

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 60473-6127]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency final rule.

SUMMARY: The NMFS is issuing a rule regarding the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) by Indians, Aleuts, and Eskimos who live on the Pribilof Islands. This action is necessary to protect the breeding stock of this declining species. This rule places restrictions upon the subsistence taking of fur seals allowed under the Marine Mammal Protection Act and the Fur Seal Act, and provides that the harvest may be suspended once the subsistence needs of the Pribilovians have been satisfied.

EFFECTIVE DATE: July 3, 1986.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235.

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SUPPLEMENTARY INFORMATION:

Background

From 1957 through 1984, a harvest of fur seals on the Pribilof Islands was conducted under the authority of the Interim Convention on Conservation of North Pacific Fur Seals (Convention). The parties to the Convention, the United States, Canada, Japan, and the Soviet Union, agreed to prohibit pelagic (at-sea) harvesting of seals, conduct limited land harvests and share the commercially valuable seal skins. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Prior to the entry into force of the Convention, harvests were conducted under the 1911 Convention for the Preservation and Protection of Fur Seals. The 1911 treaty was interrupted prior to World War II by the withdrawal of Japan, but the Pribilof Islands seal herd was protected between 1941 and 1957 by a provisional agreement between the United States and Canada.

The subsistence needs of the Pribilovians for seal meat have traditionally been met from seals taken in the commercial skin harvest

conducted under the Convention. The level of the commercial harvest historically has exceeded the estimated subsistence needs of the islanders. In 1984, for example, the commercial harvest on the Pribilof Islands totaled over 22,000 seals. Since 1973, no commercial take has been allowed on St. George Island and only a limited subsistence harvest has been authorized to protect ongoing fur seal population research. The resultant shortfall in meeting the St. George residents' subsistence requirements has been offset by providing them with meat from the St. Paul harvest.

Under the terms of the 1980 extension of the Convention, the Convention expired on October 14, 1984. On October 12, 1984, the parties to the Convention signed a protocol that, upon acceptance by all four parties, would extend the Convention until October 13, 1988. Japan, Canada, and the Soviet Union have ratified the 1984 protocol. On March 20, 1985, the President transmitted the protocol to the Senate, requesting its advice and consent. On June 13, 1985, a hearing was held on the protocol before the Senate Committee on Foreign Relations, but no final action has been taken on the protocol.

In consultation with the departments of State and Justice, and the Marine Mammal Commission, NOAA determined that no commercial harvest could be conducted under existing domestic law, absent Senate ratification of a protocol extending the Convention of provisional application of the protocol. Accordingly, on July 8, 1985 (50 FR 27914), NOAA promulgated an emergency interim rule to govern subsistence taking of North Pacific fur seals for the 1985 season under the authority of section 105(a) of the Fur Seal Act (FSA). The purpose of the interim rule was to limit the take of seals to a level providing for the legitimate subsistence needs of the Pribilovians and to restrict taking by sex, age, and season for herd management purposes. One important element of the interim rule was the maintenance of the humane harvest methods developed during the years of the commercial harvests.

Just prior to the expiration of the 19-day harvest season, the NMFS received an urgent request from the residents of St. Paul to extend the season for one additional day (August 6, 1985). Due to delays which occurred at the outset of the harvest period, several potential harvest days were lost. Consequently, the number of seals harvested by August 5 failed to reach even the lower bond of the subsistence need estimate provided in the preamble of the July 8

emergency rule. The Pribilovians were granted an emergency one day extension on August 6, 1985 (50 FR 32205). During the 1985 season, 3,384 seals were taken for subsistence on St. Paul Island and 329 on St. George. A theoretical mean consumption of 0.4 lbs. of seal meat per person per day for one year was possible for residents of St. Paul Island based on the amount of edible meat removed from seal carcasses and retained on that island.

The 1985 harvest was governed by a regulation intended to apply only for that harvest. At the outset of last year's harvest it appeared that a consensus could be reached resulting in the ratification of the protocol with reservations. Had this occurred, the issuance of additional regulations might not have been necessary. While the possibility that the protocol will be ratified still exists, it was determined that in the interim a permanent rule be promulgated to regulate the 1986 and subsequent harvests. Even if the protocol is ratified soon, depending upon any reservations attached to it, these regulations may be necessary. NMFS published a proposed rule on May 15, 1986 (51 FR 17896), and provided a 30-day public comment period.

Applicable Laws

The statutes are potentially applicable to the taking of fur seals on the Pribilof Islands absent the extension of the Convention, the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, and the FSA, 16 U.S.C. 1151. Both statutes provide for the subsistence taking of fur seals by Alaskan Indians, Aleuts, and Eskimos, but their provisions are not identical.

Section 101(b) of the MMPA, 16 U.S.C. 1371(b), provides that marine mammals may be taken

by any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for the purposes of creating and selling authentic native articles of handicrafts and clothing . . . ; and
- (3) in each case, is not accomplished in a wasteful manner.

Notwithstanding this provision, the Secretary of Commerce may prescribe regulations to limit the taking of marine mammals by Alaskan Natives if he determines the species to be depleted. Any regulations issued under the MMPA to restrict the native taking rights must be promulgated by formal, on-the-record rulemaking after an opportunity for an agency hearing.

The FSA provides for the subsistence take of fur seals under section 103, 16 U.S.C. 1153. Under the terms of section 103(a)

Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals [if] . . . the seals are taken for subsistence uses as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), and only in canoes . . . propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms.

It is arguable that this section does not apply to the Pribilofians since they have harvested fur seals on land for nearly 200 years and have not "hitherto practiced" canoe-based hunting. Moreover, section 103(b) more specifically addresses the subsistence harvest of fur seals on the Pribilof Islands and would appear to take precedence over the more general provisions of section 103(a).

Section 103(b) of the FSA states that Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State. . . .

No such recommendations on the taking of fur seals for subsistence purposes by Pribilofians have been made by the Commission and accepted by the Secretary of State.

Subsistence takings allowed under section 109(f)(2) of the MMPA differ from those authorized by MMPA section 101(b). Section 109(f)(2) defines "subsistence uses" as

the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption.

The term "family" means all persons related by blood, marriage, or adoption, or any persons living within a household on a permanent basis.

The term "barter" means the exchange of marine mammals or other parts, taken for subsistence uses—(i) for other wildlife or fish or their parts, or (ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Section 101(b) allows the taking of marine mammals for the creation of handicrafts and clothing for sale, whereas section 109(f)(2) only permits handicraft articles to be made if the

marine mammals were initially taken for consumption.

The definition of subsistence contained in the regulations which implement section 101(b) of the MMPA (50 CFR 216.3) allows marine mammal parts to be used by anyone who depends upon the taker to provide them with subsistence. In contrast, section 109(f)(2) allows personal or family consumption, or barter, or sharing for personal or family consumption.

Section 105(a) of the FSA empowers the Secretary of Commerce to "prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands . . . as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population . . ." It is under this broad authority that these regulations are issued. The MMPA management scheme of section 109(f)(2), as referenced in section 103 of the FSA, was followed in the 1985 emergency rule and has been adopted in this rule.

Need for Emergency Regulations

The Pribilof Island fur seal population is currently declining at the rate of about 6 percent annually and is below levels which would result in maximum productivity. Extensive research conducted under the terms of the Convention indicates that a harvest of females, pups, or harem bulls could have a disastrous effect on the already declining fur seal population. One of the causes of the population decline observed prior to the 1970s is the female harvest which occurred between 1956 and 1968. In contrast, based on available information, a harvest of subadult males at levels which allow for the future reproductive needs of the population will have no negative impact on long-term population trends. Additional research is needed to determine the effect, if any, of the harvest on overall population trends.

Without this final rule in place when the Pribilofians begin harvesting seals, the age and sex classes of fur seals that may be taken would not be limited. Females, pups, and harem bulls would be subject to harvesting as well as the subadult male fur seals that were the sole target of the commercial harvest since 1969. Absent this regulation, the harvest would not be limited in time and place, but could continue as long as seals were available at any location where they congregate.

This rule provides harvest restrictions to ensure that none of the haulout areas of the bachelor males is overharvested. Hauling grounds on St. Paul Island may be harvested only once each week. Since, at any one time, many of the

subadult male seals are away from the islands and are feeding at sea, the rotation of harvest sites is intended, in part, to allow a sufficient number of young seals to escape the harvest to return to breed in later years.

Under this rule, only taking by traditional harvesting methods is allowed. These methods have been determined to be painless and humane by a number of prominent veterinarians, including the Panel on Euthanasia of the American Veterinary Medical Association. By restricting the harvest to traditional techniques, taking will be humane and it is believed that the disruption of the fur seal rookeries will be minimized and that the risk of mistakenly taking female seals will be reduced.

Although this rule is being issued under emergency conditions it should be noted that a proposed rule was published and a full comment period provided.

Comments on the Proposed Rule

The public comment period on the proposed rule extended from May 15 to June 16, 1986. Written comments were received and accepted through June 21. Extensive comments on the proposal, comprising over 120 pages, were received from the following parties:

The Garden Club of America
The National Marine Mammal Laboratory, NMFS
The Wildlife Legislative Fund of America
International Wildlife Coalition
Tanadgusix Corporation (TDX)
Committee for Humane Legislation/
Friends of Animals, Inc.
Marine Mammal Commission (MMC)
The Aleut Community of St. Paul
William N. Arterburn
Defenders of Wildlife
Center for Environmental Education
Humane Society of the United States
Greenpeace International
Sierra Club
State of Alaska
Traditional Village Council of St. George Isl.
Animal Protection Institute of America
Fish & Wildlife Service, DOI

One of the major issues raised in these comments was the need to place a quota or upper limit on the number of seals that can be taken for subsistence. Seven commenters urged the establishment of a specific quota. Three of those recommended setting an upper limit of about 2,000–2,500 seals annually on St. Paul; while one comment mentioned an upper limit not to exceed recent commercial harvest limits (i.e.,

22,000). Two commenters recommended that the quota be set at less than the number taken in 1985 but gave no specific numbers. One pointed out that there is no evidence of an inadequate food supply on the islands and noted that alternative meat sources are available. One commenter asked that NMFS provide an estimate of subsistence needs. This estimate should consider changing economic conditions, increased dependence on fishing, and any changes in the Aleut population on the islands.

One group thought that the subsistence hunt is in a process of evolution and that a quota is not sufficiently flexible to accommodate changing circumstances. Another commenter supported the approach contained in the proposed rule that no specific quota be set, but requested that subsistence needs be quantified as soon as possible. A group on St. Paul Island repeated its 1985 claim of a subsistence need of 15,170 seals annually and pointed to historical records showing an average consumption of about 600 lbs. of seal meat per person per year.

One group requested that the NMFS evaluate seal and other subsistence resource use on the Pribilof Islands during the coming year. They want to establish a mechanism for annually determining whether a subsistence harvest is necessary. The MMC urged establishment of either a quota or a revised estimate of the range of animals that are likely to be needed for subsistence purposes based, in part, on data from last year's harvest. The MMC suggests that the quota or range estimate can be used to determine when subsistence needs have been satisfied during any one year. The NMFS has chosen to adopt this latter approach whereby annual range estimates are provided for subsistence needs on St. Paul and St. George Islands. As discussed below, when specific provisions of the harvest regulations are addressed, an annual estimate of expected subsistence needs for fur seals on each island will be established. This information and its background documentation will be provided in summary form in a **Federal Register** notice and will be subject to a 30-day public review.

One commenter mentioned that subsistence needs for seal meat on St. Paul Island will be less in 1986 if no meat is transferred to St. George Island. The Aleut Community of St. Paul provided an estimated subsistence need of 75-100 seals/day, assuming a 4-week harvest period, as an absolute minimum projected food requirement. This

equates to an annual minimum take of 2,100 to 2,800 seals. They also requested a season from June 30 to September 30 (93 possible harvest days). A take of 75-100 seals per day for 93 days could result in a harvest of from 6,975 to 9,300 seals annually, although the daily harvest rate is likely to be lower if a longer season is provided. Based on a review of this and other information provided by commenters and the results of the harvest season in 1985, the NMFS is establishing a harvest range estimate for St. Paul Island of 2,400 to 8,000 seals in 1986. This estimate may be revised during the harvest if the lower bound of the range is reached, based on an analysis of harvest data as provided for in § 215.32(e)(3). Further discussion of the use of this range estimate is provided in the analysis of regulatory provisions.

A determination of a subsistence need estimate for St. George Island is more difficult since a quota has existed on their subsistence harvest since 1973. However, based on native population, the St. George harvest is likely to account for approximately one quarter of the total harvest. In their comments on the proposed rule, St. George Island representatives agreed to limit the take to 100 seals per week for their suggested 18 week season (June 30-November 1). Such a limitation would place an upper bound of 1800 seals on the subsistence need estimate in 1986. A range of 800 to 1800 seals are expected to be needed for food on St. George Island in 1986. Again, this estimate may be revised during the season according to procedures provided in § 215.32(e)(3). Estimates of subsistence needs will be determined annually based on data from the preceding year's harvest, utilization of meat stored, the prevailing economic conditions on the islands, and other relevant information. It is expected that the range of estimated subsistence needs will narrow as additional harvest data are developed.

Six commenters addressed the question of a harvest season. The TDX Corporation on St. Paul Island asked for a season spanning June 30 to September 30. They stated that they prefer fresh meat and found it prohibitively expensive last year to freeze a year's supply of meat taken within a short season. They also said that while June and July were chosen as harvest seasons during the years of the commercial harvest based on skin quality, in fact, animals taken in August provide the best quality meat. This group claims that an extension of the harvest into September would not increase the accidental taking of

females because: (1) only experienced sealers will be harvesting seals and they can distinguish females at up to 10 feet away, (2) the harvest will involve traditional methods but will be on a smaller scale so as to provide more time for carefully screening the seals taken, and (3) the Aleuts respect and understand the importance of female seals in the species' population ecology. St. Paul's Aleut Community also requested a season extension through September 30, but noted that the taking of increased numbers of females would warrant termination or substantial restriction of any lengthening of the harvest.

Three commenters objected to the 40-day harvest season described in the proposed rule (June 30-August 8), saying that this could result in taking in excess of 7,000 to 8,000 seals annually based on last year's daily harvest rate. One specifically opposed any extension to accommodate a family hunt because of the risk of taking more females in August. One commenter said that the need for a longer killing period has not been justified but that they would not object to a "slight lengthening" if an upper limit to the harvest can be established. St. George Island representatives are requesting a harvest season of from July 1 to November 1, with an earlier commencement beginning in 1987. They do agree, however, to take no more than 100 seals per week.

The NMFS is establishing a harvest season on both islands running from June 30 to August 8 with possible extensions up to September 30 under certain circumstances. This is designed to accommodate the family hunt requested by representatives of both islands. It is the opinion of NMFS that the family hunt, described below, can better provide for the subsistence needs of the Pribilofians for fresh meat and has been designed and will be monitored to minimize disturbance to the rookeries and stress to harvested animals.

The National Marine Mammal Laboratory (NMML) cautioned that frequent, uncoordinated disturbances could cause seals to abandon traditional landing sites. The NMML recommended that harvesting be done only by experienced, coordinated crews and that no driving or killing of seals by individuals be allowed. Another commenter recommended that drives of seals be confined to the early morning hours when temperatures are low and herding stress is minimal.

St. Paul reported that it cost over \$150,000 to carry out the traditional-style

subsistence harvest in 1985. St. George representatives said it cost them \$130,000. These costs apparently included salaries for experienced sealers, preparation and storage costs and some expenses incurred for the transportation of meat between islands. Four commenters recommended that the harvest methods developed during the time of the commercial harvest (i.e., short season, large-scale drives and daily harvests utilizing paid sealers) be abandoned in favor of a family hunt more in keeping with other Alaskan Native marine mammal subsistence harvests. The Aleut Community of St. Paul requested that the final rule provide for a nonpaying "family hunt" involving the use of between 4 and 10 Aleut sealers experienced in the traditional hunt techniques. The core time, place, and manner of the harvest described in the proposed rule could still be observed. However, this group feels that the less intrusive nature and smaller scale of the family hunt should justify a longer harvest season.

The Traditional Village Council of St. George Island expressed its desire for a "true subsistence harvest" involving an extended season, hunting on an as-needed basis, the continuation of humane killing practices, and no commercial utilization of seal parts. This group offered to serve as a self-regulating body and work with the NMFS representatives to count seals and provide other harvest information upon request. They expressed a willingness to accept an NMFS observer to monitor the harvest. They recommended a "family-style", individualized harvest by experienced sealers or islanders under the tutelage of experienced sealers. Efforts would be made to avoid taking females and causing unnecessary disturbances of the rookeries.

The NMFS is sympathetic to the idea of a family hunt. Regulatory provisions which delineate the allowable harvest methods, afford the Aleuts the opportunity to use small household groups and take seals at a slower rate over a longer period of time. In our view, this harvest regime will better provide for the true subsistence needs of the Pribilovians. While there is a risk that this arrangement could result in an increased taking of female seals, or disturbance to rookeries, the NMFS plans to mitigate these risks by placing additional restrictions on taking beyond August 8.

Three commenters recommended that we retain the restrictive quota on St. George in order to protect the research programs there and continue to provide

transportation of edible meat from St. Paul. Two of these reviewers, however, indicated that if the research program is terminated, similar harvest restrictions should apply on both islands. On the other hand, St. Paul interests stated that "with the harvest now being limited to subsistence take only, there is no need to do comparative studies between St. Paul and St. George". (The studies referred to in this comment are designed to compare the population trends of harvested versus unharvested populations.) They further stated that scientists have had 13 years to do comparative studies. According to the comments from St. Paul, St. George Aleuts should have the same subsistence harvest opportunities as St. Paul Aleuts. St. George representatives point out that obtaining seal meat from St. Paul last year was "impractical, wasteful, prohibitively costly to St. George, and violative of our subsistence rights". They want a true subsistence harvest similar to those of other Alaskan Natives.

The MMC requested that NMFS address the following concerns before changing the St. George harvest regulations: (1) the effect on the St. George Island Research program, (2) the reallocation of funds if this research is terminated, (3) the restrictions on taking that would apply to St. George, and (4) whether fewer seals will be needed on St. Paul if more seals are taken on St. George.

An increased take of seals for subsistence on St. George Island will not terminate the research program there, one aspect of which attempts to compare the "unharvested" population on St. George to the "harvested" population of St. Paul. It will take up to six years before the impact on adult sex ratios, of any increased harvest of subadult males on St. George, is manifested. Thus, the NMFS will still be able to monitor the "unharvested" population on St. George for some time even if the St. George harvest is expanded. Additionally, NMFS scientists are already emphasizing other research on St. George, such as pregnancy and mortality rate determinations. No reallocation of funds is anticipated at this time. The final rule imposes identical harvest restrictions, except for the authorized haulout areas, for St. George and St. Paul. However, some flexibility is provided that may be exercised differently on the two islands. In response to the final concern raised by the MMC, NMFS anticipates that fewer seals will be needed on St. Paul since they are no longer required to share a portion of their harvest with St.

George. This fact appears to be reflected in the minimum subsistence need estimate provided by the St. Paul Island representatives of 2,100-2,800 seals for 1986, versus the 3,384 taken in 1985.

Wasteful taking was a topic addressed by nine of the 18 commenters. Two claimed that the 1985 subsistence hunt on St. Paul Island was wasteful and pointed out that of the 3,384 seals killed, meat from over 1,000 seals spoiled or was not used. One commenter believed that further taking should not be allowed until all meat from the 1985 harvest has been consumed. One of the commenters recommended a reduction in the number of seals taken per day so that more time is available to properly butcher and package meat to prevent unnecessary spoilage and waste.

Most of the unused meat from the 1985 harvest consisted of backs and ribs, portions which are less favored by the Pribilovians. Traditionally, backs have been very infrequently eaten. Additionally, problems were encountered by the freezing method employed on St. Paul during the 1985 harvest. The islanders attempted to freeze meat from up to 200 seals per day in a central facility. There was some question whether the meat was frozen rapidly enough to prevent bacterial growth and there were doubts expressed concerning the edibility of some of the meat. Because of the questions about the frozen meat's fitness for consumption it would be unreasonable to condition the 1986 harvest on full use of the remaining meat from 1985.

Four commenters urged that NMFS require utilization of all edible portions of each carcass, including tongues, backs, ribs, chests, rearflippers and hindquarters. The Village Corporation on St. Paul (TDX) stated its position that ribs, backbones and hindquarters need not be taken since they do not eat large quantities of these parts. A minimal use of ribs, backbones and hindquarters should not, in their opinion, be considered "wasteful". In sharp contrast, the Aleut Community of St. Paul indicated that it is the traditional use and consumption of the backbone that has always been slight when compared to hearts, livers, flippers, breasts, shoulders, and ribs. They stated that the backbone contains very little meat but may occasionally be used as an additive to soup or pot roast.

The State of Alaska asked NMFS to determine what parts must be taken for human consumption, consistent with the traditional uses of fur seals, to comply with the requirement that substantial use be made of each seal taken.

As defined in the preamble to the proposed rule "substantial use" of a carcass means that "it has been dressed out and that the front flippers, shoulders, and most other readily obtainable and utilizable tissues and organs have been removed for subsistence uses." It is fairly evident that the backbone portion of seals is subject to a limited array of uses. Thus, it cannot be expected that all back portions are readily utilizable, although some may be. The NMFS considers it counterproductive to require the Pribilovians to take all of the backbones for consumption when the possibility of using more than a small fraction of these is remote.

More problematical is determining the use expected to be made of ribs. TDX indicated that only a small quantity of ribs is eaten, while the Aleut Community of St. Paul listed ribs along with hearts, livers, flippers, breasts, and shoulders as those portions more often consumed. Ribs are probably more readily utilizable than are backbones, but it is not known to what precise uses they may be put. The NMFS will try to resolve the discrepancy between the two St. Paul comments during this year's harvest and will include in its summary of the 1986 harvest (to be published in the *Federal Register* in 1987) any additional information obtained on the use of ribs and what would constitute substantial use.

Based upon a review of all pertinent literature, public testimony and written comments, the NMFS considers the removal and consumption of the following seal parts to constitute substantial use which would be consistent with the requirement that the taking of seals not be accomplished in a wasteful manner: all hearts, livers, flippers, breasts, shoulders, and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections.

Several commenters noted that the restrictions on the use of nonedible byproducts contained in the proposed rule created a situation under which some portions of fur seals not traditionally used for subsistence may be wasted. For example, one commenter completely opposed these regulations because of the restrictions on sales of pelts. According to this reviewer, "the actual effect of the proposed regulation, by not allowing commercial use of the fur of the *fur seal*, is to mandate waste." The State of Alaska objected to restrictions on economic uses of nonedible byproducts because (1) the taking has no negative impact on the seal herd, (2) it is wasteful not to use the

byproducts, and (3) this action forecloses certain economic opportunities for Pribilof Island residents. The U.S. Fish and Wildlife Service (FWS) asked NMFS to consider the use for dog food of any meat or byproducts that are not used for human consumption.

St. Paul's TDX Corporation stated that, "For hundreds of years Aleut people used the Fur Seal as one of our main economic bases and in the last 200 years we have used the Fur Seal byproducts in the cash exchange economy. Selling of our Fur Seal skins, sticks and meat is our traditional and customary use of the Fur Seal". TDX wants permission to sell skins and other harvest byproducts from the first 6,000 seals taken on St. Paul for subsistence purposes. They feel this would provide the means to fund "traditional harvesting methods". Two commenters emphasized that the bacula (sealsticks) should not be sold. One mentioned that an independent observer had witnessed several attempts at retrieval of sealsticks for later use during the 1985 subsistence harvest. Two commenters said that bacula should be collected and destroyed by the NMFS representatives to avoid creating any incentive to harvest more seals than necessary for food.

The NMFS is cognizant of the arguments that can be made on each side of the issue of whether the sale of byproducts should be allowed. There is merit to both positions. While it may make sense to allow the full use of the harvested seals, including the commercially valuable skins, some risk exists that a profit motive may inflate the number of seals harvested beyond that needed for subsistence. This rule need not choose between these opposing viewpoints. While it may be possible to construct provisions that would allow full utilization of fur seal parts while ensuring that only a subsistence level of seals is harvested, section 109 (f)(2) of the MMPA is clear that only *handcrafted* nonedible byproducts may be sold. Despite the logic of either position on this issue, NMFS cannot promulgate a rule to allow the commercial use of raw seal parts. Those who feel strongly that partial use or no use of seal skins or other byproducts constitutes waste, are free to seek a legislative solution to this problem.

The proposed rule specifically requested comments on the need for further rulemaking on the uses that may be made of nonedible byproducts of the subsistence harvest, i.e., sale of skins and sealsticks. Three comments were

received on this issue and all opposed further rulemaking on commercial use of seal parts, although questions were raised by commenters as to the precise uses that may be made of edible portions of fur seals, mostly those less preferred parts such as backs and ribs.

The St. Paul residents have asked if fur seal meat may be sold at the island restaurant which caters primarily to tourists. The answer is no. Not only is the sale of edible portions prohibited by this rule, but edible portions may only be bartered to, or shared with, Alaskan Natives.

A second inquiry is whether any parts of seals may be used as bait in fishing operations. The answer to the issue depends on the nature of the fishery. If the fish or crab caught will be used for native subsistence, then the Aleuts would be permitted to use seal parts as bait. If, however, the catch was destined for commercial use, the seal meat could not be used as bait.

The last question on the exact uses of seal meat allowed under this rule is that posed on the use of seal parts as dog food. Here again, the commercial use of seal meat in this manner is not provided for by the applicable law. Some Alaskan communities may be able to claim that feeding dogs is a subsistence use since it provides transportation, one of the enumerated subsistence uses. Concerning the use of seal meat for local use as dog food on the Pribilof Islands, one need only refer to 50 CFR 215.23. That regulation prohibits the landing of dogs on the Pribilofs in order to prevent molestation of fur seals.

Two reviewers urged action to ratify the 1984 Protocol extending the Convention until 1988. The NMFS agrees that ratification of the 1984 protocol which would extend the Convention is an important step in providing international protection to the North Pacific fur seal and the continuation of essential cooperative management and research. The Secretaries of Commerce and State have expressed these views to the Senate and urged prompt ratification.

Two commenters cited provisions of the FSA Amendments of 1983 as requiring a phase out of the subsistence harvest. Such a reading misconstrues the intent of section 206(a)(1) of the FSA. This section provides that, "In order to promote the development of a stable, self-sufficient enduring and diversified economy not dependent on sealing, the Secretary shall cause to be established a Trust for the benefit of the Natives of the Pribilof Islands . . ." Clearly, this provision speaks to the eventual decrease in economic reliance on

commercial sealing, but it should not be construed to diminish the cultural and nutritional importance of the subsistence harvest. In fact, it is these same 1983 Amendments to the FSA that specifically provided for a subsistence harvest in section 103. It is anticipated that the needs of the Aleuts will continue to be met through the limited subsistence harvests provided for under these regulations. It is worth noting, however, that changing economic conditions on the islands may well alter the levels of subsistence takes. The NMFS intends to determine whether economic conditions have changed the number of animals required for subsistence as part of its annual assessment of the Pribilofians' subsistence needs.

As part of its comments, the MMC provided a formal recommendation that the NMFS designate the Pribilof Island population of the North Pacific fur seal as depleted under the MMPA. The FWS and The Center for Environmental Education also requested that a finding of depletion be made. The MMPA defines "depletion", among other things, to mean "any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this Act, determines that a species or population stock is below its optimum sustainable population" The FWS suggests that a depletion designation could provide the NMFS with greater management flexibility in the future, should this species fail to rebound to original numbers.

A status review of the North Pacific fur seal conducted under the Endangered Species Act of 1973, and published in the *Federal Register* on March 6, 1985 (50 FR 9232), contained findings on the current population status in relation to its optimum sustainable population (OSP). Since the current population is below 50 percent of the levels observed in the 1940s and early 1950s, the population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range as defined at 50 CFR 216.3.

A finding of depletion is a condition precedent to regulation of a subsistence harvest under section 101(b) of the MMPA, but not the FSA. Accordingly, such a finding need not be part of this rule issued under the authority of section 105 of the FSA. As noted by the MMC in its comments on the 1985 rule, the designation of depleted status carries with it certain restrictions which affect the interests of private parties and

other Federal and state agencies, and allows the regulation of subsistence rights granted by section 101(b) of the MMPA. Interested parties should, therefore, be provided with an opportunity to review and comment on any proposed designation.

The MMC stated its position that the designation of fur seals as depleted in this instance is mandatory and not optional since the population is below its OSP. The State of Alaska, on the other hand, urged a very careful and thorough review of all available scientific data before any proposal is made on this issue. The State further comments that, "Miscalculations about fur seals will have serious ramifications for management of other resources and for the Pribilof Islanders." They question whether or not population levels attained during the 1940s and early 1950s reflect the actual long-term carrying capacity of the environment for fur seals, and whether or not the annual rate of decline is actually as high as 6 percent.

The NMFS continues to believe that the Pribilof Island portion of the fur seal population is currently below its OSP and is continuing to decline at about 6 percent annually. Accordingly, the NMFS intends, as soon as practicable, but no later than October 1986, to propose a rule listing the fur seal as a depleted species under the MMPA. This proposal will contain summaries of all pertinent scientific information and will be available for thorough public review and discussion prior to a final decision on this designation.

Two commenters questioned the adequacy of the National Environmental Policy Act (NEPA) documentation on the issuance of this rule. Both recommended that an additional EIS be prepared to assess alternatives to the present subsistence harvest. One group complained that the 1985 EIS does not consider a moratorium on the harvest and fails to record the "significant" changes in the seal population and the Aleut community since 1985. One of the four major alternatives considered in the final EIS on the Convention, published in April 1985, is the expiration of the treaty and the beginning of a subsistence-only harvest on both islands. Indeed, the EIS considered the impact of a far larger take of seals than is contemplated under the current management regime, namely, a take of subadult males in the range of 22,000-25,000 annually through 1988. The future of the Pribilof economy is projected through the year 1995 and no significant changes in the economy appear to warrant a revision of information

published only last year. The commenter also claims that a supplemental EIS is needed to assess the "substantial effect of the proposed subsistence kill on the seals". The 1985 EIS considered the impacts of a commercial kill of over 22,000 seals. In 1985, only 3,713 were taken. The comment further states that the EA on this rule and the EIS on the Convention failed to evaluate the effects of ingesting toxic chemicals in seal meat. This commenter has written to DOC officials and others on several occasions subsequent to publication of the EIS. Had this concern been brought to our attention during the review period on the EIS, it would have been addressed in the final document. However, based upon the best available information, there is no evidence to suggest that ingestion of fur seal meat in Alaska represents a human health hazard.

The second commenter urges the NMFS to issue a supplemental EIS that focuses solely on the subsistence hunt. They claim that an issue that is not considered in the EIS is the level of need for subsistence use of seal meat. On the contrary, the EIS provides a subsistence need estimate of "up to 12,000 seals" annually and considers the historic and contemporary needs of the Pribilofians for seal meat.

Several commenters criticized NMFS for failing to issue a proposed permanent rule by September 1985, as has been contemplated in the interim rule of July 8, 1985. The anticipated publication date of a proposed permanent rule was designed to accommodate the possibility that formal rulemaking under the MMPA would be necessary to regulate a subsistence harvest. However, the consensus of commenters on the interim rule was that the subsistence provisions of the FSA were controlling and that informal rulemaking under the FSA was appropriate. Despite any delay in issuing the proposed rule, the public has been provided a full review period on the proposal.

Discussion of Regulatory Provisions

Definitions

Several definitions are added to § 215.2 by this rule to accompany the substantive regulatory changes of other sections. Also, the definition of "director" and "convention" are deleted since the former term is obsolete and the latter is defined in the FSA. No modifications of the definitions provided in the proposed rule have been made.

The most important definitional additions are those for "subsistence

uses" and "wasteful manner." The definition of "wasteful manner" is functionally identical to that for the same term used in the MMPA regulations at 50 CFR 216.3. The only modifications are the restriction of the definition to the Pribilof Islands and to the taking of fur seals and a change to conform with the definition of subsistence used in this rule.

The definition of subsistence is taken from section 109(f)(2) of the MMPA. We have chosen to maintain this definition, despite the fact that one commenter wanted to change the definition to emphasize that only those uses customary and traditional in the culture of Alaskan Natives prior to the introduction of the commercial sealing industry may be made of seal parts.

The definition of "handicraft articles" in this rule is functionally identical to that contained in 50 CFR 216.3 for "authentic native articles of handicrafts and clothing". Two commenters opposed the use of the term "Alaska Natives" rather than Pribilovians in § 215.2(e)(1). They claim that this definition will encourage creation of new handicraft industries and allow greater exploitation of fur seals. One considered this a "loophole" by which Pribilovians could be allowed to profit from the subsistence hunt. A native group, on the other hand, claimed that because of long-term government regulation of the islands, Pribilovians did not develop handicrafts to the same degree as other Alaskan Natives. They thought the definition should encompass crafts practiced by any "Northern natives", not just Pribilovians. One commenter asked why the proposal requires that handicraft articles be commonly produced on or before October 14, 1983, rather than December 21, 1973, the date of enactment of the MMPA. Section 103(b) of the FSA which deals with the subsistence taking of fur seals was enacted on October 14, 1983. Thus, it was thought that this was a more appropriate cut off date. This commenter further inquired whether tanned hides qualify as handicraft articles under this definition. Hides which have been sewn, beaded or otherwise handcrafted clearly would fit within the definition of handicraft articles. More problematical is whether hides that have merely been tanned qualify as handicrafts. Most hides, however, are likely to have had some further work done on them, such as sewing and hooping. Non-natives who may want to purchase hides under the handicraft provisions should be alert to the fact that it is possible that they may not later sell those hides if they have

been altered in such a way as to change their native handicraft character.

Conforming Provisions

The penalty provisions of § 215.3 are amended to bring them into conformity with changes made to the enforcement section of the FSA in 1983. No changes are made from the proposed rule.

Subsistence Harvest of Fur Seals

Section 215.31. Section 215.31 states the general conditions under which fur seals may be harvested by Pribilovians. As noted above, the MMPA management scheme contained in section 109(f)(2), and referenced in section 103 of the FSA, is adopted in this rule. Its definition of subsistence provides the most harmonious resolution of the conflicting provisions of the two Acts. Under this proposed rule, permissible takings must be for subsistence uses as defined in section 109(f)(2) of the MMPA and § 215.2(h) of this rule. Subsistence uses include the customary and traditional use of fur seals for food, shelter, fuel, clothing, tools, or transportation. The definition also specifies that seal parts may be used for barter or sharing for personal or family consumption. Additionally, handicraft articles may be made and sold if they are fashioned from nonedible byproducts of marine mammals taken for personal or family consumption.

Section 215.31(b) requires that any takings may not be accomplished in wasteful manner. The harvest will be suspended in accordance with § 215.32(e) if it is determined that the harvest is being conducted wastefully. There are three facets to the definition of the term "wasteful manner". First, it means any taking which is likely to result in the killing of fur seals beyond those needed for subsistence purposes. Second, wasteful manner includes takings which result in the waste of a substantial portion of the fur seal. Lastly, it means the employment of a taking method which is not likely to assure the killing and retrieval of the fur seal.

The harvesting method employed by the Pribilovians has been shown to be a very effective means of taking fur seals that virtually guarantees that the targeted seals will be killed and retrieved. Provided that the traditional harvesting techniques are followed, the provisions of the last facet of the wasteful manner definition is clearly satisfied.

In order to determine if taking is wasteful under the first criterion, the level of taking which is necessary to meet the subsistence needs of the

Pribilovians must be established. However, it should be noted that the second standard of wastefulness closely relates to this determination. Since no one target number can be set for the subsistence needs, based on available information, the NMFS believes that the best way to ensure that the harvest is accomplished in a non-wasteful manner is to provide an estimate of anticipated needs and to continue to monitor the use of those seals which are taken to see that substantial use of each seal is made. Guidance on what is considered to be substantial use of fur seal is given above in the discussion of public comments on the proposed rule.

In developing its estimate of subsistence needs on the Pribilofs, NMFS considered the following information. Since the commercial harvest of fur seals on the Pribilof Islands historically exceeded the subsistence needs of the Pribilovians, no accurate record of the extent of that need was developed. Whereas the levels of the commercial harvest were documented each year, no such figures were kept concerning the eventual fate of non-commercial seal parts. The excess availability of seal carcasses for subsistence resulted in the selective use of prime seal meat portions and the discard or other use of less desirable parts.

Prior to the 1985 subsistence harvest, the NMFS had limited data on the amount of seal meat actually consumed by Pribilovians. Estimates presented in the preamble to the interim rule were derived from a variety of historical records, from extrapolations based on certain subsistence use data recently recorded for St. George Island, and from contemporary testimony and written reports provided by the Pribilovians. Two assumptions were used to derive the subsistence use estimates cited in the 1985 rule: (1) that the current *native* population is 483 on St. Paul Island and 153 on St. George Island (U.S. Bureau of Census, 1980); and (2) that a subadult male fur seal dresses to 25 pounds of meat. *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigations of the Fur Seal Industry", 63rd Cong. 2d Sess., (1914) at 514.

Estimates of the annual subsistence need for fur seals by Pribilovians published in the 1985 interim rule ranged from 3,358 to over 15,000 seals. During the 15 day subsistence harvest on St. Paul Island in 1985, 3,384 subadult seals were taken. About 80 percent were 3-year-olds and all but five were males. A detailed report on the 1985 harvest has

been provided by Drs. Steven T. Zimmerman and James D. Letcher. Dr. Zimmerman is the Chief of the Marine Mammals and Endangered Species Division, Alaska Region, NMFS. Dr. Letcher is a private veterinarian (currently affiliated with the Baltimore Zoo) who agreed to observe the 1985 subsistence harvest on St. Paul. (See Zimmerman and Letcher, A Report on the 1985 Subsistence Harvest of Northern Fur Seals on St. Paul Island, Alaska, *Marine Fisheries Review*, In Press).

The total weight of meat taken on St. Paul Island for subsistence purposes was 93,435 lbs. An unmeasured percentage of this total was taken each day for immediate personal consumption. The remainder was sent to St. George Island (about 18,000 lbs.), sent to other Aleut Villages (about 4,000 lbs.), or preserved for use on St. Paul Island by salting (about 8,500 lbs.) or freezing (about 50,000 lbs.). Approximately 10,500 lbs. of the meat sent to St. George Island spoiled. An estimated 7,500 lbs. of the meat on St. Paul Island spoiled before it could be preserved. In both cases spoilage resulted from packing meat into large boxes while it was still too warm.

An average of 27.5 lbs. of meat (with bone) was butchered from each seal. This is 43.8 percent of the total mean weight of a harvested seal (62.8 lbs.) and 55.7 percent of the seal's weight minus pelt and attached blubber (49.4 lbs.). During the 1984 commercial harvest, Dr. Zimmerman had observed that front flippers, hearts, livers, and shoulders comprised most of what was taken from the seal carcasses for consumption. During the 1985 season, Dr. Zimmerman was able to determine that the combined weights of these most prized parts constituted 30 percent of the animals by weight. The difference between the 43.8 percent use of carcasses in 1985 and the estimated 30 percent use of some carcasses in 1984 is due to the fact that backs, ribs, and chests were taken in 1985 in addition to flippers, hearts, livers, and shoulders. The relatively high yield of meat (27.5 lbs.) from each animal killed during 1985 appeared to result from diligent efforts by the Pribilovians to avoid wasting any potentially utilizable meat during the butchering process.

After losses due to spoilage and transfer to other villages, about 64,000 lbs. of seal meat remained available for subsistence on St. Paul Island at the conclusion of the 1985 harvest. This would allow for a theoretical annual daily consumption of approximately 0.4 lbs. of seal meat (with bone) per person

per year. The amount of meat harvested per person was less than that recorded in other northern and western Alaska villages which depend on subsistence lifestyles.

During the week of March 2, 1986, the NMFS conducted an informal survey of subsistence use of seal meat taken on St. Paul Island. About two-thirds of the approximately 50,000 lbs. of meat stored in the community freezer from the 1985 harvest is believed to remain on the island. About 80 percent consists of ribs and back portions. Some native leaders have concluded that only the front flippers, liver, hearts, and shoulders are desired for subsistence purposes, and that these are the seal parts that have been traditionally used for island subsistence.

The NMFS representatives that will be on the Pribilof Islands during the annual harvest will collect three types of information to aid in making the findings required by § 215.32(e). Each day it will be noted how many seals are killed. Then, with the cooperation of the Pribilovians, the NMFS officials will weigh a representative sample of carcasses before and after meat has been removed for human consumption. This will be done to estimate the percent use that is being made of seals. At the end of each day's harvest, a visual survey will be made of the remaining carcasses to see that substantial utilization has been made of each animal taken. If this monitoring program indicates that the carcasses are not being utilized or that the subsistence needs of the islanders have been satisfied, the Assistant Administrator must exercise his authority under § 215.32(e) to suspend the harvest.

During the period of the harvest, an unbiased estimate of the average percentage of utilization of seal carcasses will be made. Based upon a daily random sample of approximately 10-20 percent of all seals killed, the following data will be collected:

1. The weight of the animals immediately following exsanguination,
2. The weight of the pelt with blubber still attached, if pelts are removed in such a way to make this measurement possible and
3. The weight of organs and tissues not removed for food purposes.

Restrictions on Taking

Comments received from St. George Island noted that a harvest of 309 seals on that island was insufficient to satisfy the residents' subsistence needs and stressed that it was unlikely that sufficient seal meat to make up the shortfall could be obtained from St. Paul without incurring substantial costs.

Since, as discussed above, the research project on St. George is evolving in response to changing circumstances and need not be terminated to accommodate a limited but increased subsistence take on St. George, the NMFS intends to lift the quota on St. George and allow a full subsistence harvest. Last year, to mitigate the effects of the low harvest level on St. George, NMFS provided transportation between the islands to augment the seal meat supply from St. Paul. Federal funds for such transport are not available this year. Also, the St. George residents have indicated a preference for fresh seal meat rather than that brought in from St. Paul.

Several other modifications have been made to § 215.32. Most of these are required to provide for the full-scale subsistence harvests to be conducted on both St. George and St. Paul Islands. In response to comments requesting further guidance on how the determination will be made that subsistence needs have been met, § 215.32(b) and (e)(1)(iii) have been added. Procedures have also been added under which the harvest may be extended if it is determined that subsistence needs have not been met by August 8. Section 215.32 has been reorganized to accommodate these changes.

Section 215.32(a) is a new provision necessitated by the decision to allow full subsistence harvests on St. Paul and St. George Islands. Its provisions specify that the harvests on the two islands be treated independently. Separate harvest estimates will be provided for each island and any determination made by the Assistant Administrator or NMFS representatives will apply only to the island for which it is made. For example, any decision to suspend, terminate, or extend the harvest on St. George will have no effect on the St. Paul harvest.

As indicated above, § 215.32(b) is a new section added to aid the Assistant Administrator in determining when the subsistence needs of each island have been satisfied. This section establishes a mechanism whereby a harvest level or range will be set prior to each year's harvest. By April 1 of each year, the NMFS will publish in the **Federal Register** a summary of the data obtained from the previous year's harvest and a discussion of the number of seal expected to be needed that year to meet the subsistence requirements of each island. The summary should discuss the duration of the harvest on each island, noting any suspensions or extensions that were issued, provide the numbers of seals taken on each island, assess the utilization of the meat and other fur seal parts, provide any available breakdown

of how the meat was stored (consumed fresh, frozen, or salted), and include any other relevant information. Based upon a discussion of the available information, the NMFS will estimate the number of seals required to satisfy subsistence needs for the current year. This estimate need not provide a single number for each island but may be expressed as a range. As more subsistence harvests are conducted and more data are made available, the uncertainty of these estimates should decrease and, in time, it may be possible to issue precise estimates within a narrow range. A 30-day public comment period will follow publication of the notice in the *Federal Register*. Taking into account any comments received, the NMFS will issue a final notice of estimated harvest levels prior to June 30 of each year, the starting date for the harvest.

The procedures contained in § 215.32(b) were not in place for the 1986 harvest, but similar procedures were followed through the issuance of the proposed and final rules. The preamble to the proposed rule contained a summary of the 1985 harvest and a discussion of the number of seals expected to be taken to meet the subsistence needs of the Pribilovians in 1986. However, the ranges discussed were not for the individual islands. Several commenters representing a spectrum of viewpoints addressed the 1986 harvest level and many provided their own calculations. Assuming identical per capita subsistence requirements on St. George and St. Paul Islands and taking into account the data from the 1985 harvest and public comments, the NMFS has arrived at the following subsistence estimates:

St. Paul—2,400–8,000
St. George—800–1,800

(See previous discussion for the derivation of these estimates.)

With slight modifications, § 215.32(c) is taken from § 215.32(b) of the proposed rule. Subsection (c)(1) retains the June 30 date for the opening of the harvest. This date is not applicable to both islands. Under the proposed rule no harvest season was provided for St. George Island because of the small numbers of seal allowed to be harvested there. Prior to June 30, very few harvestable seals are present on the Pribilofs and an earlier season will not significantly increase the availability of seal meat. To minimize the costs of monitoring the harvest and ensure that data derived from the 1986 and future harvests are comparable to the existing data base, the June 30 date was adopted.

Section 215.32(c)(2) is derived from § 215.32(b)(1) of the proposed rule. The requirements that only experienced sealers may take seals and that the killing be by stunning with a sharp blow to the head with a long club, followed immediately by exsanguination, are retained. Limiting the harvest to these traditional techniques will help ensure that only humane methods are used to take seals. The use of organized drives of fur seals to killing fields was developed for use in the large scale commercial harvest and, if small numbers of seal are harvested, less disturbance to the rookeries may result by using alternative methods of separating the subadult males to be harvested from the other seals. The final rule requires the traditional method of organized drives to be used unless the NMFS representatives, in consultation with the Pribilovians conducting the harvest, determine that alternative methods will not result in increased disturbance to the rookery. This determination will be made informally and will vary depending on the number of seals to be harvested, topography of the rookery, and the placement within the rookery of the seals to be harvested.

The use of organized drives has resulted in a very low risk of taking female seals. Since the discontinuation of the female harvest in 1968, this harvesting method has resulted in an accidental taking of females below one half of one percent of the total take. Using organized drives on St. Paul Island in 1985, only five females were taken out of a total harvest of 3,384 seals. Section 215.32 (c)(2), therefore, requires that the use of alternative harvesting methods, even if less disruptive to the rookeries than organized drives, may not be used if they lead to the taking of female seals above historical levels.

The provisions of § 215.32(c)(3) adopt the prohibitions against harvesting adult fur seals and pups and intentionally harvesting subadult female fur seals that were contained in § 215.32(b)(2) of the proposed rule. These prohibitions are based upon the recommendations of the Scientific Committee of the Fur Seal Commission, which, since 1969, has opined that only the subadult male portion of the population should be harvested. Because of the difficulties in distinguishing between immature male and female seals, the rule provides for the occasional accidental taking of subadult female fur seals so long as the historic low level of females taken is maintained. The intentional taking of female fur seals is not authorized by this rule under any circumstances.

Section 215.32(c)(4) specifies that only subadult male fur seals 124.5 centimeters (49 inches) or less in length may be taken. This restriction, contained in § 215.32(b)(3)(i)(C) and (ii)(B) of the proposed rule, establishes the size range for harvestable male seals. The result is to confine the harvest to primarily 2, 3, and 4-year-old males.

Section 215.32(c)(5) carries forward the provisions of § 215.32(b)(2)(i)(D) of the proposed rule. To aid researchers studying the causes of the fur seal population decline and conducting other scientific investigations, seals that have been tagged or which are entangled in debris such as fishing nets or packing bands may only be taken if so directed by scientists studying fur seal entanglement.

Under the provisions of the proposed rule, the NMFS suggested a five day per week harvest schedule on St. Paul Island and set a maximum harvest schedule of two drives per week on St. George Island. In response to comments from Aleut groups on both islands, the NMFS recognizes the primary responsibility of the Pribilovians in scheduling the harvest. Section 215.32(d) provides that, with some restrictions, the scheduling of the harvests is at the discretion of the Pribilovians. With the increased harvest season and adoption of a family hunt, daily harvests may not be required. However, this would depend upon the numbers of seals taken per day.

The first of the restrictions on scheduling mandates that the harvest operations be timed so as to minimize stress to the harvested seals. Drives have traditionally been conducted only in early morning hours when the temperature is low and the stress placed upon the seals is minimal. It may be that alternative harvest techniques may be developed under § 215.32(c)(2) that do not stress the harvested seals as much as the traditional drives. If this were the case, other harvest hours could be chosen. Even if organized drives are used in the harvest, other times of the day may be chosen if they do not result in increased stress to the seals. For example, the Pribilovians could schedule some harvests for the cool morning hours and others in the evening when temperatures have dropped. In any event, setting the schedule must be done sufficiently in advance and notice given to the NMFS representative to allow for the conducting of the necessary monitoring activities.

Although no schedule is mandated under § 215.32(d) certain rookeries and harvest maxima are specified. In

accordance with a recommendation from the NMML, Little Polivia on St. Paul was dropped from the list of acceptable harvest sites. The NMML also recommended that only the haulout sites of Northeast and Zapadni be harvested on St. George Island. This recommendation is also adopted in the final rule.

On St. Paul Island none of the seven specified haulout areas may be harvested more than once per week. This provision means that only one intrusion of each rookery may be made per week. It does *not* mean that a haulout area may be designated as the harvest locality for a particular day with repeated visits by small groups of harvesters throughout the day. Once the harvest has been carried out at an rookery it may not be visited by the harvesters until the following week regardless of whether everyone who wanted to take seals was present. Because of this limitation, the scheduling of the harvests and publication of the agreed upon schedule throughout the communities is particularly important. This restriction addresses the primary concern enunciated by the NMML that the "main objective of any harvest regulations must be to minimize disturbances, especially to rookery areas." It also ensures that no rookery is over harvested, allowing a proportion of the subadult males to escape the harvest by being at sea.

The NMML also recommended that the take at each hauling ground on St. Paul be approximately in proportion to the level of take for that hauling ground during the last commercial harvest. For example, the NMML recommends that seals taken from Reef hauling ground constitute 25 percent of the harvest. There is some concern that harvesting an equal number of seal from each haulout area irrespective of its relative size may cause some shifts in the population away from the smaller sites. The NMFS scientists intend to study any shifts in the population that may result from the particular harvest levels at the hauling grounds and recommend any changes to the scheduling provisions that they deem necessary. The St. Paul residents should be mindful of the concern expressed by the NMML when scheduling the harvesting rotation. If at all possible, the larger haulout areas should be visited on those days when it is thought that more seals will be desired.

On St. George Island, seals may be harvested only at the haulout areas of Northeast and Zapadni. Because only two harvest sites are available, each site

may be visited twice per week. As with St. Paul, this limitation applies to the number of intrusions of the hauling ground allowed. All persons wishing to take seals at a particular site must be there at the same time. Multiple entries into a haulout site, even if on the same day, will be considered to be separate harvests.

Under the terms of § 215.32(e) there are three situations in which the Assistant Administrator is required to suspend the harvest: (1) if he determines that the subsistence needs of the Pribilovians on the island have been satisfied, (2) if he determines that the harvest is otherwise being conducted in a wasteful manner, or (3) when the lower bound of the range of the estimated subsistence level for the island provided in the Federal Register notice issued under § 215.32(b) is reached. The first two criteria are taken from § 215.32(a) of the proposed rule with one alteration. Under the proposed rule, the Assistant Administrator was *authorized* to suspend the harvest. NMFS has adopted in the final rule the suggestion of one commenter that the Assistant Administrator be *required* to suspend the harvest as more clearly portraying the Assistant Administrator's responsibility. Once a determination under subsection (e)(1) (i) or (ii) has been made, the Assistant Administrator has a nondiscretionary duty to suspend the harvest.

If the harvest is suspended because of a determination that the subsistence needs of the islanders have been satisfied, the harvest may not resume unless new information indicates that this determination was incorrect. In effect, the harvest for the island is terminated for the year once its subsistence requirements have been met.

A suspension based upon a determination that the harvest is being conducted in a wasteful manner, other than by exceeding the islander's subsistence needs, may be lifted upon showing that the conditions which led to the determination have been remedied. For example, the Assistant Administrator would be required to suspend the harvest if he determined that meat was being wasted through the use of ineffective preservation techniques. If the Pribilovians switched to an alternative method of preservation that would not constitute waste or decided only to harvest meat for immediate consumption, the suspension could be lifted.

The provisions of § 215.32(e)(1)(iii) and (e)(3) implement the determination of anticipated subsistence needs made

in accordance with the procedures of § 215.32(b). Section 215.32(e)(1)(iii) requires that the harvest be temporarily suspended when the lower end of the estimated subsistence level for the island is attained. Under § 215.32(e)(3), the duration of the suspension may not exceed 48 hours. This period was chosen because it should provide enough time to allow the appropriate information to be reviewed and should not cause an inordinate period of inconvenience or delay to the Pribilovians. During this period, the Assistant Administrator will review the available harvest data to determine if the subsistence needs of the Pribilovians have been met. If they have, he will suspend the harvest as provided for in § 215.32(e)(1)(i). The decision to terminate or continue the harvest will be based on a variety of factors, including how much meat has been consumed fresh, the rate of consumption, how much meat has been preserved, and how much of the season remains. If, for example, virtually all of the seal meat from the projected harvest level has been consumed early in the harvest season and very little has been frozen or salted, a good case can be made that the actual subsistence needs of the island exceed the lower range of the estimate. If on the other hand, it is late in the harvest season and a significant proportion of the seal meat has been stored for subsequent use rather than consumed fresh, a finding that the subsistence needs have been satisfied may well be in order. If the Assistant Administrator finds that the subsistence needs of the Pribilovians have not been met, he must provide a revised estimate of the island's subsistence needs based upon the harvest data and any other appropriate factors.

It should be noted that despite the addition of § 215.32(b), (e)(1)(iii), and (e)(3), NMFS still intends to monitor the harvest on a continuous basis and will make a determination that the subsistence needs of either island have been met, if warranted, whether or not the lower bound of the estimate are ever reached. Setting a range does not give the Pribilovians carte blanche to harvest up to that number of seals. As discussed previously, the subsistence needs of the Aleuts may fluctuate from year to year and, thus, an estimate of need may be either too high or too low. The procedures adopted in the final rule are intended to foster public participation in establishing a reasonable estimate of subsistence needs and to trigger special, considered review when a credible case can be made that the islands'

subsistence requirements have been satisfied.

Section 215.32(f) provides criteria for terminating the harvest or, in the alternative, extending the harvest if subsistence needs have yet to be fulfilled. Section (f)(1) follows two triggers for terminating the harvest set forth in § 215.32(b)(3)(i)(A) of the proposed rule. The Assistant Administrator will terminate the harvest when he determines that the subsistence needs of the Pribilovians have been satisfied or, in the alternative, the harvest will terminate on August 8 of each year. This date was chosen to avoid an unacceptable taking of female fur seals. After the first week in August, immature fur seals of both sexes begin to arrive on St. Paul Island in significant numbers. Also, the harem structure breaks down in early August and many females begin using the haulout areas. Extending the harvest period could result in a marked increase in the accidental take of female seals without additional controls on harvest methods. As illustrated by the population decline which coincided with the female harvests of the 1950s and 1960s, any increase in the taking of females is likely to have a detrimental effect on the fur seal population.

As noted above, an increased risk of taking female fur seals exists if the harvest goes beyond the first week of August. However, the Pribilovians contend that experienced sealers can readily distinguish between male and female subadult fur seals and that the risk of taking female seals beyond August 8 is overstated by NMFS. The NMFS believes that there are advantages to conducting a more measured harvest, taking seals at a slower rate for a longer period of time. If more fresh seal meat can be consumed, it is less likely that preserved meat stocks will exceed or fall short of actual subsistence needs. Therefore, § 215.32(f)(2) authorizes the Assistant Administrator to extend the harvest until September 30 if, by August 8, the subsistence needs of the island have not been fulfilled and the number of females taken remains low. An extension will be terminated if, before its expiration, it is determined that the subsistence needs of the Pribilovians have been met.

The final rule contains two standards of an unacceptable take of female seals that will trigger the termination of the harvest even though an extension was issued. The first of these is when the total number of female seals taken during the harvest exceeds one half of one percent of the total number of seals taken. For example, if the total

harvest on one island were 2500 seals the harvest would be terminated when 13 females had been taken. Although the percentage of females taken on St. Paul last year was only 0.14 percent, data compiled over several years of the commercial harvest and the St. George harvest indicate that a higher allowance for females be set. The highest percentage of females (2.0 percent) recorded in harvest data since 1969, when an "all male" harvest was resumed, was the St. George harvest of 1978 when six females were taken out of a total harvest of 298 seals. The range of other percentages of females taken falls between 0.0 and 0.6 percent.

The second measure of an unacceptable increased taking of females is the absolute number of females taken during the period of the extension. This allows NMFS to close the harvest when it first becomes apparent that the risk of taking females is substantially heightened. The Assistant Administrator need not allow the Aleuts to continue to take an unacceptable level of female seals waiting for the percentage set forth in section (f)(2)(ii) to be attained. Any time during the extension that five female seals are taken within a seven consecutive day period, the harvest will be terminated.

Five was chosen as the limit because it is presumably large enough to allow for statistical swings in the harvest data that are the result of chance but do not indicate an increased risk to female seals, yet low enough to trigger cessation of the harvest when it becomes apparent that a significant rate of females is being taken. To use last year's harvest data as an example, had there been an extension beyond August 8 and five females had been taken within a one week period, this provision would have operated to close the harvest before the one half of one percent level was reached.

Disposition of Fur Seal Parts

Section 215.33 governs the disposition of fur seal parts derived from the Pribilof Islands harvest and is based upon section 109(f)(2) of the MMPA. Fur seal parts, including edible parts, may be transferred from the taker to other Alaskan Natives. As some commenters pointed out, the language of the proposed rule would have allowed the sale of all seal parts to Alaskan Natives, a result clearly at odds with section 109(f)(2). The final rule clarifies that only barter or sharing of edible portions between Alaskan Natives is authorized; no sales of these parts, even among Alaskan Natives, is permitted. The only sales authorized under section 109(f)(2)

are the selling of handicraft articles fashioned from nonedible byproducts of seals taken for personal or family consumption. The final rule provides that the only allowable permanent transfer of seal parts to non-Natives is of finished handicraft articles. Certain temporary transfers of seal parts to non-Natives are also permitted under the terms of this regulation. Non-Natives may be registered under 50 CFR 216.23(c) as agents or tanners and may temporarily possess seal parts to carry out those functions so long as the parts ultimately are returned to an Alaskan Native for conversion into handicraft articles. Similar accommodations are provided in NMFS's MMPA native taking regulations. Additionally, NMFS adopts a broad interpretation of the provision which allows the creation and sale of handicrafts. Under § 215.33(c), nonedible seal parts may be sold to other Alaskan Natives if the purpose of the sale is for the conversion of the seal part into a handicraft article. This interpretation of the statutory language is particularly appropriate in this instance since the Pribilovians were denied the opportunity to develop an extensive handicraft tradition during the period of the commercial harvest.

Several commenters expressed a belief that these regulations should allow the sale of raw fur seal parts for commercial utilization. They argued that to do otherwise would result in the wasteful taking of fur seals, since it is conceivable that the valuable pelts may go unused. Other commenters expressed the opinion that no commercial use of seal parts, aside from handicrafts, be permitted since it would result in inflated claims of subsistence needs. As explained elsewhere in the preamble to this rule, the subsistence use definition section 109(f)(2) of the MMPA limits the commercial use of marine mammal parts to sales in connection with handicraft articles.

In § 215.33 (b) and (c) of the proposed rule, the term "Native Alaskan" was inadvertently used instead of "Alaskan Native". The use of the former term was in no way intended to allow transfers under these provisions to anyone but Alaskan Natives. The term "Alaskan Native" has been substituted in the final rule.

Cooperation With Federal Officials

NOAA's fur seal research program has yielded much valuable data necessary for the management and conservation of the fur seal, and a major goal of the program has been to determine the cause of the continuing decline in the fur seal population. Data

from the harvest have been used to monitor the rate of entanglement in debris and to determine body weight, body length, tooth size, levels of toxic substances, and changes in the age structure of the male portion of the population. These data are also used to assess the status of the population, to monitor population trends, to evaluate rates of population interchange between the islands, and to seek explanations for the observed dynamics of the population. The harvest has also been used to retrieve tags applied for various research purposes.

To insure that new data comparable to existing data and not confounded by procedural changes, it was deemed advisable, in the 1985 interim rule, to maintain as much continuity in the harvest methods as possible. Where possible, every effort was made to ensure that the specific procedures of the subsistence harvest follow historic practices. This rule seeks to continue the accommodation of the research program to the extent possible. However, greater latitude in choosing harvest days and location is being provided.

Applicability of the Rule

In accordance with section 103(b) of the FSA, only Pribilovians are authorized to engage in the land based harvesting of fur seals. All other Native Alaskans who harvest fur seals must conform to the provisions of section 103(a) of the FSA which allows fur seals to be taken only from canoes not propelled by motors and manned by not more than five persons each.

This rule places no reporting requirements upon the Pribilovians. However, § 215.34 requires those who take fur seals to cooperate with NMFS representatives in compiling scientific information and other data regarding the extent of taking and uses to which seal parts are being put. As well as providing the continuation of vital fur seal research, this information is essential to the Assistant Administrator's monitoring of the harvest and will be used to determine the point at which subsistence needs have been satisfied. These data may also be used as evidence that the harvest is or is not otherwise being conducted in a wasteful manner.

At the suggestion of the MMC, § 215.34 has been modified in the final rule to clarify that the Pribilovians are required to cooperate with scientists who are recording tag data or *other* data.

Classification

The NMFS prepared an environmental assessment (EA) of this rule and

concluded that it will result in no significant impacts on the environment other than those already discussed in the final environmental impact statement (EIS) on the Interim Convention on Conservation of North Pacific Fur Seals, published in April 1985. Copies of the EA/EIS may be obtained by writing to the address listed above.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

Due to the potential adverse effect on the seal population which would result from a delay in issuing final regulations governing the subsistence harvest, good cause justifies the promulgation of this final rule on an emergency basis. It is impracticable and contrary to the public interest to delay the effective date of these emergency final regulations. Therefore, these regulations shall become effective upon delivery to the Federal Register. A 30-day public review and comment period was provided on the proposed rule published on May 15, 1986 (51 FR 17896).

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in Section 8(a)(1) of the Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

List of Subjects in 50 CFR Part 215

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

Dated: July 3, 1986.

Joseph W. Angelovic,
Deputy Assistant Administrator for Science
and Technology, National Marine Fisheries
Service.

PART 215—[AMENDED]

Accordingly, 50 CFR Part 215 is amended as follows:

1. The authority citation for Part 215 is revised to read as follows:

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

2. Section 215.2 is revised to read as follows:

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part:

(a) *Act* means the Fur Seal Act, as amended, 16 U.S.C. 1151-1175.

(b) *Alaskan Native* has the identical meaning under this section as in 50 CFR 216.3.

(c) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) *Fur seal* means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

(e) *Handicraft articles* means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Where commonly produced by Alaskan Natives on or before October 14, 1983, and

(2) Are composed wholly or in some significant respect of natural materials, and

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices.

Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered under 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(f) *Public display* means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(g) *Pribilovians* means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(h) *Subsistence uses* means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and

for barter, or sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(i) *Wasteful manner* means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

3. Section 215.3 is revised to read as follows:

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part will, upon conviction, be fined not more than \$20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part may be assessed a civil penalty of not more than \$10,000 for each such violation.

4. Subpart D is revised to read as follows:

Subpart D—Taking for Subsistence Purposes

Sec.	
215.31	Allowable take of fur seals.
215.32	Restrictions on taking.
215.33	Disposition of fur seal parts.
215.34	Cooperation with federal officials.

Subpart D—Taking for Subsistence Purposes

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

- (a) For subsistence uses, and
- (b) Not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated

independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.

(b) By April 1 of each year the Assistant Administrator will publish in the *Federal Register* a summary of the preceding year's harvest and a discussion of the number of seals expected to be taken that year to satisfy the subsistence requirements of each island. Following a 30 day public comment period, but before the start of the harvest, a final notice of the expected harvest levels will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 30 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

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

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) *St. George Island*—Seals may only be harvested from the following haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e) (1) The Assistant Administrator is required to suspend the take provided for in § 215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the

subsistence needs of the Pribilovians on the island have been satisfied;

or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) is warranted. If a the harvest is not suspended under paragraph (e)(1)(i), the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f)(1) The Assistant Administrator shall terminate the take provided for in § 215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) that the subsistence needs of the Pribilovians on the island have been satisfied, whichever occurs first.

(2) Notwithstanding the requirements of paragraph (f)(1), the Assistant Administrator may allow taking under § 215.31 if he determines that, as of August 8, the subsistence needs of the Pribilovians have not been met. In this case, the taking of seals may be extended for a period not to exceed September 30. If the harvest is extended beyond August 8, the Assistant Administrator shall terminate the take if:

(i) It is determined under paragraph (e)(1)(i) that the subsistence needs of the Pribilovians on the island have been satisfied; or

(ii) The number of female seals taken since June 30 exceeds one half of one percent of the total number of seals harvested for that island; or

(iii) The number of female seals harvested during any consecutive seven day period after August 8 exceeds 5.

§ 215.33 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to

any person unless it is a nonedible byproduct which:

(a) Has been transformed into an article of handicraft, or

(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or

(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.

§ 215.34 Cooperation with federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMFS representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(e).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR PART 650

[Docket No. 60625-6125]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency interim rule continuing the management measures for the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) and the implementing regulations which establish a 30 average meat count standard (the number of meats per

pound), and a corresponding minimum shell height requirement of 3½ inches for sea scallops landed in the shell. In addition, this rule provides authority to the Regional Director to grant exemptions from the regulations for research purposes. This action is intended to delay implementation of Amendment 1 (amendment) to the FMP in order to provide reasonable opportunity for the industry to comply with the management program, minimize fishing-related mortality on small scallops, and facilitate the development of an alternate management program for the fishery.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 617-281-3600 extension 331.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP established a maximum average meat count standard within a range of 40-25, meats per pound, and a corresponding minimum shell height requirement for sea scallops landed in the shell (August 18, 1982, 47 FR 35990). Enforcement of this standard was limited up to and including the point of first transaction in the United States.

The Council prepared an amendment to the FMP (Amendment 1) which was approved by the NOAA Administrator on October 17, 1985. The amendment established a minimum weight standard, the four-ounce standard, and extended enforcement beyond the point of first transaction. The purpose of the amendment was to reduce the taking of small sea scallops.

The final rule implementing the amendment was to become effective on January 1, 1986 (November 6, 1985, 50 FR 46069). NOAA delayed the implementation of the amendment for a period of 180 days as authorized by section 305(e) of the Magnuson Act in order to avert a severe economic hardship in the fishery (January 3, 1986, 51 FR 208; April 8, 1986, 51 FR 11927; and May 5, 1986, 51 FR 16520). The emergency rule continued the management measure regulations implementing the original FMP and reestablished the 35 meats per pound standard (3½ inch shell height requirement).

On May 28, 1986, the Council voted unanimously to forestall the implementation of the amendment through emergency action, and to continue the management measure of the original FMP and the implementing

regulations which impose a 30 average meat count standard. The Council believes that this action is necessary due to the tremendous number of small scallops recently recruited into the fishery. Their abundance and distribution will render industry compliance with the minimum weight standard of the amendment very difficult. Council analyses have shown that the 30 average meat count standard achieves essentially the same resource benefits over time as the four-ounce minimum weight standard contained in the amendment.

In light of the Council's concerns over discarding and dredge-induced, non-capture mortality, and recognition that even reasonably conservative fishing practices would not guarantee compliance with the minimum size standard, particularly at sea, the Assistant Administrator finds that an emergency exists within the sea scallop fishery. This determination is further supported by the potential for widespread abandonment of any conservation measures by fishermen if the amendment is implemented against the will of virtually the entire industry. This could result in substantial, yet unnecessary harm to the resource.

The industry finds compliance at sea with a meat weight standard to be difficult at best. Sea conditions frustrate precise compliance with the exacting minimum meat weight standard. Compliance at sea with the average meat per pound standard is also hindered by sea conditions, but much less so. A pound standard is easier to gauge at sea than a four-ounce weight standard. Fishermen can equate a pound of scallops to a reasonable volumetric equivalent (that is, a pound of scallops occupies roughly a pint). Scallops filling the volumetric equivalent to a pound can easily be counted to determine if the sample is in compliance with the specified meat count per pound standard. While this procedure is not "scientifically" accurate, it is reasonably predictive of compliance or non-compliance with the standard, particularly in light of the tolerance built into the enforcement of the standard. On the other hand, compliance with the minimum meat weight standard is very difficult at sea because it demands weighing small scallops. Even with the most accurate scale on board, a fisherman would have great difficulty in weighing a sample to see if it complied with the four-ounce weight standard due to the degree of error resulting from the pitching and rolling of the vessel even under moderate sea conditions.