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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

**[Docket No. 190926-0046]**

**RIN 0648-BH25**

**Subsistence Taking of Northern Fur Seals on the Pribilof Islands**

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

**ACTION:** Final Rule.

**SUMMARY:** NMFS is modifying the subsistence use regulations for the Eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) in response to a petition from the Aleut Community of St. Paul Island, Tribal Government (ACSPI). This rule simplifies the regulations and authorizes Pribilovians who reside on St. Paul Island, Alaska, to kill for subsistence uses each year up to 2,000 male fur seals less than seven years old (defined as juvenile males), including young of the year (also called pups). This rule authorizes up to 20 mortalities of female fur seals per year (and any female mortality will be included in the 2,000 fur seals authorized for subsistence use per year). This rule allows the taking of fur seals on St. Paul Island over two subsistence use seasons annually: one season from January 1 through May 31 using firearms to hunt, and the second season from June 23 through December 31 without using firearms for the harvest. In addition, the rule authorizes Pribilovians who reside on St. George Island, Alaska, to kill each year up to 500 male fur seals during harvests for subsistence use, including authorization of up to

three female mortalities each year (and any female mortality will be included in the 500 fur seals authorized for subsistence use per year). Finally, the rule streamlines and simplifies the regulations by eliminating several duplicative and unnecessary regulations governing Pribilovians on St. Paul and St. George Islands.

**DATES:** Effective on September 27, 2019.

**ADDRESSES:** A 2005 Final Environmental Impact Statement for Setting Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands (EIS), 2014 Final Supplemental EIS (SEIS) for Management of Subsistence Harvest of Northern Fur Seals on St. George Island, the 2019 Supplementary Information Report to the 2014 Final SEIS for Management of Subsistence Harvest of Northern Fur Seals on St. George Island, and 2019 Final SEIS for Management of Subsistence Harvest of Northern Fur Seals on St. Paul Island are available on the Internet at the following address under the NEPA Analyses tab <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports>.

Electronic copies of the Regulatory Impact Review (RIR) prepared for this action are available at <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports>.

A list of all the references cited in this final rule may be found on <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the above ADDRESSES and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or

fax to (202) 395-5806.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS published a proposed rule on August 14, 2018 (83 FR 40192) to modify the subsistence harvest regulations for northern fur seals on the Pribilof Islands based on the petition from the ACSPI (77 FR 41168; July 12, 2012). The rule streamlines and simplifies the regulations by eliminating several duplicative and unnecessary regulations governing Pribilovians on St. Paul and St. George Islands (Islands). The rule simplifies the regulations and authorizes Pribilovians who reside on St. Paul Island to kill for subsistence uses each year up to 2,000 male fur seals less than 7 years old, including pups during two seasons. The rule defines the first season from January 1 through May 31 and authorizes the use firearms to take juvenile fur seals during this first season. The rule defines the second season from June 23 through December 31 and authorizes the harvest of juvenile fur seals without the use of firearms. This rule authorizes up to 20 mortalities of female fur seals per year (of the 2,000 fur seals authorized for subsistence use per year) on St. Paul Island. In addition, the rule simplifies the regulations and authorizes Pribilovians who reside on St. George Island to kill up to 500 male fur seals during harvests for subsistence use, including authorization of up to three female mortalities each year. These annual levels of authorized subsistence use of fur seals are consistent with levels that NMFS has authorized under previous regulations since the early 1990s, as discussed further below. Finally, the rule streamlines and simplifies the regulations by

eliminating several duplicative and unnecessary provisions governing Pribilovians on St. Paul and St. George Islands.

St. Paul Island and St. George Island are remote islands located in the Bering Sea populated by Alaska Native residents who rely upon marine mammals as a major food source and cornerstone of their culture. The taking of North Pacific fur seals (northern fur seals) is prohibited by the Fur Seal Act (FSA, 16 U.S.C. 1151-1175) unless expressly authorized by the Secretary of Commerce through regulation. Pursuant to the FSA, it is unlawful, except as provided in the FSA or by regulation of the Secretary of Commerce, 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 (16 U.S.C. 1152). Section 105(a) of the FSA authorizes the promulgation of regulations with respect to the taking of fur seals on the Pribilof Islands as the Secretary of Commerce deems necessary and appropriate for the conservation, management, and protection of the fur seal population (16 U.S.C. 1155(a)). Existing regulations issued under the FSA 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).

For both Islands, the number of fur seals authorized to be harvested annually was established every year from 1985-1994. The regulations were revised on July 12, 1994 (59 FR 35471) to authorize an annual harvest range to last for three-year periods, in accordance with 50 CFR 216.72(b), based on an estimate of the number of fur seals expected to satisfy the Pribilovians' subsistence requirements. The history of regulatory revisions can be found in the 2019 SEIS (NMFS 2019) for the management of the

subsistence harvest of northern fur seals on St. Paul Island, Alaska (the 2019 St. Paul SEIS), and in the 2014 SEIS for management of subsistence harvest of northern fur seals on St. George Island, Alaska (the 2014 St. George SEIS) (see **ADDRESSES**).

Northern fur seals were killed for their skins for at least 200 years during commercial operations on the Pribilof Islands (Scheffer *et al.*, 1984, and NMFS 2007). Northern fur seal population trends are most closely related to the number of females because a single territorial adult male inseminates multiple reproductive females. Thus, the number of males in the population is much less important to the stability of the population. This understanding of population dynamics provided the basis for the commercial harvest levels established under the FSA (Scheffer *et al.*, 1984). Gentry (1998) and NMFS (2007) summarized the extensive research on the direct and indirect effects of the commercial harvest on fur seal behavior and the population. NMFS has examined the abundance and trend of the population compared to the number of sub-adult male fur seals killed and the number of fur seals likely harassed during the historical commercial harvest and later subsistence harvests. The harvest management and intensity of harvest changed drastically during the transition from commercial harvest to subsistence use on the Pribilof Islands. Seals were harvested commercially five days a week during the month of July from all haulout areas. The abrupt reduction from commercial harvest levels to subsistence harvest levels in the 1980s did not result in a corresponding change in the estimates of the number of pups born on the Pribilof Islands. NMFS did not observe a statistically significant change in the estimate of pup production until after 1994 on St. Paul Island. Thus, for both St. Paul and St. George Islands, when the harvest of sub-adult males was reduced by over 90 percent, there was no change in

the trend of number of pups born, regardless of whether the underlying population trend was declining (as on St. George Island from 1973-1982) or stable (as on St. Paul Island from 1985-1994). Therefore, NMFS concluded in the 2014 St. George SEIS and the 2019 St. Paul SEIS that subsistence harvest mortality of sub-adult male fur seals has not contributed to a detectable change in the population trends since the implementation of the subsistence use regulations (51 FR 24828; July 9, 1986). NMFS assumes that some level of harassment occurs during the subsistence take of fur seals. NMFS analyzed the impact of harassment on non-harvested seals and concluded in the 2014 St. George SEIS and the 2019 St. Paul SEIS that harassment associated with subsistence take would have short-term energetic effects on those seals, but no detectable population consequences.

Further, NMFS (2014, 2019), Fowler *et al.* (2009), Towell and Williams (2016), and Towell (2019) analyzed the direct mortality and harassment associated with authorizing the Pribilovians on St. Paul to take male pups and males less than 7 years old for subsistence use up to the levels authorized in this final rule. NMFS (2014), Fowler (2009), and Towell and Williams (2016) analyzed direct mortality and harassment associated with authorizing Pribilovians on St. George to take sub-adult male and male young of the year for subsistence use up to levels authorized in the 2014 final rule (79 FR 65327; November 14, 2014). Towell (2019) modeled the population composition after 25 years of annual mortality of up to 2,000 six year old males on St. Paul Island compared to similar mortality of up to 2,000 male pups prior to weaning. Based on our understanding of fur seal ecology and modeling the response of the population to subsistence mortality of pups, these analyses conclude that the mortality of male pups results in fewer population consequences than a similar harvest of males older than two years because

pups have a high level of natural mortality after weaning.

NMFS, therefore, does not expect a detectable change in population trends from future subsistence harvests authorized under this rule of up to 500 sub-adult male fur seals 124.5 cm or less in length (*i.e.*, sub-adult) annually on St. George (of which up to three may be female fur seals and of which up to 150 may be male young of the year seals authorized for harvest in 50 CFR 216.72(d)(6)-(d)(10)). This continues the currently authorized methods and level of subsistence use on St. George Island. NMFS also does not expect a detectable change in population trends from future subsistence use authorized under this rule of up to 2,000 juvenile fur seals annually on St. Paul (of which any number may be pups, but of the 2,000 authorized for subsistence use only up to 20 may be female fur seals). This continues the currently authorized level of subsistence use on St. Paul Island, but with methods and seasons modified by this final rule, as explained further below.

For St. George Island, the regulations will continue to use the term “sub-adult” to refer to those fur seals authorized for subsistence use in the sub-adult season from June 23 through August 8 annually (50 CFR 216.72(d)(1)-(5)) and will continue to use the term “young of the year” to refer to those fur seals authorized for subsistence use in the male young of the year season from September 16 through November 30 annually (50 CFR 216.72(d)(6)-(10)). For St. Paul, this final rule authorizes in 50 CFR 216.72(e) take by hunt and harvest of juvenile male fur seals, and defines juvenile as non-breeding male fur seals less than seven years old (*i.e.*, including pups, which also are called young of the year).

#### **Petition for Rulemaking to Change Management on St. Paul Island**

The process to change subsistence use management of northern fur seals on St. Paul Island began on February 16, 2007, with the receipt of Tribal Resolution 2007-09 from ACSPI. In that resolution, ACSPI requested NMFS immediately start the process to impose a moratorium on the regulations at 50 CFR 216, Subpart F or revise the regulations. On May 7, 2007, NMFS determined that an immediate moratorium was not warranted and that the Marine Mammal Protection Act (MMPA) co-management process described in an agreement between NMFS and ACSPI was the best means to determine what regulatory changes were needed to allow the community to meet its subsistence needs while continuing to promote the conservation of northern fur seals on St. Paul Island consistent with the MMPA and FSA.

On October 21, 2009, ACSPI submitted resolution 2009-57 with supporting information to NMFS as a basis to modify the regulations governing the subsistence use of northern fur seals on St. Paul Island. NMFS evaluated the resolution and worked with ACSPI over the next two years to clarify details of the request and supporting documents. Based on those clarifications, NMFS determined that there was adequate information to publish a notice of receipt of petition for rulemaking and opportunity for public comment under the Administrative Procedure Act (77 FR 41168; July 12, 2012). ACSPI subsequently approved resolution 2015-04, amending resolution 2009-57, to assist NMFS to respond to comments received on the petition. NMFS then published a Notice of Intent to prepare an SEIS to evaluate alternatives to managing the subsistence use of northern fur seals on St. Paul Island (80 FR 44057; July 24, 2015), and completed a draft SEIS for public comment (82 FR 4336; January 13, 2017), as well as a proposed rule (83 FR 40192; August 14, 2018).

The 2019 St. Paul SEIS (NMFS 2019) analyzes the effects of the status quo, the petitioned alternative, preferred alternative, and other alternative subsistence use management regimes. NMFS concluded in the SEIS that the preferred alternative including subsistence use of up to 2,000 juvenile northern fur seals, of which up to 20 may be females killed during the subsistence use seasons, would have a minor effect on the population of about 424,531 fur seals residing seasonally on St. Paul Island. ACSPI petitioned NMFS to define the seals that may be taken for subsistence uses as “juvenile” male fur seals. A “juvenile” would be defined as a seal less than seven years old, inclusive of pups. This rule does not designate pups as a separate sub-category of juveniles, and ACSPI seeks flexibility to harvest any male seals less than seven years old. ACSPI also petitioned NMFS to remove a restriction on the length of seal that may be taken for subsistence use. These changes streamline and simplify the regulations because those distinctions were unnecessary from a conservation perspective (per the analysis in the 2019 St. Paul SEIS - NMFS 2019; and the proposed rule - 83 FR 40192).

ACSPI petitioned NMFS to revise the subsistence use regulations, suggesting that four regulatory provisions were necessary to improve management of the subsistence use of northern fur seals on St. Paul Island: (1) subsistence use of up to 2,000 juvenile male fur seals annually; (2) hunting of juvenile male fur seals from January 1 to May 31 annually using firearms; (3) harvesting of juvenile male fur seals from June 23 to December 31 annually without the use of firearms; and (4) co-management of subsistence use by ACSPI and NMFS under the co-management agreement. Subsequent discussions with ACSPI clarified that their request was to revise the co-management agreement signed in 2000 and to establish in a revised agreement a process to cooperatively manage

and restrict subsistence use, such as location and frequency of harvesting and hunting, without additional regulatory provisions.

NMFS entered into a co-management agreement with the ACSPI in 2000 under Section 119 of the MMPA (16 U.S.C. 1388). The co-management agreement (available at <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/co-management-marine-mammals-alaska>) established a Co-management Council with equal membership between NMFS and ACSPI to work cooperatively in the conservation and management of fur seals and Steller sea lions on St. Paul Island. The co-management agreement includes a guiding principle “that provides for full participation by the Unangan of St. Paul, through the [ACSPI], in decisions affecting the management of marine mammals used for subsistence purposes,” including the management of subsistence use of northern fur seals.

NMFS and ACSPI revised and aligned the co-management agreement for consistency with this final rule, while maintaining the guiding principles set out in the original agreement. The revised co-management agreement recognizes shared responsibilities in the conservation and cooperative management of fur seals, as well as Steller sea lions and harbor seals, and allows the co-management process to address monitoring and reporting of the subsistence seasons and the details of management of subsistence use. Specifically, the Co-management Council will use an adaptive management framework to make non-regulatory in-season adjustments to management decisions such as the locations, timing, and methods of subsistence use, within the regulatory parameters allowed by this rule. This also includes, but is not limited to, monitoring and management of mortality of female fur seals and seals struck and lost

during the hunting season. The Co-management Council will use environmental, community, and subsistence use data and information to make in-season decisions regarding how the harvest is prosecuted, ensuring adherence to the regulatory seasons and the regulatory limit on the subsistence use of up to 2,000 juvenile fur seals, of which up to 20 may be female fur seals killed during the subsistence use seasons.

### **Changes to Management on St. George Island**

In 2006, the Traditional Council of St. George Island, Tribal Government (Traditional Council) petitioned NMFS to change the subsistence use management of northern fur seals on St. George. NMFS worked with the Traditional Council to clarify the petitioned changes and authorize the annual harvest of up to 150 male young of the year seals during a second season from September 16 through November 30 within the limits already established every three years under 50 CFR 216.72(b). The action included changes to the authorized subsistence use locations on St. George applicable to both young of the year and sub-adult harvests, as well as other regulatory provisions for conservation of fur seals.

In 2014, NMFS finalized the rule that authorized on St. George the harvest of up to 150 male young of the year seals, allowed harvests of sub-adults and young of the year seals at all areas capable of sustaining a harvest, added a harvest suspension provision if two females were killed during the year, and specified termination of the subsistence use seasons for the remainder of the year if three females were killed (79 FR 65327; November 4, 2014). NMFS changed 50 CFR 216.74 to reflect that the Traditional Council and NMFS had developed a different subsistence management relationship under Section 119 of the MMPA. At that time, NMFS did not change the process used to

establish the subsistence needs of the Pribilovians on St. George, so we continued to specify in triennial notices in the **Federal Register** the lower and upper limit of the number of seals required to meet the subsistence needs on both Islands, per 50 CFR 216.72(b).

ACSPI petitioned for the removal of 50 CFR 216.72(b), which is applicable to both Islands. In this rule, NMFS removes the requirement for triennial notices for both Islands, and NMFS establishes in regulation the maximum number of seals that may be harvested on St. George Island (500), which is based on the upper limit established by NMFS (82 FR 39044; August 17, 2017) and agreed to by the Traditional Council since 1990 (55 FR 30919; July 30, 1990). NMFS also removes duplicative and unnecessary regulations applicable to subsistence use on St. George based on the determination that the statutory take prohibition in the FSA does not also require regulatory prohibitions.

### **Population and Demographics**

NMFS currently manages the northern fur seal population as two stocks in the U.S.: the Eastern Pacific and the San Miguel stocks. The Eastern Pacific stock includes northern fur seals breeding on St. Paul, St. George, and Bogoslof islands and Sea Lion Rock, AK. NMFS designated the Pribilof Islands northern fur seal population as depleted under the MMPA on May 18, 1988 (53 FR 17888). Loughlin *et al.* (1994) estimated approximately 1.3 million northern fur seals existed worldwide in 1992, and the Pribilof Islands portion (which later was designated the Eastern Pacific stock) accounted for about 982,000 seals (74 percent of the worldwide total). In 1995, NMFS included fur seals breeding on Bogoslof Island in the estimate of 1,019,192 northern fur seals for the Eastern Pacific stock (Small and DeMaster 1995). The most recent estimate for the

number of fur seals in the Eastern Pacific stock, based on pup production estimates from Sea Lion Rock (2014), on St. Paul and St. George (mean of 2012, 2014, and 2016), and on Bogoslof Island (mean of 2011 and 2015), is 620,660 (Muto *et al.* 2019). The annual pup production trends for the breeding islands in the Eastern Pacific stock from 1998 to 2016 vary between islands. Between 1998 and 2016, the St. Paul pup production declined 4.12 percent per year (SE = 0.49%;  $P < 0.01$ ); the most recent biennial pup production estimate in 2018 shows continued decline of pup production on St. Paul and an increase on St. George (Towell *et al.* 2019). There is no new estimate for Bogoslof Island. The ongoing decline in pup production at St. Paul is the determining factor for the overall declining stock estimate (Muto *et al.* 2019). The causes of the different trends among breeding areas are unknown.

Northern fur seals seasonally occupy specific breeding and non-breeding sites. The age and breeding status of the seals are the main determinants of where they are found on land during the breeding and non-breeding season. Non-breeding males occupy resting sites commonly called hauling grounds or haulout areas during the breeding season and are excluded from the breeding sites (*i.e.*, rookeries) by adult males. Adult males defend territories on the breeding sites occupied by females and pups through August. Beginning about September 1, non-breeding males of all sizes can be found inter-mixed with breeding aged females and nursing pups on both rookeries and haulout areas. The harvests (both commercial and subsistence) of non-breeding males occurs on these separate hauling grounds. All of the seals begin to comingle in similar areas in September after adult male fur seals stop defending habitat. The terrestrial cycles of fur seals are described in detail in the SEIS (NMFS 2019) and the proposed rule (83 FR

40192, August 14, 2018).

Mixed ages and both sexes of fur seals occupy this larger area that includes the rookery and haulout areas until December. Thus from approximately September through December all fur seals generally occupy similar terrestrial habitat, and there is little if any predictable separation among males and females as is found earlier in the year.

Pups begin to occupy separate terrestrial areas from non-pups in September, and make daily transits among the two terrestrial habitat areas, while spending progressively more time in the water prior to weaning (Baker and Donahue 2000). They return daily to their nursing sites, and if their mothers have not returned from a foraging trip the pups rest or move to the exclusive pup sites. Both areas have been successfully harvested on St. George Island since the subsistence use of pups was authorized in 2014 (79 FR 65327, November 4, 2014).

Male fur seals are sexually mature and begin to show secondary sexual characteristics (*e.g.*, growth of mane, prominent saggital crest, extreme growth of shoulders and neck) at about seven years old (Gentry 1998). These distinguishing characteristics are the basis for hunters to target males less than seven years old.

Female fur seals can be distinguished from male fur seals based on size, canine tooth size, and whisker color. Male fur seals are larger at all ages, beginning at birth. Males grow faster and larger than females. As male and female fur seals age, their whiskers change color from all black (pup) to mixed black and white (two to seven years old) to all white (older than seven). This whisker color distinction is important because a four-year-old male is similar in size to a six-year-old or older female, but the female's whiskers will be all white and the male's whiskers will be mixed black and white. The

size difference between males and females from birth to two years old is difficult to visually distinguish from a distance. Upon close inspection, the lower canine teeth of females are relatively narrower than a male's lower canine teeth. There are also some differences in fur coloration, head shape, and behavior between two- to four-year old males and females, but these characteristics are highly variable and prone to misclassification when considered alone. Thus, even though the Priblovians target male fur seals exclusively, the final rule authorizes the mortality of up to 20 females annually on St. Paul and up to three females annually on St. George to account for misidentification of females for males. Towell (2019) modeled the effects of 20 female mortalities on St. Paul per year, and Towell and Williams (2016) modeled the effects of three female mortalities on St. George per year. NMFS (2014, 2019) summarized the results of these and other analyses to reveal no population level consequences were expected to occur.

### **Deregulation of Aspects of the Subsistence Use of Northern Fur Seals**

NMFS will continue to regulate the subsistence taking of fur seals on the Pribilof Islands by sex, age, and season, as contemplated in the emergency final rule that NMFS promulgated after the cessation of the commercial harvest of northern fur seals in 1984 (51 FR 24828; July 9, 1986).

#### *Removal of Duplicative Regulatory Provisions Governing Subsistence Use on St. Paul and St. George Islands*

Section 102 of the FSA broadly prohibits the "taking" of northern fur seals (16 U.S.C. 1152). The current regulations governing subsistence harvest for St. Paul and St. George Islands include specific prohibitions on the take of certain age classes of fur seals

and the intentional take of female fur seals (50 CFR 216.72(d)(5), (d)(9), (e)(4)). NMFS has determined that these specific regulatory provisions prohibiting take were duplicative of the more general statutory prohibition on “taking” in Section 102 of the FSA, and thus this rule removes these sections from 50 CFR 216.72:

(d)(5) Any taking of adult fur seals or young of the year, or the intentional taking of sub-adult female fur seals is prohibited;

(d)(9) Any harvest of sub-adult or adult fur seals or intentional harvest of young of the year female fur seals is prohibited; and

(e)(4) Any taking of adult fur seals or pups, or the intentional taking of sub-adult female fur seals is prohibited.

The removal of these duplicative regulatory restrictions will not result in any changes to subsistence use of northern fur seals on St. George Island or St. Paul Island.

NMFS determined that the following provisions for St. Paul and St. George Islands are duplicative of the regulations (50 CFR 216.41) promulgated for permitting scientific research under the MMPA (16 U.S.C. 1361-1407) and authorizing stranding response under Section 403 of the MMPA (16 U.S.C. 1421b), and thus these sections are removed from 50 CFR 216.72:

(d)(3) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists, and

(e)(6) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

NMFS removes these provisions in this final rule, and will continue to rely on the more recent regulatory processes established under the MMPA to authorize taking

associated with response to fur seals entangled in marine debris or previously tagged for scientific research. The removal of these duplicative regulatory restrictions will not result in any changes to the process to receive authorization for take associated with response to fur seals entangled in marine debris or previously tagged for scientific research.

*Removal of Unnecessary Regulatory Provisions Governing Subsistence Use on St. Paul and St. George Islands*

This final rule specifies in regulation the maximum number of fur seals that may be killed for subsistence uses annually on each Island. Per 50 CFR 216.72(e), Pribilovians on St. Paul may take by hunt and harvest up to 2,000 juvenile (less than 7 years old, including pups) fur seals per year for subsistence uses over the course of the hunting and harvest seasons, including up to 20 female fur seals per year. Per 50 CFR 216.72(d), Pribilovians on St. George may take by harvest for subsistence uses up to 500 fur seals per year over the course of the sub-adult male harvest and the young of the year harvest, including up to 3 female fur seals per year. The maximum harvest of fur seals authorized is based on the previously established upper limit of the subsistence need for each Island (82 FR 39044; August 17, 2017), which has been unchanged since 1992 for St. Paul Island (57 FR 34081; August 3, 1992) and since 1990 for St. George Island (55 FR 30919; July 30, 1990). More detailed information on the basis for setting take at the levels authorized in this final rule can be found in the proposed rule (83 FR 40192; August 14, 2018).

The final rule removes reference to a lower limit of the subsistence need and removes references to the lower limit of the harvest range for regulations governing harvest on St. George of sub-adult male fur seals (previously 50 CFR 216.72(d)(1)) and

male young of the year fur seals (previously 50 CFR 216.72(d)(6)). The final rule eliminates the process to re-assess every three years the subsistence requirements of the Pribilovians residing on St. Paul and St. George Islands that was codified at 50 CFR 216.72(b). The final rule eliminates the suspension of subsistence use when the lower limit of the range of the subsistence need is reached that was codified at 50 CFR 216.72(f)(1)(iii) and 216.72(f)(3). The final rule removes the provision for the suspension of subsistence harvest on St. Paul Island or St. George Island if NMFS determines that the subsistence needs of the Pribilovians on that Island have been satisfied, which was codified at 50 CFR 216.72(f)(1)(i). The final rule removes the provision previously at 50 CFR 216.72(g)(2) that required the termination of the subsistence harvest if NMFS determines that the upper limit of the subsistence need has been reached or if NMFS determines that the subsistence needs of the Pribilovians on either Island have been satisfied.

The final rule revises the subsistence use termination provisions at 50 CFR 216.72(g) to be consistent with the new hunting and harvest seasons for St. Paul and the subsistence use limits for each Island. The provision at 50 CFR 216.72(g)(1) applies to only St. Paul Island and: (i) for hunting of juvenile male fur seals with firearms, terminates the hunting season at the end of the day on May 31 or when 2,000 fur seals have been killed, whichever comes first; (ii) for the harvest of juvenile male fur seals without firearms, terminates the harvest season at the end of the day on December 31 or when 2,000 fur seals have been killed during the year, whichever comes first; or (iii) terminates the subsistence use seasons when 20 female fur seals have been killed during the year.

In addition, 50 CFR 216.72(g)(2) applies only to St. George Island and: (i) for the sub-adult male harvest, terminates the season at the end of the day on August 8 or when 500 sub-adult male seals have been harvested, whichever comes first; (ii) for the male young of the year harvest, terminates the harvest at the end of the day on November 30 or earlier when the first of either the following occurs: 150 male young of the year fur seals have been harvested or a total of 500 sub-adult male fur seals and male young of the year fur seals have been harvested during the year; or (iii) terminates the subsistence harvest seasons when 3 female fur seals have been killed during the year.

For St. Paul Island, the final rule removes the regulatory provision at 50 CFR 216.72(e)(5) that specified the taking of only fur seals 124.5 cm or less in length. The final rule amends 50 CFR 216.72(e) to authorize take by hunting and harvesting of juvenile seals (defined as seals under 7 years old) (1) annually from January 1 through May 31 with firearms; and (2) annually from June 23 through December 31 without the use of firearms. The final rule authorizes up to 20 female fur seals to be killed during subsistence activities per year. More detailed information on the age classes authorized for subsistence use, the hunting and harvest seasons, and female mortality for St. Paul Island can be found in the proposed rule (83 FR 40192; August 14, 2018).

### **Co-management Provisions**

ACSPI's petition did not include regulations authorizing the incidental take of female fur seals. NMFS evaluated ACSPI's petition for rulemaking along with other alternatives in the SEIS (NMFS 2019) and determined that the "taking" of fur seals, including incidental taking of females, must be authorized by regulation (16 U.S.C. 1152, 1155(a)). As noted previously, the final rule authorizes for St. Paul Island mortality of up

to 20 female fur seals each year.

ACSPI petitioned NMFS to include a regulatory provision that would allow ACSPI to co-manage subsistence use of northern fur seals under a co-management agreement. The final rule does not include this regulatory provision because co-management of subsistence use is authorized under Section 119 of the MMPA (16 U.S.C. 1388) and no implementing regulations under the FSA are necessary to allow for co-management between NMFS and ACSPI. ACSPI and NMFS will continue their co-management partnership under the MMPA.

NMFS and ACSPI have revised and aligned the Co-management Agreement to reflect the new regulatory framework governing the subsistence take of fur seals on St. Paul Island. NMFS and ACSPI will also develop and finalize in-season monitoring and management plan(s), which would specify details of monitoring, reporting, and hunting and harvest management that the Co-management Council would implement via consensus within the parameters of the regulations. This approach will strengthen co-management consistent with Section 119 of the MMPA (16 U.S.C. 1388), insofar as ACSPI would be an equal partner with NMFS in determining the details of how the subsistence use seasons are managed under the regulations. ACSPI would monitor the juvenile male hunting and harvest seasons with independent monitoring by NMFS representatives, while ensuring compliance with regulatory requirements and any restrictions or limitations identified in the in-season monitoring and management plan(s). NMFS and ACPSI would monitor the subsistence use of pups consistent with the intent of the revised Co-management Agreement, while also ensuring compliance with regulatory requirements and any restrictions or limitations identified in the in-season

monitoring and management plan(s).

The final rule removes the heading “St. George Island” from section 50 CFR 216.74(a). The final rule at 50 CFR 216.74 describes the co-management process and the respective roles of NMFS and the tribes, clarifying its applicability to both St. George and St. Paul. The final rule removes 50 CFR 216.74(b), thus, section 216.74 no longer has subsections.

The final rule replaces all the regulatory restrictions at 50 CFR 216.72(e) to establish a new regulatory framework for St. Paul Island that is largely consistent with the petition from ACSPI. This includes removing regulatory restrictions on the location and scheduling of harvests, the requirement that only experienced sealers are authorized to harvest seals, and the size restriction authorizing the take of only furs seals 124.5 cm or less in length. NMFS (2019) determined that most of the details of subsistence use activities on St. Paul Island, including the location and scheduling of subsistence use, methods, and the individuals authorized to participate in the hunting and harvest seasons, would be more effectively managed by NMFS and ACSPI via the St. Paul Co-management Council, rather than prescribed by regulation. The Co-management Council can consider the availability of subsistence users to participate at different times, while ensuring that Pribilovians can preserve their cultural practices and environmental stewardship of fur seals in partnership with NMFS under the regulatory limits in the final rule. More detailed information on the basis for removing these regulatory requirements at 50 CFR 216.72(e) can be found in the proposed rule (83 FR 40192; August 14, 2018).

### **Comments and Responses**

NMFS received comments on the proposed rule (83 FR 40192; August 14, 2018)

from ACSPI, the Humane Society of the United States and Humane Society Legislative Fund, the Marine Mammal Commission (Commission), and three individuals. A summary of the comments received and NMFS's responses follows.

*Comment 1:* Two commenters reiterated their comments submitted on the draft SEIS. The major issues or statements of concern from these commenters included: female mortality, MMPA authority, transparency of co-management, use of PBR, apparent stock sub-division, availability of referenced scientific reports, perceived increases to subsistence use, subsistence use and user monitoring, self-reporting, analysis of disturbance, wasteful take, struck and lost seals, use of firearms to hunt, inconsistent use of the term "negligible," edible portion of meat versus the subsistence need, more recent information on the population status, and law enforcement.

*Response 1:* NMFS is authorizing 20 female mortalities, and population modeling (Towell 2019) suggests this annual level of subsistence-related female mortality will not have significant consequences to the population. NMFS corrected the commenter that the MMPA was not the authority for the regulations, and was instead the authority for co-management and no implementing regulations were required to co-manage subsistence use of fur seals. NMFS disagreed with the comments related to the applicability of using of PBR to manage human-caused mortality and the implication that NMFS was proposing to sub-divide the stock. NMFS acknowledges the inadvertent mistakes in referencing the report by Towell and Williams (2016, replaces Towell and Williams 2014 or 2015) and the additional analysis applicable to St. Paul Island (Towell 2019, replaces Towell and Williams unpublished). NMFS made both references available on the web when the proposed rule was available for public comment

<https://www.fisheries.noaa.gov/action/proposed-modification-subsistence-use-regulations-eastern-pacific-stock-northern-fur-seals>). NMFS and ACSPI are committed to independent and joint subsistence use and user monitoring under the Co-management Agreement. NMFS disagreed with the comments about self-reporting and its applicability to monitoring aspect subsistence use. NMFS disagreed with comments regarding the population consequences of disturbance. NMFS disagreed with the suggestion that there were alternatives to hunting with firearms and it would result in taking in a wasteful manner. NMFS disagreed that the references of struck and lost from other hunting examples were more applicable than those NMFS used in their analysis from Steller sea lion hunting on St. Paul Island over the past 15 years. NMFS disagreed that we used the term “negligible” incorrectly in terms of the NEPA significance criteria. NMFS disagreed with the request to analyze the edible portion of meat from different age seals in order to establish the subsistence needs of St. Paul Island. NMFS does not comment on law enforcement investigations and provided information on previous completed cases. NMFS updated the FSEIS with the current population information. Please see the responses to comments 1, 3 – 20, 22, 27, 32 – 34, 38, and 39 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS (NMFS 2019) for further details of the responses and any revisions in the final SEIS as a result of those public comments.

*Comment 2:* One commenter indicated that the proposed rule was based on faulty documents. The commenter indicated the 2014 FSEIS for regulatory changes to authorize the St. George subsistence harvest changes and 2017 DSEIS for the regulatory changes to authorize subsistence use changes on St. Paul and St. George Islands are the faulty documents that form the basis of the proposed rule.

*Response 2:* NMFS disagrees that any faulty documents form the basis of our decision making in the final rule. The FSEIS for subsistence harvest management on St. George Island (NMFS 2014), and the DSEIS for subsistence harvest management on St. Paul Island (NMFS 2017), as well as the FSEIS for subsistence harvest management on St. Paul Island (NMFS 2019), contain the required information and analysis for the development of the proposed (83 FR 40192; August 14, 2018) and this final rule. Please see the responses to comments 1, 5, 6, 7, 8, 10 – 19, 22, 27, 32, 33, and 38 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS (NMFS 2019).

*Comment 3:* One commenter suggested that deregulation of the subsistence use of northern fur seals is impermissibly risk prone.

*Response 3:* NMFS disagrees that the removal of certain regulatory provisions via this rulemaking is risk prone. NMFS's decision to remove regulatory provisions applicable to the subsistence use of northern fur seals is based on our determination that a number of regulatory provisions were redundant, duplicative, and/or unnecessary. Section 102 of the FSA prohibits all taking of northern fur seals (16 U.S.C. 1152) in the absence of regulations under Section 105 authorizing the taking of northern fur seals on the Pribilof Islands (16 U.S.C. 1155(a)). Thus, specific prohibitions or restrictions do not need to be codified in regulations because the final rule provides the only authorized subsistence taking of northern fur seals on the Pribilof Islands, and any other taking of northern fur seals is prohibited directly by the FSA. The final rule removes other regulatory provisions that were redundant with the regulations (50 CFR 216.41) promulgated for permitting scientific research under the MMPA (16 U.S.C. 1361-1407) and authorizing stranding response under the MMPA (16 U.S.C. 1421b). The final rule

also removes regulatory provisions requiring that NMFS re-assess every three years the subsistence requirements of the Pribilovians residing on St. Paul and St. George Islands that was codified at 50 CFR 216.72(b). NMFS determined this process was unnecessary because the annual subsistence needs of the Pribilovians have remained consistent since at least the early 1990s and the corresponding limits on subsistence use can be codified in regulations rather than revisited every three years. If circumstances change, NMFS could reconsider the limits on subsistence use via subsequent rulemaking.

NMFS also notes that this final rule does not deregulate all aspects of subsistence use. This final rule establishes a regulatory limit on the total number of fur seals that may be killed on each Island each year, including a total limit on female mortality, and establishes hunting and harvest seasons on St. Paul Island. Existing regulations on the harvest seasons on St. George Island are unchanged (50 CFR 216.72(d)). Moreover, the regulations retain the requirement that all taking of fur seals must be for subsistence uses and not accomplished in a wasteful manner (50 CFR 216.71).

*Comment 4:* One commenter suggested the proposed rule would increase human related mortality in contravention to the goals of the Conservation Plan for the Eastern Pacific Stock of Northern Fur Seal, *Callorhinus ursinus*, specifically the first objective listed in the Conservation Plan to identify and eliminate or mitigate the cause or causes of human related mortality of northern fur seals.

*Response 4:* NMFS disagrees with this comment. The level of subsistence mortality in the final rule is the same as has been authorized for many years, and multiple analyses indicate that there are no adverse population consequences as a result of subsistence mortality at the levels authorized in the final rule. The number of fur seals

killed may increase relative to the number harvested in recent years, but would not exceed the level that has been authorized every year since the early 1990s.

NMFS has identified both authorized and illicit causes of mortality of northern fur seals related to subsistence use, and this rule will reduce illicit causes of fur seal mortality as discussed in the DSEIS (NMFS 2017) and FSEIS (NMFS 2019). The outcome of this rule will allow NMFS and ACSPI to identify and characterize the full range of subsistence use mortality on St. Paul Island. In addition, through the advancement of the co-management partnership with ACSPI, we will be able to eliminate or mitigate causes of mortality by making annual in-season adjustments to subsistence activities based on real-time monitoring data and regular reporting to the Co-management Council. The combined regulatory and non-regulatory approach to managing subsistence use mortality is consistent with the first objective of the Conservation Plan. Further, the Conservation Plan goal referenced by the commenter includes numerous conservation actions. Conservation Action 1.3 *Evaluate harvests and harvest practices* is intended to understand and mitigate causes of human mortality, and this final rule would strengthen implementation of that action via improved co-management. In addition this rule supports Conservation Action 2.1 *Work with the Tribal governments under co-management agreements*. We also refer the reader to response to comment 2 in the Comment Analysis Report (Appendix B) for the 2019 St. Paul final SEIS (NMFS 2019).

*Comment 5:* Two commenters indicated that there was not an adequate justification for the subsistence need, and that NMFS was increasing the subsistence need.

*Response 5:* NMFS disagrees that the Pribilovians' subsistence needs have not

been adequately justified. The commenters base their rationale on the number of seals recently taken for subsistence use as an indication of the Pribilovians' subsistence needs. The Pribilovians have long maintained that the current regulatory and management regime does not allow them to meet their subsistence need (which NMFS evaluated most recently at 82 FR 39044, August 17, 2017), and NMFS concurs. As explained in the 2019 St. Paul SEIS and in the proposed rule, recent harvest levels are not indicative of current and future subsistence need for each Island. On St. Paul Island, for example, the current season is limited to only 47-days, from June 23 to August 8, which conflicts with the commercial halibut season and one of the few employment opportunities for Pribilovians on the Island. Other regulatory restrictions, such as the requirement that only experienced sealers are authorized to take fur seals, can restrict the ability of Pribilovians to harvest fur seals to meet their subsistence need (83 FR 40192, August 14, 2018; 56 FR 36735, 36739, August 1, 1991).

Moreover, NMFS determined that the existing regulatory approach to establishing the subsistence need on St. Paul and St. George Islands is no longer necessary for the several reasons, including: (1) the estimates of yield of edible meat per fur seal, which were used to approximate the number of seals thought to fulfill subsistence needs, are no longer germane factors when evaluating the subsistence needs of Pribilovians; (2) the use of the lower and upper limit of the subsistence requirement has not provided the expected flexibility to the Pribilovians to meet their annual subsistence needs and has proven to be an unnecessary restriction; (3) estimating the subsistence need based on nutritional, socio-economic, and cultural factors results in a more realistic assessment of subsistence need than the exclusive use of nutritional factors; and (4) given the consistency of the

determination of Pribilovians' subsistence needs for more than 25 years, codifying the maximum subsistence use levels in regulation would be much more efficient than continuing to revisit the subsistence need every three years.

Regarding this final basis, while the final rule could result in increased numbers of seals killed for subsistence uses, the total mortality authorized in regulation would be no greater than has been authorized continuously for over two decades (St. Paul: 57 FR 34081; August 3, 1992 & St. George: 55 FR 30919; July 30, 1990). Moreover, total mortality authorized in regulation by this final rule would have no adverse population-level consequences.

*Comment 6:* Three commenters expressed concerns about monitoring, two suggesting the proposed rule would result in a reduction in Federal monitoring and the need for regulatory requirements for monitoring the subsistence use of northern fur seals on St. Paul Island. The other commenter suggested there was a need for continued monitoring of the population and subsistence.

*Response 6:* NMFS disagrees that the new regulations will result in a reduction in Federal monitoring of subsistence use of northern fur seals. NMFS will continue to independently monitor subsistence use of northern fur seals on St. Paul to ensure compliance with the regulations and to inform the decisions of the St. Paul Co-management Council. Local subsistence use monitoring will also be implemented by ACSPI. The results of all the monitoring will be shared in-season with the St. Paul Co-management Council to inform in-season adjustments and decision-making to ensure authorized take levels (including female mortality) are not exceeded, subsistence use is not being accomplished in a wasteful manner, and stress on non-targeted seals is being

minimized.

NMFS's implementation of this new local participatory monitoring approach is more likely to improve conservation outcomes based on research by Danielsen *et al.* (2007) and Eerkes-Medrano *et al.* (2019). The commenters indicate that more Federal regulation of subsistence use of northern fur seals will ensure greater conservation value; however, Danielsen *et al.* (2007) shows that "investment in monitoring that combines scientific with participatory methods is strikingly more effective than a similar level of investment alone in generating conservation management interventions." Eerkes-Medrano *et al.* (2019) suggests that communities with negative previous experiences with scientists (*e.g.*, St. Paul) mistrust new projects and engagement by scientists and managers. They suggest that attempted top-down (*i.e.*, regulatory) approaches to management and monitoring are often unsuccessful and that only through respect and openness to local perspectives can engagement with local communities improve communication and conservation outcomes. Consistent with this research, NMFS expects that the approach adopted in the final rule that increases the role of co-management in the monitoring and management of the hunting and harvest seasons on St. Paul Island will improve trust and communication between NMFS and the St. Paul community.

*Comment 7:* Two commenters expressed concerns about the reliability of self-reporting and that NMFS was relying solely on self-reporting to monitor subsistence use and delegating all subsistence use monitoring to the ACSPI.

*Response 7:* See response to comment 6. NMFS is not relying solely on self-reporting and intends to develop for St. Paul Island independent monitoring of the new subsistence hunting season and harvesting after August 8 while continuing to monitor, as

needed, subsistence harvests at other times of the year. This approach of using multiple methods to monitor natural resource use is encouraged by Gavin *et al.* (2010). Multiple methods includes use of independent investigators (i.e., NMFS, third party contractors, university researchers, and ACSPI) and retrospective surveys, self-reporting, and real-time observations to validate results and inform management. In addition, NMFS is investigating the use of randomized response techniques (Gavin *et al.*, 2010; Blair *et al.*, 2015; Blank and Gavin 2009) to assess compliance with regulatory and non-regulatory conservation measures and will work within the St. Paul Co-management Council process to implement such measures to evaluate compliance.

*Comment 8:* One commenter indicated that ACSPI maintains the authority for terminating the hunt at a specific threshold.

*Response 8:* NMFS disagrees that the ACSPI maintains the authority for terminating the hunting season on St. Paul Island. Under the final rule for St. Paul, the hunting and harvest seasons would terminate at the close of the seasons, if 20 female fur seals are killed, or when total mortality (juvenile males and females) reaches 2,000 fur seals. Under the final rule, the St. Paul Co-management Council will implement non-regulatory restrictions on St. Paul subsistence users, including decisions as to whether to terminate the hunt and/or harvest prior to reaching the regulatory limit on annual subsistence use. The St. Paul Co-management Council includes equal membership by NMFS and ACSPI.

*Comment 9:* Two commenters identified concerns about the level of repeated disturbances to females as a result of subsistence use and need for regulatory restrictions to manage disturbances.

*Response 9:* We refer the reader to the responses to comments 5, 11, and 12 in the Comment Analysis Report (Appendix B) in NMFS (2019) (the 2019 St. Paul final SEIS). In summary, NMFS acknowledges concerns about the possible effects of repeated subsistence use disturbance; however, the subsistence harvester behavior and research results to date on the Pribilof Islands indicate that it is unlikely that disturbance effects decrease the ability of the population to recover. For example, while it is possible under the regulations for harvests on St. George to occur twice per week, that has seldom occurred, and data indicate the harvest typically happens one time per week during either season (see <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/northern-fur-seal-subsistence-harvest-estimates-and-reports#subsistence-harvest-estimates>). Moreover, as explained in the 2014 St. George SEIS and the 2019 St. Paul SEIS, Ream and Sterling (2019) and Merrill (2019) found no differences in adult female foraging trip duration, on-shore attendance duration, and time of departure on the winter migration between harvested and non-harvested sites using the comparisons identified in their study design to detect effects from the pup harvest on St. George Island from 2016 through 2018. Gentry (1998) and Gentry (1981) examined numerous aspects of the commercial harvest of northern fur seals on the population. Gentry (1998) concluded *in regards to juvenile males* that, “It is the location of that site, not the location of kills, that makes a site favorable to fur seals. Fur seals appear not to choose sites by comparisons; any predictions that they will move among islands to avoid human activities is likely to be wrong.” Further, *in regards to females*, “If they abandon a site it is because they are unable to reach it and still avoid males, not because some physical quality of the site is repellent” (Gentry 1998).

The commenters are asking NMFS to use Federal regulations to attempt to prevent a perceived problem that past evidence suggests will not occur. NMFS will continue to work through the St. George and St. Paul Co-management Councils to assess subsistence user behavior and determine appropriate non-regulatory measures to mitigate disturbance to females and other harassment of fur seals incidental to subsistence use as identified through co-management monitoring, NMFS monitoring, and other observations by the public or fur seal researchers.

*Comment 10:* One commenter indicated that NMFS should not permit the use of firearms for subsistence use, as this will result in higher rates of struck and lost seals, and lead to a wasteful hunt.

*Response 10:* NMFS has identified that the subsistence needs of the Pribilovians on St. Paul Island are not currently being met during the winter and spring, and that the use of firearms is the only practical method to obtain fresh fur seal meat during those seasons. This method would be implemented for fur seals similarly to Steller sea lion hunting. The comparison to struck and lost rates during the terrestrial subsistence harvest is invalid, because fur seals are not reliably found on land during winter and spring and the hunting and harvest methods are very different. NMFS therefore used available data from hunts of Steller sea lions to estimate fur seal struck and loss rates during the hunting season. Although struck and lost rates per landed seal for hunting may be higher than for harvesting, the analyses in the 2014 St. George SEIS and 2019 St. Paul SEIS indicate that the expected level of struck and lost fur seals will remain low. NMFS expects hunting to comprise a small proportion of ACSPI's overall effort to obtain seals for subsistence use, so even if struck and lost rates initially are higher than anticipated, NMFS expects the

number of seals lost to be small relative to the total take. In addition, the number of seals struck and lost by subsistence hunters will be estimated from monitoring by both NMFS and ACSPI, and those losses will be counted towards the total take each year.

NMFS and ACSPI will address the use of firearms and rates of struck and lost seals through the co-management process in order to monitor struck and lost rates based on hunting from land of seals in the water or on land and hunting from water of seals that are in water. Once data are available on hunting effort and performance, NMFS and ACSPI will review the data to make co-management decisions to identify hunting methods or locations to reduce struck and lost rates as needed. Overall, the intent is to assess the circumstance and locations that account for relatively higher struck and lost rates and to subsequently work with subsistence users to use hunting methods or alternative hunting locations that result in lower rates of struck and lost seals. NMFS and ACSPI will work through the co-management process to identify solutions and implement through co-management, if additional limitations are required to limit high loss rates in order to ensure retrieval of struck fur seals consistent with the requirements of 50 CFR 216.71 and 50 CFR 216.3 regarding wasteful manner.

We also refer to the Comment Analysis Report (Response to Comments 14 and 15 in Appendix B) in the 2019 St. Paul Final SEIS (NMFS 2019).

*Comment 11:* One commenter expressed the need for the co-management process to solicit public input, provide transparency, and promote accountability.

*Response 11:* Co-management of subsistence use is authorized under Section 119 of the MMPA (16 U.S.C. 1388), and the negotiation of a revised co-management agreement is a government-to-government process between NMFS and ACSPI.

Nevertheless, NMFS agrees that transparency and accountability are important considerations for improving co-management. NMFS will discuss with our co-management partners on St. Paul and St. George ways to promote accountability and increase transparency, such as posting subsistence harvest reports, subsistence use research reports, and the minutes from Co-management Council meetings on the web as soon as practical. In addition, NMFS notes that meetings of the Co-management Council are open to the public.

*Comment 12:* Two commenters recommend a regulatory prohibition on the intentional taking of female fur seals. One recommended this in addition to the authorization to take 20 females and the other commenter proposed the regulation instead of the authorization for 20 female mortalities.

*Response 12:* NMFS disagrees that prohibiting intentional taking of females in the regulations is necessary for fur seal subsistence use management. Enforcing a prohibition on intentional taking of females is problematic because of the difficulty in establishing intent. Also, as discussed in the response to comment 3 above, Section 102 of the FSA prohibits all taking of northern fur seals (16 U.S.C. 1152) in the absence of regulations under Section 105 authorizing the taking of northern fur seals on the Pribilof Islands (16 U.S.C. 1155(a)). Thus, no female fur seals may be taken beyond the specific limits in the final rule to account for unintended or accidental female takes: 20 females per year for St. Paul and 3 per year for St. George. If these limits are reached at any point during the year, the regulations require the termination of subsistence use activities for the remainder of the year. The regulations also retain the suspension provision for St. George Island when 2 female fur seals have been killed (50 CFR 216.72(f)). For St. Paul, interim

thresholds of female mortality to suspend subsistence use or other non-regulatory measures to avoid female mortality and harassment will be developed through the co-management process between NMFS and ACSPI.

*Comment 13:* One commenter recommends the need to retain the regulatory prohibition on harvesting sub-adult seals on St. Paul Island after August 8.

*Response 13:* NMFS disagrees with this recommendation. Please refer to the discussion in the SEIS (NMFS 2019), including responses to comments 1, 13, and 20 in the Comment Analysis Report (Appendix B) in the 2019 St. Paul final SEIS. In summary, the termination of subsistence use in the regulations if 20 females are killed is a strong incentive for subsistence users to make local decisions about whether to harvest sub-adult seals after August 8 (when more females are likely to be present among sub-adult male seals) and what precautions to use to avoid incidental take of females to lessen the risk of termination of subsistence use for the remainder of the year. Moreover, ACSPI and NMFS can adopt additional controls as needed via co-management, such as establishing separate seasons or limitations at specific locations or more strict limitations on female mortality, in addition to the regulatory limit on total annual female mortality. NMFS expects that these measures create sufficient incentives and controls to minimize the accidental taking of female fur seals in the future (including after August 8).

*Comment 14:* One commenter recommended the regulations include a number of requirements designed to minimize chances of taking female seals, limit disturbance, ensure humane taking, and independent monitoring.

*Response 14:* NMFS disagrees with this recommendation. Instead of prescribing additional regulatory limits on subsistence use, NMFS has determined that broad

regulatory limitations of the total annual number of female and juvenile male mortalities and the hunting and harvesting seasons are sufficient to conserve and manage the northern fur seal population on St. Paul Island. Additional limitations on subsistence activities or use will be determined by consensus of the Co-management Council to be implemented and monitored to achieve positive conservation outcomes as described in the northern fur seal conservation plan.

Please refer to responses to comments 6, 7, and 9 above. Please also refer to the discussion in the SEIS, including the response to comments 5 and 18 in the Comment Analysis Report in the 2019 St. Paul final SEIS (Appendix B of NMFS 2019).

*Comment 15:* One commenter indicated they were not in favor of changing the regulations to satisfy the Pribilof Island people.

*Response 15:* The FSA and MMPA both provide for the taking of northern fur seals to meet the subsistence needs of the Pribilof Islands Alaska Native residents (Pribilovians). NMFS's federal trust responsibilities under federal law and under the FSA and MMPA include recognizing the subsistence food needs (including nutritional and cultural needs) of Alaska Natives on St. Paul and St. George Islands to the fullest extent possible consistent with applicable statutes, implementing regulations, and co-management provisions, which allow for a formal framework for Alaska Native Organizations (like ACSPI) to develop co-management agreements with NMFS to conserve marine mammals and to cooperatively manage those stocks of marine mammals used for subsistence purposes. Please refer to the discussion in the 2019 St. Paul SEIS, Chapters 1.5 and 1.6, for more information on NMFS's Federal Trust Responsibilities and Co-Management of Fur Seals on the Pribilof Islands.

*Comment 16:* Two commenters expressed no concerns with the proposed rule.

*Response 16:* NMFS appreciates the public support for the rule.

*Comment 17:* One commenter encouraged NMFS to replace “traditional harvest methods” with “established harvest methods” under §216.72(e)(2) as revised.

*Response 17:* NMFS agrees. The subsistence harvest methods that Pribilovians have used under the regulations were modeled after the methods used in the commercial harvest, and although they are considered humane for fur seals, they are not traditional methods used by the Unangan people prior to the commercial harvest. NMFS will revise the term as suggested by the commenter.

#### *Changes from the Proposed Rule to the Final Rule*

NMFS replaced “traditional harvest methods” with “established harvest methods” under § 216.72(e)(2), as suggested by a commenter (see response to comment 17 above).

NMFS made minor changes to the regulatory text from the proposed rule that do not change the intent or effect of these regulations. NMFS made minor revisions to the regulatory text in § 216.72(d) and (e)(3) to clarify that any female mortality during the year will be counted towards the total authorized mortality each year for each Island. NMFS also made minor revisions to the regulatory text in § 216.72(g)(2) to clarify that, for St. George Island, the male young of the year harvest will terminate when any of the following occurs: 150 young of the year fur seals have been harvested during that season, 500 fur seals total have been harvested over the course of both seasons (the male sub-adult season and the male young of the year season), or three females are killed.

NMFS replaced “harvest” with “subsistence use” under § 216.72(a), (f), and (g) and under § 216.74, where those regulations were referring to subsistence use on both St.

Paul Island and St. George Island, for clarity and consistency with other regulatory changes. As addressed in this final rule, NMFS is establishing two subsistence use seasons on St. Paul: a hunting season from January 1 to May 31 (during which the use of firearms is allowed) and a harvest season from June 23 to December 31 (during which the use of firearms is prohibited and harvest will be by established harvest methods). The harvest seasons established in regulation for St. George are unchanged (the sub-adult harvest season from June 23 through August 8 and the young of the year harvest from September 16 through November 30) (50 CFR 216.72(d)). To ensure consistency within the regulations and to avoid confusion between the hunting and harvest seasons on St. Paul and the harvest seasons on St. George, NMFS replaced the term “harvest” when referring to subsistence use on both Islands with the term “subsistence use” throughout 50 CFR 216.72(a), (f), and (g) and 50 CFR 216.74.

### **Classification**

NMFS has determined that this final rule is consistent with the FSA, MMPA, and other applicable laws. Pursuant to 5 U.S.C. 553(d), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in the effective date of this rule because such a delay would be contrary to the public interest. A delay in effectiveness of the revised regulations would preclude St. Paul residents from meeting their subsistence needs this year by delaying the resumption of the traditional pup fur seal harvest for a full year until 2020, and would delay regulatory revisions that implement more sustainable subsistence use practices. In addition, the Assistant Administrator finds that the regulations would relieve some unnecessary subsistence use restrictions currently imposed on St. Paul residents by expanding the number of areas on the island where subsistence activities

may occur, by allowing for subsistence use during a longer season, and by allowing for subsistence harvests of a younger age class of fur seals. The revised regulations would allow for sustainable harvesting and hunting practices that occurred historically, some of which are prohibited under the current regulations.

*National Environmental Policy Act*

NMFS prepared an SEIS evaluating the impacts on the human environment of the subsistence harvest of northern fur seals on St. Paul Island (NMFS 2019). NMFS also prepared a Supplemental Information Report to the St. George SEIS (NMFS 2014).

*Executive Order 12866 and Regulatory Flexibility Act*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Regulatory Impact Review to carefully assess the costs and benefits of available regulatory alternatives and to assess those measures that maximize net benefits to the Nation. A copy of this Analysis is available from NMFS (see ADDRESSES).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule will not have a significant economic impact on a substantial number of small entities. NMFS published a proposed rule on August 14, 2018 (83 FR 40192). An initial regulatory flexibility analysis (IRFA) was prepared and included in the “Classification” section of the proposed rule. The comment period closed on September 13, 2018. No comments were received on the IRFA or regarding the potential certification at the final rule stage. The factual basis for certification is as follows:

This action directly regulates the subsistence use of northern fur seals by Alaska Natives residing in the communities of St. Paul and St. George. Individual Pribilovians, through the coordination of their tribal governments, organize volunteer crews to take northern fur seals consistent with the regulations. NMFS has identified two small tribal government entities that may be affected by this action—the Aleut Community of St. Paul Island, Tribal Government, and the Pribilof Island Aleut Community of St. George Island, Traditional Council (i.e., both federally-recognized tribal governments). The tribal governments on behalf of their members report on the level of the subsistence use of northern fur seals to NMFS and therefore may represent an affected small government jurisdiction. The tribal governments also participate as equal partners with NMFS in the co-management of subsistence resources and the conservation of marine mammals, pursuant to co-management agreements authorized under the MMPA.

NMFS expects this action to have positive economic impacts to the small governmental entities affected by the rule; no negative economic impacts are expected. This final rule, therefore, is not expected to have a significant economic impact on a substantial number of the small entities regulated by this proposed action. NMFS indicated its intent, in the proposed rule, to certify under the Regulatory Flexibility Act to provide potentially affected entities an opportunity to comment on potential certification. NMFS received no comments regarding directly regulated small entities and/or certification.

*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 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. This final rule was developed through timely and meaningful consultation and collaboration with the tribal governments of St. Paul and St. George Islands and the local Native Corporations (Tanadgusix and Tanaq), and their input is incorporated herein.

#### *Collection-of-Information Requirements*

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), and which has been approved by OMB under control number 0648-0699. NMFS obtained OMB control number 0648-0699 for the regulations at 50 CFR 216.71-74, which apply to both St. Paul and St. George Islands. For St. Paul Island, public reporting burden for hunt 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. There are no significant changes in the collection-of-information requirements for St. Paul or St. George as part of this action. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-5806.

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. All currently approved NOAA collections of information may be viewed at

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html)*

Dated: September 27, 2019.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service

#### **List of Subjects in 50 CFR Part 216**

Alaska, Marine Mammals, Pribilof Islands, Reporting and Recordkeeping Requirements.

For the reasons set out in the preamble, NMFS amends 50 CFR Part 216 as follows:

#### **PART 216—SUBPART F, PRIBILOF ISLANDS, TAKING FOR SUBSISTENCE**

##### **PURPOSES**

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. Amend § 216.72 by:

a. Revising the section heading;

b. Removing and reserving paragraph (b);

- c. Revising paragraphs (d) introductory text and (d)(1);
- d. Removing and reserving paragraphs (d)(3) and (5);
- e. Revising paragraph (d)(6) introductory text;
- f. Removing and reserving paragraph (d)(9); and
- g. Revising paragraphs (e), (f), and (g).

The revisions read as follows:

**§ 216.72 Restrictions on subsistence use of fur seals.**

(a) *St. George and St. Paul Islands.* The subsistence use of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of subsistence use is applicable only to the island for which it is issued.

\* \* \* \* \*

(d) *St. George Island.* The subsistence fur seal harvest restrictions described in paragraphs (d)(1) through (5) of this section apply exclusively to the harvest of sub-adult fur seals; restrictions that apply exclusively to the harvest of young of the year fur seals can be found in paragraphs (d)(6) through (11) of this section. For the taking of fur seals for subsistence uses, Pribilovians on St. George Island may harvest up to a total of 500 male fur seals per year over the course of both the sub-adult male harvest and the male young of the year harvest. Pribilovians are authorized each year up to three mortalities of female fur seals associated with the subsistence seasons. Any female fur seal mortalities will be included in the total authorized subsistence harvest of 500 fur seals per year.

(1) Pribilovians may only harvest sub-adult male fur seals 124.5 centimeters or less in length from June 23 through August 8 annually on St. George Island.

\* \* \* \* \*

(6) Pribilovians may only harvest male young of the year from September 16 through November 30 annually on St. George Island. Pribilovians may harvest up to 150 male fur seal young of the year annually.

\* \* \* \* \*

(e) *St. Paul Island*. For the taking of fur seals for subsistence uses, Pribilovians on St. Paul Island are authorized to take by hunt and harvest up to 2,000 juvenile (less than 7 years old, including pups) male fur seals per year.

(1) Juvenile male fur seals may be killed with firearms from January 1 through May 31 annually, or may be killed using alternative hunting methods developed through the St. Paul Island Co-management Council if those methods are consistent with § 216.71 and result in substantially similar effects. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) Juvenile male fur seals may be harvested without the use of firearms from June 23 through December 31 annually. Authorized harvest may be by established harvest methods of herding and stunning followed immediately by exsanguination, or by alternative harvest methods developed through the St. Paul Island Co-management Council if those methods are consistent with § 216.71 and result in substantially similar effects.

(3) Pribilovians are authorized each year up to 20 mortalities of female fur seals associated with the subsistence seasons. Any female fur seal mortalities will be included in the total number of fur seals authorized per year for subsistence uses (2,000).

(f) *Subsistence use suspension provisions*. (1) The Assistant Administrator is

required to suspend the take provided for in § 216.71 on St. George and/or St. Paul Islands, as appropriate, when:

(i) He or she determines that subsistence use is being conducted in a wasteful manner; or

(ii) With regard to St. George Island, two female fur seals have been killed during the subsistence seasons on St. George Island.

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

(3) A suspension based on a determination under paragraph (f)(1)(ii) of this section may be lifted by the Assistant Administrator if he or she finds that the conditions that led to the killing of two female fur seals on St. George Island have been remedied and additional or improved methods to detect female fur seals during the subsistence seasons are being implemented.

(g) *Subsistence use termination provisions.* The Assistant Administrator shall terminate the annual take provided for in § 216.71 on the Pribilof Islands, as follows:

(1) For St. Paul Island:

(i) For the hunting of juvenile male fur seals with firearms, at the end of the day on May 31 or when 2,000 fur seals have been killed, whichever comes first;

(ii) For the harvest of juvenile male fur seals without firearms, at the end of the day on December 31 or when 2,000 fur seals have been killed, whichever comes first; or

(iii) When 20 female fur seals have been killed during the subsistence seasons.

(2) For St. George Island:

(i) For the sub-adult male harvest, at the end of the day on August 8 or when 500 sub-adult male seals have been harvested, whichever comes first;

(ii) For the male young of the year harvest, at the end of the day on November 30 or earlier when either of the following occurs first: 150 male young of the year fur seals have been harvested or a total of 500 male sub-adult and male young of the year fur seals have been harvested; or

(iii) When three female fur seals have been killed during the subsistence seasons.

3. Revise § 216.74 to read as follows:

**§ 216.74 Cooperation between fur seal subsistence users, tribal and Federal officials.**

Federal scientists and Pribilovians cooperatively manage the subsistence use of northern fur seals under section 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 subsistence use practices under co-management and to facilitate scientific research.

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