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[Page 0]

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[[Page Unknown]]

[Federal Register: July 12, 1994]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 940414-4191; I.D. 032494B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

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

ACTION: Final rule; fur seal subsistence harvest estimates on the Pribilof Islands.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, NMFS is required to publish an estimate of the number of seals expected to be harvested in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK. Additionally, this document amends existing fur seal regulations, making the subsistence harvest take estimates applicable for 3 years instead of 1 year. The intended effect of this rule is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents while minimizing negative effects on the seal population.

EFFECTIVE DATE: This final notice of subsistence need estimates is effective July 12, 1994, and applies to the harvest beginning June 23, 1994. The final rule that amends existing fur seal regulations, making the harvest estimates applicable for 3 years instead of 1 year, is effective August 11, 1994.

ADDRESSES: Dr. William W. Fox, Jr., Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, (907) 586-7235, Margot Bohan or Michael Payne, (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the Marine Mammal Protection Act (MMPA) (50 CFR 216.15(c)). The subsistence harvest of northern fur seals on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215, Subpart D--Taking for Subsistence Purposes, and has been regulated to minimize negative effects on the population. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 et seq., and the MMPA, 16 U.S.C. 1361 et seq. (see 51 FR 24828, July 9, 1986).

The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Aleuts while using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The St. Paul and St. George Islands' harvest estimates are given as a range, the lower end of which can be exceeded if NMFS is given notification and the Assistant Administrator for Fisheries, NOAA (AA), determines that the subsistence needs of the Aleut residents from either of the islands have not been satisfied. Conversely, the harvest

can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

NMFS published a summary notice of the 1993 fur seal harvest on November 1, 1993 (58 FR 58297). The proposed estimates for the 1994 fur seal subsistence harvest and the proposed rule to make the harvest take estimates applicable for 3 years instead of 1 year were published on May 13, 1994 (59 FR 25024). Following acceptance and consideration of public comments on this proposal, NMFS is publishing this final notice of the expected harvest levels for 1994, as follows: St. Paul Island: 1,645-2,000; St. George Island: 281-500. In addition, this document amends existing fur seal regulations, making these take estimates applicable for 3 years instead of 1 year.

Comments

NMFS received four sets of comments on the proposed harvest estimates and the proposed rule.

Comment: One commenter opposed the proposed amendment to the existing fur seal regulations. The commenter stated that NMFS continues to allow the wasteful taking of fur seals on the Pribilof Islands, and that the proposed rule change would place NMFS in the position of endorsing and authorizing wasteful take for an extended period. The commenter asserted that rather than addressing the wasteful seal killing that has persisted on those islands for years, NMFS, to the contrary, now proposes to institutionalize this improper conduct for 3 years without further question.

Another commenter voiced support for the regulatory amendment. The commenter reasoned that the take has been relatively stable and the upper and lower limits of the estimate range were wide enough to allow change, and, therefore, as the populations of animals and people vary, so can the target goals for future harvests.

Response: Regulations on subsistence taking of northern fur seals have been devised to limit take to a level providing for legitimate subsistence needs of the Pribilof Natives while minimizing negative effects on the seal population. These regulations are intended, thus, as preventative measures against wasteful taking and improper conduct within each harvest season. (Wasteful taking is discussed in greater detail at 58 FR 42027, August 6, 1993.) The rationale behind the 3 year estimate of subsistence need versus an annual estimate was explained in the proposed estimates of subsistence need (59 FR 25024, May 13, 1994). NMFS has recognized the need to reevaluate the regulatory issues regarding subsistence (57 FR 34081, August 3, 1992). As a first step towards addressing this need, NMFS proposed that Sec. 215.32(b) of the fur seal regulations be applicable for a 3-year period, beginning in 1994. The regulatory amendment is based on the fact that the actual number of fur seals harvested each year since 1989 has been relatively consistent, and the fur seal take has never exceeded the upper limit of the estimated range for subsistence need within any year of the harvest. NMFS anticipates that the subsistence needs of the Pribilof Island residents may increase during the next 3 years. However, based on historical evidence to date, the year-to-year subsistence needs are not expected to increase to levels exceeding the range established in this final estimate.

Comment: One commenter supported the implementation of a cooperative management plan as a means of protecting the fur seal. The cooperative plan would expand governmental conservation efforts, and involve local people on the islands to a larger extent in fur seal management issues. The commenter requested that particular effort be made to establish a structure that will enable the residents of the Pribilof Islands to more actively participate in the monitoring and regulating of the harvest.

Response: NMFS agrees with the commenter's suggestions. Section 119 of the recently reauthorized MMPA allows for NMFS to enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and to provide for a co-management of subsistence use by Alaska Natives. NMFS intends to pursue the development of such a program that would further the goal of cooperative management and monitoring with the Alaskan native organizations.

Comment: One commenter stated that the 1994 subsistence estimates are too high because they are based on historically wasteful seal killing practices carried over from the period of commercial harvest when only the choicest cuts of meat were taken for human consumption. The commenter continued by stating that through the adoption of these estimates, NMFS further institutionalizes waste and sanctions a level of seal killing known to reflect wasteful practices.

Response: This comment is similar to the one presented and discussed in the final subsistence estimates for 1993 (58 FR 42027, August 6, 1993). In that final notice, a commenter maintained that the present harvest level did not reflect the true subsistence need on the Pribilof Islands. However, available information indicates that the

present number of fur seals taken for subsistence on the Pribilof Islands is not higher than necessary to provide for subsistence needs. During one of the last periods when fur seals were taken solely for subsistence purposes on St. Paul Island, 1912-16, the number of fur seals taken each year (range 1,764-3,483) was significantly higher than it is at present, even though the human population on St. Paul Island at that time was less than one-half of the present population. Therefore, the commenter has inaccurately assumed that practices carried over from the commercial harvest have resulted in a level of subsistence use greater than that used historically on the Pribilof Islands.

Comment: A commenter stated that there is no basis for setting the lower end of the estimated subsistence range based on the greatest number of seals killed during any year over the past 6 years.

Response: NMFS believes that the present range of fur seal subsistence estimates used on St. Paul and St. George Islands are justified. During the past 3 years the number of seals taken in the subsistence harvest has stabilized, ranging from 1,482 to 1,645 takes each year on St. Paul Island and from 194 to 319 each year on St. George Island. Generally, the lower limits of the estimate ranges for the islands have been approached during each of the past 3 years, but a difference of 1 or 2 actual days of harvest between years can result in the difference observed between the estimated number and actual number of seals taken within any one season. The apparent trend toward stability in the harvest totals on St. Paul and St. George Islands indicates to NMFS that the proposed estimates of annual need accurately reflect the actual subsistence requirements on the islands.

Comment: One commenter stated that the estimate of need should not be based on numbers of seals. Rather, it should be based on the quantity of meat that is required for subsistence needs. The commenter provided data indicating that, by its calculations, approximately 450-570 fewer seals could have been harvested on St. Paul Island in 1993 had the harvest estimates been based on the amount of meat required by residents of St. Paul, rather than based on a number of seals required.

Response: The commenter's estimate of the number of seals that need not have been killed in 1993 (450-570) was based on an average maximum percent-use value of 60 percent. This value was a result of a 1987 study in which 83 seals were weighed before and after virtually all consumable parts (including many parts that are only marginally edible, such as connective tissues, etc.) had been removed (i.e., everything was taken except for the pelt, blubber, skull, neck, inedible internal organs, and body fluids). This butchering technique is referred to as a whole cut, and a mean 53.3 percent of each animal (maximum approximately 60 percent) was dressed out under these circumstances (53 FR 17773, May 18, 1988).

During the 1987 harvest, 101 carcasses were also weighed before and after butchering had removed only the front flippers, shoulders, breasts, hearts and livers (referred to as the butterfly cut), the parts historically eaten. A mean 29.1 percent of each animal was dressed out under these circumstances (53 FR 17773, May 18, 1988). Thus, it was determined that the range of percent-use values between animals that have been butchered to remove only selected parts, and animals that have been butchered to remove virtually all consumable parts (including many parts only marginally edible), lies between 29.1 and 53.3 percent of the initial carcass weight. Whether the harvest is being conducted in a wasteful versus non-wasteful manner focuses on whether or not the butterfly cut method of butchering is interpreted as a wasteful manner as defined in the regulations. NMFS determined, based on a 1992 study, that the butterfly cut does not represent a wasteful manner of taking (discussed in greater detail at 58 FR 42027, August 6, 1993).

During the 1992 harvest, NMFS weighed the whole carcass, as well as the weight of each major body part (breast, shoulder, arm, ribs, backbone, and hindquarter as well as heart, liver, front flippers, rear flippers, head, guts and pelt), to determine the proportion of edible meat that was available from the different parts of the body for each of six fur seals. In summary, the mean weight of the parts taken in a whole cut totaled 54.9 percent of the beginning weight of the seals, and the mean weight for the parts constituting a butterfly cut was 32.5 percent, indicating a mean percent-use difference of approximately 22 percent. However, using mean values from the 1992 study, the total amount of edible meat (excluding bone, minimally edible connective tissue, and inedible tissue) available from a whole cut seal was 29.6 percent (range 26.8-31.6) of the beginning weight of the animal compared to 21.1 percent (range 18.9-23.4) taken from a butterfly cut seal. Therefore, the average difference in the amount of edible meat between the two butchering techniques is approximately 8-9 percent of the original body weight of the animal, not the 22 percent difference that has been widely used to characterize the two different techniques, and that was used in the commenter's calculations. As NMFS explained in the 1993 document of final subsistence estimates, while a whole cut

does result in more meat being made available for subsistence use than does the butterfly cut, both cuts result in a substantial portion of the edible parts of the seal being used for subsistence, and the real difference in edible meat being made available to the user has been greatly exaggerated.

Comment: One commenter cautioned that NMFS must guard against economic incentives that might lead to higher harvest levels. The commenter continued to state that NMFS should retrieve all seal penis bones or bacula to assure that potential trade in these items will not result in excessive seal killing. The commenter did not feel that this was either unreasonable or burdensome on the part of NMFS. Moreover, some Pribilof residents have suggested this approach as a means to reassure concerned parties that the commercial value of seal bacula is not an incentive for harvesting fur seals.

Response: NMFS' position is that the subsistence harvest and the estimates of subsistence needs must not be based upon commercial interests. There is no indication that the harvest is being driven by commercial interests; however, NMFS will continue to monitor the disposal of carcasses, and the removal of bacula from animals taken in the harvest, to ensure that commercial interests are not factors in the subsistence harvest.

Comment: One commenter stated that the subsistence harvest methods used by the Aleut sealers do not need to be monitored or regulated to ensure compliance with NMFS' standards for substantial use of seal carcasses.

Response: The regulations governing the subsistence harvest of fur seals require that NMFS' representatives monitor the harvest and collect information on the number of seals taken and the extent of utilization of the fur seals taken (51 FR 24832, July 9, 1986). NMFS believes that alternatives to the present fur seal management regime should be considered and discussed during the development of a cooperation management program under section 119 of the MMPA. The commenters' concerns will be considered further in these discussions and in any future rulemaking to revise these regulations.

Subsistence Harvest Estimates for 1994 Through 1996

NMFS published a document proposing a range of subsistence need estimates for 1994-96 based on the results of the 1992-93 harvests (59 FR 25024, May 13, 1994). NMFS proposed that the lower bound of the harvest estimate for northern fur seals on St. Paul Island for each year, 1994-96, remain at 1,645 (the same as that in 1992 and 1993). If the Aleut residents of St. Paul Island reach the lower limit of the estimated range of animals during the harvest, and still have unmet subsistence needs, they may request an additional number of seals, up to a harvest total of 2,000 fur seals. For St. George Island, NMFS also proposed that the lower bound of the estimate of subsistence need for each year, 1994-96, remain at the 1992 and 1993 level of 281 fur seals. If the Aleut residents of St. George Island reach the lower level of estimated need during the 1994 harvest, and still have unmet subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991-93 harvests).

The Aleut residents of St. Paul and St. George Islands may harvest up to the lower bound of the applicable estimate between June 23 and August 8 of each year, 1994-96. If, at any time during the harvest, the lower estimate of subsistence need for an island is reached, the harvest must be suspended for no longer than 48 hours, pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. At such time, the Pribilof Aleuts may submit information indicating that subsistence needs (for either island) have not been met. This information should be submitted as quickly as possible, optimally just prior to the time that notification is given that the lower end of the harvest estimate has been reached in order to assure that the required harvest suspension lasts no longer than 48 hours. If the Pribilof Aleuts substantiate an additional need for seals, and there has been no indication of waste, the AA must provide a revised estimate of the number of seals required for subsistence purposes. If additional information is not submitted by the Pribilof Aleuts, the AA will consider only the information in the record at the time of the suspension. It is likely, under such circumstances, that the revised subsistence estimate would remain the same as the original estimate. If that is the case, no additional takings would be authorized.

Classification

NMFS has determined that the approval and implementation of this document and amendment to the current regulation will not significantly affect the human environment, and that preparation of an Environmental Impact Statement on this is not required by section 102(2) of the

National Environmental Policy Act or its implementing regulations. This rule makes only minor changes to the regulations governing the taking of fur seals for subsistence purposes; this action does not entail significant substantive revision. Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments (EA), it is categorically excluded by NOAA Administrative Order 216-6 from the requirement to prepare an EA.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published with the proposed rule and harvest estimates (see 59 FR 25024, May 13, 1994). Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: July 6, 1994.
Charles Karnella,
Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 215, subpart D, is to be amended as follows:

PART 215--PRIBILOF ISLANDS

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1384.

2. Section 215.32 is amended by revising paragraph (b) to read as follows:

Sec. 215.32 Restrictions on taking.

* * * * *

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the Federal Register a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3 years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

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