

*and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

47. The *NPRM* proposes to establish a market-specific, spectrum availability-based approach to the processing of remaining translator applications. As discussed in more detail below, alternatives considered included dismissal of all pending translator applications and the opening of a joint LPFM/translator window, or the deferral of translator application processing until the close of the next LPFM application filing window.

48. *Joint Window.* One option considered was to dismiss all pending FM translator applications from the 2003 window and make plans for a joint window for both LPFM and FM translator applications. In theory, such an option could advance the three section 5 mandates. However, the *NPRM* concludes that there would be overwhelming practical and legal difficulties in attempting to implement such a novel licensing process. Specifically, the *NPRM* notes that an alternate method for selecting among “mixed” groups of competing NCE and commercial applications would need to be devised, and concludes that it would be extremely difficult to develop such a selection method that fits within section 5’s framework as to both services, and that any method chosen would likely be subject to extensive, time-consuming challenges.

49. *LPFM Priority.* Another option considered was to defer consideration of all translator applications until after the next LPFM window. Only those translator applications in conflict with LPFM filings would ultimately be dismissed under this approach. The *NPRM* questions the lawfulness of this licensing procedure, and also concludes that this approach would necessarily delay further the processing of translator applications, filed in the 2003 window and now frozen for six years, until after the close of the next LPFM window. It further notes that this approach would increase the disparity between the

number of LPFM and translator licenses in larger markets where spectrum exists for both services and where the number of pending translator applications is likely to substantially outnumber LPFM licensing opportunities.

50. We do not believe that either of these approaches would have offered any significant benefits to small entities than the proposed market-based processing policy. Moreover, as discussed above, the market-based approach ensures additional spectrum for LPFM stations in markets in which it is most limited while also ensuring the immediate licensing of translator stations in communities in which ample spectrum remains for both services, including many major markets. Both of these outcomes benefit small entities. However, we are open to comments that might propose alternatives to any of the approaches considered above.

51. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals.* None.

#### Ordering Clauses

52. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j), that this *Notice of Proposed Rulemaking* is adopted.

53. *It is further ordered* that no application to modify the facilities of an authorized FM translator to move its transmitter site for the first time into a market with fewer LPFM channels available than the service floor for that market proposed herein, as set forth in Appendix A, shall be accepted for filing until the close of the upcoming LPFM filing window proposed for summer 2012.

54. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 110718394–1392–01]

RIN 0648–BB09

### Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates

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

**ACTION:** Notice of Availability; Request for Comments.

**SUMMARY:** Pursuant to the regulations governing the subsistence taking of northern fur seals, this document summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 2008 to 2010 and proposes annual estimates of fur seal subsistence needs for 2011 through 2013 on the Pribilof Islands, Alaska. NMFS solicits public comments on the proposed estimates.

**DATES:** Written comments must be received at the address or fax number by August 29, 2011.

**ADDRESSES:** Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resource Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648–BB09” by any of the following methods:

*Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>;

*Mail:* Kaja Brix, Assistant Regional Administrator, Protected Resource Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802;

*Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK;

*Fax:* 907–586–7557, Attention: Ellen Sebastian.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) file formats to be accepted.

**FOR FURTHER INFORMATION CONTACT:**

Michael Williams, (907) 271-5006, e-mail [Michael.Williams@noaa.gov](mailto:Michael.Williams@noaa.gov); Kaja Brix, (907) 586-7835, e-mail [Kaja.Brix@noaa.gov](mailto:Kaja.Brix@noaa.gov); or Shannon Bettridge, (301) 427-8402, e-mail [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

An Environmental Impact Statement is available on the Internet at the following address: <http://alaskafisheries.noaa.gov/protectedresources/seals/fur/eis/final0505.pdf>.

**Background**

The subsistence harvest from the depleted stock of northern fur seals (*Callorhinus ursinus*), on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 216, subpart F. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151, *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents, while restricting taking by sex, age, and season for herd conservation. To further minimize negative effects on the Pribilof Islands' fur seal population, the harvest has been limited to a 47-day season (June 23 to August 8).

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous three-year period and an estimate of the number of seals expected to be taken in the subsequent three-year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands. Beginning in 2000, the ranges of estimated annual northern fur seal subsistence harvests have been discussed with each tribal government as part of the co-management relationship and agreement. Accurately predicting the annual subsistence needs of the Pribilof communities has been one of practical and social difficulties; the process to develop estimates of the number of fur seals required to meet subsistence needs has resulted in acceptance of the different ranges since those first established in 1986. The current upper harvest take limit of 2,500 juvenile male fur seals has been accepted every year since 1997. The lower harvest take limit of 1,945 provides a degree of flexibility the communities feel comfortable with regarding changes and unanticipated

needs within the community and the environment.

There are several factors and conditions that affect both the subsistence harvest of northern fur seals and the number of fur seals required to meet subsistence needs. The variability of the harvest occurs for many reasons. Weather conditions and availability of animals varies annually. The availability of wage earning jobs reduces the time available for community members to harvest fur seals and hunt other subsistence resources. Thus, individual community members may be unavailable to harvest fur seals during the season in certain years or have more financial resources to hunt other marine mammals in subsequent years or seasons. Several specific seasonal employment opportunities may interfere with community members' ability to harvest fur seals under the current regulations. The current timing of the northern fur seal subsistence harvest season overlaps with the local halibut fishing season, and many of the community members who participate in the harvest are also fishermen. In addition, crab fishery rationalization and a renewal of the crab harvest in the Pribilof region has provided local job opportunities that may extend into the spring hunting season for Steller sea lions. The level of Steller sea lion hunting success in the spring influences the need to take fur seals during the subsequent summer northern fur seal subsistence harvest season. Thus both Steller sea lions and northern fur seals combine to meet the subsistence needs of the local communities, with northern fur seals providing the more reliable resource of the two species, despite being available only during a 6-week harvest season.

The communities of St. Paul and St. George Islands rely on marine mammals as a major food source and a cornerstone of their culture. The harvest of juvenile male northern fur seals has occurred for well over two hundred years and the biological implications of this harvest are reasonably well understood. Subsistence harvests under the current regulations are a small fraction of the commercial harvests that occurred during the past hundred years.

**Summary of Harvest Operations and Monitoring 2008 to 2010**

The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel, a contract veterinarian, and tribal government staff monitored the harvest and communicated to further improve the

efficiency of the annual harvest and full utilization of the animals taken. Annual northern fur seal harvest reports are received from the Tribal governments of both islands and from a contract veterinarian for St. Paul.

The reported annual male northern fur seal subsistence harvests for St. Paul for the years 2008, 2009 and 2010 were 328, 341, and 357, respectively (Zavadil 2008; Zavadil 2009; Zavadil *et al.* 2010), and for St. George for the years 2008, 2009 and 2010 were 170, 113, and 78, respectively (Lekanof 2008, Lekanof 2009; Merculief 2010). The number of male northern fur seals harvested on St. Paul Island from 1986 to 2010 ranged from 269 to 1704, and the number harvested on St. George Island from 1986 to 2010 ranged from 78 to 319 seals. The average number of male seals harvested during the past ten years on St. Paul and St. George Islands, respectively, has been 441 seals (range: 269 to 646) and 156 seals (range: 78 to 212) (Table 1).

The annual upper harvest take level is 2,500 juvenile male fur seals to satisfy the subsistence requirements for both St. Paul and St. George. The current abundance estimate is about 676,416 fur seals, and the potential biological removal (PBR) level is estimated at about 14,543 animals. The upper harvest take level is significantly lower than the PBR level, and the actual harvest has not reached the lower take level of 1,945 in the past decade. The fur seal stock is designated as depleted and has been declining recently in the Pribilof Islands. The mortality from the subsistence harvest is in addition to other sources of known human-caused mortality, which are described in the annual stock assessment, and include such things as bycatch in commercial fisheries, entanglement in derelict fishing gear, illegal shooting and accidental death during research. The estimates of all sources of known human-caused mortality do not reach PBR.

The accidental harvest of young female fur seals has occurred intermittently during the male harvest. The regulations call for termination of the annual harvest on August 8 to reduce the probability of the accidental killing of females to the lowest level practicable. Thirty-two females on St. Paul and four females on St. George have been accidentally killed since 1987. The average accidental killing of females on St. Paul and St. George Islands during the last 10 years is two and less than one, respectively.

Under section 119 of the Marine Mammal Protection Act, cooperative agreements were signed with St. Paul in

2000 and with St. George in 2001 for the cooperative management of subsistence uses of northern fur seals and Steller sea lions. The processes defined in the cooperative agreements have facilitated a more collaborative working

relationship between NMFS and Tribal authorities. This has led to more coordinated efforts by the Tribal governments of both islands to promote full utilization of inedible seal parts for traditional arts, crafts, and other uses

permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents.

Table 1. Subsistence Harvest Levels of Juvenile Male Northern Fur Seals on the Pribilof Islands, 1986-2010

Year	Estimated Take Range		Actual Harvest	
	St. Paul	St. George	St. Paul	St. George
1986	2,400-8,000	800-1,800	1,299	124
1987	1,600-2,400	533-1,800	1,704	92
1988	1,800-2,200	600-740	1,145	113
1989	1,600-1,800	533-600	1,340	181
1990	1,145-1,800	181-500	1,077	164
1991	1,145-1,800	181-500	1,644	281
1992	1,645-2,000	281-500	1,480	194
1993	1,645-2,000	281-500	1,518	319
1994	1,645-2,000	281-500	1,615	161
1995	1,645-2,000	281-500	1,263	259
1996	1,645-2,000	281-500	1,588	232
1997	1,645-2,000	300-500	1,153	227
1998	1,645-2,000	300-500	1,297	256
1999	1,645-2,000	300-500	1,000	193
2000	1,645-2,000	300-500	754	121
2001	1,645-2,000	300-500	595	184
2002	1,645-2,000	300-500	646	202
2003	1,645-2,000	300-500	522	132
2004	1,645-2,000	300-500	493	123
2005	1,645-2,000	300-500	466	139
2006	1,645-2,000	300-500	396	212
2007	1,645-2,000	300-500	269	206
2008	1,645-2,000	300-500	328	170
2009	1,645-2,000	300-500	341	113
2010	1,645-2,000	300-500	357	78

#### Estimate of Subsistence Need for the Period 2011 to 2013

The projected subsistence harvest estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA, determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower end of the range is reached if the annual subsistence needs of the Pribilof residents are determined to have been

met or the harvest has been conducted in a wasteful manner.

For the 3-year period, 2011 to 2013, NMFS proposes no change to the past and current ranges of 1,645–2,000 juvenile male fur seals for St. Paul Island and 300–500 juvenile male fur seals for St. George Island. Retaining these levels will provide adequate flexibility and enable adaptive management of the subsistence harvest through the co-management process within the regulations. NMFS seeks public comments on these proposed estimates.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this annual harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals to be harvested prior to August 8 up to the upper limit of the respective harvest take level. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR

216.72(e)(1) and (3) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest level is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs.

The harvest of fur seals is anticipated to be non-wasteful and in compliance with the regulations specified at 50 CFR 216.72 which detail the restrictions and harvest methods. NMFS will continue to monitor the harvest on St. Paul Island and St. George Islands during 2011, 2012, and 2013.

### Classification

#### *National Environmental Policy Act*

NMFS prepared an Environmental Impact Statement (EIS) evaluating the impacts on the human environment of the subsistence harvest of northern fur seals. The Final EIS, which is available on the NMFS Web site (see Electronic Access) was subjected to public review (69 FR 53915, September 3, 2004), and the comments were incorporated into the final EIS (May 2005).

#### *Executive Order 12866 and Regulatory Flexibility Act*

This proposed action has been determined not to be a significant rule under Executive Order (E.O.) 12866. The proposed actions are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

NMFS has identified two small entities that may be affected by this action—the communities of St. Paul and St. George, both of which have populations less than 500.

#### *Estimate of Economic Impacts on Small Entities*

This action would have no adverse economic impact and may provide a net benefit for the communities of St. Paul and St. George. The estimated ranges of the subsistence needs are unlikely to restrict the number of animals taken by subsistence hunters. NMFS compared historic harvest levels on each island to the upper and lower ends of the range of the estimated subsistence need. The total annual harvests on each island has never exceeded the upper end of the proposed subsistence need ranges, and has only exceeded the lower end of the proposed ranges in 1991 on both islands and in 1993 on St. George. The regulated entities will not experience any change from the status quo since the proposed ranges are the same ranges that have been used since 1997.

The subsistence harvest of fur seals provides a local, affordable source of fresh and frozen meat to for the communities' consumption. Fresh meat is unavailable on either St. Paul or St. George. Subsistence hunting and fishing are the primary means by which the communities meet their dietary need. No other fish and wildlife species are predictably available to replace fresh fur seal meat. Replacement of the frozen fur seal meat with livestock meat that is shipped to the islands is extremely expensive and only available when air and barge service can deliver. In addition marine mammals such as fur seals are the preferred meat resource for Aleuts and other coastal Alaska Natives.

#### *Explanation of the Criteria Used To Evaluate Whether the Action Would Impose "Significant Economic Impacts"*

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

The criteria recommended to determine the significance of the economic impacts of the action are profitability and disproportionality. The guidance states that "the concept of profitability may not be appropriate for a non-profit small organization or a small government jurisdiction". Based on this guidance NMFS believes disproportionality is the appropriate standard given the regulated entities are small government jurisdictions. No large entities are allowed to harvest northern fur seals; therefore the regulatory

allowance for the small entities on St. Paul and St. George to harvest northern fur seals does not create a disproportionate impact that would disadvantage them.

#### *Explanation of the Criteria Used To Evaluate Whether the Action Would Impose Impacts on a "Substantial Number" of Small Entities*

The action would not impose adverse economic impacts on any small entities. Because this action will not impose impacts on any small entities, it will not impose impacts on a substantial number of small entities. This action will have beneficial economic impacts on the directly regulated Alaska Native residents of St. Paul and St. George, and will not have an adverse economic impact on any small entities. Therefore, a regulatory flexibility analysis is not required and none was prepared.

#### *Paperwork Reduction Act*

This proposed action does not require the collection of information.

#### *Executive Order 13132—Federalism*

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence needs 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), and the American Indian Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service 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 has contacted the Tribal governments of St. Paul and St. George Islands and their respective local Native corporations (Tanadgusix and Tanaq) about setting the next three years

harvest estimates and received their input.

Dated: July 25, 2011.

**John Oliver,**

*Deputy Assistant Administrator for  
Operations, National Marine Fisheries  
Service.*

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