

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 60473-6073]

Subsistence Taking of North Pacific Fur Seals; Proposed Restriction

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

ACTION: Proposed rule.

SUMMARY: The NMFS is proposing 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 substance needs of the Pribilovians have been satisfied.

EFFECTIVE DATES: Comments on this proposed rule must be received by June 16, 1986.

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

FOR FURTHER INFORMATION CONTACT: Michael Gosliner (Principal Attorney), 202-634-4224 or Georgia Cranmore (Program Official), 202-634-7278.

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 totalled 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 or 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 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. These proposed regulations are similar to the emergency interim rule published on July 8, 1985 (50 FR 27914).

Just prior to the expiration of the 19-day harvest season, the NMFS received an urgent request 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 bound 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.

Applicable Laws

Two statutes are potentially applicable to the taking of fur seals on the Pribilof Islands absent 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 Pribilovians 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 Pribilovians 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 person 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 Subsistence 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 proposed rule, 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 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 of 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.

Comments on the Interim Rule

Of the 16 letters of comment the NMFS received on the emergency interim rule, 15 contained statements of qualified or complete support for the adopted subsistence regime. One commenter supported a continuation of the commercial harvest and opposed limiting the harvest to subsistence purposes only. Five letters included a recommendation to extend the 1985 harvest season due to extenuating circumstances. Three commenters opposed any extension of the harvest past August 5 because of the possibility of increased taking of females.

One animal welfare group stated that, "NMFS has a duty to ensure, to the extent possible, waste-free and complete utilization of these animals for the subsistence purposes for which their taking is being permitted." This commenter suggested that 100 percent utilization of all edible parts is mandatory and that the sample size used in our monitoring program may not be adequate to ensure complete utilization of each animal. The Pribilovians on the other hand, strongly objected to what they called "oppressive supervision" of subsistence-use practices. They requested that harvest management be accomplished by their own leadership.

While several commenters recommended the establishment of a permanent reporting system for subsistence use, one commenter criticized the practice of weighing all meat taken for subsistence. This commenter suggested that we weigh enough carcasses to arrive at an average weight of all edible parts and then concentrate on visual inspection of each carcass. Two commenters recommended that we devise a system to monitor and record actual consumption of subsistence meat. One commenter recommended that an upper limit be established for the subsistence harvest and that all bacula (sealsticks) be destroyed to avoid providing an incentive to harvest more seals than needed for food.

While one commenter urged us to avoid waste of pelts due to any restrictions on their commercial use, others objected to the section of the interim rule concerning disposition of fur seal parts. Specifically, two commenters objected to the provision that would allow payment to Pribilovians for skin processing done on behalf of the United States Government. One commenter claimed that this provision could lead to

a "government subsidy of the 'subsistence' hunt." One commenter recommended that a limit of 6,600 skins be set for those skins that may be transferred to the government for final disposition. Any commercial use or potential commercial use that may be allowed was viewed by a number of commenters as a possible incentive for increased harvesting of seals beyond numbers needed for food.

One commenter, who had observed the 1985 harvest, noted that there were no seal handicrafts for sale on St. Paul Island. Since seal parts were generally not available to individual Pribilovians in the past, except at considerable cost, no tradition of seal handicrafts had developed. However, some handicrafts made from seal pelts, bones, and teeth are apparently in private use on St. Paul. Accordingly, this commenter recommended that the handicraft definition be amended by deleting the word "commonly" so as to encourage the production and sale of rare items, but not, presumably, the development of totally new products.

Two reviewers recommended that we rely on section 109(f)(2) of the MMPA for guidance on the regulation of subsistence take, rather than section 101(b). 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 Marine Mammal Commission believes the application of section 101(b) procedures requiring formal rulemaking is appropriate in this instance. They further state, however, that, "Although it is the position of the Commission that the formal rulemaking requirements of the MMPA should be used if permanent regulations are determined to be necessary, we recommend that consideration be given to the alternative approach of developing a cooperative agreement with the Pribilovians to govern the taking of fur seals for subsistence purposes."

The Marine Mammal Commission provided a formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA. Four other commenters also requested a finding of depletion. 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 . . .".

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 will not be part of the present rulemaking under section 105 of the FSA. As noted by the Marine Mammal Commission in comments on the emergency rule, the designation of depleted status carries with it certain restrictions which affect the interests of private parties and other Federal and state agencies. Interested parties should therefore be provided with an opportunity to review and comment on any proposed designation. When the NMFS determines that the designation of this population as depleted is appropriate, we intend to make use of notice-and-comment rulemaking procedures. The use of informal rulemaking to make a depletion designation is supported by the recommendation of the Marine Mammal Commission.

Discussion of Regulatory Provisions

Definitions. Several definitions are added to § 215.2 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. 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 to the definition of subsistence used in this rule. The definition of subsistence is taken from section 109(f)(2) of the MMPA. The definition of "handicraft articles" is functionally identical to that contained in 50 CFR 216.3 for "authentic native articles of handicrafts and clothing".

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. This is merely a technical amendment and no discretion is exercised in its adoption.

Subsistence Harvest of Fur Seals

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 repeated in § 215.3 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(c) requires that any takings may not be accomplished in a wasteful manner. 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. Also, it should be noted that the second standard of wastefulness closely relates to this determination. As part of accurately estimating subsistence needs, one must have some idea of what

portion of a fur seal is reasonably usable for subsistence purposes. These determinations are crucial to the operation of this rule since the Assistant Administrator is authorized by § 215.32(a) to suspend the harvest when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

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 attempts by Pribilovians to avoid wasting 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.

Under the terms of this rule not only must the subsistence harvest not exceed the subsistence needs of the Pribilovians, but there must be substantial use made of each seal taken. Since no one target number has been set for the subsistence needs, the NMFS believes that the best way to ensure that the harvest is accomplished in a non-wasteful manner is to continue to monitor the use of those seals which are taken.

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(a). 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 which 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. Substantial use of a carcass will mean 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. 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 intends to exercise his authority under § 215.32(a) 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, and
3. The weight of organs and tissues not removed for food purposes.

Section 215.32(b)(1) provides that only traditional methods of harvesting may be used to take fur seals. These methods consist, in part, of organized drives of subadult male fur seals from the haulout

sites to killing fields located some distance inland. Drives are conducted only in the early morning hours when the temperature is low and the stress placed upon the seals is minimal. Once at the killing fields, the driven animals are separated into smaller groups and selected individuals are stunned by a sharp blow to the head with a long club. The stunning is followed immediately by exsanguination.

Limiting the harvest to the use of traditional methods will ensure that humane methods are used, will minimize the disruption to rookeries which may result from other methods of taking, and will lessen the risk that female seals will be taken. Since the discontinuation of the female harvest in 1968, this method of harvesting has resulted in an accidental taking of females well below one percent of the total take. In 1985, only five females were accidentally taken during the total harvest of 3,384 seals.

Section 215.32 (b)(2) clarifies that only subadult male fur seals may be taken. The Scientific Committee of the Commission, since 1969, had recommended that only this component of the fur seal population be harvested. The rule specifies that no adult fur seals or pups may be taken. Because of difficulties in distinguishing between immature male and female fur seals, the rule provides for the occasional accidental taking of a subadult female fur seal which may arise during the harvest so long as the historic low level of females taken is maintained. Intentional taking of subadult females, however, is not allowed.

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 is 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 are comparable to existing data and not confounded by procedural changes, it was deemed advisable, in the 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 locations is being provided in the proposed rule. For example, only a recommended harvest schedule is provided. No one haulout area may be harvested more than once each week, however, regardless of the rotation schedule chosen.

Aside from research motives, seasonal restrictions have been adopted to avoid an unacceptable taking of female fur seals. Under this rule, no fur seals may be taken on St. Paul Island after the first week in August. At this time, 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. The first 3-year-olds arrive on the islands early in July, and are available for harvest. Beginning the subsistence harvest much earlier than July would tend to select for older males which arrive on the Pribilofs earlier in the season.

The provisions applicable to the St. George Island harvest are drawn from past practice and are incorporated into this rule primarily to safeguard the research program which has been conducted on the Pribilof Islands since 1973. So as not to jeopardize this research, which compares the dynamics of harvested and unharvested populations, it has been recommended that the harvest level on St. George be reduced in proportion to the overall decline in the population. In 1984, the St. George quota was 350 and was reduced to 329 in 1985 to match the approximate six percent decline in the population that year. Since the three year running average decline rate remains at six percent, the St. George quota is lowered to 309 for 1986. As with St. Paul Island, only subadult males may be taken. Restrictions are also placed on the

location of drives and the number of seals that may be taken per day.

The harvest restrictions placed upon St. George Island in this rule may not allow its residents to take enough fur seals to satisfy their subsistence requirements. To mitigate any burden placed on St. George residents, the NMFS is proposing to provide free air transportation between St. George and St. Paul Islands at least once a week throughout the duration of the St. Paul harvest to allow St. George residents to obtain additional quantities of fresh meat for subsistence purposes. However, the NMFS recognizes that St. George residents are being asked to accept greater restrictions on subsistence taking than those placed on residents of St. Paul Island. Consequently, while the quota system for St. George, established in 1973 and carried over into the 1985 interim rule, has been adopted in this proposed rule, the NMFS is prepared to consider alternatives. We solicit comments on this issue during the public review period.

Section 215.33 governs the disposition of fur seal parts to any person other than an Alaskan Native. Fur seal parts, under this rule may be transferred from the taker to other Alaskan Natives in accordance with section 109(f)(2) of the MMPA. No part of a fur seal may be sold to a non-native unless it is a nonedible byproduct of a seal taken for personal or family consumption that has first been converted into an article of handicraft as defined in § 215.2(e). For example, the bacula of male seals (sealsticks) cannot be sold as aphrodisiacs and excess seal meat cannot be converted into dog food. Skins that have been retained from the subsistence take for conversion into handicrafts may be transferred to a registered tannery for processing, as long as they are returned directly to the Pribilofians from whom they were obtained.

The NMFS is considering the promulgation of an interpretive rule that will further delineate the uses that may be made of nonedible byproducts. Comments on the necessity of such a rulemaking are invited.

In accordance with section 103(b) of the FSA, only Pribilofians 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. No numerical limit is placed upon the level of fur seals that may be harvested by the Pribilovians. Seals may be taken so long as the taking is for a "subsistence use" and is not accomplished in a "wasteful manner".

No reporting requirements are placed upon the Pribilovians under this rule. 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. The compilation and analysis of 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.

Classification

The NMFS prepared an environmental assessment (EA) of this proposed 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. A copy of the EA/EIS may be obtained by writing to the address listed above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This rule will *not* result in a) an annual effect on the economy of \$100 million or more; b) a major increase in costs or prices; or c) a significant adverse effect on the U.S. economy. A regulatory impact review concludes that this rule will have no economic effects save those nondiscretionarily mandated by statute. Consequently, the General Counsel of the DOC certified to the Small Business Administration that this proposed rule if adopted, will *not* have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 215

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

Dated: May 12, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 215—[AMENDED]

Accordingly, 50 CFR Part 215 is amended as follows:

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

Authority: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1364.

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:

(1) *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) Were 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. A new Subpart D is added 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 Assistant Administrator is authorized to suspend the take provided for in § 215.31 when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

(b)(1) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including organized drives of subadult male fur seals to killing fields and separation into smaller groups for selective stunning followed immediately by exsanguination.

(2) Only subadult male fur seals may be taken. Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(3) The following schedule and take limits shall apply:

(i) *St. Paul Island*—Any harvest of fur seals on St. Paul Island must be conducted in accordance with the following provisions:

(A) The harvest season opens June 30 of each year and closes on August 8 or upon suspension of the harvest by the Assistant Administrator under the provisions of § 215.32(a), whichever occurs first.

(B) No haulout area may be harvested more than once each week. The

following is a suggested harvest schedule:

Monday—Zapadni
Tuesday—English Bay
Wednesday—Northwest Point
Thursday—Polovina, Little Polovina, Lukanin, Kitovi
Friday—Reef

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

(D) Seals with tags and/or entangling debris may only be taken if so directed by scientists studying fur seal entanglement.

(ii) *St. George Island*—Any harvest of fur seals on St. George Island must be conducted in accordance with the following provisions:

(A) Fur seals may only be taken at the east haulout area of the North Rookery. No more than two drives may be conducted per week and no more than 50 seals may be taken per day.

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

(C) The total take on St. George Island must not exceed 309 seals in 1986, and will vary in subsequent years in accordance with the rate of seal population growth or decline, as determined by the NMFS. To meet their subsistence needs, air transportation between St. George and St. Paul Islands will be made available to St. George native residents free of charge at least once per week during the St. Paul harvest to allow them to obtain additional quantities of fresh meat, if needed for subsistence uses.

§ 215.33 Disposition of fur seal parts.

No part of a fur seal taken for subsistence uses may be sold or

otherwise transferred to any person other than an Alaskan Native 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 Native Alaskan, or

(c) Is being sold or transferred to an agent registered under 50 CFR 216.23(c) for resale or transfer to a Native Alaskan 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 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(a).

[FR Doc. 86-10918 Filed 5-14-86; 8:45 am]

BILLING CODE 3510-22-M