FROM PACHINA BAY TO THE PRIBILOFS TO PARIS:

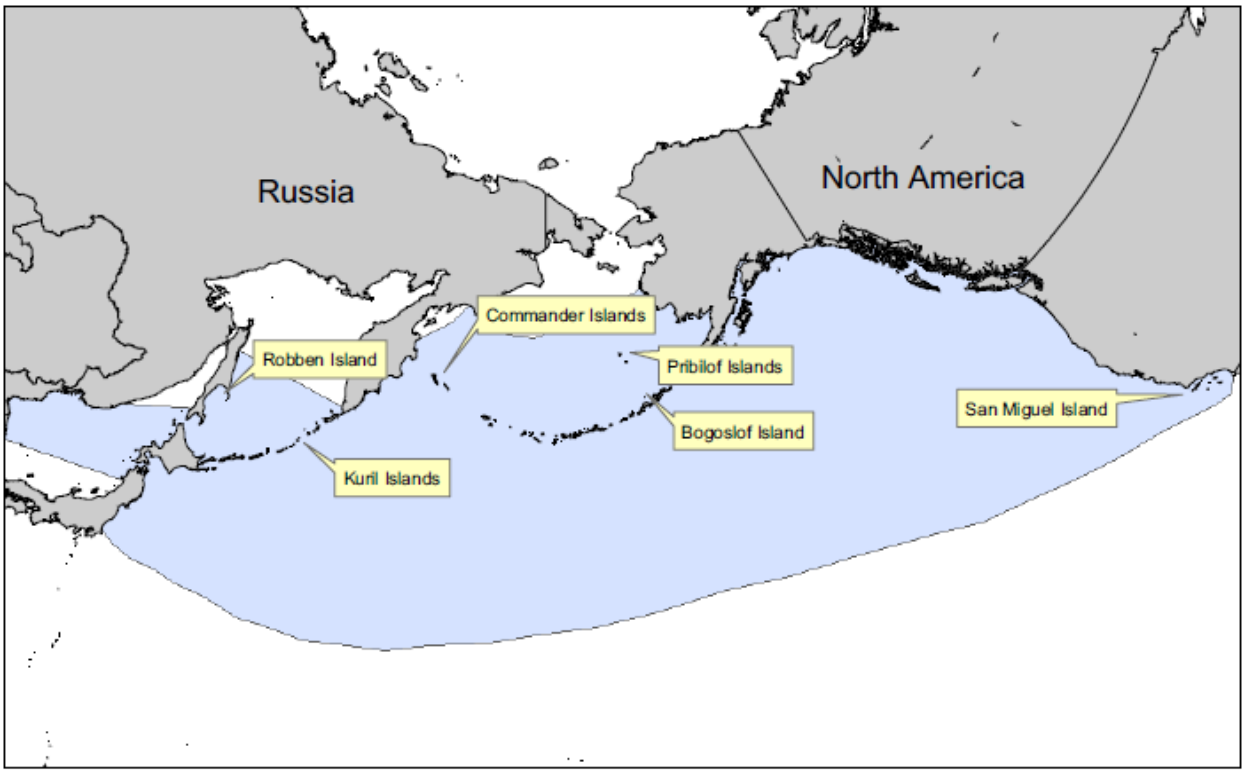
PROTECTION FOR A NORTHERN MAMMAL, COMPENSATION FOR NUU-CHA-NULTH SEALERS AND KNIGHTHOODS FOR COUNSEL

Paper presented to 20 Club on May 1, 2014
by Christopher Harvey, QC

Zoologically speaking, the fur seal is not a seal at all but a sea-going bear. It has thick fur and, unlike the true seal, has external ears and hind feet that can be turned forward for moving about on land – like the walrus. The northern fur seal is the second hairiest animal in the world (after the sea otter) with about 300,000 hairs per square inch in two layers of coat.

Fur seals exist in the southern hemisphere from the Indian Ocean to the Galapagos to the Falkland Islands, but have been largely depleted by hunting for their valuable fur - a fate that their cousins in the northern hemisphere narrowly avoided.

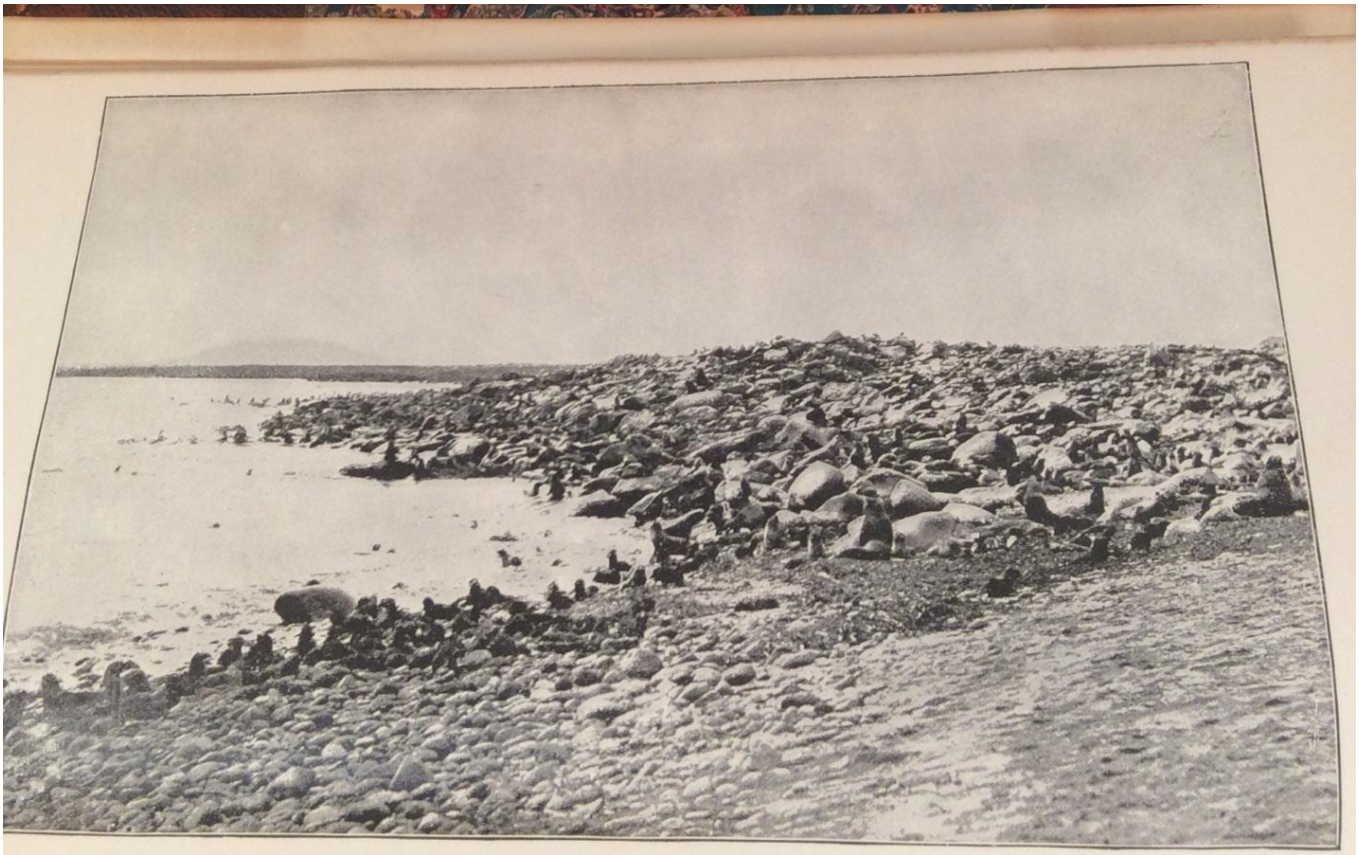
In the North Pacific there are three similar but distinct species of fur seal: the Alaskan, the Russian and the Japanese. The latter two species breed on the Commander, Robben and Kuril Islands in the western Pacific and migrate southward from there. The Alaskan fur seal breeds on the Pribilof Islands in the Bering Sea and is the largest in both size and the number of the herd. They return each year to the Pribilof Islands after a migration as far south as California.



The Pribilof Islands are located in the Bering Sea 200 miles north of the nearest land in the Aleutian Chain and 300 miles from the Alaskan mainland. The largest of the five Islands are St. Paul and St. George, being 13.5 and 12 miles long respectively. During the summer they are most often completely enveloped in fog. They were discovered in 1786 when Pribilof, a Russian sea captain, almost ran into them in the fog. It is during this foggy period that the fur seals visit the islands.

In May, the great bull seals, about seven feet long and weighing around 600 lbs., begin hauling themselves out of the water on the Pribilofs. They immediately establish a breeding territory that they jealously guard, fighting off rivals and enticing cows into their harem. The cows arrive in June when they must run the gauntlet of bulls and immediately give birth to a single pup.

The bulls collect a harem of anywhere up to a hundred cows and devote themselves to continuous mating for about six weeks. They consume no food or water whatever for the entire period at the end of which the once massive creatures are a scarred and bony shadow of their former selves. This activity has been described as "one of the most remarkable feats of continuous physical exertion in the animal world".[1] As the height of the breeding season nears (mid-June to mid-July) the rookeries are jammed with seals. So thick are they that, as one observer put it, it appeared that "the earth itself…pulsated in vertiginous frenzy". It is not surprising, that the males, who are bachelors for the first six years before becoming mating bulls, have an average life span of only 10 years compared to 26 for the females.



PART OF NORTHEAST POINT ROOKERY, ST. PAUL ISLAND.

[1] J.T. Gay, American Fur Seal Diplomacy, vol. 31 American University Studies, Series IX, History

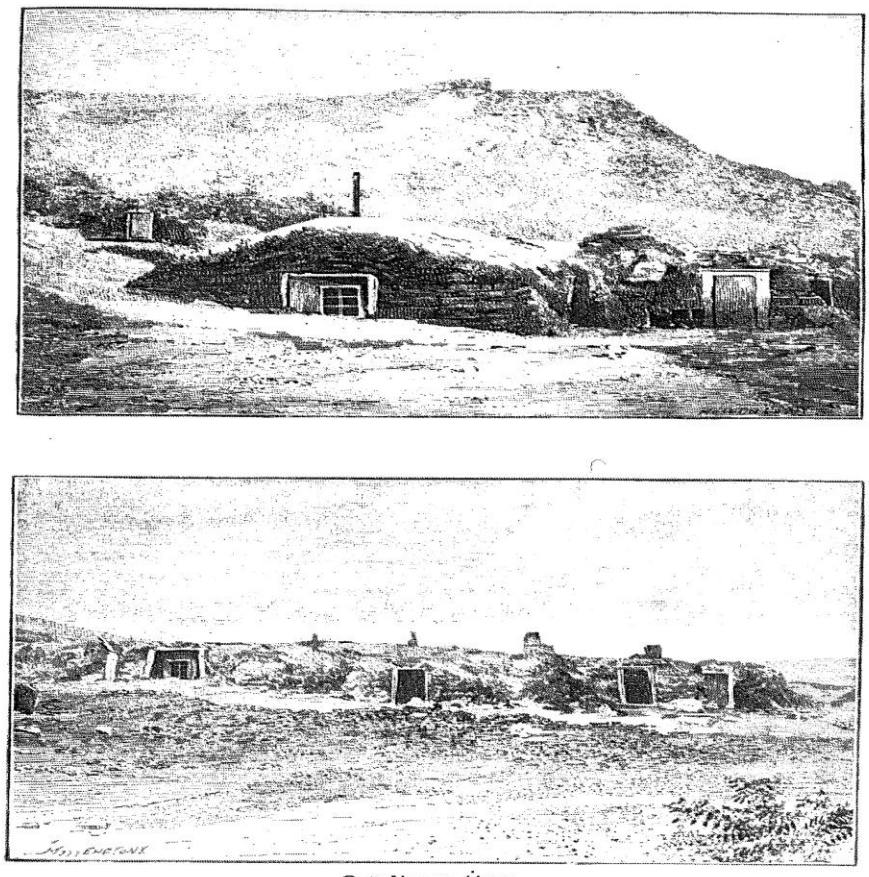
The cows are much smaller - about one-fifth the size of the bull - and are roughly handled from the moment they arrive and are forcibly settled as a member of a harem. The pups are born as a resilient ball of fat - which is fortunate because from the time they are born they are snapped at and cuffed out of the way by the frenetic bulls. The pups form a perimeter band around the harem. To feed them, the mother will travel up to 150 miles from the island feeding on squid and fish, returning to find her pup by recognition of its cry in answer to the mother's call. The mother has no interest whatever in feeding any other pup. Thus, if the mother dies or cannot find her pup, the pup starves to death. The pup is unable to swim until taught to do so.

By six weeks the pup is independent and happily swimming in the sea. By early August the southern migration begins, with the older males leaving first. By November, most fur seals have left the islands. Until they return their life is spent entirely at sea.

Hunting of the seals originally took place on land by the indigenous inhabitants under the direction of their chief. They took them first for sustenance and clothing. Later, when a market developed for the fur, the skins were sold to the Russian-American Company. Only the surplus "bachelor" males were taken. It was a relatively easy exercise since the bachelors lived apart from mating bulls and cows. They were simply herded to the killing grounds where they were clubbed and skinned. On St. Paul's Island the "drive" has been described as follows:

> When I was a boy, before the Americans came here, we used to drive from the rookeries at Northeast Point to the village killing grounds, a distance of 12 miles, and from Halfway Point, a distance of 6 miles, and from Zapadnie, a distance of 5 miles. After the Americans came the drive from Northeast Point was stopped at once and a salt house was built at Northeast Point and the seals have been killed here ever since within about 2 miles of the hauling grounds….[2]
>
> When we used to kill 85,000 seals in two months we had to work hard, and we had to go out at night to drive, so that the seals should not be hurried, nor driven in the daytime when it was warm…. We used to start the drive at 6 o'clock at night, and get into the village between 6 and 7 o'clock next morning.[3]
>
> The driving is all done by our own people under direction of the chiefs and we never drive faster than about half a mile in one hour.[4]

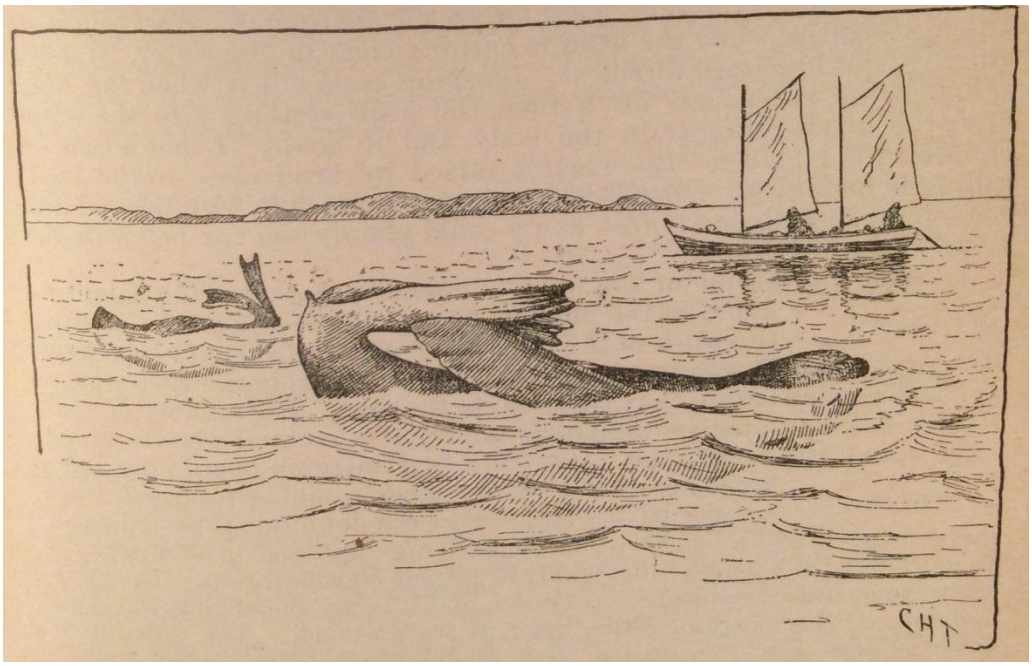
[2] Deposition of Karp Buterin (elected head chief in 1891) sworn June 9, 1892
[3] Deposition of Jacob Kootchoten, native sealer on St. Paul Island, sworn June 8, 1892
[4] Deposition of Nicoli Krukoff, native employee of lessees, on St. Paul Island, sworn June 8, 1892



OLD NATIVE HUTS.

Soon after the islands were purchased from Russia in 1867 the US government granted an exclusive 20-year lease to the Alaska Commercial Company to kill up to 100,000 young males annually on land, but soon the sustainability of the operation was imperiled by a pelagic (at sea) sealing industry. A fleet of sailing schooners set off each year from southern US ports and from Victoria to hunt fur seals from offshore Vancouver Island right up to the Bering Sea, and even around the Kuril Islands in northern Japan. The schooners would arrive with native canoes and sailing dories piled up on deck, which would then be lowered into the water and sent off in the fog to look for seals sleeping in the water. The natives used a "toggle-headed spear" with a kind of harpoon tip that detached on impact but was tethered to the canoe by a long rope. This was an effective hunting method since the seal was seldom lost, unlike the method adopted by the white seal hunters who would use either Winchester rifles or shotguns. By the time they reached the dead or injured seal it would often have sunk to the bottom.

> This hunting system is described in an oral interview of an old Victoria sealer taken by Imbert Orchard, a radio journalist, in the early 1960s and stored in the CBC Archives, *Voices of British Columbia*.



Unfortunately for the seals, it is impossible to distinguish female from male in the water, and most of those taken at sea were females, which would mean the death also of the pup *en ventre sa mere* and the pup on shore who would starve to death when the mother failed to return.

Pelagic sealing produced a good income for Nuu-chah-nulth hunters and others but soon began to deplete the herd. The American lessees on the Pribilofs complained to the US government. Then Congress passed a bill to prohibit killing of seals by persons other than the lessees "within the limits of the Alaska territory" – which the U.S. government conveniently interpreted as including a large part of the Bering Sea and North Pacific as far west as the maritime boundary between the US and Russia. The legal theory used to support this was *mare clausum*, or closed sea. Not surprisingly, in view of international law and British policy relating to the freedom of the seas, this soon led to an international dispute.

In 1886 the American "revenue steamer" *Corwin* arrived on the scene "cruising in Bering Sea for the purpose of protecting seal life, the fur-seal industry, and the Government interests in Alaska generally".[5] A cat-and-mouse game ensued in which the sealers held the advantage due to the elements:

> The next morning at 4:10 sighted a schooner, evidently a sealer, but was unable to pursue her, owing to the fact of having the *Thornton* and *Carolena* in tow… At 7:20 a.m. sighted another schooner, but she fled, and outsailed us. At 11 a.m., sighted a schooner under shortened sail. She at once changed her course and made all sail southeast and escaped….

[5] Deposition of Charles Abbey, captain, USRM, sworn April 8, 1892

> Fogs are almost constant in Bering Sea in the summer time. During the 58 days I cruised in those waters 54 days were foggy or rainy, the other four days being partly clear. On this account it is most difficult to seize vessels in Bering Sea. The reports of the guns of the hunters might often be heard when no vessel could be seen.[6]

In 1886 the *Corwin* seized three Canadian schooners from Victoria that were hunting seals more than 70 miles from the nearest US land. The vessels were brought to Sitka for trial. The jury, charged on the basis of the *mare clausum* principle, found the defendants guilty as charged and condemned the vessels.

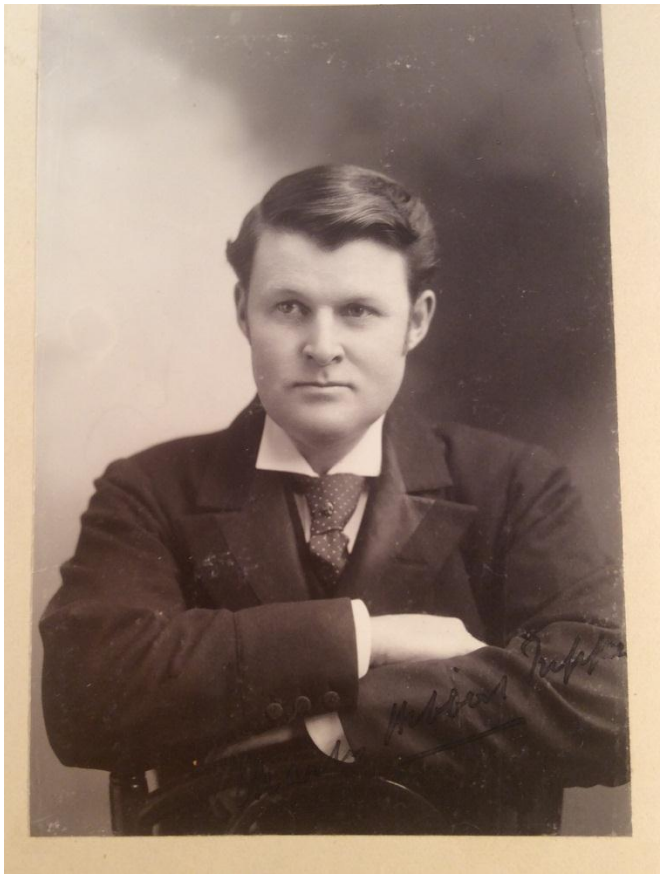
The Foreign Office in London, having received wails of protest from the Canadian sealers, soon lodged a protest through the usual diplomatic channels. The US released the vessels and the persons under arrest, but in the following year, the *Corwin* was back and 15 more schooners were seized, leading to further protests. The British and US governments came close to agreement on a convention with a closed season to protect the seals, but Canadian opposition caused the British government to take the position that if the Americans would not agree to a closed season on land, the British would not agree to a closed season at sea.

In 1889, after further seizures, Sir Charles Tupper, High Commissioner for Canada, wrote to the Colonial Secretary requesting that a British ship of war to be sent to the Bering Sea to protect Canadian vessels. Canadian anger was mounting, and the citizens of Victoria were discussing the possibilities of war with the US.[7]

Sir Charles' son, Charles Hibbert Tupper, then entered the fray. He had been a member of Parliament representing Pictou, Nova Scotia, in John A. Macdonald's government since 1882 and took an active interest in these developments. He may also have had a financial stake in the fur seal industry (one of the schooners sailed under the name *C.H. Tupper*). He wrote strongly worded letters to his father and remained actively involved in the dispute for the next two decades. He appears as the author of British notes of protest to the US, and he was sent to Washington by Britain as a technical advisor or "assistant" to a British Minister, Sir Julian Pauncefote, who was sent to try to settle the matter. This experience left him with an unflattering view of British resolve. He said they seemed "in no humour to fight for the Canadian case".

[6] *Ibid*

[7] Martin, Fredericka. The Hunting of the Silver Fleece. New York: Greenberg: 1946, p. 192



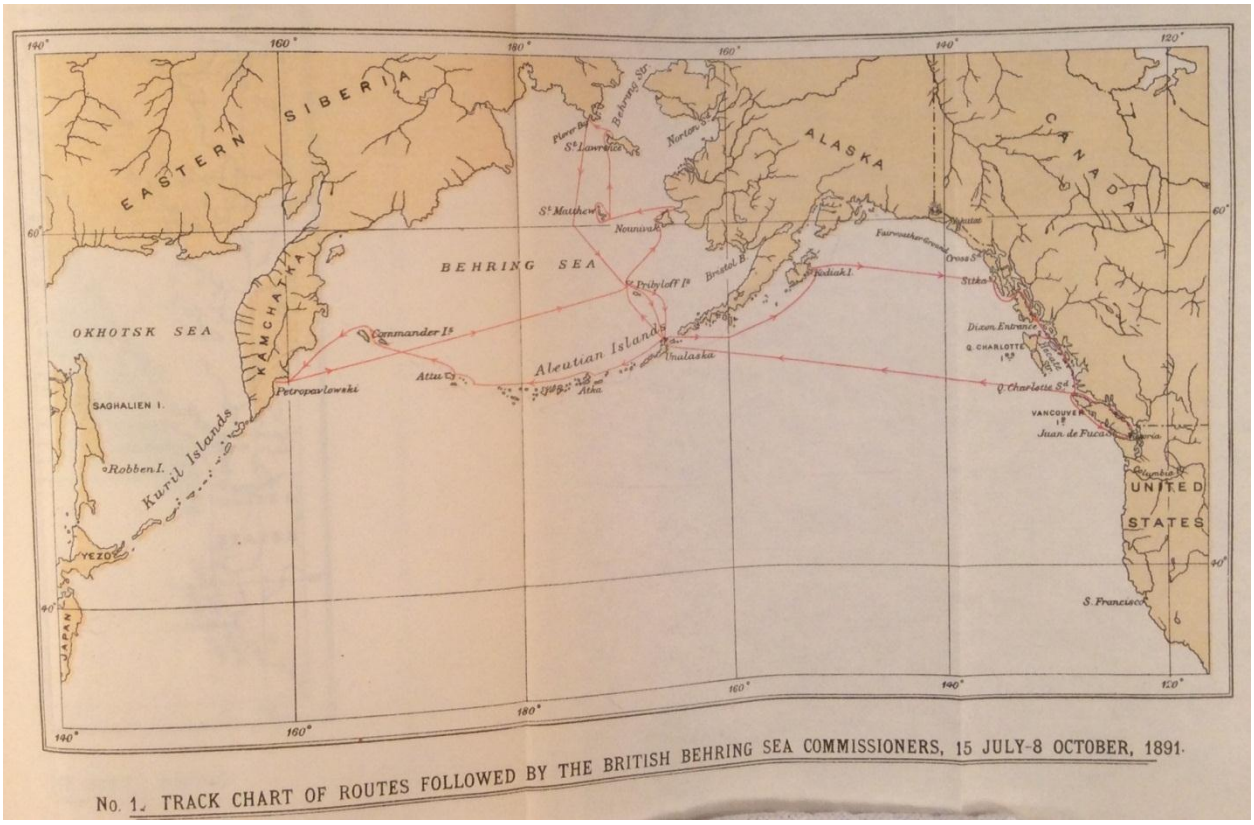
In 1890 when the US revenue cutters were again ordered to cruise to the Bering Sea, Lord Salisbury (British PM and Foreign Secretary) "secretly" ordered four warships to prepare for possible deployment to the Bering Sea. The order was leaked to the Americans.

Legal arguments developed in the diplomatic notes that were exchanged. Lord Salisbury said that fur seals were indisputably animals *ferae naturae* that that they are universally "regarded by jurists as *res nullius* until they are caught". The Americans, on the other hand, took the position that since they were the owners of the seal-breeding islands they had a right of property in the seals wherever they were on the high seas.

Meanwhile the seal populations were rapidly diminishing. The US government commissioned and received a report from a naturalist, Henry W. Elliott, on the depleted state of the herd in 1890 (by which time the herd of 4,700,000 had been reduced to 1,000,000). Elliott, although a US appointee, sided with the British position and recommended a closed season for both land and sea killing. The US, however, would not agree to end the seal hunt on land.

After much diplomatic manoeuvring, the Americans agreed to a joint commission which allowed British observers to visit the Pribilof Islands. Sir George Baden-Powell (brother of Robert, the founder of the scouting movement) and Professor George M. Dawson (the eminent Canadian surveyor and scientist) travelled extensively throughout the Bering Sea in 1891 and again in

1892. They concluded that the US government had been understating the amount of killing on land.



In 1892 the US and Britain entered into an agreement to arbitrate with a *modus vivendi* to restrict seal hunting pending arbitration. The agreement contained a clause holding that the losing party in the arbitration is responsible for damages incurred as a result of the *modus vivendi*.

Five questions were submitted to arbitration, including the *mare clausum* principle and ownership of the seals after they leave the Pribilofs. Seven arbitrators were appointed (two British, two Americans, one each from France, Italy and Sweden/Norway). One of the British appointees was the Canadian Attorney General. Charles Hibbert Tupper was appointed as "agent" for Great Britain. The arbitration took place in Paris with the French arbitrator, Baron Alphonse de Courcel, presiding.

Counsel for Britain were Charles Russell, Q.C. (Attorney General for England), Sir Richard Webster, Q.C. of the English bar (who subsequently, as Lord Alverstone, was much maligned in Canada for siding with the US in the Alaska Boundary arbitration) and Christopher Robinson, Q.C., an able member of the Canadian bar.

Russell was by all accounts an extraordinary barrister. His rich voice was said to resonate with strong emotions, whether of indignation, scorn or pity. He had amazing intellectual power and could quickly seize the real points of the most entangled case, rejecting all that was secondary, petty or irrelevant. His style was without literary ornateness or grace but could rise to impassioned eloquence. To all these qualities Russell added an energetic will that riveted attention, dominated his audience, and bore down on his opponents. His argument in the Arbitration lasted eleven days and was a magnificent exposition of law in its practical application to matters of state. Webster and Robinson followed for nine and three days respectively.

James Carter, for the US, advanced its claim to ownership of the seals wherever situate by comparing them with domestic animals. Because the fur seal is a migratory animal with an instinct to return "home", *animus revertendi* was used to support the property claim. Carter said

> … take the case of wild bees, for instance. According to Blackstone, bees also are *ferae naturae*; but, when hived and reclaimed a man may have a qualified property in them, by the law of nature, as well as by the Civil Law. [They are] property *per industriam* according to Blackstone.

Turning to Roman Law Carter quoted from Gaius's *Elements of Roman Law* which declared:

> In those wild animals, however, which are habituated to go away and return, as pigeons and bees, and deer, which habitually visit the forest and return, the rule has been handed down that only the cessation of the instinct of returning is the termination of ownership.

Russell's reply to this is classic:

> Now, it is said that these animals resort to the Islands to breed, and resort there in compliance with what has been picturesquely described as the "imperious instincts of their nature". They do.
>
> And when they get there, what do the representatives of the United States do? Can they do anything to improve the breed? Nothing. Do they make any selection of sire and dam, of bull and cow? Indeed, could they? No. What do they do? They do two things, one positive the other negative, and two things only. The positive thing is that they do what a preserver-game does; he has a gamekeeper to prevent poaching; they have people on the Islands to prevent raiding. The negative thing they do is that they do not kill all. They knock on the head a certain number, but exercise a certain amount of discrimination or a large amount of discrimination. That is the whole sum and substance of what they do, no more, no less.
>
> Let me illustrate my meaning. Suppose the existence, which there may well be in some undiscovered region, of an Island where there are seals; what does the United States do on the Pribiloff Islands that Nature, unassisted, does not do on the undiscovered Island?
>
> The only thing that Nature does not do is that she does not knock them on the head….

In the result the US lost on all five points. Fortunately for the seals, however, the parties had agreed to ask the arbitrators to recommend regulations in the event that the British were successful. Regulations were duly recommended and duly enacted by both the UK and US. Seal hunting on land was prohibited from May 1st to June 30th each year and at any time within 60 nautical miles of the Pribilofs. Hunting in the Bering Sea by shotgun or rifle as opposed to spears was also prohibited, there having been much evidence in the arbitration as to the superiority of the aboriginal method of hunting in that it avoided the wastage caused when seals sank after being shot.

By reason of the prior agreement regarding the *modus vivendi*, the US became bound to compensate the Canadian sealers for the losses caused by the seizures. More on this subject later

Efforts were made over the next 18 years to persuade Japan and Russia to adhere to the treaty and to extend the regulations to the western Bering Sea. This was complicated again by Canadian resistance. In one meeting in 1897, Prime Minister Laurier and Minister of Fisheries, Sir Louis Davies, turned up in Washington uninvited as "observers" and raised a number of extraneous issues such as trade reciprocity.

In due course the US agreed to include extraneous issues and the Canadian position softened. A Joint High Commission was established in 1899 and agreement was reached to end pelagic sealing with compensation of $600,000 agreed to be paid to the Victoria sealers. However,

before this could be implemented, the Alaska Boundary Award was announced and Canadian dissatisfaction became a major obstacle to any further cooperation.

In 1906 the Japanese, now in possession of the Robben Island breeding grounds as spoils of the Russo-Japanese war, suddenly become more amenable to conservation efforts. By this time the Pribilof herd was down to 130,000. Poor returns season after season had the effect of making the Victoria sealers more interested in compensation than in sealing. Thus, in 1911, Britain, the US, Russia and Japan entered into a treaty prohibiting pelagic sealing altogether. In return compensation was payable to Britain and Japan of 15% each from the returns of the annual seal harvests by Russia on the Commander Islands and by the US. on the Pribilofs. Japan similarly agreed to pay 10% from the Robben Island harvest. An alternative provision provided for a payment of $10,000 annually if land killing was stopped - which it was on the Pribilofs, apart from some minor native sustenance harvesting.

At the conclusion of the 1893 arbitration, a grateful queen awarded a knighthood to both Russell and Charles Hibbert Tupper for their services. (Robinson was similarly offered a knighthood but declined). Shortly thereafter Russell was granted a life peerage and, as Lord Russell of Killowen, was appointed Lord Chief Justice of England.

The elder Sir Charles Tupper became Prime Minister of Canada on May 1, 1896, the last of a hapless group of four conservatives who attempted to govern in the wake of Macdonald's death. His defeat on July 8, 1896 by Wilfrid Laurier gave him the shortest prime-ministerial term in Canadian history. He then retired to England, where he outlived all his contemporaries to be the last surviving Father of Confederation.

His son, now Sir Charles Hibbert Tupper, continued to represent Pictou, Nova Scotia, in Parliament until 1903 – several years after he had moved to British Columbia. In 1896 he became Minister of Fisheries briefly in his father's cabinet. After some difficulty with the BC Law Society he was called to the BC bar and established a law practice in Vancouver in about 1898. His son, Reginald Hibbert Tupper (1893-1972) was born in Ottawa and spent his childhood in Vancouver before being shipped off at the age of 11 to a Royal Navy prep school in England. "Reggie" returned to Vancouver in 1912. As a lieutenant in the 16th Battalion Canadian Scottish he was seriously wounded by shrapnel at the second Battle of Ypres. After the war he was called to the bar and joined his father in practice in 1919. The firm then became Tupper, Bull, Tupper. It is now, of course, Bull Housser & Tupper, having had three generations of Tuppers. Reggie's son David (1921-1999) spent his career with the firm.

As mentioned, an agreement was reached in 1911 to prohibit any further pelagic sealing. Compensation to the sealers was agreed to be provided from the annual land harvests, and the US made an immediate down payment of $200,000. The British government, quite properly, passed the fund on to Canada and left its distribution to the Canadian government. Since there was, not surprisingly, a confused tangle of claims submitted by vessel owners, crew and hunters,

(totaling $9.2 million) the Canadian government issued a commission to Audette J. of the Exchequer Court of Canada to investigate the claims and give his opinion "as to what person or persons, if any, is or are entitled to be paid compensation by the Crown".

Audette J. conducted hearings across Canada and in due course submitted his report and decision to the Minister of Fisheries. He decided the claims "according to the true principles of equity and good conscience". With respect to the claims arising from the 1894 regulations he held (refuting arguments advanced by the claimants) that "the crown has the undoubted paramount right to make laws in regard to the ocean, the open sea beyond territorial waters for all its liege subjects". He exonerated Lord Salisbury of failing to delay the regulations until Russia and Japan had adhered to them.[8] He also dismissed complaints by the Canadian sealers about the conduct of Japan:

> It having been found that there were seals in Japan, in 1894, a large fleet of Canadian sealers, about thirty-two vessels, went over and were very successful, bringing back a very large number of skins. It took these Canadian sealers from three to four years to all but destroy the seals on the Japanese coast, as they were unprotected by any regulations…. Under the circumstances who can find fault with the Japanese coming to our coast when the Canadian sealers had gone over to their country and had exterminated their seals?

Having found that the regulations, far from damaging the interests of the sealers, came to their rescue and prolonged the industry until 1911, Audette J. held that it would be contrary to the principles of natural justice to award damages under this category of claim.

His Lordship was, however, more sympathetic to the claims arising from the termination of all commercial sealing by the Treaty of Washington, 1911 which, he said, was "the culmination of what the regulations began by keeping the herds alive – an eminently satisfactory settlement". He awarded the owner of each schooner the value of the vessel, each master and hunter "the amount of the previous year or previous years' return". The "Indian [he said] stands on special circumstances under the Treaty" since it was agreed that:

> … the provisions of this Convention shall not apply to Indians, Ainus [being indigenous people of Japan], Aleuts, or other aborigines dwelling on the coast of the waters mentioned in article I, who carry on pelagic sealing in canoes not transported by or issued in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practised and without the

[8] Commissioner Report, 1916 Sessional Paper no. 79, p. 7:"And, indeed, no one with a conscientious appreciation of what is right and just, could criticize and accuse Lord Salisbury with disregarding the interests of British subjects and especially those of the sealers, or of the proper discharge of his duties under the circumstances"

> use of firearms; provided that such aborigines are not in the employment of other persons, or under contract to deliver the skins to any person.

He found that the Nuu-chah-nulth sealer, although put back in the "regular and natural avocation… as his father and fore-father did before him", nevertheless suffered damages in that:

> … in the latter years, especially after some mishaps and accidents to some of the schooners his superstitious nature made him very unwilling to continue the dangerous life of the sealer, and he is now seeking in preference to sealing, the more permanent industries assuring him more reliable employment in the salmon factories, lumbering, hop-picking and fishing.

(This is the only reference I have been able to find about the casualties there must surely have been after the canoes were set adrift from the schooners in the fog-bound and treacherous waters of the Bering Sea).

On that basis, Audette J. awarded 50% of the previous year's earnings to the Indian sealers and extended the right to recover to the heirs of those sealers who had perished.

Attached to this paper is a list of the claimants in this category. The names are interesting: example:

> Bob, of Clayoquot; Indian (hunter), $155.06
>
> Topsail George, of Kilsomat; Indian $161.00
>
> Big Tom, of Ahouset; Indian $150.00
>
> Fat Sam, of Ahouset; Indian $200.00
>
> Circus Jimmy, of Nootka; Indian $80.00

EPILOGUE

History, it may be said, repeated itself in the early years of the 21st century although not exactly on the same scale or with the same equitable result. Some of the descendants of the Nuu-cha-nulth seal hunters were then making a living, as Audette J. predicted, as commercial salmon fishermen. One was Vic Amos, a descendant of Amos of Ahouset, ("Indian $196.00"). His principal source of income was the Chinook salmon that, like the northern fur seal, travelled well offshore during the winter on their annual north/south migration. The salmon were returning southbound to various rivers in the southern US states. Like fur sealing, salmon fishing in the winter is an uncomfortable occupation. The fishermen spend more time in protected coves waiting out winter storms than fishing, but it is a well-regulated industry with strict quotas. Each salmon caught is immediately dressed and prepared for markets in the US with a computer chip

attached that gives the consumer in, say, a New York restaurant, all the relevant information as to when and by whom the fish was caught. All that is needed is the appropriate App and Vic Amos' smiling face will pop up alongside his fish boat at some remote location off the west coast of Vancouver Island.

Unfortunately for Vic Amos, the US government again took exception to Canadians pillaging American wildlife, and in 2008, after extensive negotiations, the US and Canada agreed to a 50% reduction by Canada of the annual Chinook salmon catch off the West Coast of Vancouver Island. An amendment to the Pacific Salmon Treaty obliged the Canadian government to reduce the Chinook salmon harvest of Vic Amos and his colleagues by some 50%, in return for which the US undertook to pay $30 million the Canadian government as compensation. But unlike its predecessor a century earlier the Canadian government did not feel it was under any moral obligation to pass the funds on to the fishermen who had suffered the loss. Instead it elected to use the $30 million for its own purposes and fishery programs.

Salmon trollers file lawsuit against feds over treaty

Government's decision to invest funds in licence retirement outrages fleet

Stefania Seccia / The Westerly News
June 17, 2010 01:00 AM

The matter in due course came before the successor to the Exchequer Court, being the Federal Court of Canada, by way of a claim in equity by Messrs. Kimoto and Amos on behalf of themselves and all other licensed WCVI salmon trollers. Constructive trust and other doctrines were relied upon to support the claim. Since it was difficult to find precedents for such claims, the case of the pelagic sealers was brought to the court's attention. Harrington J., who is perhaps not the Court's leading equity scholar, had this to say:

> [45] The Applicants' reliance on the Report of the Pelagic Sealing Commission is misplaced. Pursuant to the *Treaty of Washington, 1911*, among the United States, Great Britain, Russia and Japan, for the preservation of fur seals, Great Britain, on behalf of Canada, received US$200,000 from the United States. In accordance with the statute respecting Inquiries concerning Public Matters, the Honourable Louis Arthur Audette, Assistant Judge of the Exchequer Court, was appointed a Commissioner to inquire into and recommend what should be done with the funds. He recommended that the funds be paid to the Canadian sealers directly affected, or their estates. However, to use his own words:
>
> > The subject-matter of this great contest is to be approached and decided according to the true principles of equity and good conscience, *ex aequo et bono* having regard to what is fair and just in the relation between the State and its subjects and the duties and obligations arising therefrom, respectively, and not according to the strict principle of law, because none of the sealers have any legal claims.
>
> [46] The Applicants point out that under section 3 of its governing Act, the Federal Court is a Court "of law, equity and admiralty." However, "equity" means that system of law, in large measure discretionary, administered in the English Courts of Chancery before they were merged with the law courts. This is not a court of equity in the sense used by Commissioner Audette. It does not fall upon me to make recommendations, but rather to decide whether it was open to the Minister to make the decision she did. It was.
>
> *Kimoto v. Canada (Attorney General),* 2011 FC 89

Like the West Coast Trollers, the fur seals face a challenging future. After their numbers bounced back to above two million by 1950 commercial sealing resumed with as many as 85,000 being taken in some years. That lasted only until 1984 when all commercial harvesting was again stopped in response to declining abundance and growing ecological challenges. The Pribalof population is now estimated at about 650,000 and is listed as "depleted" under the US Marine Mammal Protection Act. Efforts to reverse the decline are complicated by the fact that there is no consensus as to what environmental or human factors are to blame.