

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 050623166–5166–01; I.D. 061505B]

RIN 0648–AT49

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

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

ACTION: Notice of availability; request for comments.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, this document summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 2002 to 2004 and proposes annual estimates of fur seal subsistence needs for 2005 through 2007 on the Pribilof Islands, Alaska. NMFS solicits public comments on the proposed estimates.

DATES: Written comments must be received at the appropriate address or fax number by August 17, 2005.

ADDRESSES: Written comments on the harvest estimates should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, Alaska Region, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802. Comments may be sent via facsimile (fax) to (907) 586–7012 or by email to fursealharvest-PR-0648-at49@noaa.gov.

Comments also may be submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction on the website for submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Vos, (907) 271–5006, email Daniel.Vos@noaa.gov; Kaja Brix, (907) 586–7824, email Kaja.Brix@noaa.gov; or Tom Eagle, (301) 713–2322, ext. 105, email Tom.Eagle@noaa.gov.

SUPPLEMENTARY INFORMATION:**Electronic Access**

A draft Environmental Impact Statement is available on the Internet at the following address: <http://www.fakr.noaa.gov/protectedresources/seals/fur/deis0804.pdf>.

Background

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

There are several factors and conditions that affect the subsistence harvest of northern fur seals. Beginning in 2000, the take ranges have been discussed with each tribal government as part of the co-management relationship and agreement. As the history of estimating the subsistence needs of the Pribilof communities has been one of practical and social difficulties, the process to meet the take range regulation has evolved into the long-term acceptance of the ranges first established in 1987. These levels provide a degree of flexibility the communities feel comfortable with regarding changes and unanticipated needs within the community. The variability of the harvest occurs for many reasons. Weather conditions and availability of animals vary year by year. Demand may change. The timing restriction on the hunt overlaps with fishing seasons, and many of the hunters are also fishermen. Thus, they may be unavailable to hunt in certain years. If the harvest were reduced, the subsistence needs of the local communities may not be adequately met in certain years. The economic and logistical difficulties associated with small, rural and remote Alaskan communities such as those of St. Paul and St. George Islands, create a situation where subsistence use is an important source of food and a major component of the traditional needs of the communities.

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous 3–year period and an estimate

of the number of seals expected to be taken in the subsequent 3–year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands.

Summary of Harvest Operations and Monitoring 2002 to 2004

The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel monitored the harvest and worked closely with the tribal governments of each island to further improve the efficiency of the annual harvest and full utilization of the animals taken.

The reported northern fur seal subsistence harvests for St. Paul from 2002 to 2004 were 648, 522, and 493 respectively, and the reported northern fur seal subsistence harvests for St. George from 2002 to 2004 were 203, 132, and 123, respectively. The number of northern fur seals harvested on St. Paul Island from 1986 to 2004 ranged from 493 to 1,710, and the number harvested on St. George Island from 1986 to 2004 ranged from 92 to 319 seals. The average number of seals harvested during the past 10 years on St. Paul and St. George Islands, respectively, has been 958 seals (range: 493 to 1,591) and 193 seals (range: 121 to 260), (Table 1).

The tribal governments of both islands stress the full utilization of edible parts of harvested animals and have implemented a program that promotes full utilization of inedible seal parts for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents and increased fulfillment of the non-wasteful harvest requirements.

From 2002 through 2004, NMFS and the tribal governments of both islands worked closely to improve the conduct of the subsistence harvest and to promote full utilization of all the products thereof. Through the co-management process, (cooperative agreements were signed with St. Paul in 2000 and with St. George in 2001), NMFS and tribal authorities have developed a cooperative and collaborative working relationship, which increases local participation and responsibility regarding subsistence uses of fur seals and other marine mammals on and around the Pribilofs.

TABLE 1. SUBSISTENCE HARVEST LEVELS FOR NORTHERN FUR SEALS ON THE PRIBILOF ISLANDS, 1986–2004

Year	Take Ranges		Actual Harvest Levels	
	St. Paul	St. George	St. Paul	St. George
1986	2,400–8,000	800–1,800	1,299	124
1987	1,600–2,400	533–1,800	1,710	92
1988	1,800–2,200	600–740	1,145	113
1989	1,600–1,800	533–600	1,340	181
1990	1,145–1,800	181–500	1,077	164
1991	1,145–1,800	181–500	1,645	281
1992	1,645–2,000	281–500	1,482	194
1993	1,645–2,000	281–500	1,518	319
1994	1,645–2,000	281–500	1,616	161
1995	1,645–2,000	281–500	1,525	260
1996	1,645–2,000	281–500	1,591	232
1997	1,645–2,000	300–500	1,153	227
1998	1,645–2,000	300–500	1,297	256
1999	1,645–2,000	300–500	1,000	193
2000	1,645–2,000	300–500	754	121
2001	1,645–2,000	300–500	597	184
2002	1,645–2,000	300–500	648	203
2003	1,645–2,000	300–500	522	132
2004	1,645–2,000	300–500	493	123

Estimate of Subsistence Need for the Period 2005 to 2007

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

For the 3-year period, 2005 to 2007, NMFS proposes no change to the past and current ranges of 1,645–2,000 for St. Paul Island and 300–500 for St. George Island. Retaining these levels will provide adequate flexibility for further refinement of annual harvest levels through the co-management process.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 216.72(e)(1) and (3) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the

estimated harvest level is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs. The harvest may also be suspended if the harvest has been conducted in a wasteful manner. NMFS seeks public comments on the proposed estimates.

The harvest of fur seals is anticipated to be non-wasteful and in compliance with the regulations specified at 50 CFR 216.72 which detail the restrictions and harvest. NMFS will continue to monitor the harvest on St. Paul Island and St. George Islands during 2005 to 2007.

Classification

National Environmental Policy Act

NMFS prepared a draft EIS evaluating the impacts on the human environment of the subsistence harvest on northern fur seals. The draft EIS, which is available on the Internet (see Electronic Access) was subjected to public review (69 FR 53915, September 3, 2004), and the comments are being incorporated into a final EIS.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant rule under Executive Order (E.O.) 12866. The regulations are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local

government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. Because the harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only, the estimate of subsistence need would not have an economic effect on any small entities. Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

This proposed action does not require the collection of information.

Executive Order 13132 – Federalism

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence needs

were prepared by the local governments in St. Paul and St. George, with assistance from NMFS officials.

Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This action does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this action.

Nonetheless, NMFS took several steps to work with affected tribal governments to prepare and implement the proposed action. These steps included discussions on subsistence needs and mechanisms to ensure that the harvest is conducted in a non-wasteful manner. NMFS signed cooperative agreements with St. Paul in 2000 and with St. George in 2001 pursuant to section 119 of the MMPA.

Dated: July 12, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050630174–5174–01; ID 062005B]

RIN 0648–AT08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 41

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 41

(FW 41) to the NE Multispecies Fishery Management Plan (FMP). FW 41 management measures were developed by the New England Fishery Management Council (Council) to expand participation in the existing Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) to all Northeast (NE) multispecies limited access Days-at Sea (DAS) vessels fishing with hook gear. The proposed action would also modify some of the management measures currently applicable to the Georges Bank (GB) Cod Hook Sector (Sector) vessels when declared into the CA I Hook Gear Haddock SAP by including modification of the season, haddock total allowable catch (TAC), and restricting vessels to fishing only inside the SAP area on trips declared into the SAP. In addition, NMFS proposes to clarify regulations pertaining to fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area. Specifically, during the time the SAP is open, eligible vessels could choose to fish in the SAP, and fish in the Eastern U.S./Canada Area west of CA II. This action is intended to mitigate the economic and social impacts resulting from Amendment 13 to the FMP and to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by August 17, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: FW41@NOAA.gov. Include in the subject line the following: Comments on the Proposed Rule for Groundfish Framework 41.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on the Proposed Rule for Groundfish Framework 41.”
- Fax: (978) 281–9135.

Copies of FW 41, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B Mill 2, Newburyport, MA 01950. A summary of the IRFA is provided in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In order to increase the fishing effort on, and yield from healthy stocks, Amendment 13 to the FMP created a structure that allows for development of programs to target healthy fish stocks using Category B DAS. Amendment 13 included four specific SAPs, only two of which were approved and implemented on May 1, 2004. The regulations implementing FW 40–A (69 FR 67780, November 19, 2004) also created opportunities to use Category B DAS, including the CA I Hook Gear Haddock SAP. However, due to insufficient controls on GB cod mortality, which could have led to undermining fishing mortality objectives necessary to end overfishing and rebuild the GB cod stock, the measures for non-Sector vessels proposed in FW 40–A were found to be inconsistent with National Standard 1 and section 303(a)(1)(A) of the Magnuson-Stevens Act, and were thus disapproved. Specifically, the portion of the program pertaining to non-Sector vessels proposed to: Allow participants to fish in the SAP area using either an A or B DAS; count cod catch against the SAP’s incidental cod TAC only when fishing on a B DAS; allow participants to fish both inside and outside the SAP area on the same trip under different gear restrictions; and allow non-DAS groundfish vessels to participate in the SAP. In contrast, regulations pertaining to the Sector vessels were relatively straightforward in that all cod caught by Sector vessels count toward the Sector’s allocation of GB cod, and the same gear restrictions apply both inside and outside of the SAP area on a single trip. The purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. This special access program would help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

FW 41 would provide access to the CA I Hook Gear Haddock SAP for all limited access NE multispecies DAS permit holders, including both Sector and non-Sector vessels. Working together, Sector and non-Sector vessel owners who plan to participate in the program have suggested measures to minimize the potential for a derby (race to catch limited quota) fishery. The Council, in FW 41, has specified that