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Attn: Ellen Sebastian.  
*Submitted via: [www.regulations.gov](http://www.regulations.gov): NOAA-NMFS-2017-0117*

September 13, 2018

Dear Mr. Kurland and Ms. Sebastian,

On behalf of the millions of members and supporters of the Humane Society of the United States (“the HSUS”) and Humane Society Legislative Fund (“HSLF”), we are writing to once again express our concerns with your proposal to modify the subsistence use regulations for the Eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) in response to a petition from the Aleut Community of St. Paul Island’s Tribal Government. 83 Fed. Reg. 40192 (Aug. 14, 2018).

The HSUS has submitted comments on prior proposals to modify the regulations (attached) and, thereby, dramatically expand the number of fur seals that are likely to be killed and hereby incorporate them by reference.<sup>1</sup> We find that this proposal not only does not address the concerns we have previously raised, but additionally it problematically reduces federal oversight of the hunt. Moreover, the impacts of this amended hunt proposal appear to rely on the analysis and conclusions in the 2017 Draft Supplemental Environmental Impact Statement (DSEIS) and 2014 Environmental Impact Statement (EIS) 2017 on which we submitted the aforementioned adverse public comments incorporated by reference. It is improper for the agency to rely upon these faulty documents to form the basis of this proposal.

Given the ongoing decline in the stock’s abundance, we are troubled that, in its discussion of compliance with the Regulatory Flexibility Act, NMFS provides a somewhat troubling reason for the rulemaking; that is: “no significant alternatives were identified that would accomplish the stated objectives for *deregulating the subsistence use* of northern fur seals in the Pribilof Islands.”<sup>2</sup> Fur seals continue to decline for reasons that are not well understood. Now is not the time to expand the killing season, increase the kill of younger (largely not sexually dimorphic) males, introduce more indiscriminate methods for hunting, increase the overall number of fur seals that may be killed by more than five times the current harvest rate and “deregulat[e] subsistence use” of the species. To “deregulate” subsistence hunting and use would be impermissibly risk prone. We continue to support the “No Action” alternative.

### **Fur Seals Continue to Decline in Much of their U.S. Range**

NMFS itself projects a continuing decline in pup production even at the level of current average annual hunt in the Aleutians. The decline in pup production on St. Paul Island is of greatest concern. The long-standing decline

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<sup>1</sup> For example, we submitted substantive comments on: 79 Fed. Reg. 9,457 (Feb. 19, 2014) (comments at Attachment A); 80 Fed. Reg. 44,057 (July 24, 2015) (comments at Attachment B) and 92 Fed. Reg. 4336 (Jan. 13, 2017) (comments at Attachment C).

<sup>2</sup> 83 Fed. Reg. at 40209 (emphasis added).

is depicted in the most recent (2016) NMFS stock assessment (SAR) for the stock as well as in NMFS reports on fur seal research (See figure 1 below). The decline in production in St. Paul is by far the most alarming.

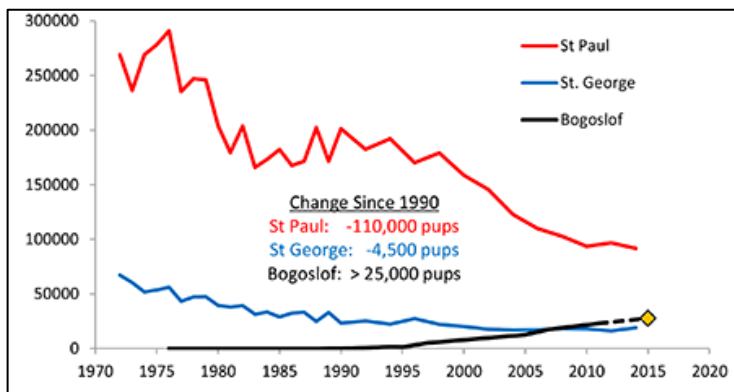


Figure 1. Northern fur seal pup production estimates for St. Paul, St. George, and Bogoslof Islands, Alaska.<sup>3</sup>

We maintain that the currently authorized harvest levels are already higher than is justifiable, given the ongoing long-term decline in this stock. Pup production dropped from an estimated 877,000 fur seal pups in 1984 to a current range-wide estimate of 147,658 pups in 2012 as documented in the NMFS SAR.<sup>4</sup> We reiterate: most pronounced decline, and therefore greatest threat to persistence is on St. Paul Island. The abundance estimate for St. Paul Island rookeries has dropped from 122,825 in 2004 to 91,737 in 2014. This is a loss of over 30,000 fur seals in just 10 years. NMFS itself acknowledges that “[t]here has been a decline in pup production on St. Paul Island since the mid-1990s.”<sup>5</sup> The agency’s SAR concluded that between “1998-2014, pup production declined 4.25% per year (SE =0.48%; P < 0.01) on St. Paul Island...”, and that declines at the larger Pribilof colony (specifically St. Paul) “continue to drive the overall stock estimate down over time.”<sup>6</sup> Although the decline in abundance and pup production in St. George was not as dramatic as that on St. Paul, the SAR documents a decline in pup production of 1.95% per year on St. George.”<sup>7</sup>

NMFS states that the harvest of sub-adult males would not likely have an adverse impact on the population as NMFS “would have expected to observe a change in estimated production of pups on St. Paul following the end of the commercial harvest in 1984. NMFS indicated that it “did not observe a statistically significant change in the estimate of pup production until after 1994 [and there] was no change in the trend of number of pups born, regardless of whether the underlying population trend was declining.”<sup>8</sup> Nonetheless, as we pointed out above, there *is* an ongoing decline.

<sup>3</sup> From: NOAA/Alaska Fishery Science Center: Alaska Ecosystems: Bogoslof Island Research 2015. See Figure 3 at: <https://www.afsc.noaa.gov/Quarterly/JAS2015/divrptsNMML2.htm>. Similar declines are depicted in the NMFS SAR for fur seals. See: NMFS 2016. Alaska Marine Mammal Stock Assessments, 2016: Northern Fur Seal. Revised 12/30/2016 At: [https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock#pinnipeds---otariids-\(eared-seals-or-fur-seals-and-sea-lions\)](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock#pinnipeds---otariids-(eared-seals-or-fur-seals-and-sea-lions)).

<sup>4</sup> Id. In NMFS Stock Assessment

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 83 Fed. Reg at 40193.

Indeed, the DSEIS stipulates that “pup harvests from breeding areas with low and declining or unstable pup production may disproportionately affect those locations, but there is no recent data to evaluate this.”<sup>9</sup> There is no process or criteria described in the DSEIS for designating and exempting these rookeries, particularly if more control over timing and location of hunts is delegated to the native management organization: the Aleut Community of St. Paul Island (“ACSPI”). Given the ongoing decline in pup production in St. Paul Island, it would be risk-prone to err on the side of permissive harvests that will only increase the death toll in pups when there is little or no information to demonstrate that this will not result in adverse effects on the population growth in this declining population. Moreover, as we have pointed out in prior comments, the DSEIS illustrates a continued failure in pup production, even as the overall harvest levels dropped dramatically in 1994 and, even during a limited “season,” the harvest was confined largely to sub-adult males.<sup>10</sup> This would seem to argue *against* approving the killing of pups (which are largely not sexually dimorphic), when this is a demographic that is already in significant decline.

Importantly, we call attention to the first in the list of four main goals of the Conservation Plan for this MMPA-depleted species, which is to “identify and eliminate or mitigate the cause or causes of human-related mortality.”<sup>11</sup> With the exception of the status quo alternative, all of the proposed action alternatives would actually seek to *increase* “human-related mortality” in the face of documented declines in the stock. This would seem in direct contravention of the species’ conservation plan.

### **Lack of Adequate Justification for Increased Subsistence Need**

While we do not oppose a true subsistence harvest on these remote islands, the HSUS and HSLF have long opposed granting a longer hunt season and/or a liberalization of the methods and conditions under which the hunt is conducted. NMFS stipulated in the Federal Register regarding hunt quotas for the years 2017-2019 that the authorized harvest levels have not been taken since 1985.<sup>12</sup> The justification for amending the seasons and method of harvest is to increase the total harvest from the current average of about 325 fur seals killed each year to 2,000 to meet what are said to be native Alaskan subsistence needs. But this is not a result of a notable increase population on the Island, as we note that the DSEIS stipulates that the native Alaskan population of St. Paul has itself declined since 1980 (when it was said to be 483) to the most recent population estimate of 394 native Islanders in 2010.<sup>13</sup> The Islanders have managed to feed themselves and sustain a local populations for over 30 years without killing thousands of fur seals annually for sustenance.

### **Concern Regarding the Deregulation of the Subsistence Use of Northern Fur Seals**

In the current rulemaking proposal, NMFS has indicated its intent to reduce oversight of the hunt and hunt reporting, calling the agency’s involvement “duplicative.”<sup>14</sup> While we understand that the sections of 50 C.F.R. § 216.72 highlighted by NMFS arise out of the “more general statutory prohibition on ‘taking’ in Section 102 of

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<sup>9</sup> Draft Supplemental Environmental Impact Statement (DSEIS), Management of the Subsistence Harvest of Northern Fur Seals on St. Paul Island, Alaska. January 2017 National Oceanic and Atmospheric Administration National Marine Fisheries Service, Alaska Region. Anchorage, Alaska 99513. At:

<https://alaskafisheries.noaa.gov/sites/default/files/analyses/0117stpaulfursealdeis.pdf>

<sup>10</sup> DSEIS at figure 4.3-1.

<sup>11</sup> 72 Fed. Reg. 73766 (Dec. 28, 2007); see also DSEIS at 3-6.

<sup>12</sup> 82 Fed. Reg. 22792 (May 18, 2017). Moreover, NMFS stipulates in this Fed. Reg. notice that the subsistence harvest for fur seals on St. Paul varied from 266 to a high of 314 in the years 2014-2016 and on St. George is declined from 158 in 2014 to 83 in 2016.

<sup>13</sup> DSEIS Table 3.9-1.

<sup>14</sup> See, e.g., 83 Fed. Reg. at 40196.

the [Fur Seal Act]<sup>15</sup>, the regulations currently in place better define what protections should be granted to the seals, and create necessary clarity on specific legal violations. We absolutely disagree that the specific prohibitions are duplicative of a general statutory prohibition on “taking” since killing these seals constitutes a taking and the regulations simply clarify which animals may or may not be taken. For example, paragraph (d)(5) of the regulation, which would be removed under NMFS’ proposal, prohibits “[a]ny taking of adult fur seals, or young of the year, or the intentional taking of sub-adult female fur seals,” whereas Section 102 of the statute makes no mention of age or sex classes with regard to the harvest.<sup>16</sup> We oppose removing these sections in the CFR.

### **The Preferred Alternative Relies to a Great Extent on Potentially Unreliable Self-reporting and Turning over Monitoring of the Hunt to Vested Local Parties**

While we understand the attraction of local management and self-determination by local indigenous communities, we oppose the proposal to decrease the role of federal managers in hunt monitoring and management.

As we have noted in prior comments, the DSEIS states that “reporting and monitoring requirements, which are not supported by a majority of users, are often ineffective, result in significant nonresponse bias, which in turn creates under-estimates of take and over-estimates of performance, and nearly always are not successful as a long-term management tool.”<sup>17</sup> This statement is troubling. It appears to acknowledge an extant reluctance to accurately report kills. If hunt monitoring is being undertaken by the ACSPI, we are concerned that there may be even *less* reporting and accountability, not more. Indeed the record of self-reporting of pinniped harvests is poor.<sup>18</sup>

The DSEIS acknowledges that illegal killing is apparently occurring when the hunt is not being monitored resulting in illegal kills of females and pups, with the impact therefrom, largely unquantified.<sup>19</sup> As such, we see no reasonable justification for *decreasing* the role of monitoring by federal managers given the far longer hunting season that is proposed and the spotty record of local accounting.

Under the preferred alternative, the ACSPI maintains authority for terminating the hunt at a specific threshold and for general monitoring and reporting. Moreover, in the past, the ACSPI has expressed confusion as to the definition of an “experienced sealer” in the regulations and what it may mean to the desire to pass along traditions to inexperienced youth. However, passing along a cultural tradition such as sealing can readily be

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<sup>15</sup> 83 Fed. Reg. at 40196; see 16 U.S.C. § 1152.

<sup>16</sup> See 16 U.S.C. § 1152; 50 C.F.R. § 216.72(d)(5).

<sup>17</sup> DSEIS at 3-58. Refer also to p.6 of prior HSUS comments on the DSEIS dated February 27, 2017 which are attached

<sup>18</sup> See the NMFS SARs for bearded and ringed seals where data are collected and reported by the co-managers of the Ice Seal Committee and where only 12 of 64 communities are reporting kills and only two of those in consecutive years. With regard to Steller sea lions (also harvested in a variety of areas, including St. Paul) the NMFS 2016 SAR reports that “As of 2009, annual statewide data on community subsistence harvests are no longer being consistently collected” and, St. Paul Island is one of the only communities reporting. We are concerned that if NMFS is no longer actively involved in gathering data, this Island, with its depleted and declining stock of fur seals may slip into the poor reporting seen in other areas where accountability and US government monitoring has shifted to native co-managers.

<sup>19</sup> NMFS states that, for example, “NMFS has no estimate of the level of illegal take of pups and therefore has no means to evaluate the significance of the effects on the population” DSEIS at 4.3.4.2.2 and “There is currently an unknown level of illicit subsistence hunting/harvest of fur seals that is unreported. This illegal harvest has resulted in ongoing tension and mistrust between ACSPI and NMFS due to violations of regulations that is unaccounted for and goes unpunished.” DSEIS at 3.2.11 And “The population consequences of such subsistence hunting are unknown since NMFS has no ability to quantify whether, and to what extent, female fur seals are killed” DSEIS at 3.2.11.

dealt with by instituting a form of “apprenticeship” program wherein youth pair with experienced hunters to learn the proverbial trade. The term “experience” might then be defined by NMFS as having first had a certain number of years as an observer/assistant. That sort of process can be undertaken fairly simply under this alternative.

### **Repeated Disturbance Can Only Exacerbate the Challenges to Recovery Faced by the Stock**

The proposed expansion of the seasons in which hunting are permitted and the proposal to allow pups to be killed seem designed to assure that 2,000 animals *will be* killed. As we have noted in prior comments (incorporated by reference), the increase in the sheer number of seals that would be killed under the action alternatives is alarming enough but the impact of repeated disturbance in rookeries throughout most of the year has been underplayed.<sup>20</sup> We note that, in NMFS’ 2007 EIS on fur seal research, the agency acknowledged that there has been no detailed analysis of the influence of human disturbance on northern fur seals; however, it cited research showing “repeated displacement of females may result in permanent abandonment of sites.”<sup>21</sup> This same research found juvenile male fur seals are less tolerant of human presence and are easily displaced from haulouts. As one of its mitigation measures in the 2007 fur seal research EIS, NMFS suggested “limiting the frequency of disturbance at individual rookeries (to reduce chronic disturbance) between years and within one year.”<sup>22</sup> That would certainly *not* be the case under this hunt/harvest proposal where disturbance under all action alternatives in the DSEIS could be authorized over the vast majority of the year and, under some alternatives, could well occur multiple times each year in the same area.

### **NMFS Should Not Permit the Use of Firearms in the Harvest**

We feel strongly that allowing the use of firearms is unjustifiably risk prone. As noted above, continual disturbance may have consequences to fitness. Moreover, animals can be shot in the water, leading to a likely increase in struck and lost animals.<sup>23</sup> Increased struck and lost rates lead to a wasteful hunt.

As we noted in prior comments on the DSEIS, our preference for choosing Alternative 1 is based in part on the fact that it does not as readily result in animals being struck and lost as would be more likely to occur when animals are shot near or in water where they may escape wounded (and the hunter at distance may assume they were missed), only to have the seal die later<sup>24</sup>. Moreover, at this time there is no means of estimating the magnitude of struck and lost rates that may be incurred under other alternatives. The DEIS stipulates, for example, under Alternative 2 Options A and B, that the monitoring of struck and lost during the hunting season “would be a priority “ for the monitoring program “until a struck-lost ratio can be estimated and incorporated into the total number of animals taken as part of the annual harvest.”<sup>25</sup> Moreover, as noted in prior comments, based on experiences in other countries where seals are harvested, there appears to be no way to accurately

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<sup>20</sup> See p. 3 of HSUS prior comments on the DSEIS dated February 27, 2017

<sup>21</sup> NMFS, 2007. Steller Sea Lion and Northern Fur Seal Research. Final Programmatic Environmental Impact Statement. Volume 1 NOAA-NMFS. May 2007. At Appendix B. Available at: <http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm> .

<sup>22</sup> Id.

<sup>23</sup> Shooting in the water is highly risk-prone. NMFS notes that, in the most recent year with reports (2014) 40% of Steller sea lions shot by native hunters on the Island were lost (i.e., close to half of all animals were reported lost). DSEIS at Table 4.2-3. We presume this pertains to animals shot in St. Paul since the citation says “Memo for Record St. Paul.”

<sup>24</sup> See additional detail on p.9 of prior HSUS comments on the DSEIS dated February 27, 2017

<sup>25</sup> DSEIS at 4-82.

account animals struck and lost in the water.<sup>26</sup> Firearms should be disallowed for use with animals in or very near the water.

### **Proposed Changes to the Kill Quota are Impermissibly Risk Prone**

The proposed rulemaking further removes constraints on the number of animals that can be killed and reduces the agency's ability to verify impacts from the hunt. As we have previously stated, the depleted status of fur seals under the Marine Mammal Protection Act (MMPA), and ongoing decline in the species in a substantial portion of the range would seem to warrant heightened control of intentional kills, not a relaxation of restrictions. For varying reasons, discussed below, we find the action alternatives to be impermissibly risk prone. While the "no action" alternative appears the most conservative—and thus, most deserving of support from among the alternatives presented—we continue to maintain that the range of alternatives should include one that would cap the quota at a level that is the highest number killed in the most recent five year period to better suit the goal of slowing or halting the ongoing decline.

We note that the agency now proposes to "stop publishing a range with a lower limit of subsistence need" governing hunts on St. George for sub-adult male fur seals and male young of the year fur seals. Instead NMFS proposes to "set a fixed harvest limit that accounts for expected and unexpected year-to-year variability in the availability of fur seals based on environmental factors and the availability of subsistence users to participate based on economic, social, and other factors."<sup>27</sup> In the process, the agency *will reduce* household reporting requirements and the need to trigger quota-related harvest suspensions which it refers to as "burdensome." Instead, the agency proposes, in some unspecified manner, to somehow determine whether the hunt is being conducted in a "wasteful" manner and suspend the hunt only if it can be determined by this unspecified metric to be "wasteful."<sup>28</sup> We find this undefined threshold for the term "wasteful" to be risk prone and should be quantified. We continue to support the no action alternative, which assures that the hunt is better constrained and its impacts more readily monitored.

### **Specific Comments on the DSEIS Alternatives**

#### Alternative 1: The No Action Alternative

As stated above, we support the No Action alternative, given the many risk-prone weaknesses in the various Action alternatives.<sup>29</sup> In brief, we find that maintaining the limit on the permissible dates for the hunt is an important component of the hunt regulation in order to insure conservatism in the management of this declining stock. NMFS notes that "[f]emale fur seals become more abundant on the rookeries and hauling

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<sup>26</sup> See, for example, an EU Commission reported that struck and lost rates in Sweden and Canada ranged from 40-50% for animals shot in water: European Commission. Scientific Opinion of the Panel on Animal Health and Welfare on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal (2007) 610, 1-123.

Commission on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal (2007) 610, 1-123.

Moreover, Butterworth et al, found that "the rate [of animals struck and lost] was between that between 5% and 50% for adult seals shot in water, compared to 0% up to 21% for seals struck on land (ice)." Butterworth A, Gallego P, Gregory N, Harris S and Soulsby C. Welfare aspects of the Canadian seal hunt: final report. 31 August 2007.

[http://www.hsus.org/webfiles/PDF/seals/welfareaspectsofcanadiansealhunt\\_butterworth.pdf](http://www.hsus.org/webfiles/PDF/seals/welfareaspectsofcanadiansealhunt_butterworth.pdf)

<sup>27</sup> 83 Fed.Reg. at 40200

<sup>28</sup> Id.

<sup>29</sup> We incorporate by reference our more detailed comments of February 27, 2017 on the Draft Supplemental Environmental Impact Statement for the Management of the Subsistence Harvest of Northern Fur Seals on St. Paul Island, Alaska: NOAA-NMFS-2015-0073, which include the more in-depth reasons for our demurs on the action alternatives.

grounds after early August and they *can easily be confused with sub-adult males* during harvests. NMFS implemented the deadline to reduce the likelihood of female fur seals being rounded up during the harvest.”<sup>30</sup> Additionally, the current limits on harvest of specific age classes and limits on the hunt seasons have been effective in maintaining very low levels of accidental mortality of females since the adoption of the initial co-management agreement.<sup>31</sup> We support continuation of the current season and dates.

#### Alternative 2: Petitioned/Preliminary Preferred Alternative

We oppose this alternative, which adds longer seasons and greater harvest of young and juvenile animals. Our opposition is based in part on our concern (expressed above) regarding the ongoing decline in the population and, in part, because it appears that NMFS will lose authority to suspend a hunt—surrendering authority to the Island’s co-management council. The agency’s role would largely be to continue research to monitor the abundance, growth rates, vital rates, and overall status of the northern fur seal population, though many of these functions would also appear to be left in the hands of the co-management council. The authority to manage, monitor and restrict subsistence use by the St. Paul Island community would be delegated to the co-management council; that is, the “user group” would be almost entirely self-regulating. While NMFS states in the Federal Register notice that “Alternative 2 is believed to have major beneficial effects to the Pribilovians of St. Paul Island,” it certainly does not appear to hold beneficial impacts for fur seals.

#### Alternative 3

As indicated in prior comments,<sup>32</sup> although this is not the alternative we support, we find this alternative preferable to the identified “preferred” alternative in the DSEIS, in that it maintains greater NMFS involvement in managing and monitoring the hunt. It also has the advantage of adding additional restrictions regarding the location of hunting (at Northeast Point), a shorter time period (January 1 through March 15), and hunting only when fur seals are hauled out on land, not when they are found in the water. In this way Alternative 3 would minimize the probability of struck and lost seals by restricting hunting to seals hauled out on land and the hunt could be more readily terminated based on excessive female mortality. Nonetheless, the use of firearms promises to dramatically increase the number of animals killed by firearms, with male pups killed between August and December capped at 1,500 pup deaths. Additionally, given the dramatic increase in mortality likely under this alternative, we find it risk-prone given the already-declining population.

#### Alternative 4

This alternative prohibits the use of firearms and it retains the provision that the hunt/harvest may be conducted only by experienced sealers using the traditional methods, including stunning followed immediately by exsanguination (as in Alternative 1). Nonetheless, given the expanded season, and the likelihood of a large increase in mortality, we oppose this alternative as well.

#### Alternative 5

We oppose adoption of this alternative that proposes to *establish a separate sub-PBR* for the St. Paul stock based on an abundance estimate for a declining stock that we note is already several years old. As we have noted in earlier comments on the DSEIS, this sets a dangerous precedent. Moreover, it is highly risk prone, as it would result in an upper limit on mortality of close to 5,000 fur seals—which *is two and a half times* the already unnecessarily high quota of 2,000 that is currently in regulations. This alternative would also permit up to 200 females to be killed accidentally—which the DSEIS itself acknowledges is close to 2% of the female population—and would only suspend the hunt if 150 females had been killed. Table 4.3-1 summarizes the

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<sup>30</sup> DSEIS at 4-22 (emphasis added).

<sup>31</sup> DSEIS at 4-24.

<sup>32</sup> See further discussion of this alternative on p.10 of our prior comments on the DSEIS

impact of this alternative, showing it would allow up to 50% of the stock's PBR to be killed. This alternative is highly risk prone from the perspective of species conservation. We adamantly oppose its adoption.

### **Additional Proposed Changes to the Current Hunt Regulations**

#### A Reduction in Federal Oversight of the Hunt of an Otherwise Protected Species

We are concerned that, with regard to St. Paul and St. George Islands, NMFS proposes to remove 50 CFR 216.74(b), “which states that Pribilovians who engage in the harvest of seals are required to cooperate with scientists who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes and that Pribilovians who take fur seals for subsistence uses must cooperate with NMFS representatives on the Pribilof Islands who are responsible for compiling harvest information.”<sup>33</sup> Some of the changes appear intended to “clean up” duplicative language; however we are concerned with the implications and likely result of the change.

While NMFS asserts that there has been general cooperation and collaboration with the tribal governments, this collaboration and cooperation has been in the context of a regulatory requirement that can be invoked if need be. However, as we note above, the public reporting of hunt statistics generally lags behind by several years and we cannot imagine the timeliness and accuracy of reporting will improve with no mandate for timely and accurate reporting.

#### Changes to the Co-Management Agreement Appear Risk Prone

In addition, NMFS proposes regulatory changes related to the St. Paul and other subsistence co-management agreements. In this case, after specifying specific harvest areas that may *not* be harvested more than once a week, NMFS notes that some areas on St. George could be harvested twice weekly. This difference was specified because, according to the agency, at the time of the original strictures, there was concern about over-harvest and disturbance on the islands.<sup>34</sup> Moreover, the agency states that there was confusion over place names and haulout areas that it wishes to correct. This sort of change (i.e., using correct place names in the regulations) appears justified. However, the agency also states that this proposed rule would “leave in-season management of the hunting and harvest seasons to the Co-management Council, including the scheduling and identification of locations and frequency of hunting and harvesting through an annual in-season monitoring and management plan, thereby supporting co-management of the subsistence use of marine mammals by Alaska Natives per Section 119 of the MMPA.”<sup>35</sup> We understand and support the purpose behind co-management; however, in this instance co-management appears to be largely abrogated in favor of turning management of this declining and federally protected marine mammal over to the tribal councils with a vested interest in meeting its own needs/ends—a self-interest not borne by federal scientists whose primary interest is in the monitoring and management of the stock to assure persistence of the stock that is a public trust resource.

### **Additional Concerns**

As noted above, we incorporate our 2017 comments on the DSEIS by reference but wish to call out several points we raised regarding deficiencies in impact analysis. These include relying on data in the aging 2014 stock assessment for determining impacts of the hunt;<sup>36</sup> and inappropriately concluding there will be a “negligible

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<sup>33</sup> 83 Fed. Reg. at 40207.

<sup>34</sup> Id.

<sup>35</sup> 83 Fed. Reg. at 40208.

<sup>36</sup> DSEIS at 4-3.



impact” based on an apparent misunderstanding or confusion with definition and use of the term “negligible”.<sup>37</sup> Importantly, NMFS inappropriately failed to consider a more conservative alternative that would cap the number of animals killed to the level that is currently being harvested (i.e., fewer than 500 annually).<sup>38</sup>

## Conclusion

The action alternatives proposed are unjustifiably and impermissibly highly risk-prone. They would result in more animals being killed annually; allow a greater portion of the harvest to be comprised of non-sexually dimorphic fur seal pups; generally allow hunting seals in a disruptive manner by using firearms over protracted seasons; stipulate increases in accidental mortality of females; and transfer more management and enforcement responsibility of the subsistence use to the ACSPI, a self-interested user-group, thereby decreasing independent oversight of the hunt. We support the “No Action” alternative and oppose the action alternatives. We also reiterate our request that the Agency consider our prior suggestion that it propose and consider another alternative that would cap the hunt at recent levels as described above.

The on-going decline in fur seals in St. Paul argues for more risk-averse management, not for assuring that even more animals will suffer preventable anthropogenic mortality.

Sincerely,



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and



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<sup>37</sup> See 64 Fed. Reg. 28800 (May 27, 1999) (which sets this level at 10% of a stock’s PBR, whereas most action alternatives would allow killing up 1,500 pups, and that number alone would exceed that “negligible” level and does not include the adult mortalities).

<sup>38</sup> NMFS would leave in place the current authorization of 1,645 – 2,000 kills annually, though recent hunts have never exceeded 500 animals.



# **Attachment A**



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OF THE UNITED STATES**

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Alaska Region

National Oceanic and Atmospheric Administration

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Submitted via: [www.regulations.gov](http://www.regulations.gov)

July 14, 2014

**RE: Draft SEIS for the Management of the Subsistence Harvest on Northern Fur Seals on St. George, Alaska: NOAA-NMFS 2014-0025.**

Dear Dr. Balsiger:

On behalf of the members and constituents of The Humane Society of the United States ("The HSUS"), I am writing to express some concerns with the draft Supplemental Impact Statement ("DSEIS") for the Management of the Subsistence Harvest on Northern Fur Seals on St. George, Alaska.

As an initial procedural matter, we believe that the National Marine Fisheries Service (NMFS) has limited the universe of commenters on the DSEIS by only notifying prior reviewers and posting the DSEIS on the NMFS fur seal webpage without publishing a notice of availability of the DSEIS in the Federal Register. Earlier this year, the agency published in the Federal Register a notice of intent to revise the subsistence harvest management on St. George Island<sup>1</sup>, but there was no subsequent notice published announcing the availability of the DSEIS and thus, we feel the Agency has lost the ability to reach all the potential commenters.

Leaving this matter aside, we have concerns with the proposed changes to the subsistence hunt management. To date, the hunt has focused on sub-adult males that are killed within a single season. According to the NMFS stock assessment for the most recent years, 113 sub-adult males and one female were harvested on St. George in 2009; 78 juvenile males were harvested in 2010 with no females reported as accidentally killed; and, in 2011, 120 fur seals were reported as killed.<sup>2</sup> According to

<sup>1</sup> 79 Fed. Reg. 9,457 (Feb. 19, 2014).

<sup>2</sup> Allen, B. and R. Angliss. 2013. Northern fur seal in: Draft Alaska Marine Mammal Stock Assessments. AFSC available at [http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013\\_draft.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_draft.pdf).

more recent NMFS reports, 63 fur seals were killed in 2012, and 80 in 2013 under the extant management program.<sup>3</sup>

As described in the DSEIS' summary, the proposed action (Alternative 2) would change the management of the subsistence harvest on St. George Island in response to the three significant aspects of a petition submitted by the Pribilof Island Aleut Community of St. George Island's Traditional Council. It would: (1) allow for the taking of male young of the year, northern fur seals during a separate autumn season of each year within the already established upper harvest level of 500 fur seals; (2) reduce the harvest concentration at designated breeding areas or hauling grounds on St. George Island; and (3) eliminate "obsolete requirements" for subsistence harvesters to cooperate with scientists during the subsistence harvest. The preferred alternative would result in the deaths of up to 500 fur seals for subsistence purposes, of which up to 150 would be male young of the year and up to 350 would be male sub-adult fur seals. This alternative would change the current management program in a manner that raises several concerns.

As NMFS acknowledges in its stock assessment, northern fur seals face significant conservation challenges. For reasons that are poorly understood, during 1998-2010, pup production declined 5.46% per year on St. Paul Island and 2.09% per year on St. George Island with the estimated pup production in 2010 below the 1916 level on both St. Paul and St. George Islands.<sup>4</sup> There is every indication that the decline has not stopped.<sup>5</sup> The importance of protecting females and increasing pup survival has been emphasized in virtually all of NMFS' management decisions related to this stock.

The preferred alternative would create a second harvest season in the fall allowing up to 150 young of the year, male northern fur seals to be killed. In the 2005 EIS, which this DSEIS supplements, NMFS stated that in 1986 and 1987, when the hunt season was extended, "the extensions of the harvest beyond the first week of August resulted in an increased number of female fur seals taken."<sup>6</sup> This is likely due to the fact that distinguishing the sexes is difficult until about age five.<sup>7</sup> Expanding the hunt to the fall is risk prone with regard to preventing female mortality.

The preferred alternative stipulates that, if harvesters accidentally kill female fur seals during the harvest, those deaths would count against the total quota of 500. Under the preferred alternative, the

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<sup>3</sup> 79 Fed. Reg. 27,550 (May 14, 2014).

<sup>4</sup> Op Cit., n. 1.

<sup>5</sup> Id.

<sup>6</sup> NMFS, 2005. Setting the Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands. Final Environmental Impact Statement. May, 2005. 208 pp. Available at: <http://www.alaskafisheries.noaa.gov/protectedresources/seals/fur/eis/final0505.pdf>.

<sup>7</sup> Northern fur seal (*Callorhinus ursinus*) Physical Description/Field Identification. OBIS/SEAMAP Duke University. Available at: <http://seamap.env.duke.edu/species/180627>, accessed 7/10/2014.

subsistence hunt would terminate if three females are killed. NMFS has stated that statistics on the hunt are gathered by the tribal government itself.<sup>8</sup> Relying on self-reporting of the sex of harvested fur seals would go against the self-interest of the hunters, since reporting dead females can terminate the hunt. Moreover, self-reporting generally results in under-reporting.<sup>9</sup> This underlines the need for independent monitoring, particularly during any fall hunt for young of the year animals, which may unintentionally result in the deaths of young females.

The preferred alternative would use the pup production and trend information at each breeding location to evaluate the statistical probability of pup production falling below a level that is necessary for long-term stability. We strongly support inclusion of conservatism in this metric.

We also have concerns with regard to the proposal to re-consider the specific language in the regulations under 50 C.F.R. § 216.74 that pertain to a requirement that hunters 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. We are sympathetic to past concerns wherein hunters have expressed the belief that the requirement that they cooperate with scientific research may have interfered with the collection of body parts by native artisans. However, there is a true need to scientifically sample whiskers, organs and other tissues (including what are called “meats”) both to understand possible changes in the diet of fur seals that may be contributing to their decline and to ascertain toxin exposure. It is not clear to us that elimination of this requirement to cooperate with scientists and relying instead on voluntary cooperation under co-management will still assure the conduct of key sampling to ascertain species and ecosystem health. We believe that if 50 C.F.R. § 216.74 is revised, the revised regulations should still provide a mandate to assist scientific monitoring, managing, sampling, and reporting in the two harvest seasons while supporting the co-management process.

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<sup>8</sup> 79 Fed. Reg. 27,550 (May 14, 2014).

<sup>9</sup> See, for example, Jaiteh, V., S. Allen, J. Meeuwig and N. Loneragan. 2014. Combining in-trawl video with observer coverage improves understanding of protected and vulnerable species by-catch in trawl fisheries. *Marine and Freshwater Research*. (Finding that independent observers reported dolphin takes 1.6 to 3.7 times higher than was reported by the commercial fishermen). And Credle, V. R., D. P. DeMaster, M. M. Merklein, M. B. Hanson, W. A. Karp, and S. M. Fitzgerald (eds.). 1994. NMFS observer programs: minutes and recommendations from a workshop held in Galveston, Texas, November 10-11, 1993. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-OPR-94-1. 96 pp. (Finding that self-reports were up to 10 times less accurate than reports by independent observers).

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Sharon B. Young". The signature is written in a cursive style with a large, sweeping "S" at the beginning and a long, trailing flourish at the end.

Sharon B. Young  
Marine Issues Field Director  
The Humane Society of the United States  
[syoung@humanesociety.org](mailto:syoung@humanesociety.org)

# **Attachment B**



## The Humane Society of the United States • Center for Biological Diversity

Jon Kurland, Assistant Regional Administrator for Protected Resources  
National Marine Fisheries Service, Alaska Region  
P.O. Box 21668, Juneau, AK 99802-1668  
Attn: Ellen Sebastian  
*Submitted via: [www.regulations.gov](http://www.regulations.gov)*

### **Re: NOI for a Supplemental Environmental Impact Statement on Northern Fur Seal Harvest: NOAA-NMFS-2015-0073**

Dear Mr. Kurland and Ms. Sebastian,

On behalf of the members and constituents of The Humane Society of the United States and the Center for Biological Diversity, we are writing to express grave concerns with the proposal to amend the fur seal harvest regulations to allow a broader hunt in St. Paul Island. At this time, we can only support the “No Action” alternative as described in the Federal Register Notice. 80 Fed. Reg. 44,057 (July 24, 2015) but we believe an additional action alternative is warranted that is more protective of this species than the three that the agency provided. Given the depleted status and the ongoing decline of Northern fur seals (*Callorhinus ursinus*), it would be highly risky to allow an increased hunt duration, with the likelihood of far more animals being killed.

As a preliminary matter, the National Marine Fisheries Service (NMFS) failed to provide the public with the documents requesting the revisions to the harvest regulations with adequate time for review. In the Federal Register notice, the National Marine Fisheries Service (NMFS) stated that “On November 10, 2014 and April 29, 2015, ACSPI submitted letters to NMFS (see ADDRESSES) to revise its petition based on the public comments and subsequent discussions during the semi-annual St. Paul Island Co-Management Council meetings.” However, they were not posted on the website. We believe it was not until an interested party requested these documents that NMFS finally made them available on its website the Friday before the comment period closed. This provides the public an inadequate amount of time to review these key documents. We therefore request that NMFS extend the comment period to allow time for meaningful public review and comment.

The agency states in this Federal Register notice that it is seeking comments on the scope of issues, potential impacts of the proposed alternatives, and additional alternatives that should be considered for the fur seal harvest regulations. As we will discuss below, we are concerned that the ongoing decline in fur seals is not given appropriate weight when considering the alternatives that would dramatically lengthen the hunt season, leaving both of these action alternatives highly risk prone. We strongly support the need for further limits on the hunt, not a liberalization of it, and thus support the need for additional alternatives.

## Status of Fur Seals

Since 1988, Northern fur seals have been classified as “depleted” under the Marine Mammal Protection Act (MMPA). 53 Fed. Reg. 17,888 (May 18, 1988). As NMFS acknowledges in its stock assessment report (SAR), Northern fur seals face significant conservation challenges. For reasons that are poorly understood, during 1998-2012, pup production declined almost 5% per year on St. Paul Island and approximately 2% per year on St. George Island with the estimated pup production in 2012 said to be below the 1916 level on both St. Paul and St. George Islands.<sup>1</sup> The most recent NMFS SAR documents that between 2002 and 2012 (the most recent ten years presented) the abundance on St. Paul Island declined from approximately 145,000 seals to approximately 96,000.<sup>2</sup> While this may still seem like a large number of animals, the trend is worrisome. Alarming, NMFS states in the species’ SAR that “declines at the larger Pribilof colony (specifically St. Paul) continue to drive the overall stock estimate down over time.”<sup>3</sup>

The most recent NMFS fur seal research report we found available was for the years 2010-2011.<sup>4</sup> This report states that “[o]n St. Paul Island 3,974 and 3,829 territorial male seals with females were counted in 2010 and 2011, respectively, and both years represented a 3.6% annual decline from the previous year.” Further, “[t]he number of pups born on St. Paul Island in 2010 was 8.8% less than in 2008 (P < 0.01)” and those on St. Paul were significantly smaller and lighter than those on St. George Island, where the population is smaller and the decline somewhat less pronounced.<sup>5</sup> The overall rate of decline in the Pribilof Islands since 1998 is said to be 4.9 percent.<sup>6</sup>

NMFS itself has recognized the need to protect females and to increase pup survival in its management decisions related to this stock.<sup>7</sup> Thus, it makes little objective sense to allow an expansion of the harvest in St. Paul, and the use of more intrusive methods (e.g., gunfire in and around haulouts and rookeries), when females and pups may be harmed at a time when the overall population on St. Paul island is declining.

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<sup>1</sup> 79 Fed. Reg. 9,457 (Feb. 19, 2014) relating to St. George harvest and Northern fur seal stock assessment in: Allen, B. M., and also Northern Fur Seal Stock Assessment, In: Allen, B. M. and R. P. Angliss. 2015. Alaska marine mammal stock assessments. U.S. Dep. Commerce., NOAA Tech. Memo. NMFS-AFSC-301. At: [http://www.nmfs.noaa.gov/pr/sars/pdf/alaska2014\\_final.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/alaska2014_final.pdf)

<sup>2</sup> Northern Fur Seal Stock Assessment, In: Allen, B. M. and R. P. Angliss. 2014. Alaska marine mammal stock assessments, U.S. Dep. Commerce., NOAA Tech. Memo. NMFS-AFSC-301 At: [http://www.nmfs.noaa.gov/pr/sars/2013/ak2013\\_northernfursealep.pdf](http://www.nmfs.noaa.gov/pr/sars/2013/ak2013_northernfursealep.pdf).

<sup>3</sup> Id.

<sup>4</sup> Testa, J. W. (editor). 2012. Fur seal investigations, 2010-2011. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-241, 77 p. At: <http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-241.pdf>.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> See, e.g., 79 fed. Reg. 9,457 (“The best available scientific evidence suggests that preserving females in the population is essential to recovery. Historically, when the fur seal population has experienced more than minor levels of direct female mortality the estimated pup production in subsequent year(s) has declined.”).

## The Risk of Stampedes, Abandonment and Incidental Mortality

In its 2007 Environmental Impact Statement (EIS), evaluating the effects of disturbance by researchers on Steller sea lions and Northern fur seals, NMFS cataloged the ill effects likely from disturbance of haulouts and breeding grounds.<sup>8</sup>

In its assessment, NMFS found that both the presence of humans and overflight of aircraft could result in disturbance and, in some cases, stampedes. For obvious reasons, the impact of shooting in or near a rookery was not examined in this research-related EIS, but it is not unreasonable to assume that nearby shooting would have a similar effect. While NMFS found that disturbed northern fur seals were less likely to abandon breeding grounds than Steller sea lions, it concluded that possible effects of disturbance could be similar. Female abandonment of areas consequent to repeated disturbance could be disastrous to reproduction in an already declining stock.<sup>9</sup>

Even if disturbance of mothers by hunters firing shots to kill juvenile animals may not result in abandonment of very young possibly dependent fur seals by their mothers, this is not the only concern. The panicked flight of other juveniles and adults, startled by shooting, can result in incidental mortality. As NMFS describes in the 2007 EIS, during panicked abandonment of rookeries and haulouts “pups may be trampled...juvenile and adult animals can also be injured from running into each other or sliding or crashing into...underwater rocks,” which can result in “serious or fatal injury.”<sup>10</sup> On at least one occasion on St. Paul Island, a low flying aircraft “caused a large stampede of bachelor [fur seal] bulls into the water.”<sup>11</sup> Given the size of adult males compared to females, juveniles and pups, any disturbance—such as gunshots—that causes them to panic could result in significant risk of serious injury and mortality from collision and trampling.

To avoid disturbance that could result in panicked flight from the breeding or hauling areas, when NMFS researchers conduct visual counts of males during breeding, it is done “from vantage points which cause little disturbance and do not cause animals to abandon the rookery.”<sup>12</sup> Shooting, even from a distance, cannot assure this degree of precaution against disturbance.

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<sup>8</sup> NMFS, 2007. Steller Sea Lion and Northern Fur Seal Research. Final Programmatic Environmental Impact Statement. Volume 1 NOAA-NMFS. May 2007. At Appendix B. Available at: <http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm>.

<sup>9</sup> NMFS acknowledges that, though the bond between mother fur seals and their young is strong and established shortly after birth, “repeated displacement of females may result in permanent abandonment of sites,” and, while effects of disturbance have not been well studied, may result in the same concerns as noted for Steller sea lions as a result of human presence in a rookery or hauling area. These concerns include potentially fatal injury of young animals when adults flee, as well as aggressive interactions among males trying to re-establish territory if moved during breeding seasons. See Appendix B sections 2.3.4.1 and 2.3.4.2 in: NOAA. 2007. Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research.

<sup>10</sup> Id. at B-3.

<sup>11</sup> Id.

<sup>12</sup> Id. at B-8.

In its 2007 EIS on fur seal research, NMFS acknowledges that there has been no detailed analysis of the influence of human disturbance on northern fur seals; however, it cites research showing “repeated displacement of females may result in permanent abandonment of sites.”<sup>13</sup> This same research found juvenile male fur seals are less tolerant of human presence and are easily displaced from haulouts. As one of its mitigation measures in the 2007 EIS, NMFS suggested “limiting the frequency of disturbance at individual rookeries (to reduce chronic disturbance) between years and within one year.” That would certainly not be the case under this hunt/harvest proposal where disturbance could be authorized for the vast majority of the year and could well occur multiple times each year in the same area.

A dramatic increase in the duration and/or magnitude of the harvest risks not only additional mortality in a stock that can ill afford it, but may have significant adverse impacts on future productivity if haulouts and rookeries are abandoned or the stress on females from repeated disturbance causes reproductive effects.

### **Effects of Chronic Disturbance and Stress**

As NMFS acknowledged in the 2007 FEIS, there has been no detailed analysis of stress on fur seals. However, there are studies of other similar species showing the adverse impacts of repeated disturbance.

One study of a different species of pinniped cited observations that, when approached by humans, the “proportion of seals resting dropped considerably, to be replaced by more active behaviours—in particular the three disturbance response behaviours...(watching, looking up, or moving away)” and this paper cited a study by Boren which found a similar response for fur seals.<sup>14</sup>

Research has examined literature related to disturbance across a broad spectrum of taxa. One review of literature analogized animal responses to human disturbance to that of their responses to approach by predators. In the case of the fur seal hunt, humans are not only “disturbers”; they are, in fact, predators. The author states that a “vast body of literature” supports the finding that increased vigilance comes “at the cost of reducing time spent foraging or engaged in other activities. Antipredator vigilance responds not only to the mere presence or absence of predators, but also to factors affecting the level of perceived risk, including group size, distance from a refuge, and obstructive cover.”<sup>15</sup> Habitat use patterns may shift but animals may not be able to shift use patterns if no suitable alternative sites are readily available, forcing animals “to remain at disturbed sites where the increased energetic costs of antipredator behavior reduce effective habitat quality.”<sup>16</sup> Further, “the risk-disturbance hypothesis predicts that long-term or intense disturbance stimuli can cause population declines via reduced body

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<sup>13</sup> Id. at B-8.

<sup>14</sup> Muller, C. 2000. Documenting the effects of human-induced disturbance on a Weddell seal colony. Graduate Thesis. At: [http://www.anta.canterbury.ac.nz/documents/GCAS\\_3/Muller\\_C\\_Sup.Proj.pdf](http://www.anta.canterbury.ac.nz/documents/GCAS_3/Muller_C_Sup.Proj.pdf).

<sup>15</sup> Frid, A and L. Dill. 2002. Human Caused Disturbance Stimuli as a Form of Predation Risk. *Conservation Ecology*. 6(1):11. At <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/2697/print.pdf?sequence=1&isAllowed=y>.

<sup>16</sup> Id.

condition and consequent reductions in reproductive success, particularly during periods of high environmental stress.”<sup>17</sup>

A study of California sea lions at a colony in Mexico found an influence of human activity on important life history parameters (reproductive rate, and body condition, and growth rate of neonate pups), with increased human presence associated with lower reproductive rates, which translated into reduced long-term population growth rates.<sup>18</sup> This suggested to the authors that human activities (including repeated disturbance) could lead to population declines.

Fur seals are listed as depleted under the MMPA, and their populations are still declining. Some of the greatest declines are observed on St. Paul Island. In light of literature suggesting that chronic disturbance can adversely affect fitness and reproduction, it is clearly risky to subject fur seals to disturbance of their biologically important resting, foraging and social behaviors as is proposed to occur throughout the vast majority of each year.

### **Concerns with a Proposed Change in Methodology**

Under the Tribal Government’s proposal, fur seals could be shot, most of them while in the water. This must not be permitted as it is likely to be both wasteful and arguably inhumane. The MMPA demands that takes by Alaskan Natives not be wasteful.<sup>19</sup> As we discuss below, shooting in the water is likely to lead to significant struck/loss ratios, wasting the lives of animals from this MMPA-depleted stock.

An international veterinary panel stated in 1998 that “because it is impossible to verify death or irreversible unconsciousness of a seal shot in open water, shooting seals in open water can never be humane.”<sup>20</sup> In Canada, where seal hunting is permitted, the 2005 Independent Veterinarians’ Working Group recommended that “seals should not be shot in water due to the high potential for ‘struck and lost’ events, suffering resulting from the inability to confirm irreversible unconsciousness and the potential for the loss of wounded animals.”<sup>21</sup>

Further, accounting for the number of animals likely to be struck and lost after being shot in the water does not seem to have been adequately considered in the Tribal Government’s proposal. A seal hunting

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<sup>17</sup> Id.

<sup>18</sup> French, S., M.Gonzalez-Suarez, J. Young, S. Durham and L. Gerber. 2011. Human Disturbance Influences Success and Growth Rate in California Sea Lions (*Zalophus californianus*). PLoS One. March 16, 2011. At: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0017686>.

<sup>19</sup> 16 U.S.C. § 1371 (b)(3) (establishing the need for regulations for hunting depleted species and requiring notice and hearings as required by Section 103 of the Act).

<sup>20</sup> Burdon, R.L., Gripper, J., Longair, J.A., Robinson, I. and Ruehlmann, D., 2001. Rapporteur: Fielder, J. Veterinary Report Canadian commercial seal hunt Prince Edward Island, March 2001, Canada. Report of an International Veterinary Panel, 36 pp. Cited in EFSA report, reference 1.

<sup>21</sup> Smith B et al. Improving Humane Practice in the Canadian Harp Seal Hunt. A Report of the Independent Veterinarians’ Working Group on the Canadian Harp Seal Hunt. August 2005. <http://ivwgonline.org/IVWGReportAug2005.pdf>.

conference found that “in 2006, the rate [of animals struck and lost] was between 5% and 50% for adult seals shot in water, compared to 0% up to 21% for seals struck on land (ice).”<sup>22</sup> A different report found even higher loss rates from shooting in the water. In Sweden, data on seal shooting between 2001 and 2006 showed ‘struck and lost’ rates as high as 43%. In Canada, a ‘struck and lost’ rate of 50% was recorded for older harp seals shot in open water: in other words, for every seal shot and recovered from the water, one seal had sunk and its fate was unknown.<sup>23</sup> Loss rates of these magnitudes are not only wasteful but they further jeopardize the species because—given the lack of independent monitoring—these “lost” animals may simply not be reported and/or counted against the total kill quota.

The tribal government itself has admitted that 32% of Steller sea lions that their experienced harvesters shot in the water were struck and lost. Losing approximately one third of all animals shot is arguably wasteful. This sort of loss rate cannot be allowed for this declining stock of already depleted northern fur seals. Use of firearms—particularly shooting in the water—cannot be allowed.

### **Concerns with the Magnitude and Duration of the Proposed Harvest**

Under the St. Paul proposal, harvests would be conducted in two “seasons” consuming 342 days a year rather than the current 47-day season. Further, though the current harvest quota allows 1,645 to 2,000 fur seals to be killed, that number of seals has virtually never been harvested since the 1980s.<sup>24</sup> In the mid-1980s, when the hunt resulted in over 3,000 fur seals being killed in a single year, the population also experienced significant declines.<sup>25</sup> After a brief and minor resurgence, fur seals are continuing to decline. It is important to the population trajectory to minimize the additive mortality from human hunting in order to assure the least possible anthropogenic contribution to the decline.

We assume that the limited number of harvest days over the past decade also limited the number of seals that can be killed.<sup>26</sup> It is not unreasonable to suppose that a season that is more than 7 times as long as the current season is likely to result in killing up to the maximum of 2,000 fur seals, which appears to be the goal of the Tribal Government, as they have also requested eliminating the hunt moratorium that would otherwise be imposed if/when 1,645 fur seals have been killed.

In the 2013 harvest report from St. Paul, which is the most recent report we found posted, approximately 300 fur seals were killed, including 298 sub-adult males and 3 females that were

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<sup>22</sup> Butterworth A, Gallego P, Gregory N, Harris S and Soulsby C. Welfare aspects of the Canadian seal hunt: final report. 31 August 2007.

[http://www.hsus.org/webfiles/PDF/seals/welfareaspectsofcanadiansealhunt\\_butterworth.pdf](http://www.hsus.org/webfiles/PDF/seals/welfareaspectsofcanadiansealhunt_butterworth.pdf)

<sup>23</sup> European Commission. Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal (2007) 610, 1-123.

<sup>24</sup> The harvest totals have averaged around 300-400 animals for the past decade. In the mid-1980s over 3,000 were killed in a single year on St Paul. See annual Subsistence Harvest Reports at:

<http://alaskafisheries.noaa.gov/protectedresources/seals/fur.htm>.

<sup>25</sup> Northern Fur Seal Stock Assessment, at Figure 6. supra note 2.

<sup>26</sup> Since 2005, annual hunt-related mortality has averaged 300-400 fur seals. See subsistence harvest reports at: <http://alaskafisheries.noaa.gov/protectedresources/seals/fur.htm>.

accidentally killed.<sup>27</sup> Eleven of the males killed were larger/longer than the authorized maximum size limit. The harvest took place on 8 occasions between July 6, 2013 and August 7, 2013.<sup>28</sup> It is not clear why there is a need to authorize up to 2,000 deaths when hunts over the past decade have been conducted with fewer animals killed and over a far shorter—thereby less disruptive—time period annually.

Given the proposal to hunt throughout most of the year (two alternatives propose at least 342 days), there seems to be an increased likelihood of a significant adverse impact on fur seals. In addition to losing large numbers of the declining population, there is reason to be concerned that females may permanently abandon sites as a result of repeated, almost year-long, disturbance, and their reproductive fitness may be adversely affected.

Further, there seems no effective means to independently monitor and account for incidental mortality of females or inappropriately sized animals that can occur throughout the year; monitoring would be more readily facilitated during a limited season. Instead, the only accounting would be via hunter self-reports and oversight by a Tribal Co-Management Council.

### **The Problem of Self-Monitoring**

The Federal Register Notice does not make clear whether there is a plan to independently monitor the hunt during portions of the year or to require interim reporting of hunt statistics (i.e., more frequently than simply reporting the number killed at the end of each year) in this far longer season. However, in its initial request for an extended hunt, the monitoring plan provided by the tribal government in its 2009 request stipulates that struck and loss rates will be “gathered through hunter/harvester reporting requirements” including a requirement to self-report struck and lost animals within 24 hours.<sup>29</sup>

Reliance on accurate self-reporting is likely to be futile. A workshop report produced by North Atlantic Marine Mammal Commission (NAMMCO), an organization favorable to hunting marine mammals, discussed the paucity of accurate information on struck and lost rates. In their report they stated that “[m]any hunters have the perception that information on struck and lost will be used against them, for example by imposing restrictive quotas or other hunting regulations. Most hunters do not understand

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<sup>27</sup> Lestenkof, P.M., P.I. Melovidov, and M. Rukovishnikoff, Sr. 2014. The subsistence harvest of sub-adult northern fur seals on St. Paul Island, Alaska, in 2013. Aleut Community of St. Paul Island, Tribal Government, Ecosystem Conservation Office. St. Paul Island, Pribilof Islands, Alaska. At: <http://alaskafisheries.noaa.gov/protectedresources/seals/fur/reports/spharvestrpt2013.pdf>.

<sup>28</sup> Id.

<sup>29</sup> Aleut Community of St. Paul Island Tribal Government. 2009. Letter to the National Marine Fisheries Service requesting fur seal harvest regulation changes. At: [http://alaskafisheries.noaa.gov/protectedresources/seals/fur/resolution\\_sp/stpaultrtonmfs102109.pdf](http://alaskafisheries.noaa.gov/protectedresources/seals/fur/resolution_sp/stpaultrtonmfs102109.pdf).

the need for this information, and in some cases this has not been explained properly to them by management authorities. In some cases hunters consider it embarrassing to report struck and lost.”<sup>30</sup>

Self-reporting is generally not accurate, particularly if reporting is either time-consuming or likely to be contrary to the self-interest of the reporter. A study contrasting reports of incidental marine mammal takes by NMFS observers versus self-reporting of marine mammal incidental takes by commercial fishermen under Section 117 of the MMPA (under which there were no penalties for takes that were reported), found substantial under-reporting by fishermen.<sup>31</sup> Another report on marine mammal takes used Alaskan fishers’ self-reports “from 1990 to 1993, and fisher self-reporting programs from 1995 to 2001 in an attempt to estimate the fishery related mortality of marine mammals. However, this was unsuccessful as logbook data were found to under-estimate mortality rates in comparison to more reliable observer data....”<sup>32</sup>

In the past, NMFS has been unconcerned with the reliability of self-reports, averring in the case of the hunt in St. George Island that that they were consistent with reports from independent observers in years prior to 2003.<sup>33</sup> We must point out that, given the short season, takes of females were so infrequent on both islands that there was no perceived gain in not reporting accurately. However, far more females are at risk with a higher quota on killing young of the year (aka: pups) along with a longer season with a low likelihood of independent monitoring. And killing females at some point would result in closing the hunt completely (i.e., the tribal government proposes 20 kills). This latter threat of a cessation of hunting may act as a disincentive to report killing females, particularly if it is known that the cutoff point is approaching.

Under the proposal by the Tribal government, the hunt would be terminated only if 20 females are documented to have been killed. This is said to be 1 percent of the 2,000 maximum harvest—a further indication of the tribal government’s intent to take the full number rather than the 300-450 animals per year taken over the past decade.

There are several problems with this proposed number. First, in the event that the subsistence need is met at a lower number of animals (e.g, 500 or 1,000) or if 20 females deaths occur when a total of 1,000 animals have been killed; then these 20 female deaths before stopping the hunt are not 1 percent of the total kill but would represent *a greater* percentage of the total kill. Moreover, stopping the hunt only if 20 females are killed is antithetical to the need to conserve females in this declining population. NMFS

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<sup>30</sup> NAMMCO, 2006. The NAAMCO Workshop to Address the Problems of “Struck and Lost” in Seal, Walrus and Whale Hunting. North Atlantic Marine Mammal Commission. Copenhagen, Denmark. 14-16 November 2006. Available at: <http://www.nora.no/files/13/20110518093256137.pdf#page=47>.

<sup>31</sup> NOAA. 2011. National By-Catch Report. Section 2: Data Sources for Estimating Bycatch. Citing Credle 1994, unpublished information from NMFS. At: [http://www.nmfs.noaa.gov/by\\_catch/National\\_Bycatch\\_Report/2011/2\\_DataSources.pdf](http://www.nmfs.noaa.gov/by_catch/National_Bycatch_Report/2011/2_DataSources.pdf).

<sup>32</sup> Manly, B. 2007. Incidental Take and Interactions of Marine Mammals and Birds in the Kodiak Island Salmon Set Gillnet Fishery, 2002-2005. Alaska Marine Mammal Observer Program Report. 19 September 2007. At: [https://alaskafisheries.noaa.gov/protectedresources/observers/bycatch/kodiakreport02\\_05.pdf](https://alaskafisheries.noaa.gov/protectedresources/observers/bycatch/kodiakreport02_05.pdf).

<sup>33</sup> 79 Fed. Reg. 69327, November 4, 2014



stated that “efforts to protect female fur seals, whether or not they are sexually mature, are the most likely to have direct conservation value for the fur seal population.”<sup>34</sup>

It is important to remember that it simple human nature that awareness of an undesirable consequence for certain actions will result in taking evasive action to avoid the consequence. In this case, killing 20 females stops the hunt for the year. Because of this, it will put pressure on hunters to either (1) be especially careful if they want to kill the entire quota of 2,000 seals to assiduously avoid females or (2) it becomes an incentive to under-report if the quota is nearing. Further, if shooting is allowed, it is not clear that the tribal government and NMFS have a plan to account for the struck/loss ratio since a female may be fatally wounded if shot in the water and thus some proportion of all seals struck and lost would need to be counted against any “quota” for killing females.

The current harvest of fur seals, lasting 47 days, at least allows some opportunity for independent observation though it appears from reports that NMFS rarely observes the current short hunt. The ability to reliably monitor mortality is particularly important in the case of depleted species where incidental take of females or other vulnerable demographics are possible—as past hunt reports have indicated they are<sup>35</sup>—with “mistakes” likely exacerbated if shooting in the water is allowed. In this case the sheer number of animals that can killed or struck and lost (including the greater potential for female deaths) further substantiates the need for independent hunt monitoring to validate the self-reports.

## **Comments on Proposed Alternatives**

### The No Action Alternative

Under most circumstances, we would favor the “No Action” alternative that would keep in place the 45 day season; impose limits on where and how often a site may be harvested; maintain the sex and size limits on harvested animals; continue the provisions allowing for a suspension of the harvest under certain circumstances and disallow a change in hunt methodology (i.e., it would continue to prohibit the use of firearms). However, given the ongoing decline in this population, driven in large measure by losses of fur seals in St. Paul Island, we believe NMFS should have offered at least a fourth alternative, which we will discuss further below. While the “No Action” alternative is somewhat more precautionary than either the Petitioned Action or Alternative 3, we believe it is still insufficiently precautionary.

### Alternative 2: The Petitioned Action

We are adamantly opposed to this Alternative. Under the petitioned action, the harvest season would expand from 47 days to 342 days—a more than sevenfold increase in the current authorized season that appears solely for the purpose of allowing hunters to kill a maximum number of animals each year.

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<sup>34</sup> Id. at 69330

<sup>35</sup> In the hunt report for 2013, 11 of the 298 male animals killed violated the restrictions on size. That is, approximately 4% were improperly killed and an additional 3 females were reported killed. Lestenkof et al, *Supra* note 26.

Although hunters on St. Paul have not killed more than 500 fur seals annually over the past decade, the tribal government clearly wishes to kill up to the 2,000 maximum that is currently permitted. Just three years ago, the tribal government had even petitioned to *increase* this number to 3,000 annually.<sup>36</sup> Killing 2,000 fur seals a year is an unconscionable increase in the current harvest mortality that is affecting a species currently in decline for reasons that are not well understood and not well mitigated at this time.

Female survival is critical to ensuring the best chance for species recovery. Though they are not intentionally targeted in this hunt, three were incidentally killed in the 2013 hunt, and the petitioned action would allow for 20 females to be killed before a halt to killing (i.e., the hunt would only be suspended for 2 days if a total of 5 females are killed and that would simply allow for consultation with NMFS on how to “detect and reduce additional mortality of females”).<sup>37</sup>

Under the current hunt regulations, the term “sub-adult” is used and defined as a fur seal aged 2 to 5 years and less than 124.5 cm in length. Under the petitioned action, this term is dropped and the prohibition on taking animals greater than 124.5 cm would be lifted. Larger fur seals (said to be aged 1-7) could be hunted from January 1 to May 31, most of which are said likely to be “shot in the water.”<sup>38</sup> There would be an approximately 3-week cessation in hunting from June 1<sup>st</sup> to 23<sup>rd</sup> and, starting on June 23<sup>rd</sup>, hunting would resume for male pups (defined as being in their first year of life) and juvenile male fur seals (up to age 7) from June 23 to December 31 annually, though firearms would apparently not be used during this “second season.” Young of the year pups are not sexually dimorphic and would need to undergo stressful handling to determine their sex. Although the proposal states that they would be “sexed” prior to being killed, as we have noted, this has not always been definitive in the past when even older females were accidentally killed.

As we have already discussed, shooting is inappropriate. Shooting animals at a distance, as is proposed during first of the two “seasons” of the hunt, is likely to result in additional unintended mortality of females. As discussed, this is also likely to result in wasteful killing of animals struck and lost and neither retrieved nor counted as part of the quota. Further, shooting weapons is likely to startle or panic animals in the rookery and haulouts, causing them to flee and resulting in the unintended deaths of both females and animals too young to be targeted.

The proposal would end the requirement that the hunt be suspended for further review if 1,645 animals are killed. As we have pointed out, in the past decade, hunters on St. Paul Island have killed less than 500 seals a year. The notion that they oppose even a review if 1,645 animals are killed is further indication that the plan is to kill up to 2,000—a number that is over 4 times the most recent harvest level. We see no justification provided for this, other than the assertion that this is what the tribal government wishes to do—regardless of the conservation status of this species.

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<sup>36</sup> 77 Fed. Reg. 41,168 (July 12, 2012).

<sup>37</sup> See 80 Fed. Reg. at 44059.

<sup>38</sup> *Id.*

### Alternative 3

This alternative appears to have been offered as a means of giving the tribal government much, but not all, of what it wants; however, it too is more extreme than this declining stock deserves. As said earlier, we strongly oppose lengthening the hunt season. We see no reasons provided for the necessity of lengthening the season after all this time other than that the tribal government simply desires to kill many more times the number of seals than are currently killed—something that this already declining stock can ill-afford. This alternative would allow the slaughter of up to 2,000 males (1,500 pups and 500 juveniles) but would terminate the harvest if 20 females were confirmed dead. Given that the hunt is not independently monitored and the hunters would have knowledge that the hunt would be ended if 20 females die, there is a significant disincentive for hunters to report female deaths.

### **The NMFS Should Provide an Additional Alternative**

The “No Action” alternative, while more precautionary than either of the action alternatives, does not seem to consider that this is not the time to allow an increase in the length of the season and thus the number of seals killed; it is a time to *decrease* the number killed. We cannot stress enough that this is a depleted and declining stock. Pup production is declining at a rate of 5 percent per year in St. Paul Island, and NMFS acknowledges that “declines at the larger Pribilof colony (specifically St. Paul) continue to drive the overall stock estimate down over time.”<sup>39</sup> As referenced above, NMFS has documented an overall decline in the population from over 145,000 fur seals to 96,000 in the most recent 10 years of abundance estimates. Again, this is not the time to kill *more* fur seals or to engage in noisy and continually disruptive activities, including greater handling of pups to sex them, that will stress animals and possibly challenge health and/or cause diminished reproductive fitness.

We suggest an alternative be added that would maintain many of the hunt strictures outlined in the “No Action” alternative (e.g., short season, no firearms, etc.), but would reduce the harvest quota from the current 1,645 – 2,000 authorized to be killed annually to a lower number more in keeping with the current harvest levels. The recent hunt levels have never exceeded 500 fur seals, and we see no documentation to support the notion that the current hunt level has not met the tribal government’s needs over the past decade or that substantiate the need for far higher kill levels. NMFS should propose an alternative that would reduce the annual harvest level to no more than 500.

### **Conclusion**

Northern fur seals are depleted and declining, with the decline most notable on St. Paul Island. Allowing an increase in the number of days during which fur seals can be killed is apparently intended to allow hunters to kill up to 2,000 of them annually rather than the 500 killed each year for the past decade or

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<sup>39</sup> Allen and Angliss 2015. supra note 2

more. The introduction of firearms is untenable given the greater potential for disturbance and incidental take of females as well as an appalling number of animals likely to be struck and lost.

The three alternatives presented (the no action alternative, the tribal government proposal and the even the risky proposal that modifies the tribal government proposal) are insufficient. Given the on-going decline in the species—which is most pronounced on this island—there should be at least one other alternative that would limit the hunt to the current number of days and fix the total kill at 500 males, which is slightly more than the maximum killed annually for more than a decade.

Sincerely,



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# **Attachment C**



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November 13, 2017

**Re: Proposed Information Collection; Annual Northern Seal Subsistence Harvest Reporting and St. George Harvest Management Plan**

Dear Ms. Jessup,

I am writing on behalf of the members and constituents of The Humane Society of the United States and the Humane Society Legislative Fund to provide comments on the paperwork burdens created by the ongoing hunt of fur seals in the Pribilofs by natives of St. Paul and St. George Islands. See 82 Fed. Reg. 43,001 (Sept. 13, 2017). The collection of the proposed information is critically important for the conservation of a declining fur seals in the Pribilofs and does not create an undue burden on the regulated community. Below are comments pertaining to the importance of the collection of accurate information for this declining marine mammal stock which is the subject of (a) in the list the four areas for comment.

Earlier this year, the National Marine Fisheries Service (NMFS) proposed regulations for fur seal harvest limits for the years 2017-2019 permitting 300-500 fur seals for St. George and 1,645-2,000 for St. Paul, stating that these levels should remain “unchanged from the levels established for 2014-2016.”<sup>1</sup> As we noted in our comments pertaining to those proposed regulations (and incorporated by reference) it is inappropriate for the agency to continue granting a quota of this size especially, as NMFS has pointed out, the harvest level has not

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<sup>1</sup> 82 Fed. Reg. 22,792, 22798 (May 18, 2017)

come close to this level since 1985.<sup>2</sup> This makes it difficult to justify a need to take the full quota going forward.

Moreover, The HSUS wishes to underscore that this species is experiencing a long-term decline, with pup production dropping from an estimated 877,000 fur seal pups in 1984 to a current range-wide estimate of 147,658 pups in 2012 as documented in the most recent NMFS Stock Assessment Report.<sup>3</sup> The most pronounced decline is on St. Paul Island. Although the decline in abundance and pup production in St. George was not as dramatic as that on St. Paul, the SAR documents a decline in pup production of 1.95% per year on St. George.”<sup>4</sup> This does not bode well for the future of the stock.

Accurate monitoring of the annual kills—and a reliable and verifiable system of reporting—is clearly vital to assuring that the anthropogenic mortality does not increase and thereby add to the ongoing declines in the population. In addition, to assure accuracy in reporting of kills during the hunt, self-reporting of the number of animals killed must be independently verified by NMFS, the United States Fish and Wildlife Service or the state of Alaska wildlife officials.

Thank you for the opportunity to comment.

Sincerely,



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<sup>2</sup> 82 Fed. Reg. at 22798. Moreover, NMFS stipulates that the subsistence harvest for fur seals on St. Paul varied from 266 to a high of 314 in the years 2014-2016 and on St. George declined from 158 in 2014 to 83 in 2016. Id.

<sup>3</sup> NMFS 2016. Alaska Marine Mammal Stock Assessments, 2016: Northern Fur Seal. At: [http://www.nmfs.noaa.gov/pr/sars/pdf/ak2016\\_draft.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/ak2016_draft.pdf).

<sup>4</sup> Id.