination: That the harvests of non-breeding male fur seals at the upper limit defined do not measurably effect the abundance or reproductive potential of the fur seal population, even in light of the observed decline in the population (NMFS 2005, 2014). Analysis provided in the 2017 draft SEIS on population consequences of various harvest levels and age and sex restrictions for St. Paul Island is also consistent with those conclusions.

*Comment 6:* NMFS should provide a more rigorous analysis of subsistence needs, including a discussion of (1) why NMFS believes that those needs are more than five times higher than the average number of seals harvested per year on St. Paul over the past 15 years, (2) whether St. Paul residents have been foregoing the opportunity to stockpile meat during the harvest season for use later in the year and, if so, why this might be the case, and (3) how any shortfalls in the availability of seal meat may have been offset by greater reliance on other subsistence species (*i.e.*, are data available that show corresponding trends in these other harvests?).

*Response 6:* As indicated in response to Comment 2, NMFS, in consultation with the Tribal governments, considers recent harvest levels and nutritional

(food security), social, and cultural needs when developing estimates of the number of fur seals expected to be taken annually to satisfy the Pribilovians' subsistence requirements over the next three years. During co-management meetings between NMFS and the Tribal governments, the Pribilovians conveyed that sudden, unanticipated, and prolonged environmental and/or socioeconomic changes may alter the annual subsistence requirements. As a result, the Pribilovian communities need flexibility built into the estimate of the number of fur seals expected to satisfy their subsistence requirements. The estimated number of seals expected to satisfy the subsistence requirements must be higher than the average number of seals harvested annually in recent years in order to ensure the Pribilovians' subsistence requirements are satisfied annually over the next three years.

Pribilovians forego opportunities to stockpile fur seal meat during the harvest season due to practical limitations and costs of freezer space, limited availability of volunteer harvesters due to competition with wage-earning jobs, and competition for available labor from the local halibut fishery. The Pribilovians have repeatedly indicated that seal meat is not interchangeable or replaceable with other meat. No other marine mammals are available in the same manner on the Pribilof Islands. Steller sea lion and harbor seal hunting primarily occurs during the winter and spring in the nearshore waters of the Pribilof Islands when few if any fur seals are present, and the harvest levels are modest due to limited availability. Approximately 20 Steller sea lions were successfully retrieved each year on St. Paul over the past five years (Aleut Community of St. Paul Island unpublished data), and changes in any one year most likely represent a natural change in availability rather than the ability to substitute for the fur seal harvest by increasing hunting effort for sea lions.

There are no data available to evaluate how changes in availability of one subsistence resource may be offset by another, and the Pribilovians have indicated that subsistence resources are not interchangeable or replaceable. Pribilovians rely on fur seals to provide a significant portion of their annual meat requirement. In addition, as indicated in the response to Comment 2, the fur seal harvest provides a cultural sharing opportunity to connect the community with their environment and history. Even when fewer seals are harvested, the cultural component is important. Shortfalls of meat based on their availability can be offset, but not

replaced, by greater use of store-bought or other subsistence resources. Both Pribilof communities regularly experience a lack of diversity and availability of store-bought and wild foods. The price and availability of store-bought and wild food on the Pribilof Islands can undermine food security and impact estimates of the number of fur seals necessary to meet the subsistence requirements of the Pribilovians. Further, community members must regularly choose between spending time pursuing subsistence resources to maintain cultural practices and food security versus spending time in wage-earning jobs to purchase store-bought foods and other necessities.

*Comment 7:* Harvest levels proposed for St. George are higher than the actual harvest reported since the regulatory change in 2014. The recent regulatory revisions to authorize the subsistence harvest of both sub-adult males and pups on St. George may have changed harvest patterns and the yield of meat per seal. As such, NMFS should provide a more rigorous analysis of the subsistence requirements of Pribilovians residing on St. George.

*Response 7:* NMFS interprets this comment as requesting that we analyze the subsistence requirements of Pribilovians residing on St. George by analyzing the yield of meat per fur seal pup and sub-adult. Analyzing the yield of meat per fur seal pup and sub-adult would not provide an accurate estimate of the number of seals expected to be taken annually over the next three years to satisfy the subsistence requirements of Pribilovians on St. George. Meat is not the only edible subsistence resource obtained from fur seals. Seal oil, tongues, kidneys, and fermented seal flippers are highly valued subsistence resources which are not accurately reflected by measurements of edible meat.

In addition, previous efforts by NMFS to quantify the yield of meat per seal (58 FR 42027, August 6, 1993) created significant delays in the harvest process on St. Paul Island. This was largely a function of scientists and managers having to weigh and measure people's food multiple times on the killing field. The additional handling ultimately extended the duration of the harvest, extended the time that seals were held in groups on the harvest grounds prior to stunning, and required harvesters to volunteer for longer periods.

*Comment 8:* To the extent Native subsistence taking of northern fur seals is permitted, taking of fur seals for other than subsistence purposes should not be permitted.

*Response 8:* NMFS agrees. As noted in response to Comment 1 above, the Fur Seal Act and its implementing regulations restrict the take of fur seals to take for subsistence uses and not accomplished in a wasteful manner.

*Comment 9:* Pribilovians of St. Paul Island recently requested a revision of the harvest regulation to authorize, among other things, a longer harvest season, the use of firearms to harvest fur seals, the shooting of fur seals in the water, and the targeting of young animals that are not yet sexually dimorphic. The combined effect of the proposed revision in harvest guidelines appears likely to result in a dramatic increase in the number of animals killed each year such that close to 2000 fur seals could be killed annually. We support the "No Action" alternative that was presented in the notice of availability of the Draft Supplemental Environmental Impact Statement and opportunity for public comment published in 83 FR 4337, January 13, 2017.

*Response 9:* This comment is beyond the scope of this action. NMFS will solicit comments separately on any proposal to revise the harvest regulations for St. Paul Island.

#### Classification

##### *National Environmental Policy Act*

NMFS prepared an EIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals, which is available on the NMFS Web site (see **ADDRESSES**). 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 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 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 separately 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 discussed 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 at the proposed action stage that it would not have a significant economic impact on a substantial number of small entities. The harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only, and the estimate of subsistence need would not have an adverse economic impact on any small entities. Background information related to the certification was included in the proposed estimates published in the **Federal Register** on May 18, 2017 (82 FR 22797). We received no comments on this certification and are not aware of anything that would change the conclusion of the certification; therefore a regulatory flexibility analysis is not required for this action, and none has been prepared.

#### *Paperwork Reduction Act*

This action does not contain any collections of information subject to the Paperwork Reduction Act.

#### *Executive Order 13132—Federalism*

This 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 Public Law 108–100 (188 Stat. 452) as amended by section 518 of Public Law 108–447 (118 Stat. 3267) extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS 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' subsistence requirements and considered their input in formulating the proposed action. NMFS notified the tribal governments and Native corporations when the proposed action published in the **Federal Register** for a 30-day comment period (82 FR 22797, May 18, 2017); no comments were received.

#### *Executive Order 13175—Reducing Regulation and Controlling Regulatory Costs*

This rule is not expected to be an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Dated: August 11, 2017.

#### **Samuel D. Rauch, III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XF615

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; closure of the coastwide General category fishery.

**SUMMARY:** NMFS closes the coastwide General category fishery for large medium and giant (*i.e.*, measuring 73 inches curved fork length or greater) Atlantic bluefin tuna (BFT) until the General category reopens on September 1, 2017. This action is being taken to prevent further overharvest of the General category June through August subquota and help ensure the fishery continues to the end of the calendar year.

**DATES:** Effective 11:30 p.m., local time, August 16, 2017, through August 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

#### **SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification,