of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 30, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–17357 Filed 8–13–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 170908881–8680–01]

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify 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). The Fur Seal Act (FSA) prohibits all taking of northern fur seals except in accordance with regulations authorizing Alaska Natives who reside on the Pribilof Islands (Pribilovians) to take northern fur seals for subsistence uses in compliance with a number of explicit regulatory restrictions. The proposed rule would simplify the existing regulations and would enable Pribilovians on St. Paul Island to resume traditional cultural practices that are prohibited by existing regulations, with no adverse consequences to northern fur seals at the population level. The proposed rule would streamline and simplify the regulations and otherwise eliminate several duplicative and unnecessary regulations governing St. Paul and St. George Islands.

DATES: Comments must be received no later than September 13, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0117 by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0117,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

A 2005 Final Environmental Impact Statement for Setting Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands (EIS), 2014 Final Supplemental EIS for Management of Subsistence Harvest of Northern Fur Seals on St. George Island (SEIS), and 2017 Draft Supplemental EIS for Management of Subsistence Harvest of Northern Fur Seals on St. Paul Island (DSEIS) are available on the internet at the following address under the NEPA Analyses tab: *https://alaskafisheries.noaa.gov/pr/fur-seal.*

Electronic copies of the Regulatory Impact Review (RIR) prepared for this proposed action are available at: *https://alaskafisheries.noaa.gov/pr/fur-seal.*

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by email to Error! Hyperlink reference not valid.*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

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 FSA unless expressly authorized by the Secretary of Commerce through regulation. Pursuant to the FSA (16 U.S.C. 1151–1175), it is unlawful, except as provided in the chapter 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)). Regulations issued under the authority of the Fur Seal Act authorize Pribilovians to take fur seals on the Pribilof Islands if such taking is for subsistence uses and not accomplished in a wasteful manner (50 CFR 216.71).

The residents of St. Paul are currently authorized by regulations under the FSA Section 105 (16 U.S.C. 1155) to harvest male fur seals 124.5 cm or less in length for subsistence uses each year from June 23 until August 8 using traditional methods (50 CFR 216.72(e)). The residents of St. George are currently authorized to harvest male fur seals 124.5 cm or less in length for subsistence use each year from June 23 to August 8. The residents of St. George are also authorized to harvest male young of the year each year from September 16 through November 30 (50 CFR 216.72(d)).

For both Islands, the number of fur seals authorized to be harvested annually is currently established every three years, 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 (*e.g.,* 82 FR 39044, August 17, 2017). Prior to 1985, the subsistence needs of the Pribilovians were met by utilization of the meat from the carcasses remaining after the commercial harvest for skins, which occurred from 1911 to 1984 (Veltre and Veltre 1987). After the end of the commercial harvest, the Pribilovians were prohibited from taking northern fur seals for subsistence uses in the absence of regulation promulgated under Section 105(a) of the FSA. NMFS promulgated the emergency interim rule for subsistence use of northern fur seals by Pribilovians in 1985 (50 FR 27914, July 8, 1985) and the emergency final rule for subsistence use of northern fur seals by Pribilovians in 1986 (51 FR 24828, July 9, 1986). The history of subsequent regulatory revisions can be found in the DSEIS for the management of the subsistence harvest of northern fur seals on St. Paul Island, Alaska, and in the 2014 SEIS for management of subsistence harvest of northern fur seals on St. George Island, Alaska (see **ADDRESSES**).

Northern fur seals were killed for their skins for at least 200 years 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 or harassed during the historical commercial harvest and later subsistence harvests. The harvest management and intensity of harvest changed drastically during the transition to subsistence use on St. George. Seals were harvested commercially five days a week during the month of July from all haulout areas through 1972, all harvests were prohibited from 1973–1975, and then, beginning in 1976, no more than four subsistence harvests were allowed per week from one or two haulout areas for a total of less than 300 sub-adult males harvested per year. The subsistence harvest beginning in 1976 took less than three percent of the average commercial harvest and did not change the population trend on St. George Island, indicating that the take of sub-adult males did not measurably affect the production of pups, distribution of seals, or other indices of the population (Gentry 1998).

Likewise, the transition from the commercial harvest to the subsistence harvest on St. Paul Island after 1984 indicated the subsistence harvests of sub-adult male fur seals did not adversely impact the production of pups, distribution of seals, or other indices of the population. The average number of sub-adult males killed annually in the subsistence harvest on St. Paul Island (an average of 924 fur seals annually over the period of 1985 to 2016) is less than 4 percent of the average number of males killed annually during the commercial harvest (25,176 fur seals from 1975 to 1984). The abrupt reduction from commercial harvest levels to subsistence harvest levels did not result in a corresponding change in the estimates of the number of pups born on St. Paul Island.

If the harvest of sub-adult males had an adverse effect on the fur seal population, NMFS would have expected to observe a change in estimated production of pups on St. Paul following the end of the commercial harvest in 1984. NMFS did not observe a statistically significant change in the estimate of pup production until after 1994. 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) or stable (as on St. Paul Island). Therefore, NMFS concluded in the 2014 St. George SEIS and the 2017 St. Paul DSEIS 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. NMFS also 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 2017 St. Paul DSEIS that harassment associated with subsistence take would have minor short-term energetic effects on those seals.

Further, NMFS (2014, 2017), Fowler *et al.* (2009), and Towell and Williams (2014, unpublished) analyzed the direct mortality and harassment associated with authorizing the Pribilovians to take male pups for subsistence uses. 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 proposed rule of up to 500 sub-adult male fur seals 124.5 cm or less in length (*i.e.,* sub-adult) on St. George (of which up to 3 may be female fur seals and of which up to 150 may be male pups authorized for harvest in 50 CFR 216.72(d)(6)–(d)(10)), which would continue the currently authorized methods and level of subsistence use. NMFS also does not expect a detectable change in population trends from future subsistence use authorized under this proposed rule of up to 2,000 juvenile fur seals 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), which would continue the currently authorized level of subsistence use and modify methods and seasons, as explained further below.

For St. George Island, NMFS will continue to use the term ''sub-adult'' to refer to those fur seals authorized for subsistence use in the sub-adult season (50 CFR 216.72(d)(1) through (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 (50 CFR 216.72(d)(6) through (10)). For St. Paul, NMFS proposes to authorize in 50 CFR 216.72(e) take by hunt and harvest of juvenile male fur seals, and NMFS proposes to define juvenile as non-breeding male fur seals less than seven years old (*i.e.,* including pups).

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 co-management process described in the 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 the DSEIS for public comment (82 FR 4336; January 13, 2017).

The DSEIS (NMFS 2017) analyzes the effects of the status quo, the petitioned alternative, and alternative subsistence use management regimes, and concludes that the 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 483,086 fur seals residing seasonally on St. Paul Island and on the northern fur seal stock of about 620,660 animals total (Muto *et al.,* 2018). 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 seals less than 7 years old inclusive of pups. This proposed rule would not designate pups as a separate sub-category of juveniles because that distinction is unnecessary from a conservation perspective (per the analysis in NMFS 2017) and ACSPI seeks flexibility to harvest any male seals less than 7 years old. ACSPI also petitioned NMFS to remove a restriction on the length of seal that may be taken for subsistence use. The current regulations for St. Paul Island identify seals that may be taken for subsistence use as males 124.5 cm or less in length, and prohibit the subsistence use of pups. This length of male seal (124.5 cm or less) corresponds to an age range of two to four years old, and is called a ''sub-adult'' male in reference to those seals taken typically in the past commercial and subsistence harvests.

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://alaskafisheries.noaa.gov/pr/fur-seal*) 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 intend to revise and align the co-management agreement with the proposed rule. Specifically, the Co-management Council will use an adaptive management framework to make non-regulatory in-season adjustments to the locations, timing, and methods of subsistence use, within the regulatory parameters allowed by this proposed rule. 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 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 pups during a second season from September 16 to 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 pup 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 pups, allowed harvests of sub-adults and pups 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 the triennial notice 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 the removal of 50 CFR 216.72(b), which is applicable to both Islands. In this proposed rulemaking, NMFS proposes to set 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. NMFS also proposes to remove duplicative or 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 (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 population has decreased since then, and the 2017 estimate for the Eastern Pacific stock (including fur seals breeding on St. Paul, St. George, and Bogoslof islands and Sea Lion Rock) was 620,660 northern fur seals (Muto *et al.,* 2018). The annual pup production trends for the breeding islands in the Eastern Pacific stock from 1998 to 2016 vary between Islands: Pup production is declining (−4.12 percent) for St. Paul, stable with no trend for St. George, and increasing (+10.1 percent) for Bogoslof (Muto *et al.,* 2018). 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 these breeding sites where females return from their winter migration to give birth, nurse their young, rest, and breed. Pregnant adult females begin to arrive from their winter migration as early as mid-June. The majority of adult females arrive around the second week of July. Older females arrive before younger females, and pregnant females arrive before non-pregnant females. Adult females land on the rookeries (breeding sites) where adult males immediately herd and retain them in territories until they give birth within two days after their arrival on land. After they give birth and remain on land for about six days, they enter estrous and breed before departing on their first of many multi-day foraging trips to sea and return to nurse their pups (Gentry 1998).

Territorial breeding males arrive on island in May and remain on the rookeries until mid-August, when most pregnant females have arrived and have given birth. Territorial adult males depart the rookery in August and are replaced by non-territorial, non-breeding adult males of similar size on the rookeries. Adult females and the pups remain at the rookeries until December, but they occupy a larger area that includes the rookery and haulout areas after territorial males have left the Islands for their migration.

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. Scientists consider the non-breeding season to last from September through December. Thus from 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 areas from non-pups in September, and make daily transits among these areas while spending progressively more time in the water prior to weaning (Baker and Donahue 2000). Pups wean themselves beginning in late October, by leaving their birth site and spending the next 20–24 months at sea. All pups have left the islands where they were born by early December, and breeding-age females leave their breeding islands a few days after pups have departed on their winter migration. NMFS estimates that less than 10 percent of pups born die before weaning (MML unpublished data). NMFS also estimates that 50 to 80 percent of pups die after weaning and before they are two years old, which is when they would first return to the islands (Lander 1981, MML unpublished data).

Most fur seals first return to the islands when they are two years old, intermittently occupying non-breeding terrestrial sites from July through December. Older, non-breeding male seals arrive at the beginning of the terrestrial season earlier than younger seals. Non-breeding male fur seals rest on shore for about seven to ten days followed by intermittent at-sea foraging trips ranging from eight to twenty-nine days (Sterling and Ream 2004). All non-breeding fur seals migrate from their land resting sites (including on the Pribilof Islands) to the North Pacific Ocean and Bering Sea, where the fur seals are located from about December to June, when fur seals begin their annual return migration to their breeding and non-breeding, resting terrestrial sites (including those on the Pribilof Islands).

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). Males are not physically capable of holding territories until they are eight years old, and most males that hold successful breeding territories are nine years old and hold breeding territories for about one season (Gentry 1998). About one-third of territorial males successfully breed, but about ten percent of the breeding males account for over 50 percent of all breeding each year (Gentry 1998). This information shows that very few adult males successfully defend and hold territories on land, even fewer breed, and fewer still account for most of the annual reproductive effort. In the following year, about 70 percent of those territorial adult males from the previous year will be replaced by new males and will not be the fathers of those pups who are born within the territories they hold.

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.

Deregulation of the Subsistence Use of Northern Fur Seals

NMFS is proposing to remove duplicative and unnecessary regulatory restrictions, as detailed below. 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). Subsistence use of northern fur seals on the Pribilof Islands will be subject to any changes proposed in this rule that become final.

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 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 are duplicative of the more general statutory prohibition on ''taking'' in Section 102 of the FSA, and thus this proposed rule would remove 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 taking of sub-adult or adult fur seals, or the 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 has 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 proposed to be 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.

When NMFS promulgated the above provisions in the subsistence harvest regulations, NMFS did not contemplate that the Pribilovians would apply for and obtain permits to conduct scientific research on fur seals or obtain authorization to respond to northern fur seals entangled in marine debris (51 FR 24828, 24836, 24838–39; July 9, 1986). Congress amended the MMPA to authorize the Marine Mammal Health and Stranding Program in 1992, and the regulatory process to obtain a scientific research permit was not completed until 1996 (61 FR 21926, May 10, 1996). NMFS therefore proposes to remove these provisions, relying instead on those regulatory processes established under the MMPA more recently 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

NMFS proposes to specify in regulation the maximum number of fur seals that may be killed for subsistence uses annually on each Island. The proposed rule would specify in 50 CFR 216.72(e) that 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. The proposed rule would specify in 50 CFR 216.72(d) that 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 proposed maximum harvest of fur seals to be authorized is based on the currently 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 and since 1990 for St. George Island.

NMFS also proposes to cease using a lower limit of the subsistence need and to eliminate references to the lower limit of the harvest range for regulations governing harvest on St. George of sub-adult male fur seals (50 CFR 216.72(d)(1)) and male young of the year fur seals (50 CFR 216.72(d)(6)); to eliminate in its entirety the provision at 50 CFR 216.72(b), which applies to both Islands and which establishes a process to re-assess every three years the subsistence requirements of the Pribilovians residing on St. Paul and St. George Islands; and to remove the provisions at 50 CFR 216.72(f)(1)(iii) and 216.72(f)(3), which are associated with the suspension of subsistence use when the lower limit of the range of the subsistence need is reached. NMFS also proposes to remove the provision in 50 CFR 216.72(f)(1)(i) that allows 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, and to remove the provision in 50 CFR 216.72(g)(2) that requires 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. NMFS proposes to revise the subsistence use termination provisions at 50 CFR 216.72(g) to be consistent with the proposed seasons for St. Paul and the subsistence use limits for each Island.

NMFS has determined that the existing regulatory approach to establishing the subsistence need on St. Paul and St. George Islands is no longer necessary for the following reasons: (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, overstated the actual yield of meat, and 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, as NMFS has done in more recent triennial estimates of subsistence need, results in a more realistic assessment of subsistence need than the exclusive use of nutritional factors as envisioned in the existing regulations; 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. We explain each of these reasons below, which justify setting authorized take for subsistence use in regulation for each Island and which justify the additional regulatory provisions that NMFS proposes to modify or eliminate.

Biases in Estimated Edible Yield of Subsistence Harvested Fur Seals

As explained in this subsection, estimates of yield of edible meat per fur seal and percent-use were the basis for determining the number of seals for annual subsistence needs and were the basis for determining whether the subsistence harvest was being accomplished in a wasteful manner. However, the estimates of yield of edible meat per fur seal and percent-use overstated the actual yield of meat due to bias and inaccurate assumptions and are subject to continuing bias that NMFS cannot correct. NMFS therefore will no longer analyze subsistence need solely based on estimates of yield of edible meat and percent-use, and ACSPI and NMFS will work within the Co-management Council to identify and address any instances of wasteful taking. In addition, we remind readers that when referencing past taking for subsistence uses, we use the term ''sub-adult males'' to refer to two- to four-year old fur seals which generally fit the size limit in the regulations of 124.5 cm or less in length and that, while pups are less than 124.5 cm in length, they were prohibited from subsistence use for St. George until 2014 and are currently prohibited from subsistence use for St. Paul (50 CFR 216.72(e)(4)).

In 1985 and 1986, when the subsistence harvest was first being authorized, NMFS did not have any reliable means to establish the number of seals required to meet the subsistence needs of either St. George Island or St. Paul Island. As described in the emergency final rule regarding the subsistence taking of North Pacific fur seals (51 FR 24828, July 9, 1986), the commercial harvest for fur seal skins prior to 1985 had created an excess of meat for the subsistence needs of both communities, and disrupted the subsistence use patterns when compared to other Alaska Native communities (Veltre and Veltre 1987). For subsistence needs, NMFS used estimates of the yield of meat from an ''average'' commercially harvested seal as the basis for the subsistence levels established in the early years of the subsistence harvest regulations. NMFS assumed that a sub-adult male seal yielded a certain amount of meat, which was then used to calculate how many seals were needed to satisfy the nutritional needs of Pribilovians each year. The original estimate of the yield of meat per seal was from congressional testimony in 1914 that a sub-adult male fur seal dresses to 25 pounds of meat (50 FR 27914, 27916; July 8, 1985) and the May 7, 1987 notice (52 FR 17307) from measurements of harvested seals in 1985 (28.5 lbs) and in 1986 (24.4 lbs).

Public comments received by NMFS in the late 1980s questioned the Pribilovians' harvest practices and estimates of their subsistence need, and included accusations of wasteful taking and criticisms of the Pribilovians' use of the ''butterfly cut'' of seals. At the same time, the Pribilovians expressed frustration regarding the intrusive nature of harvest sampling, characterization of their subsistence use based on ''percent-use'' of the carcass, and the process to establish their subsistence need (55 FR 30919, July 30 1990). On August 1, 1991, the Humane Society of the United States filed an unsuccessful petition for a temporary restraining order to suspend the subsistence harvest (56 FR 42032).

In an attempt to resolve the controversy, NMFS and the ACSPI measured the percent use of the ''butterfly cut'' and ''whole cut'' from northern fur seal carcasses in terms of the actual yield of meat in 1992. This unpublished study measured the mass of meat, bone, and blubber from all body parts of the carcasses of three sub-adult males. One seal was three years old, the other was two years old, and the third was of unknown age. The actual yield of edible meat ranged from 11.9 to 15.9 pounds for seals that weighed from 44.6 to 58.1 pounds (NMFS unpublished data). The estimated yield of meat from this work in 1992 shows that the 1985 and 1986 estimates of yield of meat over-estimated the actual yield of edible meat by 35 to 52 percent depending on the size of the seal.

Further evaluation of the data from 1985 through 1991 that were used to estimate the yield of meat indicate previous weights reported were actually estimates of the total mass of the butterfly cut or whole cut, which included bones, fat, and connective tissue. In addition, the measures of edible meat from 1985 and 1986 do not account for the subsistence use of blubber, tongues, or flippers, items that are consumed in varying amounts locally (Veltre and Veltre 1987), but were not considered consistently by NMFS in the estimates of percent-use or yield. In the 1985 and 1986 estimates, NMFS measured and reported the percentage use of the carcass as the product of the mass of meat and bone of cuts divided by the total mass of the carcass. NMFS's approach resulted in a mean of 29.1 percent-use for the butterfly cut and 53.3 percent-use for the whole cut, a difference of about 24.2 percent, which was perceived as an indication of waste when using the butterfly cut versus using the whole cut.

By using the data of the actual edible meat (excluding bone) from 1992, the percent-use of meat divided by the total carcass weight would have ranged from about 18 percent-use for the ''butterfly cut'' to 27 percent-use for the whole cut. The traditional butterfly cut resulted in only a 9 percent difference (or about one pound of meat based on the average total seal weight) in the actual edible portion of meat when compared to the whole cut, which indicated the distinction between cuts was not significant or necessarily representative of waste. These results indicate that the old percent-use method overstated the amount of edible meat per seal by an even greater amount than acknowledged by NMFS based on data from all years prior to 1992. These results also support the Pribilovians' position that their subsistence use was not wasteful contrary to accusations of wasteful take that were based on the percent-use method (57 FR 34081, August 3, 1992).

NMFS also made inaccurate assumptions in the beginning of the subsistence period about the age of seals likely to be harvested for subsistence needs, which further biases the estimates of the number of seals needed for subsistence. Hanson *et al.* (1994) showed that St. Paul subsistence sealers chose to harvest three- and four-year old seals that were statistically smaller than the average sized seal of the same age in the population, which indicates sealers were selecting the smallest seals of those available. The selection of smaller seals for subsistence uses further reduces NMFS's previous over-estimates of yield of meat derived from the

commercial harvest. In addition, St. Paul and St. George residents have indicated they prefer a ''two-year old'' sized seal, an assertion that was confirmed using 1986 subsistence harvest data (Zimmerman and Melovidov 1987). Subsistence harvest monitoring data reported by Hanson *et al.,* (1994) indicated a continued preference for two-year old seals. The results of Hanson *et al.* (1994) have been confirmed by recent analysis of the average age of subsistence harvested seals from 1986–2016 on St. Paul Island (2.6 years) compared to commercially harvested seals from 1956–1984 (3.3 years) (MML unpublished data). On St. George Island, the subsistence harvest has occurred for 10 years longer than on St. Paul, and the average age of sub-adult males in the commercial harvest was 3.4 years versus 2.5 years in the subsistence harvest (MML unpublished data).

The proportion of two-year-old seals in the subsistence harvest for both Islands combined is about 47 percent, whereas during the commercial harvest two-year old seals represented about 8 percent of the total harvest for both Islands (MML unpublished data). Similarly, the proportion of four-year-olds decreased from about 32 percent of the commercial harvest to about 4 percent of the subsistence harvest based on data from both Islands (MML unpublished data). Thus smaller, younger seals represent a larger proportion of those seals taken in the subsistence harvest than the commercial harvest. Younger, smaller seals provide a lower yield of meat than the older, larger seals harvested commercially, and represent another uncorrected bias in the previous estimates of yield per seal and in the process to estimate the number of seals necessary to meet the Pribilovians' subsistence need.

Even if NMFS were to correct for age-related bias and fix inaccurate assumptions in previous methodologies to calculate future estimates of yield of meat to estimate the number of seals for subsistence needs, such estimates would remain biased and inaccurate. Baker *et al.* (1994) reported that particular year classes showed statistically different rates of body mass increase in the first few years of life. For example, three year old male fur seals born in 1987 were significantly lighter than three year olds born in 1988 and 1989 (Baker *et al.* 1994). Caruso and Baker (1996) compared the weights of two-, three-, and four-year old males from the subsistence harvest and found that two- and three-year old males from 1992 were significantly heavier (1.4 kg heavier for a two-year old) than similar-aged seals harvested in 1991, 1993, or 1994. Thus, environmental conditions can influence the size and growth of young seals and bias estimates of the yield of meat per seal among year classes. NMFS currently does not have a means to correct estimates of growth or average size at age to account for environmental variation.

Based on this analysis of the yield of edible meat from the subsistence harvest and the lack of information to correct the biases identified in the estimates of percent-use and yield of meat, NMFS no longer sees value in characterizing the subsistence need based on percent-use or yield of edible meat. Instead, as explained later in this proposed rule, NMFS will consider a combination of nutritional, socio-economic, and cultural factors, as well as the consistency of prior determinations of subsistence needs over time, to estimate and set in regulation through this proposed rule the number of seals needed annually for subsistence purposes on St. Paul and St. George Islands. Furthermore, ACSPI has instituted a practice whereby the whole cut is removed from the killing field in all instances, and the butterfly cut is no longer used (62 FR 17775, April 11, 1997). With regard to concerns about the potential for wasteful harvest practices in the future, NMFS will work within the Co-management Councils for St. Paul and St. George to ensure accurate monitoring to detect and address whether subsistence use is being accomplished in a wasteful manner. In addition, this proposed action does not change the regulatory provision that the take of fur seals must be consistent with 50 CFR 216.71 (*i.e.,* (a) for subsistence uses, and (b) not accomplished in a wasteful manner).

NMFS's Use of the Upper and Lower Limit of the Estimated Subsistence Need

The existing regulations call for establishing the upper and lower limit (*i.e.,* the range) of the subsistence need in order to provide flexibility to the Pribilovians while also limiting the harvest to the legitimate subsistence need within that range (51 FR 24828, July 9, 1986). The lower limit, if reached, results in a 48-hour temporary suspension, but the lower limit could be exceeded if NMFS is given written notice by the Pribilovians seeking additional seals for subsistence uses as described in 50 CFR 216.72(f)(3). As explained next, this regulatory approach has not provided flexibility in the timing of the harvest and the availability of harvesters to ensure that Pribilovians can fulfill their subsistence needs. In addition, this regulatory approach has proven burdensome for both Pribilobians and NMFS to administer and manage. NMFS therefore proposes to eliminate in its entirety the provision at 50 CFR 216.72(b), as well as related regulatory provisions regarding the lower and upper limits and the associated suspension and termination provisions.

Since 1985, NMFS has used numerous methods to establish the range, but has frequently received public comments indicating disagreements about the consistency of implementation (*e.g.,* 55 FR 30919, July 30, 1990). The Pribilovians have requested additional seals above the lower limit twice each on St. Paul (in 1987 and 1991) and St. George (in 1991 and 1993). In 1990, NMFS reduced the subsistence needs of the Pribilovians to the lowest level during the subsistence period to range from 181 to 500 on St. George and 1,145 to 1,800 on St. Paul (55 FR 30919, July 30, 1990). In 1991, NMFS proposed the range of subsistence need at the 1990 levels (56 FR 19970, May 1, 1991). NMFS was unable to establish a method acceptable to all stakeholders to determine the Pribilovians' subsistence need, and in the final notice, NMFS used the 1990 range of the subsistence need for 1991 (56 FR 36735, August 1, 1991). The Tribal Governments from St. Paul and St. George requested additional seals above the lower end of their respective ranges in 1991. NMFS authorized the Pribilovians to continue harvesting up to 100 additional seals on St. George and 500 additional seals on St. Paul from July 31 until August 8, 1991 (56 FR 42032, August 26, 1991).

The Humane Society of the United States filed a motion for a Temporary Restraining Order on August 1, 1991, which challenged the August 1 final notice for subsistence use in 1991 (56 FR 36735). The order was denied on August 5, 1991: the court upheld NMFS's determination that the harvest was not being conducted in a wasteful manner and that the accusations of waste were overstated (*Humane Soc'y of the United States* v. *Mosbacher,* Civ. A. No. 91–1915, 1991 WL 166653 (D.D.C. Aug. 5, 1991); 56 FR 42032, August 26, 1991). NMFS held a workshop in November 1991 and determined the household survey conducted by the tribal councils would be the agreed-upon method to establish the subsistence need (57 FR 22450, May 28, 1992).

NMFS established the 1992 subsistence need based on household surveys by the Tribal Governments of St. Paul and St. George, but in addition requested that the Pribilovians

substantiate any request to exceed the lower limit of the range (57 FR 34081, August 3, 1992). NMFS questioned the estimates of subsistence need from household surveys in 1992 and 1993, because the tribal government could not survey all households in advance of each harvest season. The Pribilovians extrapolated the subsistence need to account for the un-surveyed/non-responsive households, but a final method to account for these households could not be agreed upon.

The St. George Traditional Council indicated on February 10, 1993 that they would require 407 seals to meet their subsistence need (58 FR 32892, June 14 1993). NMFS concluded that since St. George harvested fewer seals (194) than the lower level of the estimated 1992 range of subsistence need (281) and the average harvest over the past 5 years was 187, that NMFS would not use the 1993 St. George subsistence needs request based on their household survey data and instead used the lower level of the range from 1992. The community of St. George harvested 298 seals by August 3, 1993 (17 seals greater than the lower level of the range), and the Traditional Council requested additional seals during the temporary harvest suspension (58 FR 58297, November 1, 1993). NMFS approved the harvest of 44 more seals by St. George (325 total seals) after requesting and receiving information to substantiate their request (58 FR 32892, June 14 1993). St. George harvested 319 seals by August 8, 1993.

In the 1993 household survey of subsistence needs on St. Paul, about one-third of the households responded to the tribal government's survey, resulting in an estimate of 842 seals needed to meet their stated subsistence need. NMFS did not extrapolate to account for non-responsive households on St. Paul and instead indicated that there had not been significant changes in demography or economics in 1993 compared to 1991 and 1992 to warrant such a dramatic reduction in need, and NMFS determined that the estimated subsistence need for St. Paul would remain 1,645 to 2,000 in 1993 (58 FR 32892, June 14, 1993). St. Paul harvested 1,518 seals in 1993.

In 1994, NMFS set the range based on household survey results from the tribal governments that indicated similar results from previous years and thus the range of the subsistence need was set at the same level as in 1993, but applied through 1996 (59 FR 35471, July 12, 1994). In December 1996, after NMFS requested the tribal governments indicate their subsistence needs for the 1997–1999 period, ACSPI indicated their subsistence need range could remain the same (1,645 to 2,000 seals), and the St. George Traditional Council requested the lower limit be increased from 281 to 300 seals and the upper limit be retained at 500 seals (62 FR 33374, June 19, 1997). The tribal governments from both Islands indicated to NMFS in 1999, 2002, 2005, 2008, 2011, 2014, and 2017 that the subsistence ranges should be maintained at these lower and upper limits to meet their subsistence needs (see *https://alaskafisheries.noaa.gov/pr/fur-seal*). After NMFS had signed cooperative agreements with the tribal governments on St. Paul and St. George Islands, the subsistence needs were discussed annually during co-management meetings and considered in a more collaborative and holistic process.

The lower limit and regulatory suspension process required under the existing regulations have proven to be barriers to harvesting within the range established as ''meeting the subsistence need'' at the peak of community participation and availability of preferred seals. If the lower limit of the subsistence need is reached, NMFS must suspend the harvest for up to 48 hours per 50 CFR 216.72(f)(1)(iii). Practically, this usually occurs in early August after most harvests have occurred and as the number of two-year-old males landing on the hauling grounds is rapidly increasing (Bigg 1986). Thus, the preferred age-class (two years old) is more easily available to subsistence users at this time, but very little time remains in August to harvest this preferred age-class and to meet the subsistence need of the Pribilovians.

Once the lower limit is reached, NMFS must determine whether the subsistence needs of the Pribilovians have been satisfied, and if not, must provide a revised estimate of the number of seals required to meet those subsistence needs (50 CFR 216.72(f)(3)). Thus, when the lower limit is reached, Pribilovians must collect information through surveying or querying the community and provide that information in writing to support that their subsistence need falls above the lower limit but below the upper limit of the range previously established as meeting their subsistence need (*e.g.,* 56 FR 36736, August 1, 1991). In those years when the actual subsistence use reached the lower limit of the range of the subsistence need established previously in the **Federal Register** notice, it was in the Pribilovians' best interest to conduct an additional house-to-house survey to establish an interim limit less than the upper limit to substantiate their subsistence need (59 FR 35474, July 12, 1994).

After the Pribilovians submit information to NMFS, NMFS must then substantiate the request to exceed the lower limit by making the determination that the Pribilovians (1) have not yet satisfied their subsistence need, (2) have not conducted wasteful take, and (3) have identified the number of seals required to meet the additional need (56 FR 36736, August 1, 1991). Often this process was too cumbersome administratively, for both NMFS and the Pribilovians. The 48-hour suspension when the lower limit was reached would occur during the last few days of the season, requiring Pribilovians to document their needs above the lower limit and NMFS to determine those newly documented needs were justified before the end of the season. This caused administrative delays that left too few days for additional harvesting of seals, including the harvest of the preferred age of seal. Such a process does not create flexibility that would allow the Pribilovians to meet their subsistence needs when the lower limit is reached.

Finally, a fundamental problem with using the previous year's actual harvest or an average of prior harvests to establish the allowable future harvest is that it creates an incentive for users to harvest as much as allowed in order to maintain future food security, particularly because many factors can force Pribilovians to harvest fewer seals each year, regardless of their particular annual needs. Decreased harvest levels in a given year would effectively reduce the lower limit in subsequent years, while ignoring factors that affect harvest levels, including: Normal year-to-year variability in seal size; the Pribilovians' preference for smaller seals; the limited availability of two-year-old seals until late in the harvest season; the availability of wage earning jobs on both Islands that conflicts with the subsistence season; and the availability of experienced sealers (58 FR 32892, June 13, 1993). These factors may result in diminished allowable harvest over time that could amplify the perverse incentive to harvest more seals than necessary in a given year to preserve the allowable harvest level for future years.

To avoid these problems, NMFS proposes to stop publishing a range with a lower limit of subsistence need. Instead NMFS proposes to set a fixed harvest limit that accounts for expected and unexpected year-to-year variability in the availability of fur seals based on environmental factors and the availability of subsistence users to participate based on economic, social,

and other factors. Because NMFS would cease using a range with a lower limit, NMFS proposes to eliminate references to the lower limit of the range in the regulations governing use on St. George of sub-adult male fur seals (50 CFR 216.72(d)(1)) and male young of the year fur seals (50 CFR 216.72(d)(6)). NMFS also proposes to remove the requirements in 50 CFR 216.72(f)(1)(iii) and (f)(3) for NMFS to determine whether the Pribilovians' subsistence needs have been satisfied because they will already be established in the regulations. The proposed regulatory changes will reduce the household survey burden for Pribilovians on both St. Paul and St. George Islands and will also remove the cumbersome administration of the harvest suspension provisions and determinations that apply when the lower limit of the range was reached. NMFS would still annually evaluate whether the subsistence uses are being accomplished in a wasteful manner (per 50 CFR 216.71(b)), and the proposed rule does not eliminate the existing regulatory provision that allows the suspension of the subsistence harvest if the harvest is being conducted in a wasteful manner (50 CFR 216.72(f)(1)(ii)).

Estimating the Subsistence Need Should Include Consideration of Nutritional, Socio-Economic, and Cultural Factors

NMFS has determined that to satisfy the Pribilovians' subsistence requirement for northern fur seals, estimates of subsistence need must reflect a combination of nutritional, socio-economic, and cultural needs (see Veltre and Veltre 1987). During the late 1980s, NMFS used simple nutritional factors to estimate the subsistence needs of the Pribilovians. As described previously, NMFS used historical information from the villages of St. Paul and St. George and from other Alaska Native communities to estimate a range of the amount of meat required as a product of the yield and number of seals killed. NMFS has continued to estimate annual subsistence harvest based on the nutritional needs of the Pribilovians, while recognizing that other factors should be considered.

After the petition for a temporary restraining order and a subsequent subsistence workshop in 1991, NMFS acknowledged that subsistence need includes cultural aspects of the use of fur seals by Alaska Natives, as well as providing a traditional food (57 FR 22450, May 28, 1992). Pribilovians have indicated most recently in their comments on the DSEIS that the overlap in the timing of the local halibut fishery and current 47-day fur seal harvest season forces families to choose between producing income in the halibut fishery and obtaining fur seals. In the late 1980s the Pribilovians did not have the resources (*i.e.,* large enough boats or gear) or opportunity (*i.e.,* fishing was managed as limited entry until the passage of the Fisheries Conservation and Management Act in 1976) to participate in local commercial halibut fisheries, so they fished for subsistence when practical. In the late 1980s through 1992 there were on average 16 fur seal harvests on St. Paul Island per year, which has gradually diminished such that from 2002 to the present the Pribilovians averaged eight harvests per year. In 1995, Pribilovians were authorized to commercially fish for halibut through individual fishing quotas and later community development quotas. Thus, fur seal harvests changed from commercial to subsistence activities, and halibut fishing changed from subsistence to commercial economic enterprises. Because the subsistence season for fur seals overlaps with the commercial halibut season, many Pribilovians have no choice but to limit the time they spend obtaining fur seals for subsistence uses while they pursue cash-paying jobs in the halibut fishery. Other regulatory limits that prescribe who may harvest, where, and how further undermine the opportunities for Pribilovians to engage in the subsistence harvest of fur seals. As their sealing opportunities have diminished under the current regulations, Pribilovians have lost opportunities to share with elders and the community at large, teach harvesting and hunting skills to the next generation, collect seal parts for the creation of authentic Native handicrafts, and participate in cultural ceremonial events. As these ties to their culture have waned, it becomes more difficult to foster cultural traditions and instill the associated values within the community. The proposed creation of two seasons and multiple methods to take fur seals recognizes the important cultural values of the hunting and harvesting of fur seals, and will provide Pribilovians more flexibility to foster their own cultural traditions and values.

The Pribilof Islands are considered a hybrid economy (Huskey 2004) where subsistence use, market forces, and government transfers contribute to a village's ability to maintain a self-sufficient economy. Members of the public who live in rural areas like the Pribilof Islands value (nutritionally and socio-economically) wild and store bought foods differently than residents from urban areas. NMFS (2017) has evaluated how the concept of food security provides a more balanced approach to estimating the subsistence need in coastal communities such as St. Paul and St. George. From the aspect of nutrition and food security, fur seals represent an available, accessible, fresh, and safe source of traditional food for Pribilovians. Subsistence opportunities connect community members and relatives through food sharing and cooperative hunting and harvesting efforts. Opportunities for subsistence use of fur seals preserve the Pribilovians' traditional skills, cultural values, and knowledge, and enable the passing of cultural values on to younger subsistence users. Thus, unnecessarily restricting the opportunities for subsistence communities to obtain wild resources, such as fur seals, would not only result in the deterioration of nutrition, public health, and social stability, but also a critical component of their unique local culture. This combination of traditional and modern lifestyles helps to sustain the Pribilof cultural identity and provides a measure of economic and food security by providing an alternative to obtain food in newly emerging cash- and wage-based economic systems (Huskey 2004). The proposed approach to addressing the subsistence needs of Pribilovians is more environmentally, socially, and economically sustainable, and safeguards food security, cultural traditions, and economic surety by allowing the Pribilovians a greater role in the in-season monitoring and management (see following Co-management discussion). This approach to establishing the subsistence need improves upon the one previously used by NMFS that relied exclusively on the nutritional aspects.

Based on the cultural values of subsistence use and the need for food security for the Pribilovians, NMFS proposes to codify a regulatory threshold of 2,000 fur seals less than 7 years old, of which up to 20 may be females killed during the subsistence use seasons annually, for St. Paul. Similarly for St. George, the regulatory threshold will be 500 male fur seals during the subsistence use seasons annually, of which up to 3 may be females killed, and which also would include in each year up to 150 male pups (see 50 CFR 216.72(d)(6)–(d)(10)). This approach maintains the maximum harvest level that has been authorized every year since 1992 for St. Paul and since 1990 for St. George (82 FR 39044, August 17, 2017), and maintains the allowable pup harvest for St. George (79

FR 65327, November 4, 2014), but better reflects a holistic consideration of nutritional, socio-economic, and cultural factors of subsistence use. In addition, this approach will streamline the administration of the harvest, reduce the household survey burden on St. Paul and St. George, and provide a sustainable maximum harvest level that accounts for the prevailing socio-economic conditions and abundance of the fur seal population on the Pribilof Islands. As addressed earlier in the BACKGROUND section, NMFS does not expect a detectable change in population trends from take associated with future subsistence use of hunting or harvesting up to the annual regulatory thresholds for each Island.

The actual number of seals killed for subsistence uses in a given year can be dependent upon the seasonal availability of fur seals and other food resources, as well as average body mass of harvested seals, environmental variability, and the availability of harvesters. If socio-economic conditions or the fur seal population status change, NMFS can evaluate whether a change in the regulatory limits of the subsistence use is warranted.

Simplification of Regulation of Subsistence Use Based on Consistency of the Determination of Pribilovians' Subsistence Needs for More Than Twenty-Five Years

The Pribilovians have stated in their past public comments that their harvest was not wasteful. They have also indicated that efforts to institute intrusive sampling during early years of the subsistence harvest, perceived micro-managing of the harvest method, and inconsistent application of methods to determine the subsistence need ultimately resulted in reduced estimates of their subsistence need over time, even though biologically the harvest of males would be sustainable at levels higher than proposed in this rule (52 FR 26479, July 15, 1987; 56 FR 36739, August 1, 1991; 77 FR 41168, July 12, 2012; 75 FR 21243, April 23, 2010). To respond to concerns of perceived micro-managing and alleged inconsistent methodologies to determine subsistence need, NMFS proposes to simplify and streamline the existing regulatory approach by establishing in regulation the subsistence need for both St. Paul and St. George Island, by removing an annual harvest suspension determination that was based on whether subsistence need that year was satisfied, and by revising harvest termination provisions to be consistent with proposed changes to seasons and subsistence use limits.

Codification in regulation of the maximum level of subsistence use is based in part on the consistency of the prior determinations of subsistence needs over time, as well as on the consideration of other nutritional, socio-economic, and cultural factors (addressed above). Under 50 CFR 216.72(b), every three years NMFS must publish in the **Federal Register** a summary of the Pribilovians' fur seal harvest for the previous three-year period and an estimate of the number of fur seals expected to satisfy the subsistence requirements of Pribilovians in the subsequent three-year period. Through that process, NMFS has set the maximum allowable harvest at 500 seals per year for St. George Island every year since 1990 and 2,000 seals per year for St. Paul Island every year since 1992. NMFS has set the annual maximum allowable use of fur seals for subsistence uses based on NMFS's consistent determination of the number of seals that would satisfy the subsistence requirements for each Island. Given the consistent determination on the upper limit of subsistence needs for the two communities and the sustainable nature of that level of harvest (NMFS 2014, NMFS 2017), codifying the allowable harvest levels in regulation would be more efficient than continuing to revisit the subsistence need every three years. If NMFS finalizes this new and more streamlined approach to the regulations and circumstances later change, NMFS can initiate rulemaking to revisit the allowable harvest levels under the authority of the FSA. Under the Co-management Agreements, the ACSPI and NMFS will continue to cooperatively manage subsistence use on St. Paul Island, and the St. George Traditional Council and NMFS will continue to cooperatively manage subsistence use on St. George Island.

In addition, NMFS proposes to remove the provision at 50 CFR 216.72(f)(1)(i), which allows 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. Under this proposed rule, NMFS would set in regulation the annual subsistence needs of each Island, which will reflect and respect the many factors that influence subsistence need on each Island. Based on the proposed codification in regulation of annual subsistence need, the regulatory provisions that currently require NMFS to determine if subsistence needs are satisfied, suspend the harvest, and notify the Pribilovians of this suspension would be unnecessary and irrelevant, and removal of this provision (50 CFR 216.72(f)(1)(i)) will further simplify and streamline the regulations.

Finally, NMFS proposes to revise the subsistence use termination provisions at 50 CFR 216.72(g) to be consistent with the new seasons for St. Paul and the subsistence use limits for each Island. Currently, 50 CFR 216.72(g)(1) terminates the harvest seasons for St. Paul and St. George Islands on August 8 and for the St. George male young of the year harvest season on November 30 and requires NMFS to determine whether the annual subsistence needs on both Islands have been satisfied. Currently, 50 CFR 216.72(g)(2) requires the termination of the subsistence seasons on either Island 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 that Island have been satisfied.

Under this proposed rule, 50 CFR 216.72(g)(1) would be revised to apply only to St. Paul Island and: (i) For the hunting of juvenile male fur seals with firearms, would terminate the season at the end of the day on May 31 or when 2,000 fur seals have been killed during the year, whichever comes first; (ii) for the harvest of juvenile male fur seals without firearms, would terminate the 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) would terminate the subsistence use seasons when 20 female fur seals have been killed during the year.

In addition, 50 CFR 216.72(g)(2) would be revised to apply only to St. George Island and: (i) For the sub-adult male harvest, would terminate the season at the end of the day on August 8 or when 500 sub-adult male seals have been harvested during the year, whichever comes first; (ii) for the male young of the year harvest, would terminate the harvest at the end of the day on November 30 or earlier if 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) would terminate the subsistence harvest seasons when 3 female fur seals have been killed during the year.

The Assistant Administrator would no longer need to make an annual determination of whether the subsistence needs of the Pribilovians have been satisfied, because the proposed rule would establish annual limits for St. Paul Island and St. George Island, including the limit on the

number of female fur seals that may be killed during the year for St. Paul and St. George Islands, and would set two seasons for St. Paul Island, as discussed next.

Regulatory Changes to the Management of Subsistence Use on St. Paul Island

NMFS established in the emergency final rule (51 FR 24828, July 9, 1986) that the original harvest season would occur from June 30 through August 8, with the opportunity to extend the harvest until September 30 if certain conditions were met. The ACSPI and Tanadgusix Corporation (the local Alaska Native Corporation created by Alaska Native Claims Settlement Act) requested a season from June 30 through September 30, in order to meet their subsistence need (51 FR 24828, July 9, 1986). NMFS removed the provisions to extend the subsistence harvest in 1992, citing the inability of Pribilovians to distinguish and avoid immature females during previous harvest extensions and authorized the season to start a week earlier on June 23 (57 FR 33900, July 31, 1992). The current subsistence regulations for St. Paul Island define a single season from June 23 through August 8 to harvest male fur seals 124.5 cm long or less (50 CFR 216.72(e)(2), (e)(5), (g)(1)).

During the 1980s and 1990s, NMFS and the Pribilovians were adjusting to the subsistence regulatory process and its implementation on both islands. NMFS and ACSPI signed the Co-management Agreement in 2000, which provided the opportunity to adaptively manage female mortality during subsistence activities. The St. Paul Co-management Agreement includes a female mortality threshold of five that, if reached, would result in temporary harvest suspension and a review of the circumstances of those mortalities. The St. Paul Co-management Agreement also includes a second threshold of eight female mortalities (*i.e.,* three more than the temporary suspension), that, if reached, results in termination of the harvest for the season. The Pribilovians have not reached these thresholds during any harvest season on St. Paul since signing of the Co-management Agreement in 2000.

NMFS proposes to create two seasons on St. Paul for subsistence use of fur seals differentiated by the allowable methods that may be used during each season. The first season would authorize Pribilovians to kill juvenile fur seals (defined as less than 7 years old) using firearms to hunt from land on St. Paul Island from January 1 through May 31, hereafter referred to as the proposed ''hunting season.'' The second season would authorize the Pribilovians to kill juvenile fur seals without the use of firearms on St. Paul Island from June 23 through December 31, hereafter referred to as the proposed ''harvest season.'' It is not known whether pups would be available for subsistence uses during the hunting season, but the proposed rule would not preclude Pribilovians from taking pups during either of the two proposed seasons. The limited available evidence suggests that pups likely would not be available to hunters during the proposed hunting season.

NMFS proposes to remove the regulatory provision at 50 CFR 216.72(e)(5) that requires the taking of fur seals 124.5 cm or less in length, and NMFS instead proposes to allow take by hunting and harvesting of juvenile seals (defined as seals under 7 years old) through the regulatory changes that would provide that (1) juvenile fur seals may be killed with firearms from January 1 through May 31 annually; and (2) juvenile fur seals may be killed without the use of firearms from June 23 through December 31 annually. The proposed rule would authorize harvest during the associated season by traditional methods which involve herding and stunning followed immediately by exsanguination. The proposed rule would also authorize up to 20 female fur seals to be killed per year to account for incidental or accidental take of females. This amount of female mortality associated with the hunting and harvesting seasons is higher than allowed under the current Co-management Agreement, but at one percent of the proposed annual limit on subsistence use, it is a conservative limit that will incentivize avoiding incidental take of females and other causes of accidental mortality and will not have negative consequences at a population level (NMFS 2017).

NMFS also proposes to remove the regulatory provision at 50 CFR 216.72(e)(2) that no fur seal may be taken before June 23 and to revise the regulatory provision at 50 CFR 216.72(g)(1) that currently terminates the annual take on August 8 for sub-adult males on St. Paul. As explained earlier, this proposed rule would revise the suspension and termination provisions at 50 CFR 216.72(f) and (g) to be consistent with the new seasons and limits for St. Paul Island, which are discussed in detail further below. This revision would include a termination provision of subsistence hunting and harvest seasons for the remainder of the year if 20 female fur seals are killed at any point during the year.

Finally, the proposed rule would set the total number of seals authorized for subsistence use in both the hunting and harvest seasons, including female fur seals killed during those seasons, at 2,000 juvenile fur seals per year. As explained earlier and in the DSEIS (NMFS 2017), NMFS does not expect a detectable change in population trends from killing up to 2,000 juvenile fur seals on St. Paul during the hunting and harvest seasons annually in the future to be authorized under this proposed rule.

Age Class

ACSPI petitioned NMFS to define the age class of male fur seals allowed for subsistence use as those less than seven years old (*i.e.,* juveniles), rather than those 124.5 cm or less as currently described at 50 CFR 216.72(e)(5). In addition, the proposed rule includes pups in the definition of ''juvenile'' at ACSPI's request, and would remove the current prohibition at 50 CFR 216.72(e)(4). For the reasons detailed below, NMFS proposes to allow the subsistence use of juvenile fur seals less than seven years old, which reflects an age class distinction that the Pribilovians can use in the field to reliably determine eligibility for subsistence use before taking the animals, rather than a measure of length, which can only be verified after-the-fact. These age classes are relevant to the two proposed seasons because of the different availability of the age classes of seals being targeted for subsistence use. The oldest seals are available in limited numbers during the hunting season, and the youngest seals (pups) are available during the latter portion of the harvest season. The limited available evidence suggests that pups do not linger offshore near the Pribilofs after weaning, as they start their migration in approximately December (Lea *et al.,* 2009), and thus likely would not be available to hunters during the start of the proposed hunting season (January 1). In addition, because a significant portion of breeding females do not return to the Pribilofs to pup until July, most, if not all, pups born in that year will not be born until after the end of the proposed hunting season (May 31).

Subsistence Use of Pups

NMFS reexamined the record behind the existing prohibition on the taking of pups for subsistence purposes. During the original rulemaking to authorize the subsistence harvest, we incorrectly stated, without explanation, that a harvest of pups could have a disastrous effect on the already declining fur seal population (50 FR 27915, July 8, 1985; 51 FR 24829, July 9, 1986). NMFS has subsequently explained, in the context

of the rulemaking to authorize the harvest of pups on St. George Island, that a regulated harvest of male pups would not have a negative effect on the population (79 FR 43007, August 6, 2014; 79 FR 65327, November 4, 2014). The simple explanation for why harvesting pups is not a biological concern for the fur seal population is that pups have a high natural mortality rate, and thus removing a given number of pups from the population has less of a negative effect than taking the same number of older fur seals. NMFS (2014, 2017) analyzed numerous lines of harvest evidence including the harvest of northern fur seal pups from their Russian breeding islands (Kuzin 2010, Ream and Burkanov pers. comm.), survival models (Towell 2007, Fowler *et al.,* 2009), and a model of the proposed St. Paul harvest levels and associated population effects (Towell and Williams, unpublished data) and concluded that the population level effects of the subsistence harvest of 2,000 6 year old males (*i.e.,* the oldest age in the ''juvenile'' category) would be higher than the harvest of 2,000 male pups, but neither would have significant negative population consequences (NMFS 2017).

Under the proposed rule, the highest permissible yearly pup harvest on St. Paul (2,000 fur seals) is 2.4 percent of the 2016 pup production estimate (80,614), but a more likely harvest level is about half of that and either level represents an insignificant proportion of the pup production. A more extreme example of the sustainability of a pup harvest comes from the average annual Russian commercial harvest of about 4,300 pups from 1987–2006. This level of harvest represents about 11 percent of annual pup production on Bering Island each year during this 20-year period (Ream and Burkanov pers. comm.). The Bering Island harvest of pups included only males from 1987–1992, and averaged over 6,000 annually during that time period (14.6 percent of annual pup production). Ten years after the initiation of the male pup harvest on Bering Island, the trend in pup production was not statistically different from zero (Ream and Burkanov pers. comm.). These results support NMFS's determination that a male pup harvest of up to 2,000 pups, or currently approximately 2.4 percent of annual production, would not have any detectable direct or indirect population level effects.

Subsistence Use of Juveniles

In the emergency final rule (51 FR 24828, 24836, 24840; July 9, 1986), NMFS promulgated the restriction at 50 CFR 216.72(e)(5) that ''[o]nly sub-adult male fur seals 124.5 cm or less in length may be taken'' with the intent of having the subsistence harvest replicate the commercial harvest and associated research as closely as practical to allow for continued research comparisons among sites with different harvest levels. NMFS discussed this in the emergency interim rule: It should be stressed that this rule authorizes only the subsistence taking of fur seals even though the methods and schedule employed are derived from the commercial harvest (50 FR 27914, 27918; July 8, 1985). In the emergency final rule, NMFS noted that the result is to confine the harvest to primarily 2, 3, and 4-year-old males (51 FR 24828, 24836; July 9, 1986). Maintaining comparability to the size of commercially-harvested seals (124.5 cm or less in length) has proven not to be an issue because Pribilovians prefer and choose smaller seals for subsistence needs.

Zimmerman and Lechter (1986) and Zimmerman and Melovidov (1987) weighed approximately 950 seals from the 1985 and 1986 subsistence harvests to estimate percentage use, but made no reference to obtaining lengths from the same sample of harvested seals to confirm seals were less than 124.5 cm or whether the harvest selected seals according to their relative abundance in the population. Zimmerman and Lechter (1986) noted that about 80 percent of the seals harvested in 1985 were three-year-old males. Zimmerman and Melovidov (1987) reported that 54 percent of the seals harvested in 1986 were three-year-old males, and noted that this likely represented an Aleut preference for younger seals for food. Hanson *et al.* (1994) and Caruso and Baker (1996) showed the Aleut preference for younger seals is likely closer to a two-year-old sized seal. NMFS has analyzed the age data of harvested male seals on St. Paul, and the data indicate about 42 percent of the subsistence harvested seals in recent years are two-year-old males versus 13 percent during the last 10 years of the commercial harvest (MML unpublished). Since the emergency final rule in 1986, the Aleuts have never indicated an interest in the subsistence harvest of larger older male seals. Accordingly, authorizing the subsistence use for both hunting and harvesting of juvenile seals (less than seven years old, including pups), rather than dictating a length limit, better accommodates and respects the traditional and cultural preferences of the Aleuts; moreover, the Aleuts' preference to target two to three year old seals in past subsistence harvests indicates that it is not likely that older seals will be targeted in future harvests.

In addition, harvesters use length in combination with coloration, behavior, and head shape to simultaneously make a harvest choice. A length restriction would not be useful for managing the proposed subsistence hunting season from January 1 through May 31. NMFS and ACSPI do not have a clear understanding of the sizes (or ages) of seals available at this time of year, and it is unrealistic to expect hunters to estimate the length of a mostly-submerged seal before pulling the trigger of a firearm. This is also true for the harvest season since a precise measurement of a moving seal on land among ten or more seals of similar size cannot be taken until after the seal is dead. At age seven most male fur seals show secondary sexual characteristics such as growth of a mane and broadening of the sagittal crest, neck, and shoulders (Scheffer 1962) that provide a reliable means for subsistence users to distinguish adult males from juveniles during both the hunting season and the harvest season. Thus, rather than being regulated by a precise length limitation that can only be confirmed after the fact, Pribilovians will be able to take seals under seven years old based on broad age distinctions that can be used in the field to reliably determine eligibility for subsistence use during either the hunting or harvesting season before taking the animals.

Accordingly, the proposed rule would remove the provision at 50 CFR 216.72(e)(5) that only subadult male fur seals 124.5 cm or less in length may be taken. Instead, the proposed rule would authorize the subsistence use to include both hunting and harvesting of juvenile seals (those less than seven years old), including pups. The subsistence harvest regulations for St. George Island (50 CFR 216.72(d)) will retain the 124.5 cm length restriction and will continue to use the term sub-adult male to refer to animals less than that size. St. George harvesters take younger seals on average than St. Paul, and this length restriction has had no impact on their subsistence use. If petitioned to do so or if warranted, NMFS may propose changing those provisions for St. George via subsequent rulemaking.

Hunting Season

The proposed rule would authorize Pribilovians on St. Paul to kill juvenile northern fur seals from January 1 through May 31 by using firearms only, although alternative hunting methods

consistent with the FSA and 50 CFR 216.71 could be developed by NMFS and ACSPI through the Co-management Council. Northern fur seals are not observed on land for most (January 1 through May 1) of the proposed hunting season (Bigg 1990, NMFS 2017), so ACSPI petitioned NMFS to allow Pribilovians to hunt from land on St. Paul Island for animals in or adjacent to the water using firearms. NMFS proposes to define firearm in the same manner as NMFS has previously defined the term. In a regulatory prohibition on discharge of firearms at or within 100 yards of a Steller sea lion west of 144° W longitude (see 50 CFR 224.103(d)(1)(i)), NMFS has defined a firearm as any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant. NMFS proposes to adopt the same definition in 50 CFR 216.72(e)(1) for the St. Paul hunting season. Pribilovians currently hunt with firearms to take Steller sea lions for subsistence uses during this time of year. During scoping and public comments on the DSEIS, Pribilovians indicated that they historically hunted fur seals at this time of year and this would not only allow them to restore traditional cultural practices but also allow them to secure fresh fur seal meat from January to May, thereby promoting greater food security year-round on St. Paul Island since other sources of fresh meat (including sea lions) are limited during those months.

NMFS has not considered the use of firearms to take northern fur seals for subsistence uses from January through May in previous rulemakings. A primary rationale for why the proposed take of fur seals using firearms would be a sound practice for subsistence use is that fur seal behavior and ecology are substantially different in the winter and spring versus the summer and autumn. Fur seals spend most of their lives at sea and are not reliably available on the Pribilof Islands in the winter and spring, indicating that the hunt is not likely to take breeding fur seals, is not likely to take a significant number of fur seals, and is not likely to incidentally harass non-harvested seals (NMFS 2017), as discussed next.

Adult male northern fur seals land on the Pribilof Islands to breed beginning in early May (Bigg 1986, Gentry 1998). Pribilovians have observed small numbers (fewer than 20 per month in any year) of juvenile and adult male northern fur seals swimming in the nearshore waters on the Pribilof Islands during the winter and spring, and these observations are substantiated by satellite telemetry data (NMFS 2017). A few fur seals are observed on land in the winter, but unlike their behavior in the summer they are typically found very close to the water's edge and cannot be approached closely (NMFS 2017). Progressively younger males arrive and land on the Pribilof Islands from May through December, though there are no data to determine the ages of seals arriving in May (Bigg 1986). The satellite telemetry data also indicate that female fur seals are not observed within 100 nautical miles of the Pribilof Islands from January through May, indicating the probability of accidentally taking female fur seals during the hunting season would be very low (NMFS 2017). Because there is a small likelihood that breeding fur seals are present on or near St. Paul and would be taken during the hunting season, the hunt of fur seals from January 1 to May 31 is not expected to impact the breeding population of northern fur seals or population trends over time.

NMFS (2017) analyzed the potential subsistence mortality of six-year old males during the hunting season. The best available data to estimate the probable mortality rate for fur seals comes from the hunting effort (*i.e.,* available weather days to hunt) and success rates (*i.e.,* struck and lost at sea) for Steller sea lions. NMFS (2017) combined these two sources of information from sea lion hunting to estimate that about 20 to 40 fur seals may be killed during the subsistence hunting season. This represents a practical estimate, without any direct data about fur seal hunting or fur seal availability at this time of the year. We assumed that the number of hunting days and hunter success was most influenced by weather, and that the species (sea lion versus fur seal) would have less influence. We do not know the probability of hunters encountering four-, five-, or six-year-old seals while hunting, but would predict based on the preferences identified during the earlier subsistence harvests (Zimmerman and Melovidov, 1987; Hansen *et al.,* 1992) that hunters would choose the smallest (*i.e.,* youngest) of those juveniles available while they are hunting. Bigg (1986) described the timing of arrival of different aged male fur seals on St. Paul based on the kill data from the commercial harvest that generally started on July 1. Thus, Bigg's (1986) analysis is informative, but there are no data from observations of known-aged individuals from January through May.

While the most likely outcome of the hunting season will be mortality of a mixed number of four-, five-, and six-year old males, NMFS (2017) and Towell and Williams (unpublished) took a conservative approach and modeled the mortality of 2,000 six-year old males for 25 years. This modeling approach is conservative in evaluating the population consequences for several reasons. The longer an individual survives the more likely it will survive to reproduce and contribute to the population. And because survival increases as animals approach sexual maturity, the use of the oldest available seals (six-year-olds) would be removing the seals more likely to successfully contribute to reproduction once sexually mature. A six-year old seal has a higher probability of surviving to the next year than a younger seal. For example, if killing 2,000 four-year-olds, 15–20 percent of them (400) would have died naturally. Modeling for the mortality of six-year-old seals that had survived to near-sexual maturity represents the maximum effect to reproduction and the population. Any hunting mortality of younger seals (four- or five-year-olds), which is likely, would reduce the effect relative to the possible (but unlikely) hunting mortality of exclusively six-year-olds. NMFS (2017) model results indicated a one to two percent reduction in the estimated number of adult males counted in July in the population due to a possible kill of 2,000 six-year-old males compared to a kill of 2,000 males less than 124.5 cm (*i.e.,* males two to four years old). This low percent reduction (one to two percent) is not likely to impact the northern fur seal population overall.

The incidental harassment of non-targeted northern fur seals during the hunting season is not likely to affect many seals. NMFS (2017) reported that due to their general solitary nature and rare occurrence on the Pribilof Islands during the majority of the hunting season, the level of incidental harassment of fur seals on or near St. Paul Island due to the use of firearms to hunt seals on St. Paul Island would be very low. NMFS (2017) reported that the average number of seals observed on St. Paul for the months of January through May was 19, 3, 1, 19, and 42 fur seals each month, respectively. Supporting the on-land observations, NMFS (2017) also estimated that fur seals spend significantly more time in the North Pacific Ocean than in the Bering Sea during the months of January, February, March and April, and May. Thus, on any particular day when a hunter would be hunting, there would be few if any seals on land (likely less than 42), and possibly a slightly higher number in the water. This alleviates concerns about the possibility of noise from firearms

disturbing or harassing a significant number of seals or causing seals onshore to stampede offshore. The breeding season starts in late June and, as discussed earlier, female seals are not present and breeding males are not usually present on St. Paul Island between January and May. Therefore, limiting the use of firearms to January 1 through May 31 alleviates concerns about the possibility of harassing breeding fur seals on land. Also, limiting the use of firearms to January 1 through May 31 alleviates concerns about the safety of fur seal researchers and tourists since few, if any, researchers or visitors would be present during that timeframe.

Public comments received on the DSEIS expressed concern that the use of firearms to kill fur seals for subsistence is a wasteful manner of taking, as this method increases the likelihood of struck and lost seals. NMFS has evaluated the taking of fur seals with firearms, and there is no viable alternative method to obtain fur seals at the time of year proposed. The traditional harvest method (see next section) is not practical in the winter and spring because the few fur seals that are present on land from January through May are not found in the inland areas typically occupied during the summer and autumn. If the proposed rule is finalized, NMFS will work with ACSPI and hunters both independently and within the co-management framework to monitor and characterize number of fur seals struck and lost and, if necessary, identify measures to reduce the number of seals lost. These estimated numbers and rates of struck and lost fur seals will be compared to those obtained for Steller sea lions and other marine mammals to determine whether the take may be considered wasteful (*i.e.,* not likely to assure the killing and retrieval of the fur seal (51 FR 24828, 24834; July 9, 1986)), and whether the Co-management Council should consider modifying hunting practices to address waste. In addition, NMFS and ACSPI through the Co-management Council could develop alternative hunting methods. Any alternative methods would need to be non-wasteful and otherwise consistent with Section 105(a) of the FSA and 50 CFR 216.71, and would need to result in substantially similar effects (including, but not limited to, levels of harassment of non-hunted seals). Because alternative methods for hunting seals may have different effects than the methods analyzed by NMFS, NMFS would consider whether any such differences warrant additional rulemaking and NEPA analysis before being implemented.

Harvest Season

The proposed rule would authorize Pribilovians on St. Paul to kill juvenile northern fur seals from June 23 through December 31 by harvesting. The proposed rule specifies that subsistence harvest would be without the use of firearms and may be by traditional harvest methods of herding and stunning followed immediately by exsanguination, although alternative harvest methods consistent with the FSA and 50 CFR 216.71 could be developed by NMFS and ACPSI through the Co-management Council. The proposed harvest season is significantly longer than the currently authorized season from June 23 through August 8. When viewed in conjunction with the proposed hunting season from January 1 through May 31 and the proposed limit of 2,000 fur seals for subsistence use, the net effect is to allow the hunting and harvest of the same maximum number of fur seals annually as has been authorized under existing regulations, but spread over a longer period of time. This would allow subsistence users to obtain fresh fur seal meat during more of the year, increasing food security for ACSPI. ACSPI also has indicated they prefer the flexibility of one harvest season defined in the regulations rather than multiple regulated harvest seasons for different ages of available seals as NMFS promulgated for St. George in 2014 (79 FR 65327, November 4, 2014). This proposed rule provides for that flexibility by setting one harvest season from June 23 to December 31 for any male fur seals less than 7 years old (*i.e.,* juvenile).

NMFS distinguishes the harvest as a coordinated and organized effort during the harvest season of multiple subsistence users to provide many seals to meet the subsistence needs of many community members at one time, rather than individual hunters obtaining one seal at a time during the hunting season for use by a small number of individuals. Unlike the hunting season, the proposed rule would not authorize the use of firearms during the harvest season. Instead, the harvest season will continue to use methods consistent with those described as ''traditional harvesting techniques'' (see 51 FR 24828, July 9, 1986). Thus, the harvest of juvenile fur seals will continue to be by traditional harvest methods of herding and stunning followed immediately by exsanguination.

In addition, NMFS and ACSPI through the Co-management Council could develop alternative harvesting methods. Any alternative methods would need to be non-wasteful and otherwise consistent with Section 105(a) of the FSA and 50 CFR 216.71, and would need to result in substantially similar effects (including, but not limited to, levels of harassment of non-harvested seals). Because alternative methods for harvesting seals may have different effects from the methods analyzed by NMFS, NMFS would consider whether any such differences warrant additional rulemaking and NEPA analysis before being implemented. This approach would allow for the development of alternative harvest methods through the Co-management Council, rather than NMFS attempting to dictate all aspects of harvest methods in regulation. This approach facilitates cooperative management of an important subsistence resource for Pribilovians and ensures Pribilovians who harvest seals will have a role in developing harvest methods that are consistent with the allowable take of fur seals at 50 CFR 216.71.

In addition, the proposed approach recognizes the significant role the commercial harvest and Federal management has played in shaping subsistence use of northern fur seals on the Pribilof Islands and in defining a particular harvest method as ''traditional.'' The ''traditional harvesting techniques'' described in the 1986 rule were based on the commercial method of visiting a particular non-breeding fur seal resting area, preventing those seals present on land from escaping into the water, and slowly moving those seals into a group from the resting area to an area inland. The inland area was called the killing field and all seals within the harvestable size limits were killed (Bigg 1986). This was possible because it was estimated that about 80 percent of non-breeding males are not on shore on any particular harvest day (Gentry 1981), and thus escaped the commercial harvest. It was estimated that on average the commercial harvest killed about 41 percent of the three-year old males and 53 percent of the four-year old males available in the population (Marine Mammal Biological Lab 1972). NMFS maintained this level of commercial harvests of sub-adult males for over 30 consecutive years until the herd reduction program was instituted (NMFS 2007, 2014, 2017). This aspect of the ''traditional harvesting technique'' is known as a round-up and drive, and has been modified for subsistence uses by allowing both excess seals for the daily subsistence need or unwanted seals

(*e.g.,* large males or females) to escape prior to them being driven to the killing field. The accepted method of taking on the killing field has included seals being stunned unconscious by a blow to the head with a club and exsanguinated by severing the aorta (51 FR 24828, July 9, 1986). An independent panel of veterinarians reviewed this method of killing and determined it to be painless and humane (51 FR 24828, July 9, 1986).

The harvest season would continue the established subsistence method as has occurred in the past on St. Paul Island and would also authorize harvesting pups using the same technique, though adapted to pup behavior. This approach would enable ACSPI to resume a traditional cultural practice (the subsistence use of fur seal pups) that is prohibited by existing regulations (for more background on the traditional harvest of pups, see the preamble to the St. George proposed rule at 79 FR 43007, 43010–11; July 24, 2014). As explained earlier, NMFS (2014, 2017) has shown that a harvest of pups has a lower biological effect on the population than a similar harvest of sub-adult or juvenile males because at least 50 percent of pups do not survive their first two years at sea after weaning (Lander 1981). NMFS (2017) modeled the mortality of 2,000 male pups, 2,000 two- to four-year-old males, and 2,000 six-year-old males annually for 25 years and estimated a possible reduction in the number of adult males in the twenty-fifth year of about four, six, and eight percent, respectively when compared to a population with no harvest mortality.

ACSPI has indicated an interest in harvesting male pups during the latter half of the proposed harvest season. ACSPI did not identify specific regulatory dates or other regulatory restrictions to harvest pups, but instead wanted to retain the flexibility of allowing subsistence users to determine the best times, locations, and modifications to the methods to harvest pups. The proposed rule does not limit the opportunities to harvest male pups during the harvest season. Adult male fur seals' territorial behavior in July and August limits safe access by humans into areas occupied by pups. Adult males typically prevent entry of people or other seals into breeding areas until late August, when most females are no longer coming into estrous (Gentry 1998). Subsistence users can handle pups safely up until weaning in order to distinguish male from female seals prior to harvest, but this and other restrictions will be managed and monitored within the co-management process, not by regulations.

NMFS has worked with the Traditional Council of St. George Island since 2014 to implement the regulations authorizing the harvest of pups on St. George Island (79 FR 65327, November 4, 2014). NMFS has independently monitored all pup harvests from 2014 through 2017. No female pups have been accidentally harvested by the Pribilovians on St. George Island during this timeframe. If the proposed rule is finalized, NMFS expects similar cooperation with ACSPI and a similarly low level of accidental female pup mortality on St. Paul Island.

Authorized Mortality of Females During the Hunting and Harvest Seasons

The 1986 emergency final rule included two harvest termination provisions regarding the taking of females during the subsistence harvest of male fur seals (51 FR 24828, July 9, 1986). The first provision established a termination threshold of one-half of one percent of the total number of seals harvested per island. Therefore, the harvest termination thresholds in 1986 based on the harvest range of 2,400 to 8,000 males would have been 12 to 40 females. The second provision established a termination threshold when the number of females harvested during any consecutive seven-day period after August 8 exceeds five. Both of these provisions were removed in 1992 when NMFS removed the option to extend the harvest after August 8 (57 FR 33900, July 31, 1992). The probability of encountering immature female fur seals on the hauling grounds increases after August 1 (57 FR 33900, July 31, 1992). Non-breeding female fur seals arrive on the hauling grounds later than similarly-aged males (Bigg 1986).

NMFS and ACSPI are still concerned about the killing of females during the subsistence use seasons on St. Paul Island and the ability of subsistence users to distinguish young females from young males. However, rather than preclude subsistence opportunities in an attempt to prevent any female mortality, NMFS is proposing a safe threshold for female mortality associated with the subsistence hunting and harvest seasons and a female mortality termination provision similar to the previous termination provision (51 FR 24828, July 9, 1986) to minimize population consequences. Since the duration of the combined proposed hunting and harvest seasons would be longer than the current subsistence harvest season, NMFS is proposing to authorize for subsistence use the incidental mortality of up to 20 female fur seals each year (*i.e.,* one percent of the allowable mortality). NMFS also proposes to include a provision to terminate the subsistence use on St. Paul for the rest of the year if 20 female fur seals are killed at any point during a calendar year. Although it is more likely female fur seals would be encountered and killed during the harvest season, the subsistence limit and termination provision apply once 20 female fur seals are killed at any point during a calendar year.

The authorized level of female mortality (20) is higher than allowed under the current Co-management Agreement (8). NMFS and ACSPI will revise the Co-management Agreement so that it is consistent with the proposed regulation if it is finalized. The annual limit on female mortality will incentivize avoiding incidental take of females and other causes of accidental mortality and will not have negative consequences at a population level. NMFS modeled the potential population impact of the different female mortality thresholds of all the alternatives in the DSEIS (NMFS 2017, Towell and Williams unpublished report). NMFS modeled the mortality of 20 female pups and 20 juvenile females (less than six years old) and reported that effects included both lost adult females and changes in reproduction. For the mortality of 20 female pups per year over 25 years, that effect was estimated as a 0.04 percent loss in adult females and 0.04 percent reduction in reproduction using two different historical estimates of female survival (Towell and Williams unpublished report). For the mortality of 20 juvenile females per year over 25 years, that effect was estimated to range from a 0.07 to 0.12 percent loss in adult females and a 0.12 to 0.39 percent reduction in reproduction using two different historical estimates of female survival (Towell and Williams unpublished report). The use of two different estimates of female survival was not expected to show any difference when considering the mortality of female pups, but was expected to provide the range observed for the mortality of up to 20 juvenile females. This low percent reduction in adult females and in reproduction is not likely to impact the northern fur seal population overall.

The Co-management Council may establish interim thresholds of female mortality below the regulatory limit of 20 in order to adjust subsistence use practices. The intent is for the revised Co-management Agreement to incentivize avoiding incidental take and mortality of females, and other sources of accidental mortality. Thus the non-regulatory measures within the management plans developed in the Co-

management process would further reduce the likelihood of reaching the limit of 20 female mortalities.

Implementation of a Revised Co-Management Agreement and Subsistence Management Plan for St. Paul Island

NMFS evaluated ACSPI's petition for rulemaking along with other alternatives in a DSEIS (82 FR 22797, January 13, 2017) 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 proposed rule adds a regulatory provision to the petitioned alternative to authorize the incidental or accidental mortality of up to 20 female fur seals each year. ACSPI petitioned NMFS to include a regulatory provision under the FSA that would allow ACSPI to co-manage subsistence use of northern fur seals under a co-management agreement. The proposed rule does not include this petitioned regulatory provision because co-management of subsistence use is authorized under Section 119 of the MMPA (16 U.S.C. 1388) and so no implementing regulations under the FSA are necessary to allow for co-management between NMFS and ACSPI. ACSPI will be able to continue co-management with NMFS under the MMPA.

If the proposed rule is finalized, NMFS and ACSPI would revise the Co-management Agreement to reflect the new regulatory framework governing the subsistence take of fur seals on St. Paul Island. NMFS and ACSPI would also finalize an in-season monitoring and management plan, which would specify details of hunting and harvest management that the Co-management Council would implement via consensus within the parameters of the regulations. For example, the in-season monitoring and management plan could include non-regulatory provisions that limit the hunting and harvest of fur seals to particular sites, or suspend the hunting and harvest seasons temporarily if a certain number of females (below the regulatory limit of 20) are killed. This approach would 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 occasional independent monitoring by NMFS representatives. NMFS and ACPSI would monitor the pup harvest and hunting season consistent with the intent of the revised Co-management Agreement, while ensuring compliance with regulatory requirements and any restrictions or limitations identified in the in-season monitoring and management plan.

Additional Regulatory Changes for St. Paul and St. George Islands

NMFS proposes to remove 50 CFR 216.74(b), which states that Pribilovians who engage in the harvest of seals are required to cooperate with scientists who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes and that Pribilovians who take fur seals for subsistence uses must cooperate with NMFS representatives on the Pribilof Islands who are responsible for compiling harvest information. These requirements reflected NMFS's relationship with St. Paul subsistence users in the 1980s, but the relationship has evolved through co-management to be collaborative and cooperative, rather than hierarchical, and thus the regulatory mandates in 50 CFR 216.74(b) are unnecessary. Instead, NMFS proposes to remove the heading ''St. George Island'' from current section 216.74(a), which describes the co-management process and the respective roles of NMFS and the tribes, to clarify that 50 CFR 216.74(a) applies to both St. George and St. Paul. Thus, section 216.74 would no longer have subsections.

Additional Regulatory Changes Related to St. Paul Subsistence Co-Management Agreement

NMFS proposes to replace the regulatory restriction at 50 CFR 216.72(e), which states that seals on St. Paul Island may only be harvested from the Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef haulout areas and that no haulout area may be harvested more than once per week. When NMFS promulgated this regulation, NMFS did not indicate why haulout areas on St. Paul Island required additional protection regarding the frequency of harvest (once per week) when compared to those areas on St. George that could be harvested twice per week (51 FR 24828, July 9, 1986). It appears NMFS was simply continuing the frequency of commercial harvests on St. Paul as noted in the emergency interim rule (50 FR 27914, July 8, 1985). NMFS's decision about the frequency of subsistence harvests appears to have been influenced by concerns about overharvest and disturbance on the Islands (51 FR 24837, July 9, 1986), but those concerns were not explained relative to differences in effort (and presumably effects) between the commercial harvest and subsistence harvest and relative to different authorized practices (frequency of harvest allowed) between St. Paul Island and St. George Island. The 1986 subsistence harvest on St. Paul Island was limited in the regulations to one harvest per hauling ground for a total of 2,400–8,000 seals less than 124.5 cm in length over 19 harvest days. When examined in the context of the actual harvest effort in 1984 and 1986, and the data collected and analyzed in 1978 and 1979 by Gentry (1981) and Griben (1979) showing that there were no movements of seals from harvested areas or any evidence of a lack of seals at the end of the commercial harvest season, this concern about disturbance during the subsistence harvest appears without basis. It is also not clear whether disturbance to the rookeries from the subsistence harvest on haulout areas would be any different than that observed for the much larger commercial harvest.

In addition, the final rule did not include a rationale for the designation of the harvestable haulout areas (51 FR 24828, July 9, 1986), and some of the place names are problematic. Northeast Point is a geographic region on St. Paul Island, not a haulout area. Northeast Point includes two rookeries, named Vostochni and Morjovi, both of which include at least three separate haulout areas. English Bay refers to a body of water on the southern coast of St. Paul Island, not a haulout area. Four different rookeries around English Bay are occupied by fur seals: Tolstoi, Zapadni Reef, Little Zapadni, and Big Zapadni. Each of these rookeries include at least one separate haulout area that was commercially harvested. Reef is a peninsula of land on the southeast coast that includes three rookeries named Reef, Gorbatch, and Ardiguen. Reef and Gorbatch rookeries each include at least two separate haulout areas, and Ardiguen is separated by a cliff on the inland side with no associated harvestable haulout area. These discrepancies and inconsistencies in identifying the haulout areas in 50 CFR 216.72(e), combined with the unclear original rationale, render that regulatory provision ineffective today. Moreover, there is no present rationale to dictate harvest frequency and location by regulation, particularly in light of the preference of NMFS and ACSPI to manage the subsistence use of fur seals through a non-regulatory, yet effective, co-management process. In lieu of identifying in regulation the specific sites where subsistence use may occur,

the proposed rule would leave in-season management of the hunting and harvest seasons to the Co-management Council, including the scheduling and identification of locations and frequency of hunting and harvesting through an annual in-season monitoring and management plan, thereby supporting co-management of the subsistence use of marine mammals by Alaska Natives per Section 119 of the MMPA (16 U.S.C. 1388).

NMFS proposes to replace 50 CFR 216.72(e)(1), which states that the scheduling of the harvest is at the discretion of the Pribilovians, but must minimize stress to the harvested fur seals, and that the Pribilovians must give adequate advance notice of their harvest schedules to NMFS representatives. The existing regulatory language that requires the Pribilovians to notify NMFS of their harvest schedules was based on the premise that NMFS would provide the exclusive harvest monitoring. However, under the existing Co-management Agreement, the Pribilovians on St. Paul Island have taken responsibility for regular monitoring of subsistence use, and have identified and implemented measures to reduce stress to harvested and unharvested seals. Under the Co-management agreement, they have re-instituted morning harvests, slowed the driving times from the haulout areas to the killing fields, and canceled harvests when weather conditions create a high risk for seals overheating. ACSPI has also instituted cool-down periods after the initial drive of seals to the killing fields, in between periods of stunning on the killing field, or if other unforeseen circumstances warrant. There have been no cases of seals overheating during the harvest in the past decade, in contrast to the commercial harvest and the first twenty years of the subsistence harvest (*see* annual harvest reports *https://alaskafisheries.noaa.gov/pr/fur-seal*). Under the proposed rule, the Pribilovians would continue to work with NMFS on the cooperative management of the proposed subsistence use seasons, and the Co-management Council would schedule subsistence use and identify the locations and frequency of hunting and harvesting in the annual in-season monitoring and management plan. These measures would help improve the quality of the meat collected for subsistence use. Moreover, allowing the Co-management Council to develop measures for the location, frequency, and timing of subsistence use would respect the cultural identity of the Pribilovians and their stewardship responsibility towards fur seals.

NMFS proposes to replace 50 CFR 216.72(e)(3), and revise 50 CFR 216.72(e)(2) to authorize subsistence harvests without the use of firearms by traditional methods of herding and stunning followed immediately by exsanguination. Currently, 50 CFR 216.72(e)(3) prescribes that no fur seal may be taken except by experienced sealers using the traditional harvesting methods. The rationale for this provision was based on the determination by NMFS in the first years of the subsistence harvest that the traditional method of harvest was certified as humane and the premise that only experienced sealers would be able to maintain the high level of performance required to meet the humane standard. However, experienced sealers are often not available during the current subsistence season on St. Paul Island, which coincides with other limited employment opportunities on the Island, such as commercial fishing (56 FR 36735, 36739; August 1, 1991). A consequence of the regulatory requirement for experienced sealers resulted in a canceled harvest on the last day of the 1992 season (58 FR 32893; June 14, 1993). Specifically, a harvest of approximately 100 seals was scheduled to occur on St. Paul on August 8, 1992, the last available date of the 1992 harvest season. However, due to a family emergency the harvest foreman and other family members had to leave the Island on that date. Thus a lack of available experienced sealers caused the harvest to be canceled.

NMFS (2017) evaluated the tradeoffs of using regulatory requirements to prescribe the methods, scheduling, and personnel for the subsistence use seasons on St. Paul Island, compared to whether NMFS and ACSPI could effectively use a more collaborative non-regulatory approach to meet the regulatory requirement of ensuring the subsistence use is not accomplished in a wasteful manner (50 CFR 216.71(b)). NMFS (2017) determined that subsistence use activities on St. Paul Island, including the individuals authorized to participate in the hunting and harvest seasons, would be more effectively managed by the St. Paul Co-management Council, rather than prescribed by regulation. Such a process will allow the Co-Management Council to manage the hunting and harvest seasons to accommodate the diversity of subsistence use activities on St. Paul Island. 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.

Request for Comments

NMFS developed the proposed northern fur seal subsistence use regulations to accomplish the intent of the ACSPI's petition, remove duplicative and unnecessary regulatory provisions for Pribilovians on St. George Island, and enhance the conservation and management of northern fur seals. NMFS solicits public comment on the proposed regulations and on the Initial Regulatory Flexibility Analysis (IRFA) prepared for this proposed rule.

Classification

National Environmental Policy Act

NMFS prepared a DSEIS evaluating the impacts of the subsistence harvest of northern fur seals on St. Paul Island on the human environment, and will complete a final SEIS prior to issuing a final rule. NMFS will also prepare a Supplemental Information Report to the St. George Final SEIS prior to issuing a final rule.

Executive Order 12866 and Regulatory Flexibility Act

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

Regulatory Impact Review (RIR or Analysis)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). NMFS recommends this action based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis related to the impact of the proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules;

and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

NMFS prepared an analysis under the Regulatory Flexibility Act (RFA) that carefully examined the potential impacts, including possible economic benefits and costs, and potential adverse economic burdens that may accrue uniquely to small entities, attributable to the action described above. NMFS affirms that the analysts have used the best available scientific data and commercial information to examine the possibility that a small entity, directly regulated by the proposed action, may potentially incur a significant adverse economic impact attributable to adoption of this action.

Number and Description of Small Entities Regulated by This Proposed Rule

The harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only by Pribilovians. This action directly regulates the subsistence use of northern fur seals by Alaska Natives residing in the community of St. Paul and St. George (*i.e.,* Pribilovians). Individual Pribilovians, through the coordination of their Tribal Governments, organize volunteer crews to take northern fur seals for subsistence use consistent with the regulations. The RFA recognizes and defines three kinds of small entities: (1) Small businesses; (2) small non-profit organizations; and (3) and small government jurisdictions. Thus, subsistence harvesters do not meet the RFA definition of small entities.

NMFS has identified two small entities that may be affected by this action—the Aleut Community of St. Paul Island, Tribal Government (ACSPI), and the Traditional Council of St. George Island, Tribal Government (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.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for deregulating the subsistence use of northern fur seals in the Pribilof Islands, are consistent with applicable statutes, that would reduce costs to potentially affected small entities more than the proposed rule and that is directly responsive to the ACSPI petition.

The Alaska Native residents of St. Paul and St. George rely on a traditional subsistence lifestyle. The proposed rule would improve the management of fur seal subsistence use on St. Paul and St. George and would improve the ability of Pribilovians on both Islands to meet their subsistence needs. For both Islands, the proposed rule removes or reduces regulatory burdens on NMFS and Pribilovians by removing a requirement for NMFS to publish every three years subsistence determinations for each year, by ceasing to use a lower and upper limit to specify harvest levels, and by eliminating or revising regulations related to the lower and upper limit and the suspension and termination of the subsistence use season. For both Islands, the proposed rule also removes duplicative and therefore unnecessary regulations. The proposed rule balances an approach to streamline and simplify the regulations that govern the subsistence use of fur seals on the Pribilof Islands, while recognizing that a non-regulatory approach would prevent the subsistence use of fur seals on the Pribilof Islands. Under the FSA, all taking of fur seals is prohibited, unless authorized in regulations deemed necessary and appropriate for the conservation, management, and protection of the fur seal population (16 U.S.C. 1155(a)). NMFS will continue to regulate some aspects of subsistence use because an exclusively non-regulatory approach is not appropriate to ensure both the conservation goals for fur seals on the Pribilof Islands and the continued subsistence use of fur seals by Pribilovians. As discussed next, however, the preferred alternatives for each Island will streamline and simplify the regulations and have conservation value, while providing positive and beneficial effects for the communities of St. Paul and St. George Islands.

For St. Paul Island, Alternative 2 (Preliminary Preferred/Petitioned Alternative) addresses the subsistence need of the St. Paul community expressed in their petition. The Petitioned Alternative recognizes a formal request by the ACSPI to maximize the use of co-management (*i.e.,* non-regulatory) rather than Federal regulations to restrict and manage subsistence practices. Alternative 2 addresses the petition of ACSPI to reinitiate the pup harvest and winter hunting of fur seals, and Alternative 2 delegates authority to the St. Paul Co-Management Council to develop a process and implement practical, locally-supported conservation controls. These controls may include measures to manage and minimize incidental or accidental mortality of females, monitor and report the subsistence use during all seasons, and prohibit subsistence use at breeding locations where the annual pup production may not sustain such use. Alternative 2 increases opportunities for using fur seals by authorizing harvests of juvenile fur seals from June 23 through December 31, and by adding a hunting season for juvenile fur seals from January 1 through May 31 every year. As a result of this change, the availability of fresh fur seal meat outside the current summer harvest season and the opportunities to co-manage the subsistence use are improved. During the hunting season, firearms would be a permitted method to pursue fur seals on land or in the water. By allowing subsistence use of different age classes of fur seals at more locations on St. Paul, the community would have greater community resilience in meeting the demands of changing future environmental conditions to meet their subsistence need. For example, increasing ambient air temperatures on the Pribilof Islands increases the probability of over-heating seals during the round-up process in the summer, and may result in more canceled harvests. The tribal governments on both islands have begun to collect data to quantify the effects of changing environmental conditions on their ability to meet their subsistence needs. Fur seals may begin to spend more time in the Bering Sea in the winter as less seasonal sea ice forms. As a result they may haul out more frequently on the Pribilof Islands. Alternative 2 would best balance meeting the subsistence needs of the community with the conservation and management of the fur seal population. Alternative 2 also expands co-management of a resource of significant value to the community of St. Paul Island. Therefore, Alternative 2 is believed to have major beneficial effects to the Pribilovians of St. Paul Island. NMFS' preliminary preferred alternative is Alternative 2 due to the high likelihood of positive or beneficial effects on the community, and similar environmental consequences to all other alternatives.

For St. George Island, Alternative 2 will remove duplicative and unnecessary regulations on the take of

fur seals and will streamline and simplify the regulations by setting a sustainable maximum harvest level in regulation. Setting in regulation a fixed maximum harvest level for St. George Island will account for the prevailing socio-economic conditions and abundance of the fur seal population on the Pribilof Islands, as well as the variability in the availability of fur seals based on environmental factors and the availability of subsistence users to participate in the subsistence harvests. Alternative 2, as compared to Alternative 1, will reduce current survey burdens on the subsistence harvest on St. George Island while emphasizing a broader consideration of the economic, social, and environmental factors affecting the subsistence use. The result of the regulatory streamlining will improve access and utilization of subsistence resources on St. George Island. This will positively impact food security, availability, and stability for the Pribilovians on St. George Island. Therefore, Alternative 2 is believed to have major beneficial effects to the Pribilovians of St. George Island. NMFS' preliminary preferred alternative is Alternative 2 due to the high likelihood of positive or beneficial effects on the community, and similar environmental consequences to all other alternatives.

NMFS determined that disproportionality is the appropriate standard given the regulated entities are small government jurisdictions. No large entities are allowed to hunt or harvest northern fur seals; therefore the regulatory allowance for tribal members of either the Traditional Council of St. George or the Aleut Community of St. Paul Island to use northern fur seals for subsistence does not create a disproportionate impact that would disadvantage them. NMFS expects this action to have positive economic impacts to the small governmental entities affected by the rule; no negative economic impacts are expected. Based on this analysis, NMFS preliminarily determines that, while there may be two directly regulated small entities that may be beneficially affected by this proposed rule, those entities would not be significantly affected by this proposed rule. However, NMFS has prepared this IRFA to comply with the RFA and to provide potentially affected entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying under section 605 of the RFA (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule revises an existing collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), although certain collection-of-information requirements would remain in place for both Islands. NMFS obtained OMB control number 0648–0699 for the regulations at 50 CFR 216.71–74, which apply to both Islands. For St. Paul Island, public reporting burden for hunt and harvest reporting for ACSPI 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. George as part of this action.

Under the existing regulatory structure, NMFS is required to suspend the subsistence use season for each Island when the lower limit of subsistence use for that Island is reached, and if allowing the season to resume, NMFS is required to determine the number of seals needed to satisfy subsistence need. NMFS substantiates the number of seals needed above the lower limit based on additional information provided from the Pribilovians. Under the proposed rule, these regulatory requirements would be eliminated; therefore, the proposed rule would reduce the burden on the Pribilovians on both Islands to collect and submit additional household surveys or additional information to justify their annual subsistence need.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Executive Order 13175—Native Consultation

The ACSPI petitioned NMFS to revise the northern fur seal subsistence use regulations. NMFS worked with ACSPI and contacted their local Native Corporation (Tanadgusix) about revising the regulations regarding the subsistence use of northern fur seals on St. Paul Island. Their input is incorporated herein. NMFS contacted the tribal government of St. George Island and their local Native Corporation (Tanaq) about revisions to the regulations applicable to the subsistence use of northern fur seals on St. George Island. Their input is incorporated herein. This proposed 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).

Collection-of-Information Requirements

This proposed rule revises a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). 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. George as part of this action.

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

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

Dated: August 6, 2018.

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, 50 CFR part 216 is proposed to be amended 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. 1361 *et seq.,* unless otherwise noted.

■ 2. In § 216.72:
■ a. Revise the section heading;
■ b. Remove and reserve paragraphs (b);
■ c. Revise paragraphs (d) introductory text and (d)(1);
■ d. Remove and reserve paragraphs (d)(3), (d)(5);
■ e. Revise paragraphs (d)(6);
■ f. Remove and reserve paragraph (d)(9) and
■ g. Revise paragraphs (e), (f), and (g).

The revisions are to read as follows:

§ 216.72 Restrictions on subsistence use of fur seals.

* * * * *

(d) *St. George Island.* The subsistence fur seal harvest restrictions described in paragraphs (d)(1) through (d)(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 (d)(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 3 mortalities of female fur seals associated with the subsistence seasons, which 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.

* * * * *

(3) [RESERVED]

* * * * *

(5) [RESERVED]

(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.

* * * * *

(9) [RESERVED]

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(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 traditional 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, which will be included in the total number of fur seals authorized per year for subsistence uses (2,000).

(f) *Harvest 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 the harvest 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 the harvest 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) *Harvest 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 the first of the either occurs: 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 3 female fur seals have been killed during the subsistence seasons.

* * * * *

■ 3. Revise § 216.74 to read as follows:

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

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

[FR Doc. 2018–17117 Filed 8–13–18; 8:45 am]

BILLING CODE 3510–22–P