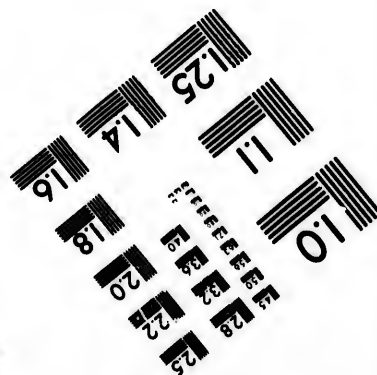
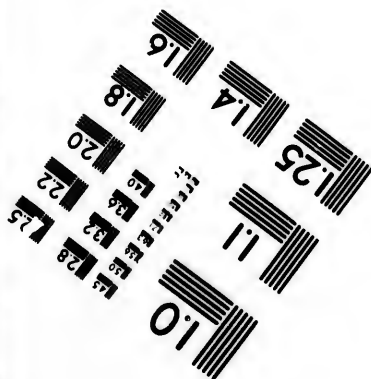
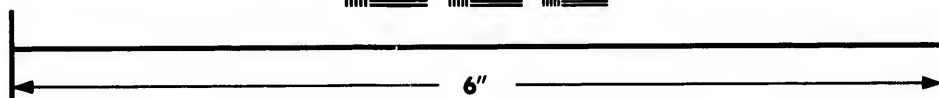
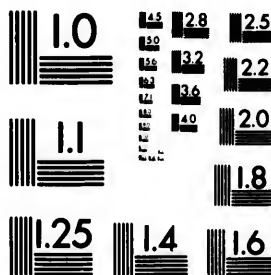


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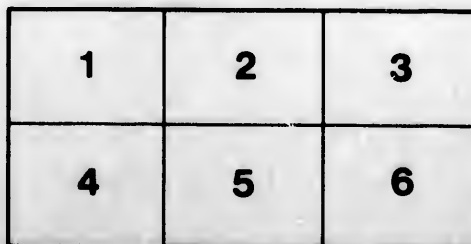
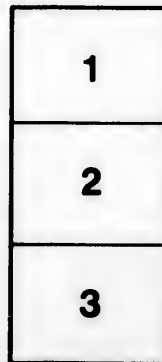
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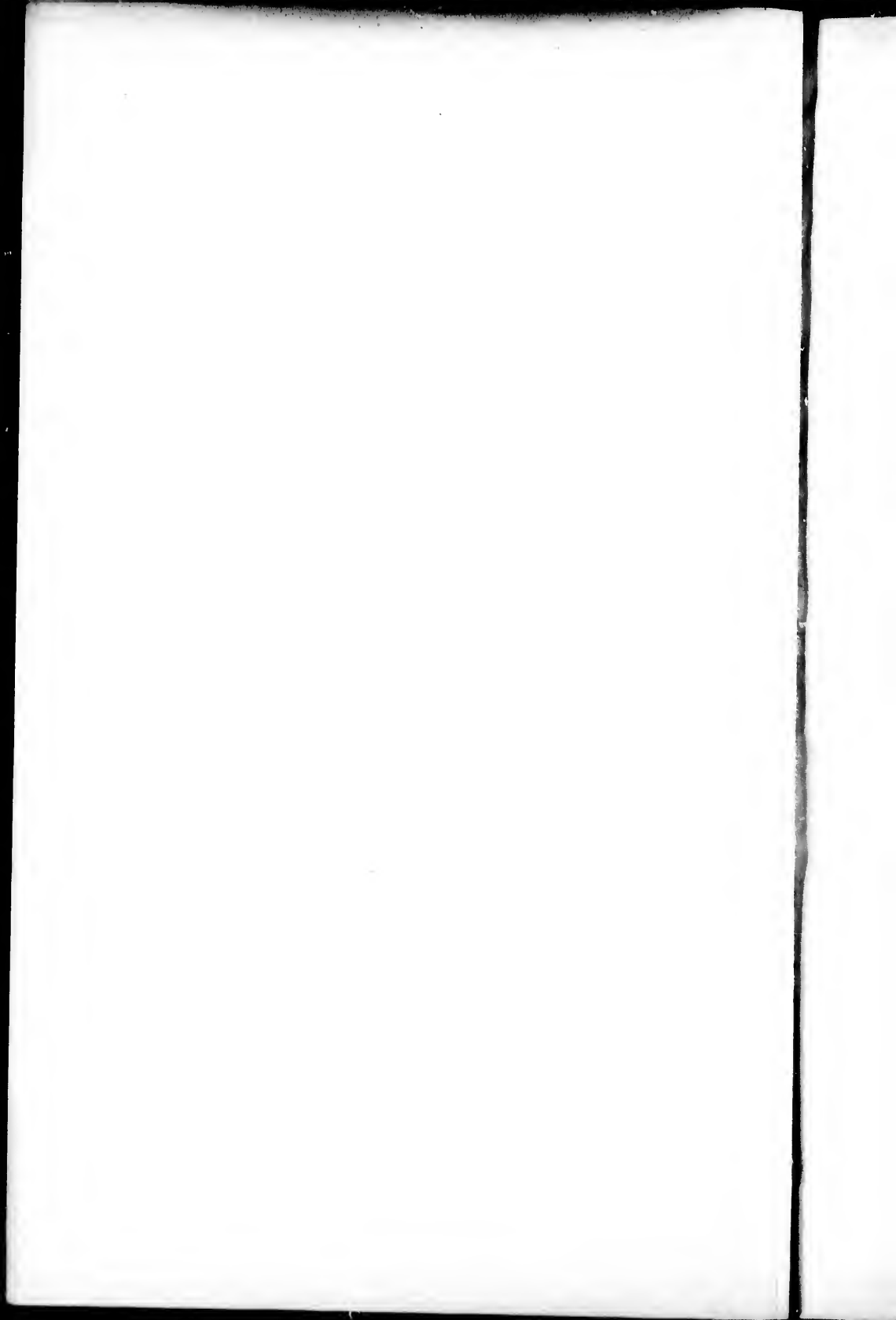
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BEHRING SEA ARBITRATION.

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REPORT

OF THE

BEHRING SEA COMMISSION,

AND

REPORT OF BRITISH COMMISSIONERS

OF

JUNE 21, 1892.

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WITH FIVE MAPS AND DIAGRAMS, AND APPENDICES.

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*Presented to both Houses of Parliament by Command of Her Majesty.  
March 1893.*

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# BEHRING SEA COMMISSION.

## INSTRUCTIONS TO BRITISH COMMISSIONERS.

### No. 1.

*The Marquis of Salisbury to Sir G. Baden-Powell and Dr. Dawson.*

Gentlemen,

*Foreign Office, June 24, 1891.*

THE Queen having been graciously pleased to appoint you to be her Commissioners for the purpose of inquiring into the conditions of seal life in Behring Sea and other parts of the North Pacific Ocean, I transmit to you herewith Her Majesty's Commission under the Sign Manual to that effect.

The main object of your inquiry will be to ascertain, "What international arrangements, if any, are necessary between Great Britain and the United States, and Russia or any other Power, for the purpose of preserving the fur-seal race in Behring Sea from extermination?"

Her Majesty's Government have proposed to the United States that the investigation should be conducted by a Commission to consist of four experts, of whom two shall be nominated by each Government, and a Chairman, who shall be nominated by Arbitrators.

If the Government of the United States agree to this proposal, you will be the Delegates who will represent Great Britain in the Commission.

But, in the meanwhile, it is desirable that you should at once commence your examination of the question, and that for that purpose you should proceed as soon as you conveniently can to Vancouver, from whence the Lords Commissioners of the Admiralty have been requested to provide for your conveyance to the various sealing grounds and other places which it may be expedient for you to visit.

Application has been made to the United States' Government for permission for you to visit the seal islands under their jurisdiction, and a similar request will be addressed to the Russian Government in the event of your finding it necessary to visit the Commander Islands and other Russian sealing grounds.

Your attention should be particularly devoted to ascertaining—

1. The actual facts as regards the alleged serious diminution of seal life on the Pribyloff Islands, the date at which such diminution began, the rate of its progress, and any previous instance of a similar occurrence.

2. The causes of such diminution; whether, and to what extent, it is attributable—

(a.) To a migration of the seals to other rookeries.

(b.) To the method of killing pursued on the islands themselves.

(c.) To the increase of sealing upon the high seas, and the manner in which it is pursued.

I need scarcely remind you that your investigation should be carried on with strict impartiality, that you should neglect no sources of information which may be likely to assist you in arriving at a sound conclusion, and that great care should be taken to sift the evidence that is brought before you.

It is equally to the interest of all the Governments concerned in the sealing industry that it should be protected from all serious risk of extinction in consequence of the use of wasteful and injudicious methods.

You will be provided with all the documentary evidence in the possession of this Department which is likely to be of assistance to you in the prosecution of your inquiry.

Mr. A. Fronde has been appointed to be your Secretary, and will accompany you on your tour.

Separate despatches will be addressed to you with regard to the expenses of your mission, and the form in which your correspondence with this Office should be conducted.

I am, &c.  
(Signed) SALISBURY.

---

Inclosure in No. 1.

Commission passed under the Royal Sign Manual and Signet, appointing Sir George Smyth Baden-Powell, K.C.M.G., M.P., and George Mercer Dawson, LL.D., F.R.S., to undertake an inquiry into the Conditions of Seal Life and the precautions necessary for preventing the extermination of the Fur-seal Species in Behring Sea and other parts of the North Pacific Ocean.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, &c., to all and singular to whom these presents shall come, greeting!

Whereas, we have deemed it expedient that Commissioners should be appointed for the purpose of inquiry into the conditions of seal life and the precautions necessary for preventing the extermination of the fur-seal species in Behring Sea and other parts of the North Pacific Ocean:

Now, know ye, that we, reposing especial trust and confidence in the diligence, skill, and integrity of our trusty and well-beloved Sir George Smyth Baden-Powell, Knight Commander of Our Most Distinguished Order of St. Michael and St. George, Member of Parliament; and of our trusty and well-beloved Professor George Mercer Dawson, Assistant Director and Geologist of the Canadian Geological and Natural History Survey, have nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint them our Commissioners to undertake the inquiry aforesaid:

And we do hereby give to our said Commissioners full power and authority to do and perform all acts, matters, and things which may be necessary and proper for duly carrying into effect the object of this our Commission.

In witness whereof we have signed these presents with our Royal hand.

Given at our Court at Windsor Castle, the 22nd day of June, in the year of our Lord 1891, and in the fifty-fifth year of our reign.

By Her Majesty's command,  
(Signed) SALISBURY.

---

No. 2.

*The Marquis of Salisbury to the Behring Sea Commissioners.*

Gentlemen,

*Foreign Office, January 15, 1892.*

I HAVE to inform you that Her Majesty's Minister at Washington has sent home the text of seven Articles, signed by himself and Mr. Blaine on the 18th ultimo, which are to be embodied in a formal Agreement between Her Majesty's Government and that of the United States for referring to Arbitrators certain questions at issue between the two Governments in regard to the jurisdiction claimed by the latter over the waters of Behring Sea in connection with the fur-seal fisheries therein.

Sir J. Pouncefote has also forwarded the text of an Agreement signed on the same day for the appointment of two Commissioners by Her Majesty's Government and that of the United States respectively, to investigate, conjointly with the Commissioners of the other Government, all the facts relating to seal life in Behring Sea, and the necessary measures for its proper protection and preservation.

A copy of Sir J. Pouncefote's despatch, inclosing both these documents, is forwarded herewith for your information.

I now transmit the Queen's Commission under the Sign Manual appointing you to be Her Majesty's Commissioners in accordance with the provisions of the Joint Commission Agreement, and I request that you will proceed to Washington as soon as you can conveniently do so, in order to draw up the Report indicated in the second paragraph of the Agreement.

The information which has been obtained by your American colleagues and yourselves during your recent visit to Behring Sea will supply you with material for the preparation of your Report.

There are, however, a few points to which Her Majesty's Government consider it desirable that your special attention should be directed.

You will observe that it is intended that the Report of the Joint Commissioners shall embrace recommendations as to all measures that should be adopted for the preservation of seal life. For this purpose, it will be necessary to consider what Regulations may seem advisable, whether within the jurisdictional limits of the United States and Canada, or outside those limits. The Regulations which the Commissioners may recommend for adoption within the respective jurisdictions of the two countries will, of course, be matter for the consideration of the respective Governments, while the Regulations affecting waters outside the territorial limits will have to be considered under clause 6 of the Arbitration Agreement in the event of a decision being given by the Arbitrators against the claim of exclusive jurisdiction put forward on behalf of the United States.

The Report is to be presented in the first instance to the two Governments for their consideration, and is subsequently to be laid by those Governments before the Arbitrators to assist them in determining the more restricted question as to what, if any, Regulations are essential for the protection of the fur-bearing seals outside the territorial jurisdiction of the two countries.

In the event of any points arising on which the Commissioners are unable to arrive at an understanding, they should report jointly or severally to each Government on such points.

In conclusion, I have to state that Her Majesty's Government place every reliance on your tact and discretion in the conduct of your investigations with your American colleagues, who will, no doubt, be equally desirous with yourselves of arriving at a common agreement on the questions to be discussed.

I am, &c.  
(Signed) SALISBURY.

---

Inclosure in No. 2.

Commission passed under the Royal Sign Manual and Signet appointing Sir George Smyth Baden-Powell, K.C.M.G., M.P., and Professor George Mercer Dawson, Assistant Director and Geologist of the Canadian Geological and Natural History Survey, to be Her Majesty's Commissioners under the Behring Sea Joint Commission Agreement between Great Britain and the United States of the 18th December, 1891.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, &c. &c., &c., to all and singular to whom these presents shall come, greeting!

Whereas we have deemed it expedient that Commissioners should be appointed for the purpose of inquiring into the conditions of seal life in Behring Sea and the measures necessary for its proper protection and preservation under the Agreement between Great Britain and the United States of America of the 18th December, 1891.

Now know ye that we, reposing especial trust and confidence in the diligence, skill, and integrity of our trusty and well-beloved Sir George Smyth Baden-Powell, Knight Commander of our most distinguished Order of St. Michael and St. George, Member of Parliament, and of our trusty and well-beloved Professor George Mercer Dawson, Assistant Director and Geologist of the Canadian Geological and Natural History Survey, have nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint them our Commissioners to undertake the inquiry aforesaid.

And we do hereby give to our said Commissioners Full Power and authority to do and perform all acts, matters, and things which may be necessary and proper for duly carrying into effect the object of this our Commission.

In witness whereof we have signed these presents with our Royal hand.

Given at our Court at Osborne the 1st day of January in the year of our Lord 1892, and in the 55th year of our reign.

By Her Majesty's command,  
(Countersigned) SALISBURY.

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## BEHRING SEA COMMISSION.

### JOINT REPORT.

No. 3.

*The Behring Sea Commissioners to the Marquis of Salisbury.*—(Received March 19.)

My Lord,

*Washington, March 4, 1892.*

WE have the honour to transmit herewith a Report signed this day by the Commissioners of Great Britain and the United States appointed to investigate the condition of seal life in the North Pacific Ocean.

Under the instructions contained in your Lordship's despatches of the 24th June, 1891, and of the 15th January last, and in accordance with the terms of the Agreement arranged between the two Governments, the requisite investigations have been carried out; the Joint Report, as now submitted, has been agreed to; and we are at present engaged in drawing up our "several" Reports dealing with those facts of seal life, and measures necessary for its proper protection and preservation, on which no agreement was come to in the Joint Report.

We have, &c.

(Signed)

GEORGE BADEN-POWELL.  
GEORGE M. DAWSON.

Inclosure in No. 3.

### BEHRING SEA COMMISSION JOINT REPORT.

An Agreement having been entered into between the Governments of Great Britain and the United States to the effect that—

"Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal life in Behring Sea, and the measures necessary for its proper protection and preservation;

"The four Commissioners shall, so far as they may be able to agree, make a Joint Report to each of the two Governments; and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree;

"These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise;"

And we, in accordance with the above Agreement, having been duly commissioned by our respective Governments, and having communicated to each other our respective powers, found in good and due form, have agreed to the following Report:—

1. The joint investigation has been carried out by us, and we have utilized all sources of information available.

2. The several breeding-places on the Pribyloff Islands have been examined, and the general management and methods for taking the seals upon the islands have been investigated.

3. In regard to the distribution and habits of the fur-seal when seen at sea, information based on the observations recorded by the cruizers of the United States and



Great Britain, engaged in carrying out the *modus vivendi* of 1891, has been exchanged for the purpose of enabling general conclusions to be arrived at on these points.

4. Meetings of the Joint Commission were held in Washington, beginning on Monday, the 8th February, and continuing until Friday, the 4th March, 1892. As a result of these meetings, we find ourselves in accord on the following propositions:—

5. We are in thorough agreement that, for industrial, as well as for other obvious reasons, it is incumbent upon all nations, and particularly upon those having direct commercial interests in fur-seals, to provide for their proper protection and preservation.

6. Our joint and several investigations have led us to certain conclusions, in the first place, in regard to the facts of seal life, including both the existing conditions and their causes; and, in the second place, in regard to such remedies as may be necessary to secure the fur-seal against depletion or commercial extermination.

7. We find that, since the Alaska purchase, a marked diminution in the number of seals on, and habitually resorting to, the Pribiloff Islands has taken place; that it has been cumulative in effect, and that it is the result of excessive killing by man.

8. Finding that considerable difference of opinion exists on certain fundamental propositions, which renders it impossible in a satisfactory manner to express our views in a Joint Report, we have agreed that we can most conveniently state our respective conclusions on these matters in the "several" Reports which it is provided may be submitted to our respective Governments.

Signed in duplicate at the city of Washington this 4th day of March, 1892.

(Signed)

GEORGE SMYTH BADEN-POWELL.  
GEORGE MERCER DAWSON.  
THOMAS CORWIN MENDENHALL.  
CLINTON HART MERRIAM.

(Signed)

ASHLEY ANTHONY FROUDE, }  
JOSEPH STANLEY-BROWN, } *Joint Secretaries.*

REPORT OF THE BRITISH BEHRING SEA COMMISSIONERS.

No. 4.

*The Behring Sea Commissioners to the Marquis of Salisbury.—(Received August 14.)*

My Lord,

*Foreign Office, August 13, 1892.*

WITH reference to our despatch of the 4th March, 1892, inclosing the Joint Report of the Joint Commission, we now have the honour to submit, as the "several" Report contemplated in that despatch, the Report which we have had the honour to make to Her Majesty the Queen under the Commission appointing us to investigate seal life in Behring Sea.

We have, &c.

(Signed)

GEORGE BADEN-POWELL  
GEORGE M. DAWSON.

Inclosure in No. 4.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY,

We, your Majesty's Commissioners, appointed to undertake an inquiry into the conditions of seal life and the precautions necessary for preventing the extermination of the fur-seal species in Behring Sea and other parts of the North Pacific Ocean, beg to submit the following Report.

2. The main object of our inquiry was to ascertain what international arrangements, if any, were necessary between Great Britain and the United States and Russia, or any other Power, for the purpose of preserving the fur-seal race from extermination.

3. We were further instructed that Her Majesty had proposed to the President of the United States that the investigation should be conducted by a Joint Commission of the two nations, and that, on the conclusion of an Agreement providing for this, we were to be the Delegates who would represent Great Britain on the Commission.

4. It was also understood that the investigations and conclusions of this Joint Commission would be ultimately laid before the Arbitrators, who were to adjudicate on the international rights involved, and on the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea.

5. Wherefore, in carrying out the terms of our Commission, it has been our object to acquire and record the most complete information available, in order to promote, in the true interests of all concerned, an equitable, impartial, and mutually satisfactory adjustment of the questions at issue.

6. The necessary means of transport over the North Pacific Ocean was provided for us by the Lords Commissioners of the Admiralty, and the requisite permission to visit and examine the seal rookeries situated in American or Russian territory was obtained at our request from the respective Governments.

7. We formed complete plans for visiting such places situated in, and such areas of the North Pacific Ocean, and holding personal interviews with such persons as should

satisfy us that we had neglected no source of information which might be likely to assist us in arriving at sound conclusions.

8. Care was taken before commencing our local investigations to complete our personal knowledge of all documentary evidence to which we could procure access, including the previous official correspondence, and a mass of public and private publications, descriptions, records, and opinions.

9. Requests for information were also addressed to several countries outside the probable scope of our personal inquiries, from which collateral information of importance could be derived. With the aid of the Canadian and Imperial Governments, a series of questions were sent to the various Governments who now hold the chief resorts of the fur-seal in the Southern Hemisphere, namely, the Argentine, Uruguayan, Chilean, and Brazilian Republics, and the Colonies of the Falkland Islands, the Cape of Good Hope, Tasmania, New South Wales, Victoria, and New Zealand.

10. Inquiries were also made for information in regard to the North Pacific seal fisheries to the Governments of Russia and Japan, to Her Britannic Majesty's Consuls at Shanghai, Canton, Honolulu, and San Francisco, and to the Canadian Indian Agents along the coast of British Columbia.

11. In regard to personal work, a brief account of our proceedings will explain the plan of action adopted, and we append a Chart of our track. From the 6th to the 19th July we consulted with the Canadian Ministers in Ottawa; we then crossed the continent by train, and at Vancouver and Victoria held prearranged interviews with those who were engaged in the practical work of sealing, and with the Commander-in-chief of the Pacific Station and the port authorities. So soon as the chartered steamer "Danube" could be got ready for sea, we left on a direct course for the port of Iliulik, in Unalaska Island.

12. The "Danube" made the passage of about 1,400 miles in seven and a half days. After consulting at Unalaska with the Senior Naval Officer, Commander Turner, of Her Majesty's ship "Nymphæ," we made the best of our way to the Pribyloff Islands, where we spent several days carrying out our first inspection of the seal rookeries in company with Professor Mendenhall and Dr. Merriam, the Commissioners-designate of the United States, every hospitality and courtesy being afforded by the officials both of the Government and of the lessees of the islands.

13. At this date the rookeries were still at their fullest, and the organization had not yet broken up. After careful inquiry into the various questions connected with the habits and treatment of the seals on these islands, we started on the 6th August on a cruise of 1,450 miles to the eastward and northward in company with Her Majesty's ship "Phœnix," to satisfy ourselves as to the limits of the range of the fur-seal in those parts of Behring Sea. We visited the native and other Settlements on Nunivak Island, Cape Vancouver, St. Matthew Island, St. Lawrence Island, and Plover Bay in Eastern Siberia, near the entrance of Behring Straits, returning thence for a second inspection of the Pribyloff rookeries and to note the difference in their appearance after a fortnight's interval.

14. Thence we proceeded to Iliulik Harbour, Unalaska, to communicate by appointment with the Commanding Officers of the English and United States' war-ships as to future movements. Leaving that port on the 24th August for the westward we cruised along the Aleutian chain, calling at the Islands of Atka and Attu, on which are the only remaining native Settlements in the western part of the Aleutian chain.

15. We then crossed to the Commander Islands, and there received from the Russian authorities every facility and courtesy in our task of learning all we could concerning seal life on those islands. Thence we proceeded down the coast of Kamshatka to Petropaulovski, where again the Russian authorities gave us every information. On this cruise Her Majesty's ship "Porpoise," sailing in company, proved of the greatest assistance.

16. Leaving Petropaulovski on the 10th September our course was shaped for the Pribyloff Islands, so as to strike them from a westerly direction, and continue across that portion of Behring Sea our observations of seals seen at sea. A third and final examination of the Pribyloff rookeries was then made after a further interval of twenty-six days, and Unalaska was again reached on the 17th September.

17. Leaving Behring Sea on the 20th September, we visited Kadiak Island, Sitka, and Shakan, making inquiries of both the native and White residents as to the fur-seal fishery in this distant territory of the United States. Continuing our cruise of investigation, we called at the following places on the coast of British Columbia, viz, Port Simpson, Metla-katla, Port Essington, Masset (Queen Charlotte Islands), Bella-Bella, Nawitti, Clayoquot Sound, and Barclay Sound, where, by personal inquiries, we were

enabled to amplify the written statements which, in compliance with our previous request, had been forwarded to us by the Indian agents on the coast. The Indian Settlement at Neah Bay, on the United States' shore of the Straits of Fuca, was also visited, where we likewise obtained valuable information.

18. The facts thus obtained afforded a direct knowledge of the fur-sealing industry, both past and present, as it affects the Indians of South-east Alaska and British Columbia.

19. We completed our local investigations by obtaining from the sealers in Victoria, Vancouver, and Seattle, further evidence as to their opinions and wishes, thus concluding our task by obtaining authoritatively the views of all persons connected with the fur-seal fishery on the facts of seal life and on the protective measures they would favour.

20. The cruise in the North Pacific occupied nearly three months, and the log shows a distance covered of more than 9,000 miles.

21. We were thus enabled to examine for ourselves all the principal seal rookeries, and especially to inspect the typical rookeries on the Pribyloff Islands at three different seasons, at the widest intervals of time possible within the period at our command: to learn, by personal inquiry, knowledge of the limits eastward, northward, and westward of the present habitat of the fur-seal, and to satisfy ourselves as to the peculiar features of the localities which the fur-seal did or did not select as shore resorts.

22. In regard to the important point of the facts and reasons of the presence of the fur-seal in particular portions of the ocean at particular seasons of the year, a point on which we could find little or no previous descriptions or recorded observations, records were collated from schooners engaged in sealing, and for 1891 we formulated a plan of seal logs and seal track-charts based on recorded observations of seals seen at sea, which has been very efficiently carried out on the British men-of-war "Nymphé," "Porpoise," and "Pheasant," and on our own chartered steamer, the "Danube,"—similar work having also been carried on by the United States' men-of-war and revenue-cutters employed in Behring Sea during the same season. For this purpose also special inquiries were made as to the kinds of fish constituting the favourite food of the fur-seal. Photographs were also taken by us of the seals, their breeding places, and surroundings.

23. It may be observed further, that in obtaining evidence from persons of experience or knowledge of the subject, we adopted, in general, the informal plan of free interviews and independent conversation. In this way we acquired very distinct and trustworthy knowledge of their opinions and experiences.

24. The witnesses who thus gave evidence included officials of the Governments and the Companies, and ex-officials now otherwise employed, owners, captains and hunters engaged in pelagic sealing; natives, chiefly Aleut and Russian half-breeds, engaged in killing and skinning seals on the Pribyloff Islands; natives, such as Indians, Innuits, and Aleuts, who habitually hunt and kill fur-seals, and merchants and others connected with the trade in furs.

25. In the following statement of the results of our investigations, we propose, first of all, to present, in summary, in Part I, a general view of the conclusions at which we have arrived as to the condition of seal life in the North Pacific Ocean, and as to the measures necessary for the preservation of the fur-seal industry.

We would then, in Part II, deal in a more systematic manner and in detail with the various divisions of the subject, and subsequently give, as Appendices, such correspondence and statistics as may be needed to complete our account of the subject under investigation.

## PART I.

## SUMMARY OF FACTS AND CONCLUSIONS.

## I.—THE FORMER, PRESENT, AND PROSPECTIVE CONDITION OF THE FUR-SEAL FISHERY IN THE NORTH PACIFIC OCEAN.

(A.)—*General Conditions of Seal Life.*Habits of  
the fur-seal.

26. The fur-seal of the North Pacific Ocean is an animal in its nature essentially pelagic, which, during the greater part of each year, has no occasion to seek the land, and very rarely does so. For some portion of the year, however, it naturally resorts to certain littoral breeding places, where the young are brought forth and suckled on land. It is gregarious in habit, and, though seldom found in defined schools or compact bodies at sea, congregates in large numbers at the breeding places. Throughout the breeding season, the adults of both sexes—if not entirely, at least, for very considerable periods—abstain from food, but during the remainder of the year the seals are notably influenced in their movements by those of the food-fishes upon which they subsist.

Migrations.

27. Such movements are, however, subordinate to a more general one of migration, in conformity with which the fur-seals of the North Pacific travel northward to the breeding islands in the spring and return to the southward in the autumn, following two main lines, one of which approximates to the western coast of North America, while the other skirts the Asiatic coast. Those animals which pursue the first-mentioned migration-route, for the most part breed upon the Pribyloff Islands in summer, and spend the winter in that part of the ocean adjacent to, or lying off, the coast of British Columbia. Those following the second route breed, in the main, on the Commander Islands, and winter off the coasts of Japan. The comparative proximity of the breeding islands frequented by the seals pertaining to these two migration-tracts during the summer insures a certain interrelation and interchange of seals between the two groups, to an extent not fully known, and which doubtless varies much in different years.

Winter and  
summer  
habitats.

28. The fur-seal of the North Pacific may thus be said, in each case, to have two habitats or homes between which it migrates, both equally necessary to its existence under present circumstances, the one frequented in summer, the other during the winter. If it were possible to confine the fur-seal to the vicinity of the northern islands resorted to during the breeding season, or even within the limits of Behring Sea, the species would become extinct in a single year; but if, in any way, it were to be debarred from reaching the islands now chiefly resorted to for breeding purposes, it would, according to experience recorded elsewhere, speedily seek out other places upon which to give birth to its young.

29. The fur-seal of the Southern Hemisphere, while recognized as distinct in kind, resembles that of the North Pacific in its habitual resort to littoral breeding places and in other respects, but is not known to migrate regularly over such great tracts of sea, or to have definitely separable summer and winter habitats.

Events on  
breeding  
places.

30. With reference to the length of the period during which the fur-seals resort to the shore:—The breeding males begin to arrive on the Pribyloff Islands at varying dates in May, and remain continuously ashore for about three months, after which they are freed from all duties on the breeding rookeries, and only occasionally return to the shores. The breeding females arrive for the most part nearly a month later, bearing their young immediately on landing, and remaining ashore, jealously guarded by the males, for several weeks, after which they take every opportunity to play in the water close along the beaches, and about a month later they also begin to leave the islands in search of food, and migrate to their winter habitat. The young males and the young females come ashore later than the breeding seals, and at more irregular dates, and "haul out" by themselves. Lastly, the pups of the year, born in June and July, commence to "pud," or herd together away from their mothers, towards the middle or end of August, and after that frequent the beaches in great numbers, and bathe and swim in the surf. They remain on the islands until October, and even November, being among the last to leave.

Breeding  
places.

31. While resorting to or remaining on the land, the fur-seal is practically defenceless, and it is, therefore, on uninhabited islands or rocks that large numbers of seals are known to congregate during the breeding season. Such places alone have afforded the necessary security from various predaceous animals and from man, and all the notable seal "rookeries" of both hemispheres have been found on unpeopled insular

areas. The latitude and corresponding climate of such breeding places has doubtless been a circumstance of some importance in rendering certain localities congenial to the fur-seal, but even the single species inhabiting the North Pacific shows a considerable range of adaptability in this respect, provided that the necessary security against disturbance and destruction be afforded for adults and young.

32. Until the discovery by the Russians of the Commander Islands in 1741, and the Pribyloff Islands in 1786, these were doubtless, in the average of years, fully peopled with seals up to the limits imposed by natural conditions, such as food supply, areas available for breeding grounds, and the counteracting effects of destructive agencies at that time affecting seal life. Among the latter, particular mention may be made of predaceous marine animals such as the killer whale and shark, and to hunting carried on in the southern portion of the migration-range of the seal by various native tribes. These agencies were almost continuous in their operation, but, in addition, certain occasional causes of destruction of seals must not be lost sight of. Among these are, inclement seasons in which the breeding islands, or some of them, remained so long ice-bound that the females were unable to land in time to give birth to their young; autumn storms, fatal to young seals, and also the recurrent inroads of murrains or diseases of various kinds.

Original conditions on breeding islands.

Of the two first of these last-mentioned causes, instances which have resulted in great damage to seal life have been recorded on the Pribyloff Islands. In regard to the third, though elsewhere observed, there is a remarkable absence of notice in the records of these islands.

33. The separate or concurrent effects of such causes, even before the era of the seal-hunter, must have produced great fluctuations in the total volume of seal life in certain years or terms of years. There are of course no data available in actual proof of this, but that such must have occurred is sufficiently obvious from analogy with the known facts relating to other animals, and particularly those of a similar gregarious habit.

Natural fluctuations in numbers.

34. In all parts of the world the discovery of the breeding islands of the fur-seal has usually been followed by unrestricted slaughter upon these breeding places, and this has invariably resulted in general depletion, often approaching extermination, but in no known case within historical times, has it actually resulted in complete extirpation.

Interference with natural conditions.

#### (B).—Killing on the Breeding Islands.

35. The discovery of the breeding islands in the North Pacific, and the slaughter of seals upon them by man, introduced a more important factor in regard to their seal life, the general effect of which, under what regulations soever, tended inevitably towards a reduction in the aggregate number of seals frequenting the islands. In other words, the initiation of commercial killing on the breeding islands interfered with the previously established balance of nature. It formed a heavy new draft upon seal life, while no compensating relief was afforded against the active depredations of other enemies or against other natural occurrences which had heretofore set limits to the increase of the seals. Their former places of secure retreat were invaded by man, while, during the greater part of each year, they remained exposed on the open ocean as before to innumerable accidents, and entirely beyond the control or possible protection of those in charge of the breeding islands. The inroads of the seal killers on the islands might be modified in kind or in degree, but their general tendency could not be reversed.

Effects of killing.

36. The Pribyloff and Commander Islands of the North Pacific have, however, continued to be the resorts of large numbers of fur-seals for more than 100 years subsequent to their discovery and occupation by the Russians. Almost from the first, regulations restricting the slaughter of seals on land were instituted and carried out by the Russian authorities, and similar measures have been continued in the case of the Pribyloff Islands by the Government of the United States. Though continuous, or nearly so, in their general operation, such regulations have varied much in their nature, and even more with regard to the degree of efficiency with which they have been enforced, and in the latter respects they have at no time been entirely satisfactory for the purposes intended.

Regulations on breeding islands.

37. During the early years of the Russian control, the conditions of seal life were very imperfectly understood, and but little regard was paid to the subject. A rapid diminution in the number of seals frequenting the islands, however, eventually claimed attention, and improvements of various kinds followed. Among the first of the more stringent measures adopted was the restriction of killing to males, which followed from the discovery that a much larger number of males were born than were actually required for service on the

Improvements in regulations.

breeding "rookeries." The killing of females was practically forbidden on the Pribyloff Islands about 1847, and on the Commander Islands probably about the same date.

38. The obvious fact was also recognized that the killing for food alone of large numbers of young seals or "pups," when their skins came to possess no commercial value, was a useless waste of seal life. On the Commander Islands this practice ceased after the year 1874. It was strongly protested against as early as 1875 on the Pribyloff Islands, but was not actually forbidden there until the year 1891.

39. The number of seals annually killed on the Pribyloff Islands during the earlier years of the Russian régime is not accurately known, though fairly exact statistics are extant from the year 1817. Sufficient is known, however, to show that the number killed in various years before this date differed widely, and was in some years excessive. The whole number of seals killed in certain terms of years has been recorded with approximate accuracy. A study of the figures thus available indicates that the average annual killing during the twenty-one years, 1787 to 1806, both inclusive, was about 50,000; during the nine years, from 1807 to 1816, it was approximately, 47,500; and during the years from 1817 to 1866 was 25,000.

Combining the whole period covered by the figures above quoted, and adding the year in which the islands were discovered, we find that the killing on the Pribyloff Islands averaged for this term of eighty-one years about 34,000 annually.

The exact figures, in so far as these can be obtained, are given in a tabular form (§ 771).

40. The excessive killing of seals in certain years of the Russian period of control, together with the nearly promiscuous slaughter (for the first part of this period) of seals of both sexes and all ages, doubtless had much to do with the alarming decrease in seal life which occurred more than once during this period. It is to be noted, however, in this connection, that as both males and females continue to be productive as breeders for a number of years, the effect of excessive killing of any particular class of seals, such as young males or young females, for two or three consecutive years, could only produce its full effect on the breeding "rookeries" after the lapse of four or five years.

It is thus instructive to observe that even to maintain the comparatively low average number killed during the Russian period, it was found absolutely necessary on several occasions to institute periods of rest or "zapooska," in which all killing of seals was prohibited for some years.

41. It is also noteworthy, that for many years previous to the close of the Russian control (probably from about 1812) under a more enlightened system of management than that of the earlier years, the number of seals resorting to the islands was slowly increasing, and that the average number taken annually was gradually raised during these years from a very low figure to about 30,000, without apparently reversing this steady improvement in the numbers resorting to the islands.

42. In 1867, the last year of the Russian tenure, a sudden and great increase in the take of seal-skins was allowed to occur, and the number rose abruptly in this year to about 75,000.

43. In the next year, being the first in which the Pribyloff Islands passed into the control of the United States, an almost promiscuous slaughter occurred, in which it is estimated that over 242,000 seals were killed. In 1869 about 87,000 seals in all were killed, making an average number for each of the three years, 1867 to 1869, of over 130,000, and including large numbers of females.

44. The effect of the irregular and excessive killing on the breeding islands in these three years (long before pelagic sealing had grown to be of any importance) became apparent in two principal ways: (1) the number of seals diminished on the breeding islands to an extent much greater than could be accounted for by the actual number slaughtered, and at about the same date the seals were seen in unprecedented abundance off the British Columbian coast to the southward (facts clearly shown in the diagrams and by the figures elsewhere given for the catch); (2) the number of young produced in the three following years was much less than before, and this, in conjunction with the extraordinarily high limit of 100,000 allowed by law to be taken each year, commencing in 1871, speedily brought about a very marked decrease in males of killable age. Thus, in 1875, notwithstanding the generally optimistic tone maintained in official reports, we find a first significant note of warning, and economy of seal life is inculcated. In the same year the number of skins obtained was considerably reduced in face of a steady market, and before the decline in prices of the two succeeding years, which decline, no doubt, accounts in part for the still smaller number of skins taken in these two years.

Numbers killed on the Pribyloff Islands.

Depletion threatened in Russian times.

Increase in later years of Russian régime.

United States' control.

Effects of excessive slaughter.

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45. It is particularly important to note the effects of the excessive killing of the years 1807-08-09, which, combined with those ensuing from the slaughter of male seals of particular ages in various years to 1876, can be closely followed, chiefly by means of Captain Bryant's intelligent notes on this period, which are elsewhere summarized (§ 810 *et seq.*).

46. It is clearly apparent, and is borne out by the experience of later years, that any severe disturbance of the natural conditions on the breeding islands is at once reflected in changes of habits of the seals and in the irregularities and overlapping of dates in the annual cycle of seal life. Such changes are not prevented by the restriction of killing to males, for an excess in number of males is a part of the natural conditions; and any change in the proportion of males, even if not pushed so far as to become in itself a cause of decrease in numbers born, constitutes a true cause of change in habits, and has a very special effect on the time and place of landing of the females (§ 396 *et seq.*). An excess in number of males, with the consequent competition for females, must, in all probability, further be regarded as a provision for maintaining the strength of the race as a whole by means of natural selection, and in the case of the fur-seal it is not possible to substitute for such provision the artificial selection of breeding males, as is done with animals under the control of man.

47. In 1870 the Pribyloff Islands were leased by the United States to the Alaska Commercial Company, and the number of seals to be killed for skins was fixed empirically at 100,000 annually. This number was admitted at the time by the best authorities to be experimental (§§ 810, 815), and it was provided by Congress that the Secretary of the Treasury might reduce the number allowed for killing if found necessary, for the sake of preserving the seals and with proportionate reduction of rent. Practically, however, and on grounds not publicly explained, it remained unaltered, and became a fixed limit.

48. As early as 1875 and 1876 the number thus established was officially reported as being too great, but it was not reduced or changed during the entire twenty years' term of the lease, except by an alteration made in the relative proportions to be killed on St. Paul and St. George Islands in 1874, when also the time during which the killing for skins might progress was extended.

49. The limit thus fixed did not include seals killed for food at seasons or of ages at which the skins were not merchantable; and, as a result, the total recorded take of seals on the islands in each full year of the lease but three, actually exceeded 100,000. Of these three exceptional years, one falls below 100,000 by a very small amount only, while two are considerably below it. Thus, excluding the first year, the number known to have been killed in each of the nineteen succeeding years of the lease averages 103,147. The official figures for the entire twenty years of the lease further show that, during this term, 129,580 seals, including about 93,000 unweaned young, or "pups," were killed for food or otherwise, of which the skins were not marketable; this waste alone being more than 7 per cent. of the whole number killed.

50. These totals, however, do not include seals lost or destroyed in various ways incidental to the modes practised in driving and killing (§ 704 *et seq.*), nor those taken or killed in raids (§ 727 *et seq.*), or other illegal ways consequent on the imperfect protection of the islands. These together would raise the figures representing the annual killing by a very material though unknown amount. Lieutenant Maynard, in his report written in 1874, estimates the total number of seals killed each year about that date at 112,000. According to Bryant ("Monograph of North American Pinnepeds," p. 410), the total number of seals actually killed upon the islands during the first six years of the United States' control amounted to 110,000 annually.

51. The killing since 1867 of so large a number of seals on the Pribyloff Islands thus constituted a draft on their seal life of a character never before attempted, and more than twice as great as any similar demand of which comparable records have been preserved; the annual average, as above stated, for the previous eighty years, having been about 34,000.

52. The various reports on the condition of the seals resorting to the Pribyloff Islands in different years, and other published information bearing on the same subject, are often contradictory, and sometimes so manifestly inaccurate, particularly in respect to the crucial point of the number of seals, that it is difficult from these alone to form any satisfactory or coherent idea of the actual state of seal life during much of this period. These discrepancies in part arise from the frequent changes which occurred in the personnel of the Government Agents and Company's officers, in consequence of which no single method of ascertaining the condition of the "rookeries," or of estimating the number of seals frequenting the islands, was long maintained; in part from the appearance in several cases of the same individual, now in the capacity of an employé of the Company,

Changes produced by disturbances.

Killing fixed at 100,000.

Reported too high.

Actual killing exceeded 100,000.

Reports afford unsatisfactory data.



and again as a supervising officer of the Government. There are also, unfortunately, certain groups of years during which no serious attempt appears to have been made to record the true condition of the breeding islands. This is particularly the case in years between 1880 and 1889.

Evidence of other kinds.

53. The killing on the islands was, however, by law confined to male seals, and it is, rather from the collateral evidence afforded by allusions to the proportion of virile males to females, together with other incidental references, the meaning of which becomes clear when coupled with local knowledge, than from many of the direct statements published, that a true idea of the actual condition of seal life on the islands during these years can be formed.

Proportions of males to females.

54. The proper proportion in number of virile males to adult females is a matter of importance, and in estimates, made while the rookeries of the Pribyloff Islands were still in excellent condition, there is a satisfactory measure of agreement on this point. Bryant placed this proportion at one male to nine to twelve females, while Elliott states the mean number of females in a harem in 1872-74 at from five to twenty ("Monograph of North American Pinnepede," p. 300; United States' Census Report, p. 26). M. Grebnitzky, Superintendent of the Commander Islands, and a naturalist of pre-eminent experience in the facts of seal life, informed us that when the proportion of females exceeded ten to each mature male, he considered that too many males were being killed, and that each harem should in no case contain more than twenty females. When, therefore, we find the harems in the Pribyloff Islands growing yearly larger, till at the present time they surpass the proportions above mentioned from four to eight times, it is reasonable to conclude that in this change the effect of an excessive slaughter of young males is rendered apparent.

55. Our own and all other local observations on the rookeries during the last few years prove that it is no uncommon event to find a single male seal with a harem numbering from forty to fifty, and even as many as sixty to eighty, females.

Further sources of information.

56. Further evidence with the same meaning is afforded by the increasing number of barren females; by the disturbance and change in the habits of the seals; by the actual dearth of "killable" seals in the vicinity of the nearer rookeries, and the extension of driving (as early as 1879 or 1880) to places which had previously been held in reserve and which had seldom or never been drawn upon in earlier years; by the driving of "killables" from the very margins of the breeding rookeries, which should have remained undisturbed; by the longer time during which the killing required to be continued in later years in order to enable the full quota to be obtained, and by the larger number of undersized and otherwise ineligible animals, including females, ruthlessly driven up in recent years and turned away from the killing grounds in an exhausted and bewildered if not actually injured state. The proportion thus turned away, according to the report of the Special Treasury Agent in 1890, actually rose to 90 per cent. of the whole number driven.

Indicate continued decrease.

57. A critical investigation of the published matter, together with the evidence personally obtained from many sources and an examination of the local details of the rookeries and hauling grounds on the Pribyloff Islands, leads us to believe that there has been a nearly continuous deterioration in the condition of the rookeries and decrease in the number of seals frequenting the islands from the time at which these passed under the control of the United States, and that although this decrease may possibly have been interrupted, or even reversed, in some specially favourable years, it was nevertheless real, and in the main persistent.

Number fixed for killing too high.

58. There can be no doubt that the number fixed by law and maintained for commercial killing on the breeding islands has been much too great, and that the resulting slaughter of more than 103,000 male seals in each year has been more than the total volume of seal life could fairly stand. The sparing of females in a degree prevented, for the time being, the actual depletion of seals on the islands, and this, with the fact that the killing of immature males does not immediately produce its effect on the "rookeries," caused the apparent decrease to be at first gradual. As, however, this effect was of a cumulative character, it could not very long escape observation, and it was observed by the natives, as we personally ascertained from them, to be distinct and serious at least as early as 1882 or 1883, while Colonel Murray, the Government Agent, and Mr. Elliott, the Special Treasury Agent, in their several reports to the Treasury, trace the beginning of the notable diminution back as far as 1879 or 1880. Other evidence of a circumstantial rather than a direct character, elsewhere detailed, enables the earlier effects of the general decrease to be followed still further back (§ 674 *et seq.*).

Not adaptable.

59. It is particularly necessary to note that the adoption of a high fixed number to be killed each year, practically prevented such a system of adaptable control, based on the

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observed facts of each year, as would have enabled the best results to have been obtained and due provision to have been made in time to counteract the effects of unfavourable seasons or of other extraneous conditions affecting seal life. The system adopted was in fact purely artificial, and one not suited to the natural requirements of the case.

(C.)—*Sealing at Sea.*

60. From the circumstances above noted, the maintenance of seal life in the North Pacific was threatened and reduced to a critical state in consequence of the methods adopted on the breeding islands, where the seals were drawn upon annually to, and even beyond, the utmost limits possible apart from depletion, and where, in consequence of the enlarged season of commercial killing and the allowance of "food killing" during the entire time in which any seals resorted to the islands, these animals had practically no undisturbed season of respite. At this time a new factor also tending towards decrease appeared in the form of "pelagic sealing," a phrase applied specially to the hunting of the fur-seals on the open sea, schooners or other small vessels being employed as a base of operations.

Pelagic sealing a further draft on seal life.

61. This particular method of sealing originated as a natural outgrowth from that practised from time immemorial by the natives of the coast of British Columbia, and parts of South-eastern Alaska and the State of Washington. In this industry these natives have from the first been largely interested, though it has been taken up, fostered, and directed by the Whites. It was thus in its mode of origin a perfectly natural and legitimate development of the native modes of hunting (§ 571 *et seq.*).

Its origin and development.

62. Pelagic sealing, as thus by degrees expanded into an important industry, was an essentially novel method of taking the fur-seal consequent on the peculiar habits and maritime genius of the native peoples of the west coast of North America, and particularly of those in British Columbia, and the vicinity of Cape Flattery in the adjacent State of Washington. It was from the first, and still is, an important source of revenue to a native population, numbering many thousands, as well as a help to their advancement in civilization.

63. Under the circumstances above described as prevailing on the breeding islands, the growth of this new industry, however, meant a further acceleration of the rate of diminution of the fur-seal of the North Pacific as a whole.

64. The hunting of the fur-seal by the native peoples in their own canoes, and using the shore as a base of operations, had been practised from times which are prehistoric for the West Coast; but the total number of seals thus taken (save in certain exceptional years) was always small, and it was not till about the year 1869 that the first practical essays were made in taking the seals at sea with the assistance of schooners provided with Indian hunting crews and canoes. This method of hunting was initiated almost simultaneously, about the time mentioned, in British Columbia and in the adjacent State of Washington.

Independent native hunting.

65. It may here be particularly noted that the industry thus developed in consequence of peculiar local conditions, had never elsewhere appeared as a factor of commercial importance, and that in so far as we have been able to discover by inquiries specially directed to this point, no vessels carrying hunters for the purpose of taking seals at large on the sea-surface had ever before frequented any seas anywhere.

Peculiar character of pelagic sealing.

The vessels sailing from New England and from some British ports, which formerly, in considerable numbers, made sealing voyages to the Southern Hemisphere (§ 834 *et seq.*), slaughtered the seals there only on shore and at the breeding places, and this without any respect for the rights of territorial dominion or property over the islands they frequented. The "sealing fleet" employed in the Southern Hemisphere has, therefore, at no time been of the same character with that engaged in pelagic sealing in the North Pacific.

66. For several years subsequent to its inception, pelagic sealing remained in the hands of a few persons, and was to so great an extent a trade secret that little information can now be obtained respecting it. This is particularly the case in regard to the sealing-vessels sailing from United States' ports, some of which, although interested in pelagic sealing proper, are known to have obtained many skins by illegal raiding on the breeding islands from the earliest years of the control of these islands by the United States.

Its growth.

67. From four schooners in 1878 and 1879 (about which time the new development of sealing first began to attract some attention), the sealing fleet owned in British Columbia gradually increased, till in 1889 twenty-three, in 1890 twenty-nine, and in

1891 fifty vessels were employed in it. So far as known, the first of these vessels to enter Behring Sea for purposes of sealing was the "Mary Ellen," in 1884. In 1885 two of the British Columbian vessels continued their voyage into Behring Sea, and in the following year the entire fleet, then numbering eighteen vessels (excepting two which were wrecked), did so.

The fifty vessels employed in 1891 were provided with 370 boats and canoes, and were manned by 1,083 Whites and Indians.

68. The number of skins thus obtained grew in proportions corresponding to the growth of the fleet from 35,310 in 1889 to 43,315 in 1890, and to 49,615 in 1891. Only a portion of these catches were, however, made within Behring Sea, and of this portion an increasing percentage was obtained in the western region of that sea.

First pelagic sealing in Behring's Sea.

69. At least one vessel registered in the United States is known to have entered Behring Sea for legitimate pelagic sealing as early as 1881, and, in this particular extension of the industry, the British Columbian sealers cannot therefore claim to be the pioneers.

70. The United States have for many years past strenuously endeavoured to build up native maritime industry. In this pelagic sealing they undoubtedly have on the Pacific coast a useful nursery for seamen. The industry of whaling has shown a serious falling-off in recent years, but that of sealing has exhibited a marked and steady increase. In 1885 there were not ten vessels so employed. In 1891 the sealing fleet owned in the United States numbered more than forty vessels, and the value of the catch is reported to have exceeded 30,000.

(D).—Additional points connected with Sealing at Sea or on Shore.

Decrease observed on Pribyloff Islands.

71. The decrease in the number of seals resorting to the Pribyloff Islands is reported to have been more rapid since 1886 or 1887, and this has been attributed to the growth of pelagic sealing. At the same time, the chief complaint has been that a great proportion of the seals taken at sea are females, whereas the most noticeable decrease observed on the islands is in males. While, therefore, it may be admitted that pelagic sealing must be held accountable for its share in the total effect, the above-mentioned incompatible complaints cannot be received without question. When a decrease became apparent on the islands, prudence should have dictated some curtailment of the annual slaughter there in correspondence with the effect of the new factor tending towards diminution.

Measures practised to obtain quotas.

72. No such curtailment, however, occurred. The Company holding the lease of these islands on fixed terms were not interfered with, but continued to take their full legal quota of skins without regard to the risk to seal life as a whole. Not only so, but instead of reducing the catch, the standard of weight of skins taken on the islands was steadily lowered so as to include a younger class of seals under the designation of "killables." Instead of skins weighing 7 or 8 lbs., those of 5 lbs. and (as we have ascertained on excellent authority) even of 4 lbs. and of 3½ lbs. have been taken and were accepted by the Company as early as 1889.

This is in marked contrast with the conduct of affairs on the Commander Islands, where no seals yielding skins below 7 lbs. in weight have been allowed to be killed for some years, and where in 1891, in order to afford a factor of safety, the limiting weight of skins was raised to 8 lbs.

73. The Company holding the lease of the Pribyloff Islands had, of course, its own interests in view, and the period of its lease was drawing to a close; but it must be added that no explanation has been offered by the Government Agents in charge of the islands of the principles under which they were guided to allow this lowering of standards, with the concomitant encroachment on the limits of breeding rookeries, and the extension of the area of driving to places hitherto held in reserve.

Waste of seal life.

74. Summarizing the causes of waste of seal life involved in the methods actually practised in killing seals on the Pribyloff Islands (§ 659 *et seq.*), we find the following to be the most serious:—

(i.) The killing of unweaned "pups" and of "stagey" seals for "food," which together reached an average amount equalling 7 per cent. of the total annual catch. The skins of such seals are unmerchandise, and their slaughter is now admitted to be unnecessary, but it has been allowed to continue till the year 1891.

(ii.) Accidental killing of seals, due to over-driving, and other violence inseparable from the mode of "driving" and clubbing the seals. These evils had been fully dealt with by the United States' Special Agent in his report for 1890.

(iii.) "Stampedes" upon the breeding rookeries, caused by efforts to secure "drives" too close to their borders, or to carelessness of various kinds. These are especially destructive to "pups," which are trampled to death by the older seals.

(iv.) Effects of disturbance on the breeding rookeries, and of distress and fright resulting from "driving," which, it is believed, causes many mothers with young, as well as other classes of seals, to leave the breeding islands prematurely.

(v.) Surreptitious killing of seals by unauthorized persons on the islands. This may not have reached great dimensions, but is known to have occurred, and no statistics can be obtained respecting it.

(vi.) Raids upon the rookeries, rendered possible by the laxity of control and supervision, which prove most destructive to all classes of seals engaged in breeding, and especially to nursing mothers and "pups."

75. The official statistics show, besides the seals killed of which the skins were accepted for shipment, only those killed for "food," and of which the skins were rejected. All the incidental causes of loss above noted are unaccounted for, and the actual percentage of wastage in securing the annual quota of skins since the Alaska purchase thus remains indeterminate, but must have been great. It is believed to have exceeded 10 per cent., and may well have reached 20 per cent. on the whole number of skins accepted.

76. It is thus clear that the slaughter of seals upon the breeding islands is in itself an essentially critical and dangerous method of killing, which, although established by long custom, can scarcely be otherwise justified. No regulations which have heretofore been devised have even theoretically removed such dangers. Till quite recently, altogether insufficient care has been exercised in carrying out existing regulations; and the facts above referred to show clearly in what way, notwithstanding stated rules, and, in the absence of thoroughly independent and trained supervision, such rules may be so interpreted or strained as to permit the most serious damage to seal life as a whole.

77. Against the methods of pelagic sealing two principal lines of criticism and of attack have been developed, and both have been so persistently urged in various ways, that they appear to have achieved a degree of recognition by the uninformed altogether unwarranted by the facts, in so far as we have been able to ascertain them, though in both there is an underlying measure of truth. It is stated (1) that almost the entire pelagic catch consists of females; (2) that a very large proportion of the seals actually killed at sea are lost.

78. It is undoubtedly true that a considerable proportion of the seals taken at sea are females, as all seals of suitable size are killed without discrimination of sex. This is, in part, however, a direct corollary of the extent and methods of killing upon the breeding islands, where, practically, in late years, all males reaching the shore have been legally killable, and where, as a matter of fact, nearly all the young males which land have been persistently killed for some years, with the necessary result of leaving fewer killable males in proportion to females to be taken at sea.

79. The precise bearings on the industry as a whole of the character and composition of the pelagic catch made along various parts of the coast and in Behring Sea are discussed at greater length elsewhere (§ 633 *et seq.*), but it may be here noted that the great surplus of females, resulting from the practice just alluded to, has certainly rendered the killing of considerable numbers of these at sea less harmful in its effect than it might otherwise have been.

80. To assume that the killing of animals of the female sex is in itself reprehensible or inhuman, is to make an assumption affecting all cases where animals are preserved or domesticated by man. Most civilized nations, in accordance with the dictates of humanity as well as those of self-interest, make legislative provision for the protection of wild animals during the necessary periods of bringing forth and of rearing their young; but the killing of females is universally recognized as permissible if only to preserve the normal proportion of the sexes. This is the case in all instances of game preservation and stock raising, and in the particular example of the fur-seal, it is numerically demonstrable that, in maintaining a constant total of seals, a certain proportion of females should be annually available for killing. The killing of gravid females must, however, be deprecated as specifically injurious, and in any measures proposed for the regulation of seal hunting should receive special attention.

81. Respecting the number of seals lost after being killed at sea, a large mass of evidence has been accumulated, not alone directly from the pelagic sealers proper, but also from independent native hunters, both Indian and Aleut, and from other sources of a disinterested character. The result of this goes to show that the asserted wastefulness of the methods employed is gravely exaggerated by common report, and that there has

Difficulty of  
regulating  
shore killing.

Allegations  
against  
pelagic  
sealing.

Killing of  
females.

Percentage  
lost of seals  
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been marked improvement in this respect due to the increasing experience of the hunters (§ 613 *et seq.*).

82. Against this expert testimony we find scarcely more than supposititious statements quoted and requoted, which, when traced back to their sources, are discovered to rest either on very limited experience or on very doubtful authority; in some of which the number of seals fired at is hopelessly confused with the number killed, while in others it is even assumed that the number of rounds of ammunition disposed of represents the number of seals killed. We have thought it well to follow up all the statements upon which these allegations and hypothetical calculations are based, and practically all of these are summarised elsewhere (§ 614), and call for no further comment here. It is certain that inexperienced hunters miss many seals, and lose a considerable proportion of those hit, but such purely negative results cannot rightly be assumed to have any bearing on the number lost by skilled hunters, such as constitute the crews of the successful sealers.

Mortality of young seals.

83. More recently a further accusation has been made against the practice of pelagic sealing, to the effect that large numbers of females, with young upon the breeding islands, are killed at sea, and that in consequence many of the young die. The consideration of this point involves so many facts of seal life that it cannot be treated at length here; but it may be mentioned that, when upon the Pribyloff Islands in 1891, we ourselves were the first to note and to draw attention to the occurrence of a considerable number of dead "pups" in certain parts of the rookery grounds. Various explanations of this fact were offered by the residents of the islands, both Whites and Aleuts, but in no instance was the killing of the mothers at sea at first voluntarily advanced by them as a principal cause. The actual circumstances, closely investigated by us, were, indeed, such as to call for some other explanation, as elsewhere detailed (§ 344 *et seq.*). It is, nevertheless, certain that mothers are sometimes killed at sea, especially in proximity to the shore fronts, and it is chiefly upon this ground a radius of protection about the breeding islands, extending beyond the ordinary limit of territorial jurisdiction, is advocated as a measure of material benefit.

Effect of high prices.

84. In addition to the circumstances obtaining on the breeding islands, and the inception and growth of pelagic sealing, the high prices ruling for skins during the past few years have to a considerable extent stimulated the hunting of seals by natives all along the coast. They have also tended to incite, on the part of the more lawless sealers, raids upon the shores of the breeding islands themselves, many of which have proved successful in consequence of the wholly inadequate protection which has heretofore been accorded to these shores; but, so far as we have been able to ascertain, no schooners sailing from British Columbia under the British flag have even been detected as participants in such raids on the Pribyloff Islands.

#### (E.)—Former and present Condition of the Industry.

Seals becoming more pelagic.

85. Perhaps the most notable result of the above-mentioned co-operating causes, embracing the disturbance of conditions on the breeding islands consequent on close and persistent driving and great paucity of males, on raids made upon the shores of the islands, and on hunting at sea during the northward migration of the seals, has been to render that animal even more than before strictly pelagic in habit.

86. Seals not actually engaged in breeding, including young seals of both sexes and barren or unimpregnated, though mature females, have either not landed upon the islands, or have remained there for but a short time; and thus the aggregate number to be seen on shore at any one time has of late years become notably reduced.

More than ever found at sea.

87. At the same time, the general consensus of the statements obtained from persons occupied in pelagic sealing goes to show that there has been no similar decrease in the number of seals found at sea, but rather a possible increase during the corresponding years. The evidence of a general kind to this effect does not stand alone, but is fully confirmed by an analysis of the annual catch of the British Columbian sealing fleet for the past few years, as exhibited in the subjoined table, in which the average number of skins obtained to each canoe or boat, and to each man employed in the pelagic sealing industry is given:—

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Year.	Number of Seals per Canoe or Boat.	Number of Seals per Man.
1887 .. .. .	104	56
1888 .. .. .	143	55
1889 .. .. .	156	58
1890 .. .. .	180	59
1891 .. .. .	134	46

Weather and other obvious circumstances, including those connected with the uncertain status of the sealers in respect to seizure, have of course affected the figures for the various years to a considerable extent; but speaking generally, the results show a remarkable uniformity, and taking into consideration the measures adopted in 1891 under the *modus vivendi*, the results of pelagic sealing in this year are particularly noteworthy and to the point, seeing that of the fifty schooners employed, nearly all were turned back before the expiry of the usual hunting season.

88. At sea, however, it is generally acknowledged that the seals are becoming from year to year more and more difficult of approach and capture, facts specially noted by the native independent hunters, because specially affecting their catch by reason of the greater distance from shore to which it is now necessary to go in search of seals.

89. While, therefore, it is certain that, in recent years, the number of seals to be found upon the Pribiloff Islands has very considerably decreased, it is uncertain to what extent this particular decrease has been compensated for, or is counterbalanced by the greater dispersion of seals at sea. Under all the circumstances, it must be considered as a remarkable evidence of the resistance of seal life to unfavourable treatment, that the apparent decrease upon the islands has not been even greater.

90. Respecting the actual amount of this decrease upon the Pribiloff Islands, it is difficult to arrive at anything like precise conclusions, in consequence of the lack of trustworthy evidence of a comparable nature for the various years. A study of the available published data, made in connection with a personal examination of the various breeding grounds themselves, has convinced us, however, that some, if not all, the estimates of the total number of seals made in the earlier years of the term of the Alaska Commercial Company have been greatly exaggerated, while reports made in 1890, however accurate in themselves, have, because compared with these overdrawn estimates, exaggerated the amount of the decrease.

91. The alarming forecasts as to the condition of the breeding islands based upon reports made in 1890, have, fortunately, not been verified by the facts in 1891, as personally observed by us. If, indeed, the correctness of some of these reports for 1890 be admitted, the rookeries must have materially improved in condition in 1891, while all the evidence collected indicates that they were, in 1891, in at least as good condition as they were in the preceding year.

92. On the Commander Islands, where the breeding rookeries have undoubtedly been more carefully and systematically supervised, the number of seals seen has gradually increased for many years, and has in late years apparently held its own up to the present year, in which a decrease has been noted. There is reason to believe, however, that the increase ceased in 1889 or 1890, and was replaced by a deficit in 1891 in consequence of the number of skins taken in the two foregoing years, which greatly exceeded the average, presumably because these years were the last of the Alaska Commercial Company's lease of these islands. Reasonable proof is thus again afforded that the sum total of seal life on the breeding islands is affected most directly by excessive killing on shore.

93. In nearly all that has heretofore been written on the fur-seal of the North Pacific, attention has been too narrowly confined to such observations as could be made upon the breeding islands, and the fact that the greater part of the life of the seals is spent, not upon these islands, but at large on the ocean, has been to a great extent lost sight of. This naturally happened from the circumstance that those in any way interested in the seals, till the beginning of pelagic sealing, remained upon the breeding islands, and knew merely what could be ascertained there. The data now obtained at sea, for the first time enables the migration routes and the winter as well as the summer habitat of the fur-seal to be clearly understood, and it becomes evident that, in considering the condition of seal life as a whole, we must include, not only the observations made on the islands, but also the complementary, and, in part, counter-vailing, facts noted at sea,

More wary than formerly.

Diminution on Pribiloff Islands.

Diminution on Commander Islands.

Facts at sea and a shore complementary.

General conclusions.

94. A review in detail of all the available facts, most of which have been alluded to or outlined in the foregoing part of this summary, leads us to believe that there has been, in the main, a gradual reduction in the total volume of seal life in the North Pacific, dating back to a period approximately coincident with the excessive and irregular killing on the Pribyloff Islands in 1867 to 1869, but that this reduction in total volume has not in late years been nearly so rapid as the observed decrease in numbers upon the Pribyloff breeding islands in the corresponding years. Such a review suggests that if suitable and moderate regulations be now adopted and carried out, the decrease may be arrested, and no danger of the proximate depletion of the fur-seal or destruction of the fur-seal fishery need be anticipated

Possible result.

95. If, however, the inflexible and heavy draft on seal life in the past should be maintained on the breeding islands, while pelagic sealing also continues to increase at the present ratio, it is practically certain that the whole number of seals must, in the course of a few years, become further reduced to such a degree as to cause the industries based upon their capture to lose all importance from a commercial point of view. The continued undue disturbance of the seals must likewise tend to cause them to abandon their present haunts.

Industrial considerations.

96. Apart, therefore, from such merely ethical considerations as have from time to time been advanced in favour of the preservation of the fur-seal, but which appear to have no special bearing upon this more than on any other animal in a state of nature, the intrinsic value of the fur of the seals together with the material interests involved in the taking and the dressing of the skins, seem to call for such regulations as may result in the maintenance of the fishery.

97. A point, however, of grave but unrecognized importance, is the direct influence on the sealing industry of the market for seal-skins. It is necessary to remember that the requirements of this market may from time to time altogether alter the regulations necessary. In the Atlantic hair-seal fishery, for instance, the international regulations became subject to the new requirements of a process by which the hair of newly-born seals became commercially valuable. Again, the actual price of the skins at any particular period depends largely upon the uncertain requirements of fashion; and it is known that the Alaska Commercial Company, recognizing this fact when lessees of the Pribyloff Islands, by various more or less direct methods, did much to popularize and increase the market value of the seal-skins, of which in the earlier years of their lease they held a practical monopoly.

98. To render this point perfectly clear, it is only necessary to quote the following expressions from the report of the Congressional Committee of 1876 on the Alaska Commercial Company:—"Every art and appliance and much money have been expended in the cultivation of a taste for seal-skin furs, which the Alaska Commercial Company had almost the exclusive control over. . . . By placing on sale a larger number of skins than was required the prices obtained would be lessened, and the popular estimate of this luxury depreciated, so that its present value would be endangered and a change of fashion probably effected, diverting it to some other fur, which might ruin the trade altogether."

99. The high price obtainable for the skins in recent years has, however, been in itself a principal cause of the increased activity in killing and hunting which now appears to threaten the industry. If, for any reason, the price of seal-skins should fall below, or even nearly to, the amount of the Government tax (10 dol. 25 c.) payable on skins under the new lease of the Pribyloff Islands, then, on the one hand, the lessees would no longer find it remunerative to continue taking seals on shore, and, on the other, the profits of sealing at sea would become so much reduced as to discourage further enterprise in this direction.

Regulations desirable.

100. It would thus appear that, as matters stand, a most influential factor in respect to the fate of the fur-seal fishery is one altogether removed from natural facts of seal life, and that either the demand for seal-skins as a whole, or the special size or kind of skins called for by the market, may at any time be changed in such a manner as to introduce new determining factors in the industry. It is therefore evident that, in a matter of such considerable importance, some additional and possibly counteracting system of regulation of an intelligent kind is desirable; that this should include a consideration of the industrial features of the case as well as of those relating to the fur-seal as an animal, and should be susceptible of constant adaptation to the changing requirements of the problem.

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II.—CONSIDERATIONS RELATING TO THE BASIS UPON WHICH PRECAUTIONS MAY BE DEVISED FOR THE PRESERVATION OF THE FUR-SEAL.

101. The case to be met in the North Pacific is outlined in the foregoing paragraphs, and is treated in greater detail in Part II of this Report. Broadly stated, it is that too many seals are or may be killed, that there are too few males on the breeding islands; and that the seals, being so continually harassed and disturbed, may take to other breeding and feeding places, or largely diminish in numbers, and in either case endanger and damage the existing sealing industries. The case to be met.

(A.)—Interests involved.

102. In regard to interests, the sealing industry is naturally divided into what may, for the sake of brevity, be termed the shore and ocean interests respectively. The rights in either case are indisputable, and the possessors of one class of these rights will not willingly allow them to be curtailed or done away with for the mere purpose of enhancing the value of the rights of their commercial rivals. Thus the only basis of settlement which is likely to be satisfactory and permanent is that of mutual concession, by means of reciprocal and equivalent curtailments of right, in so far as may be necessary for the preservation of the fur-seal. Interests at sea and ashore.

103. It may be added, that the line of division between the shore and ocean interests is not an international one, and that the question of compromise as between the two industries cannot, in consequence, be regarded strictly from an international point of view. If we may judge from the respective number of vessels employed, the interest of citizens of the United States in pelagic sealing is at the present time approaching to an equality with that of Canada; while Germany and Japan have been or are represented in sealing at sea, and other flags may at any time appear. The shore rights, again, are at present chiefly divided between the United States and Russia, although Japan owns some smaller resorts of the fur-seal.

104. Confining ourselves more strictly to the eastern part of the North Pacific, to which the present discussion directly relates, a comparison may be instituted between the amount of capital employed in the prosecution of sealing on shore and at sea, and of the other interests involved. Capital employed.

105. At the present time the actual value of the buildings, plant, and equipment of the North American Commercial Company, on the Islands of St. Paul and St. George, is estimated not to exceed 130,000 dollars (26,000%). Adding to this a further sum to cover other items of capital less directly connected with the islands themselves, the entire invested capital would probably be over-stated at 200,000 dollars (40,000%); and it is not to be forgotten that the Companies leasing the seal islands habitually do a profitable retail trade in supplies, &c., with the natives and others in addition to acquiring the seal-skins. On the Pribiloff Islands.

106. The estimated aggregate value of the British Columbian vessels employed in sealing, with their equipment, as they sailed in 1891, was 359,000 dollars (72,000%). It has been asserted that only a portion of this total, corresponding with the length of the period in each year in which these vessels are actually engaged in sealing, should be taken as the capital invested. This statement is, however, as a matter of fact, incorrect. The sealing vessels are seldom used in or fitted for other employment, and nearly all of them remain laid up in harbour between the dates of the closing and opening of the sealing season—that is, between October and January, or February. In the Canadian vessels.

107. Adding to the above amount an estimate of the value of the United States' sealing fleet in the same year, which, it has been ascertained, exceeds 250,000 dollars (50,000%), and may probably amount to 300,000 dollars (60,000%), an aggregate amount of capital of about 650,000 dollars (130,000%) is represented by the combined fleets. Total.

In the foregoing estimates, no mention is made of the revenue accruing to the Government of the United States from the lease of the Pribiloff Islands to the sealing Company.

108. It is difficult to present a numerically accurate statement showing the magnitude of the several interests as represented by the number of skins taken on the Pribiloff Islands and at sea respectively. During the past few years, the statistics of the Canadian pelagic catch have been fully and carefully recorded; but of the catches made by the numerous vessels sailing from ports in the United States, no trustworthy or complete official or trade statistics appear to exist. Certain approximate figures for the total pelagic catch have, however, been obtained, the difference between which and those



representing the Canadian pelagic catch, compared with other incomplete statistics, may be roughly assumed as showing the catch by United States' vessels. These totals include, however, in some cases, skins taken on seizure from both Canadian and United States' vessels. The statement thus presented may be considered as at least sufficiently accurate to indicate the relative importance and growth of the shore and sea industries respectively. The catches made by United States' vessels are comparatively small in proportion to the number of vessels employed, chiefly because of the lack of skilled hunters.

109. These statistics may be tabulated as follows:—

Year.	Skins taken on the Pribyloff Islands.	Skins taken at sea by Canadian Vessels.	Approximate totals of Skins taken at sea (records of catch by United States' vessels being fragmentary).	Remarks.
1886	85,455	24,344	36,000	First seizures by United States' Government, 5 Three Canadian and one United States' vessel seized.
1887	90,770	20,266	37,500	Six Canadian and ten United States' vessels seized.
1888	86,995	24,329	(?)	No seizures made.
1889	78,623	27,868	42,870	Four Canadian and two United States' vessels seized.
1890	20,945	39,547	51,560	No seizures made. Killing stopped on Pribyloff Islands, at figures stated, by United States' Government Agent.
1891	12,070	49,615	68,000	Vessels turned back from Behring Sea before completion of voyages. Killing on Pribyloff Islands, limited to 7,500 under <i>modus vivendi</i> , actually reached 12,071.

110. In explanation of the above table, it may be added: (1) That the figures given for the Pribyloff Islands are those of the skins actually accepted for shipment in each year by the lessees, and are therefore neither identical with those representing the shipments made yearly, nor with those elsewhere given for the whole number of seals killed in each year; (2) that the relatively small coast catch made by the Indians in their own canoes and without the aid of sealing-vessels is not included in the pelagic catch; (3) that the pelagic catch as given includes skins taken both outside and within Behring Sea, and both in the eastern and western parts of that sea, as well as such skins as were obtained by raids made on shore on the breeding islands.

Number of men employed.

111. The number of men employed in the British Columbian sealing fleet alone, in this year (1891), was 1,083, in the United States' fleet about 750, making a total of about 1,830 persons earning their livelihood by this means, of whom about 1,430 are White and 400 Indians. In the shore sealing upon the Pribyloff Islands the number of men employed is about 10 Whites and 80 "natives."

Native interests.

112. Upon the Pribyloff Islands the whole "native" population deriving its support from the industry of killing the fur-seal numbers under 300. Much has been said as to the necessity of providing for the support of these particular "natives." It is not so generally recognized, however, that in British Columbia probably 1,500 or 2,000 natives depend upon the earnings of about 370 Indian hunters employed in the sealing fleet. The earnings of these hunters thus represent much of the support of a considerable part of the entire native population of the west coast of Vancouver Island.

Native in independent sealing.

113. The direct interest in sealing of the Indian tribes of British Columbia, parts of Alaska, and the State of Washington is, moreover, not confined to their share in pelagic sealing proper. The results of independent hunting, carried on for the most part in canoes from the shore by men who do not ship in sealing-vessels, is, from the point of view of the Indians themselves, not inconsiderable. It amounts for the British Columbian coast alone (\$ 569) to an annual money value of about 30,000 dollars (6,000*l.*), besides a considerable food value represented by the seal flesh and fat.

This independent native hunting is undoubtedly a primitive vested interest of the coast tribes, and its character in this respect is strengthened by the fact, now made clear, that the winter home of the fur-seal lies along, and is adjacent to, the part of the coast which these seal-hunting tribes inhabit.

114. In regard, then, to the interests likely to be affected by any measures of preservation, it is evident that much the largest amount of invested capital is that engaged in pelagic sealing, while the most important native interest involved is that of the Indians who take seals either along the coast or as engaged hunters in the schooners. On the islands there is far less capital employed, and the number of natives earning a livelihood is relatively small. Summary.

(B.)—Principles involved.

115. Passing from the interests to a more special consideration of the principles involved in the protection of the fur-seal, it is in the first place clear, in view of the habits and range of migration of this animal, that unlimited killing, whether practised on shore or at sea, must ultimately result in destroying the prosperity of the sealing industry as a whole, and, therefore, that any measure of protection, to be effective, must include both areas. Protection both on shore and at sea.

116. It is, moreover, equally clear, from the known facts, that efficient protection is much more easily afforded on the breeding islands than at sea. The control of the number of seals killed on shore might easily be made absolute, and, as the area of the breeding islands is small, it should not be difficult to completely safeguard these from raiding by outsiders and from other illegal acts. Easier on shore.

117. The danger to seal life on the breeding islands is, on the other hand, and for reasons of a similar kind, particularly great. It is chiefly by the persistent killing of all males between certain ages upon the Pribyloff Islands that the sealing industry is immediately threatened. To killing carried out on shore at the breeding season the depletion of the fur-seals of the Southern Hemisphere is entirely due, and, as we have seen, as an effect of such killing, long before the inception of pelagic sealing, the rookeries of the Pribyloff Islands were more than once brought to the verge of depletion. Greater danger of depletion on shore.

It is certain that by excessive killing on the breeding islands, to whatever class of seals directed, the sealing industry as a whole might without difficulty be ruined.

118. In sealing at sea the conditions are categorically different, for it is evident that by reason of the very method of hunting the profits must decrease, other things being equal, in a ratio much greater than that of any decrease in the number of seals, and that there is therefore inherent an automatic principle of regulation sufficient to prevent the possible destruction of the industry if practised only at sea. The growth of pelagic sealing proper, ever though so recent in its origin, already begins to contribute experience in support of this view. The seals when at sea occupy a given area of surface, and there is thus a natural limit to the number of boats or canoes which can work that area without interfering to a certain extent with each other's success. The increasing wariness of the seal has already been alluded to, and it is also to be borne in mind that sealing at sea can only be carried on in calm weather, seals obtaining absolute "rest" while stormy weather prevails. Less danger at sea.

119. It is, therefore, abundantly evident, if we judge by actual experience, that a control of seal life beginning and ending with protection at sea, either partial or absolute, can do no more than palliate, and certainly cannot materially lessen, the danger to seal life as a whole, unless such control be devised and adopted in close co-operation with agreed-upon equivalent measures on the breeding islands. Protection sea alone quite inadequate.

120. Whether from the point of view of expediency or from that of justice, this must be the dominant principle of any regulation, and while it is improbable that any scheme of measures would be seriously proposed which neglects this principle, it cannot be too plainly stated that if the attempt is made to regulate the killing of seals on shore or at sea without the provision of concurrent restrictions upon the other method, the result at best would be a curtailment of slaughter in one direction, the door being left open to a more than equivalent slaughter in the other, and no security being obtained. It therefore follows that, as one class of restrictions must be applied within jurisdictional limits, and the other requires regulations applicable to all comers upon the high seas, the subject of measures must be considered as one of conventional agreement, concession, or bargain as between the Powers interested. It will also be remembered, that the primary plea for such an arrangement has been that advanced in their own interest by the possessors of the breeding islands; but it is believed, on the other hand, that had no such plea been made, the interests of the pelagic sealers would, in the natural course of events, have led them to press for a better protection of the breeding places of the seals ashore, in the interests of their own branch of the industry.

Suggested prohibition on shore.

121. It has been pointed out, and we believe it to be probable, that if all killing of seals were prohibited on the breeding islands, and these were strictly protected and safeguarded against encroachment of any kind, sealing at sea might be indefinitely continued without any notable diminution, in consequence of the self-regulative tendency of this industry.

New methods of control necessary.

122. The natural development of pelagic methods of sealing has rendered it now no longer possible to preserve the seals merely by restricting the catch on the breeding islands, and the old methods of utilizing the seals on these islands, and of affording them a measure of protection there during the season at which they come to land for breeding purposes, have become in their nature ineffective and inappropriate, especially in view of the sea sealing, which, at the time these methods were adopted, was practically unknown. The added knowledge of the fur-seal now gained renders it further necessary to recognize it as an essentially pelagic animal, which, at a certain season of each year, resorts to the land. Thus, the older and cruder methods of regulation have become unsound and in large measure useless, and the new conditions which have arisen require to be faced, if it is desired to obviate all danger of commercial extermination.

Various rights involved.

123. Besides the general right of all to hunt and take the fur-seal on the high seas, there are, however, some special interests in such hunting, of a prescriptive kind, arising from use and immemorial custom, such as those of the "natives" of the Pribiloff Islands, and of the inhabitants of the Aleutian Islands, of South-eastern Alaska, of the coast of British Columbia, and of the State of Washington. There are also rights dependent on local position, such as those of the Governments possessing the breeding islands and those controlling the territorial waters in or adjacent to which the seals spend the winter half of the year. Such rights do not, however, depend on position only, but also on the fact that the seals necessarily derive their sustenance from the fish which frequent these waters, which, if not thus consumed by the seals, would be available for capture by the people of the adjacent coasts. The rights of this kind which flow from the possession of the breeding islands are well known and generally acknowledged, but those of a similar nature resulting from the situation of the winter home of the seal along the coast of British Columbia have not till lately been fully appreciated.

Prohibition on Pribiloffs.

124. Referring more particularly to the Pribiloff Islands, it must perhaps be assumed that no arrangement would be entertained which would throw the cost of the setting apart of these islands as breeding grounds on the United States' Government, together with that of the support of some 300 natives.

It may be noted, however, that some such arrangement would offer perhaps the best and simplest solution of the present conflict of interests, for the citizens of the United States would still possess equal rights with all others to take seals at sea, and in consequence of the proximity of their territory to the sealing grounds, they would probably become the principal beneficiaries.

Needs no international regulations.

125. Any such disinterested protection of breeding islands either by Russia or the United States would possess the extreme simplicity of being entirely under the control of a single Government, whereas in every other project it becomes necessary to face the far more difficult problem of international agreement to some code of regulations involving an accompanying curtailment of rights. In other words, any such arrangement must be viewed either as a concession of certain rights on the high seas, or a concession of peculiar rights devolving from territorial possession of the breeding islands of the seal, made in each case for the purpose of inducing equivalent concessions on the other side in the common interest.

The ruling principle of protection.

126. For practical purposes, the main consideration is that any scheme of measures of protection shall absolutely control, so far as may be necessary, any and every method of taking seals; and from industrial considerations, and in order properly to determine on reciprocal concessions, it is necessary to assume some ruling principle in accordance with which these shall be governed, and such may be found, in a rough way, in postulating a parity of interests as between pelagic sealing and sealing on the breeding islands. This would involve the idea that any regulation of the fishery, as a whole, should be so framed as to afford as nearly as possible an equal share in benefit or proceeds to these two interests.

Rights at sea and on breeding islands compared.

127. Inasmuch as the United States and Russia, with in a minor degree Japan, alone have direct interests in the breeding islands, while all other nations share with them the undoubted right of sealing on the high seas, it may at first sight appear inequitable that any basis of arrangement giving so large a share to the possessors of the breeding islands and involving so general a curtailment of common rights should be contemplated.

128. The exceptionally favourable position which the United States and Russia would

hold under such a basis of arrangement is, however, to some extent justified by the fact, that upon these Governments would devolve the expense and responsibility of efficiently controlling and guarding the breeding islands of the seals. It may be noted that the present time is one specially favourable to some such arrangement, because Great Britain and the United States alone possess considerable sealing fleets, and it is probable that any regulations agreed upon by these two Governments (especially if also approved by Russia) would meet with the ready concurrence of other Powers at present but slightly interested, or with merely a potential concern in the matter.

129. In dealing with specific measures of preservation, it may be well to bear in mind that more or less effective steps have already been taken for this purpose in other parts of the world besides the Pribyloff and Commander Islands. It is wholly in accordance with long experience in game protection in the United Kingdom that the tendency has arisen in various parts of the British Empire to protect the fur-seal. In Australasia, in South Africa, and in the Falkland Islands, regulations have been adopted from time to time with this object. Further precedents of a specially appropriate character are found in the regulations of the Newfoundland Government for the control of the great hair-seal fishery, and in the Jan-Mayen International Agreement, whereby a certain area of the North Atlantic, defined by lines of latitude and longitude, has been subjected to specific rules as to sealing since 1875, these rules affecting the control of vessels, their captains, and crews.

130. The principal modes of protection of a practical character which have been suggested for the North Pacific by various authorities may be classed under the following heads:—

- (a.) Time. Limit in period of sealing.
- (b.) Number. Limit in number of seals taken.
- (c.) Area. Limit in regions over which sealing may be carried on.
- (d.) Methods. Improvement in methods of conducting sealing.

131. Limitations of time have been placed most prominently in the list of remedies; and, indeed, "close seasons" have been popularly regarded as the main if not the only remedy of a general kind. It is clear, however, in the light of facts, that, for the purpose of limiting the total numbers taken, a time limit is specially applicable only to the pelagic industry, in which the number of seals taken bears a direct ratio, other things being equal, to the length of the season of hunting, and where the only way in which a reduced catch would not result from a shortened season would be by an increased number of vessels employed, which would soon reach unremunerative limits. On the breeding islands, on the contrary, limiting the time of killing does not necessarily limit the numbers taken, and the only effective limit is one of number. This has been fully acknowledged in the measures adopted throughout with regard to the regulation of the catch on both the Pribyloff and Commander Islands, where it is obvious that if but one or two summer months in all were allowed for killing and no other restrictions were applied, the number of seals killed would become merely a question of the number of men employed, and need only be limited by the exhaustion of animals to kill.

132. With further reference to the effect of proposed time limits or close seasons on the shore- and sea-sealing respectively, and in order to prove that such an apparently simple method of regulation is not equally applicable to both industries, it may be shown that generally this effect would be not only inequitable, but often diametrically opposite in the two cases.

In pelagic sealing, the weather is usually such as to induce a few vessels to go out in January, but the catches made in this month are as a rule small. In February, March, and April the conditions are usually better, and larger catches are made. In May and June the seals are found further to the north, and these are good sealing months; while in July, August, and part of September sealing is conducted in Behring Sea, and good catches are often made till such time as the weather becomes so uncertain and rough as to practically close the season.

133. Upon the Pribyloff Islands, though it has been the custom to kill a certain number of seals for food at all times during the period of five or five and a-half months in which any seals are found on shore, the young males or "bachelors" (which, together with virgin females, are practically the only class which can be taken ashore in large numbers without actually breaking up and destroying the breeding rookeries) do not arrive in notable proportions till June, and, in common with other seals upon the islands, become "stagey," and incapable of yielding good skins about the middle of August. The profitable killing on the Pribyloff Islands is thus naturally limited, as a maximum, to a period of about two months, and as a rule and under normal circumstances, the annual quota has been completed within thirty to fifty working days, during

Measures adopted elsewhere.

Principal modes of protection suggested.

Time limits: Close seasons.

Effects differ at sea and on shore.

On the Pribyloff Islands.

which the slaughter is carried on at a numerical ratio many times greater than that attainable during any period of the pelagic killing.

134. With seals killed at sea, the skins are never found to be in a "stagey" condition, as has been ascertained by inquiries specially made on this point, and there is, therefore, no naturally definite close to the time of profitable killing, such as occurs on the islands. The markedly "stagey" character of the skins at a particular season appears to be confined to those seals which have remained for a considerable time on the land.

Close seasons thus not equally applicable.

135. Without, therefore, entering at length into a comparison of the respective effects of close seasons at sea or on shore, it may be stated that, with the exception of the months of July and August, any close time whatever would have practically no effect on the killing on the islands, while several of the months which might be chosen would seriously affect sealing at sea. If, again, June or July should be chosen as a close month, it would shorten the time of killing upon the islands, but without necessarily reducing the number killed; while an endeavour to insert such a month of inaction, in the middle of the season of pelagic sealing, would not only be very difficult in proper enforcement, but, if enforced, would practically break up the sealing voyages, as the vessels engaged are then far from their home ports.

Other means of regulation.

136. Limitations of number of other kinds have, however, been proposed as applicable to the regulation of pelagic sealing. Thus, it has been suggested that the number of seals to be taken by each vessel should be limited according to tonnage; that the whole number of vessels employed should be limited; that those engaged in sealing be required to obtain a licence; and that a limited number of personal licences should be supplied to individual hunters.

Some such provisions might be found to possess a partial applicability, but while they might be useful portions of a greater whole, they could not by themselves become efficient systems of control.

Combined limitation of time and number.

137. An equitable basis of protection is therefore not to be found in the adoption of any simple and corresponding close season, including a part of each year applicable to both shore and sea alike; but as pelagic sealing might easily be regulated by the adoption of a close season, while shore sealing might with equal facility be governed by a limit of number, it seems probable that some compromise of interest may be arrived at by a combination of these methods.

Time limits at sea.

138. If certain months should be disensed as a close time for sealing at sea, it becomes important to inquire which part of the season is most injurious to seal life in proportion to the number of skins secured, and to this inquiry there can be but the one reply, that the most destructive part of the pelagic catch is that of the spring, during which time it includes a considerable proportion of gravid females, then commencing to travel on their way north to bring forth their young. It is on similar grounds and at corresponding seasons that protection is usually accorded to animals of any kind, and, apart from the fact that these seals are killed upon the high seas, the same arguments apply to this as to other cases.

139. This portion of the pelagic sealing is wholly carried on in that part of the North Pacific which lies to the south of the Aleutian Islands, and here also, as has already been pointed out, a certain number of seals are killed at the same season by the independent sealing of natives resident along the coast of British Columbia and South-eastern Alaska. The aggregate number of seals killed in this particular way is, however, relatively so small that it may be practically ignored in any general proposals looking to protection. It is scarcely possible, under present circumstances, to interfere with the independent native sealing, even if it should be considered just to attempt to do so. This species of hunting is decreasing rather than increasing in amount as other industries grow up, and it may be further indirectly discouraged without great difficulty.

140. It may be remembered that, to a great degree, any restrictions of time applied to sealing at sea are also restrictions of area, for at different seasons the sealing is necessarily carried on in different parts of the ocean.

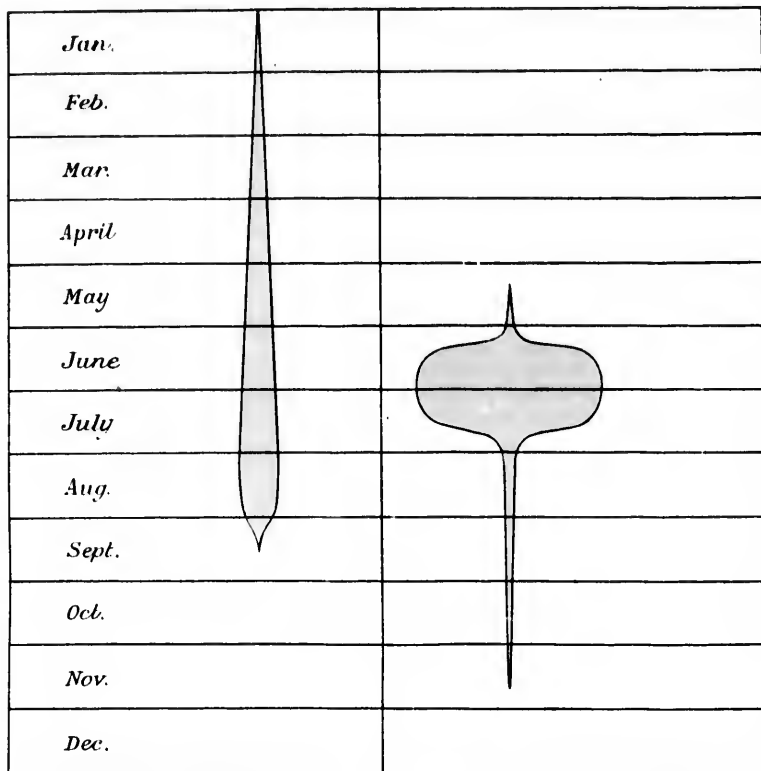
Limits of area on shore.

141. Respecting protection by means of limiting the area of sealing operations, it may be pointed out that the circumstances are such as to enable this to be done upon the breeding islands without difficulty, for, both in the case of the United States and Russia, two separate islands are resorted to by the fur-seals, and one or other of these islands in each case might be strictly set apart and maintained as a reserve of seal life. Or, again, certain portions of the several islands might without difficulty be permanently exempted from driving or disturbance by the sealers.

Expense of control at sea.

142. Limitations affecting sealing operations on the high seas, by international assent, might equally be established and maintained with the aid of a sufficient patrol of cruisers, though such police regulations would be attended with considerable expense.

DIAGRAM  
PRIVILEGE  
TO II



*Pelagic Sealing.*

*Killing on Pribyloff Ids.*

DIAGRAM SHOWING THE SEVERAL MONTHS IN WHICH SEALS ARE KILLED AT SEA AND ON THE PRIBYLOFF ISLANDS, WITH THE RELATIVE IMPORTANCE OF THE CATCH AT DIFFERENT SEASONS. TO ILLUSTRATE THE EFFECT OF CLOSE SEASONS ON THE RESPECTIVE INDUSTRIES.

NOTE. THE AREA OF EACH DIAGRAM, BETWEEN ADJACENT LINES, APPROXIMATELY REPRESENTS THE NUMBER OF SEALS KILLED DURING THE MONTH. THE DIAGRAMS ARE NOT BASED ON THE EXACT FIGURES OF ANY SINGLE YEAR, BUT REPRESENT THE NORMAL CONDITIONS.

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Some expenditure is, however, involved under any system of control of sealing at sea, whether defined by area or by time limits.

143. In any case, great good would be done by extending around the breeding islands, to a distance to be agreed upon in conformity with the circumstances, a zone of protected waters. Such an area of protection, if only of moderate width, would not alone prevent the disturbance or slaughter of practically all seals at the time actually resorting to the breeding rookeries, but would possess the great additional advantage of rendering it possible to put down the very destructive raids upon the rookeries, which have, almost from the time of the Alaska purchase, been practised with comparative impunity by certain unscrupulous sealers (§ 727 *et seq.*). It has always been easy, under cover of darkness or fog, to slip in under the land across an imaginary line drawn at only three miles from the shore; but by extending such a limit to ten or twenty miles, it can be made an effective safeguard, so long as any cruiser is retained about the islands on police duty. The advantages of such a widened zone of protection will be quite obvious to any sailor, and its practical effect would be to keep the sealers, from ordinary prudential motives, very far from the shores of the breeding islands. A 60-mile zone was reported by Mr. Blaine (in December 1890) to be, in the opinion of the President, an effective mode of preserving the seal fisheries for the use of the civilized world." Protected zones round seal islands.

144. To render such reserved area an efficient protection, however, it would be necessary to provide that between certain dates no vessels, whether under pretext of whaling or fishing of any kind, should enter the protected area except in making a passage, and that any vessel lowering boats, or hovering within this area, would be subject to penalties. It is already known that vessels ostensibly engaged in whaling and other pursuits in Behring Sea, have really occupied themselves or aided in sealing or raiding, and any less strict measures of preservation could only result in increasing this evil.

(C.)—*Summary of General Conditions bearing upon Regulation.*

145. From the foregoing review of the various facts and circumstances of seal life in the North Pacific, the following may be stated to be the governing conditions of proper protection and preservation:—

(a.) The facts show that some such protection is eminently desirable, especially in view of further expansions of the sealing industry.

(b.) The domestic protection heretofore given to the fur-seal on the breeding islands has at no time been wholly satisfactory, either in conception or in execution, and many of its methods have now become obsolete.

(c.) Measures of protection to be effective must include both the summer and winter homes, and the whole migration-ranges of the fur-seal, and control every place and all methods where or by which seals are taken or destroyed.

(d.) Although primarily devised for the protection and perpetuation of the fur-seal itself and of the sealing industry as a whole, any measures must be such as to interfere as little as possible with established industries, and such as can be instituted under existing circumstances.

(e.) Equitable consideration must therefore be given to the several industries based upon the taking of seals, and especially to the number of persons dependent on these for a livelihood and to the amount of capital invested, so that the measures adopted may be such as to recommend themselves on the ground of common interest.

(f.) The controlling Regulations should be so framed as to admit of varying degrees of stringency in accordance with the changing exigencies of the case.

III.—MEASURES FOR THE PROTECTION AND PRESERVATION OF THE FUR-SEAL OF THE NORTH PACIFIC.

(A.)—*General Nature of Measures required.*

146. The actual measures necessary for the proper protection and preservation of the fur-seal fall under two heads, namely:—

- (i.) Improvements in the methods of taking seals;
- (ii.) Restriction in the number of seals taken.



Those of the latter class are the more important, but as the "improvements in methods" are more easily dealt with, and are scarcely open to question, these may be first outlined.

(i.)—*Improvements in the Methods of taking Seals.*

147. *On the Breeding Islands.*—The "drives" should be made as short as possible, say, not to exceed half-a-mile as a maximum. They should be carried out with due deliberation, avoiding excessive hurry, and under the personal supervision of a responsible officer, and all seals not intended to be killed should, as far as possible, be "cut out" at an early stage in each "drive."

The actual clubbing of the seals should be performed with greater care, avoiding injury or death to seals not intended to be taken.

148. Care should be exercised to avoid disturbing the actual breeding rookeries in any way, and no seals not capable of yielding merchantable skins should ever be killed.

The breeding islands should be fully secured against "raids," a competent guard, with authority to repel any attempts at landing, being provided; while some armed vessel should remain about the islands during the whole of each sealing season, say, from the 1st June to 30th November.

149. *At Sea.*—Here most of the improvements in methods which may be suggested, necessarily partake of the character of restrictions which may tend directly to reduce the number of seals taken. Such improvements therefore require to be considered in their connection with the general regulations proposed for the restriction in number of seals killed.

150. The most important improvements or restrictions which may be treated from the side of "methods" are as follows:—

Prohibition of the use of rifles in shooting seals at sea, and of the employment of nets as a means of capture.

The adoption of a system of personal licences for White hunters, such licences to be renewable annually, and revokable for proved breach of any of the regulations provided.

Vessels propelled by machinery to pay an increased licence fee, or to be wholly excluded from sealing.

(ii.)—*Restriction in the Number of Seals taken.*

151. We are of opinion that to be effective and suited to the existing conditions and to the interests at present involved, any system of measures for regulating the number and kind of seals taken should include provisions of the following kinds:—

(a.) The strict limitation of the number of seals killed on the breeding islands to a safe maximum, the number and kind of seals to be adjusted within the limit of this maximum, from year to year if found necessary, in accordance with the actually observed state of the breeding rookeries in each year.

(b.) The institution of a zone of protected waters surrounding the breeding islands.

(c.) The establishment of a close time, such as to limit the period of hunting at sea, and so devised as in particular to safeguard the seals during that portion of the spring (covering the earlier part of the sealing voyages as now made) in which a certain proportion of gravid females is taken.

152. One or other of these provisions for the limitation of sea sealing should be subject to modification in area or time respectively, in such manner as to check any tendency to excessive killing at sea, to allow for exceptionally unfavourable breeding seasons, and, in general, to correspond with any marked increase or decrease found to occur in the number of seals.

153. It is suggested that such compensatory changes in the degree of stringency of regulative measures shall be made to depend upon the number fixed for killing on the breeding islands in each year, so that if it be found necessary or advisable to change this ruling number at any time, the degree of stringency of the regulations applied at sea may be proportionately increased or diminished.

154. A compensatory principle of this kind should absolutely remedy (if not in each individual year, at least in the average of years) any possible want of efficiency in the general scheme of measures, removing any doubt which may be supposed to attach to the proper control of sealing at sea, which it is not possible to regulate on an exact numerical basis.

(B).—*Specific Scheme of Regulations recommended.*

155. In view of the actual condition of seal life as it presents itself to us at the present time, we believe that the requisite degree of protection would be afforded by the application of the following specific limitations at shore and at sea:—

(a.) The maximum number of seals to be taken on the Pribyloff Islands to be fixed at 50,000.

(b.) A zone of protected waters to be established, extending to a distance of 20 nautical miles from the islands.

(c.) A close season to be provided, extending from the 15th September to the 1st May in each year, during which all killing of seals shall be prohibited, with the additional provision that no sealing-vessel shall enter Behring Sea before the 1st July in each year.

156. Respecting the compensatory feature of such specific regulations, it is believed that a just scale of equivalency as between shore and sea sealing would be found, and a complete check established against any undue diminution of seals, by adopting the following as a unit of compensatory regulation:—

For each decrease of 10,000 in the number fixed for killing on the islands, an increase of 10 nautical miles to be given to the width of protected waters about the islands. The minimum number to be fixed for killing on the islands to be 10,000, corresponding to a maximum width of protected waters of 60 nautical miles.

157. The above regulations represent measures at sea and ashore sufficiently equivalent for all practical purposes, and probably embody or provide for regulations as applied to sealing on the high seas as stringent as would be admitted by any Maritime Power, whether directly or only potentially interested.

158. As an alternative method of effecting a compensatory adjustment of the stringency of measures of protection, it is possible that some advantages might be found in the adoption of a sliding scale of length for the season of sealing at sea, with a fixed width of zone of protection about the islands.

In this case it is believed that, in correspondence with a decrease of 10,000 seals killed upon the breeding islands, the length of the sealing season at sea might be curtailed by seven days, such curtailment to be applied either to the opening or closing time of the sealing season.

159. It may be objected to the principle involved in any correlative regulation of shore and sea sealing, that it would be impossible in any particular year to make known the number fixed for killing on the islands in time to secure a corresponding regulation of pelagic sealing. As a matter of fact, however, if the condition of the breeding rookeries called for any change, it should be possible to fix this number with sufficient precision a year in advance; while, on the other hand, the general effect would be almost equally advantageous if the number killed on the islands in any one year were employed as the factor of regulation for pelagic sealing in the following year.

160. While a zone of protection has been spoken of as the best method of safeguarding the vicinity of the breeding islands, it is to be borne in mind that such an area might be defined for practical purposes as a rectangular area bounded by certain lines of latitude and longitude. Even in dense fog, and, therefore, comparatively calm weather, an arrested vessel could be anchored with a kedge and warp until the weather cleared, according to frequent custom. The special advantages of a concentric zone appear to be that it is more directly in conformity with the object in view, and that in fine weather the visibility or otherwise of the islands themselves might serve as a rough guide to sealers.

161. The restriction of the number of seals killed on the breeding islands, appropriate safeguards being provided, admit of very considerable precision, and requires no special explanation. That the restriction of the number taken at sea may be accomplished practically and with all necessary certainty, and that the means of control available in the case of this branch of the sealing industry are sufficient, is clearly shown by the successful application of measures such as these here proposed, to the Jan-Mayen and Newfoundland hair-seal fisheries, as well as of those based on like principles which are generally employed in protecting fish and game.

(C.)—*Methods of giving effect to Regulations.*

162. The means suited to secure the practical efficiency of regulations at sea are generally indicated by those adopted in the instances just cited. It is unnecessary to formulate these here in full detail, but the following suggestions are offered as pointing out those methods likely to prove most useful in the particular case under consideration:—

(i.) Statutory provisions should be made, declaring it unlawful to hunt or take fur-seal during the close season by subjects or vessels of the respective Powers.

(ii.) The time of commencement of the sealing season should be further regulated by the date of issuance of special Customs clearances and of licences for sealing, and preferably by the issuance of such clearances or licences from certain specified ports only.

(iii.) As elsewhere explained, the regulation of the time of opening of the sealing season is the most important, and the closing of the season is practically brought about by the onset of rough weather in the early autumn. If, however, it be considered desirable to fix a precise date for the close of sea-sealing in each year, this can be done, as in the case of the date of sealing under the Jan-Mayen Convention.

(iv.) The liability for breach of the regulations, of whatever kind, should be made to apply to the owner, to the master or person in charge of any vessel, and to the hunters engaged on the vessel.

(v.) The penalty imposed should be a fine (of which one-half should go to the informant), with possibly, in aggravated cases or second offences, the forfeiture of the catch and of the vessel itself.

(vi.) To facilitate the supervision of the seal fishery and the execution of the regulations, all sealers might, in addition, be required to fly a distinctive flag, which might well be identical with, or some colour modification of, that already adopted for the same purpose by the Japanese Government.

(D.)—*Alternative Methods of Regulation.*

163. Although the general scheme of measures above described appears to us, all things considered, to be the most appropriate to the actual circumstances, measures of other kinds have suggested themselves. Some of these, though perhaps less perfectly adapted to secure the fullest advantages, recommend themselves from their very simplicity and the ease with which they might be applied. Of such alternative methods of regulation, three may be specially referred to:—

(i.)—*Entire Prohibition of Killing on one of the Breeding Islands, with suitable Concurrent Regulations at Sea.*

164. The entire reservation and protection of one of the two larger islands of the Pribyloff group, either St. Paul or St. George Island, might be assured; such island to be maintained as an undisturbed breeding place, upon which no seals shall be killed for any purpose. On the remaining island, the number of seals killed for commercial purposes would remain wholly under the control of the Government of the United States.

In consideration of the guaranteed preservation of a breeding island with the purpose of insuring the continuance of the seal stock in the common interest, a zone of protected waters might be established about the Pribyloff Islands, and pelagic sealing might be further controlled and restricted by means of a close season, including the early spring months, or by a protected area to the south of the Aleutian Islands, defined by parallels of latitude. Such provisions at sea to have, as far as possible, quantivalent relation to those established on the breeding islands.

(ii.)—*Recurrent Periods of Rest.*

165. This implies the provision of a period of rest, or exemption of all seals from killing, both at sea and on shore, to extend over a complete year, at such recurrent intervals as may be deemed necessary.

Such a period of rest might be fixed in advance for every fifth, or possibly as often as every fourth, year, and be made to form a part of a general scheme imposing limitation of number of seals killed on the islands in intervening years, together with restriction by time or by area of pelagic sealing.

While proximately equal in effect on both shore and sea killing, a period of rest of this kind would, in other respects, cause some inconvenience by its interruption of the several industries, and this, though minimized by the fact that the date of occurrence of the year of rest would be known in advance, would not be wholly obviated by this circumstance.

(iii).—*Total Prohibition of Killing on the Breeding Islands, with Concurrent strict Regulation of Pelagic Sealing.*

166. While the circumstance that long usage may in a measure be considered as justifying the custom of killing fur-seals on the breeding islands, many facts now known respecting the life history of the animal itself, with valid inferences drawn from the results of the disturbance of other animals upon their breeding places, as well as those made obvious by the new conditions which have arisen in consequence of the development of pelagic sealing, point to the conclusion that the breeding islands should, if possible, remain undisturbed and inviolate.

167. If this view should be admitted, and particularly if the United States and Russia, as the owners of the principal breeding islands of the North Pacific, should agree to co-operate in entirely prohibiting all killing of seals on these islands, and in guarding and protecting the breeding places upon them, it should be possible to obtain, in consideration of such care exercised in the common interest, an international assent to measures regulating sea sealing, of any required degree of stringency, including certain special rights of supervision by the Powers mentioned.

168. It might, for example, under such circumstances, be provided—

(1.) That all sealing-vessels should be registered, and should take out special licences at one or other of certain specified ports, as, for instance, Victoria, Port Townsend, Honolulu, Hakodate, and Vladivostok.

(2.) That such annual clearances or licences be not issued before a given date, say, 1st May, and that certain licence fees be exacted. Such licence fees to be collected by the Customs authorities of the licensing Government, and to be eventually transferred, in whole or in part, proportionately, to the Governments protecting the breeding islands, to go toward meeting the cost of this protection.

(3.) That no vessel should seal in Behring Sea before some fixed date (say, 1st July) in each year, and that vessels intending to seal in Behring Sea should report either to the United States or to the Russian authorities on or after that date at named ports, such as Unalaska or Petropaulovski.

(4.) That all duly licensed sealing-vessels should be required to fly a distinctive flag, and that any unlicensed vessel found engaged in sealing should be subject to certain penalties.

(5.) That a zone of protected waters should be established about the breeding islands, within which no sealing should under any circumstances be permitted.

(E).—*International Action.*

169. In the foregoing remarks on the measures available for the protection and preservation of the fur-seal of the North Pacific, reference is made throughout especially to the eastern part of that ocean, including more particularly the area comprised in the range of those fur-seals of which the summer haunts and breeding places are about or on the Pribyloff Islands, and of which the winter home is found especially off the coast of British Columbia. It is evident, however, that the same remarks and recommendations apply equally to those fur-seals which in summer centre about the Commander Islands, and in winter frequent the seas off the coast of Japan.

170. It may be stated, further, that no system of control can be considered as absolutely complete and effective which does not include under common regulations all parts of the North Pacific, and that the facility of execution of measures and their efficiency would, under any system of regulations, be much increased by the concurrent

action of Great Britain, the United States, Russia, and Japan, as indicated in the Message of the President of the United States in 1889. Apart from the fact that vessels prevented from sealing at given dates in certain areas might at these times frequent other waters in increased numbers, the circumstance that there is a certain, though not fully known, interrelation and interchange of seals between the eastern and western breeding islands of Behring Sea, points very clearly to the advisability of such co-operation in protection.

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## PART II.

## DETAILED OBSERVATIONS ON THE FACTS AND CONDITIONS OF SEAL LIFE.

## I.—NATURAL HISTORY AND ENVIRONMENT OF THE FUR-SEAL OF THE NORTH PACIFIC.

(A.)—*Migrations and Range of the Fur-seal of the North Pacific.*(i.)—*Eastern Side of the North Pacific.*

171. Respecting the migrations and range of the fur-seal in the North Pacific, while numerous scattered references are to be found, these are for the most part fragmentary and vague, and no connected account of the migrations or migration routes, based upon facts, have heretofore been given. The additional information gained in the course of special inquiries on this subject now, however, not only enables the migrations of the fur-seal to be clearly followed, but appears definitively to set at rest the question which has been consistently asked by sealers from the earliest times of the Russian occupation as to the winter habitat of the fur-seal.

172. Written inquiries on this and other points were addressed to the district Indian agents along the coast of British Columbia, and the traders, Aleuts, Indians, and others interested or engaged in seal-hunting, or resident on the West Coast, have been conversed with and questioned. (See Appendix C.)

173. The notes thus obtained are summarized below, and it may be stated that, with few and unimportant exceptions, such as may be explained by variations from year to year in time and direction of migration, these are concordant and homogeneous in their meaning.

174. Those who have been upon the Pribyloff Islands in the autumn and winter state that the seals leave these islands and their vicinity for the south chiefly between the middle of October and the early part of December, though a few may depart before the first date, while in exceptionally mild seasons stragglers have been known to remain after the latter month. The mature seals, especially the females, are the first to leave, the pups (now on account of their change of coat ranking as "grey pups") going later, and almost all about the middle of November, when they are driven off by the weather. The "holluschickie" (half-grown males or "bachelors") and a few old bulls are the last to leave.

175. From October to December, but chiefly in November, the seals are seen in varying abundance by the Aleuts of the eastern part of the Aleutian Islands, and are hunted by these people.

The openings in the Aleutian chain, through which most of the seals go southward, are those known as the Unalga, Akutan, Unimak, and Issanakh Passes. The seals killed here are chiefly grey pups, which, particularly when the wind blows strongly from northerly directions, seem to miss the actual passes, and to become embayed for a time in the harbours and inlets on the northern side of the islands.

When strong easterly winds prevail at this season, grey pups, which have evidently made their departure from the Pribyloff Islands, are occasionally and in small numbers drifted as far to the westward as Atka Island, longitude 172° west, but none are ever seen at Attu Island.

176. On getting clear of the Aleutian Islands, the seals continue their migration in a southerly or south-easterly direction, and do not follow the coast in its north-easterly sweep, round the border of that part of the ocean which is sometimes called the Gulf of Alaska. They are not seen about Kadiak at this season, and only rarely in the autumn and winter off Sitka. Nearly two degrees of latitude south of Sitka, however, the Indians of Klawak, in the Bucarelli Gulf, take a number of seals every winter, generally about Christmas, most of these being grey pups or yearlings.

177. About the northern part of the Queen Charlotte Islands, some young seals are seen every winter toward the end of January and in February. These are chiefly grey pups or yearlings, though a few full-grown males and seals of other ages are seen as well. Hunting is not carried on at this season, but considerable numbers of such seals

have sometimes been taken close to the shore. Between the latter part of February and the third week in April, it is stated that no seals are seen here.

Abreast of, or somewhat further north than, the Queen Charlotte Islands, a considerable body of seals is often met with at sea by the pelagic sealers in May or June. These seals are then moving northward.

In the northern part of Hecate Strait and its adjacent waters a few grey pups are said to be often found in November and December, but persons giving information on this point mention the end of December as the time of arrival. Seals are more plentiful in January, February, and March, but particularly in February. The entrance to Wark Inlet is specially noted as a locality at which grey pups are often obtained at this season. A few adult seals are sometimes taken in winter off Banks Island, but no regular hunting is attempted there before the 1st March, when Bonilla Island is occupied for this purpose by Kit-katla Indians, and the 1st April, at which time Tshimsians resort to Zayas Island for the same purpose. The hunting, as at present practised, extends over April and the greater part of May; off Bonilla Island it is continued through the greater part of June, but this difference is due rather to the option of the Indians than to any diversity in dates in the arrival and departure of the seals in the two places.

Seals of both sexes and all ages are killed during the hunting season, and a few full-grown bulls are seen, but are seldom taken. There is, in this region, no interval between the arrival of seals from the north in the early winter and their departure for the north, which occurs in the main about the end of May.

Mr. R. Cunningham states, that about twenty-three years ago, he was personally cognizant of the fact that for several successive years a small colony of adult seals stayed all the winter about Somerville Island, in the entrance of Observatory Inlet. These seals appeared to be following and feeding upon the ulachan or candle-fish.

178. On that part of the coast about Milbank and Fitzhugh Sounds, still further south, but unlike the last region in being fully open to the Pacific, a few seals are seen about Christmas, or not long thereafter. They are generally first observed outside Cape Calvert. Seals are most abundant in March, but a few remain till the latter part of June. The seals coming first are chiefly females, but after about the 1st June they are nearly all young males. Fully matured large males are found in small numbers; grey pups or yearlings venture further into the inner channels, and come nearer to the shores.

179. About the north end of Vancouver's Island and the entrance to Queen Charlotte Sound the seals are first seen early in December, but not in any abundance until about Christmas, from which time, for a month or six weeks, they are very numerous in all this vicinity; though the stormy character of the weather prevents the Indian hunters from going far to sea in pursuit of them. They are stated to disappear about April. The females are the first to arrive in the winter, but are followed by the grey pups or yearlings a little later, and in most of the time during which the seals remain, both sexes and all ages are represented, though the grey pups come nearest to the shore, particularly when the weather is rough. In the winter of 1890-91, a number of seals were killed by the Indians as far in as the entrance of Knight's Inlet, and on one occasion (according to Mr. Huson, about 1870, in March) a great number of grey pups ascended Knight's and Kingcombe Inlets to their heads, following the ulachan, which seek these places to spawn at this season.

180. At Nootka, on the west coast of Vancouver Island, it is stated that no seals are seen before Christmas, but in the first or second week after that date, according to the weather, hunting begins, and is continued for three months. Occasional large old bulls are also rarely seen here.

181. At Clayoquot Sound, the seals arrive about Christmas, or between that time and the end of December, and hunting begins early in January. The Indians report that some schooners hunt off that coast for about a month from this date before going north. Seals of both sexes appear here and remain together, but no large bulls have ever been seen.

In 1885 seals were unusually abundant off Clayoquot as early as the 10th or 15th December, but were mostly grey pups "smalls," or 2 and 3 year-olds.

182. About Barclay Sound the seals are first reported in December, and are often very abundant during January and February. The greater number leave before the end of April, when they begin to travel north, but a few are killed, further out at sea, sometimes as late as the 15th June.

Most of the skins brought in by Indians are grey pups or "smalls," but in 1801 there was an unusual number of adult skins.

183. With further reference to the occurrence of fur-seals on the coast of British

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Columbia generally, the following note by Mr. J. W. Mackay, who has for many years been conversant with this coast, may be quoted. In reply to inquiries made, he writes: "These animals were driven to the ocean from the narrow waters by the use of fire-arms in hunting. During the spring, numbers of the young animals fish in the broken waters inside the half-tide rocks and reefs which fringe the western shores of Vancouver Island and of the other islands which lie west of the mainland from Queen Charlotte Sound to Dixon Entrance. The older animals remain further at sea, but numbers of them take refuge in the larger sounds during stormy weather; I have seen them off Metla-kutla in the month of January."

184. Captain John Devereux, who has been for twenty-seven years on the coast of British Columbia, and has had excellent opportunities for observation, in command of the Canadian Government steamer "Douglas," informs us, in reply to questions addressed to him, that from the latter part of November, or early in December, to the beginning of June, the fur-seal is found off the coast of the entire length of Vancouver Island, but that in the early winter the weather is altogether too rough for hunting. He adds, "When they are found along the bank on the west coast of Vancouver Island they are feeding on their natural feeding-grounds." He further states that, though often far off the land, he has frequently found them inshore, and even eighteen miles up Barclay Sound; as well as in the Strait of Fuca, and, on rare occasions, in the Gulf of Georgia.

185. Near Cape Flattery and about the entrance of the Straits of Fuca, it is reported that the Indians have on exceptional occasions seen seals as early as December, and schooners have been known to take seals in that month off the Cape; but the seals usually arrive about the 1st January, when hunting begins. Grey pups are the first to appear, but in February all sorts of seals are found, except mature males. No full-grown bulls have ever been seen in this vicinity. No females with pup are found after the 5th or 6th July, and it is probable that only a few stragglers of any kind remain, though, according to Judge Swan, occasional seals are to be found here at all seasons. The last seals seen in summer are as a rule males or barren females. In exceptional instances a few seals, probably grey pups or yearlings, have been noted in recent years as far up the Straits of Fuca as Victoria and Port Townsend. Mr. J. W. Mackay, already quoted, states that the older hunters of the Songis, Sooke, and Tlalum tribes, living on or near the southern end of Vancouver Island, told him that in former years fur-seals were in the habit of landing in large numbers at Race Rocks, within 11 miles of Victoria. Fur-seals also many years ago frequented the Gulf of Georgia, and Mr. Mackay has himself bought skins from the Seshal Indians, of Jarvis Inlet, which they had taken at Sangster Island, near Texada Island.

186. From the foregoing notes, embodying the result of careful inquiries personally made at the localities referred to along a stretch of 2,000 miles of the west coast of the Continent, it is evident that in that part of the ocean adjacent to the entire length of the coast of British Columbia, as well as within the main openings and inlets of that coast, the fur-seal is a permanent winter resident, arriving soon after it is known to have passed southward through the Aleutian chain, and remaining till a general movement to the north begins in the early spring, and, though the movement last referred to acquires greater force and regularity towards its close, no time occurs between the arrival of the seals from the north and the return migration, at which they are not found off this coast.

187. To the north of the Queen Charlotte Islands, however, the case is different, for here, as already stated, the seals do not follow the coast in the autumn migration, whereas they move in rather close parallelism or contiguity to it when on their way north in the spring and early summer. Thus, in the vicinity of Sitka some seals appear near the coast as early as the middle of April, but they become abundant during May, and some are still seen in the early part of June.

On the Fairweather ground, in the Gulf of Alaska, seals are most numerous from the 1st to the 15th June. About the 25th June, in 1891, they were found in abundance by the sealing-schooners on the Portlock banks, to the east of Kadiak Island.

About Kadiak they are generally found from the 25th May to the end of June, being most abundant in the average of years about the 10th June. They are seldom seen in July, and very rarely even stragglers are noticed after the middle of that month.

In the latter part of June, or about the 1st July, the female seals in pup, which have entered Behring Sea, are found only making their way rapidly and directly to the breeding islands, while the great body of non-breeding seals either travel in a more leisurely way and with frequent intervals of rest, in the same direction, or disperse themselves in search of food over various parts of the sea.



188. According to Elliott, Bryant, and Maynard, the greater number of the adult breeding males (known as "beachmasters" or "sencatchie") arrive at the Pribyloff Islands and take up positions there, from the 1st to about the middle of June. The females about to give birth to their pups follow, at first in small and then in large numbers, their time of arrival ending about the 10th to 25th July. Yearlings (the grey pups of the previous season) come to the islands in great numbers in the latter part of July.

189. Comparatively little attention has been given to the movements of the full-grown males by the pelagic sealers, because of the small value of their skins, but it has been noticed that even as early as May the females at sea are travelling more persistently than the other seals to the north, while after the 1st June they are said to "bunch up" and to travel so fast towards the passes in the Aleutian Islands, that it is impossible to kill many of them.

190. Respecting the extreme southern limit of the range of the fur-seal of the North Pacific on the American coast, little can be added to what has already been published. The earliest departures of vessels for pelagic sealing from Victoria usually occur not long after the 1st January; these vessels then generally cruise southwards, sometimes nearly to the latitude of San Francisco, in pursuit of seals; but it would appear that no large "catches" have been recorded to the south of the Columbia River, and frequently much of what has been classed in the Returns as "south-coast catch" has been obtained off the entrance of the Strait of Fuca. It seems certain that in recent years, at least, no considerable number of seals is found further south than about 46° north latitude, though stragglers may find their way much further south.

Captain Scammon, in his work on marine mammalia, states that fur-seals were formerly abundant on the Californian coast. They have been noted, in small numbers, as lately as 1878 on the coast of Southern California,\* while Professor Jordan informs us that they were still taken in considerable numbers on the Guadalupe Islands there in 1879.† We have also been informed by an experienced sealer that in former years, he had seen fur-seals as far south as the Gulf of Tehuantepec.

191. On this subject Professor Allen writes: "The fur-seal is well known to have been formerly abundant on the western coast of North America, as far south as California, but the exact southern limit of this range I have been unable to determine." He then quotes Scammon as to the occurrence of these animals on the San Benito Islands, the coast of Lower California, Guadalupe Island, and Cedros Island, in latitude 28°. He adds, writing in 1880: "Although at one time abundant on the Californian coast, they are by no means numerous there now, having been nearly exterminated by unrestricted slaughter by the sealers."‡ This local depletion of seals may incidentally be taken as a further evidence of the local character of the seal herds above referred to, a point of some importance, which is subsequently discussed. If included in the annual migration-cycle of the Pribyloff Island seals, the Californian coast should not at this date have shown any notable sign of diminution in number of seals.

It is, however, extremely improbable that these seals were concerned in the annual migration to Behring Sea, and doubtful whether they were regularly migratory at all in the proper sense of the term. Like most of the fur-seals of the southern hemisphere, they may merely have resorted to the neighbouring land at the breeding season.

Scammon states that the fur-seals formerly bred along the Californian coast. The Farallone Islands, off that coast, are known to have been the resort of a considerable body of seals, which may be assumed to have been of the same species with those of the North Pacific, and doubtless occupied these islands as breeding places. The Russians established a station there, and, "from 1812 to 1818, about 8,400 fur-seal skins were obtained there, and it is stated that before their occupation by the Russians as many as 10,000 were taken on these islands in a single autumn."§ The season at which this killing took place, if correctly given, is alone sufficient to show that the seals found here were not migrants from the far north.

192. Disregarding exceptional cases of small importance, with the occurrence of stragglers preceding or lagging behind the main body of seals, and including both sexes and all ages of seals without reference to the different dates at which these are known to reach various points, it would thus appear that the seals which resort to the eastern part of Behring Sea, with the Pribyloff Islands as a centre, in the main frequent that sea

\* Elliott, Census Report, p. 66.

† "Fishery Industries of the United States," vol. ii, p. 393.

‡ "Monograph of North American Pinnipeds," p. 332.

§ Bancroft's Works, vol. xxxiii, p. 487.

in the early part of June till about the middle of November, a period of about five months and a-half. Behring Sea may, in fact, be named their *summer habitat*.

During a period of four and a-half or five months, extending in the main from about the 1st January to the middle or end of May, they frequent the sea lying off that part of the West Coast included between the 56th and 46th parallels of north latitude,—these limits including the whole length of the British Columbian coast, and extending beyond it slightly at both extremes. This is the *winter habitat* of the fur-seal of the eastern side of the North Pacific.

During a great part of the time, in which the seals are off this coast, the weather is so tempestuous as to prevent successful pelagic hunting, whether from schooners, or directly by canoes using the shore as a base of operations. The actual numbers of seals seen close in shore depend largely upon the weather in each locality, and varies much from year to year; and with a prevalence of strong westerly winds, the grey pups or yearlings are driven into the immediate vicinity of the coast and into its bays and channels, first and in the largest numbers. The neighbourhood of Dixon Entrance, the northern end of Vancouver Island, the entrance to Queen Charlotte Sound, and the entrance to the Straits of Fuca, are localities specially notable for the abundance of seals during the winter and spring.

The actual resorts of the seals are not alone influenced by the weather, but also greatly by the supply of suitable food, as more fully explained elsewhere; and it is probably in great measure because of the abundance of food fishes near the larger openings in the land above mentioned, that these places are special resorts.

193. It is a noteworthy and interesting fact, ascertained in the course of the present inquiry, that the full-grown males, known as "beachmasters" or "seacatchie," have seldom or never been reported to the south of the 50th parallel, while all other classes of seals are found in considerable numbers much further south. This statement, of course, applies to the seals frequenting as their winter habitat that part of the ocean lying off the coasts of British Columbia and the State of Washington.

194. Touching the distance to which the seals extend off the coast during the winter months, the generally stormy weather at this season, with the dependent absence of pelagic sealers, have prevented accurate information from being obtained. Captain Devereux, already cited, has, however, possessed special opportunities for obtaining information on this subject. He writes: "The distance from the shore where they (fur-seals) are to be found most plentiful, say, off Cape Beale (where the bank extends furthest from the land), is from 30 to 150 miles; but these figures must not be taken by any means as a fixed limit." Judge Swan has recorded the fact that, in 1880, large numbers of fur-seals were seen at from 100 to 300 miles off shore by vessels bound into the Straits of Fuca from China and the Sandwich Islands, but the exact time of year is not given.\* While the seals are moving northward in the spring, it can only be stated that, when the weather becomes such as to enable pelagic hunting to be carried on, the main body of seals is found to extend for a width of 50 or 60 miles off the coast of Vancouver Island, and for about 80 miles off the Queen Charlotte Islands.

195. Between the winter and summer resorts of the fur-seals lies a minimum distance of about 1,200 miles, across which they pass only during their migration. As already stated, in their spring migration they appear to follow parallel to the general trend of the coast on their way northward and westward, keeping in touch with the shore, or at least with the soundings or submarine edge of the continental plateau.

196. In their southern or south-eastern migration the seals do not follow the coast, but after passing through the Aleutian Islands, it is possible that they may at first scatter rather widely and at random over the ocean. It is certain, at least, that they do not pursue a direct course to the northern portion of their winter habitat, and thence travel regularly southward along the coast. The comparatively small differences and occasional irregularities in their dates of arrival in the different parts of their winter resorts, with other circumstances, seem to indicate that they come in-shore from the westward with an extended front. This, it would appear, results naturally from the set of the currents in this part of the ocean from west to east and directly toward the coast, together with the prevalent westerly winds of November, December, and January. The latter are well shown in detail on Maps 27, 47, and 49 in the "Challenger" Reports, Physics and Chemistry, vol. ii. (For currents and directions of drift in the Pacific Ocean, see especially Petermann's "Mitteilungen," 36 Band, 1890.)

While, therefore, the course and manner of this southern and eastern migration (embracing scarcely two months of the entire year) must at present remain to some

extent hypothetical, the whole remaining migratory route of the fur-seal is now accurately known, and the circumstances are such as to leave little doubt that this part is correctly explained as above. It may be supposed, that to the winds and currents chiefly is attributable the concentration of the fur-seals in the vicinity of the coast preparatory to the inception of the spontaneous northward movement early in the spring.

(ii).—*Western Side of the North Pacific.*

197. Respecting the migration-range of the fur-seals which resort to the Commander Islands, to Robben Island, and in smaller numbers to several places in the Kurile Islands, as more fully noted in subsequent pages, comparatively little has been recorded; but the result of inquiries made in various directions, when brought together, are sufficient to enable its general character and the area which it covers to be outlined. The deficiency in information for the Asiatic coast depends on the fact that pelagic sealing, as understood on the coast of America, is there practically unknown, while the people inhabiting the coast and its adjacent islands do not, like the Indians and Aleuts of the opposite side of the North Pacific, naturally venture far to sea for hunting purposes.

198. The facts already cited in connection with the migration of the seals on the east side of the Pacific, show that these animals enter and leave Behring Sea almost entirely by the eastern passes through the Aleutian chain, and that only under exceptional circumstances, and under stress of weather, are some young seals, while on their way south, driven as far to the west as Atka Island. No large bodies of migrating seals are known to pass near Attu Island, the westernmost of the Aleutians, and no young seals have ever within memory been seen there. These circumstances, with others which it is not necessary to detail here, are sufficient to demonstrate that the main migration-routes of the seals frequenting the Commander Islands do not touch the Aleutian chain, and there is every reason to believe that although the seals become more or less commingled in Behring Sea during the summer, the migration-routes of the two sides of the North Pacific are essentially distinct.

199. During the late autumn, the winter, and in early spring, the fur-seals of the western side of the North Pacific are in fact known to frequent that part of the ocean to the eastward of the Island of Yezo, the northernmost of the Japanese group, and are seen about that coast chiefly between Inobasaki and the east part of Yezo. As the prevailing winds are at these seasons off-shore, and as neither these nor any oceanic current tend to establish a drift toward the land, the fur-seals are probably much more widely scattered in proportion to their numbers, and are spread out to a greater distance from the land here, than those of the other side of the ocean are found to be during the corresponding period of stay in their winter habitat. This belief corresponds with such information as we have been able to obtain on the subject, and probably in part at least explains the fact that it has not yet been found to be a profitable enterprise to engage in pelagic sealing in this portion of the Pacific. It must further, however, be mentioned here, that no definite information has been obtained as to the northern limit of the tract which may be described as the winter habitat of the fur-seal on the western side of the North Pacific. It may therefore possibly include some portion of the waters adjacent to the Kurile Islands.

200. According to information contained in a Memorandum supplied by your Majesty's Minister at Tôkiô (Appendix B), the seals are first seen off the coast of Yezo early in November, while from other sources it has been ascertained, that in former years, when the Alaska Commercial Company's vessel followed the southern route in her spring voyage from San Francisco to Petropaulouski, fur-seals were often seen at sea in the month of May in about the same latitude.

201. When the seals first come south in the autumn, the grey pups are often abundant not far from the shores of Yezo and about Nambu,\* and from 2,000 to 3,000 are annually taken there by the inhabitants, in boats. In the Memorandum just referred to, it is stated that, "Large numbers of seals from the Russian rookeries are scattered every winter over the ocean lying off the east coast of Japan, but they are unmolested by foreign or native sealing-vessels, and only the fringe of them is touched by native fishermen in their open boats along the Nambu and Yezo coast."

202. When these seals move to the northward, in the spring or early summer, they doubtless follow a route parallel to the line of the Kurile Islands, though there is

\* A seaport on the east coast of Nipon, near latitude 40°.

nothing known to show whether they pass near to these islands, or at some considerable distance to the eastward of them. According to Mr. Grebnitsky, Superintendent of the Commander Islands, the seals travel with the northward branch of the Japan current, and are first seen on the south-western shore of Copper Island, where some of them land, while others continue their journey to the north-westward, between Copper and Behring Islands; and those which land on the northern rookery of Behring Island come to it eventually from a north-eastern direction. The same gentleman further states, as the result of his observations, that these naturally pelagic animals land thus on the Commander Islands only because it is necessary for the females to do so in order to give birth to their young; while he believes the main reason of the landing, at later dates, of the seals not actually engaged in breeding, is that during the "shedding" or "stagey" season, their pelage becomes too thin to afford a suitable protection from the water. The date of arrival of the seals on the Commander Islands is somewhat later than on the Pribyloff Islands, and the dates of leaving appear to be also later and rather more irregular in correspondence with the longer summer season and less precisely marked beginning of cold weather. In fact, in unusually mild years, a few fur-seals may generally be found about the Commander Islands all the winter.

203. According to Captain Brandt, of the Russian gun-bont "Aleut," who has had long experience of these waters, the fur-seals frequenting Robben Island, on the east coast of Saghalien in Okotsk Sea, pass through the Kurile Archipelago into the Pacific in autumn and do not go directly south into the Japan Sea; though he has seen a few fur-seals at sea not far to the north of Vladivostok.

204. It will be observed that the migration-range of the fur-seals frequenting the Commander Islands is somewhat less extended than that of those resorting to the Pribyloff Islands, its entire length being little more than 1,000 miles.

205. It is of interest here to refer to the account of the migrations of the fur-seal or "sea-cat," drawn up by the Russian Kraschenimikoff, which is supposed to be based partly on his own observations and largely on those of his fellow-traveller Steller, both members of Behring Expedition.\* He writes: "The sea-cats are caught in the spring; and in the month of September, about the River Sheepanova; at which time they go from the Kurilskoy (Kurile) Islands to the American coast (read Commander Islands); but the most are caught about the Cape of Kronitzkoy, as between this and the Cape Shupinskoy (both on the east coast of Kamtschatka); the sea is generally calm, and affords them proper places to retire to. Almost all the females that are caught in the spring are pregnant; and such as are near their time of bringing forth their young are immediately opened, and the young taken out and skinned. None of them are to be seen from the beginning of June to the end of August, when they return from the south (*sic*, read east) with their young."

206. The remarks on the same subject made by Fleurieu in Marchand's voyage are probably in the main also based on those of Steller. He writes, referring to the last decade of the eighteenth century:—

"Ces animaux quittent au mois de Juin les côtes de la presqu'île de Kamtschatka, et y reviennent, comme il a été dit, à la fin d'Août ou au commencement de Septembre, pour y passer l'automne et l'hiver. Dans le temps du départ, les femelles sont prêtes à mettre bas, et il paroît que l'objet du voyage de ces amphibiens est de s'éloigner le plus qu'ils peuvent de toute terre habitée, pour faire tranquillement leur petits sur des bords solitaires, et s'y livrer ensuite sans trouble aux plaisirs de l'amour; car c'est un mois après qu'elles ont mis bas que les femelles entrent en chaleur. Tous reviennent fort maigres à la fin d'Août; et il est à présumer que, pendant leur absence, ils ne mangent que peu ou point du tout."†

207. The particular interest attaching to these quotations is, that they appear to show that at the early dates to which they refer, the fur-seal was much better known and more often seen by the natives of the coast of Kamtschatka than it is at the present day, from which it is reasonable to conclude that on the Asiatic coast as well as on that of North America the fur-seal has considerably changed its habits, as the result of persistent hunting, and has become more pelagic than it originally was.

Particulars of the same kind referring to the North American coast are elsewhere referred to in detail (§ 396 *et seq.*).

208. The mode of origination of the regular migratory habit, which has become hereditary and instinctive in the case at least of by far the largest number of the fur-seals of the North Pacific, is an interesting question of a general kind. It is evident

\* Quoted by J. A. Allen in "Monograph of North American Pinnipeds," p. 341; from Grievés' English translation, 1764.

† "Voyage autour du Monde, 1790-92," tome V, p. 65.

that the habit has grown up as a necessary result of resorting to far northern breeding grounds, while at the same time it is not essentially a part of the life history of the animal, as the breeding stations formerly occupied on the Californian coast show. It is further instructive to mention, that as the result of inquiries made on this point from those most familiar with the subject in New Zealand, the Falkland Islands, and Cape Colony, it is found that the closely related fur-seal of the Southern Hemisphere does not regularly migrate over great tracts of the ocean, but, when occupying stations where the conditions are favourable for its existence throughout the year, it merely appropries the shores and lands upon them at the breeding season. The continued presence of fur-seals about the Commander Islands in mild winters, likewise shows that even in the case of the fur-seal of the North Pacific, it requires the prompting afforded by decided changes in the seasons to keep up the regularity of its migratory habits. It has indeed been suggested, and with some probability, that the seasonal changes in the temperature of the sea itself may have much to do with impressing regularity on the annual movement of migration, or, in other words, that when this temperature falls below or rises above certain limits, the seals begin to move southward or northward in search of less frigid or less heated waters. The data at hand are, however, insufficient for a detailed study of this point.

(iii.)—*Distribution at Sea.*

209. The distribution and mode of occurrence of the fur-seals at sea when congregated in their winter habitats on the two sides of the North Pacific, and while migrating, have already been noticed. While the information on these points is not as complete as could be wished, it is sufficient to show in a general way how the fur-seal is affected in its movements by currents, drift, and winds. In speaking of its food and feeding habits on a subsequent page, it further becomes apparent in what manner the seals congregate and travel in following certain food fishes. It appears to be rather in consequence of such circumstances, operating conjointly upon these pelagic animals, than to any ruling gregarious tendencies while at sea that they become collected into "schools" or groups of greater or less dimensions. This at least is the result of the examinations made during the summer of 1891 in Behring Sea, where though two or three seals were often seen actually in company, and occasionally as many as six or eight, the general rule seemed to be that each seal was pursuing its own course, travelling, sleeping, feeding, or sporting in the water, without reference to others in its vicinity. This is clearly shown by the observation that even when passing through an area at sea in which the seals would be noted as abundant, they are as a matter of fact usually separated by distances much too great to enable any single animal, or any group of two or three individuals, to be in any way cognizant of the presence of the next adjacent individual or similar group. Apart from seals met with near the shores of the breeding islands, the densest "school" found by us was on one occasion about five miles to the westward of the land of St. Paul Island, where about forty seals were counted in a distance run of two miles. In all other cases, it was exceptional to meet with seals to the number of four to a mile run, while two to a mile run was much above the average even when passing through areas of abundance. It is thus evident that the seals had been brought together in such areas of abundance by reason of common conditions rather than by their own volition.

210. In order to arrive at as complete a knowledge as possible of the actual distribution of the fur-seal in Behring Sea, a circular was prepared, in which it was requested that regular seal logs should be kept on the British cruisers, and, through the kindness of the Commander-in-chief on the Pacific Station, communicated to their Commanders. The work was taken up with enthusiasm by the various officers, and maintained throughout the season. Careful observations of the same kind were also made on our own steamer, the "Danube," and subsequently, through the courtesy of the United States' Commissioners, copies of the track-charts, and observations made of seals by the various United States' cruisers, were supplied. Information on the same subject was also sought in various other ways, such as by inquiry from the captains and hands of sealing-vessels met in Victoria and Vancouver, and from the inhabitants of various places touched at during the summer.

211. Little or nothing has previously been put on record with regard to the distribution of the fur-seal in Behring Sea during the months of their stay there, for though the pelagic sealers had formed their own opinion as to the best regions for carrying on their avocation, they naturally did not make these public, and it is believed that, in some cases at least, they were rather inclined to keep such knowledge as they

had gained by experience entirely private. What has been actually published on this subject depends principally upon meagre observations or ill-founded conjectures such as the resident agents on the breeding islands have been able to make with their limited opportunities. The circumstances in 1891 were, however, exceptionally favourable for acquiring information of a comparable kind on the question of distribution.

212. The observations at command for 1891 practically cover pretty thoroughly the period of about two months during which seals are ordinarily taken by pelagic hunters in Behring Sea, extending from the middle of July to the middle of September, and they are much more complete for the eastern than for the western part of the Behring Sea.

213. On consideration of the material to be dealt with, it was decided that it might be most advantageously divided into two periods of about a month each, the first including all dates from the 15th July to the 15th August, and the second those between the 15th August and the 15th September. All the lines cruized over in the first of these periods were plotted on one set of maps, and those in the second period on another. The parts of these tracks run over during the night, and in which seals therefore could not well be observed, were indicated on the maps in a different manner from the day tracks, as far as possible; and with the assistance of the logs, the numbers of seals seen in certain intervals were then entered along the various routes in a graphic manner. The places in which pelagic sealers had reported seals to be abundant or otherwise, as well as those in which sealing-vessels were found at work by the cruisers, and other facts obtained from various sources, were also indicated on the maps.

214. Without attempting to enter into further details here as to the methods employed, the general results arrived at may now be briefly described:—

It is evident, in the first place, that the seals are most abundant in the water in the immediate vicinity of the shores of the breeding islands, this abundance of seals extending often not more than half-a-mile from the fronts of the breeding grounds, and seldom for 3 or 4 miles in such a way as to be at all notable. In the case of the Pribyloff Islands, it is also observed that seals were numerous in both the monthly periods in the tract included in a general way between St. Paul and St. George Islands, though they differed much in this respect even at nearly approximate dates. It is further clearly shown that the Pribyloff and Commander groups form the main centres of abundance of seals in Behring Sea during the summer; but that while this is undoubtedly the case, the seals are not found to decrease in numbers with any approximation to regularity in zones concentric with the islands,—always excluding the seals in the immediate neighbourhood of the shores.

215. It is therefore not possible to outline a series of zones in which the number of seals present will bear an inverse ratio to the distance from the islands. It is, however, possible to draw an approximate limit for a region about the Pribyloff group, which will roughly define the area of abundant seals at sea during each of the two monthly periods chosen. In the case of the region about the Commander Islands, data, though almost wanting for the first monthly period, and but scanty for the second, are sufficient to indicate a general mode of distribution similar to that demonstrable in the first case. Within the areas of abundant seals, these animals are, however, by no means regularly distributed, even at any particular fixed date, but are scattered in irregular patches in the diffuse character already described, and are very often thickest locally towards the outer limits of the area.

216. Beyond these areas, seals are found more or less sparsely scattered over a great part of Behring Sea, which in the first period extends, in the longitude of the Pribyloff Islands, from the Aleutian chain northward to about the 59th degree of latitude, includes the whole vicinity of the western Aleutian Islands, and spreads again to a greater width with the Commander Islands as a centre.

217. In 1891 the area of abundant seals about the Pribyloff Islands appeared to be not only changed in form, but considerably reduced in size in the second monthly period; while that of scattered seals was not only changed in form, but much enlarged in area. It appears, that in most years, in the later summer this area of scattered seals extends to the north-east of the Commander Islands, quite to, or even beyond, the 60th parallel of north latitude. This particular extension is probably to be explained by the drift of that branch of the Japan current which flows through the western part of Behring Sea, assisted by the prevailing southerly winds in the same part of the sea in July,\* while the comparatively restricted spread in a northward direction in the eastern part of the sea may be similarly connected with the general movement of the water from north to south in that region.

\* See Maps 37 and 39, "Challenger Expedition Report," Physics and Chemistry, vol. ii.



218. The northern outline of this wider region of scattered seals in the second monthly period, may be practically assumed as that of the normal range of the fur-seal to the north, and is adopted as such on one of the accompanying maps. On other maps the outlines of the areas of abundant and scattered seals in each monthly period are shown. The extreme northern range of the fur-seal, however, extends far beyond the line just referred to, for Captain Healey and Lieutenant Jarvis, of the United States' Revenue Cruizer "Bear," state that fur-seals are occasionally seen by whalers as far as St. Lawrence Island, and even on the northern shores of that island. They also found in 1891, at Cape Tchaplín or Indian Point on the Siberian coast, the natives in possession of a few skins of old bull seals, which they stated had been taken near St. Lawrence Island. Our own inquiries on that island and at Plover Bay on the Siberian coast were purely negative as regards fur-seals, though hair seals, including the rare banded or ribbon seal (*Histiophoca fasciata*), were being taken by the Tuskis in nets. It was, however, further ascertained that one or two instances had occurred of old male seals being taken near St. Michael, not far from the Yukon mouth, and it is therefore probable that a line drawn from Cape Tchaplín to this place may be considered as defining the extreme maximum northern range of the fur-seal of the North Pacific. This limit, however, appears to be but rarely attained, and then only by mature and old males, which have probably become useless on the breeding rookeries, and have been driven or have wandered away alone far from their kind.

219. With the idea that the general distribution of the fur-seals in Behring Sea, from the breeding islands as centres, might show some direct relation to the prevailing winds, meteorological observations made during the summer by ourselves and on several of the cruizers were sent to the Meteorological Department of Canada, and were there, under the direction of Mr. Carpmael, analyzed by Mr. Stupart, who prepared wind-roses for each of the monthly periods for the vicinity of the Pribyloff Islands. The observations taken near the Commander Islands were, however, insufficient for such treatment. The wind-roses thus obtained for the vicinity of the Pribyloff Islands were then compared, both in a direct and in an inverse sense, with the outlines of the area of abundant seals, but without bringing to light any manifest connection of the kind conjectured, though there appeared to be a slight balance of evidence in favour of the belief that the seals tended rather to travel against the wind than with it. So far, therefore, as this evidence goes, it seems to show that the seals found at sea, even in the regions in which they are not very far from the breeding islands, are not animals which have only temporarily left the islands, for in this case their movements would almost certainly show some obvious relation to the prevailing wind and weather. The fact that they do not do so, in itself suggests that the seals met with at sea really form practically independent pelagic schools of a diffuse kind.

220. An examination of the area surrounding the Pribyloff Islands in which seals were abundant in 1891, together with such other facts bearing on former years as could be obtained from pelagic sealers, indicates that the maximum limit to which this area may reach from the islands in the summer months in any direction is not more than about 180 miles, and it is probable that similar conditions obtain with regard to the Commander Islands.

221. Respecting the number of fur-seals to be found at sea within the areas of abundance above referred to, and exclusive of those frequenting the islands and their immediate shores, it is difficult to attain to anything like certain results. The endeavour has been made, however, in a tentative way to reach some roughly approximate estimates, by finding the number of seals actually seen in measured lengths of runs in or across such areas, chosen as typical, and made at different times in both monthly periods. The results obtained varied somewhat widely, as might be expected, not alone in consequence of the actual difference in density of the seals, but also from circumstances connected with the weather and the state of the sea surface. The observations made were, however, combined in a general average, which, when thus treated, showed about one seal noted to each mile run. On the assumption (which cannot be very far from the fact) that on the average a width of half-a-mile was efficiently scanned from the deck, this would give a mean number of two fur-seals to each square mile of sea surface within the area referred to.

222. As to the much larger area of scattered seals, it is still more difficult in this case to arrive at any even approximately accurate results, for though long runs were often made without meeting any seals, limited patches of relatively abundant seals were sometimes met with, and these seemed to be quite irregularly distributed. It appears probable, however, that the density of seals within these areas does not exceed, but may reach, about one to five square miles.

223. No connected body of observations is in existence as to the actual abundance of seals at sea and their distribution in various parts of their range in different years, but more attention has naturally been paid to this since the development of pelagic sealing. The following references on this subject have been found in documents already published, or obtained in evidence. They are together sufficient at least to show that the distribution of the seals at sea, particularly as between different parts of their winter habitat, is subject to considerable variation.

1866. Judge J. G. Swan says, that between 1857 and 1866 fur-seals were very scarce about Cape Flatter; and that it is only since the last-mentioned year that they have begun to resort to the vicinity of Fuca Strait in such great numbers.\*

[This statement is probably based on the number of skins actually taken by the Indians, and may in part, at least, be explained by the fact that for a number of years the Indians scarcely hunted the fur-seal (§ 362).]

1868. 5,000 fur-seals are said to have been killed about the Strait of Fuca in this year.†

1869. Bryant speaks of the abundance of fur-seals off the coasts of Oregon, Washington, and British Columbia in this as compared with former years.‡

1872. Captain Lewis, then connected with the Hudson's Bay Company, stated that in 1872 "immense numbers of fur-seal pups and yearlings" were observed in the ocean off Vancouver Island and the entrance to Fuca Straits. That he had never during thirty years of previous service on the north-west coast seen or heard of such an abundance of fur-seals. He thought that "8,000 or 9,000 skins, chiefly pups and yearlings," were taken.§

1873. Captain Lewis, previously cited, stated that in this year very few fur-seals were seen off the British Columbian coast. His figures showed only "600 or 700 skins; these were all older ones."¶

1866 to 1880. Writing in 1880, Judge J. G. Swan says: "This unprecedented number of seals which made their appearance, a number which seems to have increased every season since 1866, will give employment to a larger fleet of vessels another year."¶¶

1880. Fur-seals were reported in great abundance 100 to 300 miles off-shore, by vessels making for the Strait of Fuca.

According to Judge J. G. Swan,\*\* the canoe catch of Neah Bay (Makali) Indians in this year was 1,558.

1881. Mr. Marsilliot, second engineer of United States' Revenue Cutter "Wolcott," states that in this year fur-seals were very abundant in Puget Sound, and were taken as far in as Hood's Canal.††

1888. Judge J. G. Swan, in a letter to Senator Dolph, says: "Seals are reported as being unusually numerous this season, and are in myriads. California steamers report running through one herd which extended 100 miles, and the seals appeared to be as thick as they could swim."‡‡

1889. Captain J. D. Warren, who has been actively engaged in sealing for twenty years, states that during that time he has noticed no diminution in the number of seals at sea, but, if any change at all, an increase.§§

1889. Captain W. O'Leary, with four years' experience, says: "I do not think there is any decrease in the number of seals entering Behring Sea. I never saw so many seals along the coast as there were this year, and in Behring Sea they were more numerous than I ever saw before."¶¶¶

1890. Mr. A. R. Milne, Collector of Customs at Victoria, summarizing the information obtained by him from sealers respecting that season, says: "I can now safely repeat what I have already said and written, that owners and masters do not entertain the slightest idea that the seals are at all scarcer." He adds, that statements made to a contrary effect in the press are believed to have been inspired by interested motives.¶¶¶

1890 and 1891. Mr. R. H. Pidcock, Indian, reports that the Indians of northern port of Vancouver Island say the fur-seals have been less plentiful than before during these two years.

Mr. Harry Guillod, Indian Agent for the west coast of Vancouver Island, says that

\* "Fishery Industries of the United States," vol. ii, p. 394.

† Dall, "Alaska and its Resources," p. 493.

‡ "Monograph of North American Finnyeds," p. 332.

§ Quoted by Elliott, United States' Census Report, p. 166. ¶ United States' Census Report, p. 166.

¶¶ "Fishery Industries of the United States," vol. ii, p. 597. ¶¶¶ Ibid., p. 394.

†† Quoted by Judge J. G. Swan in Ball, "United States' Fishery Commission," vol. iii, p. 206.

‡‡ Parliamentary Paper [C. 6131], p. 192. §§ Ibid., p. 356.

¶¶ Ibid., p. 337. ¶¶¶ Parliamentary Paper [C. 6253], p. 78.



the Indians report an unusual abundance of seals in these two years, while they were scarce for three years previously.

1891. Mr. C. Todd, Indian agent at Metla-Katla, on the northern part of the coast of British Columbia, states that the Indians believe the number of fur-seals to have been about the same for the past twenty years.

Respecting the number of seals met with at sea in this year, the following statements occur in the sworn evidence of sealers:—

C. J. Kelly: Seals are as plentiful this year from the coast (of British Columbia) to the Shumagin Islands as last year.

Captain W. Petit: From Cape Flattery north, seals were more plentiful than any year since 1886; in Behring Sea, as plentiful as in former years.

Captain W. E. Baker: Along the coast to the Shumagin Islands seals were as plentiful in some places as the year before; in others, more plentiful. No material difference in my average catch for last four years. No decrease in number of seals in late years.

Captain A. Bisset: Seals were as plentiful last year as in previous years along the coast.

Captain T. M. Magnesen: Seals were more plentiful last year than I had ever seen them, both in Behring Sea and along the coast.

Richard Thompson: Seals were as plentiful last year as the year before.

Andrew Laing: No decrease in seals last year.

Captain W. Cox: Seals were as plentiful last year as ever before.

Captain C. Hackett: Found the seals as plentiful on the coast last year as in former years. Seals were more numerous in Behring Sea than I ever saw them before.

Captain C. McDougal: Found the seals thicker in Behring Sea than ever before.

A. Douglas: Had sealed seven years. Noticed no decrease in number of seals last year. Thought they appeared a little shyer. Saw more seals and larger bodies of seals in Behring Sea than ever before.

L. L. McLean: Seals were more plentiful last year. Never saw seals so plentiful in Behring Sea before (in seven years' experience).

1892 (January). Judge J. G. Swan, in a letter, states that Indians report seals unusually abundant off Cape Flattery and about Barclay Sound.

### (B).—Food of the Fur-seal.

224. The broad and general facts of the annual migration habits of the fur-seal do not appear to depend primarily upon the pursuit of food, but rather seem to be governed by the instinctive resort to the breeding islands in the spring, followed by the equally instinctive departure for more southern latitudes on the approach of the cold and snows of winter. The distribution and migrations of the animals upon which the seals depend for food doubtless have, however, a considerable influence on the movements of the seal in a subordinate degree, and particularly upon its abundance or otherwise at various times in different parts of its summer and winter habitats. Some of the last observations quoted have a direct bearing on this point.

225. Most of the information gained on this subject is the result of special inquiries made among the native hunters of different parts of the coast, and of questions addressed to the pelagic sealers. The knowledge procured by these people is obtained in various ways. Seals are often seen at sea actually pursuing fish of different kinds, or coming to the surface with a fish held in the jaws. The stomachs of seals killed at sea are frequently well filled with fish, and are, from motives of curiosity, sometimes examined. It is also often noticed that a seal, when taken into a canoe, vomits the entire contents of the stomach. Another, and, though less direct, scarcely less trustworthy source of information, is the locally-observed coincidence in abundance of seals with that of certain kinds of fish.

226. Without quoting at length the numerous statements obtained on this point, it may be said that the general tenour of the evidence shows, that while the fur-seal has been known to eat almost all kinds of fish, including cod and even halibut, its favourite diet consists of small fish, of which the herring, probably from its size and from its gregarious habit, is altogether the most important. The appearance of seals toward spring in the inner waters along the coast of British Columbia, and the numbers seen there at any particular place or time, bear a very close relation to the occurrence of shoals of herring, while some of the most notable cases of the penetration of seals into the narrow channels about the estuary of the Nass, Skeena, and Knight's Inlet have been

directly trace to their pursuit of the ulachan, or candle-fish, then resorting to these places to spawn.

227. Another animal, which may be classed as a special food of the fur-seal, is the squid or cuttle-fish. Evidence of this has been obtained at various points along the British Columbian coast and in the Commander Islands, and of the seal stomachs opened by us on the Pribyloff Islands, besides a very few fish-bones the beaks of squid were about the only traces of food found. It is perhaps further worth noting in this connection, that Captain Morrell many years ago stated, with special reference to the fur-seal of the Falkland Islands, that they are said to live on the squid.\*

228. It is particularly along the British Columbian coast, within the winter habitat of the fur-seal, that the connection of its movements with those of the herring has been traced. Unfortunately, little is accurately known about the migratory habits of this herring in any part of the world, and the information respecting the migrations of this fish on the West Coast is exceedingly imperfect. It is probable that here, as elsewhere, the migrations of the herring are somewhat capricious, and that this fish regularly approaches the shores in large schools only about the spawning season, while its movements at other times are largely governed by the relative abundance on different parts of the surface of the ocean of the minute crustaceans and other pelagic organisms upon which it lives. This, again, depends on the winds and currents and temperature, and to the interaction of these several factors, the sudden appearance or disappearance of bodies of fur-seals, in various parts of their winter habitat particularly, may doubtless be traced.

229. In the summer habitat within Behring Sea, it has been noted by some of the more intelligent pelagic sealers that fur-seals are found to be numerous where "whale-food" abounds. The "whale-food" met with in these seas consists of similar minute organisms to those composing "herring-food," and the seals are doubtless in search of the smaller fishes which may be living upon this food. A further circumstance having the same general bearing is the frequently-observed association of seals at sea, particularly in Behring Sea, with abundance of single fronds or tangled masses of drift kelp. This no doubt depends partly on the fact that the kelp affords shelter and a measure of protection not only to the minute pelagic organisms, but also to the various small fishes which prey upon these. It is, however, to be explained for the most part by the circumstance, that the drift kelp accumulates in areas of eddy or slack-water between the various marine currents, into which these minute organisms with surface-fishes and the fur-seals themselves naturally drift.

230. The most important point to be gathered from these observations is, that the fur-seal is not usually a bottom feeder, and that it is not necessary that its fishing-grounds should be found upon submarine banks situated at such moderate depths as those to which the seal may attain by diving or "sounding," a hypothesis often advanced by theorists, but which finds little basis in the known facts.

231. That the fur-seal is essentially a pelagic surface feeder, is further shown by the fact that it is not known to resort habitually to the best fishing banks in Behring Sea, such, for instance, as the Baird bank, and that fish, such as the cod and halibut, inhabiting water of some depth and feeding along the bottom, are often found in considerable numbers, not only near the breeding islands of the seal, but even in the immediate vicinity of the breeding rookeries of these islands. Such fish are actually caught at various seasons by the natives of the Pribyloff Islands within 1 or 2 miles of some of the largest rookeries on the south side of St. Paul Island, and not more than  $2\frac{1}{2}$  or 3 miles off the rookeries on the north shore of St. George Island. On one occasion, while at anchor for a short time within less than half-a-mile from the largest rookery on Behring Island, at Cape Yushin, over twenty cod, with some other fishes, were caught from our steamer with two or three hand lines, in water not more than 6 or 7 fathoms in depth.

232. Some particulars are given on a later page respecting the abstention from food of the fur-seals while remaining upon or about the breeding islands. It appears to be certain that the mature males doing duty on the breeding rookeries do not feed at all during the breeding season, and that for some time, at least several weeks, after landing, the breeding females do not leave the rookery grounds in search of food. There is no apparent reason why the "holluschickie," or young males, should not go to sea in quest of fish. Singularly enough, however, though animals of this class have been killed by hundreds of thousands upon the breeding islands under all conceivable conditions of weather, and often within less than an hour of their deportation from their

\* Dall, "Alaska and its Resources," p. 492.

hauling-grounds, the almost universal testimony is to the effect that their stomachs are invariably found to be free from food.

233. With a view to obtain such direct information on this subject as might be possible, the stomachs of seals killed in our presence were examined; and though the results of these examinations, noted below, do not entirely confirm the statement just referred to, they show a remarkable absence of food. The number of seals which it was thus possible to examine was of course small.

On St. George Island, twenty seals were killed on the 1st August in our presence. These were selected from a drive made from the nearest part of the Great Northern Rookery, to the killing ground about half-a-mile distant, and had been about three hours off the rookery before they were killed. Of these twenty young males, the stomachs gave the following results:—

Seventeen: no food whatever, in most a little slimy matter, froth or bile, and often a few lively worms.

One: a handful of small pebbles.

One: a clot of brownish blood.

One: an isopod crustacean, about an inch in length, and a few fragments of fish bones.

234. On St. Paul Island, the 3rd August, the stomachs of ninety-eight young males were examined. These were selected from a drive made from Zoltoi sands to the killing ground, a distance of about 2,000 feet, from which they had been driven early in the same morning, possibly two or three hours before being killed. The contents of these stomachs, in addition to a few worms present in many cases, were as follows:—

Sixty-five, contained nothing, or, in some cases, a pinch of sand, or a small quantity of slimy or frothy matter.

Seventeen, contained pebbles, sometimes several, in other cases but a single pebble. Six, showed a rather notable quantity of bright yellow bile.

Four, contained some blood, generally somewhat changed in colour by the action of the gastric juices, and in one or two cases clotted.

Three, contained the horny armatures or beaks of squids only; one of these a single beak, another two beaks, and the third three beaks.

One, held some pebbles, the ear-bone of a fish (cod?), and a few pieces of broken dead shell.

One, held some pebbles and broken pieces of dead shell, with a single beak of squid.

One, showed a very small piece of kelp only.

235. From the large North Rookery on Behring Island, 5th September, an adult male or "seacatch," two females, and an unweaned pup, were driven directly from the rookery ground, about 200 yards' distant, and killed, by permission of the authorities, for presentation by us as specimens to the British Museum. The stomachs of all four were completely empty, with the exception of a few worms in those of the three adults. Not only the pup, but the females, and even the old male, were fat and in good condition.

236. Respecting the pebbles frequently found in the stomachs of the fur-seal, it has been suggested by Mr. Elliott that these may be swallowed for the purpose of destroying the worms often observed. It has further been suggested that such stones have incidentally found their way into the seals' stomachs attached to sea-weeds, or zoophytes eaten by the seals; but little can be said in favour of this theory. The habit is one, however, not peculiar to the fur-seal, but common to most pinnipeds.\* The largest of those pebbles actually collected from the stomachs of the seals above noted as having been killed on St. Paul on the 3rd August, is a flat stone, 1½ inch in length and 1 inch in breadth, but much larger ones have often been found. It is probable that individual stones do not as a rule remain very long in the stomach; for about one-half of those collected on this occasion were rough scoriaceous fragments, showing little or no sign of attrition. The other moiety was more or less perfectly rounded, and a certain number showed a peculiar fine polish, probably to be attributed to wear in the stomach of the animal. About one-seventh of the entire number represent rocks not found on the Pribyloff Islands, or, if occurring at all, only very exceptionally as erratics carried there attached to the roots of drift trees or kelp, or brought upon floating ice. These have, in all probability, been borne by the seals themselves from some distant localities. The remaining and much the larger part of the collection consists of ordinary volcanic pebbles, such as might be picked up anywhere on the beaches of the Pribyloff or the Aleutian Islands.

\* "Monograph of North American Pinnipeds," p. 354.

237. The Aleut foreman in charge of the rookeries on Behring Island stated that the young seals began to swallow pebbles when about four months old, after which they become thin. If correct, this statement would appear to mean that it is about the time at which the young are weaned that this habit is first developed. He also said that, when seals of mature age were observed to swallow stones, they were (or became) thin, and this may possibly be regarded rather as the effect of the gastric worms than of the pebbles. The same man added, and entirely as an idea original with himself, that when the seals first arrived at the Commander Islands each year, they contained stones unlike those to be found upon the islands, and which he conjectured had been picked up upon the Kamtschatka coast. In the stomach of the seal pup examined for us by Dr. Günther at the British Museum, it will be noted that a stone was found, although the pup was supposed to be about seventeen days old only. (Appendix D.)

238. On several of the rookery- and hauling-grounds of the Pribyloff Islands there is to be seen a notable abundance of small rounded pebbles, just such as those found in the stomachs of the seals. As these lie upon the surface, often far above any possible action of the sea, and as there is no evidence of benches of such rolled stones due to former periods of greater submergence upon the Pribyloff Islands, the conjecture appears to be legitimate that these have, in the course of years, been brought and accumulated by the seals themselves. Whether voided or disgorged from time to time upon the rookery grounds, or whether accumulated by a slower process consequent on the occasional death of seals upon these grounds, cannot be decided. The suggestion here made, it should be stated, is due to Mr. J. Stanley-Brown.

239. The blood noticed in some of the stomachs may probably be attributed to the laceration of the tongue by the teeth, or to congestion and extravasation of the nasal membranes brought about by the severe ordeal of driving. Its presence in the alimentary tract is at least scarcely explicable as the result of internal lesions.

240. In the middle of September, when paying a last visit to the Pribyloff Islands, several of the young seals of the same year, then well grown, were observed upon water-washed rocks, either playing with or eating fronds of kelp. Mr. J. C. Redpath stated that he believed the seals actually ate the kelp as a part of their food, but from personal observation no statement could be made to this effect, and it is considered very doubtful.

241. Colonel J. Murray informed us that, in 1890, the young seals or pups killed as food for natives on the Pribyloff Islands about the 4th and 8th November, had not even at that date been weaned, but were found full of milk. He further stated, that such pups had been driven in the very early morning to the killing grounds, and sometimes not killed till late in the evening, thus insuring a period of at least fifteen hours from the time at which they had had any possible connection with their mothers. Others, again, had not been killed till the following morning, enlarging the necessary time of abstinence from suckling to twenty-four hours from the time of last suckling. These observations appear to show that the young seals are capable of laying in a very considerable reserve in the way of mother's milk, and have important bearings on the general question of the time during which the mothers may absent themselves from the breeding rookeries at earlier dates in the history of the young.

242. Perhaps the most notable feature in regard to this food question, and one directly consequent on the prolonged abstinence of the seals from food while on and about the islands, is the entire absence of all excrement on the rookeries and hauling grounds. Captain Bryant appears, however, to be the only author who has specially mentioned this particular and striking fact. He writes:—

"The fact of their remaining without food seems so contrary to nature, that it seems to me proper to state some of the evidences of it. Having been assured by the natives that such was the fact, I deemed it of sufficient importance to test it by all the means available. Accordingly, I took special pains to examine daily a large extent of the rookery, and note carefully the results of my observations. The rocks on the rookery are worn smooth and washed clean by the spring-tides, and any discharge of excrement could not fail to be detected. I found, in a few instances where newly-arrived seals had made a single discharge of red-coloured excrement, but nothing was seen afterwards to show that such discharges were continued, or any evidence that the animals had partaken of food. They never left the rocks except when compelled by the heat of the sun to seek the water to cool themselves. They are then absent from the land for but a short time. I also examined the stomachs of several hundred young ones, killed by the natives for eating, and always without finding any trace of food in them. The same was true of the few nursing females killed for dissection. On their arrival in the spring they are very fat and unwieldy, but when they leave, after their four months' fast, they are very thin, being reduced to one-half their former weight."

In a note appended to the above by Professor Allen, that gentleman writes: "Steller states that in the numerous specimens he dissected he always found the stomachs empty, and remarks that they take no food during the several weeks they remain on land; Mr. Dall confirms the same statement in respect to the present species, and Captains Cook, Weddel, and others, who have had opportunities of observing the different southern species, affirm the same fact in respect to the latter. Lord Shulldham long since stated that the walrus had the same habit, though its actual fast seems somewhat shorter than those of the eared seals. . . . This singular phenomenon of a protracted annual fast during the period of parturition and the nursing of the young—the season when most mammals require the most ample sustenance—seems not wholly confined to the walruses and eared seals. So far as known, however, it is limited to the pinnipedes; and, excepting in the case of a single member, the sea-elephant, to the two above-named families. By some of the old writers the sea-elephant was said to feed sparingly, at this time, on the grasses and sea-weeds that grew in the vicinity of its breeding places, but the weight of the evidence in respect to this point seems to indicate that this species fasts similarly to the eared seals and walruses during the period it resorts to the land to bring forth its young.\*"

243. The fur-seals on Juan Fernandez are likewise reported, and without qualification as to sex, to abstain from nourishment during the breeding season: "Toward the end of the month of June these animals come on shore to bring forth their young, and remain to the end of September without stirring from the spot, and without taking any kind of nourishment.†"

Though not at the time aware of Bryant's statement, above quoted, the absence of excrementitious matter was one of the first points noted and remarked on by us after landing upon the Pribyloff rookeries, and it is to the absence of such matter alone that the continuous herding together on one spot for several months of so many thousand animals is on sanitary grounds rendered possible. It became obvious that so soon as the seals commence again to feed, it must be absolutely necessary for them to abandon their crowded quarters on shore. The evidence thus afforded, that the females do not feed to any notable extent until the young are practically weaned, or, at all events, until very late in the suckling season, is perhaps more definite than that given in any other way.

(C.)—*Physical Characteristics of the Pribyloff and Commander Islands, and Nature of the Breeding Grounds.*

244. The principal breeding places of the fur-seal of the North Pacific at the present time, are the Pribyloff and Commander Islands, and, omitting certain exceptional periods dependent chiefly on the interruption of natural conditions brought about by the slaughter of seals, it appears that the Pribyloff Islands have, within historic times, been frequented by larger numbers of seals than the Commander Islands. Recent changes, depending chiefly on the circumstances which have occurred in the first-named islands, have, however, at the present time, produced a nearer approach to equality in numbers as between the two groups of islands than has been normal. Of other breeding places in the North Pacific still known to be frequented by smaller numbers of seals, Robben Island is the most important, but of these some notes are given later.

245. While it has not been disproved that the fur-seal may bring forth its young upon detached floating masses of the great kelp of the Pacific, particularly in cases where the gravid female has been prevented from reaching the breeding places on shore in due time, such instances, if they occur, must be quite exceptional. As to the alleged birth of young at sea, the result of careful inquiries of various kinds shows that if this should occur without the presence of any resting place, the young probably perish, for, though undoubtedly capable at birth, and even if cut from the mother before birth, of swimming for a shorter or longer time, the young is not suited at once for a pelagic existence, and authentic instances in which females with recently-born young have been seen at sea are very rare. It may be mentioned here, however, that some of the Indians of the northern part of the coast of British Columbia aver that they have seen the female fur-seal swimming with its young on its back in the manner said to be practised by the sea-otter, and actually observed in the case of the hair-seal, but this statement has not been fully authenticated.

246. The normal habits of the fur-seal are such as to require a safe terrestrial

\* On the Eared Seals. "Bull. Mus. Comp. Zool.," vol. ii, No. 1, pp. 101, 102. See also Senate, Ex. Doc. No. 32, 41st Congress, 2nd Session, p. 5.

† Quoted in United States Census Report, p. 122.

retreat at the season during which the young is born, where the young may remain undisturbed for a period of three or possibly four months, or till such time as they may be able to assume the pelagic habits of the adult. It is therefore primarily for the purpose of giving birth to their young and suckling them that the female fur-seals seek the breeding islands. At other seasons they do not require to land anywhere, and, as a matter of fact, they very seldom do so. It has frequently been stated that the mating of the male and female must be accomplished on shore, but there is ample proof that this is not true, and that the male and female come together with equal facility in the water. It is thus evident that the ruling motive for the landing and sojourn ashore of the seals, is the birth of the young, and that the habit of the males in frequenting the breeding rookeries and seeking the females there after the young have been born has grown up from this or in connection with it. With many animals the male has a function to fulfil on the breeding places in protecting the young, but in this instance the males are neither called upon, nor do they show any natural disposition, to exert themselves in this particular direction.

247. The Commander and Pribyloff Islands, when originally discovered in 1741 and 1786 respectively, were entirely uninhabited by man; nor has any evidence been found since on either group to show that man had ever previously visited them. With the exception of St. Matthew Island, which, by reason of the late date to which the ice often lingers about its shores, is not suited to become a habitual breeding resort of the fur-seal, these two groups of islands are the only ones in Behring Sea, or, for that matter, in the whole northern part of the North Pacific, which were not either peopled by natives or regularly visited by them on their hunting and fishing expeditions. To this cause rather than to any other is to be attributed the fact that these islands became the permanent breeding resorts of the fur-seal. The cool and humid summer climate may doubtless in itself have been congenial to the seal, but in this respect, and also in the temperature of the sea surrounding them, well-marked differences occur as between the two groups, while almost any of the very numerous islands of the Aleutian chain afford surroundings so similar in the matter of climate that they would undoubtedly have afforded suitable breeding places if similarly uninhabited. The islands of this chain were, however, then thickly inhabited by the Aleuts, and as the fur-seal, when resorting to and remaining upon the shores during the breeding season, is practically defenceless and incapable alike of resistance or effective flight, while its flesh and fat are highly prized by all native tribes as food, it is probable that no breeding stations could long be maintained there or on any other lands similarly peopled. Captain Scammon nevertheless states that fur-seals formerly occupied, in addition to the Pribyloff and Commander Islands, "several of the more isolated points in the Aleutian chain."\* He does not, however, particularize further, or say whether he speaks from personal observation, or from what source his information was obtained.

248. The fact that fur-seals of the same species formerly had breeding-places on such islands as the Farallones of the Californian coast, under climatic conditions perhaps as different as it is easy to imagine, is alone sufficient to show that climate was not the ruling factor in the choice of the Pribyloff and Commander Islands by the fur-seals of the North Pacific. If further evidence be required it is furnished by the facts relating to the species of fur-seal inhabiting the southern hemisphere, which, though differing from that of the North Pacific in structural points, is so similar in habit as to furnish a case in point. Here also it is found that all the notable breeding places or rookeries were discovered upon insular lands to which man had never come, and on which, during this critical period of the annual cycle of its life, the fur-seal was also exempt from the attacks of other terrestrial animals to which it would have been an easy prey. This being granted, it is, perhaps, a legitimate subject of speculation what the conditions in the North Pacific were before the present races peopled its shores and nearer islands, and more particularly before the islands of the Aleutian chain were peopled. Dall has shown it to be probable that even these islands were inhabited from a very remote period, that the population was throughout of an Innuite type, and that the occupation of the islands proceeded from east to west.† It can scarcely be doubted that in still earlier times the fur-seals resorted to many or to all of these islands at the breeding season, but that as the islands became occupied successively by the predecessors of the modern Aleuts, this animal, from the nature of its habits, was the first to find them no longer safe or congenial. When discovered by the Russians it was estimated that the population of the chain amounted to 50,000, and in this fact alone a sufficient reason for the absence of breeding rookeries of the fur-seal is found.

\* "Marine Mammalia," p. 155.  
 † "Contributions to North American Ethnology," vol. i.

249. The Pribyloff Islands are almost entirely, and the Commander Islands are chiefly, composed of rocks of volcanic origin, but in this respect they are by no means singular, and no physical characteristics dependent on this circumstance are ruling ones in respect to their fitness as breeding places.

250. The Pribyloff group consists of two rather large islands, St. Paul and St. George, separated by a distance of about 39 miles, with two small islets, Walrus Island and Otter Island adjacent to St. Paul. Of these, Otter Island is about a mile in length, while Walrus Island is a mere flat rock about a quarter of a mile in length. The seal rookeries are all situated either on St. Paul or St. George, and those on St. Paul are considerably the more important. St. Paul Island is about 13 miles in length by 6 in breadth, while St. George Island is about 14 miles in length, by 5 miles in greatest breadth, with a somewhat inferior area.

251. As already stated, both are composed of volcanic rocks, probably referable to the latest stages of the Tertiary period, and consisting largely of basalts or basalt-like rocks in the form of nearly horizontal beds, often distinctly columnar where broken off in cliffs. There are, however, certain beds of scoriaeous material which are included between those representing originally molten matter. These islands appear, in fact, to be the result of old submarine volcanic eruptions, spreading their material in pretty regular layers on the sea-bed, and eventually rising above the surface of the shallow eastern plateau of Behring Sea, either because of the mere accumulation of material, or perhaps more probably with the aid of a local elevatory movement of somewhat later date. Since the original time of their appearance above the sea, their margins have been worn into sea-cliffs, or beaten back to form stretches of sandy beach, by the action of the waves; but in consequence of the absence of older rocks, most of the material for these beaches, as well as that of the sand dunes which characterize parts of the coast (particularly on St. Paul Island) is not siliceous, but is composed of the comminuted material of the local volcanic rocks.

252. The surface of St. Paul may be described as consisting of rounded hills, of which the highest attains an elevation of about 600 feet, connected by flat land, much of which is but little elevated above the sea. Its shores are not often bold though forming cliffs of moderate height in some places, particularly about its western end. St. George is, on the whole, considerably higher, and contains very little low or flat land. Its surface consists of hills and upland moors, and its highest parts exceed 900 feet. The shores of St. George are generally steep and bold, and much of its border is formed by cliffs of considerable height, which constitute the breeding places of innumerable birds.

253. No tree or shrub occurs on either island, of which the surface is covered, when not too rocky to support any growth, with grass and herbaceous vegetation, mingled with moss and lichen on the higher parts. Neither island affords any harbour, and it is necessary to anchor under a weather shore and to effect a landing either with an off-shore wind or in calm weather. The situation of the village on St. Paul is, however, such that a landing can generally be effected there either on one side or other of the long south-westerly-extending peninsula terminating in Reef Point.

254. The breeding rookeries and hauling-grounds (or tracts which the bachelors and other seals not actually engaged in breeding frequent) are, of course, confined to the immediate vicinity of the coast-line on both islands. The seals seldom land and never remain on Walrus Island, and though in former years many are said to have hauled out on Otter Island, and some still do so, this is not known to have been occupied as a breeding station.

255. All the existing breeding rookeries on St. Paul and St. George Islands were visited and examined by us during our first visit to the islands about the end of July, and some of them were subsequently re-examined on our second and third visits in the months of August and September respectively, for the purpose of noting the changes in the distribution and habits of the seals at various seasons. So much has, however, already been written in description of the topography of the various rookery grounds, particularly by Mr. H. W. Elliott, that it is not here necessary to enter into any minute description of them. It will serve all practical purposes and will tend to leave the main question involved unobscured, if the several rookeries are merely characterized in a very general way, and if their differences and common characters are subsequently treated of together.

256. There are on St. Paul Island at the present time seven recognized breeding rookeries, of which the names and general characters are as follows:—

(i.) *Zapadnie Rookery*.—This consists of two parts, which may be called West and East *Zapadnie* respectively, separated by a small bay with sandy beach, upon which the



seals do not remain. The rookery ground of both parts faces to the south-east, and consists of rather regular slopes rising from the edge of the sea, and more or less thickly strewn with angular or sub-angular basaltic blocks.

(ii.) *Tolstoi Rookery*.—This rookery faces to the north-west, on the other side of English Bay. The ground occupied by the breeding seals is, for the most part, a steep and rugged slope, strewn with angular blocks, and broken by jutting masses of solid rock. At its north-east end the slopes become lighter, and it merges into the open and smooth slopes of Middle Hill, which constitute an important hauling-ground frequented by bachelor seals or holluschickie.

(iii.) *Lagoon Rookery*.—Facing to the south-west, and open to the full sweep of the sea only in hearings between south-west and west. In consequence of the protection afforded by the long Reef Point, this rookery ground is the most sheltered of any on either of the islands. The ground actually occupied by the breeding seals is a narrow and low reef of well rounded boulders, which separates the sea from a shallow lagoon.

(iv.) *Reef Rookeries*.—Occupying both sides of the outer part of the long promontory known as Reef Point, and facing to the north-west and south-east. The north-western slope, often called Garbotch, is rather steep, and a part of the rookery-ground occupied on this side consists of a narrow fringe of rocky shore overlooked by low basaltic cliffs. A narrow ridge, which is worn bare and occupied as a hauling ground by holluschickie in the early part of the season, and is frequented by all classes of seals at a later period, separates the north-western from the south-eastern side of Reef Point. On the south-east side there is a wide border of fiat land but little elevated above the tide, upon which the greater part of the seals of the reef rookeries is found. Almost the whole of the rookery ground of the reef is plentifully strewn with angular masses of rock, though occasional smooth spaces also occur. The higher parts of the Reef Point consist very largely of a bed of volcanic scoriae, lying compact and much in its original state, and forming a fine hard surface considerably different from that found on most of the rookeries.

(v.) *Lukannon and Ketavie Rookeries* form practically one rookery; they slope generally eastward, and in parts are much broken by the irregular jutting out of the solid rock and the many angular masses which have detached themselves from it.

(vi.) *Polavina Rookery*.—This faces to the south-eastward and stretches irregularly along the shore for nearly  $1\frac{1}{2}$  miles. The rocky shore is here bounded on the landward side by a range of low irregular cliffs, perhaps averaging 40 feet in height, and the breeding seals for the most part occupy the upper part of the beach along the base of the cliffs, together with such breaks and hollows as exist in the cliffs and a wide rocky reef near the sea level at the southern end of the rookery ground. A certain proportion of the breeding seals, however, take up stations upon the upper edge of the cliffs, and later in the season they move irregularly back upon the low plateau composed of bare volcanic tufa which rises very gradually toward the distant base of Polavina Hill.

(vii.) *North-East Point Rookery*.—This is the most important breeding place upon either of the islands, and might perhaps be more correctly described as a series of rookeries than as a single one. North-East Point is a low peninsula of quadrangular form, connected at one of its angles by a narrow neck, consisting of sandy flats and high dunes, with the main island. Hutchinson Hill, probably about 150 feet in height and near the northern side of peninsula, is its highest point. The rookery ground runs along the eastern, northern, and north-western shores almost continuously, though in some places—and particularly in the immediate vicinity of Hutchinson Hill—it is much wider than in others. Nearly all this length of shore is strewn thickly with rocky fragments, which as far as the highest tides reach are usually well rounded, but farther back are still angular or sub-angular. Between Hutchinson Hill and the sea, there is a considerable width of rock-strewn fiat land resembling that of the south-east side of Reef Point, and coinciding with the most important portion of the rookery.

257. On St. George's Island there are now five recognized rookery grounds, four on the northern coast and one in Zapadni Bay on the southern coast:—

(i.) *Zapadni Rookery*.—This breeding ground is more or less perfectly divided into two parts, one lot of seals occupying a rough bouldery fiat immediately back of the beach, another the slope of a hill a little further to the south.

(ii.) *Starry Arteil Rookery*.—The ground here occupied by the breeding seals is a particularly steep slope, which faces to the eastward and is broken off at one side, to the north, by the shore cliff, which prevents the seals when they land from reaching the breeding grounds directly.

(iii.) *North Rookery*.—This is the most important breeding ground on St. George



Island, and irregularly occupies nearly a mile of the shore. It is supposed to contain about half the entire number of seals resorting to this island. The shore is here characterized by low irregular cliffs, with occasional breaks which afford access to the low plateau above. Most of the breeding seals are, however, strung along not far from the sea, and gather into larger groups wherever the width of the lower rocky shore is greatest.

(iv.) *Little Eastern Rookery* is comparatively small, and occupies a piece of shore not unlike that of many parts of North Rookery.

(v.) *Great Eastern Rookery*.—This rookery spreads at its western end part-way up the slopes of a steep and somewhat rocky hill, while its eastern end runs along the base of the rather high cliffs, on a very rough and rocky beach forming there a narrow strip just above the wash of the sea.

258. An examination of the various rookeries on the Pribyloff Islands alone, is sufficient to show that the seals are by no means exacting in regard to the precise character of the ground occupied. They do not require a southern or a northern aspect, and the statement that they land naturally upon the first part of the coast reached on their course from south to north is contradicted by the position of most of the rookeries of St. George Island. Nor do they appear to seek specially either sheltered or exposed situations, though most of the rookery sites are of the latter character. Their breeding ground may be nearly flat, or very steeply inclined, and on it they may be exposed to the driving spray from the waves or removed to some distance from the sea and at some height above it. The feature most peculiar to the rookery grounds, and common to most of them, is the profusion of detached angular masses of rock, which depends upon the ease with which the basaltic rocks of the Pribyloff Islands break up into such blocks under the local climatic influences. But this cannot be assumed to be an essential requirement of the seals, for they are found to be equally at home on beds of well water-worn boulders and on flats and slopes locally free from stones or rocky projections.

259. Most of the rookeries on the Pribyloff Islands are characterized by extensive out-lying beds of kelp, which indicates a gradually shelving rocky bottom, and implies that any very heavy sea will be broken and reduced in force before it actually falls upon the land. This may be a desideratum, but is not a necessity, as some examples show, and the kelp-beds are by no means confined to those parts of the shores adjacent to the rookeries.

260. It appears possible to mention only two conditions which have been avoided by the seals in the choice of their rookery grounds: these are mud and loose sand. On muddy ground the fur is doubtless apt to become uncomfortably clotted, and the sand if driven by the wind or splashed about by rain is probably also irritating to them. Shifting sandy ground besides renders the always clumsy locomotion of the seal when upon the land additionally difficult; but it may be noted that sandy beaches appear to be well liked by the seals when they haul out temporarily, and are not actually established for breeding purposes. On most of the rookery grounds, away from the actual beach, the character of the soil is such that it becomes benten down between the projecting rocks into a hard and nearly smooth floor, a circumstance which depends in part on the incorporation with it from year to year of the felted hair which is shed by the seals themselves during the stagey season.

261. Behring and Copper Islands, forming the Commander group, differ very considerably in physical aspect from the Pribyloff Islands, though like them they are entirely destitute of either arboreal or shrubby growth, and are largely covered by grasses. These two islands form parallel elevations running in north-west by south-east bearings, and separated by a least distance of 26 miles. Copper Island, which is furthest to the eastward, is separated by 190 miles of ocean from Attu Island, the westernmost of the Aleutian chain. Behring Island is again removed by a distance of 95 miles from the nearest part of Kamtschatka, and though the high volcanic mountains of the peninsula may in clear weather be seen from the island, the latter is probably never under any circumstances visible from the mainland. It is, nevertheless, rather remarkable that the islands of this group had never been inhabited by man until their discovery and occupation by the Russians in 1741, as the distance from the mainland is not so considerable as in itself to afford a completely satisfactory explanation.

262. Behring Island is about 50 miles in extreme length, with a width of nearly 20 miles at its northern and widest end. From this it tapers gradually but irregularly to Cape Maniti, its south-eastern extremity. The northern half of the island is low, with a rolling or nearly flat surface, much of which is described as consisting of "tundra" land. It includes one large lake, which discharges on the northern shore. The southern half is higher, and appears, as seen from the sea, to consist of a mass of rounded hills of

heights varying from several hundred to perhaps 1,000 feet. The shores of the higher part of the island are very generally bordered by cliffs or steep scarped rocks, with narrow V-shaped valleys breaking through them to the sea. The greater part of the island is composed, so far as examined, and also on the authority of M. Grebnskiy, of well stratified Tertiary rocks, generally shales and sandstones, but basalts and volcanic breccias appear upon some parts of the coast, and generally from the projecting reefs and rocks. There are no harbours, but a fair anchorage with off-shore winds may be found at Nikolski, the only permanent settlement, situated on the west coast of the island, about 10 miles from its north end.

263. Copper or Medni Island is about 30 miles in length, with a greatest width of about 5 miles to the south of the middle of the island. It is a partially submerged mountainous ridge, much higher and bolder than Behring Island, and apparently almost wholly composed of volcanic rocks, which are not, however, modern, like those of many parts of the Aleutian Islands, but probably of Tertiary age. Its surface is exceedingly irregular and comprises very little flat land of any kind, while the shore is often bordered by bold and rugged sea cliffs, particularly along the south-eastern side. The shore-line of this side is sinuous, but that of the north-east side is broken, and comprises several considerable bays, but no good harbours for large vessels. There are three small settlements on the coast: Glinka, Karebelny, and Preobajenski, the last-named being the most northern, and the only one continuously occupied at other seasons than the time of sealing. The highest parts of Copper Island probably attain an elevation of 3,000 feet.

264. Along the shores of both of these islands there are extensive fields of kelp, but these are not more notable than those to be found in similar situations in the Aleutian, Pribyloff, and other islands of the southern part of Behring Sea or along the Alaskan and British Columbian coasts,—a fact which is perhaps worthy of note in connection with statements which have been made as to the peculiar suitability of these islands to the graminivorous and now extinct *Rhytina*, as well as from its possible bearings on the habitats of the fur-seal.

265. Upon Behring Island the fur-seals are killed in the immediate vicinity of the two rookeries, where salt-houses are established. On Copper Island, the rookeries, situated on the south-west coast, are classified under two groups, from one of which the seals are driven across to Karebelny and from the other to Glinka for slaughter, this being supposed to be necessary owing to the rough character of the coast where they are actually situated.

266. Further evidence of the adaptability of the seals to circumstances is found in comparing the physical character of the rookeries on the Commander Islands with those of the Pribyloff Islands. On Behring Island, the North Rookery, situated at Yushin Point, towards the western part of the north coast of the island, is the largest. It occupies a flat stretch of rocky reef, which runs seaward in a triangular form, with its wide base against the land and a length of about a quarter of a mile. The surface of the reef is irregular, and much of it stands above high-water mark, though in heavy gales few parts of it can escape the more or less direct wash of the surf. To the west of the reef proper, and connected with it, is a wide dry beach or bar of sand, which is also occupied by seals, but chiefly by holluschickie or bachelors. On the landward side, the reef is overlooked by low rocky banks overgrown by rank grasses and weeds, and between these and the reef proper are some small irregular grassy flats and pools of salt water. Here the seals never go, though there is no apparent reason why this upper plateau might not be used as a hauling-ground or "parade," which would resemble several of those adjacent to rookeries on the Pribyloff Islands.

267. The South Rookery on Behring Island, situated at Poludenni Point, on the south-west side of the island and about midway in its length, was not visited by us. It is, however, much smaller than the last, and is described as presenting very similar characters. In both cases there is ample room for expansion of the rookery ground without breaking its continuity.

268. On Copper Island, the circumstances are again quite different. The rookeries and hauling-grounds are here scattered along about 15 miles of the south-east coast, extending from about the middle of the island to its southern end. All the rookeries are small; and though distinguished by various local names they are not well defined, but are connected by irregular scattered colonies of breeding seals strung along the narrower and less favourable parts of the shore. The whole shore is bordered by high irregular cliffs, here and there broken by ravines, or by more moderate though always steep and rough rocky and grassy slopes. Flat rocky reefs run out irregularly from the shore below, with abundance of rocks awash and large fields of kelp. Opposite the breaks in

the cliffs are bouldery or gravelly bays, and both these and the larger areas of reef are irregularly occupied by the seals. At Palata Point, near the southern extremity of the island, the seals occupy a steep slope of earthy appearance, which they have completely bare of vegetation to a distance estimated at 150 to 200 yards back from the shore, and a height of, say, 200 feet. This rookery in its general character more closely resembles Starry Arctel than any other of the Pribyloff Islands. It is distinctively a breeding rookery, as no *hollusehiekie*, it is said, ever haul out near it.

269. On Copper Island, however, as on Behring Island, M. Tillman, the Superintendent in charge for the Russian Government, states that even when the seals were more abundant than in 1881, there has never been any lack of room for expansion of the rookeries and hauling grounds, and that there are many other localities in all respects equally well suited for occupation by the seals, though these usually occupy the same or nearly the same stations year after year. It is thus evident on the Commander as on the Pribyloff Islands, that no very special or peculiar physical features are required to render certain spots suitable as the breeding resorts of the fur-seal. It is necessary to emphasize this point, as the question has been obscured by a tendency to surround it with a certain mystery, and to affirm that certain spots, and those alone, are available as rookery grounds.

270. The fact remains to be explained, however, that the breeding seals actually do resort with great persistency to the various recognized rookeries, congregating in these spots and leaving other neighbouring parts of the shores of the breeding islands untenanted. There is indeed some evidence to show that the same old bulls or "bench-masters" from year to year occupy the same places, and it is quite probable that the instinct which induces many animals to return to the same place in succeeding seasons, may influence the fur-seal. There is, however, another and very obvious practical cause for the reoccupation of old rookery grounds. As a rule, these extend some distance beyond the reach of the sea, and are there by the continuous presence and movement of the seals not only bare of vegetation, but beaten down into smooth and hard flats and slopes, and therefore constitute as long as they are occupied each year, and from this very cause, the places most congenial to the seals. The fact that the first of the seals to arrive in the spring, coast along the shores and land for a time in a timid and tentative way only, shows that they are in search either of their old breeding stations or of suitable new ones, and there can be no doubt that they are largely guided in their choice by the very manifest traces of former occupation by their species which the rookery sites present.

271. Not the least evident of these signs is the peculiar and very distinct odour of the rookery grounds. It is certain that the sense of smell is more trusted in by the fur-seal as an indication of danger than either that of sight or hearing (the eye and possibly the ear also being probably adapted rather to use in the water than in the air) and it is more than likely employed in relocating the old breeding grounds in each succeeding year. This is the opinion of the natives, who have had the best opportunities for observation, and is borne out by many other facts, some of which are elsewhere alluded to in this report.

272. The reasonable consideration of this subject has been somewhat obstructed by the assumption of an entirely unwarranted fixity in the position and area of the ground occupied each year by the breeding and non-breeding seals of each rookery site. For the very reason, apparently, that such fixity is not found in nature, it appeals to the imagination of writers of a certain class. While it may therefore be admitted that the several rookeries have on the whole a notable degree of permanency, this undoubtedly arises from their continued occupation each year, rather than from any peculiar physical conditions in the places chosen; and while the animals are clearly averse to sudden change, the boundaries of individual rookeries when not naturally limited, evidently from year to year increase in one direction and diminish in another, in consequence of circumstances which may at first be accidental; but which are acquiesced in by the seals and rendered for a time permanent. This is particularly the case with the hauling-grounds or resorts of the *hollusehiekie*, which hang about the borders of the breeding rookeries proper, and thus in the course of years, a very considerable area of ground in any particular locality may come to bear traces, in polished rock surfaces and otherwise, of the presence of seals, in consequence of the natural oscillations of the whole body of animals which have occurred in the course of many generations of seal life.

273. It is unfortunate that no such precise or consecutive observations have been made, with the aid of plans, measurements, and fixed marks, as to enable the changes in rookery- and hauling-grounds to be followed out from year to year, either on the Pribyloff or Commander Islands. It will be sufficient, however, to refer to a few known

facts which are independent of very close observation, but bear on the point in discussion. One of these is the remarkable differences noted in various years between the relative proportion of seals visiting the two islands, St. Paul and St. George. These are referred to in connection with the historical notes on those islands. Of the same purport is the fact that two rookeries existed within historical times at a place called Maroonitch, on the north coast of St. Paul, which even maintained their position in a reduced form in the season of great scarcity of seals in 1836, but which have since absolutely disappeared, though there is no reason to suppose that they were at any time heavily drawn upon, if at all disturbed by man. Elliott states that in 1872-74, when at the prompting of the natives he examined this shore, he was still able to trace the old limits of these rookeries tolerably well by the polished edges of the rocks.\* Another, though never large, rookery, named Nah-speel, situated near the village on St. Paul Island, has become extinct more recently; while as a fact, in the opposite direction, the formation of the Lagoon Rookery within the memory of natives still living may be cited.†

274. St. George Island again, the natives assert, was in early Russian times, entirely peopled by sea-lions, and the fur-seal began to frequent it only in later years. Though more doubtful than the other cited instances, there appears to be some reason to believe that there is a basis of fact in this statement also.‡

275. An examination of the shores of the Pribyloff Islands, shows that statements which have occasionally been made, to the effect that all ground available for the purposes of seal life has been fully occupied within historic times, are incorrect, and that the most extended limits of even temporary occupation indicated by any marks still remaining, do not prove that the area available and suitable for breeding rookeries and hauling grounds has ever been occupied up to its full capacity. From this it follows, that even if restricted for breeding purposes to these particular islands, the fur-seal has never reached its natural limit in numbers in consequence of a want of space for breeding ground but only as the result of other causes.

276. As a further result of the examination of the physical characteristics of the rookery grounds, it may be stated that the necessary conditions, and even the most favourable conditions, are by no means confined to the Pribyloff and Commander Islands, wide rocky beaches overlooked by sea-cliffs, and with all the characteristics of those of Copper Island, are found on many of the islands of the Aleutian chain, and though low plateaux bordering the shores, or gentle slopes rising from the beaches are not so common, there are plenty of them to be found in different parts of this great series of islands, some of which, as for instance the Semitehi Islands, almost precisely resemble St. Paul in physical characters. Again, on St. Matthew and Hall Islands, localities well suited for breeding places of the fur-seal occur, but as already indicated, the inhabited character of the Aleutian chain, and the long continuance of ice about the St. Matthew Islands probably explain the absence of rookeries in these places.

(D).—*Annual Progress of Events in Seal Life on the Breeding Islands.*

277. In order to follow out the various questions connected with the life history of the fur-seal, it is necessary to bear in mind the main points involved in that important part of each year during which it resorts to the breeding islands. A summary of the facts in this connection will be given here.

So far as regards the Pribyloff Islands, the fullest details under this head may be found in the works of several writers, particularly in those of Bryant, Elliott, and Maynard. There is very little room for difference of opinion as to the main facts, and most of the points in which divergence is found may be explained by the tendency to give too rigid dates and too precise an aspect to the various events and changes; or to the circumstance that with the growing depletion of males upon the islands and its attendant results, the dates and habits formerly observed by the seals have also, to some extent, changed from year to year. It will be sufficient to give a general and very brief résumé of the principal events of the breeding season based chiefly on the combined observations of the writers above cited, and afterwards to refer in somewhat greater detail to a few important points connected with these and with the general organization of seal life on the islands.

278. The first seals to arrive at the islands in spring are the full-grown males or

\* United States' Census Report, pp. 49, 59.

† *Ibid.*, p. 52.

‡ United States' Census Report, p. 58. When Lutké visited the islands in 1827, about 1,000 sea-lions were killed each year on St. George, and 300 or 400 on St. Paul; but fur-seals were also abundant on both. "Voyage Autour du Monde," tome i, p. 265.

"bulls" of about six years old and upwards. A few stragglers sometimes reach the islands as early as the middle of April, and from about the 1st May to the 10th, or 15th June they continue to arrive, but in much larger numbers towards the latter part of this period. On arrival, these full-grown males, generally known as "beachmasters," or "seecatchie," take up stations on the old rookery grounds to await the coming of the females.

With the main body of full-grown bulls a large proportion of the "bachelors," or younger males, also appear.

279. The time of arrival and landing of the gravid females appears to depend directly on the approaching close of their period of gestation. A few usually land as early as the 1st June, but it is, under normal circumstances, between the middle of June and the middle of July that the great body of females come ashore, and at or about the same time most of the yearlings of both sexes, or such of them as resort to the islands, also generally arrive, though it appears that in some years, at least, the main body of seals of this class lands somewhat later.

On landing, the females, or "cows," are taken possession of by the old bulls, and very soon after landing the young are born. Within a few days the females are again in heat and under normal circumstances, with an adequate supply of virile males, the female is at once served.

The landing of gravid females does not usually cease till about the 20th or 25th July, and in certain years has been continued much later by females which have evidently been served unusually late in the previous season.

280. All this time the bulls jealously keep the females they have secured within the boundaries of their particular harems, but about the end of July, or early in August, the breeding rookeries begin to lose their compact character. The beach-masters, or many of them, return to the sea, or haul out here or there on the beaches, while younger males crowd upon the rookeries, and the females continue going and coming between the sea and their young on shore. Before the middle of August a large proportion of the females are at all times to be found swimming and disporting themselves in the water close to the rookery ground, and the young collect in masses along the edges of the shore and rocks, from which they make short excursions into the sea.

281. About the middle of August, most of the seals found upon the Pribyloff Islands become what is known as "stagey," in consequence of the shedding of the hair and under-fur. This condition appears to continue, more or less definitely, for about six weeks. The fact, elsewhere mentioned, that practically no "stagey" skins are ever taken at sea, appears not only to show that the change in pelage is rendered definite and well marked by prolonged resort to the land, but also that during this period the seals frequenting the islands do not go to any great distance from their shores.

282. In October the seals begin generally to leave the islands, the oldest and strongest being the first to go. Nearly all the bachelors, or holluseb'ekie, have left before the 10th November, and before the end of that month all the pups of the year, which have now changed the first black coat for a grey one, also go. A very few seals, however, generally linger on into December, and in exceptional years have been known to stay on into January and even into February.

283. The seals resorting to the Commander Islands, which belong, at least in the main, to a different migration-area, and reach the islands from the south-westward, are thought by those acquainted with both these and the Pribyloff Islands to be somewhat later in the date of their arrival than those of the latter islands. It is stated that here as on the Pribyloff Islands the seals have been later than usual in coming in recent years. In 1891, we found the "stagey" season was just beginning on the Commander Islands on the 1st September. The first killing of seals took place on Copper Island in the same year on the 22nd June. Generally speaking, some seals can be found to kill on this island (in which the dates are slightly in advance of those in Behring Island) as early as the 1st June.

(E).—*Ages at which Males reach Virility, and the Females produce Young.*

284. The ages at which the male and female seals respectively reach maturity and become able to take part in the procreation of their species, as well as the number of years during which the male remains virile and the female fertile, are questions of very practical importance from two points of view. In the first place, they enable us to trace out the effect of the killing of seals of special ages or sexes at certain times, and, in the second, to estimate the time necessary for any improvement in numbers to follow from the breeding of the younger seals on the rookeries.

285. Veniaminov arrived at the conclusion that the female gives birth to its first young in its fifth year, and bases a somewhat intricate and ingenious series of calculations partly on this supposition,\* but there is now a very general consensus of opinion among those who have studied this question on the Pribyloff Islands to the effect that the females are covered at or shortly after the expiry of the second year from the time of their birth, and bear young in the third year from that time or early in the fourth year of their age. The same opinion was found to be held upon the Commander Islands, and there is every reason to believe that it is essentially correct.

286. Both males and females leave the islands at the close of the season in which they are born as "grey pups," the sexes being undistinguishable to all outward appearance. In the following season they are classed as yearlings, and it is probable that a large proportion of these either do not land upon the islands at all or stay only for a short time on shore. Such of the yearlings as are found upon the islands, however, both males and females, consort with the holluschickie or bachelors.

287. It appears, further, to be certain that the males arrive at virility in their fourth year, and between this time and that in which they attain their full strength and size and are able to maintain their places on the breeding rookery, when six or seven years old, they are often spoken of as "half-bulls" or "reserves." They actually serve in the latter capacity, and cover many of the females which escape the attentions of the older males upon the rookery grounds, and in such cases the act of coition is usually accomplished at sea.

288. While the points just referred to may be supposed to have been ascertained with moderate certainty, nothing is certainly known as to the maximum ages attained by seals of the two sexes respectively, and very little as to the total number of young which a female may bear during the continuance of her fertility, or the number of years during which the male retains his virility. Elliott conjectures that the females may live to an age of 18 or 20 years. Bryant gives his reasons for supposing that 12 years is about the average attained by the males.† Veniaminov thought that the females in their prime bring forth every year, and as they grow older, every second year. He states that, according to persons familiar with them, each female may produce in the course of her life ten or fifteen young or even more.‡ He admits, however, that this is very uncertain, and the whole subject is, in fact, beset with almost insuperable difficulties. All that is certain is that both males and females continue to perform their functions as breeders for a considerable number of years.

289. From what has been said as to the number of years required by the respective sexes to reach maturity, it follows that any great loss of young in the year of their birth can only begin to make itself apparent on the rookeries, in the case of females, after the lapse of three years, and in the case of males after five or six years. Thus in the event of the killing of all or nearly all the young males of a certain age, in any one year or series of years, a void of smaller or larger dimensions is created in the supply of full-grown males for the rookery grounds, which can only be partially bridged by the continuance on the rookeries of the older and enfeebled males, which have passed their natural term of retirement. If such killing is maintained from year to year, the deterioration in the supply of virile males for the requirements of the females, though slow and spread over several or many years, must be continuous. Moreover, the lowering of the standard weight of skins which has actually occurred in late years on the Pribyloff Islands, because of the scarcity of males of 3 or 4 years of age and which permits the killing to embrace those of 2 years old and even yearlings, is the most effectual method possible of cutting off the supply of virile males at the fountain head, and of enlarging the void in male seal life to alarming proportions.

290. Details of this kind, with their observed effects on seal life, are cited in abstract in the historical notes elsewhere given (§ 10 *et seq.*), but it is impossible to adequately represent in summarized form the whole of the facts bearing on this point. Captain Bryant's observations, as quoted by Allen, should be referred to.§

291. The diminution which has culminated in late years on the Pribyloff Islands recalls the criticism made by Lutké, when he visited these islands in 1827. Lutké writes:—

"La précaution de séparer les gros mâles d'avec ceux qui doivent être tués, est nécessaire pour entretenir la multiplication; mais cette précaution est-elle suffisante pour cela? Si tous les jeunes sont exterminés, d'où sortiront à la fin les gros mâles?"

\* Quoted by Elliott in United States' Census Report, p. 141 *et seq.*

† "Monograph of North American Pinnipeds," p. 407.

‡ Quoted by Elliott in United States' Census Report, p. 141.

§ "Monograph of North American Pinnipeds," p. 398 *et seq.*



Les chasseurs expérimentés ont observé que les ours marins vivent de quinze à vingt ans; il en résulte qu'avec cette méthode dans vingt ans il ne doit plus rester un seul."\*

(F.)—*Requisite proportions of Sexes.*

292. Though each full-grown male or "seacatch" holding his place on the rookery ground endeavours to obtain and keep about him as many females as possible, there is a limit to the number which may be advantageously held by a single male, and when adult males are found in abundance, it is not easy to pass this normal limit; but, on the other hand, when, in consequence of a paucity of adult males in proportion to females, the harems become too large, the females are irregularly served, served too late in the season, or, in some cases, may altogether escape efficient service, with resulting irregularities in times of birth of young in the next year, or an addition to the number of barren females.

293. The proper proportion of adult males to females cannot be ascertained by inspection of the Pribyloff rookeries as they are at present, because of the obvious and generally acknowledged deficiency of virile males; but in the earlier years of the control of these islands by the United States, Bryant estimated the existing proportion as about one male to fifteen females, or, as indicated by other statements by the same writer, as one to nine or twelve.† Elliott, a few years later, and subsequent to the date of certain changes in organization of the seals described by Bryant, writes:—"I found it an exceedingly difficult matter to satisfy myself as to a fair general average number of cows to each bull on the rookery; but, after protracted study, I think it will be nearly correct when I assign to each male a general ratio of from fifteen to twenty females at the stations nearest the water, and from there back in order from that line to the rear from five to twelve."‡ M. Grebaitzky, Superintendent of the Commander Islands, as the result of his prolonged experience, states that the proportion of one adult male to ten females should not, as a rule, be overpassed, and that one to twenty may be considered as a maximum limit. Captain Blair, long familiar with the fur-seals of the Asiatic coast, informed us, in speaking of Robben Island, that the number of males now existing there, viz., one adult male to twenty-five females, was far too small. Lieutenant Maynard, again, says: "The bulls are polygamous, having from five to twenty cows each; so that the number of them upon the rookeries is not more than one-tenth of that of the cows.§

294. It may thus be very safely assumed that the ratio of virile males of full age, cannot be allowed to exceed the proportion of one to twenty, without serious danger of harm to the breeding rookeries, and the certainty of grave irregularities on them; and it is necessary to bear this fact in mind in endeavouring to appreciate the meaning of the present condition of the rookeries of the Pribyloff Islands, where, as elsewhere pointed out, these conditions have, for a number of years, not been realized.

(G.)—*Copulation.*

295. An erroneous statement concerning the manner of life of the fur-seal, which has important bearings in various ways, but which has naturally arisen and has been as naturally maintained in consequence of the too exclusive attention paid by most writers on this subject to the breeding islands, is that the fecundation of the female is, and can only be, accomplished on shore. Bryant has, however, distinctly stated that copulation very often occurs in the water, and in the description of seal life prepared by him for Professor Allen, he adds: "When there was a full supply of breeding males copulation occurred mainly on the breeding grounds, the half-bulls (or reserves) participating to only a limited extent, and was rarely seen to occur in the water. Since 1874, owing to the decrease in the number of breeding males, a much larger proportion of the females receive the males in the water, so that on any still day after the 20th July, by taking a canoe and going a little off shore, considerable numbers may be seen pairing and readily approached so near as to be fully observed.|| In another place the same gentleman is

\* Lutké "Voyage autour du Monde," tome i, p. 261.

† "Monograph of North American Pinnipeds," pp. 385, 390.

‡ United States' Census Report, p. 36.

§ Maynard's Report, Ex. Doc. No. 43, 44th Congress, 1st Session, p. 3. This passage is incorrectly quoted by Elliott in his Census Report, where Maynard is made to state that the seals have each from twenty to fifty cows.

|| Senate, Ex. Doc. No. 32, 41st Congress, 2nd Session, p. 5, "Monograph of North American Pinnipeds," pp. 395, 405.

even more precise, writing: "Owing to the position of the genital organs, however, coition on land seems not to be the natural method, and only rarely—perhaps in three cases out of ten—is the attempt to copulate under such circumstances effectual." Mr. W. H. Dall, again, in a manuscript note supplied to Professor Allen, says: "They [the females] sleep in the water, lying on their sides, with the two flippers [of the upper side] out of the water, and receive the male in the same position."<sup>\*</sup>

296. Special inquiries made by us on this particular subject have fully confirmed Bryant's original statements, the evidence obtained including that of four or five gentlemen who have had long experience with the Pribyloff and Commander Islands, and several intelligent and observant hunters who have been engaged in sealing at sea.

297. The particular importance attaching to this subject depends on the circumstance that the possibility of connection being accomplished at sea, and the greater frequency of this habit caused by the dearth of adult males on the rookeries, enables us to explain in great measure the irregularity, which has in late years much increased, of the date of birth of the young. It shows, in fact, that the time of impregnation of the female is not necessarily comprised within the period during which she seeks the shore for the purpose of giving birth to the young.

(H).—*Age at which the Young Swim.—Number of Young at a Birth.*

298. It has already been noted, that evidence such as to show that the young can swim for a time at or immediately after birth, has been obtained from a number of sources, though it is, at the same time, improbable that under any circumstances the young is at first fitted to maintain its existence for any length of time in the open sea. This is, however, not a matter of any great importance, for it is evidently the normal method for the young to remain for some weeks ashore before venturing even to enter the sea.

299. It, nevertheless, appears to be quite possible that, under exceptional circumstances, the female might succeed in rearing her young while only occasionally resorting to the land and while moving from place to place. There is no reason to believe that the fur-seal is less adaptable in this respect than the hair seals, and of one of the latter (*Ptoca vitulina*) Professor Allen quotes Mr. John Cardeaux to the following effect: "The female has one young in the year; and, as these banks [upon which they breed] are covered at flood, the cub, when born, must make an early acquaintance with the water."<sup>†</sup> One of the authors of this Report has, moreover, seen the same species (17th June, 1878) in the southern part of the Queen Charlotte Islands, breeding upon tidal rocks, from which, when alarmed, the mothers took to the sea, each carrying her young upon her back, the heads of the mother and young seal coming to the surface simultaneously at each rise. Upon Indian authority, the same habit has been, as elsewhere noted, observed in the case of the fur-seal.

300. The date at which the young normally begin to swim has, however, like many others, been given an altogether undue fixity and precision. Thus Elliott states that by the 8th or 10th August the pups born nearest to the water first begin to learn to swim;<sup>‡</sup> and Bryant gives the 20th August as the date at which they first take to the water;<sup>§</sup> while as early as the 28th July, in 1891, great numbers of pups were actually observed by us to be swimming along the edges of the rookery grounds and climbing in and out over the rocks, and this in spite of the fact that it is acknowledged that the seals now arrive at the islands at dates later than they did in former years. On the 14th September two pups were even seen swimming and alone at distances of 40 and 70 miles respectively to the westward of the Pribyloff Islands.

301. As a rule, but a single pup is produced at a birth, and, though this rule is not without exceptions, it may be used in any estimates of the natural rate of increase of the seals. Maynard admits that occasional cases of twins have been recognized on the Pribyloff Islands, notwithstanding the difficulty of arriving at certainty as to such a matter under the circumstances which there obtain. The Haidas and the Tshimshians state that they have frequently found two unborn pups in a female seal when killed, though a single pup is much more common. Chief Edensaw, many years ago, saw a female in the act of giving birth on Rose Spit, Queen Charlotte Islands; one pup had been born, and when he killed the mother he found another still unborn.

302. It is perhaps further worth noting, in this connection, that those most familiar

\* "Bull. Mus. Comp. Zool.," vol. i, Part I, p. 100.

† "Monograph of North American Pinnipeds," p. 591.

‡ United States' Census Report, pp. 40, 42.

§ "Monograph of North American Pinnipeds," p. 387.



with the closely allied fur-seal of the South African Coast state that, as a rule, two pups are produced at a birth; while on the Australian coast it is said that the female generally brings forth a single pup, sometimes two.\*

(1.)—*Distances to which Seals go from the Breeding Islands in search of Food, and Times of Feeding.*

303. The feeding habits of the seals, and the distances to which seals engaged in breeding on the islands may be supposed to go for food, as well as the period of the breeding season at which excursions in search of food begin to be made, are important because of their direct bearing on the limits of protection which might appropriately be accorded about the islands at the breeding season.

304. The full-grown bulls, or beachmasters, holding stations on the rookery-grounds, undoubtedly, in the majority of cases—if not invariably—remain on duty throughout the breeding season and to the close of the rutting period without seeking food. The young again, born in any particular season, are not weaned, or not fully weaned, nor do they, under normal circumstances, leave the immediate vicinity of the shores till the time of their final departure.

305. It is thus only the classes of bachelor and female seals that can, under any circumstances, be found leaving the islands in search of food during the breeding season. Of the females, the yearlings associate with the bachelors. Some of the two-year-olds may seek the vicinity of the rookery-grounds for the purpose of meeting the males, but probably they do not long remain there, while it is believed that most of them are covered at sea. Barren females, again, whether without young from age, from an insufficiency of males, or inefficient service, are not in any way permanently attached to the islands at this time.

306. The remaining—and, at the time in question, most important—class is that of the breeding females. These, some time after the birth of the young and the subsequent copulation with the male, begin to leave the rookery-ground and seek the water. This they are able to do because of the lessened interest of the beachmasters in them, and more particularly after many of the beachmasters themselves begin to leave their stands. Thus, by about the middle of August, probably only one-half of the females, or even less, are to be seen at any one time on the rookeries. Snegiloff, the native foreman in charge of the rookeries on Behring Island, expressed the opinion that the females first leave their young and begin to frequent the water about a month after the birth of the young. Bryant says about six weeks.† Other authorities are less definite on this point, but, according to observations made by ourselves, the mothers and young were present on the Pribyloff rookeries in approximately equal numbers in the last days of July, while, on the same rookeries, in the third week of August, the young largely outnumbered the mothers present at any one time, and, in so far as could be ascertained by observation, the females were disporting themselves in the sea off the fronts of the rookeries.

307. It is very generally assumed that the female, on thus beginning to leave the rookery-ground, at once resumes her habit of engaging in the active quest for food, and though this would appear to be only natural, particularly in view of the extra drain produced by the demands of the young, it must be remembered that, with scarcely any exception, the stomachs of even the bachelor seals killed upon the islands are found void of food, and that all seals resorting to the islands seem, in a great degree, to share in a common abstinence. While, therefore, it may be considered certain that after a certain period, the females begin to seek such food as can be obtained, the absence of excrementitious matter on the rookery grounds, elsewhere referred to, shows that this cannot occur till towards the close of the breeding season. It may, further, be stated, that there is a very general belief among the natives, both on the Pribyloff and Commander Islands, to the effect that the females do not leave the land to feed while engaged in suckling their young, and that neither of the two females killed in our presence for natural history purposes on Behring Island, on the 5th September, had any trace of food in the stomach, though killed within a few yards of the rookery from which they had just been driven. Also bearing on the same point is the statement made in a memorandum received from Her Majesty's Minister at Tokio, based on information obtained from a gentleman fully conversant with the habits and haunts of the fur-seal of the western side of the North Pacific, as follows: "It is sometimes stated that the breeding cows are in the

\* "Prodromus of the Zoology of Victoria," by Sir F. McCoy, F.R.S., Decade VIII, p. 9.

† Senate, Ex. Doc. No. 52, 41st Congress, 2nd Session, p. 5.

habit of leaving the rookeries to fish for the support of their young, but the experienced authority on whose remarks these notes are founded is not of this opinion. He has never found food inside the female fur-seal taken on the breeding grounds." (See further under Food paragraph 224, *et seq.*)

308. It appears to us to be quite probable, however, that toward the close of the season of suckling, the female seals may actually begin to spend a considerable portion of their time at sea in search of food. It is unlikely that this occurs to any notable extent till after the middle of September, before which the season of pelagic sealing in Behring Sea practically closes. It is not as if the mere presence of seals in any particular part of Behring Sea during the period in question could be taken as representing that of females from the breeding rookeries, for, as already stated, other classes of seals remain thus at large during the greater part, or even the whole of the breeding season, and it is generally very difficult even for the most experienced eye under favourable circumstances to distinguish at sea between such unattached seal, and breeding females. Several of the statements as to the feeding resorts of breeding females from the islands have undoubtedly been founded on the mere presence of seals of some kind at sea. In fact, most of the previously published statements on this point have been based either exclusively on information gained on the breeding islands, and, therefore, not to the point, or on such information, loosely combined with notes on the position of seals casually observed at sea. It is unfortunate that the prohibition of pelagic sealing in Behring Sea in 1891 rendered it impossible in this particular year to gather much actual experience in this matter, such as might have been obtained by examining the condition and sex of seals killed at various known distances from the islands.

The statements collected from other sources are often singularly divergent; but, notwithstanding the evident lack of information on this particular point, a remarkable agreement is found among those interested in decrying pelagic sealing, to the effect that the pelagic sealers do, and must, kill a large number of female breeding seals. In order, however, to show the present state of this question, and the actual basis of many and serious complaints against sea sealing, a few quotations from various authorities on seal life may first be given, and after that some notes on the further evidence obtained by ourselves.

309. Bryant, after describing the relaxation in watchfulness of the male after impregnation has been accomplished, says of the female: "From that time she lies either sleeping near her young, or spends her time either *floating or playing in the water near the shore*, returning occasionally to suckle her pup."<sup>\*</sup>

Elliott writes in a similar strain of the same period. The females, he says, "*lie idly out in the rollers, ever and anon turning over and over, scratching their backs and sides with their hind flippers.*"<sup>†</sup> Elsewhere he states that the mother, he thinks, nurses her pup every two or three days, but adds, "In this I am very likely mistaken."<sup>‡</sup> Again, he speaks of a mother coming up from the sea, "where she has been to wash and *perhaps to feed for the last day or two.*"<sup>§</sup> In another reference, he says: "Soon after the birth of their young they leave it on the ground and go to the sea for food, returning perhaps to-morrow, perhaps later, even not for several days in fact, to again suckle and nourish it, having in the meantime *sped far off to distant feeding banks,*" &c.||

310. In the Report on the Fur-seal Fisheries of Alaska (1889),<sup>¶</sup> Mr. W. B. Taylor states that the cows go out every day for food to a distance of 10 or 15 miles, or even further.

Mr. T. F. Ryan states that the "main feeding grounds of the seal during the summer stay upon the islands, and to which the cows are continually going and coming, are to be found 40 to 70 miles south of St. George Island."

Mr. G. R. Tingle, in the same Report, says that the seals probably go 20 miles out in some cases in search of food.

311. Such are the more definite references of a published kind which we have been able to find on this important point in seal life, and they are sufficient to show that very little has heretofore been known on the subject, though much has been taken for granted.

312. The following is a summary of the evidence personally obtained in 1891 from those supposed to be most capable of giving an opinion on the subject:—

Mr. G. R. Tingle stated that he believed seals from St. George went to feed, for the most part, about 30 to 40 miles to the southward or south-eastward of that island. From St. Paul he was not aware that they went in any particular direction.

\* "Monograph of North American Pinnipeds," p. 866.

† *Ibid.*, p. 361.

‡ United States' Census Report, p. 38.

§ *Ibid.*, p. 39.

|| *Ibid.*, p. 35.

¶ House of Representatives, Report No. 3883, 50th Congress, 2nd Session. The *Italics* in the above-cited passages are our own.

Mr. J. C. Redpath did not know of any special place or places to which the seals go to food, but believed that the females go from 10 to 15 miles from the islands for that purpose.

Mr. D. Webster thinks that seals go from St. George Island, when feeding in the autumn, about 60 miles southward; he believes that there is a favourite feeding ground in this vicinity, because he has seen numerous seals there when on his way from the islands to Ounalaska.

Mr. Fowler stated that he believed there was a favourite feeding ground of the seals about 30 miles off north-east point of St. Paul Island. This was not from personal knowledge, but depended on statements that seals had been seen in abundance there.

Natives of St. Paul informed us that the females from the rookeries went only 3 or 4 miles to sea to feed, always returning to their young on shore the same day. When questioned as to the classes of seals seen further out, as, for instance, midway between St. Paul and St. George Islands, they stated that all kinds of seals might be found there, but added again that the females usually do not go far from the rookeries.

Mr. N. Grebnitsky, Superintendent of the Commander Islands, stated, as the result of his own personal observation and long experience, that the females went out to sea while suckling the young, but not further than half-a-mile or a mile from the shore. Most of the natives, he added, thought that the females did not feed during this period, but in this he believed them to be mistaken.

M. Tillman, the Agent of the Russian Government, in charge of Copper Island, where he has been for two years, thinks that the females go as much as 2 to 4 miles off shore to feed, but return to the rookeries every night.

M. Kluge, who has been for twenty-one years in the service of the Alaska Commercial Company on several different islands, agreed in this point with M. Tillman, and added that he knows from close personal observation, which he was able to make on Robben Island, that the females return every night, as stated.

Snegiloff, the native foreman on Behring Island, thinks, on the contrary, that the females may leave their young for several days, and may go as far as 10 miles from land to feed.

313. So far as the facts actually observed in 1891 go, it is apparent that there is always a considerable number of seals swimming, playing, or sleeping at sea opposite each of the rookery grounds, and that these in August consist largely of females, while in September great numbers of pups are to be found in addition. When extensive kelp beds exist off the rookeries, the main body of seals is generally seen inside the kelp, and at a distance of half-a-mile or so from shore comparatively few seals are seen; while at two or three miles seaward from the rookery there is no notable abundance of seals, and if sailing round the breeding islands in a fog, at a distance of four miles from the shore, it would be difficult for the closest observer (apart from other indications) to decide when he had passed abreast of a rookery.

314. It is, however, certain, from statements obtained, that females with milk are occasionally killed at sea by the pelagic sealers, and though it is possible that these are mothers which have deserted the islands in consequence of having been driven up to the killing grounds with the holluschickie, or because of some other cause of disturbance, such as the death of their young, it is highly probable that in the later summer and autumn the distance to which the females go from the breeding places becomes gradually increased. It is, nevertheless, scarcely credible that, under any circumstances, the females engaged in feeding their young can navigate to great distances from the islands on erratic courses, and subsequently return punctually and without fail to their rookeries; and any assumption made on this basis must be regarded as requiring proof of a character very different to that so far advanced by those holding such a belief.

315. It may be added here, as the result of personal observations as well as of those already published, that the seals tend to leave the rookeries and hauling grounds for the sea in large numbers when incommoded on shore by too great heat or by heavy rain, and, further, that after stormy weather, characterized by heavy wind and surf, there is generally an increased and marked exodus from the shore.

316. Singularly enough, the greatest diversity of opinion was found to prevail, even among those who ought to be best informed on this subject, as to whether the seals leave the land for feeding or other purposes most commonly by day or by night. This difference of opinion obtained not only among the Whites, but also among the natives, and it is found both in the Pribyloff and Commander Islands. Some maintain that the female seal returns to shore every night, others that most of them leave the shore at this time, and, taking all opinions into consideration, the only conclusion that can be arrived at is that the seals go and come at all times. Certainly, there is no particular period of rest upon

the rookeries themselves during the breeding season, for they are as noisy during the night as by day. Judging from observations made while at anchor near the rookery grounds of St. Paul and St. George, it would appear that the seals are more abundant in the water during the night, when they often surrounded the vessel in great numbers. On these occasions they seldom seemed to be travelling in any particular direction, but played about, coming up first on one side of the vessel and then on the other, and appeared to be more wary and easily frightened than during the day.

(J.)—*Habits when Suckling.*

317. When the female seals begin to absent themselves at frequent intervals from the rookery grounds and from their young, as already described, the young begin to travel about in all directions from the actual spot of their birth. Most of them collect in large groups, or "pods," sometimes near the edge of the sea and sometimes at a distance from it, while solitary pups are to be found roving or sleeping everywhere. It has been stated, and the statement has been received without question, that throughout the entire season, and even under the circumstances above described, the female is invariably able to single out, and will suckle only, her own young. Analogy with most other animals appears to favour this view, and probably accounts for the fact, that it has been accepted without proof, which, indeed, as neither the individual mothers nor the individual young can be continuously recognized on the rookeries, would be very hard to obtain.

318. The analogy just referred to may or may not hold in the case of the fur-seal, which is in many respects very peculiar in its habits. The young of most other animals, if left at any time by the dam, remains where left, and it is very seldom necessary for the mother to select her own progeny from a vast crowd of others. Again, even assuming that she be capable of thus singling out her own young one, if, as is commonly supposed, she remains for the greater part of the day, or, according to some authorities, for several days, in the sea, she must very often wholly fail to find her young, which may have in the meantime wandered off to an entirely different part of the rookery. Under these circumstances, the female would continue to be unquiet till she got rid of her milk, and must indeed be possessed of great fortitude if she refuses to part with it to any of the thousands of other young seals about her. The difficulty of finding the young must, of course, be vastly increased in cases in which the mother has given birth to two pups, one of which may have wandered in one direction, another elsewhere.

319. The idea that the female will suckle the pup she has brought forth only, appears to have been started by the natives, but, so far as can be ascertained, is first advanced by Bryant, who writes: "On landing, the mother calls out to her young with a plaintive bleat like that of a sheep calling to her lamb. As she approaches the mass (of young) several of the young ones answer and start to meet her, responding to her call as a young lamb answers its parent. As she meets them she looks at them and passes hurriedly on till she meets her own, which she at once recognizes."\*

320. Elliott has adopted this theory, and amplifies it, writing:—"The mother, without first entering into the crowd of thousands, recognizes the voice of her offspring, and then advances, striking out right and left, toward the position from which it replies." Elsewhere in this connection he speaks of the mother crying out for its young and recognizing the individual reply, "though ten thousand around, all together, should blaät [*sic*] at once." On a later page, he again says: "I have witnessed so many examples of the females turning pups away to suckle only some particular other one, that I feel sure I am entirely right in saying that the seal-mothers know their own young, and that they will not permit any others to nurse save their own. I believe that this recognition of them is due chiefly to the mother's scent and hearing."†

321. It is not intended to criticize these statements, which, in so far as they relate to observed facts, can be certified to; but it is necessary to point out that they constitute the entire body of proof in the matter in question, and that the influence drawn from them must be characterized as "not proven." The young themselves certainly do not know their own mothers, and the statement that the mother knows her individual young seems to be placed in doubt, and is certainly not to be assumed merely from analogy with other animals which show a degree of affection for their young, because of the observation which may be made any day on the rookeries, that the female fur-seal is entirely careless respecting her offspring.

\* As quoted by Allen, "Monograph of North American Pinnipeds," p. 387.

† United States Census Report, pp. 39 and 162.

322. As Mr. Elliott is chiefly responsible for the theory here specially referred to, it is only fair, however, that he should be heard also on the last-mentioned point. On this he says: "The apathy with which the young are treated by the old upon the breeding grounds, especially by the mothers, was very strange to me, and I was constantly surprised at it. I have never seen a seal-mother caress or fondle her offspring; and should it stray to a short distance from the harem I could step to and pick it up, and even kill it before the mother's eye, without causing her the slightest concern, so far as all outward signs and manifestations would indicate."<sup>\*</sup>

323. The whole theory in fact, when examined, rests on the circumstance that when a female seal is seen to come ashore, she will not take the first young one she meets, but perhaps by sound, perhaps by scent, selects one which she allows to feed. It appears, therefore, to be at least quite possible, that in thus making her selection she may merely seek a young one which does not carry the smell of fresh milk about it. The gregarious habits of the fur-seal, with the difficulties inherent in the matter of the reunion of mother and young under the peculiar circumstances obtaining on the rookeries, appear to show that it would be advantageous to seal life as a whole if any mother would suckle any hungry pup.

324. It may be added, that in a report received from Mr. C. H. Jackson, Government Agent in charge of the Seal and Guano Islands of Cape Colony, he states, respecting the fur-seals inhabiting these islands (after speaking of the killing of females), that "but for a happy provision of nature, whereby a female seal will suckle any young one, the destruction of the new-born seals would be complete;" and, again, says: "The cow will suckle any of the young seals, whether her own or not, and this period of nursing continues more or less for about six months."

The same statement is made with respect to the fur-seal of the Australian coast.†

325. The analogy of other animals has so frequently been cited in this connection that it may be in point to quote from an interesting memorandum furnished by Sir Samuel Wilson, M.P., the eminent Australian sheep-breeder. He states that it is common and easy to make ewes suckle other ewes' lambs, either by putting the skin of the dead lamb over the new lamb, or by folding together, in hurdles, the strange lamb and the ewe. When the herd is valuable, all ewes are mothered to lambs which have none of their own, and the same is done in the case of twins. Ewes recognize their own lambs by smell. Sometimes a lamb, not her own, may come up on the other side while she is suckling her own lamb, and may, unnoticed by her, suck her for a time. There are, moreover, lambs which go about in this way, and manage to live by what they can steal. This Australian experience is fully borne out by general experience.

#### (K.)—*Natural Causes of Destruction.*

326. In connection with the general aspects of seal life, and the effects upon it of commercial killing, it is necessary to remember that it is largely ruled by certain natural events, or phenomena, and that, as in the case of nearly all animals in a state of nature, but a limited proportion of the whole number of young produced ever attain either to a "killable" age, or to one of maturity. Thus, in killing a large number of seals annually, a draft is made upon a margin of seal life which has escaped all the other necessarily envioning dangers, and which very often must be regarded as a natural reserve in process of being slowly built up in the intervals between irregular and exceptional inroads which may at any time occur, and over which man exercises no possible control.

327. Thus, on the Pribiloff Islands, one particular instance has been recorded, when, in consequence of the long persistence of field-ice about the islands, the seals were very greatly depleted. This occurred in 1836, when, according to native count, the number of adult seals on St. Paul Island was reduced to about 4,000, and the greater part of the small number of seals killed in that year consisted of pups. Other, though less disastrous instances, of the same kind have occurred since, and a study of available information respecting the amount and position of the ice in Behring Sea in various years shows that such adverse conditions may recur in any year, though probably seldom with the same intensity as in 1836.

328. Again, large numbers of pups are often killed before leaving the islands by heavy storms occurring before they are able to swim strongly, and in consequence of which they are dashed against the rocks or upon the beach. Unfortunately, nothing like a complete record has been kept of such occurrences, but Bryant, Maynard, and Elliott, in their published Reports, all refer, at greater or less length, to them. One notable case of this

<sup>\*</sup> United States' Census Report, p. 38.

† "Prodromus of the Zoology of Victoria," by Sir F. McCoy, F.R.S., Decade VIII, p. 10.



particular kind occurred in October 1876,\* and Mr. D. Webster informed us that once "in the seventies," as early as July, he had seen the beaches at North-East Point "strung with dead pups," after a heavy storm. More or fewer pups are, in fact, apparently killed in this way every year.

329. On Robben Island, very considerable numbers of young pups are killed by burgomaster gulls (*Larus glaucus*), which pick out their eyes. This is so well known that a reward of 5 copecks (1½d.) is given for each of these gulls killed. This gull is rather scarce on the Commander Islands, but the natives there have noticed cases of pups being killed in the same way. They are common about the Pribyloff Islands, and are frequently seen on the rookeries, but no one there appears to have observed them attacking young seals.

330. The most generally recognized danger to the pups, of a constant kind, while they are still upon the islands, is that resulting from the adult bulls or seacatchie on the rookeries. These, when fighting, or otherwise excited or disturbed, pay not the slightest attention to the young in their vicinity, and overrun them without compunction in such a manner as frequently to cause their death. Elliott doubts whether more than 1 per cent. of the whole number of young in each year is destroyed in this way, but everyone who has paid the slightest attention to the economy of the rookeries is familiar with the frequent occurrence of such deaths.

331. In his Report upon the condition of affairs in Alaska (1875), the same writer speaks of the presence on the rookeries of "decaying carcasses of old seals and the many pups which have been killed accidentally by the old bulls while fighting with and charging back and forth against one another."† In the Census Report substantially the same passage is, however, paraphrased by the writer, with the substitution of "few pups" for "many pups."‡

Professor Allan may also be cited in this connection, though he specially refers to alarms of a kind which can scarcely be strictly classed under natural causes of destruction. He writes: "Constant care is also necessary lest thoughtless persons incautiously approach the breeding grounds, as the stampede of the seals which would result therefrom always destroys many of the young."§

332. When a sudden alarm causes a panic among the seals on a rookery, and they make in consequence a rush in closely-huddled masses for the water, very considerable numbers of pups may at any time be killed. It is very easy in this way to "stampede" even the breeding seals, and the necessity of preventing such stampedes is one of the main reasons for preserving the vicinity of the rookeries from all intrusion and disturbance. As already noted, the seals are alarmed particularly by smell, and during the summer of 1891 a panic was caused on the Reef Rookery of St. Paul Island by the drifting over it of the smoke from a steamer which was entering the anchorage there.

333. Nordenskiöld refers particularly to this matter in his account of the fur-seals of Behring Island, writing:—

"The young ones are often smothered by the old when the latter, frightened in some way, rush out into the sea. After such an alarm hundreds of dead pups are found on the shore."||

334. Killer whales (*Orca rectipinna*) are among the more active enemies of the fur-seal. Mr. D. Webster, who, because of his long experience on the Pribyloff Islands, has already been frequently quoted, states that these whales usually come to the islands from the north early in September, and stay about them as long as the seals do.¶ They kill many seals, particularly pups, and wantonly kill, apparently in sport, many more than they actually devour. Captain Lavender, in his Report for 1890, mentions the occurrence of large schools of killer whales in pursuit of young seals about the islands on the 30th October in that year,\*\* and Lieutenant Maynard mentions a case in which a single killer whale was found to have fourteen young seals in its stomach.†† The Aleuts at Ounaska further stated that they have often seen killer whales pursuing and catching fur-seals, not alone the young, but also the adults.

335. In the vicinity of the Commander Islands killer whales also occur, but they do not appear to be so numerous as about the Pribyloff Islands, and their ravages have not been complained of in the same way.

\* "Monograph of North American Pinnipeds," p. 397.

† Page 149. See also "Monograph of North American Pinnipeds," p. 370.

‡ United States' Census Report, p. 42. § "Bull. Mus. Comp. Zool.," vol. ii., Part I, p. 97.

|| "Voyage of the 'Vega,'" translation by Lealie, vol. ii, p. 290.

¶ See also Bryant in "Monograph of North American Pinnipeds," p. 407.

\*\* Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session, p.

†† House of Representatives, Ex. Doc. No. 43, 44th Congress, 1st Session, p. 6.

336. As the killer whale frequents not only the summer haunts of the fur-seal, but its whole migration-range and winter habitat, it is practically certain that the seals are exposed to their attacks at all times, except when actually ashore on the breeding islands. It is, moreover, supposed, and doubtless correctly so, that the larger sharks to be found in the same waters prey upon the young seals to a considerable extent.

337. In consequence of these and perhaps other enemies, and of various accidents, and irrespective of possible epidemic disease, the number of the young seals born is greatly reduced before they return as yearlings in the following year; and it is still further continuously reduced, though in a diminishing proportion, in subsequent years. On this subject Bryant writes as follows:—

“During the time the young seals are absent from the islands, fully 60 per cent. of their number are destroyed by their enemies before they arrive at the age of one year, and during the second year about 15 per cent. more are lost. Later they appear to be better able to protect themselves, but before they arrive at maturity, at least 10 per cent. more are destroyed. So that if left entirely to themselves, only 10 or 15 per cent. of the annual product would mature or reach the age of seven years.”\*

On the same subject Elliott writes, speaking particularly of the males:—

“By these agencies, during their absence from the islands until their reappearance in the following year and in July, they are so perceptibly diminished in number, that I do not think, fairly considered, more than one-half of the legion which left the ground of their birth last October came up the next July to these favourite landing-places; that is, only 250,000 of them return out of the 500,000 born last year. The same statement, in every respect, applies to the going and coming of the 500,000 female pups, which are identical in size, shape, and behaviour.”†

338. Neither of these statements claim any great precision, and it would be impracticable to make them precise. Bryant's may be taken, however, as showing a more careful consideration of the facts, and according to his estimates, in the case of 100,000 pups, but 40,000 would return in the second year and 34,000 in the third year, while about 30,000 would reach maturity.

339. It can scarcely be doubted that the fur-seal of the North Pacific is also subject to diseases of various kinds, the prevalence or otherwise of which have their effects on the numbers at each particular period. Inquiries made on the subject have, however, not brought to light any notable mortality which has been attributed to disease; nor do previously published reports include any mention of such mortality. It may thus at least be inferred, that no notably fatal disease has attacked these animals while upon their breeding islands within historic times, but it is not safe to affirm that disease has been wanting, or that epidemic diseases may not, at any given time, appear, and require to be allowed for in any regulations made respecting the killing of seals.

340. In the Report of Mr. C. H. Jackson on the fur-seal islands of Cape Colony, already referred to, he writes: “Upon several islands, especially in the Ishabar group, are to be found the remains of vast numbers of ‘seal,’ probably the effects of an epidemic disease at some distant period.”

341. On the same subject and referring to the same region, Mr. H. A. Clark writes as follows, quoting “Morell's Voyages”: “In 1828 Captain Morell, in the schooner ‘Antarctic,’ visited the west coast of Africa on a fur-seal voyage. At Possession Island, in latitude 26° 51' south, he found evidence of a pestilence among the fur-seals. The whole island, which is about 3 miles long, he states, was covered with the carcasses of fur-seals, with their skins still on them. They appeared to have been dead about five years, and it was evident that they had all met their fate about the same period. I should judge, from the immense multitude of bones and carcasses, that not less than half-a-million had perished here at once, and that they had fallen victims to some mysterious disease or plague.” About 17 miles north of Possession Island are two small islands not over a mile in length, where Captain Morell found still further evidence of a plague among the fur-seals. “These two islands,” he says, “have once been the resort of immense numbers of fur-seals, which were doubtless destroyed by the same plague which made such a devastation among them on Possession Island, as their remains exhibited the same appearance in both cases.”‡

342. Elliott, after stating that he has observed no disease among the seals of the Pribyloff Islands, quotes a recorded instance of a plague affecting the hair seals of the north of Scotland, Orkney and Shetland Islands, and adds: “It is not reasonable to

\* “Monograph of North American Pombeds,” p. 407; see also House of Representatives, Ex. Doc. No. 83, 44th Congress, 1st Session, p. 65.

† United States' Census Report, p. 68.

‡ “Fishery Industries of the United States,” vol. ii, p. 416.

suppose that the Pribyloff rookeries have never suffered from distempers in the past, or are not to in the future, simply because no occasion seems to have arisen during the comparatively brief period of their human domination."<sup>6</sup>

343. The fur-seals upon the Pribyloff Islands are, however, afflicted by at least one known trouble, that of intestinal worms, and in the stomachs of nearly every seal killed a certain number, and often a very considerable number, of such worms are found. This cannot of course be considered as constituting in itself a very serious affection, but if under any particular train of circumstances it should be considerably increased, it alone might become a danger to the continued well-being of the seals.

(L.)—*Mortality of young Seals in 1891.*

344. In the season of 1891, considerable numbers of dead pups were found in certain places upon the rookery grounds or in their vicinity, and various hypotheses were advanced to account for this unusual mortality. As some of these have special bearings on the general question of seal preservation, it may be well to devote a few words to this particular subject.

345. In order to exhibit the circumstances surrounding this fact and to arrive at a probable explanation of its true meaning, it will be necessary in the first instance to give in summarized form the observations and notes bearing upon it made on the ground by ourselves.

346. When visiting Tolstoi Rookery, St. Paul Island, on the 20th July, we observed and called attention to several hundred dead pups which lay scattered about in a limited area, on a smooth slope near the northern or inland end of the rookery ground, and at some little distance from the shore. The bodies were partly decomposed, and appeared to have lain where found for a week or more, which would place the actual date of the death of the pups, say, between the 15th and 20th July. Neither the Government Agent who was with us, nor the natives forming our boat's crew at the time, would at first believe that the objects seen on the rookery were dead pups, affirming that they were stones; but when it became clearly apparent that this was not the case, they could suggest as causes of death only over-running by bulls or surf along the shore, neither one of which appeared to us at the time to be satisfactory. Mr. D. Webster, interrogated on the subject some days later on St. George Island, offered merely the same suggestions, but a few days still later, both Whites and natives on the islands were found to have developed quite other opinions, and to be ready to attribute the deaths to the operations of pelagic sealers killing mothers while off at sea, and leading to the death of pups from starvation consequent on such killing.

347. Believing the matter to be one of considerable importance, however it might be explained, particular attention was paid to it on subsequent visits to rookeries. On the 31st July and the 1st August the rookeries of St. George were inspected, but no similar appearances were found, nor was anything of the same kind again seen till the 4th August, on Polovina rookery, St. Paul Island, where, near the southern extremity of the rookery, several hundred dead pups were again found by us, here also covering an area of limited size, which we were able to examine carefully without disturbing the breeding seals. It was estimated that the pups here found had died between ten days and two weeks before, which would place the actual date of death at about the same time with that of those first referred to.

348. On the following day the extensive rookeries of North-East Point were visited and examined, but very few dead pups were anywhere seen. Mr. Fowler, in charge of these rookeries for the Company, was specially questioned on this point, and fully confirmed the negative observations made by ourselves at the time. It may here be mentioned that the vicinity of North-East Point had been the principal and only notable locality from which, up to this date, sealing vessels had been sighted in the offing, or had been reported as shooting seals within hearing of the shore.

349. On the 10th August, after a cruise to the northward of about a fortnight's duration, we returned to St. Paul, and on the same day revisited Tolstoi Rookery. On this occasion the dead pups previously noted were still to be seen, but the bodies were flattened out and more or less covered with sand, by the continuous movement of the living seals. There were, however, on and near the same place, and particularly near the angle between Tolstoi Rookery and the sands of English Bay, many more dead pups, larger in size than those first noted, and scarcely distinguishable in this respect from the

\* United States' Census Report, p. 62.



living pups which were then "podded out" in great numbers in the immediate neighbourhood. Messrs. Fowler and Murray, who accompanied us on this occasion, admitted the mortality to be local, and the first-named gentleman stated that in his long experience he had never seen anything of the kind before, and suggested that the mothers from this special locality might have gone to some particular "feeding bank," and have there been killed together by sea scalers. On the same day we visited the Reef Rookery again, and a search was made there for dead pups, which resulted in the discovery of some of approximately the same size with those last mentioned, but probably not more than an eighth, and certainly not more than one-fourth, in number as compared with the inner end of the Tolstoi Rookery ground, and proportionately in both cases to the number of living pups.

350. While making a third inspection of the St. Paul rookeries in September, on the 15th of that month, the Reef and North-East Point rookeries were again specially examined. The rookery ground of the south-eastern side of the Reef Point was carefully inspected area by area, with field-glasses, from the various rocky points which overlook it, and from which the whole field is visible in detail save certain narrow stony slopes close to the sea-edge, where dead pups might have been hidden from view among the boulders. Subsequently, the north-eastern sloping ground, named Gorbchoi on the plans, being at that date merely occupied by scattered groups of seals, was walked over. The result of the inspection was to show that there were on the south-east side a few dozen dead pups at the most in sight, while on the opposite side perhaps a hundred in all were found in the area gone over, being, probably, the same with those seen here the previous month, and in number or contiguity not in any way comparable with those seen at the inner end of Tolstoi.

351. On the same day a final visit was made to the North-East Point rookeries, then in charge of three natives only. Two of these men went over the ground with us, and were questioned on various subjects, including that of dead pups, through our Aleut interpreter. They would not admit that they had seen any great number of dead pups on the North-East Part this season, and did not seem to be in any way impressed with the idea that there had been any unusual mortality there. The ground to the north of Hutchinson Hill was, however, carefully examined by us from the slopes of the hill, and a few dead pups were made out there. Again, at a place to the north of Sea-lion Neck of the plans, and beyond the sand beach upon which holluschickie generally haul out, a slow advance was made among a large herd of females and pups, though part of these were necessarily driven off the ground in so doing. An occupied area of rookery was thus walked over, and the dead pups which appeared at this spot to be unusually abundant were counted with approximate accuracy. A very few were found scattered over the general surface, but on approaching the shore edge, an area of about 20,000 square feet was noted, in which about 100 dead pups were assembled. Some of these lay within reach of the surf at high tide. Most appeared to have been dead for at least ten days, and several were broken up and mangled by the movement of the living seals on and about them. This particular locality showed a greater number of dead pups to area than any other seen at this time either on the North-East or Reef rookeries, but in number in no respect comparable to that previously noted at Tolstoi, or even to that on the south part of Polovina.

352. We were informed on this our last visit to the Pribyloff Islands, that subsequent to our discovery of and comments upon the dead pups at the two last-mentioned places, the attention of Mr. J. Stanley-Brown (who was engaged during the summer in making a special examination of the rookeries for the United States' Government) was called to the circumstance, and that he undertook some further examination of it, of which the result will, no doubt, eventually be rendered available. Dr. Acland, who had just been installed as Medical Officer on St. Paul, also told us that he had, within a few days, examined the bodies of six of the dead pups from Tolstoi, and that though rather too much decomposed for correct autopsy, he had been unable to find any signs of disease, but that all those examined were very thin and without food in the stomachs.

353. It may be noted here that the carcasses thus examined must have been those of pups which had died in the month of September, or when no sealing schooners remained in Behring Sea.

354. The body of a pup found by us on the North-East Rookery on the 5th August, which was still undecomposed, was preserved in alcohol, and has since been submitted to Dr. A. Günther, F.R.S., of the British Museum, who kindly offered to make an examination of it. This is quoted at length in Appendix (D). The stomach was found to contain no food. The body was well nourished, with a fair amount of fat in the subcutaneous tissue, but no fat about the abdominal organs. The lungs and windpipe were

found in an inflammatory condition. Respecting the actual cause of death, Dr. Günther says: "Both the absence of food as well as the condition of the respiratory organs are sufficient to account for the death of the animal; but which of the two was the primary cause, preceding the other, it is impossible to say."

355. It would be inappropriate here to enter into any lengthened discussion of the bearings of the above facts on the methods of sealing at sea; but as, after the tentative adoption of various hypotheses, the mortality of the young seals was with a remarkable unanimity attributed to pelagic sealing by the gentlemen in any way connected with the breeding islands, and as it has since been widely and consistently advertised in the press as a further and striking proof of the destructiveness of pelagic sealing, it may be permissible to allude to a few cogent reasons, because of which the subject seems at least to require consideration of a much more careful and searching kind:—

(1.) The death of so many young seals on the islands in 1891 was wholly exceptional and unprecedented, and it occurred in the very season during which, in accordance with the *modus vivendi*, every effort was being made to drive all pelagic sealers from Behring Sea. Those familiar with the islands were evidently puzzled and surprised when their attention was first drawn to it, and were for some time in doubt as to what cause it might be attributed.

(2.) The explanation at length very unanimously concurred in by them, viz., that the young had died because their mothers had been killed at sea, rests wholly upon the assumption that each female will suckle only its own young one, an assumption which appears to be at least very doubtful, and which has already been discussed.

(3.) The mortality was at first entirely local, and though later a certain number of dead pups were found on various rookeries examined, nothing of a character comparable with that on Tolstoi rookery was discovered.

(4.) The mortality first observed on Tolstoi and Polovina was at too early a date to enable it to be reasonably explained by the killing of mothers at sea. It occurred, as already explained, about the 15th or 20th July, at a time at which, according to the generally accepted dates, as well as our own observations in 1891, the females had not begun to leave the rookeries in large numbers, or, when leaving them, to do no more than swim or play about close to the shore. It has already been stated that Bryant gives the 25th July as the opening of the period in which the females begin to leave the rookeries. Maynard states that the bulls, cows, and pups remain within the rookery limits to the same date, while Elliott places this change in the rookeries between the end of July and the 5th and 8th August. It is, moreover, acknowledged by the best authorities, that the dates in seal life upon the islands have become later rather than earlier in recent years, as compared with those in which the dates above cited were ascertained. In the case of the death of pups after the middle of August, it might be an admissible hypothesis that the mothers had been killed at sea, and that subsequently to such killing the young had had time to starve to death, but not at dates earlier than this. In the present case, the mortality began long before that date, and it seems probable that the deaths which occurred later must be explained by the same cause, whatever it may have been, extending from the original localities and becoming more general.

356. The causes to which the mortality noted may be attributed with greatest probability are the following, but the evidence at present at disposal scarcely admits of a final attribution to one or other of them. If, however, the examination made by Dr. Acland of several of the carcasses be considered as indicative of the state of the whole, one of the two first is likely to afford the correct explanation:—

(a.) It is well known that in consequence of the decreased number of "killables" found on the hauling-grounds in late years, it has been found necessary to collect these close to and even on the edges of the breeding rookeries, and that it has thus been impossible to avoid the collection and driving to the killing grounds with the "killables" of all sorts of seals not required, including seacatchie and females. It is also known that the driving and killing in the early part of the season of 1891 was pushed with unwonted energy, taking into consideration the reduced number of seals, and it appears to be quite possible that the females thus driven from their young, though afterwards turned away from the killing grounds in an exhausted and thoroughly terrified state, never afterwards found their way back to their original breeding places, but either went off to sea or landed elsewhere. The places where the greatest number of dead pups were first seen on Tolstoi and Polovina were just those from the immediate vicinity of which drives were most frequently made.

(b.) The appearances, indicating a local beginning and greatest intensity of mortality, with its subsequent extension to greater areas, might reasonably be explained by the origination and transmission of some disease of an epidemic character.

(c.) The circumstances where the mortality was observed to be greatest appeared to be such as to be explicable by a panic and stampede with consequent over-running of the young, but, if so, such stampedes must have occurred more than once. They might not improbably have resulted from attempts to collect "drives" too near the breeding rookeries.

(d.) It is entirely within the bounds of probability that raiders may have landed on at least Tolstoi and Polavina rookeries without any one upon the islands becoming cognizant of the fact. Females would in such a case be killed in greatest numbers, for these occupy the stations most easily got at from the sea-side, and the killing upon the rookery ground would also unavoidably have resulted in "stampeding" large numbers of seals of all classes.

(M.)—*Methods of enumerating Seals on the Pribyloff Islands and Estimates of Numbers.*

357. The matter of seals frequenting the Pribyloff Islands at different dates is of course a fact of fundamental importance, and every attention has thus been given to the methods employed in making estimates of number and to the results arrived at. Unfortunately for purposes of comparison, these have been made for the past twenty years at irregular intervals, on entirely different methods, and by quite different persons, excepting in the one case of Mr. Elliott, who made elaborate observations on the spot both in 1872-74, and in 1890, the latter being of special value for purposes of comparison with the conditions in 1891.

358. The first actual estimate of the total numbers of seals resorting to the Pribyloff Islands appears to have been that made by Bryant in 1869. Bryant states that he discovered that there were no open places on the rookeries, that they began to fill at the water-line, and extended no further back than the breeding seals could occupy in a compact body. He then estimated the number to a square rod, and, presumably, by finding the number of square rods contained in the rookery grounds, found the total number of breeding seals to be 1,130,000. He next proceeded to estimate the non-breeding seals and young of the year, and states his belief that there were on the island [sic] not less than 3,230,000.\* If intended for both islands, as by the context it appears to be, this estimate is probably a reasonably fair one, made at least to the best of the writer's ability, though, as he does not state the number assumed to the square rod, we are without any exact means of checking it.

359. In his report, based on observations in 1872-74, Mr. Elliott claims the credit for the "discovery" that the seals collected on the rookeries in a uniform number to the square rod, and, with even greater candour than the last writer, puts us in possession of his unit of computation. This is very simple, for he merely allows two square feet to each breeding seal on the rookery ground, divides the whole number of square feet considered as rookery ground by two, and calls this the number of breeding seals. His discussion of the subject is somewhat lengthy, but he sums up his conclusions as follows: "Taking all these points into consideration, . . . I quite safely calculate upon an average of two square feet to every animal, big and little, on the breeding grounds, as the initial point upon which to base an intelligent computation of the entire number of seals before us."† Working upon this basis, he makes the number of breeding seals on the islands, in 1872-74, 3,133,420, and, adding an estimate for the non-breeding seals, raises the grand total to 4,700,000.‡

360. Lieutenant Maynard, in his Report written in 1874, states that the seals frequenting the Pribyloff Islands "have been variously estimated at from 1,000,000 to 15,000,000." He thinks Mr. Elliott's method of estimation to be the most accurate, but, by adding a larger number of non-breeding seals, raises the grand total, as relating to the year 1872, to about 6,000,000.§

361. Fourteen years after Mr. Elliott's estimate, Mr. G. R. Tingle, in 1887, expresses the belief that the area of rookery grounds had increased, and, employing Elliott's method of computation, arrived at the figures 6,357,750 for the total number of seals. He explains, however, that the space given to each seal by this hypothesis was too small, and, consequently, reduces his estimate by one-fourth, making it 4,768,300.||

362. It will be observed that Elliott's mode of computing the space occupied by the breeding seals has been made the basis for subsequent calculations, though both

\* "Monograph of North American Unipeds," p. 389.

† United States' Census Report, p. 50.

‡ Ibid., pp. 61 and 62.

§ House of Representatives, Ex. Doc. No. 13, 44th Congress, 1st Session, p. 5.

|| House of Representatives, Report No. 3883, 50th Congress, 2nd Session, pp. 163 and 177.

Maynard and Tingle took the liberty of essentially changing the results as they would have appeared if this method had been strictly followed. Neither wholly believed in it, but neither saw his way to substituting a more accurate basis, and both, therefore, merely modified its results by guessing at additions or subtractions.

363. Elliott's basis of computation must, however, be taken subject to his own measurements of an adult female, which are as follows: Length, 50 inches; girth, 36 or 37 inches. Such an animal, in a recumbent position, would be contained in a rectangle of as nearly as possible 4, instead of 2, square feet, and as it is not the normal habit of seals to lie overlapped one upon another, or to stand upright on their hind flippers, it is surely clear that his unit of measurement is an erroneous one. This appears to have occurred to the author himself, for, in stating the totals of various rookery areas, he writes, cautiously, "making ground for" so many seals, and it is not till he proceeds to make up his grand totals that this statement is suddenly exchanged (though in the same tables) for one representing actual number of seals.

364. This fact of measurement is not, however, the most palpable source of error in these calculations, for the nature of the ground occupied by the breeding seals in itself renders them wholly inapplicable. A first inspection of the territory covered by any one of the Pribiloff rookeries is sufficient to show this, and the fact becomes more and more obvious as they are examined in detail. The notes already given (§ 253 *et seq.*) on the character of the rookery grounds may indicate the reason of this criticism, but it would be difficult to convey an adequate idea of the rocky and broken character of some of them by any description. Photographs may serve to exhibit better their general nature, and it appears to be reasonably within limits of error to conjecture that, in the aggregate of the Pribiloff Rookery grounds, not more than one-half the whole space included by their outer limits can, under any circumstances, be assumed to be a surface so level as to be "ground for the resting-place of seals."

365. It has been considered necessary to deal with this subject because of its direct bearing upon the question of the fluctuation and general diminution of the seals upon the rookeries, and the evidence that it affords of the now scarcely-questioned fact, that the estimates made in the earlier years of the control of the islands by the United States were absurdly high. It may be added that no single individual of the many questioned by us who had been familiar with the Pribiloff or Commander Islands, or both, for longer or shorter periods, was found to be ready to maintain even the approximate accuracy of the statements of number of seals according to the above-discussed method of enumeration.

366. By way of further substantiating the conclusions arrived at, however, it may be well to quote a few published opinions bearing on it, which occur in the Congressional Inquiry into the Fur-seal Fisheries of Alaska, made in 1888:—

Mr. S. M. Büynitzky, Government Agent on the islands during parts of the years 1870-71-72, says: "I saw an approximate estimate made by Mr. Elliott . . . I do not think any estimate would be within a million or two. I think he puts them at five millions, but it may be three or seven millions, as they are countless."

Mr. G. Wordman, Government Agent on St. George Island from 1881 to 1885, asked as to the total number of seals on the islands, says: "I never could make it so much as Professor Elliott has done. I made many estimates. I have been to all the rookeries on the islands many times, and compared them with the space occupied by the carcasses on the killing grounds, and I feel pretty confident that the whole number has been over-estimated." He then proceeds to justify his opinion by special references to rookeries on St. George and to measurements.

Mr. T. F. Morgan, who was on the Pribiloff Islands in 1868-69, and again during every killing season from 1874 to 1888, as an employé of the Alaska Commercial Company, says, respecting the number of seals: "I think that Professor Elliott has over-estimated it . . . he laid down the carcasses of seals and measured around them, and then measured the rookeries. . . . But they do not lie all over the territory which he marked out. . . . The seals did not cover the whole area as thoroughly as he measured it."

Dr. H. H. McIntyre, Superintendent for the Alaska Commercial Company, and on the islands every year, except three, from 1870 to 1888, says: "I think the number has been very largely over-estimated in the reports of naturalists who have observed the habits of the animals on the seal islands. They have made their mistake in supposing that all the ground which shows signs of having been occupied by seals is covered by them simultaneously, when the fact is, that the bachelor seals may be found to-day upon

a certain rookery, and another time upon another place. The result is, the same animals in many instances have been counted two or three times. I think the estimates are fully one-third, or perhaps one-half, too high."

367. No further estimate of the total number of seals upon the Pribyloff Islands appears to have been made until that of Mr. Elliott in 1890, in which the grand total arrived at is 959,393 breeding seals, including only 350,000 breeding females, besides a large number of barren females, while the number of male seals over one year old did not exceed 100,000.

368. The citations above given are sufficient to show the character of the estimates of numbers made, and to indicate why it is impossible to follow the changes and fluctuations in numbers of seals resorting to the Pribyloff Islands directly and by these means alone. In his original report of 1874, Lieutenant Maynard very sensibly remarks that the most trustworthy index of the condition of the rookeries is to be found in the aggregate area occupied by them at particular dates in each season, rather than in actual numbers of seals, which can never be anything but mere approximations. His suggestion, that plans should be made and marked with the rookery limits in each year, was unfortunately not carried out, and we are thus thrown back upon indirect methods of instituting comparisons between the past and present condition of seal life upon the islands. We can only hope that for the future steps will be taken accurately to peg out or mark the limits of the existing rookeries as a criterion of changes certain to occur from year to year.

369. The auxiliary methods which were adopted in making comparisons of the past and present condition of the rookeries, included careful personal observation at three different periods in the season of 1891, made in the light of evidence previously published, and with the aid of formal and informal questioning and conversation with all those actually engaged in the work on the islands, as well as with many who had previously worked on the islands, but were at the time in other independent employments.

370. The differing ages at which the males and females respectively reach maturity and enter into the breeding class, together with the varying times at which the sexes are supposed to continue in this class, with other circumstances already detailed as to the habits of the fur-seals, together afford the data for very elaborate calculations as to the rate of increase or decrease of numbers of seals under various conditions, and subject to the killing of certain numbers of seals of specified sexes and ages. Such calculations, from a practical point of view, are, however, more curious than useful: first, because of the uncertainty of many of the data, due to a want of necessarily precise information; and second, from the impossibility of including the consideration of the varying natural causes of loss, which in some years may be so serious as to entirely vitiate any arithmetical result which may be arrived at by such a calculation. An attempt of a very general character has, nevertheless, been made to illustrate the normal increase and possible killing of seals, which may be presented for the purpose of putting the matter in point. In this calculation roughly approximate data only are employed, because it is believed that such data are, under the circumstances, likely to yield results as trustworthy as any assumptions of a refined and definite character.

371. The state of the breeding rookeries of the fur-seal, under normal circumstances, and while the surplus of males is being annually killed off, may, it is believed, be fairly represented by a unit value consisting of—breeding males 10,000, breeding females 100,000. Bryant's estimate (which appears to be the best) of young surviving to reach maturity, under normal circumstances, is 30 per cent. of the entire number born; or with an annual birth-rate corresponding to the above "unit" of 100,000, 30,000 would reach "maturity" each year.\*

It may further be assumed that the average age of "maturity" in the two sexes is 4 years, and that the whole number of seals upon the rookeries during four preceding years has remained constant.

372. Under these assumptions, 30,000 4-year-old seals would be added each year; and it may be postulated, though it has not been actually ascertained, that of these 15,000 are males and 15,000 females. Of these it may be supposed that 10 per cent. is required in each case to replace natural losses by death annually of the breeding classes, or, say, 10,000 females and 1,000 males.

373. Under these assumptions, it is evident that a surplus of the yearly increment, consisting of 14,000 males and 5,000 females, may be killed each year without damage to the existing state of the rookeries, which should thus remain at a fixed number.

\* Bryant estimates that during the first year 60 per cent. of the young are lost, during the second year 15 per cent., but before they arrive at maturity at least 10 per cent. more are destroyed. "Monograph of North American Pinnipeds," p. 407.



The death-rate allowed is probably sufficient to cover all but very exceptional natural causes of loss.

If, however, under these circumstances, no females be killed, an addition of 5,000, or 5 per cent., on the whole number of females, will accrue to the rookeries yearly; and such increase, to maintain the requisite proportion of the sexes, will call for a similar increase of 5 per cent. in males, or 500 males; thus reducing the number of males which may be killed, if killing is restricted to this sex, to 13,500 annually.

With such an annual increase of 5 per cent. to the entire herd, this should double in number in about every fourteen years.

Thus, about 770,000 breeding seals should produce annually 100,000 killable males of an average age of 4 years, and still allow for a 5 per cent. annual increase of the breeding seals.

374. Adding to the assumed unit of 110,000 breeding seals, male and female, the number of non-breeding seals required by Bryant's percentage estimates of loss by death of young, the following figures would represent the whole number of such seals at any one time:—

Pups, just born	..	..	..	..	..	..	..	100,000
Yearlings	..	..	..	..	..	..	..	40,000
2-year-olds	..	..	..	..	..	..	..	35,000
3-year-olds	..	..	..	..	..	..	..	33,000
Effete seals of both sexes, say	..	..	..	..	..	..	..	50,000
Total of non-breeding seals	..	..	..	..	..	..	..	258,000

375. Adding to these the breeding seals, the whole number of seals present, when 30,000 may be killed annually without decreasing the aggregate number, would be 368,000, and proportionately, in order to produce an increase of 100,000 annually, a total number of 2,576,000.

376. As a matter of opinion, based on such information as we have been able to obtain, and notwithstanding the much larger number given to the islands by several of the estimates previously quoted, we are inclined to doubt whether the whole number of seals frequenting the Pribyloff Islands has ever, since the exceptional slaughter of 1868, actually exceeded 2,000,000. There can be no possible question that the actual number has been very greatly exaggerated in most of the computations made. If this opinion be approximately correct, it is evident that an annual slaughter of 100,000 males might lead to just such a continuous and cumulative decrease in total numbers as is elsewhere shown to have occurred before pelagic sealing had entered into the question.

(N.)—*Various Natural Indications of former Extent of Ground occupied by Seals on the Pribyloff Islands.*

377. It will be understood, that on the Pribyloff Islands all parts of the surface above the reach of the waves, and not too rocky or too entirely composed of loose sand, is, in consequence of the humidity of the climate, naturally covered with grass, but that on the areas running back from the shore with a greater or less width, which are occupied as rookeries or hauling-grounds by the seals, the constant movement and passage of these animals entirely prevents any vegetable growth. Thus, these resorts of seals, when seen even from a considerable distance, are quite distinctly marked as bare, earthy slopes. When more closely examined, it is further found that the rocky projections and scattered angular rocks, which are common to a greater or less extent to nearly all the rookery grounds, have had the angles more or less polished and worn by the constant movement of the seals over them. The rocks being generally basaltic contain no very hard minerals, and there being a certain proportion of silicious matter in the sand, this supplies a very efficient polishing material, which is applied by the flippers and bodies of the seals. The polish thus imparted to portions of the rocks is different from that produced by wind-drifted sand in being chiefly confined to points and angles, and is thus easily distinguished from it.

378. It is found that such partly polished rocks are characteristic particularly of the seaward side of the several rookery grounds, and that further inland, and at greater distances from the central parts of the several rookeries, the appearance becomes less and less well marked, till it at length ceases to be observable.

379. It is evident that the polishing and wearing down of rocky angles in the manner above described can have occurred only during long series of years; but it is also evident that the occupation of the same spot by large numbers of seals, say once in

every third or even every fifth or tenth year, would be sufficient to render the polishing process practically continuous. That, in fact, any particular rocky spot, if not occupied for intervals of several or many years, would not in such intervals lose the traces impressed upon it by former occupation, and that, if reoccupied from time to time, these traces would become cumulative. Experience gained in connection with the examination of polishing due to the glacial period in other regions, impressed on just such rocks as those of the Pribyloff Islands, shows that such polishing is exceedingly enduring, and that the mere action of the weather upon polished rock angles, like those found upon some of the breeding grounds, cannot have perceptibly operated in the direction of their obliteration since the earliest human knowledge of the Pribyloff Islands. Otherwise stated, it may be safely asserted, that while affording no valid evidence of recent occupation, such traces give invaluable evidence as to the whole area at any time long occupied by large numbers of seals during the past few hundred years.

380. In consequence of the want of actual information as to the extent of seal-occupied ground about the various breeding places on the Pribyloff Islands in various years, a very general tendency is apparent, even among those who have been familiar with the islands for several years, to magnify the conditions of the past at the expense of the present, and free scope is often given to the imagination in describing the former extent of various rookeries and hauling grounds. An excellent corrective to generalizations of this kind was found, however, in noting the bare or lichen-covered surfaces of the scattered rocks. The climate, as well as the rock surfaces of the Pribyloff Islands, are well adapted to the growth of lichens, but where seals have been in any considerable numbers, no lichens are found on any surface over which they can climb, or which has been within the reach of their flippers. A knowledge of the very slow growth of lichens was sufficient to indicate that where such accessible rocks were well lichen-covered, seal life must have been but scantily, if at all, represented for a long term of years.

381. An observation of this particular fact, continued from rookery to rookery over both islands, showed that the lichened rocks often extended quite to the limits of the ground still annually kept bare of grass by the seals. By this statement, it is not meant to affirm that the lichened rocks and stones were always and everywhere continuous with the limit of the bared ground, but that in many cases easily accessible points of ground touched these limits, both on St. Paul and St. George, and thus proved that the seal-frequented area had not continuously overpassed the actual limits for a considerable number of years, and that vague statements to a contrary effect were necessarily erroneous. This was particularly noted on West Zapadni Rookery, on certain parts of the Reef rookeries, and those of North-East Point on St. Paul, and on the Little Eastern Rookery on St. George; but as a criterion, it was in a lesser degree distinctly observed on nearly all of the breeding grounds.

382. To render the meaning of this fact clear to those who have not particularly paid attention to this subject, the following quotation may be given from the article on lichens in the "Encyclopædia Britannica":—

"In this fitful and abnormal life of lichens, we have the explanation in a great measure of their almost indefinite duration of existence. It is well known that they are perennial plants in the widest sense of this term; and that, though in the earlier stages of their existence, their growth is comparatively rapid, yet this becomes extremely slow when they arrive at a certain age. The time required for the development of even the most rapidly growing species may be calculated by the appearances of such of these as are met with on gravestones, mortar of houses, stone walls, wooden palings, and such like, the date of whose erection is known. Amongst other instances that have come under the present writer's own observation may be adduced the case of *Physcia parietina* [the common grey lichen of the Pribyloff Islands is a *Physcia*], growing in fair quantity on the stones of a granite wall, built in 1836, in a maritime district where the plant is extremely abundant, and where the atmospherical and other conditions are well suited for its growth. In a recent visit to the spot, it was found that although the thallus is now well developed, no fructification whatever is visible, though traces of spermogones are beginning to appear, so that, in a space of forty-five years, this plant has not yet attained full maturity."

383. Still another characteristic of the rookery grounds is, that their surfaces are generally composed, especially in hollows subjected to little wear, of a felted coat of mud and hair. In the damp climate of the Pribyloff Islands this characteristic does not endure very long, and when any particular area is abandoned for a few years by the seals, it soon becomes again covered with grass.

384. This last circumstance leads to the consideration of a fact, upon which much stress has lately been laid, in connection with the estimation of the present and former areas of the rookeries and hauling grounds. It is quite noticeable that when an area doubtless originally covered with rough, tussocky grass of long growth, and of the character normal to the islands (and generally or always confined to the single species, *Elymus mollis*), has been occupied by seals for such a time as to eradicate this grass and smooth down the lumpy surface upon which it grew, the temporary or permanent abandonment of the area is followed by the appearance on it of grasses of a shorter and closer growth, and which in the later summer and autumn sooner assume yellowish colours, in consequence of which the outlines of the previously occupied area become clearly defined. It is quite natural, that in the unfortunate absence of any consecutive record of the extent of the rookery grounds, or of correct or comparable estimates of the number of seals upon them or upon the islands as a whole, these "grass limits," as they may be called for brevity, have been seized upon as something tangible.

385. The "grass limits" are often quite readily observable, particularly from a little distance, and some special attention was given to them in order to ascertain, as far as possible, to what extent they might be employed as a criterion of change, and particularly of diminution in the areas frequented by seals, or in the aggregate number of seals resorting to the islands.

386. It may be mentioned, in the first place, that the grasses to be found in these particular areas are not in themselves peculiar, but it is merely the predominance of certain forms and their mode of growth which seems to outline such areas, the most abundant grass being apparently *Deschampsia (Aira) caspica*, with which the little cruciferous plant *Cochlearia officinalis* is often mingled. Farther, that a very similar growth and colouration is found in other parts of the islands, which have never been known to be, and which in all probability never have been, frequented by fur-seals; as, for instance, on the easterly slopes of the low hill upon which the flagstaff stands at St. Paul village. Making due allowance, however, for these and other accidental circumstances, the fact remains that, surrounding all, or nearly all, the present rookery grounds, there is a margin of varying width, and not always concentric with the still bare area, pretty clearly marked out by such difference of sod.

387. Respecting the time which it might take for any portion of seal-worn ground to revert to its original tussocky condition if undisturbed, little can be said with certainty, further than that it must be many years. The tussocky character of the general surface upon the islands has arisen in the course of time and by the persistence of grass-clumps, about which sand and soil carried by the wind have collected, and vegetable matter produced by continued growth has accumulated. Experience on the western plains of North America, where a buffalo-path or cart-trail is sometimes found to have retained its identity, with little apparent change for thirty or more years, would indicate that the time of reversion here to the original state of the surface cannot be placed at less than perhaps fifty years, while a century would, in all probability, more nearly represent it.

388. Without, however, attaching any importance to particular limits of time, it is perfectly clear that both in the extent of the seal-polished rocks and in that of the distinctive vegetation, we see marked the greatest expansion which the areas so characterized have at any time attained during the last 100 years or so, and that these traces thus carry us back so far as to render them of little value in the elucidation of the changes of late years. Still further, it is obvious that such limits need not, and probably do not, quantitatively represent the actual expansion of the seal herd centering about any given rookery ground, but, on the contrary, indicate an outer boundary, within the limits of which the seals have oscillated during a long term of years. The extraordinary fixity which has been attributed to the rookery areas and hauling grounds, arising naturally from a popular exaggeration of their sub-permanent character, has alone rendered it mentally possible to advance to the further stage of belief, which has induced some writers to assume that the whole of the areas showing traces of seal occupation have been at some definite time simultaneously and closely occupied. There is no basis for any such belief in nature, or in the observed habits of the seals, and any reference to it with this meaning involved, merely tends to cloud the consideration of the true facts of the case.

389. Dr. McIntyre, in a passage already quoted, refers clearly to this point, and the facts previously given in connection with changes in the rookeries further illustrate it, though it is not at once grasped in an inspection of the seal islands for the first time, or in one confined to a single period of the year. It is, moreover, very easily understood that any one with but a general remembrance of the former greater abundance of seals on the islands, if asked to indicate the limits occupied by them and groping for some



tangible means of doing so, should seize upon the "grass limit" as affording this means, and maintain that that limit is co-extensive with the spread of the seals in the "sixties" or in the "seventies," as the case may be.

390. The best locality actually found for observing the circumstances connected with old seal-frequented areas was that of the important rookeries of North-East Point. The "grass limit" was there particularly well marked, especially in the month of September, and it was noted that the rocks with polished edges scarcely, and then only in a very slightly marked form, extended as far as the "grass limit," giving reason to believe that the ground had been at no time thick or very continuously frequented by seals to this limit. The nearly straight shore-line running eastward from Hutchinson Hill is almost, or practically quite, continuously occupied by breeding-seals, though these occupy a much greater width in some places than in others. As early as the 5th August, 1891, it was observable from Hutchinson Hill, in connection with the general change in the rookeries at about this date, that considerable bodies of seals had worked back in three places quite to the margin of the "grass limit," and in a fourth had almost reached this limit. In thus working inland, the respective bodies of seals had formed four "bays," gradually narrowing toward the inner ends, where the greater number of seals were at the time gathered, but of which the limits were quite distinctly marked by the flattening down and partial disappearance of the short grass, and the fact that mud and sand had been drawn over it by the restless movement of the seals. This observation alone was sufficient to indicate that even the present number of seals might naturally, in the course of a few years, work over every part of the territory on the seaward side of the general "grass limit," and that this limit might thus be perennially maintained.

391. When the same part of the North-East Rookery was re-examined in the middle of September, though there were still some large "pools" of seals scattered out as far as the "grass limit," the arrangement above described had partly broken up, and the "bays" were not so distinctly outlined, as recent rains had washed and partly revived the seal-trodden grass by which they had previously been marked out. The seals occupying the "bay" nearest to the base of the hill had, however, moved still further back, and were actually in occupation to the number of 2,000, or thereabouts, of an area of the longer and tussocky grass to the rear of the general "grass limit." At the same date, near the western base of the long slope of Hutchinson Hill, a considerable area of the shorter turf on the seaward side of the "grass limit" was found to show obvious traces of having been occupied by a large number of seals for some days at least, though they had subsequently abandoned it for some other locality. Here, again, one corner of the area thus marked out by recent occupation overpassed the "grass limit," and covered a superficies estimated at about 50,000 square feet of the long tussocky grass, which showed no sign of previous occupation by seals. The shorter grass had naturally suffered more than the longer, being flattened down, partially worn off, and pressed into the mud. The longer grass in the course of a year will probably show no trace of its occupation.

392. Passing now to several changes of the same general character noted on the Reef Rookery:—As early as the 18th August, not only was a larger number of seals than before observed (mostly holluschickie) seen hauled out on the outer part of Zoltai sands, at the inner end of Reef Point, but they were also scattered in considerable numbers far back on the hill. There were in all probably about 3,000 seals here at this time, and one-half of them were estimated to be "killable" seals. On the 15th September large droves of seals were resting or travelling about all parts of the bare "parade ground" between the Reef and Gorbateh rookeries, which had on previous visits, six weeks and nine weeks before respectively, been but scantily occupied, and which, if noted only in the earlier part of the season, would have been characterized as an area practically abandoned by seals. The only notable exception to this occupation was the grassy flat to the southwest of "Fox Hill," which for some reason was not frequented, and shows little sign of having been much occupied either in this or former years. While, therefore, it might easily have been assumed at earlier dates in the season that the bare slopes of the "parade" indicated the former existence of great masses of seals unlike any now to be found, the reason of the absence of grass upon them, even under the present circumstances, became perfectly obvious on a later inspection.

393. Before leaving this particular subject, it may be well further to mention that there is on the North-East Point a considerable area of what may be called "spurious grass limit," to the west of the slopes of Hutchinson Hill, and extending nearly to Cross Hill. Here there is a flat, spreading back from the beach and bounded on the inland side by a low rise or step, which might easily be mistaken for a very wide expansion of a former rookery ground, but which is in reality not due to any such cause, but is physically different. The higher flat, running inland from the step or low bank just

referred to, is chiefly composed of loose, porous sand, a few feet only in thickness at the edge, but extending in greater or less thickness over a considerable portion of the interior of the whole North-East Point peninsula. This is overgrown by rough, tussocky grass. Between the edge of the step and the sea the superficial sandy covering has been removed, probably by the action of the wind and sea in exceptional storms, and has exposed a stony and bouldery lower surface, on which volcanic soil rather than sand is packed between the rocky fragments. All that part of the lower area which is grassed, is covered with a shorter and yellower kind of grass. No distinct "grass limit" can, therefore, be traced across it, and it is impossible in this place to outline the maximum limit of seal occupation at any period except by the polished character of the rocks, a feature which ceases to be observable long before the edge of the upper flat is reached.

394. The general features here described are well shown in the sketch forming Plate IX in Mr. Elliott's Census Report, though in this sketch, for artistic effect, the horizontal distances are considerably reduced in proportion to the vertical dimensions. The sinuous line of the edge of the higher flat may be clearly traced by the longer grass, and it is obvious that the seals did not approach this line even at the time this sketch was made, or in 1872-74. A photograph taken from the same point of view in 1891 indicates the structural peculiarities of this stretch of ground still more conclusively.

395. It may therefore be stated, in concluding the consideration of this subject, that neither the extent of the seal-polished rocks nor that of the "grass limits" in the vicinity of the breeding grounds, can be trusted to for the purpose of giving information as to changes in area or position of ground occupied by seals in recent years, as contrasted with that at present occupied. Far less can it be taken to indicate in any reliable manner the numerical decrease in the seals in these years, or be accepted in place of the annual details on this subject which an intelligent supervision of the rookeries would have exacted as a matter of prime importance, but which are unfortunately wanting, and can only be in part supplied by incidental allusions or collateral observations which have been preserved. Whether considered from a general point of view, or in the light of the special inquiries made in 1891, such indications as those above referred to must be admitted to mark out only the maximum average limit of oscillation and range of seal occupation during a very long period of years. While, therefore, exact recent surveys of the areas marked out by such "grass limits" or otherwise, in the vicinity of rookeries, may possess a certain limited intrinsic interest, they can have a'olutely no fixed value in connection with the practical matters under discussion. It is, in fact, largely to ideas loosely based on the observable extent of ground which has at one time or another, but never simultaneously, been occupied by seals, that many of the exaggerated estimates of the amount of the present reduction in number of seals in the islands may be directly traced.

(O.)—*Changes in Habits of the Fur-seal in recent Years.*

396. The systematic and persistent hunting and slaughter of the fur-seal of the North Pacific, both on shore and at sea, has naturally and inevitably given rise to certain changes in the habits and mode of life of that animal, which are of importance not only in themselves, but as indicating the effects of such pursuit, and in showing in what particular this is injurious to seal life as a whole. Such changes doubtless began more than a century ago, and some of them may be traced in the historical précis, elsewhere given (§ 782 *et seq.*). It is unfortunately true, however, that the disturbance to the normal course of seal life has become even more serious in recent years, and that there is, therefore, no lack of material from which to study its character and effect even at the present time.

397. The changes in habits and mode of life of the seals naturally divide themselves into two classes, which may be considered separately. The first and most direct and palpable of these is that shown in the increased shyness and wariness of the animal, which, though always pelagic in its nature, has been forced by circumstances to slum the land more than before, so that, but for the necessity imposed upon it of seeking the shore at the season of birth of the young, it might probably ere this have become entirely pelagic. Changes of the second class embrace those which have resulted from a disproportion of the sexes, produced by the continuous and excessive killing of males of certain ages, and from new and more destructive methods adopted on the breeding islands because of diminished numbers and other such circumstances. The increasing irregularity, and overlapping in the dates in the events of seal life may be included in this latter class.

398. Changes of the first class have now apparently become, in a measure, hereditary, while those of the second depend almost from year to year upon the treatment at the time accorded to the seals, and might, in the course of a few years at most, with care, be caused to revert to their former normal condition.

399. Pelagic sealers of experience are almost unanimous in stating that the fur-seal is each year becoming more alert and difficult of approach and capture, while the independent native hunters add their testimony to the same effect, and there can be no question as to the general fact. Such changes are more notable at sea than on the breeding islands, for when at sea the seal is in its natural element, and free to exercise its instincts of self-preservation; when on shore at the breeding season it is, on the contrary, practically defenceless, and, beyond the instinct to attempt to escape from immediate death about to be inflicted by the club or otherwise, it is incapable of seeking safety, and is at the mercy of the seal-killer. Its only refuge, under these circumstances, is to seek, if such may be found, some new breeding-place unknown or inaccessible to man. Captain Seaman, many years ago, adverted to this fact in the following terms: "We may add, likewise, from our own observation, and as the expressed opinion of several experienced sealing-masters, that their natural migrations extend over a great expanse of ocean; and if they are unduly disturbed in their favourite haunts for several successive years, they are quite sure to seek some distant and unknown place, where they can congregate unmolested by man."\*

400. It is doubtless in consequence of this fact, as already pointed out, that the Pribyloff and Commander Islands had long ago become the special resorts of the fur-seal of the North Pacific, and to the same cause must be attributed the abandonment of other breeding grounds formerly frequented by this animal, as well as the attempts to take up new rookeries which have been mentioned when describing the facts of seal life along the western shores of the North Pacific.

401. As above stated, nearly all the pelagic sealers concur in the opinion that the fur-seal is annually becoming more shy and wary at sea. They add that this is most apparent in that part of the east side of the North Pacific to the south of the Aleutian Islands, but that it is becoming equally marked in the eastern part of Behring Sea; while in the western part of the sea, where pelagic sealing has as yet been scarcely practised, the seals do not show the same fear of boats, and are more easily approached. It is thus evident that greater skill and caution is annually required on the part of the pelagic hunters, and on the assumption that the number of seals met with at sea has remained the same in proportion to area of surface, the statistics quoted on a later page respecting the catch made in relation to each boat employed, would appear to show that the dexterity of the hunters has increased, *pari passu*, with the wariness of the seals.

402. The facts observed by the pelagic sealers in regard to the abundance or otherwise of seals at sea have important bearings on the general question of the whole number of seals now or in recent years inhabiting the North Pacific, and also when taken in conjunction with the reduction in numbers on the breeding islands, in evidencing the changes in habits here specially referred to. The general tenor of the whole of the evidence to be obtained on this particular subject, whether directly by ourselves or from other sources, shows that though changes in position are noticed from year to year, no decrease in numbers has occurred at sea, while an actual increase is in many cases reported. This circumstance of the continued abundance of seals at sea in the whole tract of ocean frequented by the pelagic sealers is so notable, and at the same time so entirely opposed to some loose general statements as to diminution which have found currency, that some evidence relating to it may properly be adduced.

403. In 1889, Captain J. O. Warren, whose experience is entirely pelagic, as he has never been within sight of the Pribyloff Islands, says: "I have noticed no diminution in the number of seals during the twenty years I have been in the business, but if any change at all an increase."† Captain W. O'Leary says, in the same year: "I do not think there is any decrease in the number of seals entering Behring Sea. I never saw so many seal along the coast as there were this year, and in Behring Sea they were more numerous than I ever saw them before."‡ In the following year Mr. A. R. Milne, Collector of Customs at Victoria, after detailing his inquiries made from pelagic sealers, says: "I can now safely repeat what I have already said and written, that owners and masters do not entertain the slightest idea that the seals are at all scarce."§

\* "Marine Mammalia," p. 152.

† Parliamentary Paper [C. 6131], p. 356. London, 1890.

‡ *Ibid.*, p. 357.

§ Parliamentary Paper [C. 6253]. London, 1890.

404. Messrs. Carne and Munsie, in a letter, dated the 31st October, 1890, addressed to Mr. Milne, state that while the seals had in that year, both in Behring Sea and along the coast, to some extent changed their grounds, they did not appear to be any scarcer than when they first engaged in the sealing business in 1884. In 1890, they found the seals most plentiful to the north and eastward of the Islands of St. Paul and St. George, and distant from them from 35 to 60 miles, while in former years they were most abundant to the westward of these islands. All their captains reported that the seals were as plentiful as ever in Behring Sea, and attributed the comparatively small catches made to the rough and foggy weather that prevailed during the season. Captain J. S. Cox, in a letter bearing the same date as that from which the above statements are taken, and addressed to the same gentleman, says that the masters of his schooners report that the seals are not getting any scarcer. The limited catch made was, in their opinion, due entirely to the bad weather which prevailed in Behring Sea during the sealing season. They found the seals most plentiful to the east of St. Paul and St. George Islands. Messrs. Hall, Gæpel, and Co., in a letter, dated the 1st November, 1890, and also addressed to Mr. Milne, state that the captains of their schooners found the seals to be as plentiful as in any previous year, but that, owing to the foggy and boisterous weather encountered in Behring Sea, very large catches were not made.

405. During the month of January 1892, several captains of sealing-vessels, and hunters on such vessels, were examined under oath by Mr. Milne at Victoria, and from their evidence the following statements as to the relative abundance of seals in 1891, as compared with former years, are taken:—

Mr. C. J. Kelly found the seals as abundant as formerly along the coast to the Shumagin Islands.

Captain Wm. Petit followed the seals north from Cape Flattery, and says:—

"I found them more plentiful last year than I have any year since 1886; that is, from Cape Flattery north . . . . In Behring Sea as plentiful as in former years . . . . We saw more last year than for several years previously."

Captain W. E. Baker reported the seals to be as plentiful along the coast to Shumagin Islands as in former years, "in some places more plentiful." He says: "No material difference in my average catch for last four years."

Captain A. Bisset followed the seals north from Cape Flattery, and found them as abundant as ever before.

Captain T. M. Magnesen says:—

"I think they" (the seals) "were more plentiful last season than I ever saw them before . . . . The biggest catch I have ever made was last year, on the coast as well as in Behring Sea."

Henry Crocker thinks, from what he saw of the seals, that "they were just as many as before."

Richard Thompson believed the seals were as plentiful as in the previous year.

Andrew Laing had observed no decrease in the number of seals; "if anything, they were a little more numerous than in 1890."

Captain W. Cox took 1,000 seals in four days, 100 miles to the westward of the Pribyloff Islands. He found the seals much more plentiful in Behring Sea than he had ever seen them before.

406. Similar evidence of a general character, and confirmatory of the statistics just quoted, was obtained by us in the autumn of 1891 from a number of sealing captains and hunters, to the effect that the general experience was that seals were equally or more abundant at sea this year than they had been in former years.

407. The actual success of individual sealing-vessels of course depends so largely upon the good fortune or good judgment which may enable them to fall in with and follow considerable bodies of seals, as well as on the weather experienced, that the figures representing the catch, compared to the boats or whole number of men employed, constitute a more trustworthy criterion than any such general statements.

COMPARISON between the number of Boats and Men employed in the Fur-seal Fishery and the number of Seals taken. (Only Vessels sailing from Victoria are included.)

Year.	Number of Seals.	Number of Men.	Average per Man.	Number of Boats.	Average per Boat.
1887 .. ..	20,266	361	56	123	161
1888 .. ..	21,329	442	55	170	143
1889 .. ..	27,868	481	58	179	156
1890 .. ..	39,547	665	59	210	160
1891 .. ..	49,615	981	46	353	131*

\* In 1891, nearly all the schooners were warned out of Behring Sea some weeks before the expiry of the ordinary hunting season.

408. In considering the general bearings of the above statements obtained from pelagic sealers, and of the numerical facts derived from an analysis of their catch, it must be remembered that the vessels engaged in sealing are able to carry on their work wherever the seals may be found, and that the tendency of the seal to keep further from the shores does not materially affect their success. It is otherwise with the independent native hunters, who employ the shore as their base of operations, and it is therefore chiefly from the observations made by these men that an idea can be formed of the recent changes in habits of the seals. It must be noted here, however, before quoting this particular evidence, that circumstances of wind and weather, as well as the abundance or otherwise of suitable food for the seals, have a great effect locally on the numbers of seals of which the natives are cognizant, and that it is, therefore, rather on the general tenor of their observations than on any isolated notes that broad conclusions may be safely based.

409. In the Aleutian Islands, the natives questioned at Ounalaska began by stating that the number varied much from year to year, but the oldest among the hunters said that it had been about the same for the past five or six years.

410. At Kadiak Island, Mr. Washburn, the local agent of the Alaska Commercial Company, expressed the opinion that seals were four times more numerous in the vicinity of the shores of that island five years ago than at present, and that the number seen there had decreased notably within the last two years. The seals did not now come in to the shores as before, and did not enter Prince William Sound in large numbers as they had previously done, but remained at sea in the neighbourhood of the Portlock and other banks.

411. The same gentleman informed us of the interesting fact, related by the natives of Kadiak, that one season, now many years ago, several hundred fur-seals had formed a breeding rookery on one of the islands in Shelikoff Strait, but that this attempt had not been continued. In June or July 1891, one recently born seal pup had been seen with its mother near the shore, about 20 miles to the west of St. Paul on Kadiak Island. This, however, was the only instance of the kind he could vouch for.

412. At Sitka, both Whites and Indians, familiar with the sealing business, stated that the hunters complained that the seals were now wild and difficult to approach, and united in attributing the comparatively small native catch of 1891 to this cause. They think that the number of schooners engaged in the fishery is the reason of this increased wariness. Captain Morrisay stated that he did not think the seals were less numerous at sea this year than before, but that, on the contrary, all accounts show that they were more abundant than usual, and that a good catch would have been obtained had they not been so much disturbed by vessels. The Indians aver that long ago the seals were very numerous about Sitka, and it is a tradition or legend, that in early times they frequently landed on the islands in that vicinity. Within the memory of the living hunters, single seals had been seen ashore in various places on the islands off Sitka and near Cape Edgecombe. Two years ago, a female had been seen on the beach on the outer side of Cape Ommeny.

413. Among the Indians from Klawok, an old man explained that in the time of his great-grandfather there were vast numbers both of seals and sea-otters in that vicinity, and that the old people said that in these times the seal gave birth to its young there. He had never heard, however, that there were any special places to which the seals resorted for that purpose.

414. In the northern part of Queen Charlotte Islands, the Indians state that the seals have now become so timid, that in a hunting season of two months they sometimes

kill about thirty seals only to a canoe, whereas they formerly were often able to get the same number in one day. When they first began to hunt seals systematically, they generally got them 5 or 6 miles from the shore, whereas at the present time they had to go 15 or 20 miles. They attribute this change to the schooners which they see engaged in hunting off their coast. Edensaw, the old Chief, said that many years ago the seals were often found lying together on the water almost touching each other, and 30 or 50 in a bunch, but that now they are more widely scattered. He further stated, that in former years he had sometimes seen full-grown bulls coming ashore in various places on the west coast of the islands in spring. Not many years ago, he had seen a female with a recently born pup on the shore near Cape Kaigani; and once, long ago, he had found a female seal in the act of giving birth to two pups on Rose Spit. These facts are of particular interest, from their bearing upon the statements quoted by Professor J. A. Allen, on the authority of Captain Bryant, now more than ten years ago, for while they do not directly confirm this statement, they tend to support it. Referring to Captain Bryant, Professor Allen writes: "In his MS. Report just received, he states that a half-breed hunter told him that he found in summer, on Queen Charlotte's Island, groups of these animals, consisting of two or more bench-masters, with a dozen or more females and pups, but no half-grown males."<sup>\*</sup>

415. Speaking of the same vicinity, and as the result of long experience, Mr. Alexander Mackenzie said that, judging from the number of skins taken, seals were less abundant than formerly in Dixon Entrance, but that the fact must also be taken into consideration, that there were not now so many good hunters as before among the Indians. In 1881-82 and 1882-83 many skins were got, but in the years since 1885 the number of skins had been smaller than before.

416. The Indian hunters of the Tshimsian tribes say that before the seals were so much hunted, some of them used to give birth to their young on rocky islets in Hecate Strait. Living hunters had seen this.

417. At Bella-Bella, the Indian hunters stated that as long as they themselves could remember, seals were very abundant in that vicinity. They had gradually decreased in number till about four years ago, since which they had been moderately abundant for three years, and in 1891 had shown a marked increase in number. They sometimes, but rarely, saw seals, both male and female, coming out on the rocks. Two or three had at various times been killed on shore.

418. The Indians of Nawitti, who hunt about the north end of Vancouver Island, had no complaint to make of scarcity of seals. They said, on the contrary, that the hunting further at sea by schooners had, they thought, driven the seals into the entrance of Queen Charlotte Sound in greater numbers than before. They had occasionally seen seals of different ages sleeping on the rocks.

419. At Clayoquot Sound, on the west coast of Vancouver Island, seals were said to have been very numerous long ago, but to have been seen in smaller numbers for some ten or fifteen years past. At Ahouset, also in Clayoquot Sound, the Indians said they had never seen or heard of seals coming ashore to breed, or for any other purpose.

420. At Neah Bay, near Cape Flattery, the Indians stated that the seals seen by them, in that vicinity, are now fewer and more wary than before, and more difficult to kill. They have never seen even a single seal on the rocks, but always at sea.

421. Referring to the same place, Judge J. G. Swan writes, in 1880, that between 1857 and 1866 seals were very few, but that since that time they had appeared in much larger numbers.<sup>†</sup>

422. Mr. R. Finlayson and Mr. T. Moffat, both long identified with the Hudson's Bay Company on the West Coast, believe that the fur-seals became notably more numerous in the waters adjacent to the coast of British Columbia about the time the Alaska Commercial Company obtained possession of the Pribiloff Islands. This they attribute to some difference in the mode of capture practised on these islands, in consequence of which the seals changed their former habits. Captain Bryant has also particularly referred to the abundance of fur-seals along the coasts of Oregon, Washington, and British Columbia in 1869.<sup>‡</sup>

423. Some years in which exceptionally large numbers of seals have been noted along various parts of the coast of British Columbia are referred to in other parts of this report. (See particularly § 223.)

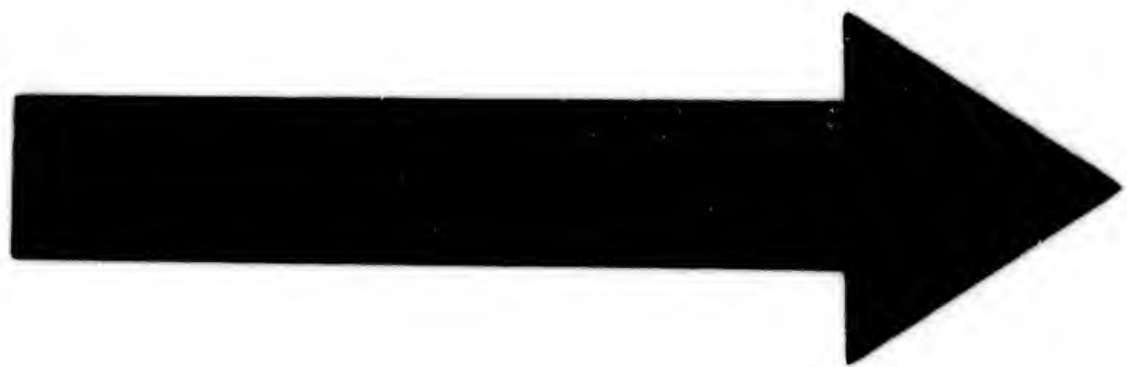
424. On another page, and in connection with the subject of the migrations and

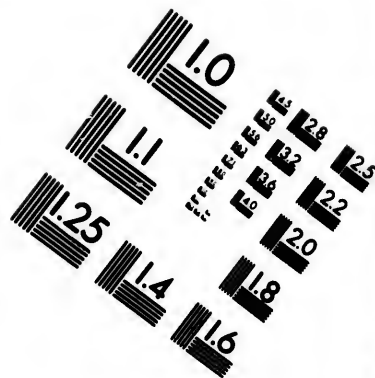
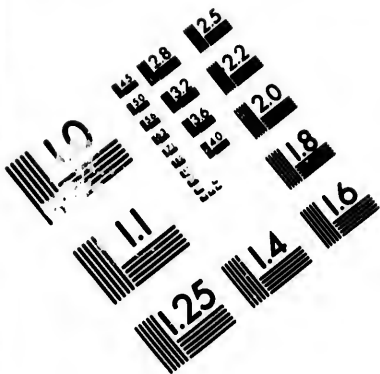
\* "Monograph of North American Pinnipeds," p. 333.

† "Fishery Industries of the United States," vol. ii, p. 394.

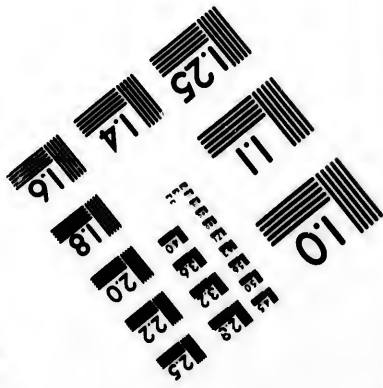
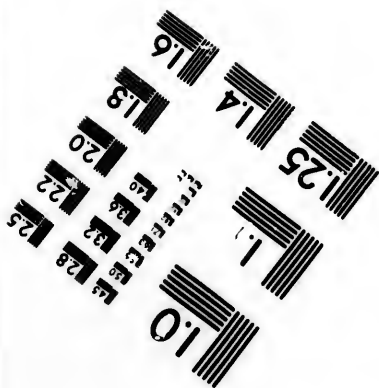
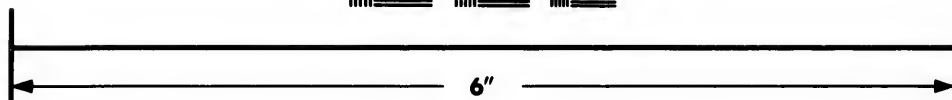
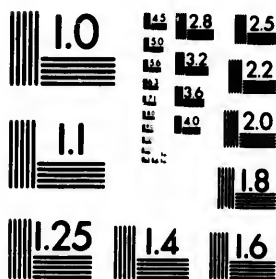
‡ "Monograph of North American Pinnipeds," p. 332.







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habitat of the fur-seal, Mr. J. W. Mackay has been cited with reference to the former abundance of seals upon the southern part of Vancouver Island. His informants on this point were old Indian hunters of the Songis, Sooke, and Tlalom tribes, inhabiting the adjacent coasts. The following additional statements by the same gentleman, from their bearing on changes in habits of the seal, may appropriately be included here: "The Indians above quoted stated that the fur-seal bred on the Race Rocks, on Smith's Island (Washington), and on several islands of the Gulf of Georgia. They used to have their young to within a recent period on the Haystack Islands, off Cape Scott, Vancouver Island. It is probable that a few individuals still breed there, these islands being very inaccessible to small craft on account of the strong tides and cross currents which prevail in their neighbourhood."

Mr. Mackay's authority for the first part of the above statement are the Indians previously referred to, and the matter must even, at the early date at which Mr. Mackay first knew them, have become traditional.

425. Under the heading of Migrations and Range (§ 171 *et seq.*), sufficient allusion to the former abundance of fur-seals on the Californian coast, and to their breeding places there, now apparently abandoned, has been made. Further particulars may be found in Scammon's work and elsewhere.

426. From the foregoing notes, it may be gathered that the increasing timidity of the fur-seal has caused it almost completely to abandon its original habit of occasionally landing elsewhere than on the main breeding islands, and has led, besides, to the probably complete abandonment of certain local breeding places where small numbers of seals resorted in former years. Not only so, but the seals now shun more than ever the entire vicinity of the coast, and are found at sea in undiminished quantity only by the pelagic sealers, whose operations do not depend on proximity to the land. The same instinct has its effect also on the breeding islands, to the continuous harassing of the seals upon which its growth is doubtless in large part due. On the islands, it shows itself particularly in the late arrival, short stay upon, or continued avoidance of, the shores by those seals not actually engaged in breeding; as well as in erratic variations in proportional numbers of seals of different classes at various seasons. These changes cannot be wholly attributed to the operations of the sea-sealers, for though not so striking on the Commander Islands as upon the Pribyloff Islands, they are still observable there, though the contingent of seals visiting these islands belong as a whole to a different migration-tract, which has scarcely as yet been touched by pelagic sealers.

427. The fact that the breeding islands are now inhabited by man, is in itself an anomaly, and particularly so when the protection of the seals on these islands is combined with the requirements of a large annual slaughter. Such circumstances need to be hedged about with most rigorous precautions, in order that they may remain compatible with the continuous prosperity of seal life. More care is taken in this respect on the Commander than on the Pribyloff Islands, but even there improvement seems possible. On the Commander Islands, great precautions are observed to prevent the smell of smoke reaching the rookery grounds, particularly early in the season, when the seal's first land. Coal-oil is used for cooking in the houses near the rookeries at this season, and all fires are quenched when the smoke blows in the direction of the rookeries. Smoking is not permitted near the rookery grounds, and no one is allowed in their vicinity (unless for purposes of collecting a drive) but the superintendent of the island or the foreman in charge of the rookeries.

428. There are, however, in addition to actual fear and the instinct of self-preservation, other causes which now render the breeding islands, and particularly the Pribyloff Islands, less continuously the resort of seals than formerly. Chief among these is the paucity of virile males, which makes the islands less attractive to the females, and, besides, has resulted in the existence of a large and increasing class of barren females, which do not find themselves under the necessity of seeking the shore.

429. On this point, speaking of an early date in the history of the islands, Veniaminor writes: "This opinion is founded on the fact that never (except in one year, 1832) have an excessive number of females been seen without young; that cows not pregnant scarcely ever come to the Pribyloff Islands; that such females cannot be seen every year."

430. To this may be added the probable circumstance, that the constantly harassed and now much reduced number of young but already virile males, meet the females more commonly than before at sea.

\* Quoted in United States' Census Report, p. 141.

431. The occurrence of increased numbers of barren females has been more precisely noted on the Commander Islands than upon the Pribyloff Islands, probably because, as the result of a better system of protection there, these animals still come to the rookery grounds instead of staying at sea. In 1891, a large number of females were observed to be without young both on Behring and Copper Islands.

432. In the eastern part of the North Pacific, the increased number of barren females has principally been observed by pelagic sealers. Their statements on this subject, whether those already published or those obtained by ourselves in conversation, are of course of a general kind, but they show that while barren females are more common than before to the south of Behring Sea, nearly all the adult females got in Behring Sea itself are of this class. The Indian hunters of the Queen Charlotte's Islands, moreover, informed us, without being specially questioned on the subject, that years ago the females killed by them were always with young, but that this was now no longer the case. Mr. A. Mackenzie, of the same place, stated that about two-thirds only of the females killed were with young.

433. Upon the Pribyloff Islands in 1891, we did not ourselves note any great abundance of barren females, but the facts in this matter would be scarcely apparent to those not intimately connected with the rookeries for more than a single year. In his official report on the condition of the islands in 1890, Mr. Elliott states that there were then 250,000 females "not bearing, or not served last year and this," but he does not explain in what way this numerical estimate was arrived at.\*

434. One direct result of a paucity of virile males, is to bring about an irregularity and change of dates in the events of seal life, which is especially notable upon the breeding islands in an unwonted absence of the usual precision and simultaneousness in these events. Instances of this are found in the recorded history of the Pribyloff Islands; elsewhere cited, and facts of the same kind are again markedly apparent at the present time. Such irregularities follow from the circumstance that the period of gestation of the female is nearly twelve months in length; and that therefore any want of promptitude in reimpregnation carries the time of birth on to a date later than usual in the following year. It is easy to see that such delay having once occurred, the female, under the most favourable circumstances, can only revert gradually and after several years to her original time; and that by a recurrence of delays in impregnation the change of time will not only be carried on from year to year, but must gradually depart more and more from the normal date. One important effect of the resulting late birth of the young is to render these much more than otherwise open to danger of various kinds, not only to that resulting from inclement and stormy autumn weather occurring while they are yet too young to withstand it, but also from the circumstance that they must delay longer upon the breeding islands, and must perhaps in the end leave those islands before their strength is sufficient for the long southern journey.

435. The best account of the nature of such changes in earlier years is that given by Bryant, which is elsewhere quoted in abstract. The changes now apparent on the rookery grounds of the Pribyloff Islands, as compared with the previously described state of these grounds, and as pointed out by those familiar with them, are chiefly of the following kinds:—

436. A general decrease in the number of seals which is most marked in the disproportionately small number of holluschickie or males of an age of less than about 6 years. Allusion has already been made to this in connection with the marked increase in size of the "harems" or coveys held by a single adult bull, in late years. It is also strikingly apparent when the present conditions are contrasted with the descriptions of former years, in which the half-grown but already virile bulls are represented as haunting the vicinity of the breeding rookeries in great numbers, and constantly struggling to meet the females upon them, or in the margin of the adjacent sea. It is further indicated, and very definitely, by the practical impossibility of procuring more than 21,000 male skins in 1890, though every exertion was made to do so, and the standards in weight of skins were greatly lowered, in order to allow the inclusion of very young males. This effort was continued till it became patent to the Government officers in charge that it was useless and cruel to allow it to go further, because of the very large and constantly increasing numbers of non-killable seals which were driven and driven to the killing grounds, in order to obtain a few passable skins. On this subject it may be well, however, to allow these officers who witnessed and superintended these killings to speak for themselves.

437. Mr. C. J. Goff says: "Heretofore, it was seldom that more than 15 per cent. o

\* Parliamentary Paper [C. 6368], p. 61.

all the seals driven the latter part of June and the first few days in July were too small to be killed; but this season the case was reversed [notwithstanding the lowering of standards], and in many instances 80 to 85 per cent. were turned away . . . The season closed on the 20th July, and the drives in July show a decided increase in the percentages of small seals turned away, and a decrease in the killables over the drives in June, demonstrating conclusively that there were but few killable seals arriving, and that the larger part of those returning were the pups of last year.\*

438. Colonel J. Murray gives an account of a meeting of the natives held for discussion in the same year and long continued, after which—"They unanimously declared that it was their firm belief and honest opinion that the seals have diminished, and would continue to diminish from year to year, because all the male seals had been slaughtered without allowing any to come to maturity for use upon the breeding grounds;" he adds: "I am now fully convinced by personal observation that it is only too true, and that the natives were correct in every particular."†

439. Captain A. W. Lavender says: "The writer was surprised when he first visited the rookeries to find no young bull seals upon them; this looked strange to him, and he began to look up the cause, and it occurred to him that the constant driving of young male seals, and the killing of all the 2-3-4- and 5-year olds, that there were no young bulls left to go on to the rookeries, and without young blood the fur-seal industry will be something of the past in a very few years."‡

440. Mr. H. W. Elliott, in his official report for 1890, remarks to the same effect on the exhaustion of the supply of young male seals, and their reduction to a "scant tenth of their number in 1872-74."§

441. It is further noticed on the islands that the rookeries are more scattered and less definite in outline than in former years, and that the remaining holluschickie tend to lie close to the rookery edges for protection, a circumstance which materially adds to the difficulty of collecting drives without unduly disturbing the breeding seals.

442. It is also generally admitted that the dates of arrival of the seals at the islands, and especially that of the arrival of the females, is becoming on the average later each year. It is difficult to arrive at a precise statement on this subject, for obvious reasons, but some authorities place the average delay in arrival of females as compared with earlier years at as much as, or more than, two weeks.

443. On the Commander Islands, where the officers in charge were found ready to afford all information on such points with the utmost frankness, it has likewise been noted that the seals now arrive somewhat later than formerly. In 1891, seals capable of yielding 10 and 12 pound skins were about a week later than usual in reaching Behring Island, and the killing, which on Copper Island generally begins about the 1st June, did not begin in 1891 till the 22nd June.

444. Various other irregularities have also been noticed in late years in or about the Commander Islands. Thus, in 1890, there were rather few holluschickie, and females appeared in smaller numbers. Again, it was remarked particularly on Copper Island, that though there had been a large number of young born in 1890, yearlings came ashore in markedly small numbers in 1891. The natives professed themselves unable to account for this, but it is almost certain that the yearlings, in consequence of the unusually severe onslaught made on the seals in 1890, had simply remained at sea. This explanation is supported by the observation, that an unusually large number of scattered seals were reported at sea between Behring Island and the coasts of Kamtschatka and Siberia, in 1891, by the vessels belonging to the Russian Government and Company. In 1890, again, according to Mr. Tillman, an unusual event occurred in the arrival of a number of holluschickie and mature bulls quite fat, at Copper Island, in August. His conjecture was that these might have come from the Pribiloff Islands, but it is possible that these seals had merely remained fishing at sea until this exceptionally late date.

445. The general effect of these changes in habits of the seals is to minimize the number to be seen at any one time on the breeding islands, while the average number to be found at sea is at least proportionately, though, perhaps, in face of a general decrease in total number of seals, not absolutely increased. The regularity of the routes of migration has no doubt been also to some extent interfered with, and it seems probable that the seals may now be more widely scattered at sea both in their winter and summer habitats than formerly.

446. As to the eventual results of such changes in habits, if perpetuated and increased by the continued and further effect of the causes referred to, it is evident

\* Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session, p. 4.

† Ibid., p. 8.

‡ Ibid., p. 9.

§ Parliamentary Paper [U. 6360], pp. 15, 16, 19, 21, 56, and 57.

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that they must ultimately be injurious to all industries based on the capture of the fur-seal. It is probable that the seals might altogether cease to frequent their present breeding grounds in mass, and instead, as has been recorded in the Falkland and other islands in the Southern Hemisphere, scatter out to form small irregular colonies beneath cliffs or rocks which are practically inaccessible to man. They would thus doubtless manage to perpetuate their species, but the numbers might be very much reduced, so that the skins would cease to be a factor of commercial importance. The continued prosperity of seal life requires, from its peculiar features, above all things, complete regularity and protection on the breeding places, and, deprived of these advantages, it lies open to many accidents and failures, which must affect it more prejudicially than can be determined from the actual numerical amount of the slaughter for skins. The extract from Scammon's work, quoted in paragraph 390, is to the point in this connection.

(P.)—*Fur-seals Breeding on the Southern Part of the North American Coast.*

447. It is evident that many years ago a considerable number of fur-seals bred in various places along the western coast of North America, and probable that the seals so breeding did not take any part in the migration of the larger body to Behring Sea. Statements previously quoted respecting the fur-seals of the Californian coast show this, and the traditions of the Indians of the coast of British Columbia, particularly those relating to Race Rocks and Smith's Island, appear to have the same meaning. Judge J. G. Swan has also collected much evidence to the same effect, with particular reference to the vicinity of Cape Flattery, which may be found detailed in the "Fishery Industries of the United States" (vol. ii, p. 393), and in the "Bulletin of the United States' Fish Commission" (vol. iii, p. 201). Some of his observations we have been unable to confirm, but the statements since obtained from Mr. J. W. Mackay go far to prove that, in still earlier years than those referred to by Judge Swan, a certain number of seals regularly occupied certain breeding places in the vicinity of the Straits of Fuca.

448. Once established, whether on the Californian or British Columbian coasts, such a race of southern-breeding seals must have become sub-permanent; and, following the analogy of other rookery grounds, it is probable that the same animals tended each year to reoccupy the same, or nearly the same, breeding stations. It is probable that these southern-breeding families may have been directly connected with the larger northern-breeding race, and it is at least easy to see how they may have originated and been recruited from it. Females delayed from any cause, and giving birth to their young along the coast to the southward, must often be served by young males, and irregular and too early service may also occur in many instances in the case of young females, or of those barren since the previous year. In all such cases of too early service, it would be impossible for the female to reach the Pribiloff Islands in time for the birth of the young, owing to climatic causes. She would, no doubt, remain with the other seals till impelled by nature to seek the shore, and if in any particular year a considerable number of females collected together for breeding purposes, the males would doubtless soon find and follow them, and, if undisturbed, the family thus established might probably return to the same place again in the next ensuing year.

449. This reasonable explanation, at all events, accords with the facts ascertained, and, moreover, in itself appears to have so much force, that even apart from these facts, it would be admissible to predicate the occasional birth of young along the whole extent of coast frequented by the fur-seal. It is further borne out by the actual existence of breeding rookeries situated along or near to the migration route of the fur-seal on the western side of the Pacific, on the Kurile Islands and on Robben Island. These occupy the same position relatively to the principal breeding places on the Commander Islands, which the former similar colonies on the North American coast must have held relatively to the Pribiloff Islands, and the survival of the southern colonies on the Asiatic side is directly due to the less persistent and less efficient hunting by the natives there.

450. This subject is in its nature closely related to the foregoing remarks on observed changes in habits. It also, however, connects itself with the general question of the origin of the regularly migratory habits assumed by the larger number of the fur-seals of the North Pacific, a question referred to under the head of migrations.

(Q.)—*Connection or Interchange of Seals between the Pribiloff and Commander Islands.*

451. It is frequently assumed that the fur-seals inhabiting the whole North Pacific may, from year to year, resort almost indifferently to the Pribiloff or Commander Islands



at the breeding season. Statements to this effect have been made by various authorities,\* and, as already noted, the arrival, in 1890, of a number of fat holluschickie and adult males on Copper Island was accounted for by the Superintendent there on the hypothesis that they had migrated thither from the Pribyloff Islands, though in reality his knowledge merely warranted the statement that he did not know whence they came. It has often been claimed by persons interested in justifying the methods practised on the Pribyloff Islands, that the continued abundance of seals on the Commander Islands is not due to greater care there exercised, but that they have been reinforced by accessions from the Pribyloff Islands, induced by the operations of pelagic sealers. One writer, indeed, took occasion, as early as 1887, to forestall any adverse criticism which might be directed against the methods and results on the Pribyloff Islands and based on the diminution of seals there, by stating, in anticipation, that such decrease would have no meaning unless discussed in connection with an unknown but possible increase on the Commander Islands.†

452. When it is considered that for twenty years both groups of islands have been controlled by a single Company, whose employes were often transferred from island to island, it is remarkable that so little has been placed on record in regard to this particular question, especially in view of the importance evidently attached to it by the gentlemen connected with the Company whose statements have just been referred to. Though unable to speak from personal observations on this point, it is clear that the result of Mr. Elliott's investigation of the Pribyloff Islands led him to believe that an interrelation existed between the seals frequenting these islands and the Commander Islands, and that a familiarity with one group of the breeding islands was insufficient to enable a complete view of the problem to be arrived at.‡

453. The inquiries and observations now made, however, enable it to be shown that the fur-seals of the two sides of the North Pacific belong in the main to practically distinct migration-tracts, both of which are elsewhere traced out and described, and it is believed that while to a certain extent transfers of individual seals or of small groups occur, probably every year, between the Pribyloff and Commander tribes, that this is exceptional rather than normal. It is not believed that any voluntary or systematic movement of fur-seals takes place from one group of breeding islands to the other, but it is probable that a continued harassing of the seals upon one group might result in a course of years in a corresponding gradual accession to the other group.

454. There is no evidence whatever to show that any considerable branch of the seal tribe which has its winter home off the coast of British Columbia resorts in summer to the Commander Islands, whether voluntarily or led thither in pursuit of food-fishes, and inquiries along the Aleutian chain show that no regular migration route follows its direction, whether to the north or south of the islands. It is certain that the young seals in going southward from the Pribyloff Islands only rarely get drifted as far to the westward as the 172nd meridian of west longitude, while Attu Island, on the 173rd meridian east, is never visited by young seals, and therefore lies between the regular autumn migration-routes of the seals going from the Pribyloff and Commander Islands respectively.

455. The price obtained for skins from the Commander Islands has generally been somewhat lower than that for the Pribyloff skins, but this is believed to result rather from the less careful handling and preparation of the Commander Island skins than from any inherent inferiority. Under this belief, the Alaska Commercial Company at one time, in 1876, sent Mr. D. Webster, their most experienced foreman, to the Commander Islands, to introduce better modes of treating the skins there. M. Grebnitsky, however, states that there is some actual general difference in the skins, such as to enable them to be distinguished by an expert, and that he is informed that the Commander Island skins are more difficult to "unhair" in dressing. Snegiloff, the Aleut foreman in charge of the Behring Island rookeries, who had also been on the Pribyloff Islands for some years, stated that he had observed that in both sexes the seals on the Pribyloff Islands were somewhat shorter and stouter than on the Commander Islands, and that the Pribyloff seals have thicker fur and shorter hair on the belly. This he attributed to the circum-

\* See Elliott, "Condition of Affairs in Alaska" (1875), p. 265; Miller, House of Representatives, Report No. 623, 44th Congress, 1st Session, p. 45; Buyitsky, House of Representatives, Report No. 288, 50th Congress, 2nd Session, p. 16; Williams, *ibid.*, pp. 77 and 78; Elliott, United States' Census Report, pp. 69 and 157.

† "Fishery Industries of the United States," vol. ii, p. 361.

‡ See especially United States' Census Report, p. 69.

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stance that the seals stay longer ashore on the Pribyloff Islands. He said further, that on the Commander Islands the females are larger, and the mature males, or "seacatchie," often become nearly white about the manes with age. He added that on Robben Island, in Okotsk Sea, the seals have still longer and thicker hair than on the Commander Islands.

456. As there is a considerable range of individual diversity, particularly in colouration, among the seals of any single locality, it would require much longer and more detailed examination than we ourselves were able to make, to verify these statements; but it appears to be probable that there is actually a slight general varietal difference as between the tribes frequenting the two principal groups of breeding islands, whether this is due to causes such as those above referred to or other circumstances. The amount of interconnection between the two groups is doubtless, however, sufficient to prevent any very striking or permanent peculiarities even of a varietal rank to grow up.

457. Some evidence not without importance in this connection is afforded by a comparison of the diagrams elsewhere given and representing the number of seals killed each year on the two groups of islands. Though affected by other causes as well, this number may be taken in a very general way as a record of the state of the rookeries as a whole, and the correspondence of the lines in the two diagrams is thus significant of connection or of co-operating causes.

(R.—Conditions affecting the Sea-otter and Sea-cow, contrasted with those affecting the Fur-seal.

458. It has often, but incorrectly, been stated that the fur-seal of the North Pacific is in danger of "extermination" if measures be not taken to preserve it. The question is, however, not one of extermination, if by that term the extinction of the species is meant. The breeding Colonies of the analogous species in the Southern Hemisphere, once exploited and harried in every conceivable way, and without law or hindrance of any kind for over fifty years, chiefly by New England vessels, have, in no known instance, been absolutely destroyed. Long before the point of extermination is reached the killing of the seals, by whatever method practised, ceases to pay. Extermination is financially impossible, and therefore need not be feared. This is well enough understood by those best informed on the subject, and it is no sentimental dread of the extinction of a species which appeals to the imagination of the persons immediately interested in the breeding islands, but rather the practical destruction of their profitable monopoly of the sealing business of the North Pacific. Depletion, or great reduction in numbers, together with changes in habits of life, such as have been already indicated, are sure to be the result of continuous indiscriminate and unrestricted slaughter and hunting of the fur-seal, but not extermination. To precisely what point the diminution in numbers of the fur-seal might go before the increased average price of the skins ceased to compensate for the reduced aggregate number taken, it is impossible to say, but that such a point would eventually be reached is proved by all experience. This experiment, however, it is hoped, is one which need not be tried, for, as already made apparent, the fur-seal, by the nature of its life and habits, offers peculiar facilities for the exercise of a rational protection under which it may remain a source of profit to the hunter, while at the same time affording a continuous yield of skins intrinsically valuable.

459. From this point of view, the sea-otter (*Enhydra marina*) is an interesting case in point. This animal has played a prominent part in the discovery and history of the North Pacific. Its skin was highly valued long before that of the fur-seal was considered of any worth, and owing to its intrinsic value as an article of dress, its cost has continued to increase in a greater or less degree with its increasing scarcity, so that at the present time skins of the first quality are worth in London 700 to 1,000 dollars each. Surely, if it were possible to exterminate a fur-bearing animal of this kind, the sea-otter should long ago have met with that fate, yet it has been hunted for more than a hundred years, and is still a chief object of pursuit of many hundreds of natives.

460. Originally, this animal frequented a large part of the west coast of North America, together with the east coast of Asia, and all parts of the Aleutian, Pribyloff, Commander, and other islands. Its limits have now been much reduced, so that it is rarely found on the coast of British Columbia or anywhere to the south of Sitka, and has altogether disappeared from the Pribyloff Islands, while on the Asiatic coast it has similarly ceased to be a matter of commercial interest in the Kurile Island chain. Although in the early part of the present century it was taken by thousands in certain localities, a few hundreds are now considered an excellent catch for a considerable



district. It is to be remembered that the diminution of the sea-otter has been the result solely of operations conducted from the shore. In the old days the otter was clubbed, speared, or shot on the beaches, and afterwards from stages or from canoes close along the rocks and beaches.

461. The sea-otter possesses, however, one important advantage over the fur-seal in the nature of its procreation. The young are born at all seasons of the year and not simultaneously, and it is not necessary for this animal to resort in large numbers to particular breeding places, or to remain on or about such places for any considerable time. Its disadvantages as compared with the fur-seal are that it is not properly a pelagic animal feeding upon migratory fishes, but, on the contrary, subsists chiefly upon sea-urchins, molluscs, and other such creatures, which are only to be obtained in the immediate vicinity of the shores and their adjoining rocky patches and kelp beds.

462. As a result of its diminishing numbers, and the greater activity of the hunters, it has within historic times not only greatly increased in wariness, but has also very markedly changed its habits in directions similar to those in which a change has already become observable in the case of the fur-seal. In earlier years, it frequented the rocky shores, and was frequently found on the land, forming in some instances veritable colonies or "rookeries," comparable in some respects with those of the fur-seal. The young in those days were probably always born on shore, and it seems further probable, though not proven, that many of the so-called "kitchen middens" of the Aleutian Islands, composed almost entirely of the shells of *echinus*, and attributed by Dall to the pre-historic Aleuts, really owe their origin to such pre-historic sea-otter colonies. At the present time, it has become an event of extreme rarity to see a sea-otter anywhere on those shores, and, so far as the natives who spend their lives in hunting the animal can ascertain, the young are now almost always brought forth on floating masses of kelp.

463. The sea-otter, in fact, appears, as the result of persistent hunting and of the efforts and instinct to elude pursuit, to have reached a practically irreducible minimum, at which it is likely to remain unchanged unless new factors enter into the problem.

464. The non-pelagic character of the sea-otter, however, renders its protection a matter of comparative facility as contrasted with the fur-seal. A strict preservation, for instance, on the Sannakh Islands, which still constitute one of its remaining favourite haunts, would, without doubt, result within a few years in this group being restocked with an abundance of sea-otters.

465. Probably, the only remaining notable colony (or rookery, as it is called from analogy with the breeding places of the fur-seal) is that which is now strictly preserved by the Russian Government on the north-west point of Copper Island, of the Commander group. The sea-otters are reported by the Superintendent of Copper Island as increasing here from year to year, though a limited number is allowed to be taken by the natives each year, and though the natives are permitted to shoot, during the winter and in the absence of the fur-seals, any sea-otters found to the south of Matveya Point on the east coast, and a designated point somewhat further to the southward on the west coast. To the northward of the line thus defined, no shooting is at any time allowed for any purpose whatever. This reserved area thus comprises about five miles of the northern end of Copper Island, with Sulkovsky Point and the Bobroti rocks and reefs lying off this point. Here the sea-otters are taken at designated times and under Government supervision in twine nets, except in certain years in which the natives get a permit to make a drive of otters upon the rocks, and kill them there with clubs like the fur-seals. This was allowed in 1890, and twenty sea-otters were got in the drive, though more might have been secured but for some mistakes which occurred during the operation. One hundred and eighty sea-otter skins in all were obtained from Copper Island during the year 1890.

466. Vigilance is required in guarding this sea-otter colony from raids, and it is said that in 1887 or 1888 Captain Snow, in the schooner "Nemo," from Yokohama, and flying the British flag, attempted to raid the place, but was fired at and driven off. Snow was reported wounded, and two Japanese sailors killed. Since this time no raids have been attempted here.

467. Near Cape Lopatka, the southern extreme of Kamtschatka, a sea-otter colony or rookery existed till recent years, but it was raided and destroyed by vessels from San Francisco between 1880 and 1882. There is also stated to have been a similar colony at Pirat, or Yellow Cape, not far from the last. An effort was made to protect this by stationing a number of Aleuts at the place to guard it, but many of these people died, and the remainder were withdrawn at their own request, after which the sea-otter colony was raided and destroyed.

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468. Some attempt has also been made by the United States' Government to protect the sea-otter. Section 1903 of the Revised Statutes of the United States provides that no person shall, without the consent of the Secretary of the Treasury, kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal, within the limits of Alaska territory, or in the waters thereof. This is further explained by a Treasury Department Notice, dated 21st April, 1879, which reads as follows:—

"No fur-bearing animals will, therefore, be allowed to be killed by persons other than the natives, within the limits of Alaska territory, or in the waters thereof, except fur-seals taken by the Alaska Commercial Company in pursuance of their lease. The use of fire-arms by the natives in killing other than during the months of May, June, July, August, and September, is hereby prohibited. No vessel will be allowed to anchor in the well-known otter-killing grounds except those which may carry parties of natives to and from such killing grounds; and it will be the duty of the officers of the United States who may be in that locality to take all proper measures to enforce all the pains and penalties of the law against persons found guilty of a violation thereof. White men lawfully married to natives, and residing within the territory, are considered natives within the meaning of this Order."

469. Inquiries at Unalaska, however, show that no attempt had been made to enforce the law against the killing of fur-seals by the Aleuts in that vicinity till 1890, when instructions were received that it must be enforced, although no means were provided for its enforcement. The law against the killing of sea-otter and the ruling as to the months in which fire-arms shall be prohibited in hunting this animal is also, as a matter of fact, inoperative. The prohibited months include all those in which it is practically possible to hunt the sea-otter, and it is well understood that if the Aleuts of the Aleutian Islands were interfered with in this, their only means of obtaining a living, they must either suffer great hardships, or their support must be undertaken by the Government.

470. The sole instance of the actual extermination of an animal of the North Pacific within historic times, and one of the very short list of such cases of extermination the world over, is that of the Rhytina or Steller's sea-cow (*Rhytina Stelleri*). It is instructive to allude to this instance, because it becomes obvious that it was entirely owing to the great differences in habits and the very restricted range of the animal, as compared with the fur-seal, that its extermination became possible.

471. This sea-cow or manatee was found in great numbers on Behring Island, and to some extent also on Copper Island, at the time of the discovery of these islands in 1741, but scarcely, if at all, elsewhere; though Nordenskiöld conjectures that it may within historic times have also occasionally visited the Kamschatka coast.

472. It was a large, slow, clumsy, and incautious animal, which fed chiefly along the shores upon marine algae; and being found easy of capture and good for food was persistently attacked by the early Russian navigators, who often visited Behring Island for the sole purpose of laying in a stock of its flesh. From the accounts of these voyages, it seems first to have disappeared from Copper Island, and subsequently, about 1768, less than thirty years after the discovery of the islands, it became extinct, also on Behring Island.\*

473. It is stated that Brandt expresses the belief that the Rhytina formerly, and in pre-historic times, not only frequented the coast of Kamschatka, but extended also as far as the coasts of China and the northern islands of the Japanese group, and to the western islands of the Aleutian chain. It thus appears to have already been naturally verging towards extinction before it was at all pursued by man. In a paper read before the Russian Imperial Geographical Society in March 1884, Dr. Dibofsky expresses a similar opinion. Mr. F. W. True writes as follows respecting the causes of its extinction: "The most generally accepted notion is that the rate of capture much exceeded that of the increase of the animal, and that extinction followed as a matter of course. Nordenskiöld, however, and in a certain way Brandt, also avows his belief that the sea-cow had gotten out of harmony with its environment many years before the Russians discovered it, and that its extermination would have occurred within a comparatively short time without the intervention of man. The fact that in Steller's time the range of the animal was much circumscribed seems to give weight to the latter view."†

\* Baron Nordenskiöld found some reason to believe that a single individual of the sea-cow was seen as late as the year 1834, but Dr. L. Stejneger, first in the "Proceedings of the United States' National Museum," vol. vii, 1884, p. 181, and at later dates in the "American Naturalist," vol. xxi, p. 1047, and "American Geographical Society Bulletin," No. 4, 1886, has advanced strong reasons to show that the animal actually became extinct in 1768.

† "Fishery Industries of the United States," vol. i, p. 133. See also Nordenskiöld's "Voyage of the Vega," vol. ii.

(8).—*Breeding Places and Resorts of the Fur-seal on the Western Side of the North Pacific.*

474. The pursuit of the fur-seal on the western or Asiatic portion of the North Pacific, affords much evidence very directly affecting the conditions and prospects of the seal fishery in the eastern waters of that ocean, altogether apart from the question as to how far the territorial Powers of these Asiatic waters, viz., Russia, Japan, and China, may desire to participate in any general regulations tending to the preservation of so well-established, important, and useful an industry.

475. We have been careful to collect and collate all the information possible on the growth of the industry on the Asiatic coasts of the Pacific, because it has for the most part been left untouched by those who have written on the subject. Clark\* simply dismisses the subject with the brief remark: "The seals taken by the Japanese are those migrating from the Commander group, the number taken averaging 4,000 annually, though some years as many as 11,000 are taken." Messrs. Laupson† merely report: "The supply from this source (Japan) has varied very much of late years, amounting sometimes to 15,000 skins a-year, at others only 5,000. Last year (1887) stringent prohibitory laws were passed by the Japanese Government, and very few skins have come forward." Very little else has been published on the subject by any one of authority. But in addition to the results of much correspondence, official and private, and gathering together of scattered references, we have had the advantage of making the acquaintance of men experienced in seal-hunting and in seal localities in this portion of the Pacific, and have thus been enabled to put together a sufficient body of information to convey sufficient accounts of the rise and progress of the sealing industry in these waters.

476. Among the points of special interest to our present purpose are:—the growth of the industry; the similarity of conditions prevailing on this side of the Pacific; the dissimilar circumstance of the absence of pelagic sealing; the very destructive effect of raids upon breeding rookeries; and the attempts at regulation and control by both the Japanese and Russian Governments.

477. After the middle of the eighteenth century, British vessels, especially under the auspices of the East India Company, extended their voyages from Bombay and Calcutta or Macao to the coast of Kamtschatka, and along the Aleutian Islands into Behring Sea, and as far as the north-west coast of America, in search of furs. Such voyages were made in 1780 and in 1786-87. These English traders at once encountered the claims of the Russians and the Spaniards to the sole right to navigate and trade in those seas, a claim then successfully contested and tacitly or explicitly ignored about 100 years before the officials of a territory belonging to the United States seized British vessels for engaging in similar enterprises in those waters.

478. The furs thus obtained by the British were taken to the Chinese market. The Russians were quick to notice this, and in due course obtained from the Chinese authorities an interdiction against the landing in China of any furs from the islands and shores of the Eastern Pacific. In the event this proved but a partial restriction so far as the English were concerned, for they commenced at once to turn their attention to bringing to the Canton market the fur-seal of the southern seas, and this highly profitable trade thus started flourished from about the year 1793 until 1835.

479. Meanwhile, however, in the Northern Pacific the Russians were active. In 1799 a charter was granted by the Czar to the Russian-American Company, giving them control over all the coasts of America on the Pacific north of latitude 55° north, and this Company, extending its operations under Baranoff and other leaders, acquired a wide dominion. In the course of a few years, English and American vessels established almost a monopoly in the supply of goods of all sorts to the Russians and their natives, the return trade being mostly in furs for the Canton market. In 1811 the firm of Astor, of New York, made a special contract to supply the Russian Company with provisions, payment being taken in furs to be sold in Canton. This enterprise took the name of the Pacific Fur Company, and the two Companies undertook, besides this mutual trade, to prevent the natives obtaining any liquor, to assist each other against all interlopers and smugglers, and to respect each other's hunting areas. In the following year these rights and undertakings were bought up by the North-West Fur Company, of which the head-quarters were in Montreal.

480. Thus, the English were in the North Pacific taking seal-skins from the southern seas to Canton, and also trading generally in furs, right away to that portion of the

\* Parliamentary Paper [C. 6131], p. 178.

† House of Representatives, 50th Congress, 2nd Session, Report No. 3883, p. 114.

North Pacific which subsequently became known as Behring Sea, on a well-established basis, by the beginning of the present century.

481. In connection with this part of the North Pacific, it may also be borne in mind that about the year 1840 whaling began to be extensively practised. In 1840 to 1842 the whaling fleet frequented the Kadiak ground, where many right whales were taken. In 1843, the Japan Sea was found to be a good whaling ground, from which that part of the Pacific near Kamschatka was next reached, and soon after Okotsk Sea. In 1848, the first whaler entered the Arctic Ocean, and thereafter not only Behring Sea, but also this further ocean, has been regularly frequented by whalers, the bow-head whale chiefly being taken in the extreme north. The industry has gradually declined, in consequence of the lessened number of whales; but between 1840 and 1860, there were about 300 vessels under the United States' flag, besides British, French, Oldenburg, Danish, and other vessels. Many of the British vessels came from Hobart Town and other places in Australasia.

482. But the fur-seal of the North Pacific remained in great measure a monopoly of the Russians until towards the middle of the nineteenth century, and then, by reason of its becoming a well-ascertained fact that the supply of seal-skins from the Southern Ocean had practically ceased, English and other nations also turned their attention to the supply of seal-skins from the North Pacific.

483. It is necessary to bear in mind that the commercial importance of the skins of the fur-seal of the North Pacific is thus of recent origin. In the well-known "Penny Cyclopaedia," published so lately as 1842, the seal is described as follows, and it is stated that no market value is attached to the skins of the adult:—

"*Arctocephalus ursinus*.—Islands on the north-west point of America, Kamschatka, and the Kurile Islands. This is the *Otaria ursina* of Dezmaest; *Phoca ursina* of Linnæus, &c. When these migratory seals appear off Kamschatka and the Kuriles early in the spring they are in high condition, and the females are pregnant. They remain on or about the shore for two months, during which the females bring forth. They are polygamous, and live in families, every male being surrounded by a crowd of females (from fifty to eighty), whom he guards with the greatest jealousy. These families each, including the young, amounting to 100 to 120, live separate, though they crowd the shore, and that to such an extent on the islands off the north-west point of America, that it is said they oblige the traveller to quit it, and scale the neighbouring rocks. Both male and female are very affectionate to their young, and fierce in their defence; but the males are often tyrannically cruel to the females, which are very submissive. . . . The skin, which is very thick, is covered with hair. . . . There is a very soft, brownish-red wool close to the skins. . . . The skins of the young are highly prized for clothing."

484. Upon the Commander Islands, until the year 1868, nothing was thought worthy of capture except the grey-pup seals, while on the Pribyloff Islands and along the coasts of North-West America the skins of the fur-seal were considered as hardly worth the taking. For instance, in 1825 skins were bartered by the Russian Government in the Sandwich Islands at an average rate of 1 dol. 75 c. (7s.); in China, at Kiatcha, at from 1 dollar (4s.) to 1 dol. 40 c. (6s.); while the prices given by the Hudson's Bay Company at Port Simpson were, so lately as 1850, only 1 dol. 50 c. (6s.) per skin.

485. A few years later, however, more attention was given to the northern fur-seal, and we find vessels from all quarters, including Honolulu, cruising round the North Pacific, endeavouring to trade for, or take, seal-skins. Seal-hunters followed in their track, bringing with them the traditions and experiences of the south seas summed up in the idea of taking the fur-seal as and when it came ashore. Writing in 1870, Professor Dall describes the Harbour of Chichagoff, in Attu, as a notorious smuggling centre for furs.

Such was the general aspect of affairs by the middle of the present century in the North Pacific.

486. In the more westerly portion of that ocean, from a variety of sources, and especially from the special report supplied to us by Mr. de Bunsen from the British Legation at Tôkiô, and a memorandum obtained from his Government by Viscount Kawazé, Japanese Minister in London, we have a tolerably complete account of the fur-seal fishery on the coasts of Japan and the Kurile Islands.

487. The seal fishery is an old-established industry in Japan, and particulars are on record dating back to the middle of the last century. The skins were obtained about 1750 and 1760 from Horomoshir, Makaruru, Shimair, and Urup by the natives of Itrup and Rashua, using arrows, harpoons, and nets.

In 1800, we read of a regular sealing establishment being set up in Itrup, and carried on for years with success.

The seal-skins were usually bartered at Nagasaki to the Chinese. The Government in these years purchased the skins from the natives, at the fixed rates of 90 and 45 sen for the best and medium quality skins respectively.

During the succeeding years, Russian subjects gradually pushed southward down the Kurile group, and much competition and even conflict resulted in rival endeavours to secure seal-skins. At this period, the Russians began to send furs to the China market direct to Peking through the great mart established at Kiateh, in Eastern Siberia.

488. About the year 1805, the Japanese Government found itself forced to deal with the increasing numbers of foreign vessels—chiefly Russian, British, American, and Dutch—which began to visit their coasts, and frequent the bays and harbours in quest of marine products.

489. As early as 1809, the Japanese Colonial Department set up a branch establishment in the Island of Itrup, with the special object of carrying out the measures established to protect the Japanese coast fishing against foreigners. The old seal-skin regulations were revived and the Government price trebled. In 1873, Commissions were set up specially to prevent seal poaching and sale of seal-skins by foreigners. Much trouble was occasioned by the foreign vessels, which usually claimed the right to remain in the bays and harbours, on the plea of stress of weather or need for wood and water. This necessitated a man-of-war being sent up, and, ultimately, a special cruiser was detailed to the Kurile Islands for the sealing season, viz., May to October.

490. In May 1874, the Government issued regulations to control the fishery around the Hokkaido (Yezo) Islands, claiming jurisdiction within a limit of two and a-half miles from the shore, and stating "if any foreigners be found fishing within the above-mentioned limits, they shall be arrested in as peaceful a manner as possible and sent to Hakodate, accompanied by guards, and delivered to the Consul of the country of their nationality." During these years, foreign vessels were frequently encountered engaged in sealing. Besides many vessels from the United States, a Danish vessel, the "Mattée," and others, are mentioned.

In 1875, on Itrup, the Russians actually commenced putting up huts, as did the Americans at a place called Maroko, for the purpose of killing seals. They were, however, arrested and sent to Hakodate.

491. The head-quarters of the Protection Establishment originally set up on Itrup Island were afterwards transferred to Nemuro, with branches on Oonebetsu, Nanneho, and Toshimori. In 1876, in consequence of the agreements come to with Russia in 1874 concerning the Kurile Islands, new regulations were issued, prohibiting fishing for seals by foreign vessels within gunshot of the Hokkaido shores; new branch offices established on Shikotan and elsewhere, and measures were taken by proclamation and otherwise to notify foreign vessels that sealing was prohibited. Endeavours were also made to improve the native methods of preparing the seal-skins. In addition to this, special regulations as to the methods of slaughter were issued, deprecating the use of fire-arms and the killing of "pups," limiting the number of seals to be taken along the coast, and establishing a close season between the months of May and November in the territorial waters. Special inquiries were also to be instituted into the facts of seal life.

492. The Japanese were thus inclined to adopt wise Regulations, but foreigners, and especially Americans, were far more reckless, and continued to maraud along the shores and to use fire-arms, eagerly seeking the profits of to-day, but ignoring all risks of depletion on the morrow. In 1877, 1878, and 1879, the Japanese made establishments successively in Kunashir, Iriribush, and others of the less inhabited islands, to secure for themselves the fur-seal industry. But foreigners followed them closely, and by the year 1880 or 1881 serious apprehensions existed that the seals were hopelessly diminished in numbers. The Japanese Report states: "The foreigners do not in the least care about the decrease of breeding or the extermination of the species; they freely use their guns in hunting, and, as the result, they killed the greatest number. Thus, we are obliged to throw aside the old instruments, such as clubs, bows and arrows, and guffs, and to adopt the gun, as it would be most foolish to keep to the old system, which left others to make the greatest gain. Thus, the use of guns is the main cause of the present decrease."

493. Over all these years, and up to the present, seals were known to breed in numbers on at least three points on the Kurile Islands, viz., the Srednoi Rocks, off the Island of Ushishir, on Raikoko Island, and on the Mushia Rocks. Indeed, in 1881, quite an impetus was given to sealing by the unexpected discovery of a small rookery on the Srednoi Rocks, holding 20,000 to 25,000 seals. 5,000 skins were taken there in that one year.

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404. Seals were known to frequent the adjoining ocean in large numbers from November to May, especially off the coast of Japan between Inabosaki and the east part of Yezo, and it was reported that during the remainder of the year the seals travelled away northwards into the Okotsk and Behring Seas to breed on Robben Island and the Commander Islands. They were never molested out at sea.

405. The native fishermen, in open boats, along the Nambu and Yezo coasts north of Inabosaki, habitually take the seals by spearing, by shooting them with barbed arrows, and in nets. In some places, a fur covering for the head and neck enabled the hunters to approach close to the seals. The annual catch of from 2,000 to 3,000 skins is disposed of to Chinese buyers in Hakodate. In the autumn, they sometimes take 2,000 to 2,500 grey pups in nets. But it has always been customary, whenever a rookery was discovered, especially along the Kurile Islands, for larger vessels to proceed thither and take all seals that could be killed on shore by clubbing.

406. The Japanese Agricultural Department states that the fur-seal appears to be reared on the rocky coasts, and caught at a distance of not more than one nautical mile from the shore, but that they are generally found on the beaches and clubbed there.

407. In recent years good records have been kept, especially of vessels under foreign flags engaged in sealing from Japan, but it is not so certain that all Japanese vessels so employed are always registered.

408. The following are the figures, about one-half of the total being under the British flag:—

Year.	Number of Foreign Vessels engaged in Sealing.	Year.	Number of Foreign Vessels engaged in Sealing.
1880 .. .. .	8	1886 .. .. .	7
1881 .. .. .	9	1887 .. .. .	6
1882 .. .. .	18	1888 .. .. .	5
1883 .. .. .	15	1889 .. .. .	5
1884 .. .. .	14	1890 .. .. .	4
1885 .. .. .	11	1891 .. .. .	3

409. The rapid increase in numbers of vessels employed from 1880 up to 1884 was due to the discovery of the rookeries on the Kurile Islands. But these were speedily exhausted by indiscriminate slaughter, and these sealing-vessels almost confined their operations to raids in and around Robben Island and the Commander Islands, especially during the temporary absence of the guard-ships. Several schooners came from America every autumn for sealing purposes, but not one of these vessels was ever employed in "pelagic" sealing.

500. It is certain that these schooners could not have been worked at a profit unless they had taken ten times as many skins as are reported to have been landed at Hakodate and Yokohama. But it is almost impossible to form a correct estimate of the total catch, because the vessels sometimes bring to Japanese ports skins of seals raided from the Russian shores, and sometimes ship seal-skins thus obtained to Europe or China without bringing them into a Japanese port, even if only for transhipment.

501. Of the extensive and wasteful slaughter on the breeding places included in the territorial jurisdiction of Japan, many interesting though incomplete records were obtained. Captain Miner, of Seattle, a particularly well-informed sealer, had frequently been to these rookeries. The Alaska Commercial Company, he stated, had obtained seals from Ushishir and Srednoi in 1882-83. In 1884, he heard from the natives of a rookery at Kikaka, a small island near Mattoo. There he secured 4,500 skins, but news of this having become public there were next year six schooners at work there, and the few seals left were killed off by the Japanese Marine Products Company which now leases the island.

502. Captain Snow, the well-known sealer of Yokohama, took in one year (1881) 7,000 seals from Srednoi Rock alone. Next year he found none there. The natives of Urup Island always had seal-skins to sell, and this led to the Alaska Commercial Company and the schooners searching the neighbourhood, but the island being low and behind others was very difficult to find. In the following year (1887), he secured 2,000 seals on Ushishir Island. Such are some of the examples of the wholesale slaughter of seal on these smaller, but prolific, rookeries.

503. The Japanese Government was not slow to appreciate the gravity of the case, and the Agricultural Department was prompt to report that the promising annual catch had suddenly decreased because of this indiscriminate slaughter on shore.

504. An Imperial Decree was issued on the 23rd May, 1884, forbidding the hunting of the fur-seal in Japanese waters except by persons with a special permit. This was supplemented on the 16th December, 1886, by Regulations issued by the Imperial authorities under the immediate supervision of the Governor-General of Hakodate.

505. These Regulations, in brief, enacted:—

- (i.) No fur-seal may be taken except between the 15th April and the 31st October.
- (ii.) No fur-seal may be taken outside a defined area.
- (iii.) This area is divided into three portions, in only one of which is seal-hunting permitted in any given year, the other two divisions benefiting by two years of rest.
- (iv.) All vessels engaged must be specially licensed, and conform to special regulations, and fly a special flag.
- (v.) All skins brought to market must be stamped at certain ports.

There is no specified limit to the numbers of licences, but the issuing authorities would exercise discretion in the matter.

506. The Nippon Marine Products Company, of Hakodate, with a capital of 125,000/., was formed to carry on whaling and the capture of sea-otter and fur-seals. The Company purchased three schooners of about 70 tons each, manned by crews of twenty-five men, for the purpose of killing seals on these hauling-grounds, these being the only vessels which have as yet taken out the necessary licences. These three vessels were reported to have taken sixty seals between them in 1891.

507. Last year three "foreign" vessels fitted out in Yokohama, but their destination was to the north of the Japanese waters; and two, the "Arctic" and the "Mystery," were captured in the late autumn by the Russian gun-boat "Aleut" raiding Robben Island, having killed 1,500 seals.

508. It would appear that the somewhat elaborate Regulations set up by the Japanese Government in 1886 have been as yet practically inoperative. It is reported that the Government vessel, the "Kaimonkan," detailed to enforce these Regulations in 1891, as a matter of fact never left her station at Nemuro. It seems probable, however, that, with the exception of the local shore fishermen, no one else has been inclined to seek for seals among these Japanese islands since the rookeries were depleted in 1881-82.

509. Apart from the Commander Islands, the most important breeding place of the fur-seal in the Western Pacific at the present time is undoubtedly Robben Reef or Island, named Tucelen or Seal Island on Russian charts, lying off Cape Patience, on the east coast of Saghalien Island, in Okotsk Sea. This is a low, flat, rocky islet, destitute of haven or convenient anchorage for vessels, about 1,800 feet only in length and not more than 50 feet in greatest height, surrounded by shingly and rocky beaches. What little is known of its history is perhaps particularly interesting, in showing how persistently the fur-seal may continue to resort to its favourite haunts in the face of slaughter and disturbance provided these are not actually continuous.

When first discovered, it is reported that the seals frequented all parts of the periphery of the little island, but especially the east and north-east sides; at present, in reduced numbers, they congregate chiefly on the south-easterly beach.

510. According to Mr. D. Webster, now employed on the Pribyloff Islands by the North American Commercial Company, Robben Island was cleared of fur-seals by raiding vessels in 1851-53, and was thereafter not again visited by sealers till he himself went there in 1870. The slaughter here referred to is no doubt the same with that mentioned in greater detail by Scammon, who says, however, that it occurred in the "midst of the Crimean War" (probably, therefore, in 1854 or 1855), and was carried out by a clipper bark sent there by "an enterprising firm in New London, Connecticut." He gives some further particulars of this raid upon Russian territory, and adds that a valuable cargo of skins was obtained, which brought an unusually high price in the European market because the regular Russian supply was cut off by the war.\*

Webster thinks that after the above date the seals gradually increased again in number, but nothing is known of the conditions till he himself visited Robben Island in 1870. Webster did not name the vessel in which he visited the reef, but it was probably either the "Mauna Loa" or "John Bright," as these two vessels, nominally engaged in whaling, are known, from information afterwards obtained from M. Kluge on Copper Island, to have raided Robben Island in that year. Webster, at this time, according to

\* "Marine Mammals," pp. 149 to 151.



his own account, assisted in taking 15,000 skins, though Kluge's estimate of the number taken was 10,000. Webster further informed us that he had hoisted the United States' flag on the island, and though warned that it was Russian territory by a vessel of that nationality, he paid no heed. A little later, however, a Russian Government vessel appeared, and the officer in command ordered him to leave within twenty days. He had already sent most of the skins to San Francisco, probably on one of the vessels above mentioned, but continued killing until he had taken about 2,000 more skins.

511. In 1871, this island, with the Commander Islands, was leased to Messrs. Hutchinson, Kohl, Phillipeus, and Co., who transferred their rights to the Alaska Commercial Company. Mr. Kluge went there in the same year in the interests of the lessees, and found that, in consequence of the raid in 1870, there were not over 2,000 seals to be found on the entire island. The island was watched in that year, but no seals were killed. A few may have been killed in 1872, though, if so, the number is not known; but from 1873 to 1878 rather more than 2,000 skins were on the average taken annually by the Company from this one small reef.

512. About the year 1870, schooners, sailing from Japan began to frequent the island, and were in the habit of raiding it in the autumn, after the guardians had been withdrawn. In 1881, the Company's agent remained on the island as late as the 5th November, at which date five or six Japanese schooners were still hovering about, looking for a chance to land. The Dutch sealer "Otsego" was warned off by the Company's trading steamer "Alexander." In consequence of such raids, the number of seals declined from year to year.

513. Probably discouraged by the cost and difficulty of protecting the island, and in order to prevent competition in the sale of skins, the Company in 1883 made a barbarous attempt to extirpate the seals on it. A full account of this attempt is given in the deposition of C. A. Lundberg,\* who arrived at Robben Island in the schooner "North Star" from Yokohama, and found the mate of the schooner "Leon," a vessel in the employ of the Alaska Commercial Company, living on the island with about fifteen Aleuts. Lundberg found a great mass of dead and decaying seals upon the shore, which had been killed by these men, as they said, in order to "keep any of those Yokohama fellows from getting anything this year." The crews of the "North Star" and another schooner, the "Helene," then set to work to remove the carcasses, which included those of many females and young, and proved to number between 9,000 and 10,000. In the process, they managed to pick out some 300 skins in good condition. "There were thousands of seals in the water, but they would not pull out on the beach on account of the stench and filth. We washed the beach as clean as we could, and turned the gravel over as far as we were able. Shortly a heavy gale came on, which washed the beach quite clean again, and the seals then began to pull out."

514. We were also informed that Captain Hansen, afterwards master of the German schooner "Adele," was present on this occasion. Captain Miner, an experienced sealing-master of Seattle, also visited the island in the same year, and described to us the great heap of carcasses which he found on the island, and the manner in which the skins had been slashed in order to render them useless.

515. In 1884, according to Mr. Kluge, the Russian Government stationed a steam launch at the island for its protection, and in the same year four schooners, including the German schooner "Helene," were captured there by the Russian man-of-war "Rasbonik."

516. In 1885, the launch was replaced by a force of twenty Cossacks, but these were withdrawn in September, after which raiding schooners again appeared. In that year, there were not more than 7,000 or 8,000 seals in all upon the island. From 1885 to 1890, no skins were taken by the Company from the island, but in the last-mentioned year 1,452 skins were taken. The guard was, however, removed from the island between the 12th and the 15th October, and after that date the island was raided by schooners, one of these, reported as hailing from Japan, and said to fly the United States' flag, being the chief offender. These schooners must have obtained at least 4,700 skins, for when the island was revisited early in 1891, that number of carcasses was found upon it, and these were buried in order to avoid the effect which their presence might have in preventing seals from again landing.

517. In consequence of this heavy slaughter, but 520 skins were obtained by the Company from the island in 1891, and Captain Brandt, of the Russian gun-boat "Aleut," estimates the whole number of seals present on the island at this date at about 16,000. In October 1891, Captain Brandt returned to the island in the "Aleut" when not expected

\* Parliamentary Paper [C.—6131], p. 363.

there, and captured two raiding vessels from Yokohama, sailing under the British flag, and at the time in possession of 1,500 fur-seal skins.

Captain Blair, of the Company's schooner "Leon," further informed us that there were at present about twenty-five females to each adult male on the islands, a proportion of males which he, from long experience of the sealing industry, considers to be far too small.

One of the difficulties found in guarding this island is due to its small size, in consequence of which the mere presence of guardians on shore tends continually to disturb the seals.

518. Passing to the coast of Kamschatka, from various good authorities on the Commander Islands and at Petropaulovski, it was learnt that there is some reason to believe that a new breeding place of the fur-seal has been established near Cape Stolboi or Cape Kamschatka. Females with young pups have been seen off this part of the coast, and an attempt was made in 1890 to examine it in boats, but was frustrated by stormy weather.

519. At Cape Tshipunski, also on the Kamschatka coast, M. Grebnitsky, the Superintendent of the Commander Islands, stated that he saw breeding fur-seals in 1879 or 1880, though it had been ascertained in 1877 that there were no seals there. Subsequent to the time of M. Grebnitsky's visit, the incipient rookery was destroyed by hunters or by raiding schooners.

520. From the vicinity of Cape Kamschatka north-eastward to Baroness Korf Gulf, a stretch of coast exists which has been entirely uninhabited for many years, and about which very little is known. The former inhabitants were killed off by small-pox, according to information received in 1786.\*

Karaginski Island lies off this part of the coast, and here it is reported that numbers of seals were seen in former years.

521. It seems certain that the killing and harassing of the seals which has been so actively carried on for the past ten years or more from the Japanese coast, along the Kurile Islands, has had the effect of causing these animals to wander further afield than before, and more or less instinctively to seek for new and secluded breeding places.

522. Thus, the Lieutenant-Governor of Petropaulovski, who is well acquainted with the northern coasts of the Okotsk Sea, informed us that up in the north, off the Ola River and in Tausk Bay, the natives have noticed the fur-seal since 1886, though not before, and that fishing-vessels in these waters occasionally secure one or two. It is also known that fur-seal occasionally haul out at various points, although at none are they known to breed. Captain Brandt, of the Russian gun-boat "Aleut," again has himself recorded as a new feature seeing several fur-seals off Point Povorotny, near Vladivostock, and states that seals are sometimes seen at Cape Seritoko.

523. The facts relating to the Asiatic coast of the North Pacific, outlined above, showing as they do that several outlying rocks and islands in various latitudes, and affected by somewhat diverse climatic conditions, have been or are resorted to by the fur-seal as breeding places, and that new places of resort may be chosen by that animal, go far to prove that it is to the continuously inhabited character of the Aleutian Islands, and other islands along the American coast, that the absence of such breeding places there at the present day must be generally attributed. This is fully borne out by the notes already given with respect to former breeding places on the Californian and British Columbian and Alaskan coasts, and may be adduced in favour of a belief that with proper protection new rookeries might not improbably be established in suitable places, provided there be no disturbance or slaughter by man.

524. This is particularly worthy of consideration in the case of the Aleutian Islands, where, in consequence of the now very small and still decreasing number of natives, it would not be difficult to set apart reserves for this purpose, as well as for the propagation of the sea-otter. The greatest difficulty in the case of the fur-seal would doubtless be found in the matter of inducing the first colonization of such new rookery grounds, but as it has been shown that the smell of the formerly occupied rookeries is one of the chief—if not the chief—attraction to the first-arriving seals, and as this smell is inherent chiefly in the soil of these rookeries, it is perhaps not unworthy of consideration whether the transfer of portions of this seal-impregnated soil, and its scattering over suitable places—particularly such as lie near the migration-route of the seal—might not lead to their occupation. In any case, such reservations would soon be colonized by the more widely wandering sea-lions and hair-seals, and the security and increase of these would probably after a time have the effect of producing a sense of safety which might

\* Bancroft, however, gives this year as 1768, "History," vol. xxiii, p. 164.

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induce the fur-seal to take up its abode there at the breeding season. The principal objection to experiments of this kind would be the cost of affording the necessary protection, but if such islands were also stocked with and preserved for the blue-fox, the sale of the skins of this animal might alone, in the course of a few years, be sufficient to cover a large part of this cost.

525. Similar measures would, of course, be also worthy of consideration in the case of various places on the shores of British Columbia, or on the Asiatic coasts of the Pacific.

II.—NATIVES OF THE COASTS OF BRITISH COLUMBIA AND ALASKA DIRECTLY INTERESTED IN INDEPENDENT SEALING. METHODS OF HUNTING, AND NUMBER TAKEN.

526. The native peoples of the west coast of America directly interested in the capture of the fur-seal are the following:—

1. Aleut.
2. Eskimo, or Inuit, including Kaniagmut, of Kadiak Island and vicinity, and Chaga-Chigmut, of Prince William Sound, with probably some other tribes of lesser importance.
3. The Tlinkit, or Koloshan tribes of South-eastern Alaska.
4. The Haida, of the Queen Charlotte Islands; with the Kaigani, of the southern extremity of the Alaskan coast-strip.
5. The Tshimsian, of the inner coast of Hecate Strait.
6. The Haultzuk tribes, to the south of the last.
7. The Kwakiol tribes of the northern part of Vancouver Island.
8. The Aht, or Nootkun tribes, of the west coast of the same island, and including the linguistically-identical Makah, of Neah Bay and Cape Flattery.

527. All these people have known and hunted the fur-seal from time immemorial, and in all cases either within the limits of what has been referred to as the winter habitat of the seal, or along the course of its northward migration-route. So long as the breeding islands remained uninhabited by man, the seal was practically exempt from his attacks in its summer habitat.

528. The amount of the interest of these native peoples in this pursuit has naturally varied in accordance with changing circumstances, and has, in most cases, been notably stimulated by the higher prices which have ruled for skins within the last twenty years. Their aboriginal modes of hunting the fur-seal are somewhat varied, including the spear, bow and arrow, net, and club; but in most cases the gun is now the weapon employed.

529. *Aleuts*.—The hunting of fur-seals by the Aleuts inhabiting the eastern part of the Aleutian chain has already been referred to in connection with the migrations of the seal. The Aleuts of Iliuliuk Settlement at Unalaska, stated that they generally got twenty or thirty seals in the early part of the summer and when on their way north. They are engaged in hunting the sea-otter at this season, and take a stray seal if they find it. Such seals are generally got along the southern side of the islands, but the seal-hunting season proper is in the autumn. In hunting seals, these natives employ the same methods as in sea-otter hunting. They use a "bidarka," or light skin-boat, in which they sometimes go as far as 25 or 30 miles from land. The spear, launched by means of a throwing-stick, was formerly most employed, but is now being superseded by the gun loaded with buck-shot. They generally shoot from a distance of 40 or 50 yards, and have plenty of time to paddle up in the bidarka and get the seal before it sinks. The dead seal is taken either with the hand or by means of a gaff carried for the purpose. Grey pups always float when killed, being very fat. An old male, or a female over two years of age, generally sinks when shot, particularly in the autumn, when seals of these kinds are thin. A female with young may sink, but more slowly. These natives, however, affirm that they never lose a seal if killed. Mr. Dirks, now agent for the Alaska Commercial Company at Atka Island, states that when previously stationed at Sannakh Islands, he has seen the Aleuts there pursue and overtake fur-seals in their light bidarkas, a feat which would be impossible with any boat.

530. Nets were formerly employed by the Aleuts of Unalaska and neighbouring islands for the capture of sea-otter, fur-seal, and hair-seal. These are described as having been from 20 to 30 fathoms in length. Such nets were set about the rocks, generally a mile or so from shore. They are still used on the Sannakh Islands, but have elsewhere been practically abandoned in consequence of the increasing wariness of the sea-otter.

531. The fur-seals killed by the Aleuts afford practically the only flesh meat which

they are, under ordinary circumstances, able to obtain, and, as food, are highly prized by them. In 1890, for the first time, the United States' Government prohibited the killing of fur-seals by the Aleuts of the Aleutian Islands, but this rule has so far been practically inoperative, in consequence of the want of means for its enforcement.

532. The Aleutian Islands were originally thickly inhabited, and settlements existed on nearly all those of considerable size. Soon after the Russian discovery, measures were taken to concentrate the Aleuts in a few islands, where they might be more easily controlled. The decrease in number of inhabitants has since then been continuous, and the number of inhabited villages is now small. In the eastern part of the chain the following places are still inhabited, and to all of them the remarks above made, with special reference to Unalaska, are equally applicable. On Unalaska Island, Iliulik, Makushin, Kashegn, Tshernofsky; on Spiskin Island, Burka; on Akutan Island, Akutan; on Akun Island, Akun; and on Umnak Island, Nikolsky.

533. The most westerly of these villages is that on Umnak Island. The next permanently inhabited place is Nizan Bay, Atka Island, 210 miles further west, and beyond this there now exists but one permanent settlement, that on Chichagoff Harbour, Attu Island, at a further distance of no less than 480 miles. The Aleuts resident at these places, however, during the summer months, hunt from island to island along almost the entire chain, with all parts of which they are consequently more or less familiar.

534. At Atka Island, fur-seals are occasionally seen. In former years, they sometimes were observed to pass on their way north between Atka and Amia Islands, but never of late. Grey pups are not infrequently taken about Atka in November. The Aleuts here do not make a business of hunting the fur-seal at any time, but when seen kill them with sea-otter spears. The flesh is prized for food. At Attu grey pups are never seen, but larger seals are occasionally got. They are generally speared, as at Atka Island. The spear employed in both cases has a small detachable ivory or copper head, and is impelled by means of a throwing-stick. The bidarka is used in hunting by these as by the other Aleut tribes.

535. *Inuit*.—The Kaniagnut Inuit people, inhabiting Kadiak Island, kill a few fur-seals in the earlier part of the summer, when they are engaged in hunting the sea-otter. They employ the skin bidarka or kayak, and use an ivory-tipped arrow with detachable head, shot from a bow. The same style of weapon is used along the Alaska peninsula, and is probably co-extensive with the limits of the Inuit peoples of this region. In Prince William Sound, the Chaga-Chigmut tribe formerly made a special business of the pursuit of the fur-seal, often getting, within recent years, as many as 200 skins in a season. In 1891, the number obtained was about fifty only.

536. *Tlinkit*.—To the eastward and southward of the Aleut and Inuit peoples, the skin boat is replaced by the wooden dug-out canoe, which, though comparatively rude, as made among the Tlinkit peoples, is nevertheless a serviceable craft, and with the Haida and other northern tribes of the coast of British Columbia, becomes perfected in construction, and assumes lines of almost ideal form.

537. In the neighbourhood of Sitka, the Indians systematically hunt the fur-seal in the spring and early summer. They form camps at suitable spots on the outer coast for this purpose, the favourite places being between Cross and Salisbury Sounds, particularly about Cape Edwards. In some years as many as 700 skins are got, but in 1891 about 300 only were obtained. Three or four Indians man a canoe, and when the weather is favourable start about two o'clock in the morning for the hunt. They continue paddling or sailing until near noon, and believe that they often get thus as far as sixty miles from the shore. They then hunt for six or seven hours before setting out on their return, and reach the land early the following morning. Such a trip is made about once a-week when the weather is fine, and the hunters consider themselves fortunate if they can make ten trips in all during the season.

538. The Indians here first saw schooners hunting off the coast about ten years ago, but heard of them before this. Some of these people are employed in sealing-schooners sailing from Sitka.

539. The seals were formerly killed with spears; rifles were afterwards employed to some extent, but in late years the gun, with buck-shot, has been adopted by almost all. The Indians state that the seals sometimes sink when shot, the proportion thus lost being sometimes one, sometimes two, out of ten. One man informed us that he had in 1891 got nineteen skins and had lost four in addition, all of which he felt sure he killed.

540. The Tlinkit (Hanega tribe) of Klawak on Bucarelli Sound, Prince of Wales Island, are now mingled with some Indians of Kaigani (Haida) extraction. They have not in recent years hunted the fur-seal in spring or summer, being more remuneratively and less arduously employed at that season in salmon canneries, or at other work.

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During the winter, however, most of the men hunt the fur-seal to a greater or less extent; a single hunter sometimes getting as many as twenty skins in a season. Here, five men often go together in a canoe, the canoes used being larger than those at Sitka. In the spring and early summer the seals are far off shore, but in the winter months they come close in, particularly the grey pups and yearlings. About two years ago, seals appeared in great numbers. In a good season, 200 or 300 skins are secured at Klawak, for which 2 dollars to 9 dollars is paid by the traders on the spot. The flesh is sometimes eaten, but not now so much as formerly, though the fat is still prized as food.

541. *Haida*.—In the northern part of the Queen Charlotte Islands (lying off the northern extreme of the coast-line of British Columbia), Masset is now the principal Indian Settlement. Here the Haida people who formerly inhabited permanent villages at Virago Sound, North Island, and elsewhere, now centre, though still resorting for purposes of hunting and fishing to their old homes. Inquiries made at Masset among the Indians (including Chief Edensaw, an old but very intelligent man), with other information obtained, enable the following statements to be made respecting fur-seal hunting by the Haida people.

542. About the beginning of the present century the sea-otter was very abundant, and was systematically hunted. Fur-seals were often seen, and, when required for food, were shot with arrows tipped with the bone of the whale, or speared, though the skins at that time were of little value. About the year 1846 (the year in which Fort Victoria was established), the Haida first began to make a business of hunting the fur-seal for skins. Guns were employed from the first in this hunting, loaded either with buck-shot or with "trade bullets," three to a charge. At first comparatively few skins were got, but for the past fifteen years a considerable number has been obtained—in two of these years 1,000 skins or more. In 1873, a post of the Hudson's Bay Company was established at Masset, chiefly for the purpose of buying fur-seal skins from the Indians, and the increased activity of the local hunters coincides with this date. The Indians first saw schooners engaged in hunting off this part of the coast about thirteen years ago.

543. The hunting season is the spring and early summer, and most of the hunting is done in Dixon Entrance, where the hunters have a good chance of making the land safely, either to the south or north, if had weather comes on. They know that seals are often abundant in the open ocean to the westward, but seldom go far out in that direction because of the danger of being blown off and lost. North Island is a favourite starting-point for the hunters.

544. In hunting there are usually four paddlers in a canoe, and one man to shoot. When shot through the head, and at once killed, the seals frequently sink, and long ago hunters often lost seals in this way; now they spear the seals as soon as they are shot, and seldom lose any. The males are the most apt to sink, while females with young always float. Mr. R. H. Hall, formerly in charge of the northern coast posts of the Hudson's Bay Company, who has himself been at sea with the Haida when hunting, as the result of his own experience, states that if a seal is lightly wounded with shot it generally escapes, as it is then impossible to overtake it with a single canoe. If severely wounded or killed outright, the seal is seldom lost. After a short time the body generally begins to sink; but "an Indian killing or badly wounding a seal is pretty safe to get it." He has seen three seals shot, and two of them left floating till the third one fired at was picked up.

545. The Indians spoken to were unable to give a percentage ratio of seals lost when shot, but in order to reach some conclusion on this point, with regard to these particular Indian hunters, those who had lately killed considerable numbers of seals were specifically questioned with the following result:—

Hunter No. 1.—In the hunting season of 1891 got 21 seals; lost none.

Hunter No. 1.—In the season of 1890 got 38 seals; lost 3 in addition.

Hunter No. 2.—In the season of 1890 got 37 seals; lost none.

Hunter No. 3.—In 1889 got 126 seals; lost none.

Hunter No. 4.—In 1889 got 90 seals; lost 3 in addition.

The Haida seldom ship as hunters in sealing schooners, but the two last-mentioned catches were made in connection with a schooner on which these hunters were engaged, and most of the seals got were taken in Behring Sea, "too far from shore to see the land." They are noted here as indicating the skill of the Haida hunters.

546. Chief Edensaw explained that long ago, when ships first began to come to buy sea-otter skins (in the latter years of the last century and earlier years of the present century), his people were well off, getting plenty of good clothes, &c., in exchange for these skins. When the sea-otter became very scarce the trading vessels ceased to come,



and for many years the Haida were very poor, and had to return to the use of skin clothing. Their condition has, however, improved again in later years, partly because of the money they are able to obtain for the fur-seal skins, partly on account of the growth of other industries along the coast in which they can engage. The Haida generally complain that the continued hunting of the fur-seal has caused it to keep far off shore, and has rendered it so shy, that it is now becoming difficult to earn money near their homes by hunting the seal as before. They are, in consequence, obliged to leave their homes in search of other work.

547. The above notes refer particularly to the northern part of the Queen Charlotte Islands. Special inquiries were not made among the southern Haida tribes. Many years ago there were numerous village communities scattered along the outer west coast of the islands, but these have gradually abandoned this coast, and coalesced with the large communities of the eastern coast. It is, therefore, now difficult to obtain facts respecting the outer coast, where, however, in connection with the sea-otter hunting, many fur-seals were doubtless formerly killed. The Haida eat the flesh of the fur-seal, and esteem it highly.

548. *Tshimsian*.—The principal fur-seal hunting station of the Tshimsian tribes proper is upon Zayas Island. They hunt in the spring, from this place as a centre, in the eastern part of Dixon Entrance and northern part of Hecate Strait. Till about thirty years ago these people never systematically engaged in hunting the fur-seal, though they knew that their neighbours, the Haida, long before this took fur-seals. Each hunting canoe is here usually manned by four persons, and guns appear to have been employed from the beginning of the systematic hunting by the Tshimsians. Buck-shot, or trade bullets of twenty-eight to the pound, three to six in a charge, are used. Three canoes hunting from Zayas Island in 1890 obtained catches of seventy, fifty, and twenty-eight skins, respectively, during the season. The trade prices paid for these skins on the spot in 1891 ranged from 3 dollars to 3 dol. 50 c. for "grey pups" to 17 dollars for best skins. The number of skins got in various years depends of course on the abundance of seals and the character of the weather; but there is also a great difference from year to year in the number of hunters, governed by the prices of skins, and the wages offered for other work. Probably, about 200 skins are taken each year at present by these Indians, but as these are bought by various traders, it is difficult to get exact figures.

549. A spear or hook about twenty feet in length is often used to recover the seal when shot, and the Indian hunters questioned stated that they had never lost a seal when killed.

550. The Kitkatla tribe of the Tshimsians, whose permanent village is situated on Goschen Island, are noted as fur-seal hunters, though, because of the facility in obtaining employment with regular wages, in late years they have not paid so much attention to this hunting as before. They resort to Bonilla Island in the seal-hunting season, and in 1891 there were there seventy hunters with their families. The number of skins obtained this year was, however, small, as most of the hunters suffered from the influenza epidemic. Generally speaking, about 300 skins are taken in spring and early summer.

551. These people hunt in Hecate Strait, and their mode of hunting is the same as that practised by the Tshimsians proper. A few of the Kitkatlas have been employed on sealing-schooners for the past four or five years, but no large numbers from any of the Tshimsian group of tribes engage in this species of hunting. Mr. R. Cunningham, who has been for twenty-five years familiar with the Indians of this tribe, states that the seals do not usually sink at once unless the breath escapes from the body.

552. *Hailzuk*.—The Hailzuk tribes, of the vicinity of Milbank Sound, resort chiefly to the outlying group, named the Goose Islands, at the seal-hunting season in spring. A number of these Indians, including several well-known seal-hunters, were interviewed at Bella-Bella. They stated that in ancient times the fur-seal was killed by their forefathers only for food. Sea-otters were abundant, and the skin of the seal was not of much value. When a fur-seal was killed, it was kept only if fat. The flesh is sometimes eaten still, but not so much as formerly, though the fat is always kept for food. The best part of the seal for food is the flipper. Before guns were in common use, the spear was employed exclusively in the pursuit of the sea-otter and fur-seal, but now one hunter only still continues to use the spear. They began hunting fur-seals as a business about twenty years ago—not so long ago as twenty-five years, which they remembered because of the small-pox. Guns are now employed, loaded with buck-shot, or with three trade bullets. They hunt only in their own canoes, with two to four men in each canoe; and in these they sometimes go so far from land that only the mountains about Cape Calvert remain in sight. Occasionally they spend a night at sea.

552\*. The seal is sometimes shot from a distance of not more than 20 feet, when

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sleeping, but often at much greater distances. It is taken into the canoe with the hand, or, if beginning to sink, a spear or gaff is used. Males sink more frequently than females.

553. These people were unable to state any definite proportion as between the seals recovered and those lost by them, but they are not accounted very skilful hunters. The largest number taken by a single canoe in one day in 1891 was eight, and in this case two that were killed were lost in addition. About 300 fur-seal skins in all were obtained by the Bella-Bella people alone in 1891, which was a good year; and nearly all these were brought in by their own co-operative store, and sold afterwards in Victoria. The highest price they got at Victoria was 10 dollars. The Indians here voluntarily expressed their willingness to conform to any laws made as to the killing of fur-seals, but requested that they might be informed in time.

554. *Kwakwiool*.—Nawitti, on Hope Island, at the northern end of Vancouver Island, is the place most noted as a centre of fur-seal hunting among the Kwakwiool tribes. The people here hunt principally in the winter, and do not resort to special hunting stations. They start on hunting trips very often from Nawitti village itself, and bring large quantities of seal meat, which they relish as food, back to this place. They hunt in their own canoes, and few of them have ever been employed on schooners. Nearly all the men engage more or less in hunting at the proper season. Spears were formerly used in hunting, but guns are now always employed, though the spear is still made use of to recover the seal after it has been shot. The seals shot sometimes sink before they can pick them up, but this happens chiefly when they are shot in the head and killed at once. Mr. A. W. Huson, who is familiar with this part of the coast, states that in some years he has himself obtained in trade as many as 160 skins from the Indians of the Nawitti village alone.

555. Fur-seals are also hunted by the Quatsino, Klaskaino, and other tribes of the Kwakwiool family, but the numbers obtained by them are not known to be considerable, and time did not admit of special visits to their villages.

556. *Aht*.—The Aht or Nootkan tribes, inhabiting the whole of that part of the west coast of Vancouver Island to the south of Cape Cook, are the most noted of the British Columbian Indians as expert fur-seal hunters. The Makah, of Cape Flattery, in the State of Washington, are a detached tribe of the same stock. These Aht people furnish by far the larger part of the Indian hunters employed on sealing schooners, and have to a great extent abandoned their original method of sealing in canoes from the shore in consequence. The number of skins still obtained by them as independent hunters is, however, not inconsiderable.

557. They are chosen as hunters for the sealing schooners in preference to the Indians of the northern part of the coast, partly because of their experience and dexterity in the use of the spear, but also because they are accustomed to hunt in comparatively small canoes, requiring fewer men, and taking up less room on the schooner's deck. The northern Indians require larger canoes, and usually no greater number of skins is taken by a large canoe than by a small one. It is true that the spear has, even among these people, now been largely replaced by the gun, but, meanwhile, they have become familiar with the method of hunting from schooners. Still another cause is found in the fact, that the Ahts are by no means so favourably disposed as other coast tribes toward devoting themselves to regular occupation, such as cannery work or logging.

558. The Ahts are divided into a large number of tribes and village communities, from many of which details as to seal-hunting have not been obtained, but the following notes on some of them may be taken as examples of the whole:—

Hunting in canoes from the shore is still practised at Nootka Sound, where the hunting season embraces about three months of the later winter and early spring. The hunters go out a long way from shore, and, when the weather is fine, sometimes stay two days at sea. The skins obtained are disposed of to various traders, but, in all probability, about 200 are got at this place annually. One of the hunters said that about twenty years ago he had himself secured 260 seals, but as the prices were then very low, he obtained just 1 dollar each for the skins.

559. At Clayoquot Sound, the Indians stated that in the times of the grand-parents of the present generation, fur-seals were valued and hunted only for food. They were then always killed with spears. Independent hunting with canoes from the shore has fallen into disuse for the last seven or ten years at Ahouset village and Clayoquot proper, respectively. The Indians from this vicinity now hunt only from schooners, and many are so employed every summer. Long ago many of them were drowned when hunting independently, and this mode of hunting has come to be considered very dangerous.



At the present time, both the gun and spear are employed in taking seals, according to circumstances or the habits of the individual hunter.

560. At Barclay Sound, the Indians of several villages still engage to a considerable extent in hunting in their own canoes from the shore, but they are also in many cases employed on sealing-schooners. The number of seals taken by them in independent hunting varies between wide limits from year to year. In the spring of 1891, about 1,800 skins at least were taken to Victoria from this vicinity, all obtained in this way. The spear is usually employed still in preference to the gun by these hunters.

561. The Makah Indians of the neighbourhood of Cape Flattery are great seal-hunters. They themselves now own three small schooners, which are registered at Port Townsend. Some of them go every year in schooners owned by Whites, but the old method of independent hunting from the shore is also still practised. Two or three men generally go in each canoe, and occasionally stay out a night at sea, where they are frequently as far as thirty miles from land. They usually still spear the seals, whether hunting independently or from schooners, though the shot-gun is employed by some of the hunters. The older men think that shooting is bad, but the younger men have taken to it. The spear used has two prongs, with detachable barbed heads. It is about fifteen feet long, and is thrown from the hand, without a throwing-stick, the butt end being flat and widened, with grooves cut in it for the fingers. This same type of spear is employed by all the Aht people.

562. The old men say that before they were born (say, about sixty years ago), the fur-seal was hunted for food and clothing, and was abundant; but on several occasions a number of Indians lost their lives at sea while hunting, and, consequently, for about twenty years the hunting was practically given up. About the time the small-pox came among them (probably in 1852, as ascertained from other sources) hunting began again, and has been continued ever since. They think that it was about twenty-five years ago (§ 586) when they first knew of Whites going to sea to hunt the fur-seal. Nearly 1,000 fur-seal skins are annually got by the Makah Indians, but a considerable proportion of the whole number is obtained by them in their schooners along the coast to the northward or in Behring Sea, so that the precise number taken in the vicinity of their own territory is difficult to ascertain. Nearly the whole of the skins taken by these Indians are sold in Victoria.

563. When the seals are speared, practically none are lost, but when shot some are lost by sinking, though a spear is employed to gaff them. These Indians stated that in taking fifty seals, sometimes one, sometimes two, might be lost, but occasionally none would be lost.

564. Further particulars of interest respecting the Indian fur-seal hunters of Cape Flattery may be found in Judge J. G. Swan's report on that subject contained in the "Report of the Fisheries and Fishery Industries of the United States," vol. ii, p. 308. Also in the "Bulletin of the United States' Fish Commission," vol. iii, p. 201. From the first of these publications, it appears that the independent catch of the Cape Flattery Indians amounted to 1,558 skins in 1880, with an average value of 9 dollars per skin at that time. In a letter of recent date, the same gentleman states that no official record of the number of skins taken by these Indians has since been kept.

565. While it is to be regretted that it is impossible to give an accurate statistical record of the number of fur-seal skins taken by the natives of the coasts of Alaska, British Columbia, and Washington, by their independent hunting in their own canoes from the shores, the results of inquiries made at a number of detached places along the coasts, and given in abstract above, are at least sufficient to show that important vested interests are there involved.

566. It is undeniable that all the natives represented along this great line of coast have been accustomed from the earliest times to hunt the fur-seal. So long as the sea-otter was abundant, little use was made of the inferior skin of the fur-seal, and that animal was prized chiefly as an article of food. At a later date, when the hunting of the sea-otter had become scarcely remunerative because of its increasing scarcity on this part of the coast, the price offered for the skins of the fur-seal was still insufficient to tempt the natives to engage systematically in the somewhat hazardous business of its capture; but as the skins became higher in price, and notably within the last twenty years, the hunting of the fur-seal has possessed a greater importance for the natives. Within quite recent years, however, the independent hunting of natives has somewhat decreased from two principal causes—the employment of large numbers of the more expert natives on sealing vessels, and the growth of various other industries capable of affording remunerative employment.

567. The low prices given in former years to the Indians of the British Columbian

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const for their skins were in part due to the fact that, in accordance with native custom, the skins were stretched and dried, and were thus not so suitable for the trade as salted skins; but of late years the Indians have become accustomed to salt nearly all the skins they take.

568. Respecting the dates between which the Indians of various tribes engage in seal-hunting, and in connection particularly with the notes elsewhere given on the migration of the fur-seal, it must be observed that these dates do not necessarily coincide with those defining the occurrence of fur-seals along the coast. The actual time of beginning the hunt depends chiefly upon the date at which such fine weather as is described as "sealing weather" sets in. The close of sealing is, on the other hand, largely governed by the arrival of the particular season at which immemorial custom requires that fishing of some other kind—generally halibut fishing—shall begin.

569. The best estimates obtained of the number of skins taken annually by the Indians of the British Columbia coast alone, for the last four or five years, show that about 1,500 in all are taken to the north of the northern end of Vancouver Island, and at least a similar number to the south of that point, or, say, at least 3,000 skins each year for the entire coast. Estimating these at 10 dollars a skin (an average price sufficiently low to cover the relatively small value of the skins of grey pups or yearlings which sometimes form a considerable portion of the catch), the gross value of the catch amounts to 30,000 dollars annually. This amount constitutes a very important part of the whole revenue of these natives, with whom also the fur-seal forms a staple article of food at certain seasons.

570. The less direct, but financially more important, interest of the same native peoples in the pelagic sealing proper, in which they are now largely engaged, is of course not included in the above estimate.

### III.—PELAGIC SEALING.

#### (A.)—*Origin and Development.*

571. The interest of the natives of the west coast of America in the capture of the fur-seal is an immemorial one, but in the earlier years of trade upon the coast the skin of the fur-seal occupied a subordinate position to that of the sea-otter, and in still earlier and pre-historic times the fur-seal seems scarcely to have been pursued except for food. The sea-otter yielded an ample supply of superior skins for clothing, while sea-lions, hair-seals, and other animals afforded skins better suited to the manufacture of skin boats by the northern tribes, and for the southern, that of other articles requiring strength of hide rather than thickness of fur.

572. The principal areas in which the fur-seal was more or less hunted in such early times, were doubtless those extending on the west coast from the vicinity of Cape Flattery to about the latitude of Sitka. To the south of Cape Flattery the natives were not seafaring in their habits, and the same may be said of most of the native peoples of the Asiatic coast, along the Kurile Islands to Kamtschutka.

573. So long as the skins of the sea-otter could be obtained in abundance for Chinese markets (where at the time they were most valued), the White traders then beginning to frequent the coast made little inquiry for the comparatively inferior skin of the fur-seal, but these, with other skins of minor value, were purchased from time to time by the traders, and have occasionally been thought worthy of mention in the narratives of their voyages. The observations on this particular subject which it is now possible to glean from these narratives are naturally rather meagre, but even an imperfect examination of some of them, is sufficient to show that from the first the skins of the fur-seal were counted among articles of trade with the natives along various parts of the coast to which these animals did not habitually resort for the purpose of breeding, and where, consequently, they must have been taken by the natives at sea.

574. It was primarily the search for, and trade in, the skins of the sea-otter which, in the last century, impelled the Russian adventurers to extend their operations from the coasts of Asia along the Aleutian Islands and to the American coast. When the Commander and Pribyloff Islands were successively discovered, the skins of the fur-seal began to be added in large numbers to the lists of articles of commerce, but even from the first, and before these principal breeding places had been found, fur-seal skins also were procured from the Aleut natives. From incidental references made in the summaries

of early Russian voyages, such as those given in Bancroft's History of Alaska, enough facts to show this may be gathered, though a complete examination of the original works might doubtless afford additional facts of the same kind.

575. Thus, in 1766, the "Vladimir" included in her return cargo 2,000 fur-seal skins which are said to have been brought from the Near Islands of the Aleutian chain. The number here given is, however, so considerable, that it may be regarded as not improbably showing that at this early date some place resorted to by the fur-seal for breeding, still existed on Agatu, Attu, or other neighbouring islands of the group; in which case all of these skins may not have been taken at sea. The "Arkangel Sv. Mikhail," returning from a voyage which had extended from 1772 to 1777, during which Kadiak was reached, but in which no mention is made of any call at the Commander Islands (the Pribyloff Islands had not then been discovered), brought back 143 fur-seal skins. In 1790, again, Sauer, of the Russian Scientific Expedition, under Billings, is recorded to have been told at Shelikoff's establishment at Kadiak, that 600 double bidarkas had been sent out to hunt sea-otters, fur-seals, and sea-lions. In 1812, in Chugatch Bay, Prince William Sound, where seals had formerly been plentiful, the yield is stated to have fallen off to fifty skins.\*

576. Similar incidental allusions may be found as well in the records of other voyages. Thus, among the skins sold in China by Portlock and Dixon, in 1788, were 110 fur-seal skins, though these navigators did not approach the known breeding islands in any part of their route.†

In 1791, again, Captain Marchant obtained thirty-seven seal-skins from the natives of Norfolk Sound, these skins forming a considerable proportion of the whole amount of furs got there.‡

577. There is often some difficulty in identifying the particular kind of skins which were obtained by such traders along the coast, because of the indefinite and varied terms made use of by them, but it seems probable that much of that classed as "beaver" was in reality fur-seal.§ This must certainly have been the case in the Queen Charlotte Islands, for though Portlock and Dixon state that considerable numbers of "beaver skins" were purchased there, the beaver is not, and never has been, a native of these islands.||

578. The opinion just referred to is that of Mr. Alexander Mackenzie, who has long been familiar with the Queen Charlotte Islands in particular, and who bases his statements upon the direct testimony of the natives themselves, to the effect that they frequently in former times traded fur-seal skins to the vessels then frequenting the islands in search of sea-otter skins.

579. Such facts, taken in conjunction with those already given as the result of our own inquiries on the West Coast, are, at least, sufficient to show that the natives were, from the earliest recorded dates, accustomed to hunt the fur-seal, as well as the more valuable sea-otter, at sea. So long as the skin of the fur-seal possessed but an insignificant commercial value, little attention was paid by traders and others upon the coast to the hunting of this animal by the Indians. The skins scarcely appeared in the lists of furs procured, and very little has been placed on record on the subject. A few skins were purchased by the Hudson's Bay Company from time to time, chiefly those offered by the Cape Flattery Indians. The first really commercial appearance of fur-seal skins at Victoria, according to Mr. R. Finlayson, was in or about 1846, between which date and 1856 considerable numbers of skins from the Pribyloff or Commander Islands, collected at Sitka by the Russian Fur Company, were forwarded from Victoria to London by the Hudson's Bay Company. These were shipped in casks, and were presumably salted skins, doubtless all taken on the breeding islands. In part overlapping the period just mentioned is the record of purchase of fur-seal skins by the same Company from Indian hunters, which runs from 1852 to the present year. (See Appendix G.)

580. When, however, better prices began to be paid for these skins, those persons interested in Indian trade along the coast became familiar with the native mode of hunting, and recognized the difficulty and danger to which the native hunters were often exposed in consequence of the distances to which they were obliged to venture from the shore in pursuit of the seal. The endeavour was then made to encourage the Indians in sealing, because of the profits obtained from the sale of the skins, and it naturally occurred both to the Indians and the traders (some of whom employed small vessels for the purposes of traffic), that a combination might be formed which would be advantageous to both parties.

\* Bancroft's History, vol. xxxiii, pp. 155, 171, 286, and 528.

† "Voyage to the North-west Coast of America," p. 300.

‡ "Voyage Autour du Monde," tome ii, p. 11.

§ The term "Sea-beaver" was also, however, sometimes applied to the sea-otter.

|| "Voyage to the North-west Coast of America," pp. 169, 201, and 300.

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It became evident that the danger and hardship inherent in the independent native mode of hunting might be much reduced by employing small vessels to carry the Indians and their canoes to sea in search of seals, thus to serve as a base of operations from which they might more successfully practise this industry.

581. At this time, the Indians of South-eastern Alaska and British Columbia knew nothing whatever about the summer resorts of the fur-seal in Behring Sea, and very little was known by any one as to the extent or course of their migrations. Thus, Dall, in his elaborate work on Alaska, published in 1870, though conversant with all facts then available, is able merely to make the following statement on this subject: "The Alaskan fur-seal formerly extended from the ice-line of Behring Sea to the coast of Lower California. At present, a few stragglers reach the Strait of Fuca . . . , but the great majority are confined to the Pribyloff Islands . . . . They leave on the approach of winter—usually about the end of October. They are supposed to spend the winter in the open sea south of the Aleutian Islands."<sup>6</sup>

Even so late as 1880, Professor Allen, after a very careful investigation of the whole subject, was able to write in the following very general way only with regard to the migrations of the fur-seal:—

"Except during the season of reproduction, these animals appear to lead a wandering life, but the extent and direction of their migrations are not yet well known. Steller spoke of their migrations being as regular as those of the various kinds of sea-fowl, and they are recorded as arriving with great regularity at the Pribyloff Islands, but where they pass the season of winter is still a matter of conjecture."<sup>†</sup>

582. It was the habit of the Indians, when sealing in their own canoes, to bring back the entire carcasses of the seals killed, and to utilize the flesh and fat as food. When schooners were first employed as an auxiliary, the same practice was very often followed. The carcasses belonged to the individuals killing the seals, and were prized by them, and whenever possible carried back to the villages to which the sealing Indians belonged. The vessels were seldom very long away from port. The sealing voyages thus at first made were restricted in their scope, and it was only by degrees that it came to be discovered that the seals might be profitably followed in their general northward movement along the coast, after the cessation of the rough wintry weather. It was also found that some seals might be obtained in the winter and early spring as far south as the coast of California, and before "sealing weather" set in on the coast of British Columbia; and as no other profitable employment offered for the sealing schooners, it became customary for them to make a cruise to the southward before engaging in the fishery to the north of the Strait of Fuca. At a later date still, the pelagic hunters ascertained, as the result of their own experience, that the fur-seals might be followed with advantage through the eastern passes of the Aleutian chain, and taken during the months of July and August, and occasionally during the early part of September, or till such time as stormy weather rendered further hunting impossible.

583. Thus, beginning as a purely local industry, in which the Indians of the west coast of Vancouver Island, with those of the vicinity of Cape Flattery in the State of Washington, were chiefly interested, the sea-sealing naturally developed and extended with the increasing knowledge gained of the habits and haunts of the fur-seal, till its operations covered almost the entire migration-range of the animal, and the number of skins obtained became so considerable, that the sealing interests of the Alaska Commercial Company (at that time the lessees of the Pribyloff and Commander Islands), and their heretofore profitable monopoly of the fur-seal of the North Pacific, was notably affected. Not until this occurred was any serious protest, or, in fact, any complaint whatever raised against the practice and methods of pelagic sealing. On the contrary, in so far as it became a matter of public knowledge, pelagic sealing was spoken of as a commendable new industry, developing maritime enterprise, in which both citizens of the United States and of Canada were engaged, and which afforded remunerative employment to them, as well as to a large number of the Indian population of both countries.

From the commercial point of view, which is necessarily that of the lessees of the islands, it is not only and perhaps not so much the fact that at sea a considerable number of seals are killed, but the circumstance that this industry interferes with their monopoly or practical monopoly of the market, which has frequently been admitted to be the most valuable part of their franchise, and in the endeavour to maintain which they have even purchased the greater part of the catch made at sea, particularly in the year 1890.

584. With the altered conditions and extended range assumed by pelagic hunting

<sup>6</sup> "Alaska and its Resources," p. 493.

<sup>†</sup> "Monograph of North American Pinnipeds," p. 335.



in the course of the few following years, certain changes also occurred in the manner in which it was conducted. The Indian hunters became accustomed to go far from their native villages, and to engage for the hunting of an entire season. The spear employed from pre-historic times by the people of the Aht Stöck was at first the only weapon used in pelagic hunting. The captains of schooners engaging in the business discouraged the employment of fire-arms, under the belief that the result of their use would be to alarm the seals and reduce the chances of a good catch. This belief was doubtless in some measure justified, but as White hunters also began to engage in the business, it became impossible to prevent the use of such weapons; the rifle was introduced, though soon superseded by the shot-gun, which has now become the usual hunting weapon. Most of the Indians readily adopted this new and more effective mode of hunting, and each year the number of these people employed, together with that of the vessels engaged in the industry, increased. The number of Whites employed as hunters varied, but, as a rule, competent Indian hunters have always been preferred when they could be obtained.

585. The Indians themselves benefited largely from a pecuniary point of view, and, in consequence of the encouragement offered by the pursuit of the fur-seal, began themselves to own and navigate sealing-schooners. Perhaps in no other way is the influence of the sealing industry toward the civilization of the Indians rendered more apparent than by the facts, that three sealing-schooners are now actually owned by the Makah Indians of Cape Flattery, while five are similarly owned by Indians of the coast of Vancouver Island, while in addition it is estimated that the payment to the Indians employed in the British Columbian sealing fleet in 1890, calculated on the number of skins obtained, was probably between 35,000 dollars and 50,000 dollars.

586. Reverting to the question of the date of the first known practical attempts at what is now classed as pelagic sealing proper, it appears, from information kindly supplied by Mr. J. W. Mackay, that this method of sealing was first attempted by Captain Hugh Mackay, of the sloop "Ino," in the spring of 1866. Captain Mackay, however, soon found that this sloop was too small to conveniently carry two or three Indian canoes, and he accordingly built, for the purpose of sealing, the schooner "Favourite," 75 tons, which was registered in Victoria on the 18th June, 1868. Little is known as to these first sealing voyages, but, doubtless, as a consequence of their success or good promise, other vessels were fitted out. Thus, Judge J. G. Swan, of Port Townsend, in a letter on this subject, quotes Captain McAlmond, of New Dungeness, Washington, as follows on the matter: "The first schooner to take Indians that I know of was the 'Lottie,' in 1869, from Neah Bay, believing that we were the pioneers. I afterwards understood that a vessel from Victoria was also taking an Indian crew." The vessel from Victoria here mentioned was evidently the "Surprise," of which Mr. Charles Spring writes: "The first attempt at sealing, in a practical way, with schooners and Indian hunters, was made in or about 1869 by Jas. Christenson in the schooner 'Surprise,' owned by the late Captain William Spring, of Victoria, British Columbia." From other sources it was ascertained that the Indian hunters employed on this and other pioneer sealing-schooners were obtained at Pachena, on the south-west coast of Vancouver Island, near the entrance to the Strait of Fuca.

587. The history of the progress and continued expansion of the pelagic sealing industry may be here briefly set out. In regard to that carried on from the British Columbian coast, it has been particularly inquired into and recorded by Mr. A. R. Milne, Collector of Customs at Victoria, upon whose investigations, checked and amplified in so far as has been possible, the subjoined summary is based.\* It has already been stated, however, in another part of this report, that, for the earlier years of the development of the business of sealing at sea, the data are very incomplete, as in these years it had scarcely begun to receive any particular attention, and records were not systematically kept of it by the Customs authorities, as has been required of them in later years.

588. From 1871 to 1878, it is known that three schooners were engaged more or less continuously in the sealing business on the west coast of Vancouver Island, where, however, they were also employed as traders. In 1879 to 1881 four or five schooners were employed in sealing along the same coast. In 1882, auxiliary steam-power was added to two of the schooners, and eight vessels in all were employed in the industry. In 1883 nine, and in 1884 eleven, schooners were employed, and all are said to have been fairly successful. One of these vessels, the "Mary Ellen," belonging to Victoria, outfitted at San Francisco, and eventually continued her voyage into Behring Sea, which she entered about the 15th June, and left about the end of August. This, so far as ascertained,

\* Parliamentary Paper [C.—4366], August 1891.

was the first of the British Columbian schooners to extend sealing operations to the waters of Behring Sea. It has not, however, been definitely ascertained that the "Mary Ellen" was the only vessel to enter Behring Sea in this year.

589. The result of the venture of the "Mary Ellen" having been satisfactory, she, and at least one other vessel, entered Behring Sea in 1885. Thirteen British Columbian schooners in all are known to have been engaged in sealing in this year.

590. In 1886, eighteen schooners engaged in the sealing industry. One of these had been brought round the Horn from the eastern coast of Canada for the purpose. Two were wrecked, but the remaining sixteen vessels entered Behring Sea; and in this year, for the first time, exception was taken to sealing in this part of the ocean by the Government of the United States, and three of the sealers, the "Caroleena," "Onward," and "Thornton," were seized.

591. In 1887, seventeen British Columbian schooners were engaged in sealing; fifteen of these are believed to have continued their operations into Behring Sea, six being seized there by the United States' cutters "Rush" and "Bear."

592. In 1888, twenty-one vessels from British Columbia composed the sealing fleet, and though the fishery was carried on in Behring Sea in the latter part of the season, no seizures were made by the United States. One schooner, however, the "Arannuh," was this year seized and confiscated by the Russian Government, having been detected in sealing within the territorial waters of Copper Island.\*

593. In 1889, the sealing fleet consisted of twenty-two vessels, all of which are believed to have entered Behring Sea. In this year four of these vessels were seized, and one was ordered out of the sea.

594. In 1890, twenty-nine British Columbian vessels were engaged in sealing, twenty-three of which entered Behring Sea.

595. In 1891, the sealing fleet of British Columbia had increased to fifty vessels, and most, if not all, of these cleared with the intention of entering Behring Sea. The adoption of the *modus vivendi* between Great Britain and the United States, however, had the effect of turning back many of these vessels, while the patrolling of the sea and warning of others, with other circumstances connected with the operations in this year, need not be repeated here.

596. As already noted, the first extension of the cruizes of the sealing-schooners of British Columbia was that along the coast to the southward, and this began to be practised as early as 1878 or 1879. Sealing operations were first extended into Behring Sea by sealers from British Columbia in 1884, though one or more United States' schooners had already at that date been for several years accustomed to frequent Behring Sea for this purpose, and cargoes obtained by them were sold in Victoria in 1881 and 1883. The practice grew up of making in the winter and early spring a voyage from Victoria to the southward, after which the vessels returned to Victoria and outfitted there for the northern voyage. This was found, however, to be inconvenient, from the loss of time involved, as well as from the fact that crews often had to be re-engaged for the second trip. Therefore, in 1890, arrangements were made by the sealers to rendezvous with a steamer at some northern point in June, to tranship their skins for conveyance to Victoria, completing their outfit for hunting in Behring Sea at the same time. In 1890, Sand Point, in the Shumigin Islands, was the place selected for the purpose, and in 1891 Alitak Bay, Kadiak Island, was chosen.

597. The foregoing details respecting the growth of the pelagic sealing industry of British Columbia have been obtained by special research and inquiry, but it has been found to be practically impossible to procure, whether officially or otherwise, comparable particulars of the pelagic sealing business conducted by United States' vessels. It is known that vessels sailing from the New England States have been engaged in the capture of the fur-seal since the latter part of the last century, their operations being carried on principally in the southern hemisphere, and the mode of killing the seals being that of a promiscuous slaughter whenever these animals could be found on shore, carried out by means of clubs or otherwise. This method of killing seals has, however, no analogy with that of pelagic sealing as now understood. It is further known, that in more recent years, and after the Governments of Russia, Japan, and the United States had provided regulations for the protection of the respective breeding islands under their jurisdiction, vessels were dispatched by unscrupulous persons for the purpose of raiding the rookeries upon these islands. The records preserved of the raids themselves, which are treated in detail elsewhere, show that such illegal sealing has been carried on, but, naturally enough, it is difficult to obtain full particulars of its character

\* Parliamentary Paper [C.—6041], 1890.



or magnitude. This again, however, is quite distinct from the question of pelagic sealing proper, the origin of which little if at all antedates the year 1860. Moreover, while this raiding of the various breeding islands appears to have been practised from year to year in the case of United States' vessels, it has latterly been more and more replaced by the legitimate pursuit of the fur-seal at sea. There was thus almost an organic connection between the two methods of sealing in the case of vessels sailing from the United States, that did not exist in the case of the sealing industry of British Columbia, which grew up directly from the independent Indian sea-sealing, and had not previously existed in any other form.

598. A certain number of vessels have for many years taken clearances from the Pacific ports of the United States for "hunting and fishing voyages;" but while most of those which have been engaged in any form of sealing have doubtless been included under this general designation, it comprises as well vessels which may have been engaged in various forms of fishing proper, and in the hunting of the sea-otter. Even in the last census of the United States (1890) the vessels engaged in sealing are not specially indicated, but are included under the general designation of the "fur-seal and sea-otter fleet."\* If such clearances were confined to a single port, local inquiries might without great difficulty result, in the case at least of the later years, in eliminating vessels which were not engaged in pelagic sealing, and in affording a reasonably exact statement of the operations of those of the latter class, but the number of ports of clearance has unfortunately baffled inquiries made in this direction.

599. It is certain, however, that the pelagic sealing industry has continued to grow in the United States in a ratio corresponding to that of the same industry in British Columbia. In 1889, the best estimate which Mr. Milne could quote of the number of vessels engaged in it placed this at thirty-two.† The United States' Census Bulletin relating to the same year gives the fur-sealing and sea-otter hunting vessels at twenty. It is probable that though two or three of these vessels were chiefly engaged in sea-otter hunting, even these occupied part of their time in sealing, while it is known that most of the fleet was primarily engaged in sealing. In 1890, more than fourteen vessels sailed from United States' ports for sealing, but the exact number has not yet been ascertained. In 1891, the number had increased to about forty-two.

600. The estimated value of the British Columbian sealing fleet with its equipment, as it left port in 1891, was 373,000 dollars. That of the United States' fleet in the same year exceeded 250,000 dollars. According to the United States' Census Bulletin already cited, the value of the vessels engaged in the fur-seal and sea-otter industry in 1889 was 152,757 dollars. Dividing this amount by the tonnage, an average tonnage value for this fleet is obtained of 160 dol. 54 c., while a similar calculation based on the figures for the British Columbian fleet of 1891 gives a corresponding tonnage value of about 114 dollars.

#### (B).—Methods.

601. In what has already been given, the methods of pelagic or sea-sealing have been indicated in a general way. These methods are essentially of a very simple character, but the actual procedure followed in killing the seals may now be briefly alluded to. The vessels employed range in size from 130 to 40 tons. Taking the sealing fleet of British Columbia in 1891, the average number of canoes or boats carried on each of the small vessels (which are all or nearly all schooner-rigged) is about seven. The average size of the vessels in 1891 was sixty-five tons, and the average number of men (White and Indians) employed on each was in the same year about twenty-two.

602. The effective hunting strength of each vessel depends on the number of canoes or boats carried, for no advantage is gained by carrying large boats, a single hunter being sufficient for each. Various plans are therefore adopted, to enable as large a number of canoes or boats as possible to be stowed on the deck of the schooner.

603. It is necessary for success, not only that a sufficient number of seals should be fallen in with, or, in other words, that an area of sea-surface rather plentifully sprinkled with seals should be found, but also that the weather should be favourable. In stormy or thick weather sealing is impossible, and the most the sealing master can attempt to do is to stay with the seals. The circumstances being favourable, the boats or canoes are launched and manned, and set out in different directions from the schooner in such a way as to cover as great an area as possible. The schooner has only to keep to leeward of the boats, so that these may the more easily rejoin her at the close of the day.

\* See United States' Census Bulletin, No. 123.

† Parliamentary Paper [C.—6368], London, August 1890, p. 362.

question of pelagic sealing. Moreover, while this method has been used from year to year in the United States, it has more recently been replaced by the use of a more organic connection from the United States, which grew out of Columbia, which grew out of previously existed in

clearances from the United States; but while most of these have been included under the last census. Even in the last census of the sea-otter fleet."\* If such a result, which were not engaged in the operations of those of the last census, unfortunately baffled inquiries

industry has continued to the same industry in British Columbia. The quote of the number of the United States' Census Bulletin of hunting vessels at sea. These vessels were chiefly engaged in sealing, while in 1890, more than the exact number has been about forty-two.

fleet with its equipment, as in the United States' fleet in the same Census Bulletin already mentioned. The industry in 1889 was valued at a tonnage value for this purpose based on the figures for the value of about 114 dollars.

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number of seals should be rather plentifully sprinkled favourable. In stormy weather can attempt to do is in the boats or canoes are in the schooner in such a case only to keep to leeward close of the day.

604. Seals thus met with upon the sea-surface are roughly classed by the hunters as "sleepers" and "travellers," and the former are of course the most easily approached. Whether in canoes or boats, paddles are employed in preference to oars, as they enable a more noiseless approach to the seals. When a seal is seen, the boat or canoe is quietly but swiftly impelled toward it, till the hunter believes that he has arrived within sure range, when he fires. If killed, as happens in the majority of cases, especially now that the shot-gun has superseded the rifle, the seal may either remain floating upon the surface or begin to sink slowly. In either case, the boat or canoe is at once urged forward, and if the carcass, which does not differ much in specific gravity from the water, is already partly submerged, it is at once secured with a 15-foot gaff, and hauled on board. If the seal should happen to be merely badly wounded, it either struggles upon the surface until gaffed, or, if retaining strength to do so, dives. If quite lightly wounded, as of course happens in some cases, it may eventually escape; but if severely wounded, it is probably killed at the next rise after a short submersion.

605. We are informed that it has been learned by experience that seals may easily be lost if shot in the neck, as in this case the muscular contraction of the body often forces most of the air from the lungs, and the carcass then may sink much more rapidly than usual.

606. This brief description refers to the killing of seals by shooting, which is now the method most commonly practised.

607. The spear is still often employed by the Indians, and when used it involves a closer approach to the seal, before it can effectively be thrown. If either of the two detachable barbs enters the body the seal is never lost, and if neither strikes it, it escapes unhurt; in short, if the seal is speared, it is secured.

608. The dead seals are drawn into the boat or canoe, and brought back at the close of the hunt to the schooner, on board of which they are subsequently skinned, and the skins laid down in dry salt for curing. It is said that in recent years considerable improvement has been made in, and extra care given to, the preserving of the skins on the schooners. This will no doubt have a favourable influence on the prices obtained for the "pelagic skins."

609. The prosecution of this industry at sea requires all the courage and skill which can be brought to bear on it. The canoes often find themselves far from the supporting schooner, and should bad weather or one of the frequent fogs of the northern part of the west coast set in, it may be difficult or impossible for them to regain her with ease. Several instances are known where Indian hunters out off the west coast of Vancouver Island have entirely lost the supporting schooner in fogs, and have only regained the distant shore after suffering great hardships.

610. The accusation of butchery laid against those who take the seals on shore cannot be brought against this pelagic method of killing the seal, which is really hunting as distinguished from slaughter, and in which the animal has what may be described as a fair sporting chance for its life. The little vessels employed in such work must be staunch and well found, for they have not only to make long voyages, but must be able to keep the sea in any weather, and it often happens that they have to lie-to for days together in storms, with all hands crowded in by no means comfortable or commodious quarters below.

611. Thus, whatever arguments may be advanced against some of the methods and consequences of pelagic sealing, it is not possible to speak of these in terms such as those employed by Lutké, who visited the Pribyloff Islands as long ago as 1827, and who records his impressions as follows:—

"Il y a quelque chose de révoltant dans ce carnage de sang-froid de quelque milliers d'animaux sans défense. Les chasseurs, tout endurcis qu'ils sont à ce genre de meurtres, avouent que souvent leur main a peine à se lever pour frapper une créature innocente qui, les pattes en l'air et poussant des cris plaintifs, quelquefois tout à fait semblables à ceux d'un enfant qui pleure, semble implorer miséricorde."\*

612. Free use has been made of the appellation "poachers" as applied to pelagic sealers in general, and to the Canadian sealers in particular, in the course of discussions arising in the Behring Sea controversy, with the obvious purpose of prejudicing public opinion. The use of this term may be justified in the case of raiders upon the breeding islands, but in such cases only, and, as has already been stated, no instance is actually known in which Canadian sealing-vessels have been found raiding the Pribyloff Islands. It more nearly describes, however, the operations of the sealing fleet in the southern hemisphere, which for many years has consisted almost solely of vessels sailing from the

\* "Voyage autour du Monde," Tome i, p. 261.

United States, and which as lately as 1880 numbered ten vessels, aggregating 1,277 tons, and manned by 272 men.\* The decreased importance of this fleet in still later years has resulted only from the reduction in number of seals brought about by its operations. Sealing by these adventurers has been conducted entirely on land, on islands or coasts either nominally or actually in the possession of various Powers, but in no instance controlled by the United States, and in some cases in direct infraction of all local laws. The killing of the seals has always and everywhere been carried out in the indiscriminate, ruthless, and wasteful manner described in detail in several of the works elsewhere cited in this Report, and in most cases a greater part of the catch has consisted of females.†

(C).—*Proportion of Seals lost.*

613. As to the proportion by number of seals which are lost after being killed or mortally wounded, to those actually taken, a great variety of very wild statements have been made, and it must be admitted that in so far as concerns mere assertion and reiteration of such assertion by means of the press and in every other conceivable manner, the critics of pelagic sealing have established an unchallenged supremacy over its defenders. If popular opinion could be educated into the belief that the operations of the pelagic sealer are wholly barbarous and scandalously destructive, by the means of unsupported assertion, this should have been fully accomplished by this time. It is necessary, however, in order to arrive at as nearly as possible a true result, to weigh and criticize the evidence offered, and to take into account the sources from which it comes. It is further most important to remark that actual numerical statements are far more trustworthy and more susceptible of critical analysis than general assertions, which, however, have heretofore been those most commonly employed as the basis of argument in this question.

614. Disregarding mere rhetorical statements made by irresponsible individuals, or given forth without signature in the press, the following citations may be made as representing the published evidence adduced in official reports in regard to the loss of seals by the sea-sealers. It is wholly upon the evidence here cited or referred to that all the statements as to great losses of seals in pelagic sealing have, up to this time, been founded.

Captain C. A. Abbey, from June 1886 to the latter part of August in the same year in command of the United States' Revenue Cutter "Richard Rush," in Behring Sea, says of the pelagic sealers: "I should judge that they killed about: three for every one they got."‡

Captain Shephard, in command of the same vessel in 1887 and 1888, says, on the same subject: "I have no very accurate information on which to base an opinion, but I should judge that they lost from 40 to 60 per cent. of them. I saw a good many shot from the boats as I was approaching, and I think they lost two or three out of five or six that I saw them shoot at."§

Mr. W. B. Taylor, Agent of the United States' Treasury Department on the Pribyloff Islands in 1881, says, in answer to a question as to the proportion of seals recovered by pelagic sealers, "that he does not believe that more than one-fourth of the seals shot at are got, the rest sinking."|| This was before the year 1881, when but few vessels had as yet engaged in the industry, and one only is actually known to have been in Behring Sea in this year.

Dr. H. H. McIntyre, Superintendent of the Pribyloff Islands for the lessees for a number of seasons, says: "I think not more than one-fifth of those shot are recovered. Many are badly wounded, and escape."¶

Mr. G. R. Tingle, at the time Government Agent in charge of the Pribyloff Islands, gave the following testimony: "The logs of marauding schooners have fallen into my hands, and they have convinced me that they do not secure more than one seal out of every ten that they mortally wound and kill." He then proceeds to make some calculations on the basis of this statement. At a later stage, and when more closely pressed for details, he explained the allusion above made more clearly as follows: "I remember reading the log-book of the 'Angel Dolly,' which I captured. There was an entry in that log-book which read as follows: 'Issued to-day to my boats 300

\* "Fishery Industries of the United States," vol. ii, p. 429.

† Ibid., p. 431.

‡ "Fur-seal Fisheries of Alaska," House of Representatives, 60th Congress, 2nd Session, Report No. 3983, p. 246.

§ Ibid., p. 230.

|| Ibid., p. 118.

¶ Ibid., pp. 164 and 170.

rounds of ammunition, all expended, and one seal-skin; . . . another entry: 'Seven seals shot from the deck, but only secured one.'\*\*

Mr. Tingle gives some further citations of a similar kind from the same log, which may, however, be found at length in the "Fur-seal Fisheries of Alaska." In it the captain refers to the character and want of skill of his crew in language rather too forcible for citation in this report.†

Mr. C. A. Williams, a member of the Alaska Commercial Company, in another part of the report of the investigation on the Fur-seal Fisheries, from which the above quotations are made, refers again to the same log-book as the "best testimony we have" on the subject of the proportion of seals lost by hunters at sea, and adds that the captain, in the log, estimates that he got but one seal in seven shot at.‡

Mr. H. D. Wolfe, who described himself as "in the newspaper business," and stated he had some familiarity with certain parts of Alaska, though claiming no experience in sealing, gives testimony to the following effect: "I think the hunting of seals in the open water is very injudicious, because the hunters will shoot, and out of every 100 seals they shoot you will not get more than thirty. . . . If you don't hit a fur-seal or a hair-seal right in the head, you are not going to catch him; he will sink.§

615. Nothing more precise than the statements just quoted, every one of them made by those presumably interested in, or engaged in, protecting the breeding islands, but without personal experience in this matter, has been found as authority for the theory which has been so diligently propagated, that excessive waste of seal life results from the practice of pelagic sealing.

616. The following statements, called forth by the publicity given to the above-mentioned theory, though for the most part made by persons directly interested in pelagic sealing, are given over their signatures, and as the result of experience, extending in some cases over many years, must be considered as of a much higher order of accuracy than those above cited:—

Captain J. D. Warren, one of the pioneers of pelagic sealing, and for over twenty years personally engaged in the business, says: "Indians rarely lose a seal they strike, and if one escapes, it is always but slightly wounded. . . . My experience with White hunters is not so extensive as with Indians, but from what I have seen while engaged in sealing, I can say that not over 6 in 100 seals killed by White hunters are lost or escape. . . . Experienced hunters seldom lose a seal."||

617. Mr. W. Fewings, with three years' experience of seal-hunting on the Pacific coast and Behring Sea, says: "The average number lost does not exceed 6 in 100, and by Indians not 6 in 1,000."¶

618. Captain H. F. Seward, who has been two years master of a sealer, employing in one year Indian hunters and in another White hunters, says: "The Indians lose very few seals, for if the spear strikes the seal is got, and if the spear misses, the seal of course escapes unhurt. . . . The seals lost by White hunters, after being shot or wounded, do not, on the lower coast, exceed 6 in 100, and on the Alaskan coast and in Behring Sea, not over 4 in 100. On sailing I generally take 10 per cent. additional ammunition for waste shot—that is, if calculating on a catch of 3,000 seals, I would take ammunition for 3,300 shots. That was double the excess the hunters would consider necessary, and I never knew the percentage of waste shot to be used."¶¶

619. Captain William O'Leary, with four years' experience of sealing, in which he sealed into Behring's Sea one year with an Indian crew, and three with White crews, says: "My experience with Indian hunters is that they lose none—at most, a few—of the seals they spear. . . . The number of seals lost by White hunters does not exceed 6 in 100, and many hunters lose much less than that number."\*\*

Mr. W. Munsie, an owner of sealing-schooners, in 1886, and therefore long before the question of losses by pelagic sealers had achieved the notoriety which it subsequently has, writes thus to the Honourable G. E. Foster, Minister of Marine and Fisheries: "Allow me to contradict a statement made by Special Agent Tingle, of the United States' Treasury Department, in which he says that three-fourths of the seals shot in the water sink and are lost. From the experience of our old hunters, I maintain but a small percentage is lost in

\* "Fur-seal Fisheries of Alaska," House of Representatives, 50th Congress, 2nd Session, Report No. 3883, pp. 164 and 170.

† See "Further Correspondence relating to Fur-seal Fisheries in Behring's Sea," Washington, 1830, pp. 37, 38, and 332.

‡ "Fur-seal Fisheries of Alaska," pp. 103 and 109.

§ "Report of United States' Senate Committee on Relations with Canada, 1890," p. 140.

¶ Parliamentary Paper [C.—6131], London, August 1890, p. 355.

¶¶ Ibid., p. 356.

•• Ibid., p. 337.

this way, probably not over 1 in 50. I doubt if the loss is as great as that caused by the rejection of skins after being clubbed by the Alaska Commercial Company on the islands, to which reference is made in the tables of Elliott's Report.\*

620. Mr. A. R. Milne, Collector of Customs at Victoria, who has had occasion to make, for official purposes, a special study of the pelagic sealing industry, and to take much sworn evidence from hunters and others engaged in sealing, in summing up his conclusions on the point here in question, writes: "Many erroneous opinions have been given in the American press, and by the paid officials of the Alaska Fur Company, as to the loss of seals by wanton slaughter (as they term it) by our sealers. I have made due and diligent inquiry as to the percentage of seals liable to be lost after being shot, and from what I have gathered it amounts, at most, to only 6 per cent."†

621. Further evidence on this subject, derived from sworn statements obtained by Mr. Milne, with special reference to the last two or three years, is printed in Appendix (II). The following is an abstract of the general statements made:—

C. J. Kelly, with two years' experience of sealing, stated his belief that the average number lost is less than 3 per cent.

Captain W. Petit, says that Whites do not lose more than 5 per cent., Indians 1 per cent.

Captain W. E. Baker, states that the proportion of seals lost was not more than 3 per cent.

C. N. Cox, states that the Indians lose 1 per cent., the White hunters 4 or 5 per cent. Captain T. M. Magnesen believes 3½ per cent. would be a fair average figure for seals lost.

H. Crocker states the loss at 3 to 4 per cent.

George Roberts, with four years' experience, gives 3 to 5 per cent. as representing the proportion lost.

R. Thompson, with two years' experience, also places the loss at 3 to 5 per cent.

A. Laing, with ten years' experience with Indian hunters, states that they do not lose more than 1 in 10.

Captain W. Cox, with four years' experience with Indian crews, states that there is no loss of seals when Indians employ the spear.

622. From information obtained by ourselves on the West Coast, the following brief notes may be given:—

Martin Lundberg, with three other practical sealers, possessing no vested interest in sealing, and at the time employed as seamen, and no longer connected with the sealing business, concurred in stating, as to the proportion of seals lost, that if a man should lose two out of thirty killed he would be considered a poor hunter.

623. Judge J. G. Swan, of Port Townsend, Washington, whose familiarity with the sealing industry of the West Coast, and particularly with the Indian interest in sealing, is well known, went so far as to characterize many of the statements made as to great numbers of seals being lost as "scandalous falsehoods." The same gentleman, in a communication subsequently received on this point, writes as follows:—

"I have seen several Makah Indians who have been here, and they tell me that Indians lose very few seals, whether they spear or shoot them, as they are always so near the seal at such times that they can recover them before they sink. Captain Lavender, formerly of the schooner "Oscar and Hattie," who is a very fine shot, told me that he secured ninety-five seals out of every hundred that he shot. He said that poor hunters, of which he had several on his vessel, would fire away a deal of ammunition and not hit anything, but would be sure to report on their return to the vessel that they had killed a seal each time they fired, but that all the seals sank except the few they brought on board. Captain Lavender was of opinion that not over 7 per cent. of seals killed were lost."

624. On a consultation with the members of the Sealers' Association of Victoria, comprising owners of sealing-vessels and sealing captains, they called special attention and invited inquiry into the matter of the number lost. They explained that when the seals sink after being killed, as they often do, they sink slowly "on a slant," so that it is usually quite easy to gaff them. They further affirmed that the result of the sealing in 1891 was, like that in former years, to show that the loss from this cause averaged below 6 per cent.

625. The captain of the "Eliza Edwards," interviewed at Vancouver, stated, as the result of his experience, that sealing must be learnt like any other business. That "green hands" might lose as much as 25 per cent. of the seals shot, but that with experienced hunters the loss is very small. It might possibly amount to 5 per cent.

\* Parliamentary Paper [C.—6131], London, August 1890, p. 36.

† Ibid., p. 300.

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626. The information on this point, gathered from native sources, has already been referred to in connection with the description of the native modes of hunting, but may here be recapitulated.

Aleut hunters, questioned at Unnaska, say that they never lose a seal if killed, whether shot or speared. Indians of Sitka, when hunting fur-seals, state that they lose sometimes one, sometimes two, out of ten shot. Haida Indians, of Queen Charlotte Islands, state that they very seldom lose seals shot at.

Mr. A. Mackenzie, long familiar with the Haida Indians, says that a very small proportion of the seals fired at by them are lost—"very seldom," "very few indeed." "Some canoes do not lose a single seal the whole season."

Mr. R. H. Hall, of the Hudson's Bay Company, and equally familiar with the Haida and other Indians of the coast, said that "an Indian killing or severely wounding a seal is pretty safe to get it."

Mr. R. Cunningham, of Port Essington, believes that the Tshimsians may lose as many as one in five seals shot. The Makah Indians, of Cape Flattery, informed us that when they speared the seals they practically lost none, but that when shot, a few were lost. In taking fifty seals they might lose one or two, but sometimes would lose none.

627. The statements given above are of course all of a general character, and open to the objections which may be urged against such statements. Those referring to the native loss in hunting, whether derived from the natives themselves or quoted from Messrs. Mackenzie, Hall, and Cunningham, are entirely removed from any suspicion of self-interest. It has been endeavoured, however, still further to elucidate the question here considered by tabulating all the well-authenticated statements referring to the actual numbers of fur-seals shot, and the proportion lost. These, it will be observed, record the actual numerical loss of seals shot and not secured, by over twenty different hunters in various years, the whole number of seals thus accounted for numbering nearly 10,000. Some of these statements have already been published, while others are those obtained in the course of our own inquiries. The tables given below show the results of this method of treatment, and are believed to afford evidence of a very high class, directly referring to the question under discussion:—

## WHITE HUNTERS.

Name.	Vessel.	Skins obtained.	Seals Lost.	Loss Per cent.	Year.	Remarks.
1. J. Wilson ..	"Triumph" ..	23	1	4.3	1889	First year of hunting.
2. "Hunter" ..	" ..	(over) 60	1	1.6	1889	
3. W. Fewing ..	"Favourite" ..	(about) 400	23	6.2	1887	Some only "shot at." First year of hunting.
4. " ..	" ..	(over) 500	30	6.0	1888	
5. " ..	"Triumph" ..	140	1	0.7	1889	
6. Oscar Scarr ..	"Viva" ..	(over) 600	20	3.5	1888	
7. Walter House ..	"Walter L. Rich" ..	185	5	2.8	1889	First year of hunting; other hunters on schooner lost about same proportion.
8. W. O'Leary ..	"Pathfinder" ..	44	1	2.3	1889	
9. Fred. Gilbert ..	" ..	518	14	2.7	1887	First year of hunting.
10. " ..	" ..	244	5	2.0	1883	
11. " ..	" ..	454	16	3.5	1880	
12. George Howe ..	"Theresa" ..	159	(about) 7	4.4	1886	Idio.
13. " ..	"Pathfinder" ..	42	(about) 20	4.5	1886	
14. " ..	"Penelope" ..	613	31	5.0	1.87	
15. " ..	"Viva" ..	734	37	5.0	1880	
16. Thomas Howe ..	"Theresa" and "Pathfinder" ..	397	(about) 20	5.4	1886	
17. " ..	"Penelope" ..	510	(about) 30	6.0	1887	
18. " ..	"Lily L." ..	316	12	3.7	1888	
19. " ..	"Viva" ..	587	27	4.4	1889	
20. Albert Bertram ..	"Annie C. Moore" ..	320	21	6.8	1889	Idio.
21. Captain Jacoby ..	" ..	117	2	1.7	1888	
22. " ..	"Allie Alger" ..	613	21	3.4	1883	
23. Martin Lundberg ..	" ..	33	1	3.0	188	Quoted as an example of a good day's work.
24. Captain Spring ..	"Favourite" ..	(about) 180	1	0.5	1888	
25. Captain McLean ..	" ..	90	(about) 5	5.5	1888	
26. C. J. Kelley ..	" ..	79	2	1.6	1891	
27. Captain W. Baker ..	" ..	55	1	1.8	1891	
28. "Hunter" ..	" ..	498	17	3.4	1891	
Abel Douglas ..	"May Belle" ..	216	..	7	..	
" ..	" ..	203	..	3.4	1891	
Total ..	..	9,337	381	4.0		

Nos. 1 to 20, from signed statements given in Parliamentary Paper [C. 6131], 1890. Nos. 21 and 22, from "Relations with Alaska," United States Senate, 51st Congress, 1st Session, Report 1536. Nos. 23 to 25 from evidence personally obtained. Nos. 26 to 28 from sworn statements obtained in 1892.



## INDIAN HUNTERS.

Native Hunters.	Tribe or Place.	Skins Obtained.	Seals Lost.	Loss Per cent.	Year.	Remarks.
No. 1 .. ..	Sitka .. ..	19	4	20.0	..	
" 2 .. ..	Uaida .. ..	21	0	..	1890	
" 2 .. ..	" .. ..	38	3	8.0	1891	
" 3 .. ..	" .. ..	37	0	..	1890	
" 4 .. ..	" (on Adale) ..	126	0	..	1889	
" 5 .. ..	" .. ..	90	3	3.3	1889	
" 6 .. ..	Haitank .. ..	8	2	25.0	1891	
" 7 .. ..	Makah .. ..	50	1, 2, or none	..	..	

Nos. 1 to 7, all from evidence personally obtained.

629. A certain proportion of the seals shot of course escape, and in killing on the islands each year, some are found with encysted shot in the skin or blubber. A few ounces of shot thus obtained was shown to us on the Pribyloff Islands as that collected from seals killed in 1890. This aggregated much less than  $\frac{1}{2}$  lb., but placing the amount at 8 ozs., this would give, at 150 pellets to the lb., seventy-five shot gathered from 21,000 seals killed, or at the rate of one pellet to 280 seals. As in most cases several pellets might be found in a single seal, while in other cases shot might be present but not found in skinning and cutting up the seal, the proportion thus stated probably more than represents the ratio of seals so slightly wounded as to reach and live on the islands in apparent health.

629. It appears to have been very generally taken for granted, on *à priori* grounds, by most of the apologists for the methods of land killing, that the fur-seal does and must sink immediately when shot at sea. Actual experience contradicts this assumption in the manner and to the degree explained above, and it is, therefore, useless to enter at length into the question of the analogy of the fur-seal with other animals in this respect, which has been advanced to show that the fur-seal should not float. Arguments of this kind have been derived particularly from the circumstance that the various species of hair-seal often sink when shot before they can be recovered. It must not be forgotten, however, that the hair-seal belongs to an entirely different group of the Pinnipedia, and is characterized not only by a much heavier osseous framework, but also by a smaller lung capacity in proportion to its weight. Yet even the hair-seal is often shot and secured at sea, where its pursuit is made an industry, and it is only when exceptionally lean that it sinks rapidly.

630. The following notes bearing on this particular subject may be quoted from Mr. J. A. Allen's "Monograph of North American Pinnipeds," which has already been frequently referred to:—

"Like other species of the seal family, the harbour seal is very tenacious of life, and must be struck in a vital part by either ball or heavy shot, in order to kill it on the spot." Says Mr. Recks: "I have been often amused at published accounts of seals shot in the Thames or elsewhere, but which 'sank immediately.' What seal or other amphibious animal would not do so if 'tickled' with the greater part of, perhaps, an ounce of No. 5 shot? He adds that it is only in the spring of the year that this seal will 'float' when killed in the water, but says that he has never seen a seal 'so poor, which, if killed *dead on the spot*, would not have floated from five to ten seconds,' or long enough to give 'ample time for towing alongside,' supposing the animal to have been killed by shot, and the boat to contain 'two hands.'"

Again, referring to the bearded seal, Mr. Allen quotes Kumlien, as follows:—

"In July, during the moulting time, their stomachs contained nothing but stones, some of them nearly of a quarter-pound weight. They seem to eat nothing during the entire time of shedding—probably six weeks. Certain it is they lose all their blubber, and by the middle of July have nothing but 'white-horse'—a tough, white, somewhat cartilaginous substance, in place of blubber. At this season they sink when shot."

631. No loss occurs at sea from the taking of seals with "stagey" or unmerchantable skins. All those familiar with pelagic sealing who were questioned upon this point agreed as to the fact that "stagey" skins are practically never got at sea, not even in Behring Sea at the season at which the seals upon the islands are distinctly "stagey." The skins taken in the earliest part of the sealing season, in December and January, are sometimes rather inferior, but they do not fall into the general category of "stagey" skins.

632. It would thus appear that the distinctly "stagey" or "shedding" condition of the fur-seal supervenes after a sojourn of some length on shore, and that such sojourn results

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in a general change of pelage which does not occur in the same marked way when the animals remain at sea. The same circumstance has further some bearing on the question of the possible excursions of the seals from the breeding islands, and on the interchangability of the seals remaining on or about the islands with those of the general sea-surface, which thus seems to be exceptional, during at least the later summer and early autumn, which is the "stagey" season ashore.

(D.)—*Composition of Catch.*

633. By the pelagic sealers and by the Indian hunters along the coast, fur-seals of both sexes are killed, and, indeed, it would be unreasonable, under the circumstances, to expect that a distinction should be made in this respect, any more than that the angler should discriminate between the sexes of the fish he may hook. Even upon the breeding islands, it is difficult for the most experienced natives to distinguish virgin females from young males of corresponding size in the drives,\* and in the autumn of 1891, we are informed by an eye-witness, that in endeavouring to secure a female yearling seal alive for the zoological collection at San Francisco, no less than seven male seals were successively captured by the natives, who, judging from the general appearance of the animals, believed them to be females, before one of the requisite sex was obtained! At sea, save in exceptional cases, females can only be certainly detected by an examination of the body when it is brought on board. The fur of the female is equally good with that of the male, and under the conditions under which the hunting is carried on, there is room for no sentimental considerations in favour of either sex. But it is unfortunately the case, that at certain seasons considerable numbers of gravid females are thus killed, and this killing is deprecated by the better classes of the pelagic sealers themselves, not alone on grounds of humanity, but because they see clearly that it is unduly destructive to the industry in which their fortunes are embarked. From communications held with pelagic sealers, there can be no doubt that any equitable arrangement having for its object the minimizing of this particular cause of loss would be favourably received by them. With the natives along the coast it is somewhat different; their traditional code of ethics admits of no period of immunity for any wild animal, and the contingency of future decrease appears to them to be too remote to be taken into their consideration. They are constitutionally observant, and in no degree reticent about the killing of females with young, and the statements on this subject obtained from them may be implicitly trusted.

634. On the question of the general composition of the pelagic catch in respect to sex and age of seals killed, and the special abundance of various kinds of seals in certain parts of the hunting area or at particular dates, evidence varying much as to numerical proportion and often diametrically opposite in bearing may easily be obtained. It is only natural, and is entirely in accord with what might be expected, that the proportions of seals by sexes and ages should be found to differ very considerably in different instances, even in a single year, in conformity with the dates or places in which the greater proportion of any particular catch was secured, and the kind of seals in each case fallen in with. Some landmen are found to be emphatically certain that nearly the whole of the pelagic catch consists of females, but this does not accord with the testimony of those who are or have been actually engaged in sea-sealing; and while it is not maintained that the evidence of such practical sealers is entirely untinged by motives of personal interest, it must be evident that these men know more on the subject than any others. Subjoined are quotations or abstracts relating to the composition of the pelagic catch, obtained from what are believed to be trustworthy sources, and in a number of cases derived from statements made over the signatures of the individuals as taken under oath. The very fact that these statements, though taken at different times, and while varying considerably from the point of view of numerical proportions, tally very well in the main, one with another, is an inherent proof of their credibility.

635. It must not be forgotten, however, in examining these statements, that the complementary information derived from the breeding islands shows that the persistent killing of young males has led of late years to the existence of a very large surplus of females, and that, therefore, the proportion of females to the whole numbers of seals, whether at sea or ashore, is, at the present time, according to the information obtained by us, quite abnormal.

The term "coast catch," often used in the following statements, must be understood to mean the seals taken to the south of the Aleutian Islands, and, as a rule, to those taken south of any part of the coast of Alaska.

\* See "Bull. Mus. Comp. Zool.," vol. ii, Part I, p. 105.

The evidence first quoted below, is that obtained from Indian hunters.

The Indians of Neah Bay, accustomed to hunt about Cape Flattery, in the State of Washington, informed us that in the early part of the summer they often found living young in females killed, of which at that season there was a considerable proportion; but later in the summer no gravid females are found, most of the catch consisting of young males or young females. Of the total catch, they thought that about one-twentieth consisted of grey pups. In 1890 seals of this class were abundant, but in 1891 very few.

636. At Nawitti, near the north end of Vancouver Island, the Indians find young in the females killed in the early summer. These are quite strong, and if thrown into the water swim well. One man kept such a young seal alive for six days.

637. At Bella-Bella, the Indians think that the larger proportion of the seals they kill in the early part of the season are females, and these are often with young. Young taken from females often live for three weeks or a month. They drink water, but will not eat, and so probably die of starvation. Some time in May the females disappear, and the greater part of the catch then consists of young males, by which they mean males somewhat smaller than the full-grown female.

638. About the Queen Charlotte Islands, many of the seals killed are females, and a large proportion of these, in the latter part of April and early part of May, are with young. The Indians state that the young taken from the mother might live a couple of hours, but they are invariably killed, as it is believed that if allowed to live the hunters will be unlucky. A White hunter, who had been with the Indians here, stated that he had tried to keep such young, which could, in some cases, swim quite strongly, but that the Indians had begged of him to kill them. Mr. A. Mackenzie, when buying skins for the Hudson's Bay Company at Masset, refused to purchase the skins of unborn pups on any terms; but after a time the Indians found they could sell them to the Chinese, working at salmon canneries on the Skeena River.

639. About Bonilla Island, in the northern part of Hecate Strait, the seals obtained in spring are chiefly females, but after the 1st June these leave, and the catch is then composed of non-breeding seals, supposed to be about three years old. The young are often fully matured in the female, and Indians say that they will swim if thrown into the water. The people here have not the same superstition as those on the Queen Charlotte Islands, and have sometimes kept the young seals alive for three weeks or a month. Mr. Lockerby, connected with the Hudson's Bay Company at Port Simpson, states that the skins purchased there are classed by size, not according to sex, but, so far as he can judge, a large part consists of young males, with a considerable proportion of grey pups.

640. Indians hunting from Sitka, in South-eastern Alaska, often find living young in females killed. These are skinned, and the skins possess some little value.

641. In the eastern part of the Aleutian Islands, so inconsiderable a number of seals are killed in spring or summer, that very few gravid females can be included.

642. The following evidence on this particular subject is that contained in written statements as to the various places of sealing, made by some of the most experienced and intelligent pelagic sealers:—

643. William Fewings says: "It is very seldom a female is killed in Behring Sea, carrying her young with her, and out of 1,000 killed on the coast earlier in the season, less than one-third are females carrying their young."

644. Captain J. D. Warren says: "Of the seals taken along the coast, about one-half are females, and of the females, not more than one-half are with young. In Behring Sea, not more than 1 in 100 of these taken by the hunters are females with young, because as soon as the females carrying their young get into the sea they go to the breeding islands or rookeries, and in a few days their young are born. The cows remain with their young till they are quite able to take care of themselves. I do not think that of the seals taken by Indian and White hunters more than 30 per cent. are females actually breeding, or capable of breeding. 'Old bulls,' 'bachelors,' 'two-year-old pups,' and 'barren cows' make up the great majority. Cows actually breeding are very watchful, and while on their voyage northward are ever on the alert, so they are difficult to take. On the other hand, the other classes above named make up the great class of 'sleepers,' from which fully 90 per cent. of the whole catch of hunters is derived. I never saw or heard of a 'cow' having her young beside her in the water, either on the coast or in Behring Sea."

645. Captain William O'Leary says: "About half the seals taken along the coast are cows, and perhaps two-thirds of the cows are with young. Putting a vessel's catch at 400, from 150 to 175 might be cows with young. In Behring Sea the average of cows with young killed will not average 1 in 100, for the reason that as soon as the cows reach the sea they go to the breeding islands, where their young are born."

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George Howe says: "About one-third of the seals taken on the coast are cows with pup, or capable of being with pup. In Behring Sea I got four cows with pups in them." (This was in a season's catch.)

Albert J. Bertram says: "I got during the season 320 seals. . . . . On the coast I got about twenty-five to thirty females with young in them, and in Behring Sea I got six or seven. I never saw a cow with her pup alongside of her in the water."

646. In the sworn statements obtained by Mr. Milne, and already referred to, frequent reference is made to the composition of the catch, both along the coast and in Behring Sea. From these statements the following abstracts have been made:—

C. J. Kelly, two years' experience in sealing, found the percentage of females to be always less than that of males.

Captain W. Petit, who seems to have paid particular attention to this matter, says that in 1891 of 765 seals killed, 18 were females carrying young—not quite 2½ per cent. "About 10 per cent. every season are barren cows, and 12½ per cent. grey pups (always males). My catch was more than 75 per cent. males; more males were taken in Behring Sea than in any former year." He further states that in 1886 he took off Barclay Sound, in one day, 104 seals, of which 3 only were females. In 1887, on Portlock Bank, 29 seals were taken in one day; of these 2 were females. "More barren cows are killed than those bearing young."

Captain W. E. Baker's proportion last year was 3 males to 1 female. The percentage of barren females was considerable.

Captain C. N. Cox states that females are more abundant in February, March, and April than at any other time. Very few females with pup are taken in May. Bearing cows are not got in Behring Sea after their young have been born. Of 848 seals taken along the coast by him in 1891, 75 per cent. were males, 15 per cent. were breeding females, and 10 per cent. barren females. In 1889, 90 per cent. of his catch consisted of males.

Captain A. Bissit believes that more males than females are killed, and that more females in proportion are taken in March and April than in other months. His catch in 1891 showed 75 to 80 per cent. of males.

Captain T. M. Magnesen states that females are most plentiful in February, March, and April; they about equal the males then. Near Behring Sea the proportion is about 80 males to 1 female. About half his catch last year was females, 12 or 14 per cent. bearing females, the others barren.

H. Crocker, four years' experience, thinks females are most plentiful from February to May: 80 per cent. of the seals killed are males.

R. Thompson, two years' experience, says that 70 to 80 per cent. of the seals taken are males.

Andrew Laing, ten years' experience, found in his coast catch that 3 in every 5 seals were males; in Behring Sea 4 in every 5 were males. The females include barren cows.

Captain W. Cox, four years' experience, states that females are most abundant in February, March, and April; in February and March there are as many females with young as males. About 65 or 70 per cent. of the seals taken are males, 15 per cent. are barren females, and about 15 per cent. bearing females. Of 2,434 seals taken by him in Behring Sea, about 5 per cent. were females in milk.

Captain Charles Hackett, five years' experience, has observed no difference in the proportion of females in different months. In 1890 about one-quarter of his catch consisted of females; in 1891, about one-half. In a catch of 1,555 seals in Behring Sea, he took only ten females with pup between the 15th July and the last of that month. Got quite a number of barren cows.

Captain C. McDougall, three years' experience, took 1,100 seals in Behring Sea, of which 800 were males. The proportion of barren cows is about one to ten bearing cows in Behring Sea.

Captain A. Douglas, seven years' experience, has not obtained more seals in one month than in another. One or two females in pup are taken during the season in Behring Sea.

Captain S. S. McLean, seven years' experience, got more males than females along the coast; about half and half in Behring Sea. About 5 per cent. of the females taken in Behring Sea are barren. My catch last year (1891) was made up of two parts males and one female.

647. In conferences held with sealers, some additional particulars as to the proportion of females taken were obtained, as follows:—

Captain Dod stated that he had taken over 600 seals in Behring Sea, of which less than twenty carried young, and that the schooner "Viva" in 1890 took 2,000 seals in



Behring Sea, of which only two were females with young. Captain Baker said that in 1801 on Portlock banks he found males most abundant, consisting of young, medium, and a few full-grown animals.

648. A consultation held with a number of representative pelagic sealers on this particular point elicited the following general statement, which, it is believed, is in entire accordance with the facts in so far as these are known from practical experience, as no degree of reticence was shown in answering direct questions on all points involved:—

It is generally admitted that a considerable proportion of gravid females are found among the seals taken in the early part of each sealing season. Such animals are generally fallen in with in more or less diffuse groups, one area of sea-surface being characterized by them, another by young males or by yearlings, a circumstance which may explain the rather varied proportions by sex and age of seals comprised in the catches of different vessels. After about the 20th May, or, at latest, the 1st June, very few females with young are ever taken. The pregnant females then begin to "bunch up," and to travel fast toward Behring Sea, so that in favourable sealing weather (or, in other words, calms and light winds) the schooners cannot keep up with them. After this time, the catch consists chiefly of young males or of barren females.

649. Behring Sea is now usually entered by the pelagic sealers between the 20th June and the 1st July, and in Behring Sea the same conditions hold. The gravid females are well ahead of the sealers, who have been working up the West Coast, and go straight to the breeding islands. By the time the sealers reach the sea, it is practically only the young males and barren, or young and non-breeding, females which remain dispersed over the sea to be taken. At a later date in the summer, a few females in milk, and, therefore, presumably from the breeding places on the islands, are occasionally killed, but no large number. This last fact is the only one which has a direct bearing, or establishes a direct connection, between the economy of the breeding rookeries and the hunting of legitimate pelagic sealers, as distinguished from raiders on the islands, in Behring Sea. The killing of unweaned pups upon the islands, together with other matters bearing on the possible excursions of breeding females to sea, are fully noticed in another part of this report, which should be referred to in this connection.

650. Statements of the most contradictory kind can be quoted on the subject of the composition of the catch made by the pelagic sealers. Doubtless, this varies very much in different cases and in different seasons, but a number of the statements met with are so extreme from one point of view or the other, that they must be supposed to have been largely coloured by interest. The single fact, already referred to, that a certain number of the young males killed upon the islands are found to contain pellets of shot, is sufficient to show that the catch of the pelagic sealers and Indians is not practically altogether composed of females, as some persons would have us believe. The foregoing paragraphs give a general statement of the case, without taking such extreme views on either side into account. It may be added, however, that the excessive killing of young males on the breeding islands may probably, by changing the proportion normally existing between the sexes, have had the result of directly increasing the number of females found and killed at sea in late years. This point is elsewhere treated at greater length.

651. The general conclusion to be derived from an examination of the statements above noted is, that in proportion to the number of skins obtained, that part of the pelagic catch made in the early part of the season, and to the south of the Aleutian Islands, is the most damaging to seal life as a whole, while the skins taken after this date, whether without or within Behring Sea, are obtained at much less proportionate cost to seal life.

652. With reference to the composition of the catch of the pelagic sealers, a note may be added respecting the relative amounts of those portions of the catch made to the south and to the north of the Aleutian chain, known as the "coast catch" and "Behring Sea catch" respectively. These may be represented in tabular form as follows:—

Year.	Coast Catch.	Behring Sea Catch (Eastern and Western).
1885 .. .. .	20,389	800
1886 .. .. .	11,921	12,423
1887 .. .. .	8,502	11,784
1888 .. .. .	7,676	16,653
1889 .. .. .	12,371	15,497
1890 .. .. .	21,390	18,165
1891 .. .. .	20,727	28,888

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653. Evidence has been put forward as to the composition of the catches on shore and at sea, based upon the reports of skins as sorted in the factories in London where the skins are prepared for the market. It is, however, to be borne in mind, that the skins arrive at these factories classed as they were for sale, and the titles used do not necessarily imply the actual source of origin, but rather the kind and quality of the skin.

It is, however, asserted by the experts, that the different localities produce somewhat different skins, which is probable. Thus it is said that while the skins known as "Alaska" (assumed to come from the Pribyloff Islands) and "Copper" (assumed to come from the Commander Islands) are distinguishable, in that the former have as a rule a longer and finer fur, that yet the skins from the two sources are oftentimes identical in quality. Indeed, it would appear that in many cases skins are classed as "Alaska" because they have longer and finer fur, and not because of any known place of origin. As a rule, the "Alaska" skins have come for fifteen years past in much better order than any others. They have been originally better skinned and better cured for all through.

It appears that at the factory, as a matter of fact, they can chiefly tell which are "north-west catch" skins by the obvious marks of shot or spear, which often reduce the market value of a skin by 25 or 30 per cent. But there is nothing to show that such skins were not taken close to or even upon the Pribyloff Islands.

It is also easy, especially after the skins are ready prepared, to recognize the four tests of the female. But, more especially in the smaller skins, the marks of sex are extremely difficult to trace. For instance, in one parcel examined in London, which was marked "faulty," all the skins, with the exception of three, were female, and most of them badly shot-marked. But the great majority were young females, giving but little or no evidence of having suckled any young. There was no evidence to show whether these seals were obtained at sea or on the rookeries by raids.

The female skins were also to be distinguished by the superior fineness of the fur, and by its being thinner on the "flanks" or under part than on the back.

#### (E).—Future of the Industry.

654. As to the probable future of pelagic sealing, which as at present practised has not been in existence for much more than twenty years;—like any other industry depending on the continued existence in suitable numbers of the animal upon which it is based, this may easily be overdone. The regulations under which the slaughter of fur-seals on the Pribyloff Islands has been carried on for the past twenty years or more have on the average been such as to require killing there to be pushed to and beyond the maximum figure which the seal life frequenting these islands could afford, without showing evidences of rapid decrease. The arrangements have been, in fact, so framed as to make the lessees of the Pribyloff Islands as far as possible the sole beneficiaries of the entire eastern side of the North Pacific, under the belief, that by the possession of the breeding islands it was possible to monopolize the industry. The methods upon the islands had themselves resulted in decrease when the growth of the independent industry of pelagic sealing began still farther to affect seal life, and, as elsewhere shown, co-operated in producing a decrease at a more rapid rate in late years.

655. The hypothetical question may here be put: If all killing should be stopped upon the breeding islands, and the pelagic industry be left untrammelled by regulations on the high seas, what would be the ultimate effect on seal life? Experience directly obtained with reference to the fur-seal is here entirely wanting. The history of all the depleted breeding places of other parts of the world clearly points to a single cause of damage, *viz.*, unrestricted and barbarous killing on shore upon the breeding grounds. Analogy with the history of other maritime industries, such as those conducted for ordinary food fishes, becomes, however, in the case supposed, directly apposite. Employing such analogies, it may be affirmed that so long as the industry continues to be profitable, a greater number of vessels will each year be employed in it; but that before long a point will be reached at which, in consequence of the greater competition, the ever-increasing wariness of the seal, and a reduction in total numbers,—the profits will diminish, unremunerative voyages will frequently be made, and a reaction will occur such as to allow a renewed increase of the animal. Such an automatic principle of regulation appears to be necessarily inherent in the seal fishery as in other fisheries, but just what the average annual catch might number when this particular fishery reached its level of stability, it is of course impossible to say. It is not likely, however, that it would show a continued decline so serious as that which has affected the whale fishery, for this is due to special causes which are well known; and, under the conditions which have been assumed for the fur-seal fishery, the breeding places of the animal would be continuously exempted from attack.



656. One of the most obvious and generally applicable methods of controlling pelagic sealing would be the general adoption of rules against the employment of specially destructive methods, and such rules might be arranged by international consent as applicable to certain defined tracts of the high seas, in the manner which has been advocated in connection with the subject of the "purse" seine in the mackerel fishery of the Atlantic coast.\* Thus, the use of vessels with steam power might be prevented, as well as that of rifles in shooting the seals. Nets have scarcely been used along the eastern part of the North Pacific in the fur-seal fishery, and it is improbable that they can be advantageously employed anywhere beyond the three-mile limit. The only known case in which nets have actually as yet been employed occurred in 1888, when it is on record that the Alaska Commercial Company fitted out two schooners, privately owned, to net seals in the passes leading from Behring Sea through the Aleutian Islands. One of these schooners is stated to have obtained 700 grey pups which were sold to the Company at the rate of 2 dol. 50 c. per skin.† Netting, however, forms no part of legitimate pelagic sealing, and might well be altogether prohibited.

657. The use of the shot-gun for the purpose of killing seals at sea has now become so nearly universal, that it is doubtful whether it can be changed without an undue interference with the now established industry. The loss of seals thus shot is, as already shown, small, and there is therefore no cogent reason why this practice should be discontinued. All the evidence shows that the loss when seals are speared by the Indian hunters is practically nil, but to restrict killing to spearing would necessarily be to preclude all but skilled Indians from engaging in it.

658. Any such regulations applied to the use of specially destructive engines, would have the effect, under the assumed conditions, of increasing the aggregate number of seals which would exist when what has been referred to the level of stability is reached.

#### IV.—CONTROL AND METHODS OF SEALING ON THE PRIBYLOFF ISLANDS, THEIR NATURE AND RESULTS.

##### (A.)—Methods employed.

659. The system adopted for the regulation and working of the Pribyloff Islands by the United States Government, when its control had been established, and after the irregular and excessive killing which at first followed on the withdrawal of the Russian authorities, was substantially that which had gradually been introduced by the Russians, as the result of their prolonged experience, but with one very important exception. This exception related to the number of seals allowed to be killed annually. The number was at this time suddenly and very largely increased, being in fact more than doubled, as is elsewhere pointed out in detail; and while the experience of many former years showed that the Russian system, with a limited annual killing, might be maintained with a reasonable certainty of the continued well-being of the breeding grounds, it had in fact, according to the best available information, resulted in a gradual and nearly steady increase in number of seals. The much larger number permitted to be killed under the new regulations at once removed the new control into the region of experiment.

660. Theoretically, and apart from this question of number and other matters incidental to the actual working of the methods employed, these were exceedingly proper and well conceived to insure a large continual annual output of skins from the breeding islands, always under the supposition that the lessees of these islands could have no competitors in the North Pacific. It was assumed that equal or proximately equal numbers of males and females were born, that these were subject to equal losses by death or accident, and that, in consequence of the polygamous habits of the fur-seals, a large number of males of any given merchantable age might be slaughtered each year without seriously, or at all, interfering with the advantageous proportion of males remaining for breeding purposes.

661. The existence of the breeding rookeries as distinct from the hauling-grounds of the young males, or holluschickie, was supposed to admit, and did in former years to a great extent admit, of these young males being killed without disturbing the breeding animals. The young seals thus "hauling" apart from the actual breeding grounds were surrounded by natives and driven off to some convenient place, where males of suitable

\* See "Report of Department of Fisheries," Canada, 1890, p. 70, and Appendix IX, p. 14.  
† Parliamentary Paper [O.—6131], London, August 1890, p. 356.

size were clubbed to death, and from which the rejected animals were allowed to return to the sea. The carcasses were skinned on the killing ground, the skins salted, and at a later date huddled in pairs and shipped, with such duplication or checking of count as might be supposed to afford guarantees to the agents of the Government and to the lessees that the interests of both were fairly treated.

662. There can be no doubt that if the number permitted to be killed had been fixed at an amount so low as to allow for exceptional and unavoidable natural causes of interference with seal life, and if it had been rearranged each year in conformity with the ascertained conditions, killing might have been continued without general damage to the seal life of the Pribyloff Islands, and very probably even with a continued gradual increase in numbers of seals resorting to the islands up to some unknown maximum point. Such results might have followed, notwithstanding the practical imperfection which clearly attached in execution to these theoretically appropriate methods, and in spite of the important change from natural conditions which any disturbance in proportion of sexes involved, if the demands made in the matter of annual take had been moderate; but when the number fixed for killing resulted, as has been shown, in an average slaughter of over 103,000 seals, it bore so large a proportion to the entire number of animals resorting to the islands as to lead necessarily in the long run to serious diminution. This decrease continued, on the whole, in an increasing ratio, being due not only to the actual number of seals slaughtered, but also to the numbers lost in various ways incidental to the methods of control and *modus operandi* on the islands, which loss, though formerly a matter of minor importance (because counted against a large annual surplus), in the face of the greatly decreased numbers, became a very serious addition to the total of diminution. In short, from a transcendental point of view, the methods proposed were appropriate and even perfect but in practical execution, and as judged by the results of a series of years, they proved to be faulty and injurious.

663. Summing up the records as to the number of seals killed on the Pribyloff Islands, Professor J. A. Allen writes as follows:—

"In this year (1833), it was ordered that young seals should be spared each year for the purpose of keeping up the stock. This order was so honestly enforced, that in four years the number of seals on St. Paul's Island increased tenfold. The number annually taken these years was only 8,000 or 10,000, instead of 40,000 to 50,000, the number formerly killed yearly. Subsequently, the killing was allowed to greatly increase, which prevented any augmentation in the number of seals. In 1834, the number allowed to be killed on St. Paul's Island was reduced from 12,000 to 6,000. After this date the conditions of increase were more carefully studied and more carefully regarded, so that there was a gradual numerical increase from 1835 to 1857, when the rookeries are said to have become very nearly as large as now, the natives believing, however, that there has been since the last-mentioned date a very gradual but steady increase."\*

664. From the experiences thus recorded, it appears to be very clearly shown that in the average of years the killing of 40,000 to 50,000 seals on St. Paul was more than this, the principal seal-bearing island, could stand, while that practised during the later years of the Russian control scarcely fall short of the figure at which all continued increase in number of seals would cease. Since the operations of the Alaska Commercial Company began, the number fixed for killing on St. Paul Island has been very much higher than any of the foregoing figures. It was originally fixed at 75,000 for St. Paul and 25,000 for St. George Island, but the law was changed in 1874, so that even a larger proportion of the whole number might be taken on St. Paul's.

665. Captain Bryant elsewhere writes:—

"During the administration of this able Governor (Shisencoff), these nurseries of the seals had been developed from almost nothing to the condition in which they were at the transfer of the islands to the United States. For many years they were able to kill only a small number, but the seals gradually increased, so that they killed as many as 40,000 in one year."†

666. When, therefore, following the extraordinary slaughter of 1868, it became lawful to kill 100,000 seals each year, changes of a very marked kind might have been expected, and, as elsewhere detailed, they soon began to be observed.

667. The incidental waste entailed in taking the annual quota of skins on the Pribyloff Islands for the twenty years of the Alaska Commercial Company's lease is acknowledged by the official figures to have been slightly greater than 7 per cent. of the whole number of skins secured. This includes skins cut in skinning, "stagey" skins of seals killed for food when not merchantable, and a number of young unweaned pups

\* "Monograph of North American Pinnipeds," p. 379.

† *Ibid.*, p. 389.

killed (it is now admitted unnecessarily) for native food. Besides these thus accounted for, however, there is reason to believe that a large proportion of the seals which had been subjected to the very severe ordeal of driving never afterwards recovered.\* Again, the disturbance produced by various causes incidental to the habitation of the islands, together with that, never wholly obviated, which arose directly from the process of driving from the vicinity of the breeding grounds, led to various changes inimical to the favourable continuation of seal life.

608. Such causes began to operate with much increased force when the general reduction became so considerable, that an ever-growing difficulty arose in collecting the fixed annual quota of skins. In addition, the inefficient guarding of the breeding islands from raids made upon their shores by marauders, due to the absence of methods of protection and laxity of control of the natives, became serious evils.

669. Some of the more notable ill-effects which followed from the practical working of the system of administration adopted, have already been referred to at sufficient length, particularly in the paragraphs (§ 395 *et seq.*) treating of changes in habits of the fur-seal, and those outlining the general decrease in numbers resorting to the Pribyloff Islands. A few words may now be added, in greater detail, in relation to the evidence showing the date of the commencement of the decrease and its progress, and then on the defective methods, viewed in such, which have been largely responsible for this result.

670. Statements have been made to the effect that during the lease of the Alaska Commercial Company, frauds were perpetrated in regard to the number of skins taken on the islands and counted for taxation. No direct evidence of this seems to have been produced, but as the official counting of the skins both on the islands and in San Francisco was done in bundles, each of which was supposed to consist of two skins, it is obvious that but for observed difference of size or weight, three or even four skins might have been bundled and corded together and counted as two. Speaking of the mode of enumerating the skins, Elliott says: "The list of the Treasury Agent on the islands, when the skins are first shipped [the shipment being made, as elsewhere stated, in bundles], is the official indorsement of the Company's catch for the year; but when the ship reaches San Francisco, these skins are all counted over anew [but again in bundles] by another staff of Government Agents."<sup>†</sup>

671. Referring to the weight of the skins and bundles, he elsewhere writes: "The average weight of a two-year-old skin is 5½ lbs.; of a three-year-old skin, 7 lbs.; and of a four-year-old skin, 12 lbs.; so that as the major portion of the catch is two- or three-year-olds, these bundles of two skins each have an average weight of from 12 to 15 lbs. In this shape they go into the hold of the Company's steamer at St. Paul, and are counted out from it at San Francisco."<sup>‡</sup>

672. An independent observer, Lieutenant Maynard, in his report written about the same time, says: "Finally, they are prepared for shipment by rolling them into compact bundles, two skins each, which are secured with stout lashings. The largest of these bundles weigh 64 lbs., but the average weight is but 22 lbs. The smallest skins, those taken from seals two years old, weigh about 7 lbs. each, and the largest, from seals six years old, about 30 lbs."<sup>§</sup>

673. The weights given by Lieutenant Maynard for the skins of seals of various ages are in error, but it would appear that in thus writing, these weights had been deduced from that of the bundles which he had seen, the weight of which certainly appears to require some explanation.

(B.)—*Decrease in Number of Seals, its Origin and Progress.*

674. With regard to the first of these questions, that relating to the decrease of seal life on the Pribyloff Islands, what has already been stated respecting the available estimates of number of seals at different dates will have shown that it is hopeless to obtain any satisfactory and connected idea of the state of the breeding islands from these alone. It is, in fact, largely from collateral evidence, from facts incidentally placed on record, of which the meaning now becomes plain, from statements obtained by ourselves in response to personal inquiry and other such sources, that a general history of the condition of the Pribyloff Islands may be built up.

675. A gentleman long associated with the Company whose lease of the Pribyloff Islands has lately terminated, explained the matter to us in brief terms, by saying that

\* See especially in this connection Elliott's Official Report for 1890.

† United States Census Report, p. 169.

‡ *Ibid.*, p. 77.

§ House of Representatives, 44th Congress, 1st Session, Ex. Doc. No. 43, p. 9.

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this Company—"Had a good thing" in the lease: "They got the cream of the fur-seal business, and kept the decrease dark." Without in any way indorsing this statement, or attributing any such settled policy to the Company, it is certain that the published reports did not by any means convey a full and correct statement of the condition of affairs and progress of events on the breeding islands.

676. It is agreed on all hands that the Pribyloff Islands were in excellent condition when finally ceded by Russia. The fact that the excessive slaughter of 1868 did not lead to an immediate collapse in seal life upon them is alone sufficient to show this. In talk had with six of the oldest and most experienced natives on St. Paul Island, all affirmed that the islands had never since been so well stocked with seals. Entering into details, they explained that the North-east Point was then completely occupied by seals both to the north and south of Hutchinson Hill. Tolstoi was in like manner entirely covered, while the Reef Peninsula was wholly occupied by cows and seacatchie as a breeding rookery, and the killable seals found room to haul out only at its inner end, on the sands. At this time, 3,000 to 4,000 Hollushickie might easily be collected in a single drive from Middle Hill, South-west Bay, or the hauling grounds nearest to the Reef Point.

677. Mr. Daniel Webster, who has been almost continuously on the Pribyloff Islands since 1868, most of the time upon St. Paul Island, and whose statements bore evidence of entire honesty, gave evidence fully corroborative of that above quoted. He expressed himself as confident that the seals were in greater abundance in 1868 than they had ever been since. In that year of unrestricted slaughter, some 75,000 young males were killed on North-east Point by the single Company with which he was connected, and without exhausting the supply. In 1874 and 1875, from 35,000 to 36,000 skins were taken each year from the same rookery without undue difficulty. According to Mr. Fowler, who has been familiar with St. Paul Island since 1879, from 29,000 to 18,000 skins were taken from North-east Point in that and some subsequent years. By the official figures, it is shown that 15,076 skins were obtained here in 1889, and 5,007 in 1890.\* Mr. Fowler expressed the belief that in 1891, if killing had not been restricted, at least double that number might have been secured at North-east Point.

678. Returning, however, to the earlier years of the Alaska Commercial Company's lease, it is found that in 1874 Lieutenant Maynard, as the result of his inquiries in that year, expressed the belief, though not without reservation, that the number of seals resorting to the islands had not decreased between 1872 and that time.\* Captain Bryant notes a slight improvement in this year as contrasted with the unfavourable conditions observed in 1873.† It was not till 1875, however, that the annual slaughter required to produce 100,000 marketable skins was first officially reported as being too great for the well-being of seal life. In this year Captain Bryant, as the result of seven years' experience of the islands, wrote on this matter in some detail; but, without quoting his observations at length, it may be sufficient to cite the following, which expresses his main conclusions:—

"When the lease was put in practical operation in 1871, there was a very large excess of breeding males on hand; since then this surplus has been diminished by the dying out of old seals faster than there has been younger seals allowed to escape and grow up to fill their places, until the present stock is insufficient to meet the necessities of the increasing number of breeding females."‡

679. Of the following year, Bryant says that "the decrease in number of breeding males may be considered to have reached its minimum [sic] in 1876. In 1877, the last season I spent on the islands, there was an evident increase in the numbers of this class."§ In the same year, before a Committee of Congress on the Alaska Commercial Company, he repeats his statement as to the too heavy rate of killing, saying: "I think that the number of 100,000 was a little more than ought to have been begun with. I think if we had begun at 85,000, there would have been no necessity for diminishing. On the other hand, I think that within two years from now it might be increased."||

680. In 1876, a lengthened inquiry was made by a Committee of Congress in regard to the operations of, and certain charges made against, the Alaska Commercial Company. This Committee does not seem to have had clearly before it the fact, that the actual number of seals killed under the lease considerably exceeded 100,000, but the view arrived at as to the killing of 100,000 seals annually, included in the official report of the

\* House of Representatives, Ex. Doc. No. 43, 44th Congress, 1st Session.

† "Monograph of North American Pinnipeds."

‡ "Fur-seal Fisheries of Alaska," House of Representatives, Ex. Doc. No. 83, 44th Congress 2nd Session, pp. 176 and 177.

§ Quoted by Allen, "Monograph of North American Pinnipeds," p. 399.

|| House of Representatives, 44th Congress, 1st Session, Report No. 623, p. 99.



investigation is plainly expressed as follows: "It is certain that to kill more than this number (100,000) would tend to a rapid decrease of the annual supply, and end in the extinction of the animals on these islands long before the expiration of the twenty years that the lease had to run."\*

681. From 1877 to 1887, such allusions as can be found to the general condition of the seals upon the Pribyloff Islands in contemporary reports are almost uniformly of an optimistic character; and a perusal of these reports might well lead to the belief that a continued and satisfactory increase in number was in progress, which, if truly representing the facts, should have brought the rookeries in this period of eleven years into a state of unexampled prosperity, though the facts were in reality far different.

682. The only reference to any decline met with in these Reports—and that is an incidental one—is due to Assistant Treasury Agent Wardman, who shows that there was a decrease in the number of "killable" seals on St. George Island in 1882, as compared with 1881. His statement serves to prove, at least, that the practical limit of killables on St. George had been reached in 1882, at a number of 21,000 or 22,000, and that the balance of a quota of 25,000 accorded to that island had to be made up on St. Paul.†

683. Though not to be found in the contemporary Reports, the true history of these years can now be very clearly understood, in a general way, as the result of more recent investigations and of our own inquiries.

684. Mr. Elliott's "Monograph" of the Pribyloff Islands is based on examinations carried out in 1872-74, and his statements of fact clearly show that nearly half the breeding rookeries and hauling grounds were at this period, and had been for at least ten years previously, entirely exempt from "driving," and therefore constituted reserves of seal life, and especially of young male seals. He writes:—

"As matters stand to-day, 100,000 seals alone on St. Paul can be taken and skinned in less than forty working days, within a radius of  $1\frac{1}{2}$  miles from the village, and from the salt-house on North-east Point; † hence the driving, with the exception of two experimental drives which I witnessed in 1872, has never been made from longer distances than Tolstoi to the eastward [westward], Lukannon to the northward, and Zoltoi to the southward of the killing grounds at St. Paul village."‡

Whatever may have been the detailed history of the seal interests on St. Paul in the intervening years, the fact that in 1879 it became necessary for the first time to extend the area of driving so as to include Zapadnie and Polavina rookeries, or the hauling grounds adjacent to them, shows conclusively that a great change for the worse had already occurred at that date. This cannot be explained by any theory of the mere reduction in number of redundant young males, for even if it be admitted that seals of this class were to be found in excessive numbers after the slaughter of 1868 (which is not probable), the normal ratio of such males resulting from any logically permissible killing should have been reached long before this time.

685. Many years ago, under the Russian régime, a small native settlement was situated near the rookery ground of Polavina, and seals were regularly killed there. Traces of this old settlement may still be seen, but it has probably been abandoned since the time of the "Zapooska," or intermission of killing which took effect in 1835, at which time most of the "natives" were removed from the Pribyloff Islands. From information gained on the islands, it appears that in or about the year 1879 the salt-house now employed at Polavina was first built, and that driving has been annually practised both from Polavina and Zapadnie ever since, but with much increasing persistency in later years.

686. The time at which the decrease in killable seals began to make itself actually apparent in the acknowledged difficulty in obtaining the annual quota of skins is thus pretty definitely fixed by circumstances, but other corroborative information with a similar meaning is now not wanting. Colonel J. Murray, Assistant Treasury Agent, in his Report for 1890, writes: "The whole truth must, nevertheless, be told, and that is, that the seals have been steadily decreasing since 1830."|| The older and more experienced natives, conversed with on St. Paul Island, after describing the great abundance of seals at the time the United States first took possession of the islands, stated that the decrease became very marked in 1882 or 1883; arriving at these dates by counting back from the actual year.

\* House of Representatives, 44th Congress, 1st Session, Report No. 623, p. 11.

† "Fur-seal Fisheries of Alaska," House of Representatives, 50th Congress, 2nd Session, Report No. 3683, p. 39.

‡ The italics are not employed in the original.

§ United States' Census Report, p. 72.

|| Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session, p. 8.

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687. One accessory cause of the decrease so plainly shown at this particular time, is perhaps to be traced in the great mortality of young, due to unfavourable weather in 1876, which would naturally be making itself apparent on the hauling grounds in 1879 or 1880. (§ 817.)

688. It is thus made evident that the decrease of young males, constituting the killable class, had reached such proportions as to hamper the lessees in taking their permitted number of skins, and to disquiet the natives, before the pelagic sealing industry had attained any considerable development, and some years before it could, under any valid hypothesis, be supposed to be accountable for any such result. Although three or four schooners were tentatively engaged in pelagic sealing off the coast of British Columbia in the years 1879-83, till the year 1883 the fleet did not include nine schooners in all, and the first of these schooners did not enter Behring Sea until 1884.

689. The United States' sealing fleet, in the corresponding years, was of similar small dimensions, and, though one vessel is known to have sealed in Behring Sea as early as 1881, the aggregate pelagic catch was, comparatively speaking, so small in these years, that it may safely be left out of consideration.

690. Of these persons questioned by us, almost all who possessed a familiarity with the Pribyloff Islands, including several who had previously been connected with the Alaska Commercial Company, were, in 1891, found ready to admit that in 1885 and 1886 the decrease in the number of seals to be found on the islands, and particularly that of killable seals, had become very striking. It was not, however, till 1888, that the existing state of affairs found some recognition in the official reports, when Dr. H. H. McIntyre, then agent for the lessees on the islands, admitted to the Congressional Committee on the Commercial Fisheries of Alaska that the seals had decreased since 1882, and that it had become difficult to obtain the full quota of marketable skins, adding: "There are at present, in my opinion, too few bull seals to keep the rookeries up to their best condition."\*

691. In the years 1886, 1887, and 1888, the annual pelagic catch in Behring Sea probably did not exceed 17,000, being thus less than one-fifth of the slaughter upon the islands; and even if it be admitted, for the sake of argument, that the killing of this number at sea was more injurious than that of a like number on shore, such alleged injurious effect could scarcely have begun to make itself apparent on the rookeries for three or four years after it took place.

692. The conditions obtaining on the Pribyloff Islands in the last three years have been so fully referred to in the present report, and in various reports made by the officers in charge, that they scarcely require detailed recapitulation in this particular connection. In 1889, Mr. C. J. Goff reported an alarming shrinkage in the rookeries and hauling grounds; and though the full quota was obtained, this was only done by lengthening the killing season to the end of July, and greatly lowering the standard size of seals killed. In 1890, being the first year of the North American Commercial Company's lease of the islands, the number to be killed, in view doubtless of Mr. Goff's previous report, which has not been published, was reduced to 60,000. But killing was stopped by Mr. Goff, in charge of the islands, at the usual date of the 20th July, at a time when, in consequence of the scarcity of killable seals, only about one-third of that number had been secured. In the same year Mr. Elliott re-examined the islands, and though his report has likewise remained unpublished, a summary of his conclusions has appeared, from which citations have already been made. He states clearly that the injury to the rookeries, he now believes, "set in from the beginning, twenty years ago, under the present system."†

693. In 1891, the result of our own examinations, as well as the evidence collected by us from all available sources, lead us to believe that some at least of the breeding rookeries are in a better condition than in the previous year, while in none of them is any further deterioration noticeable—a circumstance which fully justifies the action taken in restricting the catch in 1890, and clearly indicates that the rookeries, however reduced in numbers, possess an abundance of recuperative energy.

(C).—Standard Weights of Skins taken.

694. Closely connected with the foregoing notes, and of interest in showing that the required number of young male seals has not been killed of late years upon these islands without great detriment to their seal life, is the fact that the standard of weight of skins

\* House of Representatives, 50th Congress, 2nd Session, Report No. 3583, pp. 116 to 119.

† Parliamentary Paper [C.—6316]. London, 1891, p. 67.



has been from time to time lowered so as to enable younger animals to be taken, and that even many yearlings were included in 1889.

695. In 1890, the Government tax was suddenly raised from 2 dol. 25 c. to 10 dol. 25 c. the skin under a new lease, and it became at once no longer profitable to take very small skins. It was in part in consequence of this, and in part as a direct result of the complete sweep of the killable seals made in 1889, the last year of the expired lease, that the extremely unfavourable showing in 1890 was due. Continuous killing had left very few young seals to come forward to properly killable ages in 1890; and thus Mr. Goff notes that, of the seals returning to the islands in that year (besides those actually on the breeding rookeries), nearly all were the young of the preceding year.

696. This lowering of the standard weight of skins appears to have commenced as early as 1883; for, in 1888, Dr. H. H. McIntyre says: "In 1883 the sizes decreased, and have constantly decreased ever since. Last year they sent an urgent appeal to take larger skins, as the sizes were running down; but we were unable to respond, and during the present year the catch averages still smaller in size."\*

697. From information obtained from trustworthy sources on the Pribyloff Islands, it appears that the reduction in the standard weight of accepted skins was well known and recognized there in 1886 and 1887; and that from 1888, inclusive, many 5-lb. skins were taken, and all 2-, 3-, 4- and 5-year-old seals were accounted marketable; while in 1889 about 40,000 very small seals were taken to complete the quota, averaging probably about 4 lbs., and in some cases falling down even to 3½ lbs.

698. Thus, arriving at this conclusion from the known weight of skins of seals of various ages, it appears that, in 1889, even yearling seals were killed in large numbers. One noteworthy result of such killing requires special mention, i.e., that in consequence of the recognized great difficulty (amounting in most cases to absolute impossibility) of distinguishing virgin females from young males of corresponding size, it is quite certain that large numbers of females as well as males must have fallen under the club in these years of reduced standards, and that the protection supposed to be afforded to females by the methods employed on the islands was, in consequence, necessarily rendered largely fictitious.

699. Referring specially to the catch of 1890, Mr. Goff writes: "There have been no 2-year-olds of an average size turned away this season; they were all immediately clubbed to swell the season's catch."†

700. Thus, even excluding the extreme case afforded by the year 1889, it is apparent that all male seals except yearlings and full-grown seacatchie, together with many virgin females, have, on the breeding islands, been considered fair game by the sealers for several years past, and, with this circumstance in mind, the cause of the dearth of males upon the rookeries is not far to seek. Not content with taking the young males at the year, or within the period of two years in which the skins are most valuable, the killing was carried back into the more numerous ranks of the very young animals upon which the supply of suitable skins for future years depended, while, at the same time, other males, which had escaped previous slaughter, and become too old to afford first-class skins, were not allowed to take their places upon the breeding grounds, but were also killed to increase the catch.

701. The facts above cited afford a connected train of evidence, showing the gradual reduction and deterioration in condition of seal-life upon the Pribyloff Islands, altogether apart from the estimates of the total number of seals made at various times, and as we believe of a more trustworthy character than these.

702. As to the comparative conditions in the years 1890 or 1891 with that of the early years of the United States' control of the islands, no accurate information can be given. The result of our investigations and study of the subject in all its bearings lends us, however, to believe that the aggregate numbers given for these earlier years have been greatly in excess of the facts, and that while the latest estimates published may not be too small, the total amount of shrinkage has been very greatly exaggerated by means of comparisons instituted between these and the excessive estimates of earlier times. Because of this want of trustworthiness in the first estimates, therefore, any present estimates of a general character, however carefully made, and though interesting in themselves, cannot be accepted as *criteria* of value in relation to the question of the actual amount of decrease.

703. The ease with which fictitious reports may be built up on imperfect or ill-considered *ex parte* evidence is illustrated by a remark made by Elliott, who writes: "I noticed in this connection a very queer similarity between the sealers on St. Paul and our farmers

\* "Fur-seal Fisheries of Alaska," House of Representatives, 50th Congress, 2nd Session, Report No. 383, p. 118.

† Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session, p. 5.

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at home; they, just as the season opens, invariably prophesy a bad year for seals and a scant supply; then, when the season closes, they will gravely tell you that there never were so many seals on the island before. I was greeted in this manner by the agents of the Company and the Government in 1872, again in 1873, and again in 1874. I did not get up to the grounds in 1876 soon enough to hear the usual spring croaking of disaster; but arrived, however, in time to hear the regular cry of, 'Never was so many seals here before!'"\*

(D).—Driving of Seals.

704. One of the most important points connected with the method of taking fur-seals on the Pribyloff Islands, is that of the driving from the various hauling grounds to the killing grounds. However safeguarded or regulated, the method of driving fur-seals overland for considerable distances must be both a cruel and destructive one. Active and graceful as a fish in the water, the fur-seal is at best clumsy and awkward in its movements on land, and though it is surprising to note at how good a pace it can, when forced to do so, travel among the rocks or over the sand, it is also quite evident that this is done at the expense only of great effort and much vital activity, as well as at serious risk of physical injury. A short shuffling run is succeeded by a period of rest, and when undisturbed, all movements on shore are carried out with the utmost deliberation and frequent stoppages. But when a herd of seals, half crazed with fright, is driven for a distance of a mile or more from the hauling ground to some killing place, already pestilential with the decaying carcases of seals previously killed, it unavoidably, and however frequently the animals may be allowed to rest, entails much suffering. When the weather is at all warm, or when the seals are pressed in driving, individuals frequently drop out and die of exhaustion, others again are smothered by the crowding together of the frightened herd, and it is not infrequent to find some severely wounded by bites ruthlessly inflicted by their companions when in a high state of nervous tension. It appears also, from information obtained on this subject, that in warm weather seals, during a drive, occasionally pass into a state of violent spasmodic activity, which is aimlessly maintained till death ensues. Under such circumstances, drives have not infrequently had to be abandoned.

705. On St. Paul Island, the longest drives now practised are those from Polovina to the vicinity of the salt-house near Rocky Point, and from Tolstoi to the village killing grounds. These are about equal in length, and each not much less than two miles. On St. George, the longest drives are from the Great Eastern Rookery and from Starry Arceel Rookery to the village killing grounds, each being about three miles in length, the time occupied in driving being from four to six hours, according to the weather. Under the Russian régime much longer drives were made, and in the curtailment of these a very considerable improvement has been effected, but the essentially injurious features of the drive remain the same.

706. On Behring Island, of the Commander group, the drives are short, the longest being about one and a-half miles, from the South Rookery. On Copper Island, on the contrary, the drives generally extend across the island, and are from three to four miles long, very rough, and crossing one or more intervening steep ridges. These drives must be much more trying to the seals than any now made upon the Pribyloff Islands, and are, in fact, only rendered possible by extreme caution on the part of the drivers, and by the expenditure of much time.

707. If it were possible to drive only those seals which it is intended to kill, little exception could be taken to the method of driving in the absence of any better method, but the mingling of seals of varied ages upon the hauling grounds from which the drives are taken, even under the original and more favourable conditions of former years, renders it necessary to drive to the killing place many seals either too young or too old to be killed. It is sometimes possible to "cut out" from the drives many of these unnecessary individuals *en route*, and great care is exercised in this respect on the Commander Islands, though little appears to have been practised on the Pribyloff Islands.

708. It admits of no dispute that a very considerable impairment of the vital energy of seals thus driven, and eventually turned away from the killing grounds, occurs, altogether apart from the certainty that a proportion of such seals receive actual physical injuries of one kind or another, but this appeared to have been recognized on the Pribyloff Islands only within the past two or three years. The circumstance which has called particular attention to this source of injury to seal life is the greatly increased proportion of ineligible

seals which have now to be driven up in company with the diminishing quota of "killables." It is unnecessary to quote authorities at length on this subject, but a single citation from Mr. Goff's Report of 1890 will be sufficient to show its general character. Mr. Goff writes:—

"We opened the season by a drive from Reef rookery, and turned away over 83½ per cent. when we should have turned away about 15 per cent. of the seals driven, and we closed the season by turning away 86 per cent., a fact which proves to every impartial mind that we were re-driving the yearlings, and considering the number of skins obtained, that it was impossible to secure the number allowed by the lease, that we were merely torturing the young seals, injuring the future life and vitality of the breeding rookeries, to the detriment of the lessees, natives, and Government."\*

709. In other words, many of the seals turned from the killing ground on one occasion, return eventually to the hauling-grounds, and may thus be driven and re-driven throughout the entire killing season, if they do not meanwhile succumb under the strain.

710. Owing to the restriction imposed on the killing of seals in 1891, we were ourselves able to witness the effect of two small drives only, one on St. George, the other on St. Paul. Both these drives were made from the grounds nearest to the village killing places, and were therefore short. The weather was favourably cool, and the actual driving from the rookeries to the vicinity of the killing ground was accomplished with all requisite care and deliberation. Notwithstanding this, the seals were in both cases evidently very much exhausted and completely witless from fear. The animals let go from the killing grounds at St. George set out, when released, in small groups towards the shore, not far off, but from weakness were unable to go more than a few yards at a time; while some of them, notwithstanding their terror, were unable to keep up with the rest, and simply lay helpless upon the ground. On drawing the attention of one of the gentlemen superintending the killing to this, he remarked that it was nothing unusual, that, in fact, they not infrequently remained thus in the immediate vicinity of the killing ground for several days before recovering.

711. Much the same observations were made in the case of a drive on St. Paul Island, but it was noticed here that 100 or 200 of those set free, after slowly making their way for 500 or 600 feet, remained in an exhausted condition upon the grassy bank overlooking the northern end of Zoltoi sands, and, on the eveing of the following day, many of them were still lying together at the same place without having made any effort to reach the sea, which was not over 200 feet distant.

712. Incidental proof of the disastrous effects of driving may be seen along any of the routes ordinarily taken in the significant frequency of skeletons and bones around each rough and rocky place that has to be passed over in the course of the drive. It is of course difficult, if not impossible, to say with certainty in individual cases, to what extent this ordeal of driving may prove permanently detrimental to the animals driven. It may, however, be worth noting that Veniaminov, as long ago as 1842, quoted the natives as authority for the statement that the seals thus spared "are truly of little use for breeding, lying about as if outcasts or disfranchised."†

713. Elliott, in his published summary of his investigation on the islands in 1890, gives various reasons for arriving at a similar belief, and sums these up as follows:—

"Therefore, it now appears plain to me that these young fur-seals which may happen to survive this terrible strain of seven years of driving overland are rendered by this act of driving wholly worthless for breeding purposes; they never go to the breeding grounds and take up stations there, being wholly demoralized in spirit and in body. With this knowledge, then, the full effect of the driving becomes apparent, and that result of slowly but surely robbing the rookeries of a full and sustained supply of fresh young male blood demanded by nature imperatively for their support up to the standard of full expansion."‡

Captain Lavender, Assistant Treasury Agent, in his Report for the same year, and speaking particularly of St. George Island, adopts a similar view on the matter, saying:—

"All the male seals driven should be killed, as it is my opinion that not over one-half ever go back upon the rookeries again."§

714. Mr. Elliott, in the publication which has just been quoted, further summarizes his ideas as to the cause of the present reduced condition of Pribyloff Island rookeries in the two following paragraphs:—

"1. From over-driving without heeding its warning first begun in 1879, dropped then until 1882, then suddenly renewed again with increased energy from year to year, until the end is abruptly reached this season of 1890.

\* Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session, p. 4.

† Translation by Elliott in United States Census Report, p. 141.

‡ Parliamentary Paper [C.—6268], June 1891, p. 57.

§ Ibid., p. 21.

"2. From the shooting of fur-seals (chiefly females) in the open waters of the North Pacific Ocean and Behring Sea begun as a business in 1886, and continued to date."\*

715. It will be observed, however, that, even according to this statement, the over-driving began, in consequence of marked diminution, some seven years before it is alleged that pelagic sealing "began as a business."

716. As already indicated, all the evils incident to 'driving' in any form became greatly intensified when, with a diminished number of killable seals, the attempt is still continued to obtain a large yearly number of skins. This occurs not only because of the driving and redriving above referred to, but also in consequence of the fact, that under such circumstances the remaining killables lie very close to the breeding rookeries, so that it is no longer possible to make drives without disturbing the rookeries themselves. Thus, it has occurred that, in late years, considerable and increasing numbers of breeding females have been driven to the killing grounds with the killables, though when recognized there in the process of selecting for killing, they have been released. The probable special effect of such treatment of females, as well as the fact that in the disturbances caused upon the breeding rookeries, a certain number of the young are almost certain to be killed, have been already noted.

717. Speaking of the years 1872-74, and in connection with the driving of seals, even at that time, Elliott makes the following remarks: "It is quite impossible, however, to get them all of one age without an extraordinary amount of stir and bustle, which the Aluts do not like to precipitate; hence the drive will be found to consist usually of a bare majority of three- and four-year-olds, the rest being two-year-olds principally, and a very few, at wide intervals, five-year-olds, the yearling seldom ever getting mixed up."†

718. Referring particularly to his experience in 1869, Captain Bryant writes: "At the close of this period the great body of yearling seals arrive. These, mixing with the younger class of males, spread over the uplands and greatly increase the proportion of prime skins, but also greatly increase the difficulty of killing properly. Up to this time, there having been no females with the seals driven up for killing, it was only necessary to distinguish ages; this the difference in size enables them to do very easily. Now, however, nearly one-half are females, and the slight difference between these and the younger males renders it necessary for the head man to see every seal killed, and only a strong interest in the preservation of the stock can insure the proper care."‡

719. The meaning of these remarks and their bearing on the possibility of restricting the killing on the islands to males, becomes clear when it is remembered that the external genital organs of the male do not become distinctly obvious till about the third year of its age,§ and particularly so when it is remembered that even as long ago as 1872-74 the major portion of the catch "consisted of two- and three-year-old seals,|| while at other times even yearlings have been killed.

720. In addition to the injury caused by the physical strain of driving, its probable effect on the mental organization of a naturally timid and somewhat intelligent animal like the fur-seal must be great. The killing grounds themselves are always strewn with the carcasses of former victims in various stages of decomposition, and even in the small drive witnessed by us on St. George Island, the various "pods" of seals, including both those turned away and those killed, were actually driven over and among numbers of putrid bodies, by which the whole atmosphere in the vicinity was infected. It is believed, in fact, that this special feature of the driving is responsible to a large extent for the increasing disinclination of the seals to remain upon the breeding islands, a new but not unnatural tendency specially noticed and reported on in regard to the Commander Islands, and evidently still further operative on the Pribyloff Islands.

721. Reviewing, then, the subject of driving as a whole, and without laying stress on the more extreme statements which have been made as to its deleterious effects, it is quite evident that even if a small measure of the injury referred to this cause actually happens, the proportion of loss of seals to the whole number of skins obtained on the Pribyloff Islands, due to this one cause, must very considerably add to the waste of about 7 per cent., which is admitted by the official figures. The aggregate loss incurred is thus the result of various causes, which together involve the killing of many seals which ought not to be killed, and it is evident that the methods of driving and killing on the Pribyloff Islands, as now practised, are susceptible of very great improvement.

\* Parliamentary Paper [C.—6368], June 1891, p. 56.

† United States' Census Report, p. 72.

‡ "Bull. Mus. Comp. Zool.," vol. ii, Part I, p. 105.

§ "Fishery Industries of the United States," vol. I, p. 109.

|| United States' Census Report, p. 77.

(E.)—*Protection of Rookeries from Disturbance.*

722. Reverting to the general question of the management of the seal industry of the Pribyloff Islands, it is conceded by every one that the most important single matter is the safeguarding of the breeding rookeries from disturbance of all kinds. Generally speaking, the system adopted on the islands has this end in view, but in addition to the specific disturbance caused in the ways already mentioned, other and uncalled for effects of the same kind have been and are produced in consequence of a certain want of discipline and vigilance. Chief among these is the raiding upon the shores of the islands, which might and should be stopped by efficient protection. This is referred to at greater length below. Some of the means adopted in the government and preservation of the Commander Islands have already been alluded to, and nothing is more obvious to any one comparing the conditions on the Pribyloff and Commander Islands than the greater efficiency of the general control of the latter. This is particularly notable in the superior discipline maintained among the natives, who, as a direct corollary of their favoured position as participants in the proceeds of the islands, are understood to be entirely at the service and under the orders of the Superintendent on the islands. The appearance of vessels in the offing is reported to head-quarters with the utmost promptitude, as noted in the case of our own arrival both on Copper and Behring Islands. The seals are more carefully assorted before being driven to the killing grounds than on the Pribyloff Islands, and the killing of young seals for native food has been prohibited now for seventeen years. A fine of 100 roubles is exacted in the case of each female accidentally killed, with other such similar precautions. The methods taken to prevent the disturbance of seals upon the rookeries by smoke have already been alluded to.

(F.)—*Native Interests on the Islands.*

723. The condition of the Aleuts of the Pribyloff Islands has undoubtedly been much improved by their connection with the sealing industry, but it is difficult to see on what grounds the special advantages of a material kind afforded to these particular people as distinguished from others of the same race, and partly at the expense of interference with the rights of hunting of those inhabiting the Aleutian Islands, can be advanced as a valid argument in favour of the perpetuation of a commercial monopoly of fur-sealing. The Aleuts on the Pribyloff Islands are not natives of these islands in any true sense, but were brought thither by the Russians for their own convenience, and to afford the labour necessary for sealing. The actual circumstances of their existence on the islands are unfavourable to their vitality, as evidenced by the fact that the death rate is higher than the birth rate, so that if additions had not been made from time to time from the Aleutian Islands, in conformity with the requirements of the lessees, the number now remaining would be insignificant. These people are, moreover, now in the majority of cases half-breeds, with often a notable preponderance of "white blood." As it is, the entire population of the Pribyloff Islands, according to the Census of 1890, amounts to but 303 persons, and therefore the question of their disposition and maintenance cannot be regarded as a very embarrassing one, or one which should be allowed to enter seriously into discussions as to the means appropriate for the preservation of the fur-seal, or into the important questions connected therewith.

724. It is also clear that the so-called natives of the islands, though under ordinary circumstances provided for in certain respects by the lessees according to legal arrangement, have in past times not always been among the first objects of their solicitude. Many allegations as to the ill-treatment of the natives are to be found in the Congressional Reports on the Alaska Commercial Company and on the Fur-seal Fisheries of Alaska, while a general indictment of the treatment of the natives by the Company by A. P. Swineford, Governor of Alaska, is made so lately as in his Report for the year 1887.\*

725. A single instance, to which it happened that our attention was drawn, may be cited for the purpose of showing that the natives, even in recent years, received no more than strictly "commercial" treatment. This refers to the allowance of coal made to them. The fuel to be obtained on the islands is confined to small quantities of drift-wood, supplemented by seal blubber, or oil from seals or sea-lions, and naturally proves insufficient for the requirements of a long and inclement winter. It was therefore stipulated in the original lease that sixty cords of fire-wood should be furnished annually for the natives on the two islands. For this, 60 tons of coal was afterwards substituted, and the annual allowance for St. Paul Island was fixed at 40 tons. The supply thus



furnished, being at the rate of about 1 ton per family each year, was naturally, and even with such small local additions as could be made, insufficient, and when exhausted the people often found it necessary to purchase more coal from the Company, of which the price was fixed at 30 dollars (6L) per ton!

726. This particular abuse has fortunately been remedied under the present lease for in 1890 the amount of coal for St. Paul was increased to 50 tons, and in 1891 the Government stipulated that 100 tons should be provided for the same island, where there are now only thirty-eight families. The more liberal provision thus made, however, tends to show very clearly how insufficient that previously accorded actually was.

(G.)—Raids.

727. In forming an adequate estimate of the number of seals killed from time to time in the North Pacific Ocean, and especially on the Pribyloff Islands, it is necessary to take into consideration the numbers taken by "raids," an absolutely illegal form of seal killing, which has for years past been in active operation.

728. This form of sealing has distinct historical connection with the original seal hunting of the South Seas in the latter years of the last and the earlier years of the present centuries. There seal hunting is and was conducted entirely by the crews of vessels landed on various islands or reefs where seals were to be found, the seals being shot or clubbed on shore, and the skins shipped away in the vessels.

729. Such a form of sealing was obviously the most destructive that could be devised. The seals are easily herded together on shore by very few men, and can be driven slowly inland, and there guarded until, if need be, every single one of those thus herded is killed. But in the process of herding them together on the beaches thousands upon thousands of seals around are and must be stampeded, and in their wild rush to the sea not only do they do themselves much physical injury, but they overrun the smaller seals, and especially the pups, that chance to lie in their path. We have ourselves seen the evil after-effects of such rushes in the corpses of pups lying thick along such tracks. Moreover, in this form of killing it is usually the plan to pay no regard whatever to sex, age, or condition, and certainly females are not spared.

730. In addition to this, the raiding schooners make an abundant catch along the rookery fronts, where thousands of seals, and especially of females in milk, habitually disport themselves, and even play around any passing boat. The consequent shooting by the raiders greatly disturbs, scares, and scatters the females and males on the breeding rookeries close by. There thus seems to be no limit to the numbers of females and other seals that may be easily taken or destroyed by schooners cruising close in shore.

731. Raiding is a purely piratical and illegal form of sealing when carried on along shores over which Governments have extended their sovereignty, and particularly where regulations have been established for the preservation of the fur-seal.

732. At the present time, this illegal and destructive practice is carried on in various parts of the South Seas—for instance, in a paper by Mr. T. R. Chapman on "The Outlying Islands south of New Zealand," contained in the transactions of the New Zealand Institute for 1890, though it is stated that the fur-seal is now very scarce on these islands; the operations of seal poachers are referred to in connection with the Auckland Islands, Campbell Island, Antipodes Island, and the Bounty Islands. The name "poacher" is here applied to sealers killing on the islands, in contravention of the laws of New Zealand. Some of the men thus referred to come from New Zealand itself, but the only vessel specifically alluded to in 1889 is the "Sarah A. Hunt," a seal-poacher from America (p. 512).

733. Again, in the Straits of Magellan, the British Vice-Consul at Sandy Point reports in April 1889, that the United States' schooners pay no attention to the interdiction on sealing enacted by the Chilean Government. Indeed, the frequent presence of sealing-vessels, most of them hailing from ports in the New England States of North America, is a matter of much concern to the different Governments now endeavouring to preserve the seals in these waters.

734. There has been wholesale and most destructive raiding on Robben Island, and other islands in the Okotsk and Japanese Seas; and there have been persistent, and more or less successful raids made on the rookeries both of the Commander and Pribyloff groups.

735. In recent times, in the North Pacific Ocean, the greatest instance of the revival of this form of seal hunting occurred during the interval of the transference of the Pribyloff Islands from Russian to American control. Some vessels equipped for the



purpose at once visited these celebrated islands and landed sealing parties. Various Companies of United States' sealers occupied the islands in 1868, chief among them bands of Connecticut sealers, all of whom entered into armed combination to drive off the sealers under Pflügel, who had come up from the Sandwich Islands to raid. The general result was that at least 75,000 skins were secured in 1867, 242,000 in 1868, and 87,000 in 1869, or a total of more than 400,000 skins in these three years.

736. It is necessary for our present purpose to review the details only of raids made or attempted on the Pribyloff Islands since the United States' Government leased these islands to the Alaska Commercial Company, and this Company took formal possession under established Regulations in 1870.

737. The existing records are irregular, often insufficient, and frequently consist of mere allusions or indirect testimony. It is, therefore, probable that but a small proportion of the whole number of raids have actually been recorded, but the notices, such as they are, amply indicate what has been doing. In September 1870, the Secretary of the Treasury gave written authority to the Company to use fire-arms in protecting the rookeries against marauders.

738. Between 1871 and 1880 several actual raids were reported, one of the earliest being one by the "Cygnet," of San Francisco, caught on the 30th August, 1874, shooting seals close to Otter Island, and which raided the rookeries at Zapadnié, St. George Island, on the 1st September, 1874, and again in 1875. In July 1875, the "San Diego" was seized off St. Paul Island with 1,660 skins taken on Otter Island. On the 21st June, 1876, the "Cygnet" and the "Ocean Spray" raided the same rookery.

739. In 1877, the "Industry" was reported as hovering around St. Paul Island, and a raid was made on Otter Island.

739.\* In the same year, the revenue-cruizer "Corwin" was instructed specially to look after the seal fisheries. In the Report of her Captain for 1879 occur the following remarks:—

"In 1877, our first year in these waters, there was a vessel (the schooner 'Industry') about the islands late in September, which, without doubt, intended to take seals. She touched at St. George under the plea that she was short of water, but hearing that the 'Rush' was still about the islands, left very abruptly without waiting to water ship. I would respectfully state that, in my opinion, it is only necessary that a revenue-vessel should be known to be in these waters during the season for the protection of the islands, that it is not necessary to locate an officer and men from the vessel on Otter Island, and that now—there being two special agents during the season on each island—an occasional visit by them in their boat from St. Paul to Otter Island would be sufficient."

740. In 1879, the revenue-cruizer "Rush" received her orders "to cruise in the waters of Alaska and among the islands of the Aleutian Archipelago . . . , with a view to protecting the seal-fisheries and sea-otter hunting grounds."

The Captain reported "that in June 1879 he landed 3 tons of coal on Otter Island, and left Lieutenant Wyckoff and two men on St. Paul with instructions to proceed to Otter Island as soon as the Company could furnish him with two men and a whale-boat, this same arrangement having been made every year."

He added that in the end of September (1879), "Lieutenant Wyckoff reports that quite a number of seal would haul ashore at Otter Island during the summer. They were not inclined to stop there, but probably would if there was no one living on the island. He had seen four or five pups which were born there, but later in the season quite a number of young cows came there with the male seals."

741. In 1880, the Captain of the revenue-cruizer "Corwin" reports that he visited St. Paul on the 18th September:—

"Special Agent H. G. Otis informed me that he had visited Otter Island several times during the summer, and that no vessels nor unauthorized parties had been seen anywhere in the vicinity of the seal islands."

742. In 1880, Mr. Webster, according to his own statement to us, found clubs, hauling-hooks, and dead seals on the Great Eastern Rookery, St. George Island, all left there by raiders.

743. In 1880, the Captain of the revenue-cruizer "Corwin" reported to the Secretary of the Treasury his seizure of the schooner "Leo" in the Arctic for whiskey selling to the Eskimo, adding, "There were also found on board the 'Leo' several persons . . . : five were natives of Kodiak, employed, probably, for the purpose of taking seals around the seal islands in the fall."

744. In 1881, the Captain of the revenue-cruizer "Corwin" reported that on the 23rd May, at St. Paul Island, "Colonel H. G. Otis, the Special Treasury Agent in charge, came on board, and, after a consultation with him, it was decided unnecessary to detail an

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officer for duty on Otter Island, as it was believed that the force on St. Paul Island would be ample to protect both islands."

745. In the same report the Captain states that, on the 19th June, 1881, he overhauled the schooner "Flying Mist" at St. Michael's, and found 25 gallons of whiskey on board, "also complete outfit for taking seals, . . . seal clubs for killing them, and salt for preserving their skins, and was apparently on a predatory cruise around the seal islands late in the season."

746. The Captain of the "Corwin" also reports that the Special Treasury Agent on St. Paul wrote to him that, "on the night of the 8th June (1881) a schooner, supposed from her suspicious movements to be on a predatory mission in these waters, was sighted off the east side of the island bearing in a northerly direction, and next morning at 2 o'clock she was discovered by the look-out at East Point standing close in shore. Later in the morning, after the men on shore commenced moving about, she stood out to sea." On this the Captain remarks: "As parties on board the 'Flying Mist' acknowledged to having been in the vicinity of the seal islands, she was undoubtedly the vessel referred to by Colonel Otis, and our suspicions as to her intentions were confirmed. She had probably been frightened off by seeing men on shore, and would return later in the season when the nights were longer, and endeavour to take seals during the night, and stand off shore before daylight." Mr. Wardman reports that he noted raids on St. George Island in 1881, the first being on the 2nd September: "A gap was created in the rookery which was not filled that year." Mr. C. A. Williams reported that vessels hunted often around Otter Island, where, in 1881, sixty carcasses were found at one time.

747. Special Agent D. B. Taylor states that vessels have been poaching around the islands for years, landing under cover of fog, and that no protection is afforded against their poaching right on the rookeries. He adds that, in 1881, the Company was powerless to protect the seals against marauders; but that, if a harbour were built and a steam-launch stationed at each island, the protection would be ample. He states that vessels visit the islands, and kill in all 10,000 to 15,000 seals each year.\* Treasury Agent Gliddon, there from 1882-85, reports that the trouble consists in the marauding which takes place every moonlight night.

748. In 1884, the "Alexander" was captured by the Treasury Agent George Wardman off Starry Arteeel rookery, St. George Island, but he reported "he had to release her because he could not hold her, being unable to navigate, and there being no harbour at St. George, permitted of no other course under the circumstances."

In the same year the "Adele" was captured and sent to San Francisco.

749. The Captain of the "Corwin" sending in, for 1885, his "general report of operations of vessel for the protection of the seal fisheries and sea-otter grounds," states:—

"Mr. Tingle, the Government Special Agent, with a representative of the Alaska Commercial Company, came on board (11th September, 1885), and both stated that, during the absence of the "Corwin" in the Arctic, vessels had been cruising in sight of the islands for the purpose of killing seals; but anticipating the "Corwin's" return and the heavy weather incident to the lateness of the season, none had been seen within three weeks of that time. These gentlemen estimated that about 15,000 seals had been killed by the marauding vessels."

750. The Captain proceeds: "In previous Reports I have called the attention of the Department to the importance of greater protection to seal life in Alaskan waters, and especially in the vicinity of the Pribyloff Islands. Last year (1884) the schooner 'Adele' was seized by an officer connected with this vessel for unlawfully killing seals, and delivered by him to the United States' authorities at San Francisco. Instead of being prosecuted, as provided by section 1956 of the Revised Statutes, she was subsequently released on technical informalities.

"The same vessel has pursued her illegal occupation during the past summer, and her release from justice has very generally led to the belief that the seizure of the 'Adele' was an act unwarranted by law.

"Other vessels had previously been seized for the same offence, but in no instance has punishment been inflicted. The Department can readily see what the result will be if this state of affairs be allowed to continue.

"During the year, quite a number of vessels have raided Alaskan waters for seal and other fur-bearing animals.

\* House of Representatives Report, No. 3883, 50th Congress, 2nd Session, p. 58.

"Rumours are current here that the American Consul at Victoria has informed people that they are not prohibited by law from sealing in Alaska or other waters, provided they keep more than three leagues from the shore . . . ; all in direct violation of the Regulations," &c.

The Report for 1885 concludes with the urgent recommendation "that a revenue-cutter be sent to cruise in the vicinity of the Pribiloff Islands and Aleutian group during the sealing season. One vessel cannot protect the islands and visit the Arctic Ocean besides . . . While the cutter is absent in the Arctic, much damage can be done by marauding vessels to the seal islands."

751. In 1885, Mr. Webster, the Company's agent, with the aid of Lieutenant Lutze and his two men left as guard on Otter Island, captured three schooners, one the "Adele." In the same year, Mr. Webster found that the schooners left boats ashore, and the men actually camped in Pirate's Cove, St. George Island, for the purpose of taking seals along the shore. Many vessels were seen frequently hovering around the islands.

752. In 1886, Starry Arctel rookery was raided, and many hundred seals taken. Mr. Morgan found the carcasses of 800 female seals on the shore, as well as the cargo-hooks used for hauling them. The raiders actually camped on the beach and were seen there by the natives, but it was not discovered to what vessel they belonged.

Mr. Tingle, before the House of Representatives' Committee, stated that the "San Diego" captured by the "Corwin" in 1886 had on board 175 skins of seals that had been clubbed, and some skins of pups, showing that a raid had been made on St. George Island. We also have sworn testimony that in 1886 and 1887 the "Lookout" raided on the islands. The "C. S. Fowler" is also mentioned as a known raider.

753. In 1887, Mr. Webster saw as many as four to eight schooners in sight, and hovering around from 3 to 6 miles off. "Many a night has he walked round with his rifle, and seen their boats out shooting seal. One night in 1887, in a thick fog, boats were shooting away so close to shore as to scare all the seals on the beach."

At St. Paul Island on the 18th, 21st, and 25th July, a schooner was seen shooting seals close along the shore off the North-east rookery. On the 28th July a schooner appeared close to Otter Island, the crew ashore killing seals. She proved to be the "Angel Dolly," afterwards captured, because her Captain and one of the crew were accidentally wounded. On the 4th August a steam schooner was reported off North-east Point, and was fired at by the watchmen. She was captured by the revenue-cutter "Rush," and proved to be the "Kate Anna."

In August the Starry Arctel rookery was raided, but nothing was known of the occurrence until some time afterwards. Mr. Webster found all the unmistakable signs of what had been done, either at night or in a fog, but unknown to the authorities.

Mr. Tingle, Treasury Agent on St. Paul Island in 1887, reported a schooner lying off the Reef Rookery killing seals, and she was represented to have taken altogether 4,300 seals. In his report for 1887, he strongly urged that a 20-ton steam-yacht, armed with one gun, should be provided to chase and board the schooners sealing along the islands. He writes: "While the 'Rush' was busy taking care of marauders round St. George, those schooners were killing seals near St. Paul," being frequently in sight, but beyond the reach of the Treasury Agent.

754. In 1888, many vessels were seen hovering around the islands. One schooner anchored in broad daylight in S.W. Bay, St. Paul Island, and boldly sent several boats ashore.

755. In 1889 there are several records, especially around St. George Island, of schooners coming along shore, and of strange men being seen on the beaches in September and October. On the 21st November, a schooner, supposed to be the "Angel Dolly," anchored half-a-mile from the shore, and sent four men ashore who killed seals. On the 22nd November at Zapadne, St. George, the authorities discovered that three separate landings had been made, and found two clubs, seven dead female seals and one bull wounded with buckshot. In the autumn the "Allie Algar" raided on St. George, and procured more than 800 skins. A report in the "New York Herald" states that certain members of a schooner's crew boasted that in this year fifteen men had in five hours of one night killed 1,000 seals on St. George. Practical sealers, giving evidence under oath, testified that to their certain knowledge in the year 1889 and 1890 raids were made on the islands by the "George R. White," the "Daniel Webster," the "Mollie Adams," and the "Adele."

756. In 1890, off the North-east rookery, St. Paul Island, on the 15th and 16th June, there were two schooners hovering, with boats out. From the 1st to the 4th July the whaling barque "Lydia" was cruising along close in shore. Mr. Tingle, the Company's agent, saw a boat in a fog sealing within 200 yards of the beach; he fired at

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On the 28th August a schooner anchored close to North-east Point. Next day the revenue-cruiser "Rush" boarded her. She proved to be the "Kate Anna," but had no skins on board. For the next eight days a schooner was reported off the same rookery, anchoring close in, lowering her boats, and continually shooting seals within half-a-mile of the shore. Nothing appears to have been done to stop her, although Colonel Murray afterwards reported that there were any number of dead pups found at a later date along the beach. In August the schooner "Adele" was boarded and captured, all her crew being ashore raiding. She was brought into the bay.

The schooner "C. D. Rand" was taken by the cruiser "Rush," in North-east Bay. Her Scotch captain, declaring himself to be a member of the Salvator Army, protested he was not and could not be sealing, because it was Sunday. The only evidence given by the watchmen on shore was that they "had seen a boat." The schooner was released.

In September 1890 a large white schooner sailed into North-east rookery to land a party. The Aleut watchmen fired four shots from Martini-Henry's across her bow. She returned about 100 shots and sailed away.

757. In the same year, on St. George Island, numerous raids or attempts were reported. Four distinct attempts were made at Zapadni rookery. The "Helen Blum" and "Unga" failed to secure any seals. The "Flying Dutchman" ["Adele"] secured many skins, and it is actually reported that she would have made a great haul but that her crew at the critical moment obtained access to liquor. One schooner was surprised in the act, and departed leaving 190 females killed on the beach, the skins of which were taken and salted by Mr. Webster, on behalf of the Company, as we were informed by Captain Lavender. On the 17th September no less than three schooners were in the offing, and one attempted a landing, but retired when fired at by the watchmen. In the same year, it was also reported that one of the district salt-houses had been broken open by the crew of a vessel, and all the salted skins carried off.

758. Colonel Murray, the cautious Treasury Agent on St. George, informed us that he had examined the traces remaining of many raids that had taken place, unknown to the authorities. On one occasion he had seen the fresh blood-stained tracks down which the carcasses had been hauled to the boats; on another, he and his companion, on a fairly dark night, had come across thirteen dead seals, clubbed the night before. They had fired twenty-five shots to warn off the raiders, and had noticed, incidentally, that these shots did not in the least disturb the seals around.

759. In 1891, we found all the resident officials and natives persistent in their complaints of raids, and their reports of schooners hovering around the shores with intent to raid, and of that being reported especially on foggy days. When we first arrived at St. Paul Island, on the morning of Monday, the 27th July, the Treasury Agent, Colonel Murray, came off at once in a boat, and besought us to proceed without delay to the North-east rookery, as shots had been heard there repeatedly on the previous day, and at night close along the shore. Major Williams, the Chief Treasury Agent, and Mr. Redpath, the manager for the Company, had driven over 12 miles to North-east rookery to see what could be done. When we went to the Company's house, Mr. Tingle, the general superintendent of the Company, was perpetually working the telephone to North-east rookery and reporting that schooners were there. The vivid impression produced on us at the time was that whatever the actual amount of raiding in progress, both Government and Company were absolutely without proper means to stop it. On the 29th July we saw a brigantine sail boldly right past the settlement, but there were no means at hand either to detain or even to identify her.

In the late autumn the revenue-cruiser "Bear" remained near the islands for thirty-six days, and then proceeded to coal at Ounalaska; the day after she left the islands a steam sloop raided the Great Eastern rookery on St. George Island.

760. Corroborative evidence has been afforded in 1891 by the newspaper correspondents who visited Behring Sea. According to their accounts, Captain Alexander Carlson, of San Francisco, had been a persistent raider since 1884. Captain Hansen, in the "Flying Dutchman" ["Adele,"] perpetrated many raids, until his vessel was wrecked last year. In 1891 he wished to obtain a coasting clearance for the "Borealis," but his openly-avowed intention to raid led the Collector of Customs at Victoria to refuse him a clearance to Behring Sea, and he went off to Okotsk Sea. Captain Downs, of the "Hattie Gage," made a sworn affidavit that his mate Adams, who superseded him when he was forcibly put ashore on the Shumagin Islands, was proceeding to make raids on the Pribyloff Islands, and that in 1890 the Captain of the "Hattie Gage" had been

relieved of the command because he refused to make raids ashore. Captain Reilly, of the "Otto," said that if he had his owner's permission he would willingly make raids.

761. It will thus be seen that raiding on the Pribyloff Islands has been carried on persistently at least since 1868, and that from that date the authorities have known of the raids, and from the earliest time urgently demanded precautions in prevention.

762. The evils of raiding are very great. It is by far the most destructive form of sealing, combining all the disadvantages and none of the advantages of the other forms. The killing is chiefly of breeding females, as the raiders cannot penetrate far enough inland to obtain the young bachelors or immature female seals. Thus, the skins they obtain are those of females which are either still with pup or are suckling their young. Moreover, the process implies disturbance of the breeding rookeries; the scaring of the seals during their breeding time, male, female, and young; and the stampeding of whole rookeries, whereby, without doubt, there ensues that great killing of helpless pups which we have already reported we observed in certain rookeries.

763. We ourselves noticed the great ease with which, under present arrangements, raids might be successfully carried out, and nothing whatever be known to the residents at the moment, while after discovery depended merely on accident. Even on the rookeries immediately under the settlements no look-out is kept. For instance, we steamed into the anchorage of the settlement at St. Paul, close past the Zapadnie and Tolstoi rookeries, one bright moonlight night (14th September), and moved early the next morning by daylight round the Gorbotch and Reef rookeries to the other landing, without our presence becoming known in any way at the settlement. On the outlying rookeries no watch whatever is present, except at North-east Point on St. Paul Island and Zapadnie on St. George Island. All the other rookeries on both islands are, as a rule, absolutely without any watch or guard. On North-east and Zapadnie rookeries the guard consists of two or three native Aleuts who have rifles, but are instructed not to fire at men. Moreover, we are by no means assured that bribery by money or drink has not been actually practised over some of these distant guards.

Evidence was afforded of numerous instances of the signs of recent raids being discovered, although as to the actual occurrence nothing whatever was known to those in authority at the time, and we are not at all surprised to see that in recent years the reports that schooners are hovering off the island, anchoring close in, and sending boats ashore, are rapidly growing in frequency. As the prospects of a heavy catch ashore or along the rookery fronts are great, so is the temptation great, especially as chances of detection are few and innocuous, and chances of capture most remote under the present system.

In short, under present regulations and arrangements, there is no difficulty or danger whatever to vessels raiding along shore any night, or in any of the frequent fogs at several of the best rookeries, except when a revenue-cruiser chanced to be close by, an occasional occurrence well known to every marauding schooner. Moreover, the United States' cruisers never interfere with "whalers," some of which undoubtedly, at all events, report the movements of the cruisers, forming as it were both watch-houses and store-houses for the raiders, even when they do not themselves engage in actual raiding.

764. It is, perhaps, needless to reassert that this form of taking seals is entirely illegitimate, and although it is a very severe and disastrous drain on seal life, it is, nevertheless, one for which the national government and the administration are entirely and solely responsible. Thus, the British men-of-war which in 1891 entered Behring Sea for the purpose of assisting in stopping sealing at sea were expressly and properly precluded from taking any step within the ordinary jurisdictional limits around coasts and islands.

765. It may be pointed out that in no case yet has it been shown or proved that any British vessel ever engaged in raiding on the Pribyloff Islands.

766. There is no valid reason whatever why the local authorities should not be provided with ample means for stopping raids. It should be remembered also that the San Francisco sealers have asserted that the possibility of raiding, a most profitable operation, encourages sealer. A certain class of fit out sealing-schooners and enter Behring Sea, and if the local authorities made raiding the great risk that it should be, they would take one practical step towards reducing the number of vessels which engage in this illegitimate and most destructive methods of sealing.

767. While we were visiting the Commander Islands in 1891, we paid special attention to the means adopted for preventing raids. The Russian authorities acknowledged that the danger was great. At one time, sixteen Cossack soldiers were stationed on each island authorized to fire on all raiders, and at the present time this force consists of thirty-six armed native watchmen under four Cossacks. The Company's trading steamer

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was specially authorized to seize schooners when she had the proper Government officials on board, and now a gun-boat is detailed to cruise round the islands during the sealing season. We found the system of watching and reporting by the Aleuts to be in admirable order. When we first arrived, we found even the mastheads of the "Porpoise" and the "Danube" had been reported as having been seen above the fog on the other side of the island, and on Copper Island our presence in a bay at one end of the island had been at once reported by special messenger to the settlement seventeen miles distant.

768. Among measures to this end most frequently advocated is that of having a revenue-cruizer permanently stationed at the Pribyloff Islands throughout the months of June, July, August, and September. But we found, in 1891, that the revenue-cruizers were often far distant from the seal islands, perhaps in Iliulik Harbour, waiting for mails or coals, or away cruising around Nunivak or St. Matthew Island, or on duty as St. Michael's or other distant points. We also noticed that, in the frequent fogs and the dark loom of the land, schooners can very easily elude even the sharpest look-out from seaward. In our opinion, the most effectual, as well as the most economical, method of guarding against raids would be to have an armed police force with details permanently on guard near each rookery, and with specific orders to fire on all persons landing or taking seals. The rookeries are limited in number, and moderately well defined in area, and could easily be thus defended with effect.

769. We would also point out that, in so far as disturbance of seals is concerned, it would be well if greater restriction was placed on the number of persons allowed to visit the rookeries and the outlying islands. We found that Walrus Island was regarded practically as a shooting resort for all Government officials and all officers of Government ships. Again, when on the 4th August we went in a steam-launch from St. Paul anchorage quietly to note whether there were any seals on Otter Island a revenue-cruizer happened to come in, and while we were proceeding dead-slow along the shore carefully looking for seals she landed a boat's crew, and the officers at once began with shot-guns and revolvers shooting at the foxes and sea-fowl on shore. This appears to be a common practice in all years, and is quite sufficient of itself to scare all seals from these particular islands. We might here also mention that the day before we paid our first visit to the North-east Rookery (on the 5th August), American officers had been driving up and shooting sea-lions there for scientific purposes.

770. In regard to the practical effect of these raids on the total catch of seals, it would appear that, from the annual recorded totals of the American catch landed from schooners, very material deductions must be made and transferred to the annual total catch on the Pribyloff Islands as being the result of operations on and around the rookeries on the Pribyloff Islands, and forming, therefore, properly speaking, no part of the pelagic catch. It is not possible, owing to the scantiness of records kept on the islands, to estimate precisely the total numbers of seals thus killed. It is certain, however, that raids constitute a very material drain on the seal life of the Pribyloff Islands, probably amounting in some years to many thousand seals; that the practice involves the barbarous slaughter of very large numbers of females and pups of immature growth; and that it is an evil for which the remedy is extremely simple and easy of application, consisting merely of the most rudimentary police arrangements for insuring the execution of the local laws.

#### V.—NUMBER OF FUR-SEALS KILLED UPON THE PRIBYLOFF ISLANDS.

771. While the foregoing account of the methods of control and the manner in which seal killing has been and is conducted on the Pribyloff Islands shows that the official returns cannot absolutely represent the whole annual slaughter, these returns are of great interest for the purpose of instituting general comparisons as between the amount of the killing in various years, and particularly in their bearing on the fact of the unprece-dented character of the draft which has been continuously made on the seal life of the islands since they passed under the control of the United States, which has already been referred to at length. Much care has been given to the compilation of the subjoined table, which, it will be remarked, does not represent either the number of accepted skins actually got in each year or the shipments of such skins actually made, but is intended to show, as far as the returns admit, the whole number of seals killed according to the official count. The unrecorded causes of loss and waste would, of course, add considerably to the figures actually given :—



TABLE showing the Number of Fur-seals killed on the Pribyloff Islands in each year, from 1817 to 1891.

Year.	Number of Seals killed.	Number of Pups killed.	Year.	Number of Seals killed.	Number of Pups killed.
1817	60,188	Includes pups.	1855	8,585	Average annual killing of about 4,600 pups not included.
1818	59,856		1856	23,550	
1819	52,225		1857	21,082	
1820	50,220		1858	31,810	
1821	44,995		1859	32,000	
1822	36,469		1860	21,596	
1823	29,873		1861	29,699	
1824	25,400		1862	34,294	
1825	30,100		1863	25,000?	
1826	23,250		1864	26,000?	
1827	19,700		1865	40,000?	
1828	23,228		1866	42,000?	
1829	20,811		1867	75,000	
1830	18,031		1868	242,000*	
1831	16,031		1869	87,000	
1832	16,446		1870	23,773	
1833	16,412		1871	97,002	
1834	15,751		1872	101,698	
1835	6,580		1873	101,555	
1836	6,590		1874	107,932	
1837	6,802		1875	101,240	
1838	6,000		1876	89,478	
1839	6,000		1877	77,556	
1840	8,000		1878	101,394	
1841	8,000		1879	106,908	
1842	10,370		1880	100,634	
1843	11,240		1881	101,734	
1844	11,924		1882	101,736	
1845	13,637	1883	77,063		
1846	15,070	1884	101,013		
1847	17,703	1885	101,509		
1848	14,650	1886	100,772		
1849	21,450	1887	100,795		
1850	6,770	1888	100,450		
1851	6,564	1889	100,135		
1852	6,725	1890	20,995		
1853	18,035			Not including pups ..	
1854	26,146				
			1891	12,071	

\* Approximate, probably 270,000 if St. George Island be included.

TOTAL Shipments of Skins (by periods) made by the Russian American Company and the succeeding Alaska Commercial Company.

Includes some skins from the Commander Islands and elsewhere—	Skins.
Russian-American Company (and Antecedent United American Company), 1799 to 1821 (both inclusive), 23 years .. .. .	1,232,374
(Elliott, Census Report, p. 70.)	
Russian-American Company (second period), 1822 to 1841 (both inclusive), 20 years .. .. .	468,502
(Baneroff, p. 563, from Techminoff; Elliott, Census Report, p. 70.)	
Russian-American Company (third period), 1842 to 1861 (both inclusive), 20 years .. .. .	338,000
(Baneroff, p. 582, from Techminoff.)	
<b>Pribyloff Islands alone—</b>	
Interregnum (1862 to 1867), being years between last term of Russian-American Company and period of United States' control (about) ..	242,294
(See Table of annual killing.)	
In 1868 there were taken about .. .. .	240,000
(Elliott, Census Report, p. 70.)	
In 1869 there were taken about .. .. .	87,000
(Elliott, Census Report, p. 70.)	
Alaska Commercial Company, 1870 to 1889 (both inclusive), 20 years ..	1,840,364
(Parliamentary Paper [C. 6368], p. 45.)	
Total, 1799 to 1889 (91 years) .. .. .	4,439,134
Average annual shipment of skins .. .. .	48,782

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## Sources of Information Utilized in the above Tables.

772. 1786. Shelikoff (quoted by Bancroft, vol. xxxiii, p. 192) states that 40,000 skins were secured in the first year of hunting.

773. 1787 to 1806. Taking Resanoff's estimate of total killing of seals on Pribyloff Islands to 1,000,000, the annual killing during this period seems to have averaged about 50,000, though known to have been irregular from year to year.

774. 1807 to 1816. In 1817 Veniaminov's account of number of seals killed on Pribyloff Islands begins. No exact data have been found for the years between 1806 and that date, but from the figures quoted in Bancroft's History (vol. xxxiii, p. 418) from Materialui Istor Russ, a rough approximation may be arrived at of annual killings in Behring Sea from 1745 to 1822, a period extending from the beginning of sealing for seventy-six years. The total number of skins obtained in this period was, according to the above figures, 2,324,364. Deducting from this Veniaminov's figures for seals killed on the Pribyloff Islands from 1817 to 1822 (both inclusive), the number remaining for the years 1745 to 1816 (both inclusive) is 2,056,880, or an average of 28,970 per annum. This of course includes skins taken on the Commander Islands, with some obtained from natives in trade elsewhere. It also includes the years 1745 to 1785 antecedent to the discovery of the Pribyloff Islands, during which it is known that more than 93,000 fur-seal skins were obtained, chiefly from the Commander Islands (Bancroft, pp. 111-191). It, however, does not include seals killed for food on the Pribyloff Islands, and of which the skins were not kept. It thus appears probable that, allowing the differences in opposite senses to offset each other, the total average annual killing on the Pribyloff Islands from 1807 to 1816 (both inclusive) was not far from 30,000.

Another approximate value for the killings in these years may be obtained from Techminoff's figures, which are official, and are quoted by Elliott.

Techminoff gives the total shipments for the years 1798 to 1821 (both inclusive) as 1,232,374.\* Elliott states that about 5,000 of this amount each year came from the Commander Islands. Deducting these and also the skins accounted for by Veniaminov for 1817 to 1821 (both inclusive), the average annual product in skins from the Pribyloff Islands is found to be 44,468. The period thus accounted for includes only nine years antecedent to the period beginning with 1807, which it is wished to bridge. It is probably nearer the fact for these years than the foregoing estimate, with which it, however, agrees fairly well. It also tallies well with the earlier years of Veniaminov's table. Techminoff's figures do not include seals killed for food or otherwise of which the skins were not kept, but it is scarcely probable, even including these, that the average annual killing on the Pribyloff Islands for the years in question reached 50,000. It may reasonably be assumed to have been between 45,000 and 50,000, or, say, 47,500. As in the years before 1807, the number killed from year to year is, however, known to have been irregular.

775. 1817 to 1837. The figures for these years are Veniaminov's, as ascertained by Mr. Elliott from an inspection of Shisenkoff's journal, and includes pups in the numbers given for 1835-36. It may, therefore, probably be assumed that pups are included throughout.

776. 1838 to 1860. The figures for these years are taken from the Correspondence relating to Fur-seal Fisheries, printed in Washington in 1890.

777. 1861. Bancroft's total for years 1842-61 (both inclusive) is 338,600. The total for years 1842-60 (both inclusive) is 308,901. This being deducted from total for 1842-61 gives the number of seals taken in 1861.

778. 1862. Elliott (p. 165) gives the total catch for 1842-62 (both inclusive) as 372,894. Bancroft's total for 1842-61, 338,600, being deducted from this sum gives the number of seals taken in 1862.

779. 1862 to 1867. Both inclusive, being years of interregnum between last term of Russian American Company and United States' control of Pribyloff Islands, have been filled hypothetically by Elliott, who explains that, guided by information obtained from the natives, he has proportioned the number of skins in the salt-houses on the islands in 1867 (40,000 to 48,000) back to the latest figures given by Techminoff (1861). The figures for these years are therefore far from satisfactory. A more complete examination of the subject has enabled moderately exact figures to be obtained for 1861 and 1862, as explained above, while Bryant gives the number for 1867 as 75,000 (Allen, "Monograph of North America Pinnepedia," p. 389); but for the years 1863 to 1866 Elliott's approximate estimates must still be taken. It is to be presumed that these figures represent only

\* Bancroft, however, gives the figures for 1799 to 1821 (both inclusive) as 1,767,340 (p. 418), and no explanation has been found of this discrepancy.

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marketable skins, not including pup skins and other rejected skins. As confirmatory of the approximate correctness of these estimates, Dall may be quoted. Writing in 1868 (Alaska and its Resources, p. 496), he says that of late years the Russians had not been allowed to take more than 50,000 annually. Bryant, quoted by Allen, referring to this same period, says that for many previous years the Russians took but few seals, but the number has increased, so that in one year 40,000 were taken. (Monograph of North America Pinnepedia, p. 389.)

780. 1868 and 1869. The figures for these years are those given in Elliott's Census Report, p. 70, and are doubtless the most trustworthy that can be procured.

781. 1870. The figure for this year includes pups, 4,000, and a large number of rejected skins. (Ex. Dec. No. 83, 44th Congress, 1st Session, p. 63.)

1871 to 1889. The figures for these years were taken from Correspondence relating to Behring's Sea-seal Fisheries, Parliamentary Paper [C. 6368], pp. 44-47, and include all seals, other than pups, killed for any purpose. From 1870 to 1889 (both inclusive), 92,864 pups were killed for food, an average annual killing of 4,643.

#### VI.—HISTORICAL NOTES ON THE CONDITION OF THE FUR-SEAL ROOKERIES OF THE PRIBYLOFF ISLANDS IN VARIOUS YEARS.\*

782. 1786. Pribyloff discovered the islands now known by his name in June of this year. He returned to the Asiatic coast with 31,100 fur-seal skins. It is elsewhere recorded that about 40,000 fur-seal skins in all were taken on the islands in this year. (Bancroft's works, vol. xxxiii, pp. 185, 192, 193.)

In the first years (after the discovery of the islands), the seals in St. George Island were only five or six times less than those on St. Paul, i.e., equal to one-sixth or one-seventh of those on St. Paul. (Veniaminov, quoted by Elliott in Census Report, p. 147.)

From 1736 to 1797 or 1799, several Companies were engaged in taking seals, without count or list. Veniaminov estimates that 50,000 to 60,000 skins were obtained annually on St. Paul and 40,000 on St. George. He characterizes this as "horrible killing." (Quoted by Elliott. Census Report, pp. 70, 140, and 147.)

783. 1799. The islands came under the control of the United American Company, which was organized at Irkutsk in August 1798.

784. 1800. First year of control of Russian American Company, an out-growth of the last, organized in 1799.

785. 1803. Baranoff ordered Banner to go to the Pribyloff Islands, which "had not been visited for many years" (by traders), and where a vast number of skins must have been accumulated by the natives. (Bancroft, p. 417.)

786. 1804. Between 1801 and 1804, the Russian American Company are said to have accumulated about 800,000 skins, many of which rotted for want of care. (Bancroft, p. 477.)

787. 1805. Veniaminov states that no care as to the preservation of seal life on the islands was exercised till this year. (Census Report, p. 141.)

1806. Resanoff visited St. Paul Island in July. He found that a very wasteful killing of seals had been in progress, that 30,000 had been killed for their flesh alone, while over 1,000,000 in all had been killed up to date. He was informed that the seals had decreased 90 per cent. in number since the earlier years, and concluded that if the slaughter was not reduced a few years would witness extirpation. He ordered the killing to be stopped; but from the season of his visit it is certain that some seals had been killed in 1806 before his arrival. (Bancroft, pp. 445, 446.)

788. 1806-1807. Following Resanoff's order, no seals were killed on the Pribyloff Islands during these years (with the probable exception above noted). Nearly all the natives were removed to Unalaska. (Census Report, p. 140.)

789. 1808. Killing was recommenced on St. George and in 1810 also on St. Paul, but not till 1812 did it amount to half the number killed in former years. Females as well as males were taken. Killing without proper supervision continued from this time till 1822. (Veniaminov, quoted by Elliott. Census Report, p. 140.)

790. 1817. The fur-seals on St. George were estimated to amount to a quarter of those on St. Paul; seals on the latter island having decreased more in proportion. (Veniaminov, quoted by Elliott. Census Report, p. 147.)

\* Notes given below which have not been derived from published reports and documents, but have been obtained as a result of our own inquiries, are inclosed in brackets, thus [ ].

791. 1817 to 1837. A gradual diminution of seal life on the islands stated to have been in progress in these years, visible in each year, but not always equal, according to Veniaminov. This is also indicated by Veniaminov's quoted figures of annual catch. (Census Report, pp. 143, 147.)

792. 1820. Veniaminov characterizes the annual killing of 50,000 seals, which occurred at about this date, as excessive and leading to diminution. (Census Report, p. 147.)

793. 1822. First year of second term of Russian American Company. Mnorayeff ordered the killing to be limited, so that instead of 40,000 or 50,000 not more than 8,000 or 10,000 were taken. (This appears to refer to St. Paul Island only.) (Census Report, p. 140.)

794. 1822 to 1824. Period of rest or restricted killing on St. Paul. (Veniaminov, quoted by Elliott. Census Report, p. 142.)

795. 1824. Stated that between 1822-1824 the seals on the islands were estimated to have doubled in number. (Report upon the Condition of Affairs in Alaska, p. 107.)

796. 1826-1827. Both years inclusive. Period of rest or restricted killing on St. George Island. (Veniaminov, quoted by Elliott. Census Report, p. 141.)

797. 1826. Veniaminov states that the seals on St. George equalled about one-sixth those on St. Paul, those on St. George having increased more in proportion since 1817. Also, that Chestykhoff, estimating that the seals had doubled in number as a result of restrictive measures, ordered 40,000 to be killed annually. But with all possible effort this number could not be obtained. Greater caution in killing females, &c., was ordered, but the number of seals on the islands nevertheless remained stationary, or continued to decrease. (Veniaminov, quoted by Elliott. Census Report, pp. 140, 147.)

798. 1832. Veniaminov incidentally states that in this year an excessive number of females were observed on the islands without young. (Quoted by Elliott. Census Report, p. 141.)

799. 1834. The number of seals to be taken at St. Paul was largely reduced, the killing being limited to about 4,000 instead of about 12,000. (Veniaminov, quoted by Elliott. Census Report, p. 142.) From Veniaminov's table the reduction ordered in 1834 took effect only in 1835. This rest or "zapooska" continued on St. Paul Island during 1835, 1836, and 1837.

800. 1835. [R. Astomonoff, a native on St. Paul Island, informed us that he remembered being at North-east Point in this year, when the Russians allowed only seven seals a-day to be killed there for food.]

1836. Elliott, from information received from natives on the Pribyloff Islands, states that the winter of 1835-36 was exceedingly severe. Great quantities of ice surrounded the islands, and remained heaped on the shores till August 1836. A great mortality of seals resulted, so that, according to native count, only 4,100 seals of all classes, exclusive of pups, remained on the rookeries of St. Paul. (Census Report, p. 49.) Mr. Elliott has informed us that, according to a journal by the Rev. K. Shisenekoff, only 100 holluschickie were obtained in 1836, the remainder of the catch for this year being pups. Bryant, also according to native evidence, gives the date of this destruction of seals as 1842. (Allen, Monograph of North American Pinnipeds, p. 388.)

801. 1842. First year of third term of Russian American Company. Bancroft states that a system of "alternation" in hunting grounds was adopted, which, in the case of the Pribyloff Islands, led to great increase of numbers of seals. (Bancroft's Works, vol. xxxiii, p. 582.)

802. 1842 to 1861 (inclusive). The Russian American Company's shipments showed a heavy decrease in fur-seal (and other) skins, as compared with the preceding period of twenty years. This is mainly attributed to the encroachment of foreign traders—particularly American whalers. (Bancroft's Works, vol. xxxiii, p. 582.)

803. 1845. The great importance of never disturbing the breeding seals was first recognized in this year. (Census Report, p. 143.)

804. 1847. Up to this date males and females had been killed indiscriminately for skins; thereafter only males were killed. (Census Report, p. 49.)

805. 1862 to 1867 (both inclusive). Interregnum on Pribyloff Islands following the close of the Russian American Company's third term.

806. 1862. Technainoff says, referring to this year: "In earlier times more (seal) skins were taken than in the later; at present there are taken from the Island of St. Paul 10,000 annually, without diminishing the number for future killing; on St. George, 6,000." (Quoted by Elliott. Census Report, p. 163.)

807. 1867. Bryant speaks of the judicious administration and gradual increase

of seal life on the islands under the Russian rule for many years previous to this date. In the spring of 1867, however, the Russians, knowing that the islands were about to be surrendered to the United States, took a much increased number of seals, amounting to 75,000. (Monograph of North American Pinnipeds, p. 389.)

808. 1868. Following the cession of Alaska to the United States in 1867 a period of lawlessness ensued on the Pribiloff Islands, and in 1868 a very great number of seals was killed. The number so killed in this year is estimated at 242,000 by Elliott; at 250,000 by Bryant. Rival Companies were at work, and the killing appears to have gone on without count, list, or supervision. In the autumn of this year, however, Congress passed a special Resolution, prohibiting the killing of seals until further action of Congress. (Census Report, p. 25.) Bryant states that, previous to 1863, the selection of seals killed had, under the Russian régime, been left to the natives, and that most of those killed were under 3 years of age, including many yearlings. The killing being from this more numerous class plenty of males were left to reach maturity, and the rookeries were well supplied with active males. The males of all ages not engaged in actual breeding were about equal in number to the combined totals of beachmasters and females so engaged. Of these excluded males about 30 per cent. were virile, and there was thus one efficient male to every three or four females, or about three times as many as actually required. As a consequence, all females were served before the 10th August. (Monograph of North American Pinnipeds, pp. 390, 398, &c.)

[Messrs. D. Webster and T. F. Morgan were on the island in this year. They informed us that the seals were clubbed then as now, fire-arms being used only in self-defence among the rival sealers. The killing was directed to young males, but about 40,000 females were killed inadvertently. The limit to the number killed was reached only when salt was exhausted. Seals were more abundant at this time than ever since. It also appears that the numbers above quoted as representing seals killed in this year do not include St. George Island, where some 30,000 skins are supposed to have been taken.]

809. 1869. Practically indiscriminate killing appears to have continued in this year, though it is stated that seals were taken only for the subsistence of the natives, and under direction of the Treasury Department. (Census Report, p. 25.) The gentlemen in charge do not seem to have known the number of seals actually killed. Agent Wieker stated that 150,000 skins had been taken on the two islands. Bryant states that this was impossible, as when he left the islands in August only 16,000 skins had been obtained. McIntyre says that, under the orders given by him, 42,317 seals were to be killed for food on the two islands. Major-General Thomas afterwards ordered that as many seals as should be required for native food be killed. (United States' Senate, Ex. Doc. No. 32, 41st Congress, 2nd Session, pp. 24, 37.)

In consequence of this slaughter in 1868-69, seals are reported to have "disappeared rapidly from the Pribiloff Islands, but two or three years later began to return in vast numbers" (Bancroft's works, vol. xxxiii, p. 638). Coincidentally with this, Bryant states that fur-seals were very abundant along the coasts of Oregon, Washington Territory, and British Columbia as compared with former years (Monograph of North American Pinnipeds, p. 332). Bryant estimated the total number of seals on the islands at this date at 3,230,000. (Monograph of North American Pinnipeds, pp. 390, 392.)

McIntyre, Government Agent, after stating that for some years succeeding the discovery of the Pribiloff Islands 100,000 skins were annually taken by the Russians, adds, "But this it seems was too large a number, for the decrease in the yearly return was constant until 1842, when they had become nearly extinct. In 1858, 31,800 were taken, which was the largest catch in any one year until 1867, when, as I am informed, 80,000 or 100,000 were secured. From the most careful computation I have been able to make, I am of the opinion that no more than 100,000 can be taken annually without incurring the risk of again diminishing the yearly production." (United States' Senate, Ex. Doc. No. 32, 41st Congress, 2nd Session.)

The Alaska Commercial Company was incorporated in this year.

810. 1870. The general conditions of seal life on the islands remained as described above (under 1868), according to Bryant.

An Act was passed by Congress providing that seals should be killed on the Pribiloff Islands only during the months of June, July, September, and October, that killing should be confined to males, and that the number killed for skins in each year should not exceed 75,000 on St. Paul and 25,000 on St. George. Respecting the number thus fixed, Dall says: "It is probable that 100,000 might be safely killed," but suggests that the number should be increased or diminished as experience proved to be necessary. (Alaska and its Resources, pp. 496, 497.)

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This was the Alaska Commercial Company's first year of lease of the islands, but no full control was achieved till 1871. Bryant states that in this year the natives, to purchase supplies and for their own food, killed 85,000, mostly 1- and 2-year-old seals. (Monograph of North American Pinnipeds, p. 398.)

The killing as per official Return made up in 1871, however, shows a total of 23,773, from which 9,988 skins in all were saved, the remainder being pups and other seals killed for food. (House of Representatives, Ex. Doc. No. 83, 44th Congress, 1st Session.)

811. 1871. It was discovered that the skins of 3-, 4-, and 5-year-old seals were most in demand, and the killing was changed to suit this demand; but no material change was observed in the habits of the seals. (Monograph of North American Pinnipeds, p. 392.) Bryant elsewhere says that a careful comparison of this year with 1869 and 1870 shows a decrease of 10 per cent. in females. (Ex. Doc. No. 83, 44th Congress, 1st Session, p. 65.)

812. 1872. The killing was directed as far as possible to seals from 4 to 6 years old, and some of 7 years old were killed. This, taken in conjunction with the killing of 1871, diminished the number of "reserves" or virile males not actually on the breeding grounds, but doing duty along the shores. The number of females was increasing 5 per cent. annually. (Bryant in Monograph of North American Pinnipeds.)

Lieutenant Maynard, accepting the method of estimating the seals advocated by Elliott, makes the whole number in this year nearly 6,000,000. (House of Representatives, Ex. Doc. No. 43, 44th Congress, 1st Session, p. 5.) Elliott estimated that the seals on St. George Island were only one-eighteenth of the whole number, or, as compared with those on St. Paul, as 1 to 17. (Census Report, p. 157.)

[Mr. Dirks stated to us that in this year it seemed as if the killing of 100,000 seals annually could not injuriously affect the rookeries.]

In this year Captain Lewis, of the Hudson's Bay Company, reported very great and entirely unprecedented number of seals off Vancouver Island and the entrance to Fuca Strait, chiefly grey pups and yearlings. (Elliott. Census Report, p. 166.) This appears to have been in connection with the change in habits observed on the rookeries in the following summer.

813. 1873. It was now found that the 3-year-old seals afforded the best marketable skins, and the killing was directed to those. The "reserves" became reduced to half their former number, and each beachmaster had on the average fifteen females. When the rookeries broke up at the close of the breeding season, the females lingered instead of leaving them as before. In September and October a few young were born, showing that some females had not been served at the proper time in 1872. The females were still increasing 5 per cent. annually in number. (Bryant in Monograph of North American Pinnipeds.)

814. 1874. The condition of seal life remained about the same as in 1873. The "reserves" were in about the same numbers, but contained more young as compared with fully mature males. The females appeared in similar number, and, on the whole, there was an evident improvement in the condition of the rookeries. (Bryant in Monograph of North American Pinnipeds.)

An Act of Congress, approved March 1874, authorized the Secretary of the Treasury to rearrange the proportion of catch to be taken from St. Paul and St. George respectively, and to designate the months of killing. Under this provision, the time of killing was extended to include the first half of the month of August. (Bancroft's Works, vol. xxxiii, p. 638.)

815. In 1874, Lieutenant W. Mynard, U.S.N., investigated the conditions of seal life on the Pribyloff Islands as Special Government Agent. He recommended that enlarged copies of maps of the breeding grounds should be furnished to the agents in charge of the islands, who should be required to compare these each year with the respective breeding rookeries. "This, if carefully done, will afford data, after a time, by which the fisheries can be regulated with comparative certainty." Respecting the number of seals killed, he says: "Since 1870 there have been killed on both islands, in round numbers, 112,000 young male seals each year. Whether this slaughter has prevented the seals from increasing in number or not, and, if so, to what extent, can only be deduced from their past history, which, unfortunately, is imperfectly known." He is inclined to think that no decrease had occurred between 1872 and 1874, but states that the period was too short to decide whether the killing was excessive. He adds: "The number now killed annually is entirely experimental, and we have nothing to start from as a basis." Maynard further states that the number of bulls in this year was not more than one-tenth that of the females. (House of Representatives, Ex. Doc. No. 43, 44th Congress, 1st Session, pp. 5, 6.)



[Mr. D. Webster states that the skins taken in 1874 and 1875 ranged in weight from 6 lbs. to 11 lbs.]

Elliott believes that the number of seals did not materially alter in the twelve or fifteen years previous to 1874. He estimated the number of breeding seals on the islands at 3,193,420, the whole number of seals on the islands at 4,700,000. (Census Report, pp. 57-67.)

816. 1875. The killing was this year confined to seals less than 5 years old, and more 2-year-olds were taken than in any year since 1870. This left a large number of males to mature. Many young were, however, born as late as August. (Bryant in Monograph of North American Pinnipeds.) In his official Report for this year, Bryant protests against the killing of pups for food, characterizing it as "a great waste," and adding, "I can find no precedent for this previous to the transfer of the island to the United States, only that the former Russian Fur Company allowed, as an extra indulgence to the natives, after the close of the season's sealing, to take 500 of these young seals for feasting." (House of Representatives, Ex. Doc. No. 83, 44th Congress, 2nd Session, p. 174.)

Bryant also states in the same Report (p. 175) that a residence of seven successive seasons on the islands had convinced him that the killing of 100,000 annually did not leave a sufficient number of males to mature for the wants of the increase in the number of females. He explains his reasons for this in some detail.

817. 1876. No marked change in the conditions this year, but many females landed to bring forth their young after the 20th July. A heavy gale with snow occurred on the 30th October, driving seals into the water, from which only a small number returned, many pups being lost. Bryant anticipates that the result of this loss will appear in 1880, when the pups should reach maturity. The decrease in breeding males, consequent on excessive slaughter of 1868 and 1869, was in this year greatest. (Bryant in Monograph of North American Pinnipeds, p. 399.)

Bryant again states that he believes the number 100,000 fixed for killing to have been too high, and that in his report he had recommended that it be reduced by 15,000. (House of Representatives, Ex. Doc. No. 623, 44th Congress, 1st Session, Report on Alaska Commercial Company, p. 99.)

John F. Miller, President of Board of Directors of Alaska Commercial Company, says: "Our agents report a very considerable increase in the number of females since 1871. We cannot tell that there is much increase in the number of males." (Report on the Alaska Commercial Company, p. 41.)

818. 1877. Bryant states that this year there was an evident increase in the number of breeding males. He estimates that there were about 1,800,000 breeding seals on the islands, as against 1,130,000 in 1869. (Monograph of North American Pinnipeds, p. 410.)

819. 1878. [Mr. D. Webster informed us that he did not observe much decrease in the number of seals till this year.]

820. 1879. [From evidence obtained by us, it appears that in this year it became necessary to extend the area of driving for the first time, so as to include Polovina and Tolstoi rookeries, and that the salt-house near Polovina was built at or about this time.]

821. 1880. The number of seals on the Pribyloff Islands is said to have been greater than ever before, the increase being particularly observable in young seals. (Cruise of the "Corwin" in 1880, p. 55.) Colonel J. Murray dates the beginning of a steady decrease of seals from this year. (Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session.)

822. 1881. Elliott, in his report printed in this year, strongly protests against the unnecessary slaughter of pups for food purposes. He states in the same report that the breeding rookeries have been gradually increasing since 1857. (Census Report, pp. 119, 170.)

W. B. Taylor, Assistant Agent of Treasury Department on St. Paul in 1881, says that according to information received from those who had been a number of years on the Island of St. George, there were as many seals there as ever. (Ex. Doc. No. 3883, 50th Congress, 2nd Session, Fur-seal Fisheries of Alaska, p. 44.)

823. 1882. Dr. H. H. McIntyre, after June 1870 Superintendent of the Seal Fisheries of Alaska for the lessees, states that since 1870 the number of seals on the Pribyloff Islands had increased every year. (Fur-seal Fisheries of Alaska, p. 116.) Speaking in 1888 (see under, 1888), he, however, places the beginning of decrease in this year. The same gentleman reports that at this time the desired number of large skins could no longer be obtained. (Fur-seal Fisheries of Alaska, p. 118.)

Mr. G. Wardman's statement, however, respecting the number of "killables" on

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St. George Island indicates a decrease in the number of this class as between 1881 and 1882. (Fur-seal Fisheries of Alaska, p. 39.)

[Natives on St. Paul Island informed us that they noticed seals to be markedly reduced in number in this year.]

824. 1883. Jacob H. Moulton, Special Agent of the Treasury Department on the Pribyloff Islands from 1877 to 1885, says that between 1877 and this year there was, he thinks, an increase in the number of seals on the Pribyloff Islands. (Fur-seal Fisheries of Alaska, p. 255.)

825. 1884. [Mr. T. F. Morgan informed us that from 1874 to 1884 he thought the seals increased. He noticed a decrease in 1884, accompanied with an irregularity in habits.]

826. 1885. Jacob H. Moulton states that between 1883 and this year there was no increase of seals on the islands. (Fur-seal Fisheries of Alaska, p. 255.)

H. A. Gliddon, Agent of the Treasury Department on the Pribyloff Islands from 1882 to 1885, says that from 1882 to 1885 no change in the number of seals on St. Paul was noticed, but they vary in different years, especially on St. George. (Fur-seal Fisheries of Alaska, p. 27.)

827. 1886. George R. Tingle, Treasury Agent on the Pribyloff Islands, states that a frequent inspection of the rookeries on the islands showed a decided increase in the number of cows, with an ample supply of bulls. ("Fur-seal Fisheries of Alaska," p. 174.)

828. 1886-87. George R. Tingle, using Elliott's method of estimating the seals, makes the number on the Pribyloff Islands 6,357,750. He states, however, that he considers this result too great by about one-fourth, which reduces his estimate to about 4,768,300. (Fur-seal Fisheries of Alaska, p. 177.)

[From information obtained on the islands, it appears that the reduction in average weight of skins taken was well recognized in these two years.]

829. 1887. [Mr. T. F. Morgan told us that he noticed a marked decrease in this year. In this or the preceding year, according to Mr. J. C. Redpath, the standard weight of skins was lowered to enable the Company to complete its quota.]

830. 1888. Dr. H. H. McIntyre, Superintendent for Alaska Commercial Company at the time on the islands, states that the number of seals has decreased since 1882; that the rookeries do not produce enough to bear the killing of "100,000 by marauders in addition to the 100,000 killed lawfully." He recommends that the permission accorded to natives of killing seal pups for food should be rescinded, and, speaking particularly of 1888, says: "There are at present, in my opinion, too few bull seals to keep the rookeries up to their best condition."

He adds, further, that the size of skins ruled still smaller than in 1883. (Fur-seal Fisheries of Alaska, pp. 116, 117, 127, 132.)

In the same year T. F. Morgan, in the employment of the Alaska Commercial Company, says that there had been a large increase in the number of seals on the islands since 1868, and also since 1874. The breeding rookeries occupied more territory.

S. M. Büynitsky, Special Treasury Agent on Pribyloff Islands in 1870, states that there may be 3,000,000 or 7,000,000 seals on the islands; no estimate can be made within 1,000,000 or so of the actual number.

George Wardman, Treasury Agent on Pribyloff Islands from 1881 to 1885, estimates that the seals on St. George numbered 165,000 at most. He thinks that the number of seals has been over-estimated. (Fur-seal Fisheries of Alaska, pp. 12, 39, 69.)

[In this year, according to Mr. D. Webster, the standard weight of skins was lowered from 6 lbs. to 5 lbs. and to 4½ lbs., because of scarcity of 6-lb. skins. Thus, all males from 2 to 5 years old became, and thereafter continued to be, accounted killable.]

831. 1889. Last year of lease of Alaska Commercial Company.

[To complete the catch in this year, we ascertained that some 40,000 very small skins were taken, including even yearlings.]

832. 1890. First year of control of North American Commercial Company, under new lease.

Colonel J. Murray, First Assistant Government Agent, reports that the seals on the Pribyloff Islands have been steadily decreasing since 1880, and attributes this to the excessive slaughter of males 2 to 5 years old.

Mr. Goff states that no 2-year-old seals brought to the killing grounds were turned away in this year. (Senate, Ex. Doc. No. 49, 51st Congress, 2nd Session.)

Elliott estimates the number of seals on the islands in this year at 959,393. He attributes the decrease in number of seals to:—

1. Over-driving on the islands, begun in 1879, dropped till 1882, and then suddenly renewed and continued to date.

2. To pelagic sealing, which, according to him, was begun as a business in 1833, and carried on to date. (Parliamentary Paper London, June 1891, p. 53.)

The bearing females on the rookeries are estimated at 350,000, but it is stated that there are also 250,000 not bearing, and not served in 1889 or 1890, owing to dearth of virile males. He states that the condition of seal life on the islands is like that which occurred in 1834 under the Russian régime.

George R. Tingle, now in charge of the islands for the North American Commercial Company, states that late in this season there was a marked increase in the arrival of seals on the islands. (Ex. Doc. No. 49, 51st Congress, 2nd Session, Exhibit P.)

A. W. Lavender, Assistant Treasury Agent, notes that large schools of killer whales were about the islands in October, destroying great numbers of pups. (Ex. Doc. No. 49, 51st Congress, 2nd Session.)

833. 1891. [The result of our investigations and evidence obtained elsewhere detailed shows that the rookeries were this season in better condition than in 1890.]

#### VII.—THE FUR-SEAL FISHERY IN THE SOUTHERN HEMISPHERE.

834. In dealing with the question of the preservation of the valuable fur-seal in the North Pacific Ocean, it is desirable to utilize all the experience that may be obtained in regard to the treatment of the fur-seal in other parts of the world, and the records of these seal fisheries are peculiarly abundant.

835. There are several varieties of seal which have been taken in large numbers south of the Equator which yield that particular close fur so valued in commerce. The three chief varieties are respectively known as the *Otaria Australis* (= *Otaria Falklandica*, *Arctocephalus Australis*, *Arctocephalus Falklandicus*), of the South American coasts; the *Otaria Pusilla* (= *Arctocephalus Antarticus*) of the South African coasts; and the *Otaria Fosteri* (= *Arctocephalus cinereus*, *Eutaria cinerea*) of the Australasian coasts. But there is much variety in nomenclature, ever since the fur-seal on Amsterdam Island were described as the *Phoca Ursinus* in 1770. Professor Flower, the Director of the Natural History Department of the British Museum, has kindly sent us a Memorandum (Appendix D), descriptive of these differentiations. The southern fur-seals differ specifically, and according to some naturalists generically, from those in the Northern Hemisphere. The fur-seal north of the Equator differs in structural character, and especially in the form of the fore part of the skull, from all seals found south of the Equator.

836. But their habits and manner of life are practically identical, and there are certain conditions common to the presence of all these varieties. For breeding purposes they need rocks in close proximity to the sea, where fogs are frequent. For feeding purposes they require a wide range of ocean, yielding small fish, and squid. For temperature, they prefer temperate and even sub-tropical latitudes, and rarely if ever approach the zone of ice. Ever since the first navigators from Europe entered those seas the fur-seal was found all over the great Southern Ocean in very great abundance from the Galapagos Islands, under the Equator, in the Pacific, the Islands of St. Paul and Amsterdam in the Indian Ocean, and along the shores of Africa and America to the southward of the parallel of 20° south latitude in the Atlantic away south to the groups of islands in 60° and 63° south latitude. But their continued existence in such habitats depends on their not being destroyed or disturbed by man, murrains, or predacious animals.

837. In the North Atlantic at the present day there exists no known species of the fur-seal, although fossil remains indicate their existence in the tertiary period.

838. Extensive sealing operations were conducted in the South Seas about the close of the last century and the first part of the present century. For all this period there are extant many of the actual logs and journals of those engaged in the pursuit.

These "sealers" of the South Seas hailed for the most part from British ports or from those on the east coast of North America, and very considerable profits accrued, although the work was of a particularly arduous and venturesome character.

839. It is noteworthy, however, that South Sea sealing, as a great industry, undoubtedly had its origin in the closing of the fur trade of the North Pacific to English traders and sealers when the Russians prevailed on Chiuva, at that time the one chief market for such furs, to close her ports absolutely against all furs brought across

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the Pacific from the islands and coasts of North America, the monopoly of the whole trade being accorded to the Russians at their great mart of Kiatcha, on the Amoor. Englishmen had become convinced of the great value of the China fur trade, and this policy of restriction on the part of the Russians at once turned maritime enterprise to the South Seas for the necessary supply of furs, and in a very few years made secure the footing of the English and Americans in the China and other markets.

840. At a very early period, the English were already endeavouring to collect fur-seal skins for the China market in the seas known to their regular East India traders. Thus, in February 1773, when the vessels conveying Lord Macartney to China called at the Islands of Amsterdam and St. Paul, in the Southern Indian Ocean, in latitude 39° south, they found a sealing party there engaged in carrying out a contract to supply 25,000 skins of the *Phoca Ursina* for the Canton market. The description sent home was as follows:—

"The seals are found here in greater numbers in the summer than in the winter . . . . In the summer months they come ashore, sometimes in droves of 800 to 4,000 at a time, out of which about 100 are destroyed, that number being about as many as five men can peg down to dry in the course of the day. . . . In general they are not shy. . . . Most of those that come ashore are females, in the proportion of thirty to one male. Whether in these animals nature has fixed on such apparent disproportion between the sexes, or whether, while the females have occasion to seek the shore, the males continue in the deep, has not hitherto been observed by observations here."\*

In 1789 the Island of Amsterdam was visited by Captain Cox, of the "Mercury," who reported as follows: "On our first landing we found the shore covered with such a multitude of seals that we were obliged to disperse them before we could get out of the boat. . . . We procured here 1,000 skins of very superior quality."†

841. The seal-skin for long found its chief market in China and Russia, where it became a coveted and fashionable fur, but its gradual introduction into Europe and America dates from the time when South Sea sealing was first taken in hand as a regular industry. It has been calculated that from first to last not less than 17,000,000 skins were thus placed in the market, and without doubt it was the threatened failure of this enormous supply from the south which about the year 1840 led the Russians, British, and Americans to pay special attention to the supply of fur-seals known to exist in the North Pacific Ocean.

842. The conditions in the South Seas differed categorically from those now prevailing in the North Pacific. The various islands resorted to as breeding places by the fur-seal were not only absolutely uninhabited by man, but were also at the time in the political category of "no-man's-land." As a consequence there was no possibility of instituting any regulation of methods of slaughter, restrictions of numbers or kinds taken, or any limitation of place or season.

843. There were practically no natives (as on the west coast of North America) to lead the way in pelagic sealing. The method of slaughter universally adopted was precisely that of the White raiders of the North Pacific. No labour or effort was wasted in any endeavours to capture or kill the seal at sea. The simple method was invariably adopted of establishing parties of men on all likely beaches, camped in wooden huts or under canvas, and engaged in slaughtering and skinning all the seals that landed, without distinction of age, size, or sex. Captain Weddel pithily writes of the killing in the South Shetlands in 1821-22: "Whenever a seal reaches the beach, of whatever denomination, he was immediately killed and his skin taken; and by this means, at the end of the second year, the animals became nearly extinct. A vessel of from 200 to 400 tons brought out from the home port the men and camping equipment. She would land parties on various beaches, and then would be herself safely moored in some handy harbour. Boats, and even tenders of 30 and 40 tons, would travel between this vessel and the various islands until the season's fishery was over. Occasionally the work of destruction was more expeditiously performed when the barge or brig carrying such landing parties came upon a large rookery already well filled out with seals, for then the whole work of the cruise would be accomplished in a few days." Such sealing parties were found at work by several exploring expeditions, as, for instance, by Her Majesty's ships "Erebus" and "Terror."

844. The more detailed records of these South Sea adventurers yield many points of interest, and it may be well to quote from the earlier descriptions of the fur-seal indicating how rapidly so valuable a fur secured the notice of the early adventurers, and how speedily their successors brought about the commercial extermination of the seal.

\* G. W. Clark on Eared Seals — "Proceedings of the Zoological Society of London, 1875," p. 652.

† *Ibid.*, p. 651.

845. In the sixteenth century, Sir Frances Drake, the first Englishman who penetrated to the South Seas, frequently reports the presence and comments on the peculiarities of seals. These formed indeed a chief source for the supply of fresh meat. On his great voyage of circumnavigation in 1577-78, seals were taken in the Rio de la Plata, and again in latitude 47° 30', at an anchorage eventually named Seal Bay; about the middle of the month of May seals were found so plentiful that 200 were slaughtered in one hour.\* In the same neighbourhood some years later, in December 1586, Cavendish reports in detail on the seals found in a bay he named Port Desire.†

846. In the observations of Sir Richard Hawkins on his "Voyage into the South Sea" in 1593, we read, in his notes made in the Straits of Magellan: "Of Seals or Sea-Wolves—One day, having ended our hunting of penguins, one of our mariners, walking about the island, discovered a great company of seals or sea-wolves (so called for that they are in the sea as the wolves on the land), advising us that he left them sleeping with their bellies toasting against the sunne. We provided ourselves with staves and other weapons and sought to steal upon them at unawares to surprise some of them, and coming down the side of a hill we were not discovered till we were close upon them; notwithstanding their sentinel, before we could approach, with a great howle waked them, wee got between the sea and some of them, but they shunned us not, for they came directly upon us, and though we dealt here and there a blow, yet not a man that withstood them escaped the overthrow. They reckon not of a musket shot, a sword pierceth not their skinn, and to give a blow with a staffe is as to smite upon a stone; only in giving a blow upon his snout presently he falleth down dead.

"After they had recovered the water they did as it were scorne us, defie us, and danced before us untill we had shot some musket shott through them, and so they appeared no more.

"This fish is like unto a calfe, with four legs, but not above a spanne long; his skinne is heyre like a calfe, but these were diferent to all that I have ever scene, yet I have scene of them in many parts, for these were greater and in their former parts like unto Lyons, with shaggy heyre and mostaches

"They live in the sea, and come to sleepe on the land, and they ever have one that watcheth, who adviseth them of any accident.

"They are beneficiall to man in their skinnes for many purposes; in their mostaches for pick-tooths, and in their fatt to make traine-oyle. This may suffice for the seals, for that he is well known."

847. In the seventeenth century these notices still continue frequent. Thus Henry Brewer landing at Valentine Bay on the 9th March, 1642, writes: "Saw among the rocks several sea lions and sea dogs, about the bigness of a good European calf; some of a greyish, some of a brownish colour, making a noise not unlike our sheep."

848. Dampier, in 1683, gives the following very full general description of seals:—‡

"The seals are sort of creatures pretty well known, yet it may not be amiss to describe them. They are as big as calves; the head of them like a dog, therefore called by the Dutch, the 'sea hounds.' Under each shoulder grows a long thick fin; these serve them to swim with when in the sea, and are instead of legs to them when on the land, for raising their bodies up on end by the help of their fins or stumps, and so having their tail parts drawn close under them, they rebound as it were, and throw their bodies forward, drawing their hinder parts after them, and then again rising up and springing forward with their fore parts alternately, they lie tumbling thus up and down all the while they are moving on land. From their shoulders to their tails they grow tapering like fish, and have two small fins on each side the rump, which is commonly covered with their fins. These fins serve instead of a tail in the sea, and on land they sit on them when they give suck to their young. Their hair is of divers colours, as black, grey, dun, spotted, looking very sleek and pleasant when they come first out of the sea. For these at John Fernando have fine short fur, the like I have not taken notice of anywhere but in these seas. Here are always thousands, I might say possibly millions, of them, either sitting on the bays, or going and coming in the sea round the island, which is covered with them (as they lie at the top of the water playing and sunning themselves) for a mile or two from the shore. When they come out of the sea they bleat like sheep for their young, and though they pass through hundreds of other's young ones before they come to their own, yet they will not suffer any of them to suck. The young ones are like puppies, and lie much ashore, but when beaten by any of us, they, as well as the old

\* "Hakluyt," vol. iii, p. 733.

† Ibid., p. 804-5.

‡ "Dampier's Voyages," vol. i. p. 89.

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ones, will make toward the sea, and swim very swift and nimble, though on shore they lie very sluggishly, and will not go out of our ways unless we beat them, but snuff at us. A blow on the nose soon kills them. Large ships might here load themselves with seal-skins and train oyle, for they are extraordinarily fat. Seals are found as well in cold as in hot climates."

849. In the British Museum are kept the admirably written MSS. of certain other voyagers, and in that relating the experiences of Captain Strong in the "Welfare," in 1689, the writer, named Simson, states that on the 12th September, at the Island of Juan Fernandez, "We went on shore, but could hardly set a foot down, the seals lay so thick on the place. Besides we saw a great number of sea-lyons, not unlike other Lyons in countenance, colour, and fierceness. They had no feet but fins.

"As for the seals they were of a dark colour and grissled, but under the long pile there was conched a fur of an incomparable fineness, that if it could be felt it would answer all ye ends of beaver furr, wherefore a great many of their skins were brought to England."

This is probably one of the earliest accounts of the commercial value of the fur-seal skins.

850. In the eighteenth century navigators continue to report the abundance of seals. Thus Captain Wood Rogers, taking Alexander Selkirk off the Island of Juan Fernandez in 1709, records a lengthy description of the fur-seal seen there at that date.\*

851. The amount of information at this period extant on the fur-seal is well emphasized by Chaplain Richard Walter, of Lord Anson's flag-ship which refitted at Juan Fernandez from June to September 1740. This chaplain gives a very full and elaborate account of all the natural features of the islands and of their Fauna and Flora, but he dismisses seals in the single sentence: "The seal, numbers of which haunt this island, hath been so often mentioned by former writers that it is unnecessary to say anything particular about them in this place."

852. Captain Carteret, writing of Masafuera in 1767, says: "The seals were so numerous that I verily think if many thousands were killed in a night they would not be missed in the morning; we were obliged to kill a noted number of them as, when we walked the shore they were continually running against us, making at the same time a most terrible noise. These animals yield excellent train oil, and their hearts and plucks were very good eating, being in taste something like those of a hog, and their skins were covered with the finest fur I ever saw of the kind."

853. Captain Cook, in his official Report of the voyage of the "Resolution" in 1771, calling attention to the great number of fur-seal on New Georgia, is generally credited with being first to direct the attention of the English adventurers to the commercial advantages of South Sea sealing. But before this period, and probably following on the suggestions made as early as 1690, Englishmen were already at work on this new harvest of the sea. Thus, when Bucareli, the Spanish Governor at Buenos Ayres, sought to recover the Falkland Islands for Spain in 1770, his first task was to forcibly eject from their established port and station the "English sealers" at port Egmont, an act for which Spain afterwards made full restitution.

854. Before the end of the eighteenth century sealing in the South Seas had assumed very extensive dimensions. Not only were the furs regarded as of great value, but the oil, technically known at the time as "train-oil," assumed an important commercial position. Attention seems to have been first directed to the islands and coasts of South America. We hear of no less a number than 1,000,000 skins being taken to Canton, from the neighbourhood of Masafuera in one year, in 1798, while before the seals were exterminated on that one island in 1807, no less than 3,500,000 skins had been taken.

855. All along the coast of Chile and Peru, even as far north as the Islands of St. Felix and on the Galapagos group, seals were hunted. By the end of the century there were not less than thirty New England vessels so employed on that coast. Meanwhile, in 1783, Dame Haley, of Boston, had sent a 1,000 tons ship, the "States," down to the Falkland Islands, where she procured a cargo of 13,000 skins of fur-seal which were sold in Boston at 50 cents a-piece, shipped to Calcutta, where under the name of "sea-otter" they were sold for 2 dollars, and eventually reaching Canton, where they fetched 5 dollars per skin.

856. The methods of slaughter involved rapid extirpation in any given breeding place, and sealers came to be perpetually discovering and exhausting in succession every place to which seal resorted. The islands around South America, Tristan d'Acunha, the



South Ockneys, South Georgia, and Sandwich Land, were all in turn discovered, and hundreds of thousands of skins taken from each for a long series of years. Thirty vessels—eighteen being under the American, ten under the English, and two under the Russian flag, in the three years 1819-22, took more than 600,000 seals from the South Shetland group, completely exhausting the seal race there for the time.

857. Sealing-vessels had as early as 1790 crossed the Atlantic and worked up the coast of Western Africa as far as 20° north latitude, obtaining many seals. Others worked steadily along the open sea to the south, successively landing upon the various groups of islands—Bouvet and Lindsay, Marian, and Prince Edward, the Crozets, Kerguelen, and MacDonald.

Yet farther to the eastward, seals were obtained on the following islands: Royal Company, Emerald, Antipodes, Campbell, Macquarie, Auckland, and Bounty, while one vessel reported in Sydney a catch of 40,000 from the Fiji Islands, probably a locality named to shroud the real killing place.

858. At this period, and especially from 1819-20, there sprung up a very large transshipment trade in fur-seal skin in the new port of Sydney, reaching hundreds of thousands in five years.

Enterprising men chiefly on the Reports of Vancouver and Cook had already found their way to the coasts of "New Holland," and away round the islands of New Zealand. Bass had reported the reefs off Cape Barren Island, off the north coast of Tasmania, "covered with fur-seal of great beauty." Cook had found seals in great numbers on the rocks in Dusky Bay in New Zealand in 1773.

859. But the severe process universally adopted speedily exhausted the different rookeries, and by the year 1830 we meet with strenuous complaints that all the known killing grounds were depleted, and that new grounds must be discovered. Fanning and others pointed out, however, the significant fact that vast numbers of seals were still to be seen cruising about at sea, a remark of special and new significance to the owners of the North Pacific rookeries in 1802.

860. It is a matter of some difficulty to estimate the total number of seals taken in the South Seas during the period of the excessive energy of the great sealing industry. But there are actual records which, added together, bring the acknowledged total to more than 16,000,000.

These seals were taken from about thirty different island groups or coast districts on the mainland, and they were all taken by the one method of indiscriminate slaughter on shore.

It is probable that this wholesale slaughter did not extend over more than seventy years, but it is certain that at the end of the period the fur-seals were so terribly reduced in numbers that even the sixty years of subsequent rest and total cessation of killing have not sufficed to bring about any effectual restoration of the numbers of years gone by.

861. Equally valuable to the treatment of the seals in the North Pacific is the more recent history of sealing in the South Seas. The excessive slaughter of seals by man on the breeding islands alone had brought about the commercial extermination of the once abundant fur-seal before the year 1830.

From that period for thirty or forty years sealing was carried on but fitfully and seldom. Sir John Ross, writing of Kerguelen Land in 1840, says: "Of marine animals the sea-elephant and several species of seals were formerly in great abundance, and annually drew a number of vessels to these shores in pursuit of them. They have now, after so many years of persecution, quite deserted the place or have been completely annihilated." All other writers and travellers give similar descriptions of the methods and results of this excessive slaughter. The officers of Her Majesty's ship "Beagle," surveying the intricate passages of Magellan's Straits and Tierra del Fuego in 1830, speak in similar strain, and it is noticeable that Charles Darwin, when visiting these old-time resorts of the fur-seal in 1832-34, and contributing so much of permanent value to natural history, does not make even a single allusion to the fur-seal.

862. It is instructive to notice, however, that in later years, as civilized nations began to assert sovereignty over these wild shores, so did they claim the right to the seals and to control the breeding places. Augustus Earle, who has published an interesting account of Tristan d'Acunha in the year 1834, thus recounts the experience of one of the islanders named Richard: "By one of those sudden acts of treachery and cruelty which have been so common on the coast of South America the vessel to which he belonged while quietly engaged in picking up seal on the shore was seized by an armed republican cruiser on pretence of her occupation being unlawful, and her crew (for whom Richard had the honour of cooking) were lodged in durance vile, and the only

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863. All accounts speak of change in the habits of the fur-seal. In Tristan d'Acunha they are described as having deserted the open beaches and taken to haunting caves and ledges inaccessible to man. On the Auckland group they now resort to the beaches and ledges below the steep cliffs on the western shores, where the perpetual heavy surf renders it impracticable for man to land. But on some islands, as on Adam's Island, the sealers have made roadways for themselves over the rocks and ice of the interior down on to these beaches. This is, however, not always practicable, and it is said that under the protection of intractable precipices the fur-seal are unmolested and very plentiful on MacDonald's Island, one of the Kerguelen group.

864. A traveller, Mr. Chapman, visiting Adam's Island in 1889, writes: "We landed at the cave where the seal huts are. . . . These sealers make an easy road across the island, and when they arrive at the cliffs at the other side, lower some of their number to the ledges and caves where they slaughter seals. The slayers and the skins are then drawn up. It is wholly illegal, but it goes on, so that the fur-seal are nearly exterminated."

865. The naturalists on the "Challenger" frequently observed fur-seal in 1873-74. Of Nightingale Island it is reported: "The caves, with the sloping ledges leading up to them, are frequented by fur-sea's. Four years before the visit of the expedition 1,400 seals had been killed on the island by one ship's crew. Seals were very much scarcer in 1873, but the island was visited regularly once a-year by the Tristan people. The Germans killed only seven seals at Inaccessible Island during their stay, but the Tristan people killed forty in December 1872."\*

866. Of the Crozet Island the report was: "The islands are frequented by elephant-and fur-seals, although they are not so plentiful as formerly. . . . The flesh of the seals and birds, the eggs of the latter, together with the Kerguelen cabbage, form a nourishing diet on which the sealers residing at times on one or other of the islands have usually lived."

867. Of Kerguelen Island it is said: "Two of the whaling schooners killed over seventy fur-seals on one day, and upwards of twenty on another. . . . It is a pity that some discretion is not used in killing the animals."

868. Another entry tells us of the Messier Channel: "The steam-pinnace left Gray Harbour at 4 A.M. with several naturalists and officers, and joined the ship in the evening at Port Grappler" (in January 1876). "On the way landing was effected at several spots, and a number of birds were procured; a very large number of fur-seals (*Arctocephalus*) were seen, and six were shot, the skins and skeletons of which were preserved."

869. In regard to Australia, Sir P. McCoy, kindly supplying us with information from the National Museum, Melbourne, states of the *Euotaria cinerea*: "The decline or destruction of the fishery is certainly attributable to the indiscriminate slaughter of the seals on the few islands off the south coast, especially in Western Port, where the old males and gravid females resorted in the summer to bring forth and tend the young. . . . The fur-seal fishery was conducted simply by manning a boat suitable for landing on the islands, the landing usually taking place at night, and then the seals were killed indiscriminately by clubbing them on the nose with large sticks. . . . The Australian fur-seals were never fished for in the open ocean."

870. Thus, over all these forty years, vessels, most of them under the United States' flag, have continued to hunt the breeding places of the fur-seal in the South Seas for the purpose of killing all that could be killed, regardless of sex or condition.

The records show that the number of vessels fitting out in New England ports for this fishery averaged since 1840 from six to ten or twelve each year.

871. At the time of the revival of sealing in the North Pacific in 1867 and following years, several more vessels were dispatched to the South Seas and very considerable catches were made, although not in numbers at all comparable to those of the old days. Nevertheless, vessels returned with cargoes of 1,000, 1,600, and even 2,700 choice skins.

872. A summary and authoritative account of what occurred was given in 1889 by the Honourable C. A. Williams, of Connecticut, before the House of Representatives: "People who had been previously engaged in the sealing business revisited these southern localities after a lapse of nearly fifty years, and no seals were found on the Island of Desolation. . . . The Island of South Shetland, and the Island of South Georgia, and the Island of Sandwich Land, and the Diegos off Cape Horn, and one or two

\* "Challenger Expedition Report," vol. i, p. 264 et seq.

minor points, were found to yield more or less seal. In this period of fifty years in these localities seal life had recuperated to such an extent that there was taken from them in the six years from 1870 to 1877 perhaps 40,000 skins. . . . To-day they are again exhausted. . . . I do not think that 100 seals could be procured from all the localities mentioned by a close research."

873. According to authentic records, the sealers from New London obtained from the South Shetlands and the neighbourhood of Cape Horn and Tierra del Fuego 92,756 fur-seal skins between the years 1870 and 1880, but sealers are still at work, by their wasteful and indiscriminate slaughter, preventing the fur-seal of the South Seas from recuperating and being restored in numbers.

874. Thus, the actual experiences of South Sea sealing unmistakably emphasize the serious dangers of indiscriminate and wholesale slaughter on shore, and prove conclusively that, in the entire absence of pelagic sealing, it is perfectly possible practically to exterminate the seal race.

875. This serious result, actually achieved, is brought into still greater prominence when we bear in mind the measures adopted by several Governments of territories in the Southern Hemisphere, by special regulations or otherwise, to restore and preserve the fur-seal rookeries. The Governments which have set up such regulations are those of the Uruguay, Argentine, and Chilean Republics, and of the British Colonies of the Falkland Islands, the Cape of Good Hope, Victoria, New Zealand, and Tasmania.

876. In the Uruguay Republic, for many years the Government have protected the seals resorting for breeding purposes to the Lobos, the Espinillo, and the Coronilla Islands.

According to a special report, furnished to us by Your Majesty's Minister, Mr. Satow, these fisheries have been very carefully looked after. They are now leased to a private company for a term of years, but without limitation of the numbers to be taken. The company have the sole right of taking seals, and there is no Government tax levied on the skins. The killing of seals is only permitted between the 1st June and the 15th October in each year. All the seals are killed on shore, chiefly by means of clubs, and there is no pelagic fishing. It is the general opinion that no diminution is observable in the number of seals frequenting the rookeries. Mr. Lafone, M.P., has kindly supplied us with much very valuable information. The chief rookeries have been, to his knowledge, in good condition for more than forty years past. In Appendix (G) we give the figures of the numbers actually taken in recent years, from which it will be seen that the average annual take, with no apparent injury to the numbers of seals frequenting the rookeries, is nearly 15,000 seals; but that of these more than one-third are "small pups." In 1888 strong representations were made against killing pups. It may be added, that in the medium sizes many females are included without injuriously affecting the total number of the seals.

877. In 1889 the Government of the Argentine Republic absolutely forbade the taking of seals along its coasts, and also commenced negotiations with Chile for co-operation in the same direction, especially with the view to stopping United States' vessels which habitually poached on the rookeries, notably the "Sarah W. Hunt" and the "Martha Gale."

878. The Chilean Government has from time to time considered the question of protecting the fur-seals. In 1883 they abstained from enforcing regulations. Up to 1889 the seal fishery was free to any Chilean subject or foreigner residing in the country, but not open to vessels and their crews coming from foreign countries. It has, however, been found hitherto impracticable to guard the fishing districts during the breeding season, and the British Vice-Consul at Punta Arenas, in the Straits of Magellan, reports in 1889 that the American schooners take no notice of the interdiction, although only one of them, the "Sarah W. Hunt," has as yet been specifically prohibited from such illegitimate sealing. He also reports that the Chilean Government are contemplating more stringent measures of protection for the few remaining seals.

879. The Chilean Government has always recognized the value of the seal fishery, although since the earlier years of the century it has been felt that the seals were nearly extirpated. We have frequent allusions to Government control. Thus, in 1866, Her Majesty's ship "Topaze," visiting the Island of Juan Fernandez, reports ten inhabitants engaged in sealing under licence from the Chilean Government. In 1875 Her Majesty's ship "Challenger" reports finding a Chilean leasing the right from this Government for 200*l.* a-year, and employing fifty or sixty men on Juan Fernandez and Mas-a-Fuera for the purpose of collecting seal-skins.

880. In all these places, and especially in the districts around the Horn, the enforcement of strict regulations, especially instituted for avoiding the taking of gravid females

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and disturbance of males, females, and young during the early portion of the period they spend ashore, is certain to permit of a great increase in the supply of fur-seal.

881. In some of the several British Colonies where the fur-seal is found, specific regulations have been in force for some time past.

882. In the Falkland Islands there is legislative provision embodied in the Ordinance No. 4 of 1881 for the protection of the fur-seal, which is already having an excellent effect, so far as it can be enforced. Its main provisions (see Appendix E) are a close time from the 1st October to the 1st April, and penalties and forfeiture against individual owners of vessels and others killing or permitting to be killed any fur-seals during those months.

883. Recent inquiries made of those experienced in sealing in those islands elicited the invariable opinion that the main causes of the present depletion has been the reckless and indiscriminate slaughter of the seals whenever they land, and especially during the breeding season. In some cases the stocking of farms and people taking up their abode in the neighbourhood of the seal rookeries has certainly driven the seals to other resorts. But the killing of seals has never been attempted at sea, and is entirely confined to parties of sealers landed from boats and schooners, who club, shoot, and spear the seals on shore. The most serious complaints are that foreign schooners cruise along the coast and land sealing parties regardless of the statutory close season.

884. Experienced men in the Falkland Islands assert that the fur-seal are known not infrequently to desert favourite landing places when they find they are molested for others where they rest and breed in peace.

885. The Government of the Colony of the Cape of Good Hope has for very many years paid attention to the fur-seals frequenting the coasts and islands under its authority. Thus, on the 12th April, 1844, a Proclamation was issued:—

“His Excellency the Governor, having been pleased to decide that the Seal Island in Mossel Bay shall not be granted on lease for the present, hereby prohibits all persons from disturbing the seals on the said island, and warns them from trespassing there after this notice on pain of prosecution.”

886. A special Report from Mr. C. H. Jackson, the Government Agent in charge of the Seal and Guano Islands (Appendix B), speaks of indiscriminate slaughter on shore as the chief cause of the present depletion; and points out that, for lack of a close time during the breeding season between November and January, a great number of females have been destroyed “either about to give birth or suckling their young.” Pelagic sealing is unknown, the system of killing adopted being that of landing men in boats, armed with clubs. He speaks specially of the ease with which seals are scared from their resorts by steamers and other vessels coming close in. He also mentions that “by a happy provision of nature a female seal will suckle any young one, whether her own or not.”

887. There are no special protective laws, but the islands are Government property and are leased upon short leases, so that the Government has power, if it will, to control this profitable fishery.

888. In the Australian waters fur-seals were found on the coasts and islands of Victoria, Tasmania, and New Zealand in very great abundance, and they are still seen and obtained.

889. In regard to Victoria, Sir F. McCoy reports as follows:—

(1.) The seal fishery of Australia was never so extensive as that of the North Pacific, and for more than thirty years the trade in Australian fur-seal skins has entirely ceased, although of some extent in Sydney a little before that time.

(2.) In Victoria, the only fur-seal is the eared seal (*Euotaria cinerea*), the size, shape, and habits of which very nearly recall those of the North Pacific. The decline or destruction of the fishery is certainly attributable to the indiscriminate slaughter of the seals on the few islands off the south coast, especially in Western Port, where the old males and gravid females resorted in the summer to bring forth and tend the young. At present a few islands only are frequented by those seals, now in the breeding season, and the number of individuals is too small to furnish any trade.

(3.) The fur-seal fishery was conducted simply by manning a boat suitable for landing on the islands, the landing usually taking place at night, and then the seals were killed indiscriminately by clubbing them on the nose with large sticks. The skins were chiefly exported from Sydney.

(4.) No measures effective for the protection of the fur-seal fisheries have been undertaken on any large scale by any of the Australian Colonies, but some years ago I recommended the Victorian Government to prohibit the killing of seals on the small

islands which they frequent near Phillip Island, and although the number has somewhat increased in consequence, it is far too small to furnish a trade.

"(5.) The Australian fur-seals were never fished for in the open ocean.

"(6.) Generally the life history of the Victorian fur-seal exactly resembles that of the North Pacific, following shoals of fish in the open ocean, but coming on the islands to breed in the latter part of the summer."

890. Sealing was a leading industry in New South Wales, especially in the years 1810-20. Several firms fitted out large schooners, and great numbers of skins were secured, especially from places like Macquarie and the Antipodes Islands. Some years ago the Government issued an order prohibiting the killing of seals on the mainland and islands of the Colony, and they are reported as increasing in numbers, as, for instance, around Port Stephens.

891. From Tasmania sealing has been conducted on many neighbouring islands, the seals all being shot or clubbed on the shore. No measures of preservation have been taken until 1891, when a Government Proclamation was issued: "The taking of seals, known by the name of seals or any other local name, in Tasmania and its dependencies, is hereby prohibited for a period of three years from the 26th July, 1891." The chief difficulty found is with schooners from other parts marauding on the rookeries.

892. In New Zealand at the beginning of this century seals were numerous in several places along the coast around Port Chalmers, along the west coast, near Westport, round Stewart's Island, and in other places. All the neighbouring islands, such as the Chatham, Macquarie, Bounty, Campbell, and Antipodes groups, were well-known haunts. Mr. Yate, a missionary, writing in 1835, tells of several establishments for the seal fishery on the coast of New Zealand. But fifteen or twenty years of persistent and indiscriminate slaughter on shore had practically exterminated the seal in 1840.

893. As to the causes of the depletion, Mr. F. Chapman, writing from Dunedin, says: "As to the cause of this there is but one answer: reckless killing and disturbance in the rookeries. Mr. Dawson need not trouble himself about pelagic sealing; there is not and never was such a thing in these waters."

894. In the early years of this century the port of Sydney did a large trade in seal-skins, and it is undoubted that with rise in market prices of more than ten-fold over that period, the industry may well be revived by judicious Government regulations duly enforced.

The main difficulty in these seas, as elsewhere, is the raiding ashore, especially in the breeding season, by unauthorized persons. It is to be hoped that the outcome of the Behring Sea negotiations may be international agreement as to the illegality of all such proceedings, and thus all territorial Powers will be empowered to execute regulations against all comers, so necessary to the preservation of so important an industry as that of sealing.

895. It will be well if the Governments of New Zealand, Tasmania, Victoria, the Cape of Good Hope, and the Falkand Island, as well as those of the Uruguayan Republic and Chile, take steps to secure for themselves any international advantages for the proper protection of the fur-seal in the South Seas which may be determined to be applicable under international sanction in the North Pacific. As a commencement, each of these Governments should forthwith make statutory provision for close seasons, restriction of numbers taken, and other matters affecting seal life within their territorial dominions and the waters thereof.

896. A further point in connection with South Sea sealing remains to be dealt with.

Some of the older sealers who gave us evidence mentioned their opinion that the fur-seal of the Pribyloff Islands were the overflow of the fur-seal of the South Sea when disturbed and harassed by the indiscriminate slaughter above detailed.

We observe also that the United States' authority, Mr. Elliott, in his "Monograph on the Fur-seal" (p. 6), writes: "It appears as if the fur-seals had originally passed to Behring Sea from the parent stock of the Patagonian region, up along the coast of South America, a few tarrying at the dry and heated Galapagos Islands, the rest speeding on to the northward, disturbed by the clear skies and sandy beaches of the Mexican coast, on and up to the great fish-spawning shores of the Aleutian Islands and Behring Sea. There on the Pribyloff group and the bluffly Commander Islands they found that union of cool water, well-adapted landing, and moist foggy air which they had missed since they left the storm-beaten coasts far below."

897. We have, however, received from the Director of the Natural History Department of the British Museum a very valuable Memorandum (Appendix D), pointing out the structural and other differences which distinguish the various species of fur-seal, and

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which clearly indicate that the seals frequenting the North Pacific do not migrate south of the Equator. Nor can we hold out any hope that, as was expressed by a New Zealand authority, the persecution of the fur-seal in the North Pacific may drive them south to replenish New Zealand rookeries.

898. The relative importance of the South Sea fishery is insignificant at the present day in comparison with that of the North Pacific. In the latter the last full years gave a total catch of about 100,000, whereas the total catch south of the Equator only reaches 25,000. But the South Seas, during the first seventy years of the fisheries, produced at least 16,000,000 seals, whereas from the North Pacific it seems probable that not more than 5,000,000 have been, in all, secured in 110 years. To reinstate in some degree the South Sea fisheries would thus be to revive, if only partially, a great and most profitable industry.

899. At the same time, in the immediate matter of the preservation of the fur-seal in the Northern Pacific, it is well to bear in mind that actual experience in the South Seas proves incontestably the following among other facts:—

(i.) Excessive slaughter on shore, in the entire absence of any pelagic sealing, results in commercial extermination.

(ii.) Excessive slaughter and disturbance causes absolute depletion and desertion in given breeding places, leading the surviving seals to seek other resorts.

(iii.) As Fanning has recorded, while old rookeries are being depleted and new ones being taken up, more seals are seen at sea than ever.

900. This is a timely object lesson for the North Pacific, where from two known breeding resorts, for the past twenty-five years, so great a number of skins have been taken (§ 43 *et seq.*) by excessive slaughter on shore, and complaints are now made officially that unless strong measures of rest and recuperation are promptly adopted the seals frequenting these resorts will disappear. Undoubtedly, they will seek other breeding places.

901. Mr. Blaine has done good service in drawing attention, in his despatch of the 17th December, 1890, to the disastrous results in the South Seas following on indiscriminate and unrestricted slaughter of the fur-seal. There has never been recorded any more self-evident and striking example of the consequences of excessive slaughter by man. It is therefore useful to bear in mind the precise character and circumstances of the seal fishery of the Southern Hemisphere.

#### VIII.—MARKETING THE SEAL-SKINS.

902. The process of preparing the seal-skins for the market, costing, on the whole, 18s. to 20s. per skin, is the work of a prosperous industry in London.

The skins are landed in the docks, and sorted for size, quality, and kind, ready for the sale-room. Eventually they arrive, thus graded, at the factory, and are dealt with in batches. The process commences with the removal of the fat and flesh left on the skins by careless skinning; the next step is thoroughly to cleanse the skin by hot-water washing and stretching, after which the skins are deftly shaved down to the requisite thinness. They are then treated in a hot chamber, and the outer hair taken off. The completing stages are those of dyeing to a uniform colour, and finally shaving the skin down to the necessary thinness. At every stage much technical skill and judgment are required.

903. It is a noteworthy fact, that nearly all fur-seal skins are taken to London to be dressed and sold. The fur-seal industry thus gives employment to much shipping on the Pacific, to railways across the American continent, and to shipping on the Atlantic; while in the business of insurance, and in the sale of the raw and finished skins, both wholesale and retail, as well as in the processes above described, very considerable profits are realized.



## PART III.

## CONCLUDING REMARKS.

904. In commencing our Report, we explained the steps taken to carry out the duties assigned to us. In Part I we have given the conclusions to which our investigations have led us in regard to the facts and conditions of seal life in the North Pacific Ocean, and to the measures necessary for the proper protection and preservation of the fur-seal. In Part II and in the Appendices there are presented, in fuller detail, the results of our investigations, together with such collateral information or evidence as appears to be necessary to enable just conclusions to be arrived at.

905. In conclusion, we would wish to record our high appreciation of the ready response afforded to our inquiries by the numerous persons to whom we addressed them, whether in correspondence or by word of mouth.

906. To the officials of the United States' Government, to the Commanding Officers of the men-of-war and revenue-cruizers, as well as to the representatives of the Alaska Commercial and North American Commercial Companies, we are greatly indebted for the hospitality and courtesy they uniformly extended to us, as well as for the zealous and ready assistance they rendered us in our endeavours to obtain the information of which we were in search.

907. From the Admiral in command of the Pacific Station and the Commanders, officers, and men of Her Majesty's ships "Nymph," "Porpoise," and "Pheasant," we received every assistance and aid, and they secured for us much valuable information.

908. We would venture specially to commend the industry, zeal, and ability with which, throughout our investigations and negotiations, Mr. Ashley Froude has conducted the arduous duties of Secretary to the Commission and Joint Secretary to the Joint Commission. We would also beg that the Government of Canada may be informed of the painstaking, capable, and thorough manner in which we have been assisted throughout by Mr. James Macoun.

All of which we humbly submit, for the gracious consideration of your Majesty.

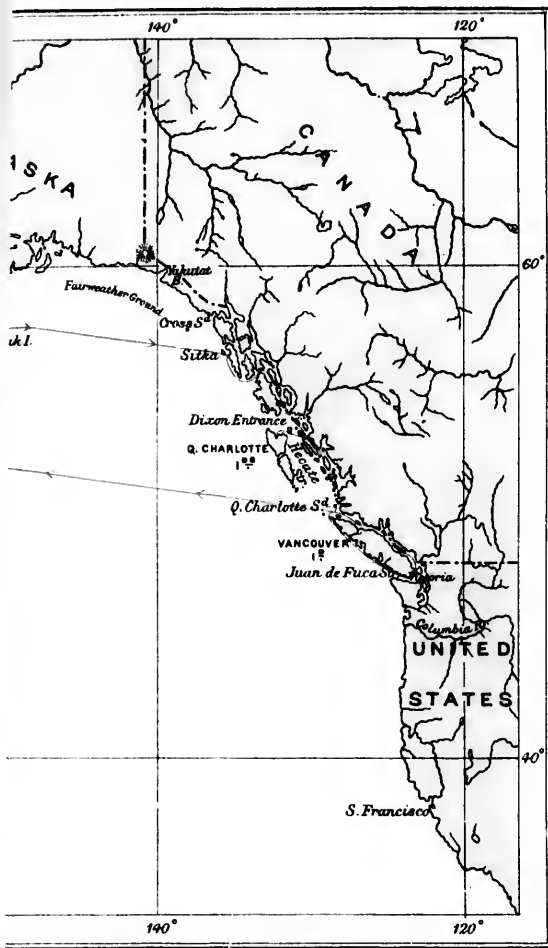
(Signed) GEORGE BADEN-POWELL.

GEORGE M. DAWSON.

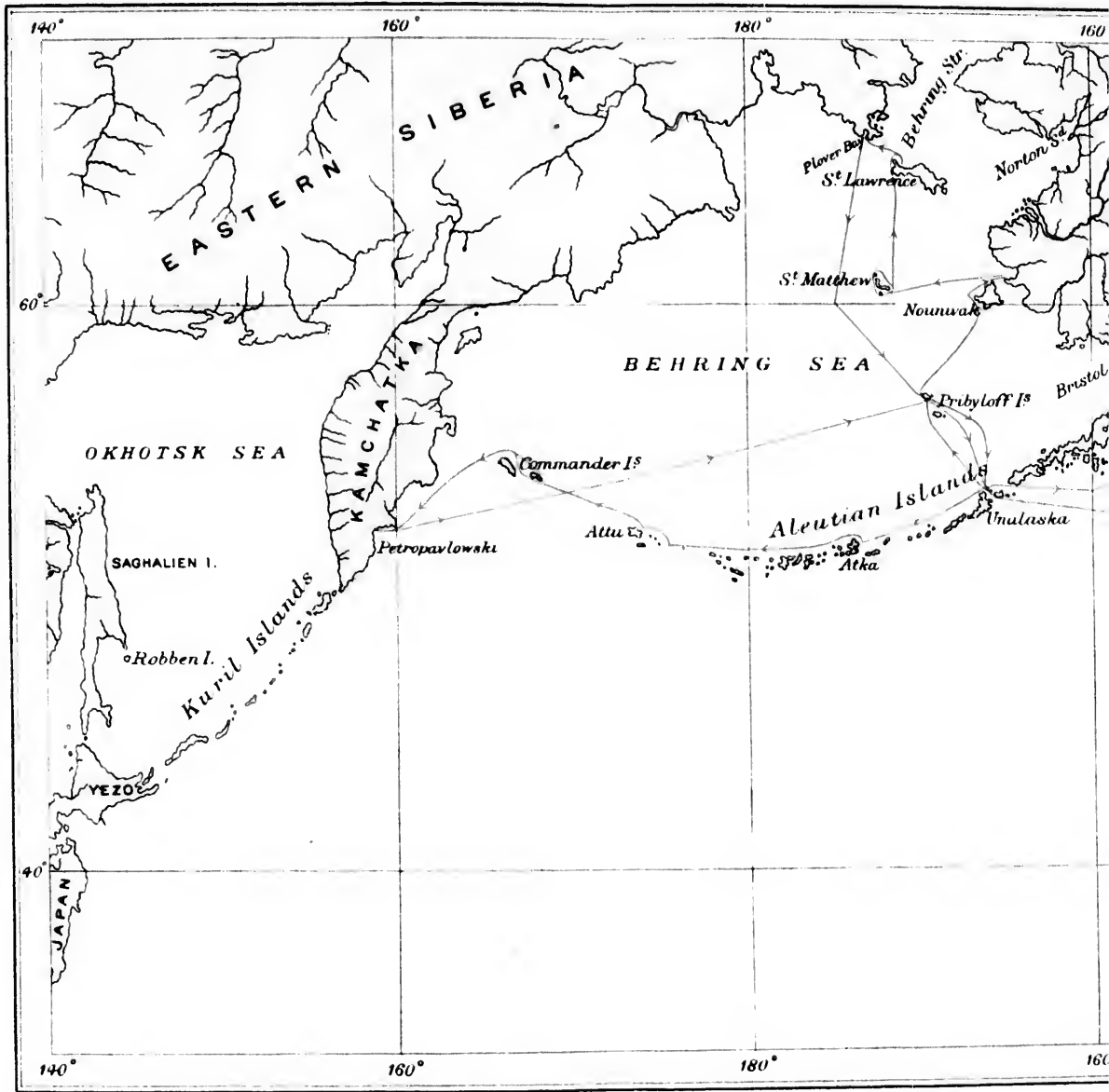
(Signed) ASHLEY FROUDE, *Secretary.*

June 21, 1892.

I.

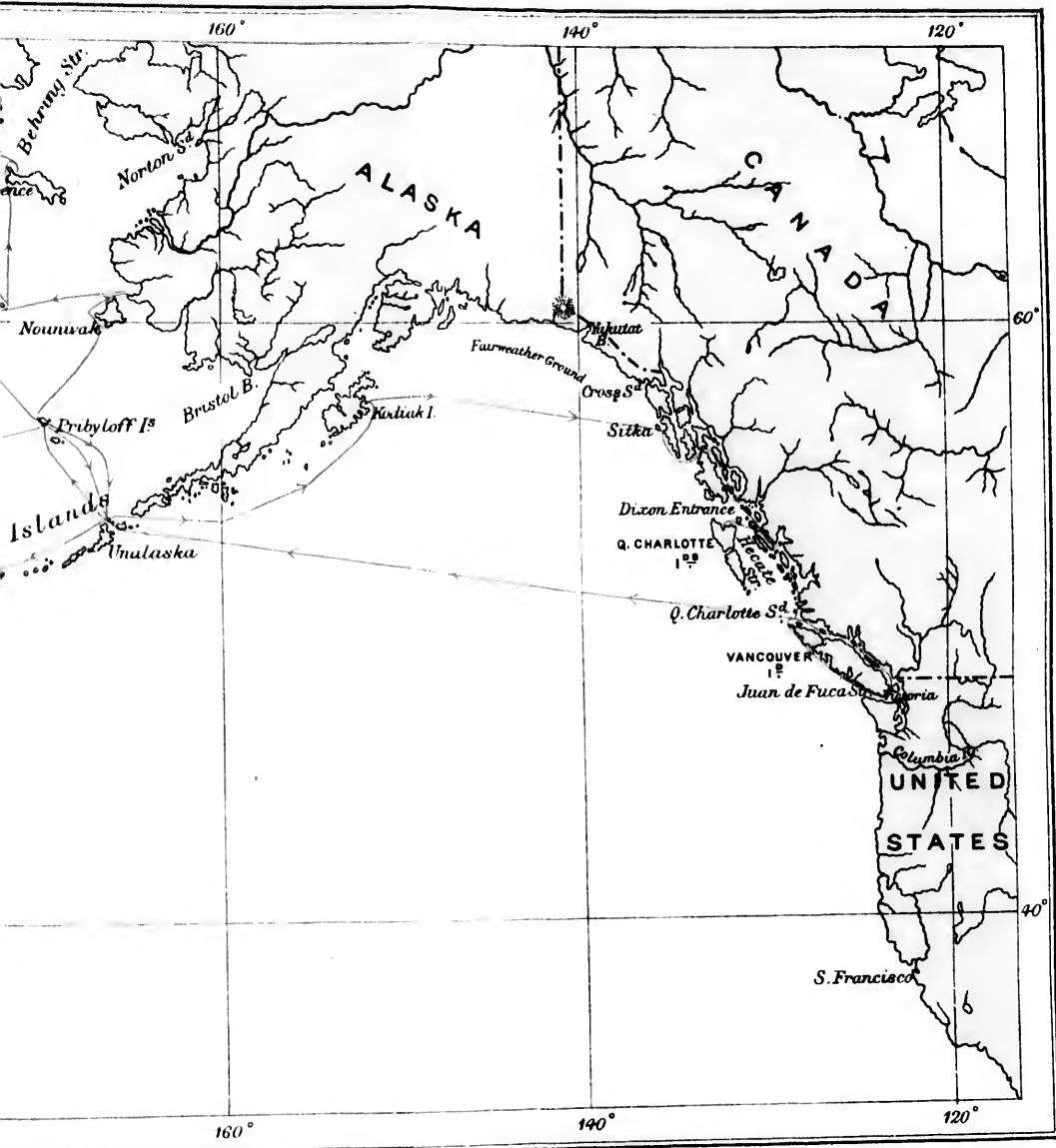


MISSIONERS, 15 JULY-8 OCTOBER, 1891.



NO. 1. TRACK CHART OF ROUTES FOLLOWED BY THE BRITISH BEHRING

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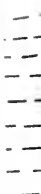


BRITISH BEHRING SEA COMMISSIONERS, 15 JULY-8 OCTOBER, 1891.

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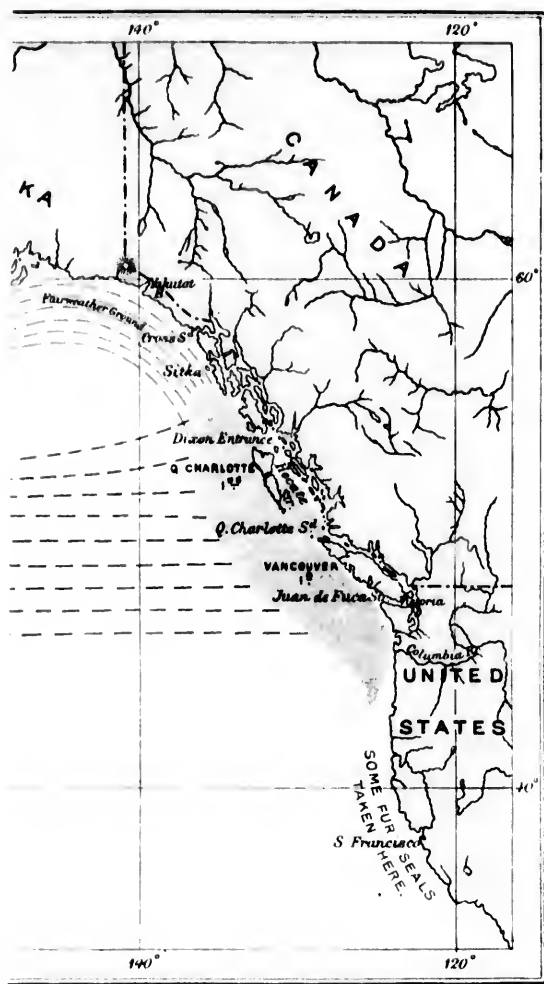


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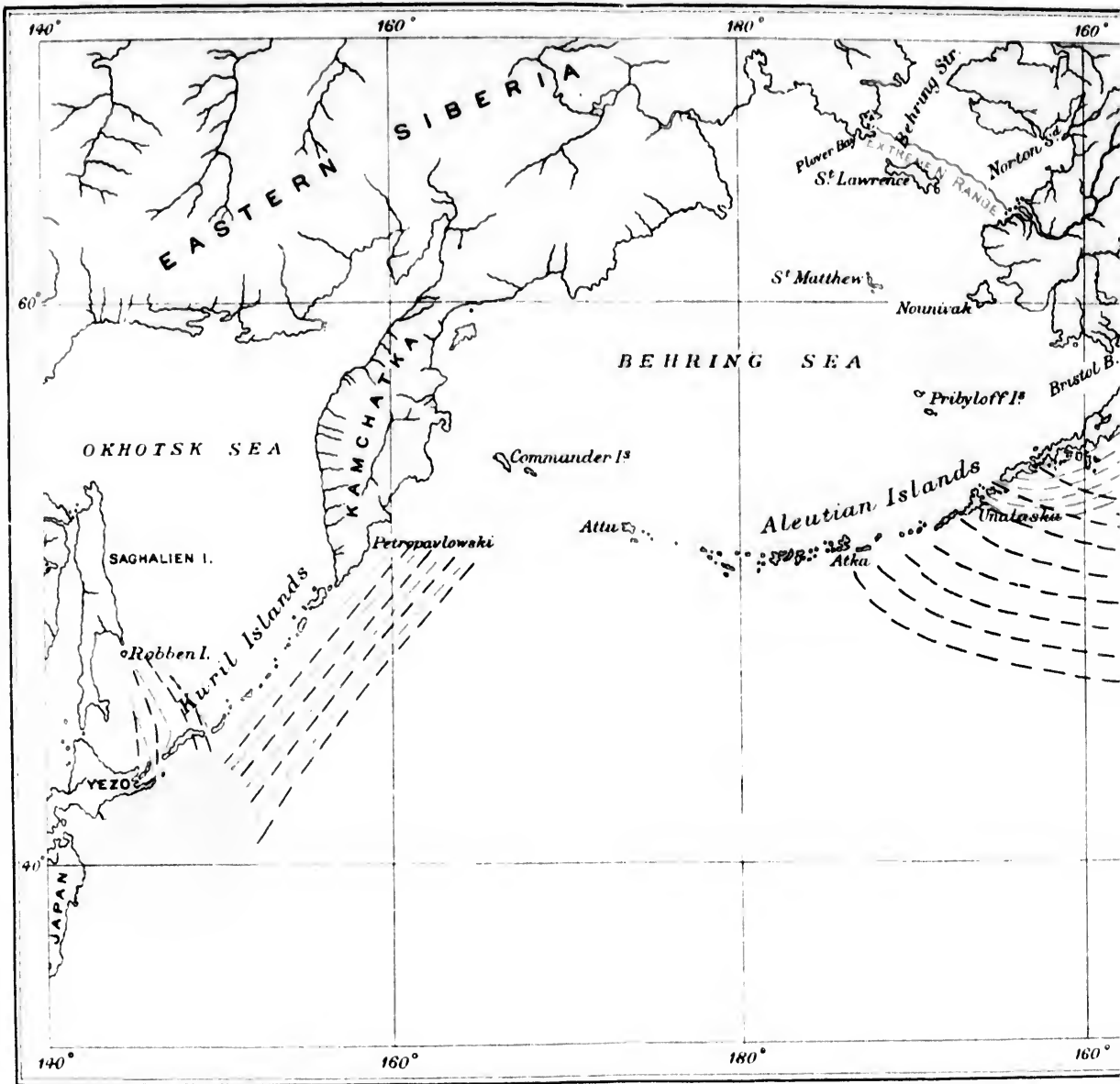
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
SEALS IN THE NORTH PACIFIC.

F SEALS IN THE VICINITY OF ROBBER ISLAND AND THE KURILE ISLANDS  
 CANNOT BE DEFINED.

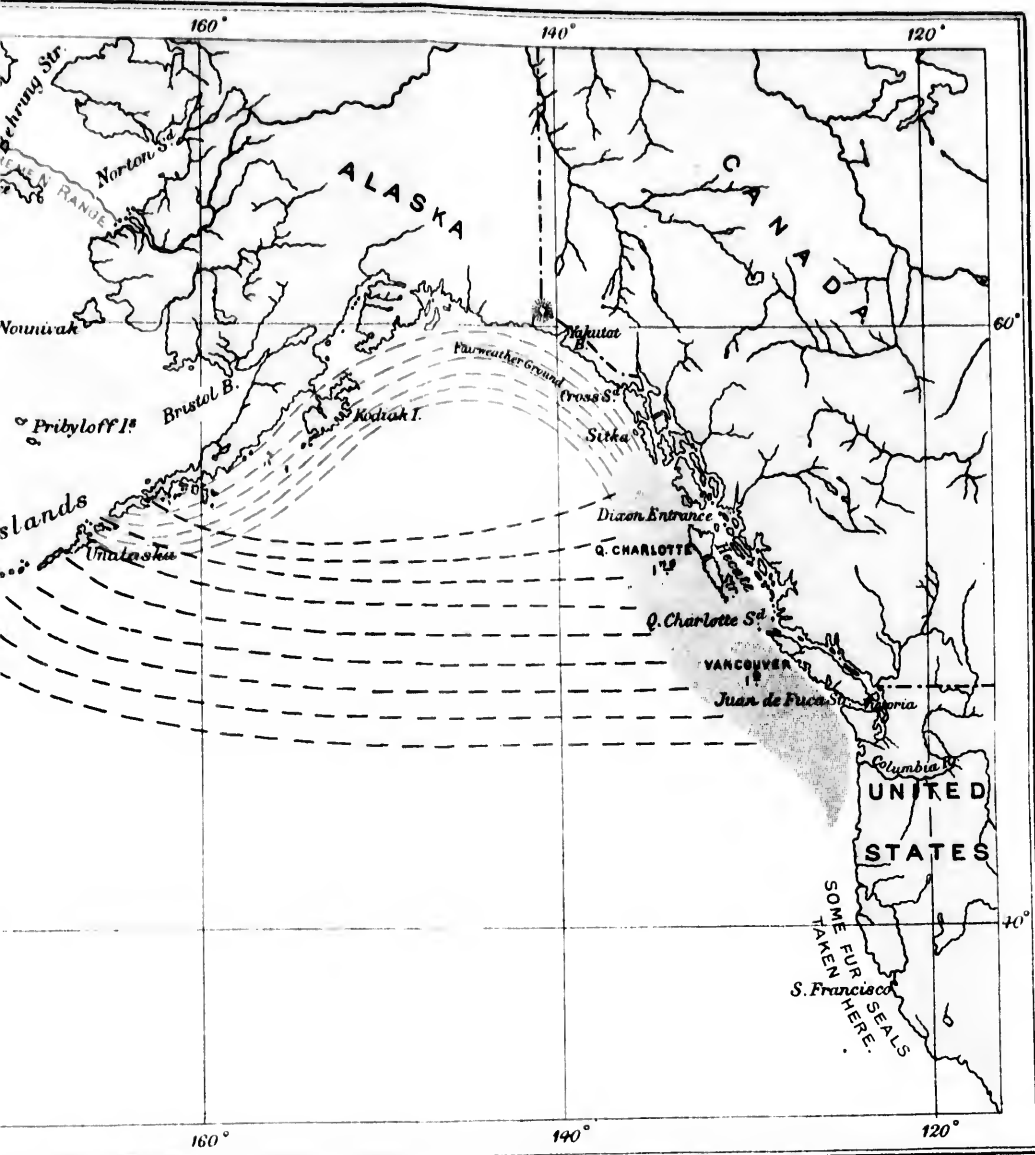




**N. 2. SKETCH MAP ILLUSTRATING RESORTS AND MIGRATION ROUTES**

-  SUMMER HABITATS.
-  WINTER HABITATS.
-  NORTHERLY MIGRATION ROUTES IN EARLY SUMMER
-  SOUTHERLY MIGRATION ROUTES IN AUTUMN.

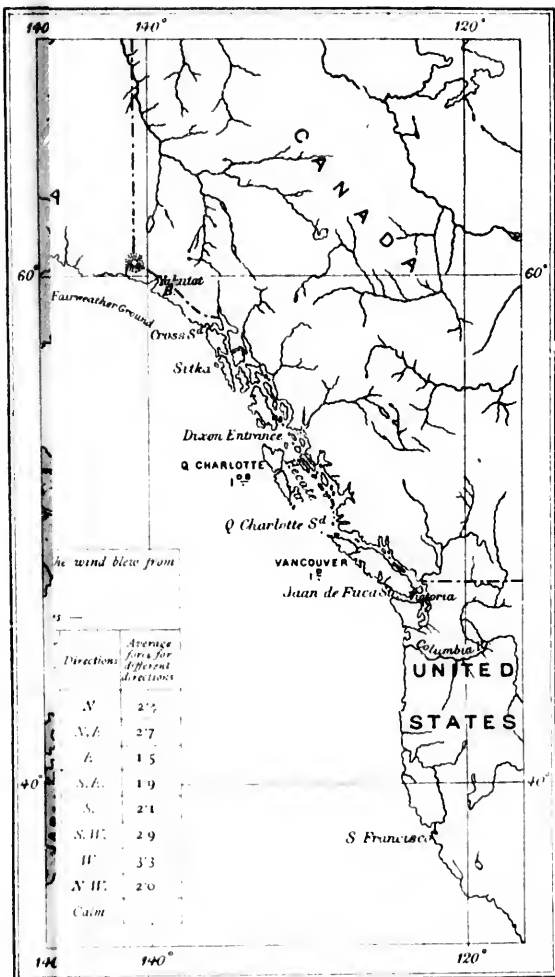
(NOTE.—THE  
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MIGRATION ROUTES OF FUR SEALS IN THE NORTH PACIFIC.

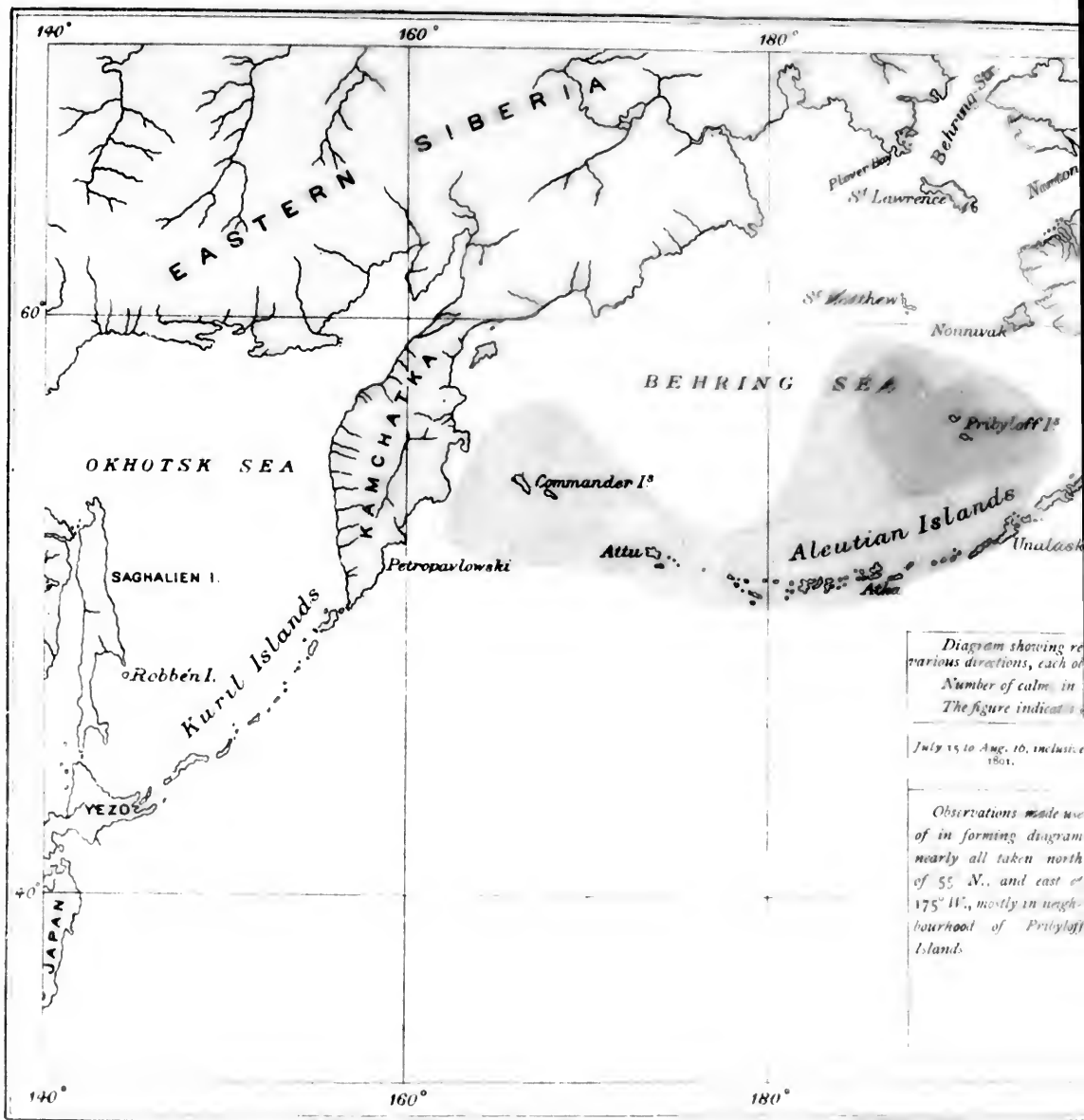
(NOTE.—THE SUMMER HABITATS OF SEALS IN THE VICINITY OF ROBBERN ISLAND AND THE KURILE ISLANDS ARE MERELY INDICATED AS THEY CANNOT BE DEFINED.)







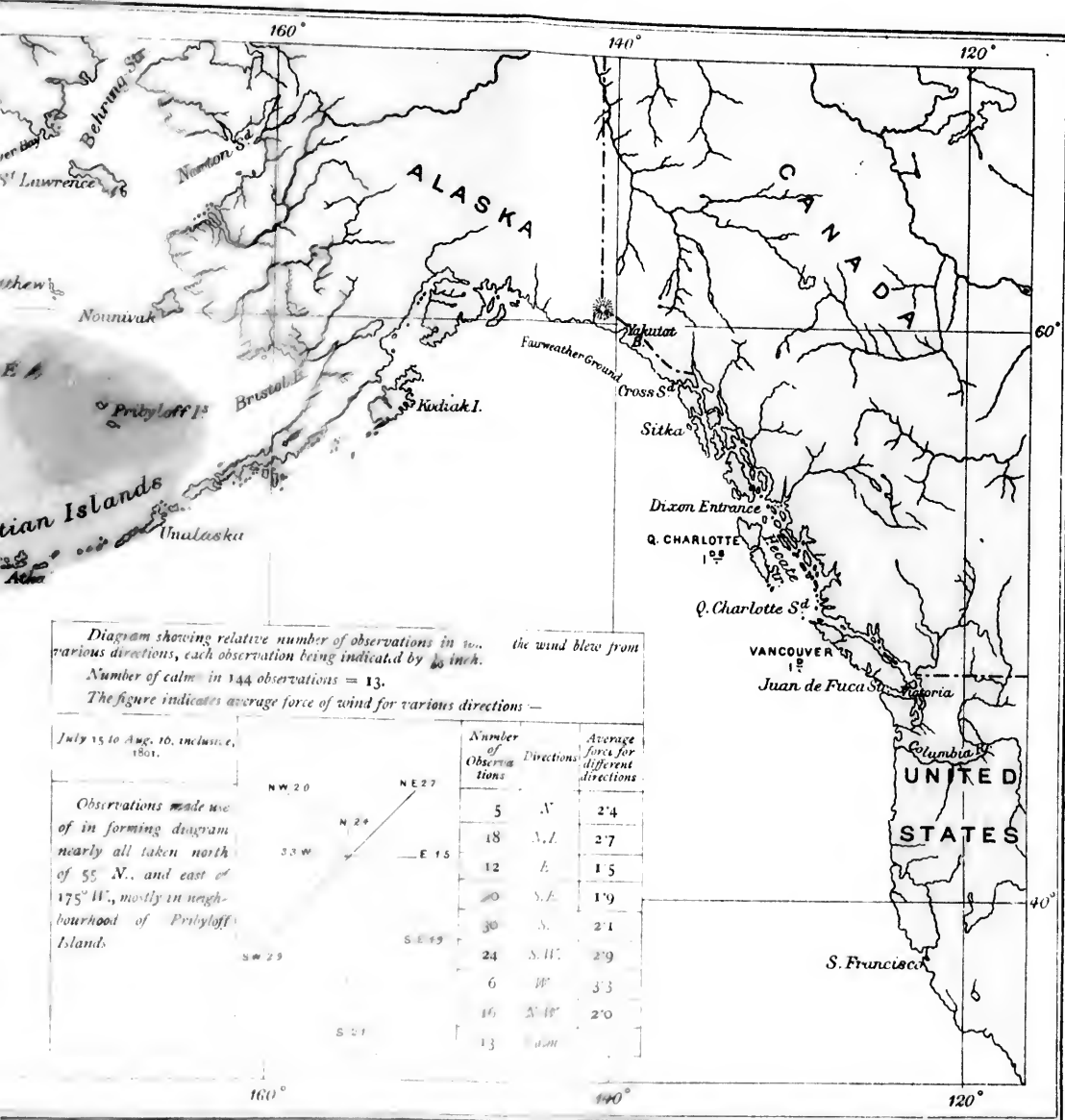
### R SEALS IN THE PERIOD

SEALS IN THE VICINITY OF THE COMMANDER ISLANDS, IN THIS PERIOD, AVAILABLE INFORMATION RESPECTING IT IS INSUFFICIENT. SMALLER AREAS VICINITY OF ROBBEN ISLAND AND SOME OF THE KURILE ISLANDS ARE EASON.



No. 3. SKETCH MAP SHOWING APPROXIMATELY THE AREA  
 EXTENDING FROM JULY '5TH TO

-  AREA CHARACTERIZED BY ABUNDANT SEALS.
-  AREA CHARACTERIZED BY SCATTERED SEALS.

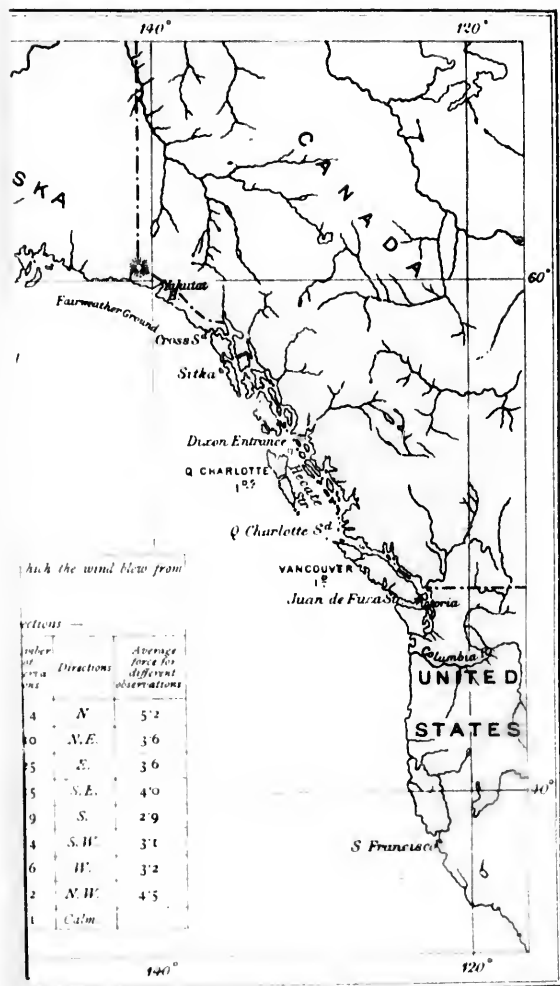


ONLY THE AREA FREQUENTED BY FUR SEALS IN THE PERIOD JULY '5TH TO AUGUST 16TH, 1891.

NOTE.—THE AREA OF ABUNDANT SEALS IN THE VICINITY OF THE COMMANDER ISLANDS, IN THIS PERIOD, IS NOT INDICATED, AS THE AVAILABLE INFORMATION RESPECTING IT IS INSUFFICIENT. SMALLER AREAS OF SEAL OCCURRENCE IN THE VICINITY OF ROBBERN ISLAND AND SOME OF THE KURILE ISLANDS ARE NOT SHOWN FOR THE SAME REASON.







FUR SEALS IN THE PERIOD 1891.

INDICANT SEALS IN THE VICINITY OF THE COMMANDER ISLANDS. IN THIS PERIOD LIMITED NUMBER OF OBSERVATIONS. SMALLER AREAS OF SEAL OCCURRENCE ON OBSEN ISLAND AND SOME OF THE KURILE ISLANDS ARE NOT SHOWN AS NO BLE RESPECTING THEM

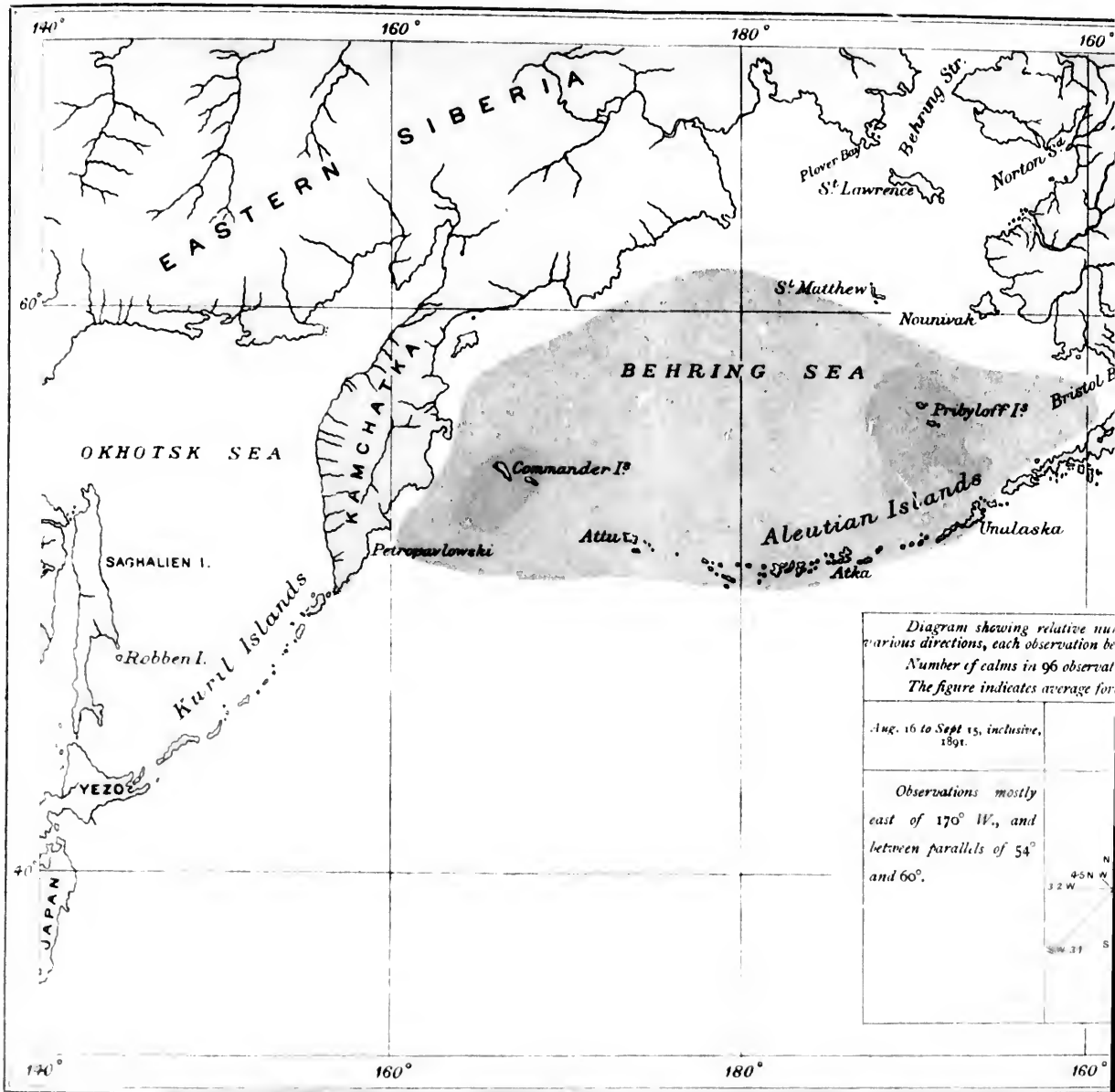


Diagram showing relative number of calms in various directions, each observation being based on 96 observations. The figure indicates average for

Aug. 16 to Sept 15, inclusive, 1891.

Observations mostly east of 170° W., and between parallels of 54° and 60°.

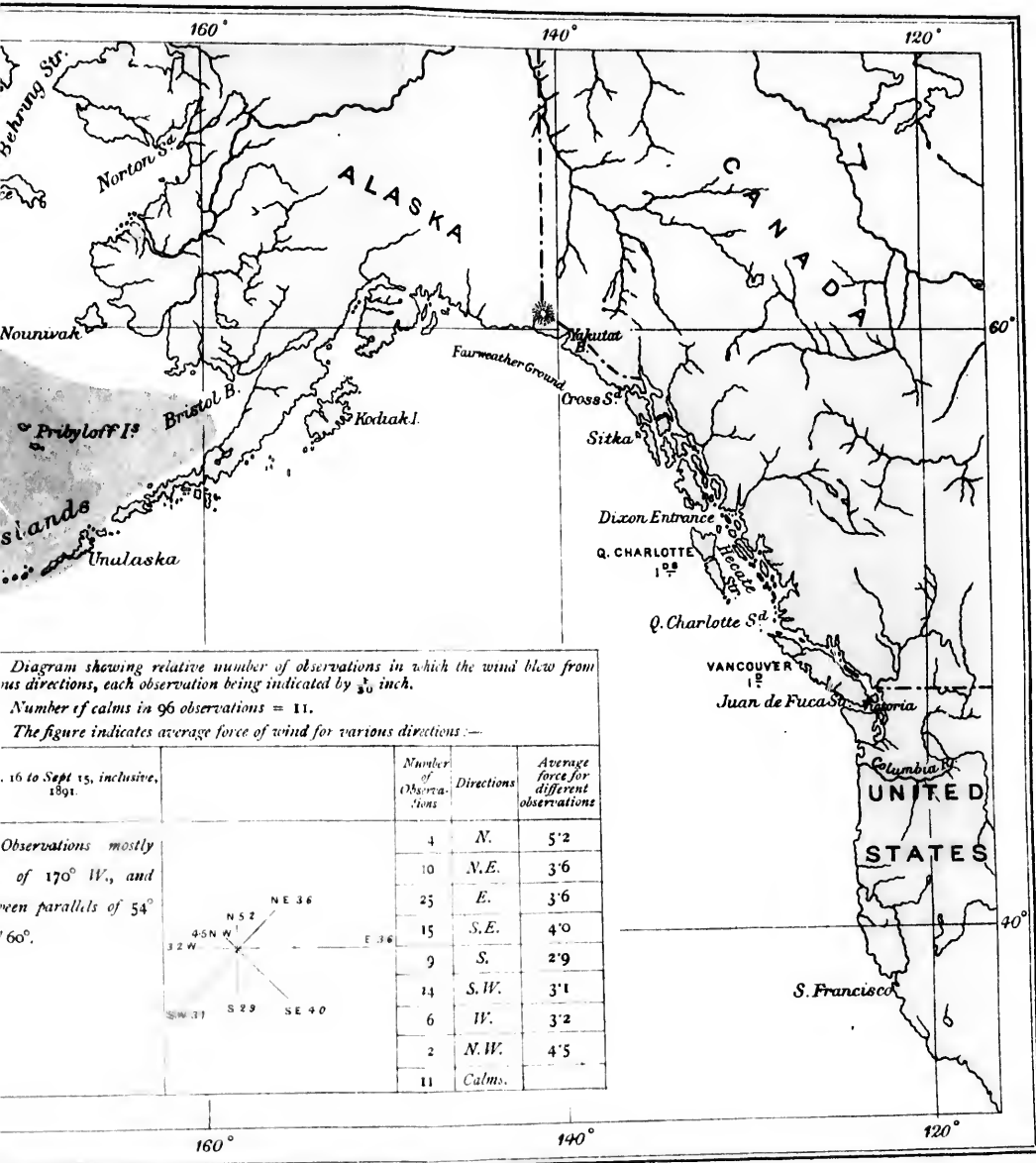


No. 4. SKETCH MAP SHOWING APPROXIMATELY THE AREA FREQUENTLY VISITED BY SEALS EXTENDING FROM AUGUST 16TH TO SEPTEMBER 15TH, 1891.



AREA CHARACTERIZED BY ABUNDANT SEALS  
 AREA CHARACTERIZED BY SCATTERED SEALS.

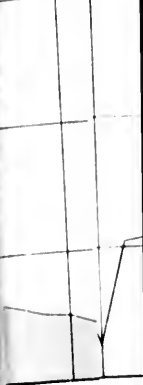
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THE AREA FREQUENTED BY FUR SEALS IN THE PERIOD  
 16TH TO SEPTEMBER 15TH, 1891.

(NOTE.—THE AREA OF ABUNDANT SEALS IN THE VICINITY OF THE COMMANDER ISLANDS, IN THIS PERIOD, DEPENDS UPON A VERY LIMITED NUMBER OF OBSERVATIONS. SMALLER AREAS OF SEAL OCCURRENCE IN THE VICINITY OF ROBBERN ISLAND AND SOME OF THE KURILE ISLANDS ARE NOT SHOWN AS NO INFORMATION IS AVAILABLE RESPECTING THEM.)

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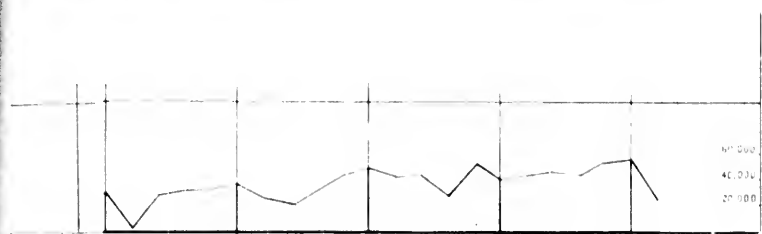
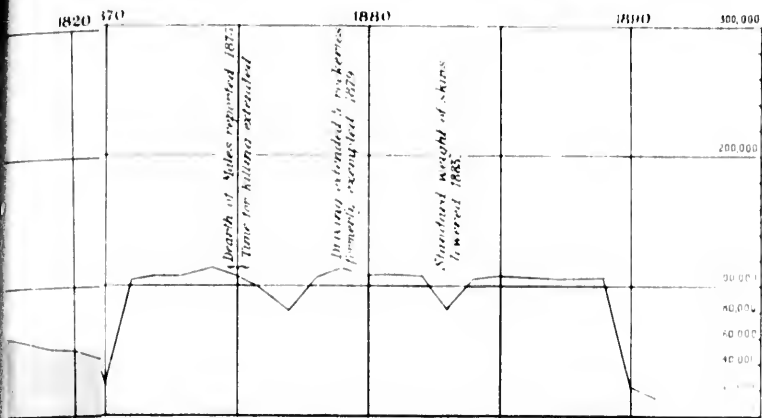


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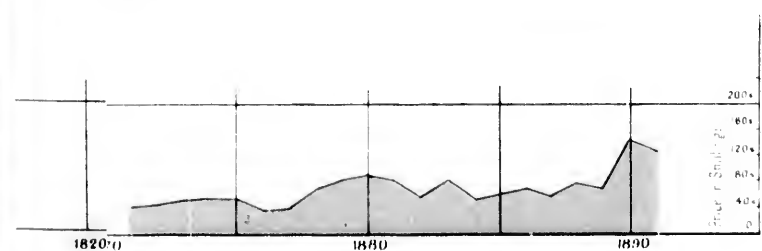
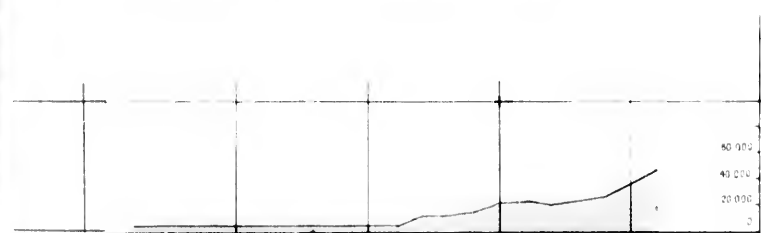


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DIAGRAM REPRESENTING THE NUMBER OF FUR SEALS KILLED ANNUALLY ON THE PRIBYLOFF ISLANDS, FROM 1817 TO 1860

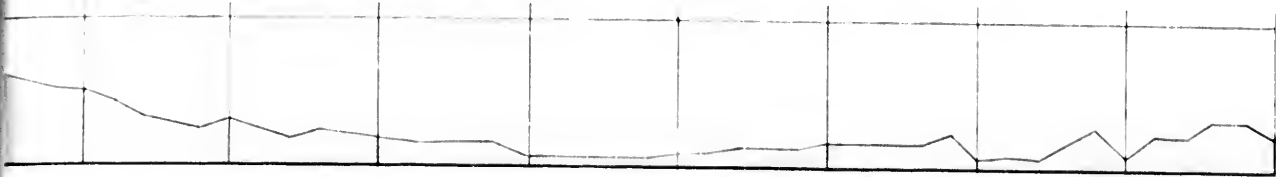


DIAGRAM REPRESENTING THE NUMBER OF FUR SEALS KILLED ANNUALLY ON THE COMMANDER ISLANDS, FROM 1862 TO 1869

*Number killed on Commander Islands in earlier years, not ascertained.*

DIAGRAM REPRESENTING THE NUMBER OF FUR SEAL SKINS PURCHASED BY THE HUDSON'S BAY COMPANY AT POSTS BEING A PORTION OF THE INDEPENDENT INDIAN COAST CATCH FOR THESE YEARS

*No record of Indian Coast Catch in earlier years.*

DIAGRAM REPRESENTING THE NUMBER OF FUR SEAL SKINS OBTAINED ANNUALLY BY CANADIAN SEALING VESSELS, FROM 1817 TO 1860 (THE NUMBER OF SKINS TAKEN BY UNITED STATES SEALING VESSELS IS NOT INCLUDED, THERE BEING NO TRUSTWORTHY STATEMENTS)

DIAGRAM SHOWING THE AVERAGE AUCTION PRICES OF FUR SEAL SKINS IN LONDON, FROM 1871 TO 1891.

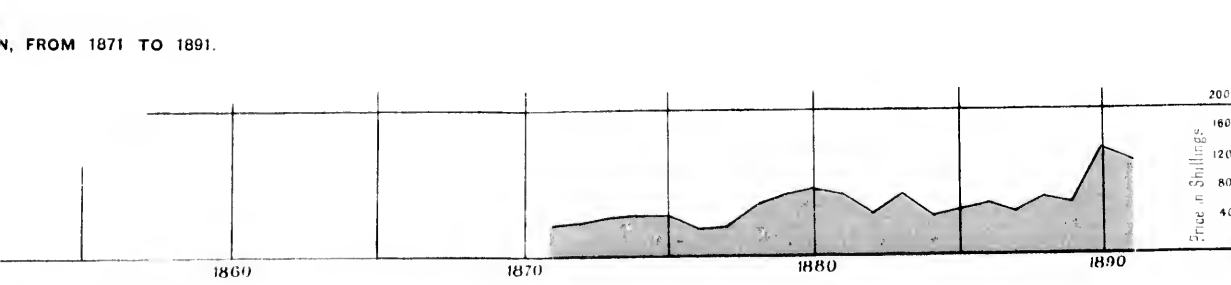
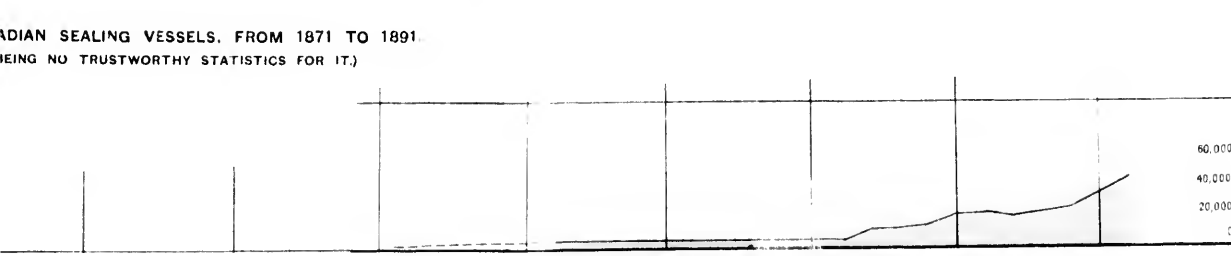
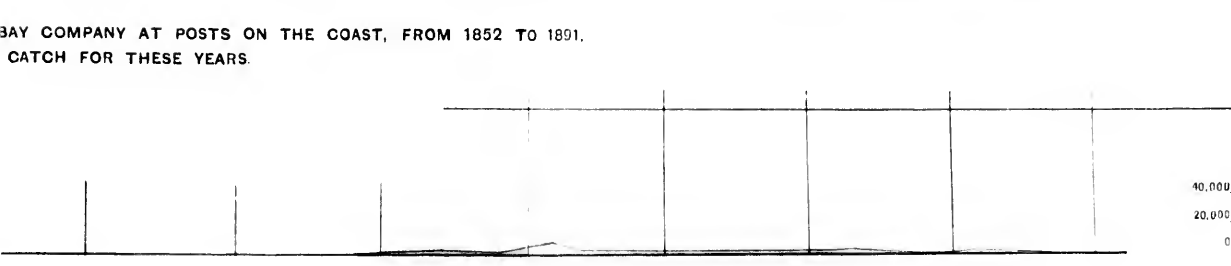
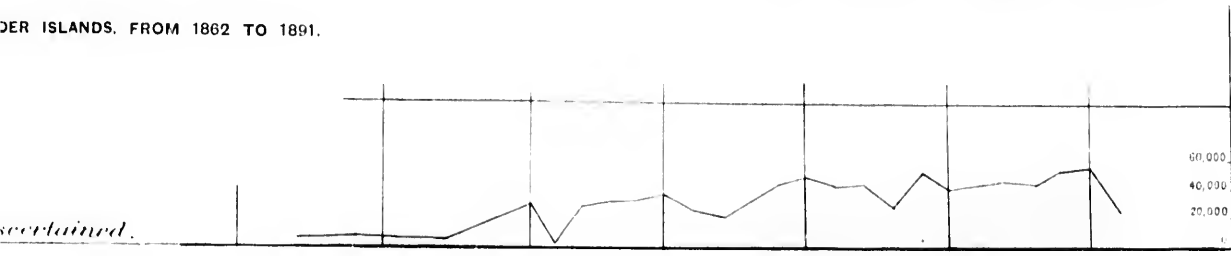
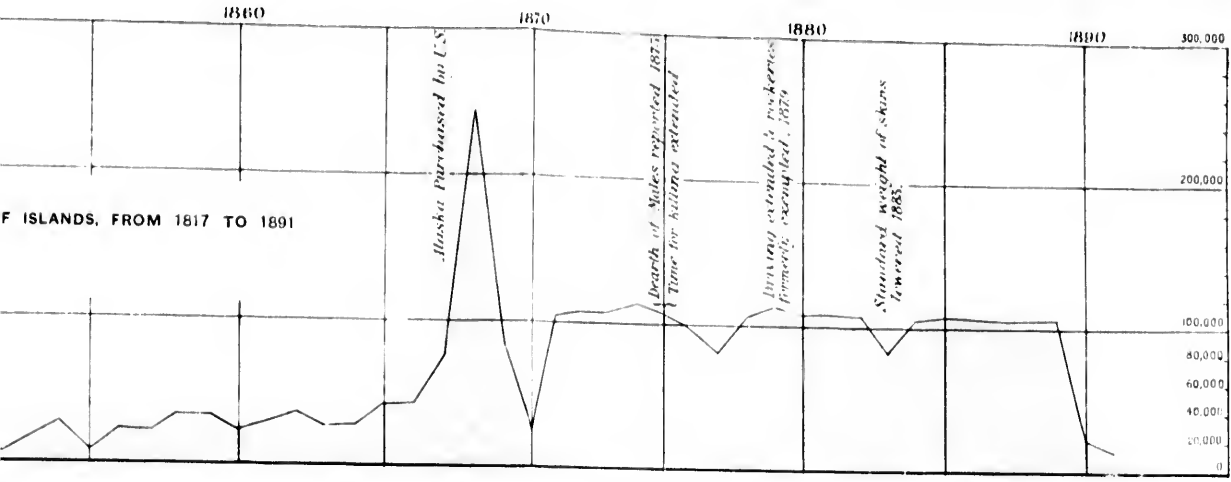
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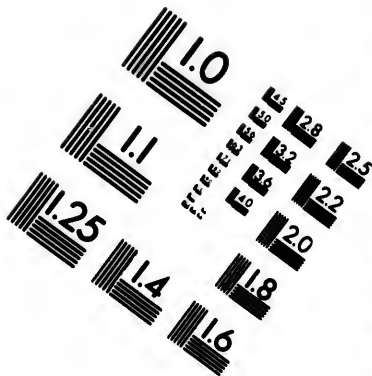
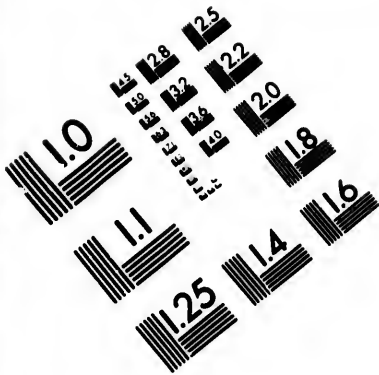
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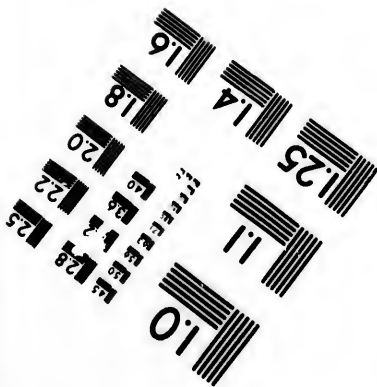
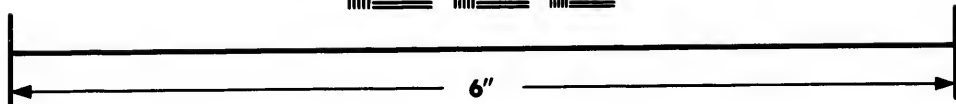
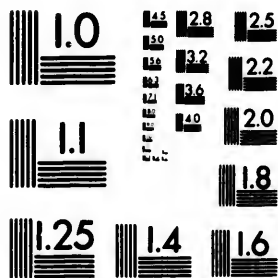
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**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
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## Appendices.

### APPENDIX (A).

#### LIST OF PERSONS AND AUTHORITIES SUPPLYING EVIDENCE.

LIST of those who gave Personal Evidence and Information to the Behring Sea Commission.

No.	Name.	Place and Profession.
1	Dr. Acland .. ..	Medical Officer, St. Paul Island.
2	Mr. Alexander .. ..	Trader, Masset, Queen Charlotte Islands.
3	Mr. Aydo .. ..	Signal Officer, Neah Bay.
4	Mr. Audieuko .. ..	A.D.C. to Commandant, Petropaulovski.
5	Mr. G. A. Baldwin .. ..	Bookkeeper, St. Paul Island.
6	Colonel Barnes .. ..	Assistant Treasury Agent, St. Paul Island.
7	Mr. Bentzon .. ..	Formerly employé, Hudson Bay Company, Port Simpson.
8	Captain Blair .. ..	Schooner "Leon," Petropaulovski.
9	Captain Brandt .. ..	Russian gun-boat "Aleut."
10	Mr. Bosewicz .. ..	Victoria, British Columbia.
11	Mr. Stanley Brown .. ..	Special Agent of United States' Government, Pribiloff Islands.
12	Mr. J. Burns .. ..	Hunter, St. Matthew Island.
13	Captain Baker .. ..	Sealing-schooner "Viva," Victoria, British Columbia.
14	Mr. Clifford .. ..	Manager, Hudson Bay Company, Port Simpson.
15	Captain Coulson .. ..	United States' revenue-cruizer "Rush."
16	Captain Cox .. ..	Agent for E. B. Marvin and Co., Victoria, British Columbia.
17	Captain W. Cox .. ..	Sealing-schooner "Sapphire," Victoria, British Columbia.
18	Mr. R. Cunningham .. ..	Fur-trader and owner of Canneries, Port Essington, British Columbia.
19	Mr. G. Cunningham .. ..	Ditto.
20	Mr. Campbell .. ..	Vancouver, British Columbia.
21	Mr. F. Cope .. ..	Ditto.
22	Captain Dodds .. ..	Sealing-schooner "Maggie Mae," Victoria, British Columbia.
23	Mr. Dirks .. ..	Agent of Alaska Commercial Company, Atka Island.
24	Mr. J. Earle, M.P. .. ..	Victoria, British Columbia.
25	Captain Edwards .. ..	Vancouver, British Columbia.
26	Mr. Emmons .. ..	Collector of Customs, Unalaska.
27	Lieutenant Emmons .. ..	United States' ship "Pinta," Sitka.
28	Edensaw .. ..	Heida Chief, Masset.
29	Mr. R. Finlayson .. ..	Victoria, British Columbia, formerly employé of Hudson Bay Company.
30	Mr. Fowler .. ..	Agent of North American Commercial Company, St. Paul Island.
31	Mr. Fraser .. ..	Vancouver, British Columbia.
32	Mr. Foster .. ..	Ditto.
33	Mr. Fergusson .. ..	Ditto.
34	Mr. Plummerfeld .. ..	Victoria, British Columbia.
35	M. Grelbitzky .. ..	Administrator of Commander Islands.
36	Mr. Grey .. ..	Alaska Commercial Company, Unalaska.
37	Mr. H. H. Hall .. ..	Victoria, British Columbia.
38	Mr. H. Hall .. ..	President of Board of Trade, Victoria, British Columbia.
39	Mr. T. B. Hall .. ..	Secretary of ditto.
40	Mr. J. Henderson .. ..	Vancouver, British Columbia.
41	Captain Henley .. ..	United States' revenue-cruizer "Bear."
42	Rev. — Hopkins .. ..	Bella Bella.
43	Mr. Hammersley .. ..	Vancouver, British Columbia.
44	A. Johnson .. ..	Indian hunter, Shukoon.
45	"Captain" Juek .. ..	Native, St. Lawrence Island.
46	Lieutenant Jarvis .. ..	United States' revenue-cruizer "Bear."
47	Rev. — Jennings .. ..	Missionary, Port Essington.
48	Jesuit Missionaries .. ..	Hazen Bay, Cape Vancouver.
49	Mr. Jones .. ..	Victoria, British Columbia.
50	M. Kanyakoff .. ..	Commandant, Petropaulovski.
51	Governor Knapp .. ..	Sitka.
52	M. Klugo .. ..	Agent of Russian Seal skin Company, Copper Island.
53	Captain Lavender .. ..	Treasury Agent, St. George Island.
54	Mr. J. Långquist .. ..	Agent for Hutchinson, Kold, and Co., Petropaulovski.

No.	Name.	Place and Profession.
55	Mr. Lockarby .. ..	Hudson Bay Company, Port Simpson.
56	A. Losh .. ..	Kitkatla Indian, Port Eslington.
57	Captain Laing .. ..	Victoria, British Columbia.
58	Martin Lumberg .. ..	Quartermaster, steam-ship "Danube."
59	Mr. Milne .. ..	Collector of Customs, Victoria, British Columbia.
60	Captain Miner .. ..	Sealing-schooner "Henry Dennis," Seattle.
61	Captain Meyer .. ..	Steam-ship "Danube."
62	Colonel Murray .. ..	Assistant Treasury Agent, St. Paul Island.
63	Mr. Morgan .. ..	Agent of Russian Seal-skin Company, Behring Island.
64	Mr. Mahanwanski .. ..	Late Agent, Alaska Commercial Company, Behring Island.
65	Mr. McManus .. ..	Newspaper reporter, sealing-schooner "Otto."
66	Captain Maynard .. ..	United States' ship "Pinta."
67	Mr. McKenzie .. ..	Fur-trader, Musset, Queen Charlotte Islands.
68	Captain McKeenzie .. ..	Sealing-steamer "Eliza Edwards."
69	Mr. Macgowan .. ..	Vancouver, British Columbia.
70	Dr. Mearns .. ..	Ditto.
71	Mr. Munie .. ..	Owner of sealing-schooners, Victoria, British Columbia.
72	Captain L. Maclean .. ..	Sealing-schooner "Favorite," Victoria, British Columbia.
73	Mr. E. H. Marvin .. ..	Owner of sealing-schooner, Victoria, British Columbia.
74	Mr. R. Neumann .. ..	Agent of Alaska Commercial Company, Unalaska.
75	Mr. Newman .. ..	Fur-trader, Aleutian Islands.
76	Mr. J. C. Nixon .. ..	Owner of sealing-schooners, Seattle.
77	Mr. Oppenheimer .. ..	Mayor of Vancouver, British Columbia.
78	Mr. Redpath .. ..	Manager of North American Commercial Company, St. Paul Island.
79	Captain Heiter .. ..	United States' ship "Thetis."
80	Mr. Rouseffell .. ..	Vancouver, British Columbia.
81	Mr. R. Robertson .. ..	Ditto.
82	Mr. Justice Swan .. ..	Port Townsend.
83	Captain Spring .. ..	Ditto.
84	Rev. — Stevens .. ..	Port Eslington.
85	Mr. E. R. Smith .. ..	Ship-owner, Yokohama.
86	Mr. Stevenson .. ..	Vancouver, British Columbia.
87	Mr. G. R. Tingle .. ..	Superintendent, North American Commercial Company, Pribiloff Islands.
88	M. Tillmann .. ..	Russian Government Agent on Copper Island.
89	Mr. Tatlow .. ..	Vancouver, British Columbia.
90	Captain Warren .. ..	Victoria, British Columbia.
91	Mr. Walsh .. ..	Navigator of sealing-schooner "Wanderer."
92	Mr. Washburn .. ..	Agent of Alaska Commercial Company, Kodiak Island.
93	Mr. D. Webster .. ..	Resident Agent of North American Commercial Company, St. George Island.
94	Major Williams .. ..	United States' Treasury Agent, St. Paul Island.
About 100 natives, Aleuts and Indians, as follows:—		
	Aleut natives .. ..	Village, St. Paul Island.
	" .. ..	North-east Point, St. Paul Island.
	" .. ..	Unalaska.
	" .. ..	Atka Island.
	" .. ..	Attu Island.
	" .. ..	Copper Island.
	" .. ..	Village, Behring Island.
	" .. ..	North Hookery, Behring Island.
	Indians (Tlinkit) .. ..	Sitka.
	" (Klawok) .. ..	Shakuan (Hanega tribe, from Klawek).
	" (Tshimsian) .. ..	Port Simpson.
	" (Haultzuk) .. ..	Bella-Bella.
	" (Aht) .. ..	Clayoquot Sound.
	" (Haida) .. ..	Musset, Queen Charlotte Islands.
	" (Kwakwiool) .. ..	Nawitti, Hope Island.
	" (Aht) .. ..	Nesh Bay (Makah tribe).
	" .. ..	Indian Office, Victoria, British Columbia (various tribes).

THE fol  
request of, th

The following are the sources from which written information has been obtained by, or at the request of, the Behring Sea Commission:—

1. *Colonial Governments.*

Cape of Good Hope.	New Zealand.
Falkland Islands.	Tasmania.
Newfoundland.	Victoria.
New South Wales.	

2. *Foreign Governments.*

Argentine Republic.	Monte Video.
Brazil.	Russia.
Chile.	Uruguay.
Japan.	

3. *Her Majesty's Consuls abroad.*

Canton.	San Francisco.
Honolulu.	Shanghai.

4. *Officers of Her Majesty's Ships and Canadian Government Officials.*

Admiral Hotham, C.B., Senior Naval Officer, Esquimalt.  
 Commander Turner, R.N., Her Majesty's ship "Nymph."  
 Commander Burr, R.N., Her Majesty's ship "Porpoise."  
 Lieutenant-Commander Hadley, R.N., Her Majesty's ship "Pheasant."  
 Mr. A. R. Milne, Collector of Customs, Victoria, British Columbia.  
 Indian Agents on coast of British Columbia, through Mr. A. W. Vowell.

5. *Miscellaneous.*

Mr. de Bunsen, British Legation, Tôkiô.  
 Earl Brownlow.  
 Captain Devereux, Graving Dock, Esquimalt.  
 Professor Flower, C.B., Natural History Museum, London.  
 Captain David Gray.  
 Dr. Günther, Natural History Museum, London.  
 Hudson Bay Company.  
 Mr. A. W. Huxon.  
 Sir George Curtis Lampson, Bart.  
 Mr. A. Lafone, M.P.  
 Mr. J. W. Mackay.  
 Professor Sir F. McCoy, Melbourne.  
 Sir R. Morier, G.C.B.  
 Mr. Murray, "Challenger" Office, Edinburgh.  
 Baron Norlenskiöld.  
 Mr. Sclater, Zoological Society, London.  
 Mr. Justice Swan.  
 Mr. E. Maunde-Thompson, British Museum.  
 Mr. W. C. Van Horne.

APPENDIX (B).

CIRCULAR TO, AND REPLIES FROM, COLONIAL AND FOREIGN GOVERNMENTS.

THE following Circular of Inquiry was prepared by the Beltrine Sea Commissioners, and forwarded at their request to the Governments of—

The Cape of Good Hope.  
The Falkland Islands.  
New South Wales.  
Victoria.  
Tasmania.  
New Zealand.

Chile.  
Argentine Republic.  
Brazil.  
Uruguay.  
Japan.

Such replies as have been received are given below.

In addition to this Circular, direct correspondence was entered into with the authorities on the same subjects.

*Circular of Inquiry.*

The Department of Fisheries of the Dominion of Canada, in connection with questions relating to the fur-seal fisheries of the North Pacific, is desirous of obtaining all possible information relating to the fur-seal fisheries of the Southern Hemisphere. The southern fur-seal, or "sea-bear" (of the family of eared seals, or *Otaridae*), is known to have formed the object of an important industry in the early part of the present century, but the islands on which it once abounded are now reported, and believed to be, almost entirely depleted of seals. As the habits and life-history of the fur-seal of the North Pacific appear to be closely similar to those of the allied seals of the Southern Hemisphere, it is thought probable that the history of the decline of the southern fisheries may afford some facts having a direct bearing on the fur-seal fisheries of the North Pacific, and may serve to indicate a proper mode of protection to be accorded to these fisheries, if such should be found necessary.

In this connection, it would be of particular interest to know for each of the seal islands or sealing-grounds of the Southern Hemisphere:—

1. Whether the decline or destruction of the fishery is attributable to the slaughter of the seals while on shore at their breeding-places, or to their pursuit at large on the circumjacent ocean.
2. In what manner the fur-seal fishery has been or is conducted in each particular locality.
3. Whether any, and, if any, what measures have been taken by various Governments towards the protection of the fur-seal fisheries in their territories or in places within their jurisdiction; and, further, if any such measures are known to have proved successful in preserving or rehabilitating the fisheries.
4. Generally, any particulars as to the life-history of the animal, its migration, season of bringing forth its young, and the habits of the seals while engaged in suckling and rearing the young.

It is also particularly requested that copies of any printed documents or Reports referring to the fur-seal fisheries, or embodying Regulations provided for these fisheries, may be furnished.

*Reply to Circular received from the Government of the Cape of Good Hope.*

*Minute.*

In acknowledging the receipt of his Excellency the Governor's Minute of the 25th August last inclosing a despatch from the Right Honourable the Secretary of State for the Colonies, requesting to be supplied with certain particulars respecting the fur-seal fishery of this Colca; for the information of the Canadian Government, Ministers have the honour to submit herewith a Report which has been received from the Government Agent in charge of the seal and guano islands, affording the desired particulars.

(Signed) J. W. SAUER.

Cape Town, October 30, 1891.

*Report upon the present Condition of the Seal Fishery on the Coasts of the Cape of Good Hope.*

The decline of the seal fishery in these waters is attributed by practical experts entirely to the destruction of the females in the breeding season, and but for the fact that there are many places almost inaccessible, and others where landing is difficult, the seal in these waters would probably have been exterminated, as no protection or legislation of any kind has ever been considered necessary.

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Cape Town,

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During the "springs," as they are technically called, at certain seasons of the year, the seals are destroyed with clubs by men landing upon the islands from boats.

The winter or shedding season commences in June and ends in August, during which period numbers of male seals are killed, but very few females, who do not appear to come out of the water at this season of the year.

The summer or breeding season, which extends from November to January, is, however, by far the most important as regards the number of seals destroyed, and of these the larger portion are females, either about to give birth or suckling their young. Of course, in the former case, all these seals are lost; in the latter, the greater number perish; and but for a happy provision of nature, whereby a female seal will suckle any young one, the destruction of the new-born seal would be complete.

As the Colonial Government up to the present have always contented themselves with letting out the islands upon short leases, with no restriction upon the lessees as to the killing of seal, &c., no official information or statistics of any kind can be furnished.

The life of a seal in the southern waters, if unmolested, is supposed to extend over a considerable period, and it arrives at maturity in about three years. The old male seals, called "bulls" or "whigs," attain an enormous size, and fight desperately among themselves. The females generally produce two pups at a birth, and immediately afterwards take the male. The "cow" will suckle any of the young seals, whether her own or not, and this period of nursing continues more or less for about six months.

As regards their migrations, it is difficult to give an opinion, as seals are always to be found in these waters, although they do not take up upon the islands in any numbers except at the seasons I have mentioned; but I think it may be naturally assumed that their migrations, whatever they may be, are regulated solely by the food supply.

Unfortunately, as I have stated before, there are no printed documents or Reports of any kind referring to the subject, but I have availed myself of information kindly furnished by the best practical experts in the Colony, with whom I have been associated, who are unanimous in their opinion—first, that the seals are decreasing in these waters; and, secondly, that the sole cause of this decrease at the present time is to be found in the destruction of the females during the breeding season.

We have practically no pursuit of the animals in the water on these coasts.

At one period, most of the islands were inhabited by seals, but there are comparatively few at the present time upon those islands in the immediate vicinity of Cape Town, and this may be accounted for by many reasons, besides the most important which I have already mentioned. Seals are very timid, and the noise of a steamer will scare them away; in fact, passing to windward in a sailing vessel, within 2 or 3 miles of an island which they frequent, will generally disturb them. It requires considerable experience to approach them, and old sealers never attempt to do so on these coasts when an easterly wind is blowing.

Upon several islands, especially in the Lehahoe group, are to be found the remains of vast numbers of "seal," probably the effects of an epidemic disease at some distant period. In many places, the hair, which is practically indestructible, has been found mixed with earth to the depth of several feet, and this when sifted gives a fair percentage of ammonia and phosphate, probably the residue of the bodies and bones of the dead animals.

The average value of seal-skins in the rough state in the London market, taken in these latitudes, is about 2s., but many fetch a much higher price. No attempt has been made in the Colony to dress the skins, and there has been no sale for them locally except for export.

The system of killing the seals is the same throughout all the colonial islands, namely, with "clubs," by men landing in boats.

The skins are salted upon the spot, folded up, tied, and sent to Cape Town by coasting craft, from whence they are shipped to Europe.

(Signed) C. H. JACKSON,

*Government Agent in charge of the Seal and Guano Islands.*

*Cape Town, October 9, 1891.*

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*Reply to Circular received from the Government of the Falkland Islands.*

*Governor Sir R. Goldsworthy to Lord Knutsford.*

My Lord,

*Government House, Stanley, October 26, 1891.*

I have the honour, in reply to your despatch of the 31st July, inclosing a despatch from the Governor-General of Canada asking for information regarding the seal fisheries in these seas, to forward a précis of the replies to the questions asked, which I have been able to obtain here.

I regret that the information is not as full as might be desired, but, unfortunately, Captain Hansen, an old and experienced sealer, from whom I had hoped to obtain full particulars, was accidentally drowned before my letter, requesting his views on a matter on which he was looked upon as an authority, reached him.

I have been given to understand by those conversant with these matters—indeed, it is referred to in the accompanying précis—that foreign vessels destroy the seals in the close season, which exists here from the 1st October to the 1st April.

The foreign vessels alluded to are American sealers, and formed the subject of correspondence

between Governor Kerr and Captain Musgrave, Senior Naval Officer on the South-East American Station.

I shall probably, when better informed on the whole question, be able to submit my views on the subject. At present I refrain from doing so.

I have, &c.  
(Signed) ROGER TUCKER, GOLDSWORTHY.

*Précis of Replies to Circular of Inquiry emanating from the Department of Fisheries of the Dominion of Canada relating to the Fur-Seal Fishery of the Southern Hemisphere which have been received from Residents in the Falkland Islands.*

Question 1. Whether the decline or destruction of the fishery is attributable to the slaughter of the seals while on shore at their breeding places, or to their pursuit at large on the circumjacent ocean.

*Honourable J. J. Felton.*—The main cause is due to the reckless and indiscriminate slaughter of the seals during their breeding season; the death of the mothers, leaving the young to perish, and the numbers who are driven from their resorts bring forth their young in the water, which naturally perish. It has not been the practice to shoot the seals in the water. If so shot, they sink.

*J. J. Goodhart* sends cutting from the "Field," which he thinks fully answers the first three questions.

*E. Nilsson.*—The decline is to be attributed to the stocking of the land and people taking up their abode in the neighbourhood of the rookeries.

*H. H. Waldron.*—The decline in the Southern Hemisphere, including the Falklands, is to be attributed to the indiscriminate slaughter of the females during the breeding season, whereby the young perish. Pursuit in the high seas is not carried on to any extent.

Question 2. In what manner the fur-seal fishery has been, or is, conducted in each particular locality.

*J. J. Felton.*—Formerly, by means of whale-boats; later on, by cutters and schooners. They would be fitted out for the "pipping" and the "shedding" seasons; as many men would be taken as possible, armed with clubs, spears, and guns, and, landing at the breeding places, they would line the beach and endeavour to turn the seals from taking to the water. If successful in this, the seals fell an easy prey. Has repeatedly heard it said that so many were killed that numbers had become useless before they could be skinned. Now that the seals have taken to outlying rocks and cliffs, the work is less profitable and more dangerous.

*J. J. Goodhart.*—See answer to Question 1.

*E. Nilsson.*—They have been usually captured by shooting or clubbing.

*Henry Waldron.*—By men landed from schooners, who remain on the rookeries until calm weather permits them to be taken off.

Question 3. Whether any, and, if any, what measures have been taken by various Governments towards the protection of the fur-seal fisheries in their territories, or in places within their jurisdiction; and, further, if any such measures are known to have proved successful in preserving or rehabilitating the fisheries.

*J. J. Felton.*—In the Falklands, since the close season was enacted, there has been an increase of seals; but foreign schooners occasionally break the law.

*J. J. Goodhart.*—See answer to Question 1.

*E. Nilsson.*—Does not see any improvement since the Law enacting a close season was passed.

*H. Waldron.*—To the same effect as J. J. Felton.

Question 4. Generally, any particulars as to the life-history of the animal, its migration, season of bringing forth its young, and habits of the seals while engaged in suckling and rearing the young.

*J. J. Felton.*—Does not think the seal migratory. The breeding season is about midsummer, when both male and female make for a suitable place.

The "shedding" season is in the fall of the year, when they frequent rocks, and the young, which before were valueless, become marketable.

*J. J. Goodhart.*—Has not studied the subject sufficiently to be able to give particulars.

*E. Nilsson.*—The seal generally is a timid animal, and recedes from advancing civilization, and migrates to any place where it can remain undisturbed.

*H. Waldron.*—Owing to keen pursuit, the seals prefer caves and ledges of rocks under high cliffs to form breeding rookeries. The fur-seal hauls up to breed in January, the young leaving in May for other rookeries with both "whigs" and "clapmatches."\* There is no regular migration, but it is probable that, when hard pressed, they leave the South Shetlands and mainland for the Falklands. "They are peculiar in liking some places for several years, and then at once going away and not hauling up there again, apparently without cause, in some instances where but few were killed and in others quite unmolested."

\* Note.—"Whigs," male seals; "Clapmatches," female seals.

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October 28

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When sealers leave carcasses on the rocks, seals desert the place.  
Seals will not increase in the Southern Hemisphere until the Chilean and Argentine Governments have a close time and see it enforced.

(Initialed) V. S. S.

October 28, 1891.

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*Reply to Circular received from the Government of New South Wales.*

*Governor Lord Jersey to Lord Knutsford.*

My Lord.

*Government House, Sydney, October 30, 1891.*

I have the honour, in reply to your despatch of the 30th July last, to state that I can obtain no information concerning the fur-seal fishery, as the fur-seal is not found on the coast of New South Wales.

I have, &c.  
(Signed) JERSEY.

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*Reply to Circular received from the Government of Victoria.*

*Governor Lord Hopetoun to Lord Knutsford.*

My Lord.

*Government House, Melbourne, October 27, 1891.*

I have the honour to acknowledge the receipt of your Lordship's despatch of the 30th July ultimo, requesting information on certain points connected with the fur-seal fishery in this Colony, and to transmit a copy of a letter, dated the 20th instant, from Sir Frederick McCoy, Director of the National Museum, which embraces all the available information on the subject.

I have, &c.  
(Signed) HOPETOUN.

*Sir F. McCoy to Mr. Murray.*

*National Museum, Melbourne, October 20, 1891.*

Sir,

In reply to your letter of this date, I have the honour to report as follows:—

1. The seal fishery of Australia was never so extensive as that of the North Pacific, and for more than thirty years the trade in Australian fur-seal skins has entirely ceased, although of some extent in Sydney a little before that time.

2. In Victoria the only fur-seal is the eared seal (*Eudaria vicaria*), the size, shape, and habits of which very nearly recall those of the North Pacific. The decline or destruction of the fishery is certainly attributable to the indiscriminate slaughter of the seals on the few islands off the south coast, especially in Western Port, where the old males and gravid females resorted in the summer to bring forth and tend the young. At present a few islands only are frequented by these seals, now in the breeding season, and the number of individuals is too small to furnish any trade.

3. The fur-seal fishery was conducted simply by manning a boat suitable for landing on the islands, the landing usually taking place at night, and then the seals were killed indiscriminately by clubbing them on the nose with large sticks. The skins were chiefly exported from Sydney.

4. No measures effective for the protection of the fur-seal fisheries have been undertaken on any large scale by any of the Australian Colonies, but some years ago I recommended the Victorian Government to prohibit the killing of seals on the small islands which they frequent near Phillip Island, and although the number has somewhat increased in consequence, it is far too small to furnish a trade.

5. The Australian fur-seals were never fished for in the open ocean.

6. Generally, the life-history of the Victorian fur-seal exactly resembles that of the North Pacific, following shoals of fish in the open ocean, but coming on the islands to breed in the latter part of the summer.

I have, &c.  
(Signed) FREDERICK MCCOY,  
*Director of Museum.*

*Reply to Circular received from the Government of Tasmania.**Mr. Seal to the Chief Secretary, Hobart.*

Hobart, November 30, 1891.

Sir,

I have the honour to report, for the information of the Canadian Government, the following in reply to the queries laid down in their Circular letter of the 9th July, 1891:—

*Query 1.* Sealing in Tasmania and her dependencies (almost solely confined to the islands in Bass Straits and the Macquarie Islands, situated to the south of New Zealand) has been carried on by the seals being killed on shore at their breeding places, and not by "pursuit at large on the circumjacent ocean."

*Query 2.* The seal fishery has been conducted by means of boats of 4 or 5 tons register fitted amongst the islands in Bass Straits, the crew being equipped with clubs and rifles, the seals being shot upon the rocks when practicable, or followed upon the shore and clubbed. Occasionally, large vessels come to Bass Straits from other Colonies, but the same mode of killing is adopted. In the Macquarie Islands the same principles are adopted with larger vessels.

*Query 3.* No measures were taken by the Tasmanian Government towards the protection of the seal fisheries in their territories until the early part of the present year, when, at the request of the New Zealand Government, seal fishing was prohibited on the Macquarie Islands, and in October of the present year the Commissioners of Fisheries, fearing the total extinction of the seals in Tasmania, consequent upon their unrestricted slaughter, submitted a Regulation (copy attached marked A) totally prohibiting the taking of seals in Tasmania and its dependencies for a period of three years.

*Query 4.* I inclose a newspaper copy (marked B) of a paper prepared and read by Mr. Alexander Morton, F.L.S., one of the Tasmanian Commissioners of Fisheries, at a late meeting of the Commission which will, I think, fully answer the query, as well as give interesting particulars of the history of the seal fisheries, and habits of the seals, as far as Tasmania is concerned.

I have, &amp;c.

(Signed) MATTHEW SEAL,  
Chairman of the Commissioners of Fisheries.*Government Notice.*

(A.)

The Governor in Council has been pleased, in accordance with the provisions of section 11 of "The Fisheries Act, 1889" (53 Vict., No. 11), to amend and approve of the following Regulation the same having been made by the Commissioners of Fisheries, and published in accordance with section 13 of the said Act.

By his Excellency's command,  
(For Chief Secretary, absent),

(Signed) ALFRED T. MILLINGER.

Chief Secretary's Office, October 26, 1891.

*Regulation.*

1. The taking of seals, whether known by the name of seals or any other local name, in Tasmania and its dependencies, is hereby prohibited for a period of three years from the 20th day of July, 1891; and any person committing any breach of this Regulation shall be liable to a penalty not exceeding 5*l.*

*Newspaper Extract.*

(B.)

Mr. Morton then said that Mr. A. W. Scott, M.A., of New South Wales, was for many years prior to his death a trustee of the Australian Museum, and, acting under instructions from the New South Wales Government, published a most comprehensive work on the classification and habits of the seals found frequenting the Australasian shores, including the Macquarie Island. Three species of seals are found in these waters: the grey Australian fur-seal (*Arctocephalus cinereus*), the sea-leopard (*Stenarthrocybus leptogyrus*), and the sea elephant (*Morunga elephantina*). The latter is only found on Macquarie Island, although it is supposed at one time to have been met with in the islands in Bass Straits. Mr. Scott, in his work, divides the genus *Arctocephalus* into two main divisions—the northern fur-seal of commerce, and the southern fur-seal of commerce—(*Arctocephalus ursinus* and *Arctocephalus Phelandicus*). If, as has been stated by Mr. Scott, that the fur-seal found on our coast is similar, if not identical, with the fur-seal of Alaska, the proposed Regulations recommended by this Board are absolutely necessary for their preservation.

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At the Fisheries Exhibition, held at London in the year 1883, considerable interest was taken in the collection of seals sent by the trustees of the Australian Museum. The skull of one of the seals sent to London was compared with the one at the Paris Museum, and found to be identical. It was the first time that the southern fur-seal (*Arctocephalus cinereus*) had been seen in England. Representations were made to the New South Wales Government some few years back that this seal was rapidly becoming extinct. The Government issued an order protecting them on the islands and the mainland of New South Wales, the result being that they are now on the increase, and a number may be seen inhabiting the Seal Rocks a little to the north of Port Stephens.

In New South Wales the sealing trade was in full swing from 1810 to 1820, the firms engaged being Sydney firms, viz., Messrs. Cable, Lord, Underwood; Riley, Jones, and Birnie; Hook and Campbell. These firms had crafts manned by crews of from twenty to twenty-eight men to each vessel, and were usually fitted out for a twelve months' cruise.

Owing to the want of proper restrictions, the indiscriminate slaughter was terrible. It is recorded that in the years 1814-15, 400,000 skins from one island, the Antipodes Island, or, as it is sometimes called, Pomatipod, were taken. These skins being obtained in such a hasty manner were but imperfectly cured, and a writer states that the ship "Pegasus" took home 100,000 of these in bulk, and on her arrival in London the skins, having heated during the voyage, had to be dug out of the hold, and were sold for manure.

As early as 1801-2 Péron says he found British seamen in Bass Straits killing all that came in their way. In the years 1803 and 1804 upwards of 36,000 skins were sent from the islands in Bass Straits, the slaughter being made without regard to sex.

At the present time in Macquarie Island are only to be found the sea-elephant (*Moranga elephantina*), yet when Macquarie Island was discovered by a sealer in 1811, the sealing master who discovered it procured a cargo of 80,000 skins, and another sealing party 100,000 skins, in one year.

With such a reckless killing, it is no wonder that the seals have become scarce round our shores, and unless steps are immediately taken, it will only be a question of time when their extermination will be completed.

Along the shores of New Zealand, as well as the southern shores of Australia, large numbers of seals were found. In New Zealand a vessel from Boston, called the "General Gates," landed a party of six men near the south-west cape of the Middle Island on the 10th August, 1821. In six weeks the party got 3,563 skins. For about twenty years enormous numbers were captured without any respect to age or sex, and in the year 1839 only a straggling seal was occasionally seen along the shores of New Zealand.

The American fur-seal had a narrow escape of sharing the fate of its southern kindred. In a paper dealing with this subject, a writer gives the following account:—

"Early in this century the seals were almost exterminated in many of the islands in the North Pacific, and were there as ruthlessly slaughtered as they were in the Bass Straits and the New Zealand coast. The extermination was, as it were, commenced, had not Russia first and the United States afterwards leased the exclusive right of killing seals on the Pribiloff Islands—a famous sealing place—to a single Company, by which means the seals were saved, as the Company had an interest in keeping up the supply of furs."

This single experiment, the writer states, has proved conclusively that fur-seals can be farmed as easily as sheep, and that sealing should not be thrown open without restrictions. Seals are a property the State should jealously guard. On the two Pribiloff Islands it is computed that 500,000 seals resort annually. These islands, from the value of the fur-seal, were discovered in the year 1786, when the slaughter commenced, and was prosecuted without [?] until the year 1839, when the mauler had been so reduced that the business threatened to be entirely destroyed within a few years. The destruction was then stopped until 1845, when it was gradually resumed, though, instead of the indiscriminate slaughter which had before been permitted, only the young males (2 years old) were allowed to be killed. The rookeries continued to increase in size until 1857.

The Company who leased the right of sealing in these islands were restricted about the year 1860 to 50,000 seal-skins annually. From 1821 to 1839, 758,502 fur-seals were killed, and 372,894 from 1845 to 1862. From another authority, Mr. Hittell, I find that when the United States Government took possession of the islands in 1867 several American firms took possession, and the wholesale slaughter of seals began afresh. In 1868 not less than 200,000 seals were killed, and for 1869 it is said the number was not far below 300,000. The United States Government, fearing their total extinction, leased the sole right of seal-fishing on these islands to one firm, restricting the allowed number to 100,000. From what he had been able to lay before the Fisheries Board, no time should be lost in at once taking steps to protect the seal fisheries in Bass Straits. Wherever proper restriction has been introduced a most valuable industry has been started in connection with the seal industry, and, instead of the three years, as has been proposed by this Board, he strongly recommended five years for the close season, and if at that time the seals have increased the Government might be recommended to lease the islands, allowing only a certain number to be taken annually, and on no account to allow the females to be killed.

In New Zealand, from the year 1855, the statistics of the export of seal-skins show:—

In 1855, from Wellington, 580 skins were exported; in 1857, 376. From then until 1868 there is no record. Then, in 1868, 675; 1869, 14; 1870, 269; 1871, 755; 1872, 2,012; 1873, 1,602; 1874, 1,061; 1875, 2,767; 1876, 3,417; 1877, 1,503; 1878, 820; 1879, 2,484; 1880, 2,648; 1881, 1,259; 1882, 353; 1883, nil; 1884, 374.

Professor J. H. Middleton states that the annual value of the fur-seal fisheries of the world is about 185,000*l*. The male seal does not attain his full size till he is about 6 years old, and the female when she is about 4. There is, says Mr. J. Clarke, in a paper printed in the "Contemporary Review," a remarkable disparity of size and build between them. In a species where the male would be 7 feet or 8 feet in length, and weigh 500 lbs. or 700 lbs., the female would not be more than 4 feet long, and

weigh from 80 lbs. to 100 lbs. The male, when aged, are whitish grey, and between 7 feet to 8 feet in length; when adult, brown-grey to black-grey, and about 6 feet in length; young, grey, upper portion soon assume darker colours; pups, black. The females when adult are ash-grey to silver-grey, at times golden-buff, frequently spotted; from 3 ft. 6 in. to 4 ft. 6 in. in length, even more when aged; pups, black. The under-fur of both sexes is rich reddish, diversified by deeper or lighter shades, and variable in length and abundance, the whole being influenced by health, sex, and condition.

He thought the Government should step in now, as the sealing industry might prove a valuable source of revenue to the Colony in the future.

*Viscount Kaurio to the Marquis of Salisbury.—(Received December 15.)*

M. le Marquis,

*Legation of Japan, London, December 14, 1891.*

I have the honour to inform your Excellency that, at the request of Sir George Baden-Powell, one of Her Majesty's Commissioners on the seal fisheries, I obtained from my Government a rapidly prepared Memorandum as to such fisheries in Japan. I have the pleasure to hand your Excellency herewith a translation of this Memorandum, which may be of interest to the above-named Commissioner.

I may possibly receive a further more detailed Report on the same subject, in which case I will forward a translation of it to your Excellency.

I have, &c.  
(Signed) KAWASÉ.

*Memorandum on the Seal Fisheries in Japan.*

(Translation.)

[N.B.—In this Memorandum "seal" does not always mean "seals proper," but includes sometimes all kinds of sea animals. Word "county" is not always applied to subdivision of Prefecture ("ken"), but sometimes it is meant for the division ("kan") of the old system.]

Seals are considered among the most important products of Hokkaido.

They are found in every part of the Kurile group, from Shimshu in the north to Shikotan and Kunashir in the south; Urup and Itrup being their favourite haunts.

Although the history of the origin of seal-hunting cannot be accurately traced, it appears that about 170 years ago a few natives of Akishi, in Kushiro, emigrated to Shibetoro, in Itrup, and occupied themselves in hunting seals, eagles, bears, &c., which they brought back to Akishi every year when the sea was free from ice (after April and May), in order to barter them for rice and other necessities of life; while the natives of Akishi visited this new Colony for the exchange of these commodities.

In the course of time the emigrants increased by degrees, settling down in such places as Toshiurui, Bianshi, in that island, and became hunters of seals and other sea animals in the neighbourhood.

In 1765 (about 120 years ago) seal fishery became very prosperous, and the natives of Rashua, as well as the old islanders of Itrup, carried on their hunting business in the Isles of Horomoshir, Makaruru, Shimsir, Urup, &c.

In the same year the Russians first made their appearance in the Islands of Rashua and Masir. In the following year they came to Itrup, and having obtained information about the localities from the natives, they went to the Island of Urup, where they stayed for three years. During their sojourn there they treated the natives in a very cruel manner, and provoked their great anger. But the natives being powerless to resist their oppressors, their Chief at last fled from the island.

In the summer of 1770, while the natives of Itrup, with their Chief, were hunting in the Island of Urup, the Russians came there and ordered them to ship all their catch to Russia, and, on their refusal, their two Chiefs were killed by the Russians.

In the same year, while the Chief of Rashua, together with a host of natives, were hunting in Urup, the Russians again made their appearance, and seized all their catch at the point of their guns. At last the anger of the natives was aroused to such a pitch by the Russian outrages that they resolved to avenge themselves, and in 1771 they gathered in great numbers, each carrying some weapon, and attacked the Russians in Urup, killing eight of them; and thence from the western coast they passed over the mountains to Waino, where they attacked some Russians who were living in caves. Only seven of the Russians escaped slaughter. From that place the natives sailed to Makaruri, where they also slaughtered seventeen Russians.

At that time the chief instruments used by the natives for killing seals were the bow and harpoon, while the Russians used guns.

After this defeat the Russians did not come for a long time.

During the years of the Anyei period (1772-80) the natives of Urup were constantly cruising and hunting round Urup and its neighbouring islands, and this prevented the Russians from catching seals so freely, although now and then they made their appearance. But towards the end of the Anyei period they came in a great number, and made a good catch.

In the years of Tenmei (1781-88), as the natives ceased to hunt for seals, all the islands of the Kuriles except Itrup were monopolized by the Russians.

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In 1795 Government caused some thirty men and women to emigrate to Itrup, and there were good catches made. Nets were then first used.

In 1800 Takatavá Kahé, a native of Awaji, emigrated to Itrup, and there employing the natives started a settlement for seal-hunting and other fisheries.

In the years of Kiowa (1801-3), Sawara Koyemon and Daté Rinyemon, of Fukuyama, Matsumayé having taken over the fishing establishment and plants from Takatavá Kahé, and building new fishing depôts in several places, carried on the fishing of sea animals.

At that time the seal-skins were bartered with the natives as follows, viz.:-

The best = 20 sacks of rice (each sack containing 8 shō\*) per skin; the middling = about 10 sacks, and the common skins were severally valued according to their qualities; and the natives were paid according to the skins they produced at the time of counting their catch. The skins thus bought were called "karimono," and were annually sent to the Prince of Matsumayé, whose Government paid for them at the fixed rate of 0.56 sen for 1 shō of rice, which was the standard of barter; and there were strict penal regulations against smugglers.

In the years of Keiō (1865-67) the Russian Government sent Alaskan natives to Itrup, and the Russian fishing settlement became more and more prosperous.

Seal-skins were a special product of Japan, and from olden times they were transported to Nagasaki, where they were sold to the Chinese.

In modern times seals and other sea animals, once famous products of Japan, being mostly caught by the Russian hands, are now looked on as Russian products, and are imported into Peking direct from Russia.

In 1869, at the time when "Kaitakushi" (Colonization Department) was newly established, its branch office was set up in the Island of Itrup, and some officials were sent in order to check foreign poachers, and superintend the fishing industry. As to the mode of buying skins, the old regulations were adopted, but on account of the old rate of exchange at 1 shō of rice at 0.56 sen being out of date, the fisheries incurred much loss. In April 1873 the official rate was raised to 1.63 sen per 1 shō.

In June of the same year for the first time a special office was established in Itrup, whose duty it was to suppress seal-poaching, and Commissioners were sent there. In August instructions were given to these Commissioners to keep strict vigilance as to poaching-vessels of foreign countries and the unlawful sale of seals in the vicinity of the island.

As seals mostly congregated in the seas neighbouring to Itrup, the ingress of foreign vessels to those waters, not only Russian, but also British, American, Dutch, and other countries, increased year after year, and oftentimes these vessels used to anchor in the neighbouring harbours.

In such cases the Commissioners informed them of the national prohibition, and requested them to leave, but under such pretexs as ship's repairs, or want of water and fuel, they did not obey the remonstrances, and when there was a shipwreck, which occurred very often, it gave a great deal of trouble and annoyance to the Commissioners, who had to look after the wrecked crews, and to have them escorted to the port of Hakodaté.

For instance, when the "Isalie" [?], an American vessel, stranded on a reef near Itrup, the natives rendered as much assistance as they possibly could to the unfortunate vessel, but all efforts having proved fruitless, this vessel was wrecked at last, and damages were claimed on the ground that it was lost on account of sufficient assistance not having been rendered. Such unlawful and unreasonable action on the part of foreign vessels was of frequent occurrence.

All these foreign poaching-vessels being of a much more improved type than the ordinary Japanese fishing-boats, it was very difficult to watch their movements in the high seas, and, as about seven-tenths of the island was uninhabited, fishing establishments in the whole island being very few, it was no wonder that watch could not be effectively kept by a few Commissioners with only two or three fishing-boats to cruise with.

Under these circumstances, in consultation with the Navy Department, two ships of war were commissioned, and one of these two was stationed at the port of Nemuro, one replacing the other in alternate years, and they were ordered to cruise round the Kurile group in order to watch the poachers.

Besides, the "Kioriomaru," of Kaitakushi, was sent to Itrup every year from May to October (season for seal-hunting) to cruise and watch in the vicinity of the island.

In March 1874 Mr. Alcott Brookes, His Imperial Majesty's Consul in San Francisco, reported to the Foreign Office that six boats were being prepared in Canada to start for seal-hunting in the islands of Hokkaido, and soon afterwards he also reported that some sealing-vessels had left the port of San Francisco.

In May of the same year, upon consultation with the Foreign Office, Regulations, consisting of three clauses, controlling the fisheries in the waters near the islands of Hokkaido, were issued, viz.:-

"1. Along the coast-lines the limit of the territorial right of Japan is fixed at 3 ri (1 ri = 2.4403 miles) from the shore; in case of bays, the line of limit shall be measured from a straight line drawn between the two capes at the extreme ends of the bay; but this applies only to cases where the space between the capes does not exceed 3 ri.

"If any foreigners be found fishing within the above-mentioned limit they shall be arrested in as peaceful a manner as possible, and sent to Hakodaté, accompanied by guards, and delivered to the Consul of the country of their nationality to be dealt with in a proper manner.

"2. If foreigners do not submit themselves to the authorities, or any violent resistance be offered by them at the time of such arrest, necessary force may be employed to carry out the foregoing Regulations.

"3. Inasmuch as there may be some foreign vessels arriving in harbour in consequence of stress of

weather or want of water or fuel, a careful scrutiny shall be made as to the true circumstances, and upon ascertaining their good faith, they shall be treated in accordance with the 'Regulations for Assistance to Foreign Vessels in Distress.' And if His Imperial Majesty's subjects be found poaching, their fishing apparatus and catches shall be confiscated according to the existing Regulations, and they shall be delivered to the branch office at Nemuro, there to be properly dealt with," &c.

The "Kioriomaru" and "Gentumaru," belonging to Kaitakushi, having on board interpreters and Seal Fishery Superintending Commissioners, were ordered to cruise in the vicinity of Itrup to watch any foreign poaching-vessels.

In the same month there was a *pourparler* with M. Benlin [?], master of a Danish poaching-vessel the "Mattée" [?].

In June, when the "Kioriomaru" was cruising back, she met with six American vessels, and there were various interviews respecting them.

In July His Imperial Majesty's ships "Hoshio" and "Osaka" were sent over, and the "Kioriomaru" again sailed to the islands.

In August an American ship "Snowdrop" was found at Tankam Bay, and some investigation was made. Five foreign vessels at Onnebetsu Bay were also subjected to investigation. But these are only a few vessels out of many which were not brought under notice.

To illustrate the cunning of foreign poachers, they, all of them, would enter and anchor in harbours, pretending that they had come under stress of weather or for want of water or fuel, going out of one port in the morning and entering another in the evening, their movements being so alert that it was a matter of no wonder that a single watch-ship was unable to keep them under observation. But, on the whole, the Island of Itrup was found unfavourable for the purpose of promoting our fisheries and of watching for foreign poachers. The climate is very inclement; during summer months there is dense fog, and when the autumn approaches the fog begins to lift, but only to be succeeded by a violent north-westerly gale, causing a heavy sea. And there is no good harbour. Thus the navigation in these waters is very difficult.

Consequently, in the same month, the stationing of the "Kioriomaru" at that island was discontinued, and she was ordered to cruise between Nemuro and Hakodate twice every month; the seal-hunting affairs were left to the control of the branch office at Nemuro; and three branches of the superintending office were established in the islands at Onnebetsu, Nanncho, Toshimori, where Commissioners were sent respectively with three boats, four boatmen for each boat.

As to the mode of hunting, the natives used to shoot seals with bows and arrows while resting upon reefs or rocks. In winter, when the sea is frozen over, they simply chased them over the ice and killed them with clubs, or they used to go in a boat made of the skins of sea-horse and whale-bones, wearing a kind of waterproof made of the bladders of sea-elephants or sea-horse, and with a head-covering made of fox or wolf-skins, thus deceiving seals when approaching them. In this clever manner they used to catch a great many. The boat itself was very simple, but so easy of motion that its progress was very fast, even in a heavy sea-way, and it was quite safe from capsizing.

The weapons which the natives had in these boats were a long harpoon, a club, and a gaff. When they approached a victim they threw the harpoon, and having made a good hit, the top, or barbed end, which is tied to a long string, separated itself from the pole and remained in the flesh; thus, even if the animal was not killed at one coup, its whereabouts could always be known, as the pole to which the other end of the string is tied acted as a float, and the seal was dragged out and clubbed to death, and then gaffed into the boat.

This mode was considered to be the best way of catching seals, but in modern times it is superseded by the use of guns.

But seals are very averse to the sound of firing, and the use of the gun is sure to drive them away from the vicinity to some far distant places, and the flocks are thinned year by year. The natives, knowing this by long experience, abstained from using guns, but at the present time, as all foreigners poach with guns, our mode of hunting was also obliged to be similarly changed.

In April 1875, at Heretarabetsu, near Shibetoro, Itrup, a Russian boat was found anchored, and its master, with three Russians and three Japanese, were seen constructing a hut on the coast. They were consequently warned off by the Commissioners.

Again, an information was given to the Commissioners that at Morocco, in the same county, the Americans Ramion Jean [?] and three others built houses, and were carrying on poaching business since October of the preceding year. They were consequently arrested and sent to Hakodate, and delivered to the hands of the United States' Consul.

In June of the same year His Imperial Majesty's ship "Asama" entered into the port of Nemuro as a guard-ship, and cruised about the Kurile group and along the coast of Kitami.

In September the "Asama" returned, and the "Kioriomaru" and "Gentumaru" set out for a cruise round Itrup.

In December a schooner, built at Muroan for seal-hunting, was completed and sent to the port of Nemuro. This schooner was named the "Chishinamaru."

The Regulations for controlling seal fisheries which were issued some years ago, after consultation with the Foreign Office, had to be amended, owing to the territorial boundaries being definitely marked out, consequent upon the exchange of the Kuriles (with Russia) having been effected in September, 1874. Consequently, in April 1876, new Regulations for controlling the fisheries in Hokkaido, consisting of three clauses, were issued.

The first clause prohibited any foreign vessels from fishing with any line, net, guns, &c., any fish or sea animal within the range of a gun-shot from the coast of Hokkaido or of other islands belonging to the Empire of Japan.

The second clause decreed that the officials appointed under the Regulations for controlling fisheries in the territorial waters of Japan shall order to clear out of the boundary any foreign vessel

which is suspected of being engaged in poaching.

The third clause prohibited any foreign vessels from fishing in the territorial waters of the country.

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The weapons which the natives had in these boats were a long harpoon, a club, and a gaff.

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In June of the same year His Imperial Majesty's ship "Asama" entered into the port of Nemuro.



which is suspected of infringing upon the prohibition mentioned in the first clause, or if such vessel is thought to have already infringed the prohibition, that they shall board the vessel and inspect her cargo.

The third clause decreed that when there is any foreign vessel which has actually infringed the prohibition in the first clause, or refused to clear out of the boundary or to submit to the inspection of the cargo mentioned in the second clause, the officials under the Regulations for controlling fisheries in the territorial waters of Japan shall take such vessel to the nearest open port, shall deliver it to the Consul of the country to which it belongs, and upon its being clearly proved to be guilty of the offence after due inquiries, shall demand from the Consul the infliction of due punishment.

In the same month, in the Bay of Tsunutan, in the Island of Shikotan, in the county of Hanasaki, an office building and a store-house were built.

The Island of Shikotan is 18 ri in circumference, and has a good natural harbour. In old times many natives used to immigrate, and the people of the mainland also used to come for fishing purposes; but, owing to the difficulty of communication, almost all of them crossed over to the neighbourhood of Nemuro; and at the present time it is rare to find any inhabitants in the island. Thus the island became a good shelter for foreign poachers, and many vessels made the harbour their resting-place whence to sail, and when the time and wind were favourable for their unlawful acts. Accordingly, some Superintending Commissioners were sent over to guard the neighbourhood.

In June an office-house and a store-house were built in the Bay of Tankanu, in the county of Furubetsu, Itrup.

In July His Imperial Majesty's ship "Moshun" cruized about the Island of Itrup in search of poachers.

In August, in consideration of the diligence and hardships of the superintending officials of Itrup in discharge of their duty, day and night through all seasons, a sub-regulation was made rewarding them by special grants of money, classified according to the merit of each individual.

In May 1878, in consequence of much inconvenience having been experienced by the officials in discharge of their duty on account of the differences of language on such occasions as when interviewing foreign vessels or making inquiry as to foreign poachers, the following instructions were given to the superintending officials in Shikotan, and were posted in conspicuous places, written in foreign languages, viz. :—

"1. This island is the Island of Shikotan, county of Hanasaki, Nemuro, Hokkaido, belonging to the Empire of Japan.

"2. You are requested to report in detail, in writing, the nationality of vessel, its name and that of the captain, the number of crew, and the reason of coming. If for temporary anchorage, in want of water or fuel, or in consequence of wind or tide, you are requested to leave as soon as your wants are satisfied or the weather becomes favourable.

"Hunting of sea animals is prohibited in the neighbouring seas."

The skins of the seals prepared according to the mode of the locality were very thin, and the process of tanning was imperfect. In June of the same year a skilled tanner of Tôkiô was consulted, and it was advised that the skins shall be left as thick as possible, and to prevent the change of fur-colour, that they should be painted with coal-water in such a manner as to allow the colour of the leather to be seen, and when dry to be painted again twice in the same way. In summer, there being fear of moth, they were to be painted with camphor-water after being painted with coal-water.

Heretofore, as there was no restriction as to the mode of seal-hunting, and fears were entertained of the extermination of the species by wanton hunting, Hunting Regulations were issued in October with a view to promote the increase of seals, as well as to check poaching; and four superintending officials and thirty-six hunters were added.

The Regulations run as follows :—

"Article 1. In view of protecting seal-hunting and checking foreign poachers, a vessel of foreign type shall be commissioned to cruise in the neighbourhood of Itrup. 'Chishimamaru' shall be commissioned for this purpose for the time being.

"Art. 2. The mode of killing shall mainly be by clubbing, and the use of guns shall be avoided as much as possible.

"Art. 3. Young seals shall be spared as much as possible.

"Art. 4. The number of seals to be caught within 1 ri of coast-line shall not exceed forty-five per annum.

"Art. 5. Between the months of May and November the killing of seals within 1 ri of coast-line is prohibited.

"Art. 6. Any person who catches wounded or crippled seals washed ashore, even within the prohibition limit, shall be paid in money or in kind according to the quality of the skin.

"Art. 7. To prevent the decrease of seals by careless chasing and wanton killing, special care shall always be taken, and the preventive method shall be established.

"Art. 8. The number of seals taken will be inspected, and their skins shall fix the proof of their ages.

"Art. 9. The covering and breeding seasons, &c., shall be carefully ascertained by practical observations.

"Art. 10. Practical observations and investigations shall be made as to the truth of the seals losing or changing the colour of their fur according to different seasons.

"Art. 11. An actual investigation shall be made as to how many seals can be caught annually if the use of guns be discontinued, and clubs and bows and arrows be adopted instead.

"Art. 12. While out hunting, if anything occurs likely to form an object for future investigation, a minute record shall be kept.

"Art. 13. While the present Regulations shall be strictly obeyed by all those who are responsible

for seal-hunting, they can address themselves to the authorities to effect required amendments in case practical inconveniences shall have been experienced."

Year by year the use of guns for killing seals having gradually increased, the frightened seals escaped into distant places, and began to flock about the coast-lines and near seas of the Island of Kunashir, where human beings were most seldom found. Consequently, hunting quarters were established in the island, hunting apparatuses newly supplied, superintending officers were sent and hunters engaged, and the hunting business was started afresh. But here, again, people came and fixed their hunting quarters, and the arrival and departure of boats became frequent. The decrease of seals naturally followed, and foreign poachers also disappeared.

In June 1879 a hunting depôt was built at Iribush, in the county of Furubetsu, Itrup.

In May 1880 His Imperial Majesty's Consul at San Francisco reported that a schooner had left that port for the purpose of seal-hunting in the neighbouring seas of Itrup.

On observing the general aspect at this time, and comparing it with former years, the number of seals caught was found to be on the decrease, and it is evident as a matter of course that the more they are killed the fewer will be bred; while, year after year, increased influx of foreign poachers competed in the fishing, there being no means of checking them outside the line of territorial limit fixed by international law. Besides, as the foreigners did not in the least care about the decrease of breeding or the extermination of the species, they freely used their guns in hunting, and, as the result, they killed the greatest number. Thus we were also obliged to throw aside the old instruments, such as clubs, hoes, and arrows, and gaffs, and to adopt the gun, as it would be most foolish to keep to the old system, while letting others make the greatest gain. Thus the use of guns is the main cause of the present decrease.

In February 1882, after Kaitakushi was abolished, seal fishery affairs were transferred to the Agricultural and Commercial Department, together with the superintending officers, fishing implements, and everything connected with the fisheries. From this time the fishing was carried on by the authority of the above-mentioned Department until 1887. And, in 1889, the "Dainippon Suisen Kaisha" (the Marine Produce Company of the Empire of Japan) was given the exclusive permission of hunting seals and sea-otters; and the several Regulations in force at the present time are as follows:—

"Decree No. 16.

"May 23, 17th year of Meiji (1884).

"In future, the hunting and catching of seals and sea-otters in Hokkaido is prohibited; the offenders will be punished by 373rd clause of the Penal Code, and their catches will be confiscated; but those who are in possession of the special permission of the Minister of Agriculture and Commerce shall be exempted."

"Imperial Decree No. 80.

"December 16, 19th year of Meiji (1886).

"Regulations controlling the Hunting, the Importation, and the Sale of Seals and Sea-otters and their Raw Hides.

"Article 1. Any person who is in possession of the special permission of the Minister of Agriculture and Commerce, pursuant to the Decree No. 16 of the 17th year of Meiji (1884), shall be allowed to hunt and catch seals and sea-otters within such area and season as may be fixed by Hokkaido Chō, provided that the person shall always carry the special permit when he is engaged in hunting, and that wherever he may be, on land or on water, he shall at once produce and show the same to the superintending officials or police officers when they ask him to do so.

"Art. 2. When any person engaged in seal and sea-otter hunting arrives in Hokkaido, he shall report the name of his boat, its tonnage, and the names of crew, to the branch office named by the Hokkaido Chō, and shall always keep fixed to the mast, or other conspicuous part of the boat, a certain sign specially provided for such hunting-boats.

"Art. 3. Any person wishing to sell raw hides of seals or sea-otters shall first present and have them stamped (branding stamps can be used) by the proper officers at the branch office mentioned in Article 2. No hides without this official stamp shall be allowed to be sold.

"Art. 4. If any person who has imported into any port of the Empire, or anchored in any port having on board raw hides of seals or sea-otters, or had sold or is going to sell these hides in a market, be found out, the Customs authorities or the police officers shall seize the articles, and shall at once prosecute the offender: provided that the raw hides of seals or sea-otters caught within the territories of Russia or the United States of America, with due permission of the respective Governments, can be imported into the Empire upon the owner or the captain of the ship producing the certificate given them by the proper authority of their Government or the guaranteeing certificate of the Russian or the United States' Consuls residing in the Empire."

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*"Report regarding the Revision of the Details of Procedure to carry out the Regulations controlling the Seal and Sea-otter Hunting."*

"To his Excellency Enomotto Takeaki,  
Minister of Agriculture and Commerce, &c.

"Sir. "*Hokkaido Chō, July 10, 21st year of Meiji (1888).*  
"I have the honour to inform your Excellency that the details of procedure to carry out the Regulations controlling seal and sea-otter hunting per notification No. Kō. 15 of Hokkaido Chō (December 19th of Meiji (1886) have been revised, as shown in the inclosed copy of Chōrei No. 35, dated 10th May of the current year.

"I have, &c.  
(Signed) "NAGAYAMA TAKESHIRO,  
"Director of Hokkaido Chō."

"Inclosure.

*"Details of Procedure to carry out the Regulations controlling the Seal and Sea-otter Hunting."*

"Article 1. The open season for seal and sea-otter hunting shall be from the 15th April to the 31st October in each year.

"Art. 2. The area of hunting shall be all the islands situated eastward of Itrup, and southward of Shimshu, of the Kuriles, and it will be divided into three sections, and every year only one of these sections shall be opened for hunting.

"The first section includes seven islands, *i.e.*, Itrup, Chirihoi, Butetchelboa [?], Broughton, Raikokō, Mushir, and Chirinkotan.

"The second section includes six islands, *i.e.*, Shimshir, Shiritoi, Ushishir, Sletonepa [?], Rashna, and Matsua.

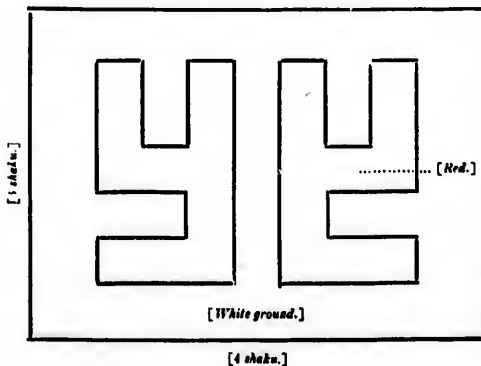
"The third section includes twelve islands, *i.e.*, Shannekotan, Yekkerma [?], Karreakotan, Omekotan, Anos, Makarushi, Shurenwa [?], Paramushir, Holt, Cocksan, Araito, and Shimshu.

"Art. 3. When a boat is going out for hunting, her name, tonnage, and the names of the crew shall be reported for inspection to the branch office of seal and sea-otter hunting superintending authorities, either at Nemuro, in the county of Nemuro, or at Shikotan, in the county of Chishima.

"Art. 4. When the branch office of seal and sea-otter hunting superintending authorities find the report mentioned in Article 3 in due form on inspection, it will give to the boat a flag hereinafter shown.

"Art. 5. Any person who wishes to export and sell the raw hides of his catch shall produce them to the Shikotan branch of the seal and sea-otter hunting superintending authorities, and shall have them stamped."

THE FLAG.



## NUMBER of Seals and Sea-otters caught.

Year.	Number of Sea-otters.	Number of Seals.
1873 .. .. .	288	..
1874 .. .. .	78	..
1875 .. .. .	250	..
1876 .. .. .	285	..
1877 .. .. .	243	..
1878 .. .. .	270	..
1879 .. .. .	211	..
1880 .. .. .	137	..
1881 .. .. .	77	..
1882 .. .. .	82	..
1883 .. .. .	3	..
1884 .. .. .	53	..
1885 .. .. .	31	..
1886 .. .. .	99	..
1887 .. .. .	..	..
1888 .. .. .	..	..
1889 .. .. .	53	33
1890 .. .. .	47	391
1891 .. .. .	..	..

*Memorandum respecting Japanese Seal Fisheries.*1.—*Whether the Decline or Destruction of the Fishery is attributable to the Slaughter of the Seals while on Shore at their Breeding-places, or to their Pursuit at large on the circumjacent Ocean.*

1. The only known rookeries or hauling grounds of the fur-seal within Japanese dominions are the following:—

Srednoi Rocks (off Ushishia).  
Raikoké Island.  
Mushiu Rocks.

The first of these hauling grounds, all of which are situated in the Kuriles, is only some 100 yards long by 60 yards wide, and the others are not much larger; but at the time of their discovery in 1881 they must have harboured annually some 20,000 or 25,000 fur-seals; 5,000 were actually taken there by one vessel in the year mentioned. Since then they have gradually declined in productiveness, and it may be said that at the present time they yield catches of only a few scores in the place of thousands.

There can be no doubt that this result is exclusively due to the indiscriminate slaughter of the seals at their breeding place. No "rookery" could withstand for many years such wholesale destruction as these were exposed to in consequence of the successful venture of 1881. Nor is there any other way of accounting for their depletion, for it is known that the two or three foreign sealers which now find it worth their while to equip at Yokohama do not engage in pelagic sealing, but proceed to the more extensive haunts of their quarry beyond Japanese waters, such as Robben, Behring, and Copper Islands, where they hope to elude the vigilance of the Russian guard vessels.

Large numbers of seal from the Russian "rookeries" are scattered every winter over the ocean lying off the north-east coast of Japan, but they are unmolested by foreign or native sealing-vessels, and only the fringe of them is touched by native fishermen in their open boats along the Nambu and Yezo coast, where some 2,000 or 3,000 are taken annually.

2.—*In what Manner the Fur-Seal Fishery has been or is conducted in each particular Locality.*

2. The coast fishery by the Japanese in the immediate neighbourhood of Yezo and off the mainland north of Imbosaki has just been alluded to. It is carried on in native open boats by means of spearing or nets. The catch (2,000 or 3,000 skins a-year) is disposed of to Chinese merchants at Hakodate.

Other pelagic sealing there is none in the ocean lying off Japan.

The few scattered seals still to be found about the exhausted breeding grounds of the Kuriles are occasionally taken by the schooners of the Japanese "Marine Products Company," but only two fitted out this year, and their catch was sixty seals between them.

Of British and other foreign sealers only three were equipped at Yokohama this year, but the sphere of their operations lies to the northward beyond Japanese jurisdiction. According to figures furnished by the British Consulate at Yokohama, between eleven and eighteen of these vessels left Yokohama annually for the seal fisheries in the years following the discovery of the Kurile breeding grounds, namely, between 1882 and 1885 inclusive. After 1885 their numbers gradually dwindled, owing to the depletion of the Japanese fishery and the greater risk and uncertainty attending a cruise to more northerly waters.

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It is stated by the Japanese Agricultural Department that "the fur-seal appears to be reared on the rocky coasts, and, in consequence, they are generally caught while swimming at a distance not more than 1 nautical mile from the coast."

It may be that a few are so taken about the Kuriles, but the fishery—now almost extinct—of those islands was carried on, in the years of its prosperity, entirely by clubbing the animals on the beach.

3.—*Whether any, and, if any, what Measures have been taken towards the Protection of the Fur-Seal Fisheries, and, further, if any such Measures are known to have proved successful in preserving or rehabilitating the Fisheries.*

3. The measures tardily taken by the Japanese Government in 1884 to protect the Kurile rookeries have remained entirely inoperative. Elaborate Regulations were framed in the year and in 1886, establishing a close season between the 1st November and the 15th April, and dividing the Kuriles into three groups, in only one of which was fishing to be allowed in any one year, and then only on the issue of a licence by the authority constituted for the purpose.

There is no means of enforcing these Regulations, which, indeed, were not devised until after the ruin of the hauling grounds had been effected. A Japanese guard-ship was told off this year to watch over their observance, but she never left her station at Nemuro, and, except the Japanese "Marine Products Company," now rapidly approaching bankruptcy, no one dreams of applying for the regulation licence, or of limiting his operations to the group in which the fishery is legally permissible. But, as stated above, the Kuriles no longer attract the seal fishermen to any extent worth mentioning.

The Japanese Regulations in question have no bearing on pelagic sealing, which, as already stated, is not engaged in by Japanese or foreign sealing-vessels.

4.—*Generally, any Particulars as to the Life-history of the Animal, its Migration, Season of bringing forth its Young, and Habits of the Seals while engaged in suckling and rearing the Young.*

4. The vast bulk of the seals now found in Japanese waters, and more especially in that portion of the ocean extending eastwards from the coast between Inabosaki and the eastern point of Yezo are from the Russian breeding grounds in the Behring Sea and in the Sea of Okhotsk.

They follow the fish southwards about the beginning of November, and remain scattered over a large expanse of ocean, where they are quite unmolested, throughout the winter and spring months. It is a matter of some surprise that no attempt is made to take them in the open sea, as is done on such a large scale in the case of the seals resorting to the breeding grounds of the eastern portion of Behring Sea. Possibly they scatter more in the Western Pacific, and are less easy to find.

After their sojourn in the south, the first to repair to the northern rookeries are the old bulls, arriving about the middle of June. They await the cows, which follow them towards the end of the same month. Yearlings and other non-breeding seals arrive at any time later. The young are brought forth in the beginning of July.

It is sometimes stated that the females are in the habit of leaving the rookeries to catch fish within 10 or 20 miles of the shore for the support of their young, but the experienced authority on whose remarks these notes are founded is not of this opinion. He has never found food inside the female fur-seal taken on the hauling grounds.

(Signed) M. DE BUNSEN,  
Her Majesty's Secretary of Legation.

Tokio, November 19, 1891.

*Mr. Wyndham to the Marquis of Salisbury.—(Received November 21.)*

(No. 107. Commercial.)

My Lord,

Rio de Janeiro, October 27, 1891.

With reference to your Lordship's Circular despatch No. 30 of the 10th August last, and to my despatch No. 114 of the 25th September, on the subject of the fur-seal fisheries of the Southern Hemisphere, I have the honour to transmit herewith to your Lordship copy of a despatch which I have received from Her Majesty's Consul at Rio Grande do Sul, in which he states that, having made inquiries in both States of his Consular district, he finds that no expeditions are sent thence to the fisheries, and that nothing is known about the conditions under which the fisheries are carried out, or the habits of the seal itself.

I have, &c.  
(Signed) HUGH WYNDHAM.

*Consul Hearne to Mr. Wyndham.*

Sir,

Rio Grande do Sul, October 14, 1891.

With reference to your despatch of the 9th September last respecting certain information with regard to the fur-seal fisheries of the Southern Hemisphere, I have the honour to inform you that I

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have made inquiries in both States in this Consular district, and find that no expeditions are sent hence to the fisheries, nor is anything known about the conditions under which fisheries are carried out, or the habits of the seal itself.

I have, &c.  
(Signed) W. R. HEARNE.

*Mr. Wyndham to the Marquis of Salisbury.—(Received October 22.)*

(No. 114.)  
My Lord,

*Rio de Janeiro, September 25, 1891.*  
With reference to your Lordship's despatch No. 30 of the 10th ultimo, desiring certain information respecting fur-seal life in the Southern Hemisphere, for the use of the Government of Canada, and to my despatch No. 109 of the 9th instant on the same subject, I have the honour to report to your Lordship that I have received a note from the Minister of Foreign Affairs, in reply to my request for the information desired, in which he states, on the authority of the Minister of Marine, that seal-fishing is unknown in Brazilian territorial waters, that no laws respecting the same exist in Brazil, and that hitherto no vessel engaged in this trade has touched at any Brazilian port.

I have, &c.  
(Signed) HUGH WYNDHAM.

*Mr. Pakenham to the Marquis of Salisbury.—(Received January 18, 1892.)*

(No. 51.)  
My Lord,

*Buenos Ayres, December 22, 1891.*  
With reference to your Lordship's despatch No. 24 of the 10th August on the subject of seals and seal fishery on the Argentine coast, I now have the honour to inclose translation of the reply of the Minister for Foreign Affairs to my inquiry on the subject, whereof copy is likewise inclosed.

Apparently the taking of seals is at present prohibited by law, as also the working for profit of any natural product of the south coasts, though it is implied that before very long certain fishery privileges may be conferred in various quarters not as yet named.

I believe there is an extensive industry in the seal fishery off Maldonado, near Monte Video, and, in fact, I well remember, twenty-five years or so ago, that those concerned in the fishery gravely petitioned the Government that the lighthouse at Maldonado should be closed, as the light appeared to alarm the seals.

I have, &c.  
(Signed) F. PAKENHAM.

*Mr. Pakenham to Señor Costa.*

M. lo Ministro,

*Buenos Ayres, September 12, 1891.*  
I have the honour to place in your Excellency's hands a copy of a Circular issued by the Department of Fisheries of the Dominion of Canada, and which Lord Salisbury has directed me to lay before the Argentine Government, with the request that, if it is possible, they will kindly furnish the information therein asked, which is to the effect that fears being now seriously entertained as to the total destruction of the fur-seal, or sea-bear, a series of queries has been issued on this interesting subject with a view to their protection.

I have therefore the honour to request that your Excellency will kindly cause steps to be taken to obtain the desired information as to the pursuit, capture, or preservation of these valuable animals in Argentine waters for transmission to the Governor-General of the Dominion.

I avail, &c.  
(Signed) F. PAKENHAM.

*Señor Zeballos to Mr. Pakenham.*

(Translation.)  
Señor Ministro,

*Buenos Ayres, December 14, 1891.*  
In reply to your note addressed to my distinguished predecessor on the 12th September last, I have the honour to inform your Excellency that the taking of seals, as also the working for profit ("explotacion") of any natural product of the south coasts, is prohibited by law, and for a long time this has been the case with this branch of national industry.

Further, from what I can judge of the case, I am able to tell your Excellency that the Executive Power has asked Congress for authority to concede some fishing concessions to certain persons, who will be obliged to supply the necessary information for the publication of the projects presented to the Legislative Body.

I avail, &c.  
(Signed) ESTANISLAO ZEBALLOS.

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*Monte Video,*



Memorandum on the Seal Fishery in Uruguay, by Mr. Ernest Satow.

The seal fishery in the Republic of Uruguay is carried on at three points on the Atlantic coast, namely, Lobos Island, at the entrance to the Rio de la Plata, at the Castillos Islands further north, and at Corouilla group, near the Brazilian frontier.

Two kinds of seals are known there, namely, the fur-seal, and the common single-hair seal. The male of the latter species is large, and of a dark brown colour, while the female is much smaller, and of a yellow colour.

At Lobos Island there is an establishment for steaming down the oil and salting the skins, besides huts for the accommodation of the sealers who live there during the killing season.

At the highest point of the island is a large "corral," or inclosure, capable of holding several thousand seals. When not engaged in killing, the sealers remain in the vicinity of their huts, but when the superintendent sees a favourable opportunity, which happens usually during cold winds from the south-east, in consequence of the seals coming high up out of the water, he sends the men down to intercept them, and by making loud noises to drive them into the corral. Then, as convenience suits, a certain number of seals are let out by a door on the opposite side to that by which they entered, and driven to the killing ground, where they are quickly dispatched by a blow with a club. The establishment for the Castillos Islands is at Polonia, on the mainland, whence the sealers proceed in boats when they judge that there is a favourable opportunity.

The general opinion seems to be that there has been no diminution in the number of the seals, at any rate of recent years. In 1876 a Decree was issued establishing a close season from the 16th October to the 31st May, and this Law is strictly enforced. A copy in translation is annexed.

As has been seen above, there is no pelagic seal-fishing off the coast of Uruguay.

The figures of the export of seal-skins and *nutria* skins (the latter is a large fresh-water rat, *Myopotamus Cuyuna*, inhabiting the rivers) for the last six years preceding 1891 are as follows:—

1885 .. .. .	25,885
1886 .. .. .	24,191
1887 .. .. .	42,348
1888 .. .. .	22,942
1889 .. .. .	30,211
1890 .. .. .	38,462

Although there is thus considerable variation in the yield of the fisheries, there does not appear to be any ground for supposing a constant diminution.

The female fur-seal produces one at a birth, the male pups being the more numerous. The pupping season begins in November. The mothers are very careful of their young. When the latter are about a fortnight old the mothers take them down to the water and teach them to swim. They suckle their young for nearly a year. The seals never entirely abandon the islands, but go to and fro their fishing banks, which are not far off.

The mating season is in December and January. During this time the males often fight savagely for possession of the females, and numbers may be seen lying on the islands or shore of the mainland helpless from their wounds.

The fisheries in Uruguay are leased to a private Company, of which Don Guillermo Lafone is Managing Director.

Decree establishing a Close Season.

(Translation.)

The Government being unable to remain indifferent to the denunciations of the periodical press with reference to the abuses committed in "exploiting" the amphibious animals that populate the Islands of Lobos, Espinillo, and Polonia, and the regulation of this industry, implying not only an advantage for the Company which pursues it, as well as a duty appertaining to the public Administration charged with the preservation and development of those factors of the national wealth, the Provisional Governor in Council decrees:—

Article 1. The slaughter of seals on the above-mentioned islands shall commence on the 1st day of June, and terminate on the 15th day of October in each year.

Art. 2. The Civil Administrator of the Department of Maldonado is charged with the execution of the present Decree, and he will take the necessary measures for its due execution.

Art. 3. Let this be communicated, published, and deposited in the public archives.

(Countersigned)

JUAN A. VASQUEZ.

(Signed)

LATORRE.

Monte Video, May 13, 1874.

APPENDIX (C).

VARIOUS LETTERS AND COMMUNICATIONS RELATING TO THE FUR-SEALS OF THE BRITISH COLUMBIAN AND NEIGHBOURING COASTS.

Questions addressed to District Indian Agents on the Coast of British Columbia.

[These questions, prepared by Dr. Dawson, were kindly forwarded by Mr. A. W. Vowell, Superintendent of Indian Affairs in British Columbia, to the three Coast Agencies, in the summer of 1891.]

1. Are fur-seals found or hunted by Indians in any part of your district? If so, at what seasons are they found in greatest numbers, and about what dates are they first and last seen each year?
2. Are fur-seals known to give birth to their young on or about any part of the coast in your district, and, if so, at what places and in what seasons?  
If young pups are observed, please state whether the Indians know their mode of birth, *i.e.*, whether born on shore or at sea.
3. Do any of the Indians in your district know of breeding places formerly resorted to by the fur-seal, or do they remember to have heard that such breeding places formerly existed?
4. Have the fur-seals been more or less abundant on the coast within the past few years?

Information received in reply to the foregoing Questions.

Sir,  
*West Coast Indian Agency, Nanaimo, July 30, 1891.*  
 In answer to Circular of the 20th July, received from India Office, I have the honour to state that fur-seals are hunted by the Indians on the west coast, and are found in great numbers in February. Are first seen in December and last in April—that is close in shore. After that they begin to travel along the coast of Vancouver Island and Queen Charlotte Islands towards Behring Sea. Fur-seals are not known to give birth to their young on any part of the coast in my Agency. All Indian sealers inform me that seals are born on shore (from their experience in Behring Sea, where many females are killed), and that the mothers leave the young on shore in daytime, going some miles out to sea in search of food, returning at night. Indians in my district do not know of any breeding places formerly resorted to by the fur-seal, nor do they remember to have heard of such places.

With regard to the last query, I should say that the fur-seal have been less abundant on the coast the last few years, as the schooner coast catch has been less than formerly. From the Barclay Sound Indians report the seals have been unusually abundant this and last season, but were scarce for three seasons before. The reason given to me by one of the best Indian sealers in Barclay Sound for the number of seals in the mouth of the Sound this year was that the hunters on the schooners who seal farther from shore than the Indians shoot at the seals so much that it frightens them in shore, of which the Indians, who use only spears, take advantage, and get the skins they want without frightening them away; also the seals follow the herrings for food. Some 1,300 skins were taken to Victoria this spring at one time speared by Indians in or near the mouth of Barclay Sound.

I have, &c.  
(Signed) HARRY GUILLOD, Agent.

Dr. Dawson,  
Care of C. Todd, Esq., Metlakathla.

Sir,  
*Kwaw Kwalth Indian Agency, Alert Bay, August 13, 1891.*  
 I have the honour to forward, as requested, the information which I have obtained from the Indians at the north end of Vancouver's Island, *viz.*, the Nūwitti Indians on the east, and the Kwātsēno Indians on the west side, as these are the only two tribes in my Agency who hunt the fur-seal.

The fur-seal is found in greatest numbers about the last week in December, and continue to be seen for about a month or six weeks, when they decrease in numbers, and are only occasionally seen after that time.

The Indians have never known them to have young during the time they are in the neighbourhood, and none have been killed younger than about six months old.

They have never heard of any breeding grounds in the vicinity. They say that during the last two years the fur-seals have not been nearly so plentiful as in former years, and this year few have gone out to hunt them on that account.

The Indian name here for the fur-seal is "kā-whā."

I have, &c.  
(Signed) R. H. PIDCOCK, Indian Agent.

Dr. Dawson, Metlakathla.

Sir,  
 In reply to  
 20th July, 1891  
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Todd, Esq.

Extract from Letter

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*North-west Coast Agency, Metlakahla, B.C., September 4, 1891.*

Sir, In reply to a Circular letter from the Superintendent of Indian Affairs at Victoria, dated the 20th July, 1891, requesting my answers to certain questions concerning the habits and haunts of the fur-seal in British Columbia waters, after full and exhaustive inquiries, I have the honour to submit the following:—

1. Yes; they are hunted and killed by Indians all along the north-west coast and Queen Charlotte's Islands, their route whilst travelling south being near the coast-line east of Queen Charlotte's Islands, and returning to the northward mostly on the west side of said Islands.

They first appear going south about the middle of December, and disappear going north about the end of May in each year.

The fur-seals are most numerous during the months of January, February, and March.

2. No; occasionally a last year's pup is found, and during April and May many female seals have been killed with young so near birth that they have been taken from the old seals and have lived, can swim about, and have been raised by Indians.

The Indians all state that the mother seals go far north to give birth to their young; that seals are born on shore far away.

3. No such places known to the Indians of this district.

4. Indian tradition makes fur-seal very numerous long ago, but the present generation of Indian hunters think that they have been the same as now for at least twenty years.

During last spring (the Indians think) the seals were as numerous as ever, but few were caught owing to continued rough water.

I inclose a letter from West Huson, Esq., a man well acquainted with the Bella Bella Indians and their hunting work, which disproves the statements originating at Bella Bella that the fur-seal bring forth their young amongst the kelp beds in Queen Charlotte's Sound.

I have, &c.

(Signed) C. TODD, *Indian Agent,*  
*North-west Coast Agency.*

Dr. Dawson.

*Letter from Mr. A. W. Huson, inclosed by Mr. C. Todd.*

Dear Sir,

*Bella Bella, B.C., August 17, 1891.*

As per request I have made several inquiries at China Hat and at this place regarding breeding places of the fur-seal, but find that none of the natives know of any breeding rookeries of the fur-seal in this part of British Columbia. Some say the seals have their young off shore in kelp patches, then others say they bring forth their pups on the outlying rocks along these shores, but none of the natives ever saw their pupping places; most of them say the mother seal goes a long way off to pup.

Mr. Clayton says he is positive that the fur-seal do not bring forth their pups on this part of the coast.

Respectfully yours,  
(Signed) A. W. HUSON

Todd, Esq.

*Extract from Letter from Mr. A. W. Huson, dated Victoria, B.C., October 16, 1891, and addressed to Dr. G. M. Dawson.*

The fur-seal come into Queen Charlotte Sound early in December, and are mostly all females in pup. A little later on the grey pups make their appearance close in shore if the weather is bad, so that the natives kill many of them in sight of their villages, and on one occasion, some twenty years ago, a great swarm of grey pups ascended to the very head of Knight's Inlet so thick that I knew of the native killing sixty in one day. However, this was an exception, it was in the month of March, and the young seal seemed to be falling in and feeding on the *utachan* that always ascend Knight's and Kingcome Inlets.

Nearly every winter fur-seals, both old and young, are to be seen in about the waters of Queen Charlotte Sound, coming in in December and leaving again about April.

The number usually killed by the natives depends on the weather.

I have traded in as high as 600 skins from the natives at Nawitti in one year.

There are no rookeries about the north end of Vancouver Island that I know of.

The natives say the females go off into the kelp patches to bring forth their young.

*Extracts from Letters to Dr. G. M. Dawson from Mr. J. W. Mackay.*

Under date of the 13th November, 1891, Mr. Mackay writes as follows:—

"The old Indian hunters of the Songees, Sooks, and Chlan bands often informed me that in their younger days fur-seals and sea-otter were in the habit of landing in great numbers at the Race Rocks, 11 miles from Victoria; they also frequented the Gulf of Georgia. I have bought fur-seal skins from the Seshahls who inhabit the Jarvis Inlet, taken from animals killed at Sangster's Island, near Texada. These animals were driven to the ocean from the narrow waters by being hunted with the use of spears; during the spring months of the young animals fish in the broken waters inside of the outlying half-tide rocks and reefs which fringe the western shores of Vancouver Island and of the other islands which lie west of the mainland from Queen Charlotte Sound to Dixon's Entrance. The older animals

remain further at sea, but numbers of them take shelter in the larger sounds during stormy weather. I have seen them off Motlakahla in the month of January. They were first systematically hunted by the Whites about 1856. The Indians took to hunting them some two or three years later; before that period they merely killed them when they happened incidentally to come in their way, as they did with most other wild animals; up to that period the beaver, marten, mink, land-otter, and sea-otter were the only animals which the Indians systematically hunted for their skins.

"The Indians above quoted stated that the fur-seal bred on the Race Rocks, on Smith's Island (Wash.), and on several islands in the Gulf of Georgia. They used to have their young to within a recent period on the Haystack Island, off Cape Scott, Vancouver Island. It is probable that a few individuals still breed there, these islands being very inaccessible to small craft on account of the strong tides and cross currents which prevail in that neighbourhood."

A further inquiry addressed to Mr. J. W. Mackay on the subject of the former breeding of fur-seals on Haystack Island elicited (under date the 7th January, 1892) the subjoined additional particulars on this and other points previously referred to.

"Respecting your query of the 1st instant, I got my information from the late Captain Hugh Mackay, of the schooner 'Favourite.' Mackay was the first person to practise the taking of the fur-seal in the open ocean, and using a seaworthy vessel as the starting point and for shelter. The idea was suggested to him by the Indian hunters, who represented to him the difficulties and dangers of following the seals far from land in open canoes, and asked him to take them out in his schooner. He acceded to their demands, and success followed the operation. Mackay died about twelve years ago. He was an intelligent Scotchman from Sutherlandshire, a cooper by trade; he collected much trustworthy information during the twenty years in which he was occupied trading on the west coast of Vancouver Island. I believe his statement respecting the fur-seal on Haystack Island, as it agrees with the accounts which I got in early days respecting individual fur-seals having their young in the unfrequented parts of the coasts of Vancouver Island. Mr. Huxon is probably correct as regards the landing of sea-lions on the Scott Islands. In former times these animals extended their peregrinations all round Vancouver Island. I was one night kept awake for hours by the roaring of the male animals on Smith Island, off the south entrance to Rosario Strait. The sea-lions would not interfere with the movements of the fur-seals, and both varieties might herd together."

From a further correspondence respecting the date at which Captain Hugh Mackay first attempted sealing at sea the following are extracts:—

January 20, 1892.—"The date of Hugh Mackay's beginning to take the fur-seal at sea may be arrived at approximately by an examination of the Customs Records at the port of Victoria, British Columbia. Mackay owned the sloop 'Ino,' with her he traded oil and furs from the Indians of the west coast of Vancouver Island. He made his first experiment on the fur-seal at sea with the 'Ino,' finding this vessel too small to carry two or three canoes on deck, he built the schooner 'Favourite,' of 75 tons burthen. The 'Favourite' was registered at the port of Victoria. The date of her register will be about eighteen months subsequent to the 'Ino's' first fur-sealing cruise. I shall write to Mr. Milne, the Customs Collector at the port of Victoria, to give me the date of the 'Favourite's' first register, and shall communicate results to you."

January 31, 1892.—"I am informed that the schooner 'Favourite' was launched at Sooke, British Columbia, on the 28th April, 1868. She was registered in Victoria on the 18th June, 1868. Hugh Mackay was registered owner and master; on this data we may conclude that the first attempt at taking the fur-seal at sea was made by Hugh Mackay in the spring of 1866, say, February 1866. The above information is from the Collector of Customs at the port of Victoria, British Columbia."

*Extracts from Letters from Judge James G. Swan, of Port Townsend, State of Washington, addressed to Dr. G. M. Dawson.*

Under date of the 4th November, 1891, Judge Swan writes:—

"Your letter of the 28th October was received this morning. I promised you, when we met at Victoria, to send you certain information relative to the seal catch at Cape Flattery, and particularly regarding the date when schooners first took out Indians with their canoes on the sealing grounds. But there has been no official record, and I have had to rely upon the recollection of individuals, which has proved very unsatisfactory. To-day I received a note from Captain E. H. McAlmond, of New Dungeness, Washington, in reply to a letter from me. Captain McAlmond writes, 1st November, 1891: 'The first schooner to take Indians that I know of was the schooner 'Lottie' in 1869 from Neah Bay; believing that we were the pioneers, I afterwards understood that a vessel from Victoria was also taking an Indian crew.'

"On the 28th October last I received from Mr. Charles Spring, of Victoria, a letter, dated the 27th, in which he writes: 'The first attempt at sealing, in a practical way, with schooners and Indian hunters was made in or about 1869 by James Christenson in the schooner "Surprise," owned by the late Captain William Spring, of Victoria, British Columbia.' This is evidently the vessel referred to by Captain McAlmond. No record of catch has been kept by any one that I have ascertained, and the recollection of individuals is very uncertain. For instance, Captain James Dalgarino, for many years a Puget Sound pilot stationed at Neah Bay, was quite certain that schooner 'Potter,' of Port Townsend, took Indians with canoes to the sealing grounds in 1861. But Captain McAlmond, who was at Neah Bay the same time, writes in the letter received from him to-day: 'Captain Norwood, in the "Potter," took Indians to pilot him to the halibut bank.'

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"The only official account of the seal catch at Cape Flattery that has ever been kept is the one I had charge of for the tenth census of the United States under instructions from Professor Spencer F. Baird, to make a full Report on the fisheries of Cape Flattery, including fur-seals. This Report, in full, may be found in 'The Fisheries and Fishing Industries of the United States,' section 5, vol. II. This is the most complete and reliable Report ever published of the Neah Bay fisheries, and was compiled by me during the entire year of 1880 while I was in the official capacity of Inspector of United States' Customs, stationed at Neah Bay. Since that time no account has been kept of an official nature, and any attempt to make up a statement would be mere guesswork, and utterly unreliable. I think Captain Charles Spring, who was with us during our interview in Victoria, is a thoroughly reliable man, and his statement of seal statistics the most correct that I have known. I have endeavoured to obtain statistics from parties at Neah Bay, but without success.

"The whole of the seal catch by the Indians of Cape Flattery has been sold in Victoria, and I think, classed with other skins procured from the west coast Indians. I would have supposed that the Indian Department at Washington, ever mindful of the good effect on members of Congress it is to make a good showing of Indian industries, would have instructed the Indian Agents to have kept a record similar to mine, so that they could show to Congress that the Makah Indians of Cape Flattery are a self-supporting people. Had such a record been kept, its value at this time would have been appreciated, but it seems to have been the policy of the authorities at Washington to ignore all knowledge of seal industries except those of the Pribyloff Islands; hence the impossibility at the present time of reaching any reliable results."

Under date of the 10th January, 1892, Judge Swan writes:—

"Your kind letter of the 22nd December was received on the 31st. Since then I have been endeavouring to obtain past statistics of the seal business at Cape Flattery, but without success. I have, however, arranged with an intelligent half-breed Makah Indian, who has the agency store and trading post at Neah Bay, to keep an accurate account of the catch during the present season.

"Yesterday a number of Makah Indians came to my office, and I had a long interview with them. They told me that they had come to fit out their schooners 'Lottie' and 'James G. Swan' for sealing. These schooners are in winter quarters in Scow Bay, opposite the city. Those Indians say that seals are unusually plentiful at Cape Flattery and Barclay Sound, and if the weather is good they hope to make a large catch."

Under date of the 6th February, 1892, Judge Swan writes:—

"I have seen several Makah Indians who have been here, and they tell me that Indians lose very few seals, whether they spear or shoot them, as they are always so near the seal at such times that they can recover them before they sink.

"Captain Lavender, formerly of schooner 'Oscar and Hattie,' who is a fine shot, told me that he secured ninety-five seals out of every hundred that he shot. He said that poor hunters, of which he had several on his vessel, would fire away a deal of ammunition and not hit anything, but would be sure to report on their return to the vessel that they killed a seal each time they fired, but that all the seals sank except the few which they brought on board. Captain Lavender was of opinion that not over 7 per cent. of seals killed were lost."

*Judge Swan to Dr. G. M. Dawson.*

Dear Sir,

*State of Washington, December 13, 1891.*

I have just received from Neah Bay the following names of vessels engaged in sealing from Neah Bay in 1890 and 1891, with the number of seal-skins taken by each vessel.

Schooner—	1890.	Skins.
Swan .. .. .	.. .. .	136
Lottie .. .. .	.. .. .	120
Teaser .. .. .	.. .. .	250
C. C. Perkins .. .. .	.. .. .	50
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	1891.	
Swan .. .. .	.. .. .	160
Lottie .. .. .	.. .. .	480
C. C. Perkins .. .. .	.. .. .	190
Teaser .. .. .	.. .. .	193
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The schooner "Teaser" is owned in Seattle, the "Swan," "Lottie," and "C. C. Perkins" are owned by Indians at Neah Bay.

Yours truly,  
(Signed) JAMES G. SWAN.

Under date of the 28th November, 1891, Judge Swan writes:—

"The same letter informs me that schooner 'Lottie,' Captain Peter Thompson, was the first vessel which took Indians and canoes from Neah Bay to hunt seals. This was in 1869, the 'Lottie' was a pilot-boat at that time. She is now owned by Captain James Claplanhoo, a full-blood Makah Indian, and Head Chief of the tribe. Last spring the 'Lottie' went to Behring Sea and did very well. Captain Claplanhoo, after paying all costs of the voyage, had 7,000 or 8,000 dollars left. He deposited 5,000 dollars gold in the Merchant Bank in this city. He will buy another schooner and try his luck again next season.

"I am amused with reading the remarks of correspondents of the eastern press about seals. They only know what they have seen and been told on the rookeries, but of the migratory habits of seals they know nothing and care less. I have always contended, and still hold my opinion, that the seals are not in one great band, but in countless herds, like flocks of wild geese or the bands of buffalo. Geese do not all fly to the Arctic, as was once supposed, nor did the buffalo of Texas go north to the Saskatchewan in the summer, or the herds of Winnipeg visit Texas in the winter.

"All the bands of fur-seals in the North Pacific do not go to the Pribyloff Islands, and there are thousands which do not visit Behring Sea at all. But these writers, who assume to know all the facts, never discuss this question, Where do the seals go when they leave Behring Sea?

"If the killing of fur-seals is prohibited on the Pribyloff Islands during the breeding season then will be no fear of extermination. That butchery is driving off the seals more than the so-called poaching.

"I inclose an article from the 'Seattle Post Intelligencer' of the 5th on fur-seals, written by myself. It was published in the Sunday issue, but the demand was so great that every copy was sold and another edition published in their weekly the following Thursday. The editor told me that it had been extensively copied in the leading journals of the east."

Extract from the "Seattle Post Intelligencer" of November 5, 1891.

(Special Correspondence.)

Port Townsend, October 31, 1891.

The investigations of the United States' and British Commissions in Behring Sea during the present season of 1891 have been the most thoroughly scientific ever made by either Government. Hitherto all the special agents sent by the United States' Government from Washington City have confined their investigations and reports to the seals of the Pribyloff Islands, derived partly by their own observations, but mostly from the interested statements of persons residing at the rookeries of those islands, the officers and employes of the Alaska Commercial Company, and the present lessees of these islands. These reports are the only ones that have obtained credit in Washington City. All adverse reports of sealers or parties engaged in the fur trade outside of the powerful monopolies have been either ignored or set aside with contempt. The controversy so far has been between organized capital seeking to secure a monopoly and private traders and fishermen, most of whom are men of means seeking by their own exertions to secure a profit. These latter have never combined or formed associations for their own protection, so as to have their side of the question fairly considered and discussed in Washington City. Both parties have been stimulated by greed, and not by a desire for scientific investigation.

When the Reports of the United States' and Royal Commissioners are published enough new facts will be produced to make a material difference between what has been dogmatically and persistently asserted by interested writers in the employ of the Alaska Commercial Company, and the real state of the case, enough to call for a modification of the present stringent Sealing Laws.

It is persistently asserted by the lessees of the Pribyloff Islands that the seals are disappearing, and that they are being exterminated by the sealing schooners, whom careless writers term poachers. Poaching cannot be done where there is no preserve, and the only preserve is on those islands leased by the United States' Government to the Sealing Companies. The open sea is not, and cannot be, any sense a preserve. Hence to call sealing-schooners poachers is an evident error which should be corrected. These vessels are not poachers on the Pacific Ocean any more than they were poachers the Atlantic Ocean before they came around Cape Horn.

The full sealing fleet list to the 20th June, 1891, amounted to 79 vessels, 47 of which are under the British flag; 30 are under the United States' flag. All are of North American build. The British vessels mostly came from Nova Scotia; a few were built in British Columbia, and the rest were purchased from citizens of the United States. The American vessels were mostly from Massachusetts, some from San Francisco, and a few were built on Puget Sound. Other vessels have been added to the fleet, but their names and tonnage I have not been able to ascertain. It is charged by the lessees of the islands that these 79 vessels have destroyed so many seals, and have driven so many of the islands, that they are in danger of being exterminated, and the wailing of these unfortunate capitalists has induced the Governments of the United States and Great Britain to send their armed cruisers to Behring Sea to put a stop to the killing of seals by private enterprise, so that the lessees of the islands may be protected and the poor seals kept from being utterly exterminated. These specious assertions, urged with eloquent sophistry, have deluded eastern people, and especially those at Washington City, into a belief that our hard-working fishermen and hunters upon the high seas are working a wrong to the monopolists and the nation at large, and must be suppressed by force.

Now let us see who is really working an injury to the monopolizing capitalists, and the real wrong by the intelligent fur-seal is leaving the leased rookeries on the Pribyloff Islands.

A writer in the London "Weekly Times," of the 12th September, 1891, who was in Behring

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as a reporter on the steamer "Danube" during the past summer, says of the decrease of the seals on the Pribyloff group:—

"The cause of this is, no doubt, the indiscriminate slaughter of these animals on the islands by the Alaska Commercial Company and the present Company's servants, which has driven the seals to other parts of the sea for breeding, and already, the present season, considerable numbers have made their appearance on St. Matthew's Island, where formerly they did not resort, the two islands St. Paul and St. George being the great rookeries."

The seals begin to make their appearance in the region about Cape Flattery in the latter part of December or the first of January, varying with different seasons. When easterly winds prevail with much snow they keep well off shore, and do not make their appearance in great numbers before the middle of February or the first of March. Last winter was very mild, with but little snow, but the prevailing winds, which were south and south-west, were exceedingly violent, preventing sealing-schooners from doing much hunting. The mildness of temperature, however, with the direction of the prevailing winds, drove the seals toward the coast in incredible numbers. They gradually work up the coast toward Queen Charlotte Island, when the larger portion of the herds move along the Alaskan coast toward Unimak Pass and other western openings into Behring Sea. A portion of these seals, however, pass into Dixon's Entrance, north of Queen Charlotte Island, and into Cross Sound and Cook's Inlet, and do not go to Behring Sea, but have their young on the innumerable islands, furls, and bays in Southern Alaska and British Columbia. These seals are seen in these waters all summer, at the same time of the breeding on the rookeries of the Pribyloff Islands, and are killed by Indians and the skins sold to dealers. The great body of the seals, however, do enter Behring Sea, where they are followed by the sealing-vessels. They usually take to the islands about the first of June, the breeding cows and bulls being earlier than the rest of the herd. The breeding goes on about four months.

The writer in the London "Times" before alluded to says of the method adopted on the islands for taking the seals, that:—

"It is cruel and unsportsmanlike. The animals have no chance for their lives, but are slaughtered like sheep in the shambles. A portion of the herd is separated from the main body by a party of men armed with clubs. These men—they can hardly be called hunters—by shouts and blows drive the part of the herd they have surrounded away into the interior of the islands, a mile or so from the beach. Here, on a clear space, the unfortunate seals are at once clubbed to death and skinned, the carcasses being left as they lie. These slaughters are carried on until the number of skins required are secured. Latterly the seals seem to have an instinct that there is something wrong, as the squads driven into the sand-hills never return, only the stench from the slaughter coming down to the beach when the land breeze blows. In consequence of this the rookeries have been less frequented than in former years. This has given rise to the assertion of the monopolizing Company that the taking of seal by the private vessels is causing a depletion of the seals on the breeding islands.

"When the methods adopted by the hunters of the sealing-vessels are compared with those of the licensed killers, those barbarous butchers, it does not require much consideration to give an intelligent judgment in the case, and determine which method is the most humane and which method is the real cause of the seals leaving the rookeries.

"When the sealing-schooner is at sea she has a number of small boats of a canoe form, built expressly for sealing. When a seal is sighted a boat is launched overboard, a hunter, with one or two men to pull the boat, quietly take their places. The hunter is armed with shot-gun and rifle. The boat is pulled quietly toward the seal. In nine cases out of ten the animal takes alarm and dives out of sight before the boat is near enough for the hunter to shoot, and in no case does a hunter shoot until he is near enough to be certain of the game. As soon as a seal is shot it begins to sink slowly, and the boat is pulled rapidly up to it, the carcass is gaffed and hauled aboard. This is repeated as long as a seal can be seen. In many instances only one or two will be killed during a whole day's hunting, but on other times as many as twenty or thirty will be taken. After a day's hunt the boats return to the schooner, the seals are skinned, and the pelts laid in salt in the hold. This goes on from day to day during the season. A small boat is not a very safe craft in the boisterous water of the Northern Ocean, and the thick fogs often spring up and hide the schooners from the hunters' sight, when days may elapse before the boats are picked up, and sometimes they are never found. Thus these hardy sealers pursue the objects of their chase in the open sea. The seal has a chance of escaping, and the percentage killed is very small. When it is considered that an extent of ocean of nearly 12,000 square miles is hunted over, the chance is slight of the seals being exterminated by the fleet of sixty or seventy vessels engaged in the seal-hunting business.

"It has been asserted that only a few seals out of every hundred shot are captured by the hunters, and the balance sink or escape wounded to die later on. This is not so. The ample evidence collected by the Commissioners this season proves that a seal hardly ever escapes when shot. Of course, a few do, but not over five or six out of the hundred.

"The sealing monopolists of the rookeries have had reports made by so-called 'experts' on the condition of the sealing business and on the probable effect on seal life if the present rate of killing is to be kept up. All, or nearly all, of these 'experts' have reported that but few seal are left; that the ratical poaching schooners had killed them off, and yet the whole of the persons interviewed by the Commissioners, masters of sealing-schooners, Indians along the coast, and traders admitted that the seals are in no ways diminishing in numbers, but that the present season of 1891 the fur-seals in the North Pacific have been more numerous than for the past twenty years. There is, however, much greater difficulty experienced in capturing them. The wary animals have learned what a sealing-boat is, and at the sound of a gun the animal is on its guard, and it is harder for the hunter to get in range of his quarry. The Indians kill the seal by paddling the canoe silently close to the sleeping animal, and then with unerring aim hurling a leaded spear with a line attached, with which the seal is hauled in and taken aboard the canoe. Seldom or never does a seal escape. The white hunters use the gun as described."

Although seals have appeared in incredible numbers this present season of 1891, yet the weather all through the spring and early summer months was unusually boisterous, and days and even weeks elapsed during which time it was impossible to launch a sealing-boat or an Indian canoe, consequently the catch has not been as large as was generally expected, and recent accounts from London show that the prices brought for fur-seal skins at the great trade sales did not average over 13 dollars. As prices from 17 to 22 dollars were paid in Victoria for these skins, somebody has been a great loser, and the prospect now is that fewer vessels will engage in the business next season, and that prices will rule still lower.

Of the migratory habits of fur-seals but little has hitherto been made known, for those who have had the information to give have had an interest directly opposed to imparting the truth. Hence the fallacious assertion has been made and stoutly maintained by the monopolists and their mendacious hirelings that all the fur-seals of the North Pacific Ocean congregated on the rookeries of the islands of the Pribiloff group, and if they are allowed to be killed by the poachers and pirates, whom the general public know as honest, industrious, energetic fishermen and hunters—the fur-seal will become extinct, and Miss Flora McFlimsey will have nothing to wear, poor girl! But the scientific investigations of the United States' and Royal Commissions, and particularly the latter, who have made the migrations of the seals a special study, will show that the habits of all migratory animals, both birds and beasts, are governed by natural laws. The seals, like the great herds of buffalo, formerly so abundant, and the myriads of wild fowl from the north, are not (each kind) one single great body. The buffalo were found in great droves from Texas to the Assiniboine and the Red River of the north, but they were not all in one band. The herds from Lower Texas never went north to the upper limits, nor did the herds of the extreme north ever seek their feeding ground in Southern Texas. Every band had its own range. So of the Canada geese and other wild-fowl, which were popularly declared to visit the regions of the North Pole every spring to propagate their young. No one thought or dared to assert to the contrary, but when Colonel Goss, the celebrated ornithologist, found the nests and eggs and young of the Canada goose in Kansas, and other observers have discovered these so-called Arctic breeders rearing their young at the head-waters of the Missouri and Mississippi, it was found that popular belief regarding natural history is not always scientific fact, and so as to the habits of the fur-seal. They do not move in one immense herd to Behring Sea, but in droves and bands or schools like fish, all over the great expanse of the North Pacific Ocean. Dr. Dawson, of the Royal Commission, said, as reported in the Victoria "Colonist" of the 13th October:—

"Very little has been published about the migrations of the seals on the North Pacific coast before they enter the Behring Sea, and this point is one from which we got a lot of interesting matter. We have taken a good deal of evidence about the presence of seals at Cape Flattery, and have been told that they were more numerous last spring than they have ever been before. . . . I find a peculiar idea existing among those who claim to be authorities in regard to seals found in the waters of South America, especially about Tierra del Fuego and the Straits of Magellan. The notion that they are the same species of seal as those found in Behring Sea and the North Pacific is quite erroneous. They are of a different genus altogether."

So also will these scientific investigations show that a portion of the so-called California seal, which comes north every season, does not enter Behring Sea at all, and that its habits in many respects differ essentially from those which visit the rookeries on the Pribiloff Islands. These California seals do have pups somewhere on the coast, either at the Farallones or further south, or on the great kelp patches, as is clearly shown by the young pups which annually make their appearance with the herd, and are taken and brought into Neah Bay by the Indians every season, and it is further proved that these pups will swim at birth, and even when taken from their mother before birth, thus showing a difference of habits between the Pribiloff Islands seal and those taken at Cape Flattery. These facts about the habits of the fur-seals of Cape Flattery, which I have known for more than thirty years, have this year been proved to be correct by the Royal scientists, and will seem to show there are always two sides to every question. While I join with all the sealers with whom I have conversed that there should be a close season on the Pribiloff Islands, when no seals should be killed on those islands or in Behring Sea, I equally join with some of the more intelligent and observing of these sealers that the hunting of seals along the coast of Washington, British Columbia, and South-eastern Alaska does not in any way affect the seal catch on the Pribiloff Islands, as there is every reason to assume that these coast seals never enter Behring Sea.

When we consider how the development of the fisheries of the North Pacific have been paralyzed by this seal controversy, and our fishermen have been driven by the mistaken policy of our Government to seek protection under the British flag, we may well exclaim, "This is a sorry sight." The fishermen of Gloucester and other eastern ports, who were protected by our Government in their fisheries on the Atlantic, almost to the verge of hostilities with Great Britain, find that when they come around Cape Horn to engage in the same peaceful and honourable vocation in the North Pacific Behring Sea, and the Arctic Ocean, they are denounced by the same Government as poachers and pirates. They take nothing but the products of the ocean. They rob no man. Yet because a powerful Syndicate of capitalists demands the right to monopolize the taking of seals to furnish articles of luxury for the rich, our fishermen and hunters are harried and worried by revenue-cutters and other armed vessels, not for the public good, not for the benefit of the poor, but simply to gratify the avarice of the wealthy few who have secured from our Government a monopoly of seal-catching on Pribiloff Islands, which they arrogantly assume gives them the monopoly of the whole ocean, as well as Alaska.

When the Hudson Bay Company, which for more than 100 years had lorded it with despotic sway across the whole continent, from the Atlantic to the Pacific, sought to renew its Charter, those far-seeing statesmen, Gladstone, Labouchere, Lord Bury, and others opposed granting a renewal, and Parliament refused. The course of those wise statesmen against that gigantic monopoly opened to the Dominion of Canada all that great region which had been represented by the Company as a land of

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ice and snow, of fogs and cold, fit only as an abode for wild beasts and the still wilder Indian. But it has been found an agricultural region of immense value, which has been opened and demonstrated by the Canadian Pacific Railroad to be a fit abode for thousands of industrious white persons, who have found within its borders happy homes, and have thus added to the wealth of the Dominion.

So, too, when we can have statesmen in Congress who can rise above the sordid motives of filthy lucre, and look into this seal question and the development of Alaska, and of our great fisheries, they will see that the sum paid by the Company for the lease of the Pribyloff Islands is not a feather's weight in the scales of justice, when we compare this amount, great as it is, with the vastly greater amount of good the nation will derive by giving every encouragement to our fishermen to bring in the rich products of the ocean, the whales, the seals, the fish, and to our miners and others to open up and develop the rich treasures of Alaska. All this development is retarded and paralyzed by the action of the monopolizing Companies, just as the Hudson Bay Company retarded the development of British Columbia and all that great region, clear through to Hudson's Bay and the Atlantic. Instead of emulating the example of the British Parliament and abrogating a powerful monopoly, we seem to have gone back to feudal times and granted rights and privileges to the moneyed Barons which are denied to the people. Better that every fur-seal be exterminated than the United States should enter into this unholy alliance with a monopoly to paralyze our industries and rob the people of their inheritance.

On the North Atlantic Ocean the hair-seals have been hunted for more than two centuries, and every year more vessels and larger ones are engaged in this business. Yet the hair-seal is not exterminated. The habits of the fur-seal and hair-seal are analogous—both live on fish, both are amphibious; but the commercial value of the fur-seal is the greatest, and while our fishermen can kill all the hair-seals they wish, the fur-seal must be reserved for those who have longer purses and can cajole Congress by their sophistries.

The fur-seals never will be exterminated. They may and have been driven from their rookeries, but they have found others, and if they are being driven from the Pribyloff Islands, as is asserted, I predict that when the wholesale butcheries are stopped and the stench of the rotting carcasses no longer pollutes the atmosphere of St. Paul's and St. George's rookeries, the seals will return to their old haunts, as they are now returning to their former rookeries at Cape Horn and other places in the South Pacific. In all the preceding years of the history of the sealing on the Pribyloff Islands, the Captains of the revenue-cutters have not been required to make specific Reports on their observations of fur-seals off the rookeries, and any voluntary statements they may have made were either pigeon-holed or not considered good form, hence we have no knowledge of any such Reports. This season, however, the Captains have been required to make Reports on their observations of fur-seals and their habits off the rookeries, and their testimony, added to the Reports of the Commissioners, will furnish much interesting information which has hitherto been suppressed.

If the Government will prohibit the killing of fur-seals on the Pribyloff Islands and in Behring Sea during the breeding season, and will encourage our fishermen as they are encouraged on the Atlantic, the seals will not be driven off nor the market overstocked, and, better than all, encouragement will be given to the development of our fisheries by furnishing a motive for a fishing fleet to congregate on Puget Sound, and by the products of their labours to enrich our State. If such a course is pursued one will hear no more of American vessels being driven under the British flag for protection from the United States' Government, which should protect them. Our Government is very jealous of injuries and insults put upon our citizens by foreign nations, but not a word is said of the injuries and losses our citizens have incurred by our Government in sustaining and protecting a monopoly on the seal islands. It is a disgraceful partnership between the United States and these monopolists, which should be dissolved. It is an old adage that "when thieves fall out honest men get their dues," and I hope that the present feud between the two rival Companies may bring Congress to a clear understanding of this matter, and our fishermen allowed the same privileges and encouragement that they have in the North Atlantic.

(Signed) JAMES G. SWAN.

*Letter from Captain John Dererenz, addressed to Ashley Froude, Esq., Secretary, Behring Sea Commission.*

Sir,

*Graving Dock, Esquimaux, November 10, 1891.*

In reply to your letter of the 28th ultimo, respecting the habits of the fur-seal along the coasts of British Columbia and Alaska, I beg to report as follows:—

1. From the early part of December to the beginning of June they are found near the edge of the bank of soundings along the coast from south of the Strait of De Fuca to Cape Scott Islands on the west coast of Vancouver Island, and that about the middle of June they disappear altogether, and are seldom seen again until late in November or early part of December, when the weather is then too rough for all practical purposes to catch them.

2. The distance from the shore where they are to be found most plentiful—say off Cape Beale, where the bank extends furthest from the land—is from 30 to 100 miles, and in some cases to 150 miles; but these figures must not be taken by any means as a fixed limit, because they are frequently found inshore and up the sounds some 8 or 10 miles inside the headlands, and, in fact, I have seen them in the Strait of Fuca, and on rare occasions in the Gulf of Georgia even.

3. When they are found along the bank on the west coast of Vancouver Island they are feeding on their natural feeding grounds, where they feed upon all kinds of fish in season—of which we have a variety on this coast of some thirty odd species—however, the herring is their principal food, and then comes the salmon and other varieties, and so long as the fish are plentiful the seal never leaves the

feeding ground, but when the herring, salmon, smelts, and others proceed northward and into the inlets, harbours, rivers, &c., to spawn, the seals follow them, but so soon as they find shoal water they go to sea again. Now some of our inlets on the west coast are from 50 to 100 fathoms deep, and the seal is quite at home in them.

4. As far as my observations have extended regarding the increase or decrease in their numbers, and I have been on this coast twenty-seven years, all I can say on the subject is that when they return to their feeding grounds after their periodic migrations they appear to be in numbers very similar to the salmon, herring, smelt, oolachan, &c. Some years they are found in inexhaustible numbers, then for a year or two they will be scarcer, only to return in the following year in as great abundance as ever, and it is my firm belief that if the fish never left the banks fringing the west coast of British Columbia and Southern Alaska the seals would never leave their feeding grounds, for the only food they can get in Behring Sea is codfish, which is by no means so plentiful as the herring, smelt, and oolachans further south.

As to the distance they preserve from the shore-line, I do not believe there is any difference, for instance, in the months of November, December, and January the salmon and herrings, &c., are far off shore, and as spring advances they approach the land in shoals and the seals follow them. The herrings come in first, the salmon follows, and feeds upon them, and the seal feeds upon all, although the herring is its favourite food.

Any other information as to the history of seal-fishing in this province, &c., I can supply if necessary.

I am, &c.

(Signed) JOHN DEVEREUX, *Dock-master.*

1.—Letter from

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APPENDIX (D).

MISCELLANEOUS CORRESPONDENCE AND MEMORANDA.

1. Behring Sea Commissioners to Her Britannic Majesty's Consuls-General at Shanghai, Canton, and Honolulu.
2. Her Britannic Majesty's Consul at San Francisco to Behring Sea Commissioners.
3. Her Britannic Majesty's Consul-General at Shanghai to Behring Sea Commissioners.
4. Her Britannic Majesty's Consul-General at Canton to Behring Sea Commissioners.
5. Behring Sea Commissioners to Senior Naval Officer, Esquimaux.
6. Extracts from "Challenger" Reports.
7. Letter from Mr. F. Chapman.
8. Extract of letter from Baron Nordenskiöld.
9. Letter from Mr. John Murray.
10. Report of examination of dead Seal Pup by Dr. Günther.
11. Memorandum by Sir Samuel Wilson, M.P. (Sheep-breeding).
12. Memorandum by Earl Brownlow (Deer-breeding).
13. Memorandum by Professor Flower, C.B.
14. Letter from Captain David Gray, Peterhead.
15. Mr. W. Palmer, on the Killing of Seals upon the Pribyloff Islands.
16. Extract from the Melbourne "Araucan," December 17, 1887 (referred to by Mr. Chapman).
17. Extracts from Pamphlet by Mr. A. W. Scott on the Fur-seals of the Southern Hemisphere, 1873.

1.—Letter from the Behring Sea Commissioners to Her Britannic Majesty's Consul-General at Shanghai.\*

Sir, *Government House, Ottawa, November 16, 1891.*  
Having been appointed British Commissioners to investigate the facts and conditions of fur-seal life and the sealing industry in the North Pacific Ocean, we find that our inquiry would be much assisted if you could furnish us with information on the following points:—

1. As to the names and number of vessels sailing from Chinese ports in any given years, which have taken fur-seal at sea or on the rookeries, together with the number of skins taken and other particulars, such as the nationality of the vessels, and the numbers of their crews.

2. Any information as to the number of fur-seal skins landed at Shanghai, and the market prices of the same in any given years.

[† 3. Any information on, or names of authorities for, the very considerable trade in fur-seal skins, both from the North Pacific and the South Seas, which appears to have been carried on at Canton during the earlier years of the present century.]

We should be much obliged if the above information could be forwarded to us as soon as possible, addressed to the Behring Sea Commission, care of his Excellency the Governor-General, Ottawa Canada.

We have, &c.  
(Signed) GEORGE BADEN-POWELL  
GEORGE M. DAWSON.

2.—Letter from Her Britannic Majesty's Consul at San Francisco to the Behring Sea Commissioners.

Sir, *San Francisco, January 5, 1892.*

I am in receipt of your despatch, dated Foreign Office, the 10th ultimo, wishing me to obtain for the Behring Sea Commissioners the forms of clearance issued at the Custom-house at San Francisco for vessels proceeding on whaling, fishing, and sealing voyages to the North Pacific, including Behring Sea.

The precise phrases used in clearing vessels at this port upon these voyages is shown on the inclosed forms of clearance obtained from the Custom-house. Those that go hunting and fishing procure a clearance, which states that they are "bound for hunting and fishing voyage, having on board stores," and those that go whaling are cleared "for whaling voyage, having on board stores." I am informed by the Deputy Collector of Customs, who clears all vessels here, that these are the only two forms of clearance given, and that no sealing or trading clause is inserted in such forms. He says no vessels are cleared for Behring Sea. The steamers of the Alaska Commercial Company clear for Unalaska, and receive permission from the Collector of Customs there to proceed to the Islands of St. George and St. Paul.

As regards a statement of the number of vessels clearing from this port for fishing and hunting, I inclose a Memorandum which I have procured from the Custom-house at this port.

I am, &c.  
(Signed) DENIS DONOHOE.

\* Sent also to Her Majesty's Consuls-General at Honolulu and Canton.  
† To Canton only.



3.—*Letter from Her Britannic Majesty's Consul-General, Shanghai, to the Behring Sea Commissioners.*

Gentlemen,

Shanghai, January 8, 1892.

In reply to your letter of the 16th November last, just received, asking for certain information with regard to vessels clearing from Chinese ports which have taken fur-seal, I have the honour to inform you that, as far as I can learn, no vessels have cleared for that purpose from this country, though vessels registered here may possibly have left for Yokohama with the ultimate intention of engaging in the seal fishery. Most, if not all, of the vessels engaged in the seal fisheries registered here are built and fitted out in Yokohama, and are only registered in Shanghai because it is the nearest port where English registry can be obtained.

The Imperial Maritime Customs have kindly furnished me with the following figures showing the import of seal-skins:—

Year.	Pieces.	Value.
		Haikwan taels.
1887 .. .. .	973	1,941
1888 .. .. .	2,381	5,097
1889 .. .. .	3,450	8,114
1890 .. .. .	592	1,012
1891 .. .. .	860	1,775

The Haikwan tael is, roughly speaking, equivalent to 5s.

These skins have all been imported from Japan, and I am unable to say whether they had their origin in that country, or had been previously imported to it.

I am sending copy of your despatch to Her Britannic Majesty's Consul at Yokohama, who will doubtless furnish you with all the information obtainable.

I have, &amp;c.

(Signed) NICHOLAS J. HANNEY.

4.—*Letter from Her Britannic Majesty's Consul-General, Canton, to the Behring Sea Commissioners.*

Gentlemen,

Canton, December 28, 1891.

I have the honour to acknowledge the receipt of your letter of the 16th ultimo, in which you ask for information about the fur-seal trade of this port.

In reply to your first query, I have to state that, so far as can be ascertained, no vessel sailing from a Chinese port has ever gone on sealing expeditions.

As to the second point on which you ask for information, I cannot trace any record of fur-seal skins having ever been landed at this port.

On the third point also I have been unable to obtain any information. None of the records accessible here have even a mention of a "very considerable trade in fur-seal skins, both from the North Pacific and the South Seas."

In a Consular Report on the trade of this port in 1843, Mr. Thom writes: "Twenty years ago the fur trade (which was almost entirely in the hands of the Americans) carried on with China amounted to upwards of 1,000,000 dollars annually. But, owing to the indiscriminate slaughter of the animals of the chase, it has dwindled away so much as to be no longer worth pursuing, and, indeed, during these last two or three years no skins or furs whatever have been imported into China." Mr. Thom gives the names of the furs imported into China, and fur-seals is not among them. Further, in a Return of United States' imports into Canton in 1846, other furs are enumerated, but not fur-seals. In a previous Return (1831) of the United States' trade in furs, I find in like manner the names of the furs exported to China, and fur-seals is not among these. But in another account I find it stated that the furs usually imported into China by United States' traders in the early part of this century were rabbit, seal, sea-otter, land-otter, beaver, and fox.

The archives of this Consulate-General do not go back to the period at which the United States' trade in furs with China flourished. Consequently, there are no archives to shed light on the subject. The books which I have referred to also fail to give precise information, and it is doubtful whether anything certain and definite about it can be learned here.

I have, &amp;c.

(Signed) T. WATTEES

5.—*Behring Sea Commissioners to Senior Naval Officer, Esquimaux.*

Sir,

Ottawa, July 8, 1891.

As Her Majesty's Commissioners appointed to investigate the conditions of seal life in Behring Sea, it appears to us that information on the following points would be of great value to the Commission if gathered by any of Her Majesty's ships visiting Behring Sea in 1891.

We therefore venture to append, for your consideration, heads of information on matters which we have to investigate.

We have, &amp;c.

(Signed) GEORGE BADEN-POWELL  
GEORGE M. DAWSON.

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*Records of Observations on Fur-Seal Life in the North Pacific Ocean, for the Behring Sea: Commission: to be entered in a Separate Seal Log.*

1. Place of each recorded observation (possibly, marked off on separate chart by reference numbers).
2. Points to be noted in regard to seals:—
  - (i.) Whether playing, resting, or travelling (if travelling: (a) direction, (β) pace, (γ) whether single or in schools).
  - (ii.) (a) Sex, age, and size; (β) whether accompanied by pups or not.
  - (iii.) State of weather and sea at times of observation.
3. Obtain corresponding information from any sealing-schooners visited for any immediately preceding dates, and generally record any information applying to seal life.

This Memorandum was communicated to the commanding officers of Her Majesty's ships "Nymph," "Porpoise" and "Pheasant," who kindly caused accurate observations to be made on the points indicated.

The results of these observations are, so far as were considered essential, embodied in our Report.

*6.—Extracts from Report of the Scientific Results of the Exploring Voyage of Her Majesty's Ship "Challenger," 1873-76.*

"The caves (on Nightingale Island), with the sloping ledges leading up to them, are frequented, as was said, by fur-seals. Four years before the visit of the expedition, 1,400 seals had been killed on the island by one ship's crew. Seals were very much scarcer in 1873, but the island was visited regularly once a-year by the Tristan people, as was also Inaccessible Island. The Germans killed only seven seals at Inaccessible Island during their stay, but the Tristan people killed forty there in December 1872." (Narrative, vol. i, part i, p. 264.)

"From all sides of the precipitous black cliffs cataracts fall over into the sea, and water is found in numerous ponds all over the group. The islands\* are frequented by elephant- and fur-seals, although these are not so plentiful as formerly, and as there is no lack of water, there is no danger of shipwrecked mariners dying of starvation. The blubber of the elephant-seal and the skins of penguins, with the adherent fat, furnish the material for fire, and the flesh of the seals and birds, the eggs of the latter, together with the Kerguelen cabbage, form a nourishing diet, on which the sealers residing at times on one or other of the islands have usually lived, and with which they appear to have been contented." (Narrative, vol. i, part i, p. 321.)

"Two of the whaling-schooners met with at the island† killed over seventy fur-seals on one day, and upwards of twenty on another, at some small islands off Howe Island to the north. It is a pity that some discretion is not exercised in killing the animals, as is done in St. Paul Island in Behring Sea in the case of the northern fur-seal. By killing the young males, and selecting certain animals only for killing, the number of seals may even be increased;‡ the sealers in Kerguelen Island kill all they can find." (Narrative, vol. i, part i, p. 355.)

"In 1866, when Her Majesty's ship 'Topaze' called at the island,§ there were only ten inhabitants, and the 'Challenger' || found forty or fifty under the control of a Chilean, who paid 200*l.* a-year rent to the Chilean Government, and who had a few men also at Mas-i-Fuera island; he was engaged principally with the hunting of the fur-seals." (Narrative, vol. i, part ii, p. 827.)

"The steam-pinnace left Gray Harbour,¶ at 4 A.M. with several naturalists and officers, and joined the ship in the evening at Port Grappler. On the way, landing was effected at several spots, and a number of birds were procured; a very large number of fur-seals (*Arctoccephalus*) were seen, and six were shot, the skins and skeletons of which were preserved." (Narrative, vol. i, part ii, p. 865.)

"In the narrative of the voyage it is stated that fur-seals frequented Nightingale Island, one of the Tristan da Cunha group; the Crozet Islands, Kerguelen Island, Juan Fernandez, the Messier Channel, and Elizabeth Island, in the Strait of Magellan. Specimens of eared seals, which did not possess the elongated concave palate so characteristic of the genus *Otaria* in the sense defined on p. 29, were procured from the Kerguelen group of islands, in the Messier Channel on the west coast of South America, and from Juan Fernandez. They consisted of the following specimens from Kerguelen; two carcasses of young fur-seals without the skin, procured from the 'Emma Jane' at Fuller's Harbour, January 1874; two skeletons of fur-seals, also at Fuller's Harbour, which were distinguished from each other as No. 1 and No. 2 (No. 2 having been killed on Swaine Island). From the Messier Channel were obtained the skin and skeleton of a male and the skin and skeleton of a female; also two skeletons of males shot on rocks in January 1876. The specimen from Juan Fernandez was a skin containing the skeleton of a very young animal." (Zoology, vol. xxvi, part lxxvii, p. 37.)

\* Crozet Islands, Penguin or Inaccessible Island, visited 1873-74.

† Kerguelen Island.

‡ J. A. Allen.—The eared seals. Bull. Mus. Comp. Zool., vol. ii, pp. 1-88, 1870-71.

§ Juan Fernandez.

|| Visited by "Challenger," 1875.

¶ Visited by "Challenger," January 1876.

## 7.—Seals and Sealing in New Zealand.

Through the kindness of Professor T. J. Parker, F.R.S., of the University of Otago, Dunedin, New Zealand, the subjoined interesting account of the seal fishery in New Zealand, written at his request, has been furnished by Mr. Frederick Chapman. The communication is in the form of a letter addressed to Professor Parker, and is dated from Dunedin, 24th September, 1891:—

"I have endeavoured to get some definite information and original opinions to enable you to answer Mr. G. Dawson's letter of the 23rd June, with reference to the extirpation of our seals, but the only person I could think of as old enough to give me first-hand information; yet not too old, has not yet answered my letter. I think, however, that from a general knowledge of the traditions and literature of old New Zealand, and from books at my command, I can give you something to begin with, and I will try and obtain more.

"Doubtless Mr. Dawson has access to a paper on the fur-seal of New Zealand, by J. W. Clarke, in the Proceedings of the Zoological Society for 1875 (p. 650), which is in your Museum library. This paper gives some interesting facts, the verification of which I had previously sought for years. As I know nothing of the seals in Australian waters beyond the fact that they were once numerous on the islands of Bass Strait, I will come to New Zealand. Seals were formerly numerous on our mainland. To get at the numbers taken here early in the century, one would have to make inquiries of old mercantile houses in Sydney, London, and America—the Campbells, Enderbys, &c., if any of them exist. The old Maori traditions constantly refer to seals, which were very numerous in the neighbourhood of this port two centuries ago, and may have been plentiful when the century began. The rocky west coast of this island was, however, the home of numerous seals, and a few are still killed there in quiet places. There was a beautiful colony at the Steeples, close to the Westport lighthouse, but when the Government opened a season for sealing, a few months since, a party went out in a boat from Westport and luted them. That was already regarded as a past place for sealing when Brunner explored that coast by land in 1846, though Brunner saw a few seals there. It had evidently revived in our time. The coasts of Foveaux Strait and the west coast swarmed with sealers early in this century, and there were some on the west coast about Dusky Sound even earlier. They were shore parties, who lagged the seals in great numbers. Dr. Shortland, who visited Mr. Jones' whaling station at Waikouaiti, 20 miles from here, in 1842, frequently refers to the sealing, but rather as a past matter. Our whales were pretty well exterminated by 1850, and had even then long been scarce, and a writer ten years before that repeats the protests of the French whalers, who were numerous here, against the disastrous practice of the Sydney people, who maintained shore stations, and so utterly destroyed the whales. It is difficult to realize that in 1843 there were fourteen whale-ships lying in this port, with all their boats out daily, and four shore stations in active operation, in face of the fact that during the nineteen years I have lived here only one whale has been killed. I have digressed from the seals, but the fact of the whale explains, and more than explains, that of the seal.

"Captain Turnbull, whose book I have never seen, writes in 1810 of 46,000 seals taken at the Fiji Islands. We don't hear of seals there now. It is quite possible that that locality was mentioned to lead others off the scent. At Macquarie Island the discoverers killed in one season 80,000 fur-seals! Our friend Professor Scott visited it ten years ago, and was told the fur-seal never came there. Ever since then it has been occupied by sea-elephant hunters, but no fur-seal ever visits them. This suggests that the fur-seals do not come up from the Antarctic ice, as the sea-elephant do. Campbell Island was repeatedly occupied by sealing parties, some of whose graves are seen there. Antipodes Island was occupied in 1824, and I do not know how much earlier or later. Captain Fairchild, of the New Zealand Government steamer, in four or five visits has never seen a seal there. The Auckland Islands, the largest group, have been visited repeatedly during the last eighty years, and numerous shore parties have lived there. On the Snares, sealers' huts still stand. The coasts of Stewart's Island have yielded large numbers of seals.

"The Rev. Wm. Yate, a missionary, in 1828-35, after describing the enormous number of whales destroyed (black or inshore whales) writes: 'There are also several establishments for the seal fishery on the coast of New Zealand or on the small islands in the vicinity of the coast. A number of sailors are landed and left to kill and skin the seals, many thousands of which are destroyed in the course of a few months.' Earlier than this, in 1815, the Rev. S. Marsden, the first missionary in New Zealand, writes narrating the adventures of the Maori Chief Diraterra and ten Tahitians and ten Europeans who were placed as a sealing party on the Bounty Islands. They suffered great privations, but in a few months, on sixteen rocks with a total area of about 100 acres without vegetation or water, killed and skinned 8,000 seals. This is enough to show you that once these places were densely peopled with seals. The Chatham Islands were another sealing ground, but of them I know very little. All this relates to matters which happened so long ago that sealers are a dead race, while, as you know, whalers who came later or lasted longer are only represented by a very few old men. As for middle-aged natives like myself, we heard in our youth of whales, but not of seals.

"Sealing has been closed for a good many years, before which the Maoris of Riverton used to visit the west coast and get a few, and though poaching never wholly stopped, it did not pay very well. This year a sapient Government has opened a season, and two vessels have been sent to the islands. One reports getting 150 from the Chathams and Bountys, and the other 450 from the Auckland, but there is some underhand work over it, and more may have been got, as the crew are accused of stealing 300 skins. This is by far the largest take for many years, and has, I think, about finished the fur-seal in New Zealand waters.

"I visited five groups of islands last year in the summer, and saw one fur-seal, and from this and other facts concluded that they were very scarce now.

"Now, as to the cause of this, there is but one answer. Reckless killing and disturbance in the rookeries. Mr. Dawson need not trouble himself about pelagic sealing. There is not and never was such a thing in these waters. You could not have it in our wide and angry sea. Calm days are almost

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unknown where you get south of New Zealand, and I never heard of seals being seen in the open ocean. Certain it is that ocean sealing is and always has been an unknown thing here.

"In December 1887 some very interesting articles appeared in the 'Melbourne Argus' on 'The Sealers at Work,' by a man who was shipwrecked in the 'Derry Castle' at the Auckland Islands, and rescued by seal poachers. I have tried to get these papers, but they are out of print. He describes the *modus operandi*. They carry a long rope and lower one of the party over the cliffs hundreds of feet high. He gets off at the mouth of the cave where the seals lie, and cuts off their retreat. He then proceeds to club them, and send up their skins by the rope. This is done because it is so dangerous to put in a boat on the open coast with a fearful sea running. The whales, so enormously plentiful prior to 1840, are, as I have said, almost extinct. This is due to slaughtering them in the breeding bays, and to the occupation of these bays as shipping ports. The off-shore whale (sperm whale) is still lively, though greatly reduced in numbers. Disturbance, as you know, is as great a destroyer as actual killing. I believe it will pay our Government some day to restore the seal fisheries. It would be interesting to experiment with northern seals, as they might migrate, and so people the islands and coasts, while the facts I have mentioned, and the direct testimony of Captain Fairchild, who assures me that this is the case, seem to show that ours keep very much to the native spot. If I can see Captain Fairchild I will get some further facts from him. I think Filhol could give Mr. Dawson some information, as he told me a great deal about seals when he was here, which I have forgotten.

"This is about all I can tell you at present. Of this I am certain, that unless the American seal fisheries are subjected to some kind of management, they will follow the fate of ours, though it will take longer to effect it in their case."

8.—*Extract from Letter from Baron Nordenskiöld to Dr. Dawson, dated Stockholm, September 2, 1891.*

My personal experience about the higher animal life in the Behring Sea is very limited, and all the information I could collect you will find in Chapters XIV and XV of the second volume of the "Vega Voyage," which work, perhaps, can be useful to you by my references to the older literature, to which I had a fuller access than any of the previous authors on the subject. The collections of invertebrates brought from the Behring Sea and the adjacent part of the Polar Sea by the scientific staff of the "Vega" were very large.

9.—*Observations on Sealing in the Southern Hemisphere in the years 1873-76.*

In addition to the notes contained in the published volumes relating to the "Challenger" expedition, Mr. John Murray has been so kind as to furnish the following information:—

"Challenger" Expedition Office, 45, Frederick Street, Edinburgh,  
September 2, 1891.

Dear Sir,

"I have been from home for some time, otherwise your letter of the 2nd July would have been answered long before this.

"I fear I have very little information to convey with reference to the seal fisheries of the south. All the fur-seals that we procured were killed on land, and it was the habit of the seal-fishers we met thus to capture all their animals. We saw very few seals far from their breeding places. We saw only three or four on the southern ice. All the seal-fishers we encountered in the south were from New London, U.S.A. In our time there were no Australians engaged in the trade. There were immense numbers of sea-elephants killed every year on Long Beach at Herd Island. Men wintered there for the purpose of killing them when they came on shore in the early spring. We saw the sealers kill twenty-four fur-seals one day by landing on Swain's Islands where they were breeding.

"We found that some fur-sealing was done at the Falkland Islands. You could get information as to the present state of the trade by addressing a letter to Mr. Deans, Stanley Harbour, Falklands, or you might address a letter direct to the Governor of the islands.

"Trusting that you will have had a pleasant trip to the west, yours, &c.

(Signed)

JOHN MURRAY.

10.—*Report of Examination of Seal Pup, by Dr. Günther, F.R.S., British Museum.*

The pup fur-seal submitted to my examination was labelled "Found dead on north-east rookery, St. Paul's Island, 5th August, 1891."

1. Its length from end of nose to root of tail 23 inches; umbilical cord closed at its distal end; milk-dentition perfectly grown. Apparent age of animal about 17 days.

2. Fur in perfect order; no signs of external or internal mechanical injury. Body well nourished, with a fair amount of fat in the subcutaneous tissue; no fat about the abdominal organs.

3. Organs of digestion and other abdominal organs healthy. Stomach entirely empty, with the exception of a smooth black pyramidal pebble, size of a small bean, and of two or three very small corroded pebbles; intestine empty, with some slight accumulations of mucus in various parts. The animal could not have taken any sustenance for at least two or three days before its death.

4. The chest had not been opened, consequently partial decomposition had set in before the

preservative fluid could act upon the organs. It is therefore difficult to distinguish between pathological signs and post-mortem appearances. But so much is certain, that the lungs were in an inflammatory condition, especially at the base of the right lung. The inflammation extended also some way up the wind-pipe, the mucous membrane of which was covered with a granular deposit in the portion affected.

5. Both the absence of food as well as the condition of the respiratory organs are sufficient to account for the death of the animal; but which of the two was the primary cause preceding the other is impossible to say.

6. A small and thin nematoid worm, from 1 to 1½ inches long, was found in considerable numbers in the lower half of the smaller intestines; one specimen, to perhaps, every 2 inches of intestine. They could not have caused any inconvenience to the animal, and, in fact, there was not the slightest sign of irritation in the mucous membrane.

(Signed) A. GÜNTHER, M.D.

British Museum, January 26, 1892.

11.—Questions in regard to Sheep in the Breeding Season, kindly answered by Sir Samuel Wilson, M.P.

1. Is it common and easy to make ewes suckle other ewes' lambs?—Yes. It can be effected by patting the skin of the ewe's dead lamb on the lamb she is desired to adopt, or by holding her and getting the lamb to suck her for a few days, when she will take to it as if her own progeny.

2. Is it absolutely certain that lambs always know their own mothers, and never get milk from any other mother unless forced to do so by man?—Ewes always know their own lambs by smelling them. A ewe will not allow a strange lamb to suck her if she notices it, but sometimes a lamb not her own may come up on the other side while she is suckling her own lamb, and may unnoticed by her suck her for a time.

There are motherless lambs which go about in this way, and manage to live by what they can steal, and the green grass, which they can soon digest, even when a few days old.

Lambs at a very early age do not, I think, know their own mothers, but will run up to any ewe bleating for the lamb, and try to suck her, when the ewe at once knows if it be her own lamb, and it not drives it away. Older lambs know their dams by the voice.

3. Is it usual to lead ewes accidentally deprived of lambs to suckle other lambs, whether one or twins, or having lost their mothers?—Where the breed is valuable, all lambs are "mothered" to ewes that have lost their own, and sometimes one of twins is put to a ewe that has lost her lamb.

Ewes lambing at large in paddocks, however, are left to do as instinct directs, and fewer lambs in proportion are reared than when well cared for.

4. If so, what are the measures adopted?—Putting motherless lambs or one of twins to a ewe which has lost her lamb.

5. How many ewes will one ram serve effectively in the season, and how long does the season last?—Ordinarily one ram is put to fifty ewes running at large in paddocks, but a ram that is well fed and only allowed to serve a ewe once, may get 200 lambs in a season.

Rams are usually kept with the ewes six or seven weeks.

6. Do the rams eat as much, and the usual food, during the rutting season?—The rams eat as usual when serving the ewes, but fall off in condition owing to running about after the ewes. If fed artificially besides the natural pasture they would, I think, consume more food while serving the ewes than at other times, but this I have not tested.

7. What is the proportion of male to female lambs born?—The proportions are about equal as a rule. In some cases there is a very considerable difference, the causes being imperfectly understood. Old rams put to young ewes are said to produce a much larger proportion of ewe lambs, but I have not endeavoured to alter the proportions of the sexes of the progeny, and cannot speak from experience in this matter.

(Signed) SAMUEL WILSON.

P.S.—80 per cent. is considered a good average increase in merino ewes.

A flock of ewes with careful management may double their numbers every two and a-half years for a considerable time under favourable conditions.

S. W.

12.—Letter from Earl Brownlow on the subject of Deer in the Breeding Season.

Dear Sir George,

8, Carlton House Terrace, London, May 8, 1892.

I am very glad to give you any information in my power about the habits of deer in the British Isles both in a wild and tame state. This information I have gained in a great degree from personal observation, but the details of management of tame deer in a park I have partly obtained from my park-keeper, who is a man of very great experience, and has a thorough knowledge of the subject.

The habits of deer differ very little in a tame or wild state.

A stag is in his prime at about 12 years old, and a hind at about 9 years old.

Supposing that the stock in a park consists of 100 deer.

There should be forty stags to sixty hinds. Three stags should be killed each year at 12 years old, leaving a margin of four for loss and accident, and six hinds at 9 years old, leaving a margin of six for loss or accident. From sixty hinds you would probably get from twenty-five to thirty calves each year.

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The breeding season begins about the 20th September, and lasts till late in October.

During this time the stags eat very little. In a wild state they begin to eat white lichen off the rocks early in October. If you kill a stag then you will find the grass in his stomach mixed with lichen, and later there will be no grass, and only a handful of lichen. In a park where they cannot get lichen they will rush into the water, and suck the green vegetation from the surface. They soon get thin and poor, and when the skin is removed the flesh is red, without fat, with an offensive smell. They are then quite unfit for food. They take no rest, and spend all their time in hunting and keeping together their hinds.

A stag will have with him any number of hinds from two or three to thirty.

At other times of the year the stags and hinds keep separate in small herds, the very young stags keeping with the hinds.

A hind has one calf as a rule, which is born about May.

The stags cast their horns every year, and will eat the old horns if they can get them to supply lime for the growth of the new horn.

Although a great deal might be written on this subject, no other information strikes me which would be likely to be of any assistance to you in your inquiry.

I remain, &c.  
(Signed) BROWNLOW.

13.—*Memorandum on the Place of the Fur-Seal in the Classification of Mammalia, by Professor Flower, C.B., F.R.S., Director of the Natural History Departments, British Museum.*

All the animals commonly spoken of as seals are divided into two very distinct groups:—

(a.) The true seals (*Phocidae*), distinguished mainly by having no external ears, and by not using their hind limbs when walking on land.

(b.) The eared seals (*Otariidae*), often called sea-lions or sea-bears, which have small external ears, and which, when on land, support themselves and walk on the soles of their hind as well as their fore limbs.

None of the first-named group have the fine under-fur which makes the skin of some of the species of the second group such a valuable article of commerce; it is therefore not necessary to speak further of them in the present Report.

Up to the year 1816 both groups of seals were included under the generic name of *Phoca* (Linnaeus), but in that year the eared seals were separated by Péron\* from the others, under the name of *Otaria*, a name which zoologists, whose tendencies in questions of nomenclature are conservative, still retain for the whole group.† Others have divided it up into nearly as many genera as there are species, founded on trifling modifications of the teeth and skull and the length of the ears, and thus such names as *Aretocephalus*, *Callophorus*, *Euotaria*, *Zalophus*, *Eumetopias*, *Phocæctes*, *Halarctus*, *Neophoca*, *Arctophoca*, and *Gypsophoca* occur as generic appellations of various members of the family in zoological treatises on the subject.

As the various authors who have made a special study of this group of animals do not agree as to the relative importance of the characters upon which these distinctions are founded, there is much difference of opinion as to the extent and limits of these so-called generic divisions, and consequently as to the name to be applied to many of the species, hence the confusion of nomenclature which is obvious to any one who compares the different monographs and treatises on the natural history of the seals.

Besides the difficulties as to the most appropriate names, there are others which arise from our ignorance of the animals themselves, especially the distinctive characters and geographical distribution of the various species. The number of species is not even accurately determined, as variations due to sex, age, or season have often been mistaken for those due to specific distinctions. Indeed, until more complete materials are collected in our museums, including skins, skeletons, and skulls of animals of both sexes and various ages, and from different and well-recorded localities, a complete zoological monograph of the family will be impossible.

The common practical distinction between "hair-seals" and "fur-seals," or those which, in addition to the stiff, close, hairy covering common to all the group, possess an exceedingly fine dense woolly under-fur, does not coincide with divisions based on other and more important structural characters. Though all true seals (*Phocidae*) are "hair-seals," some of the *Otariidae* are "hair-seals," and others "fur-seals." It is the skins of the latter, when dressed and deprived of the longer, harsh, outer hairs, which constitute the "seal-skins" of commerce so much valued for wearing apparel.

In habits all the *Otariidae*, whether hair-seals or fur-seals, appear to be much alike. As might be inferred from their power of walking on all fours, they are better capable of locomotion on shore, and range inland to greater distances than the true seals at the breeding season, though even then they are always obliged to return to the water to seek their food, and the rest of the year is mainly spent in the open sea far away from land. They are gregarious and polygamous, and the adult males are usually much larger than the females. They are widely distributed, especially in the temperate regions of both hemispheres, though their entire absence from the North Atlantic is a noteworthy fact. No *Otaria* has ever been found either on the European, African, or American shores of that ocean north of the Equator.

So far as is yet known, each species has a definite and limited area of geographical distribution beyond which it never wanders. In this respect they follow an almost universal law of Nature, applicable to both animals and plants, although the causes of this limitation are, in most cases extremely obscure.

\* "Voyage aux Terres Australes," vol. II, p. 87.  
† Flower and Lydekker: "Introduction to the History of Mammals, Living and Extinct, 1891," p. 593.



The chances of accurate observations upon the movements of marine animals are so small that we are still and probably shall long remain in considerable ignorance as to the exact pelagic range of many of the species, but as they always spend some months on shore every year during the breeding season, and as the number of localities suitable for this purpose is limited, the coast range of each species should be ascertained with a tolerable amount of precision when a sufficient number of reliable data are obtainable. This cannot be said to be the case at present, owing to the difficulty of discriminating the species from the casual external observations of un instructed seamen upon whose information we have mainly to rely.

These remarks apply chiefly to the species inhabiting the Southern Hemisphere. With regard to those of the North Pacific, our knowledge is in a more satisfactory state.

It is now ascertained with tolerable certainty that there are in this region three, and only three, very distinct species, and there is no evidence that either of these species is, or has ever been, found elsewhere.

These are—

1. STELLER'S SEA-LION (*Otaria stelleri* = *Eumetopias stelleri* of some authors), the largest of the whole group; found on the Pacific coast of North America from California to Alaska; Pacific coast of Asia from Japan northwards into the Behring Sea.

2. THE CALIFORNIAN SEA-LION (*Otaria californiana* = *Zalophus californiana* = *Otaria gilgipi*), inhabiting the coasts of California and Japan, but not entering the Behring Sea.

These two are hair-seals; the next is a fur-seal.

3. THE NORTHERN FUR-SEAL OR SEA-BEAR (*Otaria ursina* = *Callorhinus ursinus*), inhabits the North Pacific from California and Japan northwards into the Behring Sea.

The main character by which this animal is distinguished from all other *Otariide*, and which has been considered by Gray and most later writers to entitle it to generic distinction, is the form of the fore part of the skull, which is short, broad, and high, being as it were truncated in front, instead of low and narrow as in all other species. By this general aspect the skull can be distinguished at once from that of any other. The molar teeth are six above and five below on each side. In the two other North Pacific species they are five above and five below. The external characters need not be entered into here, as they have been abundantly and minutely described elsewhere.\*

The distinctive characters and geographical distribution of the species of *Otaria* inhabiting the seas and coasts south of the Equator, and met with either now or formerly in all suitable localities round the whole circumference of the globe, are, as stated above, less accurately determined, nor is this the place to attempt to unravel this purely zoological problem, but the following may be mentioned as best established.

4. THE SOUTHERN SEA-LION (*Otaria jubata*), formerly abundant on the Falkland Islands and the coasts of Patagonia and Chili, extending as far north as the Galapagos Islands; an animal nearly as large as the Northern or Steller's Sea-lion, but easily distinguished from it by the form of the skull, especially of the bones of the palate. This is not a fur-seal.

5. THE SOUTH AMERICAN FUR-SEAL (*Otaria australis* = *Otaria falklandica* = *Arctocephalus australis* and *falklandicus*), South American coasts, from Lobos Islands near the mouth of the Rio de la Plata on the east, to the Galapagos on the west.

6. THE SOUTH AFRICAN FUR-SEAL (*Otaria pusilla* = *Arctocephalus antarcticus*), from the Cape of Good Hope.

7. THE AUSTRALIAN FUR-SEAL (*Otaria forsteri* = *Arctocephalus cinereus*) of Australia, New Zealand, Auckland Islands, &c.

8. THE AUSTRALIAN SEA-BEAR (*Otaria lobata* = *Zalophus lobatus*). A hair-seal from the Australian coasts.

9. HOOKER'S SEA-LION (*Otaria hookeri* = *Arctocephalus hookeri*). Auckland Islands. Also a hair-seal.

W. H. F.

May 1892.

14.—Letter from Captain David Gray, Peterhead.

Sir,

Peterhead, June 3, 1892.

I had the honour yesterday to receive your communication, asking for information regarding the hair-seal fishing in the North Atlantic.

The Jan-Mayen Convention provides that no seals are to be killed within the limits detailed in the Act, namely, from latitude 69 N. to latitude 75 N., and from the meridian of Greenwich west to the Greenland shore. The penalty for killing a seal before the 3rd April is 500*l.*, payable to the informant.

There are no police required to enforce the close time; each ship's crew looks after their neighbours, so that the close time in the Greenland seas has been very strictly kept.

The effect of the close time on the seals is to protect them during the time they are bringing forth their young, and gives them a few days' quietness to nurse them, and is beneficial in so far that it prevents the old seals being killed before the young are born, and also allows a proportion of mother seals to escape to continue the species; beyond this the close time does not go. The young broods were very often clean swept up, so that not one escaped.

The Newfoundland seal fishery is conducted in a different way; the St. John's people, having the control of the fishing themselves, do not allow the ships to leave before a date. This year the 15th March was the day fixed for the steamers leaving. Sailing-ships are allowed to sail eight days sooner.

\* See especially the excellent "Monograph on North American Pinnipeds," by J. A. Allen, Washington, 1860.

The Newfoundland season than last year. To sum up, it is not so good as it was last year. At Newfo

Sir George had Foreign

The following is the result of the investigation of the Pribiloff Islands. The extracts are made from the reports of the sealers, with which you are acquainted below in the report. It is, therefore

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The Newfoundlanders are becoming more strict every year; the sailing day was five days' later this season than last, and they have to stop fishing on the 20th April.

To sum up, the position is this; at Greenland the closing time will prevent the seals being exterminated, but it will not allow them to increase.

At Newfoundland their present mode of fishing means, in a few years, extermination.

I have, &c.

(Signed) DAVID GRAY.

Sir George Baden-Powell, M.P.,  
Foreign Office, London, S.W.

15.—*Mr. W. Palmer on the killing of Seals upon the Pribyloff Islands.*

The following are extracts from a paper read by Mr. William Palmer, Taxidermist to the Smithsonian Institution, before the Biological Society of Washington, in October 1891. Mr. Palmer visited the Pribyloff Islands in an official capacity in 1890. The first part of the paper from which these extracts are made gives some general account of the habits of the seal, together with remarks on pelagic sealing, with which subject, however, Mr. Palmer was not personally familiar. The portion of the paper quoted below is that giving the result of Mr. Palmer's own observations made on the breeding islands, and is, therefore, of value as a record of the conclusions thus arrived at by him:—

NATURAL HISTORY.

*Fate of the Fur-seal in America.*

(Read before the Biological Society of Washington, District of Columbia, October 17, and illustrated by Lantern Slides.)

The present condition of the Alaskan fur-seal islands is but another illustration of the fact that the ignorance, avarice, and stupidity of man have succeeded in reducing an overwhelming abundance of animal life, that by careful and considerate treatment would for ever have been a source of immense wealth, to such a condition that it becomes a question of great moment to devise means to prevent its extermination, and adopt measures to restore its former abundance.

But pelagic seal fishing is not the only cause of the decrease of seal life on the Pribyloffs.

Probably, an equal cause is the unnatural method of driving seals that has been followed on the islands since the first seal was captured.

The mere killing of seals as conducted on the islands is as near perfection as it is possible to get it. They are quickly dispatched, and without pain. One soon recognizes, as in the killing of sheep, that in the quickness and neatness of the method lies its success, all things considered.

But the driving is a totally different matter. I doubt if any one can look upon the painful exertions of this dense crowding mass, and not think that somewhere and somehow there is great room for improvement. It is conducted now as it always has been: no thought or attention is given to it, and, with but one exception, no other method has been suggested, or even thought necessary.

Each day during the season, which lasts from the 20th June to the 1st August, there are three killings: one on St. George, one at the village of St. Paul, and another at North-east Point, St. Paul.

I have marked on outline Maps of the islands the extent of some of these drives, which are as follows:—

Monday, from the Reef; Tuesday, from Lukannon; Wednesday, Tolstoi; Thursday, at Half-way Point (the drive being brought from Polovina); Friday, at Zapadnie (when the water is smooth the killers go by boat to Zapadnie, but in rough weather the seals are driven to the village); Saturday and Sunday drives are made up from some of the places driven from earlier in the week, or a number of small drives from several places are united. At North-east Point drives are made, commencing at one end on Monday and continuing round wherever enough seals can be found. On St. George drives are made from each rookery in succession, the killing ground being just below the village. Some of these driving trails are from a quarter to a mile long, but the longest, from Zapadnie, is 5 miles.

The fur-seal is utterly unfitted by nature for an extended and rapid safe journey on land. It will progress rapidly for a short distance, but soon stops from sheer exhaustion. Its flippers are used as feet, the belly is raised clear of the ground, and the motion is a jerky but comparatively rapid lope. When exhausted, the animal flops over on its side as soon as it stops moving, being unable to stand up.

The drives are conducted in this manner: as soon as it is light, which is between 1 and 2 in the morning, several natives make their way between the seals hauled out near a rookery and the water, and cut out as large a drive as possible. As it is the habit of the seals when alarmed to get as far as possible from any strange object, it follows that they are easily driven in any direction by simply walking behind them waving the arms and making a noise. The character of the ground over which the seals are driven is in many places utterly unfit for the purpose: up and down the steep slopes of sand dunes, over cinder hills studded with sharp rocks, some places being so bad that they are avoided by the people themselves; but the seals have been driven over the same ground for many years, and on some of the hills deep paths have been worn by the passing of tens of thousands of seals. No

attempts have been made to remove the rocks or to lessen the difficulties of the passage, and the seals are still driven pell-mell over huge rocks and down steep inclines, where many are crushed and injured by the hurrying mass of those behind. When the drive reaches the killing ground it is rounded up and left in charge of a man or boy to await the killing, which begins at 7 A.M. A pool of perhaps sixty seals are then cut out of the drive and driven to the killers, who with long wooden clubs stun those seals that are of proper size and condition by a blow or two on top of the head. The seals that are not killed are then driven away by tin pans and a great noise, and while in an excited and over-heated condition rush, as fast as it is possible for a seal to go, into the icy-cold waters of Behring Sea.

It will thus be seen that these seals are subjected on an average from 2 o'clock in the morning until 10 to a long drive over very rough ground, then to a dense herding, where they are continually in motion and crowding each other, thence to an intense excitement on the killing ground, and finally in a condition little better than madness rushing into icy cold water. Uncivilized and partly civilized man has no pity for dumb brutes, and as these drives are conducted entirely by the natives, who prefer indolence in the village to the discomforts of a drive in the fog and rain, it follows that the seals are often driven much faster than they should be, and absolutely without thought or care. But this is not all. The seals that are spared soon haul out again near a rookery, and perhaps the very next day are obliged to repeat the process, and again and again throughout the season, unless in the meantime they have crawled out on a beach to die, or have sunk exhausted to the bottom. The deaths of these seals are directly caused as I shall explain, and, as far as I am aware, it is mentioned now for the first time.

A seal body may be said to consist of three parts, an inner, which is the flesh, bones, &c., a ring of fat surrounding this of from 1 to 4 or 5 inches thick, and then the skin which carries the fur. I think it will be readily seen that a forced drive for a long distance over rough ground, up and down hills, and over and among huge boulders and fine sand, with a subsequent herding, and then after a most violent exercise a sudden bath in icy cold water, must of necessity disturb that equilibrium of vital forces which is essential to the good health of any animal. It is known that the stomachs of the fur-seals on the islands contain no food, and that in all probability many of them have fasted for several weeks. When driven into the water the seals are weak from two causes, the drive and lack of food; below they can secure food they must rest, and rest is only obtainable at the expense of that most vital necessity of these animals, their fat. I remember looking with great curiosity for the cause of death of the first dead seal that I found stranded on the beach. Externally there was nothing to indicate it, but the first stroke of the knife revealed instantly what I am confident has been the cause of death of countless thousands of fur-seals. It had been chilled to death; not a trace remained of the fat that had once clothed its body and protected the vital organs within. Since the day that it had escaped from the drive, it had consumed all its fat in the effort to keep warm, and nothing remained but to lie down and die. I opened many after this, and always discovered the same, but sometimes an additional cause, a fractured skull perhaps. I have even noted those left behind in a drive, and watched them daily, with the same result in many cases. At first they would revel in the ponds or wander among the sand dunes, but in a few days their motions became distinctly slower, the curvature of the spine became lessened; eventually the poor brutes would drag their hind flippers as they moved, and in a few days more become food for the foxes. In every case the fat had disappeared.

It will be seen also that by this driving process the 2- or 3-year-olds, which are the only ones killed for their skins, are culled out almost completely from the seals which visit these islands, and therefore that very few male seals ever reach a greater age; consequently, there are not enough young bulls growing up to supply even the yearly loss on the rookeries, much less to provide for any increase.

It should also be thoroughly understood that until a cow seal is 3 years old she is but a cypher so far as a natural increase of the rookeries is concerned, and that a male seal must be at least 7 or 8 years old before he can possibly secure a footing on the rookeries. During these 3 and 8 years they have to run the gauntlet of the poachers. If they escape the driving—and this seems impossible—they have their natural enemies to encounter, sharks and killer whales, so that taken altogether, nearly everything is against this increase.

During the eight years' minority of the few male seals that have escaped their enemies it is safe, I think, to assume that at least four summers were spent in getting an experience of the drives. Does any one think that they were then capable of filling their proper functions on the rookeries?

But some one is not satisfied with the accidental landing of the seals on the beaches, from whence they can be easily driven. Along the sea edge of the rookeries are many small outlying rocks on which the young male seals congregate in large numbers and survey the rookeries from which they are disbarred by their inferior size and strength. An old bull seal will suffer himself to be slaughtered rather than yield an inch of his chosen location. The cows are so timid that only the greatest exertion of the bulls prevents their being stampeded, while as to the "holluschickie" the sight, even the scent, of a man or strange object will drive them pell-mell instantly into the water.

The natives have been provided with whistles, and when a boat finds itself near a rookery (and pretence for its presence is easily found) good use is made of them with a consequent confusion among the seals, and a probable increase in the next morning's drive. And yet a stranger on the island is bamboozled with the information that his presence a few yards from the village is fraught with great danger to the Company's interests.

The breeding seals on the rookeries represent the principal of the sealing industry, while the quota of 100,000 skins taken annually for the past twenty years is the interest on the principal. Owing to poaching and the effects of driving and culling the principal has become seriously impaired, so that it is no longer possible to pay this large rate of interest. The work on the islands has been directed entirely to collecting this interest at any cost. The principal was left to take care of itself.

The decrease in seal life began about ten years ago; before then it was an easy matter to secure 100,000 skins a-year from St. George's Island, the rookeries near the village of St. Paul, and at North

east Point. The rookeries at P it became absolutely necessary, places, and the custom has been

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How can it be otherwise? Treasury; with every change of men are entirely dependent on visitors to the islands are regard

It may be interesting for a Sea with our own. Dr. Stejneger Commander Islar la, assures me in numbers. A comparison of the reason. The necessity for a fixed fact in the minds of the Pribiloff Islands not the slightest firm in the belief that their inter made, it is composed of many s small seals unfit for killing are it is composed almost entirely of

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1. No seals should be killed  
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These remedies are not new, and experience of sealing are second killed, none should be allowed to evidence then, and which, in view are now beginning to be accepted There should also be a close and then by careful management ledge and care of animal life, a ric

United States' National Museum

east Point. The rookeries at Polavina and Zapadni were then never driven from. But ten years ago it became absolutely necessary, in order to secure the full quota of skins, to make drives from these places, and the custom has been continued since, to the great injury of the seal business.

But these drives from Polavina and Zapadni, and the decrease in seal life, seem to have been carefully concealed from the Government and others interested in the welfare of the seals; in fact, it has been strongly put forth in the Reports of the Treasury Agents in charge and elsewhere that the seals have actually greatly increased in numbers; but a comparison of the sketches alone in Mr. Elliott's "Monograph of the Seal Islands," made in 1873-74 and 1876, with the actual condition of affairs at present on the islands, will convince any one that the opinions and Reports of political appointees are almost worthless when dealing with the fate of the fur-seal.

How can it be otherwise? Their tenure of office exists only with that of the Secretary of the Treasury; with every change of that office new men who know nothing of seals are sent up, and these men are entirely dependent on the seal Company even for their passage and board while there. All visitors to the islands are regarded as interlopers and meddlers.

It may be interesting for a moment to compare the management of the Russian side of Behring Sea with our own. Dr. Stejneger, of the National Museum, who has spent several seasons on the Commander Islands, assures me that, instead of decreasing, the fur-seals there are actually increasing in numbers. A comparison of the Russian ideas of seal management with our own will readily show the reason. The necessity for great care in the driving and management of the drive seems to be a fixed fact in the minds of the Russian officials and natives of the Commander Islands, while on the Pribyloff Islands not the slightest interest is taken in the matter. On the Russian side the natives are firm in the belief that their interests lie in the proper care of the seals; consequently, when a drive is made, it is composed of many small drives carefully selected and slowly driven, so that the large and small seals unfit for killing are gradually weeded out, and when the drive reaches the killing grounds it is composed almost entirely of killable seals.

On the American side, on the contrary, the seals are driven as fast as possible, the only ones weeded out being those too weak to go further, while of those rounded up on the killing ground by far the greater number are allowed to escape. Out of a drive of 1,103 counted by me only 120 were killed; the rest were released. On the Russian side, it is a settled fact that the islands and seals belong to the Russian Government, and that the Company taking the skins has only certain restricted rights for that purpose; but on the American side it seems to be a settled fact, at least in the minds of the Company's people, that they own the seals and the islands, while the duty of the Government is to collect the tax and appoint Agents to subserve the interests of the Company only. The natives are utterly dependent on the seal Company for their support, and while having a very vague idea that somehow the Government is a big thing, they naturally look to the Company for everything affecting their interests.

Sealers have no doubt about the fate that would be their lot if caught poaching on the Commander Islands, or within 3 miles of their shores, and accordingly have given them a wide berth; but they have heretofore done as they pleased about the Pribyloff Islands, and even on the rookeries. In the absence of the revenue-cutters the islands are utterly defenceless, and liable at any time to be raided.

I have only touched lightly upon several questions of the sealing industry, and have by no means exhausted the subject; but enough has been said, I think, to show that if an industry which eighteen months ago was expected to pay the Government a net profit of over 2,000 per cent., and is, besides, a great natural exhibit, the only one of the kind America can produce, is to be saved, reform is necessary. For twenty years the fur-seal has been the spoil of politics and the victim of the poacher. Inexperience on the one hand, and avarice on the other, have well nigh ruined the industry in American waters.

There are then two chief causes of the decrease of seal life on the Pribyloff Islands—poaching in Behring Sea, and the driving and culling of the seals on the islands. The remedy is simple:—

1. No seals should be killed by any one at any time in the waters of Behring Sea.
2. All seals driven on the islands should be killed; none should be driven and again allowed to enter the sea.

These remedies are not new. Nearly twenty years ago Captain Daniel Webster, whose knowledge and experience of sealing are second to none, said, pointing to the drive, "Every one of them should be killed, none should be allowed to return to the water," and gave reasons which, while unsupported by evidence then, and which, in view of the immense abundance of seal life, seemed absurd at the time, are now beginning to be accepted as true.

There should also be a close time for at least five years to allow the rookeries to be replenished, and then by careful management by a bureau and employés of the Government, trained in the knowledge and care of animal life, a rich and profitable industry will be saved.

(Signed) WILLIAM PALMER.

United States National Museum, Washington, D.C.

16.—*Extract from the Melbourne "Argus," December 17, 1887, referred to by Mr. F. Chapman.*

SEALERS AT WORK.

(By James McGhie, survivor from the wreck of the "Derry Castle.")

When I wrote the account of "Life on the Auckland Islands," which has just appeared in "The Argus," I purposely said nothing about the Awarua poaching seals when she visited Port Ross, and picked us up while we were cast away there. It did not become me to tell tales against my benefactor, but inasmuch as the captain's admission of the poaching has been published in all the newspapers, I may as well describe how seal hunting is done. The work is the most dangerous and arduous that men can do. It is besides so ill-paid, that few but Maoris will undergo the risk and the hardship on the terms which custom has assigned to the enterprise. The owner of the sealing-vessel gets nearly all the benefit if many seals are taken, and if the trip is unsuccessful—which is very seldom the case, owing to the surprising boldness and endurance of the Maoris—he loses comparatively little. The Maoris agree to ration themselves, to work the vessel, and to catch the seals at so much per skin, less the cost of the provisions put on board the vessel upon the requisition of the crew at the time of commencing the cruise. If only enough skins are secured to pay for the stores the Maoris get nothing for their work, while the owner has the profit of the skins at the price they are worth in the London market to recompense him for the use of the vessel and for paying the captain's wages. The rule, I believe, is that the sealers have far worse than a sailor's life at less than a sailor's pay, but year after year crews are found ready to engage in the chase. The men are engaged by a Headman, to whom alone they are subject, and who directs the sealing operations. The crew (through their Chief) determine what places shall be visited, and when they shall return home. The captain has simply to navigate the vessel from one haunt of the seals—called a "rookery"—to another, in order that the men who are on shares may have the best opportunity of doing well as far as they are inclined out of the trip.

We agreed to go with the sealers, and forthwith all hands set about preparing for the expedition, repairing the whale-boat, cutting seal-clubs, making bullets, and packing up. Then a start was made for a "whig rookery" at Enderby Island. A "rookery" is a home of seals in the interstices of rocks near the water's edge. What sealers know as a "whig rookery" is one which is only occasionally the haunt of adult seals, and is not a breeding place. The "take" depends upon whether the seals happen to be "at home" or not. They were not "at home" on this occasion.

The next "rookery" chosen for a visit was at North-west Cape, 7 miles from Port Ross, and across mountains over 1,000 feet high. We found the track blocked up with snow, so while we were waiting for the snow to melt on the hills hunting excursions were made, and three wild pigs were killed.

The sealer is armed with a club, which is a stick with a hook at one end. The club is used to stun the seals by striking them on the nose at close quarters, and the hook serves to bring to a halt seals which are escaping from their holes, or rookeries, into the sea when they are attacked by the hunters. To reach the rookeries, which are on the face of steep cliffs, invariably on the weather side of the islands, the sealers have to travel over the mountains from the sheltered side, where their vessel lies at anchor. These journeys, which are made in winter while the snow is falling heavily, and over almost impassable country, are toilsome and exhausting in the extreme. The men can carry little food or blankets in addition to the equipment for circumventing the seals, and half starved, and without any shelter beyond what the rocks afford, they for several days pursue the seals until all the prey is either killed or driven away. But it is in descending the cliffs to reach the rookeries that the most dangerous part of the work is done. Sometimes there is a sheer descent of 1,000 feet to the sea, on the edge of which the seals make their home. The men are let down one after another by their companions, some of whom remain above to haul up their comrades and the skins when the hunt is over. When the scene of action is reached the boots are replaced with a sort of plaited slipper, made by the Maoris, and which gives a better foothold on the slippery rocks when leaping about after the escaping seals. The rookeries are formed by masses of rock falling from the cliffs. In time they get covered over with earth, so as to form a sort of roof. It is only in these places that the fur-seal, which is the valuable article of commerce, is found. The hair-seal is of no value, as the hide is too oily to tan into ordinary leather. The seals go into the rookeries to breed and to sleep after a spell at sea, and the hunters have to creep into the holes and crevices between the rocks to get them. The seal will fight hard when put to it. The old seals are mostly spared, as their fur is often torn from fighting, or worn off by rubbing against the rocks, and they are left to multiply the species. When an old seal is met with the hunter lies perfectly flat, and allows the animal to creep over him. Sometimes the seals get so far back in the rocks that a man cannot follow them, in which case they are pulled out to a more open space by means of the hook and clubbed. While the hunters are raiding the interior of the rookeries, some of the party stay outside to intercept any that may try to escape, like fox terriers watching the holes of a warren till the rabbits bolt. After knocking all the seals on the nose and sticking them in the first onslaught, the hunters proceed to skin the animals. The carcasses are thrown into the water. If they were left on the rocks the seals would avoid the place for a considerable time.

The North-west Rookery, which, as I have said, was one of the first visited by the party, can only be reached by crossing a "razor-back," or conical-shaped causeway, which comes to a sharp point with the sea, 760 feet below, on both sides. Some of the men walked it, but others of less iron r.

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17.—*Extracts*

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crossed astraddle. The danger is increased owing to the friable nature of the soil, which slips from under the feet. The 7 miles walk to the rookery and back to Port Ross is one of the most severe on the island. A fog came on, and the party lost their way among the hills. They divided into pairs, and some did not get back for hours after the others.

A rough trip was made in the whale-boat to the Government depot at Carnley Harbour, in the hope that some boots would be obtained for our party, who much needed them, but there were no boots there; but we got some clothes.

A start was made across the island next morning to the Red Rock Rookery on the western side. Our longest rope (1,000 feet) required three men to carry it, each having a coil on his shoulders, with a slack piece between the bearers. The total descent to the rookery was 800 feet, and it was undertaken in two lengths, the first landing-place being at a drop of about 500 feet. The first man who (tied by the waist) is let down runs great risk from dislodging loose stones, which may fall upon his head. As he goes down, a look-out man, on a projecting point, gives the signal to "stop" or to "lower away" from time to time. When five men got on to the first ledge, they helped each other to get to the bottom, while communication was maintained with those overhead by means of notes stuck in a strand of the rope, which was hauled up on a signal being given. If firewood is to be got it is thrown down on to the rocks, but at the rookery I am speaking of the shore was lined with plenty of fuel from the wreck of the "Derry Castle."

After the sealing party had descended, their comrades made another trip back to the boat for more requisites for camping as comfortably as possible, as this place is the head-quarters for attacking all the rookeries in the locality, all of which are within a radius of 15 miles.

On the fourth day the hunters reappeared, and signified to those who had kept a constant watch on their movements to see if they wanted anything sent down, that the hunting was over. They sent up forty-two skins, which was more than they expected, and when the whole of the party mustered again on the top of the mountain, they were in very good spirits accordingly.

The next rookery chosen for a raid was called "The Point," because the lowering is down from the end of a promontory. The landing-place is a narrow piece of sward sloping towards the sea, which is about 100 yards lower down.

The "Cave" Rookery, so designated because the seals are found in a natural cave, and the Nineteen Rookery, whose title indicates the number of skins taken when it was first visited. These were assailed in turn, and while waiting for snow, which put a stop to further active operations, to melt, the skins were duly salted and rolled up in the peculiar manner which prevents the inside of the pelt touching and injuring the fur.

The next and last rookery visited was of a different nature to all the others. It is "The Swinger," because the sealers have to swing 80 yards across a chasm, through which the sea surges with great fury, to get to where the seals are. The cliff is close on 1,000 feet high, and overhangs the sea. The art of getting safely across the chasm is to place the loop for the foothold in the rope at exactly the proper length for the leap, so that you will strike the landing-place, instead of being dashed by the momentum of the swing against the rocks if the loop is too long, or swing fruitlessly back if it is too short. Only a few skins were got, and the party were greatly disappointed after all their risk and labour. The total take of skins was 178.

A start was made to return to the vessel. Again heavy snow fell, and it was not possible to leave Norman Inlet for two days, but finally the schooner was reached.

On arriving at the boat from Norman Inlet the question was debated whether we should proceed to the Campbell Islands and prolong the trip at least two months, or close it at once and get back home. Captain Drew was in favour of coming away, chiefly because the young seal-skins, which were the greater portion of the take, were not properly "primed" by age and salt water to be of the full value.

17.—*Extracts from a Pamphlet by Mr. A. W. Scott on the Fur-seals of the Southern Hemisphere, 1873.*

In "Mammalia Recent and Extinct," published in Sydney by the Government of New South Wales, Mr. A. W. Scott writes as follows:—

"I have endeavoured . . . by devoting as much space as my limits would permit, to the consideration of the animals whose products are of such commercial value to man, and whose extinction would so seriously affect his interests, to point out the pressing necessity that exists for devising the means of protection for the fur-seals and the sperm and right whales of the Southern Ocean.

"The islands of the Southern Seas, now lying barren and waste, are not only numerous, but admirably suited for the production and management of these valuable animals, and need only the simple regulations enforced by the American Legislature to resuscitate the present state of decay of a once remunerative trade, and to bring into full vigour our other important export to the many we already possess.

"A detailed account of the habits of the fur-seal of the Auckland Islands has recently been given by Mr. Musgrave" (narrative of the wreck of the "Grafton," Melbourne, 1865) "which he acquired during a compulsory residence in their midst of nearly twenty months. Of the females, he relates that their nose resembles that of a dog, but is somewhat broader; their scent appears to be very acute. The eyes are large, of a green colour, watery, and lustreless. When on shore they appear to be constantly weeping.

In the latter part of December, and during the whole of January, they are on shore a great

deal, and go wandering separately through the bush, and into the long grass on the sides of the mountains above the bush, constantly bellowing out in the most dismal manner. They are undoubtedly looking out for a place suitable for calving in. I have known them go to a distance of more than a mile from the water for this purpose.

"Females begin to breed when 2 years old, and carry their calves eleven months, and suckle them for about three months.

"Before they have their calves the cows lie sometimes in small mobs (from twelve to twenty), as well as while giving suck, and there are generally one or two bulls in each mob. The cows are evidently by far the most numerous."

"Of the habits of the very young, he says:—

"It might be supposed that these animals, even when young, would readily go into the water—that being one of their natural instincts—but, strange to say, such is not the case; it is only with the greatest difficulty, and a wonderful display of patience, that the mother succeeds in getting her young in for the first time. I have known a cow to be three days getting her calf down half-a-mile, and into the water; and, what is most surprising of all, it cannot swim when it is in the water. This is a most amusing fact. The mother gets it on her back, and swims along very gently on the top of the water, but the poor little thing is bleating all the while, and continually falling from its slippery position, when it will splutter about in the water precisely like a little boy who gets beyond his depth and cannot swim. Then the mother gets beneath it, and it again gets on her back. Thus they go on, the mother frequently giving an angry bellow, the young one constantly bleating and crying, frequently falling off, spluttering and getting on again, very often getting a slap from the flipper of the mother, and sometimes she gives it a very cruel bite. The poor little animals are very often seen with their skins pierced and lacerated in the most frightful manner. In this manner they go on until they have made their passage to whatever place she wishes to take her young one to."

"The males are described thus:—

"One of a medium size will measure about 6 feet from nose to tail, and about 6 or 7 feet in circumference, and weigh about 5 cwt. They by far exceed these dimensions. The fur and skin are superior to those of the female, being much thicker. On the neck and shoulders he has a thicker, longer, and much coarser coat of fur, which may be almost termed bristles; it is from 3 to 4 inches long, and can be ruffled up and made to stand erect at will, which is always done when they attack each other on shore or are surprised, sitting as a dog would do, with their heads and necks looking towards the object of their surprise, and in this attitude they have all the appearance of a lion. They begin to come into the bays in the month of October and remain until the latter end of February, each one selecting and taking up his own particular beat in a great measure; but sometimes there are several about the same place, in which case they fight most furiously, never coming in contact with each other (either in or out of the water) without engaging in the most desperate combat, tearing large pieces of skin and flesh from each other; their skins are always full of wounds and scars, which, however, appear to heal very quickly.

"At this place we saw hundreds of seals; both the shores and the water were literally swarming with them, both the tiger and black seal, but in general the tiger seals keep one side of the harbour, and the black seals, which are much the largest, the other side, but in one instance we saw a black and a tiger seal fighting' . . . . .

"Mr. Morris, of Sydney, for many years a sealer by profession, in addition to the information already quoted in p. 15, has kindly furnished me with the following interesting particulars of the history of the southern fur-seal fishery and the habits of the animal, which have the advantage of being derived from his own personal experience.

"From him I learned the following particulars:—

"The females in September come on shore to pup, and remain until about March. The pups are born black, but soon change to grey or silvery grey. The herd then go to sea for the remaining portion of the year, returning again in September with regularity.

"During this absence in the sea the male pups have changed from the grey to a light brown colour, while the females remain unaltered.

"In New South Wales the sealing trade was at its height from 1810 to 1820, the first sealers and promoters of which were the Sydney firms of Cable, Lord, and Underwood; Rille and Jones; Dr. and Hook and Campbell. The vessels employed by them were manned by crews of from twenty-five to twenty-eight men each, and were fitted out for a cruise of twelve months.

"The mode of capture adopted was: The men selected for the shore party would number from six to eighteen, this being regulated by the more or less numerous gathering of seals seen in the rookery. These men always land well to leeward, as the scent of the animal is very keen, and cautiously keep along the edge of the water in order to cut off the possibility of retreat; then when abreast of the mob they approach the seals and drive them up the beach to some convenient spot, as a small nook or naturally formed inclosure; this accomplished, one or two men go in to the attack, while the others remain engaged in preventing outbreaks. As soon as a sufficient number have been slain to erect a wall of the dead, then all hands rush in to the general massacre."

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APPENDIX (E).

SEAL PRESERVATION REGULATIONS AND ORDINANCES.

Falkland Islands.  
Cape of Good Hope.

Greenland Seas.

Japan.  
Newfoundland.

FALKLAND ISLANDS.

By his Excellency Thomas Kerr, Governor.

No. 4, 1881.

*An Ordinance to provide for the establishment of a Close Time in the Seal Fishery of the Falkland Islands and their Dependencies and the Seas adjacent thereto.*

Whereas the seal fishery of these islands, which was at one time a source of profit and advantage to the colonists, has been exhausted by indiscriminate and wasteful fishing, and it is desirable to revive and protect this industry by the establishment of a close time during which it shall be unlawful to kill or capture seals within the limits of this Colony and its dependencies.

Be it therefore enacted by the Governor of the Falkland Islands and their dependencies, with the advice and consent of the Legislative Council thereof, as follows:—

1. No person shall kill or capture, or attempt to kill or capture, any seal within the limits of this Colony and its dependencies, between the days hereinafter mentioned (which interval is hereinafter referred to as the close season), that is to say, between the 1st day of October and the 1st day of April following, both inclusive, and any person acting in contravention of this section shall forfeit any seals killed or captured by him, and shall, in addition thereto, incur a penalty not exceeding 100*l.*, and a further penalty of 5*l.* in respect of every seal so killed or captured.

Close time for seal fishery, and penalties for breach.

2. Any owner or master, or other person in charge of any ship or vessel, who shall permit such ship or vessel to be employed in killing or capturing seals, or who shall permit any person belonging to such ship or vessel to be employed in killing or capturing as aforesaid during the close season, shall forfeit any seals so killed or captured, and, in addition thereto, shall be liable to a penalty not exceeding 300*l.* for each offence.

Liability of owner and master of ship.

3. Every offence under this Ordinance may be prosecuted, and every penalty under this Ordinance may be recovered, before the Police Magistrate or any two Justices of the Peace in a summary manner, or by action in the Supreme Court of this Colony, together with full costs of suit: Provided that the penalty imposed by the Police Magistrate or two Justices shall not exceed 100*l.*, exclusive of costs.

Prosecution of offence.

One-half of every penalty recovered under this Ordinance shall be paid to the person who prosecuted the offence or sued for such penalty.

All fines, forfeitures, and penalties recovered under this Ordinance, where not otherwise hereinbefore provided, shall be to Her Majesty, her heirs and successors, and shall be paid to the Treasurer for the use of the Government of this Colony.

For all purposes of and incidental to the trial and punishment of any person accused of any offence under this Ordinance, and the proceedings and matters preliminary and incidental to and consequential on his trial and punishment, and for all purposes of and incidental to the jurisdiction of any Court, or of any constable or officer with reference to such offence, the offence shall be deemed to have been committed either in the place in which it was actually committed, or in any place in which the offender may for the time being be found.

4. Where the owner or master of a ship or vessel is adjudged to pay a penalty for an offence under this Ordinance, the Court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment, and sale of the said ship or vessel and her tackle.

Liability of ship to penalty.

5. In this Ordinance the expression "seal" means the "fur-seal," the "sea-otter," the "hair-seal," the "sea-elephant," the "sea-leopard," and the "sea-dog," and includes any animal of the seal kind which may be found within the limits of this Colony and its dependencies.

Definition of "seal."

6. This Ordinance may be cited as "The Seal Fishery Ordinance, 1881."

Short title.

(Seal) (Signed) T. KERR, Governor

Passed the Legislative Council this 27th day of December, 1881.

(Signed) JOHN WRIGHT COLLINS.

Clerk to the Council.

## CAPE OF GOOD HOPE.

*Cape Government Notice.**Seal Island.*

His Excellency the Governor, having been pleased to decide that the seal island in Mossel Bay shall not be granted on lease for the present, hereby prohibits all persons from disturbing the seals on the said island, and warns them from trespassing there after this notice on pain of prosecution.

By Command of his Excellency the Governor,

(Signed)

JOHN MONTAGUE,

*Secretary to Government.*

*Colonial Office, Cape of Good Hope,  
April 12, 1844.*

[TASMANIA. Sec p. 158.]

## JAPAN.

*Regulations for the Protection of the Fur-Seal Fishery issued by the Japanese Government in October 1878*

Art. 1. In view of protecting seal-hunting and checking foreign poachers, a vessel of foreign type shall be commissioned to cruise in the neighbourhood of Itrup. "Chishimamaru" shall be commissioned for this purpose for the time being.

Art. 2. The mode of killing shall mainly be by clubbing, and the use of guns shall be avoided as much as possible.

Art. 3. Young seals shall be spared as much as possible.

Art. 4. The number of seals to be caught within 1 ri of coast-line shall not exceed forty-five per annum.

Art. 5. Between the months of May and November the killing of seals within 1 ri of coast-line is prohibited.

Art. 6. Any person who catches wounded or crippled seals washed ashore, even within the prohibition limit, shall be paid in money or in kind according to the quality of the skin.

Art. 7. To prevent the decrease of seals by careless chasing and wanton killing, special care shall always be taken, and the preventive method shall be established.

Art. 8. The number of seals taken will be inspected, and their skins shall fix the proof of their ages.

Art. 9. The covering and breeding seasons, &c., shall be carefully ascertained by practical observations.

Art. 10. Practical observations and investigations shall be made as to the truth of the seals losing or changing the colour of their fur according to different seasons.

Art. 11. An actual investigation shall be made as to how many seals can be caught annually if the use of guns be discontinued, and clubs and bows and arrows be adopted instead.

Art. 12. While out hunting, if anything occurs likely to form an object for future investigation, a minute record shall be kept.

Art. 13. While the present Regulations shall be strictly obeyed by all those who are responsible for seal-hunting, they can address themselves to the authorities to effect required amendments in case practical inconveniences shall have been experienced.

*Seal and Otter Catching.*

We hereby give our sanction to the Regulations for catching seals and sea-otters, and for the sale and importation of their raw skins, and order the same to be promulgated.

[His Imperial Majesty's Sign-Munual.]

[Privy Seal.]

The 15th day of the 12th month, 19th year of Meiji (1886).

Countersigned by Count ITO HIROBUMI,

*Minister President of the Cabinet.*

Count YAMAGATA ARITOMO,

*Minister of State for Home Affairs.*

Count MATSUKATA MASAYOSHI,

*Minister of State for Finance.*

Count YAMAGATA ARITOMO,

*Minister of State for Agriculture and Commerce.*

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*Imperial Ordinance No. 80.**Regulations for Catching Seals and Sea-Otters, and for the Sale and Importation of their Raw Skins.*

Article 1. Persons who have obtained the special permission of the Minister of State for Agriculture and Commerce, in accordance with the second paragraph of Decree No. 16 of the 17th year Meiji, may engage in catching seals and seal-otters during the term, and within the limits of the places, specified for the purpose by the Hokkaido Local Government.

Every person catching seals and sea-otters shall at all times carry a certificate of such permission. And whenever, whether at sea or on shore, any officer supervising seal and seal-otter catching, or any police officer, demands to inspect the certificate, the same shall be immediately produced.

Art. 2. Any person engaging in catching seals and sea-otters shall, on arrival in Hokkaido, report the name and tonnage of the vessel and the names of her crew to an officer designated by the Hokkaido Local Government Office for that purpose, and shall at all times exhibit, on the mast or in some other conspicuous position in the vessel, a signal specially adopted by the Hokkaido Local Government Office for vessels engaged in catching seals and sea-otters.

Art. 3. Any person desiring to sell the raw skins of seals and sea-otters shall produce the same to the officer mentioned in Article 2 hereof, and shall have the seal (a brand may be used instead of a seal) of the said officer stamped thereon. No person shall be permitted to sell skins not bearing the stamp.

Art. 4. Whenever it is found that any person is importing the skins of seals and sea-otters not stamped by the officer, as provided in the preceding Article, into any port of the Empire, or is staying at any port of the Empire with such skins laden on board a vessel, or is selling, or attempting to sell, such skins in the market, the Customs or police officers shall seize the same, and shall immediately make complaint to the competent authorities.

But the raw skins of seals and sea-otters caught within the territory of Russia or of the United States of America, with the permission of the Governments of those countries respectively, may be imported into the Empire, provided the owner or master of the vessel first produces a certificate issued by a competent authority of Russia or the United States, or by a Russian or United States' Consul residing in Japan.

*Details of Procedure to carry out the Regulations controlling the Seal and Sea-Otter Hunting, May 10, 1888.*

Article 1. The open season for seal and sea-otter hunting shall be from the 15th April to the 15th October in each year.

Art. 2. The area of hunting shall be all the islands situated eastward of Itrup, and southward of Nemuro, of the Kuriles, and it will be divided into three sections, and every year only one of these sections shall be opened for hunting.

The first section includes seven islands, *i.e.*, Itrup, Chirihoi, Butotchelboa [?], Broughton, Raikoké, Shirishir, and Chirinkotan.

The second section includes six islands, *i.e.*, Shimshir, Shiritoi, Ushishir, Sletonepa [?], Rashua, and Seta.

The third section includes twelve islands, *i.e.*, Shannekotan, Yekkerma [?], Karreukotan, Onenepan, Ainos, Makarushi, Shurenwa [?], Paramushir, Holt, Cockscar, Araitte, and Shimshu.

Art. 3. When a boat is going out for hunting, her name, tonnage, and the names of the crew shall be reported for inspection to the branch office of seal and sea-otter hunting superintending authorities, either at Nemuro, in the county of Nemuro, or at Shikotan, in the county of Chishima.

Art. 4. When the branch office of seal and sea-otter hunting superintending authorities find the report mentioned in Article 3 in due form on inspection, it will give to the boat a flag hereinafter mentioned.

Art. 5. Any person who wishes to export and sell the raw hides of his catch shall produce them to the Shikotan branch of the seal and sea-otter hunting superintending authorities, and shall have them stamped.

## NEWFOUNDLAND.

In reply to an inquiry as to the Regulations for the protection of the hair-seal fishery in Newfoundland, information to the following effect was kindly furnished by Sir Terence O'Brien, K.C.M.G., Governor of that Colony.

The accompanying Acts will furnish the whole legislation on the matter.

The Regulations extend to all vessels under the British flag, there being no foreign vessels engaged in the fishery.

The Regulations are acknowledged to be effectual, and were much needed for the preservation of the seals.

The means taken to enforce the Regulations will be found in the Acts above mentioned, which, it is added, have no force in extra-territorial waters as such.

## NEWFOUNDLAND.

*Acts respecting the Prosecution of the Seal Fishery.*

ANNO QUADRAGESIMO SECUNDO VICTORIÆ REGINÆ.

CAP. I.—*An Act respecting the Prosecution of the Seal Fishery.*

[Passed February 22, 1872]

## Section.

1. 36 Vict., cap. 9, repealed.
2. Steamers not to sail before 10th March; Penalty.
3. Sailing-vessels not to sail before 1st March; Penalty.
4. Seals not to be killed before 12th March; Penalty; Proviso; Notice.
5. Cats not to be killed; Penalty; Definition; Proviso.
6. Limitation.
7. Times of Clearance; Proviso; Sundays.
8. Recovery of Penalties; Appropriation.
9. Appeal; Proviso; Recognizance.

Be it enacted by the Governor, Legislative Council, and Assembly, in Legislative Session convened, as follows:—

I. The Act passed in the thirty-sixth year of the reign of Her present Majesty, entitled "An Act to regulate the Prosecution of the Seal Fishery," is hereby repealed.

II. No steamer shall leave port for the seal fishery before the 10th day of March in any year, under the penalty of 2,000 dollars, to be recovered from the owner or other person on whose account such steamer shall have been sent to the seal fishery.

III. No sailing-vessel shall leave port for the seal fishery before the 1st day of March in any year, under the penalty of 400 dollars, to be recovered from the owner or other person on whose account such vessel shall have been sent to such fishery.

IV. No seals shall be killed by the crew of any steamer or sailing-vessel before the 12th day of March in any year, under a penalty of 4 dollars for every seal so killed, to be recovered from the owner or other person as aforesaid, or from the master or crew of the said vessel, or from the parties receiving the same, respectively: Provided, that in case of the owner or other person as aforesaid, that a steamer or other person received such seals with notice or knowledge that the same had been killed before the 12th day of March in any year.

V. No immature seals, known as cats, shall be killed by the crew of any steamer or sailing-vessel at any time, under a penalty of 4 dollars for every such seal so killed, to be recovered from the owner or crew of such seals, or from the master or crew of any such steamer or vessel. And it is hereby declared that no young seal pelt of less weight than 28 lbs. shall be considered an immature, or cat seal: Provided, that no party or parties referred to in this section shall be liable to the penalties or fines herein stated, unless it be proven that over 5 per cent. in number of seals taken on board or landed from such vessel are less weight, each, than 28 lbs. aforesaid. The fines and penalties mentioned in this section to apply to the excess over such 5 per cent.

VI. No action shall be brought by any person to recover any penalty provided by this Act within twelve months from the time such penalty shall have been incurred.

VII. No officer of Her Majesty's Customs in this Colony shall clear any steamer for a sealing voyage before the 9th day of March, or any sailing-vessel for a sealing voyage before the last day of February: Provided, that in the event of either of these days falling on Sunday, such vessels may be cleared on the preceding Saturday.

VIII. All penalties incurred under the provisions of this Act shall be sued for and recovered in summary manner before a Stipendiary Magistrate, by any person who may sue for the same; and the amount of such penalty shall go to the party who shall sue for and prosecute the same, and the remainder to the Receiver-General for the use of public hospitals.

IX. If any person shall feel himself aggrieved by any Judgment of a Stipendiary Magistrate, under this Act, he shall have liberty to appeal therefrom to the then next sitting of Her Majesty's Supreme Court at St. John's: Provided, that notice of the same be given to the Magistrate within twenty-four hours after such Judgment shall have been delivered, and within five days thereafter recognizance, or other security, with or without sureties, at the option of such Magistrate, shall be entered into to prosecute the same without delay, and pay such amount as may be awarded, with costs.

## Enacting clause.

36 Vict., cap. 9, repealed.

Steamers not to sail before 10th March; Penalty.

Sailing-vessel not to sail before 1st March; Penalty.

Seals not to be killed before 12th March; Penalty; Proviso; Notice.

Cats not to be killed; Penalty; Definition; Proviso.

## Limitation.

Times of clearance; Proviso; Sundays.

Recovery of penalties; Appropriation;

Appeal; Proviso; Recognizance.

I.—An Act

Be it enacted in Legislative Session

I. The second session of Her Majesty,

repealed.

II. No steamer shall leave port before the 10th day of March in any year, under the penalty of 2,000 dollars, to be recovered from the owner or other person on whose account such steamer shall have been sent to the seal fishery.

III. No sailing-vessel shall leave port before the 1st day of March in any year, under the penalty of 400 dollars, to be recovered from the owner or other person on whose account such vessel shall have been sent to such fishery.

CAP. X

Be it enacted in Legislative Session

I. In any action brought to recover any penalty provided by this Act, no party or parties referred to in this section shall be liable to the penalties or fines herein stated, unless it be proven that over 5 per cent. in number of seals taken on board or landed from such vessel are less weight, each, than 28 lbs. aforesaid. The fines and penalties mentioned in this section to apply to the excess over such 5 per cent.

II. No seals shall be killed by the crew of any steamer or sailing-vessel before the 12th day of March in any year, under a penalty of 4 dollars for every seal so killed, to be recovered from the owner or crew of such seals, or from the master or crew of any such steamer or vessel. And it is hereby declared that no young seal pelt of less weight than 28 lbs. shall be considered an immature, or cat seal: Provided, that no party or parties referred to in this section shall be liable to the penalties or fines herein stated, unless it be proven that over 5 per cent. in number of seals taken on board or landed from such vessel are less weight, each, than 28 lbs. aforesaid. The fines and penalties mentioned in this section to apply to the excess over such 5 per cent.

III. No steamer shall leave port before the 10th day of March in any year, under the penalty of 2,000 dollars, to be recovered from the owner or other person on whose account such steamer shall have been sent to the seal fishery.

IV. The master of any steamer or sailing-vessel shall not clear any steamer for a sealing voyage before the 9th day of March, or any sailing-vessel for a sealing voyage before the last day of February: Provided, that in the event of either of these days falling on Sunday, such vessels may be cleared on the preceding Saturday.

V. All penalties incurred under the provisions of this Act shall be sued for and recovered in summary manner before a Stipendiary Magistrate, by any person who may sue for the same; and the amount of such penalty shall go to the party who shall sue for and prosecute the same, and the remainder to the Receiver-General for the use of public hospitals.

VI. No action shall be brought by any person to recover any penalty provided by this Act within twelve months from the time such penalty shall have been incurred.

VII. No officer of Her Majesty's Customs in this Colony shall clear any steamer for a sealing voyage before the 9th day of March, or any sailing-vessel for a sealing voyage before the last day of February: Provided, that in the event of either of these days falling on Sunday, such vessels may be cleared on the preceding Saturday.

VIII. All penalties incurred under the provisions of this Act shall be sued for and recovered in summary manner before a Stipendiary Magistrate, by any person who may sue for the same; and the amount of such penalty shall go to the party who shall sue for and prosecute the same, and the remainder to the Receiver-General for the use of public hospitals.

IX. If any person shall feel himself aggrieved by any Judgment of a Stipendiary Magistrate, under this Act, he shall have liberty to appeal therefrom to the then next sitting of Her Majesty's Supreme Court at St. John's: Provided, that notice of the same be given to the Magistrate within twenty-four hours after such Judgment shall have been delivered, and within five days thereafter recognizance, or other security, with or without sureties, at the option of such Magistrate, shall be entered into to prosecute the same without delay, and pay such amount as may be awarded, with costs.

ANNO QUADRAGESIMO SEXTO VICTORIÆ REGINÆ.

I.—An Act to amend an Act passed in the 42nd year of the Reign of Her present Majesty, entitled, "An Act respecting the Prosecution of the Seal Fishery."

[Passed March 3, 1883.]

Section.

1. 42 Vict., cap. 1, sections 2 and 3, repealed.
2. Steamers not to sail before 6 A.M., 10th March; Penalty; Proviso.
3. Sailing-vessels not to sail before 6 A.M., 1st March; Penalty; Proviso.

Be it enacted by the Administrator to the Government, Legislative Council, and Assembly, in Legislative Session convened, as follows:—

I. The second and third sections of the Act passed in the forty-second year of the reign of Her present Majesty, entitled "An Act respecting the Prosecution of the Seal Fishery," are hereby repealed.

II. No steamer shall leave port for the seal fishery before the hour of 6 o'clock in the forenoon on 10th day of March in any year, under the penalty of 2,000 dollars, to be recovered from the owner or other person on whose account such steamer shall have been sent to such fishery. Provided that, in the event of the said 10th day of March falling on Sunday, any steamer may leave port for such fishery any time after 6 o'clock in the forenoon of the previous day.

III. No sailing-vessel shall leave port for the seal fishery before the hour of 6 o'clock in the forenoon on the 1st day of March in any year, under the penalty of 400 dollars, to be recovered from the owner or other person on whose account such vessel shall have been sent to such fishery. Provided that, in the event of the said 1st day of March falling on Sunday, any sailing-vessel may leave port for such fishery at any time after 6 o'clock in the forenoon of the previous day.

Enacting clause.  
42nd Vict., cap. 1, secs. 2 and 3, repealed.  
Steamers not to sail before 6 A.M., 10th March; Penalty; Proviso.  
Sailing-vessels not to sail before 6 A.M., 1st March; Penalty; Proviso.

ANNO QUINQUAGESIMO VICTORIÆ REGINÆ.

CAP. XXIII.—An Act to regulate the taking of, and Right of Property in, Seals.

[Passed May 18, 1887.]

Section.

1. Right of property in seals.
2. When seals not to be killed: Penalty.
3. Second trip of steamers; Proviso.
4. Penalty; Proviso.
5. Masters' penalty.
6. Term "second trip."
7. Complaints must be made within three months.

Be it enacted by the Administrator of the Government, the Legislative Council, and House of Assembly, in Legislative Session convened, as follows:—

I. In any action or proceeding for the recovery of, or in relation to, the property in seals, or seals killed by persons engaged in or prosecuting the seal fishery in steam-vessels going from, or returning to, the ports of this Colony, it shall be held that no property, or right of property, shall have been acquired except in seals killed, sculped, panned, or bulked by and in the actual and personal charge of claimants, or some person or persons for them watching or engaged in carrying away such seals or pellets.

II. No seals shall be killed by any crew of any steamer, or by any member thereof, before the 1st day of March, or after the 20th day of April, nor shall seals, so killed, be brought into any port of this Colony or its dependencies as aforesaid, in any year, under a penalty of 4 dollars for every seal so killed, to be recovered from the master and crew by, and paid to, any informer who shall sue for the same, in a summary manner, before a Stipendiary Magistrate.

III. No steamer shall be permitted to go upon a second or subsequent trip to the seal fishery after the 1st day of March in any year: Provided that, if it be shown to the satisfaction of the Collector, Collector, or other Customs officer of the port from which the said steamer sails, that a steamer has been forced, by any accident, to return to port during the first trip, she shall not be deemed to have been upon a second trip if she again leaves port before the 10th day of April.

IV. The master, owner, and crew of any steamer, which shall go on a second or subsequent trip contrary to the third section of this Act, shall be liable to forfeit double the value of their respective interests in the seals which shall be brought in on such second or subsequent trips, to be recovered and paid to any informer who shall sue for the same, in a summary way, before a Stipendiary Magistrate: Provided that, in case the owner or purchaser of such seals, having had notice that such seals had been killed on such second or subsequent trip, shall be liable and responsible for the payment of such seals to the extent of the interest of the owner, master, and crew of such steamer: Provided that, in any case in which a larger sum than 100 dollars shall be adjudged, against any defendant, he may appeal

Enacting clause.  
Right of property in seals.  
When seals not to be killed: Penalty.  
Second trip of steamers; Proviso.  
Penalty; Proviso.



to the Supreme Court, upon (if required) giving good and sufficient security within ten days after conviction, to prosecute the appeal and abide final judgments.

Masters' penalty.

V. Sealing-masters violating the third section of this Act shall be incompetent, for two years after conviction for any offence thereunder, to be employed to command vessels of the seal fishery, or to be cleared at the custom-house, as masters of such vessels.

Term "second trip."

VI. For the purposes of this Act, vessels shall be deemed to be on a second or subsequent trip if they shall engage in killing seals on the coast of this island and its dependencies, after clearing out sailing for Davis Straits or Greenland fishery, and the master and owners shall be liable to the penalties as provided in fourth and fifth sections of this Act. Any complaints, on information made in this section, may be made within three months next after the return of the said vessel to a port of this island.

Complaints must be made within three months.

VII. Any complaint or information, under the foregoing provisions of this Act, must be made within three months of the time of the alleged breach thereof.

ANNO QUINGAGESIMO SECUNDO VICTORIÆ REGINÆ.

CAP. I.—An Act to amend the Law relating to the taking of Seals and Right of Property therein.

[Passed March 7, 1880.]

Enacting clause.

Be it enacted by the Governor, Legislative Council, and Assembly, in Legislative Session convened as follows:—

Repealing clause.

I. The first section of the Act passed in the fiftieth year of the reign of Her present Majesty, entitled "An Act to regulate the taking and right of property in Seals," is hereby repealed.

Memorandum respecting the Seal Fishery of the Greenland Sea, prepared at the Board of Trade at the request of the Behring's Sea Commissioners.

Roughly speaking, this so-called fishery used to be carried on between Spitzbergen and Iceland, the chief centre being the neighbourhood of the Island of Jan Mayen.

As early as the month of February 1873 the late Mr. Frank Buckland, by a letter to the "Times" entitled "A Plea for the Seals," and otherwise, called public attention to the abuses connected with the pursuit of this fishery. The circumstances would appear to have been as follows:—

About the time of the Spring Equinox, the seals congregate in immense numbers, and the females give birth to their young upon the ice. The young at birth are very helpless, and weigh about 4 lb. but they grow with astonishing rapidity, and it is said that in about a fortnight the weight of a young seal is some 70 lbs.

Owing to competition in the fishery, it had become the practice to take (*i.e.*, kill) seals immediately upon the birth of the young. In this way the mothers were slain or often scared away from the pups before the latter were of age to take care of themselves. The young were of small value for commercial purposes at this stage of their existence, and though some of them were killed and shipped, enormous numbers were left to die of starvation.

Conducted in this manner the fishery was a scene of revolting cruelty, the cries of the thousands of young dying seals being said to resemble the cries of hundreds of thousands of human infants. The destruction of the fishery by the scattering or extermination of the seals seemed not far distant. The seals in question are not those from which the fashionable fur is obtained, but their skin is used for making boots, especially patent leather boots, and the oil obtained from them is applied to various purposes.

As regards the United Kingdom, the fishery was prosecuted from the ports of Dundee and Peterhead. Norway was the foreign country mostly interested. In 1874 the Swedish Government suggested to our Foreign Office that some international arrangement might properly be attempted with a view to imposing restrictive Regulations to remedy the evils above referred to.

The earlier action of the Board of Trade upon this proposal is set forth in Parliamentary Paper No. 73 of 1875 (copy herewith). The result so far was to obtain concurrence on the part of those interested, both in Great Britain and in Norway, as to the necessity for a close season about the time of the birth of the young seals. But there was considerable divergence of opinion both as to the date of the ending and the duration of such close season.

Subsequently, the Board of Trade, in consultation with the Foreign Office, framed a Bill, which they introduced into Parliament, and which became law as "The Seal Fishery Act, 1875" (38 Vict. cap. 18). This Act empowered Her Majesty, by Order in Council, to fix a day before which it was to be illegal for British subjects in any year to kill or capture, or attempt to kill or capture, seals within an area specified in the Schedule to the Act, and the Act provided heavy penalties for those contravening its provisions. The area in question was that included between 67° and 75° north latitude, 5° east and 17° west of Greenwich, in adopting which the Board of Trade were chiefly guided by Captain David Gray, of Peterhead, one of the most experienced of the ship-masters engaged in the fishery, and by whose graphic representations Mr. Buckland had been put in motion.

In the meanwhile, the Foreign Office were making representations to other countries who might be interested in the matter, with a view of insuring reciprocal legislation on their part. As already

cated, the fishery and Sweden were represented.

In the course of the negotiations to initiate the Convention of the Governments of the United Kingdom and Sweden was expressed to be within the area meantime, they were later in the matter. The replies of the United States Government were representative of Germany and of the country which by the day before was an area defined in the British and Norwegian Order in Council. The former Majesty's Ministers obtain legislative consequence of the In the course of the day had, however, This was proposed by Captain Gray, now become firmer in seal-skin. It is left to die of starvation necessary to introduce a close season Government, however, during the month contemplated, restricted one, and greater be made, In November April as the day of the Act amongst the interested. By about the end all taken legislative April thus established subjects, who were necessary to commencement of the for that purpose being In 1879 Russia In 1885 Captain which had been imp They intimated between Iceland and view to more effect extended. They accordingly 7° and 76° north latitude east on the west and at a definite date They added that engaged in the fishery These proposals Kingdom from which made the proposals countries who participated By November 18 replies were to

The Government as awaiting information [305]



cated, the fishery was chiefly conducted by subjects of Great Britain or Norway, but Germany, Holland and Sweden were also, though to only a small extent, concerned.

In the course of the year 1875 all the Governments of these foreign countries expressed a willingness to initiate legislation of the character desired. It was also thought well to provide for the contingency of the subjects of Russia, France, Denmark, or the United States joining in the fishery. The Governments of these latter countries were accordingly informed of what was being done, and a hope was expressed that, in the event of their respective subjects coming, as they might any day do, to fish within the area in question, similar legislation would be adopted by the Governments, and that, in the meantime, they would not allow their flags to be carried by the subjects of countries which had legislated in the matter for the purpose of evading such legislation.

The replies of the first three of these Governments were generally favourable, but that of the United States was indefinite. Neither French nor Danish subjects were, however, engaged in the fishery.

By the commencement of the year 1876 the steps towards legislation in Norway and Sweden were represented as approaching completion, and satisfactory assurances as regards legislation in Germany and Holland had been received. An Order in Council was thereupon obtained in this country which brought the Seal Fishery Act into operation, and fixed the 3rd April in every year as the day before which British subjects should not commence the taking of seals within any part of the area defined in the Schedule to the Act. This date was named as a compromise between the views of British and Norwegian subjects.

The former wished for a rather later, and the latter for a rather earlier, date.

This Order had hardly been promulgated when a telegraphic intimation was received from Her Majesty's Minister at Stockholm to the effect that the Norwegian Government would be unable to obtain legislative authority for fixing a close season as regarded the fishery of the current year. In consequence of this, the British Order in Council had to be revoked.

In the course of the same year the necessary legislation was obtained as regards Norway. There had, however, been in that country a reaction of opinion as to the need of a close season.

This was probably due to a consideration of which the Board of Trade were later on made aware by Captain Gray, *i.e.*, that the new-born seals, which had formerly been of little commercial value, had now become far more valuable owing to a process invented for utilizing their hair in the manufacture of ham seal-skin. They would, in consequence, be taken in as large numbers as possible, instead of being left to die of starvation after the slaughter of the mothers. This, if a fact, would make it perhaps unnecessary to interfere with the conduct of the fishery on the ground of preventing cruelty, but would make a close season more needful as regards preventing the extermination of the seals. The Norwegian Government, however, thought themselves bound in honour to proceed with the measure. Strangely enough, during the progress of the Bill, there was some idea of making it apply to a larger area than that contemplated by the English Act, it being held in Norway that such an area was an unduly restricted one, and the Bill was passed on the understanding that a modification on this point should hereafter be made, if necessary.

In November 1876 a fresh Order in Council was obtained in England again fixing the 3rd April as the day for opening the fishery, and steps were taken for circulating copies of it and of the Act amongst those concerned in the United Kingdom, and for informing the foreign Governments interested.

By about the end of March 1877 the Governments of Norway, Sweden, Germany, and Holland had all taken legislative steps similar to those adopted in Great Britain, and the close season until the 3rd April thus established has been duly observed by parties of these nationalities and by British subjects, who were all that were engaged in the fishery, except possibly some Russians. It has not been necessary to organize any police for the enforcement of the Act. No date was fixed for the commencement of the close season, though Germany raised the point, the advisableness of fixing a date for that purpose being then doubted by the Board of Trade.

In 1879 Russia intimated that she had imposed similar restrictions on her own subjects.

In 1885 Captain Gray and others of the Peterhead interest represented that the close season which had been imposed had had most beneficial results, but that further restrictions were to be desired. They intimated that a new branch of the fishery, *i.e.*, that for "hooded seals," had been created between Iceland and Greenland, extending as far south as the latitude of Cape Farewell; and that with a view to more effectually protect the breeding seals and the immature young, the close season should be extended.

They accordingly proposed that the area for restrictions should in future be that comprised between 60° and 76° north latitude, excluding Iceland and its territorial waters, and between the Greenland coast on the west and the ice margin on the east, that the close time should end on the 10th April, and that a definite date (10th July) should be fixed for commencement of the close season.

They added that there was reason to believe that the Norwegians, as the only foreigners then engaged in the fishery, would be ready to concur.

These proposals were supported by the Fishery Board for Scotland, the only part of the United Kingdom from which ships were known to proceed to the fishery. At the instance of the Board of Trade the proposals were submitted by the Foreign Office to the Governments of the five foreign countries who participated in the existing restrictions.

By November 1886 replies were received from all those countries, with the exception of Russia. These replies were to the following effect:—

#### *Germany and Holland.*

The Governments expressed themselves as disposed to favourably regard the Scottish proposals as awaiting information as to the course contemplated by other Powers.

*Sweden.*

Those interested received the Scottish proposals rather favourably, but wished, in consideration of young seals moulting in April, that opening of fishery should be not later than the 7th of that month, and, further, that closing day should be the 7th July.

*Norway.*

Those interested thought the 10th April and 10th July inadmissible as dates for opening and closing, and did not wish Iceland and its waters excluded from the protected area. They also had proposals of their own widely divergent from those of Scotland. These were:—

(a.) That to prevent destruction of females, it should be forbidden to kill old seals before the 15th April (6 A.M.) at the places where the young are taken.

(b.) That in consideration of hooded seals having no young to need protection towards end of close season, the fishery for these seals between Cape Farewell and Spitzbergen should be free until the 15th July (6 P.M.), after which date it was, according to them, pursued only by one or two ships under conditions ruinous to the fishery, as the seals having by that date become very wild, immense numbers were then destroyed by shooting at long range without many being actually taken.

(c.) That to obviate dangers incident to opening the fishery immediately after midnight, the opening should be at 6 A.M. on the 3rd April, or, if that day is a Sunday, at 6 A.M. on the 4th.

(d.) That the limits of protected area should be 60° and 78° north latitude, the east coast of Greenland, and 10° east longitude (Greenwich).

These views were conveyed to the Scottish Office by the Board of Trade, with an intimation that they were unable to see that future steps towards establishment of new restrictions could be taken unless some course could be suggested for reconciling the respective views of the Scottish, Norwegian, and Swedish interests.

Early in 1887 the reply of the Scottish interests was received. They thought the point raised by Sweden in connection with young seals moulting not material, as the short hair skins had now become more valuable than the fur-skins. They were willing to accept the area as defined by Norway, and that, on the day of opening, the fishery should commence at 6 A.M. They agreed as to need for protecting female seals, but thought opening on the 10th April would insure this, as later the females would get too wild to allow of their being shot, and they agreed as to need for protecting hooded seals late in the season.

They were, however, firm as to the need for making the opening and closing dates for the fishery as near the 10th April and 10th July as possible, and did not see how hooded seal fishery could be made free during general close time without endangering the observance of close time for other kinds of seals.

These views were communicated to the Foreign Office by the Board of Trade in the hope of an understanding being arrived at between Norway and Scotland, so as to form a basis for negotiation with the other Powers. At the same time, it was pointed out that the including of Iceland and its waters in the protected area would involve inviting Denmark to join in the arrangements.

In March 1888 a further communication was received from Norway. It now appeared that owing to a change observed in the last two or three years in the condition of the ice off Greenland, the Norwegian interests no longer wished the hooded seal fisheries to close on the 15th July.

They declined to make any concession as regards the day for opening the seal fishery generally, and it was doubtful whether they would adopt any date for closing. On other points they now acquiesced with Scotland, to which country these views were conveyed.

Later in the year Russia intimated that she concurred with Norway on all points.

Subsequent correspondence afforded no prospect of reconciling the divergent views of Scotland and Norway, whilst Denmark took exception to the territorial waters of either Iceland or Greenland being included in the area of protection.

In these circumstances, the negotiations came to a standstill, and the arrangements made in 1875-79 have been maintained.

Copy of the English Act, with the Order in Council, in handbill form, as circulated in the past amongst those interested and now in force, is annexed.

(Initialled) J. M. N.

February 11, 1892.

## SEAL FISHERY (GREENLAND).—38 VICT., CAP. 18

Order in Council made the 28th day of November, 1876, for applying "The Seal Fishery Act, 1875."

At the Court at Windsor, the 28th day of November, 1876.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas by "The Seal Fishery Act, 1875," it is enacted that when it appears to Her Majesty's Council that the foreign States whose ships or subjects are engaged in the seal fishery in the area mentioned in the Schedule to that Act, or any part of such area, have made or will make, with respect

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to their own ships and subjects, the like provisions to those contained in that Act, it shall be lawful for Her Majesty, by Order in Council, to direct that that Act shall, after the date mentioned in the Order, apply to the seal fishery within the said area, or such part thereof as may be specified in the Order:

And whereas it has been made to appear to Her Majesty in Council that the foreign States whose ships or subjects are at present engaged in the seal fishery in the area mentioned in the Schedule to the said recited Act have made or will make, with respect to their own ships and subjects, the like provisions to those contained in the said recited Act:

Now, therefore, Her Majesty, in exercise of the power vested in her by the said recited Act, by and with the advice of her Privy Council, is pleased to direct that "The Seal Fishery Act, 1875," shall, after the date of this present Order, apply to the seal fishery within the area mentioned in the Schedule to the said Act.

And Her Majesty, in exercise of the same power, by and with the like advice, is further pleased to fix the 3rd day of April in every year as the day before which the master and person in charge of, and every person belonging to, any British ship, and every British subject, shall not kill or capture, or attempt to kill or capture, any seal within the area mentioned in the Schedule to the said Act.

"The Seal Fishery Act, 1875," is as follows:—

38 VICT., CAP. 18.—*An Act to provide for the establishment of a Close Time in the Seal Fishery in the Seas adjacent to the Eastern Coasts of Greenland.*

[June 14, 1875.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. When it appears to Her Majesty in Council that the foreign States whose ships or subjects are engaged in the seal fishery in the area mentioned in the Schedule to this Act, or any part of such area, have made or will make, with respect to their own ships and subjects, the like provisions to those contained in this Act, it shall be lawful for Her Majesty, by Order in Council, to direct that this Act shall, after the date mentioned in the Order, apply to the seal fishery within the said area, or such part thereof as may be specified in the Order.

Application of Act by Order in Council in conjunction with foreign States.

Her Majesty may, by the same or any subsequent Order, limit the operation of the Order, and under the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

So long as an Order under this section remains in force this Act shall, subject to any such limitation, condition, exemption, or qualification as aforesaid, apply to the seal fishery within the said area, such part as may be specified in the Order.

Her Majesty may from time to time, by Order in Council, rescind, alter, or add to any Order made in pursuance of this section, and make a new Order in lieu thereof.

Every Order in Council made in pursuance of this section shall be laid before both Houses of Parliament within six weeks after it is made, or if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the "London Gazette."

2. When an Order in Council has been made for applying this Act, then, so long as such Order remains in force, the master or person in charge of or any person belonging to any British ship, or any British subject, shall not kill or capture, or attempt to kill or capture, any seal within the area mentioned in the Schedule to this Act, or the part of the area specified in the Order, before such day in any year as may be fixed by the Order, and the master or person in charge of a British ship shall not permit such ship to be employed in such killing or capturing, or permit any person belonging to such ship to act in breach of this section.

Close time for seal fishery

Any person who is guilty of any breach (by any act or default) of this section shall be liable to a penalty not exceeding 500*l.* for each offence.

3. Every offence under this Act may be prosecuted, and every penalty under this Act may be recovered—

Prosecution of offences.

(1) In England, before two Justices of the Peace in a summary manner, or by action in any of Her Majesty's Superior Courts at Westminster, together with full costs of suit; and

(2) In Scotland, by action as for a debt in the ordinary Sheriff Court or in the Court of Session;

(3) In Ireland, before two Justices of the Peace in a summary manner, or by personal action in any of Her Majesty's Superior Courts at Dublin.

Provided that the penalty imposed in a summary manner by two Justices shall not exceed 100*l.*, exclusive of costs.

One-half of every penalty recovered under this Act shall be paid to the person who prosecuted the offence or sued for such penalty.

For all purposes of and incidental to the trial and punishment of any person accused of an offence under this Act, and the proceedings and matters preliminary and incidental to and consequential on such trial and punishment, and for all purposes of and incidental to the jurisdiction of any Court or of any constable or officer with reference to such offence, the offence shall be deemed to have been committed either in the place in which it was actually committed or in any place in which the offender may for the time being be found.

4. Where an offence under this Act is committed, then—

Liability of owner and master of ship in certain cases.

(a) If the same is committed by the fault or with the connivance of the master of any ship, that master, and—

(b) If the same is committed by the fault or with the connivance of the owner of any ship, the owner—  
shall be liable to the like penalty to which the person committing such offence is liable under this Act.

Liability of  
ship to  
penalty.

5. Where the owner or master of a ship is adjudged to pay a penalty for an offence under this Act the Court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship and her tackle.

Definition of  
"seal."

6. In this Act the expression "seal" means the harp or saddleback seal, the bladdernosed or hooded seal, the ground or bearded seal, and the floe seal or floe rat, and includes any animal of the seal kind which may be specified in that behalf by an Order in Council under this Act.

Short title.

7. This Act may be cited as "The Seal Fishery Act, 1875."

#### SCHEDULE.

##### Area to which Act applies.

The area included between the parallels of 67° and 75° of north latitude, and between the meridians of 5° east and 17° west longitude, reckoned from the meridian of Greenwich.

##### Norwegian Law for the establishment of a Close Time for Seal Fishery in the Arctic Seas.—Stockholm, May 18, 1876.

(Translation.)

We, Oscar, by the grace of God King of Norway and Sweden, the Wends and Gotlis, hereby notify that a Resolution passed by the Ordinary Storting now in session, on the 25th April of the year, of the following tenour, has been submitted to us:—

1. When it shall appear that the foreign States whose ships or subjects are engaged in the seal fishery in the area included between the parallels of 67° and 75° of north latitude, and between the meridians of 5° east and 17° west longitude, reckoned from the meridian of Greenwich, have made or may hereafter make the like provision, it shall be lawful for the King to fix a time of year during which it is forbidden either for the crew of a Norwegian vessel or for a Norwegian subject within the area aforesaid to kill or capture seals, including *Cystophora cristata*.

2. Any one guilty of a breach of the prohibition enacted by section 1, or who shall in any way aid or abet such breach, shall be liable to a fine of from 200 to 10,000 kronor. B of the crew shall be held liable except the master in case the said breach took place either order or with knowledge, and without his having done everything in his power to prevent the same.

The provision in the Criminal Law of the 3rd June, 1874, 2nd chapter, section 40, last sentence, not applicable.

3. In the event of a breach of the present Law taking place, it will be dealt with by the Police Court. The vessel will be liable for any fine that may be incurred by either the master or owner. One-half of the fines shall go to the informer.

We have, therefore, accepted and sanctioned, as we hereby accept and sanction, this Resolution as law.

Given at our Palace at Stockholm, the 18th May, 1876, under our hand and seal of the realm.  
(Signed) (L.S.) OSCAR

##### Ordinance of the King of Sweden and Norway to establish a Close Time for the Seal Fishery by Swedish Vessels in the Arctic Seas.—Stockholm, November 30, 1876.

(Translation.)

We, Oscar, by the grace of God King of Sweden and Norway, of the Gotls and the Wends, hereby known that, considering that the seal fisheries in the Arctic Sea, especially in the neighbourhood of Jan Mayen's Island, are conducted in such a manner as to threaten the extermination of the seal in those waters, and the total destruction of the fisheries, negotiations have been initiated by the Kingdom of Norway with the Governments of those foreign countries whose inhabitants take part in the said fisheries, and those Governments having now promulgated, or declared their willingness to promulgate, suitable Ordinances to the above effect, and seeing that a certain small number of Swedish ships also take part in the fisheries, and that, in so far as these Ordinances are calculated to work the desired effect, it is essential that, as has already been ordained elsewhere, the liability for their violation should be of such a character as to outweigh the benefit to be derived from a breach of the law, we have now thought it right, in so far as Sweden is concerned, to participate in the said Agreement, and we have therefore graciously ordained as follows:—

§ 1. In the Arctic Seas, between 67° and 75° north latitude and 5° east and 17° west longitude from Greenwich, all Swedish ships and all Swedish subjects are forbidden until further notice to kill or catch seal (including the *Phoca cristata*) earlier in the year than the 3rd April.

§ 2. All manner part proviso that, captain of the against it, he goes to the in penalty shall § 3. In Courts. Let this herewith affix

Stockholm

§ 2. All persons infringing the Regulations contained in the foregoing paragraph, or being in any manner parties to such infringement, will be liable to a fine of from 200 to 10,000 kronor, with the proviso that, should the said infringement have taken place either in obedience to the orders of the captain of the ship or with his knowledge, or without his having done everything in his power to guard against it, he alone of all the crew shall be liable to the penalty incurred. Of the fines imposed, half goes to the informer and half to the Crown. Failing means to meet the fine, the corresponding legal penalty shall be enforced.

§ 3. In cases of violation of the prescriptions of this Ordinance, jurisdiction lies with the ordinary Courts.

Let this be obediently observed by all whom it may concern. For further certainty we have hereunto affixed our hand and seal.

(Signed) (L.S.) OSCAR.

*Stockholm Palace, November 30, 1876.*

APPENDIX (F)

PARTICULARS OF PELAGIC CATCH OF BRITISH AND UNITED STATES' SEALING-VESSELS, 1871-91.

Memorandum on the Number of Fur-Seal Skins taken at Sea in 1891.

From the Returns (Table A) compiled by Mr. Milne, the Collector of Customs at Victoria, British Columbia, and from information furnished by Mr. D. Oppenheimer, the Mayor of Vancouver, it appears that the number of British vessels engaged in sealing in 1891 was fifty, and that their total catch for the year was 49,615. These Returns have been compiled with the greatest care.

With regard to the catch of the United States' sealing-vessels for the same year, there is much difficulty in arriving at an estimate of the number of skins taken, owing to the fact that practically no records were kept by the United States' Customs authorities of the number of skins landed. The only official Returns supplied to us are those derived from a telegram from the Custom-house at San Francisco to the Treasury Department at Washington (Table B), which gives certain particulars as to the catch of sixteen vessels, and statements from the Collectors of Customs at San Francisco, Port Townsend, Astoria, and San Diego, giving the number of sealing-vessels that cleared from those ports in 1891 (Table C).

From the latter Table it appears that the number of United States' vessels engaged in sealing in 1891 was forty-two, but no details as to their catch are given.

It has been ascertained that 62,500 seal-skins were sold in London in 1891, under the classification of "North-West," this being the termed used for skins supposed to be taken at sea.

If we assume that these represent the whole pelagic catch for the season of 1891 in all parts of the North Pacific Ocean, and deduct from this number those known to have been taken by British vessels, i.e., 49,615, there remains a balance of 12,885 skins to be accounted for. A certain number of these may have been taken by the Indians in canoes on the coasts of Washington, British Columbia, and South-East Alaska, but their number would probably not amount to more than 3,000. This would leave about 10,000 as the catch of the United States' sealing-vessels.

It must, however, be borne in mind that the above figure of 62,500 does not represent the total number of skins taken, as a portion of those sent to London are re-exported after having been dressed, and thus would not appear in the sales list, and that, besides, many skins are not sent to London at all to be dressed, but are prepared in America.

It appears therefore, that in the absence of sufficient official records it is impossible to form anything more than a very approximate estimate of the number of seal-skins taken by the United States' sealing-vessels.

Taking the average catch of the British Columbian vessels as 1,000, and allowing a similar catch to the United States' vessels, their total catch would amount to about 40,000, but from information derived from unofficial sources this estimate appears to be too great, and after careful consideration it may be estimated that the catch of the forty-two United States' vessels engaged in sealing in 1891 was between 16,000 and 20,000.

Name of Vessel	
Annie C. Moore	..
Aurora	..
Aniska	..
Ariel	..
Annie K. Paint	..
Beatrice	..
Beatrice (Vancouver)	..
Borealis	..
C. D. Rand (Vancouver)	..
Carlota G. Cox	..
Carmelite	..
C. H. Tupper	..
Eliza Edwards (Vancouver)	..
E. B. Marvin	..
Favourite	..
Gewena	..
Katherine	..
Kate	..
Letitia	..
Labrador	..
Laura	..
Minnie	..
Maggie Mac	..
Mary Taylor	..
Mascotte	..
Mountain Chief	..
Mary Ellen	..
Maude S.	..
May Belle	..
Otto	..
Ocean Belle	..
Oscar and Hattie	..
Penelope	..
Pioneer	..
Rosie Olsen	..
Sierra	..
Sapphire	..
Sea Lion	..
Teresa	..
Triumph	..
Thistle, steam-ship	..
Umbrina	..
Venture	..
Vancouver Belle (Vancouver)	..
Viva	..
W. P. Sayward	..
Winifred	..
Walter A. Esie	..
Wanderer	..
Walter L. Rich	..

Fifty vessels. Skins purchased from dealers at Victoria

† Total cre



Table (A).

## BRITISH Columbian Sealing Fleet, 1891.

Name of Vessel.	Tons.	Boats or Canoes.	Crew.		Catch.			Date of Warning.	Date of Return to British Columbia.	Where warned.*	
			White.	Indian.	Coast.	Sand Point.	Behring Sea.				Total.
Annie C. Moore	113	7	23	..	46	442	1,588	2,076	Aug. 6	Aug. 30	I.
Aurora	42	11	5	15	53	340	47	440	July 7	.. 11	I.
Aurora	75	12	5	23	..	406	..	406	June 30	July 27	O.
Ariel	91	10	7	16	..	..	1,082	1,082	Aug. 16	Sept. 7	I.
Annie E. Paint	82	6	21	..	..	154	154	154	June 29	July 23	O.
Beatrice	66	12	5	22	59	136	876	1,071	July 23	Sept. 27	I.
Beatrice (Vancouver)	48	..	16†	..	..	136	206	342	.. 8	Aug. 29	I.
Bowalia	19	3	5	25	..	473	1,547‡	2,419	..	.. 31	I.
C. D. Rand (Vancouver)	19	..	4	..	..	..	..	..	July 12	.. 31	I.
Carlotta G. Cox	78	6	20	..	..	517	1,519	2,636	Aug. 10	Aug. 30	I.
Carmelle	99	7	23	..	..	751	1,639	2,390	.. 8	Sept. 2	I.
C. H. Topper	99	7	24	..	..	235	374	609	July 1	..	O.
Eliza Edwards, steam-ship (Vancouver)	37	..	15	..	..	1	49	50	.. 7	..	I.
E. B. Marvin	117	7	23	..	276	462	..	738	.. 1	July 27	I.
Favourite	80	12	6	20	35	337	2,381	2,753	(Seized July 6) Aug. 12	Sept. 18	I.
Geneva	92	6	23	..	3	221	267	494	July 16	Aug. 30	I.
Katherine	81	9	5	16	..	191	1,224	1,415	.. 18	Sept. 24	I.
Kate	58	9	5	20	32	..	1,100	1,132	..	.. 28	I.
Letitia	28	6	..	12	4	..	..	4	..	..	I.
Labrador	25	5	11	..	..	374	216	590	July 18	Aug. 28	I.
Laura	19	6	6	14	..	61	61	61	.. 17	.. 24	I.
Laura	46	12	6	20	308	373	22	793	.. 15	.. 3	I.
Minnie	71	7	24	..	..	137	548	3 688	.. 1	July 14	O.
Maggie Mae	43	5	18	..	51	115	264	764	..	Aug. 29	I.
Mary Taylor	40	2	5	..	7	..	79	86	..	Nov. 16	I.
Mascotte	23	6	..	12	51	..	..	21	..	Aug. 29	I.
Mountain Chief	69	12	24	..	24	609	65	695	July 2	July 29	O.
Mary Ellen	97	7	24	..	..	394	1,030	1,421	.. 23	Sept. 26	I.
Maud S.	58	5	19	..	..	701	211	942	.. 22	Aug. 21	I.
May Belle	83	5	7	6	..	..	48	48	Seized	Sept. 27	O.
Otto	83	7	23	..	170	568	1,170	1,908	June 30	.. 23	O.
Ocean Belle	81	5	20	..	54	409	1,062	1,525	..	.. 22	I.
Oscar and Mattie	70	7	20	..	223	410	691	1,330	July 7	Oct. 3	I.
Pendage	66	6	21	..	162	712	1,484	2,358	..	Sept. 17	I.
Pioneer	38	9	3	16	40	176	52	268	July 24	Aug. 29	I.
Sierra	35	6	..	12	886	..	..	886	..	..	I.
Sapphire	124	8§	20	13	30	971	2,435	3,439	Aug. 9	Sept. 2	I.
Sea Lion	50	6	19	..	354	584	82	1,020	July 14	Aug. 1	I.
Teresa	63	7	23	..	..	307	985	1,292	.. 17	Sept. 27	I.
Triumph	98	7	23	..	176	666	171	1,013	.. 17	Aug. 5	I.
Triumph, steam-ship	147	7	26	..	9	291	82	385	.. 12	.. 1	I.
Umbrina	98	7	23	..	..	495	504	999	.. 23	Sept. 9	I.
Venture	48	15	4	20	..	..	659	659	..	.. 17	I.
Vancouver Belle (Vancouver)	73	..	27	..	..	..	28	28	July 5	..	I.
Virg	92	6	23	..	..	1,261	731	1,992	June 30	Sept. 17	O.
W. P. Hayward	59	13	6	25	187	731	801	1,722	..	Aug. 22	I.
Winifred	13	2	2	8	7	..	98	105	July 15	.. 11	I.
Walter A. Esie	68	6	20	..	198	818	1,021	2,067	Aug. 12	Sept. 2	I.
Wanderer	25	6	4	12	7	200	330	537	.. 15	.. 17	I.
Walter L. Rich	79	7	22	..	..	519	21	540	June 29	July 27	O.
Fifty vessels.	3,401	369	715	368	3,565	17,162	28,888	40,615			
Skins purchased from Indians at Victoria in 1891	..	..	..	..	..	..	..	1,953			

\* I. = Inside Behring Sea. O. = Outside Behring Sea.

† Total crew.

‡ 399 caught off Kurile Islands.

§ Qty. Boats apart from canoes.

Table (B).

## PARTICULARS of United States' Sealing Fleet, 1891.

N.B.—These particulars are derived from information given to the Behring Sea Commissioners by Mr. J. Stanley-Brown at Washington in March 1892, and which he stated was all that he was able to collect from official sources.

34 sealing-vessels cleared from San Francisco in 1891, as per telegrams from Collector E. B. Jerome, February 25 and 26, 1892:—

Albert Walker.	Mattie T. Dyer.	Sophie Sutherland.
Hattie Gage.	C. H. White.	San Diego.
Helen Blum.	City of San Diego.	Annie Harley.
Lily L.	J. H. Lewis.	Emma and Louisa.
C. G. White.	E. E. Webster.	Rosie Sparks.
Hermann.	Lizzie Dery.	Pearl.
La Nimfa.	John Hancock.	Alexander.
Louis Olsen (s.s.).	Mary Gilbert.	Thiatlo (s.s.).

9 sealing-vessels cleared from Port Townsend, as per telegrams from Collector A. Wasson, February 25 and 26, 1892:—

Allie Alger.	George R. White.	Henry Dennis.
Emmot Feliz.	Mit.	J. G. Swan (Nash B)
Challenge.	Mayflower.	Lottie (Nash Bay).

2 sealing-vessels cleared from Astoria, as per telegrams from Collector E. A. Taylor, February 25 and 26, 1892:—

Hessie Rutter.  
Kate and Ann (Yakina Bay).

2 sealing-vessels cleared from San Diego, as per telegram from Collector John R. Berry, February 26, 1892:—

Laura.  
Ethel.

5 sealing-vessels cleared from miscellaneous United States' ports:—

<i>Sitka</i> (2).	<i>Kadiak Island</i> (3).
Leo.	Nellie Martin.
Sitka.	Undaunted.
	P. F. Feeney.

42 total number of vessels.

Table (C).

INFORMATION tabulated from Telegrams from the Custom-house at San Francisco to the Treasury Department, Washington, dated February 16, 1892.

(Taken from Manifests; and Mr. Stanley-Brown states is all that the Custom-house is able to furnish.)

Name of Vessel.	Date of Arrival.	Skins reported.
J. H. Lewis .. .. .	March 7, 1891	7
Rosie Sparks .. .. .	August 1, ..	148
Sophie Sutherland .. .. .	" 5, ..	17
San Diego .. .. .	" 17, ..	465
C. H. White .. .. .	" 17, ..	438
C. G. Wilson .. .. .	" 21, ..	23
Mattie Dyer .. .. .	" 21, ..	15
C. G. White .. .. .	September 1, ..	1,686
Alexander .. .. .	" 8, ..	9
Ditto .. .. .	December 28, ..	10
Lily L. .. .. .	September 16, ..	61
Hermann .. .. .	" 23, ..	31
Helen Blum .. .. .	" 23, ..	3
E. E. Webster .. .. .	October 3, ..	..
Pearl .. .. .	" 8, ..	2
Emma and Louis .. .. .	" 9, ..	894
La Nimfa .. .. .	November 9, ..	9

The following skins were taken to ports in Alaska, and arrived at San Francisco in coasting vessels:—

Name of Vessel.	Date.	Cargo.
SS. Bertha .. .. .	July 31, 1891	17 cases of skins.
Undaunted .. .. .	August 4, ..	16 barrels.
N. Thayer .. .. .	" 14, ..	150 packages.
Blakley .. .. .	" 27, ..	46 sacks and 12 bundles.
SS. Jennie .. .. .	October 8, ..	21 skins.
Arago .. .. .	November 9, ..	42 bundles and 1 box.

## SUMMARY Sta

Year.	Number British Columbia Vessels	About 3
1871 to 1878		
1879	4	
1880	4	
1881	5	
1882	8	
1883	9	
1884	11	
1885	13	
1886	16	
1887	17	
1888	21	
1889	22	
1890	29	
1891	50	

Since 1885 that year the figures All figures been kept. The catch of

Annual Rep

The above ve trading stations of along the west coast points on the Brit The owners number of skins a The probable yearly, and the pr It was repor Kinberly, went to object of her voyag

These vessels price of skins then skins yearly.

## SUMMARY Statement of the Approximate Number of Fur-Seal Skins taken by Pelagic Sealers from 1871 to 1891.

Year.	Number of British Columbian Vessels.	Catch.	Approximate Number of United States' Vessels.	Approximate Catch.	Catch of Foreign Vessels.	Approximate Total.
1871 to 1878	About 3	? 2,000	1	..	..	2,000
1879	4	? 4,800	..	..	..	4,800
1880	4	? 4,800	..	..	..	4,800
1881	5	? 6,000	..	..	..	6,000
1882	8	? 12,000	..	..	..	12,000
1883	9	? 13,500	1	2,500 (in Behring Sea)	1 German (catch unknown)	18,000
1884	11	? 16,500	3	..	..	16,500
1885	13	21,199	..	..	1,758	23,935
1886	16	24,344	13	11,000	605	36,000
1887	17	20,266	32	16,000	1,350	37,500
1888	21	24,329	8	Unknown	1,214	25,000
1889	22	27,868	33	13,300	1,701	42,870
1890	29	39,347	12	11,000	1,031	51,560
1891	50	49,615	42	18,000	..	68,000

Since 1885 correct data of the British Columbian sealing-vessels have been preserved; previous to that year the figures given are approximate.

All figures given for the United States' sealing-fleet are approximate, no reliable records having been kept.

The catch of the German vessel ("Adèle") are correct, she having landed her cargo at Victoria.

*Annual Reports of Number and Catch of British Columbian Sealing Fleet from 1871 to 1890.*

SEALING Report from years 1871 to 1878.

Vessels.				Tons.	Crew.
Favourite	..	..	..	80	14
Thornton	..	..	..	29	8
Anna Beck	..	..	..	36	9

The above vessels at this time were not regularly engaged in seal-hunting, but were visiting the trading stations of their owners, where many of the skins were obtained by barter from the Indians along the west coast of Vancouver Island, Queen Charlotte Islands, Bella Bella, Bella Coula, and other points on the British Columbian coast.

The owners being very recent, no reliable information could be obtained; consequently, the number of skins and the extent of the industry were not known at that time.

The probable catch of the Indians and above vessels would be about from 3,000 to 5,000 skins yearly, and the price at this time was low, about from 3 to 4 dollars per skin.

It was reported in the years 1874 and 1875 that the American schooner "Cyzret," Captain Kimberly, went to Behring Sea and obtained good catches. This is probably incorrect, as the chief object of her voyage was sea-otter hunting, she once bringing them to Victoria.

SEALING Report for years 1878 to 1880.

Vessels.				Tons.	Crew.
Favourite	..	..	..	80	14
Thornton	..	..	..	29	8
Anna Beck	..	..	..	36	9
Onward	..	..	..	35	9

These vessels were engaged in the coast sealing only, with an average catch each of about 1,200; price of skins then in Victoria from 4 to 5 dollars each, the Indian catch being about 2,000 to 2,500 skins yearly.

## SEALING REPORT, 1881.

Vessels.	Tons.	Crew.
Favourite .. .. .	80	14
Thornton .. .. .	29	9
Anna Beck .. .. .	36	9
Onward .. .. .	35	9
Mary Ellen .. .. .	63	12

These vessels were only engaged in sealing on the west coast of Vancouver Island, about 1,200 skins being the average catch. Value at Victoria about 5 dollars per skin.

No official Report made by above vessels, and no memoranda at Custom-house.

About this time the Indians would kill and bring to Victoria for sale about 2,500 skins yearly.

## SEALING REPORT, 1882.

Vessels.	Tons.	Crew.
Favourite .. .. .	80	14
Thornton .. .. .	29	9
Anna Beck .. .. .	36	9
Onward .. .. .	35	9
Grace .. .. .	77	12
Alfred Adams .. .. .	69	14
W. P. Sayward .. .. .	59	12
Mary Ellen .. .. .	63	12

These vessels were only engaged in sealing on the west coast of Vancouver Island, and did not go to Behring Sea. The average catch would be about 1,500 skins for each vessel, and the prices low about from 5 dollars to 5 dol. 50 c. per skin.

Vessels at this time considered in the coasting trade, and no official Report kept.

## SEALING REPORT, 1883.

Vessels.	Tons.	Crew.
Mary Ellen .. .. .	63	12
Grace .. .. .	77	14
W. P. Sayward .. .. .	59	12
Anna Beck .. .. .	36	10
Thornton .. .. .	29	9
Dolphin .. .. .	60	12
Kate .. .. .	58	12
Alfred Adams .. .. .	69	14
Favourite .. .. .	80	16

None of these vessels cleared for or entered Behring Sea, but confined their operations to hunting on the west coast of Vancouver Island. Number of seals taken by each schooner not recorded. The average catch for each vessel would be about 1,500 skins; value at Victoria about 6 dollars each.

In this year the American schooner "City of San Diego," Daniel McLean, master, and his brother Alexander, mate, and a crew of thirteen men, entered Behring Sea to hunt seals, and had a successful catch of 2,500 skins. This vessel fitted out in San Francisco and proceeded direct to Behring Sea.

In this year the German schooner "Adèle," which came from Japan, was caught trespassing near seal islands in Behring Sea, and was seized, but was afterwards released. The seizing vessel confiscating the skins, reported the skins taken at about 300.

All the ab  
about 1,500 s  
catch.

The follow

Cit  
Alc  
Out  
Ad

Rutler .. .. .  
Kate .. .. .  
Favourite .. .. .  
Onward .. .. .  
Dolphin .. .. .  
Black Diamond .. .. .  
Alfred Adams .. .. .  
Grace .. .. .  
Thornton .. .. .  
W. P. Sayward .. .. .  
Mountain Chief .. .. .  
Anna Beck .. .. .  
Mary Ellen .. .. .

Adèle (German) .. .. .

## SEALING REPORT, 1884.

Vessels.	Tons.	Crew.
Thornator .. .. .	29	9
Dolphin .. .. .	60	16
Onward .. .. .	35	9
Kate .. .. .	58	12
Anna Beck .. .. .	36	9
Grace .. .. .	77	18
W. P. Sayward .. .. .	59	12
Alfred Adams .. .. .	69	16
Black Diamond .. .. .	81	19
Mary Ellen .. .. .	63	17
Favourite .. .. .	80	19

All the above reported as having entered Behring Sea, but no returns reported. Average in 1884 about 1,500 skins per vessel. Have carefully examined the records, and can find no particulars of catch.

The following foreign vessels also cleared from Victoria, British Columbia, but did not return:—

Vessels.	Tons.	Crew.	
City of San Diego .. .. .	46	..	American.
Alexander .. .. .	45		
Otter .. .. .	38		
Adèle .. .. .	50	10	German.

## CATCH of British Columbian Sealing-vessels, 1885.

Vessels.	Tons.	Men.	Catch.		
			Const.	Behring Sea.	Total.
Rustler .. .. .	28	5	1,450	..	1,450
Kate .. .. .	58	14	1,675	..	1,675
Favourite .. .. .	80	18	1,726	..	1,728
Onward .. .. .	35	9	1,694	..	1,694
Dolphin .. .. .	60	15	1,833	..	1,835
Black Diamond .. .. .	81	15	1,426	..	1,426
Alfred Adams .. .. .	69	18	1,512	300	1,812
Grace .. .. .	77	16	1,800	..	1,800
Thornator .. .. .	29	9	1,425	..	1,425
W. P. Sayward .. .. .	59	16	1,900	..	1,900
Mouquin Chief .. .. .	26	6	1,225	..	1,225
Anna Beck .. .. .	36	7	1,234	..	1,234
Mary Ellen .. .. .	63	18	1,189	500	1,989
(Thirteen vessels.)	701	166	20,389	800	21,189

## Other Skins landed at Victoria.

Adèle (German) .. .. .	50	15	1,356	400	1,756
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CATCH of British Columbian Sealing-vessels, 1886.

Vessels.	Tons.	Boats and Canoes.	Crew.	Catch.		
				Coast.	Behring Sea.	Total.
Mary Ellen .. .. .	63	6	24	1,200	2,353	3,553
Pathfinder .. .. .	66	6	22	750	950	1,700
Dolphin .. .. .	60	5	18	1,040	960	2,000
Penelope .. .. .	70	6	20	600	650	1,250
Grace .. .. .	77	6	21	600	1,100	1,700
Anne Beck .. .. .	36	9	18	541	601	1,142
W. P. Seward .. .. .	59	5	24	750	850	1,600
Alfred Adams .. .. .	69	10	22	650	750	1,400
Favourite .. .. .	80	12	28	650	2,231	2,881
Black Diamond .. .. .	81	12	24	350	378	728
Teresa .. .. .	63	5	18	800	1,400	2,200
Arctica .. .. .	42	4	16	1,300	..	1,300
Kate .. .. .	58	4	15	1,090	..	1,090
Thurston* .. .. .	29	3	14	500	..	500
Onward* .. .. .	35	4	15	400	..	400
Carolina* .. .. .	32	4	15	700	..	700
(Sixteen vessels.)	920	101	314	11,921	12,423	24,344
Adèle (German) .. .. .	50	4	16	433	132	605

\* These vessels were seized and confiscated by the United States' Government.

CATCH of British Columbian Sealing-vessels, 1887.

Vessels.	Tons.	Boats.	Crew.	Catch.		
				Coast.	Behring Sea.	Total.
W. P. Seward* .. .. .	59	12	24	477	..	477
Anne Beck* .. .. .	36	4	12	210	126	336
Grace* .. .. .	77	6	18	410	359	769
Dolphin* .. .. .	60	5	18	330	288	618
Alfred Adams* .. .. .	69	12	29	525	854	1,379
Acia* .. .. .	64	6	21	512	1,364	1,876
Lottie Fairfield .. .. .	125	6	24	400	2,600	3,000
Mary Taylor .. .. .	43	5	18	450	550	1,000
Pathfinder .. .. .	66	6	21	1,000	1,300	2,300
Penelope .. .. .	60	6	23	800	700	1,500
Triumph .. .. .	98	6	24	..	480	480
Favourite .. .. .	80	14	28	630	1,257	1,887
Black Diamond .. .. .	81	5	21	250	245	495
Mountain Chief .. .. .	26	7	15	700	..	700
Teresa .. .. .	63	7	23	550	696	1,246
Kate .. .. .	58	8	20	743	..	743
Mary Ellen .. .. .	69	8	21	515	915	1,460
(Seventeen vessels.)	1,143	123	361	8,502	11,764	20,266
Adèle (German) .. .. .	50	5	20	720	630	1,350

\* Seized by United States' Government in Behring Sea.

Mary Ellen ..  
Penelope ..  
Jasinta ..  
Mountain Chief ..  
San José ..  
Sapphire ..  
Vira ..  
Black Diamond ..  
Mary Taylor ..  
Annie C. Moore ..  
Maggie Mac ..  
Triumph ..  
Favourite ..  
Annie ..  
Rosie Olsen ..  
Pathfinder ..  
Lily ..  
O. S. Fowler ..  
Minnie ..  
Aurora ..  
Araunah ..

(Twenty)

Adèle (German)

\* The Behring Sea to the north of Vancouver + "Araunah" ..

Vessels.

Pathfinder ..  
Teresa ..  
Annie C. Moore ..  
Vira ..  
Penelope ..  
Sapphire ..  
Aurora ..  
Jasinta ..  
Mary Taylor ..  
Minnie ..  
Wanderer ..  
Ariel ..  
Lily ..  
Black Diamond ..  
Kate ..  
Favourite ..  
Mountain Chief ..  
Sierra ..  
W. P. Seward ..  
Winifred ..  
Beatrice ..  
Maggie Mac ..

(Twenty-two vessels)

Adèle (German)



## CATCH of British Columbian Sealing-vessels, 1888.

Vessels.	Tons.	Boats.	Crew.	Catch.		
				Coast.	Behring Sea.*	Total.
Mary Ellen .. .. .	69	12	30	805	910	1,715
Penelope .. .. .	69	5	29	1,410	1,327	3,347
Juanita .. .. .	40	13	28	177	1,017	1,194
Mountain Chief .. .. .	26	6	10	400	825	1,225
San José .. .. .	52	4	16	107	..	107
Sapphiré .. .. .	124	9	22	1,200	..	1,200
Viva .. .. .	92	6	21	806	2,069	2,875
Black Diamond .. .. .	81	9	20	231	863	1,094
Mary Taylor .. .. .	43	9	24	392	..	392
Triumph .. .. .	98	12	29	..	2,470	2,470
Annie C. Moore .. .. .	118	6	23	..	715	715
Maggie Mac .. .. .	71	5	20	125	1,299	1,424
Favourite .. .. .	79	13	30	300	1,834	2,134
Rosie Olsen .. .. .	25	5	11	156	1,039	1,195
Pathfinder .. .. .	39	4	13	100	500	600
Lily .. .. .	68	9	22	600	650	1,250
O. S. Fowler .. .. .	68	12	22	93	..	93
Minnie .. .. .	34	8	12	230	..	230
Aurora .. .. .	46	12	26	209	525	734
Aranaht .. .. .	41	11	23	335	..	335
Aranaht .. .. .	71	5	20	..	..	..
(Twenty-one vessels.)	1,347	170	442	7,676	16,653	24,329
Adèle (German) .. .. .	50	8	20	392	822	1,214

\* The Behring Sea catch for this and previous years includes a certain number of skins taken on the coast of British Columbia to the north of Vancouver Island, the schooners having no opportunity of landing the skin: before entering Behring Sea.  
 † "Aranaht" seized by Russians near Copper Island (Parliamentary Paper C. 6253, p. 80).

## CATCH of British Columbian Sealing-vessels, 1889.

Vessels.	Tons.	Boats.	Crew.	Catch.			
				Spring.	Coast.	Behring Sea.	Total.
Pathfinder .. .. .	66	6	24	384	558	48	990
Teresa .. .. .	63	7	23	284	198	828	1,310
Annie C. Moore .. .. .	113	7	23	313	489	1,318	2,120
Viva .. .. .	92	6	22	589	872	2,182	3,643
Penelope .. .. .	70	6	21	384	..	1,796	2,180
Sapphiré .. .. .	123	18	39	754	610	1,626	2,990
Aurora .. .. .	41	11	22	330	486	..	816
Juanita .. .. .	40	13	29	103	32	29	164
Mary Taylor .. .. .	42	8	18	383	364	..	747
Minnie .. .. .	46	10	21	200	..	500	700
Wanderer .. .. .	15	6	15	178	..	..	178
Arcti .. .. .	90	6	22	..	841	844	1,685
Lily .. .. .	68	11	25	260	..	74	354
Black Diamond .. .. .	81	12	29	317	282	55	684
Kate .. .. .	58	10	24	624	..	800	1,424
Favourite .. .. .	79	10	25	..	340	1,764	2,104
Mountain Chief .. .. .	26	5	13	210	..	..	210
Sierra .. .. .	10	2	5	80	..	..	80
W. P. Seward .. .. .	59	12	29	..	557	1,843	2,200
Winifred .. .. .	10	2	5	..	22	..	22
Beatrice .. .. .	67	7	22	500	..	700	1,200
Maggie Mac .. .. .	70	6	25	164	613	1,290	2,067
(Twenty-two vessels.)	1,329	179	481	6,129	6,242	15,497	27,868
Adèle (German) .. .. .	..	..	..	240	1,461	..	1,701

CATCH of British Columbian Sealing-vessels, 1890.

Vessels.	Tons.	Boats.	Crew.		Catch.			
			White.	Indian.	Spring.	Coast.	Behring Sea.	Total.
Mary Taylor .. ..	43	11	6	18	104	302	592	998
Pioneer .. ..	66	5	20	..	235	716	984	1,233
Viva .. ..	92	8	23	..	262	456	2,015	2,713
Triumph .. ..	98	7	23	..	182	1,018	473	1,673
E. B. Marvin .. ..	117	7	26	..	368	878	918	2,164
Sapphire .. ..	124	19	6	36	119	1,378	745	2,262
C. H. Tupper .. ..	99	7	23	..	..	571	796	1,367
Kato .. ..	58	16	5	22	156	511	230	897
Favourite .. ..	80	13	6	26	356	981	1,116	2,453
Aurora .. ..	42	11	5	19	165	797	..	961
Beatrice .. ..	66	12	4	25	229	710	831	1,784
Katherine .. ..	81	11	5	18	369	315	945	1,670
Lily .. ..	69	9	5	20	122	..	500	622
Penelope .. ..	70	5	22	..	148	578	445	1,171
W. P. Sayward .. ..	59	9	6	16	154	339	459	952
Maggie Mac .. ..	71	6	20	..	..	1,200	752	1,952
Juanita .. ..	40	10	6	16	97	311	770	1,178
Annie C. Moore .. ..	113	7	26	..	90	703	639	1,432
Teresa .. ..	63	7	23	..	175	569	450	1,194
Ariel .. ..	91	12	4	24	229	349	1,137	1,706
Minnie .. ..	46	9	5	16	300	764	1,467	1,848
Sea Lion .. ..	50	5	18	..	254	817	774	1,317
Walter L. Rich .. ..	79	6	20	..	122	562	633	1,317
Ocean Belle .. ..	83	7	23	..	..	946	480	1,426
Wooder .. ..	25	9	4	15	82	..	..	82
Venturo .. ..	48	4	15	..	94	..	..	94
Mary Ellen .. ..	70	7	23	..	115	951	..	1,066
Mountain Chief .. ..	23	4	..	10	60	..	..	60
Letitia .. ..	28	5	..	12	70	..	..	70
(Thirty vessels.)	1,994	246	372	293	4,658	16,732	18,165	39,547
Adèle (German) .. ..	..	..	..	7	220	..	811	1,031

APPROXIMATE Number and Catch of United States' Sealing Fleet, 1886-91.

1886—							Skins.	
City of San Diego .. ..	..	..	} Landed at Victoria	..	..	..	2,648	
Sylvia Handy .. ..	..	..		..	..	..	..	8,500
Vanderbilt .. ..	..	..		..	..	..	..	11,000
About ten others, with total catch of, say .. ..	..	..	..	..	..	..	11,000	
Total for 1886 (thirteen vessels) .. ..	..	..	..	..	..	..	16,000	
1887—								
City of San Diego .. ..	..	..	} Landed at Victoria	..	..	..	2,487	
Vanderbilt .. ..	..	..		..	..	..	..	13,500
About thirty others, with total catch of, say .. ..	..	..	..	..	..	..	16,000	
Total for 1887 (thirty-two vessels) .. ..	..	..	..	..	..	..	16,000	
1888—								
About eight vessels, catch unknown.	..	..	..	..	..	..	..	
1889—								
Walter L. Rich .. ..	..	..	} Landed at Victoria	..	..	..	5,741	
San Diego .. ..	..	..		..	..	..	..	7,600
Venturo .. ..	..	..		..	..	..	..	13,500
Allie Alger .. ..	..	..		..	..	..	..	..
Henry Dennis .. ..	..	..		..	..	..	..	..
Lottie .. ..	..	..		..	..	..	..	..
Molly Adams .. ..	..	..		..	..	..	..	..
Bessie Rotter .. ..	..	..	..	..	..	..	..	
J. H. Lewis .. ..	..	..	..	..	..	..	..	
About twenty-four other vessels, with total catch of, say .. ..	..	..	..	..	..	..	7,600	
Total for 1889 (thirty-three vessels) .. ..	..	..	..	..	..	..	13,500	
1890—								
Mattie Dyer .. ..	..	..	} Landed at Victoria	..	..	..	3,116	
San Diego .. ..	..	..		..	..	..	..	8,000
Geo. A. White .. ..	..	..		..	..	..	..	11,000
Henry Dennis .. ..	..	..		..	..	..	..	..
Venture .. ..	..	..	..	..	..	..	..	
About seven others, with total catch of, say .. ..	..	..	..	..	..	..	8,000	
Total for 1890 (twelve vessels) .. ..	..	..	..	..	..	..	11,000	

Year.
1871 .. ..
1872 .. ..
1873 .. ..
1874 .. ..
1875 .. ..
1876 .. ..
1877 .. ..
1878 .. ..
1879 .. ..
1880 .. ..
1881 .. ..

2.—STATEMENT OF the Coast of Island, 1852

Year.
1852 .. ..
1853 .. ..
1854 .. ..
1855 .. ..
1856 .. ..
1857 .. ..
1858 .. ..
1859 .. ..
1860 .. ..
1861 .. ..
1862 .. ..
1863 .. ..
1864 .. ..
1865 .. ..
1866 .. ..
1867 .. ..
1868 .. ..
1869 .. ..
1870 .. ..
1871 .. ..
1872 .. ..
1873 .. ..

Note.—Pr

## APPENDIX (G).

## MISCELLANEOUS TABLES.

1. Average Prices realized for Alaska Salted Fur-Seal Skins at Public Auction in London.
2. Statement of Fur-Seal Skins obtained in trade from Indians by the Hudson Bay Company on the coast of British Columbia between Port Simpson and the northern end of Vancouver Island, 1852 to 1890.
3. Skins taken for Shipment from Commander Islands, 1862 to 1891.
4. Shipment of Fur-Seal Skins from Lobos Islands, communicated by Mr. Alfred Lafone, M.P.
5. Particulars of Fur-Seal Skins in London Market, from Messrs. C. M. Lamson and Co.

1.—AVERAGE Prices realized for Alaska Salted Fur-Seal Skins at Public Auction in London, furnished by the Hudson Bay Company.

Year.	Skins.	Price.	Year.	Skins.	Price.
		<i>s. d.</i>			<i>s. d.</i>
1871 .. ..	104,899	42 2	1882 .. ..	100,100	53 7
1872 .. ..	96,283	44 10	1883 .. ..	75,914	82 9
1873 .. ..	103,724	52 0	1884 .. ..	99,994	51 9
1874 .. ..	99,150	52 6	1885 .. ..	99,874	57 7
1875 .. ..	99,634	50 9	1886 .. ..	99,947	69 3
1876 .. ..	90,276	31 4	1887 .. ..	99,949	56 0
1877 .. ..	75,410	39 11	1888 .. ..	100,037	77 11
1878 .. ..	99,911	69 2	1889 .. ..	100,031	66 11
1879 .. ..	100,036	81 0	1890 .. ..	20,994	146 6
1880 .. ..	100,161	91 5	1891 .. ..	13,494	125 4
1881 .. ..	99,921	79 9			

Note.—Previous to 1871 fur-seal skins were sold privately, and it is impossible to obtain correct average prices.

2.—STATEMENT of Fur-Seal Skins obtained in Trade from Indians by the Hudson Bay Company on the Coast of British Columbia between Port Simpson and the Northern End of Vancouver Island, 1852-90.

Year.	Number of Skins obtained.	Year.	Number of Skins obtained.
1852 .. ..	5	1874 .. ..	1,873
1853 .. ..	11	1875 .. ..	1,033
1854 .. ..	9	1876 .. ..	1,515
1855 .. ..	32	1877 .. ..	1,210
1856 .. ..	65	1878 .. ..	1,544
1857 .. ..	28	1879 .. ..	1,257
1858 .. ..	99	1880 .. ..	1,418
1859 .. ..	187	1881 .. ..	1,852
1860 .. ..	62	1882 .. ..	3,551
1861 .. ..	71	1883 .. ..	557
1862 .. ..	398	1884 .. ..	471
1863 .. ..	569	1885 .. ..	95
1864 .. ..	521	1886 .. ..	1,545
1865 .. ..	243	1887 .. ..	102
1866 .. ..	381	1888 .. ..	646
1867 .. ..	768	1889 .. ..	289
1868 .. ..	367	1890 .. ..	228
1869 .. ..	440		
1870 .. ..	4,686		
1871 .. ..	8,911	Total number obtained in 39 years ..	39,624
1872 .. ..	1,336		
1873 .. ..	1,229	Average number obtained each year ..	1,117

3.—Skins taken for Shipment from Commander Islands, 1862-91.

Notes.	Year.	Number.	Notes.
Only grey pups killed .. ..	1862 .. ..	4,000	
	1863 .. ..	4,500	
	1864 .. ..	5,000	
	1865 .. ..	4,000	
	1866 .. ..	4,000	
	1867 .. ..	4,000	
	1868 .. ..	12,000	
Alaska Commercial Company's first term began	1869 .. ..	21,000	
	1870 .. ..	27,500	
	1871 .. ..	3,412	
	1872 .. ..	29,318	
Elliott makes catch 3,614, but this doubtless a mistake.	1873 .. ..	30,396	Including Robben Island.
	1874 .. ..	31,272	
	1875 .. ..	36,274	
Stopped killing pups for food .. ..	1876 .. ..	26,960	
	1877 .. ..	21,532	
	1878 .. ..	31,340	
	1879 .. ..	42,752	
	1880 .. ..	48,584	
	1881 .. ..	43,522	
	1882 .. ..	44,620	
	1883 .. ..	28,696	
	1884 .. ..	52,652	
	1885 .. ..	41,737	
Approximate estimate .. ..	1886 .. ..	44,500	Without Robben Island, from which no skins were taken.
	1887 .. ..	46,751	
Approximate estimate .. ..	1888 .. ..	45,000	Including 1,453 taken on Robben Island.
	1889 .. ..	55,493	
	1890 .. ..	55,727	
End of Alaska Commercial Company's lease ..	1891 .. ..	27,467	Including 500 taken on Robben Island.
	Total .. ..	872,408†	

\* 1865 to 1891 from official figures obtained by us on Commander Islands.

† The skins obtained by raiders upon Robben Island and on the Commander Islands are not included in the figures above given, which merely represent the annual catch as officially recorded.

Notes on the Killing of Fur-Seals on the Commander Islands.

The facts available for the earlier years after the discovery of these islands are very incomplete, but the following notes may be cited:—

In 1751-53, Jugot, among skins brought from Behring Island, had 2,212 fur-seal skins, and in 1752 and 1753 the crew of a vessel belonging to Trapeznikoff, an Irkutsk merchant, took 2,500 fur-seal skins on the same island. ("Nene Nachrichten von denen Neuentdecken Inseln," quoted by Norbertskiöld, in "Voyage of the Vega," vol. ii, p. 270.)

Returns of cargoes of skins from the Commander Islands, quoted by Bancroft (Bancroft's Works, vol. xxxiii, pp. 111-191), show that between 1752 and 1786 (the last year not included) at least 93,758 skins were shipped. Most of these were obtained from the Commander Islands, upon which alone the actual killing doubtless exceeded this figure, probably very considerably. It was not till 1886 that the first skins were taken on the Pribyloff Islands.

Elliott states that he believes there was an interregnum between 1760 and 1786, during which the fur-seals were driven from the Commander Islands, and no skins were taken (Census Report, p. 109). This is, however, manifestly an error, in view of the statements of individual cargoes upon which the above total amount is based, and from which it would appear that the Commander Islands never ceased to produce a certain number of skins. Elliott further states that he does not know when the seal returned, but is "inclined to believe" that they did not reappear in any considerable number till 1857 or 1858. In 1867 the Russians did not think that more than 20,000 skins could be secured on the Commander Islands annually. Since 1867 (to 1880) the capacity of the Commander Islands gradually increased from about 15,000 to 50,000 skins per annum, doubtless because of the careful management of the industry on these islands. (Census Report, p. 109.)

4.—Ship

Year.

1897 ..  
1898 ..  
1899 ..  
1900 ..  
1901 ..

Totals\*

\*TOTAL Catch o

Y

1876 ..  
1877 ..  
1878 ..  
1879 ..  
1880 ..  
1881 ..  
1882 ..  
1883 ..

5.—Partic

Dear Sir,  
We have the  
you asked us whe

Sir George Baden  
8, St.

Year

1873 .. ..  
1874 .. ..  
1875 .. ..  
1876 .. ..  
1877 .. ..  
1878 .. ..  
1879 .. ..  
1880 .. ..  
1881 .. ..  
1882 .. ..  
1883 .. ..

4.—Shipment of Fur-Seal Skins from Lobos Islands, communicated by Mr. Alfred Lafone, M.P.

Year.	Wigs.	Middlings.	Smiths.	Large Paper.	Middling Paper.	Small Paper.	Extra Small Paper.	Extra Extra Small Paper.	Grey Paper.	Rubbed or Tinted.	Total.
1887	256	163	154	556	1,195	5,600	6,468	..	344	21	14,849
1888	301	255	664	1,499	1,660	7,088	5,915	..	333	23	17,718
1889	135	134	266	741	1,651	3,955	3,618	93	488	106	13,205
1890	175	175	403	968	1,084	5,901	4,898	..	502	95	14,344
1891	224	115	867	694	1,093	6,333	3,400	..	10	40	12,776
Totals	1,101	842	2,344	4,450	6,683	30,937	24,319	93	1,077	285	72,739

5.—TOTAL Catch of Salted Lobos Island Seal Skins, 1876-91, communicated by Mr. Alfred Lafone, M.P.

Year.	Skins.	Year.	Skins.
1876	11,353	1884	14,580
1877	13,066	1885	10,862
1878	12,301	1886	14,986
1879	12,295	1887	14,849
1880	14,865	1888	17,718
1881	13,596	1889	13,205
1882	13,200	1890	14,211
1891	12,422	1891	12,776

5.—Particulars of Fur-Seal Skins in London Market, from Messrs. C. M. Lampson and Co.

Dear Sir, 64, Queen Street, London, May 23, 1892.  
 We have the pleasure to inclose herewith particulars of fur-seal skins sold in London, for which you asked us when we had the pleasure of seeing you here.  
 We are, &c.  
 (Signed) C. M. LAMPSON AND CO.  
 Sir George Baden-Powell, K.C.M.G., M.P., &c.,  
 8, St. George's Place.

(A.)—SALTED Lobos Island Fur-Seal Skins sold in London.

Year.	Skins.	Year.	Skins.
1873	6,956	1884	16,258
1874	8,509	1885	10,853
1875	8,179	1886	13,667
1876	11,353	1887	14,068
1877	13,066	1888	20,747
1878	12,301	1889	8,765
1879	12,295	1890	18,541
1880	14,865	1891	15,834
1881	13,589	1892 (to date)	4,800
1882	13,200	Total	247,777
1883	12,861		

## (B)—SALES of Cape Horn Salted Fur-Seal Skins.

Year.				Skins.	Year.				Skins.
1876	..	..	..	6,306	1896	..	..	..	909
1877	..	..	..	7,631	1897	..	..	..	2,762
1878	..	..	..	8,227	1898	..	..	..	4,403
1879	..	..	..	12,180	1899	..	..	..	3,021
1880	..	..	..	17,562	1890	..	..	..	2,430
1881	..	..	..	13,164	1891	..	..	..	3,114
1882	..	..	..	11,711	1892 (to date)	..	..	..	3,566
1883	..	..	..	4,653	Total	..	..	..	112,208
1884	..	..	..	6,743					
1885	..	..	..	3,404					

## (C 1).—SALTED North-west Coast Fur-Seal Skins sold in London prior to Pelagic Sealing in Behring Sea.

Year.				Skins.	Year.				Skins.
1872	..	..	..	1,029	1880	..	..	..	8,939
1873	..	..	..	4,949	1881	..	..	..	9,997
1874	..	..	..	1,646	1882	..	..	..	11,727
1875	..	..	..	2,042	1883	..	..	..	2,319
1876	..	..	..	..	1884	..	..	..	9,242
1877	..	..	..	264	Total	..	..	..	64,366
1878	..	..	..	12,212					
1879	..	..	..	..					

## (C 2).—SALTED North-west Coast Fur-Seal Skins dressed and dyed in London (but not sold there) taken prior to Pelagic Sealing in Behring Sea.

Year.				Skins.	Year.				Skins.
1872	..	..	..	699	1880	..	..	..	4,562
1873	..	..	..	40	1881	..	..	..	5,890
1874	..	..	..	122	1882	..	..	..	11,159
1875	..	..	..	578	1883	..	..	..	7,385
1876	..	..	..	1,062	1884	..	..	..	10,115
1877	..	..	..	772	Total	..	..	..	46,215
1878	..	..	..	2,434					
1879	..	..	..	2,397					

## (C 3).—DRY North-west Coast Fur-Seal Skins sold in London prior to Pelagic Sealing in Behring Sea.

Year.				Skins.	Year.				Skins.
1868	..	..	..	2,141	1878	..	..	..	912
1869	..	..	..	1,671	1879	..	..	..	918
1870	..	..	..	684	1880	..	..	..	..
1871	..	..	..	12,495	1881	..	..	..	686
1872	..	..	..	14,884	1882	..	..	..	321
1873	..	..	..	901	1883	..	..	..	390
1874	..	..	..	2,772	1884	..	..	..	785
1875	..	..	..	1,351	Total	..	..	..	42,767
1876	..	..	..	993					
1877	..	..	..	1,173					

.... Of the skins sold in 1871 and 1872, a very large proportion were the accumulation of the Russian-American Company, and were taken by them after the purchase of Alaska by the United States.

## RECAPITULATION.

Salted fur-seal skins sold in London, 1872-84	..	..	..	..	64,366
.. .. dressed and dyed in London, 1872-84	..	..	..	..	46,215
Dry fur-seal skins sold in London, 1868-84	..	..	..	..	42,767
Grand total	..	..	..	..	153,348

(C 4).—DRY

 1885 ..  
 1886 ..  
 1887 ..  
 1888 ..  
 1889 ..

SALTED NO

 1885 ..  
 1886 ..  
 1887 ..

In addition to

(C 5).—SALT

Yo

 1885 ..  
 1886 ..  
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 1888 ..  
 1889 ..

 Dry skin  
 Salted ..  
 Salted ..

Year

 1871 ..  
 1872 ..  
 1873 ..  
 1874 ..  
 1875 ..  
 1876 ..  
 1877 ..  
 1878 ..  
 1879 ..  
 1880 ..  
 1881 ..  
 1882 ..



(U 4.)—DRY North-west Coast Fur-Seal Skins sold in London after commencement of Pelagic Sealing in Behring Sea.

Year.					Skins.	Year.					Skins.
1885	..	..	..	..	1,520	1890	..	..	..	..	099
1886	..	..	..	..	979	1891	..	..	..	..	1,085
1887	..	..	..	..	2,813	Total .. .. .					8,004
1888	..	..	..	..	1,252						
1889	..	..	..	..	228						

SALTED North-west Coast Fur-Seal Skins dressed and dyed in London (but not sold there) taken after commencement of Pelagic Sealing in Behring Sea.

Year.					Skins.	Year.					Skins.
1885	..	..	..	..	10,607	1888	..	..	..	..	1,030
1886	..	..	..	..	15,087	1889	..	..	..	..	2,017
1887	..	..	..	..	3,589	Total .. .. .					30,290

In addition to the above it is estimated that from 25,000 to 30,000 skins have been dressed and dyed in the United States.

(C 5.)—SALTED North-west Coast Fur-Seal Skins sold in London after commencement of Pelagic Sealing in Behring Sea.

Year.					Skins.	Year.					Skins.
1885	..	..	..	..	2,078	1890	..	..	..	..	38,315
1886	..	..	..	..	17,909	1891	..	..	..	..	54,180
1887	..	..	..	..	36,907	Total .. .. .					28,298
1888	..	..	..	..	36,818						
1889	..	..	..	..	39,563						

RECAPITULATION.

Dry skins sold in London, 1885-91	..	..	..	..	..	..	..	..	..	8,604
Salted skins dressed and dyed in London, but not sold there, 1885-89	..	..	..	..	..	..	..	..	..	39,290
United States, estimated, 1885-89	..	..	..	..	..	..	..	..	..	30,000
Salted skins sold in London, 1835-92	..	..	..	..	..	..	..	..	..	254,068
Grand total	..	..	..	..	..	..	..	..	..	331,962

(D)—SALES of Alaska Salted Fur-Seal Skins.

Year.					Skins.	Year.					Skins.
1871	..	..	..	..	104,899	1883	..	..	..	..	75,914
1872	..	..	..	..	96,283	1884	..	..	..	..	99,394
1873	..	..	..	..	103,724	1885	..	..	..	..	99,874
1874	..	..	..	..	99,150	1886	..	..	..	..	99,947
1875	..	..	..	..	99,634	1887	..	..	..	..	99,919
1876	..	..	..	..	98,276	1888	..	..	..	..	100,037
1877	..	..	..	..	75,410	1889	..	..	..	..	100,031
1878	..	..	..	..	99,911	1890	..	..	..	..	20,994
1879	..	..	..	..	100,036	1891	..	..	..	..	17,632
1880	..	..	..	..	100,161	Total .. .. .					1,853,907
1881	..	..	..	..	92,921						
1882	..	..	..	..	100,100						

## (E.)—SALES of Copper Island Salted Fur-Seal Skins.

Year.				Skins.	Year.				Skins.
1873	..	..	..	22,198	1884	..	..	..	26,675
1874	..	..	..	30,349	1885	..	..	..	48,928
1875	..	..	..	34,479	1886	..	..	..	41,759
1876	..	..	..	33,198	1887	..	..	..	54,582
1877	..	..	..	25,980	1888	..	..	..	46,296
1878	..	..	..	18,686	1882	..	..	..	47,411
1879	..	..	..	28,215	1890	..	..	..	52,765
1880	..	..	..	38,900	1891	..	..	..	55,724
1881	..	..	..	45,209	1892	..	..	..	30,680
1882	..	..	..	39,311					
1883	..	..	..	36,480					
					Total	..	..	..	761,219

Sir,  
I have the  
a joint letter from  
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Depo

Cereno Jones  
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1. *Mr. Milne*  
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## APPENDIX (H).

## AFFIDAVITS RELATING TO PELAGIC SEALING.

Mr. Milne to Mr. Tupper.

Customs, Canada, Victoria, B.C., January 22, 1892.

Sir, I have the honour to acknowledge the receipt of your communication of the 7th instant relative to a joint letter from Sir George Baden-Powell and Dr. George M. Dawson, Behring Sea Commissioners.

I beg to state that I have endeavoured to supply the information, and herewith transmit the first affidavit of some of the most reliable of our sealing men, and I am continuing to take all I can obtain, which will be forwarded from day to day.

I trust the information is what is wanted, as I have endeavoured to frame the questions so that the answers would show reasons for their intelligent answers on the three questions:—

1. The proportion of seals lost as compared with hit.
2. The proportion of females to males killed in the different months.
3. The abstention of Canadians from all raiding, &c.

I have, &c.

(Signed) A. R. MILNE, Collector.

*Depositions taken before A. R. Milne, Collector of Customs, Port of Victoria, B.C.*

Cereno Jones Kelley, master of the Canadian schooner "C. H. Tupper," of Shelburne, Nova Scotia, having been duly sworn—

1. *Mr. Milne.* How many years have you been engaged in sealing, Captain Kelley?—*A.* I have been sealing for two years as master of the "C. H. Tupper."

2. *Q.* Have your voyages been reasonably fortunate, in comparison with those of other vessels?—*A.* About an average.

3. *Q.* Have you gone south of Cape Flattery in hunt for seals?—*A.* Yes, Sir; and have followed the seals all along the coasts of British Columbia to Behring Sea.

4. *Q.* During last year, to your observation, were the seals as plentiful from the coast to Shumagin Islands as they were the previous year?—*A.* I think there was no material difference.

5. *Q.* Did the seals last year appear to be frightened or more timorous than in previous years on account of the number of vessels?—*A.* I observed no material difference.

6. *Q.* In shooting seals, what is your experience?—*A.* My experience is that unless a seal is mortally wounded—hit in a vital spot—it is practically uninjured, and appears to be as full of vitality as before it was shot. The shot-wounds will rapidly close up, if not made in a vital part, and the seal will swim away as though nothing had happened. The flow of blood stops very quickly, and the seal moves off at a very rapid rate. I picked shot from the bodies of seals, previously wounded in other than a vital part, and the animal in every other way appeared to be in a healthy condition.

7. *Q.* So you believe that a seal when shot, if not mortally wounded, does not sink or seek a place to rookery, or some place to die?—*A.* A wounded seal will not alter its course in the slightest. It will go along the same as before, its wound healing rapidly, very rapidly, too. It is astonishing how quickly such wounds will heal. I once shot a seal which had been speared by Indians, and the spear had made an apparently mortal wound. There was a cut about 2½ by 3 inches a little above the side behind the flipper. This wound appeared to have been made about three days previously, and in that time it had healed half-an-inch all round.

8. *Q.* Are there more seals shot sleeping than in motion?—*A.* I should say that the larger proportion of seals are shot whilst sleeping, that is, as far as my own experience goes.

9. *Q.* What do you consider the vital part of a seal? Where do the hunters aim for generally—the head or the heart?—*A.* It depends largely upon the position of the seal. The vital parts are in the head, in the vicinity of the heart, and, if a seal is shot so as to bleed internally, the hunters are sure of securing it. The head is the usual mark.

10. *Q.* What is usually a safe shooting distance?—*A.* It depends largely upon the circumstances of the case. Somewhere between 10 and 30 yards would be about the distance. I should say that in the average with sleeping or travelling seals. The sleeping seal is often approached to within even less than 10 yards, but the average is from 10 to 20 yards for sleeping seal, and from 10 to 30 yards for travellers.

11. *Q.* The seal is very sensitive, is it not?—*A.* Yes; we have to approach them from the leeward always. Their sense of smell is very acute.

12. *Q.* Do the seals generally travel far when wounded?—*A.* That will depend upon where it is wounded. If it is vitally wounded in the head, it will hardly move from its position, for it is likely to die right there, but it will not sink. This is from my own observation. There is only one way that a seal will sink after being shot, that is, when it is shot in such a manner as to be thrown backwards, striking tail first, thus allowing the air to escape out of its mouth. I might say, further, that I have never seen a seal sink which was shot while sleeping.

13. *Q.* Will you state the proportion of seals lost as compared with those hit in sealing?—*A.* My personal experience during the past two years is that my loss by seals sinking would not average

3 per cent. During the last year (1891) I actually lost only two seals out of seventy-seven—that is, I shot seventy-nine, and secured seventy-seven.

14. *Q.* In hunting seals, what is the direction in which they usually travel?—*A.* In the spring months they are leisurely travelling towards the north, when they change their position.

15. *Q.* In hunting seals, have you ever met with pups in the water?—*A.* Not generally; but during the season of 1890, while off Middleton Island, the hunters reported seeing two seal pups, probably a week old, but they appeared to be only just born.

16. *Q.* What is your opinion of the proportion of males to females killed during the hunting season? Are there any months in the year when there are more females than males killed?—*A.* It depends upon circumstances. My experience is that groups of bachelor bulls will travel together, and sometimes groups of females, including barren cows, will travel together, and again groups of yearling pups apparently travel together. That is my experience, and the experience of a number of others. The catch of any schooner coming into contact with groups of bulls, or of females, would be no criterion of the catch of other schooners as regards the number of females. In the year 1890, while in Behring Sea, one day we took seventy-five seals, and the next day we took eighty, and in the whole of that number I observed only one female, and the hunters particularly informed me that they did not see any female seals at all; that they were all vigorous young bulls.

17. *Q.* Would anything lead you to think, Captain Kelley, that there is a likelihood of more females than males being killed between here and Shumagin Islands? That is, from January to June?—*A.* I can safely say that my personal experience has been on the side of the males, largely both on the coast and in the Behring Sea the number of seals caught is made up largely of males.

18. *Q.* Are there any months of the year during which there are more females caught than males?—*A.* I should say that, as far as my own observation has gone, there is no difference; but in every month, during my voyages, I have had more males than females.

19. *Q.* Do you know of any Canadian vessels who have raided the seal islands during any year in which you have been engaged in the sealing industry?—*A.* I have every reason to believe that none of the Canadian fleet have ever raided, or attempted to raid, or made any preparations to raid, any seal islands in the Behring Sea. If any such a thing had happened, I should most certainly have heard of it, and I believe it to be true that the American schooners "George H. White" and "Daniel Webster" did raid these islands, as also the "Mollie Adams." That they did raid the seal islands is a fact well known to all Canadian sealers. I also heard that the German schooner "Adèle" raided the Prichard Islands, which action met with the strong disapprobation of every Canadian sealer.

(Signed) C. J. KELLEY.

Sworn to at Victoria, British Columbia, this 22nd day of January, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

Before A. R. Milne, *Collector of Customs, Victoria, B.C., January 23, 1892.*

Captain William Petit, present master and part owner of the steamer "Mischief," having been sworn:—

1. *Q.* (*Mr. Milne.*)—Captain Petit, how many years have you been engaged in sealing?—*A.* Six years, Sir.

2. *Q.* Continuously.—*A.* Yes, Sir.

3. *Q.* What vessels did you command?—*A.* In 1886 I commanded the "W. P. Sayward," in 1887 the steamer "Grace," in 1888 the schooner "Sapphire," and in 1889, 1890, and 1891 the "Mary Taylor."

4. *Q.* Have your catches during these six years been reasonably successful in comparison with other vessels?—*A.* About an average.

5. *Q.* You have sailed south of Cape Flattery, have you not, and followed the seals along the coast of British Columbia and into Behring Sea?—*A.* Yes.

5\*. *Q.* During last year, to your observation, were the seals apparently as plentiful from the coast to Shumagin Islands as they were in previous years?—*A.* I found them more plentiful last year than I have any year since 1886, that is, Cape Flattery north.

6. *Q.* How did you find them in Behring Sea?—*A.* I found them there in Behring Sea as plentiful as in former years.

7. *Q.* Are the seals now more frightened or more timorous than they have been on account of more vessels, or from any other cause?—*A.* I have seen no material difference.

8. *Q.* In shooting seals, what is your experience?—*A.* My experience is that unless a seal is mortally wounded—hit in the head or in the region of the heart—the shot does not appear to injure it.

9. *Q.* Do you believe that a seal, when shot, and not mortally wounded, does not sink, or seeks some place to die—a rookery, or some such place?—*A.* No, Sir; a wounded seal will not alter its course in the slightest. It will move along as before, its wound healing rapidly.

10. *Q.* What do you consider the vital part of a seal? Where do the hunters generally aim for?—*A.* For the head or the heart; it depends upon the position of the seal, but usually the head.

11. *Q.* What is the distance at which you shoot seals?—*A.* It depends upon circumstances.

12. *Q.* Are more seals shot while sleeping than in motion?—*A.* There are more shot sleeping. It is my opinion that the larger proportion of seals are shot while sleeping. The seals taken by the Indians are nearly all killed while sleeping.

13. *Q.* What is the shooting distance?—*A.* It depends upon circumstances; 10 to 20 yards for sleepers, and a little more, 10 to 30 yards, for travellers.

14. *Q.*

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14. Q. You have seen the hunters and Indians approach even nearer than 10 yards, have you?—  
A. Yes, I have seen them approach to within less than 10 feet.

15. Q. When seals are vitally wounded, say in the head, will they move far from the position in which they are shot?—A. No, Sir.

16. Q. They are likely to die right there, are they?—A. Yes, Sir.

17. Q. And they will not sink?—A. With few exceptions, such as when a seal is shot and thrown backwards, thus allowing the air to escape out of its mouth.

18. Q. Will you state your opinion, Captain Petit, of the proportion of seal lost by sinking after being shot?—A. My personal experience during last season with white hunters would not exceed 5 per cent., and with Indians in former years I doubt if it amounts to even 1 per cent. The reason of this percentage in favour of Indians is because they were caught with a spear, and consequently could not get away.

19. Q. Have you ever seen a seal shot while sleeping sink?—A. I have never known one to sink.

20. Q. Then you are clearly of the opinion that seals will not sink for some time unless thrown backwards?—A. I am. When they do sink, even to 10 or 15 feet, they can be reached with the gaff.

21. Q. When the hunters return to the vessel at night, do they usually discuss their day's proceedings, and particularly mention the loss of seals, when such loss occurs?—A. Yes.

22. Q. Then, Captain Petit, you conscientiously adhere to the statement that the loss by sinking of seals hit will not exceed 5 per cent.?—A. I certainly do; but there are seals hit and not mortally wounded, and these escape, but they are not "lost," as they are quite as vigorous as before, because their wounds heal very rapidly. I have often found shot in the skin.

23. Q. What is your opinion of the proportion of females to males killed during the last hunting season?—A. Last year, out of my catch of 765, I had only 18 females carrying young—not quite 2½ per cent. Of course, as in other seasons' catches, we had a number of barren cows—about the usual run, 10 per cent., and 12½ per cent. of grey pups. These grey pups are always bulls, and one year old.

24. Q. Your catch, then, would be about 75 per cent. of males last season?—A. Yes, Sir; including the yearlings it was more than 75 per cent.

25. Q. You say grey pups are always males; will you explain this?—A. The Indians called my attention to this fact years ago, but the reason is not quite known, still it is a fact. I have observed very closely, and have never yet seen a female grey pup one year old. I try to account for this by the supposition that the yearling grey male pups are driven early out of Behring Sea by the old bulls.

26. Q. Last year, did you hear any remarks about the number or proportion of the males to females caught from any one or any source?—A. Yes, Sir; I heard that a much larger percentage of males were caught last year than in any former year.

27. Q. I would ask you, Captain Petit, if in any former years there was a similar preponderance of males—do you remember of any such fact?—A. Yes, I do. In 1886, when off Barclay Sound, in one day we had taken 104 seals, of which 3 only were females. In the following year, 1887, when off Portlock Bank, we took 79 in one day, and only 2 females were found in that number.

28. Q. How do seal cows travel?—Singly or in pairs?—A. They travel singly or in pairs.

29. Q. How do bulls travel?—A. They travel in bands, as do also the bull pups. They travel singly too.

30. Q. Are female seals carrying young very timid?—A. Yes, Sir; they are. They sink their bodies so that nothing but their noses and eyes are out of water, and are therefore smaller marks for the hunters.

31. Q. Barren cows travel with bulls, do they?—A. Yes, Sir; barren cows usually travel with the bulls.

32. Q. Are there any months in the year during which there are more females than males killed? Any particular time that you have observed?—A. No, Sir.

33. Q. Is it your candid opinion that there are more barren cows killed than seal-bearing cows?—A. Yes, Sir; I think there are more.

34. Q. Do these barren cows, from the knowledge you have of seals—do you think that they ever become bearing?—A. I think they do.

35. Q. That they will have periods of bearing?—A. I don't think that a seal will bear before she is 4 years old.

36. Q. How long does a seal carry her young?—A. It is understood to be eleven months.

37. Q. Were there any circumstances occurred to you upon your last voyage which would indicate a marked decrease in the number of seals?—A. None whatever, Sir. On the contrary, I should say there were more. There seemed to be more last year, at least we saw more that year than for several years previously.

38. Q. In your observation as to the habits of the seals, they appear to be like the salmon—that they return from no known cause in larger numbers?—A. Well, I don't know, Sir; I think that they have their annual migrations; but there is question whether they follow the same track every year. You will find them on some grounds one year, and in other years on other grounds.

39. Q. Do you think that the number of female seals killed in the hunt is materially injuring the reproduction of seals?—A. No, Sir.

40. Q. Can you give a reason for that?—A. From the small percentage of females killed, I don't think it would injure reproduction in any way.

41. Q. Were you in Behring Sea last year, and were you ordered out?—A. And was ordered out by the United States' ship "Corwin."

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42. Q. Before being ordered out, what was your usual fishing distance from land?—A. 60 to 100 miles.

43. Q. You found seals all along that distance from land?—A. Yes, in large numbers.

44. Q. You had the prospect of a fair catch?—A. Yes, Sir; I had the prospects of a very fair catch up to the time I was warned.

45. Q. You consider it a very material loss, being warned at the time out of Behring Sea?—A. I do, Sir; I consider it a very heavy loss.

46. Q. You still adhere to the statement that the seals between 60 and 100 miles from land were as plentiful as in any previous years in your experience?—A. As plentiful as they were in any year since 1886.

47. Q. Did you observe in your catch in Behring Sea any preponderance of females over males, or vice versa?—A. Yes, Sir; the males were in excess.

48. Q. Can you state from recollection an average day's hunt in Behring Sea?—A. Forty-eight was about the largest I made while in Behring Sea.

49. Q. Do you remember hearing any of the hunters speak of losing any seals by sinking?—A. No, Sir; I don't remember any instances of such loss.

50. Q. Did you cross from the American side of the Behring Sea into the Russian side?—A. No, I didn't; I came straight home to Victoria through Uminimak Pass.

51. Q. During the year, did you hear from any source that any Canadian vessels had raided the seal islands or any of them?—A. No, Sir; I never heard of any British or Canadian vessels, and during the past year, or any year I have been engaged in sealing.

52. Q. Captain Petit, do you believe any of the stories that are told about the "Geo. B. White," the "Daniel Webster," and the "Mollie Adams" raiding these islands?—A. Yes, Sir; I believe those reports.

53. Q. These were all American vessels, were they not?—A. Yes, Sir.

54. Q. During the last two years, it is reported that the American schooners "J. Hamilton," formerly the British schooner "Aida," and the "City of San Diego," raided the Copper Islands?—A. Yes, Sir.

55. Q. Do you believe that is true?—A. I do, Sir; and also in 1886 or 1887, the American schooner "Look-out" raided the Pribyloff Islands, so that the history of raiding the seal islands is peculiarly American, and solely by American schooners.

56. Q. Was not the British schooner "Aida" seized by the American Government and sold?—A. Yes, Sir. In 1887, and renamed the "J. Hamilton Lewis."

57. Q. Is not this same vessel, the "J. Hamilton Lewis," the same vessel as was seized by the Russians this year, in the vicinity of Copper Island?—A. Yes, Sir; and served her right too.

58. Q. If any of the Canadian vessels had raided either the American or Russian seal islands, your long experience in the sealing fleet here would have insured your being aware of it?—A. Yes, Sir; I should certainly have heard of it—learned it from hunters, masters, or seamen. It would have been sure to have leaked out.

59. Q. Is it your opinion that ship-masters or ship-owners have been most careful in instructing their masters or captains to avoid any interference whatever with the seal islands?—A. I have served with different owners, and I have been instructed to carefully avoid approaching the islands within the international limit. In fact, all the sealing I have conducted has been done outside at least of the 20 miles from land.

Mr. Milne.—That will do, Captain Petit. Thank you very much.

(Signed)

WILLIAM I ETIT, Master.

Sworn to before me, at Victoria, British Columbia, this 23rd day of January, 1892.

(Signed)

A. R. MILNE, Collector of Customs.

Before A. R. Milne, Collector of Customs, Victoria, B.C., January 22, 1892.

Captain Wentworth Evelyn Baker, present master of the Canadian schooner "C. H. Tupper," and formerly master of the schooner "Viva," of Victoria, being duly sworn:—

1. Mr. Milne.—How many years have you been engaged in sealing, Captain Baker?—A. Four years.

2. Q. What Canadian schooners have you commanded during those four years?—A. The schooner "Viva."

3. Q. During the four years have you been more than reasonably successful as a seal-hunter?—A. Yes, Sir.

4. Q. How many white men would your vessel usually carry?—A. Twenty-three, all told.

5. Q. You have hunted all along the coast, and also every year in Behring Sea?—A. Every year except 1891. During last year I was always outside of the line of demarcation between Russian and American waters.

6. Q. During last year, to your observation, were seals as plentiful along the coasts to Shumagin Islands as they were the year before?—A. In some places I found them as plentiful; in others I found them more plentiful. In some places where I never found any before I found them last year, and I found none where I had previously found some.

7. Q. Then, Captain Baker, you think there is no material difference, on the average, during the four years? That is to your observation?—A. I should say, to my observation, there was no material difference.

8. Q. You found the first two years 1890, and in 1891, and in 1892.

9. Q. You did not find them so many as they were in 1890. I found them to be an increase of traffic.

10. Q. It is not mixed bulls—not mixed.

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8. Q. Your coast catch last year was equal to that of former years, was it?—A. It was equal to the first two years, and better than the third year by almost as many more skins, having 698 skins in 1890, and in 1891 I had 1,260 skins.

9. Q. Owing to the number of vessels, do the seals appear to be more timorous?—A. Well, I did not find them so, except in some places. It is a great deal owing to the position in which you find them. I found that the nearer the coast the wilder they are, and the further at sea you go they don't seem to be any wilder than previously. I think that what makes them wilder along the coast is the increase of traffic, steamers and so on being very numerous.

10. Q. It is said that seal travel in groups of females and groups of bachelor bulls and young bulls—not mixed. Is that so?—A. I have always found it so.

11. Q. So you think that the number of male or female seals caught would depend entirely upon the schooner falling in with groups of males or females?—A. Entirely.

12. Q. How is that?—A. It is much harder to keep the run of females than of the males or barren cows. Females with young appear to be much more timid, and when you get among them and commence shooting, they disappear very quickly, and show only the nose and eyes above water when travelling, and do not expose their bodies as much above the water as the bulls and barren cows do, as if the maternal instinct to preserve their young was apparent. This fact is well known to all seal-hunters. I have often been in a group of cows with pups during the afternoon, and at night they would all disappear, and, apparently from maternal instinct, they will travel away as quickly as possible.

13. Q. Do you consider it more difficult to shoot females, so little exposed as they are, than males?—A. It is decidedly more difficult, particularly on the coast.

14. Q. You have observed a number of barren females?—A. Yes; quite a [ ? ].

15. Q. How do they travel?—A. Usually by themselves, or mixed with bulls; I have never found a cow with pups among the bulls.

16. Q. Have you any idea what the percentage would be of the number of barren cows to the number of seals caught?—A. I could not say exactly, but the percentage is considerable.

17. Q. What is the accepted theory among the sealers as to the barrenness of cows?—A. I don't know as I have heard of any theory—unless they are like other animals.

18. Q. When you speak of barren cows, you mean those who have been more than one season barren?—A. Yes; because before that they are called pups. The barren cows are those who are old enough to have pups, but didn't.

19. Q. You are quite of a clear opinion, then, Captain Baker, that there is a considerable percentage of barren cows?—A. Yes, Sir.

20. Q. Are there more seals shot whilst sleeping than in motion?—A. Yes, Sir; my experience has been that there are more seals shot whilst sleeping, and that is the experience of most of my hunters, by their report.

21. Q. What do you consider the vital part of a seal?—A. The head or the heart, or in the neck.

22. Q. Do your hunters prefer to shoot the seal in the head?—A. Yes, Sir; on account of preserving the skin, and also that, the moment the seal is shot in the head, the head sinks and the seal cannot escape. Then, if the seal is not killed, the shot will stun it, and its head will drop below water, so that it cannot sink.

23. Q. What is usually a safe shooting distance?—A. For sleeping seals the distance would be about 10 yards, and for travelling seals the distance would be about 10 to 30 yards.

24. Q. Considering that the seals are shot in the head, and the greater portion whilst sleeping, will you state the proportion of seals lost, as compared with those hit, in sealing?—A. The proportion is very small, because, as the usual distance for shooting is about 10 yards for a sleeping seal, we most ways kill them instantly, and being so near the seal—even if they are inclined to sink—they are dead before they have time to sink. If they even did sink 15 feet, say, we could catch them, as when making they go very slowly. The only time I know of when a seal is likely to sink is after it has been chased around in the boats and winded, then shot again, so as to be thrown backwards, allowing the wind to escape from its mouth, when it sinks tail first. Every boat is supplied with a long pole, about 15 feet, and a spear and gaff on the end, so that we can reach that distance. It is very seldom that a seal will get away. I would say, therefore, from personal experience, that the percentage of loss, compared with those hit in sealing, would not exceed 3 per cent. Last year I killed, myself, on the coast, fifty-five seals, and out of that number I lost only one by sinking.

25. Q. As a general thing, is the percentage of loss more now than it was four years ago, or is it smaller?—A. From personal experience, I think about the same, and from the reports of the hunters I could judge it was the same, as they all report their experiences on their return to the vessel each night, and when a seal is lost it is always spoken about. From a record kept by hunters during two voyages the aggregate loss by each hunter is shown, and the percentage is not greater, on an average, than 3 per cent.

26. Q. How many hunters do you usually carry?—A. Six; and I hunted myself. The ship's company consists of twenty-three persons.

27. Q. What size shot do you use in shooting seal?—A. No. 2 buck-shot, or "S" Canadian shot; and the guns are of the very best material and very expensive, costing from 70 to 100 dollars.

28. Q. What do you think is the proportion of females to males in the number killed in the different months of the fishing season?—A. I don't know, I am sure. It depends upon circumstances. My experience last year was very largely on the bull side on the coast; that is, the proportion taken was largely male seals. I can conscientiously say that it must have been three bulls to one female, and I had a larger number of seals than any other vessel on the spring catch.

29. Q. In the Behring Sea, to your observation, were the males or females in the preponderance?—A. My experience is that they are very much as they are on the coast. Sometimes I would meet groups of all bulls, and again with groups of all cows.

30. Q. While in Behring Sea last year, what would be your usual sealing distance from the land?—A. I was not in Behring Sea last year, but in previous years it would be from about 30 to 60 miles from land. The usual distance is about 60 miles. Sometimes we are inside of that, sometimes outside of it.

31. Q. Last year, I understand you to say, Captain Baker, you were not in the Behring Sea on the American side?—A. No.

32. Q. Do I understand you to say that on the Russian side the same observations will apply to the habits and shooting of seal as on the coast?—A. Precisely the same as to their grouping and habits.

33. Q. During the four years that you have been sealing, Captain Baker, I would like you to state explicitly if you saw or heard of any Canadian vessels raiding the American seal islands?—A. No, Sir. To my knowledge I have never heard of any, and I have every reason to believe that there has never been any Canadian schooner raiding any of them.

34. Q. If anything like this had happened, you would have heard of it?—A. Most certainly would have.

35. Q. You have never heard any information of any of our sealers conniving to raid the seal islands?—A. I never did.

36. Q. Two years ago it was reported that some American schooners had raided seal islands. Do you hear such a report?—A. Yes, Sir; I heard a report that certain American schooners had raided these islands. The "Geo. R. White," "Daniel Webster," "Mollie Adams," and for two years the "J. Hamilton Lewis," have been raiding the Copper Islands on the Russian side, and it is reported that the American schooner "City of San Diego" also raided the Copper Islands last year.

37. Q. You have heard of the German schooner "Adèle" raiding these islands?—A. Yes; in 1889, with poor success. These illegal acts meet with the strong disapprobation of every Canadian sealer.

38. Q. And if Canadian sealers had done acts of that kind, you think it would most certainly have leaked out?—A. It most certainly would have.

39. Q. You are quite satisfied, then, that not a single Canadian schooner at any time has raided the seal islands?—A. Not to my knowledge. I don't know of one single case.

40. Q. What was your entire catch last season?—A. 1,991 for the whole season.

41. Q. Giving your opinion in confidence, what is your opinion of the seals on the coast and in Behring Sea? Are they decreasing or increasing?—A. From my experience, I have not seen any decrease, but I have noticed also that they change their grounds from time to time, and where you find them this year you may not find them the next. This was very remarkable during the year 1890, as the seals were all found to the eastward of Pribiloff Islands, while in former years they were found to the westward.

42. Q. When did you find them to the eastward of St. Paul's Island? I understand you to say that you found them very numerous?—A. More so than I ever did before.

43. Q. Have you any opinion to offer us to the return of the seals to the coast last year?—A. I have no direct opinion, but certainly the seals were more plentiful on the northern coast last year than the previous years.

(Signed) W. E. BAKER, Master.

Sworn to before me, at Victoria, British Columbia, this 22nd day of January, 1892.

(Signed) A. R. MILNE, Collector of Customs.

January 19, 1892.

Clarence Nelson Cox, master of the schooner "E. R. Marvin," of Victoria, examined by Collector Milne:—

1. Q. What vessels have you commanded on this coast and in Behring Sea, Captain Cox?—A. I have been two years master of the "Triumph," and one year mate of the "Sapphire" with my brother.

2. Q. This makes your fifth or sixth year?—A. This makes my fourth year. I was in Behring Sea so late last year; that is probably why it may seem I have been out oftener than others.

3. Q. The inquiry, Captain Cox, is to elicit, first, the number of seals lost by being hit. It is alleged that you lose a large proportion of those that are shot, and we wish to get at the facts. We wish to establish the number of females caught during the last and previous years, and also to investigate if there were any Canadian sealers raiding the seal islands. In the spring of the year, when you begin your work, you go down to meet the seals along the coast?—A. Yes.

4. Q. I have been given to understand that the seals travel in bands?—A. Yes; all the seals travel together, and all the bulls together, and the grey pups together.

5. Q. I suppose they are quite distinctly separated?—A. Yes; we got the grey pups along the shore, always inside of the large seals.

6. Q. As a matter of fact, you do not find many female seals bearing young travelling with the bull seals?—A. I have never seen them in company together. I have found the barren cows and bulls in company.

7. Q. This separation is from natural selection, or instinct?—A. Yes; while carrying the young they are never found with the bulls. The barren cows occasionally do travel with the bulls.

8. Q. During what months have you found more females carrying young as compared with other months of the sealing season?—A. In the winter, when we first go out—February, March, and April.

9. Q. That is the case with the pups about the coast?

10. Q. Why are they called "brown pups"?

11. Q. About what proportion of the seals killed are the barren cows?

12. Q. Why are they called "barren cows"?

13. Q. Is it the same as the "barren cows"?

14. Q. What is the composition of the group?

15. Q. As a matter of fact, during the season, how many seals are killed?

16. Q. Have you any comparison with the seals of the coast?

17. Q. You have seen the "Adèle" going to the coast?—A. That is all I know.

18. Q. What is your opinion of the sleeping seals?

19. Q. As a matter of fact, how many seals are lost, that is, that do not amount to anything?

20. Q. The seals would be more numerous if you had two barrels and a bar is not stuck in the barrel?

21. Q. You can exceed 4 or 5 per cent?

22. Q. This year?

23. Q. How many seals are on a stern boat?

24. Q. Your ship is not stuck in the barrel?

25. Q. And the seals are not stuck in the barrel?

26. Q. Your catch is more than 15 per cent?

27. Q. What is your experience there?

28. Q. About how many seals?

29. Q. You state that you got more than 15 per cent?

30. Q. And you got more than 15 per cent?

31. Q. Then you got more than 15 per cent?

32. Q. Did you get more than 15 per cent?

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48. Q. Your ship is not stuck in the barrel?

49. Q. And the seals are not stuck in the barrel?

9. Q. That is, both bearing cows and barren cows, too?—A. No; bearing cows. There are also grey pups about at that time.

10. Q. What do you mean by "grey pups"?—A. The yearling seal. After that it is called a brown pup, then a "two-year-old."

11. Q. Along the coast, from the time you strike them in the spring, do you shoot the larger portion of the seals sleeping, or are there more shot while travelling?—A. Yes; the larger portion of the seals killed during the season are shot while sleeping.

12. Q. You say you find the bearing cows travelling continually?—A. If the weather is rough, they are travelling, but if fine, they are usually seen sleeping or resting.

13. Q. Is it a fact that the females with young swim low down in the water?—A. Yes; the bulls and barren cows keep their heads well up, looking around.

14. Q. When you come upon a group of seals, your catch, then, will depend upon whether the group is composed of males or females?—A. Yes; very much.

15. Q. As a matter of experience, Captain Cox, have you come upon more groups of males than of females during the last year, say?—A. I have caught more bulls the last season—a great deal more. I had 848 seals coming up the coast before entering Behring Sea, and of these about 75 per cent. would be males.

16. Q. Have you any private opinion as to the reason of this preponderance of the males last year compared with previous years?—A. I cannot account for it. In fact, I could hardly advance any reason of the cause. I get the most of them from Queen Charlotte Island coast northwards.

17. Q. You think, though, with some of the other sealers, that at about May the cows are well in advance, going to Behring Sea, to the breeding grounds, consequently the males would be left behind?—A. That is the only reason I can see for it, because we get very few females "with pup" in May.

18. Q. What do you consider a sufficient shooting distance, that is, sufficiently close range sleeping seals?—A. A great many are shot inside of 15 yards. I think about 15 yards.

19. Q. As a professional sealer, what is your honest and candid opinion about the percentage of seals lost, that is, the number lost after being hit—those that sink?—A. With the Indian hunters it would not amount to one in a hundred. They kill with the spear, and I know it would not amount to per cent. I was only one season with Indian hunters. Last year I had Whites. I do not think there would be more than 4 or 5 per cent. with shooting by the white hunters.

20. Q. The spear of the Indian sealer is barbed, is it not, and fastens in the animal?—A. Yes, it has two barbs and a line attached, so that they are sure of their seal unless their line breaks, or the spear is not stuck in far enough to hold, neither of which happens often.

21. Q. You can quite confidently state that the loss of seals killed by white hunters would not exceed 4 or 5 per cent.?—A. I can.

22. Q. This you base upon your own personal knowledge?—A. Yes.

23. Q. How many of a crew do you carry on your vessel?—A. Six boats, that is, six hunting boats and a stern boat; seven in all.

24. Q. Your ship's company would be how many?—A. Twenty-three men.

25. Q. And the number of hunters?—A. Six hunters, or, counting the stern boat, seven hunters.

26. Q. Your catch last year was how many skins?—A. On the coast 848 skins.

27. Q. Of that number how many would be breeding seals?—A. I do not think there would be more than 15 per cent.—about 126 female skins.

28. Q. What percentage of them would be barren female skins?—A. About 10 per cent.

29. Q. Is the percentage of bearing cows greater than that of barren cows?—A. Yes; every year by experience there have been more bearing cows than barren.

30. Q. About 15 per cent., then, would be bearing cows, and 10 per cent. barren ones?—A. Yes.

31. Q. You stated that it would entirely depend upon the groups you struck along the coast whether you got males or females?—A. Yes.

32. Q. And you base your figures upon four years' experience?—A. Yes.

33. Q. Then you know the percentage of bearing cows would be 15 per cent., and the barren cows per cent.?—A. Yes. The first year I was with my brother I believe we had not more than 10 per cent. of cow seals; one of our seasons we had at least 90 per cent. bulls.

34. Q. That statement applies to Behring Sea?—A. Yes.

35. Q. What year was that?—A. 1889, when I was with my brother as mate of the "Sapphire." My catch on the coast up to Behring Sea was about 90 per cent. bulls.

36. Q. In the Behring Sea, what percentage of females had you, as compared with males—I told there are less bulls?—A. I think the percentage of bulls in Behring Sea is less than on the coast.

37. Q. Bachelor bulls?—A. Yes. The greater percentage would be cows—bearing cows; after they dropped their young we don't get them in Behring Sea.

38. Q. Do you not find a lot of bachelor bulls hovering about the outskirts of the groups of seals?—A. Yes, we get some, but there are more females in Behring Sea.

39. Q. Did you find it so last year?—A. Of course, I was not in Behring Sea long enough to know.

40. Q. Your remarks, then, would not apply to last season?—A. No.

41. Q. You think there would be about an equal number of cows and bulls in Behring Sea?—A. Yes; I think that the bulls and cows are about equally divided.

42. Q. It is well known among sealers that the old bulls keep their herds, and drive the "bachelor" off?—A. Yes.

43. Q. Do you find many groups of bachelor bulls in Behring Sea?—A. We do not find them much in groups as on the coast.

44. Q. Taking your whole catch for the past year, skin for skin, what percentage of females had you?—A. We had not more than 25 per cent. barren and bearing cows. That would leave us about 75 per cent. bulls.

45. Q. 25 per cent. females, including barren cows?—A. Yes.

46. Q. In the years before last would that percentage hold good?—A. I think the previous years would not differ very much.

47. Q. In the months of February, March, and April, you think that the females killed are more numerous than in Behring Sea?—A. I think so. We get a great many more grey pups in the winter.

48. Q. Among all the hunters it is pretty well known that the average of loss by being hit would not exceed 3 to 5 per cent.?—A. Yes; that is well known.

49. Q. Wounding a seal so that it escapes, you don't consider that lost?—A. No; they carry a lot of shot, and the hunters don't just shoot at it and leave it if it does not die on the spot, but give chase, and if wounded badly it has not much chance of getting away.

50. Q. Considering the hazardous occupation of sealing, the men get very expert in it?—Yes; I have a man aboard who does not lose five seals during the whole season.

51. Q. Is it your opinion that the female seals with young are somewhat timid, and more on the alert than the old bulls?—A. Yes; they are.

52. Q. That is one reason why the percentage of females is so small, I suppose?—A. Yes.

53. Q. In Behring Sea you say the percentage of loss would be more than on the coast?—A. I think the percentage of loss in Behring Sea is less than on the coast, because the sealers get more seals asleep in the sea. They seem to be right at home there, and not travelling about so much.

54. Q. Have you at any time known any of our vessels (that is, Canadian vessels), registered Canadian vessels, landing on the seal islands for the purpose of raiding and killing seals?—A. I can conscientiously say that I have never known of any of our vessels landing there.

55. Q. And have never heard our masters or sailors encourage that sort of practice?—A. No.

56. Q. Have you heard of any vessel having done so?—A. Yes; I have.

57. Q. What vessels?—A. The "Mollie Adams," "George R. White," and the "O. S. Fowler" of San Francisco, I heard, raided the Pribyloff Islands.

58. Q. That fact is well known to the whole fleet?—A. Yes, Sir.

59. Q. You were not in Behring Sea last season?—A. I was in, but didn't stay long; I was ordered out of it.

60. Q. You left as soon as ordered to leave?—A. I did; came direct home.

61. Q. Who warned you?—A. The British steamer "Pheasant."

62. Q. You didn't try to seal after that?—A. No.

63. Q. Or lowered your boats?—A. I didn't lower any boats after receiving the order.

64. Q. You have heard of some American schooners raiding Copper Island?—A. I have.

65. Q. Do you know the McLean brothers?—A. Yes; and the "City of San Diego" here, and the "Webster" and "J. Hamilton Lewis," three American vessels who raided Copper Island.

66. Q. You have no idea of why the seals were more plentiful along the coast last year than other seasons?—A. I have no idea.

67. Q. There has been no practical theory advanced as to why last year the seals were more plentiful close in shore than in other years?—A. I have none, except that it is on account of their food fish. The seal follows the food. The earlier those fish strike along the coast, and the closer in shore the earlier and closer to the coast we get the seals.

(Signed) C. N. COX.

Sworn before me, this 18th day of January, A.D. 1892.

(Signed) A. R. MILNE, Collector of Customs.

Captain Alfred Bissett, master of the Canadian schooner "Annie E. Paint," of Victoria, British Columbia, being duly sworn, says:—

20. Mr. Milne.—How many years have you been engaged in sealing?—A. Two years; this is my third year—have been master, mate, and hunter.

21. Q. You have had about average luck?—A. Yes; about the average.

22. Q. You have followed the seals from south of Cape Flattery north, haven't you?—A. Yes, Sir.

23. Q. During the last year, to your observation, were the seals as plentiful along the coast as they were the previous years?—A. They were.

24. Q. Did the seals appear more frightened than usual?—A. I think not; I noticed no difference.

25. Q. Did you notice last year, or any year, in hunting seals, that the cows travel together by themselves, and the bulls by themselves, in herds?—A. I did notice that the bulls, in a general way, travel together, and the cows together, and small seals—as a rule, pups—travel together.

26. Q. When hunting, of course, if you struck a band of bulls the catch that day would be principally bulls?—A. Yes; principally bulls.

27. Q. Do you think more seals are shot while sleeping than when in motion?—A. Oh, yes; more; about 80 per cent., I think.

28. Q. What do you consider a safe shooting distance for a sleeping seal?—A. For a sleeping seal about 20 to 30 feet is a sure distance.

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29. Q. And when they are on the move, what is the distance?—A. Well, from 25 to 30 yards.
30. Q. What is your opinion of the proportion of seals that are lost after being hit?—A. I think from 3 to 5 per cent. would cover everything.
31. Q. Where do you aim for in shooting a seal?—A. I aim for the head.
32. Q. So when a seal drops his head down, the air is stopped from escaping?—A. Yes; that is the reason we shoot in the head.
33. Q. During last year did you notice the proportion of females to males killed?—A. From counting the skins, and noticing the seals coming on board the ship, I should form 75 to 80 per cent. were bulls, and the remainder females.
34. Q. Do you know the reason of that?—A. I don't know, unless the cows travel a little faster than the bulls, who follow the coast. I have always noticed that there are more bulls killed on the coast than there are females.
35. Q. Have you ever noticed when the number of females predominate?—A. I hardly know, but I have noticed that during the months of March and April that there were more cows than males than in the months of May, June, and July.
36. Q. Can you form any idea, from what you have heard, whether there are more females killed than males?—A. I should say that there are decidedly more males. That is from what I have heard and seen myself. There is no doubt that the low price obtained in London this year is due to the large number of small bull skins taken, the skins of the females being larger and better.
38. Q. During the two years that you have been engaged in sealing have you ever known any Canadian vessel to raid any of the seal islands?—A. No, Sir.
39. Q. If there had been any such thing going on, it would have leaked out?—A. It would certainly have leaked out, and I would have heard of it. It is almost impossible to keep it quiet. (The above having been carefully read over to Captain Bissett, he corroborates and substantiates the same.)

(Signed)

ALFRED BISSETT.

Sworn before me at Victoria, British Columbia, this 18th day of November [sic], 1892.

(Signed)

A. R. MILNE, *Collector of Customs.*


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 January 19, 1892.

Captain Theodore M. Magesen, in command of the schooner "Walter A. Earle," of Victoria, examined by Collector Milne:—

1. Q. How many years have you been sealing in Behring Sea, Captain Magesen?—A. Three years; this will be my fourth.
2. Q. You have had very good success last year?—A. Yes; very fair success.
3. Q. Did you notice last year any perceptible decrease in the number of seals compared with previous years?—A. I think they were more plentiful last season than I ever saw them before.
4. Q. Do you mean in Behring Sea?—A. Yes; both along the coast and in the Sea. The biggest catch I ever made was last year, on the coast as well as in the Behring Sea.
5. Q. You have noticed the habits of the seals—how they travel?—A. They travel in batches, the bull seals by themselves, and the cow seals by themselves, and the yearling pups by themselves.
6. Q. As a matter of fact, are there more seals shot while sleeping than while they are travelling?—A. That is hard to say; but I think there are just as many shot while moving as there are sleeping seals.
7. Q. When you shoot seals by sleeping, what is the safe shooting distance?—A. About 25 yards.
8. Q. And when travelling?—A. About 45 to 50 yards.
9. Q. The usual mark you shoot at is the head of the seal?—A. Yes.
10. Q. When hit in the head, the seal does not sink?—A. No; sometimes he does, though, if he is shot when short of wind at the moment, and he will sink if you are too far away to pull it out.
11. Q. You have noticed them sinking?—A. Yes; they generally sink tail first.
12. Q. If the seal is shot in the head, he drops his head, and that confines the breast, and it floats?—A. Yes; that is the way I have accounted for them floating.
13. Q. How many seals, in your experience, do you think a hunter loses out of say, 100 shot at?—A. I know my head hunter killed 498 seals last year, and 17 of them sunk.
14. Q. That would be about 3½ per cent.?—A. Yes.
15. Q. Do you consider that a fair average on the number of seals lost?—A. As an experienced hunter, I think it is a fair average.
16. Q. Would you say that a man who loses, say, 5 per cent. of the seal he shoots would not be an experienced hunter?—A. He could not lose more than that.
17. Q. Will that percentage of loss apply to the travelling seals as well as to the sleeping seals?—A. Yes, the most of the seals lost are the ones shot by the ones moving or travelling.
18. Q. Your boats carry pole, spear, and gaff?—A. Yes; and if the seal sinks down 10 or 15 feet they are easily recovered.
19. Q. If you were on your oath, now, and heard any one say that for every seal that was killed male or female, one was lost, you would say it was a misstatement?—A. Yes; that is not so.
20. Q. If any one came here and said that for every seal you hit you killed another seal?—A. That is nonsense.
21. Q. The highest percentage of loss, you say, would be 5 per cent. for sinking seals?—A. Yes;

and I may say that I have taken seals with shot in them, dropped out when skinning, and they seemed as strong and healthy as ever.

22. Q. That is to say, that unless you shoot a seal in a vital part, the wound heals quickly?—A. Yes; and unless you hit it hard the seal gets away.

23. Q. You have seen females with young?—A. No; I never saw them carrying their young in the water.

24. Q. Down the coast the seals are pretty well divided, are they not?—A. Yes.

25. Q. The cows travel by themselves, and the bulls by themselves?—A. Yes.

26. Q. Did you say that you have caught more bull seals than cow seals during the season?—A. Yes, along the coast; but when I got up and up I got more bulls than cows.

27. Q. What months have you seen more cows in proportion than other months?—A. In February, March, and April.

28. Q. But even when you see more cows the average of the seals killed is in favour of the bulls, is it not?—A. No; it is about equal.

29. Q. You say the cows travel quicker towards the Behring Sea?—A. Yes; when we get further up the cow seals seem to leave the bulls behind.

30. Q. Has it always been so?—A. Yes; I have got 131 seals in a day, and not a cow amongst them, but you sometimes get one. I think the average is about 1 in 90.

31. Q. You always get more bulls than cows?—A. Yes, up there.

32. Q. How many out of every hundred seals you had on board your vessel last year would be females?—A. I think fully a half of them would be cows.

33. Q. How many of them would be bearing cows, and how many of them would be barren cows?—A. Of bearing cows, I think about 18 or 20 per cent. would be bearing cows. I do not think there would be so many as that. I had 2,000, and I think there would be only about 12 or 14 per cent. with pups; the others would be what are called barren cows, and a lot of them would be dry cows.

34. Q. With the barren cows and the ones bearing young you say would make up about half your catch?—A. Yes; about half and half.

35. Q. The proportion of males and females, though, depends upon the crowds or groups you get into?—A. Yes; it depends upon the band you strike.

36. Q. You never, at any time, had more females than males in any of your catches?—A. No, never.

37. Q. While in Behring Sea during the last four years had you ever heard of any Canadian schooners "raiding" the Pribyloff Islands?—A. No. I never heard of any of my crew being engaged in such. Several of my crews told me of the American sealers raiding them, but I never heard of a Canadian vessel doing so.

38. Q. If you were bound to make statement on your oath, you would say you believed no Canadian vessels ever raided the Pribyloff Islands for seals?—A. Not as far as I know.

39. Q. You believe, as a matter of fact, that the owners of Canadian sealers and their masters have never countenanced this raiding?—A. I believe that is the feeling that prevails among them all.

40. Q. You have heard mentioned the names of the American vessels that raided those islands?—A. Yes; I heard of the "Mollie Adams" and "George R. White," but not any others.

41. Q. You have not heard of any others?—A. No; I have not heard of any others.

42. Q. You have heard of vessels raiding the Copper Islands?—A. Yes; I have heard of the "Hamilton Lewis" and "Webster" raiding Copper Island.

43. Q. Those vessels you name are all American vessels?—A. Yes.

44. Q. Manned by American crews?—A. Yes.

45. Q. Have you any recollection of seeing any of those vessels in this (Victoria) Harbour?—A. No.

(Signed) THEO. M. MAGNESEN.

Sworn before me, this 23rd day of January, A.D. 1892.

(Signed) A. R. MILNE, Collector of Customs.

Henry Crocker, hunter on board the schooner "Annie E. Paint," having been sworn:—

65. Q. How long have you been engaged in sealing?—A. I have been hunting now for three years; this is my fourth.

66. Q. From your observation, do you think that the seals were as plentiful last year as they were during the previous seasons?—A. Yes; from what I saw of them I am sure they were just as many as before.

67. Q. In what months do the female seals seem to be the most plentiful in the sealing grounds?—A. I believe that from February to May the females seem to predominate in numbers; that is, when the cows are getting heavier with young, they make for the islands sooner than the bulls.

68. Q. Is it more difficult to shoot a female seal than it is a bull?—A. The males are more easily killed than the females, owing to the inquisitiveness of the males, and the females being more shy, and also as they move along the water with only their nose visible.

69. Q. As an experienced hunter, what percentage of loss have you had by seals sinking?—A. It is very rarely that a seal will sink. I have been a whole season and have not had more than half a dozen sink during the whole season.

70. Q. Can you form any estimate of what your loss has been?—A. I would say not more than 3 or 4 per cent.

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71. Q. Was the loss last year more than in previous years?—A. I could see no difference.
72. Q. As a reason for the small percentage of loss, you get very near the seals before shooting?—A. Yes, Sir; the usual distance is within about 20 feet to a sleeping seal.
73. Q. If a man has a higher percentage of loss than that, he must be careless, you think?—A. Yes, I should say so, and not a first-class hunter, for there is no necessity for losing a seal.
74. Q. Does your percentage of loss agree with other hunters with whom you have conversed?—A. Yes.
75. Q. So that on the coast and in Behring Sea the same percentage would apply?—A. Well, on the coast one does not very often sink a seal; but in Behring Sea, if a cow, having delivered her pups, is shot, she will be more apt to sink, as the blubber is very much thinner. But, on the whole, I think the percentage will not be more than 3 or 4 per cent. of loss.
76. Q. Have you taken notice in hunting whether there are more females than males, or the reverse, taken?—A. There is fully 80 per cent. of bull seals killed off the coast, as well as in Behring Sea. I think the reason for this is that the younger bulls are driven off by the older ones, who guard their particular herds.
77. Q. In the three years you have been in Behring Sea has it always been your experience that there were more males caught than females? And in what proportion?—A. I say about the same as this year; I don't see any difference.
78. Q. Does your percentage of females taken agree with that of other hunters with whom you have conversed?—A. Yes.
79. Q. As an experienced hunter, then, you adhere to the statement that for the whole season's catches for the years you have been hunting, that the percentage of seals caught will be about three males to one female?—A. Yes; about that.
80. Q. Do you include in that statement barren cows?—A. Yes.
81. Q. Have you any idea or reason of your own why the males come to predominate so much?—A. I think it is because the females make for the islands earlier than the young bulls and barren cows.
82. Q. Have you ever heard of any Canadian vessels raiding the seal islands?—A. No, Sir.
83. Q. You have never heard of any Canadian master or owner offering any inducement to hunters to raid the islands?—A. No, Sir.
84. Q. There has never been any bonus offered you to raid the islands?—A. No, Sir; while in Behring Sea we are always too anxious to get away from the islands.
85. Q. If any Canadian vessels had raided the islands you would have likely heard of it?—A. Yes. I think it is impossible to keep it so quiet as that.
86. Q. You have heard of American vessels raiding the Copper and Pribyloff Islands?—A. I have heard it. I have known of the American vessels going into Sand Point just after they had raided the islands, and I was in Sand Point when one vessel was fitted out for the purpose of making a raid.
87. Q. The masters with whom you have sealed all seem to have avoided the islands?—A. Oh, yes; they keep away from the islands between 50 and 100 miles. (The foregoing having been read over to the said Henry Crocker, he corroborates and substantiates the whole of the said statements.)

(Signed) HENRY CROCKER, *Hunter.*

Sworn to before me, at Victoria, British Columbia, this 18th day of January, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

George Roberts, hunter on board the schooner "Annie E. Paint," being duly sworn, says:—

55. Q. How long have you been engaged as a sealer?—A. I have been at seal-hunting for three years, one season as a hunter.
56. Q. Were the seals more plentiful last year than in previous years?—A. They were just about the same as regards number.
57. Q. How do the seals generally travel—in mixed numbers, males and females together?—A. The seals travel in bands of bulls and bands of cows, both by themselves.
58. Q. What is the proportion of seals lost by sinking after being shot?—A. Well, I should say that 3 to 5 per cent. would cover the whole loss. It is not more.
59. Q. What is the distance you are off a seal when you shoot, generally?—A. Well, from 20 to 30 feet for a sleeper, and for a traveller from 25 to 30 feet.
60. Q. What part of the seal do you aim at?—A. I aim at the head, as the best place, being the surest.
61. Q. Do you think there were any more female seals shot than males last year?—A. No; I think there were more males shot; in fact, I think that since I have been engaged in the business there have been more males killed than females.
62. Q. What months have you noticed more females than males?—A. In the months of March and April there are more females than at any other time. There are more females killed during those months than there are any other time.
63. Q. Have you ever heard of any of the Canadian vessels poaching on the seal islands?—A. I never did; I would have heard of it if there had been any. I have heard of the American raiders; but I do not know of a single Canadian vessel raiding a seal rookery.

64. Q. If a seal is sinking, does it go quickly or slowly?—A. If it is not too far away it can always be secured, as it does not go too quickly to get it.  
(The above having been read to the said George Roberts, he corroborates and substantiates all of the foregoing statements.)

(Signed) GEORGE ROBERTS, Hunter.

Sworn to before me at Victoria, British Columbia, this 18th day of January, 1892.

(Signed) A. R. MILNE, Collector of Customs.

Richard Thomson, hunter on board the schooner "Annie E. Painter," being duly sworn, says:—

40. Q. How long have you been engaged in sealing?—A. I have been engaged as a hunter for two years.

41. Q. Were the seals as plentiful last year as they were the previous year, to your observation?—A. Yes; I believe they were.

42. Q. Were the seals apparently harder to approach than they were in previous years?—A. No; I can't say that I saw any difference.

43. Q. How do the seals generally travel?—A. As a rule the bulls travel separately, and quite a distance apart generally.

44. Q. What is your experience in hunting as to the number of seals lost after being hit?—A. I should think from 3 to 5 per cent. would cover all.

45. Q. What is the usual manner in which seals are lost?—A. Well, if the seal is in a certain position and shot so as to allow the air to escape, the seal will be lost. As long as the head sinks below the water first, the seal will not sink. They very rarely sink in any case.

46. Q. You carry a spear on a gaff, don't you?—A. Yes; it is carried to spear the seals when they are going down.

47. Q. From your experience in sealing, you consider that from 3 to 5 per cent. would cover the total loss of seals, after being shot, through sinking?—A. Yes.

48. Q. When you shoot a seal at a distance, and do not shoot them in a vital part, they make off, do they?—A. Yes.

49. Q. You don't consider that lost, then?—A. No; we don't consider the seal lost unless it sinks.

50. Q. Have you handled more males than females during the past two years?—A. I should say more males.

51. Q. Have you any idea of the proportion of males—would there be two males to one female?—A. I should say from 70 to 80 per cent., or about three males to one female.

52. Q. In what months do you consider that there are most females killed?—A. During the months of April and May. There are apparently more females, but not as many as males.

53. Q. You have never known of any Canadian schooners raiding the seal islands, have you?—A. I have never heard of a Canadian, but I have of the American.

54. Q. During the time that you have been to Behring Sea, you would have heard of it?—A. I would certainly have heard of it.

65. Q. You have always sailed out of this port?—A. Yes, Sir.

(The above having been read over to Richard Thomson, he corroborates and substantiates the same.)

(Signed) R. THOMSON, Hunter.

Sworn to at Victoria, British Columbia, before me, this 18th day of January, 1892.

(Signed) A. R. MILNE, Collector of Customs.

Victoria, B.C., January 22, 1892.

Andrew Laing, called and examined by Collector A. R. Milne:—

1. Q. You are one of the oldest seal-hunters in the province, Mr. Laing?—A. I have been ten years at it.

2. Q. Your knowledge of sealing really goes beyond the present knowledge of the average sealer?—A. I have had as much experience as any of them. I think I know as much as any of them.

3. Q. Your observations on the west coast extend beyond the advent of the sealing business in Behring Sea?—A. Yes. I went on the coast in 1871, and have been sealing with natives for the last twenty-one years.

4. Q. You had ample opportunity of observing the life and habits of the seals?—A. Yes.

5. Q. From those observations last year did you notice any perceptible or material decrease in the number of seals?—A. None whatever.

6. Q. It was generally reported last year they were more numerous than the year before?—A. Yes. I think, if anything, they were a little more numerous than 1890.

7. Q. Does that remark apply to full-grown?—A. To full-grown and mid-sized.

8. Q. What direction do the seals on the coast usually come from?—A. They come from the south following the herring, which spawn on the west coast and different places, and the seal follow those fish into the shore or far out, as the case may be. The natives get a great number of these seals among a school of herring.

9. Q. What is the usual distance which the natives hunt away from shore?—A. In the spring

they will hunt the land.

10. Q. How February, or latter part of the month, can get a few seals.

11. Q. And

12. Q. You come down as far

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14. Q. Do they

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17. Q. But the males killed that

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males.

18. Q. When proportion of them

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20. Q. When

miss one in ten.

21. Q. And what

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40. Q. Among all

male?—A. Yes, it is

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that is impossible

41. Q. Have you

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own it into the wat

ten minutes, as long

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they will hunt 10 or 15 miles off, later in the season 20 or 25 miles. I have seen them 40 miles from the land.

10. *Q.* How long does the hunting of the seal on the west coast usually last?—*A.* Commences in February, or latter end of January, and lasts till the 1st June, when you get more or less seals; you can get a few stragglers in July.

11. *Q.* And the tendency of the seals is from the south?—*A.* Yes, following their food fish.

12. *Q.* You have been down the coast to where you meet the seals in their migration?—*A.* I have gone down as far as Shoal Water Bay, Columbia River.

13. *Q.* How do you meet the seals—in large bands or batches?—*A.* Yes, in schools, from two to twenty in a school.

14. *Q.* Do they seem to travel in pairs?—*A.* No, Sir.

15. *Q.* Do you find in these schools, or bunches, they are all males or females?—*A.* They are mixed. I remember an instance—I think in 1886—when we got on the coast off Cape Flattery either 104 or 09, am not positive, and out of that there were over 100 bull seals, and the next day we got about 86, and out of that number over 70 were bulls. That was in the year 1886.

16. *Q.* Would your observation lead you to suppose that your catch would depend entirely upon the group of bulls or females as to which your catch would be composed of principally?—*A.* As we get amongst them; yes.

17. *Q.* But taking one year with another—from 1886 to the present time—have you seen any more females killed than of bulls?—*A.* No, Sir. I think we have got about three males in five, and when we get up about the Bank, about Middleton Island, I think they will average more males than females.

18. *Q.* When you strike the seals on the coast about 40 or 50 miles from shore, do you find a large proportion of them sleeping?—*A.* They are generally sleeping. The Indians get noise but sleeping seals. I have never been working with Whites.

19. *Q.* The natives approach the seals very close?—*A.* Yes; and he comes to the leeward of them, and if there is any sea on they get into the trough of the sea and make no noise. If he went to windward the seal would scent him, and get away.

20. *Q.* When he gets close enough he throws his spear, and seldom misses?—*A.* Yes; he don't miss one in ten.

21. *Q.* And when once his spear is fastened, the seal never gets away?—*A.* No.

22. *Q.* If an Indian loses more than what you say, he would not be a good hunter?—*A.* No good at all. It would not pay to "jack" him.

23. *Q.* Do the Indians ever shoot?—*A.* Sometimes. They never shoot if the seal is sleeping.

24. *Q.* Does that percentage of loss apply to the sleeping seals only?—*A.* Yes.

25. *Q.* You mean by "loss"—what?—*A.* By sinking.

26. *Q.* If the seal is wounded so it gets away, you don't consider it lost?—*A.* No.

27. *Q.* If speared and wounded, and scurried off, you don't consider it lost?—*A.* Oh, no; not at.

28. *Q.* The Indian hunter is very close to the quarry, and rarely misses his aim?—*A.* Well, he will get within 25 or 30 yards of it.

29. *Q.* Have you noticed any marked difference in the manner in which the females carrying young travel as compared with the males?—*A.* The only difference I could see is that they will travel very fast for a little distance, and then turn up and rest.

30. *Q.* I mean, do they sink their bodies more?—*A.* No; they do not.

31. *Q.* Do you think that the female is more shy than the male, that is, those "with young"?—*A.* No; I think they are not any more shy. The female is always inclined to be sleepy. The male always on the watch, and will rise till his head and shoulders are out of the water.

32. *Q.* One hunter has said that the female lies deep in the water, exposing only a portion of her head?—*A.* I have never noticed that. When lying asleep one-half of the head is under water.

33. *Q.* Then you will say that the percentage of loss of the Indian hunters is not more than how many in the hundred?—*A.* Not more than one in ten; not more than 10 per cent.

34. *Q.* You say you never hunted with white men until this year?—*A.* No.

35. *Q.* If any person made a statement that there is a greater amount of loss than what you say, you would not regard it as correct?—*A.* I would say it was not correct, with Indian hunters.

36. *Q.* Your statement is based upon actual experience?—*A.* Yes.

37. *Q.* In going down the coast in the spring, in February, March, and April, have you noticed that females are more plentiful than in the following months?—*A.* I do not think they are.

38. *Q.* But as they come from the south, you think they are not?—*A.* Between January and June, between the south and the Shumagin Islands, have you noticed any time or place where there are any more females killed than others?—*A.* I think in May, I have noticed one thing: you will find, take one in ninety, you will never find a female pup. Where the female young go to is something that the Commissioners ought to have found out before they came down from the sea.

39. *Q.* It has been stated that the Indians say there is no such thing as a female grey pup?—*A.* I have never seen one yet, and cannot account for it, unless the females go one way and the males another.

40. *Q.* Among all yearling grey pups, there has never been any one known to have found a male?—*A.* Yes, it is a fact. I have heard a great deal of talk of females having young on the kelp, but I don't think that is so. Some hunters report of seeing pups off Middleton's Island, but I think that is impossible.

41. *Q.* Have you ever seen them ent a pup out of the female seal?—*A.* Yes; and I have seen the pup so cut out walk or move about the deck of the vessel, and I have tried to raise it. I have also seen it thrown into the water, and have seen it swim about like a young dog; I have seen it keep afloat for ten minutes, as long as the vessel was within sight. On the islands, the mother seal will take the

young and force them into the water to teach them to swim. They will never take the water freely themselves for from six weeks to two months.

42. *Q.* You think they will swim 50 yards probably, or 100 yards?—*A.* Yes; but don't think they could live continually in the water if they were born in it.

43. *Q.* When you strike the seals on the west coast, what would you say was the usual distance per day that the seals travel?—*A.* That is impossible to say; it depends upon their food.

44. *Q.* That is, they linger longer over good food than otherwise?—*A.* Yes; I remember in, I think 1888, where an Indian threw his spear at a seal, and his line broke; it was near the Shumagin Islands and he took the same seal the next day—we lay to all night—and he recovered his own iron spear head. That might show the distance they move in, say, a night, because it did not travel far.

45. *Q.* When you lower your boats two Indians go to a canoe?—*A.* Yes, and both paddle.

46. *Q.* The Indian in the bow keeps his spear right before?—*A.* Yes.

47. *Q.* And he throws it at the animal, and strikes it where?—*A.* It makes no difference where they are hit. They try when shooting to hit in the head.

48. *Q.* When a seal is struck, or wounded, what time does it require to heal?—*A.* It heals very rapidly.

49. *Q.* What time does it require to get the seal aboard after it is speared?—*A.* Not more than two minutes when they spear, and not as long as that when they shoot it.

50. *Q.* What is the usual length of the sealing-boat?—*A.* About 20 feet.

51. *Q.* And the canoe?—*A.* About 22 feet.

52. *Q.* Is it not a fact that sealing in these small boats in the stormy spring months is a very hazardous undertaking?—*A.* Yes.

53. *Q.* It is commonly reported that our seal-hunters, both Whites and Indians, are more expert than any others on the coast?—*A.* That is so. They are the most expert.

54. *Q.* It is said also that unless the weather is very tempestuous nothing will retard them?—*A.* Yes; they go out every chance they can get.

55. *Q.* The loss of a full-sized skin meant the last two years how much to the hunter?—*A.* About 3 dollars per skin.

56. *Q.* What is the largest number which you ever saw an Indian canoe bring aboard in one day?—*A.* Forty-eight in one canoe, in Behring Sea.

57. *Q.* On the coast, how many?—*A.* Thirty-four; that is over the average.

58. *Q.* In leaving the schooner, how far do the hunters, both Indians and Whites, go?—*A.* They go as far as 10 or 12 miles, sometimes 15 miles, from the vessel, till they can just see the tops of the sail.

59. *Q.* And this in pretty rough weather?—*A.* Yes; pretty rough. It might be smooth when they go out, but it often comes on rough before they can get back.

60. *Q.* In following the seals up the coast in February, March, and April, and May and June, where do you begin to get them in larger numbers?—*A.* Off Queen Charlotte Islands.

61. *Q.* At this time, are the females in advance of the males, seemingly hastening to the sea?—*A.* They get through as soon as they can, the males in advance of the females—they haul out last.

62. *Q.* Some sealers think the cows go ahead?—*A.* The males haul out, and each one gets his batch of females, and as the cows come in they make up their herd of females.

63. *Q.* Have you ever, when with sealers, heard the percentage of loss talked of?—*A.* No; I have never heard it mentioned with sealers.

64. *Q.* You speak from your experience with Indians? Your percentage of loss of 1 in 10 would be based on actual experience with Indian hunters?—*A.* Yes; 1 in 10.

65. *Q.* You have stated that in the month of May you think there would be more females than in the other months of the season? At that time what part of the ocean would you be?—*A.* I go to Queen Charlotte Island.

66. *Q.* You have also stated that the more plentiful the food, the slower the seals travel?—*A.* Yes; they stay longer where the food is.

67. *Q.* At the end of any of your seasons, have you actually counted the number of females you had in your cargo?—*A.* I have never done so.

68. *Q.* Have you any idea of your last year's catch, what proportion of females you had in your coast catch?—*A.* I think there would be about 3 males in 5—3 males to 2 females.

69. *Q.* That applies to the east catch only?—*A.* Yes; up to Kodiak.

70. *Q.* In the Behring Sea, what proportion would it bear?—*A.* I think about 4 males in 5—4 males to 1 female.

71. *Q.* Were you in Behring Sea last year?—*A.* The vessel was. The way I account for getting so many males was, during the beginning of July and August, when the females would be ashore nursing their young the greater part of the time.

72. *Q.* At any time in Behring Sea, what has been your nearest point of hunting to the islands?—*A.* I have never been closer in hunting than 30 miles—usually 30 to 90 miles off. We got blown in there once, the only time I saw the island; we were within 10 miles of the then.

73. *Q.* You never saw or heard of any schooners, or spoke any schooner, who made a boat raiding the islands?—*A.* None belonging to us. I heard of the "Webster," "Mollie Adams," and "Hamilton Lewis," and the German schooner "Adèle" raiding the islands.

74. *Q.* All these were American schooners?—*A.* Yes; except the "Adèle."

75. *Q.* There is no doubt, then, among sealers, that these vessels did actually raid the islands?—*A.* It has been commonly reported, and I have no reason to disbelieve it.

76. *Q.* Did any of those vessels at that time belong to Victoria?—*A.* No; they did not.

77. *Q.* Can you advance any idea as to when the seals leave Behring Sea?—*A.* To the best of my knowledge, about the middle of October.

78. *Q.* Is that return in

79. *Q.* You Victoria to ship from a Canadian

80. *Q.* It raiding of the one I have spoken

81. *Q.* You I do.

82. *Q.* Is and in San Francisco

83. *Q.* From plentiful than your year before, 1839

84. *Q.* Is same as with a for it.

85. *Q.* Refers female seals bar that have had your

86. *Q.* Who those that are be

87. *Q.* Have killed in April a

88. *Q.* No, 89. *Q.* Would certainly less than

90. *Q.* If an female killed, would

91. *Q.* You the bearing cows the fall. I don't

92. *Q.* You 93. *Q.* You a young?—*A.* The ashore at all.

94. *Q.* Are to this side of the S

95. *Q.* Year A. Yes, where the

96. *Q.* Your 10 per cent, with

97. *Q.* You 98. *Q.* Then cent?—*A.* It does

99. *Q.* In the males to females?

100. *Q.* As a positive that from opinion that no C

101. *Q.* If it A. Yes; it stands

102. *Q.* They could not keep it

103. *Q.* After and in speaking of they lost any, they

104. *Q.* You 105. *Q.* You fishing?—*A.* Yes.

106. *Q.* Has it usual?—*A.* About

107. *Q.* Is it average?—*A.* I ha

108. *Q.* It is in Behring Sea; th difference.

109. *Q.* It has light? The fur of th seals,

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78. *Q.* Is it the accepted idea that those seals which leave Behring Sea in the fall are the same that return in the spring?—*A.* That is my opinion.

79. *Q.* You have never heard at any time any inducement ever offered by a captain or sailor from Victoria to ship men or to perform any work with the intention of raiding those islands?—*A.* Not from a Canadian vessel.

80. *Q.* It is a fact that every ship-owner and master of Canadian vessels has deprecated the raiding of the islands, that is, have never agreed with it?—*A.* They do not agree with it at all. Every one I have spoken to are very well satisfied to go into the sea and get their catch legitimately.

81. *Q.* You think there is ample field for hunting seals without raiding the islands?—*A.* Yes, I do.

82. *Q.* Is it your opinion, Captain Laing, that, with the increased number of schooners here and in San Francisco, there will be any material injury to the sealing industry?—*A.* I do not think so.

83. *Q.* From observations made last year, you are quite of the opinion that the seals were more plentiful than you had ever seen them before?—*A.* They were more plentiful last year, 1891, than the year before, 1890.

84. *Q.* Is there any way you can account for that?—*A.* None whatever, unless it is the same as with any species of fish; some years you get more than others. There is no accounting for it.

85. *Q.* Referring to the number of females caught in the spring, there are quite a number of the female seals barren, or have never borne young? You have noticed it?—*A.* Yes; some are barren that have had young, and others that have not borne one.

86. *Q.* When you speak of the proportion of females killed, you mean the barren cows as well as those that are bearing young?—*A.* Yes.

87. *Q.* Have you formed any idea of the general average or percentage of females carrying young killed in April and May?—*A.* I could not form any idea.

88. *Q.* Nor of barren cows?—*A.* No, Sir.

89. *Q.* Would you hazard a statement that all the females, both bearing and barren cows, were certainly less than the male seals taken?—*A.* Yes; certainly less in number.

90. *Q.* If any one were to make the bold statement that for every male seal killed there is a female killed, would it be correct?—*A.* That would not be correct.

91. *Q.* You have not heard any estimate of the percentage of barren females as compared with the bearing cows killed?—*A.* There are less of the barren cows killed in the spring than there are in the fall. I don't think that they go as far south as the cows that bear young.

92. *Q.* You say that in Behring Sea the males preponderate?—*A.* Yes.

93. *Q.* You cannot account for this, you say, except it be that the females are all ashore bearing young?—*A.* The males we get in the sea are all 3- or 4-year-olds, which the old wigs would not let ashore at all.

94. *Q.* Are there any "rookeries" along the coast of any extent?—*A.* I have never heard of one this side of the Shumagin Islands.

95. *Q.* Year after year, hunting, then, do you find them travelling along the same course?—*A.* Yes, where their food is, from 15 to 35 miles out.

96. *Q.* Your opinion is that the percentage of loss as compared with those hit would not exceed 10 per cent. with Indian hunters?—*A.* How do you mean lost?

97. *Q.* You say a seal hit and not killed is not lost if it escapes?—*A.* Yes.

98. *Q.* Then the proportion of loss in proportion to those killed is about how much—10 per cent.?—*A.* It does not exceed that.

99. *Q.* In the number killed during the different months of the season, what is the proportion of males to females?—*A.* Three males to two females.

100. *Q.* As to the abstention of Canadian sealers from raiding the seal islands, you are quite positive that from your knowledge of sealing-vessel owners and masters, you give it as your direct opinion that no Canadian sealers ever raided those islands. You would say so upon oath in Court?—*A.* They never did to my knowledge.

101. *Q.* If such a thing had been attempted, it would, as a matter of fact, have leaked out?—*A.* Yes; it stands to reason the crews would have been unable to keep it to themselves.

102. *Q.* They would tell it either to their associates on board or after getting ashore?—*A.* They could not keep it.

103. *Q.* After the hunters get aboard at night, they usually recount whether they lost any seals, and in speaking of their loss it would mean those seals that would sink, not those that escape?—*A.* If they lost any, they would not tell it at all, but if they sunk any, they would speak of it.

104. *Q.* You are at present a ship-owner, Captain Laing?—*A.* Yes.

105. *Q.* You have had great opportunities of hearing from all sources matter relative to the seal fishing?—*A.* Yes.

106. *Q.* Has it been noticed that the skins taken last year in the Behring Sea were smaller than usual?—*A.* About the same general size.

107. *Q.* Is it generally known that the seals caught on the Copper Island are better than the average?—*A.* I have never seen them, but it is reported they are better.

108. *Q.* It is reported also that seals caught in January, March, and April are better than any in Behring Sea; they say the fur is better?—*A.* They say so, but I don't know that you can see any difference.

109. *Q.* It has been said that the fur of the seals caught during the winter and spring months is lighter. The fur of all animals in cold climates is thicker in winter?—*A.* I have never noticed that with seals.



110. Q. A few years ago it was said that the Behring Sea skins were the best?—A. It has been so reported, but I don't think there is any difference.

111. Q. The "grey pup" of this year will be a "brown pup" next year?—A. Yes; a "2-year old" or "brown pup."

112. Q. Do the hunters usually follow the grey pups with the same zeal as they do the other seals?—A. They can't tell the difference till they are actually "on top of them."

113. Q. And they are apt to shoot little as well as big?—A. Yes; everything they come across.

114. Q. Were the Indian hunters more successful last year than Whites?—A. No, they were not. It was a "stand off" between them. The only difference is that the Whites will risk more than the Indians.

115. Q. The expensive wages, cost of outfitting schooners, considered, don't you think that 4 dollars per skin a high figure for hunters?—A. It is.

116. Q. How many boats does the average schooner carry?—A. About six and the stern boat.

117. Q. And each boat takes three white men?—A. Yes, a hunter, a boat-puller, and a log-steerer.

118. Q. The ship furnishes the boat, guns and outfit?—A. Yes, the whole outfit of gun-ammunition, provisions, wages for the two men, and pays the hunter so much per skin.

119. Q. At the present time, how much per skin?—A. 3 to 4 dollars.

120. Q. With Indian crews?—A. They furnish their own canoe, spears, and outfit; one Indian steers; but the vessel furnishes them in provisions only. The last two or three seasons some vessels have supplied guns and ammunition.

121. Q. Does the Indian get 4 dollars per skin; does he out of that pay his own boat-helper?—A. Yes, he pays out of his rate per skin. The ship pays the steerer nothing.

122. Q. Therefore, if the Indian crews were as profitable, they are the cheapest; if they get a many skins?—A. Yes, if you can get them.

123. Q. Is the Indian a good hunter, in your experience?—A. Yes, Sir.

124. Q. Bold and intrepid?—A. Yes, when he is in his canoe nothing will scare him. I have seen an old bull seal capsize a canoe, and the Indians would get into it again, bail the water out, and go on hunting as though nothing had happened.

125. Q. Is the Indian lazy, or does he seem anxious to proceed in the hunt from day to day?—A. In fine weather, yes, but when the sea is "choppy" he would usually rather stay aboard.

126. Q. His canoe is not quite so strong as the sealing-boat?—A. No, not quite.

127. Q. Have there been many accidents among the Indians—loss of life?—A. Not since, I think, 1887, when a schooner foundered with all aboard.

128. Q. Do you think that as the years pass along the Indians, as well as the Whites, get more expert in seal-hunting?—A. Yes, they do.

129. Q. Notwithstanding all the ships in the fleet on the ocean, you would adhere to your statement that you don't think there is any noticeable decrease in the number of seals?—A. Yes, do not think so. If the vessels had been let alone in Behring Sea last year, we would have had a bigger catch than any previous year.

130. Q. Do you think, Captain Laing, if they would cease killing seals on the Pribyloff Islands would increase the number of seals on the coast?—A. I think it would.

131. Q. If the rookeries were undisturbed by anything, you think the seals would be plentiful?—A. I do.

132. Q. Have you any opinion to offer as to killing seals on the islands doing more harm than anything else?—A. I think the American people are doing more harm by killing seals and interfering with them on their rookeries or seal islands than we hunters do on the coast.

133. Q. You have never heard of any rookery along the coast?—A. I never heard of one. There is a rookery of sea-lion off Queen Charlotte Island, but I never heard of any of seals.

(Signed) A. D. LAING

Sworn before me, this 25th day of January, A.D. 1892.  
(Signed) A. R. MILNE, Collector of Customs.

January 25, 1892.

William Cox, present master of the schooner "Sapphire," of Victoria, called and examined by Collector Milne:—

1. Q. You are engaged in the sealing business, Captain Cox?—A. Yes, I have been master of a sealing-schooner "Sapphire" for the last four years.

2. Q. How many boats do you carry in your outfit?—A. I carry canoes and an Indian crew.

3. Q. With the exception of how many white men to navigate?—A. Seven white people for navigating the vessel.

4. Q. The number of Indians?—A. The last two years I have had twenty-eight north of Behring Sea.

5. Q. And how many canoes?—A. Fourteen canoes.

6. Q. Had you more canoes?—A. Yes, I have had twenty-four canoes while on the coast.

7. Q. When you finally leave for Behring Sea, you drop a number of the Indians, and only take about fourteen canoes with you?—A. Yes.

8. Q. Do you prefer Indian crews to white men?—A. Yes, I do.

9. Q. V. thing; there They don't little more.

10. Q. more.

11. Q. heavy outfit,

13. Q. The canoes are

14. Q. A with a white

15. Q. I A. Yes, almost them to do.

16. Q. D. they spear all

18. Q. W. hundred; but they did more

19. Q. D. A. Yes, they are

20. Q. D. on the wind; that the seal sh

21. Q. W. they cannot lose

22. Q. The would really co

23. Q. The 24. Q. The

25. Q. The 26. Q. And

27. Q. You the Indian fires

28. Q. So it would be how r

29. Q. From the seal would b

30. Q. In th seals bearing you

31. Q. Does have not seen m

32. Q. Durin of males to fema

33. Q. That seen a female gre

34. Q. That

38. Q. But t

39. Q. Your

40. Q. Now, (January), till the

41. Q. Yes, about 65 or 70 per

42. Q. About 15 per cent. of ha

43. Q. There have seen three w



9. Q. What are your reasons for the preference?—A. Well, I get along better with them for one thing; there is more honour among them than among the average white crew in this business. They don't make an agreement to-day, and break it to-morrow if they see a chance to make a little more.

10. Q. And they don't quarrel among themselves?—A. No; and you can generally trust them more.

11. Q. They are more profitable, too, are they not?—A. Yes, a little more.

12. Q. They furnish their own canoes?—A. Yes, and spears and boatmen; and it is not such a heavy outfit, but their canoes are light and easily broken by the heavy seas.

13. Q. They are better than aboard a large vessel?—A. Yes, but you have to be very careful—the canoes are "dug-outs" and easily shattered.

14. Q. Apart from getting along easier with the Indians, the experience is just about the same as with a white crew?—A. Yes, the skins cost about the same in the end.

15. Q. Do the Indian crews venture out during the stormy weather as much as the white men?—A. Yes, almost as freely. I have had the same crew so long now that they will do anything I wish them to do.

16. Q. Do you take them down the coast?—A. Yes, and up the coast and on into Behring Sea.

17. Q. They spear all their seals?—A. The greater number of them, yes, but sometimes shoot; they spear all the "steepers."

18. Q. What proportion do you think they shoot?—A. They shoot probably twenty out of the hundred; but I think now the fleet is getting so large there are more wike seals, that consequently they did more shooting with me last year than ever before. They never shoot a sleeping seal.

19. Q. Do you think the seals are getting more shy on account of the larger fleet of vessels?—A. Yes, they are much more shy.

20. Q. Do the Indians approach the seals from leeward?—A. No; the Indian always goes "across on the wind;" he pulls up almost in range of it, and goes across the wind. They have a sort of idea that the seal sleeps with one eye open, hence the way they approach.

21. Q. When they heave the spear, the barb holds fast?—A. Yes; if they strike the seal at all, they cannot lose it.

22. Q. Therefore the percentage of seals killed by Indians and lost would be very small?—A. I would really count it nothing. If they did lose one by the spear pulling out of the blubber it would not kill the seal, as it heals so quickly again.

23. Q. The barb holds them, and they have no chance to sink?—A. Yes.

24. Q. Therefore the percentage of loss is nothing?—A. I would not reckon it anything.

25. Q. The loss they make is only when firing at a travelling seal?—A. Yes.

26. Q. And that loss would be by the animal escaping?—A. Yes.

27. Q. You would not consider it lost, then?—A. No; if not hit in a vital part it is not lost, for the Indian fires at a close range, and there are two in a boat, and almost sure of it before the shot is fired, because they can't sink far before they are right on to it.

28. Q. So the percentage of the seals lost by Indian hunters, "sleeping" and not "travelling," would be how much?—A. With sleeping seals there is no loss. In travelling seals there are none lost, only in escaping. Last year I saw a great number of seals brought in that had been shot before.

29. Q. From personal knowledge and observation, you are satisfied that a flesh-wound made in the seal would heal rapidly and not injure the seal?—A. Yes; the shot seems to strike in the fatty parts or blubber, and does not seem to hurt the animal, as it closes over and soon heals.

30. Q. In the months of February, March, and April, have you seen a marked number of female seals bearing young killed?—A. Yes; in winter there are a number.

31. Q. Does that mean "barren" cows?—A. No; on the coast we get them "with young." I have not seen many "barren cows" out here in winter.

32. Q. During the months of February, March, and April, what would you say was the proportion of males to females?—A. I have only done one winter's sealing, and that winter they would be fully one-half females during February and March.

33. Q. That is, there would be as many females as bulls and grey pups?—A. Yes; I have never seen a female grey pup on the coast. That is a yearling grey female seal; that is corroborated by the Indians. All the yearlings seen by me have been males.

34. Q. That is well known, you say, by the Indians?—A. Oh, yes. They remark this.

38. Q. But there is a larger number of males killed than females in April, May, and June?—A. Yes; in those three months we get a larger number of males; bulls from 3 to 4 years old; all about the same size.

39. Q. Your opinion is that the females, after the month of May, hasten on to the Behring Sea?—A. Yes.

40. Q. Now, from the beginning of the sealing season, when you start out this time of year (January), till the time you enter Behring Sea, what is your opinion as to the percentage of female seals, including both bearing and barren cows, killed? What would be the proportion of female seals, including both bearing and barren cows, killed? What would be the proportion of females as compared with the bulls?—A. Right up to the Shumagin Islands?

41. Q. Yes. Would it be 60 per cent, or 70 per cent, or what?—A. Yes, I think it would be about 65 or 70 per cent, of males, and the remainder mixed cows—bearing and barren cows.

42. Q. About what percentage of barren cows?—A. I think about equally divided: about 15 per cent, of barren and 15 per cent, of bearing cows, and 70 per cent, of bulls, would pretty near represent the catch on the upper and lower coast.

43. Q. There is an opinion expressed that a seal pup will not swim; some people say so?—A. I have seen three with their dams in the water on the Alaskan coast.

44. Q. How far from shore?—A. 40 or 50 miles from shore, in the month of June.
45. Q. Is it your opinion that they would be born in the water?—A. Yes, or on the kelp. Seal mate in the water, sleep in the water, and I have seen pups taken from the dead mother on the vessel and thrown aboard and swim about awhile in the water. I have watched such pups swim about for half-an-hour or more. They seemed to have no difficulty in swimming.
46. Q. You have never seen or heard of a Canadian sealing-schooner attempting to raid the Pribiloff Islands?—A. I have never heard of one.
47. Q. If such a thing had been done or attempted it would be sure to be known among sealers?—A. Yes; it would be impossible to keep it a secret.
48. Q. Is it your opinion that our ship-owners and masters have done everything they could possibly do to discourage anything of that kind?—A. Yes; everything.
49. Q. What has been the general distance you have sealed—the distance from the seal islands?—A. From 100 to 140 miles. I was within 80 miles of them last year; that was the nearest I was to them.
50. Q. Of course your men on board would, if they had ever been engaged in such raiding of the islands, certainly have told their fellows?—A. Yes, it would soon have become known.
51. Q. It is well known to all sealers that certain schooners have raided those islands?—A. Yes, during 1889 and 1890.
- 51\*. Q. Do you remember what their names are?—A. Yes; the American schooner "Mollie Adams," "George B. White," and others.
52. Q. Do you remember any other schooner raiding the islands?—A. Yes; the German schooner "Adèle."
53. Q. It was well known that it was a German vessel?—A. Oh, yes.
54. Q. Those American vessels that raided the Pribiloff Islands recruited their crews—where?—A. I think the "Mollie Adams" recruited her crew at Gloucester.
55. Q. In the United States?—A. Yes; she fitted up in Port Townsend, Washington.
56. Q. Did you ever hear of any American vessels fitting out at Sand Point to raid the islands?—A. I do not remember it.
57. Q. Were you ordered out of Behring Sea last year?—A. Yes.
58. Q. By whom?—A. The British steamer "Porpoise."
59. Q. On being ordered out of the Sea, you immediately complied?—A. Yes; I came right away.
60. Q. Did you lower your boats afterwards?—A. I did not. I came right out of the Sea.
61. Q. What month was that?—A. 9th August.
62. Q. Had you not been ordered out, were you in good hunting ground?—A. Oh, yes.
63. Q. Were the seals plentiful at the time you were warned; that is, as plentiful as you had previously seen them?—A. Yes; just as thick as ever.
64. Q. What was your catch up to the time you were warned out?—A. 2,434 in Behring Sea.
65. Q. What was your coast catch?—A. 1,008 on the coast, and 2,434 in the Sea.
66. Q. Had you been unmolested for another thirty days your chances; were good for a large catch?—A. Yes; our chances were good for quite doubling our catch.
67. Q. Your principal ground for sealing you found—where?—A. About 100 miles westward of the Islands of St. George and St. Paul. I took 1,000 in four days there.
68. Q. During that time, when you were getting seals so quickly, was your percentage of loss greater there than on the coast?—A. No; they were very quiet.
69. Q. You have stated that, from your personal observation, you think the seals were as plentiful last year as you have ever seen them in Behring Sea?—A. Yes; much more so than I ever saw them before.
70. Q. More so at a distance of 100 to 130 miles from the nearest seal island?—A. Yes.
71. Q. What course would that lie from the Pribiloff Islands?—A. About west.
72. Q. At the time you were sealing there were there any other Canadian schooners in your company?—A. Yes; the "Annie C. Moore," the "Carmelite," and the "Ariel." They had all an average catch.
73. Q. Have you ever heard of the McLennan raiding Copper Islands?—A. Yes.
74. Q. Do you believe they did actually raid them?—A. Yes.
75. Q. Did you hear the story of their going, with three boats of the "Webster" and "City of San Diego" in a crowd, landing at a passage between the rocks and the mainland of the island, and standing there, where the water was swift, and shooting the seals as they passed through?—A. Yes, but they lost a great many. The captain of the "San Diego" said that they didn't get one-tenth of what they shot.
76. Q. It is the prevailing opinion among the sealers that the "J. Hamilton Lewis" was seized by landing on the islands?—A. Yes; the Russians had been watching her. She was seized for actually raiding the islands.
77. Q. You didn't go to the Copper Island side at all?—A. I did not.
78. Q. In leaving Behring Sea, where did you come out through?—A. Through the Four Mountain Pass.
79. Q. After you had been warned out, did you speak any other cutter?—A. I did not.
80. Q. Did you see any seals from the time you were warned out till the time you came through the pass?—A. They were just as thick as ever within 40 miles of the Four Mountain Pass. We were two days sailing through them. It grieved us very much, I can tell you, to sail through seals and couldn't touch them.
81. Q. The Four Mountain Pass is about what longitude?—A. "172 Pass" we call it.
82. Q. But you say there were plenty of seals from the time you were warned out to within 40 miles of this pass?—A. Yes; just as thick as where we had left.

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33. Q. Will you state in direct evidence, as though in Court, that, as far as your knowledge goes no Canadian sealer, directly or indirectly, ever raided or attempted to raid the seal islands?—A. I have had ample opportunity of learning if such had been the case, and I know of none.

Captain Cox, continuing, said: I didn't take one "bearing" female seal last season in Behring Sea. I have taken a few which were evidently "with milk."

34. Q. What percentage do you say?—A. There might be 5 per cent. of what I took which had had young; there was evidence of having had young; whether they had last year or not I do not know.

(Signed) WILLIAM COX.

Sworn before me this 25th day of January, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

Victoria, B.C., February 15, 1892.

*Seal-hunting in North Pacific Ocean and Behring Sea.*

Captain Charles Hackett, master and managing owner of the schooner "Annie C. Moor," of St. John's, New Brunswick, being duly sworn:—

Q. How many years have you been sealing?—A. This is my fifth year.

Q. You have had reasonable success in seal-hunting?—A. Yes.

Q. You have followed sealing from San Francisco to Behring Sea?—A. I have.

Q. What has been the number of your crews?—A. Twenty-three men all told.

Q. The number of boats your vessel carried?—A. Seven altogether.

Q. You have had every opportunity of seeing seal life?—A. I have.

Q. On the coast did the seals appear to be as plentiful last year as former years?—A. I have found them so.

Q. Please state how the seals travel?—A. As a rule we find the bearing females by themselves.

Q. Did the seals appear more timorous last year than former years?—A. I don't think so.

Q. Are there more seals shot whilst sleeping than travelling?—A. As far as my experience has been that about seven-eighths, that is seven are shot while sleeping to one travelling.

Q. Please state about the average distance that seals are shot while sleeping?—A. From 10 to 15 yards.

Q. What do you consider the proportion of seals lost as compared to the whole that are hit in pelagic sealing?—A. One of my hunters, named Folger, killed over 400 seals during the season, and only lost five seals; the exact number is hard for a master to say, but I believe that 5 per cent. would be the outside.

Q. Captain Hackett, would you consider that a hunter that lost more than five in the hundred would not be a good hunter?—A. I certainly do.

Q. Do you mean by "being lost," that is by sinking?—A. When I say lost I mean by sinking.

Q. When a seal is shot in the head you generally get him, and mostly all the seal are shot in the head?—A. They are; and when we shoot them from the deck of the schooner, to lower the boat and bring the vessel to generally is from ten to fifteen minutes; but we always get the seal floating.

Q. From recent observation, then, you would say that the actual loss during the seasons you have been sealing will not exceed 5 per cent.?—A. I certainly say so.

Q. Are there more lost on the coast than in Behring Sea?—A. In the Behring Sea the percentage of loss would not be 5 per cent.

Q. Have you observed in any month a greater number of females than in other months; that is, on the coast have you observed a greater number of females taken during the months of April and May?—A. I have not observed any difference.

Q. What proportion of females were in your catch last year (1890), and also in 1891?—A. In 1890 about one-quarter were females, and in 1891 about half and half.

Q. Would this percentage apply to your catch in Behring Sea as well as on the coast?—A. Yes; the percentage of females in 1890 would be about one-quarter, and in 1891 about half and half.

Q. What was your catch in 1890?—A. About 1,500.

Q. What was your catch in 1891?—A. 2,070 seals.

Q. What proportion of females with pup did you observe taken on the coast during the past two years?—A. About half and half.

Q. What proportion of females with pup did you observe in Behring Sea?—A. In a catch of 1,555 seals in Behring Sea last year I had only ten females with pup; those with pup were taken between the 15th and last of July, and that those females killed with pup appeared to come from the westward and got mixed with groups of other female seals which had their young and were entirely dried up.

Q. Do you find many yearling pups in Behring Sea?—A. No; I have found no yearling pups in Behring Sea; we get what we call the white-belly pups; they are from two- to three-year-old pups, and we get quite a number of barren cows.

Q. What do you mean regarding barren cows?—A. I mean those who have not borne young during that year.

Q. Did you notice if the seals were smaller in size last year?—A. I did not; they were as large as any year.

Q. Whilst in Behring Sea last year were the seals as numerous as you have seen them before?  
A. They were more numerous than I have ever seen them before.

Q. What age is a seal-skin at its best?—A. I consider at 3 years old.

Q. What has been the distance from the Pribyloff Islands that you were while sealing any year in Behring Sea?—A. From 50 to 100 miles, and was never nearer than 50 miles.

Q. You were warned out of the Sea last year?—A. I was.

Q. Were the seals plentiful at the time?—A. They were quite numerous.

Q. How far were you from land when warned?—A. About 100 miles to the westward of Pribyloff Islands.

Q. Had you not been ordered out of the Sea your catch would have been good?—A. My catch would have been at least 3,000 seals.

Q. Have you ever heard of any Canadian vessels during the years that you have been employed in the sealing industry raiding the Pribyloff seal islands in Behring Sea?—A. I have not.

Q. You would have certainly heard of it had it occurred?—A. Had that been done, I would have heard it; I am acquainted with all the principal sealing men.

(Signed) CHAS. HACKETT.

Sworn before me this 15th day of February, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

Victoria, B.C., February 8, 1892.

Caleb McDougall, master of the schooner "Pioneer," of Victoria, British Columbia, personally appeared, and being duly sworn, doth depose and say:—

That this is the third year that he has been engaged in hunting seals in the Northern Pacific Ocean and Behring Sea.

That he has had every opportunity of watching every peculiarity of seal-hunting.

That it is his opinion, from actual observation, that the number of seals lost, as compared with those hit in pelagic sealing, is about one in fifty, that is, one seal is lost to fifty caught.

That the loss of seals is by sinking.

That the greater number of seals are killed while sleeping.

That seals travel in groups, that is, groups of males and groups of females, also of grey or yearling pups.

That in Behring Sea during the year 1890 in one place the hunters would bring 110, and 120, and 130 each day, all males and no females, that is, in that one place, and the greater number of his catch (1890) were male seals, that is, his vessel had 1,100 in Behring Sea, of which 800 were males and the rest females.

That there is no doubt but that the old bull seals drive the younger males away from the islands, and that is the reason why he considers that more males are caught than females in Behring Sea.

That the proportion of barren cows is about one in ten to the bearing cows, that is, there is one barren and ten bearing in Behring Sea.

That since he has been engaged in sealing he thinks the seals are increasing, and that he found the seals in Behring Sea thicker last year than he ever found them.

That it depends entirely upon what portion of the Sea that the vessel is in and striking a band of males or females, but with all vessels in Behring Sea the catch is always more males than females.

That he does not know of any single instance of a British sealing-vessel raiding the seal islands in Behring Sea, and he is quite sure that no British vessel in any case attempted to raid the seal islands. If they had, he would have heard of it.

(Signed) C. McDUGALL.

Sworn before me, this 8th day of February, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

Victoria, B.C., February 1, 1892.

1. Q. Captain William O'Leary, how many years have you been sealing?—A. This is my sixth year.

2. Q. You have been generally successful?—A. Yes.

3. Q. You have had all opportunities of watching every peculiarity of seal-hunting?—A. Yes.

4. Q. What is your opinion of the proportion of seals lost as compared with those hit in pelagic sealing?—A. My opinion is that only 3 to 5 per cent. are lost.

5. Q. Do you mean those who are lost by sinking?—A. Yes.

6. Q. Are there any lost in any other way?—A. Yes; by escaping.

7. Q. What is your opinion of the proportion of females to males taken during the season on the coast?—A. My experience on the coast has been that the females and males are about equal, and of the females there are an equal number of barren cows and bearing cows.

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8. Q. What is your opinion about the proportion of bearing cows?—A. About half and half, that is, half barren and half bearing cows.

9. Q. In Behring Sea is your catch chiefly male seals?—A. Yes; about three to one; that is, three males to one female.

10. Q. Captain O'Leary, what is your opinion about the increase or decrease of seals?—A. I think the seals were as plentiful last season as I have ever seen them.

11. Q. Captain O'Leary, being one of the oldest sealing captains, do you know of any single instance of a British sealing-vessel raiding the seal islands?—A. I have never heard of one, nor do I believe that any British vessel raided or attempted to raid the seal islands; I would have heard it if such had been attempted.

(Signed) WILLIAM O'LEARY.

Sworn before me, this 1st February, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

Victoria, B.C., February 16, 1892.

*Re Sealing in Pacific Ocean and Behring Sea.*

Alex Douglas, present master and managing owner of Canadian schooner "May Belle," of Victoria, British Columbia, being duly sworn, in answer to the following questions, says:—

Q. How many years have you been sealing?—A. I have been seven years.

Q. You have been reasonably successful in the sealing industry?—A. Yes, I have.

Q. You have followed the seals along the west coast and in Behring Sea?—A. Yes, Sir; I have.

Q. How many men composed your crew last year?—A. Twenty-one men, all told.

Q. The number of your boats carried?—A. Six boats.

Q. You have had every opportunity of being acquainted with the habits and life of the seals?—A. I have.

Q. On the coast, did the seals appear as plentiful last year as former years?—A. I have seen no decrease; in fact, I saw more seals last year, but they appeared a little shyer.

Q. In Behring Sea, did the seals appear as plentiful last year as formerly?—A. I saw more seals and larger bodies of seals in Behring Sea last year than in any year before.

Q. Did the seals appear more timorous in Behring Sea than formerly?—A. No, they did not, but seemed quite quiet, and not frightened.

Q. On the coast do the females travel by themselves?—A. The females generally travel by themselves; think the males don't travel so far south. We find the males appear more plentiful towards Alaska.

Q. Are there more seals shot sleeping than travelling?—A. Yes, Sir.

Q. What is the usual distance that seals are shot while sleeping?—A. About 40 to 45 feet.

Q. What would be the distance shooting at a travelling seal?—A. About 30 to 40 yards.

Q. Where are the seals usually struck when shot?—A. In the head and neck.

Q. From your long experience, what do you consider the proportion of seals lost as compared to the whole that are hit in pelagic sealing?—A. I am quite sure that not more than from three to five in the hundred, in one year in Behring Sea; out of 216 seals taken by myself, I never lost a single one; and last year I lost seven out of 205 killed by myself; the loss was by sinking.

Q. Having personal experience hunting every year, how quickly do you reach the animal shot sleeping?—A. About five to ten minutes if the seal has been shot sleeping.

Q. Sleeping seals don't sink quickly, do they?—A. Sleeping seals very seldom sink. The loss by sinking is altogether the travelling seals.

Q. Then you would say that the percentage of loss, that is, three to five in the hundred, has been your experience for several years?—A. Yes; it has been about the same.

Q. Is the loss greater on the coast than in Behring Sea?—A. No, Sir; very few are lost on the coast.

Q. On the coast, have you taken a greater number of females in some months than in other months; say, have you observed a greater number of females taken in April and May?—A. No, Sir.

Q. Where do you find the yearling grey pups?—A. Always on the coast.

Q. Do you find many pups in Behring Sea?—A. No; I have only found two grey pups in Behring Sea.

Q. Do you find any brown pups, about 2 years old, in Behring Sea?—A. Very few.

Q. Have you observed in Behring Sea that the females have delivered their young?—A. Yes, Sir.

Q. Do you take any females with pup in Behring Sea?—A. Very few; say one or two in the season. They have all delivered their young before the vessels enter Behring Sea.

Q. Did you observe any difference in the size of the seal-skins last year?—A. None; they are the same as former years.

Q. What has been the distance from the seal islands that you usually hunted in Behring Sea in past years?—A. From 60 to 100 miles generally to the westward.

Q. You were warned out last year, and by whom?—A. Yes, Sir; and by the United States ship "Mohiann."

Q. At the time you were warned, what distance were you from the seal islands?—A. At the time I was warned I was 115 miles to the north-west of the seal islands.

Q. At the time you were warned were the seals plentiful?—A. I have never seen the seals as plentiful in Behring Sea.

Q. Do you say that had you not been forced out of Behring Sea that you would have had an excellent catch?—A. I certainly would have had a good catch.

Q. Then you consider that having been ordered out of Behring's Sea last year that it has been a serious financial loss to you?—A. It has been a great loss to me and a very great hardship.

Q. Have you ever heard of a British vessel, during the years that you have been engaged in the sealing industry, raiding, or attempting to raid or take seals in any way on the Pribyloff or seal islands in Behring Sea?—A. I have not at any time heard of any British vessel taking any seals from the seal islands.

Q. If any vessel had attempted to do so you would have certainly heard of it?—A. I certainly would; for I am acquainted with all the principal sealing men sailing from this port.

(Signed) ABEL DOUGLAS

Sworn before me, this 16th day of February, 1892.

(Signed) A. R. MILNE, *Collector of Customs.*

*Victoria, B.C., February 20, 1892.*

*Re Sealing in Pacific Ocean and Behring Sea.*

Laughlin L. McLean, present master of the Canadian schooner "Favourite," of Victoria, British Columbia, and master of the same vessel for the past seven years, personally appeared, and being duly sworn, in reply to the following questions doth depose and say:—

Q. Captain McLean, you have been master of the "Favourite" during the past seven years?—A. Yes; for seven years.

Q. You have been reasonably successful in the sealing industry?—A. Yes; I have.

Q. You have had every opportunity of observing the seals and seal life?—A. I have had every opportunity.

Q. What number of men compose your crew usually?—A. From thirty to thirty-two men, as told.

Q. How many Whites and how many Indians?—A. Seven Whites and about twenty-five Indians compose my crew.

Q. Have had Indian hunters every year?—A. Every year but one, that was 1887.

Q. Do you prefer Indians to Whites for hunters?—A. I do.

Q. Were the seals to your observation as plentiful last year as former years?—A. They were as plentiful.

Q. Were they as plentiful on coast?—A. Yes.

Q. Were the seals as plentiful in Behring Sea as in former years?—A. In my experience I have never seen the seals as plentiful in Behring Sea.

Q. Did the seals in Behring Sea appear to be more timorous?—A. No; they did not; they appeared quite tame.

Q. From your long experience, what do you consider the proportion of seals lost as compared with the whole number that are hit in pelagic sealing?—A. I would say with Indians about one in ten and with good white hunters about 5 per cent.

Q. Have you observed in any months more females than males?—A. No; but I think there are more males in the month of April on the coast.

Q. Did you have more males than females in the coast catch?—A. Yes; I had more males than females on the coast.

Q. What percentage of males to females did you have in Behring Sea last year and any year?—A. About half and half, and every year about the same.

Q. Did you notice that the females taken in Behring Sea had delivered their young?—A. Yes; they had all their young some time before that. They give up their young about the end of July, and never get them with pup after July.

Q. What proportion of females taken in Behring Sea are barren?—A. About 5 per cent.

Q. Do you ever find yearling or grey pups in Behring Sea?—A. No; we never find them.

Q. Do you find brown pups (2 or 3 years old) in Behring Sea?—A. We find a few; not many, occasionally one or two.

Q. From your long observation, do you think that the females taken in Behring Sea had remained long enough with their pups so that they care for themselves on the land?—A. Yes, I do.

Q. You mean by barren cows those that have not borne that year?—A. Yes, I do.

Q. In Behring Sea do they all travel together, that is, males and females?—A. They are pretty well mixed up.

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Sworn before  
(Signed)



Q. Then you say that, including barren cows, that the percentage of all females taken in Behring Sea is about equal to the males?—A. About that, and no more.

Q. Do I understand you clearly to say that the catch on the coast was mostly males?—A. Yes, I do.

Q. Captain McLean, would you please say in what proportion the males were to the females in your catch on the coast?—A. About two-thirds males, that is, two males to one female.

Q. Did you observe any change in the habits of the seals last year from former years?—A. On the coast I do not observe any difference, but in Behring Sea I find the seals further from land; a few years ago I found them 25 or 30 miles from land, that was our favourite fishing ground; but the last two or three years my best catches have been from 140 to 150 miles from land.

Q. Have you ever known or heard of any British vessel engaged in the sealing industry raiding or attempting to raid or to take seals in any way from the Pribyloff or seal islands in Behring Sea?—A. I have not heard that any British vessel in any year attempted any such thing, as I know all the principal men engaged in sealing, and I would certainly have heard it if such had occurred.

Q. You have heard of some American vessel raiding the seal islands?—A. Yes, two years ago.

Q. You were ordered out of Behring Sea last year?—A. Yes, by Her Majesty's ship "Porpoise."

Q. Were you in good hunting ground when warned?—A. Yes, the seals were very thick.

Q. Had you been let alone your catch would have been very good?—A. Yes, my catch would have been an extraordinary good one, for I had 2,183 when ordered out, and I had a full month to go, and my catch if let alone would have been at least 3,500 seals.

Q. On your way out did you observe that the seal were plentiful in Behring Sea?—A. They were thick all the way out to the pass coming out of the sea, and it was very annoying to see so many and not be able to touch them.

Q. Where did Her Majesty's ship "Porpoise" speak you and order you out?—A. In 173° west longitude, about 135 miles from nearest land.

Q. Then you consider that being ordered out last year has been great financial loss and hardship to you?—A. I do, most certainly; my vessel was equipped for a voyage two months longer.

(Signed) LAUGHLIN L. McLEAN, Master,  
Schooner "Fironrite."

Sworn before me this 20th day of February, 1892.

(Signed) A. K. MINER, Collector of Customs.

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1918

UNITED STATES. No. 1 (1893).

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BEHRING SEA ARBITRATION.

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CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED AT  
WASHINGTON ON THE 29<sup>TH</sup> FEBRUARY, 1892,

BETWEEN

HER BRITANNIC MAJESTY AND THE UNITED  
STATES OF AMERICA.

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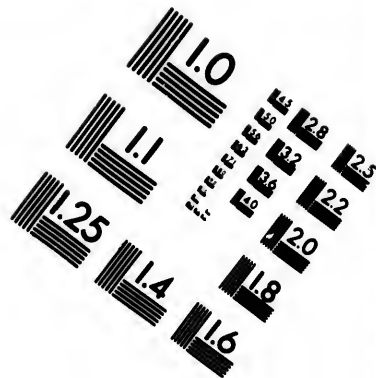
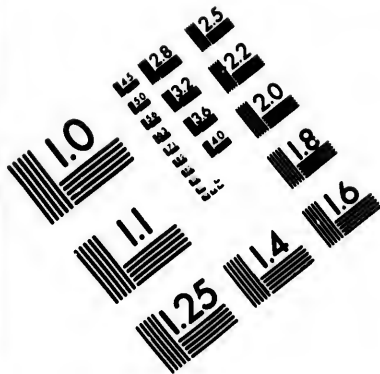
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March 1893.*

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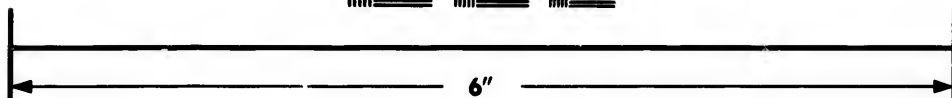
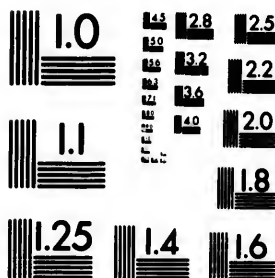
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## GENERAL CONTENTS.

THE CASE now submitted to the Arbitrators on the part of the Government of Her Britannic Majesty contains a statement of the facts which that Government considers to be material to enable the Arbitrators to arrive at a just conclusion upon the points submitted to them by the Treaty of Arbitration.

It contains also some general propositions which that Government believes to be in accordance with the established principles of International Law, and upon which it intends to rely.

The Case is arranged as follows :—

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## BEHRING SEA ARBITRATION.

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*Case presented on behalf of the Government of Her Britannic Majesty to the Tribunal of Arbitration.*

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### INTRODUCTORY STATEMENT.

#### Introductory Statement.

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THE differences between Great Britain and the United States of America, the subject of this Arbitration, arise out of claims by the United States of America to prevent and interfere with British vessels fishing in the waters of Behring Sea other than the territorial waters thereof.

Prior to the year 1886 British vessels had, in common with the vessels of the United States and those of other nations, navigated and fished in the non-territorial waters of Behring Sea without interference.

In 1886 the British schooner "Thornton" was arrested when fishing 70 miles south-east of St. George Island, the nearest land.

The vessel was libelled in the United States' District Court of Alaska by the District Attorney, the charge formulated being that the vessel was "found engaged in killing fur-seals within the limits of Alaska Territory and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States."

The vessel was condemned, and the master and mate were imprisoned and fined.

The British schooners "Carolena" and "Onward" were seized about the same time when fishing under similar circumstances, and were subsequently condemned by the District Court.

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Seizures of British ships.

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The Judge (in summing up the case of the "Thornton") ruled that the Law above mentioned applied to all the waters of Behring Sea east of 193° of west longitude.

Certain other vessels were also subsequently seized in non-territorial waters, and the fishing of British vessels was interfered with under the circumstances hereinafter stated.

Great Britain protested against this action on the part of the United States, and negotiations took place, which eventually resulted in the Treaty and Convention entered into at Washington on the 29th February and the 18th April, 1892.

The Treaty is as follows:—

Treaty of 1892.

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, being desirous to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, have resolved to submit to arbitration the questions involved, and to the end of concluding a Convention for that purpose have appointed as their respective Plenipotentiaries:

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, G.C.M.G., K.C.B., Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States; and the President of the United States of America, James G. Blaine, Secretary of State of the United States;

"Who, after having communicated to each other their respective Full Powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

#### "ARTICLE I.

"The questions which have arisen between the Government of Her Britannic Majesty and the Government of the United States concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in or habitually resorting to the said waters, shall be submitted to a Tribunal of Arbitration, to be composed of seven Arbitrators, who shall be appointed in the following manner, that is to say: two shall be named by Her Britannic Majesty; two shall be named by the President

50th Cong., 2nd  
Sess., Senate  
Ex. Doc. No. 106,  
pp. 120-130.  
Blue Book, United  
States, No. 2, 1890,  
pp. 2, 19, 30.  
See Appendix,  
vol. iii.

of the United States; his Excellency the President of the French Republic shall be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy shall be so requested to name one; and His Majesty the King of Sweden and Norway shall be so requested to name one. The seven Arbitrators to be so named shall be jurists of distinguished reputation in their respective countries; and the selecting Powers shall be requested to choose, if possible, jurists who are acquainted with the English language.

"In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of any or either of the said Arbitrators omitting or declining or ceasing to act as such, Her Britannic Majesty, or the President of the United States, or his Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, as the case may be, shall name, or shall be requested to name forthwith, another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

"And in the event of the refusal or omission for two months after receipt of the joint request from the High Contracting Parties of his Excellency the President of the French Republic, or His Majesty the King of Italy, or His Majesty the King of Sweden and Norway, to name an Arbitrator, either to fill the original appointment or to fill a vacancy as above provided, then in such case the appointment shall be made or the vacancy shall be filled in such manner as the High Contracting Parties shall agree.

#### "ARTICLE II.

"The Arbitrators shall meet at Paris within twenty days after the delivery of the Counter-Cases mentioned in Article IV, and shall proceed impartially and carefully to examine and decide the questions that have been or shall be laid before them as herein provided on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final decision, shall be determined by a majority of all the Arbitrators.

"Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the arbitration.

#### "ARTICLE III.

"The printed Case of each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other party as soon as may be after the appointment of the members of the Tribunal, but within a period not exceeding four months from the date of the exchange of the ratifications of this Treaty.

## "ARTICLE IV.

"Within three months after the delivery on both sides of the printed Case, either party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other party, a Counter-Case, and additional documents, correspondence, and evidence, in reply to the Case, documents, correspondence, and evidence so presented by the other party.

"If, however, in consequence of the distance of the place from which the evidence to be presented is to be procured, either party shall, within thirty days after the receipt by its Agent of the Case of the other party, give notice to the other party that it requires additional time for the delivery of such Counter-Case, documents, correspondence, and evidence, such additional time so indicated, but not exceeding sixty days beyond the three months in this Article provided, shall be allowed.

"If in the Case submitted to the Arbitrators either party shall have specified or alluded to any Report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance notice thereof within thirty days after delivery of the Case; and the original or copy so requested shall be delivered as soon as may be, and within a period not exceeding forty days after receipt of notice.

## "ARTICLE V.

"It shall be the duty of the Agent of each party, within one month after the expiration of the time limited for the delivery of the Counter-Case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party a printed argument showing the points and referring to the evidence upon which his Government relies, and either party may also support the same before the Arbitrators by oral argument of counsel; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel, upon it; but in such case the other party shall be entitled to reply either orally or in writing, as the case may be.

## "ARTICLE VI.

"In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:—

"1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

Questions for the decision of the Tribunal.

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain ?

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea, were held and exclusively exercised by Russia after said Treaty ?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty ?

"5. Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit ?

#### " ARTICLE VII.

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination, the Report of a Joint Commission, to be appointed by the respective Governments, shall be laid before them with such other evidence as either Government may submit.

"The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.

#### " ARTICLE VIII.

"The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims, and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation.

#### " ARTICLE IX.

"The High Contracting Parties having agreed to appoint two Commissioners on the part of each Government to make the joint investigation and Report contemplated in the preceding Article VII, and to include the terms of the



said Agreement in the present Convention, to the end that the joint and several Reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators, should the contingency therefor arise, the said Agreement is accordingly herein included as follows:—

" Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal life in Behring Sea, and the measures necessary for its proper protection and preservation.

" The four Commissioners shall, so far as they may be able to agree, make a joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

" These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise.

" ARTICLE X.

" Each Government shall pay the expenses of its members of the Joint Commission in the investigation referred to in the preceding Article.

" ARTICLE XI.

" The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

" It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

" The decision shall be in duplicate, one copy whereof shall be delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States for his Government.

" ARTICLE XII.

" Each Government shall pay its own Agent, and provide for the proper remuneration of the counsel employed by it and of the Arbitrators appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

" ARTICLE XIII.

" The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

" ARTICLE XIV.

" The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration as

a full, perfect, and final settlement of all the questions referred to the Arbitrators.

"ARTICLE XV.

"The present Treaty shall be duly ratified by Her Britannic Majesty and by the President of the United States of America, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

"In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

"Done in duplicate, at Washington, the 29th day of February, 1892.

(L.S.) "JULIAN FAUNCEFOTE  
(L.S.) "JAMES G. BLAINE,"

Outline of Argument.

*Outline of Argument.*

The general outline of the argument submitted to the Tribunal of Arbitration on behalf of Great Britain will be as follows:—

That Behring Sea, as to which the question arises, is an open sea in which all nations of the world have the right to navigate and fish, and that the rights of navigation and fishing cannot be taken away or restricted by the mere declaration or claim of any one or more nations; they are natural rights, and exist to their full extent unless specifically modified, controlled, or limited by Treaty.

That no mere non-user or absence of exercise has any effect upon, nor can it in any way impair or limit such rights of nations in the open seas. They are common rights of all mankind.

In support of these principles, which are clearly established, and have never been seriously disputed by jurists, authorities will be cited.

That in accordance with these principles, and in the exercise of these rights, the subjects and vessels of various nations did from the earliest times visit, explore, navigate, and trade in the sea in question, and that the exercise of these natural rights continued without any attempted interference or control by Russia down to the year 1821.

That in 1821 when Russia did attempt by Ukase, *i. e.*, by formal declaration, to close to other nations, the waters of a great part of the Pacific Ocean (including Behring Sea) Great Britain and the United States immediately protested against any such attempted interference, maintaining the absolute right of nations to navigate and fish in the non-territorial waters of Behring Sea and other non-territorial waters of the Pacific Ocean. Both countries asserted that these rights were common national rights, and could not be taken away, or limited by Ukase, Proclamation, or Declaration, or otherwise than by Treaty.

That in the years 1824 and 1825, in consequence of these protests, Russia unconditionally withdrew her pretensions, and concluded Treaties with the United States and with Great Britain which recognized the rights common to the subjects of those countries to navigate and fish in the non-territorial waters of the seas over which Russia had attempted to assert such pretensions.

That from the date of such Treaties down to the year 1867 (in which year a portion of the territories which had been referred to in and affected by the Ukase of Russia in the year 1821, was purchased by and ceded to the United States,) the vessels of several nations continued, year by year, in largely increasing numbers, to navigate, trade, and fish in the waters of Behring Sea, and that during the whole of that period of nearly fifty years there is no trace of any attempt on the part of Russia to reassert or claim any dominion or jurisdiction over the non-territorial waters of that sea, but, on the contrary, the title of all nations to navigate, fish, and exercise all common rights therein was fully recognized.

That on the purchase and acquisition of Alaska by the United States in the year 1867, the United States were fully aware and recognized that the rights of other nations to navigate and fish in the non-territorial waters adjacent to their newly-acquired territory, existed in their full natural state, unimpaired and unlimited by any Treaty or bargain whatever.

That, from the year 1867 down to the year 1886, the United States, while they lawfully and properly controlled and legislated for the shores and territorial waters of their newly-acquired

Outline of Argument.

territory, did not attempt to restrict or interfere with the rights of other nations to navigate and fish in the non-territorial waters of Behring Sea or other parts of the Pacific Ocean.

That, under changed conditions of territorial ownership, and in view of certain new circumstances which had arisen in consequence of the growth of the industry of pelagic sealing in non-territorial waters, the United States reverted, in the first instance, to certain claims based upon those of the Russian Ukase of 1821, which the United States, together with Great Britain, had successfully contested at the time of their promulgation; but in the course of the discussions which have arisen, these exceptional claims to the control of non-territorial waters were dropped, and in their place various unprecedented and indefinite claims put forward, which appear to be based upon an alleged property in fur-seals as such.

Finally, that while Great Britain has from the first strenuously and consistently opposed all the foregoing exceptional pretensions and claims, she has throughout been favourably disposed to the adoption of general measures of control of the fur-seal fishery, should these be found to be necessary or desirable with a view to the protection of the fur-seals, provided that such measures be equitable and framed on just grounds of common interest, and that the adhesion of other Powers be secured, as a guarantee of their continued and impartial execution.

*Arrangement of Case.*

Arrangement of Case.

It will be convenient to state the arrangement and order of the Case here presented on behalf of Great Britain.

Article VI.

The first three points of Article VI are as follows:—

"1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

"3. Was the body of water now known as the Behring Sea included in the phrase 'Pacific Ocean,' as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea, were held and exclusively exercised by Russia after the said Treaty?"

Arrangement of Case.

It is proposed in the first instance to deal with these points, which relate to the original claims by Russia to certain rights in Behring Sea, and the action of Great Britain respecting these claims.

The questions therein raised will be considered under the following heads:—

Heads of Argument.

(A.) The user up to the year 1821 of Behring Sea and other waters of the North Pacific. Chapter I.  
Head A.

(B.) The Ukase of 1821 and the circumstances connected therewith leading up to the Treaties of 1824 and 1825. Chapter II.  
Head B.

(C.) The question whether the body of water now known as Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia. Chapter III.  
Head C.

(D.) The user of the waters in question from 1821 to 1867. Chapter IV.  
Head D.

It is then proposed to consider point 4 of Article VI, which is as follows:—

"4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?"

This point will be considered under the following heads:—

(E.) What rights passed to the United States under the Treaty of Cession of March 30, 1867. Chapter V.  
Head E.

(F.) The action of the United States and Russia from 1867 to 1886. Chapter VI.  
Head F.

(G.) The various contentions advanced by the United States since the year 1886. Chapter VII.  
Head G.

Point 5 of Article VI is as follows:—

"Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting Chapter VIII.  
Article VI, Point 5

the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit."

This will be briefly considered, but the proposition which appears to be embodied in this question is of a character so unprecedented that, in view of the absence of any precise definition, it is impossible to discuss it at length at the present time. It will, however, be treated in the light of such official statements as have hitherto been made on the part of the United States, its discussion in detail being necessarily reserved till such time as the United States may produce the evidence or allegations upon which it relies in advancing such a claim.

Article VII is as follows:—

Article VII.

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend, and to aid them in that determination, the Report of a Joint Commission, to be appointed by the respective Governments, shall be laid before them, with such other evidence as either Government may submit.

"The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations."

The terms of this Article make it necessary that the consideration of any proposed Regulations should be postponed until the decision of the Tribunal has been given on the previous questions.

Beyond, therefore, demonstrating that the concurrence of Great Britain is necessary to the establishment of any Regulations which have for their object the limitation or control of the rights of British subjects in regard to seal fishing in non-territorial waters, it is not proposed to discuss the question of the proposed Regulations, or the nature of the evidence which will be submitted to the Tribunal.

Article VIII.

With regard to the points raised under Article VIII (which refer to questions arising



out of claims for damages), it will be contended on behalf of Great Britain that the seizure of the ships was unlawful, and the Arbitrators will be asked to find that in each case the seizure took place in non-territorial waters, that such seizures were made with the authority and on behalf of the Government of the United States, and that the amounts of damages which Great Britain is entitled to claim on behalf of the owners, masters, and crews are the respective amounts stated in the Schedule of particulars appended to this Case.

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Arrangement of Case.

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## CHAPTER I.

Face of Waters up to 1821.  
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HEAD (A).—*The User, up to the year 1821, of the Waters of Behring Sea and other Waters of the North Pacific.*

It is shown in the following series of historical notes, chronologically arranged, that the waters subsequently included in the claim made by Russia under the Ukase of 1821, had been freely navigated over, and frequented for purposes of trade and for other purposes, by ships of various nations, from the earliest times. Further, that the discovery and exploration of these waters and the coasts and islands washed by them, was largely due to the navigators of various nations, and in particular to those of Great Britain.

Area to be considered.  
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The waters affected by the Russian Ukases of 1799 and 1821\* include not only the entire area of Behring Sea (though that sea is not specifically mentioned by any name in either Ukase), but also other parts of the Pacific Ocean, and in considering the nature of the user of the waters now in question, the entire area affected by the Ukase of 1821 is included, the facts relating to all parts of this area being of equal significance.

It will be noted in this connection that the limit claimed under the Ukase extended southward to the 51st parallel of north latitude on the American coast; and that, therefore, any events occurring to the north of 54° 40', which is the southernmost point of the territory now known as Alaska, are well within this limit.

"Pacific Ocean"  
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The Pacific Ocean as a whole, was, in the last century and in the early part of the present century, variously named the *Pacific*, or *Great Ocean* or *South Sea*, the last name arising from the circumstance that it had been reached by sailing southward round the Cape of Good Hope or Cape Horn.

"Behring Sea"  
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*Behring Sea* is, and was at the time of the negotiations which arose immediately on the promulgation of the Ukase of 1821, recognized by geographers as a part of the Pacific Ocean.

\* The text of the Ukase of 1799 will be found at p. 25 of this Case; that of the Ukase of 1821 at p. 27.

The name by which it is now known is that of the navigator Behring, but in earlier times it was often named the Sea of Kamtehatka.

This sea washes the northern parts of the coasts of North America and of Asia, and is regarded as extending from Behring Strait on the north to the Aleutian and Commander Islands on the south. Its area is at least two-thirds of that of the Mediterranean, and more than twice that of the North Sea, while its extreme width is 1,200 miles. From north to south it extends over about 14 degrees of latitude, or more than 800 miles.

From the south it is approached by numerous open sea-ways, one of which is 175 miles wide, another 95 miles, five more from 55 to 22 miles, and very many of smaller width.

On the north, it communicates with the Arctic Ocean by Behring Strait, 48 miles in width.

Behring Sea is the common highway to the Arctic Ocean with its valuable fisheries. It is Great Britain's highway to her possessions in the north via the Yukon River (of which the free navigation is guaranteed by Treaty), as well as the route for such communication as may be held or attempted with the northern parts of the coasts of North America to the east of Alaska, and with the estuary of the great Mackenzie River.

Description of Behring Sea.

1741

1768.

1769.

1774.

1775.

1778.

#### *Historical Outline.*

In 1728 and 1729, Behring, in his first expedition, outlined, somewhat vaguely, the Asiatic coast of Behring Sea, and practically proved the separation of the Asiatic and American continents.

In 1741, Behring's second expedition, which sailed from Okhotsk, resulted in the discovery of the American coast.

Unsatisfactory as the voyages of Behring and his associate Chirikoff undoubtedly were from a geographical point of view, it was upon their results that Russia chiefly based her subsequent

Historical Outline

Bancroft, *History of Alaska*, p. 37.\*

*Ibid.*, pp. 62-74.

1711.

\* This work will be referred to throughout these pages by the short title of "Alaska."

For the period discussed in this Chapter reference may be made generally to "Lyman's *Diplomacy of the United States*," 2nd edition, Boston, 1828, vol. ii, chapter XI.

1741. pretensions to the ownership of the north-western part of North America.
- Hunters and traders followed Behring's lead, and Behring Island, and various islands of the Aleutian chain, were visited from the Kamtchatkan coast.
- Alaska, p. 111. In 1763, Glottof, on a trading voyage, ventured as far east as Kadiak Island.
1768. Ibid., pp. 157, 158. In 1704 to 1768, Synd, a Lieutenant of the Russian navy, made an expedition along the coast to Behring Strait.
1769. Of the period from 1760 to 1770, Bancroft writes in his History of Alaska :—
- Ibid., p. 174. "From this time to the visit of Captain Cook, single traders and small Companies continued to traffic with the islands in much the same manner as before, though a general tendency to consolidation was perceptible."
1774. Ibid., pp. 194-197. The extension of Russian influence did not pass unnoticed by Spain, and in 1774 Perez was dispatched from Mexico on a voyage of exploration, in which he reached the southern part of Alaska.
1775. Ibid., p. 197. In 1775, Heeceta, also instructed by the Viceroy of Mexico, explored the coast of America as far north as the 57th or 58th degree of latitude, taking possession of that part of the continent in the name of Spain.
1778. Cook, Voyage to the Pacific Ocean, 1776-1780, London, 1874. In 1778, Captain Cook, sent by the English Government, reached the American coast of the North Pacific with two vessels.
- In pursuance of his instructions, he explored the coast from about 44° of north latitude as far as the region of Prince William Sound and Cook River or Inlet, taking possession of the coasts there. At Cook Inlet he found evidence of Russian trade but no Russians. At Unalaska, one of the Aleutian Islands, he again heard of the Russians, and on the occasion of a second visit met Russian traders. From Unalaska he sailed eastward to Bristol Bay, landing and taking possession. From this he explored, and defined the position of the American coast northward as far as Icy Cape, beyond Behring Strait.
- Cook was killed in the following winter at the Sandwich Islands, but his ships, under Clarke, returned in 1779 and made further explorations in Behring Sea and in the Arctic Ocean.
- Under this expedition, and for the first time, the

main outlines of the north-western part of the Continent of America, and particularly those of the coast about Prince William Sound and Cook Inlet, with the eastern coast of Behring Sea, were correctly traced.

1775

This expedition also opened up the trade by sea in furs from the north-western part of America to China.

Cook's surveys still remain in many cases the most authentic; and these, with other results of the expedition were published in full in 1784.

In 1779, another officially accredited Spanish expedition under Arteaga and Quadra, explored part of the coast northward from about latitude 55°, and westward to Mount St. Elias.

Alaska, pp. 217-221.

1779

In 1783, the first attempt was made, following Cook's discoveries, to establish a Russian trading post on the American mainland, at Prince William Sound. It ended disastrously.

Ibid., p. 186.

1783

For some years after this reverse only one small vessel was dispatched from Siberia for trading purposes; but in 1784, Shelikof visited Unalaska and reached Kodiak Island, with the intention of effecting a permanent occupation there.

Ibid., p. 191.

Ibid., p. 224.

In 1785, Captain Hanna entered into the trade between the north-west coast of America and China, for which Captain Cook's expedition had shown the way. He made a second voyage in the following year, but appears to have confined his trading operations to the vicinity of the northern part of Vancouver Island. Other commercial adventurers were, however, practically contemporaneous with Hanna, and this year is an important one in connection with the whole region.

Bancroft, History of the North-west Coast, vol. i. pp. 173, 174.\*

1785

The "Captain Cook" and "Experiment," from Bombay, traded at Nootka and at Prince William Sound.

Alaska, p. 243.

An English vessel, the "Lark," Captain Peters, from Bengal via Malacca and Canton, after trading at Petropaulovsk in Kamtehatka, sailed for Copper Island with the supposed purpose, as alleged, of obtaining a cargo of copper there. She was wrecked on the Commander Islands.

Sauer's account of Billig's expedition, London, 1803, pp. 279, 283.

In the same year, 1786, Portlock and Dixon, and Meares, arrived upon the American coast, and traded and explored far to the northward.

1786-1789.

\* This work will be referred to throughout these pages by the short title of "North-west Coast."

1786-1789.

These voyages are important, because detailed accounts of both were published, in 1789 and 1790 respectively, while the voyages of other traders have generally not been recorded.

"A voyage round the World, &c.," London, 1789.

Portlock and Dixon, who had sailed from London in 1785 in the "King George" and "Queen Charlotte," in 1786, first visited Cook Inlet, where they found a party of Russians encamped, but with no fixed establishment. Trade was carried on with the native there, and subsequently at various other places on what is now the Alaskan coast, and several harbours were surveyed. In the following year, Portlock and Dixon returned to the vicinity of Prince William Sound, where they found Meares, who had spent the previous winter there. They subsequently called at a number of places on the Alaskan coast, as well as at ports now included in the coast line of British Columbia, making very substantial additions to geographical knowledge.

Meares' voyages 1790. See also "Annual Register," 1790, vol. xxix, p. 287.

Meares sailing from Bengal in the "Nootka" early in the year, reached the Islands of Atka and Adia of the Aleutian chain, staying two days at the last-named island, and holding communication with the natives and Russians found there. He then proceeded eastward along the Aleutian Islands, and was piloted into Unalaska by a Russian who came off to the ship. He describes the Russian establishment as consisting of underground huts like those occupied by the natives; but being anxious to leave the vicinity of the Russian traders, he continued his voyage eastward to Cook Inlet and eventually wintered in Prince William Sound, as above stated.

Meares' later voyage, in 1788 and 1789, which is better known than his first venture, was directed to that part of the coast lying to the southward of the limits afterwards included by the Ukase of 1793. In 1788, Meares built at Nootka, in the northern part of Vancouver Island, the first vessel ever constructed on the coast of the north-western part of America. She was intended for use in the fur trade, and was appropriately named the "North-West America."

Also in 1786, La Pérouse, on his voyage round the world, under instructions of the French Government, first made the American land near

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D 2

1786.

Alaska, p. 255.

-1789.



Mount St. Elias. Thence he sailed eastward and southward, calling at places on the Alaskan coast. At Lituya Bay he obtained in trade 1,000 sea-otter skins. Alaska, p. 243.

1706

1700

In the same year the Russian Pribyloff discovered the islands in Behring Sea, now known by his name. *Ibid.*, pp. 109-103.

1700

In 1788, a Spanish expedition, in the vessels "Pelissosa" and "San Carlos," under Martinez and Haro, set out. It visited Prince William Sound, but found no Russians. Haro, however, found a Russian colony at Three Saints, on Kodiak Island. This was the easternmost place which had at this time a permanent Russian settlement. The voyagers took possession of Unalaska for Spain, but afterwards found Russian traders on the island. *Ibid.*, pp. 970-972.

1791

In the same year, a Russian vessel explored Prince William Sound, Yakutat, and Lituya Bays, all of which had previously been examined by English or French voyagers. *Ibid.*, pp. 967-970.

1701

In 1788, vessels from the United States first traded on the north-west coast. North-west Coast, vol. 1, p. 185.

Upon the conflict of interests at this time along this part of the American coast, and the rival claims to territory there, Bancroft makes the following remarks:—

"The events of 1787-88 must have been puzzling to the natives of Prince William Sound. Englishmen under the English flag, Englishmen under the Portuguese flag, Spaniards and Russians, were cruising about, often within a few miles of each other, taking possession, for one nation or the other, of all the land in sight." Alaska, p. 207.

1792

Referring to Billing's Russian scientific exploring expedition, by which several voyages were made from 1787 to 1791 in the Behring Sea region, Bancroft says:—

"The geographical results may be set down at next to nothing, with the exception of the thorough surveys of Captain Bay in Illuluk Harbour on Unalaska Island. Every other part of the work had already been done by Cook." *Ibid.*, p. 236.

1793

The complaints of natives, against the practices of independent traders and adventurers, brought back by this expedition, had much to do with the subsequent grant of a monopoly of the trade to the Russian-American Company.

- 1789 North-west Coast, vol. 1, pp. 201-212. In 1789, twelve vessels at least are known to have been trading on the north-west coast.\*  
The well-known "Nootka" seizures by the Spaniards occurred in this year.
- 1790 Alaska, p. 273. In 1790, Fidalgo sailed from Nootka, then occupied by Spain, to examine the north-west coast, including Prince William Sound, Cook Inlet, and Kodiak. The trading-vessel "Phoenix," Captain Moore, from the East Indies, was in Prince William Sound in this year.  
Ibid., p. 295. At this time also, Russia and Sweden being at war, a Swedish cruiser visited the Aleutian Islands, but finding no Government establishment to attack, and no Russians except traders living "in abject misery," her Commander refrained from disturbing them.  
Ibid., p. 274. In 1791, Malaspina, from Spain, under orders of his Government, visited several places upon what is now the Alaskan coast. Marchand, in the "Solide," from France, on a voyage of trade and circumnavigation, also visited the coast, and Douglas, in the "Iphigenia," was in Cook Inlet in this year.  
Ibid., p. 276.  
Ibid., p. 248.
- North-west Coast, vol. 1, pp. 250-257. Besides the above vessels, at least eight trading-vessels are known to have been on the coast, of which seven were from the United States.
- 1792 Alaska, p. 244. In 1792, Gannett, setting out from Nootka, explored Port Buen Ali, in south-eastern Alaska; and it is reported that in this year fully twenty-eight vessels were upon the coast, at least half of them being engaged in the fur trade.  
Vancouver, vol. iii, p. 498. Vancouver gives a list of 21 vessels for the same year, divided as follows: From England, 6; from East Indies, 2; from China, 3; from United States, 7; from Portugal, 2; from France, 1.  
Alaska, p. 206. The "Haleyon," Captain Barclay, visited Petropulovsk for purposes of trade, and a French vessel, "La Flavin," wintered there.
- 1793 Vancouver's voyage. In 1793, Vancouver, who had been dispatched by the English Government with the "Discovery" and "Chatham" for the purpose of

\* In many cases no records exist of the trading voyages made to the north-west coast, and the existing records are very incomplete. It is in some cases certainly known that these traders extended their operations to the north of the limit mentioned in the Ukase of 1799, or that of the Ukase of 1821. In other cases the extent of the voyages made is unknown. The traders went, in fact, wherever skins could be purchased, and, if disappointed or forestalled at one place, at once departed for another. None of these trading-vessels were Russian.

finally deciding the existence or otherwise of a communication between the Pacific and Atlantic, by the exploration of all remaining inlets on the north-west coast, was occupied in surveying operations on what now constitutes the south-eastern Alaskan coast.

1793.

In 1794, he surveyed Cook Inlet to its head, and Prince William Sound, Kodiak, and the coast extending to Yakutat Bay, were in turn carefully laid down in detail. He ascertained that the easternmost Russian Establishment at this time was at Port Etches on Prince William Sound.

Vancouver's  
voyage

1794.

Concerning the Russians here and there met with, Vancouver remarks that he—

Ibid., vol. ii,  
p. 199

"clearly understood that the Russian Government had little to do with these Settlements; that they were solely under the direction and support of independent mercantile Companies. . . . Not the least attention whatever is paid to the cultivation of the land or to any other object but that of collecting furs, which is principally done by the Indians."

1793-

Near Yakutat Bay he fell in with the "Jackal," an English trading-vessel, which was then upon the coast for the third consecutive season; and further to the south-eastward he met with the "Arthur," Captain Barber, from Bengal.

Vancouver took possession of the coast southward from Cross Sound (latitude 58°) in the name of Great Britain. The results of his surveys were published in 1798.

The names of four trading-vessels on the north-west coast, including the "Jackal," are known for this year.

North-west Coast,  
vol. i, p. 297.

In 1795, a trading-vessel, named the "Phoenix," from Bengal, was on the north-west coast.

Ibid., p. 304.

1795.

In 1796, at least three trading-vessels are known to have been on the north-west coast.

Ibid., p. 305

1796.

In 1797, the names of four trading-vessels on this coast are known, but these constituted probably but a small part of the fleet.

Ibid., p. 306.

1797.

In 1798, the names of six trading-vessels happen to have been recorded.

Ibid., vol. i, p. 306.

1798.

In 1799, the "Caroline," Captain Cleveland, from Boston, arrived at Sitka shortly after a Russian post had been established there.

1799.

Several other American vessels, among them the brig "Eliza," under Captain Rowan, visited Sitka during the summer and "absorbed the trade

Alaska, p. 389.

1799.

while the Russians were preparing to occupy the field in the future."

North-west Coast,  
vol. 1, p. 307.

The names of seven vessels trading on the north-west coast are recorded in this year.

Nothing approaching to a complete record of the names or nationalities of vessels trading upon this part of the coast in the years about the close of the last century can now be obtained, and, in the absence of any published record of explorations, even incidental allusions to the presence of such traders become rare in the years after the date of Vancouver's departure. That such trade was, however, continuously practised is evident from the general complaints made by the Russians as to its effect on their operations.

The following quotations from Bancroft's "History of Alaska" allude to complaints referring particularly to these years.

Writing of the enterprises of Baranoff, Governor of Sitka, Bancroft says :—

1798-1801.

Alaska, p. 384.

"At every point eastward of Kadiak where he had endeavoured to open trade, he found himself forestalled by English and American ships, which had raised the prices of skins almost beyond his limited means."

Again, referring specially to the nascent Establishment at Sitka, Baranoff himself writes :—

Ibid., p. 395.

"I thought there would be no danger with proper protection from the larger vessels, though the natives there possess large quantities of fire-arms and all kinds of ammunition, receiving new supplies annually from the English and from the Republicans of Boston and America, whose object is not permanent settlement on these shores, but who have been in the habit of making trading trips to these regions."

On another page Bancroft writes :—

Ibid., p. 398.

"Baranoff's complaints of foreign encroachment appear to have been well grounded. Within a few leagues of Sitka the captains of three Boston ships secured 2,000 skins, though paying very high prices, each one trying to outbid the other."

Ibid., p. 399.

Further on Baranoff is quoted to the effect that the Americans had been acquainted with the tribes in this region for two or three years, and sent there annually from six to eight vessels. These vessels from the United States were at this time just beginning to supplant the English traders, who had in earlier years been the more numerous.

Once more Bancroft quotes Baranoff as follows:—

"The resources of this region are such that millions may be made there for our country with proper management in the future, but for over ten years from six to ten English and American vessels have called here every year. It is safe to calculate an average of 2,000 skins on eight, or say six vessels, which would make 12,000 a-year, and if we even take 10,000 as a minimum, it would amount in ten years to 100,000 skins, which at the price at Canton of 45 roubles per skin, would amount to 4,500,000 roubles."

Alaska, p. 390.

*Circumstances which led up to Ukase of 1799.*

It will be convenient at this point to consider the circumstances which led up to the Ukase of 1799, the terms of that Ukase, and its effect.

Circumstances which led up to Ukase of 1799.

As early as 1786, the idea had become dominant with Grigor Shelikof, who had shortly before established the first permanent Russian colony at Kodiak, of creating a Company which should hold a monopoly of trade in the Russian possessions on the Pacific, and over all that part of the American Continent to which Russian traders resorted. Shelikof obtained but a partial success in the Charter issued for the United American Company; but after his death at Irkutsk in 1795, his schemes were taken up by his son-in-law Rezanof, who succeeded in carrying them to completion, and, in 1799, a Ukase was issued which granted the wished-for exclusive privileges to the new Russian-American Company. Before this time, in 1798, a consolidation of the Shelikof Company with several smaller concerns had been effected under the name of the United American Company; and at the date of the issuing of the Ukase there were but two rival Companies of importance in the field, the Shelikof or United American Company, and the Lebedef Company, and these engaged in active competition and hostility.

Alaska, p. 305.

Ibid., pp. 377-379.

Bancroft sums up the situation about 1791 and 1792 in the following words:—

"Affairs were assuming a serious aspect. Not only were the Shelikof men excluded from the greater part of the inlet [Cook Inlet], but they were opposed in their advance round Prince William Sound, which was also claimed by the Lebedef faction, though the Oreklrof and other Companies were hunting there . . . ."

Ibid., pp. 338, 339.

Circumstances which led up to Ukaase  
of 1790.

"Thus the history of Cook Inlet during the last decade of the eighteenth century is replete with romantic incidents—midnight raids, ambushes, and open warfare—resembling the doings of medieval *robbers*, rather than the exploits of peaceable traders . . . .

"Robbery and brutal outrages continued to be the order of the day, though now committed chiefly for the purpose of obtaining sole control of the inlet, to the neglect of legitimate pursuits."

Again, in another place, the same author writes, with regard especially to the position of Baranoff, Governor of Sitka, when he took charge of the Shelikof Colony of Kodiak :—

Alaska, p. 321

"Thus, on every side, rival establishments and traders were draining the country of the valuable staple upon which rested the very existence of the scheme of colonization. To the east and north there were Russians, but to the south-east the ships of Englishmen, Americans, and Frenchmen were already traversing the tortuous channels of the Alexander Archipelago, reaping rich harvests of sea-otter skins, in the very region where Baranoff had decided to extend Russian dominion in connection with Company away."

Ibid., pp. 302, 301,  
303.

It was only in the later years of the competition between the rival Russian Companies that they began to assume hostile attitudes to one another. The growing power of some of them favoured aggression, and the increasing scarcity of the sea-otter, which was already beginning to be felt, accentuated it. At first, and for many years after Behring's initial voyage, the traders from Siberia were sufficiently occupied in turning to advantage their dealings with the natives of the islands and coasts visited by them, and this not in the most scrupulous manner. Tribute in furs was exacted from the Aleuts on various pretexts, and whenever the traders came in sufficient force these people were virtually enslaved. Not only were the companies of traders under no sufficient or recognized control by the Russian Government, but they even disliked and resented in some measure the advent or presence among them of commissioned officers of the Government.

Ibid., p. 301.

Ibid., p. 299.

The effect of the reports of the subordinate members of Billing's expedition, as to the unsatisfactory state of affairs in the Aleutian Islands and on the American coast, tended to favour the project of the establishment of a monopoly, by disclosing the abuses which existed by reason of the existing competition. Bancroft more than hints that the superior officers of the expedition



were induced to keep silence from interested motives; and Billings's Report, whatever its tenour may have been, was never published.

In the end, however, it became in a degree imperative for the Russian Government to put a stop to the scandals and abuses which flourished in this remote and practically uncontrolled portion of the Empire, and the easiest way in which this could be done, and the least expensive, was to vest exclusive rights in the hands of the most powerful of the existing rival Companies. This, being also in the interests of the Company in question, was not found difficult of achievement, and, as a consequence of the Ukase of 1799, the absorption of the smaller concerns still existing appears to have followed without any great difficulty, Baranoff, as the executive head of the new Corporation on the American coast, coming to the front as the natural leader.

When Shelikof presented at St. Petersburg his original petition for the right to monopolize the trade, a Report was requested on the subject from Jacobi, the Governor-General of Eastern Siberia, and in Jacobi, Shelikof found an able advocate. Jacobi stated that it would be only just to Shelikof to grant his request, and that it would be unfair to allow others to enjoy the benefits of the peace which Shelikof had established at Kadiak.

The Empress then ordered the Imperial College of Commerce to examine the question, and a Committee of this body endorsed Jacobi's Report and recommended that the request of Shelikof and Golikof for exclusive privileges should be granted.

Though, among the arguments naturally advanced in favour of the grant of a monopoly, we find it urged that the benefits of trade accruing would thus be reserved to Russian subjects, the history of the occupation of the coasts and the records concerning it, show conclusively that this was not the object which to any great extent induced Shelikof to apply for such a monopoly. His Company had the utmost difficulty in sustaining its position against hostile natives, while not less serious were the difficulties arising from the competition, and scarcely veiled hostility of rival Russian traders. The increasing trade by foreigners, together with the numerous exploring and surveying expeditions dispatched

Circumstances which led up to Ukase  
of 1799.

Alaska, p. 308.

Ibid., p. 309.

Circumstances

Text of U

Circumstances which led up to  
Ukase of 1799.

to the north-west coast of America by various Powers, were no doubt distrusted by the Russian traders; but at the same time these traders were often obliged to depend on such foreigners for support and assistance.

Nowhere in the annals of the times previous to, and during the operation of the Ukase of 1799, do we find any reference to attempts to interfere with or restrict the operations of foreigners upon the American coasts or in the Aleutian Islands. Even the scientific expeditions of the period were often largely interested in trade as well as in exploration, but all vessels meeting with the Russians report a favourable, if not a hospitable reception.

Such an attitude on the part of the traders and the Company is, in fact, strictly in accord with the Ukase of 1799, which is purely domestic in its character, and in which no exclusive rights against foreigners are asserted.

#### *Ukase of 1799.*

Text of Ukase of 1799

The following is a literal translation of the Ukase in question, taken from Golovnin, in "Materiali dlia Istorii Russkikh Zasseleniy," i. 77-80:—

Alaska, pp. 379-380.

"By the grace of a merciful God, we, Paul I, Emperor and Autocrat of All the Russias, &c. To the Russian-American Company, under our highest protection, the benefits and advantages resulting to our Empire from the hunting and trading carried on by our loyal subjects in the north-eastern seas and along the coasts of America have attracted our Royal attention and consideration; therefore, having taken under our immediate protection a Company organized for the above-named purpose of carrying on hunting and trading, we allow it to assume the appellation of 'Russian-American Company under our highest protection;' and for the purpose of aiding the Company in its enterprises, we allow the Commanders of our land and sea forces to employ said forces in the Company's aid if occasion requires it, while for further relief and assistance of said Company, and having examined their Rules and Regulations, we hereby declare it to be our highest Imperial will to grant to this Company for a period of twenty years the following rights and privileges:—

"1. By the right of discovery in past times by Russian navigators of the north-eastern part of America, beginning from the 55th degree of north latitude and of the chain of islands extending from Kamschatka to the north to America and southward to Japan, and by right of possession of the same by Russia, we most graciously permit the Company to have the use of all hunting grounds and

establishments now existing on the north-eastern [sic] coast of America, from the above-mentioned 55th degree to Behring Strait, and on the same also on the Aleutian, Kurile, and other islands situated in the north-eastern ocean.

"2. To make new discoveries not only north of the 55th degree of north latitude but farther to the south, and to occupy the new lands discovered, as Russian possessions, according to prescribed rules, if they have not been previously occupied by any other nation, or been dependent on another nation.

"3. To use and profit by everything which has been or shall be discovered in those localities, on the surface and in the bosom of the earth, without any competition by others.

"4. We most graciously permit this Company to establish Settlements in future times, wherever they are wanted, according to their best knowledge and belief, and fortify them to insure the safety of the inhabitants, and to send ships to those shores with goods and hunters, without any obstacles on the part of the Government.

"5. To extend their navigation to all adjoining nations and hold business intercourse with all surrounding Powers, upon obtaining their free consent for the purpose, and under our highest protection, to enable them to prosecute their enterprises with greater force and advantage.

"6. To employ for navigation, hunting, and all other business, free, and unsuspected people, having no illegal views or intentions. In consideration of the distance of the localities where they will be sent, the provincial authorities will grant to all persons sent out as settlers, hunters, and in other capacities, passports for seven years. Serfs and house-servants will only be employed by the Company with the consent of their land-holders, and Government taxes will be paid for all serfs thus employed.

"7. Though it is forbidden by our highest order to cut Government timber anywhere without the permission of the College of Admiralty, this Company is hereby permitted, on account of the distance of the Admiralty from Okhotsk, when it needs timber for repairs, and occasionally for the construction of new ships, to use freely such timber as is required.

"8. For shooting animals, for marine signals, and on all unexpected emergencies on the mainland of America and on the islands, the Company is permitted to buy for cash, at cost price, from the Government artillery magazine at Irkutsk yearly 40 or 50 pounds of powder, and from the Nertchinsk mine 200 pounds of lead.

"9. If one of the partners of the Company becomes indebted to the Government or to private persons, and is not in a condition to pay them from any other property except what he holds in the Company, such property cannot be seized for the satisfaction of such debts, but the debtor shall not be permitted to use anything but the interest or dividends of such property until the term of the Company's privileges expires, when it will be at his or his creditors' disposal.

"10. The exclusive right most graciously granted to the

## Text of Ukase of 1799.

Company for a period of twenty years, to use and enjoy, in the above-described extent of country and islands, all profits and advantages derived from hunting, trade, industries, and discovery of new lands, prohibiting the enjoyment of those profits and advantages not only to those who would wish to sail to those countries on their own account, but to all former hunters and trappers who have been engaged in this trade, and have their vessels and furs at those places; and other Companies which may have been formed will not be allowed to continue their business unless they unite with the present Company with their free consent; but such private Companies or traders as have their vessels in those regions can either sell their property, or, with the Company's consent, remain until they have obtained a cargo, but no longer than is required for the loading and return of their vessel; and after that nobody will have any privileges but this one Company, which will be protected in the enjoyment of all the advantages mentioned.

"11. Under our highest protection, the Russian-American Company will have full control over all above-mentioned localities, and exercise judicial powers in minor cases. The Company will also be permitted to use all local facilities for fortifications in the defence of the country under their control against foreign attacks. Only partners of the Company shall be employed in the administration of the new possessions in charge of the Company.

"In conclusion of this our most gracious order for the benefit of the Russian-American Company under highest protection, we enjoin all our military and civil authorities in the above-mentioned localities not only not to prevent them from enjoying to the fullest extent the privileges granted by us, but in case of need to protect them with all their power from loss or injury, and to render them, upon application of the Company's authorities, all necessary aid, assistance, and protection.

"To give effect to this our most gracious Order, we subscribe it with our own hand, and give orders to confirm it with our Imperial seal.

"Given at St. Petersburg, in the year after the birth of Christ 1799, the 27th day of December, in the fourth year of our reign.

(Signed) "PAUL."

## The Ukase of 1799 considered.

The Ukase, it will be observed, granted to the Russian-American Company exclusive rights as against other Russian subjects only, and in no way interfered with the rights of foreigners, notwithstanding that the representations which led to its promulgation contained, as has already been indicated, complaints of competition by foreigners.

It will be noticed, for instance, that the details incorporated in clause 10 of the Ukase respecting the rights of independent traders are such as to be applicable to Russian subjects or Companies alone.

The rights and privileges under the grant

extended to the hunting grounds and establishments then existing on the main coast of America from Behring Strait down to the 55th degree of north latitude.

The southern limit of the exclusive coast privileges granted to the Company extended on the Asiatic side to Japan.

Not only were the main coasts of Asia and America thus covered by the Ukase, but the same privileges were granted on the Aleutian, Kurile, and other islands "situated in the North-Eastern Ocean."

It will be noted, therefore, that the area over which the exclusive privileges were granted to the Russian-American Company extended both on the coast of Asia and of America far beyond the limits of Behring Sea.

Special privileges in regard to the purchase of powder for shooting animals "on the mainland of America and on the islands" were conceded, and the exclusive right "to use and enjoy in the above-described extent of country and islands" the hunting and trading.

The Ukase in no way claimed any exclusive jurisdiction over the sea, nor were any measures taken under it to restrict the commerce, navigation, or fishery of the subjects of foreign nations, and this although, within the very area covered by the Ukase, as has already been shown by the facts stated, vessels of various nations had been navigating and trading.

It will be seen, by the account of the years following 1799, that these operations on the part of foreigners continued.

Referring to the Ukase of 1799, Mr. Middleton, the United States' Minister at St. Petersburg, writes, 7th (19th) April, 1824, to Mr. Adams, the Secretary of State of the United States, as follows:—

"The confusion prevailing in Europe in 1799 permitted Russia (who alone seems to have kept her attention fixed upon this interest during that period) to take a decided step towards the monopoly of this trade, by the Ukase of that date, which trespassed upon the acknowledged rights of Spain;\* but at that moment the Emperor Paul had declared war against that country as being an ally of

American State  
Papers, Foreign  
Relations, vol. v,  
p. 461.

\* The rights of Spain are here mentioned because, by the Ukase of 1799, Russia claimed territory which Spain was also understood to claim. In 1824 the United States was committed in its own interest to support the old Spanish claim, in consequence of the Spanish cession to the United States in 1819.

History

1800.

1801.

The Ukase of 1799 purely domestic.

1802.

1803.

France. This Ukase, which is, in its *form*, an act purely domestic, was never notified to any foreign State with injunction to respect its provisions. Accordingly, it appears to have been passed over unobserved by foreign Powers, and it remained without execution in so far as it militated against their rights."

Historical outline resumed.

The accuracy of the views expressed by Mr. Middleton appears clearly from the facts disclosed by the chronological statement relating to the period subsequent to the year 1793:—

1800.

Alaska, p. 389.

In 1800, the ship "Enterprise," from New York, arrived at Kadiak.

North-west Coast, vol. i, p. 308.

The name of seven trading-vessels on the north-west coast are given in this year.

1801.

*Ibid.*, p. 310.

Robert Greenhow, Librarian of United States' Department of State, "History of Oregon and California," pp 266, 267.

North American Review, 1822. Article XVIII. See Appendix, vol. i, No. 3.

In 1801, there were at least thirteen United States' vessels on the north-west coast. These vessels exchanged with the natives of the coast for furs parts of their cargoes, and, proceeding to China, returned to their respective countries with cargoes of teas, &c. Upwards of 18,000 sea-otter skins, besides other furs, were in 1801 collected by United States' traders alone for the China market.

1802.

Alaska, pp. 404-409.

In 1802, the Russian Establishment at Sitka was destroyed, and nearly all the Russians there were massacred by the natives. According to Lisiansky, the natives were assisted by three deserters from a United States' vessel, the "Jenny," which had called at Sitka not long before. Shortly afterwards, an English vessel, the "Unicorn," Captain Barber, arrived at Sitka, and two other vessels, reported by the Russian survivors as English, but one of these Baneroft believes to have been the United States' vessel "Alert."

In this year also Krusenstern, having visited China, presented a Memorial to the Russian Government calling attention to the advantages offered by the trade in furs from America direct to Chinese ports, and suggesting that Russia should engage in it.

North-west Coast, vol. i, pp. 311-312.

Of the vessels trading on the north-west coast in this year, the names of ten have been recorded.

1803.

*Ibid.*, p. 417.

In 1803, Baranoff contemplated the abandon-



ment of Unalaska, owing to disease and non-arrival of supplies. He ordered that the best men should be moved to the Pribyloff Islands to collect there the furs accumulated by the natives. These islands had not been visited for many years.

1803.

1810.

Captain O'Cain, of the United States' vessel "O'Cain," exchanged goods for furs with Baranoff at Sitka, and also took Aleutian hunters to the Californian coast to hunt furs-seals and sea-otters. "Thus was inaugurated a series of hunting expeditions beyond the borders of the Russian Colonies, which continued for many years."

Alaska, pp. 477, 478

The names of five vessels trading on the north-west coast are known.

North-west Coast, vol. i, pp. 312-317.

1811.

In 1804, Sitka was reoccupied and rebuilt by the Russians. Two United States' vessels, one being the "Juno," were there. The names of four vessels are known as trading on the north-west coast.

Ibid., pp. 318, 319.

1804.

In 1805, the "Juno" and another vessel from the United States were at Sitka, and we hear of six vessels, including the "Juno," as trading on the north-west coast.

Ibid., p. 320.

1805.

In 1806, the Russian Envoy Rezanoff visited the Pribyloff Islands on the "Maria," and endeavoured to stop the wasteful slaughter of furs-seals. He recommended the Emperor to "take a stronger hold of the country," as the traders in ships from Boston were undermining the trade with China. He reported that the "Bostonians" had armed the Kolosh Indians.

Alaska, p. 446.

1806.

1812.

In the same year the "Juno," with her cargo, was purchased by Baranoff, and the "Eclipse" (Captain O'Cain) sailed for China with furs, but was lost on the way back.

Ibid., p. 451.

Ibid., pp. 478, 479.

1814.

The names of four vessels trading on the north-west coast are known in this year.

Rezanoff, in 1807, sent the "Juno" to the Californian coast for provisions. The "Myrtle," an English ship (Captain Barber), was purchased by Baranoff. Six north-west coast trading-vessels are known by name for this year.

Ibid., p. 461.

1807.

1815.

1816.

In 1808, the United States' vessel "Mercury" obtained at Kadiak 25 bidarkas, or skin-boats, for hunting and trading to the southward.

Ibid., pp. 479, 480.

1808.

Four United States' trading-vessels are known to have been on the Alaskan coast in 1808 and 1809.

1809

1817

1810. Alaska, p. 467. In 1810, the Russian sloop-of-war "Diana" visited Sitka. There were several United States' vessels in the port at the time. Shortly after the United States' vessels "Enterprise" and "O'Cain" arrived. The "Enterprise" went to Canton with furs.
- Ibid., p. 470. Golovnin, Commander of the "Diana," writes that at this time an American sailor and a Prussian skipper composed the Diplomatic Corps of the Russian-American Company.
- North-west Coast, vol. i, p. 325. In 1810 and 1811, four foreign vessels were engaged in sea-otter hunting, under Russian contracts.
1811. Alaska, p. 422. In 1811, the "Enterprise" returned from and went back to China with furs. In this year the Ross Colony was founded in California to provide agricultural products for use on the north-west coast. Five vessels engaged in trading and hunting, besides the four vessels under Russian contracts, were seen on the coast of Southern Alaska in this year.
- Ibid., p. 483.
- North-west Coast, vol. i, p. 326.
- Alaska, p. 472. In 1812, the United States' ship "Beaver" disposed of her cargo to Baranoff at Sitka, and was then sent to the Pribyloff Islands for fur-seal skins as payment.
- Ibid., p. 480. Between 1809 and 1812, Baranoff made six additional hunting contracts with United States' vessels. He received a proportion of the skins, which were chiefly sea-otters.
1812. North-west Coast, vol. i, p. 329. Between 1812 and 1814, there was scarcely any trade, owing to the war between England and the United States.
1814. Alaska, p. 502. In 1814, Captain Bennett (United States) sold two vessels with their cargoes to Baranoff, and took fur-seal skins from the Pribyloff Islands in payment. Lozaref, sent by Russia, with two ships, reached Sitka, but quarrelled with Baranoff and returned.
- Ibid., pp. 504, 505.
1815. Ibid., p. 506. In 1815, the Russian vessel "Isabel" reached Sitka with Dr. Sheffer on board.
1816. Ibid., p. 501. In 1816, the Russian vessel "Rurik" (Captain Kotzebue) touched at St. Lawrence Island and explored Kotzebue Sound, north of Behring Strait.
1808. North-west Coast, vol. i, p. 335. Two United States' vessels visited the Russian Settlements this year.
1817. Alaska p. 510. In 1817, Kotzebue, on an exploring expedition to the North, only reached St. Lawrence Island. An expedition in two vessels under Hagemester, sent by Russia, reached Sitka.

In 1818, Hagemeister superseded Baranoff, under instructions. Roquefeuil, a French officer, arrived at Sitka in the "Bordelais," a trading-vessel. He sailed for Prince of Wales Archipelago, but had a conflict with natives and returned to Sitka. Roquefeuil notes meeting a United States' and a British trading-vessel in Alaskan waters.

Alaska, pp. 522, 523.

1818

North-west Coast, vol. 4, p. 328.

In 1818 and 1821, expeditions were dispatched by the British Government in search of a north-west passage from the Atlantic to the Pacific. These efforts were continued, and in 1824 and 1825 Parry, Beechey, and Franklin were engaged in the same quest, Beechey having been directed to pass through Behring Strait and to rendezvous with the others at Kotzebue Sound. These efforts were stimulated by the offer by Parliament of large pecuniary awards, and it is obvious that the value of the discovery, if made, depended on the free right of navigation for purposes of commerce through Behring Strait.

Encyclopædia Britannica, 9th ed., vol. xiv, p. 319.

In 1819, the United States' traders obtained most of the trade, bartering with the Kolosh fire-arms and rum for skins. They obtained about 8,000 skins a-year. The Russians could not successfully compete with them.

Alaska, p. 528.

1819

The privileges granted for twenty years to the Russian-American Company were now about to expire, and Golovnin was instructed to inquire as to its operations. His Report was not favourable.

He writes:—

"Three things are wanting, in the organization of the Company's colonies: a clearer definition of the duties belonging to the various officers, a distinction of rank, and a regular uniform, so that foreigners visiting these parts may see something indicating the existence of forts and troops belonging to the Russian sceptre—something resembling a regular garrison. At present they can come to no other conclusion than that these stations are but temporary fortifications erected by hunters as a defence against savages."

Ibid., p. 531.

In 1820, four trading-vessels are known to have been operating on the north-west coast.

North-west Coast, vol. 4, p. 240.

1820

The extent of Russian occupation at about the date of the expiry of the first Charter can be shown by the Census taken in 1810, which states the number of Russians as follows:—

Alaska, p. 522.

	Men.	Women.
For Tikmenieff's complete Tables, including natives, see Appendix, vol. i, No. 5.		
Sitka, or New Archangel .. ..	108	11
Kadiak and adjoining islands .. ..	73	..
Island of Unkamok .. ..	2	..
Katmai .. ..	4	..
Sitkhumkol .. ..	3	..
Voskresensky Harbour .. ..	2	..
Port Constantine .. ..	17	..
Nikolai, Cook Inlet .. ..	11	..
Alexandrovsk, Cook Inlet .. ..	11	..
Boas Settlement, California .. ..	27	..
Seal Islands .. ..	27	..
Nushagak [the only Settlement on the continent north of the Aleutian Islands]	3	2
Total .. ..	378	13

#### Uncertainty of territorial claims in 1818.

See also Adams to Bush, July 22, 1823; American State Papers, Foreign Relations, vol. v, p. 449; and also Confidential Memorial enclosed in letter, Middleton to Adams, December 1 (13), 1823; American State Papers, Foreign Relations, vol. v, p. 449. See Appendix, vol. ii, Part II, Nos. 4 and 5. For text of Convention, see American State Papers, vol. iv, p. 405.

While the subjects of Russia, Spain, Great Britain and the United States were doubtless making claims on the part of their respective countries from time to time, so uncertain were these claims and the merits of each, that in 1818 (20th October), in the Convention between the United States and Great Britain, it was agreed that any—

"country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present Convention, to the vessels, citizens, and subjects of the two Powers, it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two High Contracting Parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country, the only object of the High Contracting Parties in that respect being to prevent disputes and differences amongst themselves."

#### Russian territorial claim in 1821.

American State Papers, Foreign Relations, vol. v, p. 436.

See Appendix, vol. ii, Part II, No. 3.

Mr. Adams, Secretary of State of the United States, in a despatch to Mr. Middleton, the United States' Minister at St. Petersburg, dated 22nd July, 1823, contended that even as late as that year Russian rights in the region under consideration "were confined to certain *islands* north of the 55th degree of latitude," and had "no existence on the continent of America."

In the same letter Mr. Adams observed:—

"It does not appear that there ever has been a permanent Russian Settlement on this continent south of latitude 59°, that of New Archangel, cited by M. Poletica, in latitude 57° 30', being upon an island. So far as prior *discovery* can constitute a foundation of right, the papers

which I have referred to prove that it belongs to the United States as far as 59° north, by the transfer to them of the rights of Spain. There is, however, no part of the globe where the mere fact of discovery could be held to give weaker claims than on the north-west coast. 'The great sinuosity,' says Humboldt, 'formed by the coast between the 55th and 60th parallels of latitude, embraces discoveries made by Gali, Bering, and Tchivikoff, Quadra, Cook, La Pérouse, Malaspina, and Vancouver. No European nation has yet formed an establishment upon the immense extent of coast from Cape Mendosino to the 59th degree of latitude. Beyond that limit the Russian factories commence, most of which are scattered and distant from each other like the factories established by the European nations for the last three centuries on the coast of Africa. Most of these little Russian Colonies communicate with each other only by sea, and the new denominations of Russian-America or Russian possessions in the new continent, must not lead us to believe that the coast of Bering Bay, the Peninsula of Alaska, or the country of the Ischugatschi, have become Russian *provinces* in the same sense given to the word when speaking of the Spanish Provinces of Sonora, or New Biscay.' (Humboldt's 'New Spain,' vol. ii, Book 3 chap. 8, p. 496.)

"In M. Poletica's letter of the 28th February, 1822, to me, he says that when the Emperor Paul I granted to the present American Company its first Charter in 1799, he gave it the *exclusive possession* of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude, to Bering Strait.

"In his letter of 2nd April, 1822, he says that the Charter to the Russian-American Company in 1799, was merely conceding to them a part of the sovereignty, or rather certain *exclusive privileges of commerce*.

"This is the most correct view of the subject. The Emperor Paul granted to the Russian-American Company certain exclusive privileges of commerce — exclusive with reference to other Russian subjects; but Russia had never before *asserted* a right of sovereignty over any part of the North American continent; and in 1799 the people of the United States had been at least for twelve years in the constant and uninterrupted enjoyment of a profitable trade with the natives of that very coast, of which the Ukase of the Emperor Paul could not deprive them."

The Honourable Charles Sumner, speaking in the United States' Senate on the occasion of the cession of Alaska to the United States, in 1867, said:—

"It seems that there were various small Companies, of which that at Kadiak was the most considerable, all of which were finally fused into one large trading Company, known as the Russian-American Company, which was organized in 1799, under a Charter from the Emperor Paul, with the power of administration throughout the whole region, including the coasts and the islands. In this respect it was not unlike the East India Company,

H. R., Ex Doc.  
177, 2nd Sess.,  
46th Cong., p. 149,  
1867-68.  
See Appendix,  
vol. i, No 6.

which has played such a part in English history; but it may be more properly compared with the Hudson Bay Company, of which it was a Russian counterpart. The Charter was for a term of years, but it has been from time to time extended, and, as I understand, is now on the point of expiring. The powers of the Company are sententiously described by the 'Almanach de Gotha' for 1867, where, under the head of Russia, it says that 'to the present time Russian America has been the *property of a Company*'

And, referring to as late a period as 1867, he remarked:—

"It is evident that these Russian Settlements, distributed through an immense region, and far from any civilized neighbourhood, have little in common with those of European nations elsewhere, unless we except those of Denmark, on the west coast of Greenland. Nearly all are on the coast or the islands. They are nothing but 'villages' or 'factories' under the protection of palisades. Sitka is an exception, due unquestionably to its selection as the head-quarters of the Government, and also to the eminent character of the Governors who have made it their home."

Article XVIII,  
North American  
Review, vol. xv,  
Quarterly Review,  
1821-22, vol. xxvi.  
See Appendix,  
vol. i, Nos. 3 and 4.

Adams to Middle-  
ton, July 23, 1823.  
See Appendix,  
vol. ii, Part II,  
No. 3.

Alaska, p. 591.

Touching Russia's claims to exclusive jurisdiction over more than certain islands in the Pacific Ocean on the American coast, Mr. Adams, moreover, in 1823 brought forward with approval, articles which appeared in "The North American Review," published in the United States, and in the "Quarterly Review," published in England. The facts stated in these articles show the grounds upon which the Government of the United States considered themselves justified in the contention advanced by Mr. Adams, that "the rights of discovery, of occupancy, of uncontested possession," alleged by Russia, were "all without foundation in fact," as late as the year 1823.

Again referring to the circumstances in the year 1867 (the date of the cession of Alaska to the United States), the historian Bancroft writes:—

"Moreover, Russia had never occupied, and never wished to occupy, this territory. For two-thirds of a century she had been represented there, as we have seen, almost entirely by a fur and trading Company under the protection of Government. In a measure it had controlled, or endeavoured to control, the affairs of that Company, and among its stockholders were several members of the Royal Family; but Alaska had been originally granted to the Russian-American Company by Imperial Oukaz, and by Imperial Oukaz the Charter had been



twice renewed. Now that the Company had declined to accept a fourth Charter on the terms proposed, something must be done with the territory, and Russia would lose no actual portion of her Empire in ceding it to a Republic with which she was on friendly terms, and whose domain seemed destined to spread over the entire continent."

The foregoing historical summary establishes—

That from the earliest periods of which any records exist down to the year 1821, there is no evidence that Russia either asserted or exercised in the non-territorial waters of the North Pacific any rights to the exclusion of other nations.

That during the whole of that period the shores of America and Asia belonging to Russia as far north as Behring Straits, and the waters lying between those coasts, as well as the islands therein, were visited by the trading-vessels of all nations, including those sailing under the flags of Great Britain, the United States, Spain, and France, with the knowledge of the Russian authorities.

That the only rights, in fact, exercised by Russia or on her behalf, were the ordinary territorial rights connected with settlements or annexations of territory consequent upon such settlements, and the only rights she purported to deal with or confer were rights and privileges given to the Russian-American Company, as Russian subjects, in preference over other Russian subjects.

Competit

Text of U

## CHAPTER II.

Ukase of 1821.

Voyage, M. de  
Krusenslern,  
vol. i, p. 14.  
American State  
Papers, Foreign  
Relations, vol. v,  
pp. 433, 451.

Competition by Foreigners.

American State  
Papers, vol. v.  
pp. 438-443.  
Alaska, p. 528.  
Tikhmenieff,  
Isler. Obos. I,  
cited in note to  
Alaska, p. 532.

See also Alaska,  
p. 446; Rezanof's  
complaint in 1806.

Text of Ukase of 1821.

See Appendix,  
vol. i, No. 1.

HEAD B.—*The Ukase of 1821, and the circumstances connected therewith leading up to the Treaties of 1824 and 1825.*

Shortly before the date of the renewal of the Charter of the Russian-American Company in 1821, the aspect of affairs had considerably changed.

The Company had long before fully succeeded in getting rid of its Russian rivals, but trading-vessels from England and from the United States frequented the coasts in increasing numbers, and everywhere competed with the Company. Goods were brought by these vessels at prices which the Company could not successfully meet, and furs were taken by them direct to Chinosa sea-ports, while the Company, as a rule, had still to depend on the overland route from Okhotsk to Kiakhta on the Amoor.

Domestic competition had in fact ceased, and the most serious drawback to the success of the Company consisted in the competition from abroad.

The difficulties resulting to the Company on account of foreign competition appear prominently in the complaints made by its agents at this time, and the new claim of the right to exclude foreigners from trade is embodied in the Ukase of 1821.

The following is the translation of the Ukase which was issued by the Emperor Alexander in 1821:—

*“Edict of His Imperial Majesty, Autocrat of All the  
“Russias.*

“The Directing Senate maketh known to all men: Whereas, in an Edict of His Imperial Majesty, issued to the Directing Senate on the 4th day of September [1821], and signed by His Imperial Majesty's own hand, it is thus expressed:—

“Observing from Reports submitted to us that the trade of our subjects on the Aleutian Islands and on the north-west coast of America appertaining unto Russia is subjected, because of secret and illicit traffic, to oppression and impediments, and finding that the principal cause of these difficulties is the want of Rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the

whole of the eastern coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific Regulations, which are hereto attached.

"In forwarding these Regulations to the Directing Senate, we command that the same be published for universal information, and that the proper measures be taken to carry them into execution.

(Countersigned) "COUNT D. GURIEFF,  
"Minister of Finances.

"It is therefore decreed by the Directing Senate that His Imperial Majesty's Edict be published for the information of all men, and that the same be obeyed by all whom it may concern."

(L.S.)

[The original is signed by the Directing Senate. On the original is written in the handwriting of His Imperial Majesty, thus:] Be it accordingly, ALEXANDER.

"Rules established for the Limits of Navigation and Order of Communication along the Coast of the Eastern Siberia, the North-west coast of America, and the Aleutian, Kurile, and other Islands.

"Section 1. The pursuits of commerce, whaling, and fishery, and of all other industry, on all islands, ports, and gulfs, including the whole of the north-west coast of America, beginning from Behring Straits to the 51st of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands, from Behring Straits to the south cape of the Island of Urup, viz., to the 45° 50' northern latitude, is exclusively granted to Russian subjects. See Appendix, vol. i, No. 1.

"Section 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo."

By this Ukase Russia first attempted to assert, as against other nations, exclusive jurisdiction of rights over the shores of America and Asia bounding the Pacific Ocean, certain Islands therein, and over a portion of the Pacific Ocean including what is now known as Behring Sea.

The purpose of the Ukase so far as the attempted exclusion of foreigners from 100 miles of the coasts is concerned, is explained by Baron de Nicolay in his note to Lord Londonderry, the 31st October (12th November), 1821.

First assertion of exclusive jurisdiction

Purpose of Ukase of 1821.

Baron Nicolay to  
Lord Londonderry,  
October 31  
(November 12),  
1821.  
See Appendix,  
vol. ii, Part I, No. 1.

To extend territorial jurisdiction

See A  
vol. i,

Polet  
Febru  
See A  
vol. ii  
No. 1.

To prevent illicit traffic.

He insists that the operations of "smugglers" and "adventurers" on the coast—

"Have for their object not only a fraudulent commerce in furs and other articles which are exclusively reserved to the Russian-American Company, but it appears that they often betray a hostile tendency.

"It was," he continues, "therefore necessary to take severe measures against these intrigues, and to protect the Company against the considerable injury that resulted, and it was with that end in view that the annexed Regulation has been published."

And again—

"The Government, however, limited itself, as can be seen by the newly-published Regulation, to forbidding all foreign vessels not only to land on the Settlements of the American Company and on the peninsula of Kamtchatka and the coasts of the Okhotsk Sea, but also to sail along the coast of these possessions, and, as a rule, to approach them within 100 Italian miles."

The justification for the Ukase and the Regulations made thereunder, is stated on the face of the Ukase in the words:—

"And finding that the principal cause of these difficulties [*i.e.*, impediments caused by 'secret and illicit traffic'] is want of Rules establishing the boundaries for navigation along these coasts, \* \* \*."

To extend territorial jurisdiction.

That the object of the Ukase was to extend territorial jurisdiction over the north-west coast and islands and to prohibit the trade of foreigners, rather than to protect any existing or prospective fishery is further indicated by No. 70 of the Regulations of the Russian-American Company. This Regulation reads:—

See Appendix, vol. i, No. 2.

"70. A ship of war, after visiting, not only the Company's Settlements, but also, and more particularly, the channels which foreign merchant-vessels are likely to frequent for the purpose of illicit trading with the natives, will return to winter wherever the Government orders it."

Poletica to Adams, February 28, 1822. See Appendix, vol. ii, Part II, No. 1.

The motive and purpose of this Ukase is further explained by the letter of M. de Poletica, Russian Minister at Washington, dated the 28th February, 1822.

That Russia's aim was to acquire a vast North American Territory appears by the construction put by M. de Poletica on the Ukase of the Emperor Paul in 1799, as conveying to the Russian-American Company the grant of a terri-

torial concession down to the 55th degree of latitude, and by its justification of its further extension to the 51st degree on the American coast.

He proceeds to defend the policy of exclusion contained in the Ukase of 1821 by explaining that, as Russian possessions extend from Behring Strait to the 51st degree north latitude on the north-west coast of America, and on the opposite coast of Asia and the islands adjacent, to the 45th degree, the sea within those limits (viz., that part of the Pacific Ocean) was a close sea, over which Russia might exercise exclusive jurisdiction; but he goes on to say that Russia preferred asserting only her essential right without "taking any advantage of localities," and on these grounds the limit of 100 Italian miles is justified.

The measure he declares to be directed:—

"Against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade, very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, inciting them likewise in every manner to resist and revolt against the authorities there established."

The same view is expressed in the Confidential Memorandum inclosed in the Duke of Wellington's letter to Mr. G. Canning of the 28th November, 1822. See p. 42.

Upon receiving communication of the Ukase, the British and United States' Governments immediately objected both to the extension of the territorial claim and to the assertion of maritime jurisdiction.

#### *Protest of Great Britain.*

The Ukase was brought to the notice of Lord Londonderry, Secretary of State for Foreign Affairs for Great Britain, in the letter already quoted of the 12th November, 1821, by Baron de Nicolay, then Russian Chargé d'Affaires as connected with the territorial rights of the Russian Crown on the north-west coast of America, and with the commerce and navigation of the Emperor's subjects in the seas adjacent thereto.

On the 18th January, 1822, four months after the issue of the Ukase, Lord Londonderry wrote

The protest of the British Government

See Appendix,  
vol. ii, Part I. No. 1.

Correspondence between Great Britain  
and Russia.

See Appendix,  
vol. ii, Part I,  
No. 7.

in the following terms to Count Lieven, the  
Russian Ambassador in London :—

“ In the meantime, upon the subject of this Ukase generally, and especially upon the two main principles of claim laid down therein, viz., an *exclusive sovereignty* alleged to belong to Russia over the territories therein described, as also the *exclusive right of navigating and trading within the maritime limits therein set forth*, His Britannic Majesty must be understood as hereby reserving all his rights, not being prepared to admit that the intercourse which is allowed on the face of this instrument to have hitherto subsisted on those coasts and in those seas can be deemed to be illicit, or that the ships of friendly Powers, even supposing an unqualified sovereignty was proved to appertain to the Imperial Crown in these vast and very imperfectly occupied territories, could, by the acknowledged law of nations be excluded from navigating within the distance of 100 Italian miles, as therein laid down from the coast, the exclusive dominion of which is assumed (but as His Majesty's Government conceive in error) to belong to His Imperial Majesty the Emperor of All the Russias.”

Ibid., vol. ii,  
Part I, No. 14.

The Duke of Wellington having been appointed British Plenipotentiary at the Congress of Verona, Mr. G. Canning, then Secretary of State for Foreign Affairs, addressed to him, on the 27th September, 1822, a despatch in which he dealt with the claim in the Ukase for the extension of territorial rights over adjacent seas to the distance—“unprecedented distance,” he terms it—of 100 miles from the coast, and of closing “a hitherto unobstructed passage.”

In this despatch Mr. Canning says :—

“ I have, indeed, the satisfaction to believe, from a conference which I have had with Count Lieven on this matter, that upon these two points,—the attempt to shut up the passage altogether, and the claim of exclusive dominion to so enormous a distance from the coast,—the Russian Government are prepared entirely to waive their pretensions. The only effort that has been made to justify the latter claim was by reference to an Article in the Treaty of Utrecht, which assigns 30 leagues from the coast as the distance of prohibition. But to this argument it is sufficient to answer, that the assumption of such a space was, in the instance quoted, by stipulation in a Treaty, and one to which, therefore, the party to be affected by it had (whether wisely or not) given its deliberate consent. No inference could be drawn from that transaction in favour of a claim by authority against all the world.

“ I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the

Abandonment of claim to extra-  
ordinary jurisdiction



Russian Empire as a *mare clausum*, and to extend the exclusive territorial jurisdiction of Russia to 100 Italian miles from the coast, will be publicly recalled, and I have the King's commands to instruct your Grace further to require of the Russian Minister (on the ground of the facts and reasonings furnished in their [*sic*] despatch and its inclosures) that such a portion of territory alone shall be defined as belonging to Russia as shall not interfere with the rights and actual possessions of His Majesty's subjects in North America."

Correspondence between Great Britain  
and Russia

Correspondence  
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On the 17th October in the same year, the Duke of Wellington, at Verona, addressed to Count Nesselrode, the Russian Plenipotentiary at the Congress, a Confidential Memorandum containing the following words:—

"Objecting, as we do, to this claim of exclusive sovereignty on the part of Russia, I might save myself the trouble of discussing the particular mode of its exercise as set forth in this Ukase, but we object to the mode in which the sovereignty is proposed to be exercised under this Ukase, not less than we do to the claim of it. *We cannot admit the right of any Power possessing the sovereignty of a country to exclude the vessels of others from the seas on its coasts to the distance of 100 Italian miles.*"

Confidential Memo-  
randum inclosed in  
letter of Duke of  
Wellington to  
G. Canning,  
November 28,  
1822.  
See Appendix,  
vol. ii, Part I,  
No. 1.

In reply, Count Nesselrode communicated to the Duke of Wellington a "Confidential Memorandum" dated the 11th (23rd) November, 1822, which contains the following passages:—

"The Cabinet of Russia has taken into mature consideration the Confidential Memorandum forwarded to them by the Duke of Wellington on the 17th October last, relative to the measures adopted by His Majesty the Emperor, under date of the 4th (16th) September, 1821, for defining the extent of the Russian possessions on the north-west coast of America, and for forbidding foreign vessels to approach his possessions within a distance of 100 Italian miles.

"... It was on the contrary, because she regarded those rights of sovereignty as legitimate, and because imperious considerations involving the very existence of the commerce which she carries on in the regions of the north-west coast of America compelled her to establish a system of precautions which became indispensable that she caused the Ukase of the 4th (16th) September, 1821, to be issued.

"... Consequently, the Emperor has charged his Cabinet to declare to the Duke of Wellington (such declaration not to prejudice his rights in any way if it be not accepted) that he is ready to fix, by means of friendly negotiation, and on the basis of mutual accommodation, the degrees of latitude and longitude which the two Powers shall regard as the utmost limit of their possessions and of their establishments on the north-west coast of America.

*Ibid.*

"His Imperial Majesty is pleased to believe that this negotiation can be completed without difficulty to the mutual satisfaction of the two States; and the Cabinet of Russia can from this moment assure the Duke of Wellington that the measures of precaution and supervision which will then be taken on the Russian part of the coast of America will be entirely in conformity with the rights derived from sovereignty, and with the established customs of nations, and that there will be no possibility of legitimate cause of complaint against them."

Again, on the 28th November, 1822, the Duke of Wellington addressed a note to Count Lieven, containing the following words:—

"The second ground on which we object to the Ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations, and we cannot found a negotiation upon a paper in which it is again broadly asserted. We contend that no Power whatever can exclude another from the use of the open sea. A Power can exclude itself from the navigation of a certain coast, sea, &c., by its own act or engagement, but it cannot by right be excluded by another. This we consider as the law of nations, and we cannot negotiate upon a paper in which a right is asserted inconsistent with this principle."

At an early date in the course of the negotiations with the United States and with Great Britain the execution of the Ukase beyond the territorial limit of 3 miles was suspended. Indeed, as far as the waters of Behring Sea are concerned, it may safely be said that it was never put into practical execution beyond this limit. The note from Count Nesselrode to Mr. Middleton on the subject was dated the 1st August, 1822, and is thus alluded to by Mr. Middleton in a despatch to Mr. Adams of the 19th September, 1823:—

"Upon Sir Charles [Bagot] expressing his wish to be informed respecting the actual state of the *north-west* question between the United States and Russia, so far as it might be known to me, I saw no objection to making a *confidential* communication to him of the note of Count Nesselrode, dated the 1st August, 1822, by which, in fact, staying the execution of the Ukase above mentioned, Russia has virtually abandoned the pretensions therein advanced.

The communication to the British Government on the same subject was made in August 1823 in

See Appendix,  
vol. ii, Part I,  
No. 15.

See Appendix,  
vol. ii, Part I,  
No. 31.

American State  
Papers, Foreign  
Relations, vol. v,  
p. 448.

See Appendix,  
vol. ii, Part I,  
No. 29.

the shape of an extract from a despatch from Count Nesselrode to Count Lieven, dated the 26th June, 1823. The following passage in it shows how complete was the abandonment of the unusual claim of maritime jurisdiction:—

"That the Commanders of our ships of war must confine their surveillance as nearly as possible to the mainland, *iz.*, over an extent of sea within range of cannon-shot from the shore; that they must not extend that surveillance beyond the sphere where the American Company has effectually exercised its rights of hunting and fishing since the date of its creation, as well as since the renewal of its privileges in 1799, and that, as to the islands on which are to be found colonies or settlements of the Company, they are all indistinctly comprised in this general rule.

"... Your Excellency will observe that these new instructions—which, as a matter of fact, are to suspend provisionally the effect of the Imperial Ukase of the 4th September 1821—were sent from St. Petersburg only in August of last year."

Mr. Lyall, Chairman of the Ship-owners' Society, of London, wrote on the 19th November, 1823, to Mr. G. Canning, asking whether official advices had been received from St. Peterburg that the Ukase of 1821 had been annulled. Mr. Canning having privately submitted his proposed reply to Count Lieven for his comments, caused the following letter to be sent, which had received Count Lieven's approval:—

"I am directed by Mr. Secretary Canning to acknowledge the receipt of your letter of the 19th instant, expressing a hope that the Ukase of September 1821 had been annulled.

"Mr. Canning cannot authorize me to state to you in distinct terms that the Ukase has been '*annulled*,' because the negotiation to which it gave rise is still pending, embracing, as it does, many points of great intricacy as well as importance.

"But I am directed by Mr. Canning to acquaint you that orders have been sent out by the Court of St. Petersburg to their Naval Commanders calculated to prevent any collision between Russian ships and those of other nations, and, in effect, suspending the Ukase of September 1821."

On the 15th January, 1824, Mr. G. Canning wrote to Sir C. Bagot, the British Ambassador at St. Petersburg:—

"... The questions at issue between Great Britain and Russia are short and simple. The Russian Ukase contains two objectionable pretensions: First, an extravagant assumption of maritime supremacy; secondly, an unwarranted claim of territorial dominions.

Correspondence between Great Britain and Russia.

Abandonment of claim to extra-ordinary jurisdiction.

See Appendix, vol. ii, Part I, Nos. 33, 34, and 35.

Lord F. Conyngnam to Mr. Lyall, November 26, 1823.

See Appendix, vol. ii, Part I, No. 36.

See Appendix, vol. ii, Part I, No. 37.

Correspondence

Abandonment of jurisdiction

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and Russia.

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ordinary jurisdiction.

"As to the first, the disavowal of Russia is, in substance all that we could desire. Nothing remains for negotiation on that head but to clothe that disavowal in precise and satisfactory terms. We would much rather that these terms should be suggested by Russia herself than have the air of pretending to dictate them; you will therefore request Count Nesselrode to furnish you with his notion of such a declaration on this point as may be satisfactory to your Government. That declaration may be made the preamble of the convention of limits." . . .

Again, in a despatch, 24th July, 1824, to Sir C. Bagot, Mr. G. Canning says:—

See Appendix,  
vol. ii, Part I,  
No. 44.

". . . Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains, instead of the summit as the line of boundary; the second, the extension of the right of the navigation of the Pacific to the sea beyond Behring Straits.

"As to the second point, it is, perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also.

"By the territorial demarcation agreed to in this 'projet,' Russia will become possessed, in acknowledged sovereignty of both sides, of Behring Straits.

"The Power which could think of making the Pacific a *mare clausum* may not unreasonably be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner; but the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.

See *ante*, p. 32.

"Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone, but to the whole civilized world.

"The protection given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now prescribed, the free navigation of Behring Straits and of the seas beyond them must be secured to us."

See Appendix,  
vol. ii, Part I,  
No. 52.

Mr. George Canning in a despatch to Mr. Stratford Canning, who had been appointed British Plenipotentiary for the negotiation of a Convention at St. Petersburg, under date the 8th December, 1824, after giving a summary of the negotiations up to that date, goes on to say:—

" It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.

" You will therefore take care, in the first instance, to repress any attempt to give this change to the character of the negotiation, and will declare without reserve that the point to which alone the solicitude of the British Government and the jealousy of the British nation attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the Ukase of 1821.

" That this Ukase is not acted upon, and that instructions have been long ago sent by the Russian Government to their cruisers in the Pacific to suspend the execution of its provisions, is true; but a private disavowal of a published claim is no security against the revival of that claim. The suspension of the execution of a principle may be perfectly compatible with the continued maintenance of the principle itself, and when we have seen in the course of this negotiation that the Russian claim to the possession of the coast of America down to latitude 59° [*sic*] rests in fact on no other ground than the presumed acquiescence of the nations of Europe in the provisions of an Ukase published by the Emperor Paul in the year 1799, against which it is affirmed that no public remonstrance was made, it becomes us to be exceedingly careful that we do not, by a similar neglect, on the present occasion allow a similar presumption to be raised as to an acquiescence in the Ukase of 1821.

" The right of the subjects of His Majesty to navigate freely in the Pacific cannot be held as a matter of indulgence from any Power. Having once been publicly questioned, it must be publicly acknowledged.

" We do not desire that any distinct reference should be made to the Ukase of 1821; but we do feel it necessary that the statement of our right should be clear and positive, and that it should stand forth in the Convention in the place which properly belongs to it, as a plain and substantive stipulation, and not be brought in as an incidental consequence of other arrangements to which we attach comparatively little importance.

" This stipulation stands in the front of the Convention concluded between Russia and the United States of America; and we see no reason why upon similar claims we should not obtain exactly the like satisfaction. *See post, p. 52.*

" For reasons of the same nature we cannot consent that the liberty of navigation through Bering Straits should be stated in the Treaty as a boon from Russia.

" The tendency of such a statement would be to give countenance to those claims of exclusive jurisdiction against which we, on our own behalf, and on that of the whole civilized world, protest.

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Correspondence between Great Britain  
and Russia.

Abandonment of claim to extra-  
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ordinary jurisdiction.

"It will of course strike the Russian Plenipotentiaries that, by the adoption of the American Article respecting navigation, &c., the provision for an exclusive fishery of 2 leagues from the coasts of our respective possessions falls to the ground.

"But the omission is, in truth, immaterial.

"The law of nations assigns the exclusive sovereignty of 1 league to each Power on its own coasts, without any specific stipulation, and though Sir Charles Bagot was authorized to sign the Convention with the specific stipulation of 2 leagues, in ignorance of what had been decided in the American Convention at the time, yet, after that Convention has been some months before the world, and after the opportunity of consideration has been forced upon us by the act of Russia herself, we cannot now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contrast between the United States and us to our disadvantage."

The Treaty (Great Britain and Russia)  
February 28, 1825.

These negotiations resulted in a Convention with Great Britain, signed on the 28th February, 1825, hereinafter referred to.

Protest of United States against  
Ukase of 1821.

50th Cong.,  
2nd Sess., Sen.  
Ex. Doc. No. 106,  
p. 204.

*Protest of the United States.*

On the 30th January (11th February), 1822, M. Pierre de Poletica, the Envoy Extraordinary and Minister Plenipotentiary of the Russian Emperor, transmitted the Ukase to Mr. Adams, Secretary of State for the United States.

*Ibid.*, p. 205.

On the 25th February, 1822, Mr. Adams wrote to M. Poletica:—

*"Department of State, Washington,*

"Sir, *February 25, 1822.*

"I have the honour of receiving your note of the 11th instant, inclosing a printed copy of the Regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that Company upon the north-west coast of America.

"I am directed by the President of the United States to inform you that he has seen with surprise, in this Edict, the assertion of a territorial claim on the part of Russia, extending to the 51st degree of north latitude on this continent, and a Regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any Act which should define the boundary



between the territories of the United States and Russia on this continent, that the same would have been arranged by Treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

"This Ordinance affects so deeply the rights of the United States and of their citizens, that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and Regulations contained in it.

"I avail, &c.

(Signed) "JOHN QUINCY ADAMS."

It will be observed that both the Ukase and the protest apply to the waters from Behring Strait southward as far as the 51st degree of latitude on the coast of America.

On the 28th of the same month the Russian Representative replied at length, defending the territorial claim on grounds of discovery, first occupation, and undisturbed possession, and explaining the motive which determined the Imperial Government in framing the Ukase.

He wrote :—

"I shall be more succinct, Sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

"The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that Diplomatic Missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. . . .

"I ought, in the last place, to request you to consider, Sir, that the Russian possessions in the Pacific Ocean extend, on the north-west coast of America, from Behring Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the

Protest of United States against  
Ukase of 1821.

Correspondence  
and

Russian Defence of Ukase.

M. de Poletica to  
Mr. J. Q. Adams,  
February 28, 1822,  
American State  
Papers, Foreign  
Relations, vol. iv,  
pp. 861-862.  
See Appendix,  
vol. ii, Part II,  
No 1.

Ukase based on doctrine of  
*mare clausum*.

same strait to the 45th degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* ("mers fermées"), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."

50th Cong., 2nd  
Sess., Senate  
Ex. Doc. No. 106,  
p. 207.  
See Appendix,  
vol. ii, Part II,  
No 2.

To this Mr. Adams replied (30th March, 1822).  
He said:—

"This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States, as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

"With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles."

The Russian Representative replied to this note on the 2nd April following, and in the course of his letter he said:—

M. de Poletica to  
Mr. J. Q. Adams,  
April 2, 1822.  
50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
p. 208.

"In the same manner the great extent of the Pacific Ocean at the 51st degree of latitude can not invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

"As to the right claimed for the citizens of the United States of trading with the natives of the country of the north-west coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I cannot dissemble, Sir, that this same trade beyond the 51st degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian-American Company in their absolute integrity.

"I shall not finish this letter without repeating to you, Sir, the very positive assurance which I have already had the honour once of expressing to you that in every case where the American Government shall judge it necessary to make explanations to that of the Emperor, the President

of the United States may rest assured that these explanations will always be attended to by the Emperor, my august Sovereign, with the most friendly, and, consequently, the most conciliatory, dispositions."

Correspondence between United States  
and Russia.

Correspondence  
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On the 22nd July, 1823, Mr. Adams wrote to Mr. Middleton, the United States' Minister at St. Petersburg, as follows:—

"From the tenour of the Ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
p. 210.  
See Appendix,  
vol. ii, Part II,  
No. 3.

"The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the 55th degree of latitude, and have no existence on the Continent of America.

"The correspondence between M. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial Ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the Ukase itself had already done in England. I inclose herewith the North American Review for October 1822, No. 37, which contains an article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the 52nd number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by M. Poletica, are all without foundation in fact."

Mr. Middleton, writing to the Secretary of State of the United States, on the 1st December, 1823, inclosed a confidential memorial which thus dealt with the claim (which is properly regarded by him as an attempt to extend territorial jurisdiction upon the theory of a shut sea and having no other basis):—

"The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents,

American State  
Papers, Foreign  
Relations, vol. v,  
p. 452.

See Appendix,  
vol. ii, Part II,  
No. 5.

and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties, and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well-determined course.

"The right cannot be denied of shutting a port, a sea, or even an entire country, against foreign commerce in some particular cases. But the exercise of such a right, unless in the case of a colonial system already established, or for some other special object, would be exposed to an unfavourable interpretation, as being contrary to the liberal spirit of modern times, wherein we look for the bonds of amity and of reciprocal commerce among all nations being more closely cemented.

"Universal usage, which has obtained the force of law, has established for all the coasts an accessory limit of a moderate distance, which is sufficient for the security of the country and for the convenience of its inhabitants, but which lays no restraint upon the universal rights of nations, nor upon the freedom of commerce and of navigation." (Vattel, Book I, Chapter 23, section 289.)

American State  
Papers, Foreign  
Relations, vol. v,  
pp. 465, 466.

At the fourth Conference (8th March, 1824) which preceded the signature of the Treaty of the 5th (17th) April, 1824, Mr. Middleton, the United States' Representative, submitted to Count Nesselrode the following paper:—

"(Translation.)

"The dominion cannot be acquired but by a real occupation and possession, and an intention ('*animus*') to establish it is by no means sufficient.

"Now, it is clear, according to the facts established, that neither Russia nor any other European Power has the right of dominion upon the Continent of America between the 50th and 60th degrees of north latitude.

"Still less has she the dominion of the adjacent maritime territory, or of the sea which washes these coasts, a dominion which is only accessory to the territorial dominion.

"Therefore she has not the right of exclusion or of admission on these coasts, nor in these seas, which are free seas.

"The right of navigating all the free seas belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

"The United States have exercised navigation in the seas, and commerce upon the coasts above mentioned, from the time of their independence; and they have a perfect right to this navigation and to this commerce, and

they can only be deprived of it by their own act or by a Convention."

*Convention between the United States and Russia.*

The result of these negotiations between the United States and Russia was the Convention of the 17th April, 1824, which put an end to any further pretension on the part of Russia to restrict navigation or fishing in Behring Sea, so far as citizens of the United States were concerned.

The English version of the Convention is as follows:—

"ARTICLE I.

"It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles.

"ARTICLE II.

"With a view of preventing the rights of navigation and of fishing, exercised upon the Great Ocean by the citizens and subjects of the High Contracting Powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian Establishment, without the permission of the Governor or Commaader; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any Establishment of the United States upon the north-west coast.

"ARTICLE III.

"It is, moreover, agreed that hereafter there shall not be formed by the citizens of the United States, or under the authority of the said States, any Establishment upon the north-west coast of America, nor in any of the islands adjacent, to the north of 54° 40' of north latitude; and that, in the same manner there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

"ARTICLE IV.

"It is, nevertheless, understood that, during a term of ten years, counting from the signature of the present Convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbours, and creeks upon the coast mentioned in the preceding Article, for the purpose of fishing and trading with the natives of the country.

The Treaty (Russia and the United States), April 17, 1824.

For French text, see Appendix, vol. ii, Part III, No. 1.

Blue Book, "United States No. 1 (1801)," p. 57.

Appendix, vol. iii.

Navigation of Pacific to be free

Treaty (Great Br  
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Treaty of 1824.

## "ARTICLE V.

"All spirituous liquors, fire-arms, other arms, powder, and munitions of war of every kind are always excepted from this same commerce permitted by the preceding Article; and the two Powers engage reciprocally neither to sell, or suffer them to be sold to the natives, by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandize, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the High Contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this Article, by their respective citizens or subjects.

## "ARTICLE VI.

"When this Convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate on the one part, and on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

"In faith whereof the respective Plenipotentiaries have signed this Convention, and thereto affixed the seals of their arms.

"Done at St. Petersburg the 5th (17th) April in the year of Grace 1824.

(L.S.) "HENRY MIDDLETON.  
(L.S.) "Le Comte C. DE NESSELRODE.  
(L.S.) "PIERRE DE POLETICA."

*Convention between Great Britain and Russia.*

Treaty (Great Britain and Russia),  
February 28, 1825.

The negotiations between Great Britain and Russia resulted in the Convention of the 28th February, 1825.

The following is the English translation of this Convention:—

For French text,  
see Appendix,  
vol. II, Part III,  
No. 2.

## "ARTICLE I.

Navigation of Pacific to be free.

See Blue Book,  
"United States  
No. 1 (1891):"  
p. 58.  
Appendix, vol. III.

"It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles.



## "ARTICLE II.

"In order to prevent the right of navigating and fishing exercised upon the ocean by the subjects of the High Contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land without permission at any British establishment on the north-west coast.

Treaty of 1825

## "ARTICLE III.

"The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the island of America to the north-west, shall be drawn in the manner following:—

"Commencing from the southernmost part of the island called Prince of Wales' Island, which point lies in the parallel of 54° 40' north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

## "ARTICLE IV.

"With reference to the line of demarcation laid down in the preceding Article, it is understood:

"1st. That the island called Prince of Wales' Island shall belong wholly to Russia.

"2nd. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

## "ARTICLE V.

"It is moreover agreed that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding Articles to the possessions of the other; consequently British subjects shall not

form any establishment either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions, as designated in the two preceding Articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

"ARTICLE VI.

"It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.

"ARTICLE VII.

"It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and of trading with the natives.

"ARTICLE VIII.

"The port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of ten years from the date of the exchange of the ratifications of the present Convention. In the event of an extension of this term of ten years being granted to any other Power, the like extension shall be granted also to Great Britain.

"ARTICLE IX.

"The above-mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire-arms, or other arms, gunpowder, or other warlike stores; the High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

"ARTICLE X.

"Every British or Russian vessel navigating the Pacific Ocean which may be compelled by storms or by accident to take shelter in the ports of the respective Parties, shall be at liberty to refit therein, to provide itself with all necessary stores, and to put to sea again, without paying any other than port and lighthouse dues, which shall be the same as those paid by national vessels. In case, however, the master of such vessel should be under the necessity of disposing of a part of his merchandize in order to defray his expenses, he shall conform himself to the Regulations and Tariffs of the country where he may have landed.

## "ARTICLE XI.

"In every case of complaint on account of an infraction of the Articles of the present Convention, the civil and military authorities of the High Contracting Parties, without previously acting or taking any forcible measure, shall make an exact and circumstantial report of the matter to their respective Courts, who engage to settle the same in a friendly manner, and according to the principles of justice.

Treaty of 1825.

## "ARTICLE XII.

"The present Convention shall be ratified, and the ratifications shall be exchanged at London within the space of six weeks, or sooner if possible.

"In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

"Done at St. Petersburg the 16th (28th) day of February, in the year of our Lord one thousand eight hundred and twenty-five.

(L.S.) "STRATFORD CANNING.

(L.S.) "The Count DE NESSELRODE.

(L.S.) "PIERRE DE POLETICA."

Mr. Stratford Canning to Mr. G. Canning, in his despatch of the 1st March, 1825, inclosing the Convention as signed, says:—

"With respect to Behring Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian Plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits, or of the seas to the north of them." See Appendix, vol. 5, Part 1, No. 36

Mr. S. Canning, in a further despatch to Mr. G. Canning, 3rd (15th) April, 1825, said:—

". . . With respect to the right of fishing, no explanation whatever took place between the Plenipotentiaries and myself in the course of our negotiations. As no objection was started by them to the Article which I offered in obedience to your instructions, I thought it unadvisable to raise a discussion on the question; and the distance from the coast at which the right of fishing is to be exercised in common passed without specification, and consequently rests on the law of nations as generally received. Ibid., No. 5"

"Conceiving, however, at a later period that you might possibly wish to declare the law of nations thereon, jointly with the Court of Russia, in some ostensible shape, I broached the matter anew to Count Nesselrode, and suggested that he should authorize Count Lieven, on your invitation, to exchange notes with you declaratory of the law as fixing the distance at 1 marine league from the shore.

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The Ukase ne

"Count Nesselrode replied that we should feel embarrassed in submitting this suggestion to the Emperor just at the moment when the ratifications of the Convention were on the point of being dispatched to London; and he seemed exceedingly desirous that nothing should happen to retard the accomplishment of that essential formality. He assured me at the same time that his Government would be content, in executing the Convention, to abide by the recognized law of nations; and that, if any question should hereafter be raised upon the subject, he should not refuse to join in making the suggested declaration, on being satisfied that the general rule under the law of nations was such as we supposed.

"Having no authority to press the point in question, I took the assurance thus given by Count Nesselrode as sufficient, in all probability, to answer every national purpose. . . ."

The claim of Russia attracted much attention at the time.

President Monroe wrote to Mr. Madison on the 2nd August, 1824, with reference to the Convention of that year, to the effect that—

"By this Convention the claim to the *mare clausum* is given up, a very high northern latitude is established for our boundary with Russia, and our trade with the Indians placed for ten years on a perfectly free footing, and after that term left open for negotiation. . . . England will, of course, have a similar stipulation in favour of the free navigation of the Pacific, but we shall have the credit of having taken the lead in the affair."

In answer to the above, Mr. Madison wrote to President Monroe on the 5th August, 1824:—

"The Convention with Russia is a propitious event, as substituting amicable adjustment for the risk of hostile collision. But I give the Emperor, however, little credit for his assent to the principle of '*mare liberatum*' [sic] in the North Pacific. His pretensions were so absurd, and so disgusting to the maritime world, that he could not do better than retreat from them through the forms of negotiation. It is well that the cautious, if not courteous, policy of England towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition."

In the year 1822 the Russian authorities attempted to enforce the provisions of the Ukase of 1821 and seized the United States' brig "Pearl," when on a voyage from Boston to Sitka. The circumstances of this case are stated in the next Chapter.

It is sufficient for the present purpose to note

United States' interpretation of Russo-American Treaty;

Wharton, Digest of International Law, section 159, vol. ii, p. 226.

Letters and writings of James Madison, Philadelphia, 1865, p. 446.

The Ukase never enforced.

See letter of S. Canning to G. Canning, April 23, 1823. Appendix, vol. ii, Part I, No. 24. See *post*, p. 78.

that the United States at once protested, the "Pearl" was released, and compensation paid for her arrest and detention.

This is believed to be the only case in which any attempt was, in practice, made by Russia to interfere with any ship of another nation in the waters in question outside of territorial limits.

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The facts disclosed in this Chapter show:—

That the Ukase of the Emperor Paul in the year 1821—the first and only attempt on the part of Russia to assert dominion over, and restrict the rights of other nations in, the non-territorial waters of the North Pacific, including those of Behring Sea—was made the subject of immediate and emphatic protest by Great Britain and the United States of America.

That Russia thereupon unequivocally withdrew her claims to such exclusive dominion and right of control.

That the Conventions of 1824 and 1825 declared and recognized the rights of the subjects of Great Britain and the United States to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend.

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## CHAPTER III.

**HEAD (C).—***The question whether the body of water now known as the Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia.*

"Pacific Ocean" as used in the Treaty of 1825.

It will be remembered that the Ukase of 1821 included the Pacific from the Behring Strait southward to the 51st parallel, and that this claim was protested against *in toto*, on the ground that the coast was almost entirely unoccupied, and that maritime jurisdiction, even where the coast was occupied, could not extend beyond 3 miles.

In the first Articles of the Conventions of 1824 and 1825 the claim to an extraordinary jurisdiction at sea was definitely abandoned, and the abandonment was a complete withdrawal of the claim made. It was principally against this very claim that the protests of Great Britain and the United States were directed, and its relinquishment was therefore, and purposely, placed at the head of each of the resulting Conventions.

Article I of the Convention between Russia and the United States is as follows:—

"It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles."

Article I of the Convention between Great Britain and Russia is as follows:—

"It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles."

It has been contended, however, on the part of the United States, that the renunciation of claims contained in the Articles above quoted did not extend to what is now known as Behring Sea.

On this point Mr. Blaine, Secretary of State for the United States, writes:—



"The United States contends that the Behring Sea was not mentioned, or even referred to, in either Treaty, and was in no sense included in the phrase 'Pacific Ocean.' If Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her."

In order to uphold the contention thus advanced by the United States, it is, however, further found necessary to maintain that the words "north-west coast" and "north-west coast of America," which frequently occur in the correspondence connected with those Conventions, refer only to a portion of the coast of the continent south of Behring Sea. This portion of the coast Mr. Blaine endeavours to define precisely in his letter, which has just been quoted, illustrating his meaning by maps, and seeking to restrict the application of the term to that part of the coast which runs southward continuously from the 60th parallel.

The meaning of the phrase "Pacific Ocean" and that of the term "north-west coast" are thus intimately associated in the contention of the United States, and it will be convenient to treat them together.

*Meaning of the phrase "Pacific Ocean" and the term "North-west Coast" in the Treaties and Correspondence.*

It will be found that such a construction of these phrases as Mr. Blaine has striven to place upon them cannot be reconciled with the correspondence.

In the first place, it has already been shown that Russia's object was not the acquisition of the control of the sea between Behring Strait and latitude 51°—this she distinctly denied—but the exclusion from her coasts in Asia and America, and on the islands, of the traders whose ventures threatened the success of the Russian-American Company.

No claim had been advanced by Russia which could possibly render a distinction between Behring Sea and the main Pacific of the slightest importance.

On the contrary, in the Ukase of 1799, Russia asserted jurisdiction over her subjects on all hunting grounds and establishments on the coast of America from the 55° north latitude to Behring Strait and thence southward to Japan,

Contention of the United States that Behring Sea was not included.

Mr. Blaine to Sir J. Pannetiere.  
Blue Book,  
"United States,"  
No. 1 (1891),  
p. 37.  
See Appendix,  
vol. iii.

"North-west Coast."

*Ibid.*, p. 38.

Meaning of "Pacific Ocean" and "North-west Coast" in the Treaties and correspondence.

M. de Poletica to Mr. Adams, February 28, 1822.  
See Appendix, vol. ii, Part II, No. 1.

Usage of the corre-

"North-

"Pacifi-

and on the Aleutian, Kurile, and other Islands in all the "north-eastern" ocean.

In 1821, Russia was endeavouring to assert a title to the whole coast from Behring Strait to 51° north latitude on the American, and latitude 45° 50' on the Asiatic coast.

Her claim to an extraordinary maritime jurisdiction over the non-territorial waters of the ocean was definitively abandoned at the outset of the negotiations, and the discussion was thenceforward confined to the protection of her rights within territorial limits.

Russia's object was the recognition and protection of the Russian Settlements in America. Accordingly, the Conventions provide against "illicit commerce," landing "at any place [from Behring Strait to the southernmost boundary] where there may be a Russian establishment without the permission of the Governor or Commandant," and against the formation of Establishments by either Power (in the respective Conventions) on territory claimed by, or conceded to, the other.

With the same object rules were made by Russia, headed "Rules established for the Limits of Navigation and Order of Communication along the coast of the Eastern Siberia, the *north-west-coast of America*, and the Aleutian, Kurile, and other Islands." This obviously included the American coast of Behring Sea in the term "north-west coast."

Baron Nicolay, writing to Lord Londondery, 31st October (12th November), 1821, says:—

"(Translation.)

"The new Regulation does not forbid foreign vessels to navigate the seas which wash the Russian possessions along the *north-west coast of America* and the north-east coast of Asia.

"On the other hand, in considering the Russian possessions which extend on the *north-west coast of America* from Behring Strait to 51° of north latitude, and also on the opposite coast of Asia and the adjacent islands, from the same Strait to 45°, &c.

"For, if it is demonstrated that the Imperial Government would, strictly speaking, have had the power to entirely close to foreigners that part of the *Pacific Ocean* on which our possessions in America and Asia border, there is all the more reason why the right, in virtue of which it has just adopted a measure much less generally restrictive, should not be called in question.

"The officers commanding the Russian vessels of war,

Usage of the terms in official  
correspondence.

See Appendix,  
vol. i, No. 1.

Ibid., vol. ii,  
Part I, No. 1.

"North-west Coast."

"Pacific Ocean."

which are to see to the maintenance of the above-mentioned arrangements in the *Pacific Ocean*, have been ordered to put them into force against those foreign vessels, &c."

In this note "north-west coast of America" is mentioned three times, and in each case the coast of Bering Sea is included in the term. "Pacific Ocean" appears twice, and in both instances includes the Behring Sea.

A map, published officially by Russian authorities, of which a copy is included among the documents annexed to this Case was forwarded from St. Petersburg by Sir Charles Bagot to Lord Londonderry, in a despatch dated the 17th November, 1821, in which it is thus described:—

"I have the honour to transmit to your Lordship, under a separate cover, an English translation of the Ukase, and I at the same time inclose a Map of the north-west coasts of America, and the Aleutian and Kurile Islands, which has been published in the Quartermaster-General's Department here, and upon which I have marked all the principal Russian Settlements."

It will be seen on reference to this Map that the words "part of the north-west coast of America" include the whole coast line from a point north of Behring Straits down to latitude 54° north.

Again Lord Londonderry writes to Count Lieven:—

"The Undersigned has the honour hereby to acknowledge the note, addressed to him by Baron de Nicolay of the 12th November last, covering a copy of an Ukase issued by His Imperial Majesty the Emperor of All the Russias, and bearing date the 4th September, 1821, for various purposes, therein set forth, especially connected with the territorial rights of his Crown on the *north-western coast of America, bordering upon the Pacific*, and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto."

And Mr. S. Canning writing in February 1822 to Lord Londonderry from Washington, where he was then British Minister, observes:—

"I was informed this morning by Mr. Adams that the Russian Envoy has, within the last few days, communicated officially to the American Government an Ukase of the Emperor of Russia, which has lately appeared in the public prints, appropriating to the sovereignty and exclusive use of His Imperial Majesty the *north-west coast of America* down to the 51st parallel of latitude, together with a considerable portion of the opposite coasts of Asia, and the neighbouring seas to the extent of 100 Italian miles from any part of the coasts and intervening islands so appropriated. In apprizing me of this circumstance, Mr. Adams gave me to understand that it was not the intention of the American Cabinet to admit the claim thus

For map, see Appendix, vol. iv, No. 1. See Appendix, vol. ii, Part I, No. 4.

"North-west Coast."

Lord Londonderry to Count Lieven, January 18, 1822. See Appendix, vol. ii, Part I, No. 7.

Mr. Stratford Canning to the Marquis of Londonderry, February 19, 1822. See Appendix, vol. ii, Part I, No. 9.

"North-west Coast."

See Appendix,  
vol. ii, Part II,  
No. 1.

notified on the part of Russia. His objection appears to lie more particularly against the exclusion of foreign vessels to so great a distance from the shore."

Again M. de Poletica, writing to Mr. Adams on the 28th February, 1822:—

"The first discoveries of the Russians on the north-west continent of America go back to the time of the Emperor Peter I. They belong to the attempt, made towards the end of the reign of this great Monarch, to find a passage from the *icy sea* into the *Pacific Ocean*.

"When, in 1799, the Emperor Paul I granted to the present American Company its first Charter, he gave it the exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of north latitude to Behring Straits.

"From this faithful exposition of known facts, it is easy, Sir, as appears to me, to draw the conclusion that the rights of Russia, to the extent of the *north-west coast*, specified in the Regulation of the Russian-American Company, rest, &c.

"The Imperial Government, in assigning for limits to the *Russian possessions on the north-west coast of America*, on the one side *Behring Straits*, and on the other the 51st degree of north latitude, has, &c.

"I ought, in the last place, to request you to consider, Sir, that the *Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Straits to the 51st degree of north latitude*, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree."

Throughout this note the phrase "north-west coast" includes the coast of Behring Sea, and the last passage shows unmistakably that the Russians at that time regarded the Pacific Ocean as extending to Behring Strait.

The attention of the British Government was called to the Ukase by the Hudson's Bay Company in the following terms:—

"It has fallen under the observation of the Governor and Committee of the Hudson's Bay Company that the Russian Government have made a claim to the *north-west coast of America from Behring Straits to the 51st degree of north latitude*; and in an Imperial Ukase have prohibited foreign vessels from approaching the coast within 100 miles, under penalty of confiscation."

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, as he said, from the "northern extremity of the continent." Articles in the "North American Review" (vol. xv, article 18), and "Quarterly Review" (1821-22,

"Pacific Ocean."

"North-west Coast."

Hudson's Bay  
Company to the  
Marquis of  
Londonderry,  
March 27, 1822.  
See Appendix,  
vol. ii, Part I,  
No. 10.

Mr. Adams to  
Mr. Rush, July 22,  
1823. American  
State Papers,  
Foreign Relations,  
vol. v, p. 446.  
See Appendix,  
vol. ii, Part II,  
No. 4.  
See Appendix,  
vol. i, Nos. 3 and 4.

vol. xxvi, p. 344), published at the time of the controversy, and already referred to as mentioned with approbation by Mr. Adams, in 1824-25, use the words "north-west coast" with the same signification.

Mr. Adams, in his despatch of the 22nd July, 1823, to Mr. Middleton, referred to the Ukase of the Emperor Paul as purporting to grant to the American Company the "exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of *north latitude to Behring Strait*.

The fact that the whole, and not merely a particular portion, of the territorial and maritime claim advanced by the Ukase was in question, and was settled by the Treaties of 1824 and 1825 also appears from the Memorial laid by Mr. Middleton, on the part of the United States, before the Russian Government on the 17th December, 1823 :—

"With all the respect which we owe to the declared intention and to the determination indicated by the Ukase, it is necessary to examine the two points of fact; (1.) *If the country to the south and east of Behring Strait, as far as the 51st degree of north latitude, is found strictly unoccupied.* (2.) *If there has been, latterly, a real occupation of this vast territory? . . .* The conclusion which must necessarily result from these facts does not appear to establish that the territory in question had been legitimately incorporated with the Russian Empire.

"The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled."

In an earlier part of the same paper, Mr. Middleton observes :—

"The Ukase even goes to the *shutting up of a strait* which has never been till now shut up, and which is at present the principal object of discoveries, interesting and useful to the sciences.

"The very terms of the Ukase bear that this pretension has now been made for the first time."

The same appears from Mr. G. Canning's despatch to Sir C. Bagot of the 24th July, 1824 (which has been already quoted in another connection) :—

"Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains, instead of the summit as the line of boundary; the second, the extension of the right of navigation of the *Pacific to the sea beyond Behring Straits*.

"North-west Coast,"

American State Papers, Foreign Relations, vol. v, p. 426.

See Appendix, vol. ii, Part II, No. 3.

American State Papers, vol. v, p. 452.

See Appendix, vol. ii, Part II, No. 5.

"Pacific Ocean."

See Appendix, vol. ii, Part I, No. 43.

"Pacific Ocean."

"As to the second point, it is, perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also.

"By the territorial demarcation agreed to in this 'Projet,' Russia will become possessed, in acknowledged sovereignty of both sides, of Behring Straits.

"The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner; but the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.

See *ante*, p. 32.

"Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone, but to the whole civilized world.

"The protection\* given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now prescribed, the free navigation of Behring Straits, and of the seas beyond them, must be secured to us."

It would have been of little advantage to secure the right to navigate through Behring Strait unless the right to navigate the sea leading to it was secured, which would not have been the case if the Ukase had remained in full force over Behring Sea.

The frequent references to Behring Strait and the seas beyond it show that there was no doubt in the minds of the British statesmen of that day that, in obtaining an acknowledgment of freedom of navigation and fishing throughout the Pacific, they had also secured this right as far as Behring Strait.

As corroborative proof of the usual practice of the British naval authorities, in the nomenclature of these waters, reference may be made to the instructions given in 1825 by the Lords Commissioners of the Admiralty, which will be found in the "Narrative of a Voyage to the Pacific and Behring Strait, &c.," under command of Captain F. W. Beechey, R.N., in the years 1825-26-27-28, published by authority in London, 1831.

These instructions from the Lords Commis-

\* (*i.e.*) By the extension of territorial jurisdiction to two leagues, as originally proposed in the course of the negotiations between Great Britain and Russia.



sioners, which are full and detailed, make reference only to Behring Strait and the Pacific Ocean, and do not mention the Sea of Kamtehatka or Behring Sea.

*Common meaning of "Pacific Ocean" and "North-west Coast."*

The works of Mr. Robert Greenhow, Translator and Librarian to the United States' Department of State (well known in connection with the discussion of the "Oregon question"), afford a detailed and conclusive means of ascertaining the views officially held by the United States' Government on the meaning of *Pacific Ocean*, *Behring Sea*, *North-west coast*, and the extent to which the claims made by Russia in the Ukase of 1821 were abandoned by the Convention of 1824.

A "Memoir" was prepared by Mr. Greenhow, on the official request of Mr. L. F. Linn, Chairman of a Select Committee on the Territory of Oregon, by order of Mr. John Forsyth, Secretary of State. It includes a Map entitled "The North-west Coast of North America and adjacent Territories," which extends from below Acapulco in Mexico to above the mouth of the Kuskoquim in Behring Sea, and embraces also the greater part of the Aleutian chain.

Touching the signification of the terms *North-west coast* and *Pacific Ocean*, and the meaning attached to the relinquishment of Russian claims by the Convention of 1824, the first part of the "Memoir," under the heading "Geography of the Western Section of North America," contains the following passage:—

"The *north-west coast*\* is the expression usually employed in the United States at the present time to distinguish the vast portion of the American continent which extends north of the 40th parallel of latitude from the Pacific to the great dividing ridge of the *Rocky Mountains*, together with the contiguous islands in that ocean. The southern part of this territory, which is drained almost entirely by the River Columbia, is commonly called *Oregon*, from the supposition (no doubt erroneous) that such was the name applied to its principal stream by the aborigines. To the more northern parts of the continent many appellations, which will hereafter be mentioned, have been assigned by navigators and fur traders of various nations. The territory bordering upon the Pacific southward, from the 40th parallel to the

\* N.B.—The *italics* in this and subsequent quotations are those employed by Greenhow himself.

*Common meaning of "Pacific Ocean" and "North-west Coast."*

Greenhow's works.

"Memoir Historical and Political of the north-west coast of North America and the adjacent territories, illustrated by a Map and a geographical view of these countries, by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 24th Cong., 1st Session (174), 1846. The same Memoir, separately printed, appears in identical form, and with the same Map and pagination Wiley and Putnam, New York, 1849.

"North-west Coast."

"The Geography of the Territories on the North-west Coast of North America," New York, 1843.

extremity of the peninsula which stretches in that direction as far as the Tropic of Cancer, is called *California*, a name of uncertain derivation, formerly applied by the Spaniards to the whole western section of North America, as that of *Florida* was employed by them to designate the regions bordering upon the Atlantic. The north-west coast and the west coast of California together form the *west coast of North America*; as it has been found impossible to separate the history of these two portions, so it will be necessary to include them both in this geographical view" (p. 1).

Mr. Greenhow here gives the following note:—

"In the following pages the term *coast* will be used, sometimes as signifying only the sea-shore, and sometimes as embracing the whole territory, extending therefrom to the sources of the river; care has been, however, taken to prevent misapprehension, where the context does not sufficiently indicate the true sense. In order to avoid repetitions, the *north-west coast* will be understood to be the *north-west coast of North America*; all latitudes will be taken as *north latitudes*, and all longitudes as *west from Greenwich*, unless otherwise expressed."

The "Memoir" continues as follows:—

"The northern extremity of the west coast of America is *Cape Prince of Wales*, in latitude of  $65^{\circ} 52'$ , which is also the westernmost spot in the whole continent; it is situated on the eastern side of *Behring's Strait*, a channel 51 miles in width, connecting the Pacific with the *Arctic* [or *Icy or North Frozen*] *Ocean*, on the western side of which strait, opposite *Cape Prince of Wales*, is *East Cape*, the eastern extremity of Asia. Beyond *Behring Strait* the shores of the two continents recede from each other. The *north coast of America* has been traced from *Cape Prince of Wales* north-eastward to *Cape Barrow*," &c. (pp. 3-4).

The relations of *Behring Sea* to the *Pacific Ocean* are defined as follows in the "Memoir":—

"The part of the Pacific north of the Aleutian Islands which bathes those shores is commonly distinguished as the *Sea of Kamtehuaka*, and sometimes as *Behring Sea*, in honour of the Russian navigator of that name who first explored it" (pp. 4-5).

Again, in the "Geography of Oregon and California," Mr. Greenhow writes:—

"Cape Prince of Wales, the westernmost point of America, is the eastern pillar of *Behring Strait*, a passage only 50 miles in width, separating that continent from Asia, and forming the only direct communication between the Pacific and Arctic Oceans.

\*     \*     \*     \*

\* The Geography of Oregon and California and the other territories on the north-west coast of North America." New York, 1845.

"The part of the Pacific called the *Sea of Kamtehatka*, or Behring Sea, north of the Aleutian chain, likewise contains several islands," &c. (p. 4).

"Pacific Ocean."

Greenhow's "History" was officially presented to the Government of Great Britain by the Government of the United States in July 1845, in connection with the Oregon discussion and in pursuance of an Act of Congress.\*

In this History the Sea of Kamtehatka, or Behring's Sea, is again referred to as a part of the Pacific Ocean.

In respect of the understanding by the United States that the claims advanced by the Ukase of 1821 had been entirely relinquished by the Russian and United States' Convention of 1824,

"The History of Oregon and California and the other territories on the north-west coast of North America, by Robert Greenhow, Translator and Librarian to the Department of State of the United States; author of a Memoir Historical and Political on the north-west coast of North America, published in 1840 by direction of the Senate of the United States." New York, 1845.

This is a second edition, and in the preface it is explained that its issue was rendered necessary to supply 1,500 copies of the work which had been ordered for the General Government.

The same work. First edition, London, 1844. Both editions contain Maps, which appear to be identical, but different from the Maps accompanying the Memoir, though including nearly the same limits with them.

\* The following is the correspondence accompanying the presentation by the Government of the United States:—

"Mr. Buchanan to Mr. Pakenham.

"Department of State, Washington,

"Sir,

"July 12, 1845.

"In pursuance of an Act of Congress approved on the 20th February, 1845, I have the honour to transmit to you herewith, for presentation to the Government of Great Britain, one copy of the 'History of Oregon, California, and the other territories on the North-west Coast of America,' by Robert Greenhow, Esq., Translator and Librarian of the Department of State.

"I avail, &c.

(Signed) "JAMES BUCHANAN."

"Mr. Pakenham to the Earl of Aberdeen.—(Received August 16.)

"My Lord,

"Washington, July 29, 1845.

"I have the honour herewith to transmit a copy of a note which I have received from the Secretary of State of the United States, accompanied by a copy of Mr. Greenhow's work on Oregon and California, which, in pursuance of an Act of Congress, is presented to Her Majesty's Government.

"Although Mr. Greenhow's book is already in your Lordship's possession, I think it right, in consequence of the official character with which it is presented, to forward to your Lordship the inclosed volume, being the identical one which has been sent to me by Mr. Buchanan.

"I have not failed to acknowledge the receipt of Mr. Buchanan's note in suitable terms.

"I have, &c.

(Signed) "R. PAKENHAM"

Russian inter

1846.

Interpretation

the following is found on a later page of the volume last referred to:—

“This Convention does not appear to offer any grounds for dispute as to the construction of its stipulations, but is, on the contrary, clear, and equally favourable to both nations. The rights of both parties to navigate every part of the Pacific, and to trade with the natives of any places on the coasts of that sea, not already occupied, are first distinctly acknowledged, &c.” (p. 342).

It is thus clear, as the result of the investigations undertaken by Greenhow on behalf of the United States' Government—

That Behring Sea was a part of the Pacific.

That the north-west coast was understood to extend to Behring Strait.

That Russia relinquished her asserted claims over “every part of the Pacific.”

That the phrase “Pacific Ocean” in the Treaty included Behring Sea is still further shown by the reply of the Russian Government to Governor Etholin in 1842, when he wished to keep American whalers out of Behring Sea:—

“The claim to a *mare clausum*, if we wished to advance such a claim in respect to the northern part of the Pacific Ocean, could not be theoretically justified. Under Article I of the Convention of 1824 between Russia and the United States, which is still in force, American citizens have a right to fish in all parts of the Pacific Ocean. But under Article IV of the same Convention, the ten years' period mentioned in that Article having expired, we have power to forbid American vessels to visit inland seas, gulfs, harbours, and bays for the purposes of fishing and trading with the natives. That is the limit of our rights, and we have no power to prevent American ships from taking whales in the open sea.”

Again, in the reply of the Russian Government to representations of the Governor-General of Eastern Siberia in 1846, the following words occur:—

“We have no right to exclude foreign ships from *that part of the great ocean* which separates the eastern shore of Siberia from the north-western shore of America,” &c.

The instructions which were finally issued to the Russian cruisers on the 9th December, 1853, are to the same effect.

The Legislature of the Territory of Washington, in 1866, referred to “fishing banks known to navigators to exist along the Pacific coast from the Cortes bank to Behring Strait.”

Russian interpretation of “Pacific Ocean.”

Tikhmenieff.  
See Appendix,  
vol i, No. 5.

1846.

Ibid

Interpretation in the United States.

See post, p. 99.

It is clear that the Honourable Charles Sumner, when proposing to the Senate, in the year 1867, the adoption of the Treaty of Cession of Alaska, understood the words "North Pacific" in the sense in which these words are defined by the authorities just cited. In his speech on that occasion, Mr. Sumner thus referred to the waters in question:—

"Sea-otter seems to belong exclusively to the North Pacific. . . . Its present zone is between the parallels of 60° and 65° north latitude on the American and Asiatic coasts, so that its range is very limited." See Appendix, vol. i, No. 6.

Mr. H. W. Elliott, who was engaged in the study of the seal islands of Alaska for the United States' Government as late as the year 1881, in his official Report on the seal islands of Alaska remarks, concerning the seals:— Report on the Seal Islands of Alaska, Washington, 1881, pp. 6, 7.

"Their range in the North Pacific is virtually confined to four islands in Bering Sea, namely, St. Paul and St. George, of the tiny Pribyloff group, and Bering and Copper of the Commander Islands."

Again, he says:—

"In the North Atlantic no suitable territory for their reception exists, or ever did exist; and really nothing in the North Pacific beyond what we have designated in Bering Sea."

He also describes the rookeries in Behring Sea as "North Pacific rookeries."

And writes further:—

"Geographically, as well as in regard to natural history, Bering Island is one of the most curious islands in the northern part of the Pacific Ocean." Ibid., p. 110.

The above are, however, only a few from among very many similar instances which might be quoted of the continued usage of the name "Pacific Ocean" as including Behring Sea.

In 1882, a Notice which affected part of Okhotsk and Behring Seas was published by A. K. Pelikan, His Royal and Imperial Majesty's Consul, Yokohama, on the 15th November, 1881, from which the following is an extract:—

"At the request of the local authorities of Behring and other islands, the Undersigned hereby notifies that the Russian Imperial Government publishes for general knowledge the following:— 50th Cong., 2nd Sess., Sen. Ex. Doc. No. 106, p. 259

Pacific.

"1. Without a special permit or licence from the Governor-General of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, &c., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the north-eastern coast of Asia, or within their sea boundary-line."

In the correspondence between the United States and Russia, touching the meaning of this Regulation, the Notice is alluded to by M. de Giers as "relative to fishing, hunting, and to trade in the Russian waters of the Pacific," and as relative to fishing and hunting in "our Pacific waters."

In the same correspondence the Secretary of State of the United States and the United States' Minister at St. Petersburg similarly speak of "Pacific Coast fisheries" and "our Pacific Ocean fisheries."

Writing on the 8th (20th) May, 1882, to Mr. Hoffmaier, the American Minister at St. Petersburg, M. de Giers said:—

50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
p. 262.  
See Appendix,  
vol. ii, Part II,  
No. 16.

"Referring to the exchange of communications which has taken place between us on the subject of a Notice published by our Consul at Yokohama relative to fishing, hunting, and to trade in the Russian waters of the Pacific, and in reply to the note which you addressed to me, dated the 15th (27th) March, I am now in a position to give you the following information:—

"A Notice of the tenour of that annexed to your note of the 15th March was, in fact, published by our Consul at Yokohama, and our Consul-General at San Francisco is also authorized to publish it.

"This measure refers only to prohibited industries and to the trade in contraband; the restrictions which it establishes extend strictly to the territorial waters of Russia only. It was required by the numerous abuses proved in late years, and which fell with all their weight on the population of our sea-shore and of our islands, whose only means of support is by fishing and hunting. These abuses inflicted also a marked injury on the interests of the Company to which the Imperial Government had conceded the monopoly of fishing and hunting ('exportation'), in islands called the 'Commodore' and the 'Seals.'

"Beyond this new Regulation, of which the essential point is the obligation imposed upon captains of vessels who desire to fish and to hunt in the Russian waters of the Pacific to provide themselves at Vladivostock with the permission or licence of the Governor-General of Oriental Siberia, the right of fishing, hunting, and of trade by foreigners in our territorial waters is regulated by Article 560, and those following, of vol. xii, Part II, of the Code of Laws.

"Informing you of the preceding, I have, &c."



Bancroft writes, in his "History of Alaska" (pp. 19, 20): "The Anadir, which empties into the Pacific." Again: "Thus the Pacific Ocean was first reached by the Russians on the shore of the Okhotsk Sea." And yet again: "The ascent of the Lena brought the Russians to Lake Baikal, and showed them another route to the Pacific, through China by way of the Amoor."

So, in 1887, it is found that the American Representative at St. Petersburg informed Mr. Bayard (17th February, 1887) that the Notice already quoted prohibits fishing, &c., on "the Russian Pacific coasts." This correspondence related to a seizure which had been made in Behring Straits.

50th Cong., 2d  
Sess., Senate Ex  
Doc. No. 106,  
p. 268.  
See Appendix,  
vol. ii, Part II,  
No. 18.

"Pacific."

"Pacific" a  
g

*Geographical use of "Pacific Ocean" and "North-West Coast."*

In the discussion of the question of jurisdiction between the United States and Great Britain special reference has been made by the United States to the marking of Maps, from which it has been insisted that the waters of Behring Sea had been given a name distinct from that of the Pacific Ocean.

From this it was urged that the words "Pacific Ocean" in the Conventions were used with great care, so as to reserve under the exclusive jurisdiction of Russia the waters of Behring Sea.

It is, however, to be noted in studying any series of Maps chronologically arranged, particularly those published before the middle of the present century, that Behring Sea is frequently without any special name, though the adjoining Sea of Okhotsk is in almost every instance clearly designated.

On various Charts issued by the United States' Hydrographic Office, including the latest and most perfect editions now in actual use, the expression "Pacific" or "North Pacific Ocean" is used as including Behring Sea. This appears from the titles of such Charts, of which the following may be referred to:—

No. 909. Published March 1883 at the Hydrographic Office, Washington, D.C.:—

"Pacific Ocean. Behring Sea, Plover Bay, from a survey by Lieutenant Maximov, Imperial Russian Navy, 1876."

(Plover Bay is situated on the Asiatic coast, near the entrance to Behring Strait.)

Geographical use of "Pacific Ocean"  
and "North-west Coast."

Milham, John, "Na

Brookes, R., "Gene

Galletti, J. G. A.,  
"buch," Peshu, 182

"Dictionnaire Grog  
1823-33.

Seitz, Dr. J. C.,  
"waterbuch," Bd.

Arrowsmith, "Grap  
1852.

"Pacific" and "North-west Coast" in  
geographical works.

No. 910. Published October 1882 at the  
Hydrographic Office, Washington, D.C.:—

"North Pacific Ocean. Anadir Bay, Behring  
Sea. From a Chart by Engineer Bulkley, of New  
York, in 1865," &c.

(Anadir Bay is situated between latitudes 64°  
and 65° on the Asiatic side of Behring Sea.)

Similar evidence is afforded by the title-page  
of the work issued by the same Hydrographic  
Office in 1869, as follows:—

"Directory of Behring Sea and the coast of  
Alaska. . . . Arranged from the Directory of  
the Pacific Ocean."

The British Admiralty Chart of Behring Sea,  
corrected up to November 1889, but originally  
compiled in 1884 (No. 2660), is likewise entitled  
as follows:—

"North-west Pacific. Kamchatka to Kadiak  
Island, including Behring Sea and Strait."

The definitions touching the Pacific Ocean,  
Behring Sea, &c., to be found in gazetteers,  
dictionaries, and geographical works, both of the  
present and past dates, moreover, show conclusively  
that Behring Sea was, at the time of the  
Conventions, and is now, understood to form an  
integral part of the Pacific Ocean.

Such formal definitions are naturally more  
trustworthy than inferences drawn from the  
construction of Maps.

A few of these will suffice, though many more  
might be quoted:—

Mallam, John, "Naval Gazetteer," London, 1795.

"Behring's Straits, which is the passage from the North  
Pacific Ocean to the Arctic Sea."

Brookes, B., "General Gazetteer," 12th ed., London, 1802.

"Behring's Island. An island in the Pacific Ocean.

"Kamtschatka. Bounded east and south by Pacific."

Galletti, J. G. A., "Allgemeines Geographisches Wörter-  
buch," Pesth, 1822.

"Stilles Meer. Vom 5 nordl. Br. an bis zur Berings-  
strasse aufwärts stets heftige Stürme."

"Dictionnaire Géographique Universel," Tom. iv, Paris,  
1823-53.

"Mer Pacifique. Il s'étend du nord au sud depuis le  
Cercle Polaire Arctique, c'est-à-dire, depuis le Détroit  
de Behring, qui le fait communiquer à l'Océan Glacial  
Austral."

Seitz, Dr. J. C., "Geographisches Statistisches Hand-  
wörterbuch," Bd. iii, Pesth, 1822, Halberstadt, 1829.

"Stilles Meer. Vom 30 südlicher Breite bis zum 5  
nördlicher Breite verdient es durch seine Heiterkeit und  
Stille den namen des Stillen Meers; von da an bis zur  
Beringsstrasse ist es heftigen Stürmen unterworfen."

Arrowsmith, "Grammar of Modern Geography," London,  
1852.

"Behring's Strait connects the Frozen Ocean with the  
Pacific.

"The Anadir flows into the Pacific Ocean.

"The principal gulfs of Asiatic Russia are: the Gulf of  
Anadir, near Behring's Strait; the Sea of Penjina, and the  
Gulf of Okhotsk, between Kamtschatka and the mainland  
of Russia—all three in the Pacific Ocean."

"L'Océan Pacifique Boreal s'étend depuis le Détroit de Behring jusqu'au Tropic de Cancer."

"Précis de la Géographie Universelle," par Mal'v' Buz. Tom. II, p. 181, Paris, 1831-37.

"Le Détroit de Behring. A commencer par ce détroit le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie."

Ibid., Tom. VIII, p. 4.

"Behring (détroit célèbre). Il joint Océan Glacial Arctique au Grand Océan."

Langlois, "Dictionnaire de Géographie," Tom. I, Paris, 1838.

"The Pacific Ocean. Its boundary-line is pretty well determined by the adjacent continents, which approach one another towards the north, and at Behring's Strait which separates them, are only about 36 miles apart. This strait may be considered as closing the Pacific on the north."

"Fenny Cyclopaedia," vol. XVII, London, 1840.

"Behring (Détroit de) à l'extrémité nord-est de l'Asie, sépare ce continent de l'Amérique et l'Océan Glacial Arctique de l'Océan Pacifique."

"Dictionnaire Universel d'Histoire et de Géographie," par M. N. Bouillet, Paris, 1842.

"Behring (Mer de), partie de l'Océan Pacifique."

"Behring (Détroit de). Canal de l'Océan . . . unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique."

"Dictionnaire Géographique et Statistique," par Adrien Guibert. Tom. I, Paris, 1850.

"Pacific Ocean. Between longitude 70° west and 110° east, that is, for a space of over 180°, it covers the greater part of the earth's surface, from Behring's Straits to the Polar Circle, that separates it from the Antarctic Ocean."

"The New American Cyclopaedia," edited by George Ripley and Charles A. Dana, New York, 1851.

"Behring Sea is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean."

"Harper's Statistical Gazetteer of the World," vol. I, J. Collins Smith, New York, 1855.

"Behring Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait."

"Imperial Gazetteer," vol. I, Glasgow, 1855.

"Behring (Détroit de). Canal du Grand Océan unissant les eaux de l'Océan Pacifique à celles de l'Océan Glacial Arctique."

"Grand Dictionnaire de Géographie Universelle," par S. N. Boscherelle, Tom. I, Paris, 1856-57.

"Pacific Ocean. Its extreme southern limit is the Antarctic Circle, from which it stretches northward through 132° of latitude to Behring's Strait, which separates it from the Arctic Ocean."

McCulloch's "Geographical Dictionary," edited by F. Martin, vol. III, London, 1866.

"Behring (Détroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique."

"Grand Dictionnaire Universel," par P. La Roque, Tom. II, Paris, 1866-70.

"Behring (Détroit de). Passage qui unit l'Océan Glacial Arctique au Grand Océan."

St. Martin, "Nouveau Dictionnaire de Géographie Universelle," Tom. I, Paris, 1870.

"Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean."

Lippincott's "Gazetteer of the World," Philadelphia, 1868.

"Beringsstrasse. Meerenge das nordöstlichste Eismeer mit dem Stillen Ocean verbindend."

Ritter's "Geographisch Statistisches Lexicon," Ed. I, Leipzig, 1825.

"Behring's Strait, connecting the North Pacific with the Arctic Ocean."

Hackley's "Modern Cyclopaedia," vol. I, London, 1858 edition.

"Behring's Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait."

## Views of English and American jurists.

Woolsey, "Introduction to International Law," 3rd edition, New York, 1872, p. 83.

Finally, a few passages may be quoted from English and American publicists of acknowledged eminence, to show the manner in which the general question has been viewed by them.

Dr. T. D. Woolsey, President of Yale College, "Introduction to the Study of International Law," 3rd edition, New York, 1872, p. 83:—

"Russia, finally, at a more recent date, based an exclusive claim to the Pacific, north of the 51st degree, upon the ground that this part of the ocean was a passage to shores lying exclusively within her jurisdiction. But this claim was resisted by our government, and withdrawn in the temporary convention of 1824. A treaty of the same empire with Great Britain in 1825 contains similar concessions."

Wharton, "Digest of International Law," Washington, 1853, vol. i, section 32, p. 3.

In referring to the Russian Ukase of 1821, Wharton, "Digest of International Law of the United States," Washington, 1856, vol. i, section 32, p. 3, speaks of Russia—

"Having asserted in 1822 to 1824 an exclusive jurisdiction over the *north-west coast and waters of America from Behring Strait to the fifty-first degree of north latitude.*"

Davis, "Outlines of International Law," New York, 1887, p. 44.

Mr. Davis, Assistant Professor of Law at the United States' Military Academy, "Outlines of International Law," New York, 1887, p. 44:—

"Russia, in 1822, laid claim to exclusive jurisdiction over that part of the Pacific Ocean lying north of the 51st degree of north latitude, on the ground that it possessed the shores of that sea on both continents beyond that limit, and so had the right to restrict commerce to the coast inhabitants."

A recent United States' writer, Professor J. B. Angell, discussing this subject, says:—

Jas. B. Angell, in the "Forum," November 1889; "American Rights in Behring Sea."

See Appendix, vol. i, No. 8.

"The Treaty of 1824 secured to us the right of navigation and fishing 'in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, and (in Article IV) for ten years that of frequenting the interior seas, gulfs, harbours, and creeks upon the coast for the purpose of fishing and trading. At the expiration of ten years Russia refused to renew this last provision, and it never was formally renewed. But, for nearly fifty years at least, American vessels have been engaged in taking whales in Behring Sea without being disturbed by the Russian Government. Long before the cession of Alaska to us, hundreds of our whaling vessels annually visited the Arctic Ocean and Behring Sea, and brought home rich cargoes. It would seem, therefore, that Russia regarded Behring Sea as a part of the Pacific Ocean, and not as one of the 'interior seas,' access to which was forbidden by the termination of the IVth Article of the Treaty."

Sir R. Phillimore, in the 2nd edition of *Phillimore, "International Law,"* 2nd edition, vol. i, p. 241, remarks :—

"In 1822 Russia laid claim to a sovereignty over the Pacific Ocean north of the 51st degree of latitude; but the Government of the United States of America resisted this claim as contrary to the principles of international law."

Mr. W. E. Hall, "*Principles of International Law*," Clarendon Press, Oxford, 3rd edition, 1890, p. 147 :—

"*Note*.—A new claim subsequently sprung up in the Pacific, but it was abandoned in a very short time. The Russian Government pretended to be Sovereign over the Pacific north of the 51st degree of latitude, and published an Ukase in 1821 prohibiting foreign vessels from approaching within 100 Italian miles of the coasts and islands bordering upon or included in that portion of the ocean. This pretension was resisted by the United States and Great Britain, and was wholly given up by Conventions between the former Powers and Russia in 1824 and 1825."

The arguments contained in the foregoing chapter establish :—

That the Treaty of 1825 between Great Britain and Russia applied, and was intended to apply, to all the non-territorial waters of the North Pacific, extending from Behring Strait upon the north to latitude 51° upon the coast of America, and to latitude 45° 50' upon the coast of Asia (being the whole extent of sea covered by the Ukase).

That at no stage of the controversy was any distinction drawn, or intended to be drawn, between the seas to the north and the seas to the south of the Aleutian Islands.

That Behring Sea was included in the phrase "Pacific Ocean" as used in the Treaty of 1825.

That the expression "north-west coast of America," or, in its abbreviated form, "north-west coast," included the coast up to Behring Strait.

## CHAPTER IV.

HEAD (D).—*The User of the Waters in question from 1821 to 1867.*

User of Waters from 1821 to 1867.

As regards the user of the waters in question, it has been shown that down to the year 1821 Russia made no attempt in practice to assert or exercise jurisdiction over foreign vessels when beyond the ordinary territorial jurisdiction. With the exception of the incidents connected with the Ukase of 1821, already referred to in Chapter II, the same is true of the period between 1821 and 1867.

## Historical Outline.

To resume the historical statement in chronological order:—

1821. Alaska, pp. 534, 535.

In the year 1821 Mouravief was sent out to take control at Sitka under the new Charter. He assumed the name of "Governor" in place of that of "Chief Manager," which had previously been employed.

North-west Coast, vol. i, pp. 340, 341.

The names of seven trading-vessels on the north-west coast are known for this year.\*

1822. Alaska, pp. 537-539.

In 1822, the Russian vessel "Rurik" arrived at Sitka from Kronstadt with supplies. About the close of the year the Russian sloop-of-war "Apollon" also arrived, with instructions that all trade with foreigners should cease. This interdict remained in force for two years, and seriously interfered with the profits of the Company. In this year also the Russian sloops-of-war "Kreisser" and "Ladoga" arrived to enforce the provisions of the Ukase, and remained for two years.

Ibid., p. 540.

Ibid., p. 546.

An exploratory expedition, which remained absent two years, was dispatched from Sitka to the eastern shore of Behring Sea.

1823. Ibid., pp. 538-539.

In 1823, a famine was feared at Sitka and on the coast, and the "Rurik" and an American vessel which had been purchased, were sent to California and the Sandwich Islands for supplies.

Referring to this incident, Bancroft writes:—

Ibid., p. 538.

"As in this instance, the Colonies had frequently been relieved from want by trade with foreigners; and, indeed,

\* See note on p. 10 referring to trading-vessels on the north-west coast. None of these trading-vessels were Russian.



this was too often the only means of averting starvation. Even between 1818 and 1822, when supplies were comparatively abundant, goods, consisting mainly of provisions, were obtained by traffic with American and English coasters to the value of more than 300,000 roubles in scrip."

In the same year, the "Rob Roy," from Boston, is known to have been on the north-west coast.

North-west Coast,  
vol. i, p. 341.

In 1821, Kotzebue, in the "Predpriatie," called at Sitka. About this time the shareholders of the Russian Company protested against the interdiction of foreign trade, and Sitka was, in consequence, again opened to such trade.

Alaska, p. 540.  
Ibid., p. 541.

1821.

Acting under the authority of the Ukase of 1821, the United States' brig "Pearl," when on a voyage from Boston to Sitka, had been in the year 1822 seized by the Russian sloop "Apollon." Count Nesselrode, in his despatch to Count Lieven (26th June, 1823), when communicating the suspension of the Ukase of 1821, says the advices to this effect were sent from St. Petersburg in August of 1823, and that the officer of the "Apollon" could not receive them before September 1824, and that, therefore, he could not have known of them at the "time of the occurrence of the incident reported by the American press."

Dall's Alaska,  
pp. 233, 234.

1830.

See Appendix,  
vol. ii, Part I,  
No. 23.

1832.

1833.

In 1824, the "Pearl" was released, and compensation was paid for her arrest and detention.

As to the "Pearl,"  
see S. Canning to  
G. Canning,  
April 23, 1823,  
Appendix, vol. i,  
Part I, No. 24.  
North-west Coast,  
vol. i, p. 341.

In the same year four vessels are recorded as having visited the north-west coast, and some of them are known to have repeated their visits in later years.

In 1825, the "Elena" arrived at Sitka with supplies. Kotzebue also again called at Sitka.

Alaska, p. 539.

1825.

1834.

Remonstrances were addressed by the Russian-American Company to the Russian Government as to the effect of the Conventions of 1824 and 1825. The name of but one vessel trading on the north-west coast has been preserved in this year.

Ibid., p. 544.

North-west Coast,  
vol. i, p. 341.

1836.

In 1826, Chistiakof wrote to the Directors of the Company, asking that an experienced whaling master should be sent out. In July of this year Her Majesty's ship "Blossom," under Captain Beechey, sailed through Behring Sea into the Arctic Ocean.

Alaska, p. 582.

1826.

Beechey's Voyage  
to the Pacific and  
Behring Strait,  
London, 1831,  
vol. ii, p. 335.

Co

1827. Alaska, p. 516. In 1827, Lütke, sent by the Russian Government, arrived at Sitka, and thereafter made explorations in the Aleutian Islands and in Behring Sea.
- North-west Coast, vol. i, p. 341. Two vessels only of the trading fleet on the north-west coast are in this year known by name.
1828. Alaska, p. 546.<sup>1</sup> In 1828, two vessels belonging to Lütke's expedition carried on surveys in Behring Sea. The trading-vessel "Eliza" was at Sitka in this year.
- Letter of Brewer to Amory, H. R., Ex. Doc., 40th Cong., 2nd Sess., No. 177, p. 83. In the years 1826, 1827, and 1828 the "Chinchiella," a United States' brig, Thomas Meek, master, was trading between Sitka and China.
1829. Alaska, p. 565. In 1829, a Russian vessel was sent from Sitka to Chile to trade. Some explorations were also made by the Russians in the inland country.
1830. Ibid., p. 547. In 1830, explorations were made in Behring Sea by Eholen. Wrangell relieved Christukof in command. The names of four or five foreign vessels trading on the north-west coast in this and the following year are recorded.
- North-west Coast, vol. i, p. 341.
- 1832 or 1833. Alaska, pp. 548-552. In 1832 or 1833, Tebenkof established a post near the mouth of the Yukon, and explorations were conducted inland.
1833. Ibid., p. 555. In 1833, the Hudson's Bay Company sent the British vessel "Dryad" to form an Establishment at the mouth of the Stikine, but Wrangell, having heard of the enterprise, occupied the place in advance, and turned the vessel back. Damages to the amount of 20,000*l.* were claimed through the British Government from Russia. This will be referred to later.
- See *post*, p. 83. A United States' whaling master, under a five-years' Contract with the Russian Company, arrived at Sitka, but achieved little.
- Ibid., p. 583.
1834. North-west Coast, vol. i, p. 341. In 1834, the name of but one of the foreign vessels trading on the north-west coast is recorded.
1836. Ibid., pp. 341, 342. In 1836, the "Eliza" was again at Sitka, and three foreign trading-vessels are recorded to have visited the Alaskan coast.

*The case of the "Loriot."*

Case of the "Loriot."

In the same year the United States' brig "Loriot" sailed from the Sandwich Islands for the north-west coast of America for the purpose

of procuring provisions, and also Indians to hunt for sea-otters on the coast. When in the Harbour of Trekelessan, latitude 54° 55' north, and longitude 132° 30' west, a Russian armed brig ordered the "Loriot" to leave. This action was based on the expiration of the period named in the IVth Article of the Treaty, whereby, for ten years only, liberty to touch and trade at Russian Establishments on the coast was granted.

The United States protested against the interference with the "Loriot," characterizing it as an "outrage," and the following is an extract from instructions which were sent by the United States' Secretary of State to Mr. Dallas, the Minister at St. Petersburg, under date 4th May, 1837:—

"On the other hand, should there prove to be no Russian Establishments at the places mentioned, this outrage on the 'Loriot' assumes a still graver aspect. It is a violation of the right of the citizens of the United States, immemorially exercised, and secured to them as well by the law of nations as by the stipulations of the 1st Article of the Convention of 1824, to fish in those seas, and to resort to the coast, for the prosecution of their lawful commerce upon points not already occupied. As such it is the President's wish that you should remonstrate, in an earnest but respectful tone, against this groundless assumption of the Russian Fur Company, and claim from His Imperial Majesty's Government for the owners of the brig 'Loriot,' for their losses and for the damages they have sustained, such indemnification as may, on an investigation of the case, be found to be justly due to them."

Mr. Dallas subsequently wrote that he was led to believe that Russian Establishments had been made at the places mentioned. Nevertheless, the United States contended that at the expiration of the IVth Article, the law of nations practically gave United States' ships the privileges therein mentioned.

Mr. Dallas (16th August, 1837) wrote to the Secretary of State:—

"The 1st Article asserts for both countries general and permanent rights of navigation, fishing, and trading with the natives, upon points not occupied by either, north or south of the agreed parallel of latitude."

Mr. Forsyth, Secretary of State for the United States, writing to Mr. Dallas on the 3rd November, 1837, and referring to the 1st Article of the

50th Cong., 2nd  
Sess., Senate,  
Ex. Doc. No. 106,  
p. 233.

See Appendix,  
vol. ii, Part II,  
No. 6.

50th Cong., 2nd  
Sess., Senate  
Ex. Doc. No. 106,  
p. 234.

See Appendix,  
vol. ii, Part II,  
No. 7.

Ibid., p. 226.

See Appendix,  
vol. ii, Part II,  
No. 8.

Ibid., p. 234.

See Appendix,  
vol. ii, Part II,  
No. 7.

Ibid., p. 236.

See Appendix,  
vol. ii, Part II,  
No. 9.

Case of the "Loriot."

Convention of April 1824 between the United States and Russia, said:—

"The 1st Article of that instrument is only declaratory of a right which the parties to it possessed under the law of nations without conventional stipulations, to wit, to navigate and fish in the ocean upon an unoccupied coast, and to resort to such coast for the purpose of trading with the natives.

•   •   •   •

"The United States, in agreeing not to form new establishments to the north of latitude of 54° 40' N., made no acknowledgment of the right of Russia to the territory above that line."

And, again:—

"It cannot follow that the United States ever intended to abandon the just right acknowledged by the 1st Article to belong to them under the law of nations—to frequent any part of the unoccupied coast of North America for the purpose of fishing or trading with the natives. All that the Convention admits is an inference of the right of Russia to acquire possession by settlement north of 54° 40' N. Until that actual possession is taken, the 1st Article of the Convention acknowledges the right of the United States to fish and trade as prior to its negotiations."

50th Cong., 2nd  
Sess., Senate  
Ex. Doc. No. 106,  
p. 238.

See Appendix,  
vol. ii, Part II,  
No. 10.

In his despatch of the 23rd February, 1838, Count Nesselrode, the Russian Foreign Minister, wrote to Mr. Dallas:—

"It is true, indeed, the 1st Article of the Convention of 1824, to which the proprietors of the 'Loriot' appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance upon all points on the north-west coast of America, not already occupied, and to trade with the natives."

Again, Mr. Dallas, in a despatch to Count Nesselrode, dated the 5th (17th) March, 1838, interpreted Article I of the Convention as being applicable to *any part of the Pacific Ocean*. He wrote:—

" . . . The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the north-west coast of America, without the jurisdiction of other nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations enjoyed in common with all other independent sovereignties, and incapable of being abridged or extinguished,

Ibid., p. 241.  
See Appendix,  
vol. ii, Part II,  
No. 11.

except with their own consent. It is unknown to the Undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by Treaty or other form of obligation, in favour of any community.

\* \* \* \* \*

"There is first a mutual and permanent agreement declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40' north latitude; but that, nevertheless, both might, for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbours, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

\* \* \* \* \*

"The Undersigned submits that in no sense can the fourth Article be understood as implying an acknowledgment, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of 54° 40' nor."

In transmitting the papers relative to the "Loriot" to Congress, the President of the United States observed:—

President Van Buren's Message, December 3, 1838, State Papers, by Hertslet, vol. xxvi, p. 1330.

"The correspondence herewith communicated, will show the grounds upon which we contend that the citizens of the United States have, independent of the provisions of the Convention of 1824, a right to trade with the natives upon the coast in question at unoccupied places, liable, however, it is admitted, to be at any time extinguished by the creation of Russian establishments at such points. This right is denied by the Russian Government, which asserts that, by the operation of the Treaty of 1824, each party agreed to waive the general right to land on the vacant coasts on the respective sides of the degree of latitude referred to, and accepted, in lieu thereof, the mutual privileges mentioned in Article IV. The capital and tonnage employed by our citizens in their trade with the north-west coast of America will, perhaps, on adverting

to the official statements of the commerce and navigation of the United States for the last few years, be deemed too inconsiderable in amount to attract much attention; yet the subject may, in other respects, deserve the careful consideration of Congress."

Historical outline continued.

To return again to the chronological order of events:—

1837. North-west Coast, vol. i, p. 342. In 1837, one foreign trading-vessel is named as having been on the north-west coast.
1838. Alaska, pp. 552, 553. In 1838, further explorations were undertaken in the north by Chernof and Malakhof. Three foreign trading-vessels are noted as having been on the north-west coast in this year, and one is known to have visited Alaskan waters.
1839. North-west Coast, vol. i, p. 342. In 1839, a Commission met in London to arrange the dispute between the Hudson's Bay and Russian-American Companies, arising out of the interference by Russian officials with the British vessel "Dryad." The claim for damages by the former Company was waived, on condition that the latter should grant a lease of all their continental territory northward to Cape Spencer, Cross Sound (about latitude 58°), on a fixed rental. This arrangement was for ten years, but was renewed and actually continued in force for twenty-eight years.
1840. Alaska, pp. 556, 557. In 1840, the British flag was hoisted and saluted at the mouth of the Stikine, the Hudson's Bay Company taking possession. A post was also established by the Company at Taku Inlet.
- Ibid., p. 557. At this time whalers were just beginning to resort to Behring Sea; from 1840 to 1842 a large part of the fleet was engaged in whaling on the "Kadiak grounds." Writing in 1842, Etholen says, that for some time he had been constantly receiving reports from various parts of the Colony of the appearance of American whalers in the neighbourhood of the shores.
- Ibid., p. 583, Tiklunienief. See Appendix, vol. i, No. 5. In the same year Etholen relieved Kuprianof as Governor at Sitka.
- Alaska, p. 559. In 1841, the Charter of the Russian-American Company was renewed for a further term of twenty years. Etholen reported the presence of fifty foreign whalers in Behring Sea.
1841. Ibid., p. 568. In 1842, according to Etholen, thirty foreign whalers were in Behring Sea. He asks the Russian Government to send cruisers to preserve this sea as a *mare clausum*.
1842. Ibid., p. 583. His efforts were, however, unsuccessful, the



Minister for Foreign Affairs replying that the Treaty between Russia and the United States gave to American citizens the right to engage in fishing over the whole extent of the Pacific Ocean.

In the same year, inland explorations by Zagoskin, which continued till 1844, began. Sir George Simpson, Governor of the Hudson's Bay Company, reached the Sitka post just in time to prevent an Indian uprising. He also visited the Russian Establishment at Sitka and completed an arrangement between the Companies to interdict trade in spirits on the coast.

About this time the Russian-American Company became alarmed at the danger to their fur trade. Every effort was, therefore, put forward by the Company and the Governors to induce the Foreign Office of the Russian Government to drive off these whalers from the coasts, and by excluding them for a great distance from shore prevent trespasses on shore and the traffic in furs.

In 1843, explorations were carried out by Russians on the Sustehim and Copper Rivers.

The whalers, from 1843 to 1850, landed on the Aleutian and Kurile Islands, committing depredations. United States' captains openly carried on a traffic in furs with the natives.

Tikhmenieff writes:—

"From 1843 to 1850 there were constant complaints by the Company of the increasing boldness of the whalers."

Tikhmenieff.  
See Appendix,  
vol. i, No. 5.

In 1846 the Governor-General of Eastern Siberia asked that foreign whalers should not be allowed to come within 40 Italian miles of the Russian shores.

Tikhmenieff thus describes the result of these representations:—

"The exact words of the letter from the Foreign Office are as follows:—

"The fixing of a line at sea within which foreign vessels should be prohibited from whaling off our shores would not be in accordance with the spirit of the Convention of 1824, and would be contrary to the provisions of our Convention of 1825 with Great Britain. Moreover the adoption of such a measure, without preliminary negotiation and arrangement with the other powers, might lead to protests, since no clear and uniform agreement has yet been arrived at among nations as to the limit of jurisdiction at sea."

1847.

1848.

1849.

1850.

"In 1847 a representation from Governor Tebenkof in regard to new aggressions on the part of the whalers gave rise to further correspondence. Some time before, in June 1846, the Governor-General of Eastern Siberia had expressed his opinion that, in order to limit the whaling operations of foreigners, it would be fair to forbid them to come within 40 Italian miles of our shores, the ports of Petropaulovsk and Okhotsk to be excluded, and a payment of 100 silver roubles to be demanded at those ports from every vessel for the right of whaling. He recommended that a ship of war should be employed as a cruiser to watch foreign vessels. The Foreign Office expressly stated as follows, in reply:—

"We have no right to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales."

"The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon-shot, that is about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognized by the other Powers. They were confident that the fitting out of colonial cruisers would put an end to all difficulties; there had not yet been time to test the efficacy of this measure."

1847. Tikhmenieff. See Appendix, vol. i, No. 5. In 1847, traffic in fur-seal skins was carried on by a United States' whaler at Behring Island.
1848. In 1848, foreign whaling vessels entered the Arctic Ocean by way of Behring Straits for the first time.
1849. Alaska, p. 584. In 1849, the whaling fleet in the Arctic and northern part of the North Pacific numbered 290 vessels. Two-thirds of these are said to have been United States' vessels, but others were French and English, the latter chiefly from Australasia. A Russian Whaling Company for the North Pacific was formed at Åbo, in Finland, with special privileges. This Company sent out six vessels in all.
1850. Ibid., p. 572. In 1850, the British vessels "Herald," "Plover," and "Investigator," all dispatched in search of Sir John Franklin's expedition, met in Kotzebue Sound, after passing through Behring Strait.
- Ibid., p. 584. In the same year an armed Russian corvette was ordered to cruise in the Pacific, and in this year it is estimated that 300, and in later years

as many as 500 foreign whalers visited the Arctic and neighbouring waters.

Tebenkof's administration came to an end in Alaska, p. 585.  
this year.

In 1851, Nulato, a fort on the Yukon some way inland, was surprised by Indians and the inmates butchered, including Lieutenant Barnard, an English officer of Her Majesty's ship "Enterprise," one of the ships engaged in the expedition in search of Sir John Franklin. The "Enterprise" passed Behring Strait on the 6th May, 1851. The United States' whaling fleet is said to have been as numerous as in 1849.

*Ibid.*, p. 572.

1851.

"Encyclopædia Britannica,"  
vol. xix, p. 321.

The interval between the close of Tebenkof's administration and the beginning of that of Voievodsky was filled by the temporary appointment of Rosenburg and Rudakof.

Alaska, p. 586.

In 1852, buildings at the Hot Springs, near Sitka, were destroyed by the Indians.

*Ibid.*, p. 574.

1852.

The value of catch of the whaling fleet in the North Pacific in this year is estimated at 14,000,000 dollars. After 1852 the whaling industry gradually decreased.

*Ibid.*, p. 669.

1854.

In 1853, war impending between England and Russia, the Hudson's Bay and Russian-American Companies influenced their respective Governments to prohibit hostilities on the north-west coast of America.

*Ibid.*, p. 570.

1853.

1855.

1856.

In the same year the Russian-American Company again specially requested the Government to prohibit whalers from entering Okhotsk Sea, but without success. Instructions were, however, issued to Russian cruizers to prevent whalers from entering bays or gulfs, or from coming within 3 Italian miles of the shores.

Tikhmenieff,  
See Appendix,  
vol. i, No. 5.

1857.

Tikhmenieff gives the following details:—

Some time before the Company had written to the Foreign Office (22nd March, 1853):—

"If it is found impracticable entirely to prohibit for a time fishing by foreigners in the Sea of Okhotsk, as an inland sea, would it not, at any rate, be possible officially to prohibit whalers from coming close to our shores and whaling in the bays and among the islands, detaching one of the cruizers of the Kametchatka flotilla for this service?"

*Ibid.*

1859.

1860.

The instructions to cruizers were approved on the 9th December, 1853. The cruizers were to see that no whalers entered the bays or gulfs,

or came within 3 Italian miles of the shores of Russian America (north of 54° 41'), the Peninsula of Kamtchatka, Siberia, the Kadjak Archipelago, the Aleutian Islands, the Pribyloff and Commander Islands, and the others in Behring Sea, the Kuriles, Sakhalin, the Shantar Islands, and the others in the Sea of Okhotsk to the north of 46° 30' north. The cruizers were instructed constantly to keep in view that:—

"Our Government not only does not wish to prohibit or put obstacles in the way of whaling by foreigners in the northern part of the Pacific Ocean, but allows foreigners to take whales in the Sea of Okhotsk, which, as stated in these instructions, is, from its geographical position, a Russian inland sea." (These words are in italics in the original.)

1854. Alaska, p. 584. In 1854, 525 foreign whalers were in Behring Sea and its vicinity. In the same year
- Ibid., p. 585. Voievodsky was elected Governor for the Company.
1855. Ibid., p. 585. In 1855, the Åbo Whaling Company went into liquidation.
1856. Ibid., p. 584. In 1856, 366 foreign whalers were reported as in Behring Sea and vicinity.
- Ibid., p. 668. Bancroft reports that in the year 1857:—  
"Of the 600 or 700 United States' whalers that were fitted out in 1857, at least one-half, including most of the larger vessels, were engaged in the North Pacific . . . including, of course, Behring Sea."
1857. 40th Cong., 2nd Sess. Sen., Ex. Doc. No. 106, p. 251, Seward to Clay, February 24, 1868. See Appendix, vol. ii, Part II, No. 12. See p. 114 of Case. Captain Manuel Enos, of the United States' Barque "Java," stated in 1867 that he had whaled unmolested in the bays of Okhotsk Sea for seventeen years previously.
1859. Alaska, p. 592. In 1859, the cession of Alaska to the United States began to be discussed privately.
1860. Ibid., pp. 578, 579. In 1860, the Russian-American Company applied for a new Charter for twenty years, to date from the 1st January, 1862, and Reports as to the condition of the Company were called for by the Government.
- Ibid., p. 580. The Russian population of the American Colonies at this date, apparently including native wives, numbered 784: Creoles, 1,700; native population estimated at over 7,000.

In 1862, the value of the catch of the North Pacific whaling fleet was estimated at 800,000 dollars. Alaska, p. 669. 1862.

In 1863, the United States' brig "Timandra" was engaged in the cod fishery off Saghalien Island, Okhotsk Sea. In succeeding years a number of vessels resorted to this sea for the cod fishery. Fishery Industries of the United States, sec. v, vol. i, p. 209. 1863.

In 1864, Maksutof took temporary charge for the Russian Government of the Company's affairs. Alaska, p. 579. 1864.

In 1865, negotiations between the Russian Company and the Government continued, but terms such as the Company would accept could not be arrived at. Ibid. 1865.

In the spring of this year, the "North Pacific cod-fish fleet" was organized. It comprised seven vessels, all of which are believed to have fished in Okhotsk Sea. Fishery Industries of the United States, sec. v, vol. i, p. 210.

In 1866, the Russian Government still contemplated renewing the Company's Charter on certain terms. A Californian Company entered into treaty for a lease of the "coast strip" of Alaska, then held by the Hudson's Bay Company. Alaska, p. 580. 1866.

Eighteen vessels were engaged in the Okhotsk Sea cod fishery. The "Porpoise" initiated the fishery in the Shumagan Group, Alaska, finding there "safe harbours, fuel, water, and other facilities for prosecuting this business." Several British Columbian schooners also fished in Alaskan waters. Fishery Industries of the United States, sec. v, vol. i, p. 210.

In 1867, Alaska was sold by Russia to the United States for 7,200,000 dollars.

Nineteen United States' vessels fished for cod in Okhotsk Sea or in Alaskan waters, the Shumagan fleet consisting of three vessels. The total catch amounted to nearly 1,000,000 fish. Ibid., p. 211

In 1867, before the cession of Alaska, the whaling interest of the United States in these seas are thus referred to by a Philadelphia paper:— "Philadelphia North American Gazette," Friday, April 12, 1867. Ex. Doc. No. 177, 2d Sess., 40th Cong., p. 39. 1867.

"Our whaling interests are now heaviest in the seas adjacent to Russian-America, both above and below Behring Strait."

The value of the catch of the North Pacific whaling fleet was estimated at 3,200,000 dollars. Alaska, p. 669.

In 1868, the lease of the "coast strip" of Alaska to the Hudson's Bay Company by the Russian-American Company expired. Ibid., p. 593. 1868.

Whali

Walrus hu

1862.  
Whaling industry.*Statistics of United States' Whaling Industry.*1863.  
*(North Pacific Grounds, including Okhotsk and  
Behring Seas and Arctic Ocean.)*1864.  
"Fishery Industries  
of the United  
States," sec. 5,  
vol. ii, pp. 84, 85.1865.  
The growth and decline of the whaling industry during the years discussed in this chapter may be conveniently illustrated by the following Table, which shows the number of United States' vessels in the North Pacific whaling fleet from 1841 to 1867. It is taken from "The Fishery Industries of the United States," 1887, section 5, vol. ii, pp. 84-85.

(This list does not include whalers of other nationalities.)

1866.  

Year.	Number of Vessels.
1841	20
1842	29
1843	108
1844	170
1845	263
1846	292
1847	177
1848	159
1849	155
1850	144
1851	138
1852	278
1853	238
1854	232
1855	217
1856	178
1857	143
1858	196
1859	176
1860	121
1861	75
1862	32
1863	42
1864	68
1865	39
1866	95
1867	90

1867.  
Walrus hunting.*Ibid*, p. 314.

The whaling-vessels frequenting Behring Sea and the Arctic Ocean, from the first, engaged to a certain extent in walrus hunting, and about 1860 such hunting began to be an important secondary object with the whalers. In subsequent years many thousand barrels of walrus oil and great quantities of skins and ivory were secured.



The facts stated in this chapter establish:—

That from the year 1821 to the year 1867 the rights of navigation and fishing in the waters of Behring Sea were freely exercised by the vessels of the United States, Great Britain, and other foreign nations, and were recognized as existing by Russia.

That the waters of Behring Sea were treated by Russia as being subject to the provisions of the Treaties of 1824 and 1825.

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## CHAPTER V.

*The Cession of 1867 and what passed by it.*

Cession of 1867 and what passed by  
it to the United States.

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The fourth question or point in Article VI of the Treaty is as follows :—

*Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?*

This question may conveniently be treated under the following heads, as proposed on p. 10 :—

(E.) What rights passed to the United States under the Treaty of the 30th March, 1867.

(F.) The Action of the United States and Russia from 1867 to 1886.

(G.) The contentions of the United States since the year 1886.

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HEAD (E).—*What rights passed to the United States under the Treaty of March 30, 1867?*

Text of Treaty of Cession, 1867.

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The following is the text of the Treaty of Cession of Alaska as signed :—

United States'  
Statutes at Large,  
pp. 539-543.  
For English  
version, see  
Appendix, vol. ii,  
Part III, No. 3.

“Sa Majesté l'Empereur de Toutes les Russies et les États-Unis d'Amérique, désirant raffermir, s'il est possible, la bonne intelligence qui existe entre eux, ont nommé, à cet effet, pour leurs plénipotentiaires, savoir :

“Sa Majesté l'Empereur de Toutes les Russies, le Conseiller Privé Édouard de Stoeckl, son Envoyé Extraordinaire et Ministre Plénipotentiaire aux États-Unis; et

“Le Président des États-Unis le Sieur William H. Seward, Secrétaire d'État;

“Lesquels, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, ont arrêté et signé les articles suivants :—

## " ARTICLE I.

Treaty of 1867.

" Sa Majesté l'Empereur de Toutes les Russies s'engage par cette convention, à céder aux États-Unis, immédiatement après l'échange des ratifications, tout le territoire avec droit de souveraineté actuellement possédé par Sa Majesté sur le continent d'Amérique, ainsi que les îles contiguës, le dit territoire étant compris dans les limites géographiques ci-dessous indiquées, savoir: la limite orientale est la ligne de démarcation entre les possessions russes et britanniques dans l'Amérique du Nord, ainsi qu'elle est établie par la convention conclue entre la Russie et la Grande-Bretagne, le 16 (28) Février, 1825, et définie dans les termes suivants des articles III et IV de la dite convention:—

" A partir du point le plus méridional de l'île dite Prince of Wales, lequel point se trouve sous le parallèle du 54° 40' de latitude nord, et entre le 131<sup>me</sup> et le 133<sup>me</sup> degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite Portland Channel, jusqu'au point de la terre ferme, où elle atteint le 56<sup>me</sup> degré de latitude nord; de ce dernier point, la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141<sup>me</sup> degré de longitude ouest (même méridien); et finalement, du dit point d'intersection, la même ligne méridienne du 141<sup>me</sup> degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions russes et britanniques sur le continent de l'Amérique nord-ouest.

" Il est entendu, par rapport à la ligne de démarcation déterminée dans l'article précédent :

" 1<sup>o</sup>. Que l'île dite Prince of Wales appartiendra toute entière à la Russie? (mais dès ce jour, en vertu de cette cession, aux États-Unis).

" 2<sup>o</sup>. Que, partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte, depuis le 56<sup>me</sup> degré de latitude nord au point d'intersection du 141<sup>me</sup> degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie? (c'est-à-dire, la limite des possessions cédées par cette convention) : 'sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais en être éloignée que de 10 lieues marines.'

" La limite occidentale des territoires cédés passe par un point au Détroit de Behring sous le parallèle du soixante-cinquième degré trente minutes de latitude nord, à son intersection par le méridien qui sépare à distance égale les Îles Krusenstern ou Ignalook et l'Île Ratmanoff ou Noonarbook, et remonte en ligne directe, sans limitation, vers le nord, jusqu'à ce qu'elle se perde dans la Mer Glaciale. Commencant au même point de départ, cette limite occidentale suit de là un cours presque sud-ouest, à travers le Détroit de Behring et la Mer de Behring, de

manière à passer à distance égale entre le point nord-ouest de l'île Saint-Laurent et le point sud-est du Cap Choukotski jusqu'au méridien cent soixante-douzième de longitude ouest; de ce point, à partir de l'intersection de ce méridien, cette limite suit une direction sud-ouest de manière à passer à distance égale entre l'île d'Attou et l'île Copper du groupe d'îlots Kormandorski dans l'Océan Pacifique Septentrional, jusqu'au méridien de cent quatre-vingt-treize degrés de longitude ouest, de manière à enclaver, dans le territoire cédé, toutes les îles Aléoutes situées à l'est de ce méridien.

“ARTICLE II.

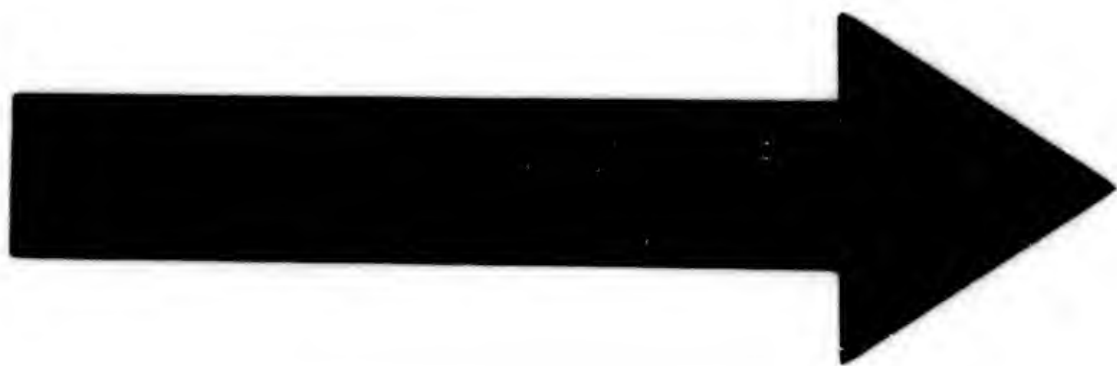
“ Dans le territoire cédé par l'article précédent à la Souveraineté des États-Unis, sont compris le droit de propriété sur tous les terrains et places publiques, terres inoccupées, toutes les constructions publiques, fortifications, casernes, et autres édifices qui ne sont pas propriété privée individuelle. Il est, toutefois, entendu et convenu que les églises, construites par le gouvernement russe sur le territoire cédé, resteront la propriété des membres de l'Église Grecque Orientale résidant dans ce territoire et appartenant à ce culte. Tous les archives, papiers, et documents du gouvernement, ayant trait au susdit territoire, et qui y sont maintenant déposés, seront placés entre les mains de l'agent des États-Unis; mais les États-Unis fourniront toujours quand il y aura lieu, des copies légalisées de ces documents au gouvernement russe, aux officiers ou sujets russes qui pourront en faire la demande.

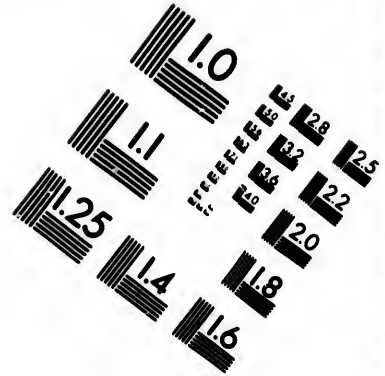
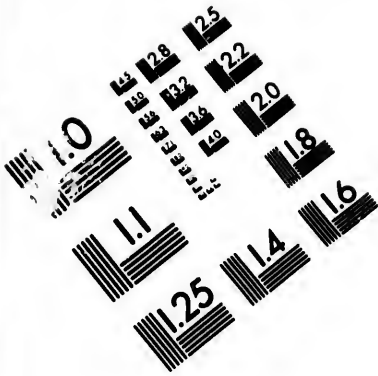
“ARTICLE III.

“ Il est réservé aux habitants du territoire cédé le choix de garder leur nationalité et de rentrer en Russie dans l'espace de trois ans; mais s'ils préfèrent rester dans le territoire cédé, ils seront admis, à l'exception toutefois des tribus sauvages, à jouir de tous les droits, avantages, et immunités des citoyens des États-Unis, et ils seront maintenus et protégés dans le plein exercice de leur liberté, droit de propriété, et religion. Les tribus sauvages seront assujetties aux lois et règlements que les États-Unis pourront adopter, de temps en temps, à l'égard des tribus aborigènes de ce pays.

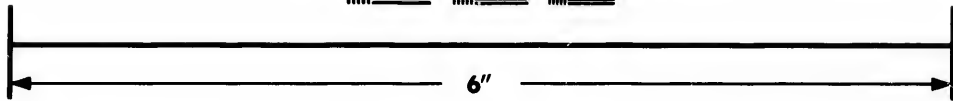
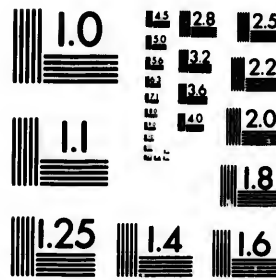
“ARTICLE IV.

“ Sa Majesté l'Empereur de Toutes les Russies nommera, aussitôt que possible, un agent ou aux agents chargés de remettre, formellement, à l'agent ou des agents nommés par les États-Unis, le territoire, la souveraineté, les propriétés, dépendances, et appartenances ainsi cédées et de dresser tout autre acte qui sera nécessaire à l'accomplissement de cette transaction. Mais la cession, avec le droit de possession immédiate, doit toutefois être considérée complète et absolue à l'échange des ratifications, sans attendre la remise formelle.





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## "ARTICLE V.

"Immédiatement après l'échange des ratifications de cette convention, les fortifications et les postes militaires qui se trouveront sur le territoire cédé seront remis à l'agent des États-Unis, et les troupes russes qui sont stationnées dans le dit territoire seront retirées dans un terme praticable, et qui puisse convenir aux deux parties.

## "ARTICLE VI.

"En considération de la susdite cession, les États-Unis s'engagent à payer à la trésorerie à Washington, dans le terme de dix mois après l'échange des ratifications de cette convention, sept millions deux cent mille dollars en or, au représentant diplomatique ou tout autre agent de Sa Majesté l'Empereur de Toutes les Russies dûment autorisé à recevoir cette somme. La cession du territoire avec droit de souveraineté faite par cette convention, est déclarée libre et dégagée de toutes réservations, privilèges, franchises, ou possessions par des compagnies russes ou tout autre, légalement constituées ou autrement, ou par des associations, sauf simplement les propriétaires possédant les biens privés individuels, et la cession ainsi faite transfère tous les droits, franchises, et privilèges appartenant actuellement à la Russie dans le dit territoire et ses dépendances.

## "ARTICLE VII.

"Lorsque cette convention aura été dûment ratifiée par Sa Majesté l'Empereur de Toutes les Russies d'une part, et par le Président des États-Unis, avec l'avis et le consentement du sénat, de l'autre, les ratifications en seront échangées à Washington dans le terme de trois mois, à compter du jour de la signature, ou plus tôt si faire se peut.

"En foi de quoi, les plénipotentiaires respectifs ont signé cette convention et y ont apposé le sceau de leurs armes.

"Fait à Washington, le 18 (30) jour de Mars, de l'an de Notre Seigneur mille huit cent soixante-sept.

(L.S.) "ÉDOUARD DE STOECKL.

(L.S.) "WILLIAM H. SEWARD."

It may be remarked, in the first place, that though the expression "water boundary" in the question at the head of this chapter may be accepted as an approximate paraphrase of the original expression employed in the Treaty, it is not a correct translation of the words "la limite occidentale des territoires cédés," which are rendered in the official English translation, published by the United States' Government, "the western limit with which the territories and dominion conveyed are contained."

The Treaty discussed.

United States'  
Statutes at Large,  
vol. xv, 1869,  
pp. 539-543.

No special dominion over waters

It will be observed that in none of these Articles is there a reference to any extraordinary or special dominion over the waters of the Behring Sea, nor, indeed, over any other portion of the North Pacific Ocean. Even in the passage last cited the word "dominion" appears to have no equivalent in the original French version. Neither is there a suggestion that any special maritime right existed which could be conveyed. The language of the Convention is, on the contrary, most carefully confined to *territory* with the right of sovereignty actually possessed by Russia at the date of the cession.

In Article I the limits of a portion of the Behring Sea are defined in order to show the boundaries within which the territory ceded "sur le Continent d'Amérique ainsi que les îles contiguës" is contained.

In Article VI, Russia again makes it emphatic that she is conveying "les droits, franchises, et privilèges appartenant actuellement à la Russie dans le dit Territoire et ses dépendances."

The final clause of Article I distinctly negatives any implication of an attempt to convey any portion of the high seas—for the said western line is drawn, not so as to embrace any part of the high seas, but, as expressed in the apt language of the Treaty—"de manière à enclaver, dans le dit territoire cédé, toutes les Îles Aléoutes situées à l'est de ce méridien."

Had the intention been to convey the waters of the Behring Sea eastward of the western limit, the words "ainsi que les îles contiguës" would not have been used, but words would have been chosen to indicate the area of the open sea conveyed, and it would have been unnecessary to specifically mention the islands.

There was good reason for a line of demarcation of the character specified.

The islands in the Aleutian chain and in Behring Sea were not well defined geographically, and could therefore not be used for the accurate delimitation of territory ceded.

In fact, even the term Aleutian Archipelago was indefinite in its signification, often including islands which were on the Asiatic side of Behring Sea, and far from the Island of Attu, the westernmost island of the Aleutian group intended to be ceded.

Character of the western geographical limit, and reason for its adoption.  
*Aleutian Islands, &c.*

Greenhow, for instance, writes:—

"The *Aleutian Archipelago* is considered by the Russians as consisting of *three groups* of islands. Nearest Alaska are the *Fox Islands*, of which the largest are *Unimak, Unalashka, and Umnak*; next to these are the *Andreanowsky Islands*, among which are *Atscha, Tonaga, and Kanaga*, with many smaller islands, sometimes called the *Kat Islands*; the most western group is that first called the *Aleutian or Aleoutsy Islands*, which are *Attu, Mednoi* (or *Copper Island*), and *Behring's Island*" (p. 5).

Character of the western geographical limit, and reason for its adoption  
*Aleutian Islands, &c.*

"Mémoir, Historical and Political, of the North-west Coast of North America, &c., by Robert Greenhow, Translator and Librarian to the Department of State," Senate, 26th Cong., 1st Sess. [174]. 1840.

In the "History of Oregon and California," &c., by the same author, the Commander Islands (Copper and Behring Islands) are again classed among the Aleutian Islands, which are said to be included under two governmental districts by the Russians, the Commander Islands belonging to the western of these districts (p. 38). Greenhow also states that the name "Aleutian Islands" was first applied to Copper and Behring Islands.

Indeed, in many Maps of various dates, the title Aleutian Islands is so placed as impliedly to include the Commander Islands, in some it is restricted to a portion of the chain now recognized by that name. Similar diversity in usage, with frequent instances of the inclusion of the Commander Islands as a part of the Aleutian Islands, is found in geographical works of various dates.

From this uncertainty in usage in respect to the name of the Aleutian Islands (though these are now commonly considered to end to the westward at Attu Island), it is obvious that, in defining a general boundary between the Russian and United States' possessions, it might have given rise to grave subsequent doubts and questions to have stated merely that the whole of the Aleutian Islands belonged to the United States. Neither would this have covered the case presented by the various scattered islands to the north of the Aleutian chain proper, while to have enumerated the various islands, which often appeared and still sometimes appear on different Maps under alternative names, would have been perplexing and unsatisfactory, from the very great number of these to be found in and about Behring Sea.

It was thus entirely natural to define conventionally a general division fixed by an imaginary line so drawn as according to the best published Maps to avoid touching any known islands.

Imperfect survey of Behring Sea.

The occasion for a western limit of the kind adopted is the more obvious, when it is borne in mind that many of the islands in and about Behring Sea are even at the present day very imperfectly surveyed, and more or less uncertain in position.

The following is from the "Coast Pilot of Alaska" (United States' Coast Survey, 1869):—

Appendix No. 2  
of United States'  
Coast Survey,  
Coast Pilot of  
Alaska, 1869,  
Part 1, p. 203.

"The following list of the geographical positions of places, principally upon the coast of Alaska, has been compiled chiefly from Russian authorities. In its preparation the intention was to introduce all determinations of position that appeared to have been made by actual observation, even when the localities are quite close. In the Archipelago Alexander most of Vancouver's latitudes have been introduced, although in such waters they are not of great practical value.

"It is believed the latitudes are generally within 2 miles of the actual position, and in many cases where several observers had determined them independently, the errors may be less than a mile. The longitudes of harbours regularly visited by vessels of the Russian-American Company appear to be fairly determined, except toward the western termination of the Aleutian chain, where large discrepancies, reaching 30' of arc, are exhibited by the comparison of results between Russian authorities and the United States' Exploring Expedition to the North Pacific in 1855. Positions by different authorities are given in some instances to show these discrepancies. The comparison of latitudes and longitudes at Victoria, Fort Simpson, Sitka, Chilkah, Kodiak, and Unalaska, between English and Russian and the United States' coast survey determinations, exhibit larger errors than might have been expected.

"The uncertainties that exist in the geographical position of many islands, headlands, straits, and reefs, the great dissimilarity of outline and extent of recent examinations of some of the Western Aleutians, the want of reliable data concerning the tides, currents, and winds, the almost total want of detailed descriptions of headlands, reefs, bays, straits, &c., and the circumstantial testimony of the Aleutian fishermen concerning islands visited by them and not laid down upon the Charts, point to the great necessity for an exhaustive geographical reconnaissance of the coast, as was done for the coast of the United States between Mexico and British Columbia."

Even the latest United States' Chart of what are now known as the Aleutian Islands (No. 68, published in 1891) is based chiefly on information obtained by the "North Pacific Surveying Expedition" under Rogers, which was carried out in the schooner "Fenimore Cooper" in 1855. On sheet 1 of this Chart (embracing the western part of the Aleutian

Islands) such notes as the following are found:—

"The latest Russian Charts place Bouldyr Island 10 miles due south of the position given here, which is from a determination by Sumner's method.

"The low islands between Goreloi and Ioulakh, excepting the west point of Unalga, are from Russian authorities, which, however, are widely discrepant."

Similarly, in the corresponding British Admiralty Chart (No. 1501), published in 1890, we find the remark:—

"Mostly from old and imperfect British, Russian, and American surveys."

On the Chart of Behring Sea, published by the United States in 1891, a small islet is shown north of St. Matthew Island, near the centre of the sea, which does not appear on the special Map of St. Matthew Island published in 1875, and which could not be found in 1891.

That the line drawn through Behring Sea between Russian and United States' possessions was thus intended and regarded merely as a ready and definite mode of indicating which of the numerous islands in a partially explored sea should belong to either Power, is further shown by a consideration of the northern portion of the same line, which is the portion first defined in the Treaty. From the initial point in Behring Strait, which is carefully described, the "limite occidentale" of territories ceded to the United States "remonte en ligne directe, sans limitation, vers le nord, jusqu'à ce qu'elle se perd dans la Mer Glaciale," or, in the United States' official translation "proceeds due north without limitation into the same Frozen Ocean."

The "geographical limit" in this the northern part of its length runs through an *ocean* which had at no time been surrounded by Russian territory, and which had never been claimed as reserved by Russia in any way; to which, on the contrary, special stipulations for access had been made in connection with the Anglo-Russian Convention of 1825, and which since 1848 or 1849 had been frequented by whalers and walrus-hunters of various nations, while no single fur-seal has ever been found within it. It is therefore very clear that the geographical limit thus projected towards the north could have

Limit continued through Arctic Ocean

Debates in C

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been intended only to define the ownership of such islands, if any, as might subsequently be discovered in this imperfectly explored ocean; and when, therefore, the Treaty proceeded to define the course of "*the same western limit*" (*cette limite occidentale*) from the initial point in Behring Strait to the southward and westward across Behring Sea, it is obvious that it continued to possess the same character and value.

*Debates in Congress on the Cession of Alaska,  
1867, 1868.*

Debates in Congress on Cession of  
Alaska.

Neither the Debates in Congress—which preceded and resulted in the cession and its ratification by the United States, nor the Treaty by which it was carried into effect, nor the subsequent legislation by the United States, indicate the transfer or acquisition of any exclusive or extraordinary rights in Behring Sea. On the contrary, they show that no such idea was then conceived.

In answer to a Resolution of the House of Representatives of the 19th December, 1867, calling for all correspondence and information in the possession of the Executive in regard to the country proposed to be ceded by the Treaty, the Memorial of the Legislature of Washington Territory (which was made the occasion for the negotiation), together with Mr. Sumner's speech in the Senate, were among other documents transmitted.

This Memorial shows that United States' citizens were already engaged in fishing from Cortez Banks to Behring Strait, and that they had never been under any apprehension of interference with such fishing by Russia, but desired to secure coast facilities, especially for the purposes of curing fish and repairing vessels.

The Memorial is as follows:—

"To his Excellency Andrew Johnson, President of the United States.

United States'  
Senate, Ex. Doc.  
No. 177, 40th  
Cong., 2nd Sess.,  
p. 132.

"Your memorialists, the Legislative Assembly of Washington Territory, beg leave to show that abundance of cod-fish, halibut, and salmon, of excellent quality, have been found along the shores of the Russian possessions. Your memorialists respectfully request your excellency to obtain such rights and privileges of the Government of Russia as will enable our fishing-vessels to visit the ports

and harbours of its possessions to the end that fuel, water, and provisions may be easily obtained; that our sick and disabled fishermen may obtain sanitary assistance, together with the privilege of curing fish and repairing vessels in need of repairs. Your memorialists further request that the Treasury Department be instructed to forward to the Collector of Customs of this Puget Sound district such fishing licences, abstract journals, and log-books as will enable our hardy fishermen to obtain the bounties now provided and paid to the fishermen in the Atlantic States. Your memorialists finally pray your Excellency to employ such ships as may be spared from the Pacific naval fleet in exploring and surveying the fishing banks known to navigators to exist along the Pacific Coast from the Cortez bank to Behring Straits.

"And, as in duty bound, your memorialists will ever pray.

"Passed the House of Representatives, January 10, 1866.

(Signed) "EDWARD ELDRIDGE, *Speaker*.  
"House of Representatives.

"Passed the Council, January 13, 1866.

"HARVEY K. HINES, *President*  
"of the Council."

In the debate which took place in Congress upon the subject of the acquisition of Alaska, the value of the proposed purchase, and the nature of the interests and property proposed to be acquired, were fully discussed.

The debate was protracted, and many leading Members spoke at length. To none of them did it occur to suggest the existence of an exclusive jurisdiction over any waters or fisheries distant more than 3 miles from land.

On the contrary, Mr. Sumner, who had charge of the measure in the Senate, after pointing out that seals were to be found on the "rocks and recesses" of the territory to be acquired, which would therefore make the acquisition more valuable, in touching upon the fisheries and marine animals found at sea, admitted that they were free to the world, contending, however, that the possession of the coast would give advantages to the United States' fishermen for the outfitting of their vessels and the curing of their catch.

With reference to the whale fishery he remarked:—

"The Narwhal with his two long tusks of ivory, out of which was made the famous throne of the early Danish kings, belongs to the Frozen Ocean; but he, too, strays into the straits below. As no sea is now *mare clausum*, all these may be pursued by a ship under any flag, except directly on the coast and within its territorial

United States' Senate, Ex. Doc. No. 177, 40th Cong., 2nd Sess., p. 183. See Appendix, vol. i, No. 6.

Debates in Congress.

limit. And yet it seems as if the possession of this coast as a commercial base must necessarily give to its people peculiar advantages in this pursuit."

Mr. Washburn, of Wisconsin, said:—

United States' Congressional Debates, from "Congressional Globe," December 11, 1867, 40th Cong., 2nd Sess., Part I, p. 138.

"But, Sir, there has never been a day since Vitus Behring sighted that coast until the present when the people of all nations have not been allowed to fish there, and to cure fish so far as they can be cured in a country where they have only from forty-five to sixty pleasant days in the whole year. England, whose relations with Russia are far less friendly than ours, has a treaty with that Government by which British subjects are allowed to fish and cure fish on that coast. Nay, more, she has a treaty giving her subjects for ever the free navigation of the rivers of Russian America, and making Sitka a free port to the commerce of Great Britain."

In 1868 Mr. Ferriss spoke as follows:—

United States' Congressional Debates, from "Congressional Globe," July 1, 1868, 40th Cong., 2nd Sess., Part IV, p. 3667.

"That extensive fishing banks exist in these northern seas is quite certain; but what exclusive title do we get to them? They are said to be far out at sea, and nowhere within 3 marine leagues of the islands or main shore."

Mr. Peters, in the course of his speech, remarked:—

*Ibid.*, p. 3668.

"I believe that all the evidence upon the subject proves the proposition of Alaska's worthlessness to be true. Of course, I would not deny that her cod fisheries, if she has them, would be somewhat valuable; but it seems doubtful if fish can find sun enough to be cured on her shores, and if even that is so, my friend from Wisconsin (Mr. Washburn) shows pretty conclusively that in existing treaties we had that right already."

Mr. Williams, in speaking of the value of the fisheries, said:—

United States' Congressional Debates, from Appendix to "Congressional Globe," July 9, 1868, 40th Cong., 2nd Sess., Part V, p. 490.

See also Alaska, p. 670.

"And now as to the fishes, which may be called, I suppose, the *argumentum piscatorium*. . . . Or is it the larger tenants of the ocean, the more gigantic game, from the whale, and seal, and walrus, down to the halibut and cod, of which it is intended to open the pursuit to the adventurous fishermen of the Atlantic coast, who are there already in a domain that is free to all? My venerable colleague (Mr. Stevens), who discourses as though he were a true brother of the angle himself, finds the foundations of this great Republic like those of Venice and Genoa among the fishermen. Beautiful as it shows above, like the fabled mermaid—'*desinit in piscem mulier formosa superne*'—it ends, according to him, as does the Alaska argument itself, in nothing but a fish at last. But the resources of the Atlantic are now, he says, exhausted. The Falkland Islands are now only a resting place in our maritime career, and American liberty can no longer live except by

giving to its founders a wider range upon a vaster sea. Think of it, he exclaims—I do not quote his precise language—what a burning shame is it not to us that we have not a spot of earth in all that watery domain on which to reef a mast or sail, or dry a net or fish t—forgetting, all the while, that we have the range of those seas without the leave of anybody; that the privilege of landing anywhere was just as readily attainable, if wanted, as that of hunting on the territory by the British; and, above all, that according to the official Report of Captain Howard, no fishing bank has been discovered within the Russian latitudes.”

It is therefore established:—

That Russia's rights “as to jurisdiction and as to the seal fisheries in Behring Sea,” referred to in Point 4 of Article VI of the Treaty of 1802, were such only as were hers according to international law, by reason of her right to the possession of the shores of Behring Sea and the islands therein.

That the Treaty of Cession does not purport either expressly or by implication to convey any dominion in the waters of Behring Sea, other than in the territorial waters which would pass according to international law and the practice of nations as appurtenant to any territory conveyed.

That no dominion in the waters of Behring Sea other than in territorial waters thereof did, in fact, pass to the United States by the Treaty of 1867.

Action of the

In re

Act of July 27

Secretary I

## CHAPTER VI.

HEAD (F).—*The Action of the United States and Russia from 1867 to 1886.*

Action of the United States and Russia  
from 1867 to 1886

Increased slaughter of seals

Elliott,  
Census Report,  
p. 25.  
H. R., Ex. Doc.  
No. 3083, 50th  
Cong., 2nd Sess.,  
pp. 87, 88,  
ibid., p. 70.

When, in consequence of the cession of Alaska as a whole, the Russians relinquished their sovereignty over the Pribyloff (or "Seal") Islands in 1867, sealers at once landed on the breeding resorts of the fur-seal on these islands. Those who came from the New England States found themselves confronted by competitors from the Sandwich Islands. They proceeded to slaughter seals upon the breeding grounds in the manner which had usually been practised by sealers on grounds where no Regulations were in force.

In the year 1868, at least 240,000 seals are reported to have been taken, and 87,000 in the following year. In view of this wholesale destruction of seals, the United States' Government decided, in the exercise of their undoubted right of territorial sovereignty, to lease these seal rookeries, and to re-establish by means of the necessary legislation, the lapsed Russian Regulations which had restricted the killing of the fur-seal.

Act of July 27, 1868, Killing of seals  
prohibited.

Accordingly, on the 27th July, 1868, an Act passed the Congress of the United States, entitled "An Act to extend the Laws of the United States relating to Customs and Navigation over the territory ceded to the United States by Russia, to establish a Collection District therein, and for other purposes," of which section 6 provides:—

United States'  
Statutes at Large,  
vol. xv. p. 241.

"That it shall be unlawful for any person or persons to kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal within the limits of said territory, or in the waters thereof."

Ibid., p. 348.

On the 3rd March, 1869, a Resolution was passed by the Senate and House of Representatives specially reserving for Government purposes the Islands of St. Paul and St. George, and forbidding any one to land or remain there without permission of the Secretary of the Treasury.

Secretary Boutwell's Report.

41st Cong., 2nd  
Sess., Ex. Doc.  
No. 109.

Mr. Boutwell's Report, as Secretary of the Treasury, preceded an Act of the 1st July, 1870. This Report discloses no suggestion of jurisdiction at a greater distance than 3 miles from the shoreline. With knowledge of the raids upon the

islands and the existence of seal-hunting schooners, Mr. Boutwell dwelt upon the means of protecting the seal islands only. He recommended that the Government of the United States should itself undertake the management of the business of the islands, and should "exclude everybody but its own servants and agents . . . and subject vessels that touch there to forfeiture, except when they are driven to seek shelter or for necessary repairs."

On the 1st July, 1870, an Act was passed entitled, "An Act to prevent the extermination of Fur-bearing animals in Alaska," from which the following are extracts:—

Act of July, 1870  
See Blue Book,  
United States,  
No. 2, 1890, p. 12.  
See Appendix,  
vol. ii.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it shall be unlawful to kill any fur-seal upon the islands of St. Paul and St. George, or in the waters adjacent thereto, except during the months of June, July, September, and October in each year, and it shall be unlawful to kill such seals at any time by the use of firearms, or use other means tending to drive the seals away from said islands. . . .

"Section 2. And be it further enacted, that it shall be unlawful to kill any female seal, or any seal less than 1 year old, at any season of the year, except as above provided, and it shall also be unlawful to kill any seal in the waters adjacent to said islands, or on the beaches, cliffs, or rocks where they haul up from the sea to remain.

"Section 4. And be it further enacted, that immediately after the passage of this Act, the Secretary of the Treasury shall lease, for the rental mentioned in section 6 of this Act. . . . for a term of twenty years, from the 1st day of May 1870, the right to engage in the business of taking fur-seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals.

Seal Islands to be leased.

"Section 5. And be it further enacted, that . . . any person who shall kill any fur-seal on either of said islands, or in the waters adjacent thereto . . . without authority of the lessees thereof . . . shall be deemed guilty of a misdemeanour."

In the year 1870, a lease was executed on behalf of the United States' Government in favour of the Alaska Commercial Company, as provided for in this Act. It covered the Islands of St. George and St. Paul only.

Lease of Alaska Commercial Company

See Appendix,  
vol. i, No. 7.

The following instructions from the Treasury Department show that the administration confined the interference of their officers to those seal-hunters only who attempted landing upon the islands:—

Instructions to United States' officials



*Treasury Department,**"September 10, 1870*

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, p. 30.

"The following Executive Order, relating to the importation of arms into the Islands of St. Paul and St. George, within the district of Alaska, is published for the information of officers of the Customs:—

*"Executive Mansion, Washington, D.C.,**"September 9, 1870,*

"So much of Executive Order of the 4th February, 1870, as prohibits the importation and use of fire-arms and ammunition into and within the Islands of St. Paul and St. George, Alaska, is hereby modified so as to permit the Alaska Commercial Company to take a limited quantity of fire-arms and ammunition to said islands, subject to the direction of the revenue officers there and such regulations as the Secretary of the Treasury may prescribe.

*"U. S. GRANT, President.*

"The instructions issued by this Department in its Circular of the 8th February, 1870, are accordingly modified so as to adjust them to the above Order.

"Revenue officers will, however, see that the privilege granted to the said Company is not abused; that no fire-arms of any kind are ever used by said Company in the killing of seals or other fur-bearing animals, on or near said islands, or near the haunts of seals or sea-otters in the district, nor for any purpose whatever, during the months of June, July, August, September, and October of each year, nor after the arrival of seals in the spring or before their departure in the fall, excepting for necessary protection and defence against marauders or public enemies who may unlawfully attempt to land upon the islands. In all other respects, the instructions of the 8th February, 1870, will remain in force.

*"WM. A. RICHARDSON**Acting Secretary.**"Treasury Department, Washington, D.C.,**"Sir,**"September 19, 1870.*

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, pp. 32-34.

"I inclose herewith a copy of a letter, dated the 17th instant, from N. L. Jeffries, attorney for the Alaska Commercial Company, reciting that a Notice recently appeared in the 'Alta California' newspaper, published in your city, of the intended sailing of the schooner 'Mary Zephyr' for the Islands of St. Paul and St. George.

"By the 4th Section of the Act of the 1st July, 1870, entitled 'An Act to prevent the Extermination of Fur-bearing Animals in Alaska,' it is provided that the Secretary of the Treasury, immediately after the passage of said Act, shall issue to proper and responsible parties, &c., &c., the right to engage in the business of taking fur-seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals, &c.

"This lease has been awarded to the Company above named for the term of twenty years, a copy of which is herewith inclosed; and the request of General Jeffries that an official announcement be made of the award of said lease, and that no vessels except those of the Government and of said Company will be allowed to touch or land at either of said islands, may be complied with, and you will please cause such Notice to be published in one or more of the San Francisco newspapers, at the expense of said Company.

"I am, &c.,

(Signed) "W. A. RICHARDSON,  
"Acting Secretary.

"T. G. Phelps, Esq.,  
"Collector of Customs,  
"San Francisco, California.

"Custom-house, San Francisco, California,

"Sir, "Collector's Office, September 30, 1870.

"I have the honour to acknowledge the receipt of your letter of the 19th instant, relative to the published Notice of the sailing of the schooner 'Mary Zephyr' for the Islands of St. Paul and St. George, in Alaska. On seeing the advertisement in the 'Alta,' written Notice was immediately sent to the parties interested, that no vessel would be permitted to land at said islands. I have caused a Notice, as suggested by the honourable Secretary, to be published. Please find a copy of the Notice inclosed.

"I am, &c.,

(Signed) "T. G. PHELPS,  
"Collector.

"Honourable Geo. S. Boutwell,  
"Secretary, Treasury.

"Notice.

"In compliance with an order of the honourable Secretary of the Treasury, notice is hereby given that a lease of the Islands of St. Paul and St. George, in the Territory of Alaska, has been executed by the Secretary of the Treasury to the Alaska Commercial Company for the period of twenty years from the 1st day of May, 1870, in accordance with the provisions of an Act of Congress entitled 'An Act to prevent the Extermination of Fur-bearing Animals in Alaska,' approved the 1st July, 1870, and that, by the terms of said lease and the above-mentioned Act, the said Company have the exclusive right to engage in the business of taking fur-seals on said islands and the islands adjacent thereto. No vessels, other than those belonging to said Alaska Commercial Company or to the United States, will be permitted to touch or land at either of said islands or the islands adjacent thereto, nor will any person be allowed thereon except the authorized agents of the United States and of said Company.

(Signed) "T. G. PHELPS,  
"Collector of Customs.

"Custom-house, San Francisco, California,  
"Collector's Office, September 28, 1870."

When the above-mentioned legislation was enacted, Mr. Boutwell, as already stated, was Secretary of the United States' Treasury.

The following correspondence between Mr. T. G. Phelps and Mr. Boutwell shows the position assumed in 1872 by the Treasury Department in relation to the extent of jurisdiction of the United States in Alaskan waters:—

Opinion of United States' Government  
in 1872 as to jurisdiction.

50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
pp. 139, 140.

*"Mr. Phelps to Mr. Boutwell.*

*"Customs House, San Francisco,*

*"Collector's Office, March 25, 1872.*

"Sir,

"I deem it proper to call the attention of the Department to certain rumours which appear to be well authenticated, the substance of which appears in the printed slip taken from the 'Daily Chronicle' of this date, herewith inclosed.

"In addition to the several schemes mentioned in this paper, information has come to this office of another which is being organized at the Hawaiian Islands for the same purpose. It is well known that, during the month of May and the early part of June in each year, the fur-seal, in their migration from the southward to St. Paul and St. George Islands, uniformly move through Oonimak Pass in large numbers, and also through the narrow straits near that pass which separate several small islands from the Aleutian group.

"The object of these several expeditions is unquestionably to intercept the fur-seals at these narrow passages during the period above mentioned, and there, by means of small boats manned by skilful Indians or Aleutian hunters, make indiscriminate slaughter of those animals in the water, after the manner of hunting sea-otters.

"The evil to be apprehended from such proceedings is not so much in respect of the loss resulting from the destruction of the seals at those places (although the killing of each female is in effect the destruction of two seals), but the danger lies in diverting these animals from their accustomed course to the islands of St. Paul and St. George, their only haunts in the United States.

"It is believed by those who have made the peculiar nature and habits of these animals a study, that if they are by any means seriously diverted from the line upon which they have been accustomed to move northward in their passage to these islands, there is great danger of their seeking other haunts, and should this occur the natural selection would be Komandorsky Islands, which lie just opposite the Pribylov group, near the coast of Kamtschatka, owned by Russia, and are now the haunt of fur-seals.

"That the successful prosecution of the above-mentioned schemes would have the effect to drive the seals from their accustomed course there can be no doubt. Considering, therefore, alone the danger which is here threatened to the interest of the Government in the seal fisheries,

and the large annual revenue derived from the same, I have the honour to suggest, for the consideration of the Honourable Secretary of the Treasury, the question whether the Act of July 1, 1870, relating to these fisheries, does not authorize his interference by means of revenue cutters to prevent foreigners and others from doing such an irreparable mischief to this valuable interest. Should the Honourable Secretary deem it expedient to send a cutter into these waters, I would respectfully suggest that a steam cutter would be able to render the most efficient service and that it should be in the region of Oonimak Pass and St. Paul and St. George Islands by the 15th of May next.

"I am, &c.  
(Signed) "T. G. FLETCHER, Collector

[From *San Francisco Daily Chronicle*, March 21, 1872.]

"It is stated in reliable commercial circles that parties in Australia are preparing to fit out an expedition for the capture of fur seals in Behring Sea. The present high prices of fur-seal furs in London and the European markets has acted powerfully in stimulating enterprises of a like character. But a few days ago we mentioned that a Victorian Company was organized for catching fur-seals in the North Pacific. Another party—an agent representing some Eastern capitalists—has been in this city for the past week making inquiries as to the feasibility of organizing an expedition for like purposes.

*Mr. Boutwell to Mr. Phelps.*

"Treasury Department, Washington, D.C.,

"Sir,

"April 19, 1872.

"Your letter of the 25th ultimo was duly received calling the attention of the Department to certain rumours circulating in San Francisco, to the effect that expeditions are to start from Australia and the Hawaiian Islands to take fur-seals on their annual migration to the Islands of St. Paul and St. George through the narrow Pass of Oonimak. You recommend—to cut off the possibility of evil resulting to the interests of the United States from these expeditions—that a revenue cutter be sent to the region of Oonimak Pass by the 15th May next.

"A very full conversation was held with Captain Bryant upon this subject while he was at the Department, and he conceived it to be entirely impracticable to make such an expedition a paying one, inasmuch as the seals go singly or in pairs, and not in droves, and cover a large region of water in their homeward travel to these islands, and he did not seem to fear that the seals would be driven from their accustomed resorts, even were such attempts made.

"In addition, I do not see that the United States would have the jurisdiction or power to drive off parties going up

there for that purpose, unless they make such attempt within a marine league of the shore.\*

"As at present advised, I do not think it expedient to carry out your suggestions, but I will thank you to communicate to the Department any further facts or information you may be able to gather upon the subject.

"I am, &c.

(Signed) "GEORGE S. BOWEN,"

Secretary"

1875.

44th Cong., 1st  
Sess., H. R., Ex.  
Doc. No. 100,  
p. 124, March 15,  
1875.

Opinion of Secretary Fish.

In 1875 Mr. McIntyre, the Assistant Treasury Agent at the Unalaska Islands, wrote that he had armed the natives with the intention of repelling by force attempts "to kill seals in the rookeries or within a rifle shot of the shore."

In 1875, a question having arisen as to Russia's authority to grant licenses for the use of the seas contiguous to her coasts, Mr. Fish, Secretary of State for the United States of America, gives conclusive evidence as to the interpretation placed upon the Convention of 1824 by the United States, as follows: -

Fish to Baker,  
Dec. 1, 1875,  
Wharton, vol. 1,  
sec. 32, p. 106.

"There was reason to hope that the practice which formerly prevailed with powerful nations of regarding seas and bays, usually of large extent, near their coast, as closed to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law which limits its maritime jurisdiction to a marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

Fishing and navigation by foreigners.

During the whole period discussed in this chapter, the vessels of various nations were continuously engaged in hunting, fishing, and navigating in the waters of the North Pacific, including Behring Sea.

H. R., Ex. Doc.  
No. 26, 44th Cong.,  
1st Sess.

Schooners from British Columbia were fishing for cod as early as 1866, and seals to the number of 20,000 a-year were reported as being taken south of St. George and St. Paul Islands in 1870 and 1872.

*Ex parte S. H. Cooper, owner of  
"W. P. Hayward,"*  
Brief for the United  
States, No. 9,  
October Term,  
1890, p. 197.

\* In 1888 (after the occurrence of the seizure of British vessels in 1886 and 1887) Mr. Boutwell, by request, explained, in a letter dated the 19th January, that "neither upon my recollection of facts, as they were understood by me in 1872, nor upon the present reading of the correspondence, do I admit the claim of Great Britain that my letter is an admission of any right adverse to the claims of the United States in the waters known as Behring Sea. My letter had reference solely to the waters of the Pacific Ocean south of the Aleutian Islands."

Whalers continued as before to frequent the waters both east and west of the line described in the Treaty of 1807. The extent of their operations appears from the following Table, which shows the number of vessels composing the North Pacific whaling fleet after the date of the Alaska Cession.\*

## Whaling industry.

Fishery Industries of the United States, 1887, sec. 8, vol. ii, p. 83.

Year.	Number of United States' Vessels.	Remarks.
1807	90	Also eleven foreign vessels.
1868	61	Also seven foreign vessels.
1869	43	Also six foreign vessels.
1870	46	Also nine foreign vessels.
1871	35	All but seven of the fleet were lost, including four foreign vessels.
1872	27	Also four foreign vessels.
1873	30	Also four foreign vessels.
1874	23	Also four foreign vessels.
1875	16	Also four foreign vessels.
1876	18	All but eight of the fleet lost, also two foreign vessels.
1877	19	Three of the fleet were lost; one foreign vessel.
1878	17	One of the fleet lost.
1879	21	Three of the fleet lost.
1880	19	

Walrus hunting is also known to have been continuously practised by the whalers during these years, and in some years large quantities of walrus ivory and oil were obtained:—

## Walrus hunting.

Fishery Industries of the United States, sec. 5, vol. ii, part 17, pp. 313 *et seq.*

"The Arctic whaling fleet from 1870 to 1880, inclusive, is estimated to have captured 100,000 walrus, producing 1,996,000 gallons of oil and 398,868 lbs. of ivory, of a total value of 1,260,000 dollars."

In 1872 expeditions for sealing in Behring Sea were reported to be fitting out in various places, as appears from Mr. Phelps' letter of the 25th March in that year, already quoted, and in 1873 a schooner was reported as having been seen shooting seals among the seal islands.

## Seal hunting.

H. R., Ex. Doc. No. 83, p. 125, 44th Cong., 1st Sess.

Ivan Petroff, Special Commissioner of the United States to the seal islands in the year 1880, says in his Report:—

"As these seals pass up and down the coast as far as the Straits of Fuca and the mouth of Columbia River, quite a number of them are secured by hunters, who shoot or spear them as they find them asleep at sea. Also, small vessels are fitted out in San Francisco, which regularly cruize in these waters for the purpose alone of shooting sleeping seal."

H. R., Ex. Doc. No. 40, 46th Cong., 3rd Sess., vol. xvii, p. 65.

\* All vessels not sailing under the United States' flag are specified in this Table as "foreign."



And he adds:—

H. R., Ex. Doc.  
No. 40, 45th  
Cong., 3rd Sess.,  
vol. xviii, p. 68.

"The fur trade of this country, with the exception of that confined to the seal islands and set apart by law, is free to all legitimate enterprise."

H. R., Ex. Doc.  
No. 153, 40th  
Cong., 1st Sess.

Sealing-vessels and their catches were also reported by the United States' cutter "Corwin," but none were interfered with when outside of the 3-mile limit.

H. R., Ex. Doc.  
No. 3883, 50th  
Cong., 2nd Sess.,  
p. 58.

In 1881 an Agent of the United States' Government stated that during the past twenty years probably 100 vessels had "prowled" about the Pribyloff Islands.

Complaints of depredations on  
rookeries.

The Agents of the United States' Government sent to the seal islands previously to 1886 continually reported upon the inadequacy of the protection of the islands, and they frequently referred to depredations upon the rookeries by the crews of vessels sealing in Behring Sea.

Letter from Mr. d'Anconin.

Early in 1881, Collector D. A. d'Anconin, of San Francisco, appears to have requested information from the Treasury Department at Washington in regard to the meaning placed by that Department upon the law regulating the killing of fur-bearing animals in the territory of Alaska, and specially as to the interpretation of the terms "waters thereof" and "waters adjacent thereto," as used in the law, and how far the jurisdiction of the United States was to be understood as extending.

Reply of Mr. French.

In reply, Acting Secretary H. F. French, of the Treasury Department, wrote as follows on the 12th March, 1881:—

"Sir,

H. R., Ex. Doc.,  
50th Cong., 2nd  
Sess., No. 3883,  
p. 281.

Your letter of the 19th ultimo, requesting certain information in regard to the meaning placed by this Department upon the law regulating the killing of fur-bearing animals in the Territory of Alaska, was duly received. The law prohibits the killing of any fur-bearing animals, except as otherwise therein provided, within the limits of Alaska Territory or in the waters thereof, and also prohibits the killing of any fur-seals on the Islands of St. Paul and St. George or in the waters adjacent thereto, except during certain months.

You inquire in regard to the interpretation of the terms 'waters thereof' and 'waters adjacent thereto,' as used in the law, and how far the jurisdiction of the United States is to be understood as extending.

Presuming your inquiry to relate more especially to the waters of Western Alaska, you are informed that the Treaty with Russia of the 30th March, 1870 [sic], by which the Territory of Alaska was ceded to the United States, defines the boundary of the Territory so ceded. This Treaty is found on pp. 671 to 673 of the volume of Treaties of the Revised Statutes. It will be seen therefrom that the

limit of the coast extends from a line starting from the Arctic Ocean and running through Bering Strait to the north of St. Lawrence Islands. The line runs thence in a south westerly direction, so as to pass midway between the Island of Attou and Copper Island of the Kommandski [sic] complex or group, in the North Pacific Ocean, to meridian of 192 degrees of west longitude. All the waters within that boundary to the western end of the Aleutian Archipelago and chain of islands, are considered as comprised within the waters of Alaska Territory.

"All the penalties proscribed by law against the killing of fur-bearing animals would therefore attach against any violation of law within the limits before described.

(Signed) "H. F. FROENK,  
"Acting Secretary"

It does not appear from any official documents that any action was taken at the time in accordance with the opinion expressed in this letter, and no seizures were made, and no warning was given to any British vessel engaged in sealing beyond the ordinary territorial limits prior to 1886, although at least one British vessel is known to have been engaged in such sealing in 1884, and no less than thirteen were so engaged in 1885. Two of these vessels are stated to have been spoken by a United States' revenue-cutter, without being in any way molested.

On the 22nd May, 1884, Lieutenant I. E. Lutz was instructed by the Captain of the United States' revenue-steamer "Corwin" to watch and to seize or arrest any vessel or persons attempting to take seals contrary to law.

Acting under these instructions, Lieutenant Lutz arrested the "Adèle," of Hamburg, Gustave Isaacson, master, with three officers and a crew of eighteen Japanese, when at anchor off shore. The Lieutenant was careful to ascertain that the vessel was engaged in sealing ashore, and having waited the return of the ship's boat which came back loaded with seal carcasses, Lieutenant Lutz reported that, *having now secured all necessary evidence*, he notified the captain of the seizure of the vessel.

It is found that from 1867 down to and including 1885, vessels continued to visit and hunt in Behring Sea without interference when outside of the ordinary territorial jurisdiction.

The circumstances which appear to have led to a change of official policy in 1886 will be related hereafter.

It may be convenient at this point to refer to questions which were raised by occurrences in the Asiatic waters of the Pacific, adjacent to Russian territory.

No seizures made before 1886

60th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 100,  
p. 134.

H. R., Mis. Doc.,  
60th Cong., 1st  
Sess., No. 609,  
p. 28

Ibid., p. 33.

*Questions arising between the United States and  
Russia in Okhotsk and Behring Seas.*

Disputes in Okhotsk and Behring Seas.

Whalers in Okhotsk Sea.

Fishery Industries  
of the United  
States, section 6,  
vol. II, p. 20.  
See extract from  
Tikhonoff,  
Appendix, vol. I,  
No. 8.

Disputes have more than once arisen respecting the rights of United States' whaling-vessels in Okhotsk Sea.

The main objection to these whalers was that they interfered with the fur industry, and it is on record that the mode of whaling practised in this sea was often to anchor the vessel in some harbour and to send the boats therefrom in pursuit of whales. The instructions to Russian cruisers, dating from 1853, only prohibited these vessels from coming "within 3 Italian miles of our shores." The Sea of Okhotsk was covered by the Ukase of 1821, and possesses a seal rookery (Robben Island). Whalers from the United States and elsewhere began to frequent this sea about the year 1843.

Whalers sometimes seal hunters.

The following evidence with reference to sealing and whaling in Okhotsk Sea given before the Committee of Ways and Means in the House of Representatives at Washington (3rd May, 1876), shows that whalers were also engaged in taking seals:

H. R., 44th Cong.,  
1st Sess., Report  
624.

"Q. Who are Williams, Haven, and Co.?" A. Williams, Haven, and Co. are Mr. Henry P. Haven, of Connecticut, who died last Sunday, and Richard Chapel. They are whalers. They took seals and whales, and had been at that business in the Pacific for a great many years.

"Q. They had an interest in these skins?" A. Yes, Sir. They had a vessel in the waters of the Okhotsk Sea, I think, seal fishing in 1866. While their vessel was at Honolulu in 1866, the captain became acquainted with a Russian captain who put in there in distress with the remainder, or a portion, of the Alaska seal skins taken by the old Russian Company, and there the captain learned of this interest. He left his vessel at Honolulu, went to Connecticut, and conferred with his employers. Then Mr. Chapel, one of the concern, went out to Honolulu and fitted out this vessel and another one and sent them to the Alaska Islands as early as April 1868."

Mr. Hoffman to  
Mr. Frelinghuysen,  
March 14, 1882.

The United States' Minister at St. Petersburg, Mr. Hoffman, writing in 1882, thus refers to this sea:—

50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
p. 260.  
See Appendix,  
vol. II, Part II,  
No. 14.

"A glance at the Map will show that the Kurile Islands are dotted across the entrance to the Sea of Okhotsk the entire distance from Japan on the south to the southernmost Cape of Kamtchatka on the north.

"In the time when Russia owned the whole of these islands, her Representatives in Siberia claimed that the Sea of Okhotsk was a *mare clausum*, for that Russian jurisdiction extended from island to island and over

the marine leagues of intermediate sea from Japan to Kamtschatka.

"But about five years ago Russia asked the southern group of these islands to Japan, in return for the half of the Island of Saghalien, which belonged to that Power.

"As soon as this was done it became impossible for the Siberian authorities to maintain their claim. My informant was not aware that this claim had ever been seriously made at St. Petersburg."

And in another letter he says:

"I do not think that Russia claims that the Sea of Okhotsk is a *mare clausum*, over which she has exclusive jurisdiction. If she does, her claim is not a tenable one since the cession of part of the group of the Kurile Islands to Japan if it ever were tenable at any time.

March 27, 1882,  
North Cong., 2nd  
Sess., Senate Ex  
Doc. No. 106,  
p. 261.  
See Appendix,  
vol. 6, Part II,  
No. 13.

Sovereignty of

The following appears as an introductory statement in "Papers relating to Behring Sea Fisheries," published at the Government Printing Office in Washington, 1887:—

"This sea [of Okhotsk] is a part of the waters to which the U. S. case of 1821 applied, and which M. Poletien, in his subsequent correspondence with Mr. Adams, prior to the Treaty of 1824, said His Imperial Majesty, the Emperor of all the Russias, might have claimed as a close sea had he chosen to do so. As has been seen, all question as to the right of citizens of the United States, as well as of the subjects of Great Britain, to navigate and fish in these waters was given up by Russia once for all in the Treaty of 1824 with the United States, and of 1825 with Great Britain.

Okhotsk Sea subject to U. S. case of 1821

"The following correspondence between Russia and the United States in the years 1867 and 1868 contains an explicit disavowal by Russia of any claim to interfere with the fishing operations of citizens of the United States in the Sea of Okhotsk."

The correspondence referred to shows that the captain of the "Europa," a United States' whaling-vessel, complained to the Department of State at Washington that the Captain of a Russian armed steamer had stated that he was authorized to drive United States' whalers away from the vicinity of the Settlement of Okhotsk, in the Sea of Okhotsk, and that he had fired on the ship's boat of the bark "Emdeavour," of New Bedford.

Interference with United States' vessels

"Europa."

"Emdeavour."

"Java."

It appears also from the same correspondence that on the 27th July, 1867, the United States' bark "Java" was cruising for whales in Shantar Bay and standing towards Silas Richard's Bluff, when a Russian Commander ordered him out of the bay, and thereupon Mr. Seward inquired

Seward to Clay,  
February 24, 1868,  
vol. ii, Part II,  
No. 12.

of the Russian Government what instructions had been issued relating to fisheries in this sea.

Explanations by Russia.

Westman to  
United States'  
Secretary of State,  
July 31, 1868,  
59th Cong., 2nd  
Sess., Senate Ex  
Doc No 166,  
p. 258

No claim of jurisdiction beyond 3 mile limit.

In reply to this inquiry, the following explanation was received from M. de Westmann, Acting Minister of Foreign Affairs at St. Petersburg, which shows the claim of jurisdiction of Russia to have been confined to 3 miles only in Russian gulfs and bays, in this part of the very waters covered by the Ukase of 1821:—

These are the circumstances: The schooner 'Aleout,' under the command of Lieutenant Etoline, had been sent in commission from Nioulaïevsk to Oudk. The abundance of floating ice having forced him to enter into the Gulf of Tongoursh, he there met the 14th July, at about 20 miles to the south of the Straits of Choubask near the eastern coast, the American whaler 'Java,' occupied in rendering the aid of a captured whale. Considering that foreign whalers are forbidden by the laws in force to fish in the Russian gulfs and bays at a distance of less than 3 miles from the shore, where the right of fishing is exclusively reserved to Russian subjects, Lieutenant Etoline warned ('avertit') the captain of the 'Java' to 'beat off' from the Gulf of Tongoursh, which he at once did. The same day the 'Aleout' made for the Bay of Mawgon, where arrived, on the next day, the American whaler schooner 'Caroline Fisk' whose captain, accompanied by the captain of the 'Java,' called on Lieutenant Etoline, and declared that he had no right to prevent them from fishing for whales wherever they liked. Lieutenant Etoline replied that there were in that respect established rules ('règles'), and if they insisted, absolutely, upon breaking them, that he would be compelled to prevent them. The captain of the schooner 'Caroline Fisk' pretending ('ayant prétendu') that he had entered into the Bay of Tongoursh in consequence of 'deviations from his course,' Lieutenant Etoline offered at once all assistance in his power; and, upon request, delivered him 7 pounds of biscuit from the stores of the 'Aleout,' after which the two ships again went to sea. The 19th of July that is, four days afterwards, the schooner 'Aleout' met a whale, upon which the Commander caused a trial fire to be made. At the same moment was seen, at about 16 miles distance, a sail, name unknown, and, near to, three 'chaloupes,' the nearest of which was at least 3 miles in advance in the direction of the cannon fire. In the evening all these ships had disappeared. That incident is registered in the books of the 'Aleout' in the following terms: 'The 19th of July, at 9 in the evening, at anchor in the Bay of Mawgon, fired a cannon shot for practice at a whale about.' From these facts General Clay will be convinced that the incident alluded to has been exaggerated, and even perverted ('dénaturé') much in order to be represented as a cause of grievance against the Commander of the 'Aleout' on the part of the American whalers."

The explanation was considered satisfactory, Mr. Seward observing that "the captain of the 'Java,' spoke unwarrantably when by implication he denied that the Russian authorities have the right to prevent foreign vessels from fishing for whales within 3 marine miles of their own shore."

40th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 100,  
p. 283

In the year 1881 the Russian Consul at Yokohama issued, on behalf of the Russian Imperial Government, a Notice, of which the following is a translation:—

NOTICE

"At the request of the local authorities of Behring and other islands, the Undersigned hereby notifies that the Russian Imperial Government publishes, for general knowledge, the following:

Russian Notice of November 1881 respecting  
Okhotsk and Behring Seas

Ibid., p. 282.

"1. Without a special permit or licence from the Government of Eastern Siberia, foreign vessels are not allowed to carry on trading, hunting, fishing, &c., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the north-eastern coast of Asia, or within their sea boundary-line.

"2. For such permits or licences, foreign vessels should apply to Vladivostok exclusively.

"3. In the port of Petropavlovsk, though being the only port of entry in Kamchatka, such permits or licences shall not be issued.

"4. No permits or licences whatever shall be issued for hunting, fishing, or trading at or on the Commander and Robben Islands.

"5. Foreign vessels found trading, fishing, hunting, &c., in Russian waters, without a licence or permit from the Governor-General, and also those possessing a licence or permit who may infringe the existing bye-laws on hunting, shall be confiscated, both vessels and cargoes, for the benefit of the Government. This enactment shall be enforced henceforth, commencing with A. D. 1882.

"6. The enforcement of the above will be intrusted to Russian men-of-war, and also to Russian merchant vessels, which for that purpose, will carry military detachments and be provided with proper instructions.

"A. PELIKAN,

"H. I. R. M. Consul.

"Yokohama, November, 15, 1881."

The firm of Messrs. Lynde and Hough, of San Francisco, was in 1882, and had been for years, engaged in the Pacific coast fisheries. They yearly sent vessels to the Sea of Okhotsk, fishing from 10 to 20 miles from shore. The attention of the firm being called to the above Notice, they wrote to the Secretary of State of the United States calling attention thereto.

Ibid., p. 259.  
Lynde and Hough  
to Folger,  
February 15, 1882.  
See Appendix,  
vol. II, Part II,  
No. 18.

Applied to

Case of



60th Cong., 2nd  
Sess., Senate Ex  
Doc. No. 100,  
p. 208.

Mr. Hoffman to  
Mr. Frelinghuysen,  
March 27, 1882.  
Ibid., p. 201.  
See Appendix,  
vol. II, Part II,  
No. 16.

Applied only to territorial waters.

Ibid., p. 202.  
M. de Giers to  
Mr. Hoffman,  
May 8 (20), 1882.  
See Appendix,  
vol. II, Part II,  
No. 16.

Ibid., p. 262.  
M. de Giers to  
Mr. Hoffman,  
June 1 (13), 1882.  
See Appendix,  
vol. II, Part II,  
No. 17.

Ibid., p. 260.  
See Appendix,  
vol. II, Part II,  
No. 14.

Ibid., pp. 262, 263.  
See Appendix,  
vol. II, Part II,  
No. 16.

The Secretary of State (Mr. Frelinghuysen), on the 7th March, 1882, enclosed their letter, together with the Regulations "touching the Pacific coast fisheries," as he termed them, to Mr. Hoffman, the United States' Minister at St. Petersburg. Mr. Hoffman acknowledged the receipt of this despatch, in reference to what he also called "our Pacific Ocean fisheries."

Mr. Hoffman, having made inquiry of M. de Giers, the Russian Foreign Minister, the latter, in his reply, dated the 8th (20th) May, 1882, explained that these Regulations applied only to "territorial waters of Russia," and, in a subsequent letter of the 1st (13th) June, quoted Article 530 of the Russian Code, which is as follows:—

"ARTICLE 530

"The maritime waters, even when they wash the shores, where there is a permanent population, can not be the subject of private possession; they are open to the use of one and all."

In a letter to Mr. Frelinghuysen of the 14th March, 1882, Mr. Hoffman shows what he understood to be the meaning applied by M. de Giers to the words "territorial waters." He writes:—

"The best whaling grounds are found in the bays and coves of the Sea of Okhotsk. Into these the Russian Government does not permit foreign whalers to enter, upon the ground that the entrance to them, from headland to headland, is less than 2 marine leagues wide."

Indeed, M. de Giers, in the letter of the 8th (20th) May, 1882, already quoted, made it clear that, as to fishing and hunting, the rule was the same, and that the prohibition of vessels engaged in these pursuits extended only over the marine league from the shores of the coasts "and the islands called the 'Commander' and the 'Seals,'"

The island referred to as the "Seals" is Robben Island, and the reference to this and the Commander Islands indicates that M. de Giers, under the term of "hunting," was referring specially to the sealing industry.

On the 21st July, 1884, the United States' schooner "Eliza" was seized by the Russian cruiser "Razboinik" in the Anadir River, which runs into Anadir Bay, a northern portion of Behring Sea. It was represented to the United

Case of the "Eliza."

States that she was there trading and hunting walrus. The United States' Vice-Consul-General at Japan termed the seizure "an act of piracy." 50th Cong., 2nd Sess., Senate Ex Doc. No. 106, p. 262.

General Vlangaly, writing from the Department of Foreign Affairs on the 10th (31st) January, 1887, explained that the "Eliza" was arrested, "not for the fact of seal-hunting," but for violating the prohibition touching trading, hunting, and fishing on the Russian coasts of the Pacific without special licence. *Ibid.*, p. 270. See Appendix, vol. II, Part II, No. 19.

The crew, it was found, were trading with the natives on the coasts of Kamchatka, as well as hunting walrus. *Ibid.*, p. 269.

This appears to have been accepted as a valid explanation; but with reference to the seizure of this ship and of the "Henrietta," Mr. Lothrop, United States' Minister at St. Petersburg, writing to Mr. Bayard, the United States' Secretary of State, on the 17th February, 1887, remarks:—

"I may add that the Russian Code of Prize Law of 1869, Article 21, and now in force, limits the jurisdictional waters of Russia to 3 miles from the shore."

The United States' schooner "Henrietta" had been seized on the 29th August, 1886, off East Cape in Behring Strait by the Russian corvette "Kreysser." *Ibid.*, p. 267.

Explanations from the Russian Government were promptly demanded by the United States, and it was alleged she was arrested for illicit trading on the Russian coasts. *Ibid.*, p. 269. See Appendix, vol. II, Part II, No. 18.

Nevertheless, Mr. Bayard, writing to Mr. Lothrop on the 16th March, 1887, observed:—

"If, as I am to conclude from your despatch, the seizure of the 'Henrietta' was made in Russian territorial waters, then the Russian authorities had jurisdiction; and if the condemnation was on proceedings duly instituted and administered before a competent Court and on adequate evidence, this Department has no right to complain. But if either of these conditions does not exist, the condemnation cannot be internationally sustained. The first of these conditions, viz., that the proceedings should have been duly instituted and administered, could not be held to exist if it should appear that the Court before whom the proceedings were had was composed of parties interested in the seizure. On general principles of international law, to enforce a condemnation by such a Court is a denial and perversion of justice, for which this Government is entitled to claim redress. *Papers relating to Behring Sea Fisheries, published at the Government Printing Office in Washington, 1887, p. 121.*

"The same right to redress, also, would arise if it should appear that, while the seizure was within the 3-mile zone, the alleged offence was committed exterior to that zone and on the high seas.

Case of the "Henrietta."

Views of Mr. Bayard.

No assertion  
ordinary jur

Report of cruise

"You are therefore instructed to inquire, not merely as to the mode in which the condemning Court was constituted, but as to the evidence adduced before such Court, in which the exact locality of seizure should be included."

No assertion by United States of extraordinary jurisdiction previous to 1886.

The instructions given from time to time to Commanders of the Revenue Service, or of ships of war of the United States cruising in Behring Sea, and guarding the interests of the Alaska Commercial Company upon the islands leased to the Company, do not even suggest the intention of that Government to assert a claim so vehemently disputed when advanced by Russia.

On the contrary, while vessels from British Columbia and elsewhere were trading and fishing generally in the Behring Sea, and while vessels—chiefly those of the United States—were actually raiding the rookeries, the instructions relating to the fisheries given to Revenue Marine vessels by the United States' Government, until 1886, were confined, as has been shown, to the immediate protection of the seal islands.

The seizure of British sealers in the open sea followed the report on the cruise of the Revenue Marine steamer "Corwin" in the year 1885.

In this report, it is among other things stated, that while shaping a course for St. Paul a special look-out was kept for vessels sealing.

The Captain writes :—

"While we were in the vicinity of the seal islands a look-out was kept at masthead for vessels cruising, sealing, or illicitly trading among those islands. But no such vessels were seen."

Having drawn attention to the number of vessels which had taken, or had endeavoured to take seals on the shores of the islands, and illustrated the great difficulty of preventing the landing thereupon, the Commander concludes as follows :—

"In view of the foregoing facts, I would respectfully suggest—

"1. That the Department cause to be printed in the Western papers, particularly those of San Francisco, California, and Victoria, British Columbia, the sections of the law relating to the killing of fur-bearing animals in Alaskan waters, and defining in specific terms what is meant by Alaskan waters.

"2. That a revenue-cutter be sent to cruise in the vicinity of the Pribiloff Islands and Aleutian group during the sealing season."

"Henrietta"

Report of cruise of the "Corwin," 1885

H. R., Ex. Doc.  
153, 49th Cong.,  
1st Sess.

Fr. Bayard

On the 6th March, 1886, Mr. Daniel Manning, Secretary to the Treasury, wrote to the Collector of Customs at San Francisco as follows:—

*Senate, Ex. Doc.,  
50th Cong., 2nd  
Sess., No. 106,  
p. 131.*

*" Treasury Department,*

" Sir,

*" March 6, 1886.*

" I transmit herewith, for your information, a copy of a letter addressed by the Department on the 12th March, 1881, to D. A. d'Ancona, concerning the jurisdiction of the United States in the waters of the Territory of Alaska, and the prevention of the killing of fur-seals and other fur-bearing animals within such areas, as proscribed by chapter 3, title 23, of the Revised Statutes. The attention of your predecessor in office was called to this subject on the 4th April, 1881. This communication is addressed to you, inasmuch as it is understood that certain parties at your port contemplate the fitting out of expeditions to kill fur-seals in these waters. You are requested to give due publicity to such letters, in order that such parties may be informed of the construction placed by this Department upon the provision of law referred to.

*See ante, p. 111.*

*" Yours, &c.*

(Signed) " D. MANNING,

*" Secretary."*

Public notice appears to have been given accordingly in the terms of the letter addressed by Mr. H. F. French to Mr. d'Ancona. (See *ante*, p. 111.)

*Blue Book,  
" United States  
No. 2 (1890)," p. 7  
See Appendix,  
vol. iii.*

The statement of facts in this chapter establishes:—

That from the year 1807 down to the year 1886 the action of the United States and Russia, the parties to the Treaty of Cession of 1807, is consistent only with the view that the rights possessed by the United States and by Russia respectively in the waters of Behring Sea were only those ordinarily incident to the possession of the coasts of that sea and the islands situated therein.

That during that period, notwithstanding the presence of seal-hunting craft in Behring Sea, the United States' authorities confined the exercise of jurisdiction to the land and waters included within the ordinary territorial limits.

## CHAPTER VII.

HEAD (G).—*Various Contentions of the United States since the year 1880.*

Contentions of United States since 1880.

The considerable development of pelagic sealing in the North Pacific which had taken place in the years previous to 1880 had established a very strong competition against the Alaska Commercial Company. That Company, paying a considerable royalty to the United States' Government upon every skin, had now to face the competition of the pelagic sealers, who paid no rent or royalty. The Company therefore exerted all its influence, especially powerful at Washington, to check and, if possible, destroy this competition. Till the development of the pelagic sealing industry, the actual circumstances had been such as to allow the Company largely to control the markets for seal-skins, and to enable them to exercise a practical monopoly of sealing in the North Pacific.

Instructions to revenue-cutters.

In the year 1880 the United States' Government for the first time furnished revenue-cutters with instructions to prevent any vessel from sealing in any part of Behring Sea to the eastward of the geographical limit mentioned in the Treaty of Cession.

Reports of Governor of Alaska, 1886, p. 48; 1887, p. 36. Blue Book, "United States No. 2 (1890)," p. 45. See Appendix, vol. iii.

This action by the United States was the first attempt to actively interfere with the right of the vessels of other nations to navigate and fish in the waters of Behring Sea other than territorial waters.

Seizure of three British vessels.

See Judge Dawson's summing up in case of "Thornton," Blue Book, "United States No. 2 (1890)," p. 30. See Appendix, vol. iii.

In pursuance of the above-mentioned orders, three British vessels were seized during this year while fishing outside ordinary territorial waters, and subsequently condemned upon the ground that the waters in which they were fishing, formed part of the waters of Alaska and were subject to the jurisdiction of the United States.

Protest of British Government.

Sir L. S. Sackville West, British Minister at Washington, at once, by instruction, made a formal protest in the name of Her Majesty's Government against these seizures of British vessels.

Attorney-General Garland issued the following order, after the British protest:—

50th Cong., 2d Sess., Senate Ex. Doc. No. 106, p. 185.

“Washington, D. C., January 26, 1887.

“Judge Lafayette Dawson and M. D. Ball, United States’ District Attorney, Sitka, Alaska.

“I am directed by the President to instruct you to discontinue any further proceedings in the matter of the seizure of the British vessels ‘Carolena,’ ‘Onward,’ and ‘Thornton,’ and discharge all vessels now held under such seizure, and release all persons that may be under arrest in connection therewith.

(Signed) “A. H. GARLAND,  
“Attorney-General.”

Mr. Bayard, however, the Secretary of State, wrote, on the 3rd February, 1887, to Sir L. S. Sackville West that this order was issued “without conclusion of any questions which may be found to be involved in these cases of seizure.”

Fresh seizures took place in July and August of 1887, and renewed protest was made by Great Britain.

Renewed seizures.

No seizure occurred in 1888, though British sealing-vessels made large catches in that year in Behring Sea.

In 1889 five British ships were seized in Behring Sea, and three others were ordered out of the sea.

In 1890 no seizures were made, though a large number of sealers visited the sea and took seals therein.

In 1891 an agreement was come to between the United States and Great Britain, resulting in a *modus vivendi*, for the purpose of temporarily regulating the fishery, pending the result of expert investigation into the necessities of the case. Vessels were forbidden to take seals in Behring Sea for a limited period under penalty of seizure and fine, and, on the other hand, the number allowed to be killed on the islands was largely reduced. The only seizures that have occurred since the establishment of the *modus vivendi* have been made on the ground of its infraction.\*

“Modus Vivendi.”

Blue Book, “United States No. 3 (1892),” p. 39. See Appendix, vol. iii.

\* See Table on opposite page.



The legality of the seizures made in 1886, 1887, and 1889 became a subject of much discussion and debate in the United States. The uncertainty of the claim of the Government of the United States is exemplified by the fact that United States' sealers entered Behring Sea to seal three or four years before the British sealers entered, and they rapidly increased in numbers, but were only occasionally interfered with or seized.

Discussion in Congress of rights of United States.

H. R., 50th Cong.,  
2nd Sess., Report  
No. 3893, "1.  
To accom. " 7  
Bill H. R. 12432.

During the fiftieth Session of the House of Representatives, in 1889, the Committee on Marine and Fisheries was directed "to fully investigate and report upon the nature and extent of the rights and interests of the United States in the fur-seals and other fisheries in the Behring Sea in Alaska, whether and to what extent the same had been violated, and by whom; and what, if

\* The following Table shows the names of the British sealing-vessels seized or warned by United States' revenue cruisers 1886-90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolena," "Thornton," and "Onward" are on the authority of U. S. Naval Commander Abbey (see 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, pp. 20, 49, 30). The distances assigned in the cases of the "Anna Beek," "W. P. Sayward," "Dolphin," and "Grace" are on the authority of Captain Shepard, U. S. R. M. (Blue Book, "United States No. 2 (1890)," pp. 80-82. See Appendix, vol. iii).

Name of Vessel.	Date of Seizure.	Approximate Distance from Land when seized.	United States' Vessel making Seizure.
Carolena .. ..	August 1, 1886	75 miles .. ..	Corwin.
Thornton .. ..	" 1, "	70 " .. ..	"
Onward .. ..	" 2, "	115 " .. ..	"
Favourite .. ..	" 2, "	Warned by "Corwin" in about same position as "Onward."	"
Anna Beek .. ..	July 2, 1887	66 miles .. ..	Rush.
W. P. Sayward .. ..	" 9, "	59 " .. ..	"
Dolphin .. ..	" 12, "	40 " .. ..	"
Grace .. ..	" 17, "	96 " .. ..	"
Alfred Adams .. ..	August 10, "	62 " .. ..	"
Ada .. ..	" 25, "	15 " .. ..	Bear.
Triumph .. ..	" 4, "	Warned by "Rush" not to enter Behring Sea.	"
Jaanita .. ..	July 31, 1889	66 miles .. ..	Rush.
Pathfinder .. ..	" 29, "	50 " .. ..	"
Triumph .. ..	" 11, "	Ordered out of Behring Sea by "Rush." [?] As to position when warned.	"
Black Diamond .. ..	" 11, "	35 miles .. ..	"
Lily .. ..	August 6, "	66 " .. ..	"
Ariel .. ..	July 30, "	Ordered out of Behring Sea by "Rush."	"
Kate .. ..	August 13, "	Ditto .. ..	"
Minnie .. ..	July 15, "	65 miles .. ..	"
Pathfinder .. ..	March 27, 1890	Seized in Neah Bay† .. ..	Corwin.

† Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

any, legislation is necessary for the better protection and preservation of the same."

The Committee reported, upholding the claim of the United States to jurisdiction over all waters and land included in the geographical limits stated in the Treaty of Cession by Russia to the United States, and construing different Acts of Congress as perfecting the claim of national territorial rights over the open waters of Behring Sea everywhere within the above-mentioned limits.

The Report states :—

"The territory of Alaska consists of land and water. Exclusive of its lakes, rivers, harbours, and inlets, there is a large area of marine territory which lies outside of the 3-mile limit from the shore, but is within the boundary-lines of the territory transferred by Russia to the United States."

H. R., 50th Cong.,  
2nd Sess., Report  
No. 3883, p. 10.

The concluding portion of the Report states as follows :—

"That the chief object of the purchase of Alaska was the acquisition of the valuable products of Behring Sea. *Ibid.*, p. 23.

"That at the date of the cession of Alaska to the United States, Russia's title to Behring Sea was perfect and undisputed.

"That by virtue of the Treaty of Cession, the United States acquired complete title to all that portion of Behring Sea situated within the limits prescribed by the Treaty.

"The Committee herewith report a bill making necessary amendments of the existing law relating to these subjects, and recommend its passage."

The Report describes these amendments as declaring—

"The true meaning and intent of section 1956 of the Revised Statutes which prohibit the killing of fur-seals, &c., in the waters of Alaska, and requires the President to issue an annual Proclamation, and cause one or more Government vessels to cruise said waters, in order to prohibit the unlawful killing of fur-seals therein. *Ibid.*, p. 24.

"The amendment increases the revenues of the Government from this source by at least 150,000 dollars per annum."

The Bill reported contained the following Section :—

"Section 2. That section 1956 of the Revised Statutes of the United States was intended to include and apply, and is hereby declared to include and apply, to all the waters of Behring Sea in Alaska embraced within the boundary-lines mentioned and described in the Treaty with Russia, dated the 30th March, A.D. 1867, by which the Territory of Alaska was ceded to the United States :

Bill H. R., 12432,  
Blue Book, "United  
States No. 2  
(1890)," p. 244 |  
See Appendix,  
vol. lii.

Report of Committee of House of  
Representatives.

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International Ag

and it shall be the duty of the President, at a timely season in each year, to issue his Proclamation, and cause the same to be published for one month in at least one newspaper published at each United States' port of entry on the Pacific coast, warning all persons against entering said Territory and waters for the purpose of violating the provisions of said Section; and he shall also cause one or more vessels of the United States to diligently cruise said waters and arrest all persons, and seize all vessels found to be, or to have been, engaged in any violation of the laws of the United States therein."

Conference of the Houses.

Mr. Edwards to Lord Salisbury, March 23, 1880. Blue Book, "United States No. 2 (1890)," p. 243. See Appendix, vol. iii.

Ibid., p. 237

Ibid., p. 234.

This Bill did not pass the House of Representatives, but the above section was added by the House as an amendment to a Bill for the "Protection of the Salmon Fisheries of Alaska," which originated in the Senate. The Senate, however, refused to accept the House amendment, and the Bill was accordingly referred to a conference of the Houses, and the section, as finally modified and adopted in the Act of the 2d March, 1880, reads as follows:—

"Section 3. That section 1956 of the Revised Statutes of the United States is hereby declared to include and apply to all the dominion of the United States in the waters of Behring Sea, and it shall be the duty of the President, at a timely season in each year, to issue his Proclamation, and cause the same to be published for one month in at least one newspaper (if any such there be) published in each United States' port of entry on the Pacific coast, warning all persons against entering said waters for the purpose of violating the provisions of said section, and he shall cause one or more vessels of the United States to diligently cruise said waters, and arrest all persons and seize all vessels found to be or to have been engaged in any violation of the laws of the United States therein."

On the 21st March, 1880, President Harrison issued his Proclamation accordingly, warning "all persons against entering the waters of Behring Sea within the domain of the United States for the purpose of violating the provisions of said Section 1956 of Revised Statutes."

*International Agreement proposed.*

On the 19th August, 1887, after the seizure of the "W. P. Snyward," and while she was in custody, the United States' Secretary of State wrote identic instructions to the United States' Ministers in France, Germany, Great Britain,\*

\* The invitation conveyed by the instructions was not, however, communicated to Great Britain until November 11, 1887. See 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 87; and Blue Book, "United States No. 2 (1890);" Sir J. Pauncefote to Baron Plessen, October 11, 1887. See Appendix, vol. iii.

Japan, Russia, and Sweden and Norway in the following terms :—

International Agreement proposed

"Recent occurrences have drawn the attention of this Department to the necessity of taking steps for the better protection of the fur-seal fisheries in Bering Sea. Without raising any question as to the exceptional measures which the particular character of the property in question might justify this Government in taking, and without reference to any exceptional marine jurisdiction that might properly be claimed for that end, it is deemed advisable—and I am instructed by the President so to inform you—to attain the desired ends by international co-operation.

Senate, Ex. Doc.,  
50th Cong.,  
2nd Sess., No. 100,  
p. 84.

"It is well known that the unregulated and indiscriminate killing of seals in many parts of the world has driven them from place to place, and, by breaking up their habitual resorts, has greatly reduced their number.

"Under these circumstances, and in view of the *common interests of all nations* in preventing the indiscriminate destruction and consequent extermination of an animal which contributes so importantly to the *commercial wealth and general use of mankind*, you are hereby instructed to draw the attention of the Government to which you are accredited to the subject, and *invite* it to enter *into such an arrangement* with the Government of the United States as will prevent the citizens of either country from killing seal in Bering Sea at such times and places, and by such methods as at present are pursued, and which threaten the speedy extermination of those animals and consequent serious *loss to mankind*.

"The Ministers of the United States to Germany, Sweden and Norway, Russia, Japan, and Great Britain have been each similarly addressed on the subject referred to in this instruction."

So to Mr. White, Secretary of the United States' Legation in London, with reference to this proposition, he wrote, on the 1st May, 1888 :—

"The suggestion made by Lord Salisbury, that it may be necessary to bring other Governments than the United States, Great Britain, and Russia into the arrangements, has already been met by the action of the Department, as I have heretofore informed you. At the same time, the invitation was sent to the British Government to negotiate a Convention for seal protection in Bering Sea, a like invitation was extended to various other Powers, which have, without exception, returned a favourable response.

Ibid., p. 101.

"In order, therefore, that the plan may be carried out, the Convention proposed between the United States, Great Britain, and Russia should contain a clause providing for the subsequent adhesion of other Powers."

And on the 7th February, 1888, the Secretary of State, in a despatch to the Minister at the

Contentions  
Judge Dawson  
Case of

Claim of jurisdic  
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Government.

**Court of S<sup>t</sup>. James', after referring to the killing of seals in Behring Sea, wrote:—**

50th Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 106,  
p. 89.

"The only way of obviating the lamentable result above predicted appears to be by the United States, Great Britain, and other interested Powers taking concerted action to prevent their citizens or subjects from killing fur-seals with fire-arms or other destructive weapons, north of 50° of north latitude, and between 160° of longitude west and 170° of longitude east from Greenwich, during the period intervening between April 15 and November 1."

*Contentions of the United States.*

Judge Dawson's directions to the jury.  
Case of the "Thornton."

Blue Book,  
"United States  
No. 2 (1890),"  
p. 21.  
See Appendix,  
vol. iii.

*Contentions of the United States.*

The Judge of the District Court of Alaska, the Honourable Lafayette Dawson, is reported, in summing up the case to the jury, to have quoted the 1st Article of the Treaty of Cession of the 30th March, 1867, and to have continued as follows:—

"All the waters within the boundary set forth in this Treaty to the western end of the Aleutian Archipelago and chain of islands are to be considered as comprised within the waters of Alaska, and all the penalties prescribed by law against the killing of fur-bearing animals must therefore attach against any violation of law within the limits heretofore described.

"If, therefore, the jury believe from the evidence that the defendants did by themselves or in conjunction with others, on or about the time charged in the information, kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal or animals, on the shores of Alaska, or in the Behring Sea, east of the 193° of west longitude, the jury should find the defendants guilty, and assess their punishment separately, at a fine of not less than 200 dollars nor more than 1,000 dollars, or imprisonment not more than six months, or by both, such fines within the limits herein set forth, and imprisonment."

Chain of jurisdiction in Behring Sea  
east of 193° west longitude.

The Counsel appearing for the United States' Government, to justify the seizure of the "Anna Beck" and other vessels in 1887, filed a "brief," from which the following extracts are taken:—

Case of the "Anna Beck" and other  
vessels. Brief for United States'  
Government.

See Blue Book,  
"United States  
No. 2 (1890),"  
p. 112.  
See Appendix,  
vol. iii.

"The information in this case is based on section 1956 of chapter 3 of the Revised Statutes of the United States, which provides that—

"No person shall kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal within the limits of Alaska Territory or in the waters thereof."

"The offence is charged to have been committed 130 miles north of the Island of Unalaska, and therefore in the main waters of that part of the Behring Sea ceded by Russia to the United States by the Treaty of 1867.

The defendants demur to the information on the ground—

"1. That the Court has no jurisdiction over the defendants, the alleged offence having been committed beyond the limit of a marine league from the shores of Alaska.

"2. That the Act under which the defendants were arrested is unconstitutional in so far as it restricts the free navigation of the Behring Sea for fishing and sealing purposes beyond the limits of a marine league from shore. The issue thus raised by the demurrer presents squarely the questions:—

"(1.) The jurisdiction of the United States over Behring Sea.

"(2.) The power of Congress to legislate concerning those waters.

*"The Argument.*

"The fate of the second of these propositions depends largely upon that of the first, for if the jurisdiction and dominion of the United States as to these waters be not sustained the restrictive Acts of Congress must fall, and if our jurisdiction shall be sustained small question can be made as to the power of Congress to regulate fishing and sealing within our own waters. The grave question, one important to all the nations of the civilized world, as well as to the United States and Great Britain, is 'the dominion of Behring Sea.'"

After conceding unreservedly the general doctrine of the 3-mile limit, he proceeds:—

"It thus appears that from our earliest history, contemporaneously with our acceptance of the principle of the marine league belt and supported by the same high authorities is the assertion of the doctrine of our right to dominion over our inland waters under the Treaty of 1867, and on this rule of international law we base our claim to jurisdiction and dominion over the waters of the Behring Sea. While it is, no doubt, true that a nation cannot by Treaty acquire dominion in contravention of the law of nations, it is none the less true that, whatever title or dominion our grantor, Russia, possessed under the law of nations at the time of the Treaty of Cession in 1867, passed and now rightfully belongs to the United States. Having determined the law, we are next led to inquire as to whether Behring Sea is an inland water or a part of the open ocean, and what was Russia's jurisdiction over it.

"Behring Sea is an inland water. Beginning on the eastern coast of Asia, this body of water, formerly known as the Sea of Kamtehatka, is bounded by the Peninsula of Kamtehatka and Eastern Siberia to the Behring Strait. From the American side of this strait the waters of the Behring Sea wash the coast of the mainland of Alaska as far south as the Peninsula of Alaska. From the extremity of this peninsula, in a long, sweeping curve, the Aleutian

Case of the "Anna Beck" and other vessels. Brief for United States Government.

Behring Sea said to be inland water



Islands stretch in a continuous chain almost to the shores of Kautchatka, thus encasing the sea."

And he concludes:—

"Enough has been said to disclose the basis of Russia's right to jurisdiction of the Behring Sea under the law of nations, viz., original possession of the Asiatic coast, followed by discovery and possession of the Aleutian chain and the shores of Alaska north, not only to Behring Strait, but to Point Barrow and the Frozen Ocean, thus inclosing within its territory, as within the embrace of a mighty giant, the islands and waters of Behring Sea, and with this the assertion and exercise of dominion over land and sea.

"Such is our understanding of the law, such is the record. Upon them the United States are prepared to abide the Judgments of the Courts and the opinion of the civilized world."

Blue Book,  
"United States  
No. 2 (1890),"  
p. 89.  
See Appendix,  
vol. iii.

On the 10th September, 1887, the Marquis of Salisbury, addressing Sir Lionel West, British Minister at Washington, discussed the proceedings in the United States' District Court in the cases of the "Carolena," "Onward," and "Thornton." After stating that Her Majesty's Government could not find in these proceedings any justification for the condemnation of those vessels, he wrote:—

Blue Book,  
"United States  
No. 2 (1890),"  
p. 89.  
See Appendix,  
vol. iii.

"The libels of information allege that they were seized for killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States; and the United States' Naval Commander Abbey certainly affirmed that the vessels were seized within the waters of Alaska and the Territory of Alaska; but according to his own evidence, they were seized 75, 115, and 70 miles respectively south-south-east of St. George's Island.

"It is not disputed, therefore, that the seizures in question were effected at a distance from land far in excess of the limit of maritime jurisdiction which any nation can claim by international law, and it is hardly necessary to add that such limit cannot be enlarged by any municipal law.

"The claim thus set up appears to be founded on the exceptional title said to have been conveyed to the United States by Russia at the time of the cession of the Alaska Territory. The pretension which the Russian Government at one time put forward to exclusive jurisdiction over the whole of Behring Sea was, however, never admitted either by this country or by the United States of America."

Upon this ground the discussion between Her Majesty's Government and the Government of

the United States was carried on for some years until the receipt of Mr. Blaine's despatch of the 22nd January, 1890, to Sir Julian Pauncefote, the British Minister at Washington, wherein a new or modified position was taken up, and it was asserted to be *contra bonos mores* to engage in the killing of seals at sea.

Mr. Blaine, after promising Sir Julian Pauncefote to put in writing the precise grounds upon which the United States justified the seizures, wrote as follows:—

"In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States.

"To establish this ground, it is not necessary to argue the question of the extent and nature of the sovereignty of this Government over the waters of the Behring Sea; it is not necessary to explain, certainly not to define, the powers and privileges ceded by His Imperial Majesty the Emperor of Russia in the Treaty, by which the Alaskan Territory was transferred to the United States. The weighty consideration growing out of the acquisition of that territory, with all the rights on land and sea inseparably connected therewith, may be safely left out of view while the grounds are set forth upon which this Government rests its justification for the action complained of by Her Majesty's Government." . . .

He argues that the practice of pelagic sealing insures the extermination of the species, and continues:—

"In the judgment of this Government, the law of the sea is not lawlessness. Nor can the law of the sea and the liberty which it confers and which it protects be perverted to justify acts which are immoral in themselves, which inevitably tend to result against the interest and against the welfare of mankind. One step beyond that which Her Majesty's Government has taken in this contention, and piracy finds its justification." *Ibid.*, p. 308.

On the 17th December, 1890, Mr. Blaine again wrote to Sir Julian Pauncefote:—

"Legal and diplomatic questions, apparently complicated, are often found, after prolonged discussion, to depend on the settlement of a single point. Such, in the judgment of the President, is the position in which the United States and Great Britain find themselves in the pending controversy touching the true construction of the Russo-American and Anglo-Russian Treaties of 1824 and 1825. Great Britain contends that the phrase 'Pacific Ocean,' as used in the Treaties, was intended to include,

Mr. Blaine upon the *seizures*

Sealing *contra bonos mores*

Mr. Blaine to Sir  
J. Pauncefote,  
January 22, 1890.  
Blue Book,  
"United States  
No. 2 (1890),"  
p. 306.  
See Appendix,  
vol. 61

Behring Sea not included in Pacific Ocea  
in Treaties of 1824 and 1825

Blue Book,  
"United States  
No. 1 (1891),"  
pp. 37, 38.  
See Appendix,  
vo l.iii.

Claim to c  
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and does include, the body of water which is now known as the Behring Sea. The United States contends that the Behring Sea was not mentioned, or even referred to, in either Treaty, and was in no sense included in the phrase 'Pacific Ocean.' If Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her. If, on the other hand, this Government can prove beyond all doubt, that the Behring Sea, at the date of the Treaties, was understood by the three Signatory Powers to be a separate body of water, and was not included in the phrase 'Pacific Ocean,' then the American Case against Great Britain is complete and undeniable."

Disavowal of *mare clausum*.

Blue Book,  
"United States  
No. 1 (1891),"  
p. 56. See  
Appendix, vol. III

Ibid., p. 41.

In the same note Mr. Blaine disavows the contention that the Behring Sea is *mare clausum*, but claims that the Ukase, which asserted exclusive jurisdiction over 100 miles from the coast in that Sea, was never annulled by Russia. He had in this note previously argued "that Great Britain and the United States recognized, respected, and obeyed the authority of Russia in the Behring Sea" for more than forty years after the Treaties with Russia. In conclusion, he claims for the United States the right to hold for a specific purpose a "comparatively restricted area of water."

Ukase of 1821 never annulled in  
Behring Sea.

Ibid., p. 52.

In this note the Secretary of State thus expresses himself:—

"The English statesmen of that day had, as I have before remarked, attempted the abolition of the Ukase of Alexander only so far as it affected the coast of the Pacific Ocean from the 51st to the 60th degree of north latitude. It was left in full force on the shores of the Behring Sea. There is no proof whatever that the Russian Emperor annulled it there. That sea, from east to west, is 1,300 miles in extent; from north to south it is 1,000 miles in extent. The whole of this great body of water, under the Ukase, was left open to the world, except a strip of 100 miles from the shore. But with these 100 miles enforced on all the coasts of the Behring Sea, it would be obviously impossible to approach the Straits of Behring, which were less than 50 miles in extreme width."

Claim to control restricted area for  
specific purpose.

Ibid., p. 54.

"The United States desires only such control over a limited extent of the waters in the Behring Sea, for a part of each year, as will be sufficient to insure the protection of the fur-seal fisheries, already injured, possibly, to an irreparable extent, by the intrusion of Canadian vessels."

\* \* \* \* \*

Ibid., p. 56.

"The repeated assertions that the Government of the United States demands that the Behring Sea be pre-

nounced *mare clausum* are without foundation. The Government has never claimed it, and never desired it. It expressly disavows it.

"At the same time the United States does not lack abundant authority, according to the ablest exponents of international law, for holding a small section of the Behring Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*."

This disavowal of any claim to Behring Sea as a *mare clausum* is again referred to in Mr. Blaine's despatch of the 14th April, 1891.

On the 21st February, 1891, in answer to the despatch of Mr. Blaine of the 17th December, 1890, Lord Salisbury wrote to Sir Julian Pauncefote:—

"The effect of the discussion which has been carried on between the two Governments has been materially to narrow the area of controversy. It is now quite clear that the advisers of the President do not claim Behring Sea as a *mare clausum*, and indeed that they repudiate that contention in express terms. Nor do they rely, as a justification for the seizure of British ships in the open sea, upon the contention that the interests of the seal fisheries give to the United States' Government any right for that purpose which, according to international law, it would not otherwise possess. Whatever importance they attach to the preservation of the fur-seal species,—and they justly look on it as an object deserving the most serious solicitude,—they do not conceive that it confers upon any Maritime Power rights over the open ocean which that Power could not assert on other grounds.

"The claim of the United States to prevent the exercise of the seal fishery by other nations in Behring Sea rests now exclusively upon the interest which by purchase they possess in a Ukase issued by the Emperor Alexander I in the year 1821, which prohibits foreign vessels from approaching within 100 Italian miles of the coasts and islands then belonging to Russia in Behring Sea."

In reply to this, Mr. Blaine wrote on the 14th April, 1891:—

"In the opinion of the President, Lord Salisbury is wholly and strangely in error in making the following statement: 'Nor do they [the advisers of the President] rely as a justification for the seizure of British ships in the open sea upon the contention that the interests of the seal fisheries give to the United States' Government any right for that purpose which, according to international law, it would not otherwise possess.' The Government of the United States has steadily held just the reverse of the position Lord Salisbury has imputed to it. It holds that the ownership of the islands upon which the seals breed, that the habit of the seals in regularly resorting thither

Blue Book,  
"United States  
No. 3 (1892),"  
p. 2. See  
Appendix, vol. iii.!

Blue Book,  
"United States  
No. 1 (1891),"  
p. 87. See  
Appendix, vol. iii.

Blue Book,  
"United States  
No. 3 (1892),"  
p. 4. See  
Appendix, vol. iii.

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Claim of property interest in seals.

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and rearing their young thereon, that their going out from the islands in search of food and regularly returning thereto, and all the facts and incidents of their relation to the islands, give to the United States a property interest therein; that this property interest was claimed and exercised by Russia during the whole period of its sovereignty over the land and waters of Alaska; that England recognized this property interest, so far as recognition is implied by abstaining from all interference with it during the whole period of Russia's ownership of Alaska, and during the first nineteen years of the sovereignty of the United States.

"It is yet to be determined whether the lawless intrusion of Canadian vessels in 1886 and subsequent years has changed the law and equity of the case theretofore prevailing."

It does not appear, however, that the special rights now apparently claimed by the United States in respect of a special property in fur-seals have ever been otherwise advanced or more definitely formulated than as above mentioned.

Case of the "W. P. Sayward."

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Stenographic  
Report of Arguments  
in Case of the  
"W. P. Sayward,"  
p. 96.

See also Brief for  
United States,  
*ex parte* T. H.  
Cooper, owner and  
claimant of the  
schooner "W. P.  
Sayward," p. 166.

In 1891, in the course of the Argument before the Supreme Court of the United States in the case of the "W. P. Sayward," one of the learned Judges inquired of Mr. Attorney-General Miller:—

"Do you mean that the Political Department has decided in terms what constitute the waters of Alaska, or only that the United States has jurisdiction over certain waters for certain purposes?"

To which Mr. Miller replied:—

"That is what I understand they have decided; that they have jurisdiction, and that they have territorial jurisdiction over those waters to the extent of 100 miles."

Claim of territorial jurisdiction over  
100 miles.

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Judgment United  
States' Supreme  
Court, *ex parte*  
T. H. Cooper,  
owner and claimant  
of the schooner  
"W. P. Sayward,"  
p. 16.

Mr. Chief Justice Fuller, delivering the opinion of the Supreme Court of the United States in the case of the "W. P. Sayward," on the 29th February, 1892, referred to the seizures in the following terms:—

"If we assume that the record shows the locality of the alleged offence and seizure as stated, it also shows that officers of the United States, acting under the orders of their Government, seized this vessel engaged in catching seal, and took her into the nearest port; and that the Law Officers of the Government libelled her and proceeded against her for the violation of the laws of the United States, in the District Court, resulting in her condemnation.

"How did it happen that the officers received such orders? It must be admitted that they were given in the assertion on the part of this Government of territorial

jurisdiction over Behring Sea to an extent exceeding 50 miles from the shores of Alaska;\* that this territorial jurisdiction, in the enforcement of the laws protecting seal fisheries, was asserted by actual seizures during the seasons of 1886, 1887, and 1889, of a number of British vessels; that the Government persistently maintains that such jurisdiction belongs to it, based not only on the peculiar nature of the seal fisheries and the property of the Government in them, but also upon the position that this jurisdiction was asserted by Russia for more than ninety years, and by that Government transferred to the United States; and that negotiations are pending upon the subject."

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The facts stated in this chapter show :—

That the original ground upon which the vessels seized in 1886 and 1887 were condemned, was that Behring Sea was a *mare clausum*, an inland sea, and as such had been conveyed, in part, by Russia to the United States.

That this ground was subsequently entirely abandoned, but a claim was then made to exclusive jurisdiction over 100 miles from the coast-line of the United States' territory.

That subsequently a further claim has been set up to the effect that the United States have property in and a right of protection over furbearers in non-territorial waters.

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\* The Supreme Court, however, expressed no opinion as to the legal validity of the jurisdiction so asserted.



## CHAPTER VIII.

Right of protection or property in  
seals outside 3-mile limit.

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POINT 5 OF ARTICLE VI.—*Has the United States any Right, and, if so, what Right of Protection or Property in the Fur-Seals frequenting the Islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?*

A novel claim.

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The claim involved in this question is not only new in the present discussion, but is entirely without precedent. It is, moreover, in contradiction of the position assumed by the United States in analogous cases on more than one occasion.

The claim appears to be, in this instance, made only in respect of seals, but the principle involved in it might be extended on similar grounds to other animals *feræ naturæ*, such, for instance, as whales, walrus, salmon, and marine animals of many kinds.

Apart from the ordinary limits of territorial jurisdiction over waters adjacent to coasts, or to some exceptional condition based upon agreement, there is absolutely no precedent for the assumption of the right to property in a free-swimming animal, whose movements are uncontrolled and not controllable by man.

Fur-seals are indisputably animals *feræ naturæ*, and such animals have been universally regarded by jurists as *res nullius* until they are captured. No person can have property in them until he has actually reduced them into possession by capture.

Why should there be a property in seals in Behring Sea alone? Outside Behring Sea citizens of the United States have pursued the seals for years as Canadians have done, and are doing, without let or hindrance, and with the full knowledge of the United States' Government.

The proposition that on one side of the Aleutian Archipelago a seal is the property of the United States, and on the other it is the property of any man who can catch it, can only be supported on the ground that Behring Sea is the domain of the United States, in other words, a *mare clausum*.

It is, moreover, submitted that if seals before capture constitute special property, the larceny of a seal on the high seas by a vessel not be-

Claim involves *mare clausum*.

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longing to the United States is not cognizable by the United States' Courts, and that any claim to protection of seals beyond territorial jurisdiction must involve *mare clausum*.

Whatever arguments may be brought forward in order to induce other nations to concur in the adoption of Regulations limiting and interfering with their rights to fish for and catch seals or other animals *feræ nature* upon the high seas, no nation under the principles of law and the practice among nations can, without the concurrence of all interested Powers, interfere with vessels engaged in this pursuit when outside of the ordinary territorial jurisdiction.

The principle suggested in the question discussed in this chapter has been steadily resisted by all nations. The Government of the United States has more than once distinctly asserted the principle that the fur-seal fishery is part of the ocean fishery, and free to all beyond the 3-mile limit.

In 1832 the United States' schooner "Harriet," Davison, master, was seized by the Government of the Republic of Buenos Ayres at the Falkland Islands; that Government having claimed the right to capture and detain United States' vessels engaged in the seal fishery at the Malvinas (Falkland Islands) and the islands and coasts adjacent to Cape Horn.

The United States' Chargé d'Affaires wrote, on the 20th June, 1832, to the Buenos Ayres Minister as follows:—

" . . . The Undersigned is instructed and authorized to say,—that they utterly deny the existence of any right in this Republic to interrupt, molest, detain, or capture any vessels belonging to citizens of the United States of America, or any persons being citizens of those States, engaged in taking seals, or whales, or any species of fish or marine animals, in any of the waters, or on any of the shores or lands, of any or either of the Falkland Islands, Tierra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean."

British and Foreign  
State Papers, by  
Hertslet, vol. xx,  
p. 335.

On the 10th July, 1832, the United States' Chargé d'Affaires wrote to the same Minister as follows:

" But again,—if it be admitted, hypothetically, that the Argentine Republic did succeed to the entire rights of Spain over these regions; and that when she succeeded, Spain was possessed of sovereign rights;—the question is certainly worth examination, whether the right to exclude American vessels and American citizens from the fisheries there is incident to such a succession to sovereignty.

Ibid., p. 349.

Freedom of seal fisheries asserted by  
United States.

Falkland Isla. Is. Case of the "Harriet"

Falkland Islands seal fisheries.

"The ocean fishery is a natural right, which all nations may enjoy in common. Every interference with it by a foreign Power, is a national wrong. When it is carried on within the marine league of the coast, which has been designated as the extent of national jurisdiction, reason seems to dictate a restriction, if, under pretext of carrying on the fishery, an evasion of the Revenue Laws of the country may reasonably be apprehended, or any other serious injury to the Sovereign of the coast, he has a right to prohibit it; but, as such prohibition derogates from a natural right, the evil to be apprehended ought to be a real, not an imaginary one. No such evil can be apprehended on a desert and uninhabited coast; therefore, such coasts form no exception to the common right of Fishing in the seas adjoining them. All the reasoning on this subject applies to the large bays of the Ocean, the entrance to which cannot be defended; and this is the doctrine of Vattel, chapter 23, section 291, who expressly cites the Straits of Magellan, as an instance for the application of the rule.

British and Foreign  
State Papers, by  
Hertslet, vol. xx,  
p. 351.

" . . . The Treaty concluded between Great Britain and Spain, in 1790, already alluded to, is to be viewed, in reference to this subject, because, both nations, by restricting themselves from forming Settlements, evidently intended that the fishery should be left open, both in the waters and on the shores of these islands, and perfectly free, so that no individual claim for damage, for use of the shores, should ever arise. That case, however, could scarcely occur, for whales are invariably taken at sea, and generally without the marine league—and seals, on rocks and sandy beaches, incapable of cultivation. The Stipulation in the Treaty of 1790 is, clearly, founded on the right to use the unsettled shores for the purpose of fishery, and to secure its continuance."

Mr. Robert Greenhow, whose works have already been quoted, in a series of articles on the Falkland Islands, written for "Hunt's Merchants' Magazine," in February 1842, refers to the claim set up by Buenos Ayres respecting the jurisdiction of the Republic and the application of its laws and regulations "especially those respecting the seal fishery on the coast."

Mr. Greenhow says:—

Hunt's "Merch-  
ants' Magazine,"  
February 1842,  
p. 137.

"To proceed another step in admissions. Supposing the Argentine Republic to have really and unquestionably inherited from Spain the sovereignty of the territories adjoining it on the south, and the contiguous islands, that Government would still want the right to extend its Regulations respecting the seal fishery to the unsettled portions of the coasts of those territories. That right was indeed assumed by Spain, with many equally unjust, which were enforced so long as other nations did not find it prudent to contest them. But as the Spanish power waned, other nations claimed their imprescriptible rights;

they insisted on navigating every part of the open sea, and of its unoccupied straits and harbours, with such limitations only as each might choose to admit by Treaty with another; and they resorted to the North Pacific coasts of America for trade and settlement, and to the southernmost shores of the continent for the seal fishery, without regard for the exclusive pretensions of Spain to the sovereignty of those regions. *Of the hundreds of vessels, nearly all American, which annually frequented the coasts and seas above mentioned after 1789, not one was captured or detained by the Spanish authorities; and long before the revolutions in Southern America began, the prohibitory Decrees of the Court of Madrid and of its Governors, relative to those parts of the world, had become obsolete, and the warnings of its officers were treated as jests.*

"The common right of all nations to navigate and fish in the open sea, and in its indefensible straits, and to use their unsettled shores for temporary purposes, is now admitted among the principal Maritime Powers; and the stipulations in Treaties . . . subjects, are intended to—prevent disputes as to . . . coasts are to be considered as unsettled,—what straits are indefensible,—within what distance from a settled coast the sea ceases to be open, &c.

"The Governments of Spanish American Republics have, however, in many instances exhibited a strong indisposition to conform with these and other such Regulations of national law, though clearly founded on justice and reason, and intended clearly for the benefit of the weak, to which class they all belong."

He also refers to the case of the "Harriet" as follows:—

" . . . The President at the same time declared, that the name of the Republic of Buenos Ayres had been used to cover with a show of authority, acts injurious to the commerce of the United States, and to the property and liberty of their citizens; for which reason, he had given orders for the dispatch of an armed vessel to join the American squadron in the south seas, and aid in affording all lawful protection to the trade of the Union, which might be required; and he should without delay send a Minister to Buenos Ayres, to examine into the nature of the circumstances, and also of the claim set up by that Government to the Falkland Islands.

" . . . The question had, however, become more complicated before the arrival of Mr. Baylies at Buenos Ayres.

"The 'Lexington' reached Berkeley Sound on the 28th December, and lay at the entrance, during a severe gale, until the 31st, when she went up and anchored in front of the harbour of Soledad. Boats were immediately sent ashore, with armed seamen and marines, who made prisoners of Brisbane, Metcalf, and some other persons, and sent them on board the ship; the cannon mounted before the place were at the same time spiked, some of the arms and ammunition were destroyed, and the seal-skins

Falkland Islands seal fisheries.

Hunt's "Merchants' Magazine," February 1842, p. 143.

Ibid., p. 144.

Halifax F. Mr.

Dr. Wood

and other articles taken from the 'Harriet' and 'Superior' were removed from the warehouses, and placed in the schooner 'Dash,' which carried them to the United States. Captain Duncan then gave notice to the inhabitants that the seal fishery on those coasts was in future to be free to all Americans; and that the capture of any vessel of the United States would be regarded as an act of piracy; and having affixed a declaration in writing to that effect on the door of the Government-house, he took his departure, on the 22nd January, 1832, carrying with him in the 'Lexington,' Brisbane and six other persons as prisoners, with many of the negroes and settlers as passengers."

Halifax Fisheries Commission  
Mr. Dana's speech.

Mr. R. H. Dana, in his speech on behalf of the United States before the Halifax Fisheries Commission in 1887, says:—

Record of the  
Proceedings of  
Halifax Fisheries  
Commission, 1877,  
p. 1653.

"The right to fish in the sea is in its nature not real, as the common law has it, nor immovable, as named by the civil law, but personal. It is a liberty. It is a franchise or a faculty. It is not property pertaining to or connected with the land. It is incorporeal; it is aboriginal. The right of fishing, dropping line or net into the sea, to draw from it the means of sustenance, is as old as the human race, and the limits that have been set about it have been set about it in recent and modern times, and wherever the fisherman is excluded, a reason for excluding him should always be given. I speak of the deep sea fishermen following the free-swimming fish through the sea, not of the crustaceans animals, or of any of those that connect themselves with the soil under the sea or adjacent to the sea, nor do I speak of any fishing which requires possession of the land or any touching or troubling the bottom of the sea; I speak of the deep-sea fishermen who sail over the high seas pursuing the free-swimming fish of the high seas. Against them, it is a question not of admission, but of exclusion. These fish are not property. Nobody owns them. They come we know not whence, and go we know not whither.

"They are no man's property; they belong, by right of nature to those who take them, and every man may take them who can."

Dr. Woolsey's opinion

Dr. Woolsey, in the sixth edition of his *Treatise on International Law*, says:—

Sec 59, p. 73,  
sixth edition.

"The recent controversy between Great Britain and the United States involving the right of British subjects to catch seals in North Pacific waters appears to be an attempted revival of these old claims to jurisdiction over broad stretches of sea. That an international agreement establishing a rational close season for the fur-seal is wise and necessary no one can dispute, but to prevent foreigners from sealing on the high sea or within the Kamtschatkan Sea (which is not even inclosed by American territory, its

west and north-west shores being Russian) is as unwarranted as if England should warn fishermen of other nationalities off the Newfoundland banks.

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In the absence of any indication as to the grounds upon which the United States base so unprecedented a claim as that of a right to protection of or property in animals *feræ naturæ* upon the high seas, the further consideration of this claim must of necessity be postponed; but it is maintained that, according to the principles of international law, no property can exist in animals *feræ naturæ* when frequenting the high seas.

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## CHAPTER IX.

*General Conclusions upon the whole Case.*

General conclusions.

It now remains to state the principles of law applicable to the whole Case, some authorities bearing thereon, and the conclusions of fact established by the foregoing statement, and to formulate the final propositions both of law and of fact, upon which Great Britain will insist.

Behring Sea an open sea.

The sea now known as Behring Sea is an open sea forming part of the common highway of all nations, and especially of Great Britain to her possessions in the northern parts of North America. In the absence of Treaty or international arrangement, all the nations of the world have the right to navigate and fish in such waters, and no mere declarations or claims by any one or more nations can take away or restrict the rights of other nations. Moreover, mere non-use or absence of the exercise by any nation of her rights cannot in any way impair or take away the right of that nation or of any other nation to exercise these rights. They are, in fact, the common heritage of all mankind, and incapable of being appropriated by any one or more nations.

Kent's "Commentaries," vol. 3, 9th edition, Boston, 1858, p. 29.

The rights and interests of nations in the open sea are correctly stated by Chancellor Kent as follows:—

"The open sea is not capable of being possessed as private property. The free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated."

Wheaton, Elements, 8th edition by Dana, 1866, p. 269.

The controversy between Grotius and Selden as to the right of appropriation by a nation of the sea beyond the immediate vicinity of the coast is thus reviewed by Wheaton:—

"There are only two decisive reasons applicable to the question. The first is physical and material, which would alone be sufficient; but when coupled with the second reason, which is purely moral, will be found conclusive of the whole controversy.

"1. Those things which are originally the common property of all mankind can only become the exclusive property of a particular individual or society of men, by means of possession. In order to establish the claim of a particular nation to a right of property in the sea, that nation must obtain and keep possession of it, which is impossible.

"2. In the second place, the sea is an element which belongs equally to all men, like the air. No nation, then, has the right to appropriate it, even though it might be physically possible to do so.

"It is thus demonstrated that the sea cannot become the exclusive property of any nation. And, consequently, the use of the sea for these purposes, remains open and common to all mankind."

*Cf. Ortolan, "Diplomatie de la Mer," tom. I, pp. 120-126.*

In a note on this passage of Wheaton, Mr. Dana adds that—

"The right of one nation, or of several nations, to an exclusive jurisdiction over an open sea, was, as stated in the text, rested solely on a kind of prescription. But however long acquiesced in, such an appropriation is inadmissible, in the nature of things; and whatever may be the evidence of the time or nature of the use, it is set aside as a bad usage, which no evidence can make legal."

No prescription in open sea.

Sir R. Phillimore writes:—

"The right of navigation, fishing, and the like, upon the open sea, being *jura mere facultatis*, rights which do not require a continuous exercise to maintain their validity, but which may or may not be exercised according to the free will and pleasure of those entitled to them, can neither be lost by *non-user* or *prescribed* against, nor acquired to the exclusion of others by having been immemorially exercised by one nation only. No presumption can arise that those who have not hitherto exercised such rights, have abandoned the intention of ever doing so."

Phillimore, "International Law," 2nd edition, 1871, I, § 174.

The following position was correctly taken by the United States in 1862, and, it is presumed, will be adhered to by that country to-day.

Position taken by United States in 1862; Cuba.

In that year Spain pushed her claim to an extended jurisdiction round the Island of Cuba. Secretary Seward wrote:—

"It cannot be admitted, nor indeed is Mr. Tessara understood to claim, that the mere assertion of a Sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. . . . He cannot, by a mere Decree, extend the limit and fix it at 6 miles, because, if he could, he could in the same manner, and upon motives of interest, ambition, and even upon caprice, fix it at 10, or 20, or 50 miles, without the consent or acquiescence of other Powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained."

Mr. Seward to Mr. Tessara. Wharton Digest of "International Law," vol. i, sec. 32, p. 163. See Blue Book. "United States No. 2 (1862)," p. 318. See Appendix, vol. iii.

It is claimed by Great Britain that the facts already stated establish:—

(A.) That from the earliest times down to the year 1821 the ships of Great Britain and the

Chapter I.

United States and of other foreign nations navigated the non-territorial waters of Behring Sea and the other parts of the North Pacific, and exercised freely the natural and common rights therein without interference or remonstrance by Russia.

## Chapter II.

(B.) That when, in the year 1821, Russia, in the terms of the Ukase of that date, advanced claims to exercise control over a considerable portion of the non-territorial waters of the North Pacific (including a large part of the non-territorial waters of Behring Sea) as over a *mare clausum*, the practice of nations and their admitted rights upon the high seas were already entirely opposed to any claim to such exclusive and exceptional rights as were embodied in or implied by the Ukase.

That this attempt on the part of Russia led to immediate and emphatic protests by Great Britain and the United States, which protests led to the withdrawal of Russia's claims. That those claims were never recognized or conceded by Great Britain in the smallest degree.

That, in view of the continued practice of nations and the growth of the principles of international law since 1821, the arguments then employed by Great Britain and the United States have to-day, if possible, even greater weight than at that period.

## Chapter III.

(C.) That the body of water now commonly known as "Behring Sea" is included in the phrase "Pacific Ocean" as used in the Treaty of 1825 between Great Britain and Russia, and that that Treaty was intended to declare the rights of Great Britain to navigate and fish in all the waters over which Russia had attempted to control and limit such rights, that is to say, from Behring Strait on the north to latitude 51° on the coast of America, and latitude 45° 50' on the coast of Asia.

## Chapter IV.

(D.) That for a period of more than forty years, that is to say, from 1821 to 1867, the subjects and vessels of Great Britain and the United States and other nations continued in increasing numbers to navigate, trade, and fish in the waters of Behring Sea, and that during the whole of that period no attempt was made on the part of Russia to reassert or claim any dominion or jurisdiction over the non-territorial waters of that sea; but that, on the contrary, the right of all nations to navigate, fish, and exercise common rights therein was fully recognized.

(E.) That at the time of the acquisition of Alaska by the United States pursuant to the Treaty of the 30th March, 1867, Russia had no rights in respect of Behring Sea other than those which belonged to her as possessing territories washed by its waters, and could not transmit to the United States any rights of exclusive dominion or control over navigation and fishing in non-territorial waters, and the United States of America acquiring as they did all the rights of Russia, acquired no more. Chapter V.

Further, that at the time of the acquisition the United States of America was fully alive to the fact that the non-territorial waters of Behring Sea were open to the ships of all nations for the purpose of the exercise of the common rights of navigation and fishing.

That as to the rights which Russia possessed at the time of the Treaty of 1867, and which were transferred to the United States by virtue of that Treaty, the ordinary rule as to the extent of maritime jurisdiction applied.

Admitting, in the consideration of this question, that Russia's title before 1867 to the coast of Behring Sea and to the islands within those waters was complete, an examination of the principles of international law and the practice of nations will show that her jurisdiction (subject to the question of embayed or inland waters) was confined to the distance of 1 marine league or 3 miles from her shores.

Ortolan, in his "Diplomatie de la Mer," pp. 145, 153 (édition 1864), says:—

"On doit ranger sur la même ligne que les rades et les ports, les golfes et les baies et tous les enfoncements connus sous d'autres dénominations, lorsque ces enfoncements, formés par les terres d'un même État, ne dépassent pas en largeur la double portée du canon, ou lorsque l'entrée peut en être gouvernée par l'artillerie, ou qu'elle est défendue naturellement par des îles, par des bancs, ou par des roches. Dans tous ces cas, en effet, il est vrai de dire que ces golfes ou ces baies sont en la puissance de l'État maître du territoire qui les enferme. Cet État en a la possession: tous les raisonnements que nous avons fait à l'égard des rades et des ports peuvent se répéter ici.

\* \* \*

"Les bords et rivages de la mer qui baigne les côtes d'un État sont les limites maritimes *naturelles* de cet État. Mais pour la protection, pour la défense plus efficace de ces limites naturelles, la coutume générale des nations, d'accord avec beaucoup de Traités publics, permet de tracer sur mer à une distance convenable des côtes, et

Authorities as to the 3-mile limit.

Ortolan.

Proceedings of  
Halifax Fisheries  
Commission, 1877,  
p. 163.

Ortolan, p. 153.

suivant leurs contours, une ligne imaginaire qui doit être considérée comme la frontière maritime artificielle. Tout bâtiment qui se trouve à terre de cette ligne est dit être *dans les eaux* de l'État dont elle limite le droit de souveraineté et de juridiction."

Case of the "Washington,"  
Mr. Joshua Bates' decision.

Under the clauses of the Convention of the 8th February, 1853, the case of the "Washington" (which had been seized in the Bay of Fundy and confiscated in the Vice-Admiralty Court at Yarmouth, N.S.) came before the Joint Commission for settlement of claims in London, and on the disagreement of the Commissioners was decided by the Umpire, Mr. Joshua Bates, in favour of the United States. In his decision he said:—

Proceedings of  
Halifax Fisheries  
Commission, 1877,  
p. 152.

"The question turns, so far as relates to the Treaty stipulations, on the meaning given to the word 'bays' in the Treaty of 1783. By that Treaty, the Americans had no right to dry and cure fish on the shores and *bays* of Newfoundland; but they had that right on the shores, coasts, *bays*, *harbours*, and *creeks* of Nova Scotia; and, as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores *of the bays*, &c. By the Treaty of 1818 the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland; but the Americans relinquished that right, *and the right to fish within 3 miles of the coasts, bays, &c., of Nova Scotia*. Taking it for granted that the framers of the treaty intended that the word 'bay' or 'bays' should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the 'Washington,' in fishing 10 miles from the shore, violated no stipulations of the Treaty.

"It was urged, on behalf of the British Government, that by 'coasts,' 'bays,' &c., is understood an imaginary line drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends 3 marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of the headlands is new, and has received a proper limit in the convention between France and Great Britain of the 2nd August, 1839; in which 'it is agreed that the distance of 3 miles, fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland.'

"The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long; it has several bays on its coast; thus the word 'bay,' as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have

the right to assume sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situated in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the Treaties of 1783 and 1818."

The Agent for the United States before the Halifax Fisheries Commission, 1877, quotes this decision, and adds the following note:—

"This Convention between France and Great Britain extended the headland doctrine to bays 10 miles wide; thus going beyond the general rule of international law, according to which no bays are treated as within the territorial jurisdiction of a State which are more than 6 miles wide on a straight line measured from one headland to the other."

Proceedings of  
Halifax Fisheries  
Commission, 1877,  
p. 153 (note).

The principle of the marine league was in 1872 applied by Mr. Boutwell, United States' Secretary to the Treasury, in his letter of instructions to the Collector of Customs at San Francisco, dated 19th April, 1872, already quoted, as follows:—

Secretary Boutwell's opinion.

See *ante*, pp. 108,  
109.

"I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose [to take fur-seals], unless they made such attempt within a marine league of the shore."

The same principle was affirmed in respect of the waters now in question by Mr. Fish, the United States' Secretary of State, who wrote to the United States' Legation in Russia on the 1st December, 1875:—

Secretary Fish's opinion.

See *ante*, p. 109.

"There was reason to hope that the practice, which formerly prevailed with powerful nations, of regarding seas and bays, usually of large extent near their coast, as closed to any foreign commerce or fishery not specially licensed by them, was, without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law which limits its maritime jurisdiction to a marine league from its coast. We should particularly regret if Russia should insist on any such pretension."

Wharton's  
"Digest," s. c. 22,  
p. 106.

The same position was taken up by the United States in their brief filed with the Halifax Fisheries Commission in 1877.

The Agent of the United States at Halifax,



after setting out the various authorities under this head concluded as follows:—

Authorities quoted by the United States  
in Halifax Fisheries Commission.

Proceedings of  
Halifax Fisheries  
Commission, 1877,  
p. 162.

"The jurisdiction of a State or country over its adjoining waters is limited to 3 miles from low-water mark along its sea-coast, and the same rule applies equally to bays and gulfs whose width exceeds 6 miles from headland to headland. Property in and dominion over the sea can only exist as to those portions capable of permanent possession; that is, of a possession from the land, which possession can only be maintained by artillery. At one mile beyond the reach of coast-guns there is no more possession than in mid-ocean. This is the rule laid down by almost all the writers on international law."

As to inland seas and seas over which empire may extend, the following authorities were referred to by the Agent in the same brief:—

Vattel.

*Ibid.*, p. 162.

"At present," says Vattel, "Law of Nations," Book 1, ch. xxiii, §§ 289, 291, "the whole space of the sea within cannon-shot of the coast is considered as making a part of the territory; and, for that reason, a vessel taken under the guns of a neutral fortress is not a good prize.

"All we have said of the parts of the sea near the coast may be said more particularly, and with much greater reason, of the roads, bays, and straits, as still more capable of being occupied, and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given—as Hudson's Bay and the Straits of Magellan—over which the Empire cannot extend, and still less a right of property. A bay whose entrance may be defended may be possessed and rendered subject to the laws of the Sovereign; and it is of importance that it should be so, since the country may be much more easily insulted in such a place than on the coast, open to the winds and the impetuosity of the waves."

Bluntschli.

*Ibid.*, p. 163.

Professor Bluntschli, in his "Law of Nations," Book 4, §§ 302, 309, states the rule in the same way:—

"When the frontier of a State is formed by the open sea, the part of the sea over which the State can from the shore make its power respected—*i.e.*, a portion of the sea extending as far as a cannon-shot from the coast—is considered as belonging to the territory of that State. Treaties or agreements can establish other and more precise limits."

"*Note.*—The extent practised of this sovereignty has remarkably increased since the invention of far-shooting cannon. This is the consequence of the improvements made in the means of defence, of which the State makes use. The sovereignty of States over the sea extended

well's opinion.

Fish's opinion.

originally only to a stone's throw from the coast; later, to an arrow shot; fire-arms were invented, and by rapid progress we have arrived to the far-shooting cannon of the present age. But still we preserve the principle: '*Terra domini non fitur, ubi fitur armorum vis.*'"

"Within certain limits, these are submitted to the sovereignty of the bordering State:—

"(a.) The portion of the sea placed within a cannon-shot of the shore.

"(b.) Harbours.

"(c.) Gulfs.

"(d.) Roadsteads."

"*Note.*—Certain portions of the sea are so nearly joined to the *terra firma*, that, in some measure at least, they ought to form a part of the territory of the bordering State; they are considered as accessories to the *terra firma*. The safety of the State, and the public quiet, are so dependent on them that they cannot be contended, in certain gulfs, with the portion of the sea lying under the fire of cannon from the coast. These exceptions from the general rule of the liberty of the sea can only be made for weighty reasons, and when the extent of the arm of the sea is not large; thus, Hudson's Bay and the Gulf of Mexico evidently are a part of the open sea. No one disputes the power of England over the arm of the sea lying between the Isle of Wight and the English coast, which could not be admitted for the sea lying between England and Ireland; the English Admiralty has, however, sometimes maintained the theory of 'narrow seas;' and has tried, but without success, to keep for its own interest, under the name of 'King's Chambers,' some considerable extents of the sea.

Klüber, "Droit des Gens Modernes de l'Europe (Paris, édition 1831)," tom. i, p. 216:—

"Au territoire maritime d'un État appartiennent les districts maritimes, ou parages susceptibles d'une possession exclusive, sur lesquels l'État a acquis (par occupation ou convention) et continue la souveraineté. Sont de ce nombre (1) les parties de l'Océan qui avoisinent le territoire continental de l'État, du moins, d'après l'opinion presque généralement adoptée, autant qu'elles se trouvent sous la portée du canon qui serait placé sur le rivage; (2) les parties de l'Océan qui s'étendent dans le territoire continental de l'État, si elles peuvent être gouvernées par le canon des deux bords, ou que l'entrée seulement en peut être défendue aux vaisseaux (golfs, baies, et calés); (3) les détroits qui séparent deux continents, et qui également sont sous la portée du canon placé sur le rivage, ou dont l'entrée et la sortie peuvent être défendues (détroit, canal, bosphore, sonde). Sont encore du même nombre: (4) les golfs, détroits, et mers avoisinant le territoire continental d'un État, lesquels, quoiqu'ils ne soient pas entièrement sous la portée du canon, sont néanmoins reconnus par d'autres Puissances comme mer fermée;

Cluber

Proceedings of  
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Commission, 1877,  
p. 163.

c'est-à-dire, comme soumis à une domination, et, par conséquent, inaccessibles aux vaisseaux étrangers qui n'ont point obtenu la permission d'y naviguer."

This view, moreover, was emphatically maintained on behalf of the United States on the occasion of the seizures in the year 1837.

The following is the extract from the Brief of the United States on this occasion:—

"Concerning the doctrine of international law establishing what is known as the marine league belt, which extends the jurisdiction of a nation into adjacent seas for the distance of 1 marine league, or 3 miles from its shores, and following all the indentations and sinuosities of its coast, there is at this day no room for discussion. It must be accepted as the settled law of nations. It is sustained by the highest authorities, law writers, and jurists. It has been sanctioned by the United States since the foundation of the Government. It was affirmed by Mr. Jefferson, Secretary of State, as early as 1793, and has been re-affirmed by his successors—Mr. Pickens, in 1799; Mr. Madison, in 1807; Mr. Webster, in 1812; Mr. Buchanan, in 1849; Mr. Seward, in 1862, 1863, and 1864; Mr. Fish,\* in 1875; Mr. Evarts, in 1879 and 1881; and Mr. Bayard, in 1886." (Wharton's [Wharton] "International Law," vol. i, sec. 32, pp. 109 and 109.)

"Sanctioned thus by an unbroken line of precedents covering the first century of our national existence, the United States would not abandon this doctrine if they could; they could not if they would."

\* This probably refers to Mr. Fish's letter already quoted at p. 109, or to his letter to Sir E. Thornton, dated the 22nd January, 1875, which is as follows:—

"The instruction from the Foreign Office to Mr. Watson of the 25th December last, a copy of which was communicated by that gentleman to this Department in his note of the 17th October, directs him to ascertain the views of this Government in regard to the extent of maritime jurisdiction which can properly be claimed by any Power, and whether we have ever recognized the claim of Spain to a 6-mile limit, or have ever protested against such claim.

"In reply, I have the honour to inform you that this Government has uniformly, under every Administration which has had occasion to consider the subject, objected to the pretension of Spain adverted to, upon the same ground and in similar terms to those contained in the instruction of the Earl of Derby.

"We have understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from the coast.

"This opinion on our part has sometimes been said to be inconsistent with the facts that, by the law of the United States, revenue cutters are authorized to board vessels anywhere within 4 leagues of their coasts, and that by the Treaty of Guadalupe-Hidalgo, so called between the United States and Mexico, of the 2nd February, 1848, the boundary-line between the dominions of the parties begins in the Gulf of Mexico, 3 leagues from land."

And in proceeds to explain these two instances as being exceptional. . . . (Wharton, "International Law," vol. i, p. 108.)

Brief for the United States, Sitka,  
in 1887

Brief for the  
United States  
Filed at Sitka  
October 12, 1887.  
"New York  
Herald," October  
18, 1887.  
Blue Book,  
"United States  
No. 2 (1890),"  
p. 112  
See Appendix,  
vol. III

See Lord Lans-  
downe to  
Mr. Stanhope,  
November 27, 1886.  
Blue Book,  
"United States  
No. 2 (1890),"  
p. 28.  
Appendix, vol. III.

The Russian claim to extraordinary jurisdiction was expressly founded on a supposed right to hold a portion of the Pacific as *mare clausum*, because that nation claimed the territory on both sides. Even if this claim had been well founded the Treaty of 1867 destroyed it, since the sea was no longer shut in or surrounded by the territory of one nation.

On this subject Ortolan writes:—

"Quant aux mers particulières et intérieures, un droit exclusif de domaine et de souveraineté de la part d'une nation sur une telle mer n'est incontestable qu'autant que cette mer est totalement enclavée dans le territoire de telle sorte qu'elle en fait partie intégrante, et qu'elle ne peut absolument servir de lien de communication et de commerce qu'entre les seuls citoyens de cette nation. Alors, en effet, aucune des causes qui font obstacle soit à la propriété, soit à l'empire des mers, ne trouve ici son application. Mais du moment que plusieurs États différents possèdent des côtes autour de cette mer, aucun d'eux ne peut s'en dire propriétaire ni souverain à l'exclusion des autres."

Sir Travers Twiss writes to the same effect:—

"If a sea is *entirely enclosed* by the territory of a nation, and has no other communication with the ocean than by a channel, of which that nation may take possession, it appears that such a sea is no less capable of being occupied and becoming property than the land, and it ought to follow the fate of the country that surrounds it."

So Halleck says:—

"21. It is generally admitted that the territory of a State includes the seas, lakes, and rivers entirely enclosed within its limits. Thus, so long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might, with propriety, be considered as a *mare clausum*, and there seemed no reason to question the right of the Ottoman Porte to exclude other nations from navigating the passage which connects it with the Mediterranean, both shores of this passage being also portions of the Turkish territory. But when Turkey lost a part of her possessions bordering upon this sea, and Russia had formed her commercial establishments on the shores of the Euxine, both that Empire and other Maritime Powers became entitled to participate in the commerce of the Black Sea, and consequently to the free navigation of the Dardanelles and the Bosphorus. This right was expressly recognized by the Treaty of Adrianople in 1829.

"22. The great inland lakes and their navigable outlets, are considered as subject to the same rule as inland seas: where enclosed within the limits of a single State, they are regarded as belonging to the territory of that State; but if different nations occupy their borders, the rule of *mare clausum* cannot be applied to the navigation and use of their waters."

Effect of creation of Alaska on *mare clausum* doctrine.

Ortolan

Ortolan, "Règles Internationales et Diplomatique de la Mer," 4<sup>e</sup> édition, tom. I, p. 147.

Twiss

"Rights and Duties of Nations in Time of Peace," 1884, p. 293.

Halleck

Halleck's International Law, vol. I, chap. 6, pp. 143-145.

The view expressed by the above authorities has been officially adopted by an accredited Representative of the United States, so that it is perhaps unnecessary to insist further upon it in this connection.

Mr. Hoffmann

On the 14th March, 1882, Mr. Hoffmann wrote from the Legation of the United States at St. Petersburg to Mr. Frelinghuysen, Secretary of State, in a letter already quoted:

Mr. Hoffmann to Mr. Frelinghuysen, March 14, 1882, 50th Congress, 2nd Sess., Senate Ex. Doc. No. 100, p. 260. See Appendix, vol. ii, Part II, No. 13.

"In the time when Russia owned the whole of those islands her Representatives in Siberia claimed that the Sea of Okhotsk was a *mare clausum*, for that Russian jurisdiction extended from island to island and over 2 marine leagues of intermediate sea from Japan to Kamohatka.

"But about five years ago Russia ceded the southern group of these islands to Japan in return for the half of the Island of Saghalien, which belonged to that Power.

"As soon as this was done, it became impossible for the Siberian authorities to maintain their claim. My informant was not aware that this claim had ever been seriously made at St. Petersburg."

And on the 27th March, 1882, he further wrote:

Mr. Hoffmann to Mr. Frelinghuysen, March 27, 1882, 50th Congress, 2nd Sess., Senate Ex. Doc. No. 100, p. 261. See Appendix, vol. ii, Part II, No. 14.

"I do not think that Russia claims that the Sea of Okhotsk is a *mare clausum*, over which she has exclusive jurisdiction. If she does, her claim is not a tenable one, since the cession of part of the group of the Kurile Islands to Japan, if it ever were tenable at any time."

Professor Angell

See Appendix, vol. i, No. 8.

Professor James B. Angell, one of the United States' Plenipotentiaries in the negotiation of the Fisheries Treaty at Washington in 1883, and an eminent jurist, in an article entitled "American Rights in Behring Sea," in "The Forum" for November 1889, wrote:—

"Can we sustain a claim that Behring Sea is *clausum*—and so subject to our control? It is, perhaps, impossible to frame a definition of a *closed sea* which the publicist of all nations will accept. Vattel's *closed sea* is one 'entirely inclosed by the land of a nation, with only communication with the ocean by a channel of which the nation may take possession.' Hautefeuille substantially adopts this statement, asserting more specifically, however, that the channel must be narrow enough to be defended from the shores. Perels, one of the more eminent of the later German writers, practically accepts Hautefeuille's definition. But so narrow a channel or opening as that indicated by the eminent French writer can hardly be insisted on. Probably, most authorities will regard it as a reasonable requirement that the entrance to the sea should be narrow enough to make the naval occupation of it easy or practicable. We, at least, may be expected to

prescribe no definition which would make the Gulf of St. Lawrence a closed sea.

"Behring Sea is not inclosed wholly by our territory. From the most western island in our possession to the nearest point on the Asiatic shore is more than 300 miles. From our most western island (Atton) to the nearest Russian island (Copper Island) is 183 miles. The sea from east to west measures about 1,100 miles, and from north to south fully 800 miles. The area of the sea must be at least two-thirds as great as that of the Mediterranean, and more than twice that of the North Sea. The Straits of Gibraltar are less than 9 miles wide. The chief entrance to the Gulf of St. Lawrence, which is entirely surrounded by British territory, is only about 50 miles in width. Behring Sea is open on the north by the straits, 36 miles wide, which form a passage way to the Arctic Ocean. On what grounds and after what modern precedent we could set up a claim to hold this great sea, with its wide approaches, as a *mare clausum*, it is not easy to see."

Dana, in a note to Wheaton's "Elements," says:—

"The only question now is, whether a given sea or sound is, in fact, as a matter of politico-physical geography, within the exclusive jurisdiction of one nation. The claim of several nations, whose borders surround a large open sea, to combine and make it *mare clausum* against the rest of the world, cannot be admitted. The making of such a claim to the Baltic was the infirmity of the position taken up by the Armed Neutrality in 1780 and 1800, and in the Russian Declaration of War against England in 1807."

Wheaton, 8th  
edition, by  
Mr. Dana, 1866,  
section 187 (note).

Mr. Dana.

It is further claimed, on behalf of Great Britain—

(F.) That from the acquisition of Alaska by the United States in 1867 down to the year 1886 no attempt was made by the United States to limit or interfere with the right of the subjects of Great Britain or of any other nation to navigate and fish in the non-territorial waters of Behring Sea.

Chapter VI.

(G.) That the original ground upon which the vessels seized in 1886 and 1887 were condemned rested upon a claim to treat Behring Sea as *mare clausum*, and as having been conveyed as such, in part, by Russia to the United States.

Chapter VII.

That the contention of the United States has subsequently been rested upon a claim to exclusive jurisdiction over a space of 100 miles from the coast of the United States' territory.

That subsequently a further claim has been raised to an alleged special right of protection of or property in the fur-seal.

General

Alleged right

Analogous

Right of seal

Slave

Case of "Le Lou"  
Slave Trade



General conclusions.

Chapter VIII.  
Alleged right of protection.

Analogous questions.

Right of search on high seas.

Mr. Madison to  
Mr. Monroe,  
January 5, 1804.  
American State  
Papers, Foreign  
Relations, vol. ii,  
p. 730.

Slave Trade.

Case of "Le Louis" engaged in  
Slave Trade and seized.

"Le Louis," 1816.  
See Dodson's  
Admiralty Cases,  
vol. ii, p. 210.

As to Point 5 of Article VI—

That, as regards the right claimed by the United States of protection of or property in furs-seals when found outside the ordinary 3-mile limit, no property exists, or is known to international law in animals *fera natura* until reduced into possession by capture, and no nation has any right to claim property in such animals when found outside territorial waters. The only right is to prevent the ships and subjects of other nations from entering territorial waters for the purpose of capturing such animals.

Upon analogous questions similar principles have been generally maintained and recognized.

Thus, with reference to the right to search neutral vessels upon the high seas—In 1804, during the war with France, Great Britain claimed to search neutral vessels on the high seas, and to seize her own subjects when found serving under a neutral flag.

The position taken on this subject by the United States was not only in opposition to such a right, but that country insisted that *in no case* did the sovereignty of any nation extend beyond its own dominions and its own vessels on the high seas.

A similar view has been adopted by all nations in relation to the Slave Trade.

Although it cannot properly be argued that the taking of seals in any manner whatever is comparable with the immorality or injustice attaching to the Slave Trade, yet, even in the case of vessels engaged in that trade, the rights of nations have not been allowed to be overruled on such pleas.

Upon this point legal authorities both in the United States and in Great Britain are quite clear.

In 1816 a French vessel ("Le Louis") sailing from Martinique, destined on a voyage to the coast of Africa and back, was captured 10 or 12 leagues to the southward of Cape Mesurada, by the "Queen Charlotte" cutter, and carried to Sierra Leone. She was proceeded against in the Vice-Admiralty Court of that colony.

It was alleged that the vessel was fitted out for the purpose of carrying on the African Slave Trade, after that trade had been abolished by the internal laws of France, and by the Treaty between Great Britain and France.

The King's Advocate admitted the proposition to be true *generally* that the right of visitation and search does not exist in time of peace, but denied it to be so *universally*. Occasions, he argued, may and must arise, at a period when no hostilities exist, in which an exercise of this power would be justifiable. The rule of law could not be maintained as a universal proposition, but was subject to exceptions, and within those exceptions must be included the present transaction, which was a transgression, not only of municipal law, but likewise of the general law of nations. In whatever light the Slave Trade might have been viewed in former times, it must no longer be deemed within the protection of the law of nations. Since the Declaration of the Congress of Vienna, that the Slave Trade was repugnant to the principles of humanity and of universal morality, traffic in slaves must be considered a crime, and it was the right and duty of every nation to prevent the commission of crime. On the whole, he submitted that the "Le Louis," having been engaged in a traffic prohibited by the laws of her own country, and contrary to the general laws of humanity and justice, ought not to be restored to the claimant.

Sir William Scott, afterwards Lord Stowell, in the British High Court of Admiralty, held, however, that trading in slaves was not a crime by universal law of nations. He observed:—

"Neither this Court nor any other can carry its private apprehensions, independent of law, into its public judgments on the quality of actions. It must conform to the judgment of the law upon that subject; and acting as a Court in the administration of law, it cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality; and upon a question of this nature, that standard must be found in the law of nations as fixed and evidenced by general and ancient and admitted practice, by Treaties and by the general tenour of the laws and ordinances and the formal transactions of civilized States.

" . . . Much stress is laid upon a solemn declaration of very eminent persons assembled in Congress, whose rank, high as it is, is by no means the most respectable foundation of the weight of their opinion that this traffic is contrary to all religion and morality. Great as the reverence due to such authorities may be, they cannot I think be admitted to have the force of overruling the established course of the general law of nations."

Slave Trade.  
Case of "Le Louis"

Lord Stowell's judgment *Seton*  
not justified

See Dodson's  
Admiralty Cases,  
vol. ii, p. 249.

*Ibid.*, p. 252

Case of the "Antelope"  
Supreme Court

## Slave Trade.

Case of "Le Louis."

See Dodson's  
Admiralty Cases,  
vol. ii, p. 252.

Ibid., p. 256.

"It is next said that every country has a right to enforce its own navigation laws; and so it certainly has, so far as it does not interfere with the rights of others. But it has no right, in consequence, to visit and search all the apparent vessels of other countries on the high seas."

\* \* \* \* \*

"It is said, and with just concern, that if not permitted in time of peace, it will be extremely difficult to suppress the Traffic. It will be so, and no man can deny that the suppression, however desirable, and however sought, is attended with enormous difficulties; difficulties which have baffled the most zealous endeavours for many years. To every man it must have been evident that without a general and sincere concurrence of all the Maritime States, in the principle and in the proper modes of pursuing it, comparatively but little of positive good could be acquired; so far at least as the interests of the victims of this commerce were concerned in it; and to every man who looks to the rival claims of these States, to their established habits of trade, to their real or pretended wants, to their different modes of thinking, and to their real mode of acting upon this particular subject, it must be equally evident that such a concurrence was matter of very difficult attainment. But the difficulty of the attainment will not legalize measures that are otherwise illegal. To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment; to force the way to the liberation of Africa by trampling on the independence of other States in Europe; in short, to procure an eminent good by means that are unlawful; is as little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not justified in assuming rights that do not belong to her, merely because she means to apply them to a laudable purpose; nor in settling out upon a moral crusade of converting other nations by acts of unlawful force. Nor is it to be argued that because other nations approve the ultimate purpose, they must therefore submit to every measure which any one State or its subjects may inconsiderately adopt for its attainment."

In accordance with this view the law of the Judgment of the Vice-Admiralty Court of Sierra Leone, condemning the French ship for being employed in the Slave Trade and for forcibly resisting the search of the King of England's cruizers, was reversed.

The decision of the Supreme Court of the United States in the case of the "Antelope" is to the same effect. There Chief Justice Marshall delivered the opinion of the Court, holding that the Slave Trade, though contrary to the law of nature, was not in conflict with the law of nations:—

[248]

Y

Case of the "Antelope." United States?  
Supreme Court to same effect.Wheaton, Report,  
vol. 2, p. 66.

"No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all by the consent of all, can be divested only by consent; and this trade, in which all have participated, must remain lawful to those who cannot be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose Governments have not forbidden it.

"If it is consistent with the law of nations, it cannot in itself be piracy. It can be made so only by statute; and the obligation of the statute cannot transcend the legislative power of the State which may enact it.

"If it be neither repugnant to the law of nations, nor piracy, it is almost superfluous to say in this Court that the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. The Courts of no country execute the penal laws of another, and the course of the American Government on the subject of visitation and search, would decide any case in which that right had been exercised by an American cruiser on the vessel of a foreign nation not violating our municipal laws, against the captors.

"It follows, that a foreign vessel engaged in the African slave trade, captured on the high seas in time of peace, by an American cruiser, and brought in for adjudication, would be restored."

The subject is fully discussed in Mr. Dana's note No. 108 to Wheaton's *International Law* (p. 258), where it is said of Chief Justice Marshall, in *Church versus Hubbard*, 2 Cranch, 187:—

"It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws, by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and, in the case before the Court, the 4 leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. . . .

It may be said that the principle is settled that municipal seizures cannot be made, for any purpose, beyond territorial waters. It is also settled that the limit of these waters is, in the absence of treaty, the marine league or the cannon-shot. It cannot now be successfully maintained, either that municipal visits and search may be made beyond the territorial waters for special purposes, or that there are different bounds of that territory for different objects. But, as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and, if fixed, must be by an arbitrary measure, the courts, in the earlier cases, were not strict as to standards of distance,

Slave Trade.

Case of the "Antelope."

Wheaton, Report,  
vol. x, p. 122.

Mr. Dana.

Wheaton, "Inter-  
national Law,"  
8th edition, by  
Mr. Dana, 1866,  
p. 359.

Ibid., p. 260.

where no foreign Powers intervened in the causes. In later times, it is safe to infer that judicial as well as political tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels, in time of peace, for all purposes alike."

It is an axiom of international maritime law that such action is only admissible in the case of piracy or in pursuance of special international agreement. This principle has been universally admitted by jurists, and was very distinctly laid down by President Tyler in his Special Message to Congress, dated the 27th February, 1843, when, after acknowledging the right to detain and search a vessel on suspicion of piracy, he goes on to say :—

"With this single exception, no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, outside the territorial jurisdiction."

---

*Article VII.*

Great Britain maintains, in the light of the facts and arguments which have been adduced on the points included in the VIth Article of the Treaty, that her concurrence is necessary to the establishment of any Regulations which limit or control the rights of British subjects to exercise their right of the pursuit and capture of seals in the non-territorial waters of Behring Sea. The further consideration of any proposed Regulations, and of the evidence proper to be considered by the Tribunal in connection therewith, must of necessity be for the present postponed.

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President Tyler.

State Papers, by  
Hervélet, vol. xxxii,  
p. 578.

Article VII.

Consideration of Regulations postponed.

## CHAPTER X.

*Recapitulation of Argument.*

The following are the propositions of law and fact, which, it is maintained on behalf of Great Britain, have been established in the foregoing Case:—

Recapitulation of Argument

1. The sea now known as Behring Sea is an open sea, free to the vessels of all nations, and the right of all nations to navigate and fish in the waters of Behring Sea, other than the territorial waters thereof, is a natural right.

2. No assertion of jurisdiction by Russia, the United States, or any other nation could limit or restrict the right of all nations to the free use of the open sea for navigation or fishing.

3. At no time prior to the Treaty of the 30th March, 1807, did Russia possess any exclusive jurisdiction in the non-territorial waters of the sea now known as Behring Sea.

4. At no time prior to the said cession did Russia assert or exercise any exclusive rights in the seal fisheries in the non-territorial waters of the sea now known as Behring Sea.

5. The attempt by Russia in the year 1821 to restrict the freedom of navigation and fishing by the subjects of other nations than Russia in the non-territorial waters of Behring Sea was immediately and effectually resisted by Great Britain and the United States of America.

6. The claims of Russia to limit and interfere with the rights of navigation and fishing by other nations in the waters of Behring Sea, other than the territorial waters thereof, were never recognized or conceded by Great Britain.

7. The protests raised and the objections taken by Great Britain to the claims of Russia to limit such free right of navigation and fishing were acquiesced in by Russia; and no attempt was ever made by Russia to again assert



## Recapitulation of Argument.

or enforce any such supposed right to exclude or limit the rights of other nations to navigate or fish in the waters of the sea now known as Behring Sea, other than the territorial waters thereof.

8. The assertion of rights by Russia in the year 1821, and her ineffectual attempt to limit the rights of navigation and fishing, was inoperative and had no effect upon the rights of other nations.

9. The body of water now known as the Behring Sea was included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia.

10. From the year 1824 down to 1886 the vessels of Great Britain have continuously, and without interruption or interference, exercised the rights of navigation and fishing in the waters of Behring Sea other than the territorial waters thereof.

11. The right of all nations to navigate and fish in the waters of Behring Sea, other than the territorial waters thereof, have been repeatedly recognized and admitted both by Russia and by the United States of America.

12. Whatever territorial rights passed to the United States under and by virtue of the Treaty of the 30th March, 1867, Russia had not the right to transmit, and the United States did not acquire, any jurisdiction over or rights in the seal fisheries in any part of the sea now known as Behring Sea, other than in the territorial waters thereof.

13. The Treaty of Cession of the 30th March, 1867, did not convey anything more than ordinary territorial dominion.

14. From the acquisition of Alaska by the United States in 1867 down to the year 1886, no attempt was made by the United States to assert or exercise any right to limit or interfere with the right of Great Britain, or of any other nation, to navigate and fish in the waters of Behring Sea other than the territorial waters thereof.

15. The sole right of the United States in respect of the protection of seals is that incident to territorial possession, including the right to prevent the subjects of other nations from entering upon land belonging to the United States, or the territorial waters thereof, so as to prevent their capturing seals or any other animals or fish either on such lands or in such territorial waters.

16. The United States have not, nor has any subject of the United States, any property in fur-seals until they have been reduced into possession by capture, and the property so acquired endures so long only as they are retained in control.

17. Fur-seals are animals *feræ nature*, and the United States has no right of protection or property in fur-seals when found outside the ordinary 3-mile limit, whether such seals frequent the islands of the United States in Behring Sea or not.

18. The right of the subjects of all nations to navigate and fish in the non-territorial waters of the sea now known as Behring Sea remains and exists free and unfettered, and cannot be limited or interfered with except with the concurrence of any nations affected.

19. No regulations affecting British subjects can be established for the protection and preservation of the fur-seal in the non-territorial waters of Behring Sea without the concurrence of Great Britain.

## CONCLUSION.

Conclusion.

It is submitted on behalf of Great Britain to the Tribunal of Arbitration, that the questions raised in this Arbitration are of far greater importance than the mere preservation of a particular industry; they involve the right of every nation of the world to navigate on and fish in the high seas, and to exercise without interference the common rights of the human race; they involve the question of the right of one nation by Proclamation to limit and interfere with rights which are the common heritage of all mankind. In defence of these rights and in the interests of all civilized nations, the above arguments are respectfully urged upon the consideration of the Tribunal.

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Schedule of Claims.

The SCHEDULE annexed to this Case contains particulars in connection with the claims presented under Article VIII of the Treaty of Arbitration, and the facts and evidence contained in the Schedule are submitted to the consideration of the Tribunal for the purposes stated at p. 12 of this Case.

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UNITED STATES. No. 3 (1893).

BEHRING SEA ARBITRATION.

COUNTER-CASE

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED  
AT WASHINGTON ON THE 29TH FEBRUARY, 1892,

BETWEEN:

HER BRITANNIC MAJESTY AND THE UNITED  
STATES OF AMERICA.

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*Presented to both Houses of Parliament by Command of Her Majesty.  
March, 1893.*

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*Counter-Case presented on behalf of Her  
Britannic Majesty's Government to  
the Tribunal of Arbitration.*

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PRELIMINARY STATEMENT.

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A PRELIMINARY statement as to the general scheme and construction of the following Counter-Case may be of assistance in its perusal.

For convenience of reference, and in the interests of brevity, it has been found desirable in framing the Counter-Case to follow the arrangement which was adopted in the British Case; as, on perusal of the United States' Case, it was observed that the arrangement of the argument contained in the First Part of that Case, namely, that relating to historical and jurisdictional questions, corresponded in a general way with the sub-division of chapters adopted in the British Case. In the following Counter-Case, therefore, there has been placed at the head of each chapter the heading which will be found for the corresponding chapter in the British Case. But inasmuch as the propositions relating to each point appear in the United States' Case not unfrequently in more than one passage, there have been added to each heading citations from the United States' Case of the propositions put forward in argument on behalf of the United States bearing upon the subject, with a reference to the page of the United States' Case from which such citations are taken. In addition there has been placed immediately following, at the head of each chapter, a brief summary of the arguments in reply which are advanced on behalf of the Government of Her Britannic Majesty.

Repetition of the points made in the British Case has, as far as possible, been avoided; though the reply to the United States' Case involves, of necessity, in some cases, reference to arguments which had already been urged on behalf of Great Britain.

Marginal references to the corresponding passages in the British Case are given.

The first four points submitted in Article VI of the Treaty of the 29th February, 1892, are first dealt with under the various heads above referred to in Chapters I to V.

The fifth question of Article VI, viz. :—"Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?" has been so treated in the United States' Case, but in preparing this Counter-Case a somewhat different course to that pursued in relation to the first four questions has been rendered necessary. It will be observed that on page 85 of the United States' Case, it is asserted that, quite independently of the jurisdiction over Behring Sea, which was established or exercised by Russia prior and up to the time of the cession of Alaska, the Government of the United States has a "right of protection and property in the fur-seals frequenting the Pribyloff Islands when found outside the ordinary 3-mile limit"; and it bases this right "upon the established principles of the common and the civil law, upon the practices of nations, upon the laws of natural history, and upon the common interests of mankind."

No arguments are adduced in the United States' Case based upon the first of these suggested grounds, viz., the principles of the common and the civil law. But in this Counter-Case, it is proposed in the first instance to deal with the unprecedented nature of the claim, having regard to those principles, and also to reply to the arguments which are adduced, founded upon an alleged practice of nations. This branch of the Case is treated in Chapter VI.

The laws of natural history and the common interests of mankind have, it is submitted, no bearing upon, or relevance in connection with, the question as to the right of protection or property claimed by the United States, to the exclusion of other nations. But as the Government of Her Britannic Majesty contend that the facts alleged as to the natural history of seals, and as bearing upon the common interests of mankind, are wholly, or, to a great extent, inaccurate, these subjects are dealt with in the various sections of Chapter VII.

It has not been found necessary to make any additional observations in reference to Chapters VI and VII of the British Case: viz., the action of the United States and Russia from 1867 to 1886, and the various contentions of the United States since the year 1886.

The above subjects are treated of in Part I of this Counter-Case.

The subject of the Regulations (if any) which are necessary, and the waters over which the Regulations should extend, referred to in Article VII of the Treaty, is considered in Part II. For reasons more explicitly stated in correspondence which will be found in the Appendix, the consideration of this point has been treated in this Counter-Case, but only in deference to the wish expressed by the United States that arguments upon all the questions with which the Arbitrators may have to deal should be placed before the Tribunal by means of the Case and Counter-Case. The Government of Her Britannic Majesty have adduced these arguments under protest, and without prejudice to their contention that the Arbitrators cannot enter upon or consider the question of the proposed International Regulations until they have adjudicated upon the five questions enumerated in Article VI upon which they are by the terms of the Treaty required to give a distinct decision; and upon the determination of which alone depends the question whether they shall enter upon the subject of Regulations. Her Majesty's Government reserve also their right to adduce further evidence on this subject, should the nature of the arguments contained in the Counter-Case on behalf of the United States render such a course necessary or expedient.

See Appendix,  
vol. i, pp. 1 *et seq.*

## PART I.

### INTRODUCTION.

BEFORE proceeding to discuss in detail the disputed points raised by the United States' Case, it is deemed necessary to refer to the translations of the various Russian documents used and cited in the Case presented on the part of the United States. These consist for the most part of documents belonging to the Official Records or Archives of the Russian-American Company, which were handed over to the United States by Russia under the Treaty of 1867, by virtue of the II<sup>nd</sup> Article of that Treaty. The original documents are deposited in the Archives of the Department of State at Washington, and have not heretofore been made public.

The translations are set out at pp. 49 to 90, vol. i, of the United States' Appendix, and are quoted at pp. 41, 42, 43, 44, 45, 46, 47, 48, 49, 54, 55, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 103, and 104 of the Case.

Fac-similes of the originals are given at the end of vol. i of the Appendix to the United States' Case.

Upon the first perusal of the extracts included in the United States Case, certain passages were observed which at once gave rise to the impression that the papers must have been faultily translated. The fac-similes supplied in the Appendix were consequently examined by a competent Russian scholar in the confidential employment of Her Majesty's Government, and a large number of errors and interpolations were discovered of a most important kind. Some few of these were apparently purposeless, but the great majority were of such a nature that they could only be accounted for on the supposition that some person had deliberately falsified the translations in a sense favourable to the contentions of the United States. The matter seemed of so much importance that steps were taken to obtain an independent translation by another hand, which was completed



in October, and entirely confirmed the previous impression.

The United States' Government independently came to the knowledge of the fact at the beginning of November, and their Agent has given the explanation of it in a communication addressed to the Arbitrators and to the British Agent on the 19th of that month. The United States' Agent at the same time gave notice of the withdrawal of a certain number of the documents, and furnished revised translations of the others. Her Majesty's Government have pleasure in acknowledging that these revised translations, with the exception of one or two small errors of no moment, are perfectly accurate. But there are statements and arguments in the Case founded on the original translations, or depending mainly on them for support, which still remain to be answered, and it will therefore be necessary in the proper place to draw attention to the translations and original documents.

It is not possible, by a mere comparison of the correct and the erroneous translations, to form an accurate opinion of the effect of the insertion of the fictitious and interpolated passages upon the argument contained in the Case for the United States.\* Attention will therefore be called, in connection with each branch of the subject, to the manner in which it depends upon such interpolations and errors. When the spurious passages are expunged, and the erroneous translations corrected, it will be found that no evidence remains to support the contentions of the United States (a) that the Russian Government and the Russian-American Company claimed and exercised exclusive jurisdiction as to trading and hunting in the Behring Sea, and (b) that the Ukase of 1821 was merely declaratory of pre-existing claims which had been enforced therein for many years. The alleged pre-existing claims and their enforcement for many years, so far as they implied any extraordinary maritime jurisdiction, are merely the creations of the translator.

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\* For convenience of reference, the original translations furnished by the United States have been printed in parallel columns with the revised translations, and are given in the Appendix to this Counter-Case. (Appendix, vol. i, pp. 11-55).

## CHAPTER I.

HEAD (A).—*The User up to the year 1821 of the Waters of Behring Sea and other Waters of the North Pacific.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 25—  
"By first discovery, occupation, and permanent colonization, the shores and islands of Bering Sea, the Aleutian chain, and the Peninsula of Alaska became, probably as early as 1800, an undisputed part of the territory of the Russian Empire."
- (2.) United States' Case, p. 26—  
"While the title of Russia to the territory north and west of, and including, the Peninsula of Alaska, was universally recognized, her claim to the North-west Coast of the American Continent . . . was earnestly disputed by more than one powerful nation."
- (3.) United States' Case, p. 33—  
"While the claim of Russia to the territory embracing the Aleutian Islands, the Peninsula of Alaska, and the coasts and islands of Bering Sea, was undisputed, the shores and the adjacent islands of the American Continent south of latitude 60° as far as California, were during the latter part of the eighteenth and the first quarter of the present century the subject of conflicting claims on the part of Russia, Great Britain, Spain, and the United States."
- (4.) United States' Case, p. 42—  
"After the Ukase or Charter of 1799, granting to the Russian American Company certain exclusive control of trade and colonization, its authorities, acting under the sanction of the Russian Government, did not permit foreign vessels to visit Bering Sea."
- (5.) United States' Case, p. 49—  
"The Ukase of 1799, which set forth a claim of exclusive Russian jurisdiction as far south as latitude 55°, called forth no protest from any foreign Powers, nor was objection offered to the exclusion of foreign ships from trade with the natives and hunting fur-bearing animals in the waters of Bering Sea and on the Aleutian Islands as a result of that Ukase and of the grant of exclusive privileges to the Russian-American Company."
- (6.) United States' Case, p. 69.  
"Prior and up to the date of the treaties of 1824 and 1825, Russia did assert and exercise exclusive rights of commerce, hunting, and fishing on the shores and in all the waters of Bering Sea."

## SUMMARY OF BRITISH REPLY.

The title said in Contention (2.) to have been "universally recognized," is not shown to have been recognized at all during the period in question. Her only Settlement north of the Aleutian Islands was Nushagak, with five Russian inhabitants, founded in 1818. Any title by discovery was open to doubt. There was none by occupation or colonization.

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Throughout the evidence which relates to this period, no distinction, as regards the title of Russia or its recognition by other nations, is drawn between coasts north and south of latitude 60°.

The Ukase of 1799 purported to grant the Russian-American Company rights exclusive of other Russian subjects, but not of foreigners; such exclusive rights were only exercisable on land; no exclusion of foreign vessels from Behring Sea, or from fur-hunting there, is shown; and the only evidence adduced of the sanction of the Russian Government to any such course, consists in the interpolations, since withdrawn, of a translator in contemporary documents.

The Ukase of 1799 was not notified to foreign Powers, and had no operation as against foreigners.

The only assertion by Russia of exclusive rights in Behring Sea was in 1821, and that on paper merely.

distinction that Russian title to eastern shores of Behring Sea was disputed.

distinction in Russia's title at latitude 60°.

THE first three contentions, of which, save for the mention of latitude 60° in the third, the second and third are for the present purpose substantially identical, may be dealt with together; premising that, prior to the year 1821, no distinction, as regards the title of Russia, had been drawn between coasts north and south of that latitude; nor will any hint of such distinction be found throughout the evidence which relates to the period now in question.

There is, prior to 1824, no evidence of recognition by any nation of the claim of Russia to the eastern shores of Behring Sea. Their outlines were unknown to geographers before the explorations of Cook in 1778 and 1779, and there is practically no evidence of any assertion of "right of dominion" over them by Russia prior to the Ukase of 1799, which apparently bases this right on "discovery by Russian navigators in remote times." The translation of that Ukase in the British and United States' Cases, which was taken from Bancroft's "History of Alaska," alleges "right of possession" by Russia; but these words are wanting in the original, of which a correct translation is given in the present Counter-Case.

See *post*, p. 11.

United States' Case, p. 24.

The authority of Captain Cook is invoked as proving the existence of "Russian influence and customs" upon the eastern shores of Behring Sea. Even if he had found instances of Russian "influence and customs," this would not prove Russian occupation or possession of this very extensive line of coast. But his narrative, on the contrary, shows that along the whole coast-line he met with

evidence of recognition of her

no Russians or other civilized people, but only with tribes of the native inhabitants. Captain Cook further states that the Russians he met at Unalaska were— Cook's Voyage vol. II, p. 496.

"strangers to every part of the American coast, except what lies opposite this island."

At Sanganooha, on the Island of Unalaska, Ibid., p. 499.  
Captain Cook met a Russian named Erasm Gregorloff Sin Ismyloff, whom he describes as the principal person amongst his countrymen in this and the neighbouring islands; and with reference to the continent north of Unalaska, Captain Cook says:—

"Both Ismyloff and the others affirmed that they knew nothing of the continent of America to the northward; and that neither Lieutenant Synd, nor any other Russian, had ever seen it of late. . . . From what we could gather from Ismyloff and his countrymen, the Russians have made several attempts to get a footing upon that part of this continent that lies contiguous to Oonalashka and the adjoining islands, but have always been repulsed by the natives; whom they describe as a very treacherous people."

Captain Cook further observes:— Ibid., p. 498

"I found that he [Ismyloff] was very well acquainted with the geography of these parts, and with all the discoveries that had been made in them by the Russians."

Ismyloff furnished Captain Cook with Charts, Ibid., p. 502.  
as to one of which he writes:—

"The second chart. . . comprehended all the discoveries made by the Russians to the eastward of Kamtschatka, toward America; which, if we exclude the voyage of Beering and Tschirikoff, will amount to little or nothing."

The writer says, in conclusion:— Ibid., p. 500.

"They assured me, over and over again, that they knew of no other islands, besides those which were laid down upon this chart; and that no Russian had ever seen any part of the continent of America to the northward, except that which lies opposite the country of the Tschutskia." [The country of the Tschutskia here mentioned is the western side of Behring Straits.]

Captain Cook's view of the extent of the Russian sovereignty on the American coast is

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likewise shown by his action in taking possession for Great Britain at certain places along that coast. His instructions contained the following clause :—

Cook's Voyage,  
vol. i, p. xxiv.

"You are also, with the consent of the natives, to take possession, in the name of the King of Great Britain, of convenient situations in such countries as you may discover, that have not already been discovered or visited by any other European Power; and to distribute among the inhabitants such things as will remain as traces and testimonies of your having been there; but if you find the countries so discovered are uninhabited, you are to take possession of them for His Majesty, by setting up proper marks and inscriptions, as first discoverers and possessors."

Ibid., vol. ii,  
p. 350.  
Ibid., p. 397.

In pursuance of these instructions, Cook left a record of his discovery on Kaye's Island, near Prince William Sound, and landed and took formal possession of the country in Cook's Inlet and at Cape Newenham, near the mouth of the Kouskokvim River, in Bristol Bay. The last-named place is on the eastern shore of Behring Sea.

Ibid., p. 433.

United States'  
Case, pp. 23, 24.

The Pribyloff Islands themselves were not discovered until 1786 and 1787, and as late as 1821 it appears to have been unknown whether there were islands to the northward of them.

Ibid., Appendix,  
vol. i, p. 58.

Russia's so-called settlement, Nushagak, with five Russian inhabitants.

United States'  
Case, p. 25.

The only Russian settlement, if such it can be called, upon the eastern shore of Behring Sea mentioned in the United States' Case, is that of Nushagak, in Bristol Bay, which appears not to have been established until 1818, and to have contained in 1819 no more than five Russian inhabitants.

British Case,  
Appendix, vol. i,  
p. 42.  
Ibid., Appendix,  
vol. iii.  
"United States  
No. 1 (1891),"  
p. 44.

Mr. Blaine himself, in a despatch to Sir J. Pouncefote, dated 17th December, 1890, says :—

"At the time these Treaties [of 1824 and 1825] were negotiated, there was only one Settlement, and that of Russians, on the shores of Behring Sea."

United States'  
Case, Appendix,  
vol. i, p. 49.  
See also Appendix,  
vol. i, p. 11.

The inability of the Russian-American Company to maintain any effective hold upon the territory which it claimed, is freely confessed by the Minister of Finance in his letter to the Minister of Marine, dated the 9th April, 1820.



In the discussion of the Convention of 1824, <sup>Lynnan's</sup> which will be found in "Lynnan's Diplomacy of the United States," it is explicitly stated:— <sup>"Diplomacy of the United States," 2nd edition, Boston, 1828, vol. ii, p. 257.</sup>

"We have said nothing of the coast to the northward of Bristol Bay, because it has never been pretended that the Russians had any settlements on that side."

Upon the official Russian Map published in 1802, which will be found in Appendix IV to the British Case, there is a manuscript note in the following words:— <sup>British Case, Appendix, vol. ii, Part I, p. 4.</sup>

"La Compagnie ne possède point d'établissements dans et au nord de la Presqu'île Alaska, quoique ses vaisseaux visitent ces régions."

No Russian settlement in or to the north of the Alaskan Peninsula.

It is also to be noted that, when the questions raised by the Russian-American Company on the Treaty of 1824 with the United States were referred to a Committee of Russian Dignitaries, this Committee on the 21st July, 1824, limited their assertion to the statement:— <sup>Revised translation. Appendix, vol. i, p. 34.</sup>

"That . . . Russia has established permanent settlements, not only on the coast of Siberia, but also on the Aleutian group of islands."

Had there existed any settlements on the eastern coast of Behring Sea, it is obvious from the nature of the Report, that these would have been mentioned.

The fact is, that upon the entire north-west coast of America from Behring Straits to the Alaskan Peninsula, up to 1824 practically no title by occupancy had been established at all, and any title by discovery was open to doubt and dispute.

Had any other Power taken possession of any part of the coast which Russia did not actually occupy, Russia could not have successfully asserted any claim thereto; and if other nations had pushed their trade north of, as they did up to, the Alaskan Peninsula, there was no ground on which Russia could have successfully maintained any protest. The territorial right by itself was not thought worth disputing; and



North American  
Review.  
British Case,  
Appendix,  
vol. i, p. 33.  
United States'  
Case, p. 25.

for practical purposes the coast, as far south as Behring Bay, was then considered as worthless as a floating iceberg.

It is submitted, therefore, that there is no foundation for the assertion that—

“by first discovery, occupation, and permanent colonization the shores and islands of Bering Sea, the Aleutian chain, and the peninsula of Alaska became, probably as early as 1800, an undisputed part of the territory of the Russian Empire.”

While no other nation drew any distinction between the title of Russia upon the American coast to the north and to the south of latitude 60°, Russia herself made no such distinction, but dealt alike with the whole north-west coast from the 55th degree to Behring Strait, up to the year 1821.

The Ukase of 1799 asserts this plainly. The following is a correct translation of the original Russian document, as given by Golovnin and Tikléméniéff:—

“We, Paul I, by the Grace of God, Emperor and Autocrat of All the Russias:

[Here follows the full title of His Imperial Majesty.]

“To the Russian-American Company under our high protection:

“The profit and advantages accruing to our Empire from the industries and trade carried on by our faithful subjects in the north-eastern sea and in that part of America have attracted our attention and consideration; wherefore, taking under our immediate protection the Company which exists for the purpose of carrying on those industries and that trade, we order it to be called the Russian-American Company under our high protection, and we command our military authorities to make use of our land and sea forces, at its request, in the way best fitted to support the enterprises of the Company; and having drawn up for the Company such Rules as are best fitted to assist and encourage it, we are pleased to grant to it, by this our Imperial Charter, the following privileges for twenty years from this date:—

“1. In view of the discovery by Russian navigators in remote times of the coast of North-Eastern America\*

\* The above error, in the Ukase of 1799, appears to have originated in the Agreement of 1778 between Shelikoff and Golikoff. Golovnin points out its occurrence in that Agreement, writing:—“For north-eastern and northern America.” This mistake arose from the stupidity and ignorance of geography of some Irkutsk writer or other, who drafted the Agreement; he ought to have said: ‘to the north-western shores of America.’” (“Materiali,” Part I, p. 55.)

from 55° north latitude, and of the chains of islands extending from Kamtchatka in a northerly direction to America and in a southerly direction to Japan, and on the strength of the right of dominion over them which belongs to Russia, we graciously permit the Company to enjoy the profits of all industries and establishments now existing on the north-eastern coast of America, from the aforesaid 55° to Behring Strait and beyond that strait, as well as on the Aleutian and Kurile Islands and the other islands situated in the north-eastern ocean.

"2. The Company may make new discoveries not only to the north of 55° north latitude, but also south of it, and may incorporate the territories it discovers into the Russian dominions under the conditions laid down in the existing Rules, if those territories have not been occupied by other nations, and have not become subject to them.

"3. The Company shall enjoy in the territory mentioned everything which it has discovered or may discover on the surface of the earth or below it, and no one shall be entitled to dispute its right to this.

"4. We graciously permit this Company in future to establish such Settlements as may be required, and to erect such fortifications as it may consider necessary for its security, and to send to those regions without any hindrance ships conveying merchandize and its employés.

"5. The Company may make voyages to all neighbouring countries, and may carry on trade with all neighbouring nations with the consent of their Governments, and after obtaining our high sanction, in order that greater power and profit may accrue to the Company from its enterprises.

"6. The Company may employ for navigation, and for its industries and establishments, persons of all classes who are free and of good reputation, and who desire to make a lawful use of such liberty; in view of the great distance of the places to which they will go, our authorities shall grant to State colonists and other free persons passports available for seven years; no serfs shall be engaged by the Company without the consent of their masters, and the Company shall pay to the Government the proper dues for all persons whom it may take into its service.

"7. Although our Imperial Decrees forbid the cutting of wood anywhere without the sanction of the College of Admiralty; nevertheless, in consideration of the distance which separates that body from the Okhotsk territory, permission is granted to the Company to cut wood, without making any payment, whenever they require it for repairing their ships or for building new ones.

"8. The Company may obtain annually from the Government artillery stores at Irkutsk from 40 to 50 poods of gunpowder, and from the Nertshinsk mines 200 poods of lead, for ready money, at the market price, for shooting game, for signals at sea, and for any unforeseen contingency on the mainland of America or on the Islands.

"9. If one of the shareholders of the Company has become a debtor of the State or of private persons, and if his property, apart from his share in the Company, is

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lands or land  
possession.

not sufficient to meet his liabilities, his capital shall be sequestrated; but, as, according to the constitution of the Company, the capital cannot be withdrawn, the parties to whom it is assigned cannot realize it, but can only take the place of the debtor and obtain their proper share of the profits when a division takes place. At the expiration of the term of the privileges of the Company, their share of the capital will be paid over to them.

"10. In granting to the Company for a period of twenty years, throughout the entire extent of the lands and islands described above, *the exclusive right to all acquisitions, industries, trade, establishments, and discoveries of new countries*, we declare that these advantages and privileges shall not be enjoyed by any persons who may wish to make voyages to those regions on their own account, or by any of those who, having hitherto been engaged in this trade, and having their ships and merchandize in those regions, some even holding shares in the Company, refuse to join the latter. It is, however, open to these latter persons, if they will not join the Company in the manner prescribed by the Regulations, to continue to exercise these industries and to enjoy the advantages connected therewith under the same conditions as heretofore, *but only until the arrival of their ships in Russia*, after which date no one shall have these privileges but the Company alone, under the penalty of losing everything that is established for its benefit.

"11. All Courts shall recognize the Board of Directors of the Russian-American Company under our protection as established for the management of the affairs of the Company, and all notices issued by Courts in matters which concern the Company shall be served on that Board, and not on one of the shareholders.

"In concluding this our Imperial Charter, we order all our military and civil authorities and Courts not only not to prevent the Russian-American Company under our protection from enjoying all the privileges granted by us, but also, if necessary, to protect it from any losses or harm which may threaten it, and to aid and protect the Board of Management in every way."

It is to be observed that in the Ukase there is no reference to hunting grounds or hunting, the passages in Articles 1 and 10, in which those words appear in the translation taken from Bancroft, referring, in fact, to industries, trade, and establishments. Articles 1 and 2, as given in Bancroft, differ materially from the same Articles as given above. They allege "possession" by Russia, instead of mere "right of dominion," founded apparently on "discovery;" they omit to speak of the coast "beyond" Behring Strait; and they only faintly indicate that which is now clearly established, that the Russian Government had in view the fact that territory on the coast to the north as well as to the south of latitude 55° was still unincorporated in Russian dominions, and might even

says nothing of hunting grounds or hunting, and alleges possession.

See ante, p. 7.

have "become subject" to other Powers. Article 10, as now translated, allows traders to exercise their industries as before, "but only until the arrival of their ships in Russia;" which words, omitted in Bancroft, show that Russian competition only was in view.

It will be noted that this Ukase dealt impartially with the Russian Settlements on the whole of the coast described, without distinction as to latitude: and in the absence of any distinction between the northern and the southern portions of the coast affected by that document, the facts stated in Chapter I of the British Case have equal weight in the consideration of the existence and extent of Russian jurisdiction over any and every part of the coast so claimed, and are sufficient to demonstrate that foreigners were allowed to trade there freely without molestation or interference.

In the discussion on the Ukase of 1821, which took place between Count Nesselrode, Count Lieven, and the Duke of Wellington while they were attending the Congress of Verona, Count Nesselrode gave to the Duke of Wellington a Memorandum, under date the 11th (23rd) November, 1822, in which, as already stated at p. 43 of the British Case, the following passage occurs:—

"Les mesures de précaution et de surveillance qui seront prises alors sur la partie Russe de la côte d'Amérique se trouveront entièrement conformes aux droits dérivant de sa souveraineté, ainsi qu'aux usages établis entre nations."

British Case,  
Appendix, vol. ii,  
Part I, p. 25.

To this Memorandum the Duke, in a note to Count Lieven, dated the 28th November, 1822, promptly objected:—

Verona, November 28, 1822.

"M. le Comte,

"Having considered the paper which your Excellency gave me last night on the part of his Excellency Count Nesselrode on the subject of our discussions on the Russian Ukase, I must inform you that I cannot consent, on the part of my Government, to found on that paper the negotiations for the settlement of the question which has arisen between the two Governments on this subject.

British Case,  
Appendix, vol. ii,  
Part I, p. 25.

"We object to the Ukase on the grounds:—

"1. That His Imperial Majesty assumes thereby an exclusive sovereignty in North America of which we are not prepared to acknowledge the existence or the extent. Upon this point, however, the Memorandum of Count Nesselrode does afford the means of negotiation, and my Government will be ready to discuss it either in London or St. Petersburg whenever the state of the discussions

Great Britain will not acknowledge the existence or extent of any exclusive sovereignty in North America.

Russian competition only was excluded by Ukase.

Foreigners allowed to trade freely over whole coast from latitude 55° northward.

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on the other question arising out of the Ukase will allow of the discussion.

"2. The second ground on which we object to the Ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations.

"We contend that the assumption of this power is contrary to the law of nations, and we cannot found a negotiation upon a paper in which it is again broadly asserted. We contend that no Power whatever can exclude another from the use of the open sea. A Power can exclude itself from the navigation of a certain coast, sea, &c., by its own act or engagement, but it cannot by right be excluded by another. This we consider as the law of nations, and we cannot negotiate upon a paper in which a right is asserted inconsistent with this principle.

"I think, therefore, that the best mode of proceeding would be that you should state your readiness to negotiate upon the whole subject, without restating the objectionable principle of the Ukase, which we can not admit

"Ever yours, &c.,

(Signed) "WELLINGTON."

Finally, on the 29th November, 1822, the Duke reports to Mr. G. Canning, British Secretary of State for Foreign Affairs, that the Memorandum of the 11th (23rd November) is withdrawn, and that the Emperor of Russia is ready to negotiate upon—

"the whole question of the Emperor's claims in North America, reserving them all if the result of the negotiation should not be satisfactory to both parties."

That the Government of the United States did not recognize as "undisputed" the claim of Russia to the coasts of Behring Sea, is also clear from the statement made by Mr. Adams, the United States Secretary of State, on the 17th July, 1823, to Baron Tuvill, the Russian Minister at Washington, that—

"we should contest the right of Russia to *any*\* territorial establishment on this continent."

Mr. Adams reiterates this contention in a despatch to Mr. Middleton, the United States' Minister at St. Petersburg, dated the 22nd July, 1823, in which, referring to the Ukase of 1799, he declares that—

"Russia had never before *asserted*" a right of sovereignty over any part of the North American continent."

In a letter of the same date, addressed to Mr. Rush, United States' Minister in London, Mr. Adams says:—

"It appears upon examination that these claims have no foundation in fact. *The right of discovery on this*

\* The italics are in the original.

clusion of vessels of other nations from open sea, objected to.

British Case, Appendix, vol. ii, Part I, p. 25.

Ibid., p. 26.

See "Memoirs of John Quincy Adams," vol. vi, p. 163.

United States contest Russia's right to any territorial establishment in America.

British Case, p. 34.

Ibid., Appendix, vol. ii, Part II, p. 4.

United States' first assertion of sovereignty was in 1799.

United States' State Papers, vol. v, p. 446. Appendix, vol. i, p. 56.

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continent, claimable by Russia, is reduced to the probability, that in 1741, Captain Tchirikoff saw from the sea the mountain called St. Elias, in about the 59th degree of north latitude. The Spanish navigators, as early as 1582, had discovered as far north as 57° 30'.

"It never has been admitted by the various European nations which have formed settlements in this hemisphere that the occupation of an island gave any claim whatever to territorial possession on the continent to which it was adjoining. The recognised principle has rather been the reverse," &c.

But whatever may have been the claims of Russia, whether admitted or not, in respect of the north-west coast of America and the islands adjacent thereto, no claim had ever been made prior to the year 1821 to exclude vessels of other nations from navigating the waters of Behring Sea, or to exercise jurisdiction over the waters of that sea as *mare clausum*, or an inland sea. On the contrary, the ground or justification for the attempted interference by Russia in the year 1821 was the competition with the Russian-American Company by the vessels and traders of other nations. This is sufficiently shown by the authorities quoted in Chapter I, Head (A), of the British Case, and by the letters Nos. 1, 2, 3, 4, and 5 in the correspondence of the Russian-American Company, which contain numerous references to the nature of complaints as to the presence of foreign competitors in trade.

The fifth contention at the head of this Chapter, which may be conveniently taken before the fourth, is in substance that the Ukase of 1779 called forth no protest or objection from foreign Powers. To this it may be answered, in the words of Mr. Middleton, that—

"this ukase, which is, in its form,\* and act purely domestic, was never notified to any foreign State with injunction to respect its provisions."

In point of fact, Her Majesty's Government have been unable to discover that the Ukase of 1799 was communicated to any foreign Government in any form whatsoever.

Moreover, as appears from the provisions of the Ukase itself, it dealt only, as was pointed out by Mr. Middleton and Mr. Adams, with the rights of the Russian-American Company, to

\* The *italics* are in the original.

Her right of discovery faulful.

No claim prior to 1821, to exclude vessels of other nations from Behring Sea.

Appendix, vol. i, pp. 11-21.  
United States' Case, Appendix, vol. i, pp. 49-57.

Contention that Ukase of 1799 asserted exclusive rights, and acquiesced in by foreign Powers.

Ukase in form domestic and not notified to foreign States.

Mr. Middleton to Mr. Adams, American State Papers, Foreign Relations, vol. v, p. 461.

Ante, pp. 11-13. British Case, pp. 29-34.

No Charter of Company, except purports to af

Contention that, 1799, foreign allowed to visit

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the exclusion of other Russian subjects; a fact which the correct translation of the Ukase brings out more clearly.

In support of the view that the Charters to the Russian-American Company were not and did not purport to be international documents, but purely domestic acts, not intended to affect foreign nations, reference may be made to the terms of the documents themselves and to those the Ukases commented upon hereafter at p. 61 *et seq.* In each case, with the single exception of the Charter based directly upon the Ukase of 1821, their terms are strictly limited to the exclusion of Russian subjects only.

The object of the Charters was not in any way to control foreigners; but, in the first instance, to consolidate the numerous rival Russian Companies which were competing with each other, and by their competition giving rise to gross abuses; and subsequently to protect the Consolidated Company.

It is again to be noted, that the *exclusive* rights specially granted to the Russian-American Company by the Ukase of 1799 were rights to be exercised on land already acquired or thereafter to be discovered within the prescribed area, and not over non-territorial *waters* of Behring Sea or any other non-territorial waters.

It is now necessary to deal with the contentions—

(4.) That, under the Ukase of 1799, the Russian-American Company, acting under the sanction of the Russian Government, did not permit foreign vessels to visit Behring Sea; and

(6.) That, up to the date of the Treaties of 1824 and 1825, Russia did assert and exercise exclusive rights of commerce, hunting, and fishing in all the waters of Behring Sea.

Neither of these allegations is supported by the facts. The domestic character of the Ukase itself has been already shown; and the report of Golovnin, written in 1818, as to the "Company's colonies," speaks of the importance of presenting a better appearance to "foreigners visiting these parts." No instance is to be found of Russia preventing foreign vessels from visiting Behring Sea; and it must be remembered that the Ukase of 1799 applied equally to the whole coast of America from Behring Straits to latitude 55°.

United States' Case, Appendix, vol. i, 14, 24, and 28.

No Charter of Russian-American Company, except that of 1821, purports to affect foreigners.

United States' Case, vol. i, p. 24.  
British Case, pp. 23, 24.

*Ibid.*, p. 28.

Contention that, under Ukase of 1799, foreign vessels were not allowed to visit Behring Sea.

British Case, p. 32.  
Golovnin, "Materalmi," Part I, Table of Contents.

No instance of exclusion.

There were at all times foreign vessels trading to places north of latitude 55°, where the Ukase was intended to have the same operation as in Behring Sea itself.

On the other hand, the solitary instance in which it is alleged on the part of the United States that Russia actually asserted exclusive rights over Behring Sea prior to 1821, is the case of the Riccord-Pigott contract in 1819. Three letters (dated 10th April, 1820, 23rd April, 1820, and 31st March, 1821) are relied upon as—

Disallowance of Riccord-Pigott contract involved no maritime jurisdiction.

United States' Case, p. 45.

Appendix, vol. i, pp. 13, 16, and 18.

illustrating the complete control which Russia claimed and actually exercised over Behring Sea prior to 1821."

United States' Case, p. 45.

From the facts alluded to in these letters, it appears that Riccord, the Superintendent of Kamtchatka, had made an agreement with Pigott, an Englishman, for ten years, from 1819—

Letter, April 23, 1820.

Revised translation, Appendix, vol. i, p. 17.

with reference to fishing for whales and extracting oil from these and other marine animals on the shores of Kamtchatka and on those of all Eastern Siberia, in the harbours and bays and amongst the islands."

This contract was undoubtedly disapproved by the Russian Government, which, having granted to a Russian Company a monopoly of trade in these regions, to the exclusion of all other Russian subjects, was naturally unwilling to allow any part of this monopoly to be enjoyed by foreigners. The Russian-American Company was therefore instructed to turn its attention to the whale fishery, and to employ a ship in fishing, the reason given being, as appears from the following quotation, that—

Letter, April 10, 1820, paragraph 1.

Revised translation, Appendix, vol. i, p. 13.

"the whale-fishing industry may be of use as a means of assisting the inhabitants of Kamtchatka and Okhotsk when the other fisheries fail."

The Government further ordered that no foreigner should be allowed to enter a merchant guild, or to settle at Kamtchatka or Okhotsk, and that no foreign merchant-vessel should be permitted—

Ibid., paragraph 2.

Revised translation, Appendix, vol. i, p. 14.

"to trade at those places under any circumstances, or to enter the ports of Eastern Siberia except in case of distress. . . . Furthermore, the Englishman Davis at Okhotsk, and Dobbello's agent in Kamtchatka are to be informed . . . that the Government refuses them permission to remain at those places, or to build houses or hold real property there; the local authorities shall afford them all proper facilities for disposal of their property and leaving the country."

These instructions have been quoted because they show clearly that the Russian Govern-

ment exercised in this instance no jurisdiction other than the ordinary territorial jurisdiction which attaches to every nation in right of its possession of the soil, and that they made no attempt to exclude foreign vessels from navigating the ocean.

The rest of the correspondence concerning this matter has, since the presentation of the United States' Case been produced by the United States, in reply to a notice by the British Agent under Article IV of the Treaty of the 29th February, 1892. It is given in the Appendix to this Counter-Case, and it is submitted that it clearly proves that Figott frequented the Behring Sea from 1819 to 1822, and was not merely an accidental visitor to Kamtchatka in 1819. He was one of many traders who had visited places on both shores of the Behring Sea, and he had pushed his trading on the American coast as far as Kotzebue Sound, north of Behring Straits. The following are extracts from the correspondence.

In a Report to the Russian-American Company, dated, apparently from Sitka, January, 1821, it is stated:—

Appendix, vol. i,  
pp. 60-63.

Ibid, pp. 62, 63.

"On the 29th September [1820] the American brig 'Pedlar' arrived at this port. Her captain is Meek, a brother of Meek who is well known to you. She had on board Mr. Pigott, with whom you are well acquainted. He was the supercargo or owner; for the cargo was under his control, and he directed the movements of the ship. He had come from Kamtchatka in eighteen days.

"There were at that time two men-of-war on the roadstead, and this fact afforded me frequent opportunities of meeting Pigott, for he was acquainted with the officers of both of them. *They had met beyond Behring Straits in Kotzebue Sound, and had been anchored there together.* He said, in a hesitating way, that *he had been trading there.*

"I must confess that *I was wrong when I said, in a letter to Michael Michulovitch, that a single man-of-war would be sufficient to put an end to this traffic.* To tell the truth, I did not believe it at the time; but I was afraid that a whole squadron, or at least a couple of frigates, would come down upon us. This prospect frightened me, both as Manager of the American Colonies and as a Russian. They would have eaten up all our provisions, and cost the Emperor a lot of money, without doing much good.

"What hope is there that a single frigate will be able to stop this traffic on our shores, abounding in straits and excellent harbours, and so well known to these Americans that they may be called the pilots of these coasts? They will always be on good terms with the natives. &c."

On the 1st February, 1820, the Governor-General

of Siberia wrote to Count Nesselrode, Secretary of State, a letter containing the following passages:—

"(1.) *We are familiar with the complaints made by the American Company in regard to the bartering carried on by citizens of the United States at their establishments, and in regard to their supplying the natives with fire-arms. These complaints are well founded, but nothing can be done in the matter. It would be useless to apply to the United States' Government to stop the trading; the commercial rules of the United States do not allow such interference on the part of their Government. The only thing to be done is for the Company to endeavour to strengthen the defences of the principal places in the Colonies, and for the Government, at least, not to favour this foreign trade. But the establishment of a whale fishery on the eastern shores of Siberia would undoubtedly favour it in a high degree. The establishment of a whale fishery would be a pretext for, and an encouragement to, foreign trade.*

"(2.) *Although the fur industry in Kamtchatka and Okhotsk, which has been declining from various causes, has now become unimportant, nevertheless, the present trade and its prospects for the future are in the hands of Russian traders. If an industry in the hands of foreigners is established on the coast, the whole trade will certainly pass into foreign hands. In this thinly-populated region it is impossible to establish an effective supervision; moreover, how is the importation of brandy, rum, &c., to be prevented?*

"(4.) *M. Ricord says, in his letter, that, owing to the smallness of our forces in that part of the world, we cannot prevent foreigners from whaling. In the first place, we may not be so weak as he supposes. The occasional appearance of a single properly armed ship may be sufficient to keep quiet and disperse all these whalers. In the second place, if they are able to get possession of this industry by force, why should this force be sanctioned by a formal Agreement?"*

The following extract from a letter from the Board of Management of the Russian American Company to Captain Muravieff, Chief Manager of the Russian-American Colonies, concerning Pigott is also interesting:—

(No. 149.)

"February 28, 1822.

"*The Board were aware that Captain Pigott, who was at Kamtchatka, intended to sail thence to our Colonies, and your despatch No. 8 of the 18th January, 1821, confirmed them in their belief that he proposed to visit waters belonging to Russia. He has paid you a visit, as you report, under stress of weather, and you have done right in assisting him; but he would never have come to Novo-Archangelsk if he had not been forced to put into that port; what he meant to do was to collect furs secretly at other places. It was with this object, and in*

Barter by United States' citizens at Russian establishments, Appendix, vol. i, p. 60.

Russia does not prevent foreigners from whaling.

Ibid., p. 62.

The only evident jurisdiction over translator's int

order to get a footing for this purpose on the Aleutian Islands, or on the northern islands situated in the direction of Behring Strait, that he made his proposal, of which you have already been informed, with regard to whaling and fishing for the benefit of Kamtehatka and Okhotsk; in the meantime, he has been asking permission from Dobello, M. Ricord's friend, to trade with the Tshuktshes [on the northern Asiatic coast], and to use the Russian flag while so engaged."

Several passages are quoted from the correspondence of the Russian-American Company in the Case presented on behalf of the United States, as proving the assertion by Russia of jurisdiction over waters; but it will be found that the alleged proof is supported only by passages which are not contained in the original documents, and have been interpolated.

United States' Case, pp. 43, 44.

The quotations are set out below, the interpolated passages being printed in small capitals and underlined and enclosed in brackets.

Thus at pp. 43 and 44, the United States rely on the following extracts from a letter dated the 9th April, 1820, from the Russian Minister of Finance to the Russian Minister of Marine :--

(For revised translation, see Appendix, vol. i, p. 11.)

"It appears of the most imperative necessity for the preservation of our sovereignty in the north-western part of America [AND ON THE ISLANDS AND WATERS SITUATED BETWEEN THEM] to maintain there continuously two ships of the Imperial fleet."\*

After suggesting that two vessels should be dispatched during that year, one to cruize from Sitka westward and northward, the letter as quoted purports to continue :--

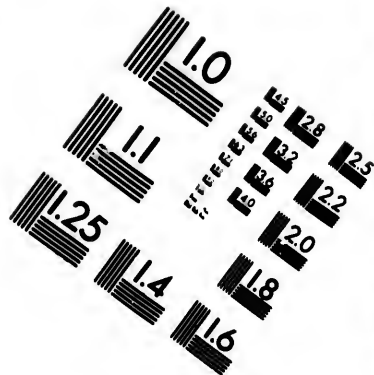
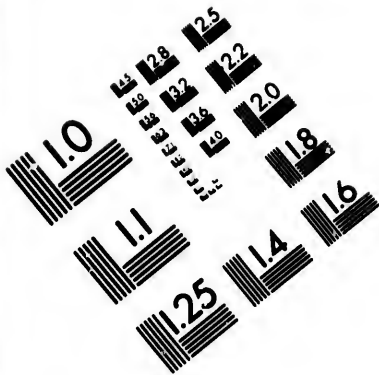
(For revised translation, see Appendix, vol. i, p. 12.)

"The commander . . . having thoroughly examined the shores of the Aleutian Islands, the coast of Kamchatka, the Kurilo Islands [AND THE INTERVENING WATERS], he may return for the winter to the harbour of Petropavlovsk. The other ship, however (sailing from Petropavlovsk), having examined the eastern coast of the Kamchatka Peninsula up to 62° of northern latitude, and the west coast of America from this latitude to the Island of Unalaska [AND THE INTERVENING WATERS (BERING SEA)], should proceed to Kadink, and from there to Sitka for the winter. The object of the cruizing of two of our armed vessels in the localities above mentioned is the protection of our Colonies [AND THE EXCLUSION OF FOREIGN VESSELS ENGAGED IN TRAFFIC OR INDUSTRY INJURIOUS TO THE INTERESTS OF THE RUSSIAN COMPANY, AS WELL AS TO THOSE OF THE NATIVE INHABITANTS OF THOSE REGIONS]."

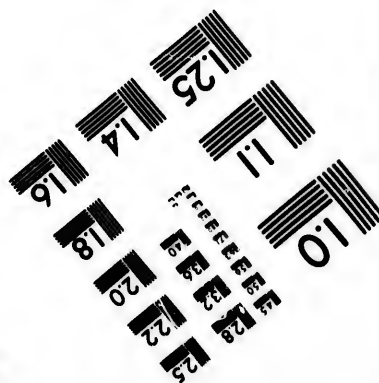
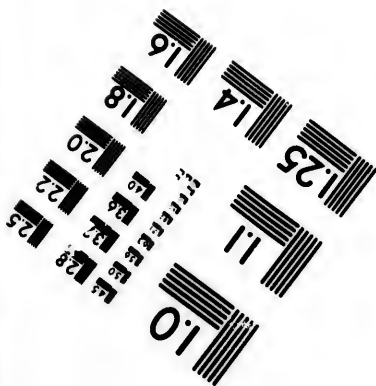
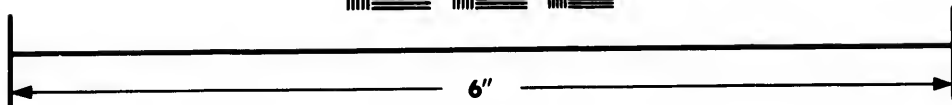
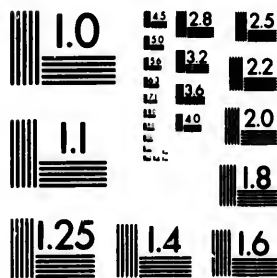
\* This type, inclosed in brackets, always denotes an interpolation of the kind mentioned in the Introduction. A reference to the interpolations would now be immaterial, were it not that it is necessary to show to how large an extent the case of the United States rests upon them.







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At p. 46 the following quotation is given from a letter, dated the 10th April, 1820, addressed by the Minister of Finance to the Board of Administration of the Russian-American Company:—

"Having for the benefit of the American Company excluded all foreigners from Kamtchatka and Okhotsk, and prohibited them from engaging in trade [AND FROM HUNTING AND FISHING IN ALL THE WATERS OF EASTERN SIBERIA], the Government fully expects that the Company, on its part, will hold itself responsible for supplying those regions with all necessaries. . . .

United States' Case p. 46. (For revised translation, see Appendix, vol. i, p. 15.)

["IN CONCLUSION, IT IS STATED AS THE DECISION OF HIS MAJESTY THE EMPEROR, IN VIEW OF POSSIBLE FUTURE COMPLICATIONS OF THIS NATURE, THAT NO CONTRACTS INVOLVING THE FREE ADMISSION OR NAVIGATION FOR TRADE OF FOREIGN SHIPS OR FOREIGN SUBJECTS IN THE WATERS ADJOINING OR BOUNDED BY THE COASTS OF RUSSIAN COLONIES WILL BE APPROVED BY THE IMPERIAL GOVERNMENT."]

Ibid., p. 47.

Further, at p. 47, there is a quotation from a letter addressed by the Board to the Chief Manager of the Colonies at Sitka, dated the 23rd April, 1820:—

Ibid. (For revised translation, see Appendix, vol. i, pp. 17, 18.)

". . . Basing your own action upon this proceeding of our Highest Protector, you, as Commander of all our Colonies must prohibit with equal strictness all foreigners from engaging in any intercourse or trade with native inhabitants [AS WELL AS FROM VISITING THE WATERS FREQUENTED BY SEA-OTTERS AND FUR-SEALS, OVER WHICH OUR OPERATIONS EXTEND], under penalty of the most severe measures, including the confiscation of ships and the imprisonment of crews engaged in this illegal traffic. You must act with the greatest severity in cases where foreigners have sold to the natives arms, powder, and lead. [THEY MUST BE MADE TO UNDERSTAND THAT THEIR PRESENCE IN OUR WATERS IS CONTRARY TO OUR LAWS, AND THAT] they will never be admitted to any port unless you or your subordinates convince yourselves that such is necessary for the saving of life. In a word, you must preserve an attitude in full accord with the views of the Imperial Government on this subject [AND PROTECT AGAINST ALL INTRUDERS THE DOMAIN OF LAND AND WATER GRANTED TO US BY THE GRACE OF THE EMPEROR AND NECESSARY FOR OUR CONTINUED EXISTENCE AND PROSPERITY]. You must transmit these instructions without delay to your subordinate Commanders for their conduct in their intercourse with foreigners, and especially to the Commanders of ships navigating our waters, [TO ENABLE THEM TO DRIVE AWAY THE FOREIGN INTRUDERS]."

Ibid., p. 48.

And at pp. 49, 41, and 42 from three others, dated the 31st March, 1821, the 20th September,

1821, and the 28th February, 1822, respectively:—

United States' Case, p. 49.  
(For revised translation, see Appendix, vol. i, p. 19.)

“ . . . The principles involved in this action of the Government you must also observe in dealing with foreigners who may visit our Colonies, [USING ALL THE FORCE AT YOUR COMMAND TO DRIVE THEM FROM OUR WATERS.] . . .”

Ibid., p. 41.  
(For revised translation, see Appendix, vol. i, p. 23.)

[“ WITH THIS PRECIOUS ACT IN YOUR HAND YOU WILL BE ENABLED TO ASSUME A NEW POSITION, AND TO STAND FIRMLY OPPOSED TO ALL ATTEMPTS ON THE PART OF FOREIGNERS TO INFRINGE UPON OUR RIGHTS AND PRIVILEGES. IN ACCORDANCE WITH THE WILL OF HIS IMPERIAL MAJESTY, WE WILL NOT BE LEFT TO PROTECT UNAIDED THE LAND AND WATERS EMBRACED IN OUR EXCLUSIVE PRIVILEGES. A SQUADRON OF NAVAL VESSELS IS UNDER ORDERS TO PREPARE FOR A CRUIZE TO THE COASTS OF NORTH-EASTERN ASIA AND NORTH-WESTERN AMERICA.”

WE CAN NOW STAND UPON OUR RIGHTS, AND DRIVE FROM OUR WATERS AND PORTS THE INTRUDERS WHO THREATEN TO NEUTRALIZE THE BENEFITS AND GIFTS MOST GRACIOUSLY BESTOWED UPON OUR COMPANY BY HIS IMPERIAL MAJESTY.]”

Ibid., p. 42.  
(For revised translation, see Appendix, vol. i, p. 24.)

[“ AS TO FUR-SEALS, HOWEVER, SINCE OUR GRACIOUS SOVEREIGN HAS BEEN PLEASED TO STRENGTHEN OUR CLAIMS OF JURISDICTION AND EXCLUSIVE RIGHTS IN THESE WATERS WITH HIS STRONG HAND, WE CAN WELL AFFORD TO REDUCE THE NUMBER OF SEALS KILLED ANNUALLY, AND TO PATIENTLY AWAIT THE NATURAL INCREASE RESULTING THEREFROM, WHICH WILL YIELD US AN ABUNDANT HARVEST IN THE FUTURE].”

A letter from the Board to the Chief Manager, dated the 3rd August, 1820, is not cited in the United States' Case, but appears in the Appendix thereto; it contains the following:—

Appendix, vol. i, p. 57.  
(For revised translation, see Appendix, vol. i, p. 20.)

“ You will perceive . . . that we . . . do not countenance any intercourse with foreigners, [OR THE ADMISSION OF FOREIGNERS WITHIN THE PRECINCTS OF OUR POSSESSIONS], except in case of absolute necessity. Heretofore, all such transactions have generally resulted in serious losses to us, [AND THE VERY PRESENCE OF FOREIGNERS IN OUR WATERS HAS BECOME A VITAL QUESTION, AFFECTING THE EXISTENCE OF THE COMPANY.]”

The inclosure to this last-quoted letter consists of “orders from the Russian-American Company to its Kadiak office, 3rd August, 1820.” This

inclosure also is not cited in the United States' Case, but is given in the Appendix, and includes the following:—

"The deceased Baranof was frequently instructed to abstain as far as possible from all intercourse with the foreigners visiting our Colonies. . . . [FOR THE SAKE OF PRESERVING INTACT OUR VALUABLE PRIVILEGES IN THE WATERS OVER WHICH OUR TRADE AND INDUSTRY EXTENDS], we may well dispense with such articles of luxury as the foreigners endeavour to make us purchase from them."

United States' Case, Appendix, vol. i, p. 57.  
(For revised translation, see Appendix, vol. i, p. 20.)

It is important to bear in mind that the passages above included in brackets have nothing corresponding to them in the original documents. The original documents, when read without the interpolated passages, far from constituting any proof that the Russian Government were asserting any dominion over Behring Sea, disprove that allegation, and show clearly that all they desired or contemplated was to protect the trading on the coast.

When the position of the persons by whom these letters were written, and to whom they were addressed, is remembered, it becomes clear not only that foreigners frequented Behring Sea in considerable numbers, but also that Russia and the Russian-American Company recognized that their presence there was unavoidable, and that interference with them must be strictly limited to the ordinary territorial jurisdiction.

Foreigners frequented Behring Sea in numbers.

Neither is any trace to be found of any action having been taken under the instructions issued by the Board of the Company with the view to excluding foreigners from trading in Behring Sea.

It is submitted that the propositions that were formulated on p. 36 of the British Case with reference to the user of the waters of Behring Sea up to the year 1821, and supported by the evidence cited therein, have not been displaced by any facts or arguments produced in the Case of the United States; but, on the contrary, that the further examination of the subject establishes that, down to the year 1821, Russia neither asserted nor exercised in the non-territorial waters of the North Pacific, including the body of water now known as Behring Sea, any rights to the exclusion of other nations.

Before 1821, Russia asserted no exclusive jurisdiction in Behring Sea.

## CHAPTER II.

HEAD (B).—*The Ukase of 1821, and the circumstances connected therewith leading up to the Treaties of 1824 and 1825.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 49—  
 "It thus appears from the foregoing citations that, so far as it concerned the coasts and waters of Bering Sea, the Ukase of 1821 was merely declaratory of pre-existing claims of exclusive jurisdiction as to trade, which had been enforced therein for many years."
- (2.) United States' Case, p. 50—  
 "It was only when the Ukase of 1821 sought to extend the Russian claim to the American Continent south to latitude 51°, and to place the coasts and waters of the ocean in that region under the exclusive control of the Russian-American Company, that vigorous protests were made by the Governments of the United States and Great Britain. And the correspondence which grew out of those protests shows that they were inspired by the claim of jurisdiction over large portions of the Pacific Ocean (as distinguished from Bering Sea), and by the conflicting claims of the three nations to the coast over which Russia sought to extend exclusive authority."
- (3.) United States' Case, p. 56—  
 "Neither in the protests, negotiations, nor treaties is any reference found to Bering Sea."

## SUMMARY OF BRITISH REPLY.

The citations referred to in Contention (1.) when freed from interpolations, show no claims of exclusive jurisdiction over the coasts and waters of Behring Sea.

Throughout the protests and negotiations resulting in the Treaties of 1824 and 1825, there was only one sea area under discussion, namely, that defined in the Ukase of 1821. The absence of all reference to Behring Sea by a distinctive name, proves that it was not, for any purpose, separated from the rest of the defined area.

The term "Pacific Ocean" was used throughout the protests and negotiations to include Behring Sea; and the term "north-west coast" to include the whole west coast of America from Behring Strait to 51° north latitude.

The claim of Russia to maritime jurisdiction was that against which the protests of Great Britain and the United States were most vigorous, and the first place in each Treaty was assigned to the clause by which it was given up.



The "foregoing citations" mentioned in the first of the above contentions as showing that, so far as it concerned the coasts and waters of Behring Sea, the Ukase of 1821 was merely declaratory of pre-existing claims, are dealt with in the latter part of the preceding chapter. They are the letters dated respectively the 9th, 10th, and 23rd April, 1820; 31st March and 20th September, 1821; and 28th February, 1822. The original documents, as will be found from the correct translations, afford no ground whatever for this contention.

The presence of foreigners in the Russian possessions has already been alluded to as the chief motive and justification for the Ukase, and it has been shown that it was doubtless in consequence of the complaints made on that score, that the Ukase purported to exclude foreigners from approaching within 100 miles of the whole of the north-west coast of America, beginning from Behring Straits, to the 51st degree of northern latitude.

No valid ground for the distinction suggested between the coasts and waters of Behring Sea and those of other seas can be found in the Ukase itself, which, like the Ukase of 1799, asserts a claim to the whole of the coast-line specified, and regards the whole as subject to the same jurisdiction.

The following are the words of the Ukase—

"The pursuits of commerce, whaling, and fishery, and of all other industry on all islands, ports, and gulfs, including the whole of the *north-west coast of America, beginning from Behring's Straits* to the 51st degree of northern latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring's Straits to the South Cape of the Island of Urup, viz., to the 45° 50' northern latitude, is exclusively granted to Russian subjects."

The letter from Baron Nicolay to the Marquis of Loudonderry, dated the 31st October, 1821, by which this Ukase was officially notified to the British Government, speaks of the sea lying between the coasts thus defined as—

"cette partie de l'Océan Pacifique que bordent nos possessions en Amérique et in Asie."

And he concludes his letter by saying:—

"Les officiers commandant les bâtiments de guerre Russes qui sont destinés à veiller dans l'Océan Pacifique

Contention that the Ukase of 1821 was as to Behring Sea, merely declaratory of pre-existing claims of exclusive jurisdiction.

Appendix, vol. i.  
pp. 11, 13, 16, 18,  
23, and 24.

British  
Case, p. 39.  
United States,  
Case, Appendix,  
vol. i, p. 16.

United States'  
Case, pp. 41-49.

Ukase does not distinguish between Behring Sea and waters outside.

It applies to north-west coast from Behring Straits to latitude 51° north.

British Case,  
Appendix, vol. ii,  
Part I, p. 2.

Sea area defined in Ukase, described as part of Pacific Ocean.

Throughout neg.  
of Behring Sea

Pacific Ocean ext.  
coast from Beh-  
mole 51° north.

au maintien des dispositions susmentionnées, ont reçu l'ordre de commencer à les mettre en vigueur envers ceux des navires étrangers qui seroient sortis d'un des ports de l'Europe après le 1<sup>er</sup> Mars, 1822, ou des États-Unis après le 1<sup>er</sup> Juillet. A dater de ces époques aucun navire ne pourra plus légalement prétendre l'ignorance du nouveau Règlement."

British Case,  
pp. 59-76.

It is difficult to understand the ground for the allegation that neither in the protests, negotiations, nor Treaties, is any reference found to Behring Sea. The fact that, during the whole of the negotiations prior to 1824 and 1825, no reference is made by any distinctive name to Behring Sea, strongly supports the contention of Her Majesty's Government. The reason is obvious. The whole area affected by the Ukase was the subject of discussion, and no distinction was drawn between the part of the Pacific Ocean north and that south of the Aleutian Islands. Had any such distinction been intended, it must have been repeatedly mentioned; and had it been desired to deal with the waters of Behring Sea in an exceptional manner, an express provision to that end must have been inserted.

Throughout negotiations, no mention  
of Behring Sea by distinctive name.

British Case,  
Appendix, vol. ii,  
Parts I and II.

With reference to this point, attention is invited to Chapter II of the British Case, and the correspondence set out in the Appendix thereto.

The Ukase of the 4th September, 1821, which led to the protests, negotiations, and Treaties, claimed the exclusive right to the pursuits of commerce, whaling, and fishing on all islands, ports, and gulfs, including the whole of the north-west coast of America from Behring Strait to the 51st degree of the northern latitude and the Aleutian Islands.

Ibid.,  
Part II, p. 3.

M. de Poletica, in his letter to Mr. Adams of the 28th February, 1822, claims—

Pacific Ocean extends on north-west  
coast from Behring Strait to lati-  
tude 51° north.

British Case,  
pp. 48, 49.  
United States'  
Case, Appendix,  
vol. 3, p. 133.

"that the Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent from the same Strait to the 45th degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* ('mers fermées'), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."

The extent of waters thus limited he claims as "shut-seas ('mers fermées')." The same limits are either expressly or impliedly referred to throughout the correspondence.\*

Thus in the letter from Mr. Adams to Mr. Middleton of the 22nd July, 1823, the writer states that—

"the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51° north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast. The States can admit no part of these claims. Their right of navigating and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands† north of the 55th degree of latitude, and have no existence on the Continent of America."

British Case, Appendix, vol. ii, Part II, p. 4.

United States admit no part of Russian Claims.

Mr. Middleton's opinion upon the subject of the Ukase, with its claim to close even Behring Strait, clearly appears in his Memorial of the

British Case, p. 50-64.

\* See particularly in the correspondence between Russia and the United States:—

M. de Poletica to Mr. Adams, 2nd April, 1822.

Mr. Adams to Mr. Middleton, 22nd July, 1823.

Mr. Adams to Mr. Rush, 22nd July, 1823.

Memorial by Mr. Middleton, 1st December, 1823.

In the correspondence between Great Britain and Russia:—

Baron Nicolay to the Marquis of Londonderry, 31st October, 1821.

Count Nesselrode to Count Lieven, 7th October, 1821.

Messrs. F. Enderby and Mellish to Board of Trade, 27th November, 1821.

Mr. G. Canning to the Duke of Wellington, 27th September, 1822.

Ship-owners' Society to Mr. G. Canning, 11th June, 1823.

Mr. Enderby to the Board of Trade, 7th February, 1824.

And in the correspondence of the Russian-American Company:—

Minister of Finance to Russian-American Company, 18th July, 1822.

Count Nesselrode to N. S. Mordvinof, 11th April, 1824.

† This word is in *italics* in the original.

United States' Case, Appendix, vol. i, p. 133.

British Case, Appendix, vol. ii, Part II, p. 4.

Ibid., p. 6.

Ibid., p. 7.

Ibid., Appendix, vol. ii, Part I, p. 1.

Ibid., p. 3.

Ibid., p. 13.

Ibid., p. 21.

Ibid., p. 36.

Ibid., p. 52.

United States' Case, Appendix, vol. i, p. 62.

Ibid., p. 14.

1st (13th) December, 1823, which contains the following passage :—

United States object to shutting up  
of a Strait never before shut up.

British Case,  
Appendix, vol. ii.  
Part II, p. 7.

"The Ukase even goes to the *shutting up of a strait which has never been till now shut up*, and which is at the present the principal object of discoveries interesting and useful to the sciences. . . . The extension of territorial rights to the distance of 100 miles from the coasts upon *two opposite continents*, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations and measures unexampled."

Ibid., Part I, p. 61.

Mr. G. Canning, writing to Sir C. Bagot, Her Majesty's Ambassador at St. Petersburg, on the 12th July, 1824, inclosed the draft of a "Projet" of Convention, which Sir C. Bagot was authorized to sign

British "Projet."

This "Projet" contained the following :—

"His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of All the Russias, being desirous of drawing still closer the ties of friendship and good understanding which unite them, by means of an Agreement which shall settle, upon the basis of reciprocal convenience, the different points connected with the commerce, navigation, and fisheries of their subjects on the Pacific Ocean, as well as the limits of their possessions and establishments on the north-west coast of America; their said Majesties have named their Plenipotentiaries to conclude a Convention for this purpose, that is to say :

"His Majesty the King of the United Kingdom of Great Britain and Ireland, &c., &c., &c. ;

"And His Majesty the Emperor of all the Russias, &c., &c. ;

"Who, after having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon and concluded the following Articles :—

#### "ARTICLE I.

"It is agreed between the High Contracting Parties that their respective subjects shall enjoy the right of free navigation along the *whole extent of the Pacific Ocean, comprehending the sea within Behring's Straits*, and shall neither be troubled nor molested in carrying on their trade and fisheries, in all parts of the said ocean, either to the northward or southward thereof.

"It being well understood that the said right of fishery shall not be exercised by the subjects of either of the two Powers, nearer than 2 marine leagues from the respective possessions of the other.

Pacific Ocean comprehending the  
sea within Behring Straits."

## " ARTICLE II.

" The line which separates the possessions of the two High Contracting Parties upon the continent and the Islands of America to the north-west, shall be drawn in the manner following :—

" Commencing from the two points of the island called ' Prince of Wales Island,' which form the southern extremity thereof, which points lie in the parallel of  $54^{\circ} 40'$ , and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly along the channel called Portland Channel, till it strikes the coast of the continent lying in the 56th degree of north latitude. From this point it shall be carried along that coast, in a direction parallel to its windings, and at or within the seaward base of the mountains by which it is bounded, as far as the 139th degree of longitude west of the said meridian. Thence the said meridian line of 139th degree of west longitude, in its extension as far as the Frozen Ocean, shall form the boundary of the British and Russian possessions on the said Continent of America to the north-west."

## " ARTICLE III.

" It is, nevertheless, understood, with regard to the stipulations of the preceding Article :—

" That the said line of coast on the Continent of America, which forms the boundary of the Russian possessions, shall not, in any case, extend more than marine leagues in breadth from the sea towards the interior, at whatever distance the aforesaid mountains may be.

" 2. That British subjects shall for ever freely navigate and trade along the said line of coast, and along the neighbouring islands.

" 3. That the navigation and commerce of those rivers of the continent which cross this line of coast shall be open to British subjects, as well as those inhabiting or visiting the interior of this continent, as to those coming from the Pacific Ocean, who shall touch at these latitudes.

## " ARTICLE IV.

" The port of Sitka or Nove Arclungelsk shall be, and shall for ever remain, open to the commerce of the subjects of His Britannic Majesty.

## " ARTICLE V.

" With regard to the *other parts of the north-west coast of America*, and of the islands adjacent thereto, belonging to either of the two High Contracting Parties, it is agreed that, for the space of        years from the

April, 1824, their respective vessels, and those of their subjects, shall reciprocally enjoy the liberty of visiting, without hindrance, the gulfs, havens, and creeks of the said coast, in places not already occupied, for the purposes of fishery and of commerce with the natives of the country.

"It being understood:—

"1. That the subjects of either of the High Contracting Parties shall not land at any spot where there may be an establishment of the other, without the permission of the Governor or other authority of the place, unless they should be driven thither by stress of weather or other accidents.

"2. That the said liberty of commerce shall not include the trade in spirituous liquors, in firearms, swords, bayonets, &c., gunpowder, or other warlike stores. The High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or transferred, in any manner whatever, to the natives of the country."

It will be observed that, in this first draft Convention, Article I purported to give to the subjects of each Power—

"the right of free navigation along the whole extent of the Pacific Ocean, comprehending the sea within Behring Straits."

British Case,  
Appendix, vol. ii,  
Part I, p. 66.

It was suggested by Count Lieven, in a Memorandum communicated to Mr. G. Canning in July, 1824, that the Imperial Government might hesitate to admit this condition—

"sans en modifier l'énoncé actuel pour ne point exposer les côtes de ses possessions Asiatiques dans la Mer Glaciale aux inconvéniens qui pourraient naître de la visite des bâtimens étrangers."

British Case, p. 16.

The objection, therefore, related wholly to Behring Strait and the Russian Asiatic possessions beyond them, and not to Behring Sea.

With reference to Count Lieven's objection, Mr. Canning on the 24th July, 1824, wrote:—

Ibid., Appendix,  
vol. ii, p. 66.

Shutting up of Behring Straits not  
to be tolerated by England.

"The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner; but the shutting up of Behring's Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England. Nor could we submit to be excluded, either positively or constructively, from a sea in which the skill and science of our seamen has been (and is still) employed in enterprises interesting not to this country alone, but to the whole civilized world."



It cannot be supposed that Mr. Canning, while insisting upon the freedom of Behring Strait and the Arctic Ocean, was at the same time conceding to Russia the right to exclude vessels from the non-territorial waters of Behring Sea.

In August, 1824, the Russian Plenipotentiaries delivered to Sir C. Bagot a "Contre-Projet," containing the following Articles :—

" ARTICLE V.

" Les Hautes Puissances Contractantes stipulent en outre que leurs sujets respectifs navigeront librement, sur toute l'étendue de l'Océan Pacifique, tant au nord qu'au sud, sans entrave quelconque, et qu'ils jouiront du droit de pêche en haute mer, mais que ce droit ne pourra jamais être exercé qu'à la distance de 2 lieues marines des côtes ou possessions, soit Russes, soit Britanniques.

British Case, Appendix, vol. ii, Part I, p. 69.

" ARTICLE VI.

" Sa Majesté l'Empereur de Toutes les Russies, voulant même donner une preuve particulière de ses égards pour les intérêts des sujets de Sa Majesté Britannique et rendre plus utile le succès de entreprises, qui auraient pour résultat de découvrir un passage au nord du Continent Américain, consent à ce que la liberté de navigation mentionnée en l'Article précédent s'étende sous les mêmes conditions, au Détroit de Behring et à la mer située au nord de ce détroit."

Ibid., p. 70.

The negotiations, however, were broken off, as reported by Sir C. Bagot, who wrote that on certain points differences had arisen which appeared to be irreconcilable.

Ibid., p. 67.

One of the points on which the Russian Plenipotentiaries refused to yield was the proposal, embodied in Article V of the British "Projet," in so far as it permitted British subjects to visit, for a stated period, the gulfs, havens, and creeks in places not already occupied on the north-west coast of America from 60° north latitude to Behring Straits. This coast they declared to be the absolute and undisputed territory of his Imperial Majesty, and they added that it was not the intention of His Imperial Majesty to grant to any Power whatever for any period of time the liberty which was required.

But the stipulation for the free navigation of the high seas, which was afterwards embodied in Article I of the Treaty, was not one of the points upon which differences arose, and the Russian Plenipotentiaries do not appear to have raised any

Russia does not object to British "Projet" on ground of exception rights in Behring Sea.

objection to the British proposal, on the ground that Russia possessed exceptional rights over the non-territorial waters of Behring Sea.

Article VI of their "Contre-Projet" indicates that they had no claim to exclude foreign vessels from waters south of the Arctic Ocean and Behring Strait. This Article purports, as a concession, to waive any such rights in respect of the last-mentioned ocean and strait, but Behring Sea is not named.

British Case,  
Appendix,  
vol. II, Part I,  
p. 68.

Sir C. Bagot, on the suspension of the negotiations, reminded the Russian Plenipotentiaries that the claim to maritime jurisdiction assumed by Russia in the Pacific, which he had hoped to see revoked in the simplest and least unpleasant manner, by mixing it with a general adjustment of other points, remained, by the breaking off of the negotiations, still unretreated; and that his Government would probably be of opinion that, upon that part of the question, some arrangement must nevertheless be entered into.

Ibid.

With reference to the sixth Article of the "Contre-Projet," he wrote as follows:—

"I gave the Russian Plenipotentiaries distinctly to understand that neither His Majesty's Government nor those of the other Maritime Powers of the world would, as I thought, be likely to accept the free navigation of Behring Strait as a concession on the part of Russia."

United States'  
Case, p. 55.

In the United States' Case great stress is laid upon the fact that Russia, after the execution of the Treaty with the United States, and before the conclusion of the Treaty with Great Britain, sought to place an interpretation upon the former Treaty which is not in accord with the interpretation now put upon it by Great Britain. This interpretation is contained in a Report, dated the 21st July, 1824, of the Conference of a Special Committee of certain Russian dignitaries, which Conference had been brought together for the purpose of replying to certain questions raised by the Russian-American Company upon the Treaty.

Conference of Russian dignitaries.

Appendix, vol. I,  
p. 32 *et seq.*

This document has been produced for the first time in the United States' Case. It is in no sense an international document. Further, the questions put by the North American Company, to which it purports to be an answer, are not produced.

Moreover, the translation of the Report cited in the United States' Case is inaccurate in most

important particulars. The translation given in the United States Case is as follows; the words appearing between brackets being simple interpolations:—

United States' Case, pp. 54, 55. (For revised translation, see Appendix, vol. i, p. 34.)

7. That since the sovereignty of Russia over the shores of Siberia [AND AMERICA], as well as over the Aleutian Islands [AND THE INTERVENING SEAS], has long since been acknowledged by all Powers, these coasts, islands [AND SEAS] just named could not have been referred to in the Articles of the above-mentioned Convention, which latter concerns only the disputed territory on the north-west coast of America and the adjoining islands, and that in the full assurance of such undisputed right Russia, has long since established permanent Settlements on the coast of Siberia, as well as on the chain of the Aleutian Islands; consequently, American subjects could not, on the strength of Article II of the Convention of the 5th (17th) April, have made landings on the coast, or carried on hunting and fishing without the permission of our Commanders or Governors. These coasts of Siberia and of the Aleutian Islands are not washed by the Southern or Pacific Ocean, of which mention is made in Article I of the Convention, but by the Arctic Ocean and the Seas of Kamchatka and Okhotsk, which, on all authentic Charts and in all geographies, form no part of the Southern or Pacific Ocean.

From this Report, it may be gathered that the two following points had been raised by the Company:—

1. It was thought that Article I of the Convention permitted citizens of the United States to resort to the coast upon points not already occupied upon the shores of Siberia and the Aleutian Islands for the purpose of trading with the natives.

2. The Company desired to confine the right of fishing and trading, granted to the United States for ten years by Article IV, to the coast south of Cross Sound.

It was to meet the first of these points that the argument that Behring Sea is not part of the Pacific Ocean, or South Sea, was for the first time suggested in the above Report.

Upon the second point, the Committee expressed the opinion that Yakutat or Behring Bay was situated—

Revised translation, Appendix, vol. i, p. 35.

“in a latitude [59° 30' north] where the rights of Russia have never formed a subject of dispute, and that this important circumstance permits us to include it in the general declaration concerning the Aleutian Islands and the other northern places.”

Revised translation, Appendix  
vol. 1, p. 35.

As to Cross Sound, the Committee agreed that as it lies under the 57th degree of north latitude, and consequently within the limits of those islands and regions to which Russia's right of sovereignty has been disputed, it is impracticable to apply the same rule.

Accordingly, on the suggestion of the Committee, Baron Tuiyll, Russian Minister at Washington, was instructed by his Government to propose to Mr. Adams that Cross Sound should be the northern limit, to which the right of fishing and trading for the stipulated period of ten years should be confined.

No copies, however, are forthcoming of the instructions given by the Russian Government to Baron Tuiyll, nor are any copies of the despatches from the Baron to his Government, or the subsequent reports of the result of the negotiations, now produced. What actually took place between Baron Tuiyll and Mr. Adams is best told by quotation from Mr. Adams' diary.

Mr. Adams' account of this transaction is as follows:

Memoirs of J. Q. Adams, vol. vi, p. 435.

6th, Monday.—Baron Tuiyll, the Russian Minister, wrote me a note requesting an immediate interview, in consequence of instructions received yesterday from his Court. He came, and, after intimating that he was under some embarrassment in executing his instructions, said that the Russian-American Company, upon learning the purport of the north-west Coast Convention concluded last June by Mr. Middleton, were extremely dissatisfied ('a jeté de hauts cris'), and, by means of their influence, had prevailed upon his Government to send him these instructions upon two points. One was, that he should deliver, upon the exchange of the ratifications of the Convention, an explanatory note, purporting that the Russian Government did not understand that the Convention would give liberty to the citizens of the United States to trade on the coast of Siberia and the Aloutian Islands. The other was, to propose a modification of the Convention, by which our vessels should be prohibited from trading on the North-west Coast north of latitude 57°. With regard to the former of those points, he left with me a minute in writing.

"I told him that we should be disposed to do everything to accommodate the views of his Government that was in our power, but that a modification of the Convention could be made no otherwise than by a new Convention, and that the construction of the Convention as concluded belonged to other Departments of the Government, for which the Executive had no authority to stipulate; that if on the exchange of the ratifications he should deliver to me a note of the purport of that which he now informally

gave me, I should give him an answer of that import, namely, that the construction of treaties depending here upon the judiciary tribunals [the Executive Government, even if disposed to acquiesce in that of the Russian Government as announced by him, could not be binding upon the Courts, nor upon this nation.]\* I added that the Convention would be submitted immediately to the Senate; that if anything affecting its construction, or, still more, modifying its meaning, were to be presented on the part of the Russian Government before, or at the exchange of, ratifications, it must be laid before the Senate, and could have no other possible effect than of starting doubts, and perhaps hesitation, in that body, and of favouring the views of those, if such there were, who might wish to defeat the ratification itself of the Convention. This was an object of great solicitude to both Governments, not only for the adjustment of a difficult question, which had arisen between them, but for the promotion of that harmony which was so much in the policy of the two countries, which might emphatically be termed natural friends to each other. If, therefore, he would permit me to suggest to him what I thought would be the best course, it would be to wait for the exchange of the ratifications, and make it purely and simply; that afterwards, if the instructions of his Government were imperative, he might present the note, to which I now informed him what would be in substance my answer. It necessarily could not be otherwise. But if his instructions left it discretionary with him, he would do still better to inform his Government of the state of things here, of the purport of our conference, and of what my answer must be if he should present the note. I believed his Court would then deem it best that he should not present the note at all. Their apprehensions had been excited by an interest not very friendly to the good understanding between the United States and Russia. Our merchants would not go to trouble the Russians on the coast of Siberia, or north of the 57th degree of latitude, and it was wisest not to put such fancies into their heads. At least, the Imperial Government might wait to see the operation of the Convention before taking any further step, and I was confident they would hear no complaint resulting from it. If they should, then would be the time for adjusting the construction or negotiating a modification of the Convention; and whoever might be at the head of the Administration of the United States, he might be assured that every disposition would be cherished to remove all causes of dissatisfaction, and to accommodate the wishes and the just policy of the Emperor.

\* The Baron said that these ideas had occurred to himself; that he had made this application in pursuance

\* This passage does not appear in Mr. Blaine's quotation from Mr. Adams' diary (United States' Case, Appendix, vol. i, p. 277). It is important, inasmuch as it indicates that the United States' Government were not disposed to acquiesce in the proposed construction of the Treaty.



of his instructions, but he was aware of the distribution of powers in our Constitution, and of the incompetency of the Executive to adjust such questions. He would therefore wait for the exchange of the ratifications without presenting his note, and reserve for future consideration whether to present it shortly afterwards, or to inform his Court of what he has done, and ask their further instructions upon what he shall definitely do on the subject. He therefore requested me to consider what had now passed between us as if it had not taken place ('non avoué'), to which I readily assented, assuring him, as I had done heretofore, that the President had the highest personal confidence in him, and in his exertions to foster the harmony between the two countries. I reported immediately to the President the substance of this conversation, and he concurred in the propriety of the Baron's final determination."

As will be seen from the above account of the negotiations, no note whatever was presented by Baron Tuyll. In point of fact, it is not clear that any note was ever written. The document produced by the United States, and purporting to be a copy of the note, is headed "Note explicative à présenter," and would appear to be nothing more than a draft Minute of a note. The following is the text of this draft note:—

Appendix, vol. i,  
p. 63

"Note explicative à présenter au Gouvernement des États-Unis lors de l'échange des ratifications dans le but d'écartier d'autant plus sûrement tout motif de discussions futures, au moyen de laquelle note on reconnoitroit positivement exceptées de la liberté de chasse, de pêche, et de commerce, stipulée en faveur des citoyens des États-Unis pour dix ans, les Iles Aleutiennes, les côtes de la Sibirie, et en général les possessions Russes sur la côte nord-ouest de l'Amérique jusqu'au 59° 30' de latitude nord.

"Il parait que ceci n'est qu'une conséquence naturelle des stipulations arrêtées, car les côtes de la Sibirie sont baignées par la Mer d'Ochotok, la Mer de Kamtschatka, et la Mer Glaciale, et non par la Mer du Sud mentionnée dans l'Article I<sup>er</sup> de la Convention du 5 (17) Avril. C'est aussi par la Mer du Kamtschatka ou l'Océan du Nord, que sont baignées les Iles Aleutiennes.

"L'intention de la Russie n'est point d'entraver la libre navigation de l'Océan Pacifique. Elle se bornerait à faire reconnoitre comme bien entendu et placé à l'abri de toute espèce de doute le principe, que depuis le 59° 30' aucun vaisseau étranger ne pourrait approcher de ses côtes et ses îles, ni y faire la chasse ou la pêche qu'à la distance de 2 lieues marines. Ce qui n'empêchera pas d'accueillir les bâtimens étrangers avariés ou battus par la tempête."

It is stated in Mr. Blaine's despatch of the 17th December, 1890, that this Minute or Memorandum



dum was not presented at the time of the exchange of ratifications, but was communicated a fortnight afterwards. It does not appear to have received any acknowledgment or reply, and the whole proceedings seem to have been entirely informal.

In any case, neither here, nor in the conversation with Mr. Adams above referred to, did Baron Tuyl suggest that Behring Sea was closed, or that his Government claimed a margin of 100 miles from the shores. His argument was that the Treaty did not apply to that sea, and that the United States were remitted there to the ordinary rights of independent nations on the high seas. What he says as to the reception of ships in distress assumes that ships will be passing; and the 2 leagues is treated as the limit of territorial jurisdiction.

To the above may be added the account of the same transaction which is given by the Russian writer, Tikhmenieff:—

"As the Convention had not yet been ratified, the Emperor, on the representation of the Company that they would be injured by that part of the Convention to which we have referred, ordered inquiry to be made into the matter by a Special Commission. In the Protocol of the Commission, which was approved by the Emperor, it was declared, *inter alia*, that the provision of the Convention granting to the citizens of the United States the right to fish in the waters of the Colony, and to trade with the inhabitants of the coast, must not be understood as giving them a right to approach the coast of Eastern Siberia, and the Aleutian and Kurile Islands, which had long been recognized by the other Powers as being under the exclusive dominion of Russia, and that that provision only applied to the disputed territory on the north-west coast of America, between 54° 40' and 57°.

"In consequence of this declaration the Head of the Foreign Office and the Commission were of opinion that in order to safeguard the rights of the Company, and to obviate the possibility of the Convention being wrongly interpreted, the Russian Minister to the United States should be instructed to make a formal explanatory declaration on the occasion of the exchange of the ratifications of the Convention. The Minister reported that he did not see his way to carrying out these instructions, and that the only way in which he could explain the provision in question to the Washington Cabinet was by a verbal note; he added that a formal declaration might give rise to serious disputes, prevent the ratification of the Convention, and produce an effect which was not intended, by arousing suspicions which would otherwise never be entertained." The Convention was accordingly ratified.

Baron Tuyl, while arguing that Behring Sea was unaffected by Treaty, impliedly admits it open to the world.

British Case,  
Appendix, vol. i.  
p. 89.

Upon the subject of the Report of the Committee, and the attempt at negotiation which resulted from it, the following observations arise:

1. That the Russian-American Company were only anxious about trade and fishing on the coast and were not concerned about Behring Sea.

2. That Baron Tuyl did not claim for Russia jurisdiction of any kind over Behring Sea; for he states in his draft note that Russia would be satisfied with a limit of 2 marine leagues to the north of 59° 30'.

3. That the interpretation of the words "Pacific Ocean or South Sea," in Article I of the Convention, upon which the Government of the United States now base their argument, was first suggested after the conclusion of the Convention, and with the express purpose of reconciling the Directors of the Russian-American Company to the terms of that Article.

4. That Mr. Adams declined the overtures of Baron Tuyl and the interpretation desired to be put upon the Treaty, and that the Convention was finally ratified in its original terms, without explanation or modification.

5. That throughout the protests and negotiations which preceded the Treaties of 1824 and 1825, the term "Pacific Ocean" was used to include Behring Sea, and the term "North-west Coast" to include the whole west coast of America from Behring Strait to 51° north latitude.

6. That no distinction is drawn in the Treaty with Great Britain in 1825 between Behring Sea and the rest of the Pacific Ocean, though the attention of the Russian Government had been forcibly called to the point by the remonstrances of the Russian-American Company (upon the conclusion of the Treaty with the United States) to the advisability of excluding certain parts of the coasts of Behring Sea.

It would seem very plain, therefore, that the claim to maritime jurisdiction was the one to which both England and the United States attached importance; that against it their protests, which were emphatic and unqualified, were mainly directed; and that they demanded and obtained not a partial, but a total and unconditional withdrawal of it.

From the considerations referred to in this chapter, it is submitted that the conclusions claimed to have been established in the British Case, as stated at p. 58, are fully supported, and that the further evidence which has been adduced, clearly shows that the Ukase of 1821—the first and only attempt on the part of Russia to assert dominion over, and restrict the rights of other nations in, the non-territorial waters of the North Pacific, including those of Behring Sea—was made the subject of immediate and emphatic protest by Great Britain and by the United States. That thereupon Russia unequivocally withdrew her claims to such exclusive dominion and control.

British Case, p. 58.  
Conclusions.

Russia withdrew her claim to control  
of Behring Sea.

*[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a continuation of the legal argument or a list of references.]*

## CHAPTER III.

HEAD (C).—*The question whether the body of water now known as Bering Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 26—  
 "By which term [north-west coast of the American Continent] it is intended to designate the coast between Prince William Sound and the mouth of the Columbia River."
- (2.) United States' Case, p. 52—  
 "That the term 'Great Ocean, commonly called the Pacific Ocean or South Sea,' used in Article I of the treaty of 1824 with the United States, and the term, 'the Ocean, commonly called the Pacific Ocean,' used in Article I of the Treaty of 1825 with Great Britain, did not apply to and include Bering Sea, is shown by a study of the maps, charts, and writings of navigators at the time of and prior to the negotiation and celebration of those treaties. A list of these maps and charts is appended hereto, and a careful examination of the same is invited. It will be seen from them that the best geographers have at all times distinguished this body of water from the ocean lying south of it by conferring upon it some separate name, in most cases either that of Sea of Kamchatka, Bering Sea, North-eastern Sea, or Eastern Ocean."
- (3.) United States' Case, p. 57—  
 "By the ukase of 1821, Russia had publicly claimed certain unusual jurisdiction both over Bering Sea and over a portion of the Pacific Ocean, yet in the resulting treaties, which constituted a complete settlement of all differences growing out of this ukase, no reference is made to this jurisdiction so far as it related to Bering Sea, although it is expressly and conspicuously renounced as to the Pacific Ocean."
- (4.) United States' Case, p. 58—  
 "It appears from an examination of the correspondence and treaties . . . that the coasts, interior waters, &c., upon and in which the United States and Great Britain were allowed to trade for ten years without restrictions, were limited on the west by Yakutat Bay and Mount St. Elias; that is to say, that this right was restricted to the coast-line, concerning the ownership of which there may have been some possible dispute."  
 • Article IV of the Treaty of 1824, and Article VII of the Treaty of 1825."
- (5.) United States' Case, p. 69—  
 "That the body of water known as Bering Sea was not included in the phrase 'Pacific Ocean,' as used in the treaty of 1825."
- (6.) United States' Case, p. 297—  
 "That Bering Sea was not included in the phrase 'Pacific Ocean' as used in the treaty of 1825."
- (7.) United States' Case, p. 302—  
 "That the body of water now known as Bering Sea was not included in the phrase 'Pacific Ocean,' as used in the treaty of 1825."

## SUMMARY OF BRITISH REPLY.

A more exhaustive collection of Maps and Charts proves that "Pacific Ocean" includes Behring Sea. Not one has been found which, having regard to the relative sizes and positions of the names, is an authority to the contrary. In Charters of the Russian American Company, the Kurile Islands, which lie outside Behring Sea, but in the Pacific Ocean, are said to be in "North-Eastern Ocean," or "North-Eastern Sea"; the identity of which with the Pacific Ocean is thus demonstrated.

Apart from the evidence afforded by Maps, and by the previous negotiations, that the words "Pacific Ocean" in the Treaties included Behring Sea, the same is proved from the Treaties themselves. Both, for ten years, throw open to the subjects of the Contracting Powers the harbours on the north-west coast; which coast is not defined by interpretation clause; and is shown by the preliminary correspondence, and by Article III of the 1825 Treaty, to have reached to Behring Strait. The throwing open of the harbours assumes the right of approach thereto, and refutes the supposition that Behring Sea was closed.

The interpretation of the term "north-west coast" in Contention (1.) is now suggested, without reason assigned, after three other interpretations had been been put forward by the United States, and answered by Great Britain, in the correspondence preceding the Arbitration Treaty. Two of the three do not reappear in the United States' Case; and the survivor which forms Contention (4.) is that "north-west coast" in both Treaties means what is called in the Treaty of 1825 the "lisière." But it did not mean this in the Treaty of 1824; for no "lisière" is mentioned therein, or was in question between the parties. Nor in the Treaty of 1825 could "north-west coast" have meant the "lisière," as the right to use harbours is carefully expressed to be reciprocal, and to apply to both Powers, while the "lisière" was to belong exclusively to Russia. Further, the second Articles of the Treaties bind Russian subjects not to land, without permission, at United States' and British establishments on the "north-west coast."

The above construction of "north-west coast" is confirmed by the use of the term "north-western coast," manifestly to include the east coast of Behring Sea, in a form of Patent prepared by the Russian Government, pursuant to the Slave Trade Treaty of the 20th December, 1841; and by the use of the term "north-west coast" in Treaties of Commerce between Great Britain and Russia, dated the 11th January, 1843, and 12th January, 1859.

With reference to the above-quoted assertions that the terms "Great Ocean, commonly called the Pacific Ocean or South Sea," and "the Ocean, commonly called the Pacific Ocean," as used in the Treaties, are shown by a study of the contemporaneous Maps, Charts, and writings of navigators not to have applied to or to have included Behring Sea, the following observations may be made.

The Maps and Charts, of which a list is given in the Appendix to the United States' Case, are said to prove that—

Contention that geographers exclude Behring Sea from Pacific Ocean.

United States' Case, p. 52.



the best geographers have at all times distinguished that body of water from the ocean lying south of it by conferring upon it some separate name.

United States' Case, Appendix, vol. i, p. 265.

This list of Maps is the list inclosed by Mr. Blaine to Sir Julian Pauncefote in his letter of the 17th December, 1890, with a statement that it represented—

“a large proportion of the most authentic maps published during ninety years prior to 1825 in Great Britain, in the United States, the Netherlands, France, Spain, Germany, and Russia.”

Mr. Blaine's list of Maps very incomplete.

Appendix, vol. i, pp. 86 *et seq.*

A criticism of this list of Maps will be found in the Appendix to this Counter-Case. It is sufficient here to point out that the list is very incomplete, and that a great many Maps which should undoubtedly have come to the notice of the compiler are omitted therefrom, as in some cases but a single Map is quoted from an Atlas containing other Maps so marked as to tally against the contention which it is endeavoured to maintain.

and position of names on Maps to be considered.

Neither has any attention been paid by the compiler of the list to the relative sizes of the characters in which the names quoted by him appear on the Maps cited, nor to the positions which these names occupy. An examination of these points, on such of the Maps included in the list as have been obtained in identical editions, show, in fact, that in a large proportion of instances the names Sea of Kamitchaika, &c. mentioned in quoted Contentions, are so placed as to refer merely to limited portions of the body of water now known as Behring Sea.

any authentic Maps give Behring Sea no distinctive name.

*Ibid.*, vol. i, p. 94.

A list of Maps contained in the Appendix to this Counter-Case, in the compilation of which no special selection has been made other than that relating to their date of publication, appears in fact to show that in more than half of the authentic Maps relating to the period in question, Behring Sea appeared without any distinctive name.

Though described by Mr. Blaine as showing “the opinion of a large part of the civilized world” during the ninety years prior to 1825, it is therefore submitted that this description is inaccurate.

United States' Case, pp. 53, 35.

It is in the Case of the United States further affirmed that the term “North-eastern Sea,” or “Eastern Ocean,” is an alternative name for the body of water now generally known as Behring

geographers exclude Pacific Ocean.



Sea. It is necessary on the part of the United States to assume this position, because of the mention made of the "North-eastern Ocean" and "North-eastern Sea" in the first and third Charters of the Russian-American Company, in which these terms are employed in defining the field of the operations of that Company; and the use of the terms mentioned in these Charters is referred to in the Case of the United States as supporting its contention. But on turning to the correct translation of the Charter of 1799, it will be found that the Company is—

*Ante*, p. 11.

"to enjoy the profits of all industries and establishments now existing on the north-eastern coast\* of America, from the aforesaid 55° to Behring Strait, and beyond that strait, as well as on the *Aleutian and Kurile Islands, and the other islands situated in the North-Eastern Ocean.*"

In section 1 of the third Charter, the Russian-American Company is referred to as being—

"established for trading on the continent of North-Western America and on the Aleutian and Kurile Islands, as in every part of the North-Eastern Sea," &c.

United States' Case, p. 28.

The above quotations are destructive of the conclusion endeavoured to be established. It is evident from both passages that the term "North-Eastern Ocean" or "North-Eastern Sea" was employed not as a special designation of Behring Sea, but as a synonym of Pacific Ocean. The Kurile Islands are in the Pacific Ocean, but wholly outside Behring Sea.

"North-Eastern Sea" (or Ocean) means Pacific Ocean, as is proved by inclusion of Kurile Islands therein.

With regard to the alternative term "Eastern Ocean," two authorities are quoted in the Case of the United States with the object of showing that by this name Behring Sea was indicated, viz., "Coxe's Russian Discoveries," and a globe by D. Adams, London, dated 1797. For details respecting these, the Appendix to this Counter-Case must be referred to. It may here be stated, however, that in Coxe's work, "Eastern Ocean" is again found to be a synonym for the Pacific Ocean, and that the names upon the globes published by Adams do not appear to throw any light upon the matter.

"Eastern Ocean" means Pacific Ocean.

From the notes given in the Appendix, the meaning of the term "Eastern Ocean" (which though comparatively seldom used, is to be found on some Maps) is clearly shown to be synonymous with the Pacific Ocean. Attention is particularly

*Ibid.*, pp. 103, 104.

\* See p. 11.

Bays and gulfs of the main sea name, e.g., Bay of Lyons.

Commander Islands the treaty of Ocean.

drawn to the several Russian Maps there enumerated.

British Case, Appendix, vol. iii. "United States No. 1 (1891)." pp. 88, 89.

Any argument founded on the use of a particular name by geographers may be conclusively answered by the following quotation from Lord Salisbury's despatch, dated the 21st February, 1891:—

"But I am not prepared to admit the justice of Mr. Blaine's contention that the words 'Pacific Ocean' did not include Behring Sea. I believe that in common parlance, then and now, Behring Sea was and is part of the Pacific Ocean; and that the latter words were used in order to give the fullest and widest scope possible to the claim which the British negotiators were solemnly recording of a right freely to navigate and fish in every part of it, and throughout its entire extent. In proof of the argument that the words 'Pacific Ocean' do not include Behring Sea, Mr. Blaine adduces a long list of Maps in which a designation distinct from that of 'Pacific Ocean' is given to Behring Sea; either 'Behring Sea,' or 'Sea of Kamschatka,' or the 'Sea of Anadir.' The argument will hardly have any force unless it is applicable with equal truth to all the other oceans of the world. But no one will dispute that the Bay of Biscay forms part of the Atlantic Ocean, or that the Gulf of Lyons forms part of the Mediterranean Sea; and yet in most Maps it will be found that to those portions of the larger sea a separate designation has been given. The question whether by the words 'Pacific Ocean' the negotiators meant to include or exclude Behring Sea depends upon which locution was esteemed to be the correct usage at the time. The date is not a distant one, and there is no ground for suggesting that the usage has changed since the Anglo-Russia Treaty of 1825 was signed. The determination of this point will be most satisfactorily ascertained by consulting the ordinary books of reference. I append to this despatch a list of some thirty works of this class, of various dates, from 1795 downwards, and printed in various countries, which combine to show that, in customary parlance, the words 'Pacific Ocean' do include Behring Sea."

Appendix, vol. i, pp. 86 et seq.

The list referred to in the above quotation has been greatly increased, and is printed in an Appendix to this Counter-Case. The special attention of the Arbitrators is invited to the language of the various authors cited, which leaves no doubt whatever but that, at the date of the Treaty, Behring Sea was, as it still is, regarded by geographers as part of the Pacific Ocean.

British Case, Appendix, vol. ii, Part III, p. 4.

Commander Islands are described in the treaty of 1867, as in Pacific Ocean.

The language of the Treaty of Cession of Russia to the United States in the year 1867 is entirely in accordance with the contention of Her Majesty's Government; for in that document,

Bays and gulfs are none the less part of the main sea for having a specific name, e.g., Bay of Biscay and Gulf of Lyons.

Sea " for Ocean  
Ocean, as is proved  
of Kurile Island

" means Pacific  
Ocean.

it will be found that the Commander Islands are properly described as being in the Pacific Ocean.

An attempt is, apparently made, in the case of the United States, to support the theory that Behring Sea is a body of water, distinct in its nature, from the Pacific Ocean, by the terms in which the geographical sketch of this sea are set out in the opening pages. The geographical sketch there given, though brief, is, it is submitted, essentially misleading in its character.

On p. 13 of the "United States' Case," the Peninsula of Alaska is described, apparently for the single purpose of stating that in it there are—

"low-lying marshy gaps which form portages used by the natives for carrying their boats across from the Pacific Ocean to Bristol Bay."

As authority for this statement Réclus "Geographic," vol. xv, p. 201, is cited; but, on turning to his work, we find that the passage thus paraphrased actually reads as follows:—

... Les montagnes péennsulaires de l'Alaska sont coupées de distance en distance par des seuils très lins, des portages—en Russe 'perenossi'—que les bateliers pratiquent en effet pour le transport de leurs barques d'un versant à l'autre versant."

Réclus, in fact, makes no mention in this connection of the Pacific Ocean or of Bristol Bay, nor does he convey the impression that Bristol Bay is no part of that ocean.

Respecting the connection of Behring Sea with the main body of the Pacific Ocean, it is further stated in the sketch, with reference to the Aleutian Islands, that—

"the straits or passes separating the islands are of various widths, those in the easterly half being generally narrow and but few of them available for navigation. The most important are Unimak Pass, 11 miles wide, and Amukta or 'Seventy-two' Pass, 42 miles wide."

This again is misleading.

The largest of the Aleutian Islands are near the coast of America. In proceeding westwards they become smaller, and the openings between them wider, until they end at Attu Island, 600 miles from the extremity of the Peninsula of Kamtchatka, and 370 miles from the nearest part of that land. In the Fox Islands, forming the eastern group of the Aleutians, there are

The geographical sketch of Behring Sea in United States' Case, misleading.

United States' Case, p. 13.

00 (196) miles to of Fox Islands 668 are sea.

Examination of

Treaty of 18

only a few straits, the most important being the Unimak, 11 miles wide; but Akutan and Unalga Passes are also navigable.

The following is a list of the openings into Behring Sea

	Geographical Miles
Unimak Pass	18 1/2
Akutan Pass	2 1/2
Unalga Pass	14
Unimak Pass	18 1/2
Adigakh Island (western of Fox Islands) to Kagamil Island	18
Kagamil Island to Chuginadak Island (2 openings)	6
Chuginadak Island to Yunaska Island	15
Yunaska Island to Amukhta Island (2 openings)	11
Amukhta Pass	35
Signum Pass	12 1/2
Anlia Island to Atka Island	14
Atka Island to Iauaga Island (3 openings)	22
Iauaga Island to Ilakh Island	14 1/2
Ilakh Island to Uglidakh Island	9
Amatignak Island to Amchitka Island	50
Amchitka Island to Kyska Island (3 openings)	23 1/2
Kyska Island to Bonidir Island	64
Bonidir Island to Semitchi Islands	52
Semitchi Islands to Atta Island	15
Atta Island to Copper Island	190
Copper Island to Behring Island	26
Behring Island to Kamtchatka	95
Total	684

It is thus seen that, on the southerly limit of Behring Sea, from the western end of the Fox Islands to the coast of Asia, a distance of some 1,060 geographical miles, there are about 660 miles of sea, being nearly two-thirds of the entire distance.

Having shown in the last Chapter that the whole sea area comprised in the Ukase of 1821 was, from first to last, without exception of Behring Sea, the subject of the negotiations resulting in the Treaties of 1824 and 1825; and having now shown that, by the usage of geographers, the term "Pacific Ocean" includes Behring Sea, it is of importance to examine the Treaties themselves.

The first is that between the United States and Russia. By Article I, it is agreed that in any part of the Pacific Ocean the citizens or subjects of the two Powers are not to be disturbed in navigation or fishing, or in resorting to the coasts, on unoccupied

Behring Sea  
misleading.

1,060 miles between Western end of Fox Islands and coast of Asia 668 are sea.

Examination of Treaties of 1824 and 1825.

Treaty of 1821 summarized.

British Case, p. 52.  
The original text is in Appendix, vol. 6 Part III, p. 17.

points, for the purpose of trading with the natives. By Article II, United States' citizens are not to resort to any point where there is a Russian establishment, without permission; nor are Russian subjects to resort without permission to any establishment of the United States on the north-west coast. By Article III, establishments are not to be formed on the north-west coast of America, by United States' citizens to the north, or by Russian subjects to the south, of latitude 54° 40'. By Article IV, during a term of ten years, the ships of both countries may reciprocally frequent the interior seas, gulfs, harbours, and creeks upon the coast mentioned in the preceding Article, for fishing and trading with the natives.

The effect of Article IV, as far as United States' citizens are concerned, is that they may for ten years frequent the interior seas, &c., on that part of the north-west coast assigned to Russia. The liberty to do this assumes that the outer seas, which afford access to the interior seas, are not closed. If, then, the north-west coast includes the coast of Behring Sea, neither that sea, as a whole, nor a margin of 100 miles, was closed. The supposition that it was closed necessitates a restricted interpretation of the term "north-west coast": a necessity to which the United States' Government and their advisers have shown themselves fully alive.

It is proved in the British Case, by numerous extracts from the correspondence which preceded the Treaties, that the words "north-west coast" were used, throughout the negotiations, to include not less than the whole of the North American coast from Behring Strait to latitude 51° north.

On what the definition of "north-west coast" in Contention (1.) is founded, the United States' Case does not explain. If the framers of the Treaty of 1824 had meant to limit this very general term to the coast between Prince William Sound and the Columbia River, an interpretation clause might have been expected. Perhaps more need not be said of this definition than that it is produced now, after three other interpretations of the term in dispute had been put forward by the United States in the correspondence preceding the Arbitration Treaty, and answered by the British Government.

In a despatch to Sir J. Pakenfote, dated the 30th June, 1890, Mr. Blaine criticizes the Treaties of 1824 and 1825, and says it is "plain" that they

If "north-west coast" includes Behring Sea coast, Behring Sea is in Pacific Ocean.

British Case, p. 60.

"North-west coast" was used throughout preliminary negotiations to include coast from Behring Strait to latitude 51° north.

Definition in Contention (1.) propounded after three others had been answered in correspondence.

On the 30th June, 1890, Mr. Blaine thought it "plain" that "north-west coast" was only from 50° to 60° north latitude.

But on the included

Contention (1) coast" to in Treaty

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Great Britain Article IV with its recy to north-west

But the "British



British Case, Appendix, vol. iii. "United States No. 2 (1890)," No. 497, p. 504.  
 But on the 17th December, 1890, he included eight more degrees.

Ibid., "United States No. 1, (1891)," No. 37, p. 38.

Contention (4) limits "north-west coast" to the "lisière" as defined in Treaty of 1825.

But the "lisière" is not mentioned in Treaty of 1824; nor had its final limits been proposed; and negotiations for Treaty of 1825 had been suspended.

Great Britain proposes to adopt Article IV of American Treaty, with its *reciprocal* liberty of access to north-west coast.

British Case, Appendix, vol. ii, Part I, p. 74.

But the "lisière" was to belong to Russia.

both limited the "north-west coast" to the coast between 50° and 60° north latitude. But in another, dated the 17th December, 1890, where he discusses the meaning of "Pacific Ocean" and "north-west coast" at length, observing that the dispute as to the former phrase "prominently involves" the meaning of the latter, he contends that "north-west coast" means the coast from 42° to 60° north latitude. Neither contention has been thought worthy of insertion in the United States' Case.

The remaining interpretation has survived in the form of Contention (4.). The coast-line therein referred to is plainly the "lisière" defined in the Treaty of 1825. This is the narrow strip of coast from 56° north latitude to the point of intersection of the 141st degree of west longitude. But that the words "north-west coast," as used in the Treaty of 1824, do not mean the "lisière" so defined, is evident from this one consideration; that the limits of that "lisière," finally adopted, and embodied in the Treaty of 1825, had not even been proposed when the Treaty of 1824 was signed; and all negotiations between great Great Britain and Russia had been suspended. This Treaty bears date the 17th April, 1824, and naturally contains no mention of any "lisière." A "lisière" had been under discussion between the British and Russian Governments, of which the boundaries were from time to time variously defined by "projet" and "contre-projet"; but no one of these definitions had taken the shape finally agreed on, even as late as the 8th December, 1824, when Mr. G. Canning wrote to Mr. S. Canning as follows:—

"We are content also to assign the period of ten years for the *reciprocal* liberty of access and commerce with each other's territories, which stipulation may be best stated precisely in the terms of Article IV of the American Convention."

This shows that Mr. Canning did not understand the term "north-west coast" to be confined to the "lisière," the proposals relating to which had one unvarying condition, namely, that it was to belong to Russia. Had the term been so confined, the careful provision of Article IV, that "the ships of both Powers, or which belong to their citizens or subjects *respectively*, may *reciprocally* frequent, without any hindrance whatever, the

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 correspondence.

1890, Mr. Blaine  
 a" that "north-  
 only from 50° to



interior seas," &c., becomes meaningless as far as any advantage to Russia is concerned. Further, Article II concludes thus:—

"Reciprocally, the subjects of Russia shall not resort, without permission, to any establishment of the United States upon the north-west coast."

Passing now to the Treaty of 1825, Mr. Blaine, in the despatch of the 17th December, 1890, above mentioned, says:—

"I quote the first Articles of each Treaty, for, to all intents and purposes, they are identical in meaning, though differing somewhat in phrase."

If, then, the considerations set forth above have any weight as showing that, in the first Treaty, "Pacific Ocean" includes Behring Sea, they have the same weight as showing that, in the second Treaty, "Pacific Ocean" includes Behring Sea.

Article II, likewise, is in substantially the same form in each Treaty, that of 1825 concluding thus:—

"Russian subjects shall not land without permission at any British establishment on the north-west coast."

Therefore, "north-west coast" here, too, cannot mean the "lisière."

Article III, in the original French, begins:—

"La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du continent et les îles de l'Amérique nord-ouest, sera tracée ainsi qu'il suit:—"

The line is then defined. It runs from an initial point, described as being situated in 54° 40' north latitude, to the Arctic Ocean.

Article IV defines the boundary between the narrow strip of coast already referred to as allotted to Russia and the British possessions. The strip is described as—

"la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie."

Articles V and VI both distinguish between "côte" and "lisière."

Article VII closely corresponds with Article IV of the first Treaty, being, as Mr. Blaine says (here agreeing with Mr. Canning), "practically a repetition" of it. According to Contenton (4.), the right given by both Articles to frequent harbours refers, not to the whole coast mentioned in Article

Further, Article II of American Treaty gives Russian subjects access to United States establishments on north-west coast.

Mr. Blaine says first Articles of each Treaty are identical.

British Case, p. 53.  
For the original text, see Appendix, vol. ii, Part III, p. 2.

British Case, Appendix, vol. iii.  
"United States No. 1 (1891)," p. 38.

Therefore, if one includes Behring Sea, the other does.

Article II of 1825 Treaty speaks of British establishments on "north-west coast," proving that that coast was not confined to the "lisière."

British Case, Appendix, vol. iii.  
"United States No. 2 (1890)," p. 504.

Mr. Blaine agrees with Mr. Canning that Article VII of British Treaty is "practically a repetition" of Article IV of American Treaty.

Meaning of

Greenhow's  
British

Slave Trade

III, but to the "lisière." But the word used in Article VII is "rôte," not "lisière"; and the effect of Contention (4.) is to destroy the reciprocal character of that Article.

Recurring to the expression "north-west coast" or "north-west coast of America," it is rarely that the expression in either form is found as a geographical term, or that its precise signification is specially defined in words. One instance is the definition given by Greenhow, and quoted at p. 66 of the British Case, which corresponds precisely with the position maintained by Great Britain. The term is not often found on Maps, but a somewhat extended examination of these has resulted in the discovery of a few instances of its use, at dates both before and after that of the Treaty of 1825. From an inspection of these Maps, it is quite apparent that the expression was employed in a very lax and general sense, and without precision of meaning in respect to lines of latitude and longitude.

Moreover, the words "North-west coast of America" will be found in the following instances to have been used by Russia and the United States for the purpose of defining international relations under circumstances which make it evident that they were understood by the Contracting Parties as including the eastern coasts of Behring Sea.

For instance, by Treaty of the 20th December, 1841, between Great Britain, Austria, France, Prussia, and Russia, for the suppression of the Slave Trade, it is provided (Article IV) that—

"in no case shall the mutual right of search be exercised upon the ships of war of the High Contracting Parties."

By section 8 of Annex (II) to that Treaty, "Instructions to Cruizers," this exemption is extended to vessels of the Russian-American Company, and such vessels are to have a Russian Patent, "which shall prove their origin and destination." The form of Patent, which is set out in Hertslet's Commercial Treaties, recites this section, and proceeds:—

"Upon this ground the Administration of the Russian-American Company, being about to dispatch their ship named \_\_\_\_\_, built in the year \_\_\_\_\_, of \_\_\_\_\_ tonnage, and commanded by \_\_\_\_\_ to the North-Western coast of America to the colonies

Meaning of "north-west coast"

British Case, p. 66  
*et seq.*

Greenhow's definition agrees with  
British construction.

Appendix, vol. i,  
pp. 105-109.

Slave Trade Treaty of 1841.

Hertslet's  
Commercial  
Treaties, vol. vi,  
p. 5.  
*Ibid.*, p. 19.

*Ibid.*, p. 956.

settled there, with the right to enter all ports and harbours, which necessity may require, considers it conformable to the above cited Article of the Instruction, that besides the patent authorizing the hoisting of the Russian flag by merchant-ships in general, the said vessel of the Company should be provided with this special patent to secure her against the visit of the cruisers of the Contracting Powers."

This is a document prepared by the Russian Government which, under the term "North-western coast," plainly includes the eastern coast of Behring Sea; for if not it must have been intended that a vessel bound for the eastern coast of that sea was not to have a Patent, and was to be exposed by its Government to the risk of search, though the Treaty authorized its exemption.

The Treaty of the 11th January, 1843, between Great Britain and Russia (Article XII) says--

"It is understood that, in regard to commerce and navigation in the Russian possessions on the *north-west coast of America*, the Convention concluded at St. Petersburg, on the 16th (28th) February, 1825, continues in force."

The presumption is strong that "North-west coast" in 1843 meant exactly what "North-western coast" meant when used by Russia in 1841.

The Treaty of the 12th January, 1859, between Great Britain and Russia (Article XIX) says--

"In regard to commerce and navigation in the Russian possessions on the *North-West Coast of America*, the Convention concluded at St. Petersburg on the 16th (28th) February, 1825, shall continue in force."

By Article XXII this Treaty lasts for ten years (therefore till after 1867).

It cannot be denied that subsequently to this Treaty (as well as before), and down to the year 1867 (the date of the cession of Alaska to the United States), vessels carrying the British flag were, without let or hindrance from Russia, navigating, fishing, and trading in the waters of Behring Sea.

Further evidence that no distinction was drawn by the United States' Government between the coasts of Behring Sea and those of the rest of the Pacific is afforded by the Notice which is referred to at p. 59 of the United States' Case, and is printed in full in United States' Appendix, vol. i, p. 91. The Notice which was published on

In this Treaty, "North-western Coast" includes coast of Behring Sea.

Hertslet's  
Commercial  
Treaties, vol. vi,  
p. 767.

Treaty of 1843.

Ibid., vol. x,  
p. 1063.

Treaty of 1859.

British vessels navigated Behring Sea without hindrance throughout the Russian domination in Alaska.

United States'  
Case, p. 59.  
Appendix, vol. i,  
p. 91.

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A Notice by the United States in 1845 assumes that the Treaty of 1824 includes the whole Russian-American coast north of latitude 54° 40'.

the 26th September, 1845, at the request of Russia by the United States' Government, is as follows :--

"The Russian Minister at Washington has informed the Secretary of State that the Imperial Government, desirous of affording official protection to the Russian territories in North America against the infractions of foreign vessels, has authorized cruizers to be established for this purpose along the coast by the Russian-American Company.

"It is, therefore, recommended to American vessels to be careful not to violate the existing Treaty between the two countries, by resorting to any point upon the Russian-American coast where there is a Russian establishment, without the permission of the Governor or Commander, nor to frequent the interior seas, gulfs, harbours, and creeks upon that coast at any point north of the latitude of 54° 40'."

It is clear that this Notice was not intended to apply only to so much of the Russian-American coast as lies between latitude 60° or latitude 59° 30', or any other particular point, and latitude 54° 40'.

Its real object was to remind the subjects of the United States of the provisions of the Treaty of 1824 which restrained their right to visit places on the Russian-American coast where there were Russian establishments, without the permission of the Governor.

The Case of the United States further invites attention upon this point to—

"the express declarations of the Russian Government on the subject during the negotiations, and after the Treaties had been celebrated."

Two quotations are given in this connection from the correspondence of the Russian-American Company.

The sense of the first quotation from a letter from the Russian Minister of Finance to the Board of the Russian-American Company of the 18th July, 1822, is seriously altered by an interpolation :—

"The Rules to be proposed will probably imply that it is no longer necessary to prohibit the navigation of foreign vessels for the distance mentioned in the Edict of 4th September, 1821, and that we will not claim jurisdiction over coastwise waters beyond the limits accepted by any other Maritime Power FOR THE WHOLE OF OUR COAST FACING THE OPEN OCEAN. OVER ALL INTERIOR WATERS, HOWEVER, AND OVER ALL WATERS ENCLOSED BY RUSSIAN TERRITORY SUCH AS THE SEA OF

United States' Case, p. 53.

Documents cited to show Russian assertions of control over Behring Sea, prove none, interpolations expunged.

United States' Case pp. 53, 54. (For revised translation, see Appendix, vol. i, p. 26.)

h-western Coast of Behring Sea.

f 1813.

f 1859.

gated Behring Sea ce throughout the tion in Alaska.

OKHOTSK, BERING SEA, OR THE SEA OF KAMCHATKA,  
AS WELL AS IN ALL GULFS, BAYS, AND ESTUARIES WITHIN  
OUR POSSESSIONS, THE RIGHT TO THE STRICTEST CONTROL  
WILL ALWAYS BE MAINTAINED.]”

By the introduction of the words “facing the open ocean,” and the addition of the concluding sentence, a passage which completely supports the view of Her Britannic Majesty’s Government, has become the foundation-stone upon which the contrary argument of the United States is based.

The second quotation in support of the United States’ contention is taken from the Report of the Committee which considered the effect of the Treaty between Russia and the United States. This has been already dealt with at pp. 33-35; and it is only necessary here to repeat the opening sentence of the quotation with its interpolations:—

United States’  
Case, pp. 54, 55.  
(For revised trans-  
lation, see Ap-  
pendix, vol. i,  
p. 34.)

“Since the sovereignty of Russia over the shores of Siberia [AND AMERICA], as well as over the Aleutian Islands [AND THE INTERVENING SEAS], has long since been acknowledged by all Powers.”

The passage read without the interpolations materially helps the British contention.

From the facts and argument advanced in this chapter, it is submitted that it is established—

(a.) That the Conventions of 1824 and 1825 declared and recognized the rights of the subjects of Great Britain and the United States to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend.

(b.) That the body of water now known as the Behring Sea was included in the phrase “Pacific Ocean,” as used in the Treaty of 1825 between Great Britain and Russia; and

(c.) That the constructions placed on the term “North-west coast” or “North-west coast of America” in the Case of the United States are unsound.

Conclusions.

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## CHAPTER IV.

HEAD (D).—*The user of the Waters in question  
from 1821 to 1867.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 40—  
"The Pribiloff Islands, the home of the Alaskan seal herd, are situated less than 200 Italian miles from the Aleutian Chain on the south, and thus a sufficient portion of the eastern half of Bering Sea was covered by the Ukase to enable Russia to protect the herd while there."
- (2.) United States' Case, p. 57—  
"The burden is thus placed upon Great Britain to show that this jurisdiction, recognized in the year 1825 to exist, has been lost. It is not claimed that it was exercised for all purposes. Russia never sought to prevent vessels from passing through Bering Sea, in order to reach the Arctic Ocean; nor did she always strictly enforce the prohibition of whaling within the distance of 100 miles from its shores; but, so far as the fur-seals are concerned, it will be made to appear in what follows that the jurisdiction in question was always exercised for their protection."
- (3.) United States' Case, p. 61—  
"There is found positive confirmation that by the treaties of 1824 and 1825 Russia did not surrender her claim to exclusive control of trade, and especially of the fur industry, in Bering Sea, in the fact that the same control over the waters of that sea was enforced after the date of those treaties as before."
- (4.) United States' Case, p. 69—  
"Third. That after said treaty of 1825 the Russian Government continued to exercise exclusive jurisdiction over the whole of Bering Sea up to the time of the cession of Alaska to the United States, in as far as was necessary to preserve to the Russian-American Company the monopoly of the fur-seal industry, and to prohibit the taking on the land or in the water by any other persons or companies of the fur-seals resorting to the Pribiloff Islands.  
"Fourth. That before and after the treaty of 1825, and up to the date of the cession of Alaska to the United States, British subjects and British vessels were prohibited from entering Bering Sea to hunt fur-seals, and that it does not appear that the British Government ever protested against the enforcement of this prohibition."
- (5.) United States' Case, p. 73—  
"It has also been seen that the great source of wealth of the Russian-American Company was the fur-seals of the Pribiloff Islands in Bering Sea, and that so jealously was this source of wealth guarded by the orders and authority of the Imperial Government that foreign vessels were prohibited from hunting seals in any part of Bering Sea, or in the passes of the Aleutian Islands; and that for the enforcement of this prohibition cruizers were employed in patrolling that sea so long as it remained Russian territory."



## SUMMARY OF BRITISH REPLY.

The burden cannot lie on Great Britain of proving that a jurisdiction never acquired by Russia, or recognized by other nations, has been lost.

Russia showed no forbearance in not putting a stop to whaling. In 1846, her Foreign Minister wrote: "We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America."

By the Treaties, Russia did surrender her paper claim to the exclusive control of trade in Behring Sea. The Charters afterwards granted to the Russian-American Company, like that which had been granted in 1799, only purported to give this Company privileges to the exclusion of other Russian subjects. No Charter but that of 1821 affects to exclude foreigners.

The great source of that Company's wealth was not the fur seal, which was formerly of less value than the otter.

There is no evidence of the exclusion of foreign ships from Behring Sea, or from seal hunting therein, and the only evidence adduced that Russia directed such an exclusion consists of the interpolations, now withdrawn, of a translator in contemporary documents.

The above cited contentions on behalf of the United States assert in effect that the jurisdiction of Russia over Behring Sea was consistently and specifically exercised for the protection of the fur-seal fishery; and that the object of the Russian Government in the alleged exclusion of Behring Sea from the effect of the Treaties of 1824 and 1825, was the protection of the fur industry.

The British Case has already dealt with the alleged exercise of jurisdiction by Russia over Behring Sea, as a matter of fact, and as regards the alleged object of that jurisdiction, viz., the protection of the fur industry. Reference must be made to the documents mentioned in Chapter II of the British Case, where it is shown that the purpose of the Ukase of 1821 was to prevent illicit trading, and interference with the trade of the Russian-American Company; as well as to the facts fully set out in Chapter IV of the British Case, which show that, both before and after the date of the Treaties of 1824 and 1825, foreign vessels habitually frequented Behring Sea for the purpose of exploration, trading, and fishing.

The instructions sent out by the Russian Foreign Office in the year 1846, are alone sufficient to negative conclusively the present contention of the United States upon this point. Not only was the limit of 100 miles, which it had been endeavoured to establish by the Ukase, not enforced; but, as appears by the instructions,

Contention that Russia exercised jurisdiction in Behring Sea for protection of seals.

United States' Case, p. 57.

Ibid., p. 59.

British Case, p. 39.

Ibid., pp. 84, 85.

it was not contemplated to prohibit the approach of foreign vessels, or to interfere with them in any way, beyond the recognized limit of 3 miles from the shores.

United States' Case, pp. 39, 40.

Ibid., p. 40.

Ibid., p. 41.

It is further asserted, on behalf of the United States, that "the reason why the limit of 100 miles was chosen in 1821," was that this limit would "secure to the Russian-American Fur Company the monopoly of the very lucrative profit\*" carried on by them. It is argued that, as the Pribyloff Islands are situated less than 200 Italian miles from the Aleutian chain on the south, a sufficient portion of the eastern half of Behring Sea was covered by the terms of the Ukase to enable Russia to protect the fur-seal fishery.

In 1822, the sea-otter was more important than the fur-seal.

It is true that in the conversation with the Governor-General of Siberia, quoted at p. 40 of the United States' Case, reference is made to the "very lucrative traffic" carried on by the Russian-American Fur Company; but it must be noted that the trade in fur-seal skins was not the sole, or even the most considerable, item in that traffic. The sea-otter was still the chief object of the hunters and traders at this date, and had continuously been so from the first. It commanded a far higher price in the market than any other skin. The traffic also included foxes, martens, beavers, bears, and other fur-bearing animals; while the fur-seal skins, though obtainable in large numbers, commanded only a small price.

Cook writes of the Russians met with by him in 1778:—

Cook's "Voyages," vol. ii, p. 509.

"Their great object is the sea-beaver or otter. I never hear them inquire after any other animal; though those, whose skins are of inferior value, are also made part of their cargoes."

Referring to a later date, contemporaneous with that of the Anglo-Russian Treaty, Bancroft writes:—

Alaska, History of p. 538.

"In 1825 fur-seal skins were bartered in the Sandwich Islands by the captain of one of the Company's ships on the basis of 1 dol. 75 c. per skin. This seems an extravagant price, when, as will be remembered, the price at Kiakhta was only 5 to 7 roubles in script (1

\* A misprint for "traffic." See United States' Case, Appendix, vol. i, p. 35.

...the fur-seals were... at North Arkhangelsk... American and English shippers...

It thus appears that the quotation at p. 40 of the United States Case does not support the inference which is sought to be drawn from it, that the limit of 100 miles was specially chosen for the protection of the fur-seals.

This limit, moreover, goes much further than was necessary if the protection of fur-seals had been the object of the Russian Government. The enforcement of the 100-mile limit would have absolutely precluded foreign vessels from navigating, for any purpose, in any part of Behring Strait, Behring Sea, the Sea of Okhotsk, and a large area of ocean south of the Aleutian Chain and along the coasts of both continents.

An attempt is made in the United States Case, in one of the passages set out at the head of this Chapter, to explain the undoubted fact, relied upon by Great Britain, that no restraint was ever placed by Russia upon the free entrance of foreign vessels into Behring Sea for the purposes of navigation, and especially for the prosecution of the whale fishery. It is plain that, in the absence of any public notification, the alleged special reservation in respect of fur-seals, (assuming that it ever had any existence in fact, or any legal validity,) never could have come to the knowledge of the seamen of various nations who from time to time visited these regions. Nor did Russia ever attempt to maintain in Behring Sea a naval force capable of giving effect to any such prohibition by force of arms.

In the second place, attention is called to the fact that no evidence is forthcoming to support the alleged reservation of the exclusive right of sealing.

It has already been shown that, prior to the Treaty of 1825, Russia possessed no such sovereignty over the shores of Behring Sea as would enable her to exclude the vessels of other nations even from the coasts. Much less had she power to exclude vessels upon the high seas, either from navigating thereon, or from the exercise of any particular industry.

Neither in the negotiations nor in the Treaties

See ante, p. 40

...

...

United States Case, p. 57.

Russia's alleged special reservation of fur-seal fishing, would not have been known to seamen.

No sufficient naval force in Behring Sea to give effect to the reservation.

No evidence of reservation.

...

Whaling in F... develope

Burden of provin... by Russia clo... Britain.

Whaling in Behring Sea largely developed after Treaties.

British Case, p. 89.

is there any reservation of a right to exclude foreigners from the particular pursuit of seal-fishing.

Whaling, which was expressly forbidden by the Ukase, was admittedly carried on without restraint after the Treaties, and there is ample evidence of the large development of this industry.

Evidence on this matter has already been adduced in the British Case, but with further reference to the operations of whalers in years subsequent to 1840, the following passage may be quoted from an account of the fishery by Ivan Petrol, in discussing the condition of the Territory of Alaska prior to its cession to the United States, he writes:

Quoted by A. H. Clark, in "Fisheries and Fishing Industries of the United States," vol. II, pp. 206, 200.

Under the terms of the Treaty with England America no vessel of either of those two nations was allowed to hunt or fish within 3 marine leagues (and of the shore; but as there was no armed Government craft in the Colonies the provisions of the Treaty were totally disregarded by the whalers.

Referring to a later date, and writing in 1870, Dr. W. H. Dall makes the following remarks concerning certain forms of traffic carried on in and about Behring Sea:

"Alaska and its Resources," p. 502.

"Since 1850, traders from the Sandwich Islands, having visited Kotzebue Sound and Grantley Harbour every spring. They load at Honolulu with ammunition, double-barrelled Belgian fowling-pieces, hardware, and rum or alcohol. They follow up the melting ice, and usually reach Bering Strait in the latter part of June. Their tariff of prices amounts to about 50 cents apiece for martens, in goods. They are usually provided with whaling implements, and manned by Kanakas. A single whale will pay the expenses of the voyage, and leave the profits of the trade clear."

That trading was going on within the limits of Behring Sea in the years immediately preceding and following 1821, has already been shown by the correspondence cited on pp. 20 and 21.

There is thus no evidence whatever of the existence, the enforcement, or the recognition by other nations of any restriction upon sealing.

It is emphatically denied that the burden lies on Great Britain of proving that Russia has lost her alleged jurisdiction in Behring Sea. The plain meaning of the Treaties indeed leaves no point to be proved; but, in any case, when a nation is contending for a jurisdiction in excess of that which

Burden of proving loss of jurisdiction by Russia does not lie on Great Britain.

United States Case, p. 87.

is admitted by international consent, the onus must rest with that nation of proving the existence of such jurisdiction by instances of its exercise, or of its recognition by other Powers. The claims of the United States cannot be supported merely by the negative fact that, for many years after the Ukase and the Treaties, there is no record of pelagic sealing in Behring Sea.

On this point, Lord Salisbury, in his despatch to Sir J. Pauncefote of the 2nd August, 1890, wrote in the following words:—

"It is impossible to admit that a public right to fish, catch seals, or pursue any other lawful occupation on the high seas can be held to be abandoned by a nation from the mere fact that for a certain number of years it has not suited the subjects of that nation to exercise it."

That the absence of sealing-vessels from Behring Sea was not due to any exclusion by Russia, is attested by the United States' Case itself; where it is shown that pelagic sealing was never attempted as a practical industry until after the cession of Alaska to the United States.

It is clear, moreover, that the Russian Government, in 1846, took a different view of its rights from that now contended for by the United States. In that year, the Government was specially invited by the Governor-General of Eastern Siberia to enforce the prohibition of whaling within a distance of 40 miles of the shore. The reply of the Russian Government was, however, not that it preferred not to "strictly enforce" such right, but that no kind of right existed. The Foreign Office wrote:—

"We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales. The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon-shot, that is about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognized by the other Powers."

The instructions to cruisers with reference to whaling in Okhotsk Sea, quoted at p. 113 of the Case for Great Britain, are to the same effect.

British Case, Appendix, vol. iii. "United States No. 2 (1890)," No. 382, p. 519. See also British Case, p. 141.

Absence of sealing-vessels from Behring Sea was not due to Russian exclusion.

British Commissioners' Report, para. 100. United States' Case, p. 187.

United States' Case, p. 57.

Russian Foreign Office says that has no right to exclude foreign ships from Behring Sea.

Tikmenieff, British Case, Appendix, vol. i, p. 41.

British Case, p. 113.

...that Russia still ex-  
...control in Behring Sea aft-  
Treaties.

United  
Case,

Ibid.

Ibid.,  
vol. i,

British  
Appendix  
p. 1.

United  
Case, A  
vol. i,

...ian-American Company's Char-  
ter of 1821 purports to exclude  
foreigners from competing with  
Company.

United  
Case, A  
vol. i,



assertion that Russia still exercised control in Behring Sea after Treaty.

United States' Case, p. 61.

It is stated on the part of the United States in one of the passages placed at the head of this chapter—

"that by the treaties of 1824 and 1825 Russia did not surrender her claim to exclusive control of trade, and especially of the fur industry, in Behring Sea."

Positive confirmation of this assertion is stated to be found in the alleged circumstance that the same control over the waters of that sea was enforced after the date of the Treaties as before.

The evidence offered in support of this assertion consists of the Charters granted to the Russian-American Company in 1829 and 1842, and of extracts from the Company's records.

Ibid.

The Charter of 1829 is described in the United States' Case as a confirmation of the Charter of 1821, except in so far as it had been modified by the Treaties of 1824 and 1825.

The modifications here referred to are of great importance, and deserve most careful consideration.

Ibid., Appendix, vol. i, p. 16.

By Section 1 of the Rules attached to the Ukase of the 7th September, 1821—

British Case, Appendix, vol. i, p. 1.

"the pursuits of commerce, whaling, and fishery, and of all other industry on all islands, ports, and gulfs, including the whole of the north-west coast of America, beginning from Behring Straits to the 51st degree of northern latitude . . . is exclusively granted to Russian subjects."

United States' Case, Appendix, vol. i, p. 25.

By Article II of the Charter of the 13th September, 1821, the Emperor proceeded to grant to the Russian-American Company—

Russian-American Company's Charter of 1821 purports to exclude foreigners from competing with Company.

"the privilege of hunting and fishing, to the exclusion of all other Russian or foreign subjects throughout the territories long since in the possession of Russia on the coasts of North-west America, beginning at the northern point of the island of Vancouver, in latitude 51° north, and extending to Behring Strait and beyond. . . ."

United States' Case, Appendix, vol. i, p. 25.

In Article VI of the Charter it is further set forth that—

"In order that the Company may enjoy the exclusive rights bestowed upon it, and to prevent in the future any molestation or disturbance on the part of Russian subjects or foreigners, rules and regulations have been established," &c.

It is obvious that the language of this Charter, and the change from that employed in the Ukase



of 1799, was consequent upon the language in the Ukase of 1821; by which, for the first time, as has been repeatedly pointed out, Russia attempted to exclude the subjects of foreign nations from the whole of the area therein referred to.

In the first Charter granted subsequently to the Treaties of 1824 and 1825, viz., that of the 29th March, 1829, there is a striking change in the language used.

Articles 2 and 3 of this Charter are as follows:—

"(2.) The limits of navigation and industry of the Company are determined by the Treaties concluded with the United States of America, April 5 (17), 1824, and with England, February 10 (28), 1825.

"(3.) In all the places allotted to Russia by these treaties there shall be reserved to the Company the right to profit by all the fur and fish industries, to the exclusion of all other Russian subjects."

If the Russian Government had considered itself entitled, in spite of the Treaties, to close Behring Sea to the approach of foreigners, it is inconceivable that the Charters should not have been so worded as to reserve the waters and coast of Behring Sea, while opening to foreigners the waters and coasts to the southward of that sea.

If this distinction was to be drawn at any time, it must of necessity have been drawn upon this occasion, and the omission to do so becomes more significant when the Charters of 1829 and 1844 are read in connection with the protests of the Russian-American Company against the terms of the Treaties, and with the proceedings of the Committee which investigated those complaints in 1824.

The Charter of 1844 is equally significant.

Section 2 sets out the boundary line which was described by the Treaty of 1825 between Great Britain and Russia.

Section 3 is in the following terms:—

"Sec. 3. In all places annexed to Russia by the above-mentioned delimitation there is granted to the Company the right to carry on the fur and fishing industries to the exclusion of all Russian subjects."

The above extracts show conclusively that, after the Treaties which resulted from the negotiations upon the question of the Ukase of 1821, the claim to exclude foreigners from navigating, hunting, and fishing, asserted by Russia in that

Ukase of 1821 only purports to exclude other Russian subjects

But Charter of 1829 only purports to exclude other Russian subjects

United States' Case, Appendix, vol. i, p. 28.

Ibid

Ibid

Ibid

Ibid, p. 68.

Ibid

Ibid, p. 28.

Company's Charter of 1844 only purports to exclude other Russian subjects.

Ibid, p. 29.

Proposals for Charter in suggest ext

Exclusive priv Company of sea).

Revocation of coast of

Ukase, was definitely abandoned and never revived. The reference to foreigners disappeared from the Charter of the Company.

It is further to be noted that the limits of the Company's territories are clearly defined in each of the three Charters quoted above; and though they are not described in identical terms in each Charter, the coast-line which is granted includes in each case the whole Russian shore from the Arctic Ocean to the southernmost limit.

United States Case, pp. 68, 69.

Further quotations are made at pp. 68 and 69 of the United States' Case, as to all of which it may be remarked that the documents quoted are of a purely municipal character, affecting Russian subjects only.

Two points, however, deserve more detailed notice:— In the proposals for the renewal of the Company's Charter in 1865 and 1866, there is no suggestion that powers should be granted to exclude foreigners, such as had been granted by the Charter of 1821, and subsequently abandoned in the Charters of 1829 and 1844.

2. The letter of the Minister of Finance, dated the 19th June, 1865, affords further confirmation of the fact that the Russian Government was unaware of the existence of any such special jurisdiction over the waters of Behring Sea as is now claimed by the United States as the successors of that Government.

The Minister proposed, in paragraph 15, to reserve to the Company the exclusive right of engaging in the fur-trade as defined within the following limits:—

“On the peninsula of Alaska, reckoning as its northern limit a line drawn from Cape Douglas, in Kenia Bay, to the head of Lake Imiamne; on all the islands lying along the coast of that peninsula; on the Aleutian, Commander, and Kurile Islands and those lying in Bering's Sea, and also along the whole western coast of Bering's Sea.”

But to revoke—

“in the district to the north-east of the peninsula of

• The footnote, United States' Appendix, vol. i, p. 77, is obviously erroneous. The passage as it stands deals, in due course, with all the shores of the Russian possessions. But the proposed substitution of “eastern” for “western” involves the omission of all reference to the Asiatic shores, and renders meaningless the subsequent words “on land to the northern extremity of the American Continent.”

The exact translation of the Russian text is “from”

Proposals for renewal of Company's Charter in 1865 and 1866 do not suggest exclusion of foreigners.

Ibid., p. 68.

United States' Case, Appendix, vol. i, p. 75.

Exclusive privileges to be granted to Company only relate to land (not sea).

Revocation of privileges on eastern coast of Behring Sea.

Revised translation, Appendix, vol. i, p. 42.

only purports to Russian subjects.

of 1844 only parole other Russian

Alaska along the whole coast to the boundary of the British possessions, also on the islands lying along this coast, including in that number Sitka and the whole Koloshian archipelago, and also on land, to the northern extremity of the American Continent, the privilege granted to the Company of the exclusive prosecution of the said industry and traffic."

This is described in the United States' Case as a decision—

"to extend the Company's privileges only to the region about Behring Sea."

United States' Case, p. 68.

It is supposed, apparently, that it contains evidence of the exercise of the extraordinary jurisdiction over Behring Sea which is claimed in the United States' Case; but, in fact, it furnishes evidence to the contrary, and can only be made to bear the construction thus placed upon it by an unfounded suggestion that, when the writer mentioned the western shore, he meant to refer to the eastern. The accuracy of expression of the passage, as it stands, becomes clearly apparent on following its description with the aid of a Map.

The passage shows that, so far from asserting exclusive rights "to the region about Behring Sea," the writer actually proposed to abolish the exclusive privilege of the Company upon the eastern shores of that sea, and treated those coasts and the coasts of the Pacific to the eastward and southward of the Alaskan Peninsula, including Sitka, as subject in precisely the same manner and to the same extent to the jurisdiction of Russia.

The correspondence in respect to the "Loriot" further shows that in the year 1837 the United States maintained, in accordance with the present contention of Her Majesty's Government, that the 1st Article of the Treaty of 1824 was in itself sufficient to entitle the subjects of the United States "to fish in these seas, and to resort to the coast for the prosecution of their lawful commerce upon points not already occupied." It was moreover claimed on the part of the United States that such rights applied to "any part of the unoccupied coast of North America"; and though the Northwest coast is several times mentioned, it is not in any way defined or restricted to any special meaning, but obviously includes the whole coast of the continent to the north of latitude 54° 40'.

The proposed Charter would have put the coasts south of Behring Sea on the same footing as those of Behring Sea itself.

British Case, pp. 79-83.

Ibid., p. 80.

Ibid., p. 61.

Except in Russian-American express vessels, no other vessels are permitted to trade in the Behring Sea.

It is a matter of history, that in the years immediately succeeding the "Loriot" incident, and subsequently, the vessels of various nations, but more particularly those of the United States, began to resort to and frequent the shores of the Aleutian Islands and the continental shores of Behring Sea, so soon as the exigencies of the whale fishery rendered it convenient for them so to do.

United States' Case, pp. 60-67.

The remainder of the evidence upon which the Case for the United States depends, in respect of the period now under discussion, consists of extracts from the correspondence of the Russian-American Company.

For example, at p. 61, the following passage from a letter, dated the 18th August, 1824, written by Count Nesselrode to the Minister of Finance, is quoted:—

Except in interpolations, letters of Russian-American Company do not express even the intention to exercise maritime control.

United States' Case, p. 61. (For revised translation, see Appendix, vol. 1, p. 32.)

" . . . it is His Majesty's firm determination to protect the Company's interests [IN THE CATCH AND PRESERVATION OF ALL MARINE ANIMALS, AND TO SECURE TO IT ALL THE ADVANTAGES TO WHICH IT IS ENTITLED UNDER THE CHARTER AND PRIVILEGES]."

It is now admitted that the words within brackets are interpolated.

No comment is required upon the extract above quoted, as the interpolated passage has been withdrawn; but when the original letter is examined, it will be found that it had no relation whatever to the protection of seals at sea, but related entirely to the taking of seals on the Islands of St. Paul and St. George, and the Commander Islands; and it has, therefore, no bearing upon the present argument.

Ibid., pp. 62-66. (For revised translation, see Appendix, vol. 1, p. 30.)

The letter of the Board, dated the 20th March, 1853, from which several quotations are made at pp. 62-66 of the United States' Case, deserves more attention.

The first quotation is as follows:—

"The board of Administration respectfully requests that, in case the interests of the Company require a deviation from our plans, your Excellency will never lose sight of the fact [THAT THE INTERESTS OF THE COMPANY ARE CENTERED AT THE PRESENT TIME IN THE DISTRICT SURROUNDING THE SEAL ISLANDS OF THE PRIBILOF AND COMMANDER GROUP, AND] that consequently

the colonial waters must be visited by the Company's cruizers constantly and in every part, in order to watch and warn the foreign whalers."

This is twice quoted in the United States' Case, and special attention is directed to it at p. 63, as a communication which—

United States' Case, pp. 62, 66.

"throws much light upon the commercial activity of the Russian-American Company, and may be accepted as indicative of the methods by which, during the last term of its charter, it enforced its control, in the colonial waters. . . ."

The value of this passage for the purpose for which it is quoted is, however, entirely destroyed by the discovery that the words which have been here printed within brackets are mere interpolations in the text of the despatch, and do not exist in the original Russian.

The second passage is as follows:—

["THIS AGENT MUST OBSERVE AND KEEP A RECORD OF ALL FOREIGN SHIPS SEEN DURING THE VOYAGE, AND OF THE POSITION OF THE SAME WHEN OBSERVED, FOR THE INFORMATION OF COMMANDERS OF OUR ARMED CRUIZERS AND OF THE COLONIAL AUTHORITIES IN SITKA, KAMOHATKA, AND AYAN."]

Ibid., p. 63.  
(For revised translation, see Appendix, vol. i, p. 37.)

No part of this passage is to be found in the original Russian.

The third quotation is of greater length than the others, and refers to what is termed in the United States' Case a "protective scheme." The inaccuracies of the translation of this passage are too numerous to be here noticed, but may be seen at once by a comparison with the literal translation in the Appendix to this Counter-Case.

United States' Case, pp. 64-66.

Appendix, vol. i, pp. 38, 39.

Throughout this despatch, when correctly translated, there is no mention whatever of the protection of the fur-seals. It is true that instructions are given to watch until—

"the foreign whalers leave Behring Sea, viz., the last part of August or the beginning of September."

Ibid., p. 38, paragraph 3. See also last paragraph of despatch.

but the only indication given as to the object of such watching is to be found in the following words:—

"To keep watch over the foreign whalers and the Englishmen, with regard to the trade carried on by them with our savages."

Ibid., p. 30, paragraph 5.



But even if the preservation of fur-seals or fur-seal fisheries had been specially mentioned as the object of these instructions, it is denied that they could have any weight as evidence for the purpose for which they are quoted in the United States' Case, unless it could be shown that they were acted upon in practice by the expulsion of a foreign ship. Of this, however, no evidence is offered, and it is confidently asserted that no such evidence exists.

No evidence is offered that any foreign ship was expelled by Russia.

United States' Case, p. 67. (For revised translation, see Appendix, vol. i, p. 41.)

At p. 67 of the United States' Case, the following extract is quoted from the letter from the Chief Manager of the Russian Colonies to Benze- man, dated 20th June, 1861 :--

"9. It has come to my knowledge that in the present year two whaling-vessels have sailed from San Francisco for the purpose of trading on the Pribilof Islands [OR OF HUNTING IN THEIR VICINITY.] Consequently, I would suggest that during your presence in those waters you will exercise the duties of an armed cruiser, [TO PREVENT ANY UNLAWFUL ACTS ON THE PART NOT ONLY OF THESE TWO VESSELS, BUT OF ANY OTHERS WHICH YOU MAY FIND IN BERING SEA]."

It will be seen that the passages printed in brackets are not to be found in the original Russian, while the "instructions herewith inclosed, which have been approved by the Emperor" (see paragraph 9, revised translation), have not been produced by the United States, although they are essential to the correct appreciation of the despatch in which they were inclosed.

United States' Case, p. 67. (For revised translation, see Appendix, vol. i, p. 43.)

The Proclamation issued at Sitka in 1864 is similarly made to serve as evidence in the United States' Case, by the insertion of the words "*or waters.*" No such words occur in the original, which is merely a notice to quit Russian *territory.*

#### Conclusions.

From the considerations referred to in this Chapter, it is submitted that the conclusions claimed to have been established in the British Case, as stated at p. 90, are fully supported; and that the further evidence which has been adduced clearly shows that, with the growth of commerce and increase of trade subsequently to the year



1821, vessels of nations other than Russia without let or hindrance frequented, traded, and fished in the waters of Behring Sea; and that no attempt was ever made during the whole period to restrict the use of those waters to vessels carrying the Russian flag.

## CHAPTER V.

HEAD (E.)--*What Rights passed to the United States under the Treaty of Cession of the 30th March, 1867?*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 70—  
 "This treaty, which, prior to its final consummation, had been discussed in the Senate of the United States and by the press, was an assertion by two great nations that Russia had heretofore claimed the ownership of Behring Sea, and that she had now ceded a portion of it to the United States; and to this assertion no objection is ever known to have been made."
- (2.) United States' Case, p. 74—  
 "Their value [the fur-seals] was well known to the American negotiators of the treaty of 1867, and while it must be admitted that political considerations entered into the negotiations to a certain extent, yet so far as revenue to the Government and immediate profit to its people were concerned, it will appear from a careful study of the incidents attending the transfer of sovereignty that it was the fur industry more than all other considerations which decided the United States to pay the sum of 7,200,000 dollars required by Russia for the cession and transfer of her sovereign rights and property."
- (3.) United States' Case, p. 85—  
 "The understanding which existed in the United States, at the time of the purchase and cession of Alaska, as to the scope and effect of the jurisdiction exercised by Russia over the waters of Bering Sea, and the enhanced value which was thereby placed upon the fur-seal herd of the Pribiloff Islands."

## SUMMARY OF BRITISH REPLY.

The Treaty of 1867 only assigns territory, not sea.

The value of the fur-seal herd was not taken into account in the purchase by the United States.

With reference to the contention first quoted above, it is to be observed that neither the Treaty of 1867, nor any other document published or communicated to foreign nations in connection therewith, asserted any claim to the ownership of Behring Sea. Upon this point, attention is invited to the observations contained in Chapter V of the British Case.

Contention that Treaty of 1867 was assertion of ownership of Behring Sea.

United States' Case, p. 70.

British Case, pp. 91-102.

The extracts from the debates in Congress, and the negotiations which took place prior to the completion of the Treaty, show conclusively that it was not supposed by the advisers of the United States, or by any person on their behalf, that any exclusive dominion over Behring Sea was being acquired.

At pp. 75 and 76 of the United States' Case reference is made to the Report of a Committee of Congress, and copious quotations are made therefrom. This Report, however, is not one made at or about the time of the Treaty, or the acquisition of Alaska, but is that of a Committee of Congress which sat in the year 1889 after the present controversy had arisen.

No reference is made in the United States' Case to the report of any previous Committee of Congress. Such reports, however, exist, and are of a directly opposite tendency. There is, for example, the Report mentioned in Bancroft's "History of Alaska" (p. 595), in the following terms:—

"The motives which led the United States' Government to purchase them" [Russia's American possessions] "are thus stated in a report of the committee on foreign affairs published 18th May, 1868: 'They were, first, the laudable desire of citizens of the Pacific coast to share in the prolific fisheries of the oceans, seas, bays, and rivers of the Western World; the refusal of Russia to renew the Charter of the Russia-American Fur Company in 1866; the friendship of Russia for the United States; the necessity of preventing the transfer, by any possible chance, of the north-west coast of America to an unfriendly Power; the creation of new industrial interests on the Pacific necessary to the supremacy of our empire on the sea and land; and finally, to facilitate and secure the advantages of an unlimited American commerce with the friendly Powers of Japan and China.'"

Again, the Committee of Ways and Means, to which, in 1876, was referred a Resolution of the House of Representatives, directing an investigation into certain matters relating to the lease by the United States' Government to the Alaska Commercial Company, presented a Report, from which the following is an extract:—

"When the proposition to purchase the Alaska Territory from Russia was before Congress, the opposition to it was very much based on alleged barrenness and worthlessness of the territory to be acquired. It was supposed that though there might be many political reasons for this

Reports of Committees of Congress

Foreign Affairs Committee, in 1868, states objects of purchase from Russia, without even mentioning the acquisition of Behring Sea. Alaska, p. 595.

H. R., Ex. Doc.,  
44th Cong.,  
1st Sess., No. 623  
p. 12.

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A Committee in 1876, says that seal islands were not considered in purchase.

United States'  
10th Census  
Report, 1881.

Mr. H. W. Elliott, in 1881, reports that the value of the fur-seal industry was not taken into account in the purchase from Russia.

"The Seal Islands of Alaska," by Henry W. Elliott, Washington, Government Printing Office, 1881, pp. 68, 69.

Committee, in 1881,  
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Behring Sea.

British Case,  
Appendix, vol. i,  
p. 81.

"Seal Islands of  
Alaska," p. 25.

In addition to the American Pacific possessions, there were not commercial or revenue advantages. *The value of those seal islands was not considered at all. Russia had derived but little revenue from them, indeed a sum not sufficient to pay the contingent expenses of maintaining the official authority. Under our system, however, we have a very different result.*"

Mr. H. W. Elliott, in his official Report on the seal islands of Alaska, writes as follows upon this point :—

"STRANGE IGNORANCE OF THEIR VALUE IN 1867.— Considering that this return" [that accruing from the fur-seal industry] "is the only one made to the Government by Alaska, since its transfer, and that it was never taken into account, at first, by the most ardent advocates of the purchase of Russian-America, it is in itself highly creditable and interesting; to Senator Sumner the friends of the acquisition of this territory in 1867, delegated the task of making the principal argument in its favour. Everything that was written in strange tongues was carefully translated for the choice bits of mention which could be found of Alaska's value. Hence his speech on the subject possesses this interest.\* It is the embodiment of everything that could be scraped together, having the faintest shadow of authenticity, by all of the eager friends of the purchase, which gave the least idea of any valuable natural resources in Alaska; therefore, when, in summoning all this up, he makes no reference whatever to the seal islands, or the fur-seal itself, the extraordinary ignorance at home and abroad relative to the Pribylov Islands can be well appreciated."

The above refers especially to Mr. Sumner's concluding summary. Mr. Sumner did, in fact, make a reference to the fur-seal in the body of his oration, though in a single paragraph only of his long speech; but the perusal of that speech, and the absence of any mention of the fur-seal in his recapitulation of principal points, show the relatively small importance which he attached to the fur-seal fishery.

In the same Report Mr. Elliott also writes :—

"It will be remembered by many people, that when we were ratifying the negotiation between our Government and that of Russia, it was made painfully apparent that nobody in this country knew anything about the subject of Russian-America. Every schoolboy knew where it was located, but no professor or merchant, however wise or shrewd, knew what was in it. Accordingly, immediately after the purchase was made and the

\* Speech on occasion of Russian-America, United States' Senate 1867, "Summary," p. 48.

formal transfer affected, a large number of energetic and speculative men, some coming from New England even, but most of them residents of the Pacific coast, turned their attention to Alaska. They went up to Sitka in a little fleet of sail and steam vessels, but among their number it appears there were only two of our citizens who knew of, or had the faintest appreciation as to the value of, the seal islands. One of these, Mr. H. M. Hutchinson, a native of New Hampshire; and the other a Captain Ebenezer Morgau, a native of Connecticut, turned their faces in 1868 toward them. Mr. Hutchinson gathered his information at Sitka. Captain Morgau had gained his years before by experience on the South Sea sealing-grounds."

Professor W. H. Dall also, who visited the islands in 1868, is quoted on another page of the United States' Case, as follows:—

"During my visit to St. George Island in 1868, this vast territory of Alaska had just fallen into the possession of the United States, and the Government had not yet fairly established more than a beginning of an organization for its management, as a whole, without mentioning such details as the Pribiloff Islands."

United States' Case, p. 132. Appendix, vol. ii, p. 23.

Mr. Elliott has since repeated the opinion expressed in the above-quoted Report, in the evidence which he gave to the Committee whose Report is quoted at p. 75 of the United States' Case:—

"The Russians made no effort to hold these islands, at the time of the transfer, simply because they did not then value their sealing industry—it was of small consequence then—a skin only being worth from 3 to 4 dollars in London.

Mr. Elliott also testifies that Russia did not value the sealing industry.

50th Cong., 2nd Sess., H. R. Report No. 3883, p. 139.

"They failed to properly develop the market, as the lessees have done under our Government."

Mr. C. A. Williams, in his evidence, given before a Committee of Congress, said:—

"I do not think, when the Government made the purchase from Russia, that any one outside of a dozen people, perhaps, who had been acquainted with sealing heretofore, had the slightest knowledge of there being any value in those islands, or that the Government was going to get anything of value outside the mainland of Alaska."

Mr. Williams does not think that more than a dozen people knew that the purchase contained anything of value outside the mainland.

50th Cong., 2nd Sess., H. R. Report No. 3883, p. 88.

Dr. W. H. Dall, who is specially quoted as an authority on Alaska in the United States' Case, wrote a letter to correct certain statements attributed to him in the discussion arising from a paper by Mr. W. Palmer, read before the Biological Society at Washington. In this letter Dr. Dall says:—

"Forest and Stream,"  
November 5, 1891.

Dr. Dall mentions small value of seal-skins in 1866, as reason why little stress would have been laid on the acquisition of the seals by the United States.

"I said that in 1866 (not 'in the early days of the industry') I purchased first-class fur-seal skins at 12½ cents a-piece, that being the price at which they were sold by the Russians. The point of this observation lies in its application to the oft-repeated statement that, as Mr. Palmer says, 'little stress was laid upon the fact that fur-seals were found in abundance' at the time of the purchase of the Territory by the United States. No stress could reasonably have been laid upon it, since 100,000 seals would at that time have been worth only some 12,500 dollars, which would hardly have paid for the trouble of taking them. Of course, almost immediately afterwards this was no longer true."

It is submitted that the contentions of the United States are based upon two assumptions, both of which are entirely erroneous.

The first, that, prior to the year 1867, Russia had, in fact, excluded the vessels of other nations from Behring Sea.

The second, that the language of the Treaty of 1867 describes, and purports to convey, some special rights in the non-territorial waters of Behring Sea.

#### Conclusions.

As to the first, the considerations contained in the preceding Chapters have established that, prior to 1867, Russia had not, at any time, excluded from Behring Sea the vessels of foreign nations.

As to the second, a reference to the language of the Treaty—which is set out at pp. 91 to 94 of the British Case—shows that Russia was conveying territories which were then admitted to form part of the Russian Empire, but with no more than the ordinary territorial rights.

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## CHAPTER VI.

Point 5 of Article VI.—*Has the United States any Right, and if so, what Right of Protection or Property in the Fur-seals frequenting the Islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit?*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 57—  
 "By the Ukase of 1821 Russia had publicly claimed certain unusual jurisdiction both over Bering Sea and over a portion of the Pacific Ocean. . . . Russia never sought to prevent vessels from passing through Bering Sea in order to reach the Arctic Ocean; nor did she always strictly enforce the prohibition of whaling within the distance of 100 miles from its shores; but, so far as the fur-seals are concerned, it will be made to appear in what follows that the jurisdiction in question was always exercised for their protection."
- (2.) United States' Case, p. 85—  
 "In determining what right of protection or property this Government has in the fur-seals frequenting the islands of the United States in Bering Sea when such seals are found outside of the ordinary 3-mile limit, it is not compelled, neither does it intend, to rest its case altogether upon the jurisdiction over Bering Sea established or exercised by Russia prior and up to the time of the cession of Alaska. It asserts that, quite independently of this jurisdiction, it has a right of protection and property in the fur-seals frequenting the Pribiloff Islands when found outside the ordinary 3-mile limit, and it bases this right upon the established principles of the common and the civil law, upon the practice of nations, upon the laws of natural history, and upon the common interests of mankind."
- (3.) United States' Case, pp. 231, 232—  
 "It may be laid down as a principle, established by international usage, that any nation which has a peculiar interest in the continued existence of any valuable marine product, located in the high seas adjacent to its coasts or territorial waters, may adopt such measures as are essential to the preservation of the species without limitation as to the distance from land at which such necessary measures may be enforced."
- (4.) United States' Case, p. 237—  
 "This hasty review of the legislation of near a score of nations clearly establishes the principle announced that any nation, having a peculiar interest in the continued existence of animal life on the high seas, adjacent to its coasts or territorial waters, may adopt such measures as are essential to its preservation, without limit as to the distance from land at which such measures may be enforced."
- (5.) United States' Case, pp. 295, 296—  
 "The United States, upon the evidence herewith submitted and referred to, claim that the following propositions of fact have been fully established: . . . That at all times, when in the water, the identity of each individual can be established with certainty, and that at all times, whether during its short excursions from the islands in search of food or its longer winter migration, it has a fixed intention, or instinct, which induces it to return thereto."

## (0.) United States' Case, pp. 299, 300—

"The United States' Government will claim: First. That in view of the facts and circumstances established by the evidence, it has such a property in the Alaskan seal herd . . . as entitles it to preserve the herd from destruction in the manner complained of, by an employment of such reasonable force as may be necessary. Second. That irrespective of the distinct right of property in the seal herd, the United States' Government has for itself, and for its people, an interest, an industry, and a commerce; . . . and that no part of the high sea is, or ought to be, open to individuals for the purpose of accomplishing the destruction of national interests of such a character and importance."

## SUMMARY OF BRITISH REPLY.

The right of protection mentioned in Point 5 of Article VI is now alleged to be exercisable in every part of the high sea, and is claimed by the United States on general principles, which, if sound, gave a like right to Russia. Such right is said to be independent of any jurisdiction alleged to have been formerly exercised by Russia in Behring Sea, by virtue of a prescriptive title. But acts of protection by Russia, had there been such, could in no way be attributed to a jurisdiction founded on prescriptive title, or used as evidence of such title, if they would have been equally justifiable without it.

The United States can have no right of protection in seas where it has no jurisdiction. For, on the unappropriated sea, all nations are equal and independent, and cannot interfere with each other's ships, except for piracy.

The Treaty, rightly construed, does not give power to the Tribunal to decide whether the United States have jurisdiction, for any purpose, over waters outside that part of Behring Sea where the United States claim exclusive jurisdiction. No claim to jurisdiction of any kind, beyond that limited area, had been made before the Treaty was signed; and it refers no questions to arbitration, except such as had then arisen between the Contracting Powers.

The words in which the grounds of claim to this widely extended right of protection are stated, are difficult of interpretation. The "common law" referred to cannot be that of England, which has no force in a dispute between nations. "Civil law," whether denoting Roman law, or used in opposition to criminal law, is inappropriate here. The right claimed must depend on international law, of which "the practice of nations" can only afford evidence, and which recognizes all the "interests of mankind" of which the Tribunal can take cognizance in dealing with rights as distinguished from regulations.

One of the purposes of the ordinary 3-mile limit is that of exclusive fishing.

There can be no property in free-swimming seals, which are proved in Chapter VII to be *ferre nature*, and are, therefore, *res nullius* even by the law of the United States. Still less is the property vested in the United States' Government; and their lessees neither have nor claim any interest in these animals.

If the identification of each seal and its annual return to the Pribiloff Islands be assumed as facts, they show no title without proof that the seal was tame or reclaimed before its departure; and that it intended to return, not only to the islands, but to some spot where it would be under the care and control of its owner.

The laws of seven British Colonies, of Scotland, Ireland, and ten other countries (including Russia), are quoted or referred to in the United States' Case, apparently for the purpose of supporting the alleged right of protection. But in no instance is it shown that extraterritorial jurisdiction over foreigners is asserted or exercised.

In the question now to be discussed, and in the contentions of the United States above quoted, the protection spoken of, whether expressly or impliedly, is a protection as of right; it is in no way dependent on the exercise by the Arbitrators of the power of making Regulations given them in a certain event, by the Treaty of the 29th February, 1892. If, for the sake of brevity, the passages in which the contentions occur are not, in every instance, set out at sufficient length to show that the claim is one of right, a perusal of the context, or a reference to their place in the argument, will make it abundantly clear.

Right of protection is quite distinct from property, and when involving, as is suggested in the United States Case, the adoption of "necessary measures" (Contention 3), and the employment of "reasonable force" (Contention 6), implies jurisdiction over the waters to which the right extends. Jurisdiction may exist without property, and property without jurisdiction. Thus, in territorial waters, every nation has a jurisdiction, which justifies the exclusion of foreigners from fishing; yet, by the law of both Great Britain and the United States, a fish swimming at large in such waters is not the subject of property.

It will be observed that, by the second of the contentions set forth at the head of this Chapter, a right of protection over the fur-seals (i.e., a jurisdiction entitling the United States to protect them) is claimed independently of the jurisdiction over Behring Sea, described in Contention (1.) as an "unusual jurisdiction," which is alleged to have been exercised by Russia, and transferred to the United States in 1867. Further, by Contention (6.), "no part of the high sea" is excepted from this right of protection. But if it be true, as propounded in Contentions (2.) and (6.), when read together, that, on general principles, nations having "an interest, an industry, and a commerce" in fur-seals, have a right to protect those animals, exercisable over the high seas generally, then acts by Russia, had there been such, justifiable by virtue of such a right, would afford no evidence whatever of the "unusual jurisdiction" over one portion of those seas, alleged to have been exercised by Russia. In fact, the two arguments are mutually destructive. If the right attached to Russia by virtue of her interest in the fur-seals, its

The protection spoken of in the Contention is a protection as of right.

Distinction between right of protection and property.

Right of protection claimed, independent of the jurisdiction over Behring Sea alleged to have been acquired from Russia.

No part of the high sea is excepted from this right of protection.

Acts of protection, then, had there been such, would afford no evidence of Russia's jurisdiction over Behring Sea.

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exercise would afford no evidence of any title to an unusual jurisdiction. Yet, in Contention (1.), the allegation that Russia exercised jurisdiction for the protection of fur-seals, is relied on as the main proof of her prescriptive title to Behring Sea and of the unusual jurisdiction arising from that title. That Behring Sea was used as a passage to the Arctic Ocean, is there expressly admitted; that the prohibition against whaling within 100 miles from the shore was not strictly enforced, is also there admitted; nor is one instance of its enforcement even alleged: but it is said, that "so far as the fur-seals are concerned," the unusual jurisdiction was always exercised.

That right of protection implies jurisdiction over the waters where it is to be exercised, is clear from the following propositions:—

(1.) That, on the unappropriated sea, all nations are equal, and independent of one another;

(2.) That, in time of peace, a vessel thereon cannot be forcibly interfered with by a foreign Power, except for piracy; and

(3.) That fishing is not piracy.

The last of these propositions is too elementary to need support. The other two, if authority be supposed necessary, are illustrated by Lord Stowell's Judgment in the case of "*Le Louis*," already cited upon another point in the British Case, p. 154, in which it was held that a French sloop could not be condemned as a pirate for being employed in the Slave Trade, and forcibly resisting the search of the British cruisers. In that case, Lord Stowell said:—

Dodson's  
Admiralty Cases,  
vol. ii, p. 210.

Ibid., p. 243.

"Upon the first question, whether the right of search exists in time of peace, I have to observe, that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. *In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or*

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any of its subjects, has a right to assume or exercise authority over the subjects of another. . . . The right of visitation being in this present case exercised in time of peace, the question arises, how it is to be legalized? And looking to what I have described as the known existing law of nations evidenced by all authority and all practice, it must be upon the ground that the captured vessel is to be taken *legally*\* as a pirate, or else some new ground is to be assumed on which this right which has been distinctly admitted not to exist generally in time of peace can be supported. . . . The question then comes to this:—Can the occupation of this *French*\* vessel be legally deemed a piracy, inferring, as it must do, if it be so, all the pains and penalties of piracy? . . . In truth it wants some of the distinguishing features of that offence. It is not the act of free-bouters, enemies of the human race, renouncing every country, and ravaging every country in its coasts and vessels indiscriminately, and thereby creating an universal terror and alarm. . . . Be the malignity of the practice what it may, it is not that of *piracy*,\* in legal consideration."

Dodson's Admiralty Cases, vol. ii, p. 246.

Ibid., p. 247.

Ibid., p. 248.

Her Majesty's Government respectfully protest that the question whether the United States have any jurisdiction outside Behring Sea—or, to speak more strictly, outside that part of Behring Sea in which the United States claim exclusive jurisdiction—is not referred to this high Tribunal, by the terms of the Treaty of 1892.

When the question stated at the head of this Chapter speaks of a right of protection beyond the ordinary 3-mile limit, it is assumed that the part of Behring Sea in which exclusive jurisdiction is claimed is the only area with which the two Powers are concerned. For, previously to the Treaty of 1892, no claim of jurisdiction, exclusive or otherwise, beyond the limits of Behring Sea, had been made by the United States. The preamble and the 1st Article both express what, it is submitted, would in any case be implied, that "the questions which *have arisen*" are those which are referred.

The claim made by the United States is set forth in Mr. Blaine's despatch of the 17th December, 1890. There, Question 5 is proposed in the following form:—

"What are now the rights of the United States as to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits, whether such rights grow out of the cession by Russia of any special rights or jurisdiction held by her in such fisheries or in

Her Majesty's Government protest that no question as to rights of the United States outside the area in which they claim *exclusive* jurisdiction is within terms of reference.

The Treaty only refers to questions which had arisen at its date; and these included no claims extending beyond the specified area.

United States' Case, Appendix, vol. i, p. 286.

\* The italics are in the original.

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the waters of Behring Sea, or out of the ownership of the breeding-islands and the habits of the seals in resorting thither and rearing their young thereon, and going out from the islands for food, or out of any other fact or incident connected with the relation of those seal fisheries to the territorial possessions of the United States."

The writer proceeds in the same despatch:—

"The repeated assertions that the Government of the United States demands that the Behring Sea be pronounced *mare clausum*, are without foundation. The Government has never claimed it, and never desired it. It expressly disavows it. At the same time, the United States does not lack abundant authority, according to the ablest exponents of international law, for holding a small section of the Behring Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*."

The United States only claim to hold a small section of Behring Sea for protection of the fur-seals.

United States' Case, Appendix, vol. i, p. 263.

In an earlier passage in the same despatch, Mr. Blaine states:—

"If Great Britain can maintain her position that Behring Sea at the time of the treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded claim against her."

Ibid., p. 294.

In replying, on the 21st February, 1891, Lord Salisbury, with reference to the question thus proposed, said:—

"The clause, 'What are now the rights of the United States to the fur-seal fisheries in the waters of the Behring Sea outside of the ordinary territorial limits?' is a question which would be very properly referred to the decision of an arbitrator. But the subsequent clause, which assumes that such rights could have grown out of the ownership of the breeding-islands and the habits of the seals in resorting thereto, involves an assumption as to the prescriptions of international law at the present time, to which Her Majesty's Government are not prepared to accede."

Ibid., p. 295.

Mr. Blaine answered on the 14th April, 1891, proposing Question 5 in its present form, and Sir J. Pouncefote assented in a Memorandum, dated the 3rd June, 1891.

Ibid., p. 305.

The correspondence on the *modus vivendi* affords further evidence of the limits of the claim made by the United States.

Ibid., p. 307.

On the 4th June, 1891, Mr. Wharton, Acting Secretary for the United States, wrote to Sir J. Pouncefote, with reference to Lord Salisbury's

Government protest as to rights of the outside the area in a exclusive jurisdiction of its territory.

refers to questions at its date; and claims extending beyond the area.



requirement that Russia should concur in the *modus vivendi*, as follows:—

“I am also directed to remind you that the contention between the United States and Great Britain has been limited to that part of Behring Sea eastward of the line of demarcation described in our Convention with Russia. . . . It was never supposed by any one representing the Government of the United States in this correspondence, or by the President, that the agreement for a *modus vivendi* should be broader than the subject of contention stated in the correspondence of the respective Governments.”

And on the 9th June, 1891, Mr. Wharton wrote thus to Sir J. Pauncefote as to another provision of the *modus vivendi*:—

“As to the third clause of your proposition, I am directed to say that the contention between the United States and Great Britain has relation solely to the respective rights of the two Governments in the waters of Behring Sea outside of the ordinary territorial limits, and the stipulations for the co-operation of the two Governments during this season have, of course, the same natural limitation.”

Subject to the above protest, the grounds on which this claim to protective jurisdiction is made will now be considered.

They are four, viz., the established principles of the common and civil law, the practice of nations, the laws of natural history, and the common interests of mankind.

In what sense the terms “common and civil law” are here used, is not very clear. The expression “common law” is technical, and is well understood by the lawyers of the United States and Great Britain; but it has no application to the question now under discussion, except in so far as any general principles can be deduced therefrom. “Civil law” is an expression sometimes used with reference to “Roman law,” and sometimes in opposition to the expression “criminal law.” It is probably intended to be used in the latter sense, but in neither case has it any application here. The rights of nations must be determined by the principles of international law. The “practice of nations” is only important as evidence of that law, thus bringing the claim once more to the same test.

The laws of natural history are not material to the question of jurisdiction. These laws would be more material to the question of property

The contention between the two Powers has been limited to Behring Sea eastward of the line of demarcation in the Treaty of 1867.

United States' Case, Appendix, vol. i, p. 312.

#### Four grounds of claim.

“Common and civil law.” Meaning of terms.

Rights of nations must be determined by international law, of which the “practice of nations” is mere evidence.

Laws of natural history irrelevant.

United States' Case, pp. 230, 239.

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if the question whether seals are *fera natura* were seriously in dispute, but in all probability no such contention will arise. The extraordinary allegation that seals may in any legitimate sense be regarded as domestic animals will be discussed in a subsequent Chapter. The "common interests of mankind" now in question are only such as international law recognizes.

What then are the principles of international law applicable to the question? Some hint of them is contained in the passage just examined (Contention 2), where "the ordinary 3-mile limit" is twice mentioned. Without staying to cite authorities showing that the 3-mile zone is now commonly regarded by other nations besides the United States as the limit, for most purposes, of territorial jurisdiction, the following authorities may be cited as showing that fishing is one of those purposes:—

Mr. Wheaton, in speaking of "those portions of the sea which wash the coasts of any particular State, within the distance of a marine league, or as far as a cannon-shot will reach from the shore," says:—

"The physical power of exercising an exclusive property and jurisdiction, and of excluding the action of other nations within these limits, exists to a certain degree; but the moral power may perhaps seem to extend no further than to exclude the action of other nations to the injury of the State by which this right is claimed. It is upon this ground that is founded the acknowledged immunity of a neutral State from the exercise of acts of hostility by one belligerent Power against another within those limits. This claim has, however, been sometimes extended to exclude other nations from the *innocent use* of the waters washing the shores of a particular State in peace and in war, as, for example, *for the purpose of participating in the fishery*, which is generally appropriated to the subjects of the State within that distance of the coasts. *This exclusive claim is sanctioned both by usage and Convention, and must be considered as forming a part of the positive law of nations.*"

Sir John Nicholl says:—

"As between nation and nation, the territorial right may, by a sort of tacit understanding, be extended to 3 miles; but that rests upon different principles, viz., *that their own subjects shall not be disturbed in their fishing*, and particularly in their coasting trade and communications between place and place during war; they would be exposed to danger if hostilities were allowed to be carried on between belligerents nearer to the shore than 3 miles."

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Authorities show that the ordinary  
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Wheaton's "Inter-  
national Law"  
(Dana's edition),  
sec. 189.

R. v. forty-nine  
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pp. 289, 290.

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Mr. Sheldon Amos says:—

"For some limited purposes, a special right of jurisdiction and even (for a few definite purposes) of dominion, is conceded to a State in respect of the part of the 'ocean' immediately adjoining its own coast-line. The purposes for which this jurisdiction and dominion have been recognized are:—(1) the regulation of fisheries; (2) the prevention of frauds on customs laws; (3) the exaction of harbour and lighthouse dues; and (4) the protection of the territory from violation in time of war between other States. The distance from the coast-line to which this qualified privilege extends has been variously measured, the most prevalent distances being that of a cannon-shot or of a marine league from the shore."

Manning's "Law of Nations," by Sheldon Amos, pp. 119, 120.

It is submitted that the authorities cited and arguments brought forward support the proposition that the sole right of the United States in respect of the protection of seals is that incident to territorial possession, including the right to prevent the subjects of other nations from fishing in territorial waters.

British Case, p. 160, Prop. 15.

#### Conclusions.

The next question to be considered is whether the United States have a property in the fur-seals frequenting the Pribyloff Islands.

The following English and United States' authorities are sufficient to show that animals such as seals are *ferae naturae*; and that, as such, they are *res nullius*.

#### Property in fur-seals.

Seals are *ferae naturae*, and, as such, *res nullius*.

"In things which are *ferae naturae*, none can have an absolute property.

Comyn's "Digest," Tit. "Hens, F.," vol. ii, p. 135.

"As in deer, conies." (R. 7, Co. 17 b.)

"Nor in hawks, doves, herons, pheasants, partridges, or other fowls which are at large and not reclaimed." (10 H. 7, 6, 30.)

"Nor in fish at large in the water."

"Yet, a man may have a qualified or possessory property in them, as if deer, &c., are tame." (7 Co. 17 b.)

"If hawks, &c., are reclaimed.

"So, if pheasants, partridges, or other fowls are tame."

"So, doves in a dovecote.

"Young herons, &c., in their nests." (7 Co. 17 b.)

"Fish in a tank," &c.

"And of such things tame or inclosed, felony may be committed." (7 Co. 18 a.)

"But if deer, fowls, &c., tame or reclaimed, attain their natural liberty, and have no inclination to return, the property shall be lost." (7 Co. 17 b.)

No suggestion that, even rule is

Blackstone, edition  
1822, vol. ii, p. 396.

"Other animals, that are not of a tame and domestic nature, are either not the objects of property at all, or else fall under our other division, namely, that of *qualified, limited, or special* property: which is such as is not in its nature permanent, but may sometimes subsist, and at other times not subsist."

Ibid., p. 397.

"A qualified property may subsist in animals *feræ naturæ, per industriam hominis*: by a man's *reclaiming*\* and making them tame by art, industry, and education; or, by so confining them, within his own immediate power, that they cannot escape and use their natural liberty."

Ibid., p. 398.

"In all these creatures, reclaimed from the wildness of their nature, the property is not absolute, but defeasible; a property, that may be destroyed if they resume their ancient wildness, and are found at large."

Ibid., p. 399.

"A qualified property may also subsist with relation to animals *feræ naturæ, ratione impotentis*, on account of their own inability. As, when hawks, herons, or other birds build in my trees, or rabbits or other creatures make their nests or burrows in my land, and have young ones there; I have a qualified property in those young ones till such time as they can fly or run away, and then my property expires."

Kent's "Commen-  
taries," 9th edition,  
Boston, 1858,  
vol. ii, p. 432.

"Animals *feræ naturæ*, so long as they are reclaimed by the art and power of man, are also the subject of a qualified property; but when they are abandoned, or escape, and return to their natural liberty and ferocity, without the *animus revertendi*, the property in them ceases. While this qualified property continues, it is as much under protection of law as any other property, and every invasion of it is redressed in the same manner.

"The difficulty in ascertaining with precision the application of the law arises from the want of some certain determinate standard or rule, by which to determine when an animal is *feræ vel domesticæ naturæ*."

"If an animal belongs to the class of tame animals, as, for instance, to the class of horses, sheep, or cattle, he is then clearly a subject of absolute property; but if he belongs to the class of animals which are wild by nature, and owe all their temporary docility to the discipline of man, such as deer, fish, and several kind of fowl, then the animal is the subject of qualified property, and which continues so long only, as the tameness and dominion remain."

No suggestion in United States' Case that, even in their own law, the rule is not as laid down by Kent.

It would seem useless to multiply authorities, as there is no suggestion throughout the United

\* The italics are in the original.

States Case that, even in their own law, the rule is not as laid down by Kent.

But independently of the question whether fur-seals at large in Behring Sea can be the subjects of property at all, no title to them is shown. The laws of the United States set out in the Appendix to their Case in no way support the view that the Government have any property in fur-seals. By the Law of the 3rd March, 1869, called "A Resolution more efficiently to protect the fur-seal in Alaska," it was resolved—

"that the Islands of St. Paul and St. George in Alaska be, and they are hereby, declared a special reservation for Government purposes."

It is to be noted that nothing is said in this Resolution about Behring Sea, or the fur-seals therein. Similarly the Law of the 1st July, 1870, called "An Act to prevent the Extermination of Fur-bearing Animals in Alaska" (section 4), authorizes a lease of—

"the right to engage in the business of taking fur-seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals."

Nor have the lessees any rights in the fur-seals swimming in the non-territorial waters of Behring Sea, for their lease, dated the 12th March, 1890, grants them for a term, in accordance with the Statute, merely—

"the exclusive right to engage in the business of taking fur-seals on the Islands of St. George and St. Paul, in the territory of Alaska, and to send a vessel or vessels to said islands for the skins of such seals."

So lately as the 20th June, 1891, the lessees disclaimed all interest in the present subject of discussion. By a document of that date, they protested against the stop which their Government, in breach of the contract, had put on their business by agreeing to the *modus vivendi*, saying:—

"Said Company assumes that the right of the United States or its lessee to take fur-seals on said islands within our unquestioned jurisdiction is beyond dispute, and not

Apart from the question of property in seals, no title to them is shown.

The United States' laws only reserve the islands for the Government.

United States' Case, Appendix, vol. i, p. 92.

The leasing power only authorizes a lease of the right to take fur-seals on the islands, and send vessels there for the skins.

Ibid., p. 93.

The lessees claim no interest in the present dispute.

British Case, Appendix, vol. iii. "United States No. 3 (1892)," p. 47.

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subject to question or interference by England or any other foreign State.

"The right of this Government to take fur-seals on its own territory is not one of the questions to be submitted to arbitration, and has no relation to the contention between the two countries. In that dispute Great Britain affirms and the United States denies the right of English and Canadian poachers to slaughter fur-seals in 'our part' of Behring Sea, and this Company respectfully insists that the agreement between the two Governments set forth in the President's Proclamation, in so far as it prohibits said Company from taking its lawful quota of seal-skins, is in contravention of the vested rights of this Company, and subjects it to great loss.

"If it may be assumed, as England has asserted, and this Government has denied, that the eastern portion of Behring Sea is not the marine territory of the United States, but is the 'high seas,' the Company respectfully submits that it is not competent for Great Britain and the United States alone, or for any other two Governments, to determine who shall be permitted to navigate those waters, or to prohibit fishing or taking seals on the high seas; and the Company respectfully points out to the Honourable the Secretary of the Treasury that its rights have been overlooked by said Agreement between the two Governments, in that it deprives the lessee from taking seals which it is authorized to take by law and its Contract with the United States, thereby inflicting a severe loss upon said Company, in order to obtain the consent of England to arbitrate the question as to the right of Canadian poachers to destroy the seal industry by pelagic sealing."

Before concluding this portion of the Chapter it is necessary to say a few words on Contention (5.), which has two propositions of fact of a somewhat bold and sweeping character, viz., that the identity of each seal can be established with certainty, and that at all times during its winter migration the seal has a fixed intention or instinct which induces it to return. Assuming, for the sake of argument only, the accuracy of these propositions, they in no way bring the case within the authorities cited above as to the conditions under which property is acquired in animals of wild nature: for to do this (1) the seal must be identified, not only as coming from the Pribyloff Islands, but as having been tame or reclaimed while there; and (2) its intention must be not only to return to the islands, which even wild and unreclaimed seals would do of their own accord, but to return to the control and care of their owner.

the voluntary return of the seals to the islands does not make them the subject of property.



It is submitted that the above authorities and arguments support the proposition that the United States have not, nor has any citizen of the United States, any property in fur-seals until they have been reduced into possession, and that the property so acquired endures so long only as they are retained in control.

British Case,  
p. 160, Prop. 10.

Conclusion.

It is attempted in the United States' Case to support the claim to the right of protection in the fur-seals outside the ordinary 3-mile limit, upon the ground that other nations have passed laws for the purpose of protecting similar or kindred industries outside the ordinary limits of territorial waters.

Contention that international law establishes the right of protection claimed.

The following list shows the order in which these laws are treated in the United States' Case and here:—

- (A.)—Falkland Islands.
- (B.)—New Zealand.
- (C.)—Cape of Good Hope.
- (D.)—Canada.
- (E.)—Newfoundland.
- (F.)—Jan Mayen Seal Fishery.
- (G.)—Russia:—White and Caspian Seas.
- (H.)—Uruguay.
- (I.)—Chile.
- (J.)—Argentine Republic.
- (K.)—Japan.
- (L.)—Russia:—Comander and Robben Islands.
- (M.)—Ireland.
- (N.)—Scotland.
- (O.)—Ceylon.
- (P.)—Australia.
- (Q.)—France.
- (R.)—Italy.
- (S.)—Norway.
- (T.)—Panama.
- (U.)—Mexico.

(A.)—Falkland Islands.

An Ordinance of 1881 is quoted, enacting stringent regulations against seal-hunting between specified dates; "within the limits of this Colony and its dependencies."

Falkland Islands Law is limited to Colony and its dependencies

New Zealand territories, lying between

United States' Case, p. 221.

In order to suggest that the provisions of this Ordinance are extended to non-territorial waters, Captain Hudington, a navigator and seal-hunter, is quoted as an authority for the statement "under oath" that this Ordinance is enforced outside the 3-mile limit.

Ibid., Appendix, vol. ii, p. 593.

It will be found, however, on reference to his affidavit, that Captain Hudington only swears as to what was his "understanding" of the Ordinance; and as to any instance of the enforcement of this law against foreigners outside the ordinary limit of jurisdiction, he offers no evidence whatever.

British Commissioners' Report, p. 198.

The Ordinance, with reference to the close season thereby established, enacts (sect. 1) as follows:—

United States' Appendix, vol. i, p. 435.

"No person shall kill or capture, or attempt to kill or capture, any seal within the limits of this Colony and its dependencies."

The terms of the Ordinance are expressly confined to the limits of the Colony, and at no time since the Falkland Islands have belonged to Great Britain, whether before or after the making of the Ordinance in question, has any attempt been made to interfere with the capture of seals outside the ordinary territorial waters. This fact is noted in the British Commissioners' Report.

British Commissioners' Report, p. 156.

#### (B.)—New Zealand.

United States' Case, p. 222.

The next instance cited in the United States' Case is that of New Zealand.

One Imperial and three Colonial Statutes of New Zealand are quoted. The area of jurisdiction conferred is limited by the Imperial Act of 1863.

Ibid., Appendix, vol. i, p. 436.

By section 2 of this Act the Colony of New Zealand is defined as comprising—

New Zealand Law is confined to "territories, islands, and countries" lying between specified limits.

"all Territories, Islands, and Countries lying between the 162nd Degree of East Longitude and the 173rd Degree of West Longitude, and between the 33rd and 53rd parallels of South Latitude."

In the United States' Case, however, this Act is described as defining the—

United States' Case, p. 223.

"boundaries as coincident with parallels 33° and 53° south latitude, and 162° east and 173° west longitude"

and the subsequent legislation of the Colony is then discussed upon the assumption that these words convey the true meaning of the Act.

The Act is printed in full in the United States' Appendix, and it will be seen that this misinterpretation of its meaning is the only foundation for the whole argument which is based on New Zealand legislation.

The expressions cited from the New Zealand Acts, as, for instance, "the whole Colony or only in particular parts thereof," "waters or places specified" (in Regulations), "within the jurisdiction of the Government of the Colony," are all limited by the definition of the area of the Colony in the Act of 1863, quoted above.

Special attention, however, is invited in the United States' Case to the reference to the Act of 1884, which, by section 5, empowers the Governor in Council to make, alter, and revoke Regulations which shall have force and effect only in waters or places specified therein.

It is alleged that—

"almost unlimited authority is thus conferred upon the Executive to establish close seasons, and to make Regulations respecting the purchase or sale of fish, including seals, and punishment for violation of the law and orders. The definition in the Act of the term 'waters' indicates that it applies to the entire area of the Colony, of which the south-eastern corner is over 700 miles from the coast of New Zealand, although a few smaller islands intervene."

This is illustrated by a coloured Map, upon which are traced imaginary boundaries of the Colony, which are asserted to be designated in the Act of 1863.

The definition of "waters" in that Act, upon which the argument rests, is in itself sufficient to prove the error:—

"Waters" [according to the definition] means any salt, fresh, or brackish waters in the Colony, or on the coasts or bays thereof; includes artificial waters, but does not include waters the property of any private person."

If "waters in the Colony" included the ocean to a distance of 700 miles from the shore, it would have been unnecessary and absurd to proceed to mention "waters on the coasts or bays" of the Colony.

United States' Case, Appendix I, p. 436.

United States' Case, p. 222 *et seq.* Section 4 of New Zealand Act, 1878. Section 5 of New Zealand Act, 1884. Section 6 of New Zealand Act, 1887. United States' Case, Appendix, vol. I, p. 437 *et seq.*

United States' Case, p. 223. *Ibid.*, Appendix, vol. I, p. 439.

United States' Case, p. 223.

*Ibid.*, Appendix, vol. I, p. 437.

Definition of "waters" in the Acts only includes "waters in the Colony, or on the coasts or bays thereof."

*Ibid.*, p. 438.

## (C).—Cape of Good Hope.

It is stated in the United States' Case that—

United States' Case, p. 224.

"in the Colony of the Cape of Good Hope sealing is prohibited at the rookeries and in the waters adjacent thereto, except under stringent regulations."

The evidence offered in support of these allegations consists of the following statements:—

W. C. B. Stamp—

Ibid., Appendix, vol. ii, p. 570.

"I am told, although I know nothing about it, that regulations of some kind have been made in the Colony of the Cape of Good Hope."

G. Comer.—The rookeries—

Ibid., p. 597.

"are in possession or control of a company, as I was then informed, which has the exclusive right to take seals there. We did not dare to go to those rookeries, because sealing was prohibited, and we would not have been allowed to take them in the waters adjacent thereto."

British Commissioners' Report, p. 194.

The Regulations in force in this Colony are of the character which appears from the Government Notice which is printed in the Appendix to the British Commissioners' Report. By this Notice all persons are prohibited "from disturbing the seals on the said island" [in Mossel Bay], and are warned from trespassing there.

Ibid., p. 155.

The Government Agent states that there is—

"practically no pursuit of the animals in the water on these coasts. . . . The system of killing the seals is the same throughout all the colonial islands, namely, with 'clubs,' by men landing in boats."

Cape of Good Hope Regulations are confined to the islands.

As a matter of fact, the legislation at the Cape of Good Hope is entirely confined to the protection of seals on the islands.

## (1).—Canada.

United States' Case, p. 225.

Turning from the fur-seal to the other varieties of seals, it is alleged in the United States' Case that, as regards the hair-seal in the North Atlantic—

"they have thrown about them upon the high seas the guardianship of British statutes. . . . Canadian statutes prohibit all persons, without prescribing any marine limit, from disturbing or injuring all sedentary seal fisheries during the time of fishing for seals, or from hindering or frightening the shoals of seals as they enter the fishery."

The only Canadian Statute referred to is the Fisheries Act of 1886, which undoubtedly affects Canadian subjects upon the high seas, and all persons within the territorial waters of Canada, but asserts no jurisdiction over foreign subjects outside those waters.

Canadian Statute referred to in United States' Case, asserts no jurisdiction over foreigners outside territorial waters.

United States' Case, Appendix, vol. i, p. 441.

(E.)—*Newfoundland.*

The laws of Newfoundland quoted in the United States' Case are municipal Regulations only, and make no assertion of maritime jurisdiction beyond the 3-mile limit.

The Newfoundland Laws quoted also make no such assertion.

United States' Case, p. 225.

(F.)—*Jan Mayen Seal Fishery.*

No comment is necessary upon the International Regulations in force in the ocean fishery known as the Jan Mayen Seal Fishery, because these are admittedly based upon a Convention between the various nations interested in the fishery. A full account of the nature and origin of these Regulations will be found in the British Commissioners' Report, pp. 198-203.

These Regulations are based on Convention.

British Commissioners' Report, pp. 198-203.

(G.)—*Russia: White and Caspian Seas.*

The Russian laws quoted in the United States' Case, p. 228, are merely municipal Regulations, which do not affect foreigners beyond the usually recognized limit of territorial waters. Article XXI of the Russian Code of Prize Law of 1869 limits the jurisdictional waters of Russia to 3 miles from the shore. So far as the Caspian Sea is concerned, it is not regarded by nations as a high sea.

Russia does not claim jurisdiction beyond territorial limits.

United States' Case, p. 228.  
British Case, Appendix, vol. ii, Part II, p. 22.

(H.)—*Uruguay.*

The laws of Uruguay which regulate the taking of seals upon the Lobos Islands do not extend beyond the ordinary territorial jurisdiction, and have no application to pelagic sealing beyond that limit. Seals are taken on the islands, and the State—

Uruguay Laws are not shown to extend beyond territorial limits.

British Commissioners' Report, p. 169.  
United States Case, p. 229.  
Ibid., Appendix, vol. i, p. 449.

“does not permit vessels of any kind to anchor off any of the said islands, and does not allow any works to be constructed that might frighten the seals away.”

(I.)—*Chile.*

The United States' Case says:—

“The Governments of Chile and the Argentine Republic have also recently given protection to the fur-

United States' Case, p. 229.

The Chilean United States coasts, islands, waters.



seals resorting to their coasts in the hope of restoring their almost exterminated rookeries.

The mischief, however, appears to have been entirely done by sealers landing on the rookeries. Mr. Comer states that—

United States' Case, Appendix, vol. ii. p. 198.

“if there had been strict regulations enforced, allowing us to kill only young ‘wigs,’ and not to disturb the breeding seals, I am convinced, and have no doubt, that all these rookeries would be full of seals to-day.”

The Chilean law referred to appears to be the Ordinance of the 17th August, 1892, from which the following extracts are made in order to show that the Chilean Government asserts no jurisdiction beyond the ordinary 3-mile limit, but is careful to define strictly the limits of the operation of the Ordinance:—

The Chilean Law referred to in United States' Case is limited to coasts, islands, and territorial waters.

*“Ordinance regulating the Pursuit at Sea or on Land of Seals or Sea-wolves, Otters, and ‘Chungungos’ in the Coasts, Islands, and Territorial Waters of Chile.”*

“Article 1. Only Chileans and foreigners domiciled in Chile are allowed to engage in the pursuit on land or at sea of seals or sea-wolves, otters, and ‘chungungos’ in the coasts, islands, and territorial waters of the Republic, as laid down in Article 611 of the Civil Code.”

“No ships can engage in the pursuit to which this Ordinance refers except those Chilean vessels which are in possession of the qualifications required by the Navigation Laws to be considered as such, foreign vessels being absolutely prohibited from engaging in this industry.

“Art. 2. For the purposes of this Ordinance, the coasts, islands, and territorial waters of Chile shall be considered as divided into as many zones as there are Maritime Governments in the Republic.

“The extent of each zone shall be that of the respective Maritime Government.”

Acting under powers conferred by the above Ordinance, the President of the Republic on the 20th August, 1892, decreed that the fishery of seals—

“be suspended for the period of one year in the regions included in the Maritime Governments of Chiloe and Magallanes, and on the coasts of the Islands of Juan Fernandez.”

The general law of Chile as to fisheries is contained in the Civil Code, where it is enacted:—



"Article 585. Things which in their nature are common property, as the product of the high seas, are not subject to any dominion, and no nation, corporation, or individual has any right to monopolize them. The use or enjoyment of them is determined among the citizens of any one nation by the laws of that nation, but between different nations by international law."

"Article 593. The adjacent sea, to a distance of 1 marine league, measured from low-water mark, is the territorial sea, and under the national dominion; but police administration for the purposes of the security of the State, or the carrying out of fiscal Regulations, extends to a distance of 4 marine leagues, measured in the same manner."

"Article 611. Sea fishing is free, but in the territorial seas the right of fishing is enjoyed only by Chilean citizens or domiciled foreigners."

(J.)—*Argentine Republic.*

The Argentine Republic is next referred to in the United States' Case as having "recently given protection to the fur-seals resorting to their coasts." But it is not alleged that the laws have an ex-territorial operation on foreigners; nor are the laws themselves set forth in the United States' Case or Appendix.

(K.)—*Japan.*

It is also stated that "the Japanese Government has taken steps toward the restoration and the preservation of the fur-seals at the Kurile Islands." The extract from Regulations of 1885 referred to by way of verification, and set forth in the Appendix, relates to islands within the territory of Japan, and no other law is set forth or mentioned; nor is it alleged in the Case that any of the Japanese laws relating to seal fisheries have an ex-territorial operation. Further, the Regulations of 1885 do not appear to be now in force, for the full official Memorandum supplied on the 14th December, 1891, by the courtesy of the Japanese Government, in answer to a Circular asking for "copies of any printed documents or Reports referring to the fur-seal fisheries, or embodying Regulations provided for these fisheries," sets forth "the several Regulations in force at the present time," among which those of 1885 are not given; and it states that

No property in fish,

Territorial sea: 1 marine league.

Argentine Laws are not even alleged (in United States' Case) to have extra-territorial operation on foreigners.

United States' Case, p. 229.

Japanese Regulations referred to in United States' Case related only to islands, and are no longer in force.

Ibid.

United States' Case, Appendix, vol. i, p. 448.

British Commissioners' Report, p. 160.

Ibid., p. 154.

Ibid., p. 164.

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Japanese Government state that there are no means of checking "foreign poachers" outside territorial limits.

there are no means of checking "foreign poachers" "outside the line of territorial limit fixed by international law."

(L.)—*Russia: Commander and Robben Islands.*

The Russian Regulations apply only to territorial waters.

United States' Case, p. 220.

The Russian Regulations of 1881 are printed at p. 116 of the British Case, and the extent of jurisdiction claimed by Russia is fully dealt with at pp. 113-117. It is there shown that these Regulations applied only to the "territorial waters of Russia"

(M.)—*Ireland.*

There is no bye-law under "The Seal Fisheries Act, 1868," with extra-territorial operation on foreigners. *Ibid.*, p. 232.

As to Ireland, the British Government have never assumed to put in force against foreigners any bye-laws made under "The Seal Fisheries Act, 1868," affecting waters outside territorial limits. And although this Act is relied on in the United States' Case as authorizing the assertion of jurisdiction over foreigners outside those limits, no bye-law having that effect exists, and it would be contrary to the practice of the British Government that any such bye-laws should be made, unless in pursuance of some Treaty with the Power whose subjects may be affected.

(N.)—*Scotland.*

Similar remarks here.

*Ibid.*

Similar remarks apply to "The Scotch Herring Fishery Act of 1869," and to all other Acts of the British Parliament which, in terms not expressly limited to British subjects, authorize fishery bye-laws affecting non-territorial waters.

(O.)—*Ceylon.*

The title of the British Government to the Ceylon pearl fisheries is prescriptive.

*Ibid.*, p. 233.

The legislation affecting the pearl fisheries of Ceylon is relied on in the Case of the United States as an example of the exercise of extra-territorial jurisdiction upon the high seas. The claim of Ceylon is not to an exceptional extent of water forming part of the high seas as incidental to the territorial sovereignty of the island, but is a claim to the products of certain submerged portions of land, which have been treated from time imme-

morial by the successive Rulers of the island as subjects of property and jurisdiction.

(P.)—*Australia.*

The Australian Pearl Fishery Acts are confessedly limited in their operation to British subjects.

Australian Acts are limited to British subjects.

United States' Case, p. 234.

(Q.)—*France.*

As to France, the United States' Case says the Decree of the 10th May, 1862—

Ibid., p. 235.

went so far as to provide in terms that under certain circumstances fishing might be prohibited over areas of the sea beyond 3 miles from shore."

This Decree, of which Article 2 only is set forth in the Appendix to the United States' Case, is given at length in the Appendix to this Counter-Case." Article 1 has the following paragraph:—

Appendix, vol. i, p. 111.

"Les pêcheurs sont tenus d'observer, dans les mers situées entre les côtes de France et celles du Royaume-Uni de la Grande-Bretagne et d'Irlande, les prescriptions de la Convention du 2 Août, 1839, et du Règlement International du 23 Juin, 1843."

This shows that French subjects only are affected; for the Government did, and could, bind its subjects only by the Convention of 1839.

Article 2 is as follows:—

"Sur la demande des prud'hommes des pêcheurs, de leurs délégués et, à défaut, des syndics des gens de mer, certaines pêches peuvent être temporairement interdites sur une étendue de mer au delà de 3 milles du littoral, si cette mesure est commandée par l'intérêt de la conservation des fonds ou de la pêche de poissons de passage.

"L'Arrêté d'interdiction est pris par le Préfet Maritime."

It is not alleged in the United States' Case that the power thus given has been acted on as against foreigners, and it is submitted that Article 2 was not intended to authorize bye-laws affecting foreigners beyond territorial limits.

The construction which supposes the Decree to apply to foreigners assumes it to assert an authority to prohibit fishing to all nations, unlimited in the selection of the kinds of fish to which the prohibition may apply, either as to their being "located" near French coasts, or as to their being those in which France has "an

interest, an industry, and a commerce;" and assumes that the prohibition may extend to mere "fishes of passage," in which the interest of France is only that which it has in common with other nations, and may apply to every part of the high seas.

Assuming the Decree confined to French subjects, no difficulty is caused by this absence of restriction. If extended to foreigners, it goes beyond anything for which the United States contend even in the present case. If all nations made corresponding laws, some as to one fish and some as to another, giving effect to the same by "necessary measures" and "reasonable force," the dangers of the sea would be aggravated in no slight degree.

France only legislates for foreigners within 3 miles.  
Appendix, vol. i, p. 113.

The extent to which France claim to legislate for foreign fishermen is now regulated by the Law of the 1st March, 1888.

Article 1 says:—

"La pêche est interdite aux bateaux étrangers dans les eaux territoriales de la France et de l'Algérie, en deçà d'une limite qui est fixée à 3 milles marins au large de la laisse de basse mer."

Statement in United States' Case as to Algerian coral fisheries is not verified by particulars or evidence.

United States' Case, p. 235.

The United States' Case proceeds:—

"Numerous laws have also been enacted by France to protect and regulate the coral fisheries of Algeria, both as to natives and foreigners, and the coral beds so regulated extend at some points as far as 7 miles into the sea."

This is not verified by particulars or evidence.

(R.)—*Italy.*

Ibid.

The United States' Case, after setting forth that there are coral beds at various distances exceeding 3 miles from the coasts of Sicily and Sardinia, says:—

"At present all coral fishing is prohibited on these banks by Royal Decree, for a designated period."

Ibid., Appendix, vol. i, p. 476.

The first of the laws set out in the Appendix, viz., that of the 4th March, 1877 (Article 1), says:—

"The present law regulates the fisheries in the waters of the public domain, and in the territorial sea. . . . The provisions contained in the Merchant Marine Code, and in other laws relating to the water police and navigation, remain unchanged, as regards the treatment of foreigners, and as regards grants in the public domain and the territorial sea."

The provisions referred to in the Merchant Marine Code and elsewhere are not given; nor does the United States' Case say that foreigners have ever been excluded in practice from the fisheries in question; or show that, as matter of construction, the alleged prohibition applies to any but Italian subjects.

Foreigners not shown to be excluded from Italian coral fisheries.

(S.)—*Norway.*

As to Norway, the United States' Case says that the principle of Contention (3.) is recognized in a Statute for the protection of whales, "in Varanger Fiörd, an arm of the open sea about 32 marine miles in width." There is nothing in the Norwegian laws set forth in the Appendix to the United States' Case to show that they apply to foreigners at all. If they do, then, as regards Varanger Fiörd, the question may be whether or not it belongs to the "inner waters" of Norway.

United States' Case, p. 236.

Norwegian Laws not shown to apply to foreigners at all.

(T.)—*Panama.*

The law of Panama next referred to applies, and is alleged to apply, only to pearl fisheries, as to the title or want of title to which, or their proximity to islands or coast, or whether in inland waters, nothing is said. Nor is there anything to show that the law in question applies to foreigners.

Ibid.

Nor are Panama laws.

The assertion in the United States' Case as to the area affected by the law is unsupported by evidence; and it will be observed that the Map of the Panama pearl fisheries in the Appendix does not purport to come from the Panama Government but to be "prepared at the office of the United States' Coast and Geodetic Survey." From what materials it was so prepared is not explained; and as it refers to a Decree of 1890, and is not dated, it may be supposed to have been made for exhibition to the Tribunal of Arbitration.

The area affected by law referred to is not shown by evidence.

United States' Case, Appendix, vol. 1, p. 484.

Authorities of a nation own soil whose per within its

(U.)—*Mexico.*

The facts stated with reference to these pearl fisheries are not verified by evidence. The Mexican Regulations appear only to refer to "the waters of the Republic;" and even then foreigners are admitted to the fisheries on complying with certain Regulations as to registration and payment of tonnage and lighthouse dues.

Mexican Regulations only apply to territorial waters.

Ibid., p. 489.

Ibid., pp. 491, 492.



United States' Case, Appendix, vol. i, note on p. 492.

It is worth observing that, although Mexican legislation is adduced in the United States' Case as an example of the exercise of jurisdiction outside the 3-mile limit, yet in setting out the Regulations of 1874 in the Appendix, those relating to the boundaries of the fishing districts are omitted.

Appendix, vol. i, p. 115.

As showing that Great Britain has not consented to the exercise of fishery jurisdiction by Mexico beyond the ordinary limit, reference may be made to the Treaty of the 27th November, 1888, between Great Britain and that country, of which the last paragraph of Article IV is as follows:—

"The two Contracting Parties agree to consider, as a limit of their territorial waters on their respective coasts, the distance of 3 marine leagues reckoned from the line of low-water mark. Nevertheless, this stipulation shall have no effect, excepting in what may relate to the observance and application of the Custom-house Regulations and the measures for preventing smuggling, and cannot be extended to other questions of civil and criminal jurisdiction or of international maritime law."

In connection with this branch of the subject, viz., the scope and effect of the legislation of other nations, it is essential to keep in mind the well-known rule of international law, that the laws of a nation affect none but its own subjects and the subjects of other nations whose persons or property may be within its territorial jurisdiction.

No nations have more consistently affirmed this rule than the United States and Great Britain, and a large number of citations might be given establishing this proposition, but a few will suffice.

Two distinguished American jurists may be quoted.

Mr. Sedgwick writes:—

Sedgwick, "Interpretation and Application of Statutory and Court Law," New York, 1857, p. 70.

"As a general proposition, the rule is good that no nation is bound to respect the laws of another nation, except as to persons or property within the limits of the latter. This is the general rule of our law, and this, too, is the language of the great civilians. '*Constat, igitur,*' says Rodenburg [De Stat., ch. 3, s. 1, p. 7]. '*extra territorium legem dicere licere nemini, idque si fecerit quis, impute ei non pareri, quippe ibi cessat statutorum fundamentum, robur, et jurisdictione.*' '*Nullum statutum,*' says P. Voet [De Stat., s. 4, ch. 2, n. 7,



p. 124. Id. 130, 138; ed. 1661], 'sive in rem sive in personam, si de ratione juris civilis sermo instituitur sese extendit ultra statuentis territorium.' And so says Boullenois: 'Of strict right no laws made by a Sovereign have any force or authority except within the limit of his dominion.' [1 Boullenois *Prin. Gen.*, 6, p. 4.]

— Mr. Justice Story states the same proposition as one of the—

"maxims or axioms which constitute the basis upon which all reasonings on the subject must necessarily rest, and without the express or tacit admission of which it will be found impossible to arrive at any principles to govern the conduct of nations, or to regulate the due administration of justice."

Story, "Commentaries on the Conflict of Laws," 8th edition, by Bigelow, Boston, 1883, s. 20, p. 22. Ibid., p. 21.

The writer proceeds to quote the passages from Rodenburg, Voet, and Boullenois, already cited by Mr. Sédgwick.

Ibid., p. 22.

The rule of English law is no less clear.

Sir P. B. Maxwell, in a work which is the standard authority on the interpretation of Statutes, writes:—

Maxwell on the "Interpretation of Statutes," 2nd edition, London, 1883, chap. vi, p. 168.

"Another general presumption is that the Legislature does not intend to exceed its jurisdiction.

"Primarily, the legislation of a country is territorial. The general rule is that *extra territorium jus dicenti impune non paretur; leges extra territorium non obligant*. The laws of a nation apply to all its subjects and to all things within its territories, including in this expression not only its ports and waters which form, in England, part of the adjacent county, but its ships, whether armed or unarmed, and the ships of its subjects on the high seas or in foreign tidal waters, and foreign private ships within its ports. They apply also to all foreigners within its territories as regards criminal, police, and, indeed, all other matters except some questions of personal status or capacity, in which, by the comity of nations, the law of their own country, or the *lex loci actus* or *contractus* applies.

"It is true this does not comprise the whole of the legitimate jurisdiction of a State; for it has a right to impose its legislation on its subjects, natural or naturalized, in every part of the world; and, indeed, on such matters as personal status or capacity it is understood always to do so; but, with that exception, in the absence of an intention clearly expressed or to be inferred either from its language, or from the object or subject-matter, or history of the enactment, the presumption is that Parliament does not design its Statutes to operate on them, beyond the territorial limits of the United Kingdom. They are, therefore, to be read, usually, as if words to that effect had been inserted in them. . . ."

Maxwell on the  
"Interpretation of  
Statutes,"  
2nd edition, London,  
1883, chap. vi,  
p. 174.

See 34 Vict., cap. 8.

Ibid., p. 175.

The "Zollverein,"  
Swabey's Reports,  
p. 98.

"Section 2.—Presumption against a Violation of  
International Law.

"So it is an admitted principle of public law that, except as regards pirates *jure gentium*, and, perhaps, nomadic races and savages who have no political organization, a nation has no jurisdiction over offences committed by a foreigner out of its territory, including its ships and waters as already mentioned; and the general language of any criminal Statute would be so restricted in construction as not to violate this principle . . . So it has been repeatedly decided in America that an Act of Congress which enacted that any person committing robbery in 'any vessel on the high seas' should be guilty of piracy, applied only to robbery in American vessels, and not to robbery in foreign vessels even by an American citizen."

To the above quotations may be added the following extract from the Judgment of Dr. Lushington in the case of the "Zollverein":—

"In endeavouring to put a construction on a statute, it must be borne in mind how far the power of the British legislature extends, for unless the words are so clear that a contrary construction can in no way be avoided, I must presume that the legislature did not intend to go beyond this power. The laws of Great Britain affect her own subjects everywhere—foreigners only when within her own jurisdiction."

Conclusions.

It is submitted that an examination of the Colonial and foreign laws referred to in the United States' Case shows that international usage in no way establishes, and in no instance sanctions, the principle asserted by the United States, but, on the contrary, confirms the following propositions at p. 160 of the British Case:—

"The right of the subjects of all nations to navigate and fish in the non-territorial waters of the sea, now known as Behring Sea, remains and exists free and unfettered; and cannot be limited or interfered with, except with the concurrence of any nations affected.

"No regulations affecting British subjects can be established for the protection and preservation of the fur-seal in the non-territorial waters of Behring Sea without the concurrence of Great Britain."

## CHAPTER VII.

CONSIDERATION OF ALLEGATIONS OF FACT PUT  
FORWARD BY THE UNITED STATES IN CON-  
NECTION WITH POINT 5 OF ARTICLE VI.

SECTION I.—*The Fur-seal is a Marine Animal, and  
Pelagic in its Habits.*

THE UNITED STATES' CONTENTIONS.

- (1.) Conclusions, United States' Case, p. 295—  
"That the Alaskan fur-seal . . . is essentially a land animal, which resorts to the water only for food and to avoid the rigour of winter."
- (2.) United States' Case, p. 300—  
"That in view of the facts . . . it [the United States] has such a property in the Alaskan seal herd as the natural product of its soil . . . as entitles it to preserve the herd . . ."
- (3.) United States' Case, p. 90—  
"From May to November inclusive (the period when the majority of the seals are on land) the mean temperature is 41° and 42° F."
- (4.) United States' Case, p. 122—  
"An examination of the table showing the annual killing of seals on St. Paul Island for several years proves conclusively the presence of seals on the Islands for at least eight months of the year."
- (5.) United States' Case, p. 123—  
"The seals evidently consider these islands their sole home, and only leave them from being forced so to do."

SUMMARY OF BRITISH REPLY.

The statement that the fur-seal is a land animal is wholly unwarranted; in truth, it is not only marine but pelagic in habit.

The statements of witnesses cited in the Case of the United States are alone sufficient to show that the fur-seal is a marine animal, and no naturalist is found to hold an opinion to the contrary.

The time in each year during which the fur-seals (or some considerable portion of them) remain on or about the Prihyloff Islands for purposes of reproduction is, in the United States' Case, very greatly exaggerated. This is done by means of substituting extreme and exceptional dates for average ones, and by means of combining in a single period the several times of stay about the islands of different ages and sexes of seals.

Statements contained in the Case itself of the United States, with respect to the arrival and departure of various classes of seals, show that these may spend respectively from three to five and a half months on or about the breeding-islands. But individual seals (with the exception of the old bulls) frequent the adjacent waters for much of the time of their resort to the islands, and many young males and virgin females probably do not land at all. Professor J. A. Allen gives the average length of stay ashore of the *Otaridae* generally, as about one-third of the year.

The industry growing out of the taking of fur-seals is described as a "fishery" in official documents and acts. The food of the fur-seal is entirely derived from the sea, and little, if any, of it is obtained even in the vicinity of the Pribyloff Islands.

Contention novel and unprecedented.

Organization and habits wholly opposed to such contention.

Seals fish-like in form, and have fins, not feet.

The initial assertion above quoted, which appears in the first lines of the "Conclusions," or summing up of the contentions held by the United States, is of a character so unprecedented, and so entirely opposed to everything known respecting the fur-seals or other allied animals, that it is scarcely conceivable that it is intended seriously to maintain it. It was certainly not to be anticipated that it would be necessary, in opposition to such a statement, to point out that the habits and organization of the fur-seal, with that of other pinnipeds (the sub-order to which the fur-seal belongs), are directly the converse of those formulated in the proposition just quoted:— That the fur-seal resorts to the land only for or in connection with its reproduction; that its stay upon the land is but temporary, and is governed by the requirements of reproduction; that it remains on or about the land for a portion only of the year; that, during the remaining, and much the greater, part of each year, it is not only aquatic but pelagic in its habit; that, in connection with this mode of life, its whole form and organization is fitted for existence in the sea; and that it is provided with fins and not with feet, as indeed is implied by the name of the zoological sub-order under which it is included.\*

It is scarcely necessary to go further than the limits of the Case presented by the United

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\* In the opening paragraph of his technical characterization of the animals of the sub-order *Pinnipedia*, Professor Allen gives the first and most distinctive character as follows:—

"Limbs pinoiform, or modified into swimming organs, and inclosed to or beyond the elbows and knees within the common integument." ("Manual of North American Pinnipeds," p. 3.)

Professor Sir W. H. Flower, K.C.B., F.R.S., similarly places this character first, writing:—

"These [the *Pinnipedia*] differ from the rest of the *Carnivora* mainly in the structure of their limbs, which are modified for aquatic progression,—the two proximal segments being very short and partially enveloped in the general integument of the body, while the third segment, especially in the hinder extremities, is elongated, expanded, and webbed." ("Encyclopædia Britannica," vol. xv.—"Study of Mammals," Flower and Lydekker.)

States, to disprove the assertion just alluded to:—thus, on p. 126 *et seq.*, evidence is cited to show that “during their migration,” or, in other words, during that greater part of the year in which the animal is not found upon the Pribilof or other breeding-islands, the fur-seal never lands, and does not even frequent “inland waters”—that, in effect, it is pelagic in its habit of life. The facts contained in the Report of the British Commissioners, and evidence contained in the Appendix to this Counter-Case, show that the seal does occasionally land even during the winter months on the coasts of British Columbia, and that it also still at times frequents the sheltered channels and straits of that coast; but the accuracy of the general statement that the fur-seal is pelagic in its mode of life cannot properly be disputed.

It may be necessary, however, in view of the confident assertion by the United States that the fur-seal is “essentially a land animal;” and the dependent suggested inference that the United States has some property right in the fur-seal as “the natural product of its soil, made chiefly available by its protection and expenditure;” to adduce some further evidence as to the marine or pelagic nature of the animal.

Professor J. A. Allen, the Curator of the American Museum of Natural History, is specially referred to and relied upon in the United States' Case in connection with the natural history of the fur-seal. He is well known to naturalists from his excellent “Monograph on the North American Pinnipeds.” It is therefore of importance to quote the terms in which, in the monograph named, he characterizes this group of animals. He writes:—

“The *Pinnipeds* or *Pinnipedia*, embracing the Seals and Walruses, are commonly recognized by recent systematic writers as constituting a sub-order of the order *Ferr* or Carnivorous Mammals. They are, in short, true Carnivora, *modified for an aquatic existence*, and have consequently been sometimes termed ‘Amphibious Carnivora.’ *Their whole form is modified for life in the water, which element is their true home. Here they display extreme activity, but on land their movements are confined and laboured. They consequently rarely leave the water, and generally only for short periods, and are never found to move voluntarily more than a few yards from the shore. Like the other marine Mammalia, the Cetacea and Sirenia (Whales, Dolphins, Porpoises, Manatees, &c.), their bodies are more or less fish-like in general form, and their limbs are*

United States' Case, p. 126 *et seq.*

Rarely lands except on the breeding-places.

*Ibid.*, p. 295.

*Ibid.*, p. 300.

All authorities class the fur-seal as marine, not terrestrial.

Professor J. A. Allen in his “Monograph.”

Allen, “Monograph of North American Pinnipeds,” Washington, 1880, p. 1.

Profess

Sir W.

Allen's "Monograph of North American Pinnipeds," p. 1.

*transformed into swimming organs. As their name implies, they are fin-footed. Generally speaking, the body may be compared to two cones joined basally. . . . In contrasting them with the ordinary or terrestrial mammals, we note that the body is only exceptionally raised, and the limbs are confined within the common integument to beyond the knees and elbows, and are hence to only a slight degree serviceable for terrestrial locomotion. . . .*

"The existing Pinnipeds contain three very distinct minor groups or families, differing quite widely from each other in important characters: these are the Walruses or *Odobenidae*, the eared seal or *Otariidae*, and the earless seals or *Phocidae*. . . ."

Professor J. A. Allen in his special Report.

The language above quoted may be contrasted with that used by Professor Allen in the paper specially prepared for the purposes of the Case of the United States. He (Professor Allen) there writes as follows:—

United States' Case, Appendix, vol. i, p. 367.

"The common seals, the eared seals, and the walruses form a well-marked group of the carnivorous mammalia, constituting a sub-order (*Pinnipedia*) of the order *Carnivora*. They are carnivores specially modified for aquatic locomotion and semi-aquatic life. Their ancestors were doubtless land animals, probably more nearly allied to the bears than to any other existing mammals. They are still dependent on the land or on fields of ice for a resting-place, to which they necessarily resort to bring forth their young. They are thus very unlike the sea-cootes and the whale tribe, which are strictly aquatic, bringing forth their young in the water, and entirely unfitted for locomotion on land."

The statement that the pinnipeds generally have been evolved, in the course of geological time, from animals resembling the bears, has no relevancy when cited in connection with the present inquiry. The actual habits of seals, it may be arguable, have some bearing on the questions at issue, but the supposed history of their evolution can have none.

Dr. W. H. Dall, who, as a well-known naturalist having personal knowledge of the Pribyloff Islands, is also relied upon and frequently referred to in the Case of the United States, describes the fur-seals as animals—

Dr. W. H. Dall.

Pacific Coast Pilot; Const Pilot of Alaska, Appendix I, p. 35.

"whose normal habitat would seem to be the sea itself, and whose temporary sojourn on the land is only rendered possible by the uniform coolness and moisture of the islands."

Sir W. H. Flower, K.C.B., F.R.S.

Sir W. H. Flower, K.C.B., F.R.S., a specially competent authority on this subject, in his article



on *Mammalia* in the "Encyclopædia Britannica," speaks as follows of the *Pinnipedia* :—

"The animals of this group are all aquatic in their mode of life, spending the greater part of their time in the water, swimming and diving with great facility, feeding mainly on fish, crustaceans, and other marine animals, and progressing on land with difficulty. They always come on shore, however, for the purpose of bringing forth their young."

Captain Bryant, who had long experience in connection with the fur-seals of the Pribyloff Islands, and whose evidence, contained in a very recent statement made by him in connection with the present Arbitration, is prominently quoted in the Case of the United States, also writes as follows .—

"The fur-seals resort to the Pribyloff Islands during the summer months for the sole purpose of reproduction. Those sharing in these duties necessarily remain on or near the shore until the young are able to take to the water."

The fact that fur-seals are capable of a certain freedom of motion while on the land is largely the result of the greater power of active motion which characterizes these animals at all times and which is equally or even more marked at sea, where in particular the dolphin-like leaps of the fur-seals have been frequently noted as entirely different from anything in the more leisurely and heavy mode of progression of the hair-seals or walruses.

In this particular connection it may be of interest further to quote Mr. H. W. Elliott, the United States' Special Agent. His observations respecting the fish-like and essentially aquatic habit of the fur-seals are as follows :—

"They all swim rapidly, with the exception of the pups, and may be said to dart under the water with the velocity of a bird on the wing; as they swim they are invariably submerged, moving along horizontally about 2 or 3 feet below the surface, guiding their course with the hind flippers as by an oar, and propelling themselves solely by the fore feet, rising to breathe at intervals which are either very frequent or else so wide apart that it is impossible to see the speeding animal when he rises a second time.

"How long they can remain under water without taking a fresh breath, is a problem which I had not the heart to solve, by instituting a series of experiments at the islands; but I am inclined to think that, if the truth were known in regard to their ability of going without rising to breathe, it would be considered astounding,

Captain Bryant,

Seals resort to Pribyloffs solely for reproduction.

Quoted in Allen's "Paper on the Eared Seals," Bull. Mus. Comp. Zool., vol. ii, No. 1, p. 95.

Allen's "Monograph of North American Pinnipeds," p. 187. Flower, "Encyclopædia Britannica," vol. xv, pp. 442, 443.

Elliott, "United States' Census Report," pp. 45, 163.

Mr. H. W. Elliott.

Fish-like habits.

Ibid., p. 45.

..... All their movements in water, whether they are travelling to some objective point or are in sport, are quick and joyous. .... They sleep in the water a great deal, too, more than is generally supposed, showing that they do not come on land to rest—very clearly not."

Length of resort to breeding islands.

In the Case of the United States very ambiguous and even contradictory statements are made respecting the length of time in each year during which the fur-seal resorts to the land, a matter which it may be presumed is rather an important one in relation to the claim made that it is "essentially a land animal."

Statements in United States' Case questioned.

United States' Case p. 90.

It is stated in the Case of the United States that the period when the majority of the seals are on land is from May to November inclusive.

In the Report of the United States' Commissioners it is again stated that—

Ibid., pp. 321, 322.

"The amphibious fur-seals are not only intermediate between the hair-seals and terrestrial carnivorous mammals in structure and means of locomotion, but also in habits, for they spend fully half their lives on land."

It is elsewhere said that—

Ibid., pp. 122, 123.

"An examination of the table showing the annual killing of seals on St. Paul Island for several years proves conclusively the presence of seals on the islands for at least eight months of the year, and that they have, in fact, been killed there in every month of the year."

Fallacies upon which erroneous statements based.

The apparent object of these statements is to show that, for the greater part of each year, the seals remain ashore upon the breeding islands; but it is submitted that such statements of a general kind are essentially misleading, and this for several reasons. As in the case of all migratory animals, certain individuals are found to arrive long before the mass of their kind in almost every year, while others, either from individual eccentricity or because of age, weakness, or wounds, are in a similar manner left behind. Such "strays" should not, however, in any case, be regarded as indicating the dates of the period of the arrival and departure of the main body of animals. The Tables quoted as Appendix (B) to the Report of the United States' Commissioners, and giving the first arrivals of seals at the Pribyloff Islands for a number of years, show this general rule in the case of the fur-seal: and, if the earliest dates of arrival should be accepted as indicating the opening

"Strays" in migration.

United States' Case, pp. 385, 386.

of the periods of arrival of the seals as a whole, would be entirely misleading.

The subject is further complicated by the fact that seals of different sexes and ages do not arrive simultaneously at the breeding islands or leave these islands at the same times. Thus it becomes possible to make general statements which, though in a measure based on fact, convey no real idea of the average time spent by the seals upon the land. For this reason it will be found that the particulars given in the United States' Case as to the dates of the arrival and departure of the various sexes and ages of seals do not correspond with the above-quoted general allegations, though, even in these statements, extreme limits rather than average ones are in most cases taken.

Thus it is stated in the United States' Case that the bulls arrive in "the latter part of April or first few days of May," and begin to leave the islands about the 1st August, and "continue going till the early part of October." This, in other words, would make the stay of the bulls about the islands from three to four months.

The cows, it is stated—

"begin to appear toward the latter part of May or 1st June;"

while—

"the great majority, however, do not haul up until the latter part of June; and the arrivals continue until the middle of July."

They are stated to remain on the islands till about the middle of November. Thus, as an extreme limit for the stay of the cows, the above shows a period of four months to five months and a half.

Similarly the "bachelors," or young male seals, are said to—

"begin to arrive in the vicinity of the islands soon after the bulls have taken up their positions upon the rookeries, but the greater number appear toward the latter part of May."

In regard to the departure of this class, it is said that this—

"generally takes place at the same time the cows and pups leave the islands, though a few bachelors always are found after that period."

Sexes arrive and leave at different times.

Thus aggregate dates do not represent actual residence.

Particulars given in United States' Case do not correspond with quoted contentions.

United States' Case, p. 108.

Ibid., p. 112.

Bulls resort to islands for 3 to 4 months;

Ibid., pp. 108, 109.

Cows, 4 to 5½ months;

Bachelors

Evidence Case about breeding

Bachelors,  $5\frac{1}{2}$  months at most.

So that, as an extreme limit of time for the stay of the bachelors, we have, according to the statements here made, about five months and a half.

Evidence given in United States' Case shows still shorter resort to breeding islands.

But the evidence of those personally familiar with the breeding islands, even that which is appended to the United States' Case, invariably gives shorter limits of time for the sojourn of any considerable numbers of the seals on the islands.

Mr. Fowler.

Thus, Mr. Fowler, the agent of the lessees, states:—

United States' Case, Appendix, vol. ii, p. 25.

"The bull seals arrive on the islands from the latter part of April to June 15th, and most all of them leave in August and September. . . . The cows come to the islands between June 1 and July 20, and commence leaving in October. . . . The young male seals from 2 to 5 years old come in May or June. . . . The pups are born soon after the cows arrive, and remain until October or November."

Mr. Morton.

Mr. Morton, agent for the lessees, and Treasury Agent, says:—

Ibid., p. 67.

"By the middle of September the systematic organization of the rookeries is entirely broken up, and the major part of the seals have left the land."

J. Ketchooten.

Jacob Ketchooten, a native sealer, says:—

Ibid., p. 131.

"The most of the bulls leave the island in September, and the cows in the last of October, and early in November."

Mr. Morgan.

Mr. Thomas F. Morgan, agent of lessees for many years:—

Ibid., pp. 62, 63.

"The pups which left the island the year before have now become 'yearlings,' . . . not coming on shore until some time in August or September. . . . The male seal, now called a bull, returns to the islands about the 1st May. . . . About the 1st August he again takes to the water."

Mr. Fratis.

John Fratis, twenty-two years on St. Paul Island:—

Ibid., p. 108.

"The cows appear about the 10th June, and they are all on the rookeries about the middle of July. . . . The bachelors come in May, . . . and they continue coming till July. . . . The cows and bachelors begin to leave in October and November, but their going is regulated somewhat by the weather."

Dr. L. A. Noyes, agent of lessees :—

Dr. Noyes.

"From the time the bulls haul out in May till they leave in September," &c. United States' Case, Appendix, vol. ii. p. 81.

Mr. Falconer, Treasury Agent :—

Mr. Falconer.

"He [the bull seal] has come earlier than formerly to the islands, having arrived in May. . . . They depart in August and September." Ibid., p. 166.

All the above periods of stay on the islands would, however, be very materially reduced if the period of stay of the main body of seals of each class were alone taken into account; and it is moreover to be remembered that, as above stated, they refer only to the periods during which the seals are found on or about the islands. As a matter of fact, the old bulls are the only seals which remain continuously for any lengthened period ashore, all other classes spending a considerable portion of the time in the adjacent water. It is besides more than probable that many of the bachelors, as well as the virgin cows, if they haul out upon the islands at all, do so for very brief periods only.

Even these statements do not properly represent length of stay of main body of seals.

British Commissioners' Report, pp. 14, 76.

In fact, the evidence proves that the different classes of seals resort to the islands at different dates and for different periods. Moreover, of the classes that are ashore, with the exception of the breeding seals, it is probable that at least one-third of their number are at any given time disporting themselves in the waters immediately adjacent to the rookeries. But while it is true to say that the great body of the seals commence to come ashore in May and June, and to leave in September and October, it will be seen that no single class of seals resorts to the shore for the aggregate period thus included.

Maynard, 44th Congress, 1st Sess., H. R., Ex. Doc. 43, p. 4.

Individual seals, moreover, spend much time in the water even while at the islands.

In fact, Professor J. A. Allen, in his article specially prepared for the United States' Case, says of the eared seals (*Otaridæ*) generally :—

United States' Case, Appendix, vol. i, p. 370.

"They are polygamous, and resort to the land to breed, where they spend almost continuously about one-third of the year."

Professor Allen gives 4 months as average time of residence.

It is thus established that on the data as given in the Case of the United States, no statement to the effect that the fur-seal spends even half of the year ashore can be substantiated.

United States' contention as to length of stay thus disproved by evidence in United States' Case.

United States' Case, pp. 90, 321, 322.

Actual

Seal inductions of Cong

Actual length of resort to breeding islands.

From a study of the most trustworthy published observations, notably those of Bryant, Elliott, and Maynard (writers who, in framing their official Reports, had no reason for unduly limiting or extending the period during which the fur-seal naturally resorts to the land), the British Commissioners report as follows:—

British Commissioners' Report, para. 30.

“With reference to the length of the period during which the fur-seals resort to the shore:—the breeding males begin to arrive at the Pribyloff Islands at varying dates in May, and remain continuously ashore for about three months, after which they are freed from all duties on the breeding rookeries, and only occasionally return to the shores. The breeding females arrive for the most part nearly a month later, bearing their young immediately on landing, and remaining ashore, jealously guarded by the males, for several weeks, after which they take every opportunity to play in the water close along the beaches, and about a month later they also begin to leave the islands in search of food, and migrate to their winter habitat. The young males and the young females come ashore later than the breeding seals, and at more irregular dates, and ‘haul out’ by themselves. Lastly, the pups of the year, born in June and July, commence to ‘pod,’ or herd together away from their mothers, towards the middle or end of August, and after that frequent the beaches in great numbers, and bathe and swim in the surf. They remain on the islands until October, and even November, being among the last to leave.”

Details respecting the landing and departure of the various classes of seals will be found in paragraphs 174 and 188 of the British Commissioners' Report.

From the quotations and references given above, it is clear that the fur-seal has never been considered by naturalists “a land animal;” and almost innumerable citations in support of this statement might be made.

It will, however, here be sufficient to show, in addition, that in the official publications and documents of the United States, as a matter of common usage, the industry depending on the fur-seal has throughout been called a “fishery.” It is not to be assumed that in the choice of this term the fur-seal was supposed to be a “fish” from the standpoint of a zoologist, but rather that its nature and habits clearly show that it is a marine animal, and not a product of the soil, as is now, and for the first time in history, gravely asserted. The industry growing out of the capture of the fur-seal is in

Seal industry, in all State publications of the United States and Acts of Congress, called a fishery.

United States' Case, p. 300



effect a "fishery" in a sense analogous to that in which this term is used in many other cases, such as the "whale fishery," or the "oyster fishery." In the Appendix, the titles of several Acts of Congress and other official documents, ranging in date from 1832 to 1892, are cited as examples of this, in which the industry is invariably described as a "fishery."

Appendix, vol. i,  
p. 122

It should further be borne in mind that the food upon which the fur-seal subsists is entirely derived from the sea, and no portion of it from the land. The quantity consumed by the seals individually, and also as a whole, is dealt with later in this Counter-Case (p. 152); and it is there shown to amount to many millions of tons annually. It is still further worthy of remark that but a small proportion of this food is derived even from the neighbourhood of the Pribyloff Islands, for it is admitted in the United States' Case that the bulls do not feed during the period in which they reside upon the islands; and as to the other seals frequenting the islands, the British Commissioners were of opinion that they also do not feed whilst on or about the islands. In support of this belief they quote the fact that the rookeries and hauling-ground were searched in vain for any traces of excrement, and that, having killed a considerable number of seals of all descriptions, and examined the contents of their stomachs, no trace of food was found. Continued observations in 1892 entirely support this opinion.

British Commissioners' Report,  
paras. 242, 243.

Appendix, vol. i,  
p. 144.

It is, therefore, evident that no grounds exist to justify the application to the fur-seal of the designation of land animal, when admittedly it derives its entire sustenance from the ocean, and passes there two-thirds, if not more, of its existence.

Food entirely derived from the sea

Seals do not feed while resorting to  
the breeding-islands.

Conclusions.

Object of

SECTION II.—*The Fur-seal is in no sense a Domestic Animal.*

THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 295—  
 "The seal is domestic in its habits and readily controlled by man while on the land."  
 (2.) United States' Case, p. 154—  
 "The killing of a portion of the surplus male life is undoubtedly a benefit to the herd, as it is with other domestic and polygamous animals."

(See also pp. 147 to 150, "Control and Domestication.")

SUMMARY OF BRITISH REPLY.

Though fur-seals are to a certain degree controllable when on land, this results from their helplessness while there, and such control has nothing to do with domestication.

The seals are now fearful of man, even when collected in great numbers ashore; though it is probable that, when their breeding-places were first visited, ignorance caused them to be fearless.

All ideas attached to the word "domestic" are wanting in the case of fur-seals. Man does not provide their food: his care is at most of a negative kind, and consists in the avoidance of acts which would tend to drive them wholly away from the breeding-islands. They would not suffer, but, on the contrary, would profit by his departure from these islands.

During the greater part of the year the seals are wholly removed from the cognizance of persons on the Pribyloff Islands; and till very lately their winter haunts were not even known.

No scientific evidence can be adduced in support of the contention that the seal is other than a wild animal; and it is believed that no credible evidence from any source can be quoted to such an effect.

Object of the assertion that the sea is domestic.

United States' Case, pp. 230 and 299.

Basis of the assertion.

The peculiar claim embodied in the above quotations from the United States' Case is evidently put forward with the object of avoiding the consequences resulting from the fact that the seal is an animal *feræ naturæ*, and as a step essential toward the claim of "property" in seals; and from this point of view it requires examination, notwithstanding its extraordinary nature. It is to be observed that, in other connections and for another purpose in the Case of the United States, it is admitted that fur-seals are animals *feræ naturæ*.

The whole argument advanced in the Case of the United States as to the domestic character of the fur-seal, with the allegations upon which it is based (given in detail in the Appendix of the Case), resolve themselves into the statement, given

in more or less varying forms, that the animals are "readily controlled by man while on the land."

Control not domestication.  
United States' Case, p. 295.

The only sense in which the assertion can be made that the seals are readily controlled while on land by man, is that referred to by the British Commissioners, who write :—

British Commissioners' Report, para. 31.

"While resorting to or remaining on the land, the fur-seal is practically defenceless."

And elsewhere :—

"Active and graceful as a fish in the water, the fur-seal is at best clumsy and awkward in its movements on land."

Ibid., para. 704.

The ease with which it is possible to drive bodies of seals on land, which is the principal argument used to show their "domestic" character, therefore depends in reality upon the unfitness of the animal for progression by land, and the consequent impossibility of its escape from the drivers by flight.

The seal controllable on land because defenceless there.

The fur-seal endeavours, and for the greater part of the year with success, to avoid mankind. Man is unable to herd it, provide it with food, or protect it from its many natural enemies. But the fur-seal, while on shore, cannot find freedom and safety by flight or by resistance. It is thus because the fur-seal is incapable on shore of speedy or prolonged locomotion or exertion, that it can be, and is, brought temporarily under the control of man. But it is to be noted that it is absolutely uncontrolled and uncontrollable by man when it chooses to proceed to sea, as it invariably does for the greater part of the year.

Wholly uncontrollable elsewhere.

The further circumstance, also adduced in the Case of the United States, that, after being driven to the vicinity of the killing grounds, such bodies of seals may without difficulty be kept together till the time for killing arrives, depends in part on the same fact, and in part on the additional circumstance that the seals are then completely exhausted. Even when eventually turned away from the killing-grounds, the spared seals are often in too exhausted a state to return voluntarily to the sea for long times.

Circumstances permitting a temporary control.

Ibid., paras. 710, 711.

Neither is it difficult to show by recorded observations that the allegations made to the effect that the seals do not show fear when approached by man on the islands are unfounded, or, at least, so much exaggerated as to convey a wholly wrong impression. When on the breeding-islands they

Seals fearful of man.

are certainly not so wary as when at sea. They are, in fact, particularly occupied at this season by their own affairs; and, besides, like other wild animals, under such circumstances to some extent emboldened by numbers. Mr. Elliott writes on this point:—

Census Report,  
p. 65.

“But the companionship and the exceeding number of the seals, when assembled together annually, makes them bold.”

They are nevertheless readily alarmed.

Mr. Elliott, in his evidence before a Congressional Committee, says:—

44th Cong.,  
1st Sess., II. R.,  
Report No. 623,  
p. 78.

“The females are exceedingly timid. The males are very bold, and will not leave unless driven off, but the females will. I myself, unaided, could drive every seal off that island in two years, without killing one.”

Again, in evidence before another Committee of Congress, he says:—

50th Cong.,  
2nd Sess., II. R.,  
Report No. 3883,  
p. 137.

“Let anybody disturb them [the breeding seals] however, go among them with fire-arms or clubs or along the beach even, and they will soon take the alarm and leave.”

Mr. H. A. Gliddon, Government Agent on the Pribyloff Islands, also says:—

Ibid., p. 25.

“The seal is a sensitive animal, and it does not like to be disturbed, and it must not be disturbed. If they are they will not go there [Pribyloff Islands] at all.”

Ibid., pp. 63, 251.

In the same Report, Messrs. T. F. Morgan and J. H. Moulton give like statements.

Professor J. A. Allen quotes Captain Bryant as follows:—

British Commissioners' Report,  
para. 331, Ball,  
Mus. Comp. Zool.,  
vol. ii, Part 1, p. 97.

“Constant care is also necessary lest thoughtless persons incautiously approach the breeding-grounds, as the stampede of the seals which would result therefrom always destroys many of the young.”

Baron Nordenskiöld likewise says:—

Ibid., para. 333,  
“Voyage of the  
‘Vega,’” vol. ii,  
p. 290.

“The young ones are often smothered by the old when the latter, frightened in some way, rush out into the sea. After such an alarm hundreds of dead pups are found on the shore.”

One of the witnesses cited by the United States says that the seals—

United States' Case, Appendix,  
vol. ii, p. 2.

“grow much tamer, too, with repeated driving, and seem to learn the road and what is expected of them on the killing-ground.”

See pp. 200 *et seq.*

The so-called “domestication” thus resulting from repeated driving is fully explained by the

details given in another page with respect to the methods and results of such driving.

So far from having had their comparative boldness while on land impressed upon them by any process of "domestication," it is indeed more than probable that the northern fur-seals, like other animals when resident where they have from time immemorial been exempt from attack, were at first entirely inapprehensive of danger. Thus, of the fur-seal of the Southern Hemisphere, Captain Morrell writes :—

"When these animals are for the first time visited by man they evince no more apprehension of danger from their new guests than did the natives of San Salvador when first visited by the Spaniards; and the confidence of the poor seals is requited in the same manner as theirs was—by robbery and murder. In fact, they will lie still while their companions are slaughtered and skinned."

United States' Case, Appendix, vol. 4, p. 377.

A similar impression is conveyed by the original Russian accounts of the fur-seals of Behring Island.

The control of a given body of seals on land is thus precisely analogous to that which may be exercised over terrestrial animals such as deer, when found in or driven into the water; and much resembles the domestic habits which might equally be attributed to salmon when congregated on their spawning-grounds, as compared with their timidity at other times. In a manner quite comparable to that employed in killing seals upon the breeding-islands, the sea-turtle in other parts of the world is taken when resorting to the shores to deposit its eggs; but no one has asserted that the marine turtles are to be classed as domestic animals because of their helplessness on land, or has called them land animals in consequence of their resort to the shores for breeding.

"Monograph of North American Pinnipeds," p. 344.

Analogy with other animals.

Neither can the fur-seal be classed as a domestic animal by reason of any specific care exercised over it by man in connection with its production or protection. Man has intruded and has established himself on the breeding resorts. The actual nature of the interference of man with the fur-seals is clearly expressed in the Report of the British Commissioners, who write :—

Man exercises no specific care over the seal.

British Commissioners' Report, para. 35.

"Their former places of secure retreat were invaded by man, while, during the greater part of each year, they remained exposed on the open ocean as before to in-

But is an invader on its breeding resorts.

Originally fearless, contact with man has produced timidity, not domestication.

Should be

seals are the

M

numerable accidents, and entirely beyond the control or possible protection of those in charge of the breeding-islands. The inroads of the seal-killers on the islands might be modified in kind or in degree, but their general tendency could not be reversed."

British Commissioners' Report, paras. 35, 36.

Should the abundance of these islands, the seals would profit.

Ibid., para. 32.

Seals are not fed on the islands; they leave emaciated.

Bull. Mus. Comp. Zool., vol. ii, No. 1, p. 37.  
"Monograph of North American Pinnipeds," p. 227, &c.

Mr. H. W. Elliott.

United States' Census Report, p. 66.

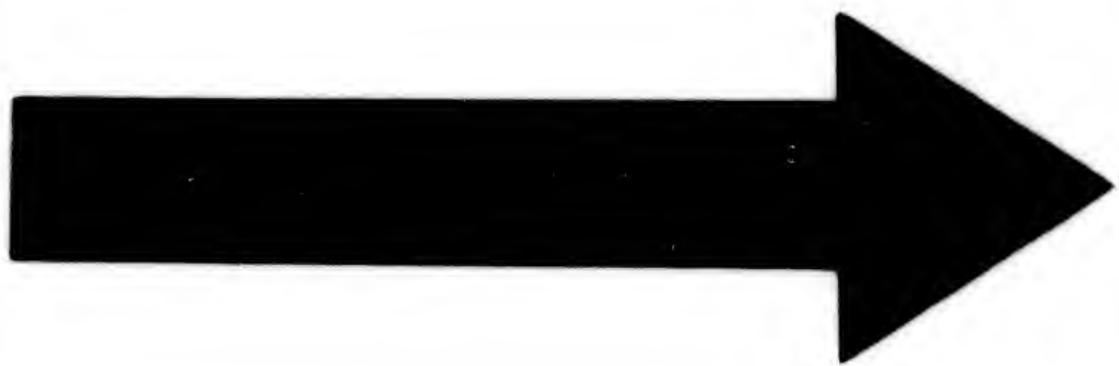
Since the occupation by man of the breeding-islands, the steps taken in the interest of fur-seal life upon them have consisted solely of measures more or less effective to prevent the disturbance of the animals, and to leave them as much as is possible, in view of the demands made for killing, to themselves. If these islands should be entirely abandoned by man, and left unvisited by him, the fur-seals, so far from suffering in any respect, would tend gradually, but certainly, to revert to the favourable conditions formerly existing; and would undoubtedly increase in numbers till checked by such natural causes as tend to set limits to the increase of all animals.

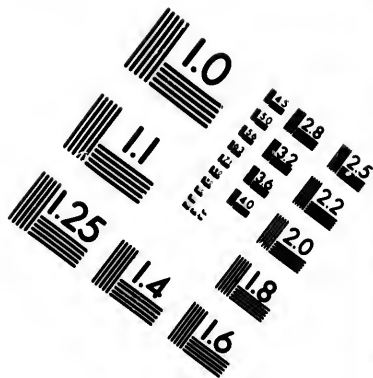
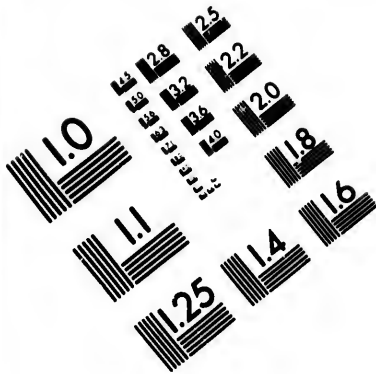
All the ideas commonly attaching to the word "domestication" are wanting in this case. Not only are the fur-seals not fed by man, but they do not obtain a particle of food while upon the Islands, and little, if any, while in the adjacent territorial waters. Their resort to the Pribyloff Islands is strictly in connection with the requirements of the breeding period. They arrive there fat and in good condition, and, after their prolonged period of fasting, leave in an emaciated state for their feeding-grounds in the great tracts of ocean to the southward.

Mr. H. W. Elliott, in his Monograph, published in 1881, writes as follows on the amount of control which man is capable of exercising over the fur-seal:—

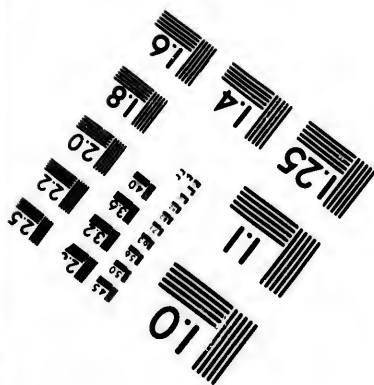
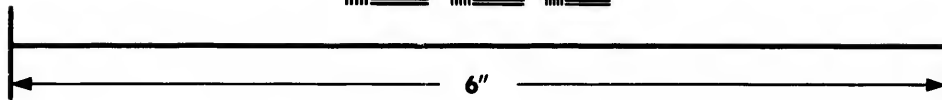
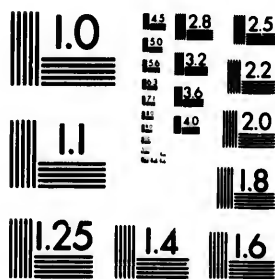
"I am free to say that it is not within the power of human management to promote this end [an increase in the number of seals] to the slightest appreciable degree over its present extent and condition as it stands in the state of nature, heretofore described. It cannot fail to be evident, from my detailed narration of the habits and life of the fur-seal on these islands during so large a part of every year, that could man have the same supervision and control over this animal during the whole season which he has at his command while they visit the land, he might cause them to multiply and increase, as he would so many cattle, to an indefinite number—only limited by time and the means of feeding them. But the case in question, unfortunately, is one where the fur-seal is taken by demands for food, at least six months out of every year, far beyond the







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reach or even cognizance of any man, where it is all this time exposed to many known powerful and destructive natural enemies, and probably many others, equally so, unknown, which prey upon it, and, in accordance with that well recognised law of nature, keeps this seal life at a certain number—at a figure which has been reached, for ages past, and will continue to be in the future, as far as they now are—their present maximum limit of increase, namely, between 4,000,000 and 5,000,000 seals, in round numbers.”

On another page the same author writes:—

“During the winter solstice—between the lapse of the autumnal, and the verging of the vernal equinoxes—in order to get this enormous food supply, the fur-seals are necessarily obliged to disperse over a very large area of fishing ground, ranging throughout the North Pacific, 5,000 miles across between Japan and the Straits of Fuca.”

United States' Census Report, p. 65.

On the same subject, Lieutenant W. Maynard, United States' navy, in his Special Report of 1874, says:—

Lieutenant Maynard.

“But in reality we do not even know where they are for seven months in each year, while we do know that they have deadly enemies. . . . Our protection of them can only be partial, that is to say, we can limit the number to be killed, when they are within our reach, and prevent their being disturbed on the breeding rookeries or driven from the islands.”

Report on Fur-seal Fisheries, 44th Cong., 1st Sess., H. R., Ex. Doc. 43, p. 6.

It is only during the course of the present inquiry that the migration routes have been made known, and the question which has been consistently asked of sealers from the earliest times has been answered. With reference to this, Professor Allen, writing in 1880, says:—

British Commissioners' Report, para. 171.

Professor Allen.

“Of the life of these animals while absent from the islands but little is known, nor is it known where their principal feeding-grounds are.”

“Monograph of North American Pinnipeds,” p. 410.

On another page of the same work he writes:—

“Except during the season of reproduction, these animals appear to lead a wandering life, but the extent and direction of their migrations are not yet well known. . . . but where they pass the season of winter is still a matter of conjecture.”

Ibid., p. 335.

While, therefore, it is admitted that, in the absence of precautions such as to prevent excessive disturbance and unlimited killing of seals upon the breeding-islands, these animals might in a few years be practically extirpated or driven from the

Man's care of seals thus merely negative.

His practices on the islands are injurious to the animal.

See pp. 260 *et seq.*

United States' Case, p. 154.

See pp. 238 *et seq.*

No scientific evidence adduced in support of contention that the seal is a domestic animal.

United States' Case, Appendix, vol. i, p. 375.

United States' Case, p. 150. *Ibid.* Appendix, vol. i, p. 431.

Conclusion.

islands, it is evident that such precautions are of a purely negative character.

It is further shown that the control and mode of dealing with the fur-seals at the time of driving is not only not beneficial, but is distinctly and in an important degree injurious to the survivors; while the claim advanced in the United States' Case, to the effect that a large number of "surplus males" may be killed with advantage, as in the case of other "domestic" animals, is decisively negated by observations elsewhere detailed, and particularly by the fact that the fur-seals differ entirely from domestic animals of polygamous habit, in the impossibility in their case of the artificial selection of the stronger and finer males for breeding purposes.

It will be noted that neither the United States' Behring Sea Commissioners, nor Professor J. A. Allen, in their Reports, venture to characterize the fur-seal as a domestic animal, and in fact that Professor Allen, in conformity with facts and usage, distinctly classes it as a wild animal, writing:—

"The habits of no wild animal during the breeding season are perhaps better known than are those of the Northern or Alaskan Fur-Seal."

The sole opinion purporting to be of a scientific kind adduced as evidence, in which the "domestic" character of the fur-seal is affirmed, is that of Dr. E. von Middendorf, of Russia, who writes that the seal "was created for a domestic animal;" but it is very clear that the writer did not appreciate the meaning of the word "domestic." He writes:—

"It is, in fact, the most useful of all domestic animals, since it requires no care and no expense, and consequently yields the largest net profit."

It is submitted that there is no just ground, or the contention that the seal is domestic in its habits.

SECTION III.—*Intermingling of Fur-seals of  
different parts of the North Pacific.*

THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 89—  
"The Alaskan fur-seal."
- (2.) United States' Case, p. 94—  
"The Alaskan seal-herd."  
"The two great herds of fur-seals which frequent the Bering Sea and North Pacific Ocean and make their homes on the Pribilof Islands and Commander (Komandorski) Islands, respectively, are entirely distinct from each other."
- (3.) United States' Case, p. 96—  
"These two herds of fur-seals do not intermingle, each keeping to its own side of Bering Sea and the Pacific Ocean."
- (4.) United States' Case, p. 323—  
"In winter the fur-seals migrate into the North Pacific Ocean. The herds from the Commander Islands, Robben Reef, and the Kurile Islands move south along the Japan Coast, while the herd belonging to the Pribilof Islands leaves Bering Sea by the eastern passes of the Aleutian chain. The fur-seals of the Pribilof Islands do not mix with those of the Commander and Kurile Islands at any time of the year."
- (5.) United States' Case, p. 296—  
"That its [the fur-seal's] course when absent from these islands is uniform and confined principally to waters adjacent. That it never mingles with any other herd . . . That at all times when in the water, the identity of each individual can be established with certainty, and that at all times, whether during its short excursions from the islands in search of food or its longer winter migration, it has a fixed intention, or instinct, which induces it to return thereto."

SUMMARY OF BRITISH REPLY.

- The word "herd" is applicable to seals (if at all) only when on the islands, and then only to each rookery separately, or to bodies of seals driven together. It is entirely incorrect and misleading when applied, as in the United States' Case, to an indefinite portion of the fur-seals of the North Pacific, there entitled "the Alaskan seal herd."
- No distinction, as between the fur-seals resorting to the two sides of the North Pacific, has heretofore been known to naturalists; and the distinction now for the first time endeavoured to be established in the Case of the United States is wholly unsupported by naturalists.
- The alleged distinction is based on the classing of skins by fur-dealers; but such classing and the differences of price resulting, are no evidence of difference of kind in the fur-seal or in other animals.
- The criteria employed by fur-dealers in classing the skins, though important in the trade, are in themselves slight and difficult of definition, and the evidence given in the Case of the United States on this point is conflicting. In the particular case of skins from the Pribiloff and Commander Islands, experienced dealers actually observe a large percentage of skins from each source which would be classed according to quality as coming from the other.
- The intermingling of fur-seals frequenting the two sides of the North Pacific is *per se* probable. It must at one time have occurred, and no reason can be assigned for its alleged cessation.



Such intermingling is either admitted to be probable, or is asserted to occur, by many of the officials on the Pribyloff Islands during twenty years past. It has not been denied till now in the Case of the United States. Intermingling is shown by actual experiment to have occurred as between the Islands of St. Paul and St. George.

The evidence quoted in the Case of the United States is alone sufficient to show that fur-seals from both sides of the Pacific intermingle, during the summer, in the vicinity of the Aleutian Islands.

Further evidence, now adduced, shows that intermingling occurs between the seals of the North Pacific generally, both to the north and to the south of the Aleutian Islands.

The proposition that the identity of individual seals can be established when at sea, is absolutely unsupported by evidence.

Meaning and object of contention of United States.

Taking the statements made in the above quotations from the United States' Case, it would appear that the position sought to be maintained in this matter may be outlined as follows:—That there is a distinctively "Alaskan seal herd" which never mingles with other fur-seals. That the identity of each animal can at all times be established with certainty in the water. That the course of the "Alaskan herd" is uniform when absent from the breeding-islands, and is confined principally to waters adjacent to the coasts of the United States, and that at all times the seals have a fixed intention of returning to the Pribyloff Islands.

The burden of proof of these general propositions devolves upon the United States. The position indicated is assumed in order to support the theory of an exclusive property in fur-seals. Great importance is apparently attached to it, for it is not only advanced in the opening pages of the lengthened discussion on the conditions of seal life, but is frequently reiterated.

Erroneous use of the word "herd."

Before entering into any detailed examination of the subject dealt with in this Chapter, it is desired to draw attention to the use here and elsewhere made of the word "herd" as applied to the fur-seals of the eastern part of the North Pacific. This, it is submitted, is a term which connotes characters entirely foreign to the known habits of the animal. If at any time possible to describe the fur-seals as forming a "herd," this can only be when it is found aggregated upon the breeding-islands; and even then, in any recognized use of the term, it could be made to apply only to any individual breeding-rookery or hauling-ground, of which upon the Pribyloff Islands alone there are many.

It is therefore simply an abuse of language to apply this single term even to the seals when upon the numerous and separate breeding colonies of the Pribyloff Islands, and much more so to attempt to denote by it the same animals when, during the greater part of each year, they are found to be scattered over an extent of ocean which stretches from the vicinity of the Pribyloff Islands to the coast of California—some 3,000 miles—and, to a lesser extent, from one side of the North Pacific to the other. No evidence has been adduced such as to warrant the use of this term, and the justification of its employment will be sought in vain in the facts brought forward in the Reports of the Commissioners of either the United States or Great Britain.

As bearing upon the general contention above stated, it may in the first place be pointed out that naturalists generally, including those who have devoted special attention to the subject, and who have been most critical and minute in their work of comparison and separation, have up to the present time found no reason to draw any distinction between the fur-seals taken in the eastern and western parts of the North Pacific. The seals so found have been universally included under a common specific name, and no difference even of a sub-specific order has been found to be tenable as between them. Thus, after referring to the comparative want of knowledge of the otaries of the Southern Hemisphere, Professor J. A. Allen writes:—

"Those of the Northern are much better known, the only doubts still existing having relation to those of Japan. Respecting all the others, there has been for the last eight years an almost perfect unanimity of opinion, so far as the question of species is concerned."

Naturalists differ in opinion whether the fur-seals of the North Pacific should, or should not, be classed as generically different from those of the Southern Oceans, and in consequence of this difference of opinion, the names *Otaria ursina* and *Callorhinus ursinus* have been employed to denote the North Pacific fur-seals collectively. By naturalists generally, moreover, the animal in question is referred to as the "Northern fur-seal," or "fur-seal of the North Pacific" (see Flower and Allen, as cited in the margin), and not as the "Alaskan" fur-seal. The United States' Commissioners, in their Report, have, however, in-

Term wholly inapplicable to fur-seals of Eastern Pacific.

See Captain Bryant's opinion, British Case, p. 108. British Commissioners' Report, paras. 209, 221, 222.

Naturalists draw no distinction between fur-seals of two sides of North Pacific;

Though these have long been well known.

"Monograph of North American Pinnipeds," p. 205.

Sir W. H. Flower. "Encyclopædia Britannica," vol. xv, p. 443; British Commissioners' Report, Appendix, p. 186. Professor J. A. Allen, "Monograph of North American Pinnipeds," p. 33; United States' Case, Appendix, vol. i, p. 372.

United States  
Professors  
identities

The fur-seals  
proving  
United States

But skins  
differ  
possess  
values.

United States' Case, p. 319.

vented still another name, viz., "Bering Sea fur-seal."

The attempt, therefore, in the course of the arguments now produced, to evolve a new and special name for application to those fur-seals found in the eastern part of the North Pacific, and to denote them as a "herd," must be considered as singularly unfortunate.

The United States' Behring Sea Commissioners state that the fur-seal of the North Pacific constitutes but a single species, writing:—

"The Northern fur-seal (*Callorhinus ursinus*) is an inhabitant of Bering Sea and the Sea of Okhotsk, where it breeds on rocky islands. Only four breeding colonies are known, namely, (1) on the Pribilof Islands, belonging to the United States; (2) on the Commander Islands, belonging to Russia; (3) on Robben Reef, belonging to Russia, and (4) on the Kurile Islands, belonging to Japan."

Professor J. A. Allen similarly characterizes the "Northern fur-seal" as a whole, as constituting a single species; and omitting all reference to the existence of the breeding-places on Robben Reef and the Kurile Islands, defines its habitat as—

"the islands in Bering Sea; at present chiefly the Pribilof and Commander Islands, migrating southward in winter along the American coast to California, and along the Asiatic coast to the Kurile Islands."

In order, however, to establish the constant difference which it is considered necessary to prove as between the seals found on the two sides of this ocean, not the skilled naturalist, but the fur-dealer and furrier, are chiefly appealed to in the United States' Case. It will, therefore, be appropriate in the first place to examine the nature of the evidence obtained from such sources.

It is a fact very well known and widely recognized, that skins even of the same animals taken in different localities under different conditions of climate, and differently handled and cured, are classified very differently from a commercial point of view. This applies to skins of almost all kinds, but is specially noteworthy in the case of such fur-bearing animals as the otter, mink, marten, and beaver.

Thus in the Hudson's Bay Company's fur sale of March, 1891, No. 1 marten skins from Port George, &c., were sold at 23s. to 24s., from East Main 20s. to 20s. 6d., from York Factory at 13s.,

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United States' Commissioners and Professor Allen admit specific identity.

Ibid., p. 322.

Ibid., Appendix, vol. i, p. 372.

The fur-dealer is depended on as proving distinction drawn in United States' Case.

But skins of same animals taken in different surroundings frequently possess different commercial values.

Examples of this.

See also Appendix, vol. ii, p. 239.

from "North-West" at 12*s. 6d.* to 12*s. 9d.*, and from Mackenzie River District at 11*s. 6d.* Similarly, and at the same Company's sale in January 1892, No. 1 beaver-skins from Fort George sold at 62*s.*, from Moose River and East Main at 45*s. 6d.* to 47*s.*, from York Factory at 39*s. 6d.* to 41*s.*, and from Mackenzie River District at 33*s. 6d.*

Such differences in value depend of course upon differences of colour, density of the fur, texture, &c., observed in the skins as brought to market, the above comparisons being in all cases made between No. 1 skins from each district. They are similar in proportionate amount to those quoted in reference to the Alaska and Copper (Commander) Islands fur-seal skins.\* They occur in this instance, in each case, in animals of the same kind, inhabiting the single connected land area of the northern part of North America, in which intermingling and interbreeding must be continually in progress.

It is further noteworthy, as an index of the amount to which the mode of treating a skin may affect its market value, that the "North-west" skins, being those of seals taken at sea, and belonging, under the contention held in the United States' Case, solely to the same "herd" as those derived from the Pribyloff Islands, are quoted by the same witnesses at about half the price of the latter.

The evidence actually adduced in the Case of the United States on this particular matter, and in support of the general contention as to the essential difference between the Pribyloff and Commander Island "herds," may be summarized as follows:—

*Mr. W. E. Martin*, who is first quoted, and is most definite as to the differences in the skins, says that there are marked differences between the Copper (Commander) Island catch and that from the Pribyloff Islands. He enumerates these, and adds that they are such as to enable—

"any one experienced in handling skins to distinguish the one from the other;"

and—

"that before the skins are dressed the two may be readily distinguished from each other."

\* In the trade the skins of fur seals derived from the North Pacific region are divided under the names of "Alaskas," "Coppers," and "North-west Catch"; such names respectively implying that the skins come from the Pribyloff or Commander Islands, or are taken at sea, as the case may be.

Commercial values thus depend on slight differences in fur, not on constant differences of kind.

United States' Case, Appendix, vol. ii, pp. 573, 575.

"North-west" and "Alaska" skins are differently defined.

Ibid., pp. 573, 575.

Character of differences of skins adduced in the United States' Case on the evidence of furs.

United States' Case, pp. 94, 95.

Actual no

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Dealers

United States' Case, Appendix, vol. ii, p. 578.

Mr. G. Rice says that the differences are—  
"such as to enable any person skilled in the business" to distinguish them; but adds—

"The manner in which the skins are distinguished is difficult to describe to any person not accustomed to handling skins."

He further only professes to distinguish the skins—

"in the raw state."

Ibid. p. 557.

Alfred Fraser, though referred to in this connection, professes only to be able to distinguish North-west catch from "Copper" and Pribyloff catch collectively. He does so by means of the shot and spear marks found in the skins of the seals taken at sea.

Ibid. pp. 551, 552.

H. S. Bevington holds that the difference is such as to enable anyone skilled in the business to distinguish the skins, "especially in bulk." He further adds, however, that the skins reach the market in separate lots, and are not found mingled. He admits that the difference is—

"difficult to describe to a person unaccustomed to handle skins."

Ibid. p. 575.

W. C. B. Stamp says that the differences are—  
"difficult to describe so that they can be understood by any person who has no practical knowledge of furs."

Ibid. pp. 580, 581.

E. Teichmann says that he could easily separate the Commander Island and Pribyloff Island skins, but that as a matter of fact they are not mingled. In the case of very young animals, however, the differences are not well marked.

Several of the gentlemen quoted in this connection, and whose evidence is given at length in the Appendix to the United States' Case, offer no explanation of the grounds upon which they rest in distinguishing the skins derived from the Pribyloff and Commander Islands respectively, while those who do, appear to rely chiefly upon the colour. But great differences of opinion occur in respect to this.

Thus, W. E. Martin states that the hair on the Commander Island skins has a *yellowish tinge*; H. S. Bevington and H. Poland, that these skins are *lighter in colour*; while, on the other hand, C. W. Price states that *both fur and hair are darker*; G. Bantle, that the *under wool is darker*; J. J. Phelan, that the *hair is darker*; and E. Teichmann, that the *top hair is darker*.

Again, Messrs. C. W. Martin, J. J. Phelan, G. Leibes, H. S. Bevington, H. Poland, and E. Teich-

is thus dependent on the nature of the fur, not on the nature of the kind.

and "Alaska" skins, not yet defined.

Differences of skin in the United States' evidence of furs.

Actual methods of distinction relied on are contradictory.

Dealers differ among themselves.

Ibid., pp. 569, 552, 571, 521, 508, 519, and 586.

mann state that the fur in the Commander Island skins is *shorter*; some, however, making the statement general, and others confining it to particular parts of the skin; while Sneigeroff, the native foreman in charge of the Behring Island rookeries (who has also had experience in the Pribyloff Islands), states that both the hair and fur of the Commander Island seals is *longer*.

Apparently the only general points of difference in which all the witnesses who mention them practically agree, is that the Commander Island skins, as received, are narrower toward the neck and flank, and have been on the average smaller than those from the Pribyloff Islands.

A list of all the leading buyers of seal-skins in the world is given in the United States' Case, Appendix II, p. 566. They are thirty-nine in number. Of these, as many as possible have been seen, and thirty have actually been interviewed, and their opinions have especially been requested on the subject of the alleged differences between skins from the Commander Islands and from the Pribyloff Islands, with the result that they are unanimous in saying that the only differences which exist are that the fur of the Pribyloff skin grows somewhat closer or denser, that the sizes of Pribyloff consignments run a little larger, and that the flaying and curing in their case is better performed; that these are the distinctions which produce the difference of price; that, concerning the other alleged variations: as to colour, they have noticed that Coppers were lighter on the average, but that Alaskas have been at times the lighter; that as to shape of skin and the length of fur, they either deny any difference or say it is too trivial for notice.

It is also a noteworthy circumstance that Messrs. Lampson and Co., who, as London agents of the lessees of both the Pribyloff and Commander Islands, dispose of all seal-skins taken on both groups of islands, up to the year 1887 made no distinction in sale catalogues between Pribyloff Island and Commander Island skins. In that year, for the first time, the words "Alaska" and "Coppers" were printed on the catalogues, and since that time also a separate catalogue is produced by Messrs. Lampson for each description. Prior to that date, in March each year, "Alaskas" and "Coppers" were sold in the same catalogues without any distinction being made on the face of the catalogues.

Further evidence adduced in this Counter-Case.

Appendix, vol. ii,  
pp. 230-233.

Differences so slight that skins from Commander and Pribyloff Islands not separately catalogued till 1887.

Causes

Indefinite  
separate  
Pacific  
Case.



## Opinions of pelagic sealers.

Appendix, vol. ii,  
pp. 35-38.

The testimony of the more experienced sealers, who have hunted on both sides of the North Pacific, is also generally to the effect that the seals and seal-skins are undistinguishable; while, when any difference is referred to, it is in regard to depth of colour of fur only; some claiming that seals on the Asiatic side are darker, while others say lighter, than those on the American side. Such differences met with in individual catches might very well depend on the different seasons of the year in which these were made.

## Causes assigned for differences of skins.

British Commis-  
sioners' Report,  
para. 455.

Sneigeroff, already quoted, attributed the differences which he has noted solely to the longer residence ashore of the Pribyloff seals, and added that the seals of Robben Island, in Okhotsk Sea, have even longer hair and wool than those of the Commander Islands.

That the Alaska Commercial Company, which, for many years, was the lessee of both the Commander and Pribyloff Islands, believed the lower prices obtained for the skins from the former was due to inferior methods of treatment, is shown by the fact that they at one time sent their most experienced foreman (Webster) from the Pribyloff to the Commander Islands to improve the method of handling the skins there.

Indefinite and novel opinions as to separation of seals of two sides of Pacific, relied on in United States' Case.

The passages in the United States' Case above noted, are all those which profess to give direct evidence, based on differences in character of the skins, as to the alleged complete distinctness of the seals resorting for breeding purposes to the Commander and Pribyloff Islands respectively. The *opinions* of a number of persons are subsequently quoted, but on referring to these, as given in the Appendix to the United States' Case, it will be found that such opinions are not the result of any personal investigation of the actual facts, and are, indeed, chiefly based on the different market values quoted for the two classes of skins, a circumstance which has just been explained.

It will further be noted that all the opinions in question have appeared for the first time in connection with the present Case, and date from a very late period in the discussion of the Behring Sea question, being subsequent to the assertion of a claim to a right of property in seals; and that no such separation of the fur-seals frequenting the two sides of the North Pacific has heretofore been asserted.

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As against the opinions thus now advanced in the United States' Case, some examples of published statements on the same subject, derived from official documents of the United States, and showing a belief in the intermingling of seals from the two groups of islands, are here given.

Such interchange of seals between the various breeding-places may be supposed to occur in two ways: first, in correspondence with natural and casual events, such as winds, currents, and the pursuit of food fishes; second, in consequence of the disturbance of the breeding-places by man. On the latter point, Seammon, in his well-known work (p. 152), sums up the result of his observations as follows:—

"We may add, likewise, from our own observation, and as the expressed opinion of several experienced sealing masters, that their [the seals] natural migrations extend over a great expanse of ocean; and if they are unduly disturbed in their favourite haunts for several successive seasons, they are quite sure to seek some distant and unknown place where they can congregate unmolested by man."

Seammon's  
"Marine  
Mammalia,"  
p. 152.

Captain Seammon.

Strictly in accordance with the statement made by Captain Seammon is the fact, alluded to in the Report of the British Commissioners, that, as a result of the excessive slaughter and disturbance occurring on the Pribyloff Islands at the time of their cession to the United States, unprecedented numbers of seals were found frequenting the shores and inlets of the coast of British Columbia.

British Commis-  
sioners' Report.  
parns. 422, 423.

A further reference, with the same meaning, is found in the following passage from Dr. Dall's work on Alaska:—

Dall's Alaska.  
p. 496.

"The number of the seal had greatly increased up to 1868, but in that year not less than 50,000 were killed on St. George's, and 150,000 on St. Paul's, by the traders. At this rate they would soon be exterminated or driven to the Kurile or Commander Islands."

Mr. Elliott, in his Report, after asking a question as to the possible accessions of seals to the Commander from the Pribyloff Islands, replies to his own interrogation as follows:—

Census Report,  
p. 69.

Mr. Elliott.

"Certainly, if the ground on either Bering or Copper Island, in the Commander group, is as well suited for the wants of the breeding fur-seal as is that exhibited by the Pribilof Islands, then I say confidently that we

Previously published opinions of United States' authors and officials on intermingling of North Pacific seals.

may at any time note a diminution here, and find a corresponding augmentation there; for I have clearly shown, in my chapter on the habits of these animals, that they are not so particularly attached to the respective places of their birth, but that they rather had with an instinctive appreciation of the fitness of that ground as a whole."

"44th Cong.,  
1st Sess., H. R.,  
Ex. Doc. No. 83,  
pp. 265 *et seq.*

The same writer, in his "Report on the Condition of Affairs in Alaska," 1875, under the heading "Thoughts upon possible Movements of the Fur-seals in the Future," treats the subject at some length, reaching very similar conclusions, and adding:—

"It is not unlikely that some season may occur when an immense number of the fur-seals which have lived during the last four or five years on the Pribilof Islands should be deflected from their usual feeding-range by the shifting of schools of fish, &c., so as to bring them around quite close to the Asiatic seal-grounds in the spring, and the scent from these rookeries would act as a powerful stimulant for them to land there, where conditions for their breeding may be as favourable as desired by them."

Mr. Miller.

In a Report on an investigation on the Alaska Commercial Company by a Committee of Congress, dated 1876, Mr. J. F. Miller, President of the Company, says that the seals upon the Pribyloff Islands—

44th Cong.,  
1st Sess., H. R.,  
Report 623, p. 45.

"maintain just about the natural increase very regularly; they do not seem to migrate."

But in reply to a further question as to whether they were not supposed at a former period to have been driven from the Pribyloff Islands to the Commander Islands, adds:—

"They no doubt were at one time. Some of them went over there, and where the others went we do not know, because they do increase upon the Russian islands; so history shows."

Mr. Buynitzky.

In a Congressional Report on the "Fur-seal Fisheries of Alaska," dated 1889, Mr. S. M. Buynitzky, Government Agent on the Pribyloff Islands, gives the following evidence:—

50th Cong.,  
2nd Sess., H. R.,  
Report 3863, p. 15.

"Q. What, in your judgment, from your experience of that business in these islands, would be the effect of opening up the business, that is, removing the restrictions, so that everybody could go in there and kill fur-seals?—A. The probable effect would be to drive the seals from these islands to the Russian group.

"Q. that is, driving them from the American islands over to the Russian islands?—A. That is the most probable effect. That was conceded at the time by all who studied the question. Secretary Boutwell knew that very well."

Mr. Geo. R. Tingle, long connected with the Pribyloff Islands in different capacities, also said before the said Committee:—

50th Cong.,  
2nd Sess., H. R.  
Report 3883, p. 164.

Mr. Tingle.

"Q. What will be the effect if more stringent measures are not taken to protect the seals by the Government?—A. If more stringent measures are not taken, it is only a question of time when these seals will be driven ultimately to seek some other home where they will not be molested. They will not continue to be harassed; and if this marauding is continued, they will, in my opinion, either be gradually exterminated or will leave the islands permanently and land at some other place. They may go on the Russian side."

In the same Report Mr. C. A. Williams, one of the Directors of the Alaska Commercial Company, makes the following statements, which, though now known not to be entirely correct in so far as they appear to relate to the *origination* of rookeries on the Commander Islands, are worthy of quotation:—

Mr. Williams.

"It was supposed at that time [early in the Russian régime] that the commencement of seal life on the Islands of Bering and Copper probably took place by reason of the indiscriminate killing on those islands, [Pribyloff] diverting the seal from their usual haunts and making them seek some other localities.

"Q. Was there a large number of seals which left the Pribilof group and went over to the Russian islands?—A. You could hardly expect them to go in a body. There had hardly been sealing or seal life to any extent on the Commander Islands or Copper and Bering. It had not attracted the attention of the Russians, but after the indiscriminate killing on the Islands of St. Paul and St. George, it was noticed that seal-life increased rapidly on the other islands, and the supposition is a natural one that they were diverted from the islands on which they had heretofore been undisturbed and sought other places."

The statements made by Mr. Williams to the Congressional Committee of 1888 differ very widely from that made in his deposition of the 2nd April, 1892

United States'  
Case, Appendix,  
vol. ii, pp. 537, 544.

In this latter he says:—

"There is no intermingling of the herds, and the skins of the two herds of the Pribilof and Commander Islands may be so readily distinguished from each other

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that an expert would have no difficulty in at once throwing out from the catch taken on the Commander Islands any skins of the Pribilof herd, and *vice versa*; deponent understands from persons who have had long experience in the examination of the living animals that the two herds so differ as to belong to separate species of the same genus, and can readily be distinguished from each other."

Thus, the opinions previously published by those who have given the greatest amount of attention to the habits of the fur-seal of the North Pacific, are sufficient to show that there is a general agreement in respect to the *prima facie* probability of interchange and migration of seals between the principal breeding-places.

The known fact that the relative proportions of seals found on St. Paul and St. George Islands of the Pribyloff group vary from year to year, is interesting as showing that the animals are by no means averse to change their breeding places in accordance with circumstances.

It is now generally admitted that the same seals do not return necessarily or even usually to the same breeding-ground year after year. Mr. Elliott quotes an experiment made by the Russians, in which 100 young males were marked at one locality on St. Paul Island. Next year some of the seals so marked were included in the catch from "every part of the island." In 1870, again, a similar experiment was made on the same island, and, respecting the 100 seals then marked, it is said:—

"Of this number, during the summer of 1872, when I was there, the natives found in their driving of 75,000 seals from the different hauling-grounds of St. Paul up to the village killing-grounds, two on Novostoshnah rookery, 10 miles north of Lukannon [the point at which the seals had been marked], and two or three from English Bay and Tolstoi rookeries, 6 miles west by water; one or two were taken on St. George Island, 36 miles to the south-east, and not one from Lukannon was found among those that were driven up from there."

The same, or a very similar, experiment is referred to by Captain Bryant.

In the Congressional Report on the fur-seal fisheries of Alaska, Dr. H. H. McIntyre likewise states that—

50th Cong.,  
2nd Sess.,  
H. R. Report 3883,  
p. 128.

"The seals are found indiscriminately on the two islands; that is, seals born on St. George are found on St. Paul, and *vice versa*."

Apart from such definite experiments, and

The above show a *prima facie* probability of intermingling.

The relative proportion of seals found on each of the Pribyloffs vary.

Experimental proof of intermingling adduced.

Census Report,  
p. 31.

over wider areas where, so far, such experiments have not been possible, information as to changes in the resort of seals as between one and another of the various breeding-islands in the North Pacific, must depend largely upon the opinions of those who have had occasion to study the habits of the seal, and upon the general facts which such persons have noted.

After detailing the above experiments, Mr. Elliott says :—

“These experiments would tend to prove very cogently and conclusively, that when the seals approach the islands in the spring, they have nothing in their minds but a general instinctive appreciation of the fitness of the land, as a whole; and no special fondness or determination to select any one particular spot, not even the place of their birth.”

United States' Census Report, p. 31. See also 44th Cong., 1st Sess., H. R. Report No. 623, pp. 82, 83.

He then proceeds to point out that the smell of the rookery-grounds constitutes probably the chief incentive to landing.

The evidence of the fur-merchants, already referred to, is also of considerable importance in this connection, and goes far to demonstrate beyond doubt that there is both intermingling and interbreeding between the seals frequenting the Pribyloff Islands and those frequenting the Commander Islands, as the following extract will show. William C. B. Stamp, the head of a fur house established seventy years, and a man with thirty years' experience in the fur-seal business, states as follows :—

The evidence of fur-dealers conclusively proves intermingling of seals of both sides of the Pacific.

“In my opinion there is no absolute line of demarcation between the Copper Island skins and Alaskas, and in inspecting the consignments made each year from the Pribyloff Islands through Messrs. Lampson and Co., I have found a certain percentage of skins, which were fac-similes of Copper Island skins, and in the same way in inspecting consignments of Copper Island skins, I have seen skins which, had I seen them elsewhere, I should have classed as Alaskas, and also a certain number of the intermediate degrees of similarity.”

Appendix, vol. ii, p. 245.

This evidence is corroborated by twenty-nine of the principal dealers in fur of the world; and one of them, Mr. Henry Poland, who, besides being a member of a fur house established 108 years, is a naturalist, and the author of a work on “Fur-bearing Animals,” makes the following statement:—

“That in the differences I have observed between the Alaska and Copper Island seals, there are not the

Ibid., p. 250.

And

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slightest grounds which would lead one to infer that they were a distinct species, the variations of climate, food, &c., would be, in my opinion, sufficient to account for the differences I have mentioned.

"In saying this, I speak from the point of view of a naturalist as well as from that of a merchant, and I am of opinion that the seals from the Pribyloff Islands must often migrate to the Commander Islands, and *vice versa*. A seal would soon lose the differences in the changed surroundings."

And even indicates its amount.

Nine of the fur merchants give estimates of the number of seals of each class found among consignments of the other class, and state that this amount varies from 20 to 40 per cent.

Thus, the existence of a slight average difference recognised by fur-dealers in their classification of skins, may be employed as the means of showing the existence, and to a certain extent even the amount, of the intermingling. It is, moreover, quite in accordance with the known facts of geographical distribution to find, in different portions of the range of the same animal, a preponderance of individuals tending toward some difference in size, colour, or other characters, which do not become absolutely peculiar to the district, or constant, unless in the event of the creation of some impassable barrier.

In further support of the theory now endeavoured to be upheld by the United States, according to which there are entirely distinct seal "herds" resorting respectively to the Pribyloff and Commander Islands, and never commingling [to the slightest extent, Professor J. A. Allen (as already mentioned) is also brought forward. In his Report specially prepared in support of the Case of the United States, he writes:—

United States' Case, Appendix, vol. i. p. 406.

"As yet, expert naturalists have been unable to make a direct comparison of the two animals [*i.e.*, the fur-seals resorting to the two groups of islands], but the differences alleged by furriers as distinguishing the representatives of the two herds point to their being separable as subspecies, in other words, as well-marked geographic phases, and thus necessarily distinct in habitat and migration."

Professor Allen does not speak from personal knowledge, even of the kind possible from the examinations of salted skins, but is guided by the commercial classification of the skins by furriers, of which the nature and scope has already been pointed out. He has not expressed any similar

of fur-dealers con-  
veys intermingling of  
skins of the Pacific.

Professor Allen bases argument in  
support of United States' conten-  
tions on evidence of fur-dealers.

"Island Life,"  
Wallace, 1890,  
pp. 58, 60.

opinion in previous scientific writings on the fur-seal and its congeners. On this occasion, however (and it is this passage which is incorporated with the Case of the United States), he writes further as follows:—

“The Commander Islands herd is evidently distinct and separate from the Pribilof Islands herd. To suppose that the two herds mingle, and that the same animal may at one time be a member of one herd and at another time of the other, is contrary to what is known of the habits of migrating animals in general.”

United States' Case, p. 96.

It would thus appear that Professor Allen endeavours to reinforce arguments derived from the trade classification of skins by an appeal to a certain so-called established principle of Natural History. But elsewhere in the previous scientific writings of the same author, ample evidence is found that the principles which he seeks now to apply so rigorously to the fur-seal of the North Pacific, did not prevent him from supposing that this animal frequented the coast of California for breeding purposes, as well as the Pribyloff Islands. In like manner he does not seek, even in the special article annexed to the Case of the United States, to prove that the walrus, the harbour-seal, or the sea-lion frequenting opposite sides of Behring Sea do not intermingle; nor does the application of any such principle lead him to deny that Steller's sea-lion equally resorts to Behring Sea and the coast of California, there overlapping the range of a totally distinct species of sea-lion; and breeding in both places, as well as on intermediate stations of a suitable character. This is, however, a well-known fact, which may be verified by reference to Allen's Monograph.

He endeavours to support this by an appeal to general propositions.

But does not consistently apply these in other cases.

The United States' Commissioners are also referred to on this point in the Case of the United States. They write:—

The United States' Commissioners likewise adduce theoretical arguments, not the results of observations.

Ibid., p. 96.  
Ibid., pp. 323, 324.

“The fur-seals of the Pribilof Islands do not mix with those of the Commander and Kurile Islands at any time of the year. In summer the two herds remain entirely distinct, separated by a water interval of several hundred miles; and in their winter migrations those from the Pribilof Islands follow the American coast in a south-easterly direction, while those from the Commander and Kurile Islands follow the Siberian and Japan coasts in a south-westerly direction, the two herds being separated in winter by a water interval of several thousand miles. This regularity in the movements of the different herds is in obedience to the

Character

Absence

Character

well-known law that *migratory animals follow definite routes in migration, and return year after year to the same place to breed.*\* Were it not for this law there would be no such thing as stability of species, for interbreeding and existence under diverse physiographic conditions would destroy all specific characters."

The Commissioners then again refer for proof to the trade differences made in classing and selling the skins.

It will be noticed that in this case, as in that of Professor Allen, no personal knowledge is claimed, and it is indeed known that the United States' Commissioners never visited the Commander Islands. Neither are any authorities quoted, with the exception of the general allusion above made to the furriers' classification of skins. The whole statement is, in fact, a mere assertion, which it is endeavoured to support by reference chiefly to a "well-known law" of natural history.

The "laws" of natural history in reality embody merely the purport of the majority of the facts observed. Further observations may result in the essential modification of such laws, which, while it is admissible to refer to them by way of analogy, cannot be employed as destructive of observations of fact. The existence of some recognized difference between the seals frequenting the two sides of the North Pacific might be such as to justify a reference to the law here spoken of by way of explanation. But it may be pointed out that there is here no difference of a specific kind requiring explanation, nor even any proven constant varietal differences; and that the very absence of such specific difference, in accordance with the law invoked, goes far in itself to prove that intermingling and interbreeding has been at least sufficiently constant to prevent any such specific diversity from arising. In other words, the natural consequences resulting from separation are not observed.

That local differences in animals of the same kind occur in consequence of diversity in climate, food, and the environment generally, is well known; and this has already been shown to be the case in the matter particularly of the skins of certain fur-bearing animals. Such changes, moreover, often result in a short time, even in the life time of an individual or during a single change of coat; but that in ordinary cases they can be depended on as a means of distinguishing

\* The italics are in the original.

Character of a "law" of Natural History.

Absence of specific difference shows intermingling.

Character of local differences found in all animals.

"Island Life,"  
Wallace, 1890,  
p. 60.  
"Animal Coloration,"  
Beddard,  
1892, pp. 19, 42, 48.

animals belonging to localities which are not only separated by no impassable barriers, but are situated within an area of which all parts are equally favourable to its existence, is entirely denied.

The highly technical character of the arguments used by the principal authorities quoted in support of the contention of the United States as to the rigid separation of the seals frequenting the Pribyloff and Commander Islands respectively into two "herds," would necessitate, for their discussion in detail, a reference to so many authorities, and to so large a body of literature, as to render such discussion quite inappropriate in this Counter-Case. They appeal to such laws as those of the distribution of allied species in separate areas, and those of animal migration, rather than to the facts in the fur-seals which are here more directly in point.

It is, however, perfectly obvious, under any hypothesis, that the fur-seals of the two groups of islands (between which it is now attempted to draw what, it is submitted, is a purely arbitrary line) must originally have reached these islands either from some common source or by traversing the waters between the islands themselves. It is not alleged in the Case of the United States that they were separately created on the several islands. There is at the present time no barrier whatever, either of land, or such as might arise from the temperature of the water or of the air, to render it difficult for seals from one of these groups of islands to reach the other group; but, on the contrary, all the circumstances are such as to afford the greatest facility for such inter-communication by marine animals. There is therefore no assignable reason, either of a practical or of a theoretical kind, why such inter-communication as *must* at one time have existed should have ceased to-day.

But it is unnecessary to rely upon abstract principles, or on the more or less valid deductions from these, to which an appeal is chiefly made on the point here under discussion in the Case of the United States. It is of course quite impossible to follow out the courses of individual seals at sea: but in addition to the opinions quoted on a previous page, from persons more or less familiar with seal life in the North Pacific, a considerable body of evidence respecting the

Fur-seals of the North Pacific originally from a common source.

No reason can be assigned for interruption of communication.

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Evidence quoted in the Case of the United States is alone sufficient to show that intermingling must occur.

United States' Case, p. 117.

*Ibid.*, Appendix, vol. i, p. 400.

*Ibid.*, Appendix, vol. ii, p. 215.

Negative evidence proves nothing.

United States' Case, pp. 96, 97, and Appendix, vol. ii.

United States' Case, Appendix, vol. ii, pp. 205, 207, 210.

Statements by the British Commissioners from investigations in 1891.

actual distribution of the fur-seal at sea has now been collected.

Thus, even in the case of the United States, it is stated only that "between parallels [*sic*] 174° west and 176° east seals are *seldom* seen"; or, in other words, that seals are seldom seen in the vicinity of a middle part of the length of the Aleutian chain, about 420 miles in length. Taking into consideration the pelagic habits of the seal, the vast extent of its range throughout the Pacific, and the fact that it often wanders far in pursuit of food fishes while at sea, the statement thus made, even if established, would only go a very small way towards proving the absence of intermingling in this particular region. As a matter of fact, the statement is erroneous.

In the evidence quoted by the United States on this point, it is elsewhere shown that seals which are *supposed* to belong to the Commander Islands have been noticed in the same region to a point 30 miles east of the Semichi Islands, in the Aleutian chain; while others, *supposed* to belong to the Pribyloff Islands, have been similarly observed at Amchitka Island, the distance intervening being only about 140 miles, which, in the case of an animal constituted as the seal is, may be regarded as practically obliterating the gap in distribution upon which it is endeavoured to insist in the Case of the United States.

Most of the evidence quoted in the United States' Case on this subject is purely negative in character, being to the effect that certain individuals did not see fur-seals when making voyages along the Aleutian Islands, or between San Francisco and Unalaska. As the witnesses cited were not looking for seals, and are therefore scarcely likely to have observed or noted them unless in large numbers, their evidence can be considered as of but little real value, though some of the seamen express the *opinion* that the seals from the two sides of the Pacific do not mingle.

The evidence of some natives is also offered, but it will be found on examination to be of a vague and indefinite character, and when the language in which the declarations are expressed is scrutinized, it is difficult to believe that they are a correct reproduction of the expressions used.

A discussion of the ascertained facts relating to the distribution of the fur seal at sea, and on the commingling of those of the two sides of the North Pacific, will be found in the Report of the

British Commissioners, who personally investigated these matters by cruising along the whole chain of the Aleutian Islands and visiting the Commander Islands.

British Commissioners' Report, paras. 209-223, 451, 457.

The result of their inquiries is shown in the Maps accompanying their Report, and they write:—

Ibid., Diagrams Nos. II, III, and IV.

"The comparative proximity of the breeding-islands frequented by the seals pertaining to these two migration tracts during the summer insures a certain interrelation and interchange of seals between the two groups, to an extent not fully known, and which doubtless varies much in different years."

Ibid., para. 27.

While expressing themselves as unable to observe any general difference as between the appearance of the seals seen by them on the two groups of breeding islands, they quote evidence to show that some such slight difference, whatever its cause, probably does exist, and add—

"The amount of interconnection between the two groups is doubtless, however, sufficient to prevent any very striking or permanent peculiarities, even of a varietal rank, to grow up."

Ibid., para. 456.

In conclusion, the Commissioners write:—

"Some evidence not without importance in this connection is afforded by a comparison of the diagrams elsewhere given, and representing the number of seals killed each year on the two groups of islands. Though affected by other causes as well, this number may be taken in a very general way as a record of the state of the rookeries as a whole, and the correspondence of the lines in the two diagrams is thus significant of connection or of co-operating causes."

Ibid., Diagram No. V.

Since the date of the Report of the British Commissioners, information obtained from pelagic sealers and seamen engaged in navigating in various parts of the North Pacific has resulted in the accumulation of an overwhelming amount of evidence supporting the position that no constant separation exists between the seals frequenting the two sides of this ocean.

Conclusive local evidence since obtained.

Many of the sealing vessels within the last few years have sailed through Behring Sea from the vicinity of the Pribyloff Islands to that of the Commander Islands, on the Asiatic side, during the summer months. Their evidence is, that on

Intermingling both to the north and south of the Aleutian Islands.

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such voyages seals have been observed on every fine day during the passage. It would be inappropriate to include these statements at length in this place, and reference is therefore made to the Appendix, where the statements of no less than 57 hunters and seamen will be found who give evidence upon the point.

Appendix, vol. ii,  
pp. 23-27.

Further, during the summer, and generally in July, a certain number of sealers have crossed from the American to the Asiatic side, to the southward of the Aleutian chain, particularly in 1892, when the *modus vivendi* then in force deterred sealers from sailing through Behring Sea. Similar observations proving the presence of seals in all longitudes to the south of the Aleutian Islands are recorded by a number of these men, whose evidence will also be found in the Appendix. Reference may also be made to the log of the "Triumph" in this connection, where the seals actually killed each other on the way westward are noted.

Ibid., pp. 27, 28.  
Ibid., p. 208.

Many of the sealers who have frequented the Asiatic side of the Pacific, and particularly the region in the vicinity and to the south of the Commander Islands, returned in the autumn to the eastward, shaping a course parallel to, but south of, the Aleutian Islands, while others made a direct course to Victoria or to San Francisco. These witnesses also state that seals were seen by them all the way across the ocean on each of the above courses. Their evidence will be found in the Appendix.

Ibid., pp. 27-29.

Intermingling in southern latitudes.

Information has further been obtained showing that during the winter months, in the latitude of the Sandwich Islands, fur-seals are found very widely distributed in the Pacific. This would appear to indicate that, at this season, a considerable number of the fur-seals congregate in the vicinity of banks and islands in that central part of the Pacific, in addition to the greater numbers found during the same season along the British Columbian and Japanese coasts. In respect to these seals it is impossible to say whether they principally resort to Pribyloff, Commander, Kurile, or Robben Islands during the season of procreation.

Ibid., pp. 25-27. The evidence on this point will be found in the Appendix.

Ibid., p. 128.

A few degrees north of the latitude just referred to seals were seen by Warren F. Upson, who says :—

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"I have crossed from San Francisco to Yokohama many times, and have taken many different courses. In courses made from 35° to 45° have seen seals off and on every day all the way across in January, February, and March."

Captain Adolpho Carlson states that he crossed from Yokohama to San Francisco in the mail-steamer "Gallic," making a course 45° north, and saw seals more or less every day in the month of January. He returned in the beginning of February on a course about 36° north, and again saw seals almost daily during the voyage. Appendix, vol. ii, p. 128.

Mr. J. M. Macoun, while in Victoria in June, 1892, was shown a chart on which was marked the track of the sealing-schooner "Mary Taylor," which had been sent to look for fur-seals north of the Sandwich Islands. Her captain reported that in November and December, 1891, he had seen seals for six weeks between latitude 30° and 40° north, and in about the longitude of the Sandwich Islands, but that the weather had been too rough to permit of a boat being lowered. Ibid., vol. i, p. 136.

Captain William Grant, quoting from his diary, says that on the 3rd December, 1890, when on the steam-ship "Parthia," in latitude 42° 29' north, longitude 157° 35' east, large schools of seals were for several hours seen from the ship. They were heading for the south. When captain of the barque "George" he had on three different trips seen seals at about the same place. Ibid., vol. ii, p. 112.

Captain Marshall, of the mail steam-ship "Empress of India," in voyages between Yokohama and Vancouver, reports having seen great numbers of fur-seals in latitude 40° 41' north, longitude 143° to 145° west, on the 18th April, 1892; and again on the 19th and 20th May in the same year between latitudes 38° and 46° north, and longitudes 146° and 169° east. Ibid., p. 214.

Still further, in connection with the subject of intermingling of fur-seals from the two sides of the North Pacific, Mr. A. C. Folger gives the following statement respecting the occasional presence of fur-seals in the vicinity of Behring Strait, in respect to which it is impossible to decide whether they have arrived there from the eastern or western part of Behring Sea. Mr. Folger says:—

"I have seen Eskimo wearing clothes made of fur-seal skins when north of Behring Straits when trading Ibid., p. 90.

Intermingling near Behring Strait.

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there, and I once saw a fur-seal hauled when north of East Cape; and on the same cruise the captain in my presence shot a fur-seal from the deck of the vessel, a boat was lowered, and the seal was got. The mate also shot them. I don't know where these seals came from, but am sure that they were fur-seals. I have known fur-seals for nearly twenty years."

Of the remaining allegations made in this connection in the Case of the United States, and recited at the beginning of this chapter, some are subsidiary to the general contentions dealt with above, while others are treated at greater length in subsequent pages. It may here be added, however, that the statement—

"that its [the fur-seal's] course when absent from these islands is uniform and confined principally to the waters adjacent to the coast of the United States,"

is one which can only be admitted with considerable modifications. As a general proposition, the uniformity of the migration routes of the fur-seal is not questioned, but the actual routes followed by the seals at sea are largely influenced by the abundance of food fishes, amongst which the herring appears to be one of the most important, and a reference to any of the published records of herring migrations will show how erratic and apparently inexplicable these often are.

The diversity thus met with is quite in accord with that noticed in the case of migratory animals generally, and particularly in that of marine animals with great powers of locomotion.

As to the second part of the above statement, that the course is confined principally to the waters adjacent to the coast of the United States, it must simply be said that it is incorrect. The evidence personally obtained by the British Commissioners, clearly shows that the principal winter habitat, or winter home of the fur-seal in the eastern part of the North Pacific, lies off the coast of the Canadian Province of British Columbia, extending beyond it in latitude only for short distances to the north and south.

The further statement incorporated in the "Conclusions" of the Case of the United States, to the effect—

"that at all times, when in the water, the identity of each individual [fur-seal] can be established with certainty,"

is somewhat ambiguous. It would appear, however, to mean that the individuals of the assumed

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Uniformity of migration routes only true in a general way.

United States' Case, p. 296.  
United States' Case, Appendix, vol. i, p. 406.  
British Commissioners' Report, paras. 26, 209.

Seals influenced by locality of fish food supply.

Winter home of the fur-seal is adjacent to the coast of British Columbia.

British Commissioners' Report, paras. 27, 28, 192, and Map No. 11.

United States' Case, p. 296.

Statement that seals identifiable in water totally unsupported.

Pribyloff and Commander "herds" of the United States' Case may thus be distinguished. If so, the allegation made, in so far as can be discovered in the Case of the United States and its appended documents, is unsupported by any evidence.

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In conclusion, it is submitted that the assertion that the fur-seals resorting to the Commander and Pribyloff Islands form two entirely and rigidly separated "herds" has been shown to be erroneous.

That, on the contrary, the facts ascertained from a large body of testimony establish that the fur-seals which breed upon the islands on both sides of Behring Sea intermingle.

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Conclusions.

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SECTION IV.—*Relation of the fur-seals to the Pribiloff Islands. Summer and Winter Homes.*

THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 89—  
 "The Pribiloff Islands are the home of the Alaskan fur-seal (*Callorhinus ursinus*). They are peculiarly adapted by reason of their isolation and climate for seal life, and because of this peculiar adaptability were undoubtedly chosen by the seals for their habitation. The climatic conditions are especially favourable. The seal, while on land, needs a cool, moist, and cloudy climate, sunshine and warmth producing a very injurious effect upon the animals. These requisite phenomena are found at the Pribiloff Islands, and nowhere else in Bering Sea or the North Pacific, save at the Commander (Komandorski) Islands."
- (2.) United States' Case, p. 91—  
 "The Alaskan seals evidently consider the Pribiloff Islands as their home, for while on or about them they are much less timid and fearful than when met with in the sea along the American coast."
- (3.) United States' Case, p. 123—  
 "The seals evidently consider these islands their sole home."
- (4.) United States' Case, p. 127—  
 "The seals do not enter the inland waters of the coast during their migration."
- (5.) United States' Case, p. 295—  
  1. "That the Alaskan fur-seal, begotten, born, and reared on the Pribiloff Islands."
  2. "That the only home of the Alaskan seal herd is on the Pribiloff Islands; that it resorts to no other land."
- (6.) United States' Case, p. 300—  
 "First. That, in view of the facts and circumstances established by the evidence, it [the United States' Government] has such a property in the Alaskan seal herd as the natural product of the soil, made chiefly available by its protection and expenditure, highly valuable to its people and a considerable source of revenue, as entitles it to preserve the herd from destruction, in the manner complained of, by an employment of such reasonable force as may be necessary."

SUMMARY OF BRITISH REPLY.

It appears from the Case of the United States, that the term "Alaskan fur-seal" is intended to designate all fur-seals found in the eastern part of the North Pacific. While it is admitted that the greater part of these seals are now born upon the Pribiloff Islands, it is shown that seals formerly resorted to various places on the west coast of North America, and elsewhere, for the purpose of bringing forth their young; and that they probably still do so in reduced numbers. The fact of intermingling between the seals of both sides of the North Pacific, likewise shows that not all the seals found in the eastern part of that ocean can have been born on the Pribiloff Islands.

The precise locality in which seals may be begotten appears to be unimportant in connection with any argument respecting property in seals; but it is certain that coition frequently occurs at sea.

It is in consequence of the isolation of the Pribiloffs, their originally uninhabited character, and the consequent freedom from disturbance found there, rather than of any peculiar climatic or physical characters, that these

islands have become chief resorts of the fur-seal at the breeding season. Similar climatic and physical features are to be found in many other places in the North Pacific.

The statement that the fur-seals might remain in the vicinity of the Pribyloff Islands throughout the year if the winter were less rigorous, is unimportant; for their stay is admitted, under the actual circumstances, to be impossible.

The expression "home" or "sole home," as applied in the Case of the United States to the Pribyloff Islands, in connection with the fur-seals found in the eastern part of the Pacific, even on the assumption that all are born there, is inadmissible. A migratory animal cannot be said to be "at home," only when in its breeding area. The home of any species is the area over which it habitually lives. Animals may have winter as well as summer homes, as stated by Dr. Merriam and other naturalists.

The principal "winter home" of the fur-seals of the eastern part of the North Pacific, is that part of the sea lying off the coast of British Columbia; and there enormous quantities of food fishes, which would otherwise be available for the support of the inhabitants, are consumed by the seals; which even enter the inner waters along the coast and prey upon the food fishes there.

Some of the assertions above formulated have already been in part dealt with, being to a certain extent involved in other contentions brought forward in the United States' Case in regard to seal life.

It has been shown that the term "Alaskan seal herd," as employed in the case of the United States, is intended to denote all the fur-seals found in the eastern part of the North Pacific. Most of these seals are doubtless born upon the Pribyloff Islands and the young remain on and about these islands till such time as their size and strength enables them to permanently assume their natural pelagic habits. After leaving the islands, they appear to remain entirely at sea till at least the middle of July in the next year. In regard to the fur-seals of the Southern Hemisphere the young animals never again come on shore during the first year of their lives, and there is much reason to believe that similar circumstances obtain in the North Pacific. Thus, Bryant says of the young females:—

"At this stage they [the female pups] leave the island for the winter, and very few appear to return to the island until they are three years old."

In the United States' Case many authorities are cited with the object of proving that the birth of the fur-seal at sea is impossible. The British Commissioners report practically in accordance with this view, or to the effect that such birth, if

It is admitted that the larger number of the fur-seals of the eastern part of the North Pacific resort to the Pribyloff Islands to breed.

Elliott, Census Report, p. 41.

"Monograph of North American Pinnipeds," p. 387.

Bull. Mus. Comp. Zool., vol. ii, Part I, p. 105.

"Monograph of North American Pinnipeds," p. 386.

United States' Case, Appendix, vol. i, pp. 376, 377.

"Monograph of North American Pinnipeds," pp. 401, 402.

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Formerly bred at other places along North-west coast, and probably still do so.

British Commissioners' Report, para. 447.

possible, is so infrequent as to be of no practical importance; though the fact that the sea-otter brings forth its young on masses of floating kelp shows it to be not impossible that the fur-seal may at times also do so.

In regard to the birth of fur-seals at other places along the American coast besides the Pribyloff Islands, the British Commissioners, however, write as follows:—

"It is evident that many years ago a considerable number of fur-seals bred in various places along the western coast of North America. . . . The traditions of the Indians of the coast of British Columbia, particularly those relating to Race Rocks and Smith's Islands, appear to have the same meaning. Judge J. G. Swan has also collected much evidence to the same effect, with particular reference to the vicinity of Cape Flattery, which may be found detailed in the 'Fisheries Industries of the United States' (vol. ii, p. 393), and in the 'Bulletin of the United States Fish Commission' (vol. iii, p. 201). Some of his observations we have been unable to confirm, but the statements since obtained from Mr. J. W. Mackay go far to prove that, in still earlier years than those referred to by Judge Swan, a certain number of seals regularly occupied certain breeding-places in the vicinity of the Straits of Fuca."

Much evidence to the same effect is contained in the Report of the British Commissioners; and it may here also be noted, that many fur-seals were actually observed upon the Seal Rocks in Portland Canal, by the naval officers engaged in surveying there, in August 1868.

Mr. Mackay, above cited, states that it is probable that a few individuals still breed on the Haystack Islands, off Vancouver Island.

The Haystack Islands, together with other outlying islands to the north of Vancouver Island, were specially visited by Mr. Macoun in May, 1892, and though the date was too early in the season to enable it to be determined whether fur-seals were actually breeding there, a considerable number of these animals was found frequenting the shores. The facts observed by Mr. Macoun will be found stated in his Report.

It is further pointed out by the British Commissioners that, even apart from the ascertained facts—

"it would be admissible to predicate the occasional birth of young along the whole extent of coast frequented by the fur-seal. It is further borne out by the actual existence of breeding rookeries situated along or

Vancouver Island, Pilot Supplement, 1883, p. 123.

Fur-seals resorting to Haystack Islands.

Appendix, vol. i, pp. 135, 136.

British Commissioners' Report, para. 449.

the larger number of the eastern part of the coast resort to the to breed.

near to the migration route of the fur-seal on the western side of the Pacific, on the Kurile Islands, and on Robben Island."

These facts (particularly when taken in connection with those relating to climate) show that, not only is it unsafe, but in all probability incorrect, to assert that *all* the seals frequenting the eastern part of the Pacific are born on the Pribyloff Islands; and this quite apart from the question of the commingling of seals of the two sides of the Pacific, which has previously been discussed.

In regard to this matter, Professor J. A. Allen, in his "Monograph" already cited, quotes Judge J. G. Swan, who has given much attention to subjects connected with the fur-seals. Judge Swan, after recording various observations made by him, writes:—

"It seems as preposterous, to my mind, to suppose that all the Fur-Seals of the North Pacific go to the Pribylov Islands, as to suppose that all the salmon go to the Columbia and Fraser River or to the Yukon."

Commenting on Judge Swan's statements, and additional facts adduced by Professor D. S. Jordan, the well-known ichthyologist, Professor Allen himself writes:—

"These observations, aside from the judicious suggestions made by Mr. Swan, are of special interest as confirming those made some years ago by Captain Bryant, and already briefly recorded (*ante*, p. \*) in this work. They seem to show that at least a certain number of fur-seals repair to secluded places suited to their needs as far south as the latitude of Cape Flattery, to bring forth their young."

Evidence appended to the United States' Case is sufficient to show that fur-seals are found in the vicinity of Cape Flattery, not only in the winter and spring, but also in smaller numbers during the greater part of the summer. Nearly all the Makah Indians of Cape Flattery state that seals are observed there till July. Further evidence to the same effect is contained in the Appendix to this Counter-Case, and is such as to show that fur-seals are found to the south of the Aleutian Islands during July, August, and September; while Indians state that they are to be seen off the coast of Vancouver Island all the summer.

• *Sic.*

Opinion of Judge Swan and Professor Allen.

"Monograph of North American Pinnipeds," p. 772.

*Ibid.*, p. 773.

United States' Case, Appendix, vol. ii, pp. 376-390.

Appendix, vol. ii, pp. 27-29.

Citation

Conclusion

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British Commissioners' Report, paras. 86-90.

Some facts showing the resort of fur-seals to new places and their attempts to form new rookeries are quoted in the Report of the British Commissioners. Further interesting particulars relating to the establishment of new rookeries have since been obtained. These refer to Mooshir, Rakokai, Shrednoi, and Ketoy Islands of the Kurile Group; Bittern Rocks off the north-west coast of Nipon Island and St. Iona Island, in the Sea of Okhotsk.

Appendix, vol. ii, pp. 34, 35.

Where begotten.

The particular locality in which the seals may be begotten, though importance seems to be attached to this in the Case of the United States, does not appear to be one of any special interest in connection with a claim to "property" in seals as such. The statements made on the part of the United States in this matter appear to be prompted by a disinclination to admit that any function necessary to the existence or propagation of the fur-seal species is or can be performed beyond the territorial limits of that Power. It may be sufficient here to say that the views now upheld by Bryant and Allen on this subject, and quoted in the United States' Case, are diametrically opposed to those formerly maintained by them; and that a sufficient body of independent evidence has been obtained to show that coition frequently occurs at sea. This circumstance is also quite in accord with what is known of the hair-seals.

United States' Case, p. 295.

Coition frequently performed at sea.

British Commissioners' Report, paras. 295-297. See also Proc. Zool. Soc., 1881, p. 380.

Conclusive evidence to this effect.

Appendix, vol. ii, pp. 33, 34

As this point has been raised in the discussion by the United States, it may be added that, in connection with other facts relating to seal life obtained from pelagic sealers, no less than 36 of these men affirm that they have witnessed the act at sea, and many not only describe the attendant circumstances, but have killed and secured both male and female.

The known period of gestation and dates of birth are, in fact, alone sufficient to show that coition must frequently take place in the water far distant from the Pribyloffs.

Climate and formation of the Pribyloff Islands are not the chief reasons of resort of seals there.

Points connected with the physical characteristics of the breeding-grounds of the fur-seal, and its requirements in this respect, to which prominence is also given in the Case of the United States, have been so fully dealt with, from personal observation, by the British Com-

missioners, that it is considered unnecessary here to do more than refer to their Report, and to quote their conclusion, which is in the following words:—

British Commissioners' Report, paras. 244-276.

"As a further result of the examination of the physical characteristics of the rookery grounds, it may be stated that the necessary conditions, and even the most favourable conditions, are by no means confined to the Pribyloff and Commander Islands."

Ibid., para. 276.

The British Commissioners likewise point out very clearly that the isolation and the uninhabited character of the breeding resorts of the fur-seal, not only in the North Pacific, but generally over the world, are (by reason of the security and absence from disturbance which they afford) the ruling factors in the selection of such resorts by it. Thus, except in the relative degree of importance attached to such isolation as compared with other circumstances, there is again a substantial agreement between the British Commissioners' Report and the statements made in the Case of the United States in this respect.

Isolation and quiet the chief reason.

British Commissioners' Report, paras. 31, 247, 248.

It will be observed, however, that particular importance is in the Case of the United States attached to the climate of the Pribyloff Islands, and that the requisite climatic features are stated to be found in the Pribyloff and Commander Islands only.

Special prominence given to climate in United States' Case.

While it is well known that climatic conditions are among the most effective ruling causes of the limitation of range or habitat of all organic forms, whether animals or plants, the known facts are, it is believed, entirely opposed to the statement that other shores, and particularly other insular areas in the northern part of the North Pacific, are not equally well adapted in respect of climate for the residence of the fur-seal during the breeding season.

Wallace, "Geographical Distribution of Animals," vol. i, pp. 11, 12.

In view, however, of special prominence given to arguments based on alleged peculiarities of the climate of the Pribyloff Islands, in the Case of the United States, and Meteorological Tables quoted in support of these arguments, it may be well to show here:—

But this shown to be erroneous. United States' Case, pp. 89-91. Ibid., Appendix, vol. i, p. 591.

1. That the northern fur-seal is tolerant of very considerable, or even of great, differences of climate in respect to its breeding-places.

2. That a large area of the northern part of the North Pacific, including many islands and long stretches of coast, affords climatic conditions so

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similar at the breeding season of the seal, as to be for all practical purposes identical, from this point of view.

On this general subject the British Commissioners write:—

British Commissioners' Report, para. 247.  
See also para. 276, 523.

"The cool and humid summer climate may doubtless in itself have been congenial to the seal, but in this respect, and also in the temperature of the sea surrounding them, well-marked differences occur as between the two groups [Commander and Pribyloff], while almost any of the numerous islands of the Aleutian chain afford surroundings so similar in the matter of climate that they would undoubtedly have afforded suitable breeding-places if similarly uninhabited."

Aleutian Islands afford similar conditions.

United States' Case, p. 331.

The United States' Commissioners also admit that "limited areas" on the Aleutian chain may afford the combination of physical and climatic conditions which they conceive to be necessary for the breeding of the fur-seal. It is believed, however, that these gentlemen speak thus cautiously in the absence of personal knowledge of the Aleutian Islands, whereas the whole length of the chain was inspected by the British Commissioners; and it may further be pointed out that, from the nature of the breeding habits of the seal, even limited areas such as those referred to would be amply sufficient for the accommodation of very large breeding colonies.

It must also be remembered that, even at the present time, breeding colonies are known to exist, not only on the Pribyloff and Commander Islands, but also on Robben Island, in the Okhotsk Sea, and on some of the Kurile Islands; and that, therefore, the actual summer temperature and climatic conditions of any of these places must be admitted to be congenial and favourable to the fur-seals at the breeding season. The importance of this fact lies chiefly in showing that, with proper protection from disturbance, new colonies may be formed; and that, in the event of the abandonment of one breeding-place by the seals, other and suitable ones may be found and occupied.

Appendix, vol. i, pp. 157 *et seq.*

A Memorandum and series of Tables relating to the climatic conditions of the places in question have been furnished by Mr. C. Carpmach, Director of the Meteorological Service of Canada, and are printed in the Appendix. These show, in regard to temperature, that during the months May to October, including the period for which

the fur-seals resort to the various breeding-islands, the Pribyloff Islands are from 6 to 15 degrees cooler than Robben Island; while the Commander Islands, with the whole of the Aleutian Islands, are intermediate in this respect. The Kurile Islands generally closely resemble Robben Island in temperature.

It is also shown, from observations at Sitka and Port Simpson, that the mean temperature of the whole west coast of America south of the Aleutian Islands, as far as latitude  $54^{\circ} 30'$ , during the months of July, August, and September, lies between those of the Pribyloff and Robben Islands; while during May, June, and October, it ranges only from 4 to 8 degrees higher than that of Robben Island.

As to the number of cloudy or clear days, and the amount of precipitation and humidity, the available data are very incomplete; but still sufficient to show that the Commander, Pribyloff, and Aleutian Islands, with the west coast of America to the south of these islands, are all notably characterized by cloudy skies and frequent rain; though the actual amount of precipitation is much larger along the continental coast to the south of the Aleutian Islands.

In further support of the fact that the fur-seal is tolerant of very considerable diversity of climatic conditions, and in order to show that the point now insisted on by Professor J. A. Allen as to the necessary limitation of the breeding-places of the fur-seals of the eastern side of the North Pacific to the Pribyloff Islands is not well taken, the analogy in this respect of the closely-allied animal, Steller's sea lion, may be noted. Respecting the fur-seal, this writer says, referring to breeding-places of this animal in California:—

“Such an assumption is entirely opposed to what is known of the habits and distribution of marine life, and to well-grounded principles of geographic distribution, namely, that a fur-seal breeding on an arctic island, which it annually travels thousands of miles to reach, would also choose for a breeding-station an island in subtropical latitudes.”

But on another page of the same Annex to the Case of the United States, he gives the habitat of Steller's sea-lion as—

“shores and islands of the North Pacific from Bering Strait southward to California and Japan.”

Position taken by Professor Allen and cited in United States Case not tenable.

United States' Case, Appendix, vol. i, p. 406.

He contradicts it by his own statements.

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And writes further as follows :—

"Formerly (eighteenth century) abundant along the coast of Kamchatka from the Kurile Islands northward. There is still a small colony at the Farallon Islands, off the coast of California, and other considerable colonies at the Pribilof, Commander, and other small islands in Bering Sea. It is also found in greater or less numbers in some of the Aleutian Islands, and at a few points on the Alaskan coast, principally of the Aleutian chain."

Analogy of the sea-otter.

In the same way, the sea-otter, a fur-bearing animal which is in many respects comparable with the fur-seal, though its habitat has now become comparatively restricted in consequence of persistent hunting, was formerly abundant not only about the Pribyloff Islands, but also as far south as the 28th degree of latitude on the American coast.

Scammon, "Marine Mammalia," p. 168.

The theory of the restriction of the fur-seal to the Pribyloff Islands as its sole possible breeding-place is, therefore, not in any way supported by the appeal to the "principles of geographic distribution" here made. Professor Allen, indeed, explains that it has now been discovered that the fur-seal of the Californian coast is a different animal from that of the North Pacific; but this in no way affects the fact that many regions about the northern part of that ocean are naturally adapted by climate to become the breeding resorts of the North Pacific fur-seal proper.

United States' Case, Appendix, vol. i, p. 373.

by Professor Allen  
United States' Case

British Commissioners' Report, paras. 171-223.

Breeding resorts and southern feeding resorts are equally necessary to the fur-seal of the North-Pacific.

The seal is migratory, and has two homes.

Ibid., para. 28.

After a full examination and discussion of the habits and migrations of the fur-seal, the British Commissioners thus sum up the result of their investigations :—

"The fur-seal of the North Pacific may thus be said, in each case [*i.e.*, in the case of the seals frequenting the two sides of the Pacific], to have two habitats or homes between which it migrates, both equally necessary to its existence under present circumstances, the one frequented in summer, the other during the winter. If it were possible to confine the fur-seal to the vicinity of the northern islands resorted to during the breeding season, or even within the limits of Behring Sea, the species would become extinct in a single year; but if, in any way, it were to be debarred from reaching the islands now chiefly resorted to for breeding purposes, it would, according to experience recorded elsewhere, speedily seek out other places upon which to give birth to its young."

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ements.

The precise meaning of these remarks is very clearly indicated by the map illustrating the resorts and migration routes of the fur-seals, which is appended to the report cited. A less complete, and, as the evidence collected in the Report of the British Commissioners shows, less accurate migration chart of a part of the North Pacific, is appended to the United States' Case. But a reference even to this map will show the substantial accuracy of the statement made by the British Commissioners as to the resort, during nearly six months of the year, of the greater part of the seals of the eastern part of the North Pacific to the waters adjacent to the coasts of British Columbia.

British Commissioners' Report,  
Map, No. II  
United States' Case, Map, No. 111.

Some importance appears, further, in the Case of the United States, to be attached to a statement which is made in the following terms:—

"The seals evidently consider these islands their sole home, and only leave them from being forced so to do. If the climate permitted they would without doubt remain on or in the vicinity of the Pribilof Islands during the entire year."

Ibid., p. 123  
See also p. 225.

Professor J. A. Allen writes to a similar effect, as follows:—

"It is evident from what we know of seal life elsewhere, that were the climate sufficiently mild in winter they would undoubtedly pass the whole year at these islands. Owing, however, to the inclemency of the winter months the fur-seals are forced to migrate southward in search of food and a milder climate."

If climate permitted, the seals might never go very far from the breeding islands.

Ibid., Appendix,  
vol. i, p. 405.

A like opinion as to the cause of migration is also recorded by the United States' Commissioners, and the British Commissioners express themselves in a similar manner.

United States' Case, p. 324.  
British Commissioners' Report, paras. 28, 208.

The inquiries of the British Commissioners do not lead to the conclusion that the seals have ever in any considerable numbers remained on or about the islands even in the mildest winters. The table referred to in the United States' Case, Appendix II, gives no proof that more than a few stragglers have remained late in the year on the islands.

United States' Case, Appendix,  
vol. ii, p. 114.

As a problem in natural history, it might be of interest to discuss the originating causes of the migratory habit of the North Pacific fur-seals,

United States' Case, p. 124.

But climate does not permit, and the facts alone are here in point.

The assertion that the Pribiloff Islands are the "only home" of the fur-seal is thus baseless.

the seals might from the fact.

Ibid., p. 324 (foot-note).

Dr. Merriam on summer and winter homes of migratory animals.

particularly as this habit is very exceptional among mammals, and stands in direct connection with the marine and pelagic nature of the fur-seal; but it is not relevant to the questions here at issue, for, as is stated in the Case of the United States:—

"The fact exists, however, that the Alaskan seal herd is compelled to migrate."

If the habits of the animal be appealed to, whether in connection with a claim to property right or to appropriate regulations for its preservation, it is the actual habits as these exist, and are imposed by the necessities of the case, that must be considered and dealt with.

The statement made in the Case of the United States to the effect that the Pribiloff Islands constitute the "only home" of the "Alaskan fur seal" appears to be largely founded on similar statements made in the Report of the United States' Commissioners. But it is not admitted, even were it possible to show that all the fur-seals of the eastern part of the North Pacific resorted to the Pribiloff Islands for purposes of procreation, that these islands would in consequence be entitled to be characterized as their "only home." An attempt is made to justify the employment of the word "home" in this sense in the Report of the United States' Commissioners, as follows:—

"The home of a species is the area over which it breeds. It is well known to naturalists that migratory animals, whether mammals, birds, fishes, or members of other groups, leave their homes for a part of the year because the climatic conditions or the food supply become unsuited to their needs; and that whenever the home of a species is so situated as to provide a suitable climate and food supply throughout the year such species do not migrate."

It is, however, important to note the recent opinion of one of the United States' Commissioners in an opposite sense, *i.e.*, to the effect that the winter resorts of animals breeding in the north may be equally entitled to be characterized as a "true home" of any species, the statement referred to being in precise accord with the employment of the word "home" in the Report of the British Commissioners. Dr. Merriam, in a critical note appended to a work by Professor W. W. Cooke, in fact, writes as follows:—

"I cannot concur with Professor Cooke in the belief that 'love of the nesting-ground . . . is the foundation of the desire for migration.' In a lecture on bird migration which it was my privilege to deliver in the United States' National Museum on the 3rd April, 1886, I said: 'Some ornithologists of note have laid special stress upon the "strong home affection" which prompts birds to leave the south and return to their breeding-grounds. To me this explanation is forced and unnecessary. Birds desert their winter homes because the food supply fails; because the climatic conditions become unsuited to their need; because the approach of the breeding season gives rise to physiological restlessness; and because they inherit an irresistible impulse to move at this particular time of the year.'—C. H. M.

"Report on Bird Migration in the Mississippi Valley," by W. W. Cooke, 1888. United States' Department of Agriculture, Div. of Econ. Ornithol. Bull. No. 2, p. 11 (foot-note).

In concluding the discussion of the group of questions dealt with in this Chapter, it is desirable to draw attention to the fact that the winter home or habitat of the fur-seal, being, as it is, chiefly in the vicinity of the coast of British Columbia, affords to the residents of that coast an excellent ground of claim to participate in the profits derived from the hunting of the fur-seal, in so far at least as any such claim can be based on the habits and haunts of the animal. This depends not so much on the mere proximity of the seals to this coast at the season mentioned, as on the enormous quantity of food fishes which the seals consume there, which, if not thus taken, would be available for the direct support of the inhabitants. The inroads of the seals upon the fisheries are, in fact, of a most serious kind; and any claim which necessitates the abstention from sealing of the people so affected in the sole interests of a Corporation or Government which profits by the killing of the seals upon their distant breeding islands, must be considered as essentially unjust.

The injury done to fisheries by seals of all kinds, even when in comparatively small numbers, is well known. What, then, must be the effect of vast bodies of fur-seals known to congregate on the coast of British Columbia, from which, without counting the pelagic catch proper, about 3,000 skins are taken each year by the Indians venturing to sea in their dug-out canoes, and, therefore, at no great distance from land?

Enormous quantity of food fishes consumed by seals when in their winter home.

Amount of fish consumed.

Resulting damage to fisheries.

British Commissioners' Report, para. 563.

Without endeavouring to cite numerous authorities on the damage done to the food fishes by seals, the following may be quoted as examples of this well-understood fact:—

Baltic. Appendix, vol. i, p. 177. The fisheries of Sleswick-Holstein, on the Baltic, in 1887, were so damaged by seals that it was feared they might be absolutely ruined, and measures had to be taken to destroy the seals.

Iceland. Ibid. In Iceland so much damage has been done to the salmon fisheries that special statutory provisions have been introduced, enabling persons "to shoot or frighten" seals coming near the fisheries.

Denmark. Ibid. In Denmark, in order to save the fishing industry, rewards have been offered for each seal killed.

Massachusetts. Ibid. The bay fishing in Essex, Massachusetts, in 1892, was so seriously injured by seals that the authorities offered a reward of 1 dollar for each seal killed.

United States' Case, Appendix, vol. i, p. 421. Dr. Alfred Nehring, Professor of Zoology in the Royal Agricultural College of Berlin, likewise in a letter addressed to Dr. Merriam, and in reply to his "Circular letter" (elsewhere referred to) speaks with approval of the pursuit of the fur-seal where, in its winter quarters, it is destructive to the fisheries.

Annual quantity of fish consumed.

With special reference to the destruction of food fishes caused by the fur-seal of the North Pacific, Mr. W. H. Elliott states his belief that a full-grown male seal consumes per diem about 40 lbs. of fish, adult females at least 10 lbs. or 12 lbs., and the rapidly growing pups or young bachelors not much, if any, less. He adds:—

United States' Census Report, p. 64.

"Therefore, this great body of 4,000,000 or 5,000,000 hearty active animals which we know on the seal islands, must consume an enormous amount of such food every year. They cannot average less than 10 lbs. of fish each per diem, which gives the consumption, as exhibited by their appetite, of over 6,000,000 tons of fish every year.

Elliott's estimate 6,000,000 tons per annum.

Ibid. (foot-note).

"If the seals can get double the quantity which I credit them with above, startling as it seems, still I firmly believe that they eat it every year. An adequate realization by ichthyologists and fishermen as to what havoc the fur-seal hosts are annually making among the cod, herring, and salmon of the north-west coast and Alaska would disconcert and astonish them."

Neither are the depredations of the fur-seal on the British Columbian coast entirely confined to

such fishes as at certain seasons frequent the open sea, for though it is stated in the case of the United States that the seals—

“do not enter the inland waters of the coast during their migration, remaining always in the open sea or at the mouths of large bays, inlets, and gulfs”—

United States' Case p. 127.

this statement shows only an imperfect acquaintance with the facts. The notes obtained by the British Commissioners on the coast of British Columbia prove, in fact, that the fur-seals frequent Dixon Entrance, Hecate Strait, Observatory Inlet, Queen Charlotte's Sound (sometimes even going to the head of Knight's Inlet), the Strait of Fuca, and in former years resorted even to the Gulf of Georgia. Mr. J. W. Mackay further writes as follows :—

Fur-seals even enter inland waters of British Columbia, and prey upon fish there.

British Commissioners' Report, paras. 177-179.

Ibid., para. 185.

“During the spring, numbers of the young animals fish in the broken waters inside the half-tide rocks and reefs which fringe the western shores of Vancouver Island and of the other islands which lie west of the mainland from Queen Charlotte Sound to Dixon Entrance.”

Ibid., para. 183.

And Captain John Devereux, formerly Commander of the Canadian Government steamer “Douglas,” says :—

“When they are found along the bank on the west coast of Vancouver Island they are feeding on their natural feeding-grounds.”

Ibid., para. 184.

Adding that—

“Though often far off the land, he has frequently found them inshore, and even 18 miles up Barclay Sound; as well as in the Strait of Fuca, and, on rare occasions, in the Gulf of Georgia.”

It is contended on behalf of Her Majesty's Government that, in view of the facts set forth in the present Chapter, there is no just ground for regarding the Pribyloff Islands as the sole home or habitat of the fur-seals which generally resort there for breeding purposes. That, having regard to the large proportion of the year during which they frequent other coasts and other waters, and the fact that the whole of their food is obtained from the open sea, no claim to treat them as property, or as a “natural product of the soil,” can be supported, on the ground that for a limited portion of the year they frequent the shores and territorial waters of the Pribyloff Islands for breeding purposes.

Conclusions.



## CHAPTER VIII.

## RECAPITULATION OF ARGUMENT.

It is submitted that, with reference to the five points stated in Article VI of the Treaty of Arbitration, and the facts bearing thereon, the arguments and considerations in the foregoing Chapters have established :—

CHAPTER I.—As regards the user of the waters of Behring Sea and other waters of the North Pacific up to the year 1821—

1. That the propositions that were formulated on p. 36 of the British Case with reference to the user of the waters of Behring Sea up to the year 1821, and supported by the evidence cited therein, have not been displaced by any facts or arguments produced in the Case of the United States; but, on the contrary, that the further examination of the subject establishes that, down to the year 1821, Russia neither asserted nor exercised in the non-territorial waters of the North Pacific, including the body of water now known as Behring Sea, any rights to the exclusion of other nations.

CHAPTER II.—As regards the Ukase of 1821, and the circumstances connected therewith, leading up to the Treaties of 1824 and 1825—

2. That the conclusions claimed to have been established in the British Case, as stated at p. 58, are fully supported, and that the further evidence which has been adduced clearly shows that the Ukase of 1821—the first and only attempt on the part of Russia to assert dominion over, and restrict the rights of other nations in, the non-territorial waters of the North Pacific, including those of Behring Sea—was made the subject of immediate and emphatic protest by Great Britain and by the United States. That thereupon Russia unequivocally withdrew her claims to such exclusive dominion and control.

CHAPTER III.—As regards the question whether the body of water now known as Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia—

3.—(a.) That the Conventions of 1824 and 1825 declared and recognized the rights of the subjects of Great Britain and the United States to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend.

(b.) That the body of water now known as the Behring Sea was included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and

(c.) That the constructions placed on the term "North-west coast" or "North-west coast of America" in the case of the United States are unsound.

CHAPTER IV.—As regards the user of the waters in question from 1821 to 1867.—

4. That the conclusions claimed to have been established in the British Case, as stated at p. 90, are fully supported; and that the further evidence which has been adduced clearly shows that, with the growth of commerce and increase of trade subsequently to the year 1821, vessels of nations other than Russia, without let or hindrance, frequented, traded, and fished in the waters of Behring Sea; and that no attempt was ever made during the whole period to restrict the use of those waters to vessels carrying the Russian flag.

CHAPTER V.—As regards the question what rights passed to the United States under the Treaty of Cession of the 30th March, 1867—

5. That the contentions of the United States are based upon two assumptions, both of which are entirely erroneous.

The first, that prior to the year 1867 Russia had, in fact, excluded the vessels of other nations from Behring Sea.

The second, that the language of the Treaty of 1867 describes, and purports to convey, some special rights in the non-territorial waters of Behring Sea.

As to the first, the considerations contained in the first four Chapters have established that, prior to 1867, Russia had not, at any time, excluded from Behring Sea the vessels of foreign nations.

As to the second, a reference to the language of the Treaty—which is set out at pp. 91 to 94 of the British Case—shows that Russia was conveying territories which were then admitted to form part of the Russian Empire, but with no more than the ordinary territorial rights.

CHAPTER VI.—As to the question whether the United States has any, and if so, what right of protection or property in the fur-seals frequenting the Islands of Behring Sea, when such seals are found outside the ordinary 3-mile limit—

(a.) That the authorities cited, and arguments brought forward, support the proposition that the sole right of the United States in respect of the protection of seals is that incident to territorial possession, including the right to prevent the subjects of other nations from fishing in territorial waters.

(b.) That the United States have not, nor has any citizen of the United States, any property in fur-seals until they have been reduced into possession; and that the property so acquired endures so long only as they are retained in control.

(c.) That an examination of the Colonial and foreign laws referred to in the United States' Case shows that international usage in no way establishes, and in no instance sanctions, the principle asserted by the United States, but, on the contrary, confirms the following propositions at p. 160 of the British Case:—

“The right of the subjects of all nations to navigate and fish in the non-territorial waters of the sea now known as Behring Sea, remains and exists free and unfettered; and cannot be limited or interfered with, except with the concurrence of any nations affected.

No regulations affecting British subjects can be established for the protection and preservation of the fur-seal in the non-territorial waters of Behring Sea without the concurrence of Great Britain.”

CHAPTER VII.—As regards the allegations of fact put forward by the United States in connection with Point 5 of Article VI, it is submitted—

SECTION I.—That no grounds exist to justify the application to the fur-seal of the designation of

land animal, when admittedly it derives its entire sustenance from the ocean, and passes there two-thirds, if not more, of its existence.

SECTION II.—That there is no just ground for the contention that the seal is domestic in its habits.

SECTION III.—That the assertion that the fur-seals resorting to the Commander and Pribyloff Islands form two entirely and rigidly separated "herds" has been shown to be erroneous.

That, on the contrary, the facts ascertained from a large body of testimony establish that the fur-seals which breed upon the islands on both sides of Behring Sea intermingle.

SECTION IV.—That there is no just ground for regarding the Pribyloff Islands as the sole home or habitat of the fur-seals which generally resort there for breeding purposes. That, having regard to the large proportion of the year during which they frequent other coasts and other waters, and the fact that the whole of their food is obtained from the open sea, no claim to treat them as property or as a "natural product of the soil" can be supported on the ground that for a limited portion of the year they frequent the shores and territorial waters of the Pribyloff Islands for breeding purposes.

#### CONCLUSION.

The above propositions, which are supplemental to those stated in Chapter X of the British Case, demonstrate, in the submission of Her Majesty's Government, that the five points stated in Article VI of the Treaty of Arbitration must be decided in favour of the contention of Great Britain, and that the United States have wholly failed to establish any exclusive right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea, when found outside the ordinary 3-mile limit; that the subjects of Great Britain have, in common with those of all other Powers, the right to navigate on, and fish in, the non-territorial waters of Behring Sea; and that any restrictions upon these rights can only be imposed with the consent and concurrence of Great Britain.

## PART II.

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### CHAPTER IX.

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#### GENERAL CONSIDERATIONS AFFECTING THE QUESTION OF REGULATIONS.

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IT is necessary in approaching the consideration of the question of Regulations (if any are to be made) to recall its relation to the five points raised by the VIth Article of the Treaty, bearing in mind that it is only in the event of those five questions having been so determined as to render the concurrence of Great Britain necessary that the authority of the Arbitrators as to Regulations arises (Article VII).

What, then, does that determination involve? It involves the recognition of the proposition that Behring Sea is to be regarded as a sea open to the commerce and to the fishermen of the world, and that the United States have no exclusive right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit.

It follows that the rights and interests of the United States in fur-seals frequenting such islands do not differ from the rights and interests of any other portion of mankind, except in so far as the territorial possession of those islands by the United States gives to their nationals the exclusive right of capture in territorial waters, and the advantages derived from the fact that the seals congregate in large numbers on those islands, thereby giving the opportunity for their slaughter.

In the next place, it is to be remembered that the object of Regulations (assuming any Regulations to be made) should be the preservation of the fur-seal industry for the benefit not of the United States alone, but of all those who may

find it profitable' to pursue this industry in non-territorial waters.

No such Regulations can be just or effective unless accompanied by corresponding and correlative control over the islands and over the time, method, and extent of slaughter upon them by the nationals of the United States of America.

To enforce Regulations which would shut out British subjects at certain seasons, and from prescribed areas, from the pursuit of pelagic sealing, and at the same time would leave the slaughter of seals on the islands to be pursued according to the mere will of the lessees of those islands or of their Government, would be to establish Regulations one-sided in their character, and, therefore, unjust and also ineffective for the object in view, namely, the preservation of seal life.

It will be shown later, that the action of the lessees upon the islands, both as to times, methods, and extent of slaughter, has heretofore exercised a more serious effect in causing the diminution of seals in Behring Sea than the pelagic sealing.

It is submitted, therefore, that no Regulations applying to pelagic sealing only ought to be formulated unless and until the United States of America have established proper and effective Regulations applicable to the islands.

Otherwise, the result would be that the Regulations would restrict pelagic sealing by British subjects, for the benefit of the United States, whilst leaving the action of their nationals in territorial waters and on the islands without control.

But it further follows that any Regulations, to be at once just and effective, must bind all who have the right to resort to Behring Sea in pursuit of fur-seals.

According to the express terms of the VIIth Article of the Treaty, the authority of the Arbitrators as to concurrent Regulations is confined to Regulations outside the jurisdictional limits of the respective Governments of Great Britain and the United States of America.

It is clear that such Regulations would require domestic legislation by Great Britain and the United States respectively to make them binding even on their respective nationals, but that domestic legislation by Great Britain could not bind the nationals of the United States of



America, neither could legislation by the United States of America bind the nationals of Great Britain.

Equally obvious is it that the legislation of neither country could bind the subjects of any other country.

It would therefore be open to the nationals of Chile, Germany, Holland, Japan, Russia, or of any other Power, to disregard any Regulations made; and if their convenience and interest pointed in that direction, to pursue the fur-seal fishing industry at times when, and in a manner and under circumstances in which, the like pursuit would be forbidden to the nationals of Great Britain and of the United States of America respectively.

It may be anticipated also that owners of both United States' and Canadian sealing-vessels would sail their vessels under the flag of some other nation, so as to obtain immunity from such Regulations.

These results, it will be admitted, have not been contemplated by either of the two great Powers parties to the Treaty, nor would they be conducive to their respective interests.

That the adhesion of other Powers has been regarded by Great Britain and the United States of America respectively as important, is shown by the concluding words of the VIIth Article of the Convention, in which "The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations."

No other Power has so far expressed its willingness to be party to any scheme of Regulations such as the Arbitrators might determine to be right and proper; and it is apparent that to issue and to enforce concurrent Regulations outside the jurisdictional limits of Great Britain and the United States of America, which would become binding upon their respective nationals and upon them only, would tend to prevent rather than to promote the adhesion of other Powers in the future.

It is submitted that, if any Regulations are to be prescribed, they ought to be so framed as only to come into operation through the instrumentality of a Convention, at which all the Powers interested shall be represented, and at which proper provisions for their enforcement binding on the nationals of all such Powers shall be formulated.

or that they should be conditional upon the adhesion of such other Powers.

It is further submitted that, in view of the great international interests involved, it is fitting that the United States of America should express their willingness to frame proper and just concurrent Regulations applicable to the islands and their territorial waters.

The position here taken on the part of Great Britain is that already taken in the original Case. It is there stated :—

"Finally, that while Great Britain has from the first strenuously and consistently opposed all the foregoing exceptional pretensions and claims, she has throughout been favourably disposed to the adoption of *general* measures of control of the fur-seal fishery, should these be found to be necessary or desirable with a view to the protection of the fur-seals, provided that such measures be equitable and framed on just grounds of common interest, and that the adhesion of other Powers be secured as a guarantee of their continued and impartial execution."

For the correspondence on this point, the Arbitrators are respectfully referred to the Appendix to the United States' Case.

United States' Case, Appendix, vol. i, pp. 339-345

A claim is made in the concluding words of the United States' Case that such Regulations be—

United States' Case, p. 303.

"proscribed by this high Tribunal, as will effectually prohibit and prevent the capture anywhere upon the high seas of any seals belonging to the said herd."

Her Majesty's Government respectfully protest that no power to impose on the Contracting Parties a total prohibition of pelagic sealing is conferred on the Tribunal by the Arbitration Treaty, whether the assent of other nations be or be not made a condition of such prohibition.

Article VII empowers the Arbitrators to—

"determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend."

The power thus conferred relates to the only area in dispute, viz., the waters of Behring Sea eastward of the line of demarcation specified in the Treaty of Cession of 1867, and excludes the supposition that prohibition could have been intended.

The object of Regulations, as laid down in Article VII, is "the proper protection and preservation of the fur-seal;" not its reservation for the United States' Government and their lessees.

The correspondence which resulted in the Arbitration Treaty shows that the construction of that Treaty now relied on by Great Britain accords with the intentions of both Powers at the time its provisions were framed. Mr. Blaine, in his despatch of the 17th December, 1890 says:—

United States' Case, Appendix, vol. i, p. 284.

"The President will ask the Government of Great Britain to agree to the distance of 20 marine leagues—within which no ship shall hover around the Islands of St. Paul and St. George, from the 15th May to the 15th October of each year. This will prove an effective mode of preserving the seal fisheries *for the use of the civilized world*. . . . The United States desires only such control over a limited extent of the waters in the Behring Sea, for a part of each year, as will be sufficient to insure the protection of the fur-seal fisheries."

The writer, after proposing the five questions, which, with modifications in the third and fifth, are now embodied in Article VI, proceeds:—

Ibid., p. 286.

"Sixth. If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing Regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined:—

"First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States, and feeding therefrom.

"Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction. And, if so,

"Third, what months or parts of months should be included in such season, and over what waters it should extend."

The Marquis of Salisbury in a letter to Sir J. Pauncefote, dated the 21st February, 1891, which contains his answer to Mr. Blaine, says:—

Ibid., p. 294.

"Her Majesty's Government have no objection to refer the general question of a close time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but such reference ought not to contain words

appearing to attribute special and abnormal rights in the matter to the United States."

In a letter from Mr. Wharton to Sir J. Pauncefote, dated the 25th June, 1891, this passage is quoted, and the writer adds:—

"I am now directed by the President to submit the following, which he thinks avoids the objection urged by Lord Salisbury." United States' Case, Appendix, vol. i, p. 319.

Then follows the clause which now forms Article VII of the Treaty.

Lastly, it is to be remembered that, if protection is to be given to which the United States has now no legal right, and if such protection involves injury to the existing legal rights of Great Britain, the question must arise, as to the terms and conditions upon which such protection should be afforded.

Subject to the foregoing observations, the scheme and scope of any Regulations outside the jurisdictional limits of the representative Governments might, it is submitted, embrace the following subjects, or some of them:—

The maintenance of a zone of protected waters round the breeding islands. British Commissioners' Report, § 155 (b).

The provision of a close season. Ibid., § 155 (c).

Provision that no sealing-vessel shall enter Behring Sea in each year before a given date.

Prohibition of the use of rifles in shooting seals at sea.

Prohibition of nets as a means of capture at sea.

Provision that all sealing-vessels shall be licensed, and shall carry a distinctive flag.

On the other hand, in order that Regulations of this nature, or any other Regulations, may be effective for the proper preservation of seal life, it is necessary, in the opinion of Her Majesty's Government, that Regulations should be enforced by the United States on the breeding-islands dealing with the following subjects:—

Limitation of the number of seals to be killed in each year, such limit to be subject to periodical review by independent Government agents, having regard to the actual condition of the breeding-islands.

Effective provisions to prevent raiding and disturbance upon the islands.

And such subsidiary provisions as may be considered necessary for the effective carrying out of these suggestions.

United States' Case, pp. 253-264.

In the United States' Case, four proposals for "a limited prohibition" are separately discussed, and each in turn is discarded as useless. By the term "limited prohibition," it is probably intended to designate the "concurrent Regulations" mentioned in the Treaty of Arbitration, but, as has already been shown, prohibition is not regulation.

The main argument of the United States is based on the assumption (shown to be erroneous) that the decrease of seals on or in the neighbourhood of the Pribyloff Islands is attributable entirely to pelagic sealing, and on the further assumption that Regulations should be framed in the sole interest of the owners of the Pribyloff Islands.

British Commissioners' Report, para. 132.

It is shown in the Report of the British Commissioners that no single measure or precaution is in itself equally appropriate to the several modes of taking seals, or separately capable of affording adequate safeguards in the interests of seal life. But it is further shown that, by a judicious combination of checks of various kinds, an efficient system of control may readily be established, so as to embrace the whole industry based upon the taking of fur-seals, and readily adaptable in its nature to varying circumstances. The method adopted in the Case of the United States of discussing and condemning separately certain measures applicable to sealing at sea is insufficient and inconclusive. No doubt total prohibition of pelagic sealing would be favourable to the owners of the Pribyloff Islands as leaving them unaffected, while disposing of the competition of their rivals (the sealers) on the high seas; but such prohibition would be manifestly unjust to the other interests concerned.

Ibid., para. 137.

It is therefore scarcely necessary at this stage to follow in any detail the arguments advanced in the United States' Case against the several modes of regulation there selected for discussion, or to indicate how erroneous are the grounds on which the suggested regulations are there condemned.

For instance, a close season as applied to sealing at sea is supposed to be sufficiently condemned by pointing out that differences of opinion exist amongst the witnesses as to the time of year which it should cover.

United States' Case, Appendix, vol. ii, p. 412.

Again, Professor Huxley's opinion is referred to as in favour of total prohibition of pelagic sealing; but on reference to his statement, it will be seen that he is careful to point out that,

under the circumstances of the case, total prohibition is impossible, and, to use his own language, is "out of the question."

The proposition that a protective zone should be established round the Pribilof Islands is treated as an absurdity, although, writing as late as the 17th December, 1890, Mr. Blaine himself made this proposal in words already quoted. See *ante*, p. 163.

In the Case of the United States, frequent allusions are made to the opinions expressed in letters by certain well-known naturalists as to the best mode of preserving and protecting the fur-seal. The method in which these opinions were obtained, and the data upon which they were based, require some notice.

In Article IX of the Treaty of Arbitration it is provided that—

"each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Behring Sea, and the measures necessary for its proper protection and preservation.

"The four Commissioners shall, so far as they may be able to agree, make a Joint Report to each of the two Governments, and they shall also report, either jointly or severally, to each Government upon any points upon which they may be unable to agree.

"These Reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise."

In view of the above provisions, and particularly of the last-mentioned one, which enjoins the privacy of the Reports, the British Commissioners have preserved the strictest reticence with regard not only to the Joint Report, but also in the matter of their Several Report, and have not disclosed in any way the conclusions at which they have arrived on the various points.

However, Dr. C. Hart Merriam, one of the United States' Commissioners, has submitted to certain naturalists a "Circular letter" bearing on the subject-matter prepared for the consideration of this Tribunal.

In the introductory paragraph of his "Circular letter" Dr. Merriam writes as follows, dating from Washington, April 2nd, 1892:—

"Dear Sir,

"The Government of the United States having selected me as a naturalist to investigate and report upon



the condition of the fur-seal rookeries on the Pribyloff Islands in Behring Sea, with special reference to the causes of decrease and the measures necessary for the restoration and permanent preservation of the seal herd, I visited the Pribyloff Islands and made an extended investigation of the subject, the results of which are here briefly outlined."

And in the concluding paragraph writes:—

United States'  
Case Appendix,  
vol. I, p. 414.

"Having been selected by my Government solely as a naturalist, and having investigated the facts and arrived at the above conclusions and recommendations from the standpoint of a naturalist, I desire to know if you agree or differ with me in considering these conclusions and recommendations justified and necessitated by the facts in the case. I shall be greatly obliged if you will favour me with a reply."

Ibid., p. 417.

No mention is made of the Agreement entered into by the Governments of Great Britain and the United States in respect to the joint character of the investigation of the facts of seal life; and, in the absence of other sources of information, the naturalists to whom these explanations were addressed would, it is submitted, naturally assume as correct the facts stated by Dr. Merriam.

To the mere fact of the submission of the questions at issue respecting the fur-seal, and the methods appropriate for its preservation, to the judgment of well-informed naturalists, no exception can be taken. But on examining the body of the "Circular letter," it is found to be a précis of the more important conclusions contained in the Several Report of the United States' Commissioners. It thus consists of a series of assertions and arguments, some of which are in direct opposition to the conclusions and opinions formed by the British Members of the Joint Commission, and many of which involve assumptions of fact which are directly controverted.

Dr. Merriam was, at the time of writing and dispatching this Circular letter, well aware of the different views held on many points by the British Commissioners. The date of the letter is nearly one month later than that of the conclusion of the joint Conferences of the Commissioners.

It is unnecessary here to discuss the statements made in the Circular letter itself, as they are considered in detail in other parts of this Counter-Case. Neither would it serve any good purpose to criticize at length the nature of the replies published.

It is, however, to be noted that several of the naturalists, whose replies are given, do not wholly agree with the conclusions placed before them.

Thus, Dr. Alphonse Milne Edwards does not commit himself to Dr. Merriam's conclusions respecting the required mode of protection of the seals. He parallels the conditions, very appropriately, with those affecting migratory birds. In conclusion, he states that only an International Commission can lay down Rules for the protection of the fishery.

Dr. Alfred Nehring points out that the pursuit of the fur-seal in its southern winter quarters may be justified on the ground of its destructiveness to fish.

Professor Robert Collet believes the matter to be one for an International Agreement for a close time, similar to that in force respecting the seal fisheries of the North Atlantic.

Dr. Gustav Hartlaub, writing apparently with no other knowledge of the matter than that afforded by Dr. Merriam's letter, briefly states his agreement with its general conclusions, but regrets that for practical reasons the prohibition of hunting for a few years cannot be thought of.

Professor Count Tommaso Salvadori points out that, in addition to the effects attributed to pelagic sealing, he believes the killing upon the islands to have been too great.

Dr. Leopold von Schrenck in brief terms records his full agreement with the statements presented to him.

Dr. Henry H. Giglioli likewise fully agrees with Dr. Merriam, but takes occasion to deplore the killing of "pups" on the islands, which, it will be remembered, was allowed to continue till 1891.

Dr. Raphael Blanchard points out that the killing of young males on land requires to be regulated and severely limited, as well as the killing at sea. He believes the matter to be one for an International Commission.

Professor Wilhelm Lilljebord and Baron A. E. Nordenskiöld, point out that the protection required clearly divides itself into that on land and that of seals at sea, where near to or connected with the breeding rookeries.

Dr. A. von Middendorf states that international protection is necessary.

Dr. Emil Holub likewise believes that protection

must be accorded equally at sea and on the breeding islands. He suggests an International Congress.

Dr. Carlos Berg, in a few lines, agrees entirely with Dr. Merriam's conclusions.

The statements made by two other naturalists, to whom it does not appear that Dr. Merriam's "Circular letter" was sent, must, in conclusion, be mentioned. These are Professor T. H. Huxley and Dr. P. L. Selater.

Professor Huxley's opinion as given in the Appendix of the United States' Case, constitutes a fair statement of conclusions and recommendations, such as may well have been based on the published evidence available up to the time at which it was written, but which, of course, did not include the Report of the investigations of the British Behring Sea Commissioners or other later evidence.

Professor Huxley admits the manifest rights of British and all other sealers at sea, and of the United States, on the Pribyloff Islands. He points out that it is the interest of both parties to preserve the seals, but that even the concurrence of both Governments would be insufficient, as this would not exclude sealers under other flags. He suggests that a Joint Fishery Commission might be established to deal with, and make laws for, the Pribyloff, Behring, and North-west Coast fisheries, under the terms of a General Treaty, to which other Powers would probably agree.

The whole tenour of the statement is eminently practical, endeavouring to deal with the facts of the case as they exist and must be met, and is in this respect in singular contrast with the schemes of protection and control which are prominently advocated in other parts of the United States' Case.

United States' Case, Appendix, vol. i, p. 411.

Dr. Selater's affidavit consists of three short clauses embracing many theoretical assertions, and making no effort whatever to deal with the actual circumstances, or to provide a means of control of shore and sea sealing, both of which, he admits, must be regulated. The third clause, in fact, shows that the author was not aware of the actual character of the management of the breeding-islands and mode of killing there, as explained in another part of this Counter-Case. In this respect, it is in accordance with the similar theoretical assertions elsewhere found in the Case of the

United States, and cannot be admitted to have more weight than these.

Upon any discussion before the Tribunal upon the subject of Regulations, Her Majesty's Government will refer, if necessary, to a Supplementary Report of the British Commissioners, which is now in course of preparation, and will, it is believed, be presented to Her Majesty's Government by the 31st January, 1893.

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The succeeding chapters have been prepared in order that the Arbitrators may be put in possession of the true facts material to the consideration of the question of Regulations, and of the reply on behalf of Her Majesty's Government to the arguments and allegations of fact contained in the Case of the United States with reference to pelagic sealing and the management of the islands in the past.

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CONSIDERATION OF STATEMENTS PUT FORWARD BY  
THE UNITED STATES BEARING UPON THE QUES-  
TION OF THE NECESSITY FOR REGULATIONS.

CHAPTER X.

*Date and Amount of the observed Decrease in  
the Number of Seals.*

THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 164—  
"Under this careful management of the United States' Government the seal herd on the Pribilof Islands increased in numbers, at least up to the year 1881."
- (2.) United States' Case, p. 165—  
"From the year 1880 to the year 1884-85, the condition of the rookeries showed neither increase nor decrease in the number of seals on the islands. In 1884, however, there was a perceptible decrease noticed in the seal herd at the islands, and in 1885 the decrease was marked in the migrating herd as it passed up along the American coast, both by the Indian hunters along the coast and by white seal hunters at sea. Since that time the decrease has become more evident from year to year, both at the rookeries and in the waters of the Pacific Ocean and Behring Sea."
- (3.) United States' Case, p. 296—  
"That this decrease began with the increase of such pelagic sealing, and that the extermination of this seal herd will certainly take place in the near future."
- (4.) United States Case, p. 185—  
"The decrease in the seal herd has thus been proportionate to the increase of the sealing fleet."

SUMMARY OF BRITISH REPLY.

It is admitted that a decrease in seals on and about the Pribilof Islands has occurred as a result of excessive killing, but it is affirmed that the date assigned by the United States for the beginning of such decrease is incorrect, and that the amount is exaggerated.

The decrease had reached such proportions on the islands as to necessitate new measures, in order to obtain the "quota" of 100,000, as early as 1879; and its progress had become still more marked in 1883.

The decrease began long before pelagic sealing had assumed any importance, and before any pelagic sealers had entered, or even approached Behring Sea.

The attempt to connect the date of the first decrease with that of an increase of pelagic sealing fails, even when examined in the light of the contentions advanced by the United States.

No trustworthy numerical data exist to prove the amount of decrease on the Pribyloff Islands, and the evidence relied on by the United States to prove its great proportions is incorrect or inconclusive.

There has been no decrease of seals at sea corresponding with that found on the Pribyloff Islands, the number at sea having proportionately, if not actually, increased in late years; an effect probably due to the disturbance incident to killing on the islands.

From the quotations given above, it appears to be affirmed in the case of the United States that the seals increased in number on the Pribyloff Islands under the control of the United States' Government at least up to the year 1881; that from the year 1880 to the year 1884-85 the number remained stationary, but that in 1884 a decrease began,\* which in subsequent years continued and became greater; that such decrease was observed not alone on the Pribyloff Islands, but also at sea generally: that it commenced contemporaneously with the increase of pelagic sealing, and is of an exceedingly great and alarming character.

The decrease of seals upon the Pribyloff Islands has no doubt brought the whole question into prominence, and it is the prospect of the diminution of the supply of seal-skins which has stirred the lessees of these islands to agitate for the interference and protection of the Government of the United States, from whom they derive these special rights.

The lessees complained of the operations of pelagic sealers, and attributed the decrease of seals observed on the breeding islands entirely to pelagic sealing; and, in consequence of these complaints, the United States endeavoured to put a stop to pelagic sealing by means of the seizure of vessels on the high seas.

As to the diminution in the number of seals, the British and United States' Commissioners agree to the following proposition in their joint Report:—

"We find that since the Alaska purchase a marked diminution in the number of seals on and habitually resorting to the Pribyloff Islands has taken place; that it has been cumulative in effect, and that it is the result of excessive killing by man."

In endeavouring to arrive at the true causes of this diminution, it is necessary in the first

\* The dates do not precisely correspond, but are given by the United States as here stated.

The United States' contentions summarized and explained.

United States' Case, p. 161.

Ibid., pp. 165, 166.

Ibid., p. 296.

British and United States' Commissioners admit decrease.

Ibid., p. 309.

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place to ascertain correctly the date at which the diminution commenced, and the amount of the diminution.

Upon this point the conclusion arrived at by the British Commissioners is expressed in their Report in the following terms :—

“ A critical investigation of the published matter, together with the evidence personally obtained from many sources and an examination of the local details of the rookeries and hauling-grounds on the Pribyloff Islands, leads us to believe that there has been a nearly continuous deterioration in the condition of the rookeries and decrease in the number of seals frequenting the islands from the time at which these passed under the control of the United States, and that, although this decrease may possibly have been interrupted, or even reversed, in some specially favourable years, it was nevertheless real, and in the main persistent.”

With reference to the attempt made in the Case of the United States to connect the commencement of the observed decrease on the islands with that of the increase of pelagic sealing, it will be found (in addition to the general evidence of deterioration during the earlier years of the United States' control), that after fixing as nearly as is now possible the actual date at which the scarcity of young male seals had become such as to hamper the lessees in taking their “quota,” the British Commissioners state that this stage in decline had been reached—

Ibid., para. 688. “before the pelagic sealing industry had attained any considerable development, and some years before it could, under any valid hypothesis, be supposed to be accountable for any such result.”

The opinion above expressed is further confirmed by the examination of the evidence attached to the United States' Case, and also by the independent investigations of Mr. H. W. Elliott. Mr. Elliott, it will be remembered, was sent in pursuance of a Special Act of Congress to the islands in 1890, to ascertain the condition of the rookeries, his previous investigations having specially qualified him for this inquiry.\*

\* It will be further remembered that the Report then made by Mr. Elliott has never been published by the United States' Government. The extracts in British Case, Appendix, vol. iii, “United States No. 2 (1891),” p. 53, are those given from the Report in the “Cleveland Leader and Morning Herald.”

British Commissioners believe decrease to have been practically continuous under United States' control.

British Commissioners' Report, para. 57.

Decrease on Islands serious before pelagic sealing.

Difficulty in taking “quota” on the Islands.

United States' Commission decrease.

Commissioners' contentions summed up and explained.

In treating of the causes and time of commencement of the decrease, Mr. Elliott alludes both to excessive killing on the islands and to pelagic sealing, and of the former he writes as follows:—

"Why is it that we find now only a scant tenth of the numbers of young male seals which I saw there in 1872? When did this work of decrease and destruction so marked on the breeding-grounds there, begin, and how? This answer follows:—

British Case, Appendix, vol. "United States No. 2 (1891)," p. 56.

"(1.) From over-driving without heeding its warning first begun in 1879, dropped the until 1882, then suddenly renewed again with increased energy from year to year, until the end is abruptly reached, this season of 1890."

Elliott traces this difficulty back to 1879.

And further on as follows:—

"Had, however, a check been as slowly and steadily applied to that 'driving' as it progressed in 1879-82 upon those great reserves of Zapadnié, South-west Point, and Polavina, then the present condition of exhaustion, complete exhaustion of the surplus supply of young male seals, would not be observed—it would not have happened."

Ibid., p. 57.

From evidence of an independent character, the British Commissioners also show that, as early as 1879, the area of "driving" on the islands had to be extended, in order to secure the "quota;" and as early as 1883 the standard weight of skins had to be lowered, in order to enable the "quota" to be maintained. On this particular symptom, marking a stage in progressive decrease, Dr. H. H. McIntyre writes:—

Further evidence to this effect.

"After 1883 the sizes decreased, and have constantly decreased ever since. Last year [1887] they [the London buyers] sent an urgent appeal to take larger skins, as the sizes were running down; but we were unable to respond, and during the present season the catch averages still smaller in size."

Admitted reduction in standard of skins in 1883.

H. R. 50th Cong., 2nd Sess., Report No. 3:83, p. 118.

Further facts bearing directly on this point will be found at pp. 232, 233 of this Counter-Case, and in the Report of the British Commissioners on this subject, so that it is unnecessary here to follow it at greater length.

British Commissioners' Report, paras. 694-303

In the endeavour made, in the Case of the United States, to fix the whole responsibility for an observed decrease of seals on the Pribyloff Islands upon the pelagic sealers, the arguments advanced are founded on so long a train of

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Decrease in seals is attributed to pelagic sealers on untrustworthy data.

untrustworthy data, that it is not possible here to controvert them in logical order without passing in review nearly all the topics relating to seal life which are dealt with in this Counter-Case. The loss of seals killed at sea is greatly exaggerated and hypothetical figures are thus arrived at for the total number of seals killed at sea, which, as elsewhere shown, are erroneous. The proportion of females and the percentage of those which are still carrying their young are in like manner exaggerated, and the fact that no corresponding decrease of seals at sea has occurred is ignored or denied.

Pp. 187 *et seq*

Brief examination of these data.

In order to understand the actual character of the contention now advanced on the part of the United States, it is necessary to bear in mind the following material facts:—

1. It is alleged that the seals killed upon the Pribyloff Islands are young males only, say, under varied conditions, males of from 3 to 5 years of age.

2. It is asserted in the case of the United States that almost all the seals killed at sea are females, and that a vast majority of these are (to the south of Behring Sea) gravid females and (in Behring Sea) nursing females.

3. It has been shown above, and is elsewhere further demonstrated, that the decrease on the Pribyloff Islands had reached serious proportions as early as 1879, and that the date assigned in the Case of the United States (1884), on the authority of retrospective statements only, is erroneous.

4. It is further shown by the official Reports of the United States, that the decrease observed and complained of in 1879 and in following years occurred in "killable" young males.

It is thus apparent, in conformity with the position assumed in the Case of the United States itself, that any scarcity of seals observed on the Pribyloff Islands, if due to pelagic sealing, cannot have resulted from the killing of such animals at sea in the same year, but must have been the effect of the killing of females with young, or of nursing females, three or four years before the actual scarcity of "killables" complained of on the islands became manifest.

Thus, in accordance with the contention now advanced by the United States, the difficulty in obtaining the "quota" in 1884 must not be attributed to any killing at sea in that year, but

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action in standard  
skins in 1883

Data assumed by United States imply that observed decrease must be due to killing some years before the decrease.

must have been consequent on such killing in 1881 and in preceding years.

The accuracy of statistics of seals killed at sea given in the Case of the United States is not conceded; but, even assuming these as a basis of argument, it is found that the total pelagic catch in 1879, 1880, and 1881 averaged but 13,200 skins; and, as shown elsewhere, the first pelagic sealing within the limits of Behring Sea (by the United States vessel, "San Diego") was attempted in 1881, while it was not till 1884 that a Canadian vessel (the "Mary Ellen") first entered that sea for purposes of sealing.

In the years preceding 1879 the whole number of seals killed at sea (still employing the figures given by the United States) had been comparatively insignificant.

Thus the diminution in "killables" claimed to have been first observed on the islands in 1884 must have been due to the loss of at most 6,600 male pups in the years 1879, 1880, and 1881.\* When it is borne in mind that the legal "quota" upon the Pribiloff Islands in each year was 100,000, the unfounded nature of the contention now held by the United States in respect to the effect of pelagic sealing becomes sufficiently apparent.

But if the new contention alluded to (here accepted merely for purposes of discussion) is discarded, and the facts disclosed in the official Reports of the United States are regarded instead, the extraordinary character of the accusation levelled against pelagic sealing, and pelagic sealing alone, becomes still more apparent. These facts show that the difficulty in securing the "quota" on the islands was felt as early as 1879, or at a date two years before *any* vessels had entered Behring Sea for purposes of pelagic sealing. If therefore the scarcity of young males then apparent on the Pribiloff Islands be attributed to killing at sea, it must have resulted from such killing in 1875, 1876, and 1877, which in those years (assuming the figures printed by the United States) amounted only to 1,646; 2,042; and 5,700 seals in all; and this entirely outside the area of Behring Sea.

It must further be remembered that the number of skins constituting the North-west Catch as

\* This is on the assumption that *all* the seals killed at sea were gravid females, and that the sexes of the young lost were equally divided on this point (see pp. 200 *et seq.*)

Statistics in United States Case itself show that alleged first decrease was not due to pelagic sealing.

United States' Case, p. 366.

British Commissioners' Report, para 67.

But if correct data be employed, this becomes still more obvious.

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stated on the part of the United States is known to include all skins brought by vessels to Pacific ports, and that of these a considerable proportion (particularly in the earlier years) was derived from raids made upon the Kurile and Commander Islands. Further, that the scarcity of young male seals upon the Pribyloff Islands, so far from establishing general decadence in seal life, has been counter-balanced, according to a great mass of trustworthy evidence, by an increasing abundance of seals at sea.

The difference actually existing between the figures given for pelagic sealing in the Case of the United States and in the Report of the British Commissioners, results chiefly from the absence of data respecting the catches of vessels sailing from United States' ports and engaging in this industry. For years previous to 1885, reasonably accurate approximations exist for the catch of Canadian vessels, and from that year onward correct statistics are available for these vessels. The wholly untrustworthy character of the information available in respect to United States' sealing vessels cannot be better illustrated than by a reference to the data supplied for the year 1892, and quoted in the Report of the British Commissioners. Therefore, the general statement given by the British Commissioners is much more accurate than that printed on the part of the United States, which has nevertheless been employed above as a basis of argument.

It must not be forgotten, in this connection, that the position now taken and the dates fixed in respect to a decrease of seals by the United States are both wholly new. As late as 1888, the Special Treasury Agents on the Pribyloff Islands had reported a continued increase of seals there, and the whole of the evidence now brought forward at this point rests, not on the contemporaneous Reports of Agents, but on retrospective affidavits and opinions of a very late date, together with certain observations on the islands themselves, made in 1891, which are subsequently referred to.

As to the amount of the decrease, no agreement appears to have been arrived at by the Commissioners. In the Case of the United States, the "extermination" of the seals is spoken of as being a certainty in the near future under the present conditions, so that it may be assumed that the decrease is believed to be very great. This is,

No decrease observed at sea.

Reason for difference of British and United States' statistics.

British Commissioners' Report, Appendix F, Table (C), p. 206. See p. 207.

Date of decrease fixed in the United States' Case opposed to previous official Reports.

H. R., 51st Cong., 1st Sess., Ex. Doc. 450, p. 41. Also H. R., 50th Cong., 2nd Sess., Report 3833, p. 72.

United States' estimate of the amount of decrease.

in fact, elsewhere referred to in the Case as "the enormous decrease." The United States' Commissioners write :—

"It may therefore be accepted as an undisputed fact that the seal population of the islands is greatly below what it was for many years,"

United States' Case, p. 338.

and likewise speak of proximate "commercial extinction" under the present conditions. It is proper to remark, however, that the United States' Commissioners state their belief that—

"most, if not all, of the published estimates of the number of seals hitherto found on these islands are exaggerated. . . . In short, one can say with much more certainty that there are fewer seals here now than five years ago than he could attempt a comparison by means of an actual or rather an assumed census."

Numerical data untrustworthy.

H. R., 51st Cong.,  
1st Sess., Ex.  
Doc. 450, p. 41.  
Also H. R., 50th  
Cong., 2nd Sess.,  
Report 3833,  
pp. 332, 333.

The numerical statements thus repudiated by the United States' Commissioners are those of the accredited Agents of their own Government on the Pribyloff Islands; but in distrusting these figures, as well as in attributing exaggeration to the former estimates of number, they are in accord with the British Commissioners, who, writing of the islands alone, and without considering the number of seals met with at sea, say :—

Explaining the exaggerated estimates of decrease.

British Commissioners' Report,  
paras. 52, 357, 368,  
and especially 365.

"A study of the available published data, made in connection with a personal examination of the various breeding-grounds themselves, has convinced us, however, that some, if not all, the estimates of the total number of seals made in the earlier years of the term of the Alaska Commercial Company have been greatly exaggerated, while reports made in 1890, however accurate in themselves, have, because compared with these overdrawn estimates, exaggerated the amount of the decrease. The alarming forecasts as to the condition of the breeding islands, based upon reports made in 1890, have, fortunately, not been verified by the facts in 1891, as personally observed by us."

Ibid., paras. 90, 91.

It is important to note that in 1892, so far from there being any continued deterioration of the condition of the "rookeries" on the Pribyloff Islands, the observations of Mr. Macoun show a substantial improvement and an increase in the numbers, particularly of young males, which had during the years 1890 and 1891 been granted a partial immunity from the enormous draft hitherto annually made upon them to fill the "quota."

Improvement in 1892.

Appendix, vol. i,  
p. 151.



Other means of estimating decrease employed by United States also untrustworthy.

trustworthy.

Examination of the facts by the respective Commissioners.

aggregated esti-  
mase.

United States' Case, pp. 339-341. Also British Commissioners' Report, pp. 384-387.

Result arrived at by British Commissioners.

British Commissioners' Report, paras. 377-395.

92.

Ibid., para. 395.

In the absence of direct numerical data, the United States' Commissioners base their statements as to the *recent* and *great* decrease of seals on the Pribyloff Islands chiefly upon the existence and dimensions of what they call the "yellow-grass zone," or, as named by the British Commissioners, the "grass limit." A rather well-marked zone or limit of this kind, indicated by a different and shorter growth of grass, is observable about most of the rookery or breeding grounds of the seals, as a strip differing in colour from the rest, and extending beyond the edges of the ground in actual occupation by the seals: and, further, in many places, rocks long resorted to by the seals have become polished on the angles and edges.

These features attracted the attention of both the British and United States' Commissioners, and were investigated by them. In order to support the particular contention held by the United States, it is necessary to assume that the seals at one and the same time occupied the ground completely to the outer margin of the "grass limit," and that this occurred within recent years. It is naturally easy to find natives, and others who have been upon the islands, and have only lately had their attention called to the matter, expressing opinion that this was the case; but it is submitted, in view of the facts hereinafter shown, that evidence of this kind is of no practical value.

The whole subject, above briefly alluded to, has been very carefully studied by the British Commissioners, and, though their Report must be referred to for details, it may be stated that they believe the "grass limit" to mark only the maximum average range of oscillation of the breeding rookeries, and show that it is often reached or passed at the present time, particularly during the latter part of the breeding season, by roving masses of seals. They write:—

"It may therefore be stated, in concluding the consideration of this subject, that neither the extent of the seal-polished rocks nor that of the 'grass limits' in the vicinity of the breeding-grounds can be trusted to for the purpose of giving information as to changes in area or position of ground occupied by seals in recent years as contrasted with that at present occupied. Far less can it be taken to indicate in any reliable manner the numerical decrease in the seals in these years, or be accepted in place of the annual details on this subject

which an intelligent supervision of the rookeries would have exacted as a matter of prime importance, but which are unfortunately wanting, and can only be in part supplied by incidental allusions or collateral observations which have been preserved."

Mr. J. M. Macoun, after a patient and scientific investigation of this subject in 1892, has reached conclusions which fully bear out the statement just quoted. After detailing his observations, he writes:—

"When on the islands I was again and again told that the yellow grass marked the limit to which seals had reached. Admitting this to be true, there is no way of determining what proportion of this ground has been occupied by seals at one time. The lichen-covered rocks prove that much of it has been deserted by them for many years, while there are other parts of it that exhibit unmistakable evidence that seals have been on it within a few years; and in yet other cases seals were seen in great numbers in 1891 and 1892 hauled-out to the extreme edge of the ground defined by yellow grass, and not in a few instances a long way beyond it.

"When the rookeries on St. Paul Island were last visited in September, it was found that at all the larger rookeries, such as Reef, Tolstoi, and Polavina, the seals had hauled-out as far as there was any signs of their ever having been before, and in many cases much farther; photographs showing this were taken at all the principal rookeries."

Another matter to which special attention is drawn by the British Commissioners, in respect to the whole number of seals, is the necessity of taking into account observations made at sea, as well as those made upon the breeding-islands, in order to arrive at a true conclusion respecting the increase or decrease of seals on the whole. They state that attention has heretofore been too exclusively given to the islands alone in this respect, and quote much evidence of a general kind, to show that no decrease corresponding with that observed on the islands has been met with at sea. They have also, for the purpose of arriving at greater certainty in this matter, instituted a comparison of the actual number of seals taken at sea relatively to the numbers of boats and the numbers of men employed for five years, 1887 to 1891, both inclusive. The figures thus obtained show a practical uniformity in catch during these years; though at the same time nearly all the evidence shows that the seals are yearly becoming

Confirmed by observations in 1892.

Appendix, vol. i,  
pp 150, 151.

Observations at sea, as well as on islands, must be considered in judging of increase or decrease.

British Commissioners' Report,  
para. 93.

Statistics show no decrease at sea.

Ibid., paras. 223,  
403-406.

Ibid., para. 399.

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British Commissioners' Report, para. 407.

Ibid., paras 408-426. See also Evidence, 1892, Appendix, vol. ii, pp. 140-156.

Statistics for 1892 indicate an increase.

more wary and difficult of approach, and the statements of Indian hunters prove that they usually keep further from land than before.

The catches made by Canadian sealing vessels in 1892, as compared with those of 1891, show a decreased number of skins in proportion to the number of vessels employed. This circumstance is, however, fully accounted for as a result of the *modus vivendi* of 1892. Notwithstanding the *modus vivendi* of 1891, a considerable proportion of the catch of that year was taken in Behring Sea, but in 1892 scarcely any of the vessels entered Behring Sea, and it is known that the total catch in the eastern part of Behring Sea did not exceed 500 skins. While many of the vessels returned to Victoria on being notified, and thus curtailed their ordinary sealing season, some went across to the Asiatic side; but, in consequence of the time consumed in the voyage over, or of other circumstances, the catch obtained there averaged much less than that made in the eastern part of Behring Sea in 1891, being, in fact, 477 skins per vessel instead of 677.

If, however, the effect of the *modus vivendi* on the catch be eliminated, by instituting a comparison between the number of skins taken on the eastern side of the North Pacific to the south of Behring Sea alone, in 1891 and 1892 respectively, the catch will be found to be actually greater in 1892. In the region specified, the average catch per vessel was, in fact, 419 in 1891, but rose to 485 in 1892, and this in face of the employment of a larger number of Canadian vessels. There is, therefore, good reason to believe that there has been a substantial increase in the number of seals met with at sea in 1892 as compared with 1891.

It will be noted, that nearly all the statements quoted in the Case of the United States respecting the scarcity of seals on the open sea, are derived from Indians, whose knowledge is chiefly that obtained in canoes in the vicinity of the coast, and therefore corresponds generally with that given by similar witnesses to the British Commissioners, and affords little, if any, real information as to the general abundance of seals at sea.

These Indians, inhabiting the coast of the continent, are in most, if not in all cases, necessarily ignorant of the enormous annual slaughter of seals made on the breeding-islands;

Evidence cited by United States to show decrease at sea throws little light on the question.

United States' Case, pp. 169-172.

as well as on considered in case or decrease.

increase at sea.

and, for this reason, the fact that they attribute any scarcity of seals observed by them to the acts of their rivals, the pelagic sealers (of which besides their own hunting they are alone cognizant), must be accepted with great reservation, as evidence respecting the effects of pelagic sealing.

It is further to be marked, that the evidence obtained from Indian witnesses, and printed in the Case of the United States, appears to have been either very incorrectly translated or very imperfectly set down. Thus, for example, of twelve Indians examined by the United States' Agents at Barclay Sound, eight have since been examined by Mr. Sherwood, and on important points contradict the statements previously attributed to them. Appendix, vol. ii, pp. 140-165.

The greater proportionate number of seals now met with at sea, as compared with those on the breeding-islands, is largely explained by the disturbances to seal life incident to the methods practised on the islands; of which evidence is quoted by the British Commissioners, and it is said that—

Methods practised on the islands drive the seals to sea.

British Commissioners' Report, paras. 427-446.

“the general effect of these changes in habits of the seals is to minimize the number to be seen at any one time on the breeding islands, while the average number to be seen at sea is at least proportionately, though perhaps, in face of a general decrease in total number of seals, not absolutely, increased.” Ibid., para. 445.

It will, in addition, be found, that in the large mass of testimony collected in 1892, and presented in the Appendix to this Counter-Case, in reply to United States' contentions, both whites and Indians are almost unanimous in denying the existence of a decrease of seals at sea; and that many experienced men affirm their greater abundance. That, while the Indians sealing from the coast believe the seals to be less numerous in proximity to the shores, they attribute this in part to a change in habits resulting from persistent hunting, in part to the absence of large runs of small fish, such as herrings. When small fish are abundant on the coast, the seals are more numerous, and are found even to enter the inlets and bays in pursuit of such fish.

Late evidence shows increase (or no decrease) at sea.

General conclusions on date and amount of decrease of seals.

Finally, in reviewing the whole of the facts and evidence collected by them on the nature and amount of the decrease in the fur-seals of the North Pacific, the British Commissioners write that they are led to believe—

“that there has been, in the main, a gradual reduction Ibid., para. 94.

in the total volume of seal life in the North Pacific, dating back to a period approximately coincident with the excessive and irregular killing on the Pribyloff Islands in 1867 to 1869, but that this reduction in total volume has not in late years been nearly so rapid as the observed decrease in numbers upon the Pribyloff breeding islands in the corresponding years."

So large a part of the Report of the British Commissioners is devoted to the subjects included under the contentions in the Case of the United States, which stand at the head of this chapter, that it is not here considered necessary to give more than a brief abstract, in which the conclusions arrived at occupy the principal place. An examination of the Report itself is respectfully invited.

The facts observed by Mr. Macoun in 1892, together with the evidence obtained from a large number of practical and experienced sealers, further tend to bear out the conclusions arrived at by the British Commissioners in every respect.

It is submitted that the facts above stated demonstrate that the commencement of the decrease of seals on the Pribyloff Islands had been distinctly observed upon these islands for some years before pelagic sealing developed to any substantial degree, and many years before it could have had any practical effect on the number of killable males on the islands.

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## CHAPTER XI.

*Allegations made in the Case of the United States  
against Pelagic Sealing, and Replies thereto.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 174—  
"It has also been shown that the decrease in the seals took place primarily among the female portion of the herd."
- (2.) United States' Case, p. 177—  
"The sole cause of the present depleted condition of the Alaskan seal herd is open-sea sealing."
- (3.) United States' Case, p. 187—  
"Open-sea sealing, the sole cause of the enormous decrease noted in the Alaskan seal herd in the last few years, and which threatens its extermination in the near future. . . ."
- (4.) United States' Case, p. 188—  
"About 1885 a new method of hunting was introduced which has been the great cause of making pelagic seal hunting so destructive and wasteful of life—the use of fire-arms."
- (5.) United States' Conclusions, p. 296—  
"That this decrease began with the increase of such pelagic sealing, and that the extermination of this seal herd will certainly take place in the near future, as it has with other herds, unless such slaughter be discontinued."
- (6.) United States' Case, p. 218—  
"The indiscriminate slaughter of seals in the waters of the Pacific Ocean and Bering Sea cannot fail to produce a result similar to that observed in the southern hemisphere, where the fur seals have, except at a few localities, become, from a commercial point of view, practically extinct."
- (7.) United States' Case, 196.  
"When the estimate, therefore, is placed at sixty-six seals unsecured out of every 100 killed with fire-arms, the probability is that the percentage lost is even more."
- (8.) United States' Case, p. 197.  
"From 80 to 90 per cent. of the seals killed in the open sea are females, the majority of which are either pregnant, or having been delivered of their pups, are the sole means of sustenance for their offspring."
- (9.) United States' Case, p. 209—  
"They (the cows) go into the water in search of food, in order that they may be able to supply their offspring with nourishment. And, as has been shown, they often go from 100 to 200 miles from the islands on these excursions. It is while absent from the rookeries feeding that they fall a prey to the pelagic seal hunter."
- (10.) United States' Case, p. 212—  
"When sealing vessels began to enter Bering Sea in pursuit of the seal herd (1884-5), at that same period dead pup seals on the rookeries first drew the attention of the residents of the Pribilof Islands."
- (11.) United States' Case, p. 216—  
"Between 80 and 90 per cent. of the seals taken are females; of these at least 75 per cent. are either pregnant or nursing."



- 12.) United States' Case, p. 297—  
 "That pelagic sealing is an illegitimate, improper, and wasteful method of killing, is barbarous and inhuman in its immense destruction of the pregnant and nursing female, and of the helpless young thereby left to perish."
- (13.) United States' Case, p. 190—  
 "The White hunter . . . loses a great many seals which he kills or wounds."
- (14.) United States' Case, p. 155—  
 "It is a conservative estimate to say that such hunters lose two out of every three seals shot by them."

## SUMMARY OF BRITISH REPLY.

Pelagic sealing in the North Pacific is in no way analogous to the methods employed in the Southern Hemisphere.

The method of killing seals ashore on the Pribiloff Islands are similar to those by which depletion has been brought about in the Southern Hemisphere.

The actual loss of seals shot at sea, due to the sinking of the body before it can be recovered, is very small.

The number of fatally wounded seals which escape capture is also very small. The substitution of the shot-gun for the rifle, by rendering close approach to the seal necessary, has greatly reduced this and other losses.

The percentage of females alleged in the Case of the United States to be taken at sea, is greatly exaggerated. The statements there made depend chiefly on the examination of cured skins. But it is in general impossible to distinguish the sexes of the animals from which they are taken.

The killing of animals of the female sex yielding products of commercial value is not *per se* reprehensible; and the larger proportion of female seals found at sea in late years is the direct result of the excessive killing of males upon the breeding-islands.

The killing of gravid or nursing females at sea, in common with other sources of loss incident to pelagic sealing is much exaggerated in the Case of the United States; but the killing of such females can, and should be, obviated as far as possible in any common scheme of Regulations agreed upon for the seal fishery as a whole.

The contention that young seals have died from starvation upon the Pribiloff Islands, in consequence of the killing of their mothers at sea, is untenable, and it is based upon a considerable mortality of "pups" on St. Paul Island in 1891. The death of young seals upon the islands during the breeding season has long been known to occur, and has always heretofore been explained by other obvious causes.

The circumstances attending the mortality of young seals in 1891 show that it cannot be attributed to the killing of the mothers at sea. The recurrence of an equal mortality in 1892, when practically no seals were killed in Behring Sea, fully confirms this conclusion.

The theory advanced in the Case of the United States respecting the cause of death of the "pups"; depends on the assumption that the females go to very great distances from the islands in search of food while suckling, which is here disproved; and it is further denied by the best authorities on the fur-seal.

Before discussing the main contentions of the United States as to pelagic sealing, it will be convenient to comment upon the parallel attempted to be drawn in the two passages last above cited from the United States' Case, between pelagic sealing and the results of sealing in the Southern Hemisphere.

The destruction of seals in the south is alluded to repeatedly and at length in the Case of the United States, as though connected in some way with pelagic sealing.

In view of the attempts thus made to parallel the conditions and probable results of pelagic sealing in the North Pacific, with the destruction of fur-seals in the Southern Hemisphere, it cannot be too clearly understood that there is nothing in common between the two modes of taking seals. The hunting of seals at large on the sea-surface has never prevailed in the Southern Hemisphere; and though, because of the necessity of reaching the insular resorts of the seals there by sea, we hear of a "sealing fleet," the method of taking seals practised has been to land upon the shores where the breeding places of the seals are found, and there to slaughter the animals with clubs.

On the other hand, the actual mode of killing the North Pacific seals on their breeding-islands, and when congregated there for purposes connected with reproduction, is analogous to, and may be considered as but a modified form of the practices employed in the Southern Hemisphere; from which, though some of the more wasteful, and therefore the more objectional, features have been eliminated, it has been directly derived. In fact, it is a matter of record that Captain Morgan, one of the two prime movers in the matter of arranging for the lease of the Pribiloff Islands to a Company, and who was a party to the enormous slaughter of 1868, had gained his experience in the slaughter of fur-seals in the Southern Hemisphere; and that Mr. C. A. Williams, who, after the organization of the Company leasing the islands became one of its principal shareholders and managers, had already long been identified with the indiscriminate slaughter of fur-seals in the Southern Hemisphere.

Mr. Williams himself acknowledged the similarity existing between the methods first practised on the islands and those employed in

No parallel can legitimately be drawn between the slaughter of seals in the Southern Hemisphere and pelagic sealing in the North Pacific.

United States' Case, pp 218, 296  
Ibid., Appendix, vol. i, p. 393,  
*et passim.*

British Commissioners' Report, para 65.

The methods practised on the Pribiloff Islands are similar to those practised in the Southern Hemisphere.

H. R., 50th Cong., 2nd Sess., Report 388, p. 88.

Elliott's Census Report, p. 25.

Pelagic

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the Southern Hemisphere, and, according to Mr. Hutchinson, who was also a party to the enormous slaughter of 1868 :—

" Morgan's men killed old seals, cows, or anything they came across. The idea was to get all they could."

Respecting the origin of pelagic sealing and its total diversity from any mode of sealing practised in the Southern Hemisphere, the British Commissioners have accumulated many facts. They write :

" It may here be particularly noted that the industry [pelagic sealing] thus developed in consequence of peculiar local conditions, had never elsewhere appeared as a factor of commercial importance, and that in so far as we have been able to discover by inquiries specially directed to this point, no vessels carrying hunters for the purpose of taking seals at large on the sea-surface had ever before frequented any seas anywhere. The vessels sailing from New England and from some British ports, which formerly in considerable numbers made sealing voyages to the Southern Hemisphere (para. 834 *et seq.*), slaughtered the seals there only on shore and at the breeding places, and this without any respect for the rights of territorial dominion or property over the islands they frequented. The 'sealing fleet' employed in the Southern Hemisphere has, therefore, at no time been of the same character with that engaged in pelagic sealing in the North Pacific."

Perhaps the most important point omitted from the United States' Case, in connection with the contention now held in respect to the effect of pelagic sealing, is the fact that on more than one occasion during the Russian régime, and many years before any seals were taken at sea, the supply of seals on the Pribyloff Islands fell so short that commercial extermination actually threatened. In these recorded cases the dearth was due either to want of care and proper restrictions in the slaughter on the islands themselves, or to some natural cause, such as that of climatically unfavourable years. It is the result of experience that, by means of excessive slaughter or disturbance on the islands, the seals may without difficulty be seriously reduced in number, or driven away to sea or to new breeding resorts, while no such experience is available to substantiate the new contention advanced as against sealing at sea.

In his statement, printed in the Appendix to the United States' Case, Professor Huxley, on the sub-

Elliott's Census Report, p. 88. H. R., 44th Cong. 1st Sess., Report No. 623, p. 133.

Pelagic sealing is a new industry of local origin.

British Commissioners' Report, para. 65.

Long before its development the seals on the Pribyloff Islands had on several occasions become much reduced.

Ibid., paras. 782-806.

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ject of the possibility of destroying the seals when on these breeding-islands, writes :—

“In the case of the fur-seal fisheries, the destructive agency of man is prepotent on the Pribyloff Islands. It is obvious that the seals might be destroyed and driven away completely in two or three seasons.”

United States' Case, Appendix, vol. i, pp. 411, 412.

The British Commissioners record a very similar opinion on this subject, and add :—

“In sealing at sea the conditions are categorically different, for it is evident that by reason of the very method of hunting the profits must decrease, other things being equal, in a ratio much greater than that of any decrease in the number of seals, and that there is therefore inherent an automatic principle of regulation sufficient to prevent the possible destruction of the industry if practised only at sea.”

British Commissioners' Report, paras. 117, 118.

It is apparent from the quotations placed at the head of this chapter, that it is maintained on the part of the United States that pelagic sealing is the *sole* cause of the decreased number of seals now found on or about the Pribyloff Islands; and, as shown elsewhere, that the slaughter of seals upon the islands themselves has had no effect in bringing about such decrease.

It is, however, maintained in the United States' Case that pelagic sealing is the sole cause of the decrease observed on Pribyloff Islands.

In support of this proposition, a lengthened indictment of the methods and results of pelagic sealing is framed in the Case of the United States, of which the following are the material allegations :—

Pelagic sealing is there condemned on several grounds.

(a.) That of fur-seals killed at sea with fire-arms at least 66 per cent. are lost, and that this loss occurs in two ways: (1) by the seals sinking before they can be secured, and (2) by fatally wounded seals escaping.

United States' Case, pp. 190, 193.

(b.) That from 80 to 90 per cent. of the seals killed at sea are females, and that of these at least 75 per cent. are either pregnant or nursing.

Ibid., pp. 197, 206.

(c.) That, in consequence of the killing of nursing females at sea, dead “pups” have been found in increasing numbers on the Pribyloff rookeries every year since pelagic sealing began in Behring Sea, and that such “pups” died from starvation.

Ibid., p. 212.

These allegations directed against pelagic sealing are employed by the United States to support the further statement—

It is stated to be illegitimate, improper, barbarous, and inhuman.

“that pelagic sealing is an illegitimate, improper, and wasteful method of killing, is barbarous and inhuman,”

Ibid., p. 297.

and that—

United States' Case, p. 297.

"it is wholly destructive of the seal property and of the industries and commerce founded upon it."

But all the allegations on which this denunciation are based are untrue, or greatly exaggerated.

Ibid., pp. 147, 296, *et passim*.

While it is not denied that there is or may be a measure of truth in some of the contentions thus held by the United States, it is maintained in the light of evidence collected, and more particularly as the result of the investigations of the British Commissioners, that they are of a greatly exaggerated character.

(a.) *That of fur-seals killed at sea with fire arms at least 66 per cent. are lost, and that this loss occurs in two ways: (1) by the seals sinking before they can be secured, and (2) by fatally-wounded seals escaping.*

Evidence produced to show great loss of seals by sinking, before the date of British Commissioners' Report, wholly untrustworthy.

As to the first of the above contentions, which is connected with the actual loss of seals killed at sea by sinking after they are shot and before they can be recovered by the hunters:—For some time previous to the preparation of the Report of the British Commissioners, many statements as to the extraordinary proportion of seals lost at sea had found currency, more particularly in the press of the United States, which were again and again published as though possessed of the utmost authenticity, and they had in consequence come to be regarded as accurate by the public. It was thus natural that the British Commissioners should devote special attention to this point, and they made it their business to seek out all the actual or alleged facts on which such sweeping statements were based. They have referred to all those which a thorough search of the published documents enabled them to discover up to the date in question, and it will be observed, on inspection of these statements, that not one of them depends on personal experience; but, on the contrary, all are merely given by their authors as matters of opinion, while in all but a single instance, it is not even claimed by the author of the statement that he ever saw a single seal killed at sea. Percentages and ratios are thus alone spoken of, and actual numbers are not known, or if known are not quoted.

British Commissioners' Report, paras. 82, 613, 614.

Ibid., para. 614.

The British Commissioners write:—

"Nothing more precise than the statements just quoted, every one of them made by those presumably interested in, or engaged in, protecting the breeding-

Remarks of the British Commissioners on this evidence.

Ibid., para. 615.

islands, but without personal experience in this matter, has been found as authority for the theory which has been so diligently propagated, that excessive waste of seal life results from the practice of pelagic sealing."

In opposition to the hypothetical statements above referred to, the British Commissioners adduce a mass of expert testimony, which will subsequently be alluded to, and which, without a single exception, entirely and specifically contradicts the theory alluded to.

At a later date, however, in 1892, the United States has obtained from various sources a considerable number of affidavits and statements intended to bear out the theory of excessive losses of seals at sea, all of which have seen the light for the first time in the Case of the United States, or among the documents appended to it, and respecting the character and value of which some critical remarks will subsequently be made.

The United States' Commissioners present no direct evidence on this subject, and their opinion is not quoted in support of the assertions made in the Case itself of the United States. Professor J. A. Allen is, however, prominently cited, being upon this, as upon most other subjects, perfectly definite, though claiming no personal experience or special sources of information in addition to those accessible to the public previously, or now submitted in connection with the Case of the United States. He characterizes statements to the effect that not more than 5 per cent. of seals shot are lost as "absurd," and goes on to say that—

"only such seals as are instantly disabled can be secured, and even many of these must be lost, since the specific gravity of a dead seal is greater than that of the water in which it is killed." Ibid., Appendix. vol. i, p. 409

He proceeds to argue that further great losses must arise from wounded seals which are not taken, and concludes that about 60 per cent. of the seals killed at sea are lost by sinking before recovery alone.

It is only by ignoring the well-known facts as to the recovery of fur-seals which have been shot in the open sea, that the argument that they sink immediately can possibly be brought forward.

With reference to this question, Mr. A. B. Alexander, Fishery Expert to the United States' Fish Commission, says:—

In 1892, new evidence advanced by the United States on this matter

The United States' Commissioners are not quoted in support of the statement on this subject in the United States' Case.

United States' Case, pp. 370, 371.

Professor Allen's definite statement. Ibid. p. 191.

The facts are opposed to the Convention (7), and to Professor Allen's statement.

Evidence of Mr. Alexander.



United States',  
Case, Appendix,  
vol. ii, p. 355.

"In sleeping, the seal's head is to leeward and the steerer will endeavour to work the boat so as to approach from that direction and give the hunter an opportunity to shoot the seal in the back of the neck. When so shot they take longer to sink than when shot in the face; that is, if a seal bobs up in the water, its body being in a submerged and horizontal position, and if it be instantly killed by the shot it will at once sink. It is then that the 8 or 10 foot gaff is used to recover it. It has been my observation that the rapidity with which seals sink is influenced by several conditions. A pregnant female will sink less quickly than a male of equal size. If a seal be shot at a time when the air is well exhausted in the lungs, it will sink more quickly than if killed when the lungs are inflated. If a seal is asleep and shot in the back of the head it will float for several minutes, thus enabling the hunter to secure it."

Facts respecting the killing and  
recovery of seals at sea.

Appendix, vol. ii,  
pp. 7-10.

As regards the length of time for which fur-seals float after being shot at sea, hunters are practically unanimous in saying that, in the great majority of cases, they always float for a sufficiently long time to enable them to be secured, if they are looked after at once after being shot. Sometimes, however, a second seal will be seen close at hand, and may be fired at before the endeavour to secure the first, which in the meantime occasionally sinks. Under ordinary circumstances, a seal is picked up as soon as possible after it is shot, and nothing more is known of the length of time it would float than that it floated until secured. Seals are, moreover, occasionally shot from the deck of the schooner itself. If the vessel is under way, a pole heavily leaded at one end and with a small flag attached to the other, is at once thrown overboard, which marks the position of the seal. A boat is lowered as soon as possible, and, with very few exceptions, the seal is secured, even under these circumstances.

Character of boats employed in  
sealing.

The boats employed in sealing are light, swift craft, with box-shaped ends, and the oarsmen sit one facing each way, ready, at a word from the hunter, to make after any seal he may hit.

Circumstances under which seals  
killed at sea are lost.

Ibid. pp. 7-13.

It is admitted by all the pelagic sealers, that a small percentage of seals is lost as above described, or in other ways, as, for instance, when a wounded seal goes off to windward faster than it can be followed by the boat in a choppy sea. Sleeping seals seldom, if ever, sink when shot, and probably three fourths of the seals are "sleepers." When "travellers" happen to be shot through the wind-pipe they generally sink, and, in consequence of this fact, experienced sealers generally try to

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shoot such seals from behind. Such seals as do sink, however, sink slowly, the specific gravity of the body being only slightly greater than that of the water, even when the breath has escaped. Thus, it is generally possible to gaff the carcass, and, in ordinary "sealing weather," the precise spot where the seal has been killed is easily found by the bubbles rising to the surface, or by the blood staining the water.

The evidence of a general kind actually quoted or personally obtained by the British Commissioners, in regard to the loss of seals killed at sea by white hunters, may be summarized as follows:—

General statements as to proportion of seals thus lost by white hunters.

*Captain J. D. Warren.*—Not over 6 per cent. lost or escape.

British Commissioners' Report, paras. 616, 622.

*Mr. W. Fewings.*—Average loss does not exceed 6 per cent.

*Captain H. F. Seward.*—Lower coast, not over 6 per cent. Alaskan coast and Behring Sea not over 4 per cent.

*Captain W. O'Leary.*—Does not exceed 6 per cent., and sometimes much less.

*Mr. W. Munie.*—Probably not over 2 per cent.

*Mr. A. R. Milne.*—At most only 6 per cent.

*Mr. C. J. Kelley.*—Average loss less than 3 per cent.

*Captain W. Petit.*—Loss not more than 5 per cent.

*Captain W. E. Baker.*—Loss not more than 3 per cent.

*Mr. C. N. Cox.*—Loss 4 or 5 per cent.

*Captain T. N. Magnusen.*—Average loss  $3\frac{1}{2}$  per cent.

*Mr. H. Croker.*—Loss 3 to 4 per cent.

*Mr. G. Roberts.*—Loss 3 to 5 per cent.

*Mr. R. Thompson.*—Loss 3 to 5 per cent.

*Mr. M. Lundberg* (with three other sealers), concurred in stating that a man losing 2 out of 30 killed would be considered a poor hunter. Say 6 per cent.

*Captain Lavender.*—Not over 7 per cent. lost.

*Sealers' Association of Victoria.*—Loss averaged below 6 per cent.

*Captain of "Eliza Edwards."*—"Green hands" might lose 25 per cent. With experienced hunters loss might reach 5 per cent.

The following additional statements of the same kind, including experience in 1892, are found in the affidavits appended to this Counter-Case:—

Appendix, vol. ii. pp. 7-10.

*Captain C. Le Blanc.*—Never more than 4 or 5 in 100.

*Captain R. D. Lavender.*—Not more than 1 in 20.

*W. O'Leary.*—From 1 to 5 per cent.

*Captain Laughlin McLean.*—About half to 1 per cent.

*J. Shields.*—First years about 5 per cent.; 1891-92 less than 1 per cent.

*Captain T. Magesen*.—Between 4 and 5 per cent.  
*Captain R. McKiel*.—Of 1,700 seals taken 40 lost (2·3 per cent.).  
*Captain J. W. Todd*.—Not more than 4 in 100.  
*J. J. Beckingham*.—Not 1 in 100.  
*Captain H. B. Jones*.—Not more than 3 in 100.  
*G. C. Gerow*.—Not 1 in 18.  
*Captain J. Gaudin*.—Not 5 per cent.  
*Captain C. F. Dillon*.—Not more than 5 per cent.  
*Captain G. Scott*.—5 per cent.  
*Captain G. Wester*.—3 per cent.  
*Captain C. Lutjens*.—5 per cent.  
*C. Hartveen*.—Not 5 per cent.  
*Captain J. S. Worth*.—Between 10 and 15 per cent., including wounded seals.  
*Captain C. E. Mockler*.—5 per cent.  
*W. F. Upson*.—10 per cent.  
*F. Crocker*.—From 5 to 10 per cent.  
*W. Conners*.—5 per cent.  
*J. W. Crew*.—5 per cent.

All the above statements of course refer to the killing of seals by means of fire-arms, and almost exclusively to killing with shot-guns. The rifle is now seldom used by white hunters, and the spear never. The spear is still employed by some of the Indian hunters, but the shot-gun is now more commonly used by them also, and by some tribes has been regularly employed for many years (by the Haidas since 1846). Most of the statements noted below in connection with numbers lost by Indian hunters thus also refer to seals killed with guns.

In order to understand the bearing of these statements, it must be noted that the Aht Indians of Vancouver Island and the Makah Indians of Cape Flattery, are the only ones systematically, and to a large extent, employed in pelagic sealing proper. The statements of whites refer to Indian hunters of these tribes employed by them. The Sitka and Tshimsian hunters, to whom a high percentage of loss is attributed, in so far as they engage in seal hunting, do so almost exclusively in their own canoes from the shore. The statements referring to these Indians are quoted by the British Commissioners, but have no direct bearing on the losses of pelagic sealers.

The statements respecting seals lost by Indians may be summarized as follows :—

British Commis-  
sioners' Report,  
paras. 584, 604.

Ibid., paras. 539,  
542, 548, 552, 554,  
557; also Elliott's  
Census Report,  
p. 65; compare  
pp. 187, 188,  
United States'  
Case.

General statements respecting the  
proportion of seals lost by Indian  
hunters.

British Commis-  
sioners' Report,  
paras. 538, 551,  
556.

Ibid., para. 626.

Ibid., paras. 617,  
626.

*Mr. W. Fewings*.—Loss by Indians not 6 in 1,000.  
*Captain H. F. Seward*.—Very few lost (with spear),  
 [249] 2 C

*Captain W. O'Leary*.—None, or very few (with spear).

*Captain W. Petit*.—Loss 1 per cent.

*Mr. C. N. Cox*.—Loss 1 per cent.

*Mr. A. Jaing*.—Loss 10 per cent.

*Captain W. Cox*.—Loss nil (with spear).

*Judge J. G. Swan*.—All recovered, whether speared or shot.

*Alert Hunters*.—Loss nil, whether shot or speared.

*Sitka Hunters*.—Loss, perhaps, 10 to 20 per cent. of seals shot.

*Haida Hunters*.—Seldom lose any.

*Mr. J. Mackenzie*.—Very few, indeed, lost of seals shot.

*Mr. R. H. Hall*.—Very few lost.

*Mr. R. Cwingham*.—Loss may reach 20 per cent. in the case of Tshimsian hunters.

*Makah Hunters*.—With spears, loss nil. With guns, perhaps 2 to 4 per cent.

It is fair to state that most, though not all, of the statements heretofore given have been derived from persons more or less directly interested in pelagic sealing, from whom alone it is possible to obtain the results of extensive actual experience on the subject of losses at sea. The statements are, moreover, also chiefly of a general character, but in order to further test the accuracy of such statements, the British Commissioners proceeded to collect facts as to the actual number of seals shot and recovered, or shot and lost by individual hunters in certain years, and in this manner succeeded in actually accounting for nearly 10,000 seals shot by white hunters. In tabulating these, a general agreement is found as between the percentages deduced from the individual statements, and the average loss reaches but 4 per cent.

At the request of the British Commissioners, the masters of a number of sealing vessels directed their hunters to keep an account of the seals lost by sinking in securing their catches. This was done by many of the hunters, and from their sworn statements regarding their catches in 1892 and previous years an additional Table has been prepared, which shows that the average loss on 39,879 seals shot by white hunters was about 3 per cent. Where a general and a numerical statement have both been made, it is found that the general statement as to loss almost invariably exceeded the numerical, so that when a general statement only has been made, it probably exceeds the actual loss.

Similar treatment has also been accorded to such actual numbers as could be obtained from

General statements checked by  
numerical statements.

The average loss by sinking of seals  
killed at sea shown to be about  
3 or 4 per cent. only.

See Appendix,  
vol. ii. p. 6.

Indian hunters, and though the whole number of seals accounted for in this case is small, and therefore not so satisfactory as evidence, so far as it goes this is in general accord with statements made.

In concluding their consideration of this subject, the British Commissioners point out how completely the recorded facts in the case contradict the *à priori* assumption that the fur-seal does, and must, sink immediately when shot. They state that such an assumption is based chiefly on the circumstances that various species of hair-seals generally thus sink, but show (1) that the two groups of animals differ greatly in respect to proportional weight of skeleton and size of lung, and (2) that when fat, even hair-seals are well known to float when killed. Two hair-seals shot near Middleton Island, Alaska, in the summer of 1892, in Mr. Macom's presence, both floated till the bodies were recovered. In fact, a great number of such seals are annually taken both in the Labrador and Greenland fisheries by shooting in the water.

As to the further assertion that large numbers of seals, being merely wounded when fired at, escape and subsequently die; it is obviously difficult to meet such a statement by direct evidence of a precise kind: for a seal fired at and not hit, or one but slightly wounded, naturally dives instantly, and does not again come to the surface for a long time, and then at a great distance from the hunters. Seals seriously wounded are almost certain to be recovered, for they either remain struggling on the surface, or travel slowly and rise often, and are easily overtaken.

Moreover, the general adoption of the shot-gun in place of the rifle, necessitating a comparatively close approach to the seals, minimizes the chances of missing the animal; while the evidence obtained from sealers shows that in practice they make sure of hitting by firing only when at close quarters.

It is not known that the escape of a certain proportion of any wild animals shot at and wounded, or killed and lost, has ever heretofore been advanced as a reason for the abandonment of the killing of such animals with the gun. The logs of sealing schooners printed in the Appendix are sufficient to show that, for any

British Commissioners' Report,  
para. 627.

The assumption that the fur-seal when killed at sea sinks immediately, contradicted by facts.  
Ibid. paras. 629, 630.

Appendix, vol. i,  
p. 136.

The assertion that large numbers of wounded seals escape and die is so vague as scarcely to admit of argument.

Appendix, vol. ii,  
pp. 11-13.

The adoption of the shot-gun necessitates a close approach to the seal rendering loss infrequent.

Contention that the escape of some wounded animals renders shooting illegitimate, unprecedented.

Appendix, vol. ii,  
pp. 187 *et seq.*

boat employed in sealing, each seal taken involves on the average, many hours of rowing and exposure at sea. There is, therefore, no question of a promiscuous and reckless slaughter among dense droves or schools of seals. The hunters are themselves remunerated on a principle of shares depending on the number of seals taken, and every possible precaution against loss is, therefore, naturally employed by the men so engaged.

The subjoined statements with regard to the securing of wounded seals, contained in the affidavits by practical sealers, are here given in summarized form; but many details are incorporated in the depositions themselves, which should be referred to in order to appreciate the means taken by hunters of knowing the amount of such losses, and also with the trouble often taken to secure a wounded seal:—

*J. Townsend.*—Very few wounded seals are lost.

*Captain A. Douglas.*—Badly wounded seals almost certain to be got.

*G. Roberts.*—Wounded seals are either captured or live.

*M. Ryan.*—Very few. None worth speaking of.

*W. T. Bragg.*—Chances of getting a badly wounded seal are good.

*Captain O. Buchholz.*—Does not think that any of the seals wounded by him would die.

*Captain W. O'Leary.*—Not many.

*W. Cowie.*—Very few.

*J. Brown.*—Of 20 or 25 seals wounded by him not half-a-dozen would die.

*W. De Witt.*—Those badly wounded I always get. Those lightly wounded do not die.

*Captain L. McLean.*—Very few indeed.

*J. H. Haake.*—Very few.

*J. Shields.*—Very few in rough weather. None in calm weather.

*O. Scarf.*—Very few, if any.

*F. W. Strong.*—Remembers only one or two instances of a wounded seal escaping. Has taken 930.

*A. Mathison.*—Very few.

*W. Shields.*—The number is very small indeed.

*C. A. Williams.*—Very few.

*C. Locke.*—Very few.

*E. Ramlose.*—Very few.

*I. O'Quinn.*—Took in 1892 210 seals, and wounded 2 that escaped him.

*Captain R. McKiel.*—The number is very small.

*Captain E. P. Miner.*—Very few. Not 1 in 100.

*J. Hall.*—Has wounded some seals, but got most of them; the others would live.

*N. Morrison.*—Always gets badly wounded seals in fair weather. Of slightly wounded they not but get well.

Precautions taken to recover all seals shot.

Summary of evidence on this point, Appendix, vol. ii, pp. 43-130.



*Captain V. Jacobsen.*—Very few.

*J. Christian.*—A few wounded seals escape, and a few of these may die.

*M. McGrath.*—Is not sure that any would die.

*W. Heag.*—In taking 168 seals wounded not more than 5, some of which may have died.

*E. Cartillion.*—Not many.

*C. O. Burns.*—Only 10 escaped wounded, and those only slightly.

*J. McRae.*—Wounded 12 or 15 in 1892; some might die.

*L. McGrath.*—Not more than 10 wounded in 1892, and thinks all would live.

*J. Brown.*—Very few are wounded.

*C. Francis.*—Wounded a few, but got most of them afterwards.

*J. Figuero.*—Wounded 6 or 7 in 1891.

*W. F. Roland.*—Always gets badly wounded seals; those that escape are not likely to die.

*A. W. Roland.*—Very few badly wounded seals escape.

*J. Matthews.*—Wounded a few, but got most of them.

*N. Bonde.*—Wounded a few.

*A. McGarva.*—Not more than 1 in 50 wounded seals will die afterwards.

*R. S. Fudley.*—Very few.

*T. Garner.*—Very few.

*J. Krapt.*—Badly wounded seals nearly always got.

*G. C. Gerow.*—Not many.

*R. Hope.*—Sure of getting badly wounded seals.

*A. Sinclair.*—Wounded 8 or 9, but none badly enough to cause death.

*W. Edwards.*—Seals that are badly wounded always got.

*G. F. Frueh.*—Not many.

*W. M. Christian.*—1 or 2 might have escaped and died.

*P. Jolibis.*—Very few.

*T. O'Leary.*—Took 240 seals in 1890, and wounded not more than 15 that got away.

*L. McGraw.*—Wounded 10, but doesn't think any would die.

*H. F. Steward.*—Percentage of wounded seals that escape is very small.

*D. A. Lewis.*—A mortally wounded seal does not often get away.

With reference to the distance at which seals are shot at, as bearing on the chances of losing wounded seals, the following statements referring to the actual practice of hunters may further be cited:—

British Case,  
Appendix, vol. iii,  
"United States  
No. 24(1891)," pp.  
355-357.

*J. Wilson.*—Shot seals at a range of from 10 to 15 yards (p. 355).

*W. Fewings.*—General range for rifles not over 50 yards, but few hunters attempted that range. In getting 400 in 1887 failed to capture about 25 shot at, or killed, or wounded, but which escaped (p. 355).

men to recover all  
shot.

ence on this point.

Summary of evidence as to distances  
at which seals are shot.

*Captain J. D. Warren.*—Sleepers are shot at from 10 to 15 yards range, "feeders" from a few feet to 100 yards, though few are fired at at that distance (p. 355).

*Captain H. F. Seward.*—I generally take 10 per cent. additional ammunition for waste shot, that is, if calculating on a catch of 3,000 seals, take ammunition for 3,300 shots. This is double the excess the hunters would consider necessary, and I never knew that percentage of waste shot to be used (p. 356).

*G. Howe.*—Uses shot-gun principally, rifle only for long range, say, 30 to 60 yards (p. 357).

*Captain C. J. Kelley.*—Average range for sleeping seals 10 to 20 yards, for travelling seals 10 to 30 yards (p. 168).

*Captain W. Petit.*—Average range for sleeping seals 10 to 20 yards; 10 to 30 yards for "travellers" (p. 169).

*Captain W. E. Birken.*—Ten yards is a safe shooting distance at "sleepers," and 10 to 30 at "travellers" (p. 173).

*Captain C. N. Cox.*—Fifteen yards shooting distance at sleeping seals (p. 175).

*Captain A. Bissett.*—Shoots at sleeping seal when 20 to 30 feet from it, and at a "traveller" when 25 to 30 yards away (p. 177).

*Captain T. W. Magnusen.*—Twenty-five yards at "sleepers" and 45 to 50 at "travellers" is safe shooting distance (p. 178).

*H. Crocker.*—The usual distance for shooting at a sleeping seal is about 20 feet (p. 180).

*G. Roberts.*—Shoots at sleeping seals when 20 to 30 feet from them, and at "travellers" when from 25 to 30 feet [yards] from them (p. 181).

The following additional statements on the same subject, including experience in 1892, are contained in the affidavits of hunters and boat-steerers subsequently obtained:—

*J. Townse.*—Three years a hunter; shoots sleeping seals at 15 yards range, and has killed a "traveller" when 60 yards away, but seldom shoots at a seal when that distance away.

*Captain A. Douglas.*—Eight years' experience; shoots at a sleeping seal when 40 or 50 feet from it.

*G. Roberts.*—Four years' experience—two as hunter; shoots sleeping seals at from 5 to 15 yards range, and never lost but one seal shot at while sleeping, and that was by going after another seal and leaving the first too long. He shoots at a travelling seal at from 20 to 50 yards range.

*M. Ryan,* who has been sealing ten years, shoots at sleeping seals when from 12 to 15 yards from them.

*J. S. Finning.*—Four years' experience as hunter; shoots at sleeping seals when 12 to 15 yards from them, and at travelling seals when 30 to 40 yards away.

*W. T. Bragg.*—Eight years' experience; shoots at sleeping seals when about 20 feet from them, and gets as close as possible to a "traveller."

British Case,  
Appendix, vol. iii.  
"United States  
No. 3 (1892)," pp  
167, 191.

Appendix, vol. ii,  
pp. 43-139.

*Captain O. Buckholz.*—Three years' experience; master mariner, but hunts as well; shoots at sleeping seals when within 15 yards of them, and travellers when about 25 or 30 yards off.

*R. Storrat.*—Three years' experience as hunter; shoots at a sleeping seal when about 15 yards from it, and never at a travelling seal when more than 50 yards away.

*W. Corie.*—Two years' experience—one as boat-steerer, and one as hunter; shoots at a sleeping seal when from 10 to 20 yards from it, and at a traveller never when it is more than 40 yards away.

*P. Campbell.*—Three years a boat-puller and boat-steerer, and two years a hunter; shoots at sleeping seals when 10 to 15 yards from them, and at travellers never when more than 50 to 60 yards from them.

*J. Brown.*—Six years' experience; one as hunter; shoots at sleeping seals when 15 or 20 yards from them, and at travelling seals never when more than 40 yards away.

*W. De Witt.*—Four years' experience as hunter; uses both shot-gun and rifle. He shoots at sleeping seals at from 10 to 15 yards range, and at "travellers" at from 30 to 40 yards. "I seldom use a rifle, and then only at travellers. Most of the seals I lost by sinking were 'travellers' shot at long range."

*W. G. Goulie.*—Five years a seal-hunter; shoots "sleepers" at from 10 to 20 yards' range, and "travellers" at from 20 to 100 yards.

*J. H. Haake.*—Three years a hunter; shoots at a sleeping seal when 12 or 15 yards from it, and says the average distance at which hunters shoot at "travellers" is about 35 yards.

*G. E. French.*—Three years' experience as hunter; shoots sleeping seals when 10 or 12 yards from them; "travellers" he shoots at 30 to 60 yards range.

*O. Surf.*—A hunter of six years' experience says: "I use the rifle a great deal. I shoot 'sleepers' with the gun at 10 or 20 yards' range, and travelling seals with the rifle at as long range as 100 yards. The seals I have lost are principally in this way."

*P. W. Strong.*—Four years' experience; uses only a shot-gun, and shoots "sleepers" from 10 to 20 yards, and "travellers" from 25 to 75 yards' range. Fully 80 per cent. of all the seals got by him were "sleepers."

*W. Shields.*—Seven years' experience as a hunter; shoots at a sleeping seal when about 15 yards from it, and at a travelling seal when not more than 60 yards away, that is, with a shot-gun. Nearly every one prefers a shot-gun to a rifle, but a good shot will do as well with a rifle. "I myself would trust as much to a rifle as a shot-gun, because when a bullet hits a seal it is sure to kill it, and we seldom fail to get the seal."

*C. A. Williams.*—Five years' experience; shoots at a seal when from 6 to 55 yards from it.

*J. Hall.*—Two years' experience; shoots "sleepers" from 12 to 14 yards' range, and "travellers" from 25 to 40 yards' range.

*W. Fivings.*—Six years' experience; shoots sleeping seals at from 10 to 15 yards' range, according to the state of the water. "I shoot travelling seals at from 40 to 60 yards. About one-third of the seals I get are 'travellers,' and most of those lost are of this class."

*T. H. Brown.*—One year a boat-steerer and four a hunter. Shoots at a sleeping seal when about 15 yards from it, and most of the seals he gets are "sleepers."

*N. Morrison.*—Four years a hunter. Shoots sleeping seals at ranges of from 10 to 30 yards, and "travellers" all the way from 40 to 500 yards. Most of the seals I lose are "travellers."

*J. Christian.*—Two years' experience as hunter. Shoots at sleeping seals when 15 to 20 yards from them, and at "travellers" and breaching seals when 20 to 50 yards away. About two-thirds—perhaps more—of the seals I got were shot sleeping.

*M. McGrath.*—One year's experience. Shoots at seals when 20 to 30 yards from them. Seldom, if ever, more than 30 yards away, but at sleeping seals at much shorter range.

*W. Heay.*—Six years' experience as boat-puller and hunter. Shoots at sleeping seals at from 15 to 20 yards' range, and "travellers" from 25 to 50 yards' range. "Over two-thirds of the seals I got were 'sleepers.'"

*J. J. Beckingham.*—Two years a boat-steerer, says: "The hunters I have been out with shoot at seals when 15 or 20 yards from them, and there is not time for a seal to sink before the boat reaches it."

*H. B. Jones.*—Five years' experience. Generally shoots at seals when from 15 to 35 yards from them.

*W. Hermann.*—25 to 30 yards.

*Captain G. Scott.*—Hunts with a rifle and a shot-gun. "With a rifle I would shoot up to 150 yards, and with a shot-gun up to 30."

*G. Wester* shoots seals with a rifle when 50 to 100 yards away, and with a shot-gun 25 to 30 yards.

*C. Harticeen* shoots at seals with a shot-gun at from 10 to 30 yards range, and with a rifle at from 30 to 100.

*M. Scott* says: "Seals are nearly all shot with a gun, and are mostly all taken at from 10 to 30 yards."

*Captain J. S. Worth* says: "The range at which I would take nearly all my seals is between 10 and 30 yards."

*C. Francis* shoots at sleepers at from 10 to 20 yards' range, and "travellers" at from 25 to 40 yards.

*J. Coburn* shoots at sleeping seals at from 10 to 20 yards' range, and travellers at from 25 to 50 yards.

*Captain C. E. Moekler* says: "The range for a gun is from 10 to 30 yards, and most of the seals are got between these ranges. With a rifle the range would be anywhere up to 100 yards."

*L. J. Thiers* says: "Nearly all the seals are killed with a gun, and at a distance of from 10 to 30 yards."

*W. O. Shafter* uses the shot-gun and the rifle. "Most of the seals are got between 10 and 40 yards, with the shot-gun."

*W. F. Upson* says that most of the seals shot are under 15 yards away.

*F. Crocker* says seals are for the most part shot with a shot-gun at from 10 to 30 yards' range.

*W. Conners* says: "Seals are mostly shot from 20 to 30 yards' distant with a shot-gun."

*P. E. Peterson* gets his seals at from 8 to 30 yards range.

*H. John Lund* shoots most of his seals when 15 to 18 yards' distant.

*J. Ford* says: "Most seals are killed from 10 to 30 yards' [range]."

*J. W. Crew* says that the seals he gets are mostly at a range of from 10 to 30 yards.

*A. McGarra* says he shoots at a sleeping seal when 15 to 25 yards from it, and would not shoot at a "traveller" when 90 yards away.

*T. Garner* says: "Shot will not kill a seal if it strikes it in the body when more than 40 yards away. I shoot at a sleeping seal when from 14 to 18 yards from it. Very few rifles are now used."

*Captain J. Gaudin*.—20 or 30 feet.

*Captain S. W. Buckmann*.—40 or 50 feet.

*R. Hope*.—10 to 30 feet at a sleeping seal.

*Captain C. F. Dillon*.—Shoots at sleeping seals when about 12 yards away, and at travelling seals all the way up to 75 or 100 yards, if a rifle is used; even at that distance the seal is generally got.

*A. Sinclair*.—Shoots at sleeping seals when 12 or 15 yards away.

*W. Edwards*.—Shoots at sleeping seals when 10 to 12 yards from them; travelling seals when as far as 60 yards from them.

*M. Edwards*.—Sleeping seals when about 15 yards away; travelling seals seldom more than 50 or 60 yards away.

*G. F. French*.—Shoots at a sleeping seal when within 25 feet of it, but would not shoot at a lively seal when more than 50 yards away.

*W. M. Christian*.—Shoots at a sleeping seal when 15 or 20 yards away, and at a "traveller" when 60 or 70 yards away.

*P. Jolibis*.—Shoots at sleeping seals when from 4 to 20 feet from them, if there is but little sea on. When the seal is awake and lively, he shoots when 30 or 40 yards away.

*T. O'Leary*.—Shoots at a sleeping seal when from 6 to 10 yards from it, and would not shoot at a travelling seal when more than 50 yards from it.

*Captain H. F. Sineard* says: "Most of the seals got are 'sleepers,' and are shot at when from 15 to 25 yards from them."

*P. Carlson*.—Kills seals from 10 to 40 yards, and the average is about 15 yards.

*D. A. Lewis* says: "I shoot seals at an average distance of 25 yards, and have killed a seal and got him at 75 yards."

*P. Hammel* says: "Seals are killed with a shot-gun 10 to 30 yards away."

(b.)—That from 80 to 90 per cent. of the Seals killed at Sea are Females, and that of these at least 75 per cent. are either pregnant or nursing.

In respect to this contention, it is not denied that a considerable proportion of the seals taken at sea are females, and that some of these are with young; but it is affirmed that the statement, as above formulated, is very greatly exaggerated. It is also submitted, that the killing of females, within proper limits as to number, is not in itself more reprehensible in the case of fur-seals than of other animals, whether polygamous or not, and whether wild or domestic, with reference to which it is systemically practised when the females yield skins or other products of value.

British Commissioners' Report, paras. 78, 633.

Exaggerated statements are made in the United States' Case as to number of female seals killed at sea.

The British Commissioners devoted special attention to this subject, and have ascertained that the pelagic sealers themselves favour such regulations as would prevent any unnecessary waste of seal life; and it will be found on consulting their Report, that in the scheme of regulations which is formulated by them as the most appropriate, special care is taken to provide against the possible killing of gravid females.

Pelagic sealers favour Regulations such as to minimize this.

Ibid., paras. 633, 648.

Ibid., paras. 155-161.

It must be observed that the statements respecting the number of female seals included in the pelagic catch, whether those contained in the Case of the United States and its Appendices, or those made in the Report of the British Commissioners, relate to recent years only, during which attention has been particularly called to the seal fishery in consequence of complaints regarding the dearth of killable male seals on the breeding-islands. It has been established by evidence derived from the official Reports of the United States, that for some years past every male seal capable of yielding a merchantable skin which landed upon the Pribyloff Islands has been killed if it could be taken; and that the necessary consequence of the decrease in the number of male seals is the existence of a preponderant number of female seals.

The excess of females in late years, the direct result of killing on Pribyloff Islands.

On this point the British Commissioners write:—

"It must not be forgotten, however, in examining these statements, that the complementary information derived from the breeding islands shows that the persistent killing of young males has led of late years to the existence of a very large surplus of females, and

Ibid., para. 635.

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that, therefore, the proportion of females to the whole number of seals, whether at sea or ashore, is, at the present time, according to the information obtained by us, quite abnormal."

Following the limitation of the excessive slaughter of young males upon the Pribyloff Islands in 1891 and 1892, and in exact correspondence with the statement made above, many of the hunters note a decided increase of males at sea in 1892, while a marked increase in the same class upon the islands was observed by Mr. Macoun.

It thus follows that, unless the taking of fur-seals upon the high seas is in itself entirely illegal, which is wholly denied, the men so employed have, in comity and reason, fair ground of complaint as against the methods practised upon the breeding-islands, which have resulted in so seriously depleting the male element of the seal tribes, and in sapping the foundations of the continued prosperity of seal life upon which their industry depends for its existence. The methods heretofore practised upon the Pribyloff Islands have in fact assumed that the owners of these islands were the only persons interested in the fur-seal industry.

The fact that, as a consequence of the restricted number of young males killed on the Pribyloff Islands in 1890, and the still smaller number killed under the operation of the *modus vivendi* of 1891, the condition of the rookeries there showed distinct improvement in 1891 and 1892, is alone sufficient to show that it has been the killing upon the islands rather than that at sea which induced the decrease. The number of seals taken at sea in 1890 and 1891 was actually greater than ever before. If, therefore, in accordance with the contention now held by the United States, the chief want upon the islands was in females, while a vast majority of the seals killed at sea were of this sex, the condition of the rookeries should have continued rapidly to deteriorate. The beneficial effect resulting from the sparing of males upon the islands is therefore specially to be noted.

It is therefore wholly unreasonable and inadmissible for those interested in the islands, having themselves brought about the depletion of one class of seals, to demand for their sole benefit the suppression of another form of sealing, which, in consequence of such action, has of late, and from

Males have increased at sea since killing on Pribyloff Islands has been reduced.

Appendix, vol. i, p. 151.

British Commissioners' Report, paras. 122, 156.

Ibid., para. 91.

Appendix, vol. i, p. 151.

Consequent improvement of conditions on Pribyloff Islands, with continued pelagic catch, shows that previous deterioration due to killing on breeding-islands.

Extraordinary character of claim now made by United States.

statements are made United States' Case as to female seals killed at

ers favour Regulations minimize this,

of females in late years result of killing on Islands.

the necessities of the case, resulted in the taking of a considerable proportion of females from the existing surplus of that sex.

The assertion in the United States' Case as to the proportion of females in the pelagic catch, rests chiefly on the evidence of furriers, who have examined the skins in the condition in which they reached them, that is to say without the heads or extremities and stretched out of their original form. While it is no doubt quite possible for these gentlemen to correctly distinguish as to sex a certain proportion of the larger skins, from the colour of the fur and other indications, yet there is so large a number of skins, more particularly skins of seals under 3 years, which present absolutely no distinctive characters in this respect, that the estimates of furriers cannot be regarded as trustworthy. It is further to be remarked that, in the course of their business, furriers have never had to consider the question of sex at all, which in no way enters into their calculations. They do not buy or sell by sex, and it is never mentioned in trade catalogues, so that therefore their retrospective statements are not based upon any trade classifications, but are merely surmises.

With reference to the question of the number of gravid females comprised in the North-west Catch, attention is called to the Table prepared by Messrs. P. R. Poland and Son, the well-known London fur merchants, in which they analyze the sizes of the whole North-west Catch from the year 1873 to the present time. From this Table it will be seen that about 42 per cent. of the North-west Catch, after deducting therefrom all outside skins such as the Japanese skins taken on the Asiatic coast, are skins of animals too young to be bearing-females, and the balance (58 per cent.) which so far as size goes, might be those of bearing-females. It is admitted in the United States' Case that 15 per cent. of the entire catch consists of males. This reduces the proportion of gravid females to less than 50 per cent. Further, to arrive at a fair estimate of the proportion which could be actually gravid when killed, this percentage amount must be reduced by one-half, because at least one-half of the North-west Catch is taken in the fall, long after all the females have given birth to their pups, thus making the highest possible total of gravid females in the North-west

Chief basis of allegations on this point in United States' Case, essentially inconclusive.

Appendix, p. 257.

Number of females in pelagic catch which could possibly be gravid shown to be small.

Catch to be about 25 per cent, without making any allowance for barren females.

The above calculation assumes, without admitting, the correctness of the figures put forward by the United States' Case. If the more moderate, and, it is submitted, more accurate, figures given by British witnesses are taken as a basis, the percentage of females which could possibly be gravid is reduced to an insignificant number.

The British Commissioners, after carefully considering all the circumstances respecting the killing of seals at sea, write as follows :—

British Commissioners' Report, para. 651.

"The general conclusion to be derived from an examination of the statements above noted is, that in proportion to the number of skins obtained, that part of the pelagic catch made in the early part of the season, and to the south of the Aleutian Islands, is the most damaging to seal life as a whole, while the skins taken after this date whether without or within Behring Sea are obtained at much less proportionate cost of seal life."

Summary of evidence as to proportion of males and females in pelagic catch.

In the Report of the British Commissioners much evidence is quoted as to the composition of the catch at sea in respect to proportion of females, &c. This evidence may be summarized as follows :—

*Captain W. O'Leary.*—South of Behring Sea half cows, of which two-thirds with young. In Behring Sea, cows with young not 1 in 100.

*Mr. G. Howe.*—South of Behring Sea one-third of catch cows with young, or capable of bearing. In Behring Sea got 4 cows with young in a season's catch.

*Mr. A. J. Bertram.*—Out of 230 seal, 25 or 30 cows with young south of Behring Sea, and in Behring Sea 6 or 7.

*Mr. C. J. Kelley.*—Proportion of females always less than that of males.

*Captain W. Petit.*—In 1886, off Barclay Sound, took 104 seals, of which only 3 were females. In 1887, on Portlock Bank, took in one day 29 seals, of which 2 were females. In 1891 catch was 75 per cent. males. Of 765 seals killed, 18 were females with young.

*Captain W. E. Baker.*—Proportion of his catch in 1891, 3 males to 1 female.

*Captain C. N. Cox.*—In 1889, 90 per cent. of his catch males. In 1891, of 848 seals taken south of Behring Sea, 75 per cent. were males, 15 per cent. females with young.

*Captain A. Bisset.*—More males than females taken. In 1891, 70 to 80 per cent. of his catch males.

*Captain T. Magnesen.*—In February to April about equally divided as to sex. Near Behring Sea about 80 males taken to 1 female. In 1891, about half his catch

f allegations on this United States' Case, inconclusive.

males in pelagic catch and possibly be gravid small.

females, 12 to 14 per cent. bearing females, the rest barren.

*Mr. H. Crocker.*—Of the seals killed, 80 per cent. males.

*Mr. R. Thompson.*—Of the seals taken, 70 to 80 per cent. were males.

*Mr. A. Laing.*—South of Behring Sea, 3 in 5 males. In Behring Sea, 4 in 5 males.

*Captain W. Cor.*—Females are most abundant in February to April. About 65 or 70 per cent. of seals taken males; 15 per cent. of the females barren. Of 2,434 seals taken in Behring Sea 5 per cent. were females with milk.

*Captain C. Hackett.*—In 1890, about one-fourth of his catch females; in 1891, about one-half; of 1,555 seals taken in Behring Sea between the middle and end of July only ten were females with young.

*Captain C. McDougall.*—Of 1,100 seals taken in Behring Sea, 800 were males.

*Captain A. Douglas.*—Has found one or two females with young in Behring Sea in a season.

*Captain S. S. McLean.*—Finds more males than females south of Behring Sea; in Behring Sea, about equally divided. In 1891 his catch consisted of two-thirds males, one-third females.

*Captain Dad.*—Took 600 seals in Behring Sea, of which less than 20 were with young. In 1890, of 2,000 seals taken by schooner "Viva" in Behring Sea, only 2 were females with young.

Much additional evidence on the same point, including experience in 1892, is contained in the statements of sealers printed in the Appendix, and of this the following synopsis may be given:—

Appendix, vol. ii,  
pp. 14-22.

*Mr. J. Townsend.*—Has secured on the coast and in Behring Sea about as many females as males.

*Mr. C. Le Blanc.*—In 1892, took more females than males on the [American] coast, and on the Asiatic side about equal numbers of each sex. More than half the females on the coast were with young. On the Asiatic side from one-quarter to one half were in milk.

*Captain A. Douglas.*—Formerly more females were taken than males, but last two years more males, from 2 to 4 years old.

*Mr. G. Roberts.*—Three out of five seals taken in 1892 were males. About one-half the females taken were in pup.

*Mr. M. Ryan.*—Took in 1892 about as many females as males. On the Asiatic side more males than females. In 1891, in Behring Sea (American side), more males than females.

*Captain R. O. Lavender.*—On coast in 1892 over one-third his catch were females. Less than half of these barren. The same in other years. In three seasons in Behring Sea he found near the islands mostly females, but further out mostly males.

*T. Mathasen.*—Boat-steerer in 1891; thinks that out of 5 seals taken 3 are females.

*J. S. Vanning.*—In 1892 took 153 seals, of which 8

were females. Other hunters in same vessel had similar experience.

*A. Billard.*—About one-half of coast catch females, of which about one-fourth were in pup.

*G. Dishow.*—In 1892 took more males than ever before. In previous years a very little more than half were females. In Behring Sea about half his catch were females.

*Mr. O. Buchholz.*—On the American coast has taken more females than males.

*Mr. E. Storrat.*—Thinks there are more females than males among the seals taken.

*Captain W. O'Leary.*—Catches have always been composed of about equal numbers of males and females, both on the coast and in Behring Sea.

*F. Campbell.*—Took 65 seals in 1892, among which were more females than males; 20 to 25 were barren females.

*J. Brown.*—In 1892 got more females than males.

*Captain A. R. Bisset.*—In 1891, 80 per cent. of catch were young males. In 1892, about half females on coast.

*H. R. Smith.*—On Vancouver Island coast early in season about half the seals taken are females, half of which are in pup. As the season grows fewer females are got, and fewer of these in pup.

*W. De Witt.*—A little more than half the seals taken on the coast are females, and of these about one-half are in pup.

*W. G. Goudie.*—In 1892, of 2,040 seals taken on the coast about 1,500 were bulls from 2 to 4 years old. About one-half the seals taken in Behring Sea are females.

*Captain L. McLean.*—Outside very many more males than females are taken. Not nearly so many females as males in Behring Sea.

*J. H. Haake.*—The greater portion of the catch of "Walter A. Earle" were males.

*J. Shields.*—Of the larger seals there are more females than males. Of the smaller seals, more males than females. In Behring Sea more males than females.

*G. P. French.*—Males and females in about equal numbers on the coast.

*O. Searf.*—Males and females in about equal numbers both on coast and in Behring Sea.

*F. W. Strong.*—Thinks that about two-thirds his catch on the coast were females, one-half in pup.

*A. Mathison.*—More than half the seals taken on coast were females. Mostly young females and barren cows. About one-quarter females in pup.

*W. Shields.*—Before 1892 thinks he took a few more females than males, but in 1892 more than two-thirds of his catch were males, and this was the experience of the other hunters on the "E. B. Marvin."

*C. A. Williams.*—Sexes about equally divided in 1892. In 1889 and 1891 nearly all bulls. On the Asiatic side seals about equally divided as to sex.

*C. Locke.*—Got in 1892 a few more males than females

on the coast, but both there and on the Asiatic side there were about equal numbers of each sex.

*E. Ransome*.—Before 1892 killed more females than males. In 1892 more males than ever before.

*Captain E. Lorson*.—On the 11th August, 1890, in Behring Sea, his hunters got 130 seals, of which about 100 were males. Thinks he took more females than males in 1891.

*Captain T. Magnesen*.—Of over 1,000 seals taken on coast each year by his hunters two-thirds were males. More females than males in Behring Sea. Sexes about equal on Asiatic side.

*Captain W. E. Baker*.—In last two years about 25 per cent. of coast catch were cows.

*I. O'Quinn*.—Of 76 seals taken on the coast in 1891, not more than 25 were females; and of 210 in 1892, not more than 40 were females. Mostly bulls on Asiatic side in 1891 and 1892. Not more than 6 in 100 were females.

*Captain R. E. McKiel*.—Gets more females than males. In 1892 more males, in proportion, than ever before.

*Captain E. P. Miner*.—40 per cent. of seals taken on coast, and about 60 per cent. of those taken in Behring Sea, are females.

*Captain C. Campbell*.—Principal part of catch in 1891 and 1892 were young males.

*Captain G. Macdonald*.—As a rule, more females than males are caught on coast. In Behring Sea about equal numbers of each sex.

*W. Feeings*.—About the same number of males and females.

*D. Laing*.—Thinks more females than males are taken on the coast, but that in Behring Sea—both sides—more males are taken.

*T. H. Brown*.—Has always taken more males than females on the coast, and about the same number of each sex in Behring Sea.

*J. Morris*.—More males than females.

*N. Morrison*.—In 1886 about two-thirds his catch were bulls. In 1891 about half were females, and in 1892 about one-third. On Asiatic side in 1891 and 1892 about half were females.

*H. S. Browne*.—More males than females in 1892, and more in proportion than other years.

*Captain V. Jacobson*.—About 3 out of 5 seals taken on the coast and in Behring Sea are females.

*Captain J. W. Todd*.—Remembers no year in which he took more females than males on the coast. In Behring Sea rather more than half females.

*J. Christian*.—Rather more than half females on Asiatic side, and about equal numbers of males and females on the American coast.

*M. McGrath*.—More than half, both on American and Asiatic sides, were females.

*W. Heay*.—Two-thirds of catch young males.

*J. Beckingham*.—As many females taken as males.



*Captain H. B. Jones.*—Thinks vessels he has been on took more females than males both in Behring Sea and on the coast.

*Captain E. Cantillon.*—Until 1892 catch contained more females than males. In 1892 many more males than females.

*C. Peters.*—More females than males in 1891 and 1892.

*H. Parson.*—In Behring Sea in 1891 took 330 seals. Most of these were young bulls. In 1892, 139 seals on coast; about 20 females among them.

*G. Heater.*—In 1890, in Behring Sea, greater part of catch males; in 1891, on coast, majority were young bulls; in 1892, one-third cows.

*A. McGarva.*—In 1890 more females than males; in 1891 about equal numbers of each sex; in 1892 more males than females.

*R. Findloy.*—More males than females in 1892; more females in previous years.

*J. Krapt.*—About half the seals taken by him females.

*F. Warrington.*—More females than males killed.

*G. E. Miner.*—As a rule more females than males, but in 1892 but 10 per cent. of catch were females.

*Captain J. D. Warren.*—A little over half the catch females both on the coast and in Behring Sea.

*C. O. Burns.*—In 1891 about half females; in 1892 nearly all bulls.

*M. Pickney.*—In 1891 less than half females; in 1892 very few females on coast. Of 420 taken in Behring Sea, about one-fourth were females.

*W. O. Hughes.*—In 1891, both on coast and in Behring Sea, about half females; in 1892 not more than 10 per cent. females on coast.

*J. McRae.*—About half females.

*J. Brown.*—About half of each sex.

*J. Siteman.*—In 1888 and 1889 about half females; in 1890 nearly all males; in 1892 three-fifths males. In Behring Sea each year about half the catch were females.

*W. Hermann.*—More females than males as a rule.

*G. Scott.*—On the coast and in Behring Sea about half males and half females.

*G. Westcr.*—About 60 per cent. females on the coast; in Behring Sea about half.

*C. Lutjens.*—About four-fifths of catch females.

*C. Hartweu.*—About 60 per cent. females both on the coast and in Behring Sea.

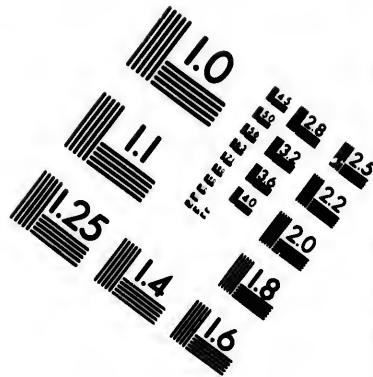
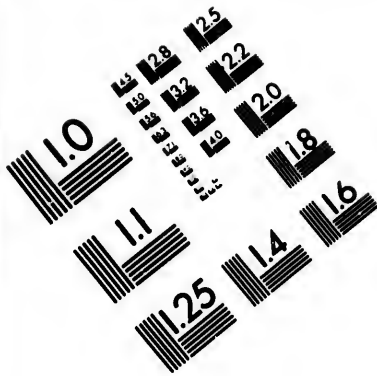
*M. Scott.*—In Behring Sea about half of each sex; on the coast for last two years more males than females.

*J. S. Worth.*—On the coast in 1890 and 1891 70 per cent. females; in 1892 about half and half. In Behring Sea the majority taken were bulls.

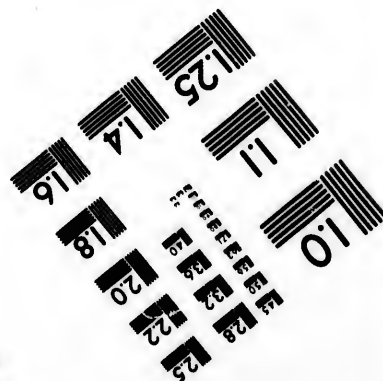
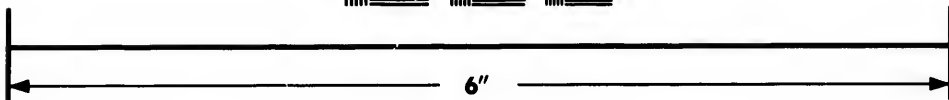
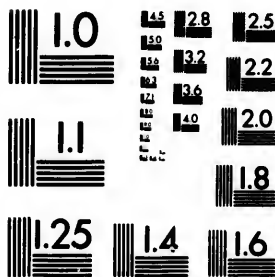
*C. Francis.*—Both on the coast and in Behring Sea about half females.

*M. Keefe.*—In 1889 and 1890 many more males than females; in 1891, in Behring Sea, nearly half females. Never has taken more females than males. In 1892 nearly all young males.





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*J. Coburn.*—In 1892 nearly all males; in previous years less than half females.

*J. Figuera.*—Pretty well divided as to sex on coast. Never got females in Behring Sea.

*C. E. Mockler.*—As a rule more cows than bulls.

*L. J. Thiers.*—Early in season more females than males; later on more males.

*G. Wells.*—In 1890, on coast, more than half males; in 1891 about half females. In Behring Sea, in 1890 and 1891, about two-thirds of catch females. In 1892 four-fifths of catch males.

*W. O. Shafter.*—Both on the coast and in Behring Sea more females than males.

*A. F. Carlson.*—More females than males on the coast.

*F. Crocker.*—More females than males on the coast; in Behring Sea about half and half.

*W. Conners.*—More than half females on the coast.

*P. E. Peterson.*—On the coast about half males and half females.

*H. J. Lund.*—About 65 per cent. of coast catch females.

*J. Ford.*—On the coast more males than females.

*J. W. Crew.*—60 to 70 per cent. females.

*W. Roland.*—On the coast about one-third females; in Behring Sea about half females.

*A. W. Roland.*—In 1891 about half females; in 1892 about one-third females.

*J. Matthews.*—About half of coast catch females; in Behring Sea at least 5 out of 6 were males.

*A. McKeil.*—3 out of 5 taken on coast females.

*G. C. Gerow.*—Two-thirds of catch on coast and in Behring Sea females.

*J. Gaudin.*—Chiefly females in Behring Sea, but nearly all were dry.

*C. Blomquist.*—14 or 15 females among 149 taken in 1892.

*R. Hope.*—Thinks more females than males are taken.

*W. Petit.*—Not more than 130 females out of 660 seals in 1892.

*C. F. Dillon.*—About three-fifths of catch females in 1892.

*A. Sinclair.*—About half males—a few more than half perhaps.

*W. Edwards.*—About as many males as females.

*M. Edwards.*—About half of each sex.

*G. F. French.*—Between one-third and one-half females.

*P. Jolibois.*—About the same number of each sex on the coast; more females than males in Behring Sea. In 1892 many more males than females on coast.

*T. O'Leary.*—More females than males.

*F. Moreau.*—80 per cent. females.

*P. Carlson.*—Half of each sex on the coast.

*P. Hammel.*—20 per cent. more females than males.

*J. Carthcut.*—About 60 per cent. females.

*Indian Evidence.—Composition of Catch.*

*Hit-hitlc.*—More females than males off San Juan.

*Kasado.*—6 out of 10 females off San Juan. In Behring Sea always more males than females.

*Schoutwick, Clawaunack, So-y-uk, Thompson, Jack, Too-tooch, and Jimmy.*—Off south end of Vancouver Island more females than males; further north more males than females.

*Clapinsum, Hannisum, and Clahouto.*—Along Vancouver Island coast more females than males; further north more males.

*Walter Watt.*—Along Vancouver Island coast about half the catch—perhaps a little more—females.

*Chileta.*—Along the Vancouver Island coast as many females as males.

*Oquughu.*—Five or six years ago more males than females; now as many females as males.

*Kach-kach-ah.*—Five or six years ago took more males than females, but now about the same number of each sex is taken.

*Shewish.*—Generally about the same number of each sex; this year more males.

*Clat-ka-koi and Kiekiana.*—About half of each sex.

*Ticklahouto, Keshuquo, and Clatchu.*—Along the coast got about 4 males out of every 7 seals killed on the coast; in Behring Sea more males than females are taken.

*Clat-misk, Wahka, Nahwyak, Claphlightup, Tsavassup, and Too-tooch.*—Along the coast more males than females are taken, and those of them who have been in Behring Sea had the same experience there.

*Ehechesut.*—Along the coast about the same number of each sex is taken.

*Annetz-acheet and Louis Annetz-acheet.*—Sometimes more females than males are taken on the coast, but in 1892 more males.

*Hat-la-cuutl.*—About the same number of males as females.

*Cedar-kavin and At-clappa.*—As many males as females along the coast.

*Atelu and Ahwahyook.*—Off Vancouver Island coast more cows, but further north more bulls.

*Quiauh.*—Along the coast more females than males, but further north and in Behring Sea more males than females.

*High-cit-lick-sheet.*—Some years more bulls, some years more cows.

*Charlie Quisto, See-ah-sum, and Weck-tin.*—About half cows and half bulls.

*Joseph, Jack, and Johnny Hammond.*—More males than females always.

*Sante.*—66 seals; nearly all males.

*Charlie.*—More males than females.

*Gus.*—95 seals; not many females.

*Douglas.*—73 seals; only 1 female.

*Jae.*—41 seals; not many females.

*Taylor.*—88 seals; more males than females.

*Tommie.*—59 seals; more males than females.



(c.)—That, in consequence of the killing of nursing Females at Sea, dead Pups have been found in increasing Numbers on the Pribyloff Rookeries every year since Pelagic Sealing began in Behring Sea, and that such Pups died from Starvation.

It remains to deal with the third of the main contentions above cited. This assertion is, like several other assertions to which great importance is now attached in the Case of the United States, entirely new.

It is therefore somewhat remarkable to find, notwithstanding the apparently complete absence of comparable observations in the reports on the islands in previous years, that it is now maintained, not only that such results have been concurrent with the progress of pelagic sealing, but that they have been observed to increase *pari passu* with the growth of such sealing at sea. In previous reports on the islands, where the death of "pups" has received mention at all, it has been apparently uniformly attributed to one of two causes, *i.e.*, either to overrunning of the young by adult seals, or destruction of the young by surf during storms.

The mortality noticed in 1891 was, moreover, attributed to the same causes by such of the officials and natives on the Pribyloff Islands as were first addressed on the subject by the British Commissioners, showing very plainly that up to that time no other explanation had been present to their minds.

In presenting the evidence upon which dependence is placed in this matter in the Case of the United States, Dr. W. H. Dall, who visited the Pribyloff Islands in 1880, Captain Bryant, who was on the islands from 1870 to 1877, Mr. Moulton, who was on St. George Island from 1877 to 1881, Mr. Otis, on the islands from 1879 to 1881, and Mr. Gliddon, Government Agent from 1882 to 1885, are first cited, to prove that dead pups were very seldom or scarcely ever seen upon the islands up to the year 1881.

But Mr. H. W. Elliott, writing in 1875, and as the result of his experience gained in 1872-74, speaks of the normal presence of—

"decaying carcasses of old seals and the many pups which have been killed accidentally by the old bulls while fighting with and charging back and forth against one another."

This contention wholly novel.

For references to United States' official documents, see British Commissioners' Report, paras. 328-333.

The mortality of young seals in 1891, first noticed by British Commissioners.

*Ibid.*, para. 346.

Evidence cited by United States to show that dead "pups" seldom seen on Pribyloff Islands till 1881.

But this is contradicted by previous Reports of United States Government.

"Report on the Condition of Affairs in Alaska," p. 149.

Lieutenant W. Maynard, United States' navy, writing of the islands in 1874, says:—

44th Cong.,  
1st Sess., II, R.,  
Ex. Doc. 43, p. 4.

"Many of them [the pups] are killed by the surf, particularly if the season is a stormy one, as they are not strong enough swimmers to save themselves from being dashed against the rocks by it."

"Monograph of  
North American  
Pinnipeds,"  
pp. 397, 398.

Still again in 1876, Captain Bryant notes the destruction of a large number of pups in the autumn by a storm, a destruction so great in fact that he anticipated its effect would appear in 1880: and the same authority further refers to the destruction of young seals which always results from a stampede of the older animals.

Bull. Mus. Comp.  
Zool., vol. ii, No. 1,  
p. 97.

Captain Bryant further alludes to another cause of death of young seals as follows:—

"Monograph of  
North American  
Pinnipeds," p. 408.

"When the sun shines for two or three hours, and the rocks become heated, there are occasional deaths among the beach-masters and very young pups from sunstroke, the symptoms being a nervous jerking of the limbs, followed by convulsions and death. Fortunately these occurrences are rare, and it was only in 1874 that any appreciable number were lost from this cause. That year many young seals died about the 1st August."

United States'  
Census Report,  
p. 38.

Again, in his Monograph, submitted in 1880, Elliott refers to the destruction of large numbers of pups by October gales.

British Commis-  
sioners' Report,  
para. 328.

The British Commissioners were likewise informed by Mr. D. Webster, who has been for many years on the Pribyloff Islands, that in one year "in the sevenies" he had seen the beaches at north-east point of St. Paul Island "strung with dead pups."

It is clear, therefore, that the statements of witnesses especially quoted by the United States' Case, who speak from past recollection only, are not in accordance with facts.

Destruction of "pups" due to raids.

Raids made upon the breeding rookeries may also be cited as a cause of death of young seals, and that such raids have been frequent is elsewhere shown. In respect to the destructive effect of raids upon the young seals, one of the witnesses cited by the United States may be quoted. Mr. I. M. Lenard says:—

United States'  
Case, Appendix,  
vol. ii, p. 217.

"When on a raid we would watch for a favourable opportunity to make a landing, and then kill male and female fur-seals indiscriminately. Probably for every 500 marketable skins secured, double that number of pups were destroyed."

From the year 1884 onward, it is maintained in the Case of the United States that the number of dead pups became considerable, and increased annually; but three witnesses only are specially cited in support of this contention, Messrs. Morgan, Loud, and Hereford. Nothing on this matter seems to be found in the annual reports of the Government officials on the islands in these years, though it must be admitted to have been important to the interests which these agents were there to guard. The affidavits of these gentlemen, speaking to the precise numbers of dead pups in a long series of years, and making out that these tally exactly with the numbers of females taken by the pelagic hunters, are all dated in April, 1892.

Mr. Morgan's evidence is, however, very imperfectly quoted in the United States' Case. He says:—

"For instance, during the period of my residence on St. George Island [beginning in 1874], down to the year 1884, there were always a number of dead pups, the number of which I cannot give exactly, as it varied from year to year, and was dependent upon accidents or the destructiveness of storms. . . . But from the year 1884 down to the period when I left St. George Island [in 1887] there was a marked increase in the number of dead pup seals, amounting, perhaps, to a trebling of the numbers observed in former years, so that I would estimate the number of dead pups in the year 1887 at about 5,000 or 7,000 as a maximum."

He then proceeds to argue that the increased number of dead pups resulted from pelagic sealing.

Mr. Loud was on the islands each year from 1885 to 1889. He speaks of seeing dead pups in all these years, and believes the mortality to have occurred in consequence of pelagic sealing.

Dr. Hereford has been stationed on the islands at various times from 1880 to 1891. He says:—

"The loss of life of pup seals on the rookeries up to 1884 or 1885 was comparatively slight, and was generally attributed to the death of the mother seal from natural causes (or from their natural enemies in the water, or, as sometimes happened, sudden storms with heavy surfs, rolling in from certain directions on the breeding rookeries, but never at any time would a sufficient number of pups be killed to make it a subject of special comment, either among the natives or the employés of the Company). Coincident with the increase of hunting seals in the sea, there was an increase in the death-rate of pup seals on the rookeries," &c.

Evidence cited by the United States to show progressive increase of death of "pups" with development of pelagic sealing, wholly retrospective.

United States' Case, pp. 213, 214.

The quotations of evidence referred to are moreover imperfect. Ibid., Appendix, vol. ii, p. 64.

United States' Case, p. 214.

But contention held does not accord with the date of sealing in Behring Sea.

British Commissioners' Report, paras. 67, 588, 589, 590.

If correct, the contention shows that the observed deaths resulted from acts on the Pribyloff Islands.

Ibid., paras. 684, 685, &c., and para. 714.

The fundamental assumptions of the contention held by the United States are not proven.

It is not known that breeding females go to sea for food while the young are dependent on them.

The portion of this statement here placed in parentheses is omitted from the citation as given in the Case of the United States.

If, then, the recollection of these three gentlemen of circumstances which passed unrecorded at the time of their occurrence, both by themselves and all other officials on the islands in these years, be accepted as substantially in accordance with the facts, we find that an increasing number of dead pups occurred each year since about 1884. In the Case of the United States, it is claimed that this took place concurrently with increased sealing in Behring Sea and in consequence of the death of suckling female seals. But in 1884 only one Canadian sealing-schooner is known to have entered Behring Sea, and in 1885 but two schooners, and it was not till 1886 that as many as sixteen vessels entered the sea, and the number of seals taken there became large.

There is, therefore, important absence of correspondence between the date above fixed for the first excessive death of pups as asserted, and that at which the operations of sealers in Behring Sea can possibly be supposed to have exercised any perceptible effect. It will be found, on the other hand, on turning to the chapters of this Counter-Case dealing with the management of the islands themselves, that, following the expansion of the area of driving initiated in 1879, the operations of the Company in the efforts to secure their "quota" of skins were pressing with annually increasing severity on the seals there throughout these very years; and it may well be asked whether just such results might not naturally be expected to follow from such excessive and repeated driving of the seals.

It must be borne in mind that the possible connection between the death of young seals on shore and the supposed killing of their mothers at sea, necessarily depends upon several circumstances which have not hitherto been adequately investigated.

It is, for instance, not known that the mother seals actually go to sea for food during all that part of the early life of the pup in which it is

absolutely dependent on the mother. But if this be assumed, it has, further, not been shown that at this season the nursing females go to such a distance from the shores as to be taken in any considerable numbers by sea-sealers — always excluding the illegitimate killing by raiders close along the rookery fronts. Some further reference will be made to these disputed points; but, in the first place, the actual circumstances bearing on the death of young seals in 1891, in connection with which the claim now made by the United States arose, may be shortly noted.

Particular attention was given to this subject by the British Commissioners during their visits to the Pribyloff Islands in July, August, and September 1891; for though, as above stated, it had escaped the notice of those in charge of the islands till their attention was directed to it, it appeared to the Commissioners to be a matter of importance. The result of their investigation is given at some length in their Report, which must be consulted for details. In summing up the facts, they write:—

"The death of so many young seals on the islands in 1891 was wholly exceptional and unprecedented, and it occurred in the very season during which, in accordance with the *modus vivendi*, every effort was being made to drive all pelagic sealers from Behring Sea. Those familiar with the islands were evidently puzzled and surprised when their attention was first drawn to it, and were for some time in doubt as to what cause it might be attributed. . . .

"The mortality was at first entirely local, and though later a certain number of dead pups were found on various rookeries examined, nothing of a character comparable with that on Tolstoi rookery was discovered."

The Commissioners then show, by reference to dates in detail, that the excessive mortality, when first observed, had occurred at a time too early in the summer to be explained by the killing of mothers at sea; and point out that, although further deaths of young occurred at later dates, there appeared every reason to believe that the whole resulted from some one cause, which had extended from the original localities, and had become more general.

The Commissioners do not regard the available evidence as sufficient to enable them definitely to determine the cause of the mortality in 1891, but suggest the following as among probable causes:—

Actual circumstances of the mortality of "pups" in 1891.

British Commissioners' Report, paras. 83, 341-343.

Ibid., para. 355.

Shown to be incompatible with the theory advanced in the United States' Case.

Ibid., para. 356.

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(a.) Disturbances connected with the collection of "drives," in which nursing females were included, which animals, though eventually spared, did not succeed in rejoining their young.

(b.) Disease of an epidemic character.

(c.) Stampedes and over-running of the young.

(d.) Raids upon the rookeries specially affected.

British Commissioners' Report, para. 346 *et seq.*

The circumstance that the mortality observed in 1891 was confined to St. Paul Island, and was not found on the neighbouring Island of St. George, is in itself sufficient to indicate that it cannot be attributed to the killing of seals at sea. All the witnesses cited in the United States' Case in respect to the mortality in this year speak of its occurrence on St. Paul Island only.

Absolute confirmation of the view that the death of pups in 1891, cannot be attributed to the killing of mothers at sea, has been obtained from the experience of the year 1892. There is complete information as to the number of vessels engaged in pelagic sealing in Behring Sea during the season of 1892. The statements of sealers set out in the Appendix, the statement of Captain Parr, the Senior British Naval Officer, detailed to patrol Behring Sea, and the careful watch kept by the United States' ships "Mohican," "Yorktown," "Adams," "Ranger," "Rush," and "Corwin," and Her Majesty's ships "Melpomene," and "Daphne," established that not more than 500 seals were killed in Behring Sea during 1892. Therefore, no exceptional mortality among pups could have arisen from the killing of nursing females. It is, however, undoubted that more dead pups were seen on the islands in 1892 than in 1891. It was, further, again noticed that the excessive mortality was as before confined to St. Paul Island. Attention to Mr. Macoun's Report on this matter is respectfully invited.

Appendix, vol. i, p. 146.

A considerable body of evidence is cited in the Case of the United States, to support the statement that the nursing females regularly and frequently go long distances to sea in search of food; and in recurring to this evidence on another page, it is so mentioned as to convey the impression that the females leave the rookeries for this purpose almost immediately after the birth of the young, or, in other words, almost immediately after

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Recurrence of mortality in 1892, when practically no seals were killed in Behring Sea, proves absolutely that the killing of females at sea cannot be accountable.

Character of evidence adduced by the United States to show that breeding females go far to sea for food.

United States' Case, pp. 115-119. *Ibid.*, p. 209.

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their arrival there; though all previous observations, together with many of the statements now cited in the United States' Case itself, show that the females do not seek the water for any purpose till some time after giving birth.

The United States' Commissioners in their Report content themselves with making the following affirmation on this subject:—

"Cows when nursing regularly travel long distances to feed. They are frequently found 100 or 150 miles from the islands, and sometimes at greater distances."

Professor J. A. Allen, in his specially prepared Report, merely says:—

"It is further *well known* that the mother seals leave the islands at frequent intervals and proceed far out to sea in search of food," and "in Behring Sea they [the female seals] make long excursions for food."

Neither the United States' Commissioners nor Professor Allen have referred to the facts upon which they have reached these conclusions. The whole of the affidavits specially referred to in the Case of the United States on this subject, except two, bear dates subsequent to that at which the Report of the United States' Commissioners was completed, viz., 15th April, 1892; and of these two exceptional affidavits, one, that of Dr. H. H. McIntyre, speaks only of young (non-bearing) females going to feed. Professor Allen has not cited the facts which have led him to assume a new position, though in his former writings he is found to be fully committed to the statement that the female seals do not feed during the season in which they resort to the breeding-islands.

The habit of prolonged abstinence at the breeding season is well known to be normal among the *Pinnipedia* as a whole; and notwithstanding the number of years over which the habits of seals have been observed, there is no record of food being found in the stomachs of females when killed upon the islands, or any facts that justify the statement that nursing females leave the islands on feeding excursions.

Writing particularly of the eared-seals (or fur-seals and sea-lions), Professor Allen says:—

"One of the most striking features in their history is that at this period [that of reproduction], *both sexes* pass weeks, and even months, without food, or without

British Commissioners' Report, para. 306.  
Elliott's Census Report, p. 39, &c.

The United States Commissioners and Professor Allen adduce no facts.

United States' Case, p. 329.

*Ibid.*, Appendix, vol. i, pp. 409, 410.

The affidavits are subsequent in date to the Report of United States' Commissioners.

The abstinence from food of pinnipeds at the breeding season is generally recognized.

Professor Allen on this subject.

Bull. Mus. Comp. Zool., vol. ii, No. 1, p. 37.

Further  
Allen

often visiting the water. Arriving at the breeding-grounds exceedingly fat and unwieldy, they seem to be sustained by the fat of their bodies, they finally leave at the end of the breeding season greatly emaciated.

"A similar fact has been long known in respect to the walrus, whose period of fasting, however, seems to be shorter than that of the eared-seals."

In his Monograph of 1880, Professor Allen writes on the same subject:—

"Monograph of North American Pinnipeds," p. 227

"The males, during the breeding season, remain wholly on land, and they will suffer death rather than leave their chosen spot. They thus sustain, for a period of several weeks, an uninterrupted fast. They arrive at the breeding stations fat and vigorous, and leave them weak and emaciated, having been nourished through their long period of fasting wholly by the fat of their own bodies. The females remain uninterruptedly on land for a much shorter period, but for a considerable time after their arrival do not leave the harems."

Captain Bryant.

Referring particularly to the North Pacific fur-seal, Captain Bryant, who is responsible for that part of Professor Allen's work on the eared-seals which treats of the habits of this animal, notes the result of his careful investigation of the statement made by the natives, that the seals do not eat while resorting to the islands. He refers particularly to the males, but adds:—

Bull. Mus. Comp. Zool., vol. ii, No. 1, pp. 101, 102.

"The same was true of the few nursing females killed for dissection."

He further draws particular attention to the absence of all excrement upon the rookery grounds.

Professor Allen himself, in an explanatory note to the passages just referred to, in confirmation of Bryant's statement, writes thus:—

"Steller states that, in the numerous specimens he dissected he always found the stomachs empty, and remarks that they take no food during the several weeks they remain on land. Mr. Dall confirms the same statement in respect to the present species, and Captains Cook, Weddell, and others, who have had opportunities for observing the different southern species, affirm the same fact in regard to the latter. Lord Shulldham long since stated that the walrus had the same habit; though its annual fast seems somewhat shorter than those of the eared-seals.

"This singular phenomenon of a protracted annual fast during the period of parturition and the nursing of the young—the season when most mammals require

States. Commissioner Allen adduce no

are subsequent in the Report of United Commissioners.

from food of pinnipeds during the breeding season is cognized.

Allen on this subject.

the most ample sustenance—seems not wholly confined to the walruses and eared-seals. So far as known, however, it is limited to the pinnipeds; and, excepting in the case of a single member, the sea elephant (*Mærorhinus elephantinus*), to the two above-named families. By some of the old writers the sea-elephant was said to feed sparingly, at this time, on the grasses and seaweeds that grew in the vicinity of its breeding-places, but the weight of the evidence in respect to this point seems to indicate that this species fasts similarly to the eared-seals and walruses, during the period it resorts to the land to bring forth its young.

"It may be that other species of the earless seals undergo similar fasts, but if so, I have as yet seen no record of the fact."

Captain Bryant, in his contribution on the habits of the fur-seal, which is incorporated in Professor Allen's later-dated Monograph, does not repeat the observations recorded in his former treatise, but refers to them, and, in regard to the particular subject now in question, clearly shows that he maintained the same position as before. Writing, for instance, of the female fur-seal as follows:—

"From that time [*i.e.*, that of impregnation] she lies either sleeping near her young or spends her time floating or playing in the water near the shore, returning occasionally to suckle her pup.

"The females, after giving birth to their young, temporarily repair again to the water, and are thus never all on shore at once, so that by the end of the season there will be twice as many young seals on shore as females."

"Monograph of North American Pinnipeds," p. 386.

The British Commissioners, as the result of their investigation of this subject, sum up their conclusions in these words:—

Conclusions of the British Commissioners on the subject.

"It appears to be certain that the mature males doing duty on the breeding rookeries do not feed at all during the breeding season, and that for some time, at least several weeks, after landing, the breeding females do not leave the rookery-grounds in search of food. There is no apparent reason why the 'holluschickie,' or young males, should not go to sea in quest of fish. Singularly enough, however, though animals of this class have been killed by hundreds of thousands upon the breeding islands under all conceivable conditions of weather, and often within less than an hour of their deportation from their hauling-grounds, the almost universal testimony is to the effect that their stomachs are invariably found to be free from food."

British Commissioners' Report, para. 232.

If female does

Evidence

British Commissioners' Report,  
para. 233-235.  
Observations made by them.

The Commissioners then detail such observations as they were themselves able to make, including the examination of the stomachs of 108 young males (Pribyloff Island), one old male, and two females (Behring Island). The old male and the females last mentioned were driven up directly from the rookery, but 200 yards distant, and at once killed, but no trace of food was found in the stomachs.

Absence of all excrement on the breeding-places.

The complete absence of excrement on the rookeries, already referred to in a quotation from Captain Bryant, was specially noted by the British Commissioners, who say:—

Ibid., para. 243.

"It is to the absence of such matter alone that the continuous herding together on one spot for some months of so many thousand animals is on sanitary grounds rendered possible. It became obvious that so soon as the seals commence again to feed, it must be absolutely necessary for them to abandon their crowded quarters on shore. The evidence this afforded, that the females do not feed to any notable extent till the young are practically weaned, or, at all events, until very late in the suckling season, is perhaps more definite than that given in any other way."

They add:—

Ibid., para. 308.

"It appears to us to be quite probable, however, that toward the close of the season of suckling, the female seals may actually begin to spend a considerable portion of their time at sea in search of food."

Analogy of the hair-seal.

In the case of the hair-seal, experienced sealers point out that there is no excrement whatever on the ice resorted to by hood-seals and floe-rats, both of which species abstain altogether from feeding whilst on the ice; but that the ice to which the harp-seal resorts is covered with dung, and the harp-seal is known to feed throughout the season.

Ibid., paras. 307,  
308, 649.

It will thus be noted that, while presenting the available evidence on the subject, the British Commissioners did not feel themselves to be warranted in making a perfectly definite statement on it either in one sense or in the other. They, however, state their belief that if the females feed while suckling it cannot be till towards the close of the breeding season, and probably not to any notable extent till after the middle of September, at which date pelagic sealing in Behring Sea becomes practically impossible, because of boisterous weather.

If females go to sea for food, this does not happen till the autumn.

The British Commissioners endeavoured to obtain and compare as impartially as possible the

Evidence collected by British Commissioners.

statements of all those who had any familiarity with seal life, as to the actual distances to which seals supposed to be engaged in feeding might go from the breeding islands. They found, in the first place, that the natives generally, both of the Pribyloff and Commander Islands, believed that the female seals did not feed at all till the young had been weaned; while other authorities stated very varied distances for the length of supposed feeding excursions, taking for granted in many cases that the mere presence of seals at sea during the breeding season, showed that the animals so seen had come away from the breeding-islands in search of food. All available opinions up to the date at which their Report was written are included in it, and serve to show the actual information at that time.

British Commissioners' Report, para. 307.

Ibid., paras. 309-312.

Breeding seals do not go far from the rookeries for any purpose.

The British Commissioners then explain the result of their own observations in 1891, which show that the seals are always to be found in considerable numbers close along the rookery fronts, while comparatively few seals are seen as much as half-a-mile from the rookeries, and that at a distance of, say, 4 miles to seaward of these places, it would be difficult for any observer to say by appearances at sea alone where a rookery-ground existed. They then write to the following effect:—

"It is, however, certain, from statements obtained that females in milk are occasionally killed at sea by pelagic sealers, and though it is possible that there are females which have deserted the islands in consequence of having been driven up to the killing-grounds with the holluschickie, or because of some other cause of disturbance, such as the death of their young, it is highly probable that in the later summer and autumn the distance to which the females go from the breeding-place becomes gradually increased. It is, nevertheless, scarcely credible that, under any circumstances, the females engaged in feeding their young can navigate to great distances from the islands on erratic courses, and subsequently return punctually and without fail to their rookeries; and any assumption made on this basis must be regarded as requiring proof of a character very different to that so far advanced by those holding such a belief."

Ibid., para. 314.

In examining the evidence on this subject which is specially relied upon and is referred to in the Case of the United States, in support of the theory that the death of young seals on the islands is due to the killing of the mothers at sea, it will be noticed that several of the witnesses

See particularly United States' Case, pp. 117, 118.

Statements in the United States' Case respecting females in milk killed at sea.

speak merely of having killed occasional seals in milk at long distances from the Pribyloff Islands, while in other cases it is taken for granted that any seals seen in Behring Sea during the breeding season must be females cruising from the islands in search of food. Several witnesses affirm that large numbers of breeding females in milk are taken at long distances from the islands. But such females, it may well be assumed, are but strays, driven from the islands by the constant disturbances there, or which have deserted them because of the death of their young; though in the autumn it is also possible that some cows whose pups are already practically or entirely weaned, may eventually travel to considerable distances, and possibly with no intention of returning to the islands.

Some explanation of this kind must be found to account for the killing of a few seals in milk, late in August, in and about the passes of the Aleutian Islands, referred to by several witnesses cited by the United States. In the evidence of sealers contained in the Appendix to this Counter-Case, Messrs. W. Shields and J. Brown state that they have killed females in milk, in different years, off Kadiak Island. E. Lorenz and G. C. Errow have similarly found females in milk in several years. In none of the above cases can the females so killed be supposed to have left suckling young upon the Pribyloff Islands.

Further evidence to the same effect is given by other witnesses, who state that though some seals in milk were taken by them in Behring Sea, those got after the end of July showed only traces of milk; and this, in such a manner as to prove that they were running dry, either because the young had already been naturally weaned, or in consequence of the loss of their young, or abandonment of the breeding-grounds.

It will be remembered that the evidence is such as to show that, if any class of seals go systematically in search of food during the breeding season, this can only be the females. But from the facts obtained respecting the abundance of fish in the immediate vicinity of the breeding-islands, it appears to be certain that these are not preyed upon to any great extent by the masses of seals frequenting the shores.

The British Commissioners report that such fish as cod and halibut are taken by the natives at distances varying from 1 to 3 miles from the

Females in milk taken where no connection can be assumed with Pribyloff Islands.

United States' Case, Appendix, vol. ii, pp. 321, 337, 348.

Appendix, vol. ii, pp. 49, 70, 73.

Females in milk taken after young are weaned.

Ibid., pp. 22, 23.

Fish abound near the breeding-places.

Appendix, vol. i, p. 138.

United States' females in milk



rookeries on St. Paul and St. George Islands, and add that when at anchor within less than half-a-mile off the largest rookery on Behring Island, cod and other fishes were caught in abundance at a depth of 6 to 7 fathoms.

British Commissioners' Report, para. 231.

Mr. Macoun, as the result of his observations in 1892, presents further evidence in detail, such as to show that fish abound in the immediate vicinity of both the Pribyloff and Commander Islands, and adds :—

"It is thus evident that should seals, whether males or females, require food during the time they resort to the islands (which has not been proved), it is to be had in abundance close to the rookeries,"

Appendix, vol. i, p. 139.

The facts above alluded to are, however, directly in contradiction of the statement found in the case of the United States, to the effect that fish are very scarce in the waters in the vicinity of the breeding-islands. This in effect is merely an unsupported and hypothetical assumption, and it is difficult to determine whether it is the basis of the further statement as to excursions of seals to great distances to feed, or is consequent on that statement.

Though otherwise stated in United States' Case.

United States' Case, p. 116.

With the facts in evidence, it is quite unreasonable to suppose that female or other seals seeking food go to great distances in this quest, while ample supplies might be obtained by them without this effort.

There is therefore no reason to suppose that seals, if looking for food, should go to great distances.

It is submitted from the facts contained in the foregoing chapter that it is established that any abnormal death of pups on the islands is not due to pelagic sealing; and that pelagic sealing is not an illegitimate, improper, or wasteful method of killing seals.

That the contention in the United States' Case that pelagic sealing is wholly destructive of the seal property, is without foundation; and that it is a legitimate development of the original method of taking seals practised by the Indians and other inhabitants of the coasts of America.

That the allegations respecting its injurious effect upon seal life are greatly exaggerated, and that any incident connected therewith, proved to be harmful, can be effectively dealt with by a scheme of general regulations.

## CHAPTER XII.

*Management of the Pribiloff Islands by Russia and  
by the United States.**Historical outline of Management.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 131—  
"Under the general protective system adopted by Russia for seal life and the restrictions added from time to time, the seal herd continued to increase, until the Managers of the Russian-American Company considered it possible and expedient to take 70,000 skins from St. Paul Island without danger of depleting the seal population."
- (2.) United States' Case, p. 74—  
"It was the fur industry more than all other considerations which decided the United States to pay the sum of 7,200,000 dollars required by Russia for the cession and transfer of her sovereign rights and property."
- (3.) United States' Case, p. 132—  
"When the United States came into possession of these islands by the cession of 1867, it was impossible immediately to formulate an administrative system for all portions of the territory then so little known and so distant from the seat of government. The year 1868 was one of *interregnum* in the Pribilof Islands."
- (4.) United States' Case, p. 132—  
"The following spring (1869) the Government Agent, Dr. H. H. McIntyre, and a revenue vessel, under command of Captain John A. Henriques, reached the islands, and immediately took precautions to protect the seal herd from molestation."
- (5.) United States' Case, p. 134—  
"Various recommendations and suggestions were made to the Congress of the United States in relation to this matter but after a thorough and careful examination of the various methods proposed the most expedient was found to be the leasing of the islands to a single, reliable Company, under the immediate supervision and control of Agents of the United States' Treasury Department duly appointed for that purpose."
- (6.) United States' Case, p. 153—  
"I do not see how it is possible to conduct the sealing process with greater care or judgment."
- (7.) United States' Case, p. 296—  
"That the present existence of the herd is due wholly to the care and protection exercised by the United States and by Russia."

## SUMMARY OF BRITISH REPLY.

A historical review of the management of the Pribiloff Islands by Russia, shows that till 1806 practically no care was exercised; that between 1806 and 1835 the number of seals generally diminished; that from about 1842 it

gradually increased, under an improved control; and that the rookeries were in excellent condition when Alaska was ceded to the United States in 1867.

During the years from 1820 to 1867, statistics show that the annual average number of seals killed did not exceed 45,000.

In 1868, the Russian control being withdrawn, an excessive slaughter of seals was permitted to occur, over 250,000 being killed. In 1869 and 1870, a partial but very incomplete control of the islands was established by the United States, and the number of seals killed in those years is only approximately known.

Though it was suggested by several competent authorities that the Government should assume sole control of the seal interests on the Pribyloff Islands, these interests were vested in a Commercial Company by lease in 1870.

Notwithstanding the experience gained in previous years, the number of seals permitted to be killed for skins annually on the islands was at the same time experimentally fixed at 100,000. The actual number killed exceeded this amount.

The "quota" thus established became in effect a fixed number, and was not reduced by the Government during the entire twenty years' term of lease of the Company, though repeatedly mentioned in official Reports as being too great.

The effects of this excessive killing can now be traced, in the condition of the seal rookeries, as recorded in the contemporaneous Reports of various years.

The restriction of killing on the islands to young males did not obviate the result of excessive killing; but, on the contrary, induced serious changes affecting the organization of the rookeries and vitality of the seals.

No regulations heretofore devised can render the killing of fur-seals upon their breeding-islands other than dangerous; and in the particular case of the Pribyloff Islands, the method of management has been imperfect in conception and execution.

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This subject divides itself naturally into two periods, viz., that of the Russian control and that of the subsequent control by the United States. It is quite apparent, from an examination of the history of the islands, and particularly from the collection and discussion of the known facts set out in the Report of the British Behring Sea Commissioners, that the evils which have arisen on the islands are largely attributable to the methods of management and control there employed, which have from the first been imperfect, not only in conception, but also and to even a greater degree in execution.

The immediate interest in these methods on the breeding-islands is obviously greatest in regard to the management by the United States, but important conclusions of fact may be deduced from a comparison of the two periods, that before and that after the cession of Alaska to the United States.

Russian and United States' management.

Statements in United States' Case relating to Russian management inaccurate.

United States' Case, p. 130.

British Commissioners' Report, paras. 30-41.

British Case, Appendix, vol. iii, "United States No. 2 (1891)," pp. 58-60.

Outline of the Russian régime.

British Commissioners' Report, p. 788.

Ibid., para. 780.  
Bauerfeld's "Alaska," p. 417.

In the Case of the United States, a brief statement is made respecting the management during the Russian régime, by which it is made to appear that, from the time at which the Russian-American Company was organized in 1799, an efficient control and system was adopted, under which the fur-seals resorting to the islands continuously increased throughout, and up to the date of the cession of Alaska to the United States. This contention is, however, very far from being in accord with the historical facts, which are generally well known, chiefly by means of the writings of the Russian chronicler, Veniaminov. These facts will be found in the form of a Summary in the Report of the British Behring Sea Commissioners.

It is considered to be unnecessary here to enter into any detailed criticism of the management of the Pribyloff Islands by the Russians, for which reference may be made to the authorities stated, as well as to Mr. Elliott's synopsis of the conditions contained in that part of his Report of 1890 which has been published, and which is printed in one of the Appendices to the British Case.

It is known that practically indiscriminate killing continued from the discovery of the islands in 1786 down to 1806, when the Russian Ambassador Resanof visited the islands, and learned that the seals had decreased 90 per cent. since the earlier years. He ordered the killing to stop for a time, but notwithstanding this and other precautionary measures, insufficient in themselves or imperfectly carried out, a continued decline in the number of seals took place until 1834 or 1835. From about 1842, an increase commenced, which (with possibly some brief periods of arrest or reversal) was generally maintained till the close of the Russian régime. It is further shown that the decrease depended largely upon the killing at certain times of great numbers of seals, and it is even asserted by Veniaminov that between 1801 and 1804 the Company had accumulated about 800,000 skins, many of which rotted for want of care, and were destroyed or thrown away.

In the earlier years, both males and females, as well as young, were killed; but even after the killing was directed chiefly to young males, the bad effect of killing these in excessive numbers was well known. Thus Mr. Yanovsky, reporting

on his inspection of the rookeries in 1820, remarks:—

“ . . . that every year the young bachelor seals are killed, and that only the cows, ‘sekatch,’ and half ‘sekatch’ are left to propagate the species; it follows that only the old seals are left, while, if any of the bachelors remain alive in the autumn, they are sure to be killed the next spring. The consequence is, that the number of seals obtained diminishes every year, and it is certain that the species will in time become extinct.

Revised translation, Appendix, vol. i, p. 21.

“ This view is confirmed by experience.”

Mr. Yanovsky then recommends that not more than 50,000 seals in all should be taken annually from the Pribyloff Islands; but the reduction in numbers of the seals which had already taken place did not permit even this number being taken in succeeding years.

In one important respect, however, the Russian management is found to contrast very favourably with that under the United States, *i.e.*, in the comparatively small number of seals actually killed. From the year 1817 accurate data on this subject are available, and for the whole period of the Russian control a fairly exact estimate of the average annual killing may be made from various sources. After a careful examination of the data, the British Commissioners write:—

Number of seals killed during Russian control comparatively moderate.

“ Combining the whole period covered by the figures above quoted, and adding the year in which the islands were discovered, we find that the killing on the Pribyloff Islands averaged for this term of eighty-one years about 34,000 annually.”

British Commissioners' Report, para. 30.

For the years subsequent to 1816 the actual numbers are given in tabular form, from which it appears that the average numbers killed from 1817 to 1837 fall from over 50,000 to less than 20,000. After the latter year the numbers taken remained under an annual average of 20,000 until the year 1856, when the average for ten years rose to 30,000. The high figure of 75,000 was quite exceptional, and was reached only in the last year (1867) of the Russian tenure, when, according to Captain Bryant, “ knowing the islands were to be surrendered to the United States, the Russians took all the seals they could.” It was fortunate that at this time the Russian methods of handling the skins did not enable them to take more.

Reason of excessive killing in last year of Russian control.

*Ibid.*, paras. 775-779.

Quoted by Allen in “ Monograph of North American Pinnipeds,” p. 389.

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United States' Case, p. 131.

The killing of 75,000 in the last year of the Russian tenure is, however, so referred to in the United States' Case as to appear to be a natural consequence of an increasing abundance of seals, and is apparently intended to lead up to the killing of 100,000 authorized soon after by the United States' Government.

An examination of diagram No. 5 in the Report of the British Commissioners will, however, show more distinctly than any mere reference to figures, the actual character and amount of killing during the greater part of the Russian régime.

Veniaminov, the chief authority on the condition of the Pribyloff Islands during the earlier years, characterizes the killing of about 100,000 seals on the islands, which occurred previous to 1799, as "horrible killing," and that of 50,000 seals, occurring about 1820, as excessive and leading to diminution; while the Board of Management of the Russian Company, following Mr. Yanovsky's Report in 1821, express the opinion that 40,000 might safely be taken on St. Paul and 10,000 on St. George, in conjunction with a period of total rest every fifth year.

Bryant, likewise, referring to the later years of the Russian régime before 1867, writes:—

Quoted by Allen in "Monograph of North American Pinnipeds," p. 389. "For many years they were able to kill only a small number, but the seals gradually increased, so that they killed as many as 40,000 in one year."

Mr. W. H. Dall, who visited the islands in 1868, may also be quoted to the same effect, as follows:—

"Alaska and its Resources," p. 496. "At first the fur-seal were killed in immense numbers by the Russians. At one time 300,000 skins were destroyed, in order that the market might not be overstocked. It was only when their numbers were very greatly diminished that the number annually killed was limited, and the other previously mentioned restrictions were imposed. Of late years not more than 50,000 fur-seal were allowed to be killed annually."

It is evident from the foregoing remarks that an annual killing for skins of about 50,000 seals upon the Pribyloff Islands was thought to be, as the result of experiences gained by the Russians, a safe maximum killing at times when the rookeries upon these islands were in excellent condition.

As a matter of fact, it appears that, under the Russian régime, for a period of eighty-one years, from the discovery of the islands to 1866, the average annual killing reached about 34,000 only.

Opinion of Russian authorities on number properly killable.

Elliott's Census Report, pp. 70, 140, 147.

Ibid., p. 147.

United States' Case, Appendix, vol. i, p. 58.

Other authorities on number killed during Russian régime.

Quoted by Allen in "Monograph of North American Pinnipeds," p. 389.

"Alaska and its Resources," p. 496.

50,000 annually, considered a safe maximum number.

British Commissioners' Report, para. 39.

Seals killed during period comparatively

Excessive killing in last Russian control.



In 1867, Russian America, now known as Alaska, was ceded by Russia to the United States and the Pribyloff Islands as a part of the territory passed into the control of the United States.

Though the Treaty of Cession was concluded as early as the 30th March, 1867, the Russian-American Company retained possession of the Pribyloff Islands throughout the summer or sealing season of that year. In the following year (1868) a number of private adventurers, chiefly from the United States, took possession of the islands and proceeded to carry out an altogether unprecedented slaughter of seals, in the entire absence of Government supervision, to the estimated number of 240,000 or 250,000 on the Island of St. Paul, and 30,000 or 35,000 on the Island of St. George.

It is contended in the Case of the United States that the value of the fur-seals, and especially that of the Pribyloff Islands as the breeding-places of this animal, was well known to the United States at the time of the acquisition of Alaska, and constituted a chief object in connection with the purchase of that territory. This assertion has been disproved by the facts quoted on a former page of this Counter-Case. Had such been the case, it is impossible to believe that the United States would so have neglected the protection of the breeding-islands.

The first effect of the "management" of the Pribyloff Islands by the United States must be conceded to have been most disastrous to seal life. The results of the extraordinary slaughter which then occurred are traced in the Report of the British Commissioners.

Sixteen months after the date of the Alaska Cession, an Act was passed by the United States' Congress, which, with other provisions, rendered it unlawful to kill certain fur-bearing animals (including the fur-seal) in Alaska; and in 1869 Government control of the Pribyloff Islands to a limited extent appears to have been attempted. Agents of the United States' Government were certainly upon the islands, but the actual number of seals killed is not known, the estimates made by various officials ranging from about 42,000 to about 150,000. Mr. H. W. Elliott in his Monograph gives the number killed as 87,000.

Cession of Alaska to United States  
in 1867.

Enormous slaughter resulting in  
1868.

British Commissioners' Report,  
para. 808.  
Elliott's Census  
Report, p. 28.  
"Monograph of  
North American  
Pinnipeds,"  
pp. 390, 398.  
Dall's "Alaska,"  
p. 497.

Value of Pribyloff Islands at first  
known in the United States.

United States'  
Case, pp. 74-77.  
See p. 71.

British Commissioners' Report,  
paras. 44, 809.

Partial but ineffective control estab-  
lished by the United States in  
1869. Number of seals killed un-  
known.

(Ibid., para. 809.  
United States'  
Senate, Ex. Doc.  
No. 32, 41st Cong.,  
2nd Sess.,  
pp. 24, 37.

United States'  
Census Report,  
p. 25.

About 500,000 seals killed in the years 1867-69.

Report to Secretary of War by General Jefferson C. Davis, August 20, 1870.

British Commissioners' Report, para. 878.

"Report on condition of Affairs in Alaska," p. 240.

The proposal to lease the Pribyloffs to a company condemned.

Mr. Washburne.

"Congressional Globe," 40th Cong., 3rd Sess., p. 341.

Mr. Fowler.

"Congressional Globe," Part II, 40th Cong., 3rd Sess., p. 1497. Sen., February 23, 1869.

Mr. F. N. Wicker.

House Mis. Doc. No. 11, 41st Cong., 2nd Sess., vol. i.

It is thus apparent that during the three years 1867, 1868, and 1869, over 400,000 seals were killed, and it is probable that, including the 30,000 or 35,000 killed on St. George Island, with other unrecorded killings, the actual number was nearer 500,000.

No supervision was exercised as to the kind of seals killed, and though there is reason to believe that, in consequence of the previous training of the Aleuts under the Russians, these were chiefly males, it is known that at least 40,000 females were included, in the single year 1868.

Mr. H. W. Elliott writes, concerning the management of the Pribyloff Islands previous to the control of the Alaska Commercial Company:—

"It was a disorderly medley of civil and military authority, and, as near as I can learn, reflects no special credit on any of the officers concerned on the part of the Government."

In 1870, the United States' Government decided to lease the right of killing seals upon the Pribyloff Islands to the highest responsible bidder; an Act of Congress was passed for this purpose, and a lease was accorded to the Alaska Commercial Company for a period of twenty years. The wisdom of the step thus taken was very seriously questioned in the United States at the time.

Mr. Washburne, in the House of Representatives, on the 13th January, 1869, in a debate on a Bill to provide territorial Government for Alaska, opposed section 7 on the plea that it would effect a monopoly of the seal fisheries in the interests of a few. Several Companies, he stated, were endeavouring for a "mere song" to obtain the exclusive right of carrying on these fisheries.

When in the month of February 1869, the proposed lease to the Alaska Commercial Company was before Congress, Mr. Fowler resisted the Bill as the first of the kind ever proposed in Congress, and stigmatized it as a most bold-faced monopoly and an infamous proposition, without a solitary reason in its favour.

Frank N. Wicker, United States' Special Treasury Agent (4th November, 1869), recommended the passage of a Bill authorising the Government to assume sole control of the seal fisheries of St. George and St. Paul Islands; to

remove all traders except the natives, who should be employed to kill seals at fair remuneration; and to appoint inspectors at liberal salaries to carry out restrictions imposed.

Dall, in his work on Alaska, suggests a method of dealing with the management of the islands in the event of a monopoly being considered inconsistent with the spirit of the United States' institutions. Secretary of the Treasury Boutwell in 1870 reported that the suggestion had been made to the Department in various forms that the islands should be leased to a Company. He believed the plan to be open to very grave objections, in that it created a monopoly in an industry important to the people of the United States. Such a monopoly, he stated, was opposed to the ideas of the people; while, as the expiration of the lease approached the inducements to protect the interests involved would diminish. He could not concur in the lease. He then suggested a method of Government control.

Professor Elliott says:—

"It will be remembered that at the time the question of leasing the islands was before Congress much opposition to the proposal was made on several grounds by two classes—one of which argued against a 'monopoly,' the other urging that the Government itself would realize more by taking the whole management of the business into its own hands."

He added, however, that as he was absent at the time of the discussion, and not knowing the arguments employed in it, he found himself at the time of writing, of opinion that the leasing of the islands to the highest bidder was the correct mode of dealing with them.

The lessees, in consequence of the late date at which they obtained their lease, did not enter into any full control of the Pribyloff Islands in 1870, and the number of seals killed in this year is again not known with certainty. The natives were allowed (as in the previous year) to kill seals not only for food, but also for the purpose of obtaining supplies by the sale of the skins. Captain Bryant, who was at the islands in this year, and General Davis, estimate that the natives thus killed 85,000 seals. An official return of seals killed of which the Government officers had actual cognizance (made up in 1871) shows a killing of 23,773, of which less than 10,000 skins in all were saved.

Dall's "Alaska and its Resources," p. 497.

Dw. Dall.

Ex. Doc. 109,  
41st Cong.,  
2nd Sess.

Mr. Boutwell.

Elliott, Census Report, p. 26.

Mr. Elliott.

No efficient control established in 1870, the first year of lease.

Bryant in "Monograph of North American Pinnacleds," pp. 391, 398.  
British Commissioners' Report, para. 810.  
H. R., Ex. Doc. 83, 44th Cong., 1st Sess. Elliott's Census Report, p. 70.

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Factor which should have guided the United States in establishing the number of seals to be killed by the Company.

British Commissioners' Report, para. 664.

After a full examination of the data respecting the condition of the Pribiloff Islands during the Russian tenure, the British Commissioners write:—

"From the experiences thus recorded, it appears to be very clearly shown that in the average of years the killing of 40,000 to 50,000 seals on St. Paul was more than this, the principal seal-bearing island, could stand, while that practised during the later years of the Russian control scarcely fell short of the figure at which all continued increase in number of seals would cease."

When therefore the Alaska Commercial Company was placed in possession of the Pribiloff Islands by the United States' Government, any examination of the Russian records would have shown it to be necessary, on the most ordinary prudential grounds, to limit the number of seals to be taken in accordance with former experience. Indeed, the extraordinary slaughter which had characterised the inception of the United States' control pointed very strongly to the necessity of restricting the killing to a very low number for several years following, and to a subsequent permission of a gradual increase, if the conditions actually existing from year to year should be found to warrant such increase.

No such safe policy was pursued. The number of skins to be taken annually was, on the contrary, arbitrarily and without sufficient data, and, as it was admitted at the time, experimentally, fixed at 100,000. While it is true that the Act of Congress reserved the right to the Secretary of the Treasury of reducing the number if found necessary, no reduction was in fact attempted during the continuance of the lease of the Alaska Commercial Company, or till the year 1890, though information was not wanting in some subsequent years, as to the deleterious change which had begun and was progressing upon the rookeries.

No such number of seals had been killed in any year under the Russian control since 1806. The character of the new and unprecedented draft which thus began upon seal life is very clearly shown by diagram No. 5 in the Report of the British Commissioners.

It is further to be noted that the number fixed by law applied to marketable skins only, while the actual number of seals killed exceeded

These were not considered, but a "quota" more than double that before taken was fixed on.

Ibid., paras. 47, 809, 810, 815.  
United States' Senate, Ex. Doc. 32, 41st Cong., 2nd Sess., Dull's "Alaska," pp. 496, 497.

Contrast with Russian killing.

The quota applied to marketable skins; many more seals were killed.

100,000 in every year, save three, of the Alaska Commercial Company's lease, and in some years very considerably exceeded this number. Thus, during the period of this lease, not less than 129,530 seals (consisting for the larger part of unweaned young) are shown by the official figures to have been killed for food or other purposes, of which the skins were not marketable. This alone, and without counting other causes of loss (which will be subsequently referred to) incident to the methods practised, amounts to a waste of over 7 per cent. on the whole number of skins secured.

The effect of the excessive rate of killing thus initiated and allowed to continue on the islands and the changes which it produced on the organization of the breeding rookeries, all of a nature deleterious to seal life—and resulting in the main in almost continuous decrease in total number of seals from the first years of the United States' control—are referred to in some detail by the British Commissioners. In tracing this effect reliance is chiefly placed on the official Reports made from time to time to the United States Government, but the evidence thus afforded is fully confirmed by personal inquiries and information subsequently obtained.

While the contemporaneous official Reports are not in all respects so full and explicit as could be desired, it is submitted that they now form the best available evidence, and are for all purposes superior in authenticity to the retrospective statements which appear to be almost exclusively depended upon in the Case presented by the United States' Government, in regard to the questions here at issue.

It is not maintained on the part of Great Britain that the operations of pelagic sealers have been without effect on the total volume of seal life in the North Pacific; but, on the contrary, it is admitted that this has in late years, though in a minor degree, contributed to produce the general decrease in numbers which is pointed out as having occurred, in the Joint Report of the British and United States' Commissioners.

It is, however, maintained that the available evidence is amply sufficient to show that this decrease began and had already attained a cumulative character, long before the development of pelagic sealing had reached such proportions as to render it of importance in this connection. It is

Waste shown by official figures to be over 7 per cent.

British Commissioners' Report, paras. 49, 50.

How the effects of the policy initiated may be traced.

See particularly British Commissioners' Report, paras. 47-59, 662-703, 811-832.

The excessive killing mainly responsible for decrease on the islands.

Injury to seal life on the islands soon became apparent, but the "quota" remained fixed.

Notes in the States

further maintained that, even after the general decrease had gone so far that it could no longer be ignored upon the Pribyloff Islands, the number of seals permitted to be killed there by the United States' Government had practically become a *fixed number*, which was not reduced even to correspond with the evident requirements of the case. The imperfect and wasteful methods employed were not amended, and even the (now admittedly) useless slaughter of unweaned young seals was allowed to continue unchecked till the year 1891.

Referring particularly to the historical aspects of this question of the management on the Pribyloff Islands by the United States, and without repeating the details or citations of authorities to be found in the Report of the British Commissioners, the following chronological notes on this subject may be given, in evidence of the continued decadence of seal life under the management of the United States:—

British Commissioners' Report, pars. 809 *et seq*

1869.—Immediately after the excessive and irregular slaughter of 1868, seals are reported to have disappeared rapidly from the Pribyloff Islands (Bancroft, vol. xxxiii, p. 638), and coincidentally seals were observed in unusual numbers on the coasts of Oregon, Washington Territory, and British Columbia.—(Bryant.)

1872.—The number of virile males not actually upon the breeding-grounds, was observed to be decreasing, while that of females was increasing.—(Bryant.)

1873.—The number of virile males was reduced to half what it had been before, while the females were still increasing, and the size of the "harems" was likewise increasing, with other grave changes in habits.—(Bryant.)

1874.—Lieutenant Maynard speaks doubtfully of the effect of killing the large legal quota of seals, which he says is "entirely experimental." He notes the small number of bulls in proportion to cows.

1875.—It was in this year first officially reported that the killing of 100,000 young males annually did not leave a sufficient number to mature in proportion to the females. The useless killing of pups was also protested against.—(Bryant.)

1876.—The decrease in fully matured males resulting from the slaughter of young males in 1868 and 1869 was in this year greatest. It was again reported that the number fixed for killing was too high.—(Bryant.)

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Notes indicating the decadence of the seal rookeries under United States' management.

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- 1879.—In this year it became necessary to extend the area of "driving" to include rookeries which had not before been drawn upon, in order to obtain the quota of skins.
- 1880.—Colonel J. Murray dates the beginning of a steady decrease in numbers from this year.
- 1881.—The killing of pups for food alone, was again strongly protested against.—(Elliott.)
- 1882.—The required number of large skins could no longer be obtained in this year.—(McIntyre.) The same gentleman places the beginning of decrease in this year. A decrease in the number of "killables" on St. George Island was noted.—(Wardman.)
- 1885.—No increase in seals between 1882 or 1883 and this year.—(Moulton, Gliddon.)
- 1886-87.—The standard weight of skins was lowered in these years in order to allow the Company to make up its quota by killing smaller animals.
- 1888.—McIntyre states that the number of seals had decreased since 1882, that the rookeries did not produce enough to bear the killing of "100,000 by marauders in addition to the 100,000 killed lawfully." He again recommends that the killing of pups should be stopped, and notes that there were too few bull seals on the rookeries. He adds that the size of skins ruled still smaller than in 1883. The standard weight was actually lowered from 6 lbs. to 4½ lbs., so as to enable all seals down to 2-year-olds to be taken.
- 1889.—The standard weight of skins was still further lowered, for the purpose of allowing the number of 100,000 to be taken. Some 40,000 very small skins were included, many being those of yearling seals.

A scarcity of full-grown virile males in proportion to females was evidenced by the large number of barren females in 1890.—(Elliott.)

- 1890.—Finding that it would be impossible to secure the legal quota of male seals in this year, the Government Agent (Goff), for the first time in the history of the islands under the United States, took the responsibility of stopping the killing when only 20,995 skins had been secured. He speaks of the "indiscriminate slaughter upon the islands, regardless of the future life of the breeding rookeries," and the "unequal distribution of ages and sexes" as among the chief causes of the decline. In the same year Agent Murray states that after several meetings and full discussion the natives unanimously declared that the decrease was due to the killing of too many male seals. He affirms this belief also from his own experience. Agent Lavender registers his opinion to the same effect. Agent Nettleton coincides with Goff's conclusions. Special Agent Elliott also particularly refers to the scarcity of virile males, and adds, "that result began, it now seems clear, to set in from the beginning, twenty years ago, under the present system."

British Case, Appendix, vol. iii, "United States" No. 2 (1891), pp. 16, 17.

Ibid., p. 19.

Ibid., p. 21.

Ibid., p. 48.

Ibid., p. 57.

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The above notes, based as far as possible on observed facts only, serve to indicate the general tendency of affairs connected with seal life on the islands under the management of the United States, and to bear out the conclusion that the number originally fixed for killing and retained as the legal quota till the year 1890 was throughout too high, and had thus from the first been a leading cause of decrease of a cumulative nature.

It will be observed, that none of the above-cited protests or warnings as to the excessive number of seals killed, or even those respecting the wasteful killing of suckling pups for food, appear to have received attention from the Government, which, on the other hand, appear to have relied on such general statements of continued increase and excellent state of the breeding rookeries as were freely supplied, often in the text of the same Reports from which the above extracts are made, to a date as late as 1888.

It will further be observed that, when the diminution in the number of seals on or about the Pribyloff Islands could no longer be denied, the complaints made by the agents and lessees were of lack of killable male seals; that the lowering of the standard weight of skins was permitted from year to year in order to allow younger and yet younger classes of males to be killed; and thus, that instead of adopting measures to check the decrease, the Government through its agents actually facilitated the perpetuation and annual growth of the evil complained of.

Appendix, vol. ii,  
p. 256.

The Tables given in the Appendix to this Counter-Case, including, as they do, practically the entire number of skins obtained from the Pribyloff Islands since 1873, conclusively substantiate the remarks above made, and prove the gradual decadence in the condition of the rookeries from that date, by showing that the average size of the skins obtained has been in the main steadily diminishing.

In order to fully explain the nature and effects of the management of the Pribyloff Islands under the United States' régime, some of the points above alluded to must, however, be considered in greater detail.

It is, in the first place, quite apparent, that the natural conditions of seal life were, from the very beginning of commercial killing by man, interfered with, and that the balance established by nature

Warnings as to wasteful killing dis-  
regarded.

Standard size of skins lowered to  
enable quota to be filled.

The excessive killing changed the  
natural condition of the rookeries.

being thus disturbed, various concurrent changes affecting seal life necessarily followed. It is further seen, from the historical notes which are available, that such disturbance becomes more and more serious and far-reaching in its effects, in correspondence with the yearly increasing extent of interference with the natural conditions. If the killing of the fur-seals while on land had been so regulated that a proportionate number of males and females were taken, leaving unaffected the natural ratio between the sexes, the whole number would doubtless have been reduced, but the favourable conditions of nature would not have been otherwise affected. When, however, the killing was directed solely to one sex, the occurrence of very grave changes became inevitable. The British Commissioners write:—

British Commissioners' Report, para. 35.

Changes aggravated by the restriction of killing to males.

"Such changes are not prevented by the restriction of killing to males, for an excess in number of males is a part of the natural conditions; and any change in the proportion of males, even if not pushed so far as to become in itself a cause of decrease in numbers born, constitutes a true cause of change in habits, and has a very special effect on the time and place of landing of the females . . . . An excess in number of males, with the consequent competition for females, must, in all probability, further be regarded as a provision for maintaining the strength of the race as a whole by means of natural selection, and in the case of the fur-seal it is not possible to substitute for such provision the artificial selection of breeding males, as is done with animals under the control of man."

Ibid., para. 46.

This interfered with natural process of selection of breeding males.

The particular point last alluded to in the above extract is also very well taken by Count Tommaso Salvatori, who, in his reply to a "Circular Letter," by Dr. C. H. Merriam, elsewhere referred to, writes:—

"But, at the same time, I think that the yearly killing of about 100,000 young males on the Pribilof Islands must have some influence on the diminution of the herds, especially preventing the natural or sexual selection of the stronger males, which would follow, if the young males were not killed in such a great number."

United States' Case, Appendix, vol. i, p. 123.

Further, it must be borne in mind that, though large numbers of seals not actually engaged in breeding resort to the breeding-islands, the true reason of the coming to land of the fur-seals for a certain portion of each year, is the necessity imposed on the females so to do for the purpose of giving birth to their young. It is at this particular season that most wild animals are by

civilized peoples granted a period of respite from disturbance and slaughter, and though in this instance it has been exceptionally held, as a theory, that the non-breeding young males can be secured and killed without disturbing the actually breeding seals, this is not in fact the case.

Isolation and quiet are the ruling cause of the resort of the seals to these particular islands. This is sufficiently plain from an examination of the circumstances in the North Pacific, and it is unnecessary to go further afield in search of climatic or physical conditions of a peculiar kind. The known facts respecting seal rookeries in other parts of the world may, however, be referred to as affording confirmatory evidence to the same effect.

The British Commissioners write as follows on this subject:--

British Commissioners' Report, para. 76

"It is thus clear that the slaughter of seals upon the breeding islands is in itself an essentially critical and dangerous method of killing, which, though established by long custom, cannot be otherwise justified. No regulations which have heretofore been devised have even theoretically removed such dangers."

Ibid., para. 35.

The fact that the Pribyloff Islands are now permanently inhabited by man, apart from the more specific disturbance of the breeding-places which results from the methods of taking the seals, must in itself be regarded as an anomaly. The smoke and movement incident to habitation of the islands, and the odour of the many thousand putrid carcasses upon the various killing-grounds, must have a disturbing effect upon the seals.

It remains to be noted, in connection with the question of the management of the Pribyloff Islands, that expressions to be found in the writings of various authors, referring in terms of approval to the methods of management, are based, probably in every instance, on the statements contained in the earlier works of Mr. H. W. Elliott. Through these alone has any general account of the Pribyloff Islands obtained wide publicity. Mr. Elliott has, in fact, been accepted as the chief authority on seal life in the North Pacific. Commemorative expressions of the kind above alluded to are cited in the Case of the United States, but Mr. Elliott's works are no

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longer referred to on any point, nor has his latest Report, resulting from his special investigations on the Pribyloff Islands in 1890, been published by the United States. Such portions of this Report as the author has himself made public show that he has found reason to change his former opinions as to the propriety of the methods employed on the islands.

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## CHAPTER XIII.

*Management of the Pribiloff Islands by Russia and  
by the United States—(continued).**Excessive killing of Male Seals.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 153—  
"The number of seals allowed to be killed annually by the lessees was, from 1871 to 1889 inclusive, 100,000, but this number is variable, and entirely within the control of the Treasury Department of the United States. In 1889, Charles J. Goff, then the Government Agent on the islands, reported to the Department that he considered it necessary to reduce the quota of skins to be taken in 1890."
- (2.) United States' Case, p. 154—  
"The killing of a portion of the surplus male life is undoubtedly a benefit to the herd, as it is with other domestic and polygamous animals. For it has always been found that such an act increases the number of the progeny. The American Commissioners also demonstrate by the diagrams attached to their report, which are explained in the body of the document, that a large portion of the young male seals can be killed without reducing or affecting the normal birth-rate."
- (3.) United States' Case, p. 172—  
"Nor was this marked decrease chargeable to the fact that there were not sufficient males to serve the females resorting to the islands."
- (4.) United States' Case, p. 174—  
"It has also been shown that the decrease in the seals took place primarily among the female portion of the herd."

## SUMMARY OF BRITISH REPLY.

Though several causes have contributed to the reduction in number of fur-seals on the Pribiloff Islands, the scarcity of virile males, due to the continued and excessive killing of male seals there, is one of the most important of such causes; and, with other results of mode of management, mainly accounts for the observed decrease.

The contention, now for the first time advanced, that the scarcity of seals on the Pribiloff Islands is chiefly in respect to females, and that there has been no want of virile males, is contradicted by the published Reports of the officers of the United States on the islands.

The retrospective statements of the few witnesses, quoted to support this new position, are in several cases directly negatived by previous official Reports of the same gentlemen.



Mr. H. W. Elliott, who had investigated the facts of seal life on the islands in 1872-74, was in 1890 sent to renew his investigations, in pursuance of a special Act of Congress. The Report made by him on his return was not published by the United States; but in portions of this Report published by himself, and in other published accounts of his inquiries, he strongly condemns the management of the islands, laying stress on the insufficient number of virile male seals there.

Captain Bryant, Government Agent on the Pribyloff Islands from 1869 to 1877, in Reports published in 1875, 1876, and 1880, specially adverts to the decrease of males and the undue increase of females, and states that the killing of 100,000 young males is too great.

The statements of several other Agents of the United States' Government upon the Pribyloff Islands, referring to 1881, 1882, and 1886, bear out the observations of Captain Bryant; and Mr. W. Palmer and Dr. W. H. Dall, both officials in the service of the United States, speak of a similar lack of male seals in 1890 and 1891. The British Commissioners likewise comment on the excessive number of females, as compared with males, upon the breeding rookeries in 1891.

Evidence confirming the scarcity of virile males is further afforded by the large proportion of barren or unimpregnated females found among seals killed at sea. This is attested by many witnesses, and it is further shown that this symptom of decrease of virile males has been increasing in late years.

The facts adduced are such as to prove that the contention now held in the Case of the United States as to the relative scarcity of females is unfounded.

In the Case of the United States it is thus maintained that the manner of taking seals upon the Pribyloff Islands cannot be improved upon, and that—

Contentions held in the United States' Case and on the part of Great Britain.  
United States' Case, p. 155.

“the killing of a portion of the surplus male life is undoubtedly a benefit to the herd, as it is with other domestic [*sic*] and polygamous animals.” Ibid., p. 154.

It is further argued, at considerable length, that there has at no time been an insufficiency of males to serve the females on the breeding islands, and therefore that a paucity of virile males cannot be accepted as a cause of decrease in the whole number of seals. Ibid., p. 172 *et seq.*

On the part of Great Britain, and as the result of the investigations of the British Commissioners and other evidence, it is contended, not that a paucity of males or any other single circumstance is accountable for the whole reduction in number of the seals, but that the dearth of males has constituted one of the principal causes of such decrease; and that, in conjunction with other matters connected with the management of the islands, it is accountable in large part for that decrease.

The evidence already referred to shows how early in the history of the control of the islands,

and how repeatedly in subsequent years the scarcity of males was noted; and further, that it was so noted and observed, not only in respect to the so-called "killable" males, but also in respect to the full-grown adult males or "bulls" on the actual breeding rookeries. It may further be added that, throughout the official Reports on the islands, no reference has been found to a disproportionately small number of females in any year.

United States' Case, pp. 172 *et seq.*  
Statement in United States' Case that scarcity on islands has been in females is wholly novel.

In the Case now presented by the United States, entirely new ground is taken, and a novel contention affirming a scarcity of females is endeavoured to be supported on the strength of certain affidavits very recently obtained, while the published records dealing with the islands are entirely ignored.

Little evidence is cited in support of the statement, and is in most cases disproved by previous statements of witnesses.

The evidence actually quoted in the United States' Case in support of this new position is exceedingly slight. It consists, in fact, of certain statements made by Colonel J. Murray, Major Williams, Mr. J. C. Redpath, and Mr. J. Stanley Brown, with that of two natives. But the two natives alone directly affirm any scarcity of females, the other witnesses confining themselves to remarks as to the abundance of males.

An examination of the contemporaneous Reports made by some of the deponents themselves afford the answer to their present retrospective statements.

Mr. J. C. Redpath, an agent of the present lessees of the islands, is in this part of the United States' Case first cited, to the following effect:—

United States' Case, p. 172.

"A dearth of bulls on the breeding rookeries was a pet theory of one or two transient visitors, but it only needed a thorough investigation of the rookeries to convince the most sceptical that there were plenty of bulls and to spare, and that hardly a cow could be found on the rookeries without a pup at her side."

Colonel Murray in 1892.

No comparative statement of an earlier date by the same gentleman is in this case known; but it is submitted that extracts to the contrary effect given below cannot be described as those of "transient visitors."

Colonel J. Murray, Assistant Government Agent on the islands in 1890 and 1891, is quoted in the United States' Case as saying:—

*Ibid.*, p. 173.

"I saw nearly every cow with a pup by her side and hundreds of vigorous bulls without any cows."

In his official Report for 1890, however, the same gentleman wrote :—

Colonel Murray in 1890.

"The meeting [of natives of St. George Island] was adjourned from time to time until they had thoroughly discussed the most important questions raised, and at the last meeting, held on the 23rd May, they unanimously declared that it was their firm belief and honest opinion that the seals had diminished and would diminish from year to year, because all the male seals had been slaughtered without allowing any to grow to maturity for use on the breeding-ground. I made a note of the suggestion in the journal that day, and I am now fully convinced by personal observation that it is only too true, and that the natives were correct in every particular. In 1889 the full quota of 15,000 skins was obtained here, but I know now (what I did not understand then) that in order to fill the quota they lowered the standard towards the close of the season and killed hundreds of yearling seals, and took a greater number of small skins than ever before."

British Case, Appendix, vol. iii. "United States No. 2 (1891)," p. 19. United States' Senate, 51st Cong., 2nd Sess., Ex. Doc. 49, p. 8.

Natives in 1890.

The above may be referred to also in reply to the two statements of natives quoted in the United States' Case.

United States' Case, pp. 172, 173.

Natives in 1892.

Mr. C. J. Goff, Government Agent on the Pribyloff Islands, and to whom Mr. Murray's Report last cited is addressed, is quoted as testifying—

Mr. Goff in 1892.

"that, although the lessees had much difficulty in procuring their quota in 1889, a sufficient number of males were reserved for breeding purposes."

Ibid., p. 173.

In the affidavit upon which this statement is based, the following passage is, however, found :—

"I have no doubt that I reported that the taking of 100,000 skins in 1889 affected the male life on the islands, and cut into the reserve of male seals necessary to preserve annually for breeding purposes in the future, but this fact did not become evident until it was too late to repair the fault of that year."

United States' Case, Appendix, vol. 11., p. 112.

Mr. Goff's Report of 1889, to which he here refers, though not published by the United States' Government, has been produced in reply to a Notice given in conformity with the Treaty of Arbitration. In this Report he writes :—

Mr. Goff in 1889.

"The prosperity of these world-renowned rookeries is fast fading away *under the present annual catch allowed by law*, and this indiscreet slaughter now being waged in these waters will only hasten the end of the fur-seals of the Pribyloff Islands."

Ibid., Appendix, vol. i, p. 85.

His Report of 1890 was protested against by the North American Commercial Company, and

See his letter, "New York Herald," May 2, 1891.

Mr. Goff in 1890.

he was removed from office, as he believed, in consequence of this protest. In his Report for 1890, he concurs generally in Mr. Elliott's views (quoted below), and writes as follows:—

British Case,  
Appendix, vol. iii,  
"United States  
No. 2 (1891),"  
pp. 16, 17.  
United States'  
Senate, 51st Cong.,  
2nd Sess., Ex.  
Doc. 49, p. 5.

"It is evident that the many preying evils upon seal life—the killing of the seals in the Pacific Ocean along the Aleutian Islands, and as they come through the passes to the Behring Sea, by the pirates [*sic*] in these waters, and the indiscriminate slaughter upon the islands, regardless of the future life of the breeding rookeries, have at last with their combined destructive power reduced these rookeries to their present impoverished condition, and to such an unequal distribution of ages and sexes that it is but a question of a few years, unless immediately attended to, before the seal family of the Pribylov group of islands will be a thing of the past. Notwithstanding the fact that the seals were looked upon as inexhaustible, and were officially reported to be increasing as late as 1888, the time has suddenly come when experiment and imagination must cease, and the truth be told."

United States'  
Case, p. 173.

Major W. H. Williams, Government Agent on the islands in 1891, is the only other witness specially cited by the United States in support of the existence of a sufficient number of males. He had not previously visited the islands, and his Report for the year in question has not been published.

United States'  
Case, pp. 352-355.

Ingenious and elaborate diagrams accompanying the Report of the United States' Commissioners, are intended to demonstrate in what way a large proportion of young male seals may be annually killed without detriment to the general reproductive powers of the fur-seals collectively. These diagrams may be accepted as an elaboration and explanation of the theory in accordance with which the killing of seals upon the Pribyloff Islands has heretofore progressed, but are very far from proving the expediency of such killing. They are based entirely on assumed data, for it is not possible, as in the case of domestic animals, to obtain any facts respecting many of even the more important points connected with the history of the fur-seal. Not only are the data respecting the life-history of the fur-seal thus assumed, but the prepotent effects of natural causes, climatic and other, are necessarily omitted from consideration in the calculations presented.

The fundamental assumption of the intricate computations upon which these diagrams are

based is found to be that, in consequence of the polygamous habit of the fur-seal, a large proportion of males may be killed each year without detriment, if only the females be spared. The fallacy of this proposition as applied to wild animals, in respect to which the selection of breeding males by man is not possible, has already been pointed out. If, in effect, any selection is practised in killing upon the islands, it is the finest males which are chosen for killing, thus broadly reversing the operations of nature.

United States'  
Case, p. 163.

But this is only the first of numerous succeeding assumptions upon which the whole calculation is built up, errors in any one of which must materially alter the results arrived at; and, in consequence of the uncertainty attaching to all of them, the diagrams presented cannot be considered as possessing any practical value.

It is stated that —

“Unfortunately, we have no ‘Tables of Mortality’ for seals; we know only approximately their maximum age, and we have little knowledge as to the distribution of their death-rate.”

Ibid., p. 152.

This, however, does not deter the computer from assuming the normal life at twenty years, from assuming that one-half the young born die within the first year after birth, or from assuming an “approximate” death rate for the already assumed further years of normal life of the seal. It is then still further assumed that the number of males and females born is equal; and though this particular assumption appears to be a probable one from analogy with other animals, no satisfactory evidence is forthcoming in the case in question.

The number of years during which the female may remain fertile, or the male may retain his virility, are likewise quite unknown. Experience gained in the case of sheep, and that also resulting from the keeping of deer in parks and under observation, shows that, though polygamous, the males of these animals are unable to maintain their virility unimpaired (in consequence of the demands made upon it) for more than a few seasons, after which their propagating power falls off very rapidly. If, therefore, the same rule holds in the case of the fur-seal (and the analogy is very close, particularly in respect to the deer), the number of males actually required would be

very materially increased. The time of fertility of the male, in such cases, is, in other words, much shorter than that of the female.

It must not be omitted to note, in the case of the fur-seal, that the age of puberty of the female is attained at least three years before that of effective service by the male, thus rendering the risk of previous death much greater in males than in females. As the death-rate from such causes is admittedly unknown, the results in regard to the number of males reaching a virile age in proportion to births must likewise be wholly uncertain.

Whether the age of effective service by the males has in nature become gradually increased in consequence of the polygamous habits of seals upon the rookeries, and the impossibility of any but the larger and older males holding places on the rookeries, or whether the later date of fertility in the case of the male, resulting in greater losses of males, and acting on an equal birth-rate in respect to sexes,—has led to such polygamous habits, it is impossible to determine.

In any case, tables or diagrams founded on such a train of assumptions as those above noted cannot be accepted as proving anything to the point in connection with seal life, though they serve, as above stated, to show in what manner the methods practised in the breeding-islands have been justified.

Veniaminov, during the Russian control of the islands, spent much ingenuity and doubtless much time in elaborating very similar tables, but no reference appears to have been made to these when it was decided to fix the number of seals for killing at 100,000 annually under the control of the United States.

The available data are too uncertain for any theoretical discussion such as that attempted by the United States' Commissioners. An appeal must be made rather to facts and results, and these, it is maintained, show in the clearest possible manner that the reduction in number of seals met with on the Pribyloff Islands is chiefly due to the number of seals killed upon these islands, and to the manner of killing there practised.

In order to show still more clearly, however, the untenable character of the claim which is now made in the United States' Case, to the effect that the observed decrease on the islands has been primarily in females, the following additional ex-

Further evidence of decrease of male seals.



tracts from Reports of Government officers upon the islands may be referred to.

In 1890, Assistant Agent A. W. Lavender writes:—

"The writer was surprised when he first visited the rookeries to find no young bull seals upon them; this looked strange to him, and he began to look up the cause, and it occurred to him that, from the constant driving of young male seals and the killing of all the 2-, 3-, 4-, and 5-year-olds, there were no young bulls left to go on the rookeries, and without young blood the fur-seal industry will be something of the past in a very few years."

It has already been noted that Mr. H. W. Elliott, whose investigations and writings on the fur-seal of the North Pacific are so well known, was sent to the Pribyloff Islands in 1890 for the special purpose of again inquiring into the conditions of the seal interests there. This was done in pursuance of a special Act of Congress approved the 5th April, 1890. Though the United States' Government have, unfortunately, not made public the Report of these investigations, some portion of Mr. Elliott's Report, which has been communicated by the author to the press, is available. In the part of his Report so published, Mr. Elliott writes as follows, after pointing out the meaning of the extension of "driving" to the more distant rookeries in 1879:—

"But when in 1882 it became absolutely necessary to draw from that time on until the end of the present season, heavily and repeatedly, upon the hitherto untouched sources of supply for the rookeries, in order to get the customary annual quota—at that time that fact, that glaring change from the prosperous and healthy precedent and record of 1870-81, should have been—it was ample warning of danger ahead; it seems, however, to have been entirely ignored—to have fallen upon inattentive or incapable minds; for not until the Report for 1889 from the Agent of the Government in charge, who went up in the spring of that year for his first season of service and experience—not until his Report came down to the Treasury Department has there been the slightest intimation in the annual declarations of the officers of the Government of the least diminution or decrease of seal life on these islands since my work of 1874 was finished and given to the world."

He then proceeds to specify the nature and causes of the decrease, and writes:—

"Had, however, a check been as slowly and steadily applied to that 'driving' as it progressed in 1879-82 upon those great reserves of Zapadni, South-west Point,

Mr. A. W. Lavender,

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891),"  
p. 21.  
United States'  
Senate, 51st Cong.,  
2d Sess., Ex.  
Doc. 49, p. 9.

Mr. H. W. Elliott's unpublished  
Report.

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891),"  
pp. 56-61.

Estimate in reduction  
males

Further statement

and Polovina, then *the present condition of exhaustion, complete exhaustion of the surplus supply of young male seals*, would not be observed—it would not have happened. But, however, no attention whatever was given to the fact that in 1882 the reserves were suddenly, very suddenly, drawn upon, steadily and heavily for the first time, in order that a prompt filling of the usual annual quota should be made before or by the usual time of closing the sealing season for the year, viz., 20th July."

Mr. Goff.

Referring again to Goff's Report of 1889, and to the effect therein attributed to pelagic sealing, he continues:—

"I was prepared to find by these figures that the breeding-grounds had lost heavily, but that did not even then satisfy me as to his statement, which came so suddenly in 1889, that little more than half the established annual quota of 100,000 holluschieko [bachelor seals] suitable for killing could or would be secured here in 1890; for, great as my estimated shrinkage on the breeding-grounds was, due to the work of poachers, yet that would not, could not, explain to my mind the nine-fold greater shrinkage of that supply from the hauling-grounds which must exist, or else 60,000 young males might be easily taken, judging from my notes of such work in 1872."

Again, he writes:—

"As matters stand to-day upon the Seal Islands the situation is very much the same as it was in 1834. Then it was expected that 20,000 seals would be taken, but only 12,000 were secured 'with all possible exertion.' This year it was expected that 60,000 fine skins would be taken, but only 21,000 have been secured with all possible exertion, nearly half of this catch being small, or 5½ lb. to 6½ lb. skins, raking and scraping the rookery margins without a day's intermission from the opening to the closing of the season; of this work in 1890 I give you in this Report the fullest detail of its progression, day to day, the merciful ending of it, ordered so happily by you."

In conclusion, Mr. Elliott's estimates of numbers are quoted, showing in 1872-74 some 145,000 to 160,000 able-bodied virile males or "bulls" over six years of age, with a proportion of barren or farrow cows too small to mention; in 1890, 8,000 or 9,000 old males only—

*"many of them absolutely impotent at the beginning of the season of 1890, most of them becoming wholly so as the season advanced;"*

with about 250,000 female seals "not bearing or not served last year and this."

Mr. Elliott is, however, even more precise and definite on the subject here in question in a

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Estimate in reduction in number of males.

Further statement by Mr. Elliott.

communication to "Forest and Stream." He writes:—

"At the close of the breeding season of 1890 on the Pribyloff Islands, after the most careful and extended search, surveying every superficial foot of each one of the fifteen different rookeries with cross bearings from a great number of measured base lines, and giving close attention to the relative number of 'bulls' and 'cows,' I found on these islands only about 8,700 old bulls, many of them aged, infirm, and actually impotent; 640,000 females (nubiles, prinipares, multipares, and barren), and no young bulls around or near the breeding-grounds.

"In short, since 1885, no young bull seal has been allowed to live and grow after it reached the age of 4 years, if it were possible to secure it; they have all been regularly killed as they grew up, and their skins sent to London. Therefore these breeding rookeries, during the last six years, have not been permitted to receive the annual supply of fresh male life, which was then, as it is now, absolutely necessary for their perpetuation and support in good form and number. . . . If, however, these young male seals that live to return next summer are not driven—are not disturbed by drivers on the islands—in four years' time from date, quite a large number of them will have matured so as to be able to take up stations on the rookery-grounds that are to-day vacant, and in the charge of aged and impotent bulls, which state of affairs, bad as it is, must get worse and worse, until these young sires arrive on the field. . . . The normal ratio of males to females on the breeding-grounds of the Pribyloff Islands in 1872-74 was an average of 1 male to 15 or 20 females. In 1890 this ratio (despite the deadly work of the open water sealers among the females) was an average of 1 old male to every 60 or 80 females (I saw many single harems in which I counted over 100 cows.) . . . In 1894 the first relief that can possibly come to them will come, provided that handful of young 2-year-old males left alive on the islands last summer is undisturbed by man there next summer and thereafter, and in 1895 the yearlings that were spared last summer, such of them as shall return, will have then matured and take their places on the breeding grounds. . . . But one very important fact should be kept in mind: that fact is, that when killing up there is again renewed for tax and shipment, no culling of the driven herds must be allowed; all the seals driven must be taken; for unless this done, then history will repeat itself—every 3- and 4-year-old male will be killed as it grows up, and the rookeries soon be again deprived of that regular supply of fresh male blood, which is absolutely necessary for their maintenance in their full form and number."

The evidence given on this subject by Captain Charles Bryant, is not here specially referred to in the United States' Case, but appears in the Appendix to that Case. In his affidavit of April

New York, May 7, 1891.

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Captain Bryant's evidence, quoted in United States' Case.

1892, after stating his experience on the Pribyloff Islands, which extended from 1869 to 1877, he says:—

United States' Case, Appendix, vol. ii. p. 7.

"The whole time I was there there was an ample supply of full-grown vigorous males sufficient for serving all the females on the islands, and every year a surplus of vigorous bulls could always be found upon the rookeries awaiting an opportunity to usurp the place of some old or wounded bull, unable longer to maintain his place upon the breeding-grounds. I should except from this general statement the seasons of 1873 and to 1875, when the destruction of young males in 1868, and the error made by the Company under their misapprehension as to the character of the skins to be taken for market, perceptibly affected the males on the breeding-grounds. It is not certain that the fertilizing of the females was thereby affected, and this gap was filled up, and from this time on there was at all times not only a sufficiency but a surplus of male life for breeding purposes."

Previous official Reports by the same officer in 1875.

As Captain Bryant's notes on the condition of the breeding-islands contained in his Reports, furnished to Professor Allen and published in that writer's monograph, afford some of the most trustworthy information respecting the earlier period of the United States' management, it is necessary to point out that Captain Bryant's recollection of these events, as embodied in the above-mentioned affidavit, is not entirely accurate.

In his official Report for 1875, addressed to the Secretary of the Treasury, Captain Bryant writes as follows:—

H. R., Ex. Doc. No. 83, 44th Cong., 1st Sess., pp. 175-178.

"At time of writing my detailed Report on the habits of these animals, dated the 30th November, 1869, it was stated to be 190,000. This number was based on the best information obtainable at that time from the natives of the island and the few employes of the former Russian Fur Company remaining in the territory. Since then a residence of seven successive seasons on the island, in charge of these animals, has furnished me with the desired opportunity for determining this surplus product by actual study of their habits and requirements, and the result is, *the killing of 100,000 per annum does not leave a sufficient number of males to mature for the wants of the increase in the number of females.* And, as it is desirable to state some of the methods by which these conclusions have been reached by me, a brief statement of the habits of these animals and the effect of the killing of 100,000 per year for the past five years seems necessary.

"These hauling-grounds are swept and driven two or three times a week during the months of June and July, and the prime seals culled out for killing, and every seal growing up has to run this gantlet for his life his second, third, and fourth year before he escapes

to grow up as a breeding bull. Thus it will be seen the method of killing does not admit of the setting apart of a special number and taking the remainder for the quota for market, and the only possible way to preserve the requisite number for breeding purposes is to restrict the number to be killed so far within the product as to ensure enough escaping for this object.

"When the lease was put in practical operation in 1871, there was a very large excess of breeding males on hand; since then this surplus has been diminished by the dying out of the old seals faster than there has been younger seals allowed to escape and grow up to fill their places, until *the present stock is insufficient to meet the necessities of the increasing number of breeding females.*

"One other cause should be stated that has directly contributed to diminishing the present stock of breeding males. During the season of 1868, before the enactment of the prohibitory law, the several parties sealing there took 240,000 seals monthly [*sic mostly ?*] of the products of the years 1866 and 1867. These would have matured and been added to the present stock of breeding males in the years 1872 and 1873, and to this a part of the prospective deficiency is to be attributed.

"Constant and careful attention has been given to the condition and changes in the different classes of seals, and the data kept for comparison from year to year, and the result, as summed up the present year in comparison with 1870, shows the present stock of breeding females has steadily increased in a ratio of 5 or 6 per cent. per annum added to the original stock, *while the stock of breeding bulls has decreased, by loss from age and other causes, so much faster than there has been young seals grown up to replace them, that its present condition is only equal to the present demand, and the stock of half-bulls, or those mature in the next two years, is not sufficient to meet the wants of the increase in the females.* Under these circumstances, I feel it my duty to recommend that for the next two years the number of seals to be taken for their skins be limited to 85,000 per annum, to be apportioned between the two islands as follows: for St. Paul's Island 70,000, and for St. George Island 15,000."

It will be observed from the above that, in his contemporaneous Report, Captain Bryant attributes the deficiency of males *primarily* to the high rate of killing, though he also mentions the excessive slaughter of 1868, as a secondary cause.

In his evidence given before a Committee of Congress in the following year (1876), Captain Bryant testifies to substantially the same effect:—

"Q. Your opinion, then, is that the number of 100,000 on the two islands, authorized by law, can be regularly

H. R., 44th Cong.  
1st Sess., Report  
No. 623, p. 99.

In 1876.

taken without diminishing the crop or number of seals coming to the island?—1. I don't feel quite sure of that, as will be seen in my detailed Report to the Secretary of the Treasury, included in the evidence which has been laid before the Committee. There were indications of diminution in the number of male seals.

"I gave that and another reason, which I explained at large in that Report. In the season of 1868, before the prohibitory law was passed or enforced, numerous parties sealed on the islands at will, and took about 240,000 or 250,000 seals. They killed mostly all the product of 1866-67."

In 1880.

In his statement drawn up for Professor Allen, again, Captain Bryant writes:—

"Monograph of North American Pinnipeds," p. 399.

"The decrease in the number of breeding males may be considered as having reached its minimum [*sic*] in 1876. In 1877, the last season I spent at the islands, there was an evident increase in the number of this class."

Mr. W. B. Taylor, 1881.

Mr. W. B. Taylor was Assistant Treasury Agent on the Pribyloff Islands in 1881. Before the Congressional Committee in 1889, from his experience gained during that time, he testified as follows:—

H. R., 50th Cong.,  
2nd Sess.,  
Report, 3883, p. 59.

"I believe that the capacity of the bull seal is limited, the same as any other animal, and I have very frequently counted from thirty to thirty-five, and even at one time, forty-two cows to one bull. *I think if there were more bulls there would be less cows to one bull, and in that way the increase would be greater than now.*"

Dr. H. H. McIntyre, 1882.

Dr. H. H. McIntyre also writes:—

United States'  
Case, Appendix,  
vol. ii, p. 52.

"I was, therefore, always alert to see that the due proportion of breeding males of serviceable age was allowed to return to the rookeries. This was a comparatively easy task prior to 1882, *but became from year to year more difficult as the seals decreed.*"

Mr. T. J. Ryan, 1886.

Mr. T. J. Ryan, Assistant Treasury Agent in the islands in 1885 and 1886, includes the following remarks in his Report for 1886:—

H. R., 50th Cong.,  
2nd Sess.,  
Report 3883, p. 217.

"As the Report will show, we killed but few bulls, though the Company was authorized to knock down all old troublesome fellows coming in their way to the number of thirty, the skins of which were wanted by the natives for door mats. *The surplus of old bulls expected to be found did not make their appearance in the drives or on the rookeries this season; and, I think now, nor last season either.*"

Mr. W. Palmer, 1890.

On this subject Mr. W. Palmer, of the United States' National Museum, may also be quoted.



As the result of his observations in 1890, he writes:—

"It will be seen also that by this driving process the 2- or 3-year-olds, which are the only ones killed for their skins, are culled out almost completely from the seals which visit these islands, and therefore that very few male seals ever reach a greater age; consequently, *there are not enough young bulls growing up to supply even the yearly loss on the rookeries, much less to provide for any increase.*"

British Commissioners' Report, p. 188.  
"Forest and Stream," October 29, 1891.

In an editorial article published in the same number of "Forest and Stream" as that in which Mr. W. Palmer's paper on the "Fate of the Fur-seal" is reported, it is stated that such well-known naturalists as Drs. Dall, Gill, and Bean participated in the discussion of the paper before the Biological Society at Washington. In this article Dr. Dall is cited as follows:—

Dr. W. D. Dall, 1891.

"Dr. Dall attributes the present decline of the fur-seals chiefly to the excessive killing of young males; there is not now a sufficient number of males in the breeding grounds to maintain the species. He admits that the method of driving referred to by Mr. Palmer is also very destructive. The excessive destruction of males began in 1872, and has continued to the present time."

In a letter written by Dr. Dall and published in a succeeding number of the same journal, he states that his remarks on Mr. Palmer's paper were not correctly reported. He writes:—

Ibid., November 5, 1891.

"What I did say was to intimate that after the killing in the open sea (the most important factor in the diminution), the second factor was the *killing of too many young males* rather than the injuries caused by driving; the latter being a view much insisted on by Mr. Palmer."

Accepting Dr. Dall's correction, it is to be remarked at least that he recognizes three factors tending to diminution of the species, of which two are connected with the practices on the Pribyloff Islands.

Even so long ago as 1827, Lutké, who visited the Pribyloff Islands in that year, clearly pointed out the inherent danger to the continued supply of virile male seals which must result from the methods followed. He writes:—

Lutke, 1827.

"La précaution de séparer les gros mâles d'avec ceux qui doivent être tués, est nécessaire pour entretenir la multiplication; mais cette précaution est-elle suffisante

"Voyage Autour du Monde," tome 1, p. 261.

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Mr. H. W.

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pour cola ? Si tous les jennes sont exterminés, d'où sortiront à la fin les gros mâles ? Les chasseurs expérimentés ont observé que les ours marins vivent de quinze à vingt ans ; il en résulte qu'avec cette méthode dans vingt ans il ne doit plus en rester un seul."

Requisite proportion of males to females, and increased size of "harems."

The requisite proportion of males to females (requisite for the mere purposes of proper service and without reference to the wider questions depending on the natural excess of males about the breeding islands) has been carefully investigated by the British Commissioners, who conclude that at least one virile male is required for every twenty females. They write :—

British Commissioners' Report, paras. 54-56, 292, 294, 436.

"When, therefore, we find the harems in the Pribyloff Islands growing yearly larger, till at the present time they surpass the proportions above mentioned from four to eight times, it is reasonable to conclude that in this change the effect of an excessive slaughter of young males is rendered apparent. Our own and all other local observations on the rookeries during the last few years prove it is no uncommon event to find a single male seal with a harem numbering from forty to fifty, and even as many as sixty to eighty females."

Appendix, vol. i, p. 140.

The excessive number of females in proportion to males is also remarked by Mr. Macoun, in his Report for 1892. He also shows that the few unattached old bulls found about the rookeries are not all virile.

Other changes resulting from the same cause and affecting the habits and mode of life of the seals, evidenced in irregularity and overlapping of dates of landing, birth, &c., have also been observed, and it is obvious that under the circumstances the breeding-islands tend to become less attractive to the females, which consequently resort less punctually and for shorter times to them.

British Commissioners' Report, paras. 434-436.

Further evidence of the paucity of males can be found in the increased number of barren females. Mr. Elliott has already been quoted on this subject. The same fact is referred to by the British Commissioners, and is stated to have been particularly noticed by pelagic sealers.

Many of the sealers whose evidence has been obtained in 1892 refer directly to the taking of large numbers of barren females. The following notes on this subject are based upon the statements of sealers contained in the Appendix :—

Mr. H. W. Elliott on barren females.

Ibid., paras. 431-433.

Evidence of pelagic sealers as to barren females.

*Captain J. D. Warren.*—Not half the females taken on the coast are with young. British Commissioners' Report, paras. 644-646.

*Captain W. O'Leary.*—Perhaps two-thirds the cows are with young.

*Captain W. Petit.*—More barren cows are killed than those bearing young.

*Captain W. E. Baker.*—The percentage of barren females considerable.

*Captain C. N. Cox.*—10 per cent. barren females.

*Captain T. N. Magesen.*—12 to 14 per cent. of females bearing; others barren.

*Captain W. Cox.*—15 per cent. of catch barren females.

*Captain Charles Hackett.*—Quite a number of barren cows.

*Captain C. McDougall.*—One barren cow to ten bearing.

*Captain S. S. McLean.*—About 5 per cent. of females are barren.

*Captain C. J. Harris,* master of the "Mary Taylor" in 1892, says: "We secured quite a number of barren cows this year."

*Charles Le Blanc,* hunter.—In 1892 got "a good many barren cows both on the coast and on the Asiatic side." Appendix, vol. ii, pp. 43-149.

*Captain A. Douglas,* eight years in the sealing business, says: "I have seen a great many barren females."

*G. Roberts.*—Found about one-half of his catch of female seals in 1892 to be barren cows and young females.

*Captain R. O. Lavender.*—Five years' experience; finds that on the coast he gets over one-third his catch in females, of which less than one-half are barren cows.

*F. Campbell.*—In 1892 took 65 seals, of which 20 or 25 were barren females.

*W. G. Gondic.*—Says that about half the females he took on the coast were with pup; the other half barren cows and young females.

*J. N. Haake.*—States that during the season of 1892 he secured quite a number of barren female seals.

*J. Shields* (who has hunted seals in Behring Sea for four years) says: "Every year that we went into Behring Sea we got barren cows."

*G. F. French.*—States that of the females he got on the coast 25 per cent. would be with young; the remainder barren cows and young females.

*O. Scarf.*—Six years a hunter; five years in Behring Sea. Got barren cows every year.

*J. Mathison.*—Seven years' experience, says: "More than half the seals I got on the coast in each year were females. Most of these were young females and barren cows."

*E. Ranlose.*—Has, both along the coast and in Behring Sea, seen barren cows—good full-grown cows.

*I. O'Quinn.*—Two years' experience as a hunter, says: "In both years I have been sealing I have got a good many barren females, principally on the coast. At least one-quarter of all the females I got were barren."

*D. Irving.*—Says that he has killed barren cows, and that they were principally old seals.

*Captain A. Heppen.*—Nine years' experience, states that quite a number of barren females are killed on the coast.

*W. Hody.*—Five years' experience as boat-steerer and one as hunter. Took, in 1892, 168 seals, of which 25 or 30 were barren cows, and says: "The hunters I was with in former years got about that number of barren cows. They generally travel with young bulls."

*Captain H. B. Jones.*—Five years' experience—three as master—says: "This year I noticed a good many barren females. My hunters often called my attention to this this year, and we would examine the seal and find that it was a cow, but that there was no young one in her. I never noticed this before to such an extent as this year."

*Captain E. Cantillian.*—Four years' experience. Has found a good many barren cows among the seals he has taken.

*H. R. Smith,* twelve years' experience in North Pacific, says that early in the season about half the seals taken on the Vancouver coast are females, and of these only about half are in pup.

*A. Billard* says about one-half of coast catch are females and of these about one-fourth are in pup.

*Captain A. R. Bissett* states that of 568 seals taken on the coast in 1892 about half were females, but not more than 70 or 80 were in pup.

*W. de Witt.*—About half the females taken are in pup.

*F. W. Strong* thinks about half the females taken on the coast are in pup.

*N. Morrison* took, in 1891, 119, of which about half were females; not over 30 of these were in pup. In 1892, of 202 seals taken, about 65 were females, about half in pup, and half barren and young females.

*J. D. Warren* says that about half the females taken on the coast were young seals and barren cows.

*C. O. Burns* says there was a number of barren cows in the boat he was in in 1891, and that in 1892 a good many barren cows were got.

*W. O. Hughes* states that about half the females taken by him in 1891 and 1892 were in pup, and that but one-third of those taken by him in Behring Sea in 1891 showed signs of milk.

*J. Brown*, six years' experience, got barren cows on the coast every year, but says that in Behring Sea he could not tell whether the cows were barren or not; very few were got with milk in their breasts.

*J. Siteman* says that in 1890 most of the females taken by the vessel he was in were young females and barren cows; in 1891, about half the females taken were barren cows or young females; in 1892, about three-fifths of the catch were males: "nearly all of the rest were barren cows. Only a few cows with pup were got. . . . The 'Geneva' was four or five days about 80 miles off shore from Mount St. Elias in June. The hunters got about 200 seals there, and most of them were barren cows. This fact was particularly noticed when the seals were brought on board and skinned. Neither myself nor any person on the 'Geneva' had ever seen so many barren cows before."

*W. Hermann* states that he frequently takes cows without pups or milk.

*G. Scott* each year takes "quite a number of barren cows."

*G. Wester* estimates the number of barren cows taken by him at from 20 to 25 per cent. of the number of females.

*Captain C. Lutjens* says: "About one-fifth of the cows taken are barren."

*C. Hartman* says that he has killed "a great many large cows that had no milk, and are not carrying pup."

*M. Scott* says: "On the coast this year [1892] we got very few cows carrying pup. I know this, because we were trying to get a number of unborn pups, and found it difficult to get what we wanted. Of the total take of cows along the coast—about 300—not more than 100 were pregnant, the others being too young to breed, or barren cows." He has also taken barren cows in Behring Sea.

*Captain J. S. Worth* has "taken some barren cows that had neither pup nor milk."

*M. Keeffe* states that his vessel took, in 1892, 180 seals on the coast, of which very few were cows, and none in pup. This was remarked at the time by the hunters and crew as something unusual. His experience has been that not more than 20 females in 100 taken are in pup.

*J. Coburn* says that none of the females he got on the coast in 1892 were females in pup; "they were either young cows or barren cows." In previous years about one-half were young and barren cows.

*J. Figuera* states that he has had a good many barren cows amongst those he has shot.

*Captain C. E. Mockler* states that about two-thirds of the females taken by him on the coast are pregnant.

*Leo J. Thiers* says: "I have frequently got a number of cows that have had neither pups nor milk, and get more of that kind on this coast than the Japan coast. There has been so much talk about seal life that I took particular notice of these facts last year."

*G. Wells*, in 1890, got a larger number of barren cows and young females than usual; about one-half the females taken by him on the coast were in pup, and this was the case in 1891 and 1892.

*W. O. Shafter* says that of forty females he took in Behring Sea about ten were in milk; the rest he was unable to say whether they were barren or had lost their pups; certainly they were not carrying their young or in milk."

*W. Conners* says: "We meet with and get plenty of barren cows."

*P. E. Peterson* says: "I have killed lots of barren cows."

*J. Ford* states that fully half the cows he has taken on the coast were neither in pup nor had milk in them.

*J. W. Crew* says that he has got "a great many barren females."

*A. W. Roland* says that on the coast only about half the females taken by him were with pup.

*J. Matthews* says that half the seals taken by him on the coast were females, and that not one in five seals taken was a female carrying young.

*A. McKiel* states that but three-fifths of the females taken on the coast are with pup.

*G. Heater* states that about one-third his catch were females, of which some were barren.

*G. C. Gerow*, five years' experience, states: "In a good season's catch there would be about 100 to 150 barren females."

*Captain S. W. Duckman* says: "Barren females are often found."

*Captain W. Petit*, seven years' experience, says: "Among the females taken this year [1892] were a good many barren females. The last day's catch (deposition made 16th June) was four barren females and four males."

*Captain C. F. Dillon* says: "There were a good many barren females among the last seals I took this year."

*A. Sinclair* had taken eighty-six seals at time deposition was made, and states: "I noticed two barren females among those I got."



*W. Edwards*, who took 138 seals before the 17th June, 1892, says: "There were very few barren females among the seals I got."

*G. F. French*, three years' experience as hunter, says: "Out of the 143 seals taken by me this year between 30 and 40 were barren; not more than 60 of the seals taken by me were females; more than half were barren cows."

*P. Jolibis* states that in 1892 of thirty females a few were barren cows.

*L. McGraw* says: "Last year I noticed a good many barren cows among those taken, but not any this year."

*Captain H. F. Seward* says: "I only noticed one or two barren females in my catch."

*F. Moreau* says: "We get plenty of barren cows."

*P. Carlson* found that a good many cows to the north of Sitka had neither pup nor milk in them.

*D. A. Lewis* says: "I have killed barren cows, but it is a matter I have not noticed very closely."

*P. Hammel* states: "I have killed plenty of barren cows."

*J. Carthart* says: "I have had a good many barren cows."

#### *Indian Evidence.*

*Kas-ado* says that off the coast he sometimes gets cows not with pup. In Behring Sea there would be more males than females taken, and of the females half would be young females and cows without pups in them. Appendix, vol. ii,  
pp. 140-166.

*Schoultwick*, and six Indians who were examined with him, say of the female seals taken near the village of Ohiat: "Lots of them are old ones without pups."

*Clahapicun*, *Hanaisun*, and *Clalouto* say that four out of six females taken by them would be carrying young.

*Walter Watt*: "Three out of six females taken along the coast are barren cows and pups. Get quite a few barren cows."

*Chileta*: Has taken "plenty of them" [old cows] "carrying no pup and having no milk."

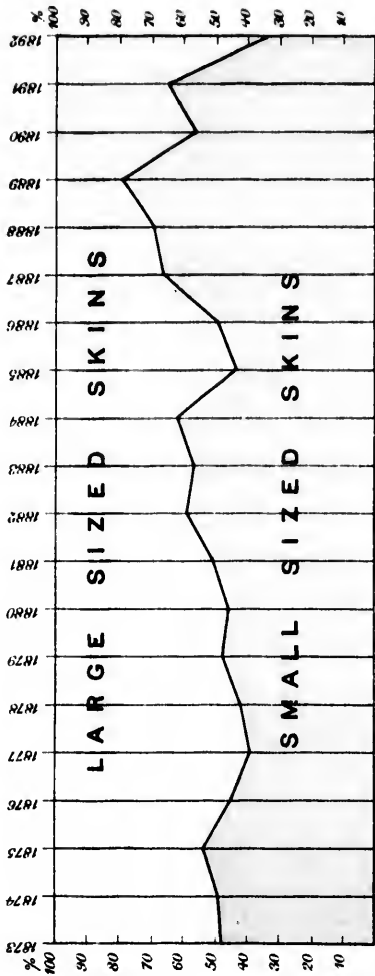
*Oquaghu*: "Fully half the cows we get have pups in them; the rest are young females or cows without pups."

*Click-la-houto*: "Along the coast have sometimes got large cows not having pups and not in milk." Of Behring Sea he says: "Of the cows I killed many did not have milk, and were not in pup."

*Kesluqua* and *Clatcher*, who heard what Click-la-hou'no said, say that their experience has been the same as his.

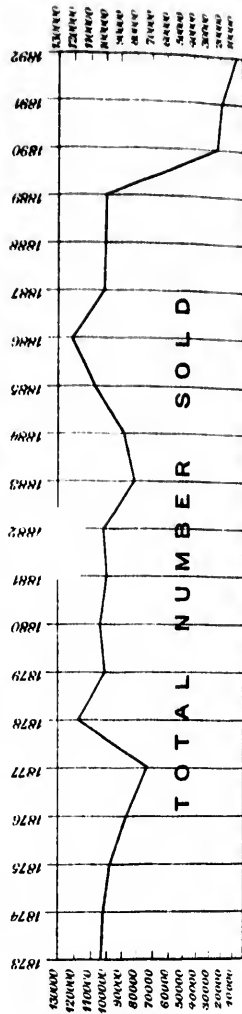


DIAGRAM COMPILED FROM TABLE I, APPENDIX, VOL. II, PAGE 255.



PERCENTAGE OF SMALL SIZED TO LARGE SIZED SKINS COMPRISED IN THE TOTAL SALES OF FUR-SEAL SKINS FROM THE PRIBYLOFF ISLANDS IN EACH YEAR, FROM 1873-1892, SHOWING THE INCREASED PROPORTION OF SMALL SIZES UP TO THE YEAR 1889.

LARGE SIZES SKINS in the above diagram comprise "Wigs," "Large Middling," "Middling and Small," "Small," and "Large Pup." SMALL SIZES SKINS comprise "Middling Pup," "Small Pup," "Extra Small Pup," "Extra Small Pup," "Grey Pup," and "Black Pup."



TOTAL NUMBER OF FUR SEAL SKINS FROM THE PRIBYLOFF ISLANDS, ACTUALLY SOLD IN LONDON IN EACH YEAR FROM 1873-1892.

*Chatnick* says: "I did not get any old cows this year that did not have pups in them, but have seen plenty."

*Eheehessut* has taken a few old cows without pups in them.

*Atela* and *Ah-nah-yook* have often killed old white-whiskered cows that have no pups in them.

*Qui-an-ah* says that he gets old cows not carrying pups.

*Enocto* gets "quite a few old cows not carrying pups, and not having milk." Eleven other Indians who were present when Enocto was examined testify to the truth of his statement.

*High-eit-lick-sheet* sometimes takes old cows that are not carrying pups and are not in milk.

*Charlie Quisto* says that some of the large cows have no pups in them.

*See-ah-sum* and *Wech-tin* corroborate what Quisto says.

*Sante, Charlie, Gus, Douglas, Joe, Taylor, and Tommie* all took barren females in 1892, but kept no count of their number.

Skins of females increasing in Pribyloff catch.

Appendix, vol. ii, pp. 245-250.

*Ibid.*, p. 246.

No less than eight of the London fur merchants, in statements made by them, explain that, while formerly the consignments from the Pribyloff Islands were exclusively composed of male skins, for the past six years a marked and increasing number of female skins has become noticeable, the presence of which they attribute to the fact that the lessees have been experiencing a difficulty in obtaining their quota of males, and have been compelled to resort to the female seals to make up their full number. Such skins were first noted by Mr. Rice as early as 1878, and in later years have continually increased.

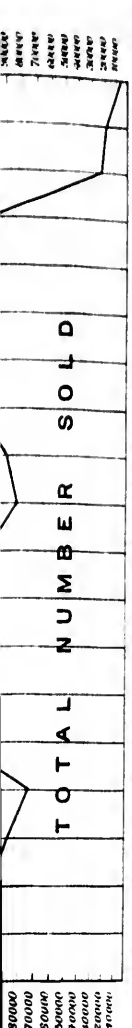
In this connection, particular attention is drawn to the Analytical Table, prepared by Messrs P. R. Poland and Son, of all catalogues relating to the sale of skins from the Pribyloff Islands from the year 1873 to 1892, from which it appears that, from 1877 to 1890, the proportion of small skins in each year's consignments had been rapidly increasing each year, the proportion in 1873 being 39.74, and in 1889 as much as 79.59, showing conclusively that the Company were compelled by the dearth of male killable seals to resort exclusively to younger and smaller seals not formerly regarded as killable. (See Diagram.)

The facts disclosed by this Table and the Diagram based thereon are of considerable importance, inasmuch as it affords a complete record of the nature of the killing in progress on the Pribyloff

Table showing sizes of whole Pribyloff catch for twenty years.

*Ibid.*, p. 255.

Shows nearly continuous diminution in size of skins taken.



TOTAL NUMBER OF THE SKINS FROM THE PRIBYLOFF ISLANDS, ANNUALLY SOLD IN LONDON IN EACH YEAR FROM 1873-1892.

Islands. The Table practically includes all the skins taken on the islands during the past twenty years, and each skin has been separately measured in order to be classified for the purpose of the trade sales. The Table shows an almost continuous decrease in the size of the skins taken since the year 1873. The temporary improvement in size noticed in 1876 and 1877 is evidently directly connected with the smaller number of skins taken in these two years, which enabled larger sizes on the average to be procured. The distinct evidence of recovery afforded by the increased average in size in 1885 remains unexplained, but it is important to note that it actually corresponds with the year in which it is now claimed in the Case of the United States, that the first marked decrease in seals occurred. The deterioration in size culminated in 1889. In 1890, when the Government Agent stopped further killing when only 20,995 skins had been secured, the average size again larger. A slight relapse is shown in 1891, when 12,071 skins were taken, and a very decided improvement in 1892, when the killing was reduced to 7,500.

When examined in connection with the general statements respecting the condition of seal life on the islands elsewhere cited, and with the Table showing the number of seals killed annually there, the table here given affords the most complete confirmation of the statements already based on these, and of the conclusion reached in this Chapter.

British Commissioners' Report, p. 132, and Diagram No. V.

From the outlines above given relating to the persistent killing of males upon the breeding islands, it is likewise easy to understand that the allegations respecting the large proportion of female seals included in late years in the pelagic catch may to some extent at least be founded on fact; the actual ratio thus brought about as between the sexes rendering it certain that in sea-sealing a much larger number of females than of males must be met with.

Excessive killing of males on Pribyloff Island results in greater proportion of females in pelagic catch.

British Commissioners' Report, para. 700.

It is submitted that, in view of the foregoing facts, the new contention endeavoured to be upheld by the United States, to the effect that there has never been any scarcity of males upon the rookeries, which contention is obviously put forward in connection with the defence of the management of the Pribyloff Islands by the United States, is clearly untenable. If the statements

quoted above from official Reports are erroneous, it must follow that the officials in charge of the islands were untrustworthy or incompetent, and in either case subsequent and retrospective statements by the same men cannot be successfully appealed to in evidence.

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of males on Prily-  
alts in greater pos-  
emales in pelagic



## CHAPTER XIV.

*Management of the Pribyloff Islands by Russia and  
by the United States—(continued).**The "Driving" of Seals and its effects.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 147—  
"A herd of seals is as capable of being driven, separated and counted as a herd of cattle on the plains."
- (2.) United States' Case, p. 152—  
"The most stringent rules have been and are enforced by the Government to prevent any disturbance of the breeding seals."
- (3.) United States' Case, p. 153—  
"I do not see how it is possible to conduct the sealing process with greater care or judgment."
- (4.) United States' Case, p. 158—  
"In fact it may be questioned whether any seals are ever killed on a drive, except now and then one by smothering."
- (5.) United States' Case, p. 158—  
"The effects of over-driving and re-driving . . . upon the seals which from age or condition are unfit for killing, is of little or no importance in relation to seal life on the islands. . . . Certainly, no male seal thus driven was ever seriously injured or his virility affected by such re-driving."

## SUMMARY OF BRITISH REPLY.

The methods actually practised in taking seals upon the Pribyloff Islands are rightly included under the head of management, and of these one of the most injurious to seal life is the practice of "driving."

The process of "driving," as practised on the Pribyloff Islands is not only in itself cruel, but is excessively destructive. Seals often die while being driven, but a more serious loss is brought about by the enfeeblement of the productive powers of seals so driven.

Even in 1842, remarks bearing out these statements may be found in the Russian Records; and Messrs. Elliott and Maynard, in 1872-74, also allude to similar facts. In 1890, however, when attention had been drawn to the decrease of seals upon the Pribyloff Islands, Messrs. Elliott, Goff, Lavender, and Palmer—all officials of the United States' Government—concur in attributing the most serious effects to "driving."

The British Commissioners write to the same effect, and point out in particular the increased injury inflicted by the process of driving under the circumstances at the time of their investigations (in 1891) actually existing on the islands, when great disturbance was caused on the breeding rookeries, and considerable numbers of breeding females were gathered up with the young males in the endeavour to collect drives. The United States' Commissioners practically admit the existence of the same evils.

"Driving" a most injurious feature  
in methods practised on Pribyloff  
Islands.

The actual method of taking seals upon the Pribyloff Islands is a subject which also rightly falls under the head of the management of these breeding resorts of the seal. If the skins of seals are to be obtained for the use of man, the animals must be killed, and the precise method of the killing is a matter of comparatively small importance. There is, however, one special feature incident to the mode of taking seals upon the islands which, from the loss occasioned by it, has had a direct effect on the whole number of seals, and has operated particularly in the direction of reducing the already too small number of virile male seals, and in aggravating materially the result of a too high rate of killing. This is the practice known as "driving." Surrounded on the "hauling-grounds"—which so long as the normal conditions prevail, and before the reduction in numbers became serious, were at least theoretically separate from the actual breeding rookeries—the seals are driven overland to the killing places. A certain proportion is then selected for killing; and the remainder, consisting of males too young or too old for profitable killing, or of females accidentally gathered up from the margins of the breeding rookeries proper, is allowed to escape and to return to the water.

Its unnatural and destructive  
character.

See pp. 101 *et seq.*

In explanation of the general results of the practice of driving animals for considerable distances overland, which, by their organization, are fitted for free and easy movement in the sea alone, reference may be made to another page, where the marine habits and mode of life of the fur-seal are spoken of, and where Sir William Flower, Professor Allen, and other authorities are quoted in support of facts in connection with this, which have never, till in the Case now presented by the United States, been questioned. The specific evils which experience has proved to follow from the practice in question, in the case of the fur-seal upon the Pribyloff Islands, may here be pointed out by means of the recorded

observations. Apart from the cruelty inherent in the mere process of driving animals so organized, the actual effects of the operation have been found to show themselves in the death by the way, from exhaustion, of driven animals; the impaired or totally destroyed virility of the males thus frequently driven, and the disturbance caused by such driving, leading to the avoidance of the breeding-islands, or to their abandonment by large numbers of seals.

It will be understood that, when large numbers of young "killable" males still existed upon the islands, the evils mentioned were comparatively small, but with the increasing scarcity of "killable" seals; ever larger numbers of those of other classes were necessarily driven in the efforts to secure the "quota," and of those thus uselessly driven many were included again and again in succeeding drives. While the "hauling-grounds" became, in consequence of the decreased number of bachelor seals, less and less clearly separated from the breeding-grounds, considerable numbers of females engaged in suckling their young upon these grounds became unavoidably included in the drives. At the time at which Mr. H. W. Elliott recorded his observations of 1872-74 in his official Report which formed part of the records of the 10th Census of the United States, and was reprinted by the United States' Government, with slight alterations, in the "Fishery Industries of the United States," he held the view that the mode of taking and killing the fur-seal upon the Pribyloff Islands could not be improved upon; yet even in this monograph, which has ever since remained the principal source of information on the fur-seal of the North Pacific, the following references to driving are found:—

"A drove of seals on hard or firm grassy ground, in cool and moist weather, may be driven with safety at the rate of half-a-mile an hour; they can be urged along, with the expenditure of a great many lives, however, at the speed of 1 mile or 1½ miles per hour; but this is seldom done."

Census Report, pp. 71, 72.

Further on he speaks of the disposition of the old seals to flight—

"rather than endure the panting torture of travel:"

and on the next page writes:—

"The progression of the whole caravan is a succession of starts, spasmodic and irregular, made every few minutes,

Evil effects increased with increasing scarcity of killable seals.

Observations by Mr. H. W. Elliott, 1872-74.

loss of seals due to "driving" at that time.

the seals pausing to catch their breath, and make, as it were, a plaintive survey and mute protest. Every now and then a seal will get weak in the lumbar region, then drag its posteriors along for a short distance, finally drop breathless and exhausted, quivering and panting, not to revive for hours—days, perhaps—and often never. During the driest driving days, on those days when the temperature does not combine with wet fog to keep the path moist and cool, quite a large number of the weakest animals in the droves will be thus laid out and left on the track.

\* \* \* \* \*

"This prostration from exertion will always happen, no matter how carefully they are driven, and in the longer drives, such as 2½, and 5 miles from Zapadne on the west, or Polovina on the north, to the village at St. Paul, as much as three or 4 per cent. of the whole drive will be thus dropped on the road; hence I feel satisfied, from my observation and close attention to this feature, that a considerable number of those that are thus rejected from the drove, and are able to rally and return to the water, die subsequently from internal injuries sustained on the trip, superinduced by this over-exertion."

Lieutenant Maynard, 1874.

Lieutenant Maynard, U.S.N., in his Special Report of 1874, also writes:—

H. H., 44th Cong.,  
1st Sess., Ex.  
Doc. 43, p. 9.

"There has been a waste in taking the skins, due partly to the inexperience of the Company's agent, and partly to accident and the carelessness of the natives. In making the drive, particularly if they are long on, and the sun happens to pierce through the fog, some of the seals become exhausted and die at such a distance from the salt-houses that their skins cannot well be carried to them by hand, and are therefore left upon the bodies."

Veniaminov, 1842.

The observations above quoted are, however, but an amplification and repetition of the still earlier notes of the Russian chronicler, Veniaminov, who, referring to about the year 1842, writes:—

Census Report,  
p. 141.

"Nearly all the old men think and assert that the seals which are spared every year, *i. e.*, those which have not been killed for several years, are truly of little use for breeding, lying about as if they were outcasts or disenfranchised."

Captain Scammon,

Speaking of the actual killing of seals upon the Pribyloff Islands, under the Russian management, Captain Scammon further says:—

"Marine Mammalia," p. 156.

"The loud moanings of the animals when the work of slaughtering is going on beggars description; in fact, they manifest vividly to any observing eye a tenderness of feeling not to be mistaken. Even the simple-hearted Aleutians say that 'the seals shed tears.'"

Notwithstanding these early strictures on the method of driving, and its effect in loss of seals

and impaired virility of the survivors, the method has been continuously practised on the islands, with scarcely a word of recorded remonstrance, till within the past few years, the reduced number of seals renewed inquiry and drew attention to the modes employed.

When Mr. Elliott again visited the Pribyloff Islands in 1890—in the light of facts, he felt compelled to change his previously formed opinions as to the perfection of the methods there in use. He writes as follows\* :—

"I can see now, in the light of the record of the work of six or seven consecutive years of sealing, very clearly one or two points which were wholly invisible to my sight in 1872-74. I can now see what that effect of driving overland is upon the physical well-being of a normal fur-seal, and, upon that sight, feel warranted in taking following ground.

"The least reflection will declare to an observer that, while a fur-seal moves easier on land, and freer than any or all other seals, yet, at the same time, it is an unusual and laborious effort, even when it is voluntary; therefore, when thousands of young male seals are suddenly aroused to their utmost power of land locomotion, over rough, sharp rocks, rolling chert or stones, deep loose sand, mossy tussocks, and other equally severe impediments, they in their fright exert themselves most violently, crowd in confused sweltering heaps one upon the other, so that many are often 'smothered' to death; and in this manner of most extraordinary effort, to be urged along over stretches of unbroken miles, they are obliged to use muscles and nerves that Nature never intended them to use, and which are not fitted for the action.

"This prolonged, sudden, and unusual effort, unnatural and violent strain, must leave a lasting mark upon the physical condition of every seal thus driven, and then suffered to escape from the clubbed pods on the killing-grounds; they are alternately heated to the point of suffocation, gasping, panting, allowed to cool down at intervals, then abruptly started up on the road for a fresh renewal of this heating as they lunge, shamble, and creep along. When they arrive on the killing-grounds, after four or five hours of this distressing effort on their part, they are then suddenly cooled off for the last time prior to the final ordeal of clubbing; then when driven up into the last surround or 'pod,' if the seals are spared from cause of being unfit to take, too big or too little, bitten, &c., they are permitted to go off from the killing-ground back to the sea, outwardly unhurt, most of them; but I am now satisfied that they sustain in a vast majority of cases internal injuries of greater or less degree, that remain to work physical disability or death thereafter to nearly every seal thus released, and certain destruction of its

\* Quotation is again made from that part of his Report which he has himself published.

Mr. H. W. Elliott, 1890

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891),"  
pp. 56, 57.

virility and courage necessary for a station on the rookery even if it can possibly run the gauntlet of driving throughout every sealing season for five or six consecutive years; driven over and over again as it is during each one of these sealing seasons.

"Therefore, it now appears plain to me, that those young male fur-seals which may happen to survive this terrible strain of seven years of driving overland are rendered by this act of driving wholly worthless for breeding purposes—they never go to the breeding-grounds and take up stations there, being utterly demoralized in spirit and in body.

"With this knowledge, then, the full effect of 'driving' becomes apparent, and that result of slowly but surely robbing the rookeries of a full and sustained supply of fresh young male blood, demanded by Nature imperatively, for their support up to the standard of full expansion (such as I recorded in 1872-74),—that result began, it now seems clear, to set in from the beginning, twenty years ago, under the present system."

Mr. C. J. Goff, 1890

Referring to the same year, and in illustration particularly of the cumulative losses inflicted by this process of driving when the number of young males of "killable" age has become much reduced—losses which must have been in progress for many years, though they did not culminate in intensity till the year 1890—Treasury Agent Goff may be quoted as follows:—

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891),"  
pp. 15, 16.  
United States'  
Senate, 51st Cong.,  
2nd Sess., Ex. Doc.  
No. 49, pp. 4, 5.

"Now, in opening the season, it is customary to secure all the 2-year-olds and upwards possible before the yearlings begin to fill up the hauling-grounds and mix with the killable seals. By so doing it is much easier to do the work, and the yearlings are not tortured by being driven and redriven to the killing-grounds. Heretofore it was seldom that more than 15 per cent. of all the seals driven the latter part of June and the first few days in July were too small to be killed, but this season the case was reversed, and in many instances 80 to 85 per cent. were turned away. The accompanying percentage examples will show the disposition of this year's drive. The first killing of fur-seals by the lessees was on the 6th June, and the scarcity of killable seals was apparent to all.

"The season closed on the 20th July, and the drives in July show a decided increase in the percentages of small seals turned away, and a decrease in the killables over the drives of June, demonstrating conclusively that there were but few killable seals arriving, and that the larger part of those returning to the islands were the pups of last year. The average daily killing for the season was 400, or a daily average of 522 including only the days worked.

"We opened the season by a drive from the Reef rookery, and turned away 83½ per cent., when we should have turned away but 15 per cent. of the

seals driven, and we closed the season by turning away 86 per cent., a fact which proves to every impartial mind that we were redriving the yearlings, and considering the number of skins obtained that it was impossible to secure the number allowed by the lease, that we were merely torturing the young seals, injuring the future life and vitality of the breeding rookeries to the detriment of the lessees, natives, and the Government."

Agent A. W. Lavender, reporting upon the same point, says:—

"All the male seals driven should be killed, as it is my opinion that not over one-half ever go back upon the rookeries again."

Another, and entirely independent observer, also referring to the year 1890, in which interest became directed to the state of the rookeries and the causes of their decline, is found in Mr. W. Palmer, of the United States' national museum. In a paper read before the Biological Society of Washington after his return from the Pribyloff Islands, Mr. Palmer treats this subject at considerable length, and evidently as the result of close observation. Following some remarks on pelagic sealing (of which, however, he does not profess to speak from personal knowledge), he writes:—

"But pelagic seal fishing is not the only cause of the decrease of seal life on the Pribyloffs.

"Probably an equal cause is the unnatural method of driving seals that has been followed on the islands since the first seal was captured.

"The mere killing of seals as conducted on the islands is as near perfection as it is possible to get it. . . . But the driving is a totally different matter. I doubt if any one can look upon the painful exertions of this dense crowding mass, and not think that somewhere and somehow there is great room for improvement. It is conducted now as it always has been: no thought or attention is given to it, and, with but one exception, no other method has been suggested, or even thought necessary.

"The fur-seal is utterly unfitted by nature for an extended and rapid safe journey on land. It will progress rapidly for a short distance, but soon stops from sheer exhaustion. Its flippers are used as feet, the belly is raised clear from the ground, and the motion is a jerky but comparatively rapid lope. When exhausted, the animal flops over on its side as soon as it stops moving, being unable to stand up.

"The character of the ground over which the seals are driven is in many places utterly unfit for the purpose; up and down the steep slopes of sand dunes,

Mr. A. W. Lavender, 1890.

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891)."  
p. 21.

United States'  
Senate, 51st Cong.,  
2nd Sess., Ex. Doc.  
No. 49, p. 9.

Mr. W. Palmer, 1890.

"Forest and  
Stream,"  
October 29, 1891.  
British Commis-  
sioners' Report.  
pp. 187, 188.



over cinder hills studded with sharp rocks, some places being so steep that they are avoided by the people themselves; but the seals have been driven over the same ground for many years, and on some of the hills deep paths have been worn by the passing of tens of thousands of seals. No attempts have been made to remove the rocks or to lessen the difficulties of the passage, and the seals are still driven pell-mell over huge rocks and down steep inclines, where many are crushed and injured by the hurrying mass of those behind. . . . The seals that are not killed are then driven away with tin pans and a great noise, and while in an excited and over-heated condition, rush, as fast as it is possible for a seal to go, into the icy-cold waters of Behring Sea.

"It will thus be seen that these seals are subjected, on the average from 2 o'clock in the morning until 10, to a long drive over very rough ground, then to a dense herding, where they are continually in motion and crowding each other, thence to an intense excitement on the killing ground, and finally, in a condition little better than madness rushing into icy-cold water. Uncivilized or partly-civilized man has no pity for dumb brutes, and as these drives are conducted entirely by the natives, who prefer indolence in the village to the discomforts of a drive in the fog and rain, it follows that the seals are often driven much faster than they should be, and absolutely without thought or care. But this is not all. The seals that are spared soon haul-out again near a rookery, and perhaps the very next day are obliged to repeat the process, and again and again throughout the season, unless in the meantime they have crawled out on a beach to die, or have sunk exhausted to the bottom. The deaths of these seals are directly caused, as I shall explain, and, so far as I am aware, it is mentioned now for the first time."

Mr. Palmer on actual cause of death  
of driven seals.

Mr. Palmer then states that he believes death to result chiefly from the consumption of the natural store of fat while the animal is too exhausted to go in search of food. He continues:--

"I remember looking with great curiosity for the cause of death in the first seal I found stranded on the beach. Externally there was nothing to indicate it, but the first stroke of the knife revealed instantly what I am confident has been the cause of death of countless thousands of fur-seals. It had been chilled to death; not a trace remained of the fat that had once clothed its body and protected the vital organs within. . . . I opened many after this, and always discovered the same, but sometimes an additional cause, a fractured skull perhaps. I have even noted those left behind in a drive, and watched them daily, with the same result in many cases. At first they would revel in the ponds or wander among the sand dunes, but in a few days their motions became distinctly slower, the curvature of

The spine became lessened; eventually the poor brutes would drag their hind flippers as they moved, and in a few days were become food for the foxes. In every case the fat had disappeared.

"During the eight years' minority of the few male seals that have escaped their enemies it is safe, I think, to assume that at least four summers were spent in getting an experience of the drives. Does anyone think that they were then capable of filling their proper functions on the rookeries?"

"The natives have been provided with whistles, and when a boat finds itself near a rookery (and a pretence for its presence is easily found) good use is made of them, with a consequent confusion among the seals, and a probable increase in the next morning's drive. And yet a stranger on the islands is bamboozled with the information that his presence a few yards from the village is fraught with great danger to the Company's interests."

After speaking of the care exercised in regard to the driving of seals upon the Russian (Commander) Islands, Mr. Palmer contrasts the state of affairs as observed by him on the Pribyloff Islands as follows:—

"On the American side, on the contrary, the seals are driven as fast as possible, the only ones being weeded out being those too weak to go further, while of those rounded up on the killing-ground by far the greater number are allowed to escape. Out of a drive of 1,103 counted by me only 120 were killed; the rest were released."

The British Commissioners, in treating the subject of driving seals on the islands, and its effects, say:—

"One of the most important points connected with the taking of fur-seals on the Pribyloff Islands is that of the method of driving from the various hauling-grounds to the killing-grounds. However safeguarded or regulated, the method of driving fur-seals overland for considerable distances must be both a cruel and destructive one."

This process of driving is then explained and examined, and instances of its effects, as noticed by the Commissioners themselves, are given; and the following farther remarks are made:—

"If it were possible to drive only those seals which it is intended to kill, little exception could be taken to the method of driving in the absence of any better method, but the mingling of seals of varied ages upon the hauling-grounds from which the drives are taken, even under the original and more favourable conditions of former years, renders it necessary to drive to the killing place many seals either too young or too old to be killed."

British Commissioners on effects of  
"driving."

British Commis-  
sioners' Report,  
para. 704.

Ibid., para. 707.

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Impossib

Attention is then called to the intensification of the evils incident to driving when the whole number of "killable" seals becomes much reduced, and, in particular, when it is under such circumstances still attempted to secure a large annual "quota" of skins. The necessary injury to vitality in the case of the seals driven but not killed is noticed, together with the fact that suckling females are often included in the drives.

Females included in "drives."

British Commissioners' Report, para. 716.

On the point last alluded to it is said :—

"Thus, it has occurred that, in late years, considerable and increasing numbers of breeding females have been driven to the killing-grounds with the killables, though when recognized there in the process of selecting for killing, they have been released."

Appendix, vol. i, p. 152.

Referring to his observations on the Pribyloff Islands in 1892, Mr. Macoun also reports that in 1892 he counted the seals killed and those allowed to escape at four "drives," and that the number killed varied from 13 to 17 per cent. of the whole number driven. He also mentions having seen many badly injured seals driven from the killing-ground, that would probably die; and that along the route over which seals had been driven, many carcasses of seals that had died were found.

To show that the inclusion in the drives of seals not intended to be killed, including females, is no new thing, Captain Bryant may again be quoted. In the passage cited, he refers particularly to the year 1869 :—

British Commissioners' Report, para. 718.  
Bull. Mus. Comp. Zool., vol. ii, Part I, p. 105.

"At the close of this period the great body of yearling seals arrive. These, mixing with the younger class of males, spread over the uplands and greatly increase the proportion of prime skins, but also greatly increase the difficulty of killing properly. Up to this time, there having been no females with the seals driven up for killing, it was only necessary to distinguish ages; this the difference in size enables them to do very easily. Now, however, nearly one-half are females, and the slight difference between these and the younger males renders it necessary for the head man to see every seal killed, and only a strong interest in the preservation of the stock can ensure proper care."

Impossibility of excluding females from "drives,"

Ibid., para. 717.  
United States' Census Report, p. 72.

Again speaking of the years 1872-74, Mr. Elliott writes :—

"It is quite impossible, however, to get them all of one age without an extraordinary amount of stir and bustle, which the Aleuts do not like to precipitate;

hence the drive will be found to consist usually of a bare majority of 3- and 4-year-olds, the rest being 2-year-olds principally, and a very few, at wide intervals, 5-year-olds, the yearlings seldom ever getting mixed up."

Even as early as 1872-74, the major portion of the catch is reported to have consisted of 2- and 3-year-old seals, and under such circumstances the practical impossibility of excluding young females from the number killed is pointed out by the British Commissioners.

On the subject last mentioned, Mr. S. N. By-nitzky's Report of 1870 may also be referred to, where he says that females are easily mistaken for young males even by the natives.

The special effects produced by the disturbance and alarm of the seals upon the breeding-islands, with other facts, are also treated of in this connection by the British Commissioners; but for details their Report (particularly paragraphs 704-721) should be referred to. In concluding this subject, the Commissioners write:—

"The aggregate loss incurred is thus the result of various causes, which together involve the killing of many seals which ought not to be killed, and it is evident that the methods of driving and killing on the Pribyloff Islands, as now practised, are susceptible of very great improvement."

The United States' Commissioners, though in a very qualified manner, substantially admit the existence of the same evils. Their admission appears to mean in effect that while such disastrous practices have been allowed continuously for twenty years or more, they may at some future time be remedied, if it be thought expedient. They write:—

"While there is no doubt that in some instances excessive driving has been allowed, that seals have been driven further than is actually necessary, and that proper care has not been taken to eliminate the non-killable seals as far as possible before the driving is well under way, those are matters that are so entirely under control that a proper adjustment may be secured at once."

British Commis-  
sioners' Report,  
para. 710.  
Ibid., paras. 698-  
700.

See also evidence  
in United States'  
Case, p. 203.

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, p. 42.

British Commis-  
sioners' Report,  
para. 721.

Statements of the United States  
Commissioners.

United States'  
Case, p. 361.

## CHAPTER XV.

*Management of the Pribilof Islands by Russia and  
by the United States—(continued).**Absence of Proper Control by Government Agents.*

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, pp. 136, 137—  
"The origin and practical workings of the lease of 1870 were made the subject of an elaborate investigation in 1876 by the Committee of Ways and Means of the 44th Congress, who reported that in their opinion, the terms of the lease were highly favourable to the Government and all parties concerned."
- (2.) United States' Case, p. 137—  
"In a subsequent investigation in 1888 by the Committee on Merchant Marine and Fisheries of the 50th Congress, the same conclusion was reached."
- (3.) United States' Case, p. 139—  
"It is evident from the nature of the industry that in case the sealing on the islands should be managed directly by the Government the opportunities for fraud and theft are very great on the part of the agents, who under the Act of 1870 are prohibited from being in any way connected or interested in the industry: as it is now, the lessees and Agents are restraints upon each other."
- (4.) United States' Case, pp. 139, 140—  
"Immediate Government management is at once seen to be impracticable under these circumstances and the present method employed to be the only feasible one."  
"The careful investigations made by the Congressional Committees showed that the Alaska Commercial Company had fulfilled the terms of the lease in all respects according to the requirements of the Act of 1870."
- (5.) United States' Case, p. 145—  
"The handling of the seals on the islands, being entirely done by the natives, is directly under the supervision of the Government Agents."
- (6.) United States' Case, pp. 146, 147—  
"Under this lease [that of 1890] it is difficult to see how the United States could have a more complete control over the seal industry on the islands, even if it took the entire management of the business. Leasing under such terms gives the Government absolute power in fixing the quota according to the condition of the herd, and at the same time avoids the details of management and disposing of the skins, which are the especial difficulties in the way of the United States working the rookeries itself. The course thus adopted by the United States seems as free from criticism or improvement as any that can be suggested."

(7.) United States' Case, pp. 153, 154 -

"The number of seals allowed to be killed annually by the lessees was, from 1871 to 1889, inclusive, 100,000; but this number is variable, and entirely within the control of the Treasury Department of the United States. In 1889 Charles J. Goff, then the Government Agent on the Islands, reported to the Department that he considered it necessary to reduce the quota of skins to be taken in 1890.

#### SUMMARY OF BRITISH REPLY.

The supervision and control of the lessees of the Pribyloff Islands by the Government Agents of the United States has throughout been lax and inefficient, and such as to afford proper safeguards to seal life upon the islands. Mr. Bontwell, Secretary of State when the leasing of the islands to a Company was first proposed, anticipated this result, and his forecast has been fully justified by events.

The fact that, though reported against from time to time, the quota of skins was allowed for twenty years to stand unchanged at 100,000, is alone sufficient to show that the lessees exercised an influence to the detriment of seal life upon the islands.

The statement made on p. 154 of the United States' Case is wholly misleading, because of its omission of mention of any reports speaking of the injury resulting from the taking of the allowed quota of 100,000 skins, previous to that contained in Mr. Goff's report of 1889, after which action resulting in a reduction of this quota was first taken. It is known that smaller skins were allowed by the Government Agents to be taken from year to year, at least since 1883, in order to enable the quota to be filled; and this without any check being attempted by the Government.

Official Reports of the United States, including Reports of the Governor of Alaska, with other evidence, show that the lessee Company practically exercised independent control over the whole western part of the Territory of Alaska.

The Company, in fact, controlled the Government Agents, who were in all respects dependent on them. Evidence shows that wholly inexperienced men were sent to the Pribyloff Islands; that they were frequently changed; and that at least several of these Agents were not furnished with instructions by the Government.

The driving and killing of the seals, carried out as a rule by the "natives" of the Pribyloff Islands, can further be shown to have been directly controlled by the Agents of the Company, and not by those of the Government. The same conditions existed in 1832.

The statements above quoted from the Case of the United States are grouped in order to show the nature and amount of the control claimed to have been exercised over seal interests on the Pribyloff Islands, and particularly over the operations of the lessees of these islands, by the United States Government. It appears to be asserted that, though certain circumstances prevented the establishment of an efficient control from the date of the cession of Alaska in 1867 to 1869,

Summary of United States' contentions as to methods of control by Government Agents.

United States' Case, p. 133.

United States'  
Case, pp. 137-146.

yet, in 1869, such control was initiated that the only practicable course open to the United States' Government was that of granting an exclusive right of sealing on the islands to a Company; that, under the lease of 1870, the Government Agents have been prohibited from being in any way connected with, or interested in, sealing; and that such Agents and the lessees are restraints upon each other. Further, that Committees of Congress have, in 1876 and 1888, investigated the operations of the leasing Company, and have found these to be entirely satisfactory; that the conditions of the present lease (beginning in 1890), like those of the previous lease, are such as to give the United States' Government absolute power to fix the "quota" according to the condition of the rookeries; and that the handling of seals upon the islands is carried out under the immediate supervision of the Government Agents, being done by the natives, who are directly controlled by these Agents.

See pp. 226 *et seq.*

Control by Government Agents in  
reality ineffective.

The subject-matter of some of these assertions has already been in part dealt with more particularly, in foregoing pages, which treat of the early history of the United States' management of the Pribyloff Islands. Reasons will here be given to justify a belief that the control exercised on the Pribyloff Islands and in connection with the fur-seal industry by the United States through its Agents has throughout been lax and defective; that in many cases the officials of the Company leasing the islands appear in reality to have controlled the Government Agents; that from time to time accusations of improper conduct have been laid against the Agents and officers, both of the Government and the Company; and that, as a matter of fact, the supervision of the natives, and of the handling of the seals there, have practically been under the control of the Company, and not of the Government Agents.

This result foreseen by Mr. Boutwell.

Speaking in 1870 of the proposal at that time first under discussion for the leasing of the Pribyloff Islands to a Company for a term of years, Mr. Boutwell, when Secretary of State for the United States, took exception to it on the ground that it would create a monopoly, and added:—

41st Cong.,  
1st Sess., Ex. Doc.  
No. 109.

"Moreover, the natives of the islands would be under the control of the Company, and as the expiration of the lease approached, the inducements to protect them

United States' conten-  
tious methods of control by  
Agents.



and preserve the fisheries would diminish, especially if the Company saw, as would probably be the case, that it had no hope of a renewal of its privileges. Under these circumstances, the Government of the United States would necessarily be subjected to great expense and trouble. . . . I am of opinion that it is better that the Government should assume the entire control of the business of the islands, and exclude everybody but its own servants and agents; that it should establish a rigid system of police, excluding from the islands distilled spirits and fire-arms, and subject vessels that touch there to forfeiture, except when they are driven to seek shelter, or for necessary repairs."

It is submitted that the above remarks of Secretary Boutwell have been entirely justified by the subsequent history of the Pribiloff Islands under the operation of the lease which was entered into not long afterwards. The exact conditions which were foreseen by the Secretary in effect did grow up; and at the expiry of the lease, and even since under the operations of a new lease, some of those best informed on the whole subject are found to advocate the same system of direct Government control as that suggested by Secretary Boutwell.

In connection with the amount and efficiency of the control actually exercised over the operations of the Company on the Pribiloff Islands by the United States' Government, the most important question is that of the number of seals allowed to be killed, and of the relation of that number to the actual state of the seal rookeries on these breeding-islands.

It has already been shown that it was in the power of the Secretary of the Treasury to reduce the number of seals to be killed annually on the islands, but that though repeated official Reports spoke of the deterioration of the rookeries, no such reduction took place. It is, in fact, in the Case now presented by the United States, alleged that, from 1880 to 1884-85, the number of seals resorting to the islands remained stationary, and that in 1884 a marked decrease began, which has since continued. This contention is elsewhere disproved, but even if it be admitted, it is clearly apparent that if the number remained stationary during the years mentioned, the recurrence of climatically disastrous years like those of 1836, 1859, and 1876 would have produced most serious effects. It is, indeed, evident that only the continued increase of the

Inefficiency of control specially evidenced by non-reduction of quota.

Admitted in United States' Case that quota remained unaltered while seals stationary or decreasing in number.

United States Case, p. 164.

Elliott, Census Report, p. 49.  
United States' Case, p. 103.  
Bryant in "Monograph of North American Pinnipeds," p. 399.

seals during a succession of favourable years, renders them able to withstand successfully the occasional natural reverses to which they are liable; while from 1884, when it is asserted that a steady diminution first began, the Pribyloff Islands must be admitted to have been in a still more alarming condition.

Notwithstanding this, however, no change in the number to be killed, or "quota," was made during the entire term of lease of the Alaska Commercial Company; and it was not till 1890 (this being the first year of the new lease of the North American Commercial Company) that the "quota" was reduced from 100,000 to 60,000.

The British Commissioners, after pointing out the power of regulation nominally vested in the Secretary of the Treasury, write respecting the "quota" of 100,000:—

British Commissioners' Report, para. 47.

"Practically, however, and on grounds not publicly explained, it remained unaltered, and became a fixed limit."

And, further:—

Ibid., paras. 71-73.

"When a decrease became apparent on the islands, prudence should have dictated some curtailment of the annual slaughter there. . . . No such curtailment, however, occurred. The Company holding the lease of these islands on fixed terms were not interfered with, but continued to take their full legal quota of skins without regard to the risk to seal life as a whole. Not only so, but instead of reducing the catch, the standard of weight of skins taken on the islands was steadily lowered so as to include a younger class of seals under the designation of 'killables.'"

\* \* \*

Interests of the lessee Company alone regarded.

"The Company holding the lease of the Pribyloff Islands had, of course, its own interests in view, and the period of the lease was drawing to a close; but it must be added that no explanation has been offered by the Government Agents in charge of the islands\* of the

\* These were: Agents H. G. Otis, H. A. Glidden, G. R. Tingle, and C. J. Goff. (The last-named reported against the continued killing of the "quota," and was removed.) Assistant Agents W. B. Wardman, L. Kimmel, H. G. Fowler, A. P. Lond, T. J. Ryan, J. P. Manchester, W. Gavitt, J. Murray, and S. R. Nettleton.

The names of several of these officers occur prominently among those of persons now produced in evidence by the United States.

Quota unchanged during lease of Alaska Commercial Company.

control specially explained—reduction of quota.

United States' case remained unaltered stationary or decreased.

principles under which they were guided to allow this lowering of standards, with the concomitant encroachment on the limits of breeding rookeries, and the extension of the area of driving to places hitherto held in reserve."

The circumstances thus disclosed by the statements made in the Case presented on the part of the United States, go far towards establishing the statement so frequently made, that the Company holding the lease of the Pribyloff Islands exercised a very powerful influence over the Government officials who were appointed to supervise its operations.

This particular phase of the "control" or "management" exercised by the Government is very lightly touched upon in the Case of the United States, where it is said :—

This assertion, that the "quota" was under Government control, when it remained unaltered, though reduction necessary, is therefore misleading.

"The number of seals allowed to be killed annually by the lessees was, from 1871 to 1889, inclusive, 100,000, but this number is variable and entirely within the control of the Treasury Department of the United States. In 1889 Charles J. Goff, then the Government Agent on the islands, reported to the Department that he considered it necessary to reduce the quota of skins to be taken in 1890. The Government at once reduced the number to 60,000, and ordered the killing of seals to cease on the 20th July." United States' Case, pp. 153, 154.

It is submitted that the statement above quoted does not represent the facts as they occurred.

Admissions in United States' Case that unusual and injurious measures adopted to fill unchanged "quota" in late years.

The United States' Commissioners write as follows :—

"It is well known that during the last few years the operating Company had experienced difficulty in finding a sufficient number of high-class skins to fill the quota permitted by the Government and that finally that quota was greatly reduced by order of the Representatives of the Government on the islands." Ibid., p. 338.

On the other hand, Professor J. A. Allen says :—

"During the last two or three years, however, and in consequence of the decline from the former status of the herd, it has been necessary to lower the age of seals selected for killing, and also to redrive portions of the herd, in order to secure even the greatly restricted quota allowed to be taken in 1890, the last year of killing for commercial purposes." United States' Case, Appendix, vol. i, pp. 407, 408.

But these admissions very imperfect,  
and, consequently, misleading.

It is believed that the admissions contained in the two passages last quoted are in themselves sufficient to show that no efficient control was exercised in the interests of seal life on the Pribyloff Islands by the United States' Government. But these admissions fall short of the facts as known and recorded in the official Reports of that Government. It has already been shown by reference to these Reports, and confirmed by ascertained facts respecting the skins sold by the Company, that a reduction in the sizes of skins had been deliberately allowed from year to year, at least since 1883, whereas no reduction in number was enforced till 1890, the first year of the lease to the new Company. That the "quota" of 100,000 had, in effect, become a fixed number, as stated by the British Commissioners, is shown by Professor Allen's remarks as to the extraordinary measures found to be "necessary," and practised in order to secure the "quota."

The following notes and quotations afford further evidence of the absence of proper control on the part of the Government :—

H. Mis. Doc.  
No. 11, 41st Cong.,  
2nd Sess.

F. N. Wicker, a special Treasury Agent, in respect to the year 1869, stated that, though the law was nominally in force, an inspection of the islands convinced him that more than the legal quota had been taken in that year and the skins sold to traders.

Dr. W. H. Dall, at that time in charge of the hydrographic work in Alaska, under date the 31st August, 1874, addressed a letter to Messrs. Elliott and Maynard, then Commissioners for the United States in respect to the Pribyloff Islands, in which the following statements are made :—

"I have not arrived at that point where I should believe that the Government habitually employs dishonest Agents, though long experience in Alaska might shake any man's optimism.

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
83, pp. 235, 236.

"I will now close this letter with one remark, which has no special connection with the foregoing, but which I believe of some importance. This is, that it would be very desirable that the officers of the United States employed on the Pribyloff Islands should be prohibited from receiving pay from, or rendering services for pay to, the Company whom, practically, they are placed there to watch. That this has occurred in several instances I am aware, and probably in some cases without any improper intent on either side; but it is evident at once that it opens a wide door for scandal, if not for fraud."

General O. O. Howard, while engaged in his official inspection in Alaska in 1875, was evidently much impressed with the circumstances that the Alaska Commercial Company, the lessees of the Pribyloff Islands, exercised an altogether undue amount of influence there. This is particularly evidenced by the following remarks in his official Report:—

“A citizen of low standing on the coast writes me that the Fur Company who have leased the seal business from the United States Government make millions of profit; and that their operations are concealed as much as possible; that vastly greater numbers are killed annually, more than their agreement allows, and that large amounts of hush-money are paid to keep the matter quiet.”

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, p. 149.

General Howard transmitted with his Report a document entitled “A History of the Wrongs of Alaska,” which was reprinted with that Report as a Congressional document. In it, numerous grave charges concerning the granting of the lease of the Pribyloff Islands and the conduct of the lessees, were made. Most of these are unimportant in the present connection, but the practices of the Company complained of are said to have been rendered possible—

*Ibid.*, pp. 154, 158,  
162.

“principally through the assistance of the United States’ revenue officers.”

Amongst those specified are Samuel Falkner, at one time Acting Commissioner at Sitka, and H. H. McIntyre, Special Agent of the Treasury Department, who both afterwards became employes of the Alaskan Commercial Company, and both now also appear as prominent witnesses in connection with the Case of the United States.

General Howard observed that he was personally unable to judge of the character of the statements contained in this document, but added:—

“[I] do believe it to be a mistake, and a dangerous precedent, on the part of the Government, to give into the hands of any Company, however benevolent in its intentions, so vast a monopoly.”

Danger of monopoly.

In his official Report for 1887, A. P. Swineford, Governor of Alaska, writes as follows of the operations and power of the Alaska Commercial Company, which he professes himself to be unable to control:—

Governor Swineford's charges  
against the Company, 1887.

observations as to  
company, 1875.

"Report of the  
Governor of  
Alaska," 1887,  
p. 32.

"While all this and much more is true concerning its treatment of the native people, instances are not lacking where it has boycotted and driven away from the islands Government officials who, intent upon the honest, faithful discharge of their duties, have incurred the displeasure or refused to do the bidding of its Agents. In fact, it possesses the power to compel compliance with its every exaction, and wherever it has obtained a foothold neither white man nor native can do more than eke out a miserable existence, save by its sufferance."

His complaint of its action.

"The actual relations of the Governor and nominal Executive Head of the Territory of Alaska to the Alaska Commercial Company are well illustrated by the fact that he does not hesitate to complain that the agents of the Company undermine his own power at its source, writing:—

Ibid.

"Its paid agents and lobbyists are kept at the national capital to oppose any and every effort that may be made to promote the welfare of Alaska through such legislation as will encourage immigration and the enlistment of capital in the development of the natural wealth hidden away in her forests, streams, and mountains: its every aim and effort is in the direction of prolonging its existence and strengthening its tyrannical hold by a blocking of the wheels of progress."

His characterization of the  
Corporation.

While on another page he characterizes the same Corporation in the following terms:—

Ibid., p. 34.

"Conceived (as there is abundant evidence to show) in corruption, born in iniquity, and nurtured and grown strong and insolent on ill-gotten gains wrung from a hapless and helpless people, this giant monopoly, which rests like a blighting curse upon the progress and welfare of this great territory, should be shorn of its corruptly-secured, much-abused franchise with no more delay than may be absolutely necessary."

Ibid., pp. 43-45.

In the Appendix to this Report, Governor Swineford prints at length certain specific complaints by the United States' Deputy Marshal at Unalaska respecting the conduct there of the agents of the Company.

of monopoly.

Charges reiterated in 1888.

It is proper to remark that the same gentleman, in his Report for the following year (1888), in the face of a "reply" made to his former statements by the President of the Company, repeats these statements. He writes:—

Swineford's charges  
Company, 1887.

Ibid., 1888,  
p. 34. Compare  
United States'  
Case, p. 138.

"I now and here reiterate every one of those charges, though I know full well that an investigation made by a Committee of Congress, holding its sessions in Washington, and calling as witnesses only those who had

been recipients of the Company's favours, is not likely to arrive at any just conclusion as to their truth or falsity."

In the same Report, Governor Swineford remarks, in close agreement it will be observed with the earlier conclusions of General Howard, as follows:—

"I can see no good reason why the present monopoly of the [fur-seal] business may not be abolished, not only without loss to the Government, but to its very great advantage so far as the amount of revenue to be derived is concerned. The present system of farming out the rookeries is not only obnoxious to every sense of right and justice, but, as I think I have shown, is in a very great degree inimical to the best interests of the territory."

Among the duties of the Governor of Alaska, as defined in section 5 of the Act of the 17th May, 1884, entitled "An Act to create a Civil Government for Alaska," is that of inquiring into the operation of the lease of the Pribyloff Islands. The Act provides:—

"The Governor appointed under the provisions of this Act shall from time to time inquire into the operations of the Alaska Seal and Fur Company, and shall annually report to Congress the result of said inquiries, and any and all violations by said Company of the Agreement existing between the United States and said Company."

Though Governor Swineford succeeded in visiting the Pribyloff Islands in 1888, the circumstances are practically such that it is ordinarily impossible for the Governor of Alaska to carry out the above provision. The capital of the territory, Sitka, is situated at a distance of about 1,200 miles from Unalaska, the nearest place of any importance to the Pribyloff Islands, which lie at a further distance of about 200 miles. There has been no regular means of communication between Sitka and Unalaska till 1891, when a monthly mail was for the first time established for a part of the year. Thus, unless by means of some chance vessel, it has been necessary to send any communications passing from Sitka to Unalaska, or *vice versa*, by way of San Francisco, involving a sea transit of some 3,500 miles, while from San Francisco to Unalaska there has again never been any regular mail service. It has thus very naturally happened that the whole of the western part of Alaska has been practically beyond the control of the Governor, and that the powerful Company

His objection to the monopoly.

"Report of the Governor of Alaska," 1888, p. 44.

Duty of the Governor of Alaska to inquire annually into operations of the Company.

The impossibility of execution of this duty.

Mr. E.  
me

Mr. R.



leasing the Pribiloff Islands has exercised there an almost independent sway.

Mr. H. W. Elliott, though throughout endeavouring to support the proceedings of the Alaska Commercial Company, does not leave the subject of the ambiguous relations between the officers of the Company and Government entirely unnoticed, writing in his official Report:—

Census Report,  
p. 167.

“There remains an unwritten page in the history of the action of the Government towards the protection of seal life on the Pribiloff Islands, and it is eminently proper that it should be inscribed now, especially so since the author of this Memoir was an eye-witness and an actor in the scene. When he first visited the Seal Islands, in 1872-73, he was compelled to take passage on the vessels of the Company leasing the islands; compelled, because the Government at that time had no means of reaching the field of action, except by the favour and the courtesy of the Alaska Commercial Company. This favour and this courtesy, as might be expected, was always promptly and generously proffered, and has never been alluded to as even an obligation or service rendered the Treasury Department. But, nevertheless, the thought occurred to me at the time, and was strengthened into conviction by 1874, that this indifference to its own self-respect and failure to support properly the aims of its agents up there should end; and that the Treasury Department should detail one of its own vessels to visit, transport, and aid its officers on the Pribiloff Islands, and also be an actual living evidence of power to execute the law protecting and conserving the same.”

Mr. Ryan, Assistant Government Agent in 1885-86, states:—

“The Company's men are sailors and men they can pick up as best they can, and, as I have said before, they have been taught by the Government agents not only that everything belongs to them, not only the seal, but the rocks the seal are on.

“You had to find out everything to be done from the Company people. . . . If the Government Agents, I repeat, would do their conscientious duty and not place themselves under obligation to the Company, by accepting free transportation, &c., and swearing afterwards that they paid their way, they would be much help to the poor natives.”

He further says:—

“Mr. Morgan and the men under him were somewhat spoiled. The great trouble, Mr. Chairman, there is that the Government officers have not been doing their duty, and they have spoiled the Company, so much so, that they seem to think they not only own the seals, but that they own the whole island.

Mr. Elliott on relations of Government and Company's Agents.

on to the monopoly.

governor of Alaska to  
fully into operations  
any.

ability of execution of  
his duty.

Mr. Ryan on position of Company's Agents.

H. R. 50th Cong.,  
2nd Sess., Report  
No. 3883, p. 215.

Ibid., p. 213.

"The officers have not done their duty in showing them [the natives] that the Government owns and governs the islands."

H. R. 50th Cong.,  
2nd Sess., Report  
No. 3583, p. 214.

Respecting the inefficient control by the United States' Government, Mr. W. Palmer, of the Smithsonian Institution in Washington, speaks as follows in a paper read by him before the Biological Society in Washington in 1891:—

Mr. W. Palmer on the character of  
the Government Agents, and their  
relations to the Company.

"But these drives from Polovina and Zapadnie, and the decrease in seal life, seems to have been carefully concealed from the Government and others interested in the welfare of the seals; in fact, it has been strongly put forth in the Reports of the Treasury Agents in charge and elsewhere that the seals have actually greatly increased in numbers; but a comparison of the sketches alone in Mr. Elliott's 'Monograph of the Seal Islands,' made in 1873-74 and 1876, with the actual condition of affairs at present on the islands, will convince any one that the opinions and Reports of political appointees are almost worthless when dealing with the fate of the fur-seal.

British Commis-  
sioners' Report,  
p. 189.

"How can it be otherwise? Their tenure of office exists only with that of the Secretary of the Treasury; with every change of that office new men who know nothing of seals are sent up, and these men are entirely dependent on the Seal Company even for their passage and board while there. All visitors to the islands are regarded as interlopers and meddlers.

"On the Russian side, it is a settled fact that the islands and seals belong to the Russian Government, and that the Company taking the skins has only certain restricted rights for that purpose; but on the American side it seems to be a settled fact, at least in the minds of the Company's people, that they own the seals and the islands, while the duty of the Government is to collect the tax and appoint Agents to subserve the interests of the Company only. The natives are utterly dependent on the Seal Company for their support, and while having a very vague idea that somehow the Government is a big thing, they naturally look to the Company for everything affecting their interests.

"I have only touched lightly upon several questions of the sealing industry, and have by no means exhausted the subject; but enough has been said, I think, to show that if an industry which eighteen months ago was expected to pay the Government a net profit of over 2,000 per cent., and is, besides, a great natural exhibit, the only one of the kind America can produce, is to be saved, reform is necessary. For twenty years the fur-seal has been the spoil of politics, and the victim of the poacher. Inexperience on the one hand, and avarice on the other, have well-nigh ruined the industry in American waters."

Resulting danger to seal interest.

The Government should take entire control.

British Case, Appendix, vol. iii, "United States No. 2 (1891)," p. 21. United States' Senate, 51st Cong., 2nd Sess., Ex. Doc. 49, pp. 6, 9. Ibid., pp. 17, 18.

Remarks of United States' Commissioners deploring frequent change in Government Agents.

United States' Case, pp. 378, 379.

Inexperienced men sent to the islands.

Ibid., p. 312.

Absence of proper instructions to Government Agents.

Captain Bryant.

Assistant Agent A. W. Lavender, in his Report for 1890, says:—

"The Government should take absolute control of these islands."

Treasury Agent C. J. Goff likewise recommends—

"That the Department take the entire matter of protecting these rookeries under its immediate supervision, for I regard any other system of protection dangerous to the future of all interested."

The United States' Commissioners make the following qualified allusion to the want of proper supervision and control by the Government Agents on the Pribyloff Islands:—

"In addition to the establishment of such Regulations as would practically suppress pelagic sealing, it is strongly recommended that killing on the islands be subjected to somewhat more strict and competent supervision. While it is not believed that any serious consequences have resulted from looseness in this respect, the interests involved are so important, and in some respects so complicated, that too much care cannot be given to the selection of the proper persons to be intrusted with their conservation. The practice of frequent changes in the Government Agents is deplorable. They should be so familiar through association and observation with the appearance of the various rookeries as to be the first to notice any changes which may take place."

They elsewhere state that, in 1890, the Government Agents sent to the islands were—

"new men, inexperienced in matters relating to seal life."

This, it will be remembered, was at a time when the rookeries were specially in need of competent supervision.

As additional evidence of the general want of proper control on the part of the Government, it is noteworthy that no proper instructions appear to have been issued to the Government Agents as to their duties on the islands. Incidental proof of this is found in the evidence taken before the Congressional Committee of 1888.

As early as 1871 an allusion to the same matter is found in a letter to the Secretary of the Treasury, dated at St. Paul Island, the 19th May of that year, where Captain Bryant, the Government Agent, writes:—

"In the absence of any instructions I shall be guided by a certified copy of the Act of Congress, authorizing the lease, and the conditions of the lease, as given me by the Company." H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, p. 50.

Again, in the case of Mr. W. B. Taylor, Assistant Government Agent in 1881. This gentleman explains that, when he received his appointment as Treasury Agent, he was Clerk of the Illinois House of Representatives. He says:--

Mr. W. B. Taylor.

"I did not know where the Seal Islands were at that time; neither did I know what my duties would be. All that I knew was that I should proceed at once to San Francisco to take the vessel. I made inquiry as to the whereabouts of the islands, but I could not get much satisfaction anywhere. . . . I landed on St. George Island first a few hours, and then proceeded to St. Paul Island, and without any positive instructions from the Treasury Department, except in a general way. . . . I was an Assistant Agent, but I was not aware of it till I got there. I discovered that I was to be the Assistant Agent after I came in contact with Mr. Otis. . . . A Report which I made will explain, perhaps, the reasons why the associations with Mr. Otis were not altogether agreeable to me." H. R., 50th Cong.,  
2nd Sess.,  
Report No. 3883,  
p. 42.

Thus Mr. T. F. Ryan, First Assistant Agent on St. George Island from 1885 to 1887, when asked whether he had any instructions from the Treasury Department, replied:--

Mr. T. F. Ryan.

"No, Sir: I had none. When I left, I had some idea of matters up there and asked the Secretary about instructions, and he asked me to write my own instructions. I did not do so. I went up there and found not a scratch of a pen anywhere except a record from day to day, merely when it rained and when the sun shone and the state of the thermometer and things of that kind, but as to the government of the people there was nothing. You had to learn for yourself." Ibid., p. 215.

So, also, Mr. W. Gavitt, Assistant Treasury Agent in 1888 and 1889, states that he was sent to the islands without any instructions whatever from the Department.

Mr. W. Gavitt.

It would appear, however, that in some cases the Chief Government Agent on the islands was expected to instruct the Assistant Agents, for Mr. G. R. Tingle states that he was provided with both written and verbal instructions from the Treasury Department. In giving evidence before the same Committee of Congress, the following

H. R., 50th Cong., 2d Sess., Report No. 3883, pp. 274, 275.

passage throwing further light on this point occurs:—

"Q. Did you give Mr. Gavitt [the Assistant Agent on St. George Island] instructions when he entered upon his duties?—A. He was assigned by the Department to St. George Island, and I was ordered to place him there and instruct him in his duties. I instructed him as far as he was capable of receiving instructions, went ashore with him, and showed him the books in the office, and how he was to keep them. I placed a copy of the Law and Executive orders in the office there, and gave him instructions as to the discharge of his duties."

Whatever the theoretical relations may have been as between the Government officers and the natives, it is evident that the natives themselves, as well as the handling of the seals, have throughout been in practice actually under the control of the agents of the Company. The subjoined extracts have special bearing on the last-mentioned subject:—

The natives and the taking of seals on the islands have been under the control of the Company's agents throughout.

Mr. H. W. Elliott, 1872-74.

Mr. H. W. Elliott says:—

H. R., 50th Cong., 2d Sess., Report No. 3883, p. 138.

"The natives and the Company are jointly interested in getting the very best skins, and getting them as quickly as possible. . . . On the morning of a killing day the Company's agent gets up at the break of day and goes out with his party."

And says, further:—

H. W. Elliott, in H. R., 44th Cong., 1st Sess., Report No. 623, p. 80.

"When the sealing season opens the men get together, and the chief goes to the Company's agent on a certain morning and asks if he is ready to go to work. The Company's agent says: 'Yes; in your judgment go ahead.'"

And again says:—

*Ibid.*

"The habit of the Company is to inform the chiefs or foremen of the natives, every morning during the working season, of their desire for a certain number and certain kind of skins. These men go to the natives, and arouse them from their slumbers."

Captain Bryant, 1876.

Captain Charles Bryant, who was on the Pribyloff Islands as a Special Agent, from 1870 to 1877, before the Congressional Committee in 1876, in answer to the question—

H. R., 44th Cong., 1st Sess., Report No. 623, p. 96.

"Who has the direction of the natives in their work, the agent of the Company?"

said:—

"No; their chiefs. In killing the seals the agent of the Company directs the chief, saying to him that he wants him to go ahead and kill seals as fast as he can,

... When the seals are on the ground the agent of the Alaska Commercial Company stands by the herd while they are being killed, and, after the chiefs have selected such seals as they consider prime, they ask the agent of the Company if there are any more in that lot which he wants. If he chooses any of the others, they kill them."

Mr. Jacob Moulton, Special Treasury Agent at the Seal Islands from 1877 to 1885, reports that—

Mr. J. Moulton, 1877-85,

"the agents of the Company have the killing in charge. The killing is done by the natives, and the agents have charge necessarily." H. R., 50th Cong., 2nd Sess., No. 3883, p. 251.

Mr. W. B. Taylor was a Special Agent of the Treasury Department on St. George Island in 1881, and says of the natives:—

Mr. Taylor, 1881,

"These people are absolutely in their [the Company's] charge, that is, in regard to their care and comfort." Ibid., p. 52.

Mr. H. A. Glidden, a Special Agent of the Treasury Department at the Pribyloff Islands from 1882 to 1885, in answer to the question—

Mr. Glidden, 1882-85,

"And then at the killing-ground who superintends the selection of those to be killed?" H. R., 59th Cong., 2nd Sess., No. 3883, p. 20.

"They are there huddled up, and then they are separated, about fifty at a time—coralled as it were—and the Superintendent of that [the separating] is one of the employés of the Company." H. W. Elliott, in H. R., 44th Cong., 1st Sess., Report No. 623, p. 20.

One of the witnesses quoted in the Case of the United States, Mr. H. N. Clark, gives the following evidence, from which it clearly appears that he, as a Company's officer, was personally in charge of the sealing and natives conducting it:—

Mr. Clark, 1881-89,

"From 1881 to 1889, inclusive, I was in the employ of the Alaska Commercial Company of San Francisco, on St. George Island, Alaska, engaged through each sealing season as boss of a gang of seal-hunters, and in the winter, excepting that of 1886 and 1887, as teacher and storekeeper on the island. My work as the leader of the sealing gang gave me as perfect opportunity as could be had for studying the habits and peculiarities of the seal and determining the best manner of curing for them." United States' Case, p. 148; Appendix, vol. ii, pp. 158, 159.

Mr. Macoun, also, reports that all work connected with the choice of hauling-grounds from

The Company's agents exercised similar control of killing in 1892.

Appendix, vol. i.  
p. 152.

which seals should be driven, the driving of the seals to the killing-ground, and the selection there of those that were to be killed, was done by the agents of the Company, or the natives acting under their instructions, during the season of 1892, when he was on the islands.

oulton, 1877-85,

Taylor, 1881,

idden, 1882-85,

ark, 1884-89,

ny's agents exercised  
trol of killing in 1892.



## CHAPTER XVI.

*Management of the Pribiloff Islands by Russia and  
by the United States - (continued).**Inadequacy of Protection: Raids.*

## THE UNITED STATES' CONTRIBUTIONS.

- (1.) United States' Case, p. 174—  
"Raids upon the rookeries, or the unlawful killing of seals on the islands by unauthorized persons, though injurious to seal life, have played no important part in the history of the rookeries, and the few thousand skins thus secured never affected the number of the seal herd to any extent."
- (2.) United States' Case, pp. 174, 175—  
"The 'raid theory,' therefore, may be dismissed as unworthy . . . of serious consideration . . . If other raids had taken place besides these, the fact would have certainly been known on the islands."
- (3.) United States' Case, p. 175—  
"A further evidence of the infrequency of such marauding is further shown by the affidavit of Mr. Max Heilbrommer, Secretary of the Alaska Commercial Company, as compiled from the records of said Company, and the statement compiled by the Treasury Department from the reports of their agents during American occupation, there being but sixteen such incursions reported. If other raids had taken place besides these, the fact would have certainly have been seen on the breeding-grounds in the shape of dead carcasses of pups and other seals."

## SUMMARY OF BRITISH REPLY.

- The protection of the Pribiloff Islands against the operations of "raiders," unlawfully killing seals upon the islands, has been inadequate, if not wholly inefficient; and the consequent damage to seal life upon these islands has been very great.
- The Reports of Agents, whether those of the Government or the Company leasing the islands, are practically unanimous to this effect. Though vessels were known, at least as early as 1873, to be engaged in raids, no Government vessel was sent to protect the islands from raids till 1877; and, thereafter, as lately as 1888, it is shown that a single vessel was charged with the whole patrol duty in Behring Sea, and that this vessel spent most of the time hundreds of miles to the north of the Pribiloff Islands, looking after the whaling interests.
- The Pribiloff Islands have throughout been utterly defenceless, and Captain Abbey, U. S. N., reported in 1886 that twenty men might carry away the whole catch of sealskins from the islands, and similar evidence exists of the inadequate protection of the rookeries up to the year 1892.
- The defective knowledge as to the number and character of such "raids" possessed by the Company leasing the islands and by the Government of the United States, in itself affords proof of the inefficiency of protection.

In the Case of the United States, it is attempted to minimise the frequency of raids with their attendant consequences on the Pribyloff Islands. Statements are further quoted in support of the assertions that raiding must be so difficult, and the chances of detection so many, that it is necessarily very seldom practised.

The contention thus advanced forms part of a general defence of the methods employed on the Pribyloff Islands, which is made the preliminary to the assertion that the killing of seals at sea is the sole cause of the decrease in numbers observed on the islands.

It requires, however, only a reference to the various official Reports of the United States Government to find, that however diverse the opinions expressed by those who have held official positions on the Pribyloff Islands, whether under the Government or under the Company, they are almost completely in accord in stating that the measures taken to protect the islands have been insufficient from first to last. In a large proportion of these Reports, and in evidence given at various times, this insufficiency of protection has in fact been a chief subject of complaint. To substantiate this statement a few particulars will be given, and some specific complaints from among many cited.

The excessive slaughter of seals on the Pribyloff islands by men who were virtually raiders in 1868, is elsewhere alluded to. Numerous vessels are known to have engaged in raiding these islands as early as 1873, some years after the date at which, according to the United States' Case, efficient possession and control of the islands had become assured.

Mr. H. W. Elliott may be quoted as authority on this point, and to establish the fact that not until 1877, and then only as the result of his own persistent endeavours to that end during four years, was a revenue-cutter detailed for the purpose of giving a certain measure of protection to the rookeries as against these raiders.

Mr. Elliott's statements are contained in his official Report, published by the Government, and are as follows:—

“Early in 1873 it became well known on the Pacific coast that the officers of the law on the seal islands had no means of enforcing the Regulations protecting the seal life on the same or in waters adjacent; hence, a number of small craft, fitted out at San Francisco and

All authorities concur in characterizing protection of Pribyloff Islands as inefficient.

Early instances of successful raiding under United States' management.

United States' Case, p. 133  
*et seq.*

Difficulty in inducing United States' Government to send revenue-cutter for protection.

United States' Census Report, pp. 167, 168.

contiguous ports, which cleared for the North-west coast and the Aleutian Islands on 'fishing ventures'; but, in reality, these vessels proceeded directly to the waters and rocks adjacent to the seal islands, where, in plain sight of the village on either islet, they shot the swimming seals with assumed indifference and great affectation of legality!

"In order, therefore, that this plain violation of law and its disastrous consequences should be effectually punished, and evaded, I published, and personally urged in 1874-77 the urgent need and great propriety of enabling the responsible Agents of the Government on the Pribyloff Islands, to enforce the law as well physically as it could be done theoretically; and pointed clearly then to the advantage and effect which a revenue marine cutter would have employed for this purpose. By repeated and unfiring appearance before the Committee on Appropriations in the House and Senate, I finally secured the legal authority and the money for the object in view. And the late Captain Bailey, in the 'Richard Rush,' made the first cruise in the season of 1877, that had been properly ordered and sustained by the Government toward the direct protection of the seal islands and its valuable property thereon since 1869."

No such protection till 1877.

Mr. W. B. Taylor, Assistant Government Agent on the Pribyloff Islands in 1881, says:—

Agent W. B. Taylor on powerlessness to protect in 1881.

"These vessels will take occasion to hang around the islands, and when there is a heavy fog to go on the rookeries very often. . . . The Government Agents there are utterly powerless to prevent the killing of seal or to protect them in any way."

H. R., 50th Cong.,  
2nd Sess., Report  
No. 3883  
pp. 54-58.

And, further, in speaking of the single revenue-cutter, says:—

"They never happen to be there when needed, and as far as their rendering any service whatever is concerned, they were practically useless so far as the Seal Islands were concerned. That has been the experience, I believe, of all who have been there."

The same gentleman further says:—

"A man that was desperate enough to take chances, and knew the situation, I do not think it would be at all a difficult job to load a schooner. If I wanted to make an outlaw of myself I could take all the skins I wanted, and not have any trouble at all."

Mr. Louis Kimmel, Assistant Treasury Agent on St. George Island from May 1882 to August 1883, after describing a raid, says:—

"It [seal life] ought to be more protected by having revenue-cutters. At that time there was only one revenue-cutter, only there once a-year."

Ibid., p. 271.

Agent H. A. Glidden complains of  
raids in 1882-85.

U. S. R., 50th Cong.,  
2nd Sess., Report  
No. 388,  
pp. 26-28.

Mr. H. A. Glidden, Government Agent in charge of the Pribiloff Islands from 1882 to 1885, in giving evidence before the Congressional Committee on the Fur-seal Fisheries of Alaska, states that to watch marauders, *i. e.*, trading vessels buying or stealing skins on the mainland or coast along the Aleutian Islands, was more trouble than anything else. Glidden further says that no revenue-cutter was kept at the islands in these years, though in every Report he made he recommended that this should be done.

Agent Wardman powerless in 1883.

*Ibid.*, pp. 31, 35,  
38, 39.

Mr. Wardman, Assistant Government Agent on St. George, in 1883, was absolutely without any means of dealing with or seizing a sealing-vessel boarded by him when at anchor there. He further speaks directly in his evidence of the inefficiency of the protection, and the fact that the revenue-cutter was often away from the islands at the very time she was required there.

Agent Ryan on inefficient protection  
in 1887.

*Ibid.*, pp. 211, 212.

Mr. T. F. Ryan, Assistant Government Agent on St. George Island from 1885 to 1887, states that he had a great deal of trouble in protecting the rookeries from parties landing on them. He complains of the inefficiency of the service of protection by the revenue-cutters, but believes that one vessel properly managed would serve to protect the islands.

Mr. T. Morgan, agent of the Com-  
pany, 1888.

*Ibid.*, p. 64.

Mr. T. F. Morgan, an agent of the Alaska Commercial Company, with long experience of the Pribiloff Islands, in giving evidence before the Committee of Congress in 1888, speak of raids upon the rookeries in several seasons, and states that by taking advantage of circumstances it would not be difficult to load a schooner with skins there.

Mr. G. A. Williams, manager of the  
Company, 1888.

*Ibid.*, p. 105.

Mr. G. A. Williams, one of the managers of the Alaska Commercial Company, also, in 1888, states that the protection accorded to the Pribiloff Islands was insufficient: that there had been increased depredations annually upon the rookeries; and that the revenue-cutter was frequently absent during the greater part of the sealing season.

Agent G. R. Tingle, 1885-89.

*Ibid.*, p. 164.

Mr. G. R. Tingle, Government Agent on the Pribiloff Islands from 1885 to 1899, before the Committee of Congress, in 1888, said:—

“When I took charge of the islands they were practically without protection. The Government had one

cutter to cruise in Bering Sea and the Arctic Ocean. She merely called at the fur-seal islands, took a look at us, cruized round us and then went on up to the Arctic, remaining there all summer and then came down in the fall, calling at the seal islands, took another look at us and then left for San Francisco."

Captain Charles A. Abbey was, in 1886, in command of the United States' revenue-cutter "Corwin." He was engaged that year in protecting the seal rookeries, and says: -

"There is no reason why the catch at the seal islands cannot be stolen any day, if anybody is disposed to. I believe I could take a vessel with twenty good men and go there and steal the whole catch and go away with it. There is more than a million dollars' worth of seal-skins at the mercy of any marauder, and has been for years."

H. R., 50th Cong.,  
2nd Sess., Report  
No. 3983, pp. 248,  
249.

Captain Abbey on insufficient  
protection.

In a paper read before the Biological Society in Washington, Mr. W. Palmer, as the result of his investigations in 1890 on the Pribiloff Islands, speaks as follows regarding the inefficiency of the protection accorded to these islands:

Mr. W. Palmer, 1890

"Sealers have no doubt about the fate that would be their lot if caught poaching on the Commander Islands, or within 3 miles of their shores, and accordingly have given them a wide berth, but they have heretofore done as they pleased about the Pribiloff Islands, and even on the rookeries. In the absence of the revenue-cutters the islands are utterly defenceless, and liable at any time to be raided."

"Forest and  
Stream,"  
October 29, 1891.

In an official Report, dated the 24th October, 1890, and written from St. George Island, Assistant Agent A. W. Lavender writes as follows respecting the inadequate means available for protecting the rookeries: -

Agent A. W. Lavender in 1890.

"I have again to request you to do your best to obtain arms and ammunition for these islands, and hope that you will be able to secure them, for without them the rookeries cannot be protected in a proper manner. The old rifles that answered for the protection of the rookeries belong to the natives, and are of but little use. In addition to the five rifles owned by the natives, the Company has found small Colt's rifles and one large Sharp's, with very little ammunition for any of them."

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891)," p. 50.  
United States'  
Senate 51st Cong.  
2nd Sess., Ex.  
Doc. 49, p. 33.

After quoting much evidence respecting raids, the British Commissioners write:—

Remarks on inadequate protection  
by British Commissioners.

"It will thus be seen that raiding on the Pribiloff Islands has been carried on persistently at least since 1868, and that from that date the authorities have

British Commis-  
sioners' Report,  
parcs., 761, 763.

known of the raids, and from the earliest time urgently demanded precautions in prevention. . . . In short, under present regulations and arrangements, there is no difficulty or danger whatever to vessels raiding along shore any night, or in any of the frequent fogs at several of the best rookeries, except when a revenue-cruizer chanced to be close by, an occasional occurrence well known to every marauding schooner."

The British Commissioners add:—

"It may be pointed out that in no case yet has it been shown or proven that any British vessel ever engaged in raiding on the Pribyloff Islands."

They further allude to the very injurious results of raiding, writing:—

"It is by far the most destructive form of sealing, combining all the disadvantages and none of the advantages of the other forms. The killing is chiefly of breeding females, as the raiders cannot penetrate far enough inland to obtain the young bachelors or immature female seals. Thus, the skins they obtain are those of females, which are either still with pups or are suckling their young. Moreover, the process implies disturbance of the breeding rookeries, the scaring of the seals during their breeding time, male, female, and young, and the stampeding of whole rookeries, whereby, without doubt, there ensues that great killing of helpless pups which we have already reported we observed in certain rookeries."

That the protection from raids has not been materially improved even in 1892 is shown by the fact mentioned by Mr. Macoun, that there were no guards stationed at rookeries on St. Paul Island except at North-east Point, and that after the middle of August the telephone line connecting this place with the village was continuously out of order. The only rookery on St. George Island on which there was a guard was Zapadne, and there the guard consisted of an Aleut man and a boy.

The statistics furnished in the Case of the United States on this subject comprise lists compiled by the United States' Treasury Department and by Mr. M. Heilbronner, Secretary of the Alaska Commercial Company. It so happens, however, that these lists in themselves afford an excellent index of the exceedingly imperfect knowledge of both the Government and the Company as to the actual frequency of raids upon the islands. The Treasury Department list records eleven raids only, between 1874 and

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by on inefficient  
protection

British Commis-  
sioners' Report,  
para. 765.

Great injury caused by raids.

Ibid, para. 762.

Palmer, 1890

See also United  
States' Case  
Appendix, vol. ii,  
p. 217

Absence of proper precautions in  
1892.

Appendix, vol. i,  
pp. 153, 154.

Lavender in 1890.

Two lists of raids in United States'  
Case do not correspond, and both  
are incomplete.

United States'  
Case, Appendix,  
vol. i, p. 519; and  
Appendix, vol. ii,  
p. 29.

inadequate protection  
Commissioners.

1889, both years inclusive; while the Company's list shows no more than six raids in the same period, and one of these is not enumerated in the Treasury list. The list of detected raids here subjoined shows about thirty in the same years, of which fifteen are recorded in various official Reports to the United States' Government.

The following list, however, merely includes known raids since 1874:—

1874.—Raid of "Cygnet" on Otter Island, 30th August, 1874.—(Wm. J. McIntyre, H. R., Ex. Doc. No. 83, 44th Congress, 1st Session, p. 129.)

Raid of "Cygnet" on St. George Island, 1st September, 1874.—(Wm. J. McIntyre, H. R., Ex. Doc. No. 83, 44th Congress, 1st Session, p. 125.)

1875.—"San Diego" raided Otter Island in 1875 and took 1,600 skins.—(United States' Case, vol. i, p. 519.)

"Cygnet" raided St. George Island, 1875.—(Report of British Commissioners.)

1876.—"Cygnet" and "Ocean Spray" raided Otter Island 21st June, 1876.—(Report of British Commissioners.)

1877.—In 1877 the "Industry" is recorded to have touched at St. George Island for the purpose of taking seals. (Report upon Alaska and its people. Bailey, p. 13.)

1880.—Great East Rookery, St. George Island, raided 1880.—(Webster in Report of British Commissioners, paragraph 742.)

1881.—Otter Island raided between April and August 1881. [Taylor reached island in April and left in August.]—(W. B. Taylor in H. R. Report No. 3883, 50th Congress, 2nd Session, pp. 54, 109.)

St. George Island raided the 1st September, 1881.—(George Wardman in H. R. Report No. 3883, 50th Congress, 2nd Session, p. 39.)

"Otter" raided St. George Island in October 1881.—(Appendix to Case of the United States, vol. i, p. 519, and vol. ii, p. 29.)

1882.—East Rookery, St. George, raided in 1882.—(Louis Kimmel, H. R. Report No. 3883, 50th Congress, 2nd Session, p. 271.)

Captain Folger says, in his affidavit, that the schooner he commanded and another anchored off St. Paul Island from June until September, running in and raiding the rookeries whenever the weather permitted. These vessels were probably those referred to by Captain Miner when he says: "I have frequently heard of raids being made on the Pribyloff Islands. In 1881 or 1882 two

List of actually recorded raids from  
1874 to 1891.

Appendix, vol. ii.  
p. 47.

Ibid., p. 73.



schooners anchored to the northward of St. Paul for nearly the whole summer. They were the 'Otter' and 'Alexander,' vessels owned by Liebes and Co. The captains of their vessels told me so themselves."

1883.—Schooner boarded off St. George Island the 10th October, 1883; 300 skins were on board.—(George Wardman, H. R. Report No. 3883, 50th Congress, 2nd Session, p. 34.)

Vessel loaded with seals captured at St. George Island while the crew were ashore.—(Glidden [1882-1884], H. R. Report No. 3883, 50th Congress, 2nd Session, p. 28.)

1884.—"Adele" seized in 1884, when raiding a rookery.—(United States' Case, vol. ii, p. 519.)

Raid on Zapadni Rookery, St. George Island, the 10th October, 1884.—(Appendix to Case of United States, vol. ii, p. 29.)

1885.—In 1885, Webster found that men had camped ashore at St. George Island.—(Report of British Behring Sea Commissioners, paragraph 751.)

June 1885, 500 seals were killed before vessel detected.—(Appendix to Case of the United States, vol. i, p. 519.)

In 1885, three schooners were captured at Otter Island: one, the "Adele," by Webster, Lieut. Lutze, and two men.—(Report of British Behring Sea Commissioners, paragraph 751.)

Starry Arceel Rookery, St. George Island, raided, and 600 seals killed "several years ago."—(Morgan, H. R. Report No. 3883, 50th Congress, 2nd Session, p. 64.)

20th July, 1885, 600 or 700 seals were killed on St. George Island.—(Appendix to the Case of the United States, vol. i, p. 519.)

20th July, 1885, 500 pups and 500 females killed on St. George Island.—(Appendix to the Case of the United States, vol. ii, p. 29.) [This probably refers to same raid as two first preceding references.]

Raid on St. George Island in 1885 or 1886; 112 seal-skins found by T. F. Ryan.—(H. R. Report No. 3883, 50th Congress, 2nd Session, p. 212.)

At Starry Arceel, a raid was made the 22nd July, 1885; 120 seals and 200 pups were killed.—(Appendix to Case of United States, vol. ii, p. 29.)

1886.—Attempted raid on St. George Island 1886.—(Tingle in H. R. Report No. 3883, 50th Congress, 2nd Session, p. 174.)

In 1886, Morgan found carcasses of 800 female seals on shore.—(Report of British Commissioners, paragraph 752.)

Raid on St. George Island, 8th August, 1886.—(Appendix to Case of the United States, vol. i, p. 519.)

"San Diego" captured in 1886 with 574 skins on board, as well as clubs, pup skins, &c., proving raid.—(Tingle in H. R. Report No. 3883, 50th Congress, 2nd Session, p. 175.)

"Look-Out" raided Seal Islands in 1886 and 1887.—(Report of British Commissioners, paragraph 752.)

Raid in autumn of 1886 or 1887 [not the one noted above].—(Morgan in H. R. Report No. 3883, 50th Congress, 2nd Session, p. 90.)

1887.—In 1887, schooner was seen shooting seals in water North-east Point, 18th, 21st, and 25th July.—(Report of British Commissioners, paragraph 753.)

1887.—"Angel Dolly" captured near Otter Island the 28th July, 1887.—(H. R. Report No. 3883, 50th Congress, 2nd Session, p. 332.)

Steam-schooner shot at from North-east Point, 4th August, 1887. Seized by "Rush," and proved to be "Kate and Anna."—(Report of British Commissioners, paragraph 753.)

Starry Arctel Rookery, St. George Island, raided in August, 1887. Signs found by Webster.—(Report of British Commissioners, paragraph 753.)

Raid on Reef Rookeries, St. Paul Island, 1887. 4,300 seals taken.—(Tingle in H. R. Report No. 3883, 50th Congress, 2nd Session, p. 166.)

In 1887, Webster heard boats shooting close to shore.—(Report of British Commissioners, paragraph 753.)

"Angel Dolly" raided St. George Island in July, 1887.—(Appendix to Case of the United States, vol. i, p. 519.)

1888.—In 1888, schooner anchored at South-west Bay and sent boats ashore.—(Report of British Commissioners, paragraph 754. United States' Case, Appendix, vol. i, p. 520.)

1889.—In 1889 the "Angel Dolly," "Allie Algar, and other vessels raided St. George.—(Report of British Commissioners, paragraph 755.)

Raid on St. George Island in September, 1889.—(Appendix to Case of the United States, vol. i, p. 520, and vol. ii, p. 29.)

The "Edward Webster" raid on St. George Island in 1889. "The captain told me of this himself." Miner's evidence, Appendix, vol. ii, p. 73

1890.—Vessels reported killing seals near shore in August, 1890.—(Report of British Commissioners, paragraph 756. United States' Case, vol. i, p. 520.)

September 15, 1890.—Six boats' crews landed at Zapadni, and killed about 180 seals.—(Appendix to Case of the United States, vol. i, p. 520.)

November, 1890.—"Adele" raided seal rookeries.—(Appendix to Case of the United States, vol. i, p. 520.)

Miner's evidence, Appendix, vol. ii, p. 73. In 1890 in September the "G. R. White" made a raid on the islands, and from what I was told by the men on board of her, nothing was known of it on the islands.\*

Several raids or attempted raids in St. George in 1890.—(Report of British Commissioners, p. 757.)

"Challenge" raided rookery on St. George Island 17th November, 1891.—(Appendix to Case of the United States, vol. i, p. 520.)

Appendix, pp. 183-185.

"Borealis" raided rookeries on St. Paul 27th November 1891, and evidence is forthcoming from men who took part in the raids to show that at the time a cutter was anchored at the village, her lights in sight. The raid was made upon South-west Bay.—(Appendix to Case of the United States, vol. i, p. 520.)

Number of undetected raids cannot be estimated.

It is hard to form an estimate of the number of undetected raids; but the facts previously given with those now mentioned indicate that it must have been very great.

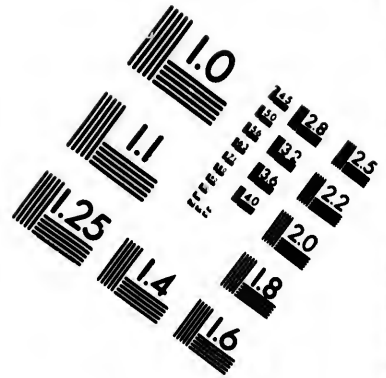
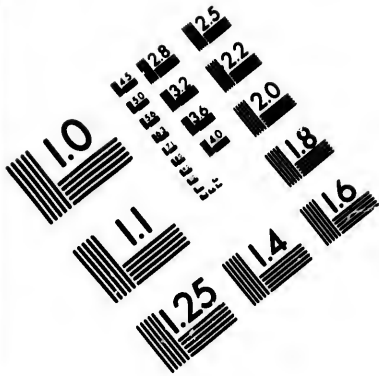
Connection of H. Liebes and Co. with raids and with North American Commercial Company.

It is further noteworthy that the firm of H. Liebes and Co., of San Francisco, of which Mr. Isaac Liebes, the present President of the North American Commercial Company, is a member, have owned two vessels, the "Otter" and the "Alexander," which are well known to have persistently raided the rookeries on both the Pribyloff and Commander Islands.

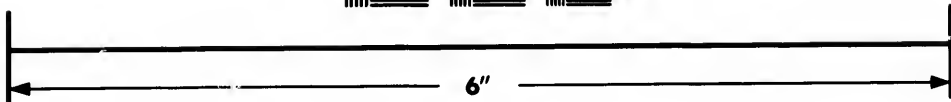
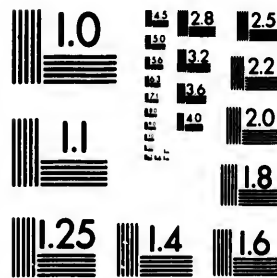
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\* As to raids of "George R. White," "Daniel Webster," "Mollie Adams," "Adelc," and "Look-Out," see affidavits of C. J. Kelly, p. 169; Wm. Petit, p. 171; W. E. Baker, p. 174; C. N. Cox, p. 177; Theo. Magneson, p. 179, in British Case, Appendix, vol. iii. "United States, No. 8 (1892)."





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## CHAPTER XVII.

### *Management of the Pribiloff Islands by Russia and by the United States—(continued).*

#### *Condition of the Natives.*

##### THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, pp. 140, 141—  
"The improvement in the condition of the natives of the Pribiloff Islands is one of the marked features of the benefit which has resulted from the management of these islands under the system adopted in 1870 by the Congress of the United States."
- (2.) United States' Case, p. 141—  
"When the United States assumed control of the Territory of Alaska the condition of these natives was wretched in the extreme, the Russian-American Company having neglected their welfare, and forced them into practical slavery."
- (3.) United States' Case, pp. 144, 145—  
". . . . The management of the Pribiloff Islands by the United States has raised the inhabitants in a few years from a state of ignorance, wretchedness, and semi-barbarism, which seventy years of the Russian Company's occupation had failed to alleviate, to a condition of liberty and civilization, which Europe and America need not feel ashamed to find among their citizens.  
"The civil government of the islands is provided for by sections 1973-1976 of the revised statutes of the United States, under which the Agent and his assistants are practically the Governors of the islands. They have the entire control of the natives, protect them from the impositions of the lessees and agents, if such are attempted, and see that the supplies required by law for their sustenance are provided."

##### SUMMARY OF BRITISH REPLY.

- The people now resident upon the Pribiloff Islands are not natives properly so-called, but Aleuts, or the descendants of Aleuts, imported for the purpose of killing seals and curing the skins. The islands were uninhabited when discovered by the Russians; and the number of so-called natives is now so small that provision may easily be made for their support, irrespective of any questions relating to the sealing industry.
- The condition of the native inhabitants of the Pribiloff Islands is, further, by no means so satisfactory as the statements given prominence to in the Case of the United States would indicate. Official Reports show that their advancement towards civilization is small, and their sanitary condition bad.
- The treatment accorded to the natives by the Company leasing the islands has throughout been governed by principles of self-interest; and interference by the Government, in the interest of the natives, has been wanting or practically ineffective.



Arguments in United States Case based on improvement in condition of natives.

United States' Case, pp. 142-144.

Facts disclosed by official Reports contradict the contentions in United States' Case.

General Davis on condition of natives in 1870.

Report of Brevet Major-General Commanding Department of Alaska to Secretary of War, August 20, 1870.

Dr. W. H. Dall in 1874.

Special prominence is given in the Case of the United States to statements respecting the improved condition of the natives of the Pribyloff Islands, resulting from the beneficent efforts and conduct of the Government Agents, and those of the Company holding the lease of the islands; and in addition to statements of the character cited above, Messrs. Bryant, McIntyre, and Falconer are further cited to present an extremely favourable picture of the condition and surroundings of the Aleuts living upon the islands. We are, in fact, it would appear, asked to consider the commercial monopoly endeavoured to be sustained by the United States as a philanthropic enterprise, largely justified by an improvement alleged to have been brought about by its means in respect to the so-called natives of the Pribyloff Islands.

It is submitted that all the statements above summarized are wholly irrelevant to any question with which the Arbitration is conversant; but as the Government of the United States have imported them into their Case, it is not desired to leave them entirely unnoticed.

The notes and quotations from official Reports made to the United States' Government, and from other published sources in connection with the general history and nature of the management of the Pribyloff Islands since their cession by Russia, put a very different aspect on the state of affairs there from that set forth in the United States' Case.

In addition to incidental remarks already made in connection with other branches of the subject, a few notes specifically referring to the circumstances and treatment of the natives may here be added.

Major-General Jefferson C. Davis, Commander of the District of Alaska, in his official Report, dated the 20th August, 1870, addressed to the United States' Secretary of War, writes.—

"The natives are peaceful, honest, and capable of transacting ordinary business quite well, and would doubtless improve themselves if they had a fair chance; but their present complete enslavement and robbery, by an unscrupulous ring of speculators, will ever prevent such progress."

In August 1874 Dr. W. H. Dall, then in charge of hydrographic surveys in Alaska, in a letter to

Messrs. Elliott and Maynard, Government Commissioners to the Pribyloff Islands, writes :—

"The Russians left these people with their self-reliance enfeebled, but their intelligence and morals elevated to some extent above their original condition. We have done nothing to sustain them in this position, nor to cultivate their self-reliance." Elliott's "Report on the Condition of Affairs in Alaska," 1875, p. 234.

Dr. Dall also states in this letter, that the Aleut natives were absolutely dependent upon the Company leasing the Pribyloff Islands for sea-lion skins with which to make their canoes; and that, contrary to the Russian practice, this Company sold such skins to the natives, and restricted the sale to such of the natives as brought furs to them for sale. He adds :—

"The description of men who gain their livelihood as fur-traders are, with rare exceptions, unfit to be trusted with absolute power over unresisting natives, notwithstanding the possible high character of the distant heads of the Company who employ them." Ibid., p. 234.

He further adds :—

"There is absolutely no law, no means of protection, no redress for injury for any citizen of the United States, to say nothing of natives. . . . Suppose some act of gross injustice should occur, in what way would the unfortunate Aleut make his troubles known, if his long experience under the Russians, and disappointed hopes under the various visits of United States' officials, had not taught him that the best way was to bear it in silence?" Ibid., p. 233.

Absence of law or redress.

In respect to the absence of law and any prospect of redress at this time, Mr. Elliott fully concurs with Dr. Dall, though contesting some of his other statements. Ibid., p. 237.

Dr. Dall further writes :—

"There are no grounds for stating, nor is it my opinion, that the present Company has abused its position more than any other would do in the same case; this, however, is not the question at issue, but whether it is consistent with the honour of the Government and with its duty toward a people who occupy the position of wards of the United States, to leave them in a condition where the grossest tyranny is possible, and where gradual degeneration and relapse into barbarism is certain." Ibid., p. 233.

Lieutenant W. Maynard, U.S.N., in his Report transmitted in 1875, alludes to one of the matters referred to by Dr. Dall as follows :—

Lieutenant Maynard, 1875.

"As the Special Agents of the Treasury Department, who are the only representatives of the Government at the islands, have not been invested as yet with any governing H. R. 44th Cong. 1st Sess., Ex. Doc. 43, p. 7.

power, it seems necessary that some means should be provided for securing to all equal protection in the rights of persons and property. This could be accomplished for the present, at least, by giving them authority somewhat similar to that of a Justice of the Peace, making them responsible to the Secretary of the Treasury for the proper performance of that duty, as they are for that of those with which they are now charged."

Agent W. B. Taylor, 1881.

Mr. W. B. Taylor, who was a Special Agent of the Treasury Department on St. George Island in 1881, says of the condition of the native people at that time:—

H. R., 50th Cong.,  
2nd Sess., Report  
No. 3883, p. 42.

"When I landed on St. Paul Island I found that the people were in a very deplorable condition—made so by the frequent and constant use of what is known as quass, a beverage which they brew when they are not molested by the Special Agent of the Treasury. I found that at least one-third the people were in a condition which made it impossible to do what was expected of them by the Company; in other words, there are so many men on the island, and their services are absolutely necessary to carry on all the business and do the seal work; but one-third of them were incapacitated for the reason I have stated. And I charged them, and I charge now, that the Agent who had control over them was directly responsible for it."

Agent Murray, 1890.

British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891),"  
p. 19.  
United States'  
Senate, 51st Cong.,  
2nd Sess., Ex.  
Doc. 43, p. 7.

Assistant Agent Murray, writing in his Report of St. George Island as late as 1890, says:—

"It would be an impossibility, however, to do much towards establishing a sanitary system of value until we have better water and a more abundant supply than is possible under existing conditions.

"The present supply of water for domestic purposes is obtained from a well into which the drainage of half the village finds its way, and the wonder to me is that the people are not constantly sick while they have to use such drinking water. There is a nice fresh-water lake within 2,000 feet of the village, and fully 50 feet higher, from which a constant and never-failing supply of good water can be taken if you can have 2,000 feet of 2-inch pipe and the necessary hydrant and fixings sent here.

"A drain is the next essential to success, and one of 700 feet in length can be dug easily; and will suffice to carry all the dirt and offal of the village into the sea. It will be necessary to have 700 feet of 12-inch drain-pipe.

"The total absence of water-closets on this island is a disgrace, and is beyond all question the cause of more immorality, disease, and death than all other things combined. That such a state of things has been allowed to exist for twenty years is a disgrace to our civilization, and I do hope you will insist on the present lessees or on the Department to have it altered at once.

"The subject is so abominable I dare not write it in a public Report.

"It is absolutely necessary, too, that at least six of the dwelling-houses be enlarged, as the families now occupying them have not room to live as human beings should. It may be true, as many assert, that under Russian rule the natives were not housed one-half so well as they are now; but such arguments are of no avail in a country like ours. When a family of seven persons, of all ages and sexes, are packed in a sleeping apartment measuring 10 by 10 feet they are not treated right, nor does our Government intend to have such things existing where it has jurisdiction.

"The dwelling-houses are badly in need of repairs, and the attention of the local agent, Mr. Webster, has been called to their condition; but as he is to leave the island this year, it may be necessary for you to mention it to the General Manager of the North American Commercial Company."

The British Commissioners in their Report do not enter at any great length into the question of the condition and treatment of the so-called natives on the Pribyloff Islands. They point out, however, that these people are not in reality "natives" of the islands, but descendants of Aleuts from the Aleutian Islands, brought thither by the Russians, mixed with recent importations from the same islands. They allude also to the fact that the whole number of these people is so insignificant (about 360) as to render the question of the cost and manner of providing for their support one which can scarcely be allowed a place in the discussion of the general questions relating to the condition of the natives as a whole, or to the measures appropriate for the protection of the fur-seals. They also note that, although the material condition of these people has been improved by the industry of taking seals on these islands, it is difficult to understand on what grounds--

"the special advantages of a material kind afforded to these particular people as distinguished from others of the same race, and partly at the expense of interference with the rights of hunting of those inhabiting the Aleutian Islands, can be advanced as a valid argument in favour of the perpetuation of a commercial monopoly of fur sealing."

British Commissioners' Report, para. 723.

It is still further stated that—

"it is also clear that the so-called natives of the islands, though under ordinary circumstances provided for in certain respects by the lessees according to legal

Ibid., para. 724.

Remarks on origin and treatment of so-called natives in British Commissioners' Report.

British Commission-  
ers' Report,  
para. 725.

arrangement, have in past times not always been among the first objects of their solicitude. . . . A single instance, to which it happened that our attention was drawn, may be cited for the purpose of showing that the natives, even in recent years, received no more than strictly 'commercial' treatment."

"The reference here made is to the entirely inadequate allowance of coal given to the natives up to the year 1891, on account of which, and in the absence of other fuel, the people found it necessary to employ their earnings to buy additional coal from the Company at its own price, which was fixed at 30 dollars (6*l.*) per ton.

origin and treatment of  
natives in British Com-  
missioners' Report.

## CHAPTER XVIII.

## THE SEAL-SKIN INDUSTRY.

## THE UNITED STATES' CONTENTIONS.

- (1.) United States' Case, p. 266—  
"Prior to 1870 all the fur-seal skins, save a few thousand, were marketed and sold in China . . . . A few skins however were purchased in England."
- (2.) United States' Case, p. 267—  
"It was not until the lease of the Pribilof Islands to the Alaska Commercial Company in 1870, and through the united efforts of that Company with C. M. Lampson and Co. that the seal-skin industry received the impetus which has built it up to its present condition."
- (3.) United States' Case, p. 268—  
"The destruction of the Alaskan herd means practically the annihilation of the seal-skin industry of the world. Therefore, the extent and value of this industry, the consequent loss in case pelagic sealing is not prohibited, . . . are matters for consideration."
- (4.) United States' Case, pp. 274, 275—  
"It is necessary that the supply should be constant and regular, otherwise there is great danger of loss to the buyers or sellers through fluctuation in prices, and the business of buying and selling become speculative . . . It is therefore evident that even in case open-sea sealing could be carried on without insuring the destruction of the herd, the results would demoralize and practically ruin the seal-skin industry, now so firmly established."
- (5.) United States' Case, p. 281—  
"It is very questionable, however, whether there is any real investment in Canada in pelagic sealing."
- (6.) United States' Case, p. 298—  
"That the investment of these adventurers in pelagic sealing is speculative, generally unprofitable, and, when compared with the seal-skin industry of Great Britain, France, and the United States, which is dependent upon this seal herd, very insignificant, and that the profits, if any, resulting from pelagic sealing, are out of all proportion to the destruction that it produces."

## SUMMARY OF BRITISH REPLY.

The fur-seal business, prior to 1870, constituted a considerable part of the fur trade of Great Britain.

The existence of pelagic sealing does not necessarily occasion an irregular supply of skins. The principal fur merchants are practically unanimous in opposing the suppression of pelagic sealing.

The capital permanently invested by Canada in the sealing industry exceeds the capital so invested by any other country.

The propositions sought to be established in the Chapter of the United States' Case from

which the above citations are taken would appear to be the following :—

I. That there is a distinctive and separate fur seal-skin industry, and that this industry, so far as Great Britain is concerned, was prior to 1870 insignificant and was in that year established through the united efforts of the Alaska Commercial Company and their agents in London.

II. That pelagic sealing produces an irregular supply which is ruinous to the industry.

III. That there is little capital invested in Canada in pelagic sealing; and that, compared with the fur-seal industries of Great Britain, France, and the United States, the Canadian industry is scarcely worth consideration.

No separate industry, except at sources of supply.

As regards the first proposition, no doubt the persons actually engaged in capturing the seals at the sources of supply form a separate and distinctive industry, more directly interested than all others in the questions at issue; but, except in this sense, it is submitted that neither in Great Britain, nor in the United States, nor in other countries, is there what can properly be called a separate and distinct fur-seal industry.

The circumstances in Great Britain will suffice to demonstrate that this statement is correct.

United States' Case, p. 272.

It is stated in the United States' Case that there are employed in the fur-seal skin industry in Great Britain from 2,000 to 3,000 persons, who would be compelled to learn other trades in case the industry were to fail. If such failure were possible, it is denied that any such result would follow.

Appendix, vol. ii. p. 248.

Including brokers, dyers, dressers, merchants, furriers, wholesale and retail, and their respective employés, there are at least a number of persons above mentioned engaged in the fur-seal skin business; but they are not so occupied exclusively, nor are they absolutely dependent upon the fur-seal skin business. But a very small part of the above classes are at any time entirely occupied with or dependent upon the business connected with fur-seal skins, all of them being concerned at the same time with furs and skins of other descriptions.

The fur-seal skin business forms no doubt a considerable part, but still only a part, of the whole fur trade of Great Britain. Its relative position to the whole fur trade may be roughly



gauged by comparing the total sums realized by sales of all raw furs and skins in London with those realized by fur-seals. It is estimated that furs of all descriptions sold in Great Britain realize annually over 1,200,000*l.*, and the total sales of fur-seal skins (taking for example 1887) amount to about 450,000*l.*, so that the seal-skin industry composes in point of value less than 38 per cent. of the total fur trade of Great Britain. Of this 450,000*l.*, at least 170,000*l.* represents seal-skins derived from other sources of supply than the Pribyloff Islands, so that it will be seen that the value of the seal-skins coming from the Pribyloff Islands does not exceed 24 per cent. of the whole fur trade of Great Britain.

As regards the amount of the total labour bill to be apportioned to seal-skins, it should be remembered that other furs, being for the most part cheaper, are more numerous than seal-skins proportionately to their respective prices, and therefore would, as a matter of fact, require more hands to deal with them.

It should also be borne in mind, with reference to the large capital engaged in the business, that so far as brokers, merchants, and wholesale and retail furriers, and dressers are concerned, their capital is not in any way sunk in the business, but is only temporarily embarked in it from year to year, and is not permanently invested, as the capital of the Canadian schooner owners is invested.

Should the seal-skin trade diminish, either through change in fashion or scarcity of supply, other furs would no doubt be made fashionable in their stead, and furriers would at once, without loss or difficulty, transfer their capital to them.

This is also true, to a lesser degree, of the dyers engaged in the business, whose plant would, to some extent, be available, provided the new skin made fashionable was one which required dyeing.

It is therefore, obvious that apart from those engaged in the actual capture, there cannot be said to be a separate and distinct fur-seal industry in the sense suggested by the United States, but that the trade in seal-skins forms in truth but one portion of a larger and more important industry.

The contention, that the seal-skin business in Great Britain owes its existence to the efforts

Seal-skin business part of general fur trade.

United States' Case, Appendix, vol. ii, p. 561.

Capital for most part not sunk in business.

The seal-skin business existed in England prior to 1870.

of the Alaska Commercial Company and their London agents, is no doubt advanced by the United States in order to base upon it a claim to priority of consideration for the United States' interest.

Appendix, vol. ii,  
p. 254.

The contention is, however, as is submitted, quite erroneous, and is disproved at once by a reference to the Tables given in the Appendix, which are summarized hereunder, clearly showing that the seal-skin industry has, at all events from an early date in the present century, formed a most important portion of the London fur trade.

Year.	Annual Total of Quantities offered for Sale in London.	Annual Average of Quantities on Basis of Ten Years.
1827 .. .. .	77,120	} 48,371.5
1828 .. .. .	74,946	
1829 .. .. .	72,691	
1830 .. .. .	56,185	
1831 .. .. .	36,740	
1832 .. .. .	40,421	
1833 .. .. .	36,239	
1834 .. .. .	32,223	
1835 .. .. .	27,168	
1836 .. .. .	29,982	
1837 .. .. .	32,497	} 29,155.2
1838 .. .. .	37,137	
1839 .. .. .	28,727	
1840 .. .. .	36,533	
1841 .. .. .	29,053	
1842 .. .. .	26,682	
1843 .. .. .	27,946	
1844 .. .. .	26,548	
1845 .. .. .	24,260	
1846 .. .. .	22,169	
1847 .. .. .	20,405	} 32,444.6
1848 .. .. .	24,762	
1849 .. .. .	32,313	
1850 .. .. .	30,471	
1851 .. .. .	27,832	
1852 .. .. .	35,923	
1853 .. .. .	30,396	
1854 .. .. .	41,799	
1855 .. .. .	48,465	
1856 .. .. .	32,080	
1857 .. .. .	35,404	} 47,471.3
1858 .. .. .	40,102	
1859 .. .. .	37,620	
1860 .. .. .	34,137	
1861 .. .. .	41,777	
1862 .. .. .	46,141	
1863 .. .. .	46,493	
1864 .. .. .	63,451	
1865 .. .. .	63,161	
1866 .. .. .	66,427	
1867 .. .. .	58,163	
1868 .. .. .	121,217	
1869 .. .. .	206,742	
1827 to 1869 ..	1,960,548	

business existed in  
prior to 1870.

The above Summary does not include sales by private contract, except those made through Messrs. Oppenheim. No figures as to other private sales are available, although no doubt they must have been considerable.

The second contention above advanced by the United States in favour of the suppression of pelagic sealing is that it produces an irregular supply, which is an undesirable circumstance for the fur trade, as it causes uncertainty and consequent speculation.

The admissibility of this plea in the decision of a question like the present, even if it were correct, is denied. But it is not correct. No doubt, in the last few years the variation in the supply and price has been considerable, but this is due to the result of the operation of the *modus vivendi*, and to exaggerated rumours of all descriptions circulated in connection with the present Arbitration and the antecedent negotiations. When these elements of uncertainty pass away, there is no conceivable reason why the seal-skin supply should not continue to be as even and constant as that of any other of the numerous furs dealt with in the trade. That the fears expressed are not shared by the fur traders of Great Britain and France is proved by the fact that, with the exception of the agents of the North American Commercial Company, and their partners in trade, Messrs. Martin and Sons, those engaged in the seal-skin business of Great Britain, and also the firm of Messrs. Révillon, of Paris, who do a business of 4,000,000 fr. a year in seal-skins, are practically all agreed in stating that they are not in favour of the proposal that pelagic sealing should be suppressed. These men of business may be presumed to know their own interests, and they dread the existence of a monopoly which the proposed suppression of pelagic sealing might tend to create.

Pelagic sealing does not occasion irregular supply.

The third contention is, that there is little or no capital invested in the Canadian pelagic industry, and that, compared with fur-seal industries in other countries, the Canadian industry is scarcely worth consideration.

In advancing this contention, the Case of the United States throws doubt upon the official Returns as to the value of the Canadian fleet,

Appendix, vol. ii.  
pp. 230-253.

United States' Case, p. 271.

The value of the Canadian fleet.

made by Mr. Milne, Collector of Customs at Victoria, for the years 1889 and 1890, because the total value of the fleet and its value per ton in the year 1890 are in excess of those given for the year 1889. And the remark is made that it is difficult to see how the wear and tear of a vessel can appreciate its value.

It will be seen, however, on an examination of the documents in question, that in the year 1890 the number of the fleet had considerably increased, and not only this, but the new vessels added are of a higher class and of a much more costly description.

The fact is, that each year competition produced its natural results. Owing to the demand for their services, skilled hunters became particular in selecting vessels in which they would serve, and they declined to go to sea in vessels which did not contain what they considered adequate accommodation and equipment. Also, the desire to obtain a better price for the skins caused the owners to construct the new vessels so that they should afford greater facilities for flaying and salting. These improved methods have had no doubt an important effect in enhancing the value of north-west skins.

Mr. Milne's figures for the year 1889 are practically confirmed by Mr. T. T. Williams, a gentleman chiefly cited by the United States on the question of the value of the Canadian fleet, and he further testifies to Mr. Milne's honesty and correctness. It is true that he differs from Mr. Milne in the total of his values for that year, but the difference is not very considerable, and there is no reason for supposing that Mr. Williams, a San Francisco journalist, is on this point a better authority than Mr. Milne, who is an expert in such matters.

As regards the actual value of the fleet at the present time, the Canadian Fisheries' Report estimates the value for 1891 at 425,150 dollars, and the British Commissioners at 359,000 dollars. As, however, the tonnage increased from 3,261 tons in 1891 to 4,550 tons in 1892, the present value of the fleet on the basis of these two estimates would be about 572,908 dollars and 483,768 dollars respectively.

It is now, however, possible to replace these estimates by more exact figures. It will be seen that sworn statements have been obtained from the owners of all the Canadian schooners, and

Appendix, vol. ii,  
p. 265.

United States' Case,  
Appendix, vol. ii,  
p. 500.

Present value.

British Commis-  
sioners' Report,  
pp. 106 *et seq.*

Appendix, vol. ii,  
pp. 215-219.

the results will be found set out in a Table in the Appendix. The following is a Summary of the Table:—

Year.	Total Tonnage of Fleet.	Total Value.	Total Value of Outfit.	Average Value per Ton of the Fleet.	
				On the Basis of the Value.	On the Basis of the Value plus the Value of the Outfit.
1891	3,261·87	Dollars. 365,100	Dollars. 194,728	Dollars. 111·93	Dollars. 171·63
1892	4,550·48	507,700	272,109	111·57	171·37

In this connection it is worthy of note that an estimate of the value of the pelagic fleet of the United States for 1889 is given in the United States' Census Bulletin, No. 123, 1891, and from this it appears that the value per ton, including outfit, is 160 dol. 54 c. This would tend to show, when the improved schooners of higher value, built in 1889, 1890, and 1891, are taken into account, that the value of 171 dol. 63 c. is not excessive.

The capital thus permanently sunk by Canada in the industry compares favourably with the capital similarly invested by Great Britain and by the United States. The capital permanently invested in London is represented by certain permanent plant, estimated by the United States at 80,000/ (400,000 dollars). The capital similarly engaged in the United States amounts to 100,000/ (500,000 dollars), but of this about 60,000/ (300,000 dollars) represents capital invested by United States' citizens in pelagic sealing, and only the balance of 40,000/ (200,000 dollars) is employed on or in connection with the islands. To the above-mentioned sum of 40,000/, an addition no doubt must be made to cover the permanent plant of dyeing works in the United States, but as only a few thousand skins per annum are dyed there, this addition must be inconsiderable.

A Memorandum is given in the Appendix by Mr. Gleadowe, of the British Treasury Department, who, in April, 1892, was sent by the British Government to assess the amount of damage sustained by Canadian sealers by reason of the *modus vivendi* having been put into force after

Value of United States' fleet.

United States' Case, p. 273.

British Commissioners' Report, pp. 106 and 107.

General character of the fleet.

Appendix, vol. ii, p. 265.

the seal season had actually commenced. Mr. Gleadowe's inquiry was in no way made in connection with the British Case or Counter-Case, and his Memorandum is confined to an explanation of the general position and character of the fleet.

Speaking of the sealing fleet generally he states:—

"As regards the schooners, I have been much impressed with the excellence of the way in which, as a general rule, they are built and found in every respect. Compared with craft of a similar tonnage in other industries they are expensively fitted up, and everything about them appears good, more like yachts than fishing-boats."

The Memorandum explains that the schooners have accommodation for twenty or thirty men, and all are arranged and fitted in a way that would be out of place in an ordinary fishing or trading schooner.

In the United States' Case, Mr. Milne's estimate of 100 dollars per ton as the cost of building these schooners is questioned, and Mr. Williams, figures of 80 dollars are stated to represent more nearly the actual cost.

A reference to Mr. Gleadowe's Memorandum, however, will show that Mr. Milne does not exaggerate the cost. The Memorandum, after explaining that the best and most lasting vessels came from the Eastern States of Canada or America, or from Yokohama or some other port of Japan, states that the schooners engaged in the trade cost from 53 dol. 50 c. per ton up to 145 dol. 50 c. per ton.

As regards the age of the vessels, it is suggested in the United States' Case that a considerable number of the vessels of this fleet are old and unseaworthy; but from Mr. Gleadowe's Memorandum, it will be seen that the majority and the most valuable of the forty-four vessels into the value of which he inquired have been built within recent years:—

United States'  
Case, p. 276.

	Schooners
1863, and previously .. ..	.. 2
1868 .. ..	.. 1
1869 .. ..	.. 1
1872 .. ..	.. 1
1875 .. ..	.. 1
1877 .. ..	.. 3
1882 .. ..	.. 1
1883 .. ..	.. 4
1884 .. ..	.. 4
1885 .. ..	.. 2
1886 .. ..	.. 5
1887 .. ..	.. 1
1888 .. ..	.. 5
1889 .. ..	.. 4
1890 .. ..	.. 1
1891 .. ..	.. 9

That vessels engaged in sealing are specially constructed for the pursuit in which they are employed, and are unavailable for any other, is shown by the following extract from the affidavit of Richard Hall, Secretary of the Victoria Sealers' Association:—

"There is no coast trade they can engage in, and deep-sea fishing is so far a failure owing to the great distance from markets and great cost of transportation, that if the sealing business were stopped from any cause, the entire fleet now engaged in that pursuit would be practically valueless. It would cost more to take any one of the fleet to the North Atlantic coast than such schooner would be worth when there."

This is confirmed by the Report of the British Commissioners, who write:—

"The sealing-vessels are seldom used in or fitted for other employment, and nearly all of them remain laid up in harbour between the dates of the closing and opening of the sealing season."

Commenting upon the persons owning the schooners, the United States' Case states that they are as varied in their occupations as the purchasers of lottery tickets; and the same spirit which induces persons to risk their money in the latter has persuaded them to take their chance in the sealing business.

The facts show that the persons owning the schooners are what one would expect them to be, viz., persons who would otherwise invest their money in coast shipping, and on this point Mr. Gleadowe states:—

"Some of them were old sailors, who have invested their money in a schooner and sail with her themselves, but the majority are men engaged in trade who have

The schooners useless for other trades.

Appendix, vol. ii.  
p. 222.

British Commissioners' Report,  
para. 106.

The schooner-owners.

United States' Case, p. 285.

Appendix, vol. ii.  
p. 265.



fitted out schooners as they would invest their money in any other speculation."

It is submitted that the owners of schooners will bear comparison with the shareholders composing the North American Commercial Company, or any other mercantile undertaking.

Number of persons employed.

As regards the number of people employed in the Canadian industry (as distinguished from those owning or having interests in the schooners, or engaged in transportation), the Tables already referred to show that there are now employed in, and depending for subsistence upon, this industry 1,458 persons, viz., 1,007 whites and 451 Indians. As to the wages obtained by them, Mr. Gleadowe reports:—

Appendix, vol. ii,  
p. 265.

"The men employed upon a schooner are paid, some by fixed wages and some by commission or lay on skins taken, and some by both. Thus, cooks and seamen are generally paid wages only, and those high wages from 30 to 60 dollars a-month, besides board; but hunters, whether white or Indian, are paid by lay only, and the amount of each varies from 1 dol. 50 c. to 3 dol. 50 c. a skin, or even more, the average being about 3 dollars. . . . A good hunter may easily make 1,000 or 1,500 dollars in a season. . . . The captain and mate are paid mainly by wages, but also have, in addition, a small lay on the skins; the captain often gets 50 dollars a-month, and 25 cents or 50 cents on every skin taken by the schooner, and the mate 40 and 50 dollars a-month and a lay on every skin taken by the stern-boat, which is specially under his charge. Where no lay is given the captain will get higher wages—in some cases 100 dollars."

The Indian hunters appear to be especially dependent upon the industry, and with reference to them Mr. Gleadowe writes:—

"In many cases, the enforcement of the *modus vivendi* deprived them of their only means of livelihood, and I cannot but fear, from what I heard from the Indian agent, that very great distress resulted in many Indian villages up the coast from prohibition."

For the reasons above given, it is submitted that the investment in Canada in pelagic sealing is substantial, and that the claims of those engaged in pelagic sealing—whose interests are directly involved in the decisions of this Tribunal—cannot with justice be neglected in the consideration of any Regulations which may affect the future of this important industry.

loss for other trades.

owner-owners.

Ibid

CONCLUSION.

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It is submitted, that the facts detailed in the foregoing Chapters establish that if any regulations affecting pelagic sealing are to be made with a view to the protection and preservation of the fur-seals in or habitually frequenting Behring Sea, it will be necessary for their effective working that, concurrently with such regulations, there should be enforced proper limitations and restrictions upon the taking of seals upon the Pribyloff Islands themselves. That any regulations must be assented to by all nations whose subjects frequent, or are likely in the future to frequent, the waters of Behring Sea for pelagic sealing, and must be framed so as not unduly to restrict or interfere with the justifiable exercise by all nations of the industry of sealing at sea, which is in itself a perfectly legitimate method of obtaining the benefit of a natural product.

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## CHAPTER XIX.

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DAMAGES.

With reference to the claim for damages mentioned at p. 12 of the British Case, and the particulars set out in the Schedule thereto, Great Britain will claim, in addition to the amount there stated, the sum of 62,847 dol. 12 c., the amount of expenses incurred by the Government of Canada in connection with the proceedings before the Supreme Court of the United States, with the view of establishing the illegality of the seizure of the "Sayward"; and the Arbitrators will be asked to find that such expenses were incurred, and should be included in the amount of damages which Great Britain is entitled to claim. The Arbitrators will further be asked to find what catch or catches might have been taken by pelagic sealers in Behring Sea without undue diminution of the seal herds during the pendency of the Arbitration.

In connection with the latter claim, it will be shown that the Government of Great Britain have paid to certain Canadian owners of sealing-schooners the sum of 100,234 dollars as compensation for disbursements made by them in contemplation of a voyage into Behring Sea, which had to be abandoned by reason of the enforcement of the *modus vivendi* of 1891.

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UNITED STATES. No. 4 (1893).

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BEHRING SEA ARBITRATION.

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ARGUMENT

OF

HER MAJESTY'S GOVERNMENT.

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*Presented to both Houses of Parliament by Command of Her Majesty.  
March 1893.*

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## BEHRING SEA ARBITRATION.

*Argument of Her Majesty's Government.*

### P R E F A C E.

IN August 1886, without any previous protest or warning, the Government of the United States seized the British schooners "Carolena," "Onward," and "Thornton" in Behring Sea, which were then engaged in pelagic sealing there.

The "Carolena" was seized in latitude 55° 50' north, longitude 168° 53' west; the "Onward" in latitude 54° 52' north, longitude 167° 55' west, and the "Thornton" in about the same latitude and longitude as the "Carolena." These schooners were, at the time of their respective seizures, at a distance of more than 60 miles from the nearest land, St. George and Unalaska Islands. After capture they were taken by the United States' revenue-cutter "Corwin" to Unalaska. They were tried before Judge Dawson, of the United States' District Court of Sitka, and the masters and mates of the vessels were fined in a considerable sum, and, in addition, sentenced to a term of imprisonment. The vessels, meanwhile, were detained.

On receipt of intelligence of these seizures, Sir L. S. Sackville West, British Minister at Washington, at once made inquiries; and by the instructions of Her Majesty's Government, on the 21st October, 1886, he entered a formal protest against these seizures of British vessels.

Mr. Bayard, the Secretary of State, wrote, on the 3rd February, 1887, to Sir L. S. Sackville West, announcing the discharge of the vessels, and the release of all persons under arrest, adding that this order was issued "without conclusion of any questions which may be found to be involved in these cases of seizure."

The men in custody were released under circumstances of great hardship, being turned adrift, without means, in a place many hundreds of miles from their homes.

On the 12th April, 1887, Mr. Bayard wrote that Regulations and Instructions to Government vessels were being framed, and that he would, at the earliest possible date, communicate with Sir L. West; but without any such communication being made fresh seizures took place in July and August of 1887, and renewed protest was made by Great Britain.

No seizure was effected in 1888, though pelagic sealing by British vessels was pursued in that year in Behring Sea.

In 1889 five British ships were seized in Behring Sea, and three others were peremptorily ordered out of the Sea.

In 1890 no seizures were made, though pelagic sealing was still carried on in Behring Sea.

The Government of the Queen remonstrated against the high-handed action of the United States as without warrant of law, and as an unjustifiable invasion of the rights of British subjects. But the correspondence has been carried on by them with an earnest desire to avoid recourse to measures of force in retaliation for those adopted by the United States, and in the confident belief that their rights would be surely and effectively vindicated by pacific methods, and just redress obtained for the wrongs committed.

As the result of prolonged negotiation and discussion the Treaty of Arbitration, from which this Tribunal derives its authority, was entered into, and on the 18th April, 1892, the Convention or *modus vivendi* (intended to cover the period which might elapse before the award of the Arbitrators) was concluded.

Hence it is that now, and for the seventh time in the course of the present century, the Governments of Great Britain and of the United States appear before an International Tribunal of Arbitration. To-day they submit existing differences to a distinguished body of jurists, with the full confidence that, in so far as the adjustment of those differences depends upon the ascertainment of legal rights, this august Tribunal will act upon recognized principles of law, and upon such principles alone; and with equal confidence that, in so far as that adjustment may properly have regard to

other than legal rights, the decision of this Tribunal will be just and equitable, having regard to all the circumstances of the case, and to all the important interests involved. This Tribunal will seek neither to diminish nor to add to the powers with which it is invested, and it cannot be doubted that each of the Governments will loyally accept its authoritative judgment.

Before proceeding with the Argument, which is now presented in accordance with the procedure prescribed by the Treaty, and which recapitulates the facts and discusses in some detail the principles applicable to them, the Government of the Queen deem it expedient to put before the Arbitrators a general view of the claims advanced by the United States, and of the contentions which arise in relation to them.

Those claims are divisible into two heads. Under the first head the United States claim, in various modes, exclusive rights in and over the greater extent of that part of the Pacific Ocean called Behring Sea, and in the fur-seals frequenting that sea, rights which they contend justify them in excluding the ships of every other nation from the pursuit of pelagic sealing therein, and in searching, seizing, and condemning such ships as engage in that pursuit.

This is, indeed, hardly a full statement of the pretensions advanced, for, carried to their logical conclusion, some of the arguments of the United States would equally justify them in treating that vast expanse of water as a *mare clausum* to all the world: so that the navigation of those waters by the nations of the world would be dependent solely on the moderate exercise by the United States of rights which they claim to possess, but upon which they do not insist.

Under the second head the United States claim that, by the authority of this International Tribunal, concurrent rules shall be established for the proper protection and preservation of fur-seals in or habitually resorting to Behring Sea.

It will be seen how essentially these two divisions of claim differ one from the other.

Under the first division the United States invoke the high authority of this Tribunal to affirm in them the existence of dominion and jurisdiction which conflict with long-established principles touching the rights of nations and the freedom of the seas.

The Government of the Queen deny the existence of any such dominion and jurisdiction, and to their assertion have offered and continue to offer strenuous opposition.

But, on the other hand, when the rights asserted are distinctly abandoned or are negatived, and when it is admitted that the concurrence of Great Britain is required to any Regulations, the Government of the Queen will willingly join with the United States in seeking the aid of this impartial Tribunal in the consideration of Rules which shall recognize that the protection and preservation of fur-seals is not a matter affecting the interests of the United States alone, and which shall be just and expedient in view of all the circumstances of the case, and having regard to all interests which are concerned.

How, then, is the case put as one of right?

Seldom, if ever, has such a claim been based upon such varying contentions.

Seldom have the arguments supporting a claim of right been shifted so lightly from one standpoint to another.

Now it is asserted as a claim of old descent from Russia; then, when it is shown that Russia neither had nor claimed to have a right at all commensurate, it becomes a claim by the United States in their own right of dominion.

At one time it is a claim to a vast area of Behring Sea as territorial waters; but, when the limits of territorial waters assented to by all nations are insisted on, it becomes reduced to a claim of jurisdiction on the high sea—a claim based upon a false analogy.

Fur-seals are undeniably animals *feræ naturæ*, yet a claim to property therein, with all its attendant rights, is asserted, and they are gravely relegated to the same category as a herd of cattle on the plains. Then, when the impossibility of establishing property in free-swimming animals in the ocean is demonstrated, the pretension resolves itself into a general and undefined claim to protect the seals in the Pacific.

Finally, a vague appeal is made to the principles of the common and the civil law, to the practice of nations, the laws of natural history, and the common interests of mankind; but one looks in vain for any vindication of the unprecedented pretensions put forward upon any such principles.

Yet the issues are clear:—

Was the Government of the United States legally justified in seizing British vessels engaged in pelagic sealing in Behring Sea outside territorial waters ?

Did the sailors on board those vessels, who owed no allegiance but to their Queen, violate any right of the United States or of its citizens in such pelagic sealing ?

The historical and jurisdictional aspects of the matter have been discussed at length in the British Case and Counter-Case. In the United States' Counter-Case it is stated that the questions involved in them are of secondary and very limited importance.

But the historical and jurisdictional considerations have a bearing upon the case, the importance of which cannot be thus lightly dismissed.

The United States, in extending their laws over the eastern part of Behring Sea, have made a distinct claim to include that part of the Pacific within their territorial dominions, and also to protect the seals in Behring Sea, as if the pelagic industry were carried on within their dominions. Judges in the Courts of the United States have declared this to be the true meaning of the Statutes they were called upon to interpret and to enforce against the British vessels.

The United States cannot substantiate their claim in virtue simply of their possession of the Territory of Alaska. They must rest it on the Treaty of Cession. The effect of that cession depends upon two points:—

1. What did it profess to cede ?
2. What had Russia the title to cede, for Russia could not assign what she did not possess ?

In this connection the Treaties of 1824, 1825, and 1867 are important, since their text and history show that Russia never made claim to such rights as are now alleged ; that she made a claim of a different nature, and made that claim only immediately to abandon it ; and, lastly, that Russia did not even pretend to cede the rights now asserted.

Yet the Sections of the Revised Statutes relating to Alaska under which the British vessels have been condemned, as interpreted by the Courts of the United States, are based on dominion and on the doctrine of *mare clausum*. And by this interpretation, not the prohibition against sealing alone, but all "the laws of the United States

relating to customs, commerce, and navigation," have been extended over the whole of the eastern part of Behring Sea. If this interpretation were sound and warranted by the Treaty of Cession, the answer is complete; the law of nations does not recognize such an extension of municipal law against foreigners; and the law, in so far as it applies to foreigners, is *ultra vires*. But if this interpretation is not correct, then these Sections do not extend beyond the territories, islands, and territorial waters of Alaska Territory, and the decisions of the Courts have no warrant even in the legislation of the United States.

United States'  
Case, Appendix,  
vol i, p. 82 *et seq.*

Considerations such as these, sapping as they do the very foundations of the claim of the United States, cannot be treated as other than most material to the due determination of the questions submitted to the Arbitrators.

Nor is it of less importance to recapitulate with some insistence and circumstance of argument the fundamental principles on which the freedom of the sea reposes.

Can it be denied that the claim of the United States, with or without its pretensions of descent from Russia, finds no warrant in these fundamental principles? If denial were possible, it would have been unnecessary to dive into the Statutes of other nations for analogy. Yet never was the argument from analogy put to such strange uses. Principles of construction have been applied to foreign laws which the Judges, in whose hands the construction of those laws rests, would never recognize. And on foundations so loosely put together conclusions have been based at variance with the fundamental principles of legislation and interpretation.

Shorn of all support of international law, and of justification from the usage of nations, the claim of the United States to possess and to protect the seals in the high sea takes, at last, its final form—as claim of property.

Yet not wholly is it rested on property. The greatest jurists of the world have dealt with "property" and "possession" in such fashion, have defined their meanings with such precision of thought and language, that it is not surprising the United States should shrink from the hopeless task of attempting to formulate a new species of ownership. And so, at last, driven from all the standpoints of admitted and long-known rights, the argument of the United



States takes refuge in a claim for protection where there is no property, under circumstances so novel that its supporters confess with candour that it can be rested on no precedent, but that a precedent ought to be established by international law to meet the exigencies of the case.

To all this shadowy claim the Government of the Queen submit but one answer—the Law.

It is sought to support this strange right by reason of the industry of the United States' citizens, and the benefit which that industry is said to confer on the markets of the world. But the rights of industry and the benefits of others interested therein are already cared for by the law.

It is said that the United States has a right to the seals as to the products of the soil. The law already sufficiently protects the products of the soil.

Animals are not products of the soil. The birds building in the trees, the rabbits burrowing in the ground, are but wild animals to the law. Yet in respect of them the law has already defined the extent of the rights of property, and has protected these rights.

Again, the claim is to the increase of the seal as to the sheep-farmer is given the increase of his flock. The law deals with the increase of the flock; and the increase of wild animals it deals with too.

“An industry the property of the nation on whose shores it is carried on”—such is the form in which the United States' claim is presented by one of its ablest advocates, a form which evades the most elementary questions as to the foundation, the nature, and the extent of the rights so claimed.

The whole case, and every part of it, and every form in which ingenuity can frame it, are covered by the law. And to this law Her Majesty's Government most confidently appeal.

And there is another law to which that Government appeal with equal confidence—the law on which depends the freedom of the sea.

What is the freedom of the sea?

The right to come and go upon the high sea without let or hindrance, and to take therefrom at will and pleasure the produce of the sea. It is the right which the United States and Great Britain endeavoured, and endeavoured success-

fully, to maintain against the claim of Russia seventy years ago. It is the right in defence of which, against excessive claims of other nations, the arguments of the United States have in former times held so prominent a place.

And what is this claim to protect the seal in the high sea? It is, as of right and for all time, to let and hinder the vessels of all nations in their pursuit of seals upon the high sea; to forbid them entrance to those vast seas which the United States have included in the denomination of the "waters of Alaska;" to take from these vessels the seals they have lawfully obtained; and to search, seize, and condemn the vessels and the crews, or with show of force to send them back to the ports from which they set out.

And so, according to the contention of the United States, "protection of an industry" at sea justifies those acts of high authority which by the law of nations are allowed only to belligerents, or against pirates with whom no nation is at peace.

From giving its high sanction to these views this Tribunal may well shrink; and it is with no mere idle use of high-sounding phrase that Great Britain once more appears to vindicate the freedom of the sea.

This, then, Her Majesty's Government submit is the issue raised by the dispute, an issue which they leave with confidence in the hands of this Tribunal. Were the British vessels right or wrong? If the United States' Congress could by the law of nations legitimately pass this Statute to bind foreign vessels upon the high seas, they were wrong in refusing to obey; but if Congress could not legitimately bind foreign vessels, their seizure was unjustifiable, and their owners must be compensated.

But there is another aspect of the question to which (the legal questions having been decided in favour of Great Britain) the attention of the Arbitrators must be called before their labours are complete: the question whether any, and, if so, what Sealing Regulations it may be necessary to formulate.

The position which Her Majesty's Government have consistently maintained on the subject of these Regulations is clearly set forth in the Introduction to the Second Part of the Counter-Case presented on its behalf. It suffices now, in

the briefest manner possible, to insist on that position.

So long as the claim of the United States to impose Regulations on pelagic sealing is based on the assertion of a legal right, that claim is strenuously opposed, and the right as strenuously denied.

But when the question is put on the lower and practical plane of common benefit to all the nations interested, on the recognition of the right of the pelagic sealer as well as of that of the island sealer, then the British Government will cordially co-operate in giving effect to such measures as may be found necessary for the preservation of the fur-seals.

On this basis the question assumes the negation of the right which the United States now claim, and admits the necessity for the concurrence of Great Britain. Her Majesty is, and always has been, ready to concur in Regulations just and equitable in the interests of all concerned; but she has been unable to join in the consideration of Regulations based on the principle that the United States have a legal right to the protection which those Regulations are intended to give.

Should any Regulations be the outcome of this Arbitration, it is confidently expected by Her Majesty's Government that they will be such as not to protect only the United States in the manner which their present contention urges, but to protect an industry in which all the nations of the world have an interest.

It were useless to make Regulations which should bind only the citizens and subjects of the United States and Great Britain. As in the case of the Jan Mayen fisheries, so in the case of the Pacific fisheries, the subjects of all the nations who now participate in them, or who may be reasonably expected to do so, ought to be equally bound.

Her Majesty's Government cannot leave this subject without expressing regret and disappointment at the position apparently assumed by the United States on the question of Regulations. It is discussed by the United States as if the exclusion of all the other nations of the world from a share in the fur-seal industry in the western seas were to be the aim and purpose of such Regulations. Her Majesty's Government

absolutely dissent from this view, and feel confident this Tribunal will not approve it. If the existing rights of nations are to be abridged, they can justly be abridged only in the interests of all, and the United States of America must be prepared to do their part by the adoption of Regulations and improved methods on the islands to preserve the fur-seals.

Finally, the broad contentions of the respective Governments, stated in popular language, are these:—

1. The United States claim dominion, and the right to legislate against foreigners, in two-thirds of that part of the waters of the Pacific Ocean called Behring Sea.

2. They claim a right of property in wild animals which resort for a certain season of the year only to their territory, derive no sustenance therefrom, and, during the greater part of the year, live many hundreds of miles away from that territory in the ocean.

3. They claim the right to protect that alleged right of property by search, seizure, and condemnation of the ships of other nations.

4. Failing the establishment of the right of property, they claim a right to protect the fur-seals in the ocean, and to apply, in assertion of that right, the like sanctions of search, seizure, and condemnation.

5. And lastly, failing these assertions of right, they claim that Rules shall be framed in the interests of the United States alone which shall exclude other nations from the pursuit of fur-seals.

On the other hand, Her Majesty's Government claim:—

1. Freedom of the seas for the benefit of all the world.

2. That rights of property, and rights in relation to property, be confined within the limits consecrated by practice, and founded on general expediency in the interests of mankind.

3. That, apart from agreement, no nation has the right to seize the vessels of another nation on the high seas in time of peace for offences against property excepting piracy.

4. That any Regulations to be established should have just and equitable regard to all interests affected.

In support of the views of Her Majesty's Government thus generally stated, the following

Argument is respectfully submitted for the consideration of this Tribunal of Arbitration.

*Statement of Questions raised in Article VI of the Arbitration Treaty.*

Questions for decision under Article VI.

Article VI. (1.) What exclusive jurisdiction in Behring Sea, and what exclusive rights in the sea fisheries therein, did Russia assert and exercise prior and up to 1867 ?

(2.) How far did Great Britain recognize and concede "these claims of jurisdiction as to the seal fisheries" ?

(3.) Was Behring Sea included in "Pacific Ocean" in the Treaty of 1825 ?

What rights, if any, in Behring Sea did Russia hold and exclusively exercise after this Treaty ?

(4.) Did not all Russia's right: (a) to jurisdiction, (b) as to the seal fisheries in Behring Sea, east of the water boundary, pass to the United States unimpaired under the Treaty of 1867 ?

(5.) Has the United States any, and, if so, what, right (a) of protection (b) or property in the seals frequenting the islands of the United States in Behring Sea when they are found outside the ordinary 3-mile limit ?

The points raised by these questions are met by Great Britain in this written argument by establishing the following principal propositions:—

*Propositions maintained in Part I of the Argument of Great Britain.*

Propositions maintained by Great Britain.

1. That the size and geographical conditions of Behring Sea are such that no nation has a right to close the sea against the navigation of the ships of other nations; nor to claim or assert territorial dominion over the sea; nor to claim or assert the right of jurisdiction, nor to exercise jurisdiction, over the sea beyond the 3 miles of territorial waters, as recognized by international law.

2. That Behring Sea is the high sea, and forms part of the Pacific Ocean; and that no nation has a right to claim, assert, or exercise jurisdiction on the sea in any other cases than those recognized by international law.

3. That, in 1821 only, and at no other time, Russia asserted a *jurisdiction* over so much of

Behring Sea as was included in a belt of 100 Italian miles from the shores of her territories :

That she never exercised such jurisdiction, but, on the protest of the United States and Great Britain, immediately withdrew her assertion of it, and limited her claim to the 3 miles of territorial waters recognized by international law :

That Russia did not at any time assert or exercise *jurisdiction* over the whole of Behring Sea, nor claim to close that sea, nor did she at any time assert or exercise the rights of *territorial dominion* over any part of such sea.

4. That the withdrawal of the claim to 100-mile jurisdiction was confirmed by both the Treaties which Russia entered into (1) with the United States in 1824, and (2) with Great Britain in 1825.

5. That the United States acquired from Russia, under the Treaty of 1867, no rights beyond the sovereignty of the ceded territories (which did not include any part of Behring Sea) and the right of jurisdiction over the 3 miles of territorial waters as recognized by international law ; and that the United States have no right, in virtue of their possessions on the shores and the islands of Behring Sea, to any dominion over that sea, or to any jurisdiction in its waters, other than that recognized by international law in the 3 miles of territorial waters.

6. That it was beyond the right of the United States to make laws under which British vessels could be condemned by the United States' Courts, or under which the United States' cruizers could interfere with British vessels engaged in pelagic sealing in Behring Sea, and that such laws were legitimately disregarded by British subjects.

*Varying Character of United States' Contention.*

In view of the great complexity and varying nature of the United States' contention, the following brief survey of the manner in which their case has been presented is submitted.

This is the more essential, as the United States' diplomatic correspondence, and other documents in which the United States' claim is advocated, do not keep the points clear, but move imperceptibly from one standpoint to another.

Different forms in which the United States' claim is presented.

The points to which the argument of the United States is directed are these:—

1. That Russia claimed and exercised the jurisdiction in Behring Sea now asserted, and ceded it to the United States, and that, therefore, the United States are entitled to exercise it in virtue of the Treaty of Cession of 1867.

2. That the United States have the like jurisdiction over Behring Sea in virtue of their own possessions, and in their own right of dominion.

3. That the United States have jurisdiction over the eastern portion of Behring Sea as part of their territorial waters.

4. That the United States have jurisdiction for the protection of the fur-seal in virtue of an alleged right of nations to exercise similar jurisdiction on the high sea, apart from any dominion or special jurisdiction over Behring Sea.

5. That the United States have a property in the seals on account of their breeding and temporary residence on the Pribyloffs, and a right to follow such seals and protect them in the high sea, apart from any dominion or special jurisdiction.

6. That the United States have such right of protection apart from any right of property.

Of these six claims, it is submitted that the last three, so far as they assert a jurisdiction extending beyond Behring Sea, or the eastern portion thereof, are not included in the reference to this Tribunal made by the Treaty of Arbitration.

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*Division of Argument.*

The following Argument is thus divided:—

In Part I the grounds are set forth on which Great Britain claims that all the questions arising under the first four questions propounded in the VIth Article of the Treaty of Arbitration should be decided in favour of Great Britain.

In Part II the United States' claim of right of protection or property in fur-seals is considered, and the grounds are set forth on which Great Britain claims that the fifth question propounded should be decided in her favour.



In Part III the question of regulations is discussed; and

In Part IV the claims of Great Britain and of the United States respectively for damages are considered.

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### ARGUMENT.—PART I.

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*Argument addressed to the first four Questions for Decision under Article VI of the Treaty of Arbitration.*

Behring Sea is the northernmost part of the Pacific Ocean.

It washes the north-western parts of the coasts of America and the north-eastern part of Asia.

United States' Case, p. 12.

The Pacific and Arctic Oceans are connected by Behring Strait, 48 miles in width.\*

From east to west, Behring Sea has an extreme width of 2,200 miles; from north to south, it extends over about 14 degrees of latitude, or more than 800 miles.

The area of Behring Sea is stated in the United States' Case to be 873,128 square statute miles.

Ibid, p. 11.

The Aleutian and Commander Islands are recognized as marking the southern limits of Behring Sea. Between the Aleutian and Commander Islands, and between the latter and the Kamtschatkan coast, are stretches of open sea 190 and 95 miles wide respectively. The western part of the Aleutian chain forms a widely scattered archipelago, with three open sea stretches of 50 miles or more in width each, and many navigable channels and passes through all parts of this group. So large are the spaces of sea as compared with the lengths of the islands, that from the western end of the Fox Islands to the coast of Asia, a distance of some 1,000 geographical miles, there are about 600 miles of sea, being nearly two-thirds of the entire distance.

The free navigation of the Pacific northward to the Arctic Ocean is, in fact, in no sense interfered with by the intervening islands, but is, and always has been, exercised by all nations through and over all parts of Behring Sea and through Behring Strait.

\* Geographical miles in all cases, unless otherwise stated.

Nature, extent, and geographical position of Behring Sea.

Waters b  
mainla  
territor

Nor w

B

No nation can close Behring Sea;

The geographical conditions of Behring Sea, its enormous size, the wide open navigable passes through and to the west of the Aleutians, together with the great width of the northern opening through Behring Strait, renders it impossible for any nation practically to close the sea against the ships of other nations.

Nor claim dominion over it.

It is not a land-locked sea, or a sea so surrounded by land as to entitle nations to whom the adjacent territories belong to assert a territorial dominion over it, but is in every sense of the term the high sea.

Pribyloff Islands.

The Pribyloff Islands, upon which are the principal breeding resorts or "rookeries" of the fur-seal in the eastern part of the North Pacific, are situated in Behring Sea, and consist of four small islands. Two of them only—St. Paul and St. George—are at present resorted to by the seals for breeding purposes. These two islands are 40 miles apart.

The Pribyloff group is situated 180 miles to the north of Unalaska Island in the Aleutians, and nearly 300 miles to the west of the mainland of Alaska, these being the nearest island and mainland.

Waters between these islands and the mainland cannot be United States' territory.

The position of the Pribyloff group of islands in the open sea is therefore such that no claim could legitimately be made by the nation owning Alaska or the Aleutians to include the intervening sea within its territory, and no justification can be found for any attempt to extend the territorial waters washing their coasts, respectively, beyond the 3 miles recognized by international law, or to treat them as embayed waters.

Nor within their territorial waters.

In the absence of Treaty, or of some claim based on acquiescence, the right of exclusive fishing on the high sea conceded to any country by international law is limited to the 3 miles of territorial waters.

British vessels wrongfully seized.

On general principles of international law, therefore, the places where the British vessels were seized by the United States were not within the territorial waters of the United States, but on the high sea.

Alleged claims of Russia.

It is contended by the United States that Russia asserted and exercised jurisdiction over Behring Sea not consistent with the foregoing

principles, and that, either by express consent of other nations or by acquiescence, Russia asserted this jurisdiction effectively.

The important periods for consideration are as follows:—

Prior to 1799,  
1799 to 1821,  
1821 to 1825,  
1825 to 1867,  
1867 and subsequently.

*Prior to 1799.*

Behring Sea was one of the vast partially explored seas open to the world.

Behring Sea open to all nations.

It had begun to be navigated by all nations, and the right to a highway through the sea at all its openings had been exercised and established; the rights of fishing and trading were also exercised.

British Case, p. 20.

Its eastern shores and islands, though not fully explored or known, were being explored by Great Britain, the United States, France, and Russia.

Rights of the high seas  
to be exercised

Character of the Sea

*Russian Ukase of 1799.*

This Ukase deals with the coast of America and the islands, giving commercial privileges to the Russian-American Company.

Character of the First Ukase

British Counter-Case, p. 11.

The territory was claimed by right of discovery; a right which neither Great Britain nor the United States admitted in negotiations.

The Ukase is purely territorial; it does not claim jurisdiction over the sea, or profess to affect foreigners. The territories were, and were treated as, colonies separated from the Russian Empire by the high seas. The Charter to the Company of 1844 expressly uses the term "colonies" for the territories in America; but for Okhotsk on the Siberian mainland the term used is "province."

United States' Case, Appendix, vol. i, p. 30.

Notification

No Russian legislation for Behring Sea exists; it is not alleged, nor could it be proved, that foreigners in Behring Sea were affected by Russian Laws in general, or by the Ukase in particular.

Russia did not claim, nor does the Ukase pretend, to make Behring Sea *mare clausum*.

The Ukase of 1799 therefore leaves the question of dominion or jurisdiction over Behring Sea

Protests of Great United States

*British Case*, p. 29 *et seq.* untouched. The highway to the Arctic Ocean was recognized, and was afterwards used; also fishing rights as on the high sea.

## 1700 to 1821.

Rights of the high sea continued to be exercised.

Rights of free navigation continued to be exercised unrestrained by Russia.

Russia continued only to enforce her territorial Ukase.

*British Case*, p. 37. Behring Sea was soon frequented by foreigners competing with the Company in navigation, exploration, and trade.

*Russian Ukase of 1821.*

Character of the Second Ukase.

*Ibid.*, Appendix, vol. ii, Part I, p. 1.  
*Ibid.*, Part II, No. 1.

Russia did not shut Behring Sea, nor claim it, or any part of it, as territory; she only claimed by this Ukase exclusive sovereignty on territory in America from Behring Straits as far south as 51° N., together with exclusive jurisdiction 100 miles from the coast.

*United States' Case*, Appendix, vol. i, p. 16.

The claim was of territory on land, and jurisdiction to restrain trade along all the coasts of that territory.

The United States' claim to territory and dominion in the Behring Sea east of the line of demarcation depends entirely on the cession of 1867 by Russia.

If Russia had not territory and dominion in Behring Sea, she could not cede it to the United States.

## 1821 to 1825.

Notification of Ukase.

*United States' Case*, Appendix, vol. i, pp. 16, 24.

This Ukase of 1821 was notified to Great Britain and the United States.

The Rules annexed to it, and the Charter issued at the same time, applied to Russian subjects and to foreigners.

Protests of Great Britain and United States.

*British Case*, Appendix, vol. ii, p. 14.

*British Case*, Appendix, vol. ii, Part II, No. 2.

A protest was at once entered by both Governments, the British protest being directed both to the claim of exclusive sovereignty over the territories, and of exclusive rights within the maritime limits specified. The United States' protest was directed in the same way to every part of the claim: to the claim to the territories south and east of Behring Straits; to the extension of the southern limit from 55° north to 51° north; and to the extension of maritime jurisdiction.

*British Case*, p. 42, and Appendix, vol. ii, Part I, pp. 3 and 24

Both protests were at first met by explanations of the reasons for the Ukase: by statements that

the Powers were expressly to understand that the entrance to and navigation of Behring Sea had not been affected except within the 100 miles limit, but that this limit was insisted on for the protection of Russian commerce.

After these protests, Russia issued instructions to her cruisers practically suspending the effect of the Ukase in so far as the claim to maritime jurisdiction was concerned.

British Case, p. 44.

This withdrawal was notified to Great Britain, and a suggestion made that the delimitation of boundaries should be matter of negotiation.

Withdrawal by Russia of her claim to maritime jurisdiction

It was notified also to the United States, and communicated by both Powers to their respective Representatives.

The United States also informed the British Minister to the United States of the same fact, and this withdrawal was made the basis of communications to the Russian Representatives during the negotiations, and was never denied.

Ibid., p. 43.  
(Middleton to Adams.)

It was communicated with the consent of the Russian Ambassador in somewhat guarded language to British ship-owners.

British Case, Appendix, vol. ii, p. 46.

Russia never withdrew or qualified the abandonment of the 100-mile jurisdiction claim, and on this basis the negotiation of the Treaties proceeded.

The abandonment, demanded both by Great Britain and the United States, was not of any specific part of her claim to jurisdiction, nor were certain coasts specified along which this jurisdiction should not be exercised, but she abandoned the *whole claim to jurisdiction along the whole of the coasts* of the territories she claimed, and never again revived or attempted to exercise it on any part of the coasts.

The action of the "Apollon" in the case of the "Pearl" was disavowed by the Russian Government.

British Case, p. 78.

#### *The United States' Treaty of 1824.*

The United States having objected to the claim of territory by Russia south and east of Behring Straits, as far south as 51°, and also to the claim of maritime jurisdiction along the shores of that territory; further, Russia having agreed to withdraw that claim of maritime jurisdiction; the Treaty was entered into to carry out the arrangements which had been come to. It is therefore

Construction and effect of Treaty of 1824.

obvious that the words of Article I, "any part of the Pacific Ocean," include Behring Sea.

The fact that the United States also contested the extension of the southern boundary does not affect this position.

British Case,  
pp. 66, 72, 73.

There was nothing unusual in using the term "Pacific" to include Behring Sea; it was commonly so used in despatches, by writers, and by geographers at that time, and is now; it is used in this sense by all the jurists who have dealt with the Treaties, and by Greenhow, a prominent official of the United States' Government, in official publications.

It was necessarily used in the Treaty in this sense, because the abandoned claim to restrict freedom of navigation and fishing applied to several parts of the Pacific Ocean, viz., Behring Sea, the Sea of Okhotsk, and that part of the Pacific which lies south and east of the Alaskan territory.

The argument that it applied only to the Pacific Ocean south and east of the Alaskan territory, and not to Behring Sea, is disproved by the fact that the 100 miles claim of jurisdiction extended both to the north and to the south of the Aleutians. Its withdrawal, therefore, could not have been confined to the south, to the exclusion of the north, unless it had been expressly so stated.

Other provisions of the Treaty (*e.g.*, Article II, forbidding resort to any point where there was a Russian establishment) manifestly applied to the whole territory claimed by the Ukase.

*The British Treaty of 1825.*

It is submitted that the Treaties of 1824 and 1825 declared and recognized the rights of the United States and Great Britain to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend: that the body of water known as Behring Sea was included in the phrase "Pacific Ocean" as used in the Treaty of 1825; and that the limited meanings placed on the term "north-west coast" or "north-west coast of America" in the United States' Case are incorrect.

Throughout the negotiations which preceded the Treaties, the words "north-west coast" were used to include not less than the whole of the North American coast from Behring Straits to

Russia of her claim to  
the jurisdiction

Construction and effect of Treaty  
of 1825.

and effect of Treaty  
of 1824.

51° north. If it had been intended to limit this general term to a certain portion of the coast, explicit language would have been used.

One contention of the United States, in effect, limits the "north-west coast" to the *lisière* defined in the IIIrd Article of the Treaty of 1825.

While on the one hand Article VI of the Treaty was confined to the *lisière indiquée*, on the other hand, the reciprocal liberty of access and commerce with each other's territories secured by Article VII was clearly not confined to the *lisière*; the main proposals made with regard to this related to its possession by Russia. The other proposals, including that as to reciprocal liberty of access, related to the whole of the north-west coast. In the words of M. Canning, writing in 1824, the object was to secure reciprocal access to the territories of the respective Powers. This was effected by adopting, as Article VII of the British Treaty, Article IV of the United States' Treaty, which gave to Russia and the United States a reciprocal right of frequenting for ten years the interior seas on the coast mentioned in Article III of that Treaty. This coast was clearly the whole of the north-west coast from Behring Strait southwards to about 54° 40', Russia agreeing not to form any establishment south of 54° 40', and the United States agreeing not to form any to the north of that latitude.

British Counter-  
Case, p. 42.

It is submitted, therefore, that Behring Sea is clearly included in the term "Pacific Ocean" in the Treaty of 1825.

Article III of the Treaty of 1825 traces the line of demarcation between the two Powers on the coast of the continent and the islands of North-western America.

Article IV defines the Eastern boundary of the *lisière* which was to belong to Russia.

Article V emphasizes the possession of the *lisière* by Russia by reiterating that the reciprocal prohibition against forming establishments in the possession of the two parties respectively applied in the case of the Russian possessions both to the coast and to the *lisière* comprised within those possessions.

Article VI dealt only with the *lisière*, granting to Great Britain a perpetual right of navigation of all the rivers flowing to the Pacific across the line of demarcation of the *lisière* indicated in Article III.

Article VII, on the other hand, dealt with the

Analysis of the Treaty

United S



coast of the continent mentioned in Article III: it gave to the two parties a reciprocal right of visit to all the inland waters, harbours, &c., on this coast: it applied, therefore, to the coast of the whole of the Russian possessions, as well as to the whole of the coast of the British possessions.

If the right of access under Article VII were limited to the coast of the *lisière*, the reciprocal character of the Article would be destroyed.

The text of the Treaty clearly shows, therefore, that the expression "north-west coast" included the whole of the coast on the north-west of the American continent; and that the term "Pacific Ocean" included all the waters washing the north-west coast, including Behring Sea.

British Counter-  
Case, p. 51.

This argument is supported by the fact that in the Treaties of 1841, 1843, and 1859, concluded by Russia with Great Britain and other Powers (and which are examined in the British Counter-Case, pp. 51-52), the term "North-west coast of America" is used in a manner showing conclusively that it included the coast of Behring Sea.

The Treaty of 1859 did not expire till 1869, *i.e.*, after the cession of Alaska to the United States.

The notice issued by the United States in 1845 at the request of Russia warns the United States' citizens against infringing the Treaty of 1824 by "resorting to any point upon the Russian-American coast where there is a Russian establishment." This notice clearly applied to all the coast of Behring Sea.

*The Cession of Alaska to United States in 1867.*

Cession to United States.

The whole of the Russian territories on the north-west coast of America, together with the islands, were ceded by Russia to the United States Treaty of 1867.

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It is submitted that the United States' official Acts and Statutes dealing with Alaska Territory next mentioned, whatever their construction, have no force or validity against foreigners, and therefore afford no support to the position assumed by the United States. They are as follows:—

United States' Statutes, &c., dealing  
with Alaska.

The Act of July 1868, section 1, extending the laws of the United States relating to customs,

commerce, and navigation over all the mainland, United States' Case, p. 78.  
islands, and waters of the territory ceded to the  
United States by Russia.

Section 1956, Revised Statutes, Chapter 3, Ibid., Appendix, vol. i, p. 96.  
titre 23, prohibiting the killing of fur-seals and  
other animals within the limit of Alaska Territory,  
or in the waters thereof.

"An Act to provide for the protection of the Ibid., p. 99.  
Salmon Fisheries of Alaska, 1889," section 3,  
declaring that Section 1956, above, shall "include  
and apply to all the dominion of the United  
States in the waters of the Behring Sea;" and  
that the Proclamation of the President, warning  
all persons from entering such waters for the  
purpose of violating the Statutes, shall be  
published at each United States' port of entry  
on the Pacific coast."

Proclamation of the United States' President Ibid., p. 112.  
in 1859 (and also in 1890, 1891, and 1892),  
warning all persons entering the waters of  
Behring Sea, within the dominion of the United  
States, for the purpose of violating Section 1956,  
and authorizing seizure of vessels.

It is submitted that the application of these  
Statutes and official Acts to foreigners is not  
warranted by the Treaty of Cession of 1867, and  
cannot be supported by any principle of law.

The Treaty of Cession contained the following  
provisions:—

Treaty of Cession, 1867.

United States' Case, Appendix, vol. i, p. 46.

#### ARTICLE I.

"Sa Majesté l'Empereur de Toutes les Russies  
s'engage . . . à céder aux États-Unis . . .  
tout le territoire avec droit de souveraineté  
actuellement possédé par Sa Majesté sur le  
Continent d'Amérique ainsi que les îles contiguës,  
le dit territoire étant compris dans les limites  
géographiques ci-dessous indiquées . . ."

United States' translation and construction of the Treaty incorrect.

A line running through Behring Straits,  
and thence to the south-west to a point between  
Attu and Commander Islands, is drawn as "la  
limité occidentale des territoires cédés, de manière  
à enclaver dans le territoire cédé, toutes les Îles  
Aléoutes situées à l'est de ce méridien."

The eastern boundary was the line of demar-  
cation traced by the Treaty of 1825.

## ARTICLE II.

The right of property in all the vacant lands and public places, &c., is included "dans le territoire cédé."

## ARTICLE VI.

". . . . La cession du territoire avec droit de souveraineté faite par cette Convention, est déclarée libre; . . . et la cession ainsi faite transfère tous les droits, franchises, et privilèges appartenant actuellement à la Russie dans le dit territoire et ses dépendances."

These Articles are thus rendered into English in the United States' Case :—

United States' Case, Appendix, vol. i, p. 44.

British Case, Appendix, vol. ii, Part III, No. 3.

## ARTICLE I.

"His Majesty the Emperor of All the Russias agrees to cede to the United States, . . . all the territory and *dominion* now possessed by His said Majesty on the Continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth . . ."

A line running through the Behring Strait, and thence to the south-west to a point between Attu and Commander Islands, is drawn as "the western limit within which the territories and *dominion* conveyed are contained so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."

## ARTICLE II.

The right of property in all the vacant lands and public places, &c., is included "in the cession of territory and *dominion*."

## ARTICLE VI.

". . . . The cession of territory and *dominion* herein made is hereby declared to be free, . . . and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or *dominion*, and appurtenances thereto."

In this translation the expression (twice used) "Le territoire avec droit de souveraineté" is translated "the territory and *dominion*."

‡ The accurate translation is, "The territory, together with the right of sovereignty."

It expresses not merely a grant of territory, but also of the sovereign rights over such territory. It says nothing of sovereign rights or dominion over the sea. The western boundary-line is drawn not to include as territory or dominion the waters to the east of it, but to show that the islands and territory to the east of it pass to the United States by the cession.

In this translation also the expression "territoires cédés" is translated "the territories and dominion ceded."

Such translation is only permissible as a free rendering of the French, and as incorporating the same dominion or sovereignty which is alluded to in Article I, *i.e.*, sovereignty over the ceded territories.

In the VIth Article the expression "le dit territoire et ses dépendances" is translated "the said territory or dominion and appurtenances thereto."

The accurate translation is, "The said territory and its dependencies."

On these mistranslations of the Treaty of Cession, are founded the United States' argument and certain judicial decisions, to the effect that the waters referred to in the Statutes were included in the dominion ceded by Russia, and include all Behring Sea to the east of the boundary-line.

Further, the inference drawn by the United States, and submitted to the Arbitration Tribunal, is that up to the time of the cession Russia continued to claim dominion over Behring Sea, relinquishing part of it to the United States; that this dominion so claimed forty years after the Treaties of 1824-25 is evidence of British acquiescence in such claim; and that therefore the United States are entitled to have Question 3, and all other questions depending on it, answered in favour of the United States.

A reference to the language of the Treaty of 1867 shows that both arguments and inference are unfounded.

There is nothing to warrant any larger meaning being given to "waters thereof" than the usual meaning, *i.e.*, 3 miles of territorial waters.

Drawing an imaginary boundary-line through the high sea for the purpose of delimitation of territories on either side of it does not warrant the inference that dominion over the high sea on either side is claimed. Such definition of a

United States' Case, p. 79.

United States' argument and judgments based on such erroneous translation and construction.

boundary-line is the only one possible where the cession is of many islands and rocks, many of which are not named or surveyed, and some of which are even perhaps unknown.

The cession was of all territories within the boundary-line, and the Treaty so expressed it.

An example of the use of water boundary-lines for this purpose is furnished by the United Kingdom Statute defining the limits of New Zealand, which plainly refers only to territories and islands within those limits. Yet the United States, for consistency, assert, contrary to the fact, that Great Britain thereby claims as within the Colony all the high sea within those limits.

United States' Case, p. 223.

The United States' contention has been shown to depend on an erroneous construction of the Treaty of 1867.

The decisions of the United States' Courts condemning British vessels for a supposed breach of the United States' sealing laws adopt a similar construction, and are therefore not to be supported.

Three examples of such decisions, with the judgments, are set out in the United States' Appendix:—

*Case of the "Thornton," 1886.*

Dawson, J., held that "all the waters within the boundary set forth in this treaty . . . are to be considered as comprised within the waters of Alaska."

The "Thornton," a British vessel, was seized when fishing 70 miles south-east of St. George Island, the nearest land, and was condemned.

*Case of the "Dolphin" and other ships, 1887.*

Dawson, J., held that Russia had claimed jurisdiction over Behring Sea, and that Great Britain had acquiesced in that claim; that the United States had purchased the sea east of the boundary-line, and that the action of the United States was "a legitimate exercise of the powers of sovereignty under the law of nations, with which no nation can lawfully interfere."

The "Dolphin" and other ships, British vessels, were seized when fishing beyond the 3-mile limit in Behring Sea, and were condemned.

ates' argument and judgment based on such erroneous construction and construction.

Decisions of United States' Courts cited in United States' Case.

United States' Case, Appendix, vol. i, p. 114.

Ibid., p. 115.

*Case of the "James G. Swan," 1892.*

Handford, J., held that Russia had asserted authority over Behring Sea by assuming to transfer to the United States certain territory and dominion with definite boundaries, including a large part of Behring Sea, and that the United States, by the ratification of the Treaty of Cession, acquired a claim of right to exercise authority and sovereignty therein.

United States' Case, Appendix, vol. i, p. 121

The schooner was condemned.

The decisions of the United States' Courts in the condemnation of other vessels proceed on the same principles.

Either they were wrong in point of construction, or the Statutes upon which they were founded were *ultra vires* as against foreigners. In neither case do they furnish any justification for the action of the United States.

The foregoing facts and arguments, it is submitted, conclusively establish that the following answers should be given to the first four questions in Article VI of the Treaty of Arbitration.

Conclusions established by foregoing argument.

*To Question 1.*—That Russia exercised no exclusive jurisdiction in Behring Sea prior to 1867; that, in 1821 only, Russia asserted exclusive jurisdiction over a part of Behring Sea along its coasts, but that she withdrew the assertion, and never afterwards asserted or exercised such jurisdiction.

That Russia exercised no exclusive rights in the seal fisheries in Behring Sea prior to 1867; that in 1821 only, Russia claimed exclusive rights, as included in her claim of jurisdiction extending to 100 miles from the coast, but that she withdrew the assertion, and never afterwards asserted or exercised such rights.

The only exclusive right which Russia subsequently exercised was the right incidental to her territorial ownership.

*To Question 2.*—That Great Britain neither recognized nor conceded any claims of Russia of jurisdiction as to the seal fisheries, *i.e.*, either (a) of exclusive jurisdiction in Behring Sea, or (b) exclusive rights in the fisheries in Behring Sea, save as already mentioned.

To Question 3.—That Behring Sea was included in "Pacific Ocean" in the Treaty of 1825.

That Russia neither held nor exclusively exercised any rights in Behring Sea after the Treaty of 1825, save only such territorial rights as were allowed to her by international law.

To Question 4.—That no rights as to jurisdiction or as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, passed to the United States under that Treaty, except such as were incidental to the islands and other territory ceded.

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## PART II.

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*Argument addressed to the 5th Question for Decision under Article VI of the Treaty of Arbitration, viz.: Has the United States any Right of Protection or Property in the Fur-seals?*

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*Propositions maintained in Part II of the Argument of Great Britain.*

1. That seals are animals *feræ naturæ*.
2. That the only property in animals *feræ naturæ* known to the law is dependent on possession.
3. That this law is common both to Great Britain and the United States.
4. That the owner of land has the exclusive right to take possession of them while they are on his land; but that right is lost when they leave his land; and when they are on the high sea all alike have the right to take possession of them.
5. That while on the Pribyloff Islands, neither the United States nor their lessees exercise their right to take possession of the seals other than of those actually killed.

And that when the seals leave the Pribyloff Islands and take to the high seas, all exclusive right of the United States is at an end, and all alike have the right to take possession of them.

6. That no right of protection of the seals in Behring Sea or in any other part of the Pacific exists.



7. That the claim of a Government to protect animals, which are not their property, on the high sea, and thereby to interfere with the exercise of the rights of fishing which other nations possess, cannot be supported by any known principles of law.

8. That no analogy exists between the rights claimed by the United States and those claimed and exercised by other nations on the high seas, whether as regards fishing laws or otherwise, and that the United States cannot derive any warrant for the right claimed from such fishery or other laws.

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The fur-seal is not only a marine animal, but pelagic in habit, spending most of its time at large in the open ocean. It is migratory in its habit, and in the course of the year traverses a great part of the North Pacific Ocean. British Counter-Case, p. 100.

The time in each year during which various classes of fur-seals (or some considerable portion of them) remain on or about the breeding-islands for purposes of reproduction, is from three to five and a-half months. But individual seals (with the exception of the old bulls) frequent the adjacent waters for much of the time of their resort to the islands, and many young males and virgin females probably do not land at all. The average length of stay ashore of the seals is about one-third of the year.

The food of the fur-seal is entirely derived from the sea. Ibid., p. 101.

The expression "home" or "sole home," applied to the Pribyloff Islands in connection with the fur-seals found in the eastern part of the Pacific, is inadmissible, even on the assumption that all are born there. A migratory animal cannot be said to be "at home" only when in its breeding area. The home of any species is the area within which it habitually lives. Animals may have winter as well as summer homes. Ibid., p. 142.

The principal "winter home" of the fur-seals of the eastern part of the North Pacific is the part of the ocean lying off the coast of British Columbia; and there enormous quantities of fish, which would otherwise be available for the support of the inhabitants, are consumed by the seals.

The principal "winter home" of the fur-seals of the western part of the North Pacific, is, similarly, in the vicinity of the Japanese coasts. But seals in smaller numbers are to be found in all parts of the North Pacific.

British Counter-Case, p. 142.

In the summer months, most of the seals go northwards for breeding purposes. Some go to the Commander Islands, others to the Kurile Islands and Robben Island, others to the Pribyloff Islands.

No special bodies of the seals can be said to resort *entirely and invariably* to one or other of these groups of islands.

Intermingling occurs between the seals of the North Pacific generally, both to the north and to the south of the Aleutian Islands.

The allegation that the identity of individual seals can be established when at sea cannot seriously be advanced.

Ibid., p. 136.

Experiments and observation further show that seals born on one of the Pribyloff Islands often land in another year on the other island, and that the relative numbers of seals on the two islands varies from year to year.

The tendency of the slaughter carried on upon the Pribyloff Islands is to drive the seals away from these islands, and many other islands are available as breeding-places.

Ibid., p. 141.

The fact of the intermingling of the seals of both sides of the North Pacific, likewise shows that not all the seals found in the eastern part of that ocean can have been born on the Pribyloff Islands.

Ibid., p. 110.

The expression "Alaskan herd" is simply a fanciful creation, supposed to lend, by the use of the term "herd," some colour to the United States' contention of right of property and protection.

Ibid., p. 118.

The term "herd" is applicable to seals (if at all) only when on the islands, and then only to each rookery separately, or to bodies of seals driven together.

No distinction, as between the fur-seals resorting to the two sides of the North Pacific, has heretofore been known to naturalists.

The alleged distinction recently advanced on the part of the United States is based on the classing of skins by fur-dealers, but such classing, and the differences of price resulting, are no evidence of difference of kind in the fur-seal or in other animals.

The criteria employed by fur-dealers in classing the skins, though important in the trade, are in themselves slight and difficult of definition. In the particular case of fur-seal skins from the Pribyloff and Commander Islands, experienced dealers actually observe a large percentage of skins from each source which would be classed, according to the criteria they employ, as coming from the other.

Though fur-seals are to a certain degree controllable when on land, this results from their helplessness while there, and such control has nothing to do with domestication.

British Counter-Case, p. 111.

It is impracticable so to control the seals as to prevent them from going to the sea whenever they desire to do so, and, were it possible so to do, the seals would perish.

While the seals are on the Pribyloff Islands, they are left entirely to their natural inclinations both as to leaving and returning to the islands.

They retain there all their characteristics of animals *feræ nature*.

They are unused to, and incapable of, any but slow and laboured movement on land, and are therefore easily surrounded and driven to the killing-grounds for slaughter.

Such control as is exercised in driving and killing, amounts to no more than preventing those which are selected for killing from escaping.

Ibid., p. 112.

The seals dread the approach of man, and endeavour to flee from him, even when collected in great numbers ashore; though it is probable that, when their breeding-places were first visited, ignorance caused them to be fearless. The result of this contact with man has therefore been the opposite of that implied by domestication.

During the greater part of the year, the seals are wholly removed from the cognizance of persons on the Pribyloff Islands; and till very lately their winter haunts were not even known.

All ideas attached to the word "domestic" are therefore wanting in the case of fur-seals. Man

does not provide their food or in any way assist them to obtain it; his care is at most of a negative kind, and consists in the avoidance of nets which would tend to drive them wholly away from the breeding-islands. They would not suffer, but, on the contrary, would profit, by his departure from these islands.

No scientific authority can be adduced in support of the contention that the seal is other than a wild animal; and it is believed that no opinion from any source which is recognized as entitled to weight can be quoted to such an effect.

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*Statement of the Law of the United States and Great Britain as to Property in Animals "Ferae Naturae."*

The common law in force both in America and England as to animals *ferae naturae* is identical.

Property in wild animals dependent on possession.

This law recognizes no property in animals *ferae naturae* until possession. Property, while the animals are alive, remains only so long as this possession lasts; when this possession is lost the property is lost. The law considers that they are then wild animals at large, and that the rights of capture revert to all alike.

The owner of land has what is sometimes called a qualified property in wild animals on the land, but this is no more than the exclusive right to take possession while they are there, and when they leave the land that exclusive right is gone.

The following passage is taken from the treatise of the well-known authors, Pollock and Wright, on "Possession in the Common Law," p. 231:—

" . . . Trespass or theft cannot at common law be committed of living animals *ferae naturae* unless they are tame or confined. They may be in the park or pond of a person who has the exclusive right to take them, but they are not in his possession unless they are either so confined, or so powerless by reason of immaturity that they can be taken at pleasure with certainty. . . . "

Examples of taking Possession.

The following examples from decided cases illustrate the nature of possession.

*Young v. Hitchens* (6 Q.B. 606), fish only

partly in a seine-net were held not to be in possession.

*R. v. Revu Pothadu* (Ind. L.R. 5 Madras 390), fish in irrigation tanks in India were held not to be in possession.

The law does not give to the owners of land this qualified property as to wild animals on their land by reason of any care, or feeding, of the wild animals, or management which falls short of reducing them into possession: it is rested solely on the fact of the ownership of the land, and the fact that any other person coming on the land to take the animals is a trespasser.

The exclusive right to take possession may be violated; but as the right comes to an end when the animals leave the land in respect of which the right arises, such violation can occur only while the animals are on the land, as by a trespasser taking possession of them.

Such a violation is committed by raiders on the islands, and the property in the seals taken by them is in the United States.

With reference to the cases put by Mr. Phelps and Mr. Blaine of killing fish by scattering poison in the sea, destroying them by dynamite, and placing dangerous obstructions and derelicts in the sea to injure commerce or fisheries, it is denied that they present any analogy to the case now under discussion, which is simply that of fishing by lawful methods.

All persons alike possess the right of fishing on the high sea, and such fishing, even though it diminish the catch of another, is in all respects analogous to the case of rival traders.

There is no principle of law in the United States or Great Britain which prohibits rival trading, or gives redress to that one of the traders who may suffer loss in his trade by his rival's exertions.

The exercise of the right to catch the seals on the high sea is a rival trade to the exercise of the right to catch the seals on land. This latter right is of the same character as the former: it only differs by reason of its being exclusive while the seals are on the land.

No act of malice towards the United States or the lessees of the Pribyloffs has been, or could be, alleged against the fishermen of Great Britain whose vessels have been seized. The seals are taken by them on the high sea for their profit,

Reason for recognition of exclusive right.

Violation of the right.

Raiding.

Cases put by the United States.

United States' Case, Appendix, vol. 1, pp. 202, 287.

This is a question of rival trading merely.

Which the law permits.

No malice alleged.

and in the exercise of their legal rights of fishing possessed by them in common with all mankind.

The case therefore falls within the general principle, that where loss results to one by the lawful exercise of a right possessed by another, no reparation can be obtained by law.

It is, therefore, submitted that any rights which the United States possess are not violated by the acts of fishermen of other nations on the high sea; and that there is no principle of law known in Great Britain or the United States by which the contention that there is such a violation can be supported.

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*Application of Principles of Property and Possession of Wild Animals to Seals.*

The distinction between the right to take possession of wild animals while they are on the land, and the right of property in such animals, is fundamental to the questions submitted to the Arbitrators.

When the foregoing principles as to property in, and possession of animals *feræ naturæ*, are applied to the case of the seals, the United States' contention of property in them, while they are in the high sea, falls to the ground.

The United States or their lessees have only an exclusive right to take possession of the seals while they are on the islands, and this exclusive right is lost when the seals go into the high seas.

They take possession only of such seals as they kill.

The alleged management amounts to no more than taking precautions that the seals shall not be driven away, and to regulate the quota of seals to be killed.

The conditions of seal life during the period the seals are in Behring Sea, their excursions to and from the islands into the high sea, and the intermingling of seals from different islands, clearly show that the conditions essential to possession never exist, except at the moment of capture.

While the seals are at sea, there is no power to reproduce at will the physical relations to the animals essential to possession.

The possession of the United States is thus seen [not to be established while the seals are

Principle of law applicable.

cognition of exclusive right.

ion of the right.

Raiding.

by the United States.

The distinction is fundamental.

question of rival trading merely.

Nature of United States' right to seals while on Pribiloffs.

h the law permits.

Their management is not taking possession.

No possession except at time of capture.

malice alleged.

Nor on high sea.

Rights of others to capture.

at sea, and the rights of all to catch the animals on the high sea remain, and were lawfully exercised by the British vessels seized by the United States.

The United States' claim to property, or to any greater right than an exclusive right to take possession while on the islands, is therefore, it is submitted, without foundation; and the exclusive right to take possession does not exist at sea.

The allegation in Mr. Phelps' letter, that the seal fishery is "the property of the nation on whose shores it is carried on," begs the question, and is not consistent with any known principle of law.

The British contention is that this absence of precedent is fatal to the United States' claim, which conflicts with the undoubted right of individuals to fish for seals in the high sea, a right which cannot be diminished or taken away by a Government to which the owners of the right owe no allegiance.

Nor is the United States' contention in any way advanced by an appeal to international law.

It is incorrect to say that the best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules.

It may be observed that law so made would not be international law at all. International law is evolved by a more just as well as a more tedious process. Its source is thus stated by Kent:—

"The sole source of this law, the fountain from which it flows, whether in its customary, conventional, or judicial-customary shape, is the consent of nations."

And again:—

"In cases where the principal jurists agree, the presumption will be very greatly in favour of the solidity of their maxims; and no civilized nation that does not arrogantly set ordinary law and justice at defiance will venture to disregard the uniform sense of the established writers on international law."

In the case of *Triquet v. Bath*, Lord Mansfield said:—

"I remember, in a case before Lord Talbot, of *Buvot v. Barbut*, upon a motion to discharge the defendant (who was in execution for not performing a decree) because he was agent of commerce, commissioned by the King of

Claim of property unfounded.

United States' Case, Appendix, vol. i, p. 287.

Source and foundation of international law.

Kent's "Commentaries on International Law," 2nd edition, by Addy, p. 4.

Ibid., p. 37.

3 Burr. 1478 (at p. 1481.)



Prussia, and received here as such; the matter was very elaborately argued at the bar, and a solemn deliberate opinion given by the Court. . . . Lord Talbot declared a clear opinion, 'That the law of nations, in its full extent, was part of the law of England' . . . 'That the law of nations was to be collected from the practice of different nations and the authority of writers.' Accordingly, he argued and determined from such instances, and the authority of Grotius, Barbeyrac, Binkershoek, Wiquefort, &c., there being no English writer of eminence upon the subject.

"I was counsel in this case; and have a full note of it.

"I remember, too, Lord Hardwicke's declaring his opinion to the same effect; and denying that Lord Chief Justice Holt ever had any doubt as to the law of nations being part of the law of England, upon the occasion of the arrest of the Russian Ambassador."\*

This extract shows it to have been the opinion of Lord Talbot, Lord Hardwicke, and Lord Mansfield, that international law is to be collected from the practice of nations and the authority of writers; and that they and Chief Justice Holt were agreed in regarding it as part of the law of England.

That branch of international law which deals with the rights of nations, and which owes its existence to the consent of nations, derives its force from well known and recognized principles of justice, while that branch of it which deals with the rights of subjects of different nations is based on principles common to the laws of all nations.

International law does not nor can a Tribunal administering this law create novel principles, antagonistic to such legal principles, nor is there any example which can warrant Mr. Phelps' suggestion that this should be done.

The consent of nations would not be presumed in favour of such novel principles, if, as is assumed above, a precedent is sought to be created on the strength of them; and this consent is essential to the admission of such precedent.

It is, it is submitted, therefore clear that the decision of the Arbitration Tribunal must conform to recognized principles of law.

No other method is sanctioned by the Treaty of Arbitration. That Treaty distinguishes clearly between the questions as to existing rights and the question of future Regulations. The former

\* The italics in this passage are taken from the Report itself.

are dealt with by Article VI, the latter by Article VII. Further, Article V of the *modus vivendi* makes the matter clear. By that Article it is provided that "if the result of the Arbitration be to *affirm the right* of British sealers" compensation shall be made "for abstaining from the exercise of that right" during the Arbitration; and "if the result shall be to *deny the right*" compensation shall be made by Great Britain.

When, as in the present case, the rights and duties of the respective parties would be determined by the principles of law common to the two countries in the same way, it is submitted that it is the duty of the Arbitration Tribunal to follow the common principles of the two laws, and no others.

A nation has no power to affect by its special Statutes the fundamental rights of possession and property, except with regard to its own subjects and persons within its jurisdiction.

The United States' Statutes, under which the British vessels were seized and condemned, as those Statutes are now construed by the Courts of the United States, would affect these fundamental rights with regard to the subjects of other nations, and therefore are *quoad* the subjects of other nations *ultra vires*.

#### *The Claim to Protection apart from Property.*

The United States, assuming that their claim to property fails, endeavour to establish an independent right to protect the seals on the high seas.

This is a contention wholly devoid of legal authority.

The right of a Government to protect the property of its subjects must rest on the same principles as the rights of an individual.

Such rights as the United States may possess to protect the seals are dependent on the existence of property in them.

The exclusive right to take possession of animals on land, dealt with in the preceding argument, does not carry with it a right to protect such animals when they leave the land.

The right of all nations to fish on the high seas is inconsistent with the claim of any nation to

The legal principles involved being common to laws of both parties to dispute, their decision must conform to them.

A State can affect only the rights of its own subjects.

Right of a Government to protect.

Right *ratione soli* does not import right off the land;

Which would conflict with rights of others on high sea.

protect fish or other free-swimming animals there.

The contingency that fewer seals may resort to the United States' islands in consequence of the exercise of this right of fishing on the high sea cannot affect that right, nor entitle the United States to claim that it should be less freely exercised.

The United States, however, insist that they have such a right of protection of the seals, in the open waters of the Pacific, independently of the claim to a right of property in the seals. The claim of right thus advanced is novel and unprecedented.

It is obvious that this question is in no way connected with or dependent on the question of concurrent regulations.

An abstract right of protection (such as is here claimed), distinct from a right of property in the animal sought to be protected, cannot exist. It would involve the right to make the protection respected, and therefore an interference with the equality and independence of other nations upon the high seas; an interference which must take the concrete form of a right of visit and search. That such rights do not generally exist in time of peace, except in the case of piracy, is too elementary a proposition to need demonstration. Pelagic sealing is not piracy.

Nor is the case altered by the fact that the claim to protect is based on the assumption that the fish may be proceeding to a place within the dominions where an exclusive right to take possession would arise. That no rights exist until this exclusive right has come into being is again too elementary a proposition to need demonstration. For, as Blackstone says:—

“All mankind had, by the original grant of the Creator, a right to pursue and take any fish or inhabitant of the waters.”

That there is no right of protection at sea even when such qualified property arises on land has already been demonstrated.

The contention basing the right of protection on the ground of an interest, an industry, and a commerce cannot be maintained. It must depend on the question whether property has been established or not.

The only right of protection of fish and other free-swimming animals in the high seas which

Right to protect apart from claim of property.

No right of protection because fish may be going to the islands.

Stephen's Black-  
7th Edit., vol. ii,  
p. 19.

United States'  
Case, p. 299.

Nor on account of interest in industry.

Nor except as against nationals.

principles involved being laws of both parties to r decision must conform

affect only the rights own subjects.

overnment to protect.

se soli does not import t off the land;

d conflict with rights o ers on high sea.

can be exercised by any State (apart from Convention) is as against its own nationals. It may be in the interests of commerce and the fishing industry of the nation that all its fishermen alike should be made to respect a close time, even for migratory fishes, and even in the deep sea. A State has a right to legislate for its own subjects on the high seas.

It may be admitted further that it is not necessary that this restriction on national fishermen should be limited to the high seas adjoining the territorial waters of the State. The protection of the Greenland fisheries, situated many miles from the shores of the States which have legislated in respect of it, is an instance in point. But special attention is directed to the condition precedent to such legislation. By the legislation of Great Britain the Queen is empowered to put the Act in force against her own fishermen "*when she is satisfied that other nations interested in these fisheries have put similar Acts in force against their subjects.*" Such legislation rests, therefore, on an agreement between the nations interested, which may be expressed in a Convention, or may be tacitly understood.

Such legislation Great Britain is willing to pass in respect of the seals in Behring Sea; but one essential condition on which Her Majesty's Government insist is, that the other nations interested should pass similar laws.

On the subject of Conventions and consequent legislation, on which stress is laid in the United States' Case, one further point alone need be mentioned at this stage of the Argument. The same power which a State has over its nationals on the high sea enables it to delegate the enforcement of the agreed regulations to the other Contracting Party.

Beyond this, it is submitted, the legislative powers of a State cannot go; the limitations on the powers here indicated depend entirely on constitutional law.

No warrant for any larger power, such as is claimed by the United States, can be found in any known principle of international law.

As to the reference to the "Laws of Natural History" there is no known code of such laws, and as to the "common interests of mankind" these must be tested by, and dealt with upon, legal principles.

The same argument affords a complete

Nationals on high sea may be bound by legislation.

Instance of such legislation.

Conventions.

No practice here shown to warrant the right of protection claimed.

answer to the suggestion, that the right of protection on the high seas against all comers depends on the practice of nations. If the United States had shown that all nations claimed to exercise such a right of protection as is claimed by the United States, or even that a large proportion of the nations made such a claim, the argument that the right had passed, or was passing, into the law of nations might have some force; but the examination of the laws cited by the United States, to which this Argument will next proceed, shows that the position taken up by the United States on this point is absolutely untenable.

Her Majesty's Government, therefore, submit that the United States' claim to protect the seals in the high seas, and beyond the territorial waters, in so far as such claim is independent of an alleged property in such seals, absolutely fails.

It remains to be seen how far the practice of nations supports the contention of the United States in regard to the claim to protection or property.

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*United States' Argument from suggested Analogy of Laws of other Nations Considered and Answered.*

The claim of the United States to rest their Case on the precedents of the laws of other nations forms a distinct branch of their Case, and requires to be specially considered.

Such laws are referred to, by the United States, for three objects:—

1. To endeavour to prove a uniform practice of nations to protect seal life from destruction by means of extra-territorial legislation.
2. To endeavour to show a uniform practice of nations of extending the provisions of their fishery laws beyond the 3-mile limit; and of making these provisions applicable to foreigners.
3. To show that other examples of extra-territorial jurisdiction are to be found in the laws of other nations.

The deductions desired to be drawn by the United States from the examples cited are:—

From 1. That the United States' law under which British vessels have been seized is justified by the laws of other nations for the protection of seals.

high sea may be bound  
legislation.

Claim to protection without property  
fails.

of such legislation.

Facts stated in United States'  
Argument.

conventions.

Objects of United States' argument  
from laws of other nations.

United States'  
Case, p. 221.

Ibid., p. 231.

Ibid., p. 237.

Deductions drawn from such laws.

ere shown to warrant  
protection claimed.

From 2. That this law is justified by analogy to the fishery laws of other nations ; and

That the application of this law to foreigners beyond the 3-mile limit is also justified by example and analogy.

From 3. That the law, and more especially in its application to foreigners beyond the 3-mile limit, is further justified by analogy of other extra-territorial laws not dealing with fisheries.

It is proposed to demonstrate in the following Argument that these premises are not well founded, and that the position assumed by the United States is untenable.

With regard to the argument from the practice of other nations, or from analogy to the practice of other nations, it is submitted that the following propositions can alone be maintained.

To warrant any exceptional departure from the principles commonly accepted by all nations as part of the law of nations, it is essential that there should be an agreement between all—

1. As to the sufficiency of the causes calling for such exceptional legislation.

2. As to the means for remedying such causes, *i.e.*, as to the purport of such legislation.

This follows from the fundamental principle on which the law of nations rests, *viz.*, consent of nations.

This subject has already been dealt with, but it is necessary to examine categorically the examples of extra-territorial legislation adduced by the United States in order to show that they utterly fail to support the argument for which they are cited.

British Counter-Case, p. 86.

In support of the first proposition advanced—that seal life is protected by extra-territorial laws of other nations, the instances adduced by United States are the following :—

*British.*

The Falkland Islands.

New Zealand.

Cape of Good Hope.

Canada.

Newfoundland.

*Foreign.*

Sweden.

Norway.

Russia.

Germany.

Holland.

} With reference to the  
Greenland or Jan  
Mayen fisheries.

General principles on which any exception must rest.

Russia.  
Uruguay.  
Chile.  
Argentine Republic.  
Japan.

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THE FALKLAND ISLANDS.

United States' Case, Appendix, i, p. 435.

The Act providing a close time for seals is No. 4 of 1881. It recites that the seal fishery of the islands was once a source of profit to the colonists, but has been exhausted by indiscriminate and wasteful fishing, and that it is desirable to revive and protect this industry by the establishment of a close time *within the limits of this Colony and its dependencies*.

The Statute then enacts that a close time shall be observed "*within the limits of this Colony and its dependencies*" from the 1st October to the 1st April.

The words italicized have a special meaning. The powers of a Colonial Legislature are well known; they have been defined by the Judicial Committee of the Privy Council; and their limitation to the Colony and its territorial waters is not only understood, but is enforced.

United States' Case, p. 221, and Appendix, vol. ii, p. 593.

Yet the United States, instead of referring to long-established principles, prefer to rest their contention that the Colony would interpret this Statute on different principles, and extend its provisions to the high seas, on the deposition of James W. Budington, an American master mariner and scaler, in which he merely expresses what his opinion and understanding of the matter are.

There is no evidence to support the contention that the Statute would, or could, be enforced on the high sea.

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NEW ZEALAND.

Ibid., Appendix, vol. i, p. 436.

The Statute No. 43 of 1878 for the protection of seals establishes a close season; no reference is made to waters, but the Governor may by order exclude any part of the Colony from the provisions of the Statute.

A "public fishery" is defined to be "any salt or fresh waters in the Colony, or on the coasts or bays thereof;" it includes artificial waters, and extends to the ground under such water.



Further, it is provided that offences against the Act committed on the sea-coast or at sea within 1 marine league of the coast are to be deemed as having been committed in a "public fishery."

"The Fisheries Conservation Act of 1884" applies to certain waters of the Colony, the term "waters" being defined to mean "any salt, fresh, or brackish waters in the Colony, or on the coasts or bays thereof." The Governor is enabled to make regulations for the protection of fish, oysters, or seals.

By "The Amendment Act No. 27 of 1887" the penalty for violating the principal Act in its application to seals is increased.

Vessels illegally taking seals are declared to be forfeited, and Her Majesty's vessels and officers are empowered to seize such vessels "*if found within the jurisdiction of the Government of the Colony of New Zealand.*"

The Act also allows vessels within the same jurisdiction to be searched.

With regard to this legislation of New Zealand, the United States' Case contains an extraordinary mis-statement:—

United States' Case, p. 223.

"The area designated as 'the Colony' is taken to mean the area specified in the Act [26 & 27 Viet., cap. 23, sec. 2] creating the Colony, which defines its boundaries as coincident with parallels 33° and 53° south latitude, and 162° east and 173° west longitude.

"The definition in the Act [The Fisheries Conservation Act, 1884] of the term 'waters' indicates that it applies to the entire area of the Colony, of which the south-eastern corner is over 700 miles from the coast of New Zealand, although a few smaller islands intervene."

In the Map in the United States' Case an area coloured pink is shown, comprising the waters between the limits of latitude and longitude, to found the contention that these waters are included within the colonial limits.

Ibid., Appendix, vol. 1, p. 437.

The words of the Imperial Statute 26 & 27 Viet., cap. 23, sec. 2, above referred to, nevertheless, are clear and explicit, and are not capable of being misunderstood.

The designation of the Colony in that Statute is as follows:—

"The Colony of New Zealand shall, for the purposes of the said Act and for all other purposes whatever, be deemed to comprise *all territories, islands, and countries lying between 162° east longitude and 173° west longitude, and between the 33rd and 53rd parallels of south latitude.*"

Ibid., p. 436.

Only the territories, islands, and countries *lying between these limits of latitude and longitude are thus seen to be included within the Colony.*

The argument here shown to be fallacious is the same as that by which the United States claim to treat Behring Sea as ceded territory.

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#### CAPE OF GOOD HOPE.

The only Regulation affecting the question in this Colony is a "Cape Government Notice" of 1844, which is as follows:—

British Commissioners' Report, p. 194.

'His Excellency the Governor, having been pleased to decide that the seal island in Mossel Bay shall not be granted on lease for the present, hereby prohibits all persons from disturbing the seals on the said island, and warns them from trespassing there after this notice on pain of prosecution.'

United States' Case, p. 224.  
United States Case, Appendix, vol. ii, p. 576.  
Ibid., p. 596.

The United States' evidence as to this Colony is that of W. C. B. Stamp, who says that he "knows nothing about it;" and of G. Comer, who states that he would not dare to take seals in the waters adjacent to the rookeries.

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#### CANADA.

The Fisheries Act, 1886, 49 Vict., cap. 95, prohibits the killing of whales, seals, or porpoises with explosive instruments, and during seal-fishing time from disturbing or injuring any sedentary seal fishery, or from frightening the shoals of seals coming into such fishery.

United States' Case, p. 225.

The United States' statement in respect of this Statute is that it prohibits all persons without prescribing any marine limit; and the inference drawn is that it applies to all persons on the high seas, including foreigners.

This erroneous inference will be disposed of by the consideration of the principles of construction of Colonial Statutes to be presently dealt with.

## NEWFOUNDLAND.

The Seal Fishery Act, 1870, 42 Vict., cap. 1, established a close time for seals, and prohibits the killing of "cats" (immature seals) in order more efficiently to preserve this close time. Steamers are not allowed to leave port before a certain day.

United States' Case, p. 225. Ibid., Appendix, vol. i, p. 442.

The Seal Fishery Act, 1892, provides more stringent regulations for the observance of the close time, and heavier penalties for leaving port before a certain day.

Seals killed in breach of the close time are not to be brought into any port of the Colony or its dependencies under a penalty of 4,000 dollars.

Steamers are forbidden from going on a second trip in any one year, and if they shall engage at any time in killing seals at any place within the jurisdiction of the Supreme Court of Newfoundland after returning from the first trip they shall be deemed to have started on a second trip.

From these Statutes the following conclusions are drawn in the United States' Case:—

United States' conclusions from foregoing British Statutes.

1. That Great Britain and its dependencies do not limit their Governmental protection to the fur-seal; it is extended to all varieties of seals wherever they resort to British territorial waters.

United States' Case, p. 225.

2. And they have thrown about them upon the high seas the guardianship of British Statutes.

It is admitted that the principle of providing a close time for seals has been adopted by British legislation as essential to the preservation of seal life.

It is denied that any country has the power to enforce such close-time regulations beyond the territorial waters against subjects of a foreign nation, though it may do so as regards its own subjects; and neither Great Britain nor her Colonies have ever departed or attempted to depart from this principle.

It is denied that the inferences drawn by the United States in respect of the legislation of some of the Colonies already considered are warranted. The principles of English law show conclusively that such inferences are unsound; it has already been shown they are not in accordance with the facts; and no evidence has been adduced by the United States to support them.

United States' inferences unwarranted.

In the case of the Falkland Islands, the conditions recited in the preamble of the Statute

are identical with those which are alleged to exist as to the seals in the North Pacific, and the colonial legislation has been framed in strict accordance with the principles contended for by Great Britain.

Neither Great Britain nor her Colonies, under circumstances of seal life precisely identical with those of the seals in the North Pacific, have attempted to establish a right of property in or protection of the seals frequenting and breeding on their shores when they leave the territorial waters.

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#### GREENLAND OR JAN MAYEN FISHERIES.

United States' Case, p. 227.

The second group of enactments of other countries referred to in the United States' Case are based upon Conventions; they therefore lend no support to the United States' contention, that they can by their independent action claim to enforce such regulations against the subjects of other nations in respect of fishing in the high sea.

The enactments in question are those of Great Britain, Sweden, Norway, Russia, Germany, and Holland. They all deal with the Jan Mayen seal fisheries in the Atlantic east of Greenland; and proceed on the principle here enunciated.

The first section of "The Great Britain Greenland Seal Fishery Act of 1875" is shortly as follows:—

"When it appears to Her Majesty in Council that the foreign States whose ships or subjects are engaged in the Jan Mayen fishery . . . have made or will make with respect to their own ships and subjects the like provisions to those contained in this Act, it shall be lawful for Her Majesty, by Order in Council, to direct that this Act shall apply to the said seal fishery."

The legislation of the other countries is conceived in a similar spirit, and was passed after negotiations between their respective Governments.

The necessary legislation having been provided, the Queen, by Order in Council, dated the 28th November, 1876, put the Act in force against her own subjects.

Legislation as to Greenland Fishery.

38 Vict., cap. 18.

conclusions from foreign Statutes.

es' inferences un-  
arranted.

The great difficulty of effectively maintaining a close time in distant fisheries in the high seas, and of protecting and regulating such fisheries, except as against subjects, has in many instances been dealt with by Conventions, as is stated in the United States' Case.

Principles of Fishery Conventions,  
United States'  
Case, p. 237.

These Conventions proceed on principles well established.

These principles are:—

1. The determination of the limits of the exclusive fisheries of the respective parties to the Convention.

2. Except as expressly varied by agreement the respective national jurisdictions are preserved intact.

3. It is only by agreement that jurisdiction on the high sea over its nationals is given by one nation to another.

These principles do not advance the United States' contention. The consent of other nations is wanting to the exercise by the United States of the exclusive control which it claims.

The existence of the Conventions demonstrates their necessity; by such Conventions alone can one nation presume to control the subjects of another State upon the high seas.

They recognize the right of the subjects of all the Contracting Parties alike to fish in the high sea beyond the territorial waters, but for their mutual benefit they subject the fishing to regulations to be observed by the subjects of all alike. The Conventions and the legislation giving effect to them do not profess to impose these regulations on the subjects of other countries not parties to the Conventions, nor to prohibit them in any way from fishing in the high seas, nor could they do so.

Argument to be deduced from existence of Conventions.

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#### RUSSIA.

##### *White Sea.*

The Russian law dealing with the Ustinsk sealing industry in the White Sea is set out in the United States' Case.

Examination of Foreign Seal Legislation.

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United States'  
Appendix, vol. i,  
p. 445.

The industry is carried on in the Gulf of Mesensk in the White Sea; the gulf is 53 miles wide.

The principal provisions of the law are the appointing certain days of departure to the fisheries, and prohibiting the lighting of fires to windward of the groups or hauling-grounds of the seals.

The law is not directly or indirectly applied to foreigners.

British Case,  
Appendix, vol. ii,  
Part II, p. 22.

Further, Article 21 of the Russian Code of Prize Law of 1869 limits the jurisdictional waters of Russia to 3 miles from the coast.

#### *Behring Sea and Sea of Okhotsk.*

British Case,  
p. 116.

This Article applies to the western shores of Behring Sea, and the regulations published at Yokohama in 1881, with respect more especially to sealing off the Commander and Robben Islands, are inconsistent with the United States' contention as to Russia's claims to jurisdiction.

Ibid., Appendix,  
vol. ii, Part II,  
No. 16, pp. 19-20.

The prohibitions contained in these regulations were explained by M. de Giers in a letter to Mr. Hoffmann.

This measure refers only to prohibited industries and to the trade in contraband:—

"The restrictions which it establishes extend strictly to the territorial waters of Russia only."

#### *Caspian Sea.*

United States'  
Case, p. 228,  
Appendix, vol. i,  
p. 445.

The fishing and sealing industries in the Caspian Sea are also dealt with by law, which expressly declares that the catching of fish and killing of seals in the waters of the Caspian included in the Russian Empire are free to all who desire to engage in the same, except in certain specified localities, under observance of the established rules. A close time is appointed.

The Caspian Sea is a land-locked sea included within the territorial dominions of Russia and Persia, and the regulations have no bearing on the questions involved in the right of fishing in Behring Sea.

## URUGUAY.

The law of Uruguay establishes a close time for seals on the Lobos and other islands on the coasts of Rio de la Plata, and in that part of the ocean adjacent to the Departments of Maldonado and Rocha.

United States' Case, p. 229. Appendix, vol. i, p. 449.

It is in no sense extra-territorial.

British Counter Case, p. 90

The provision prohibiting vessels of any kind from anchoring off the islands, and the construction of works that might frighten away the seals, is territorial.

## CHILE.

The Ordinance of 1892 allows only Chileans and foreigners domiciled in Chile to engage in the pursuit on land or at sea of seals and otters in the coasts, islands, and territorial waters of the Republic.

*Ibid.*, p. 91.

Foreign vessels are prohibited from engaging in this industry.

This Law is obviously not extra-territorial, but it is appealed to in support of the United States' contention of a right of property and protection on the high sea, to which it is diametrically opposed.

United States' Case, p. 229.

The principles on which the British contention is based are expressly laid down in the Chilean Code.

British Counter-Case, p. 91.

## ARGENTINE REPUBLIC.

The laws of the Republic are not set out in the United States' Appendix. The statement in the United States' Case is merely that protection is given to the fur-seals resorting to the coasts; it is not stated that the regulations are extra-territorial, or that they apply to foreigners.

## JAPAN.

Japanese law deals with hunting and killing seals and sea-otter in the Hokkaido, *i.e.*, Yezo, and certain islands to the north belonging to Japan.

United States' Case, p. 229. Appendix, vol. i, p. 449.



British Counter-  
Case, p. 93.

The law is not extra-territorial, and the Japanese Government have stated that they consider that there are no means of checking foreign fishermen outside the line of territorial limits fixed by international law.

Conclusion from foreign laws.

None of the countries above specified profess to control the killing of seals by extra-territorial provisions, or by interfering with foreigners on the high seas, or in any other way than in accordance with the principles already established; nor do they profess to claim a property in or a right of protection of seals in the high sea.

The first contention of the United States, that seal life is protected by extra-territorial laws of other countries applicable to foreigners, is therefore shown to be without foundation.

Examination of second contention of  
the United States as to laws of  
other nations.

A further contention of the United States is that, not seal fisheries only, but other fisheries, are protected by extra-territorial laws of other nations, and that they are extended to foreigners.

The contention is based on the following examples:—

*British.*

Irish oyster fisheries.  
Scotch herring fisheries.  
Ceylon pearl fisheries.  
Queensland and West Australian pearl fisheries.

*Foreign.*

France.  
Algerian coral fisheries.  
Italian coral fisheries.  
Norwegian whale fisheries.  
Colombian pearl fisheries.  
Mexican pearl fisheries.

From these examples, an inference is attempted to be drawn that the United States are warranted in demanding from other nations acquiescence in their claim that their legislation for Alaska should apply to the seal fishery in Behring Sea.

The contention that British fishery legislation is extra-territorial, or, if extra-territorial, that it extends to foreigners, remain to be considered.

Examination of British Fishery Legis-  
lation.

It is later pointed out that considerations (*Post*, p. 59.) apply to the case of oyster, pearl, and coral fisheries, which have no application to the case of free swimming fish or animals.

#### IRISH OYSTER FISHERIES.

The law dealing with the oyster fishers on the coast of Ireland is shortly as follows:—

The Statute permits the Irish Fishery Commissioners to regulate, by bye-laws, oyster dredging on banks 20 miles to seaward of a certain line drawn between two headlands on the east coast of Ireland. 31 and 32 Viet.,  
cap. 45, sec. 67.

Within this line the extreme depth of indentation is not more than 5 miles.

The Act provides that the bye-laws are to apply equally to all boats and persons on whom they may be binding; but they are not to come into operation until an Order in Council so directs.

The Order in Council is to be binding on all British sea-fishing boats, and on any other sea-fishing boats specified in the Orders.

The facts which have occurred since the passing of the Statute are as follows:—

The Commissioners have made a bye-law appointing a close time.

The bye-law was put in force by Order in Council of the 29th April, 1869.

The Order recited the power given to the Queen by the Act to specify other besides British boats to which the bye-law was to apply.

No other boats were so specified.

The law is therefore expressly limited to British boats within the 20 miles. It cannot by the terms of the Act itself apply to any foreign boats.

It would be contrary to the principles on which British legislation invariably proceeds that bye-laws should apply to foreign boats outside the 3-mile limit, unless power to enforce such a bye-law against the boats of any nation had been acquired by Treaty.

The provision was inserted in the Act to provide for the case of any such Treaty being entered into.

Thereafter, without such enabling provision in the Act, the Queen would possess no power to

make an Order in Council bringing foreigners within the Act.

United States' Case, p. 232.

The statement made in the United States' Case is therefore inaccurate.

#### SCOTCH HERRING FISHERIES.

By the Act of 1887, 52 & 53 Vict., cap. 23, a close time is provided, and trawling is prohibited within the north-eastern indentation of the coast of Scotland: the line of limit is drawn from Duncansby Head, in Caithness, to Rattray Point, in Aberdeenshire, a distance of 80 miles.

Penalties are imposed on any person infringing the provisions of the Act.

Ibid., p. 233.

Stress is laid in the United States' Case on the words "any person;" and the statement is made that "the Act is not confined in its operations to British subjects."

This statement is at variance with the principles of English legislation and the practice of the English Courts in interpreting Statutes.

(Post, p. 56.)

"Any person" is a term commonly used in English Statutes dealing with offences, and it is invariably applied to such persons only as owe a duty of obedience to the British Parliament.

#### CEYLON PEARL FISHERIES.

United States' Case, p. 253. Appendix, vol. i, p. 461.

British Counter-Case, pp. 93, 94.

The pearl fisheries on the banks of Ceylon, which extend from 6 to 21 miles from the coast, are subject to the Colonial Act of 1811, which authorizes the seizure and condemnation of any boat found within the limits of the pearl banks, or hovering near them.

These pearl fisheries have been treated from time immemorial by the successive rulers of the island as subjects of property and jurisdiction, and have been so regarded with the acquiescence of all other nations.

(Post, p. 59.)

The principles governing the occupation of such pearl fisheries will be dealt with at a later stage of this Argument; for the present it is sufficient to indicate the proposition which Great Britain will maintain by a quotation from Chief Justice Cockburn, in *Reg. v. Keyn*:-

L. R., 2nd Ex. D. 63.

"Where the sea, or the bed on which it rests, can be physically occupied permanently, it may be made subject to occupation in the same manner as unoccupied territory."

The special application of this principle to "Droit des Gens," the Ceylon fisheries was thus treated by Vattel:— 1, sec. 287.

"Who can doubt that the pearl fisheries of Bahriou and Ceylon may fully become property?"

#### AUSTRALIAN PEARL FISHERIES.

In the United States' Case reference is thus made to the Australasian fishery laws:—

These Statutes extended the local regulations of the the two countries mentioned (Queensland and Western Australia) to defined areas of the open sea, of which the most remote points are about 250 miles from the coast of Queensland, and about 600 miles from the coast of Western Australia.

United States' Case, p. 234. Appendix, vol. i, pp. 467-469. British Counter-Case, p. 94.

It suffices to point out that these Statutes are in express terms confined to British ships and boats attached to British ships.

#### Foreign Fishing Laws discussed.

#### Examination of Foreign Fishery Legislation.

##### FRANCE.

By the Decree of the 10th May, 1862, certain fisheries are allowed to be temporarily suspended over an extent of sea beyond the 3-mile limit if it is necessary for the preservation of the bed of the sea, or of a fishery composed of migratory fishes. The suspension will be ordered on the request of the "prud'hommes des pêcheurs," or, in their absence, of the "syndics des gens de mer."

United States' Case, p. 234. British Counter-Case, p. 94-95.

There is no evidence that this law is applied to foreigners.

On the contrary, there is evidence that, apart from Conventions, France only legislates for foreign fishermen within the 3-mile limit.

Article 1 of Law 1 of March 1888 lays down:—

"Fishing by foreign vessels is forbidden in the territorial waters of France and Algeria within a limit which is fixed at 3 marine miles to sea from low-water mark."

## ALGERIAN CORAL FISHERIES.

The United States' Case proceeds:—

British Counter-  
Case, p. 95.

"Numerous laws have also been enacted by France to protect and regulate the coral fisheries of Algeria, both as to natives and foreigners, and the coral beds so regulated extend at some points as far as 7 miles into the sea."

United States'  
Case, Appendix,  
vol. i, p. 489.  
(*Post*, p. 59.)

This statement is not verified by particulars or evidence, but a Map is given in the United States' Case, in which this 7-mile limit is indicated.

The international law as to occupation of coral beds will be dealt with presently; but it may be noted that the analogy between a 7-mile protection of a coral bed extending from low-water mark under the sea, and protection of seals on the high sea, is not apparent, either as to the principles governing the two cases, or the facts to which those principles should be applied.

## ITALIAN CORAL FISHERIES.

United States' Case,  
p. 235.  
*Ibid.*, Appendix,  
pp. 470-481.

The United States' Case states that—

"the coral beds surrounding the Island of Sardinia, and lying off the south-west coast of Sicily, have been made the subject of elaborate regulations by the Government of Italy."

The remarks that have already been made as to the Algerian coral fisheries equally apply to the Italian reefs, and it is not suggested by the United States that foreigners have been excluded.

## NORWEGIAN WHALE FISHERIES.

British Counter-  
Case, p. 96.

United States'  
Case, p. 236.  
*Ibid.*, Appendix,  
vol. i, p. 482.

The Norwegian law of 1880 for the protection of whales provided a close time "on that part of the sea on the coasts of Finmarken which the King will define."

The Proclamation of the King, in 1881, accordingly defined that part of the sea to be 1 Norwegian or Swedish mile (equal to 4 British miles) from the coasts of Finmarken, to be counted from the outermost islands or rocks which are never covered by the sea.

The whole of Varanger Fiord is included, the distance between the headlands of the fiord being 32 miles.

The Norwegian law is, therefore, expressly limited to a small area of territorial sea.

The special protection in Varanger Fiord falls within the principle of waters of the territory to (*Post*, p. 59.) be hereafter explained.

#### COLOMBIAN PEARL FISHERIES.

The Law of Panamá is thus stated in United States' Case. It prohibits—

United States' Case, p. 236.  
Ibid., Appendix, vol. i, pp. 464-485.

"the use of diving-machines for the collection of pearls within an area of the sea over 60 marine miles in length, and extending outward about 30 marine miles from the coasts."

There is no evidence to show that the law in question, if correctly stated, applies to foreigners.

Even if the bays shown on the United States' Map are intended to be included in the application of the law as is suggested in the United States' Case, the claim must be justified, if at all, on the principle of waters of the territory previously referred to and subsequently explained. (*Post*, p. 59.)

#### MEXICAN PEARL FISHERIES.

The United States' Case states—

United States' Case, p. 236.  
Ibid., Appendix, vol. i, p. 491.

that along the coast of Lower California the pearl-beds have been made the subject of special exclusive grants to private individuals, and have been divided for this purpose into two belts: the inner belt extending seaward for 3 miles (5 kilom.), and the other belt for 6 miles (10 kilom.).

Foreign vessels are admitted generally to the Mexican fisheries if they comply with the laws and regulations.

British Counter-Case, p. 97.

The only claim made by Mexico is to regulate all fishermen alike; but with regard to English fishermen, attention is drawn to the provisions of Article IV of the Treaty of 1888 between Great Britain and Mexico, by which the two Powers agree to 3 miles as the limit of their territorial waters.

The United States' contention not supported by foreign laws.

These are the only foreign laws set out by the United States, and it may be assumed that there are no laws of any other countries on which the United States could rely to support their claim, either directly or by analogy.

Her Majesty's Government submit that these laws do not support the United States' contention.

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#### EXAMINATION OF LEGAL PRINCIPLES.

Statement of legal principles referred to in analysis of British and foreign laws.

Throughout the foregoing discussion of the legislation of various nations, certain principles of law have been referred to, the full explanation of which had necessarily to be postponed until the examinations were completed.

For convenience these principles will now be collected, and will then be separately examined:—

(I.) That by the universal usage of nations, the laws of any State have no extra-territorial application to foreigners, even if they have such application to subjects.

(II.) That Great Britain has incorporated this principle into her own law by a long-established usage, and a series of decisions of her Courts; and that the law of the United States is identical.

(III.) That the British Colonies have no power to legislate for foreigners beyond the colonial limits.

(IV.) That international law has recognized the right to acquire certain portions of the waters of the sea and the soil under the sea, in bays, and in waters between islands and the mainland.

(V.) That the analogy attempted to be traced by the United States between the claims to protect seals in Behring Sea, and the principles applicable to coral reefs and pearl-beds, is unwarranted.

(VI.) And, finally, that there is no complete or even partial consent of nations to any such pretension as to property in, and protection of, seals as set up by the United States.

#### I.

It is submitted that, as well by international and constitutional law as by the common consent and practice of nations, the laws of a State have no application to foreigners beyond the territorial limits of that State; and that if they are declared

Extra-territorial laws of a State have no application to foreigners.



to have an extra-territorial application, it is limited to subjects of that State who may fall within its provisions.

The fundamental principle which governs the application of laws is expressed in the maxim, *extra territorium jus dicenti impune non paretur*.

No general propositions are clearer than these.

All persons are subject to the laws of a country in which they are.

No person is subject to the laws of a country in which he is not.

The only exception is that subjects may be legislated for by their own Legislature, even though they are abroad, the enforcement of any punishment being reserved till such time as they return to their own country.

These principles are of equal force on the high seas.

In ships on the high seas, no one is subject to any jurisdiction but that of his own country, or of the country to which the ship belongs. The laws of other countries do not bind him, and he may disregard them with impunity.

## II.

It may be conclusively demonstrated that Great Britain has incorporated this principle into her municipal law by a long-established usage, and by a series of decisions of her Courts.

In Reg. v. Keyn, Cockburn, C. J., said :—

L R., 2 Ex. D.  
63.

"Where the language of a Statute is general, and may include foreigners or not, the true canon of construction is to assume that the Legislature has not so enacted as to violate the rights of other nations."

This is the answer to the argument of the United States, based upon the words "any person" in British and Colonial Statutes

See also the case of the "Zollverein," cited in British Counter-Case, p. 99.

The intimate connection between the national law and the international law is indicated in the Judgments now quoted.

Quotations from English Judgments

In the case of "Le Louis," Lord Stowell 2 Dodson, 239. said :—

"Neither this British Act of Parliament nor any Commission founded on it can affect any right or interest of foreigners unless they are founded on principles and impose regulations that are consistent with the law of nations; that is the only law that Great Britain can apply to them, and the generality of any terms employed in an Act of Parliament must be narrowed in construction by a religious adherence thereto."

The laws of Great Britain have no extra-territorial application to foreigners.

2 De Ges. and J.  
614.

So in *Cope v. Doherty*, Lord Justice Turner said :—

"This is a British Act of Parliament, and it is not, I think, to be presumed that the British Parliament could intend to legislate as to the rights and liabilities of foreigners; in order to warrant such a conclusion, I think that either the words of the Act ought to be express or the context of it very clear."

4 H. L. Cases, 926.

So in *Jeffreys v. Boosey*, Baron Parke said :—

"The Legislature has no power over any persons except its own subjects, that is, persons natural-born subjects, or resident, or whilst they are within the limits of the kingdom; the Legislature can impose no duties except on them, and when legislating for the benefit of persons must *prima facie* be considered to mean the benefit of those who owe obedience to our laws, and whose interest the Legislature is under a correlative obligation to protect."

L. R., 12 Ch. D.  
500.

A remarkable application of this principle occurred in the case of *ex parte Blain re Sawers*. The question arose as to the application of the English Bankruptcy Law to foreigners in England; the definitions of acts of bankruptcy in the Statute include the commission of certain acts "in England or elsewhere;" yet it was held by the Court of Appeal that a foreigner in England, although on general principles he was subject to English law, could not be made bankrupt unless he had committed an act of bankruptcy in England. The words "or elsewhere" were held not to apply to such a foreigner on the principles above stated.

It is unnecessary further to cite authorities; one more quotation from Chief Justice Coekburn's judgment in *Reg. v. Keyn* will suffice :—

L. R., 2 Ex. D.  
63.

"The argument is that the language of the Statute (of Henry VIII as to offences on the sea) being general in its terms, it must be taken to have included foreigners as well as subjects. No doubt these words are large enough to include foreigners as well as subjects, but so they are to include the entire ocean as well as the narrow seas; and it cannot be supposed that anything so preposterous was contemplated as to make foreigners liable to the law of this country for offences committed on foreign ships all over the world."

It is submitted that the Statute under which the British vessels were seized and condemned was either wrongly interpreted, or was *ultra vires*.

## III.

It may further be demonstrated that Great Britain has not assumed to grant to her Colonies any larger legislative power than she assumes to possess herself; and that the Colonial Legislatures cannot assume to themselves any power of extra-territorial legislation for foreigners, as is alleged in the United States' Case.

Colonies have no power of extra-territorial legislation for foreigners.

On this point, it would be sufficient to refer to the words of "The Territorial Waters Jurisdiction Act, 1878," which defines the territorial waters "adjacent to the United Kingdom or any other part of Her Majesty's dominions" to extend no further than 1 marine league from low-water mark.

The Judicial Committee of the Privy Council have expressly declared the limits of the Colonial Legislative Power.

In *Macleod v. Attorney-General for New South Wales* the colonial law as to bigamy was considered. L.R., 1891, A.C. 445.

The section enacted that—

"Whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for seven years."

Here were general words similar to the words "any person" so much relied on by the United States.

The Judicial Committee nevertheless rejected their general application. They said:—

"The colony can have no such jurisdiction, and their Lordships do not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and indeed inconsistent with the most familiar principles of international law."

"The words 'Whosoever being married' mean 'whosoever being married and who is amenable at the time of the offence committed to the jurisdiction of the colony.'"

"'Wheresoever' may be read, 'Wheresoever in this colony the offence is committed.'"

And so, both in case of colonial laws and in the case of English laws, the words "any person" mean "any person subject to the jurisdiction of the Legislature passing such laws," subject, that is, in accordance with the principles

of international and constitutional law here explained.

The contention of the United States that the British colonial laws warrant, or afford some analogy to, the Alaskan Seal Statute, is entirely devoid of foundation.

#### IV.

It is next submitted--

That international law recognizes the right of a State to acquire certain portions of the waters of the sea and of the soil under the sea, and to include them within the territory of the State.

This affords a legitimate explanation of the cases of foreign extra-territorial fishery laws cited by the United States, quite apart from any question whether they apply to foreigners or not.

But it affords no justification for, nor are they analogous to, the Alaskan Seal Statute, as is contended by the United States.

The territory of the nation extends to low-water mark; but certain portions of the sea may be added to the dominion. For example, the sea which lies *inter fauces terræ*, and, in certain exceptional cases, parts of the sea not lying *inter fauces terræ*.

The claim applies strictly to the soil under the sea. Such claim may be legitimately made to oyster beds, pearl fisheries, and coral reefs; and, in the same way, mines within the territory may be worked out under the sea below low-water mark.

Isolated portions of the high sea cannot be taken by a nation unless the bed on which they rest can be physically occupied in a manner analogous to the occupation of land.

These principles, though they explain legitimately all the examples of foreign laws dwelt on by the United States, show also that no right to, or on, so vast an area of the high sea as Behring Sea can be acquired. Nor has any such claim ever been made.

#### V.

It is further submitted that there is no analogy between a claim to property in and to protect swimming animals, such as fish and seals, and a like claim in respect of oyster, pearl, or coral beds.

no power of extra-territorial law for foreigners.

How far international law recognizes a right to possession of parts of the bed of the sea.

Absence of analogy between protection of swimming animals and of oyster and coral beds.

The exclusive fishery right recognized by international law within the territorial waters, or the waters of the dominion, cannot at any rate be placed higher than the right to take possession of wild animals which the common law gives to the owners of land on which the animals are.

If there were any land animals which by nature were attached to the soil, the common law right would be practically equivalent to a right of property; and so as to oysters and coral beds, when they are within the waters over which international law recognizes an exclusive fishery right, this right becomes equivalent to a right of property because they are attached to the soil.

But in animals which move from this area into the high sea no such property can be acquired.

## VI.

Finally, it is submitted on this branch of the United States' Argument, that there is not shown to be any consent of nations to any proposition which would warrant the United States' claim to the right of protection or property, now for the first time advanced.

No consent of nations to principle of right claimed by United States.

The United States endeavour further to support their contention by a reference to certain other extra-territorial laws not connected with fisheries which have been passed by other nations. They state—

"Reference may also be made to the British Hovering Acts, the St. Helena Act of 1815, and the Quarantine Act of 1825." United States' Case, p 237.

### *The "Hovering Acts."*

These Acts have been passed to prevent smuggling. They establish a practice which has hitherto been acquiesced in both by Great Britain and the United States, but they afford no analogy, either in fact or in principle, to the United States' claim in the present case.

Examination of United States' Argument based on the "Hovering Acts."

In the first place, it will be observed that the Hovering Laws do not extend the limit of territorial waters, *or* assert any *general* claim of dominion over an area of the sea beyond the ordinary 3-mile limit, such as is

asserted by the United States over the waters of Behring Sea east of a certain line. They simply claim to exercise a special jurisdiction over certain vessels at a comparatively small distance outside the usual limit, in order to prevent or punish offences against the jurisdiction *within* that limit, to which such vessels are accomplices.

And in the case of a British vessel which was seized in 1890 by a Russian cruiser, on the ground that she was seal-fishing within Russian territorial waters, Her Majesty's Government were of opinion that even if the vessel at the time of her seizure was herself outside the 3-mile territorial limit, the fact that she was, by means of her boats, carrying on fishing within Russian waters without the prescribed licence precluded them from remonstrating against the seizure.

But no such conduct has been alleged against the British vessels seized by the United States. They were not hovering at sea, they were not lying-to with intent to proceed to the territory, or the territorial waters of the United States, with intent to assist others in breaking the law there. No such grounds have ever been alleged for the seizure of the British vessels. The claim of the United States is to include the right to seize such vessels within their general jurisdiction over Behring Sea, and the analogy of the Hovering Laws cannot be adduced in support of such a claim.

Moreover, even if such analogy existed, the consent, or acquiescence, of other nations, which exists in the case of the "Hovering Acts" (so long as the jurisdiction is exercised within reasonable limits), is wanting to the claim of jurisdiction advanced in the present case by the United States; and this absence of consent, or acquiescence, is fatal to a claim which involves the right of search and seizure on the high sea outside territorial waters, and, consequently, a violation or limitation of the freedom of the sea.

*"The St. Helena Act, 1815."*

At the peace of 1815 it was determined by Great Britain, in conjunction with the allied Powers, that St. Helena should be the place allotted for the residence of the Emperor Napoleon Bonaparte, under such regulations as might be necessary for the perfect security of his person;

Examination of United States' Argument based on the St. Helena Act.

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and it was resolved that, for this purpose, all ships whatever, British and foreign, excepting only the East India Company's ships, should be excluded from all approach to the island. Notice was accordingly given by the British Chargé d'Affaires at Washington to the United States' Government on the 24th November, 1815, that a Treaty of Commerce between Great Britain and the United States, dated the 3rd July, 1815, under Article III of which liberty of touching for refreshment at the island was given to United States' vessels, could not be carried out in this respect; and that the ratifications of the Treaty would be exchanged under the explicit declaration that United States' vessels could not be allowed to touch at, or hold any communication whatever with, the island, so long as it should continue to be the residence of the Emperor. The Treaty was ratified on this understanding.

American State  
papers, vol. iv,  
p. 18.

The arrangement made for the general safety received the consent, express or implied, of all nations. If any analogy can be found between that case and the one now under discussion, it goes to show that the United States cannot exclude other nations from the seal fishery without a like consent.

*"The Quarantine Act, 1825."*

This Act depends upon the principles already adverted to with regard to the Hovering Acts.

It is submitted that no one of these three Acts affords any analogy or justification for a jurisdiction based merely on protection of trade, and claimed and exercised many hundred miles in open seas.

Therefore, it is submitted that the assertion that the practice of nations supports the United States' contention in regard to their claim to property in, and protection of the seals in the high sea, is without foundation.

If it is regarded as an assumption of jurisdiction on the high sea, it is entirely beyond the power of the United States' Congress to pass an Act applying to foreigners; for, without

General conclusion on this branch of  
the Case.



acquiescence of other nations, and without example in the practice of other nations, it infringes the rights of those nations upon the high seas.

If, on the other hand, it is regarded as part of a general jurisdiction exercised by the United States over Behring Sea, it was also beyond the power of the United States' Congress to make the Act applying to foreigners; for, without the consent of other nations, and without example in the practice of other nations, it extended the territorial waters of the United States to a limit hitherto unknown and unrecognized, and in so doing it infringed the rights of other nations upon the high seas.

Answer to Question 5.

Therefore, it is submitted that the foregoing facts and arguments conclusively establish the answer to Question 5, raised by Article VI of the Arbitration Treaty, in favour of Great Britain, that is to say :—

*To Question 5.*—That the United States have no right (a) of protection, or (b) of property, in the seals frequenting the islands of the United States in Behring Sea when they are found outside the ordinary 3-mile limit.

### PART III.

#### REGULATIONS.

It is now desired to formulate, on behalf of Great Britain, the outline of the argument which will be presented in connection with the question of Regulations. As stated at p. 9 of the original Case, Great Britain has throughout been favourable to the adoption of general measures for the control of the fur-seal fishery, provided that such measures be equitable, and framed with due regard to the common interest. It is, however, essential that any Regulations should operate to preserve the fur-seal industry for the enjoyment, not of the United States alone, but of all those who may lawfully engage in sealing. In this connection, the attention of the Arbitrators is respectfully directed to the general considerations summarized at p. 159 of the British Counter-Case.

Though in the United States' Case (Conclusions) it is maintained that Regulations must practically be such as to prevent pelagic sealing everywhere, it is also stated that the United

States are in the position of *trustees* of the sealing interest, thus involving the idea of other rights besides those of the United States. United States' Case, p. 300.

The United States further, in their conclusions to their Case, include in the second "Material question" to be determined by Arbitrators:—

"Whether the United States and Great Britain ought not in justice to each other, in sound policy for the common interest of mankind, &c., 'to enter into such reasonable arrangement by concurrent regulations or convention, in which the participation of other Governments may be properly invited,' &c. Ibid., p. 299.

In the Counter-Case of the United States, however, a more advanced position is taken. We read:—

"The United States insist, as claimed in their Case, that they have, upon the facts established by the evidence, such a property and interest in the seal herd frequenting the Islands of the United States in Bering Sea, and in the industry there maintained arising out of it, as entitles them to protection and to be protected by the Award of this Tribunal *against all pelagic sealing, which is the subject of controversy in this Case*, and quite irrespective of any right of property or of self-defence in respect of their territorial interests, they claim to have clearly shown that no regulations short of prohibition will be sufficient to prevent the early destruction of the Alaskan seal herd." United States' Counter-Case, p. 121.

Before considering the scope of the Regulations, the question as to the area of waters over which they should extend requires notice. It appears from certain passages in the United States' Case and Counter-Case, that it will be contended on behalf of the United States that the Regulations should amount to a practical prohibition of pelagic sealing in all waters to which seals from the Pribyloff Islands resort, and should effectually prohibit and prevent the capture, anywhere upon the high seas, of any seals from the Pribyloff Islands. United States' Case, pp. 301-303.  
Counter-Case, p. 121.

It is submitted that any such contention is entirely beyond any claim ever advanced by the United States at any stage of the controversy prior to the delivery of their Case, and is contrary to the agreement of the parties which was embodied in the Treaty. That Treaty deals, and deals only, with "questions which have arisen" between the two Governments. In no part of the discussion was it suggested that the rights of the United States to limit the killing of seals extended beyond Behring Sea. On the contrary, when the

United States' Case, Appendix, vol. i, p. 306.

British Government desired the assent of Russia to the *modus vivendi* proposed in the month of June 1891, it was pointed out by Mr. Wharton, in a despatch to Sir Julian Pauncefote, dated the 4th of that month, that the contention between the United States and Great Britain was limited to that part of Behring Sea eastward of the line of demarcation described in the Convention with Russia of the 30th March, 1867; that Russia had never asserted any rights in the waters affecting the subject-matter of the contention, and could not, therefore, be a necessary party to the negotiations if they were not expanded; and further, that the authority of the President was derived from the Statute of the United States, and that no authority was conferred upon him to prohibit or make penal the taking of seals in the waters of Behring Sea westward of the line referred to.

It is scarcely necessary to point out that such language not only depends for its force upon an assumed jurisdiction over an area of sea, but is wholly inconsistent with the contention that pelagic sealing in the parts of the Pacific Ocean outside Behring Sea, or in those parts of Behring Sea west of the line of demarcation, was the subject of controversy between the parties.

Ibid., p. 315.

Further, on the 11th June, 1891, Mr. Wharton, in his letter to Sir J. Pauncefote, stated that the Government of the United States, recognizing the fact that full and adequate measures for the protection of seal life should embrace the whole of Behring Sea and portions of the North Pacific Ocean, would have no hesitancy in agreeing, in connection with Her Majesty's Government, to the appointment of a Joint Commission to ascertain what permanent measures were necessary for the preservation of the seal species in the waters referred to, *such an agreement to be signed simultaneously with the Convention for arbitration, and to be without prejudice to the questions to be submitted to the Arbitrators.*

Later, viz., on the 8th March, 1892, Mr. Wharton wrote to Sir J. Pauncefote:—

Ibid., p. 356

"The United States claims an exclusive right to take seals in a portion of the Behring Sea, while Her Majesty's Government claims a common right to pursue and take the seals in those waters outside a 3-mile limit. This serious and protracted controversy, it has now been happily agreed, shall be submitted to the determination of a tribunal of arbitration, and the treaty only awaits

the action of the American Senate. . . . If the contention of this Government is sustained by the Arbitrators, then any killing of seals by the Canadian sealers during this season in these waters is an injury to this Government in its jurisdiction and property. . . . The United States cannot be expected to suspend the defence, by such means as are within its power, of the property and *jurisdictional rights* claimed by it, pending the arbitration."

United States' Case, Appendix, vol. i, p. 359.

And on the 22nd March, 1892, he again writes:—

"For it must not be forgotten, that if Her Majesty's Government proceeds during this sealing season upon the basis of its contention as to the rights of the Canadian sealers, no choice is left to this Government but to proceed upon the basis of its confident contention, that *pelagic sealing in the Behring Sea is an infraction of its jurisdiction and property rights.*" *Ibid.*, p. 361.

There is no known method whereby the seals resorting to Behring Sea may be distinguished, at any rate before capture. Upon no construction of the Treaty could it be pretended that the Tribunal of Arbitration is empowered to regulate the pursuit of seals generally. To prohibit the pursuit of certain specified fur-seals outside of Behring Sea, or to make Regulations concerning them, would be impracticable, and it is submitted would be beyond the authority given to this Tribunal.

Passing from the question of the area of waters over which the proposed Regulations should extend, and assuming the Regulations to apply to the whole, or some part of, the non-territorial waters of Behring Sea, the contention of the United States, so far as it can be gathered from their Case, is that pelagic sealing must be entirely prohibited.

It is submitted that any decision of the Tribunal prohibiting pelagic sealing would be contrary to the terms of the Treaty.

Article VII contemplated the establishment of Regulations as applicable to the pursuit of seals outside territorial waters; and the prohibition of pelagic sealing is not authorized.

To contend that pelagic sealing should be entirely prohibited would be, under cover of so-called Regulations, to defeat the manifest intention of the parties.

The following argument is, therefore, based upon the view that the Regulations should be such as should be fair, both to the United States as owners of the Pribyloff Islands, and to Great

Britain as representing those who desire to engage in the lawful industry of pelagic sealing, but who at the same time are willing to be bound by such Regulations as are necessary for proper protection and preservation of the fur-seal in, or habitually resorting to, Behring Sea.

Furthermore, it is essential that the Regulations should be such as would be likely to secure the adhesion of other Powers, and would not operate as an inducement to them to withhold their consent with the knowledge that by so doing they would secure to themselves greater advantages from the industry in question.

As appears from the British Counter-Case, and from the Report of the British Commissioners, the main provisions which might be properly embraced by Regulations are the maintenance of a zone of protected waters round the breeding-islands, the establishment of a close season, and restriction as to the date in each year when sealing-vessels should enter Behring Sea.

Having regard to the fact that each of these proposals, when taken separately, is treated in the United States' Case and Counter-Case as being of no value, and that the proposals collectively appear to be considered as wholly insufficient, the way in which the question has been dealt with by the United States in the correspondence prior to the Treaty of Arbitration is worthy of consideration.

Up to the month of December 1890, suggestions of a more or less general character appear from time to time in the correspondence to the effect that international Regulations should be established through the medium of a Convention, to which all nations interested should be parties. These suggestions led to no definite agreement, and were succeeded by a proposal contained in the following passage from a note of Mr. Blaine to Sir Julian Pauncefote, under date the 17th December, 1890:—

United States' Case, Appendix, vol. i, p. 284.

'The President will ask the Government of Great Britain to agree to the distance of 20 marine leagues within which no ship shall hover round the islands of St. Paul and St. George from the 15th May to the 15th October of each year. This will prove an effective mode of preserving the seal fisheries for the use of the civilized world.'

And in the same despatch there was formulated a question, in the following words, on which the

VIIth Article of the Treaty of Arbitration was founded:—

"Sixth. If the determination of the foregoing questions shall leave the subject in such position that the concurrence of Great Britain is necessary in prescribing regulations for the killing of the fur-seal in any part of the waters of Behring Sea, then it shall be further determined: First, how far, if at all, outside the ordinary territorial limits it is necessary that the United States should exercise an exclusive jurisdiction in order to protect the seal for the time living upon the islands of the United States, and feeding therefrom. Second, whether a closed season (during which the killing of seals in the waters of Behring Sea outside the ordinary territorial limits shall be prohibited) is necessary to save the seal-fishing industry, so valuable and important to mankind, from deterioration or destruction. And, if so, third, what months or parts of months should be included in such season, and over what waters it should extend."

United States' Case, Appendix, vol. 1, p. 286.

To this proposal of Mr. Blaine's Lord Salisbury replied in his despatch of the 21st February, 1891, in which, dealing with the sixth question, he observed:—

"The sixth question, which deals with the issues that will arise in case the controversy should be decided in favour of Great Britain, would perhaps more fitly form the substance of a separate reference. Her Majesty's Government have no objection to refer the general question of a close time to arbitration, or to ascertain by that means how far the enactment of such a provision is necessary for the preservation of the seal species; but any such reference ought not to contain words appearing to attribute special and abnormal rights in the matter to the United States."

Ibid., p. 294.

Finally, in deference to the objection thus taken by Lord Salisbury, Mr. Wharton, in a letter of the 25th June, 1892, to Sir Julian Pauncefote, proposed what now forms Article VII of the Treaty.

Ibid., p. 319.

It is therefore to be noted that the original proposition, emanating from the President of the United States, viz., that the establishment of a protective zone, within which the killing of seals should be prohibited between certain specified dates, was suggested as being an effective mode of preserving the seal fisheries for the use of the civilized world, and it is contended, on behalf of the British Government, that further investigation and examination of the facts fully justify the view that Regulations of this character, but establishing a zone of smaller area, would suffice so far as pelagic sealing is concerned.

Even assuming a point which is open to considerable doubt, viz., that some of the seals still suckling their young travel to parts of Behring Sea at considerable distances from the Pribyloff Islands, by far the greater majority, if not the whole, of such female seals will be found within a zone of more moderate area.

It is established that the seals, whatever may be the cause of their leaving the islands, do not habitually or regularly go in search of food. Food, ample for their wants, is to be found in the vicinity of the islands, but all the best information points to the fact that they do not feed during the main period of their sojourn on land. In addition, the prohibition of the killing of seals during July and August, within the protected zone, would insure that the vast majority, if not all, of the female seals actually suckling their young, would be free from capture by pelagic sealing during such time as the pups are dependent upon them.

It is unnecessary to discuss in detail the minor Regulations which have been suggested as to the means of pelagic capture, and as to the due authentication of all licensed sealing-vessels. These are matters on which lengthened argument would be out of place here.

It is, however, obvious that the adoption of such Regulations, and the enforcement of legislation in order to render them effective, does involve the curtailment of rights which, upon the hypothesis which forms the basis of this argument, now belong to other nationals, including British subjects.

The object of any Regulations is the proper protection and preservation of the fur-seal in, or habitually resorting to Behring Sea. It would be unjust that other nations should be asked to enforce by legislation this curtailment of the rights of their nationals, without some corresponding concession on the part of the United States, as owners of the islands and the territorial waters thereof.

That during a great portion of the year the seals are feeding upon fish which are valuable for the food of man upon the coasts of the territory of Great Britain, and other nations, cannot be denied.

That during other portions of the year they are consuming fish that are swimming in the high



seas, in which all nations have an interest, is conceded.

It would not be equitable that restrictions upon the rights of other nations should be demanded solely for the purpose of enhancing the benefit to be derived by the United States from their possession of the islands. The least that can be suggested is that, concurrently with the establishment of such Regulations as are applicable to pelagic sealing, and in order to induce other nations, who are not parties to this Arbitration, to concur in, and give effect to, any Regulations, a reasonable limit to the slaughter of seals on the breeding-islands and proper provisions for its conduct should be made by the United States.

The Regulations for the islands which the United States may be willing to make must, it is submitted, have an important effect upon the judgment of the Arbitrators as to what pelagic Regulations would be reasonable or necessary, and it is further submitted that it is within the competence of this Tribunal to make the latter Regulations dependent or conditional on the former.

To apply restrictions to pelagic sealing, without effective and concurrent Regulations being enforced on the breeding haunts, would be as unreasonable and useless as the institution of restrictions over a coastal or estuary salmon fishery, while the salmon on the spawning-beds of the river were being taken without let or hindrance.

It is contended on behalf of the United States that the management of the islands in the past had been properly controlled and conducted with due regard to the protection of seal life. Her Majesty's Government are unable to concur in that view. For reasons that have been stated at length in the Counter-Case, in reply to the contentions in the United States' Case, it is submitted that the excessive killing of seals on the islands during a long series of years has contributed largely to, and has been in all probability the main cause of diminution in numbers. Be this as it may, in view of the experience of the past, the number of seals to be killed in each year upon the Pribyloff Islands ought to be limited, and the methods pursued there controlled, in accordance with the actual condition of seal life, and subject to periodical review by independent Government Agents.

Finally, it is submitted for the consideration of the Tribunal that the imperfect knowledge even now possessed as to the habits and conditions of seal life in many essential particulars makes it important to consider how far it is safe to lay down Regulations unlimited in duration until wider experience of their operation has been acquired.

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PART IV.

DAMAGES AND COMPENSATION.

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1. BRITISH CLAIM FOR DAMAGES.

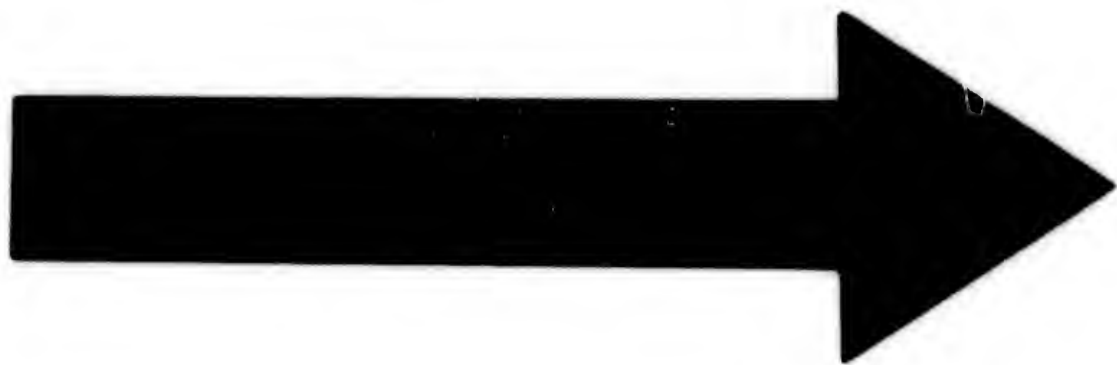
There remain for consideration the questions of fact which are involved in the claims made by the owners of British vessels for injuries sustained by the seizure of their vessels, and by such vessels being prevented by the action of the United States' cruizers from engaging in pelagic sealing in Behring Sea. The British Government agree with the Government of the United States that, as far as damages are concerned, no question of amount is to be discussed before the Tribunal of Arbitration, and that only questions of fact involved in the claim are proper for consideration. It is admitted in the Counter-Case on behalf of the United States that the seizures and acts of interference complained of took place outside the ordinary territorial waters of the United States, that is to say, outside the 3-mile limit; and, further, that the acts of seizure and interference were authorized and executed under and by the authority of the United States' Government, for the purpose of enforcing certain laws passed by the United States.

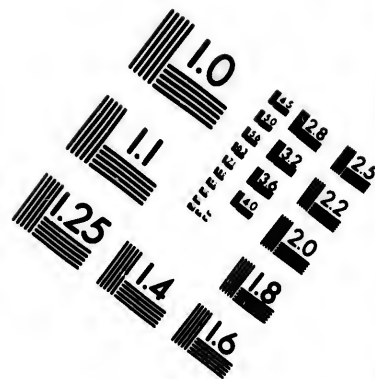
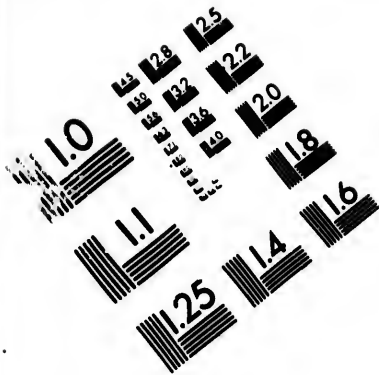
Under these circumstances, assuming, as is necessary for the purpose of the question now under discussion, that the claim on behalf of the Government of the United States to interfere with the ships of other nations fishing in the non-territorial waters of Behring Sea is unfounded, the responsible Government of the United States have by force prevented the vessels in question, and their owners, masters, and crew, from engaging in a lawful occupation and industry.

Article VIII,  
Treaty of  
Arbitration.

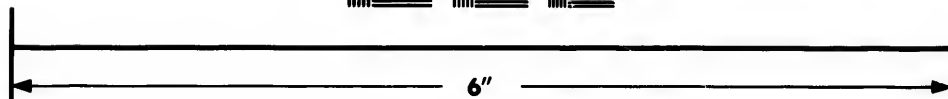
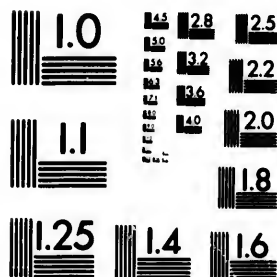
United States'  
Counter-Case,  
p. 129.

Ibid., p. 130





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14590  
(716) 872-4503

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25  
22  
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The contention put forward at p. 133 of the United States' Counter-Case is, that all the items of claim there referred to, that is, "Loss of estimated Catch," "Probable Catch," "Balance of probable Catch," "Reasonable Earnings for the months of October, November, and December," and "Loss of Profits," are in the nature of prospective profits or speculative damages, and are so uncertain as to form no legal or equitable basis for finding facts upon which damages can be predicated.

This view of the law has been rejected by the 5 C. P. D. 280. English Courts. In *Phillips v. the London and South-Western Railway Company*, where an eminent medical practitioner who had been injured by the negligence of a Railway Company was awarded 16,000*l.* damages, the Court of Appeal held that the jury had been rightly directed to take into account the loss of his professional income of 5,000*l.* a-year. And in the "Argentine," the House of Lords held that in awarding damages to a ship which had come in collision with another, the fact that the ship could not be repaired in time to fulfil a contract for another voyage, and had lost earnings in consequence, had been properly taken into account. Lord Herschell said:—

14 App. Cas 519.

"The loss of the use of a vessel and of the earnings which would ordinarily be derived from its use during the time it is under repair, and therefore not available for trading purposes, is certainly damage which directly and naturally flows from a collision."

He then proceeded to explain, what it is not necessary here to consider, that the damages were not limited to the time of actual non-repair, but that account might be taken of the loss of a voyage previously contracted for, setting off against such loss what the ship could have earned by other means, after completion of the repairs, during the time which such voyage would have occupied.

After due regard has been paid to all considerations, such as the nature of the season, the size and equipment of the vessels, and the amount of the catch in previous seasons, an estimate can be formed of the probable catch of each vessel during the season in which their operations were prevented or interfered with.

The loss of catch is due directly to the action of the United States' Government, and the fact

that the earnings or profits were prospective in no way affects the right of the claimants to recover.

The refusal of the Geneva Arbitrators to award damages to the United States for the loss of "prospective earnings" must be understood with reference to the actual conditions of the case before them. The ships in respect of which the claim was made had been destroyed. Chief Justice Cockburn, who here was in agreement with the rest of the Tribunal, says in his reasons:—

"North America  
No. 2 (1873),"  
Part II, p. 253

"According to the decisions of the Supreme Court of the United States, the only allowance which ought to be made in respect of prospective catch is in the nature of interest from the time of the destruction of the vessel."

The distinction is between prospective earnings from a ship destroyed, and temporary interruption in the employment of an existing ship.

With regard to the allegations which are brought forward at pp. 130 to 133 of the United States' Counter-Case, that is to say, that certain citizens of the United States were interested, as mortgagees or otherwise, in some of the vessels in question, Her Majesty's Government do not admit either the truth of the allegations, or that they are proper for consideration.

By 17 & 18 Vict., cap. 104, sec. 70, it is enacted as follows:—

"A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagee be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt."

The Tribunal will be asked to find that the several heads or items of damage claimed are correct, saving all questions of amount and liability.

## 2. BRITISH CLAIM FOR COMPENSATION.

By Article V of the *modus vivendi* of 1802 it is expressly agreed that, if the result of the arbitration shall be to affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, under its purchase from Russia, then compensation shall be made by the



United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the arbitration, upon the basis of such regulated and limited catch or catches as, in the opinion of the Arbitrators, might have been taken without an undue diminution of the seal herds. The Article further provides that the amount awarded shall be just and equitable, and shall be promptly paid.

Great Britain is entitled, under this Article, to the award of a just and equitable sum by way of compensation, to be ascertained by the Arbitrators on the above basis.

### 3. UNITED STATES' CLAIM FOR DAMAGES.

In the event of its being decided that British sealers have no right to take seals within the waters of Behring Sea, it will be contended by Her Majesty's Government that the basis upon which the amount of the United States' claims is assessed in the Case of the United States is untenable.

The whole of what is called in the United States' Case "the claim of the Government," as distinguished from "the claim of the lessees," is founded on the prohibition of sealing on the islands imposed under the *modus vivendi* of 1891. But no claim can be made in respect of the consequences of fulfilling a contract voluntarily entered into, unless by reason of some contract provision, such as is contained in the *modus vivendi* of 1892, but not in that of 1891. Her Majesty's Government made it a condition of renewing the *modus vivendi* in 1892, that "the Arbitrators should, in the event of a decision adverse to the United States, assess the damages which the prohibition of sealing" should have caused. No such stipulation had been made by either Government in 1891.

United States' Case, p. 287.

Ibid., Appendix, vol. i, p. 363.

### 4. UNITED STATES' CLAIM FOR COMPENSATION.

By Article V of the *modus vivendi* of 1892, if the result of the arbitration should be to deny the right of British sealers to take seals within the specified waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens, and lessees) for the Agreement

to limit the island catch to 7,500 a season, upon the basis of the difference between this number and such larger catch as in the opinion of the Arbitrators might have been taken without an undue diminution of "the seal herds."

In fixing the "larger catch" mentioned in this Article, the following facts require consideration:—

British Case,  
Appendix, vol. iii,  
No. 2, 1891,  
pp. 1, 3.

The *modus vivendi* of 1891 was originally assented to by Great Britain because it was asserted on the part of the United States that the diminution of seals had become so great as to require some such immediate and drastic provision to prevent extermination.

Senate, 51st Cong.,  
2nd Sess.,  
Ex. Doc. No. 49,  
pp. 11, 12 ;  
Ibid., p. 13.

During the sealing season of 1890, on the Fribyloff Islands, Mr. Goff, the Government Agent, stopped the killing of seals when only 21,857 had been killed, alleging that this was absolutely necessary because of the paucity of seals of suitable age for killing. The agent of the North American Commercial Company thereupon lodged a protest against the curtailment of the Company's privilege of killing.

Ibid., pp. 6 and 9.

In reporting on the sealing season of 1890, Mr. Goff, the Government Agent on the islands, and Mr. Lavender, Assistant Agent, both advised the cessation of all killing for skins upon the islands for several years. Mr. Elliott, in his letter to Secretary Windom, summarizing and transmitting a detailed Report made in pursuance of a Special Act of Congress, makes a recommendation to the same effect, placing the period of abstention from killing at seven years at least.

British Case,  
Appendix, vol. iii,  
"United States"  
No. 2 (1891),  
pp. 17, 21, 60.

The result of the investigation of seal life made by the British Commissioners in 1891 was, however, such as to convince Her Majesty's Government that the very stringent measures of the *modus vivendi* of 1891 need not, in the interests of the sealing industries, be repeated in 1892.

Sir J. Pauncefote  
to Mr. Blaine,  
February 29, 1892.  
Marquis of Salisbury  
to Sir J.  
Pauncefote,  
March 18, 1892.

Consequently, when a new *modus vivendi* was pressed for by the United States, it was proposed by Her Majesty's Government that a zone of protection, not exceeding 30 miles, should be extended about the Fribyloff Islands, while the killing upon these islands should be restricted to a *maximum* number of 30,000.

British Case,  
Appendix, vol. iii ;  
"United States"  
No. 3 (1892),  
pp. 155 and 159.

Sir J. Pauncefote  
to Mr. Blaine,  
February 29, 1892.

The United States, however, promptly and decisively pronounced this proposal for a *modus vivendi* in 1892, to be, from their point of view, "so obviously inadequate, and so impossible of

British Case,  
Appendix, vol. iii.  
"United States"  
No. 3 (1892),  
p. 161.

execution, that this Government cannot entertain it."

The British Government eventually consented to the establishment of a 'new *modus vivendi*, generally similar to that of 1891, but with the condition as to compensation above mentioned.

Acting Secretary  
Wharton to Sir J.  
Pouncefote,  
March 8, 1892.

It is submitted that, in fixing the dimensions of the catch which might have been made upon the Pribyloff Islands, for the purposes of compensation, the United States cannot now rely, as they seek to do, on the data which they explicitly contradicted in the spring of 1892.

United States'  
Case, p. 291

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APPENDIX TO ARGUMENT.

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No. 1.

*Criticism of Part Second of the Counter-Case of the United States, which is entitled, "Reply of the United States to that portion of the Case of Great Britain contained in the Report of the British Commissioners."*

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IT is observed with regret, that throughout the second portion of the Counter-Case of the United States, reflections on the impartiality, competence, and even on the honesty of the British Commissioners are repeatedly made. It is, for instance, many times asserted that the British Commissioners endeavour to support various preconceived opinions or "positions" by evidence selected for the purpose. But a reference to the Commissioners' Report will show that no such course was adopted, and that various points upon which the available evidence was found to be inconclusive have been so characterized by them.

It is only necessary to draw attention to the fact, that at a date as late as November 1890, the Canadian Government, relying on evidence contained in official Reports of the United States' Government, denied any decrease in the seals met with upon the Pribyloff Islands; while one of the main conclusions of the Commissioners proved to be in direct opposition to this contention, and was to the effect that a nearly continuous decrease had occurred during the entire period of the control of these islands by the United States.

There is surely nothing remarkable in the circumstance that some of the conclusions arrived at by the British Commissioners should agree with previously advanced contentions of the British and Canadian Governments. It might, on the other hand, be characterized as remarkable, that for the purposes of the present submission to

arbitration the United States' Government have discarded their own previous official Reports, and have substituted a number of statements and affidavits procured after the conclusion of the Treaty, upon which to base their contention; the evidence contained in latter being often at variance with the previous and contemporaneous Reports thus discarded. Though a special Act of Congress was passed to authorize an investigation of the sealing industry on the Pribyloff Islands in 1800, and such investigation was carried out, it is at least worthy of note that the Report detailing the result of this investigation has not been employed in connection with the Case or Counter-Case of the United States; that this Report has not been published by that Government; and that the United States have even refused to furnish this Report to the Agent for Great Britain, who had formally applied for it.

51st Cong.,  
2nd Sess.,  
H. R. 7903.

It is thus apparent, not only that the United States (as elsewhere shown) have gradually changed their position in regard to rights in Behring Sea, but that they have now almost entirely ignored the previous Reports and assertions of their own official Representatives in respect to the facts bearing upon seal life and its conditions.

Without attaching undue importance to the attack made in the Counter-Case of the United States upon the integrity of the British Commissioners, it is proposed to show, in this Appendix, that, without important exception, the conclusions arrived at by the British Commissioners, during their investigations in 1801, stand unaffected by the arguments directed against them in the Counter-Case of the United States; that these arguments, both in fact and form, are unfounded and erroneous; and that, generally, the conclusions of the Commissioners have been substantiated by further inquiries and investigations conducted in 1802.

The subjoined notes take the form of brief critical statements directed to the various assertions made in the part of the Counter-Case of the United States to which it relates, and follow the arrangement and order in which these assertions are presented in it.

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## "FIRST."

"MATTERS IN RELATION TO WHICH THE REPORT AND THE CASE OF THE UNITED STATES MATERIALLY CONFLICT, AND CONCERNING WHICH PROPOSITIONS OR FACTS ARE ALLEGED IN THE REPORT WHICH HAVE NOT BEEN CONSIDERED IN THE CASE OF THE UNITED STATES."

## "HABITS OF THE FUR-SEALS."

"1. *Distribution of Seals in Behring Sea and the suggested Intermingling of the Pribyloff and Commander Seal Herds.*"

*The marginal references to pages, unless otherwise specially designated, are throughout to the pages of the United States Counter-Case.*

Pages 48, 49. This chapter commences by quoting and alluding to certain passages from the British Commissioners' Report, which convey only one side of the discussion of facts of which they form a part. The general conclusions reached by the British Commissioners as the result of the whole discussion are not quoted.

Pages 49, 50. The Maps relating to the distribution of seals (particularly Nos. 3 and 4), presented by the British Commissioners, are then noticed by the United States, and it is contended that they are incorrect and not justified by the evidence adduced in support of them, particularly in the matter of the general distribution of seals in Behring Sea during the summer months.

It is stated by the United States that the Maps must have been based chiefly upon the logs of the various men-of-war, that the information contained in these logs is insufficient to bear out the indications of the Maps, and that, as other evidence relied upon by the British Commissioners is not particularly specified or detailed, it "should have no influence on the Tribunal."

Pages 50, 51. It is then assumed that the only data were those derived from the logs of cruisers, and those of the British cruisers are reproduced in the form of Charts appended to the United States' Counter-Case, together with the tracks of United States' cruisers in 1892.

In reply to these contentions, it may be stated that the distribution of seals in Behring Sea in 1891, as shown on the British Commissioners' Maps, in so far as it relates to the part of Behring Sea surrounding the Pribyloff Islands, depended chiefly upon the logs of the several

cruizers, but an inspection of the tracks, as printed by the United States, will show that the cruizers in most cases confined their operations to the regions surrounding the Pribyloff Islands. Pages 50, 51.

For other parts of the sea, other sources of information had to be employed. The British Commissioners refer to those other sources (including their own voyages) in a general way. The details and the names of informants were not specifically given, merely in order to curtail the length of their Report. The procedure followed in this case resembled that adopted in most other cases by both the British and United States' Commissioners. See post, p. 106.

Information obtained in 1892, and set forth in detail in the British Counter-Case, however, not only fully confirms the statements made by the British Commissioners as to the intermingling of fur-seals in Behring Sea, and as to their distribution in that sea; but are also such as to supply to the United States the precise data which they appear to require. British Counter-Case, pp. 119-140; and Appendix, vol. ii, pp. 23-27

*"2. The alleged promiscuous nursing of Pups by Female Seals."*

On this subject, the United States deny that certain evidence, tending to show that female seals nurse other pups than their own, is "sufficient to establish the facts alleged." But the British Commissioners in their Report make no definite allegation in this connection. The actual evidence on both sides is given by the Commissioners, and is discussed by them. Page 53.

It is next stated, that though Messrs. Elliott and Bryant are "the two most prominent authorities relied on" in the British Commissioners' Report, the opinions of these observers are not accepted on the question here under discussion.

Bryant and Elliott are often quoted as authorities, because their observations are those which enter most fully into subjects connected with seal life, and have been fully published in United States' official Reports. Where actual observations are stated, doubt is seldom, if ever, cast on them; but when deductions are drawn from observations, it is quite fair to criticize these, even where the observer may be perfectly British Commissioners' Report, paras. 321, 322.



Page 53. unprejudiced. The data quoted by Bryant and Elliott on the question of the suckling of pups, leave their conclusion evidently in the position of a not-proven deduction or theory.

The further complaint in the United States' Counter-Case, that the British Commissioners quote Elliott as to the want of affection of female seals for their young, while they do not quote remarks contained in a publication by Sir F. McCoy, is pointless. The British Commissioners quote Elliott, because his observations agree with those made by themselves on the Pribyloff Islands. They state as much.

Page 55. In the British Commissioners' Report, Mr. C. H. Jackson, Government Agent in charge of the Seal and Guano Islands of Cape Colony, is quoted as making a definite assertion, to the effect that in that region—

"the cow [seal] will suckle any of the young seals, whether her own or not."

Mr. Jackson is consequently designated in the United States' Counter-Case as a "questionable authority," and it is added that—

"an examination of the Report of this gentleman fails to reveal upon what knowledge he bases such a statement; and there is no proof that he has ever seen the seal islands of Cape Colony, or even been informed by experienced individuals respecting the habits of the fur-seals found there."

It is then insisted that his evidence is unworthy of consideration. Mr. Jackson, however, actually says in his Report:—

British Commissioners' Report, Appendix, p. 155.

"I have availed myself of information kindly furnished by the best practical experts in the Colony."

Pages 56, 57.

An attempt is here made in the United States' Counter-Case, to show that the British Commissioners attributed a statement on the same subject to Sir F. McCoy, which was not made by him. A reference to the Report will show that the British Commissioners merely allude to the statement and cite a work by Sir F. McCoy, in which it is contained. It is not implied that the statement was made by Sir F. McCoy personally, but the fact that he included it in his work may probably be assumed as showing that he believed in its inherent credibility.

British Commissioners' Report, para. 324.

It is also asserted, in concluding this subject, that the position taken by the United States, i.e., that a female seal will suckle no pup but her own, is supported by "ample evidence." This evidence is referred to in a foot-note.

Page 56.

Mr. Grebnitsky is among the authorities thus quoted, but the remark made by him is only incidental, and he advances no proof. So also with the evidence in the Appendix to the United States' Case which is here referred to. This consists either of mere assertion, or, when proof is endeavoured to be advanced, it is quite inconclusive in character.

United States'  
Counter-Case,  
Appendix, p. 366.

Observations in 1892 show that young seals do at least occasionally obtain milk from other mothers than their own.

British Counter-  
Case, Appendix,  
vol. 1, p. 143.

*"3. Period at which the Female Seals go into the Water."*

In regard to this subject, as in the case of the last, it will be found that the Report of the British Commissioners makes no definite "assertion," though it is represented as so doing in the Counter-Case of the United States; where it is also stated that the Report "practically adopts the opinion of Snegiloff, the native foreman on the Russian Islands," though this is likewise not apparent in the Report itself. In the Report it will, in fact, be found that all the evidence available, together with the personal observations of the Commissioners, has been collected and discussed impartially.

Pages 57, 58.

The general conclusion arrived at by the British Commissioners is to the effect that the female seals remain some time on land after giving birth; that when they begin to return to the sea they do not at once resume their feeding habits, but resort to the waters close to the shores, and that probably about the middle of September, they may again begin to spend a considerable portion of their time at sea in search of food.

It is because these conclusions, and the evidence supporting them, are found to be adverse to a new position since taken in the Case of the United States, that it appears to be considered necessary to commit the British Commissioners to some "assertion" which may effectively be attacked.

Pages 57, 58,  
*Post*, p. 106.

The evidence obtained from the natives of the Pribyloff and Commander Islands is rejected by the United States because the names of the Commissioners' informants are not detailed, a point dealt with elsewhere.

British Commissioners' Report,  
Appendix,  
p. 167.

Information regarding the feeding habits of seals obtained from Her Majesty's Minister at Tôkiô is rejected, and stated to be "based on no actual knowledge," though he specially states that the notes prepared by him were "based on an experienced authority."

Pages 58, 59.

The published statements of Capt. Bryant as to the period during which the females remain on shore after giving birth are next attacked, and it is endeavoured to show that discrepancies occur in his Report; while the fact that the same author (a Government official) does not repeat the statement of the actual period during which the females remain ashore after giving birth, in a later communication addressed to Professor Allen, is said to show that—

"Captain Bryant had *publicly discarded* the opinion used by the Commissioners to *maintain their position*."

And, as evidence of this, references are given to two statements made to Professor Allen, in neither of which does Captain Bryant say anything at variance with what is quoted by the British Commissioners. He does, indeed, state that—

"Monograph of  
North American  
Pinnipeds," p. 386.

"the females, after giving birth to their young, temporarily repair again to the water."

But not for the purpose of feeding, for in the same paragraph he says that, after impregnation—

"she lies either sleeping near her young, or spends her time floating or playing in the water near the shore, returning occasionally to suckle her pup."

In the statement next referred to, only a part of what Captain Bryant wrote is quoted. He begins the sentence, thus partially given, by saying—

*Ibid.*, p. 382.

"As you have had the result of my first season's observations there [see *Bull. Mus. Comp. Zool.*, vol. ii, 1870, pp. 89-108], I need not be so diffuse in my descriptions as would be otherwise necessary, and you will understand," &c.

And it is from the Report thus referred to that the Commissioners quote.

It will be remembered that certain recent affidavits made by Captain Bryant in 1892 are prominently advanced as evidence by the United States.

Pages 58, 59.

United States' Case, Appendix, vol. ii, p. 3.

United States' Counter-Case, Appendix, p. 413.

Having, in the manner above outlined, treated the evidence, observations, and general conclusions of the British Commissioners on this subject, the United States' Counter-Case concludes the discussion by the following unwarranted statement :—

" One native of the Commander Islands is, therefore, the sole authority for the statement of the British Commissioners."

The method of treatment thus adopted on the part of the United States, for the purpose of combating a reasoned discussion on natural facts, is resorted to in many other instances in their Counter-Case. But it is impossible to treat all these in any detail here. The attention of the Arbitrators is therefore respectfully called to a comparison of paras. 303-316 of the British Commissioners' Report, with their criticism as contained on pp. 57-60 of the Counter-Case of the United States.

In conclusion, the United States refer to evidence obtained in 1892 by Mr. C. H. Townsend, which is elsewhere discussed, and to observations of Mr. Stanley-Brown. It may here be mentioned, however, that Mr. Townsend's observations as to the condition of the rookeries in regard to the number of females ashore at a certain date in 1892, does not show that the observations of the British Commissioners at the same date in 1891 were erroneous. Neither is Mr. Stanley-Brown's statement, that the females stay on land *fourteen to seventeen* days after the birth of the young, in conflict with any statement made by the British Commissioners; but the assumption must not be made that when the females begin to seek the water this is equivalent to their going to sea in search of food.

British Commissioners' Report, paras. 306, 308, 309, 313.

#### " 4. Aquatic Coition."

Evidence quoted by the British Commissioners from published Reports of the United States, on the authority of Captain Bryant and Dr. W. H. Dall, on the subject of aquatic coition, are next combated by drawing attention to depositions made in 1892, in which these witnesses deny or

Pages 60, 61.

Pages 60, 61. endeavour to minimize the force of their previous statements. Captain Bryant is as definite in his former Reports respecting the occurrence of coition at sea and its frequency as it is possible for language to be. He repeats these statements in three separate Reports, dating from 1869 to 1880, to which references are given in detail in the Report of the British Commissioners. He says, for instance :—

See British Commissioners' Report, pp. 52, 53.

"Monograph of North American Pinnipeds," pp. 405, 406.

"By taking a canoe and going a little off shore considerable numbers may be seen pairing, and readily approached so near as to be fully observed."

Dr. Dall is almost equally precise, writing—

Bull. Mus. Comp. Zool., vol. ii, No. 1, p. 100. See also "Alaska and its Resources," p. 494.

"They [the females] sleep in the water, lying on their sides, with the two flippers [of the upper side] out of the water, and receive the males in the same position."

If these gentlemen have been in the wrong in regard to opinions thus stated in scientific treatises, which are now denied in affidavits lately obtained from them, can it be assumed that the statements made in these affidavits are correct?

Pages 63, 64. On these pages of the United States' Counter-Case, various arguments are advanced for the purpose of endeavouring to show that coition at sea cannot occur. These can be shown in detail to be erroneous, and to be based on misconceptions

British Counter-Case, Appendices.

Page 63.

British Counter-Case, Appendix, vol. i, pp. 139, 140.

Ibid., vol. i, pp. 125, 126.

Ibid., vol. ii, pp. 33, 34.

or on facts imperfectly stated; but as further and wholly conclusive evidence, obtained since the completion of the Report of the British Commissioners, is available in the British Counter-Case to prove that coition at sea is often observed, it is not considered useful to follow further the hypothetical statements and attempts at destructive criticism of that Report, which are resorted to on the part of the United States.

**"MANAGEMENT OF THE PRIBYLOFF ISLANDS AS THE ALLEGED CAUSE OF THE DECREASE OF THE ALASKAN SEAL HERD."**

Page 65. It is here stated in the United States' Counter-Case that—

"the British Commissioners, at several places in their Report, admit that the Regulations in force, and the methods employed in taking seals on the Pribyloff Islands, are the best that could have been adopted," &c.

It is then argued that, as the methods were good, it is only to the manner of the execution that the criticisms of the British Commissioners apply; and on the further assumption, that both were perfect during the Russian régime, that the increased annual killing of seals during the United States' control is the only remaining point of criticism to be met by the United States.

Page 65.

But this apparently simple method of reducing the points in dispute to a single item does not, in fact, accord with the statements made in the Report of the British Commissioners. The Report does not, as here stated by the United States, affirm the excellence of the principles of management without qualification.

British Commissioners' Report, paras. 660-662, 45

Without, however, in this place entering into a general discussion of this matter, it is proposed to follow the special and limited line of criticism adopted on the part of the United States.

The United States then proceed to *insist* that attention as to any decrease of seals should be confined to the *first decade* of the lease of the Alaska Commercial Company before pelagic sealing became important, because the British Commissioners admit that in later years there were concurrent causes tending toward decrease. The argument would, however, invalidate all the United States' arguments directed against pelagic sealing, and the conclusions in respect to such sealing at which they arrive.

Moreover, the United States in their Case have held that in these recent years the decrease was observed in *females* only, and that these have been killed at sea. They have endeavoured to prove this at length, and cannot now complain if evidence showing the decrease in the number of males is adduced on the same subject for the same period, *i.e.*, the second decade of the Alaska Commercial Company's lease.

United States' Case, pp. 172-174.

It is here, however, admitted by the United States that, under certain conditions, matters relating to the islands, even after pelagic sealing became important, may be relevant to the discussion. The conditions are stated to be:—

Page 66.

"That there was a sufficient increase in the number of seals killed on the islands, or sufficient changes in the methods employed in taking the quota, to materially affect and deplete the seal herd, even without the introduction of pelagic sealing."

Page 66. They then admit that some time after pelagic sealing began—

“the number *allowed by the lease* to be killed was more than the reduced herd could properly endure; but they assert that *any evil effects resulting from the management of the islands* is directly chargeable to the conditions established by pelagic sealing.”

United States  
Case, p. 153.

This remarkable admission stands broadly in contradiction to the statement elsewhere made, that—

“this number is variable and entirely within the control of the Treasury Department of the United States.”

In other words, the preservation of the seals as a whole was not the object of the management of the islands, the ruling factor being the annual take of a large number of seals, whatever the effect.

But passing over for the moment these aspects of the case, it may be pointed out that the British Commissioners in their Report practically comply with the conditions insisted on by the United States. They, in fact, show that the methods as well as the actual number of seals taken on the islands were such as to be injurious to seal life as a whole. Their treatment of the whole subject of the management of the Pribyloff Islands is practically directed to these points.

It is next stated by the United States that not till 1889 did the—

“decrease in the birth-rate of the seal herd . . . become sufficiently evident among the male portion of the herd to seriously attract the notice of, and alarm, the Government Agents on the islands.”

It is, of course, impossible to say what precise amount of decrease would be such as to “attract the notice” of a Government Agent, or whether these Agents were more easily “alarmed” in this respect in the last year of the lease of the Alaska Commercial Company than they had been formerly. The Company was in fact about to make a new tender for a second lease of the islands. It is unnecessary to inquire into this subject too minutely, for the United States have in their Case adduced evidence, and asserted on the authority of that evidence, that the decrease of seals became perceptible as early as 1884; while the British Commissioners have conclusively shown that the decrease was almost continuous from the earlier years of the United

*Ibid.*, pp. 165, 166.

British Commissioners' Report,  
paras. 57, 58.



States' control of the islands, and had become such as to be seriously felt, at least as early as 1879. Page 66.

It is here stated by the United States that in 1880— Page 67.

"for the first time the weight of skins fell below the average for former years."

If, by this statement, it is meant merely to affirm that the weight (this being equivalent to the size) of skins was lower than the general average weight of the preceding nineteen years, it is correct; but if it is intended to mean that this was the first year in which the weight of skins was lower than in preceding years considered separately, it is untrue. Evidence quoted in the British Commissioners' Report shows conclusively that the decreasing weight of skins was fully acknowledged on the islands at least as early as 1883, and evidence since obtained, and given in the British Counter-Case, shows that smaller and smaller skins were almost each year taken since 1873.

British Commissioners' Report, para. 696.

British Counter-Case, p. 257; and Table facing that page.

It is here stated, that notwithstanding the reduced number of seals taken in 1890 and in 1891 (under the *modus vivendi* of that year)—

"the herd continued to become more and more depleted, and in 1892 a decrease appears over 1891, though the consensus of opinion of those on the islands is, that in the last year the male seals have increased to a limited extent."

These remarks are doubtless intended to apply to seals seen upon the Pribyloff Islands only, and do not take into account observations on abundance of seals made at sea. But even limiting the view to the islands, the conclusions above stated are directly opposed to those resulting from the directions upon the islands of the British Commissioners in 1891 and to those of the British Agent in 1892.

See British Counter-Case, Appendix, vol. ii, pp. 29-32. British Commissioners' Report, paras. 85-87.

The British Commissioners say:—

British Commissioners' Report, para. 91.

"All the evidence collected indicates, that they [the rookeries] were, in 1891, in at least as good condition as they were in the preceding year;"

while as to 1892 the British Agent says:—

British Counter-Case, Appendix, vol. i, p. 151.

"The rookery- and hauling-grounds themselves exhibited unmistakable evidence that the number of seals was greater in 1892 than in 1891,"

and adds that during the whole time he was on the islands he never heard any one say that

Ibid., p. 152.

Page 67. there were fewer seals in 1892 than in 1891. Evidence as to increase in the number of seals is given at length in his Report. Mr. J. Stanley-Brown, on whose testimony alone the statement is made that "in 1892 a decrease appears over 1891," simply states that there was a "perceptible falling off" of the females, but offers no proof. Mr. Townsend, who visited the Pribyloff Islands in 1885 and 1891, and made "frequent observations as to the condition of the rookeries," again visited the Pribyloff Islands in 1892 for the purpose of studying seal life. He makes no statement in his Report as to the comparative number of seals on the rookeries in 1891 and 1892.

United States' Counter-Case, Appendix, p. 385.

Ibid., p. 393.

Page 68. Though, as above stated, maintaining that all reference to the management of the Pribyloff Islands subsequent to the introduction of pelagic sealing are irrelevant, the United States' Counter-Case here affirms that the Report of the British Commissioners "fails to establish a single instance where the management of the islands or the methods employed thereon have been changed since 1880 from the 'appropriate and even perfect' system adopted in 1870," &c.

British Commissioners' Report, paras. 57, 662-669, 684, (9), of seq.

While the British Commissioners, in their Report, do not treat the years here referred to as a separate period, they show that the methods employed on the islands, from the first, and including these years, were injurious, and caused, in the main, a general diminution in the number of seals resorting to the islands. They show, in particular, that in these years the standard weight of skins was deliberately reduced in order to permit younger and yet younger seals to be killed, and that the injurious effects of driving became yearly intensified.

The words quoted from the British Commissioners' Report in the above extract from the United States' Counter-Case, moreover, entirely misrepresent the meaning of the Commissioners as separated from their context. In the Commissioners' Report the sentence from which they are taken reads as follows:—

Ibid., para 652.

"In short, from a transcendental point of view, the methods proposed were appropriate and even perfect, but in practical execution, and as judged by the result of a series of years, they proved to be faulty and injurious."

Reverting to the reiterated contention of the United States, that all references to the condition

of the Pribyloff Islands after the introduction of pelagic sealing are irrelevant;—this is in no way admitted. The Commissioners were to inquire into all the causes affecting seal life and leading up to the present conditions, which are in the paragraph here referred to spoken of as depletion of the Pribyloff rookeries. It would be unreasonable to omit from consideration the influence of killing and methods on the islands during the last ten or twelve years. Moreover, the methods adopted on the islands should have been such as to provide for causes of decrease generally, when these should occur. If there had been no pelagic sealing, bad seasons or other natural causes might equally have brought about a decrease similar to that which is alleged by the United States to have resulted from pelagic sealing. The facts show that in this event provisions would have been equally wanting to meet such a case. Therefore, the methods of control and management upon the islands were clearly imperfect and unfitted to meet contingencies.

Page 68.

The statement made on this page of the United States' Counter-Case, that the killing of 100,000 young males annually could only have been injurious by leaving an insufficiency of males to fertilize the females, is incorrect; neither is the excessive killing alone referred to by the British Commissioners for proof of bad management on the islands. The attempt made to narrow down the issue to this one point in one of its aspects is thus again entirely misleading.

Page 69.

Special attention is then paid, and at some length, to endeavour to weaken the force of a statement, made by Captain Bryant in an official Report, as to excessive killing on the islands in 1875, which is quoted by the British Commissioners.

See British Commissioners' Report, paras. 395 *et seq.*, 674-693, 808-833.

As is stated in the United States' Counter-Case on this page that:—

"The reasons for his [Bryant's] Report of 1875 are clearly shown by an examination of his testimony before a Committee of the House of Representatives in 1876."

In reply to the question—

"Your opinion, then, is that the number of 100,000 on the two islands, authorized by law, can be regularly taken without diminishing the crop or number of seals coming to the island?"—

H. R., 44th Cong.,  
1st Sess., Report  
No. 623, p. 99.

Mr. Bryant replied:—

"I don't feel quite sure of that, as will be seen in my

Page 69.

detailed Report to the Secretary of the Treasury, included in the evidence which has been laid before the Committee. There were indications of diminution in the number of male seals. I gave that and another reason, which I explained at large in that Report."

H. R., 44th Cong.,  
1st Sess., Ex. Doc.  
No. 83, pp. 176,  
177.

The *other* reason then follows, and is that quoted in the United States' Counter-Case. That this *other* reason was considered by Captain Bryant to have been of slight importance, is very evident when his Report is referred to. After writing of the frequency with which the hauling-grounds are driven from, he says:—

"Thus, it will be seen the *method of killing* does not admit of the setting apart of a special number and taking the remainder for the quota for the market, and the only possible way to preserve the requisite number for breeding purposes is to restrict the number to be killed so far within the product as to insure enough escaping for this object."

Immediately following this comes the passage quoted in the Report of the British Commissioners (para. 675). Bryant then treats at some length of the great number of seals that by natural causes lose their lives while they are absent from the islands, and concludes his remarks on this subject in these words:—

"*One other cause* should be stated that has directly contributed to diminishing the present stock of breeding males. During the season of 1868, before the enactment of the prohibitory law, the several parties sealing there took 240,000 seals monthly [? mostly] of the products of the years 1866 and 1867. These would have matured and been added to the present stock of breeding males in the years 1872 and 1873, and to this *a part* of the prospective deficiency is to be attributed."

These are Captain Bryant's "reasons for his Report of 1875," and nothing further is necessary to show that, while there may have been other causes that contributed to the scarcity of breeding males, he evidently considered the one quoted by the British Commissioners to be that to which the diminution in this class of seals was to be principally attributed.

Page 71.

A discussion is begun on this page of the United States' Counter-Case of statements in the British Commissioners' Report respecting decrease between 1870 and 1880. It is, however, again insisted that the number killed on the islands is irrelevant, unless it can be shown that this caused decrease. It is from this very aspect

that the matter is considered in the British Commissioners' Report.

Page 71.

Complaint is made of the alleged "unfairness" of the comparison of the annual number of skins taken during the Russian period with the 100,000 quota of the United States. This "unfairness" appears to be that referred to in the subjoined quotation from this part of the United States' Counter-Case, in which it is said:—

Page 72.

"The desire is to suggest the inference that the killing of 50,000 was excessive."

The Commissioners were, however, in the paragraphs of their Report, here specially referred to, concerned in giving a historical résumé of the circumstances connected with killing, and the number killed. Further information on the same subject will be found in the British Commissioners' Report, paras. 659-703. In para. 664 they state:—

British Commissioners' Report, paras. 39-41.

"From the experience thus recorded, it appears to be very clearly shown that in the average of years the killing of 40,000 to 50,000 seals on St. Paul was more than this—the principal seal-bearing island—could stand, while that practised during the later years of the Russian control scarcely fell short of the figure at which all continued increase in number of seals would cease."

From this conclusion, based on all the facts, they go on to discuss the greatly increased killing afterwards practised under the United States' control. The years of great scarcity on the islands are not included in making the above comparison.

Allen, doubtless on Bryant's authority, states that in 1857 the—

"rookeries are said to have become very nearly as large as now [viz., the early years of the United States' control of which he wrote], the natives believing, however, that there has been since the last-mentioned date a very gradual, but steady, increase."

Allen, "Monograph of North American Pinnipeds," p. 379. British Commissioners' Report, para. 663. See also para. 663.

There can, therefore, be no possible objection raised to the comparison of the years 1857 to 1867 (under Russian control) with those of the following years under United States' control. The British Commissioners give the figures for these years as accurately as possible, and the authorities for the figures given are quoted by them. There remain, unfortunately, among these

Ibid., p. 132, and paras. 776-779.

Page 72. years, 1863, 1861, 1865, and 1866, for which the figures are somewhat uncertain.

Page 73. On this page of the United States' Counter-Case, extracts and disconnected fragments from Russian correspondence relating to the islands are referred to, apparently for the purpose of indicating that a high rate of killing was maintained under the Russian régime from 1860 to 1866. An examination of these communications (imperfect as they are) shows, however, that they merely include requests or instructions from the Board of Management or the Chief Manager for the killing of certain numbers of seals for skins. There is nothing to show that these projects for killing were carried out. In fact, in one case, in 1860, the Chief Manager, though instructed to get 50,000 to 60,000 skins, expresses his doubt of being able to do so, owing to certain unfavourable conditions in 1859.

United States' Counter-Case, Appendix, pp. 193-199.

Of the years mentioned in this correspondence, for which the number killed on the islands has been ascertained, the following comparison may be made :—

Year.	Number asked to be taken (Russian Correspondence).	Number taken (British Commissioners' Report, p. 132).
1860	50,000 or 60,000	21,590
1861	47,040	29,699
1862	Permitted at first, 80,000 ; reduced by order to 48,000	34,294

For the remaining years to 1866, the numbers requested or ordered to be killed was as follows :—

1863	..	..	..	..	80,000
1861	..	..	..	..	70,000
1865 (by Board)	..	..	..	..	53,000
„ (by Manager)	..	..	..	..	48,000
1863	..	..	..	..	50,000

British Commissioners' Report, p. 132.

The approximate numbers actually killed, and shown in the second column, as ascertained from the best available data, are, however, in these years much lower.

Elliott, Census Report, foot-note up. 76, 77.

It is not to be supposed that in thus failing to carry out the instructions as to killing, the persons on the islands were unable to obtain enough seals.

The difficulty arose chiefly, if not entirely, from the time consumed and the amount of labour involved in curing a large proportion of the skins by drying, as was then customary.

Page 73.

The special circumstances connected with the excessive number taken in 1867 (75,000) are explained in the Report of the British Commissioners.

British Commissioners' Report, paras. 897, 779

The British Commissioners are on this page of the United States' Counter-Case charged with a flagrant violation of their instructions as to impartiality, because they do not quote the whole of a paragraph by Elliott referring to the proportion of bulls to females. The part of the paragraph quoted, however, gives Elliott's general conclusions. It would not have been pertinent to the point under consideration to quote the exceptional cases also mentioned by him. He notes both much larger and much smaller numbers of females to a bull than the average. In correcting the "omission" of the Commissioners, the United States quote only that part of the additional matter which refers to the exceptional cases of very large numbers of females.

Page 74.

Moreover, the statement that Mr. Elliott's estimate was not entirely satisfactory to himself, appears from the first part of the quotation given by the British Commissioners, as to the difficulty he found in making an estimate. The entire passage is here cited, the italicized parts being those quoted by the British Commissioners. The words in brackets are those which are omitted from the quotation as given in the United States' Counter-Case:—

*"I found it an exceedingly difficult matter to satisfy myself as to a fair general average number of cows to each bull on the rookery; but after protracted study, I think it will be nearly correct when I assign to each male a general ratio of from fifteen to twenty females at the stations nearest the water; and for those back in order from that line to the rear, from five to twelve; [but there are so many exceptional cases,] so many instances where forty-five and fifty females are all under the charge of one male; [and then, again, where there are two or three females only, that this question was, and is, not entirely satisfactory in its settlement to my mind]."*

Elliott, United States' Census Report, p. 36.

It is next alleged, that the Report of the British Commissioners—

"fails to give any testimony to show how many females constituted a harem in 1891," &c.



## Page 74.

British Commissioners' Report, para. 55.  
British Counter-Case, Appendix, vol. i, p. 140.

It will be found, however, that the Commissioners give a statement of this kind in the very paragraph following that to which reference is here made by the United States. Further evidence of the same kind, for 1892, is contained in Mr. Macoun's Report.

## Page 75.

It is here stated, in the United States' Counter-Case, in connection with the alleged "surplus of virile males," that a photograph, by Mr. Stanley-Brown (which is reproduced in the Appendix to the Counter-Case), shows a—

"number of vigorous bulls located on the breeding-grounds unable to obtain consorts."

An inspection of the photograph referred to will show how insufficient the evidence it affords is. It shows a few bulls hauled out at the back of the breeding-ground, but with them are some smaller seals, which may or may not be females.

Mr. Macoun, in fact, states that at North-east Point (a part of which is shown by Mr. Stanley-Brown's photograph) there were, in his opinion, more old bulls than on all the other rookeries combined, but that even there the number was not great, and many of those characterized by Mr. Stanley-Brown as "old bulls"—

British Counter-Case, Appendix, vol. i, pp. 140, 141.

"showed the 'grey wig,' which proved them to be not yet fully grown, while others were, without doubt, worn-out old bulls, no longer fit for service. That the majority of them were in this condition is proved by the fact that though attempts at service by 'grey wigs' were not infrequent, I never saw one of these old bulls pay the slightest attention to any females that might pass near them."

United States' Counter-Case, Appendix, pp. 264, 265.

Professor Evermann's count of part of one of the smallest rookeries is further referred to to show an abundance of bulls, in proportion to the number of females.

But the reference here made to Professor Evermann's evidence is misleading. This gentleman counted the seals on two parts of Lukannon rookery. His first count of a small area (deducting two bulls without pups near them) gives an average of over nineteen females to each bull. (This is arrived at by taking each pup as representing a female.)

A second count of a larger area of the same rookery shows an average of forty females to each bull (deduced as above). He maintains that many of the pups here did not belong to the bulls, but why he should have chosen part of the rookery with an excess of pups is not explained. He further adds that many cows and pups were *not counted*, because they "did not seem to belong to any particular family."

Thus, the statement made in the United States' Counter-Case, that Evermann's count showed an average of fifteen females to each bull, is incorrect, and Evermann's statements are themselves inaccurate by reason of his omission to count the whole of the females and pups actually seen by him.

On a later page, Professor Evermann says that cows were more abundant in proportion to bulls on Ketavie rookery than on Lukannon. United States' Counter-Case, Appendix, p. 268

A count made by the same gentleman at Little East rookery, St. George Island, again gives an average of about forty cows to each bull. Ibid., p. 273.

The British Commissioners having quoted in their Report certain statements made by Mr. H. W. Elliott, which throw important light on the effect of the excessive killing of male seals upon the Pribiloff Islands, a reference to these statements is made in the following terms on this page of the United States' Counter-Case :—

"The Commissioners also rely on a newspaper extract, which purports to be a summary of a Report made by Mr. Henry W. Elliott in 1890 to the Secretary of the Treasury, to establish certain alleged facts."

The circumstances respecting Mr. Elliott's specially-authorized investigations on the Pribiloff Islands in 1890, the fact that his Report of these investigations has not been made public by the United States' Government, and the further fact that it has actually been refused to furnish it to the Agent for Great Britain, have already been alluded to. It would appear that when Mr. Elliott found that the United States' Government did not intend to publish his Report, he communicated to the press, over his signature, a summary of his conclusions, being that contained in his letter submitting the Report as a whole to Secretary of the Treasury Windom. The

Page 75.  
British Case,  
Appendix, vol. iii.  
"United States  
No. 2 (1891)."  
p. 53.

matter thus made public, will be found in the Appendix to the British Case. Its authenticity, so far as known, has never heretofore been questioned either by the United States' Government or by Mr. Elliott. The United States' Government are in possession of the original Report.

Page 76.

An objection is next raised in the United States' Counter-Case, to the effect that certain figures, quoted from Mr. Elliott, relating to the state of the rookeries on the Pribyloff Islands in 1890, and showing a want of virile male seals there, appear in the part of Mr. Elliott's statement given to the press by him, after his signature. As it is stated in the publication in question that the figures were furnished by Mr. Elliott, it is to be assumed that they were an additional excerpt from his full Report. If they are not, the United States is in a position, by producing the Report, to prove that they are not contained in it. The British Commissioners do not vouch for the accuracy of the "actual figures" quoted. They say expressly in his case that Mr. Elliott—

Para. 433.

"does not explain in what way this numerical estimate was arrived at."

But they fail to see any evidence in Mr. Elliott's attempt to put the circumstances of the decrease of male seals in figures, to do otherwise than illustrate these circumstances to the best of his ability.

In the second paragraph on this page of the United States' Counter-Case, a remark made as subsidiary to others included under paragraph 44 of the Report of the British Commissioners is chosen for attack. This remark is brought into special prominence for the purpose of attempted rebuttal, in the following terms:—

"The second mode by which they endeavour to show a decrease in the seal herd prior to 1880 is by pointing to an alleged recognition thereof on the part of the lessees in the reduction made by them of their catch in 1875, and to an alleged lowering of the standard of weights of skins."

British Commis-  
sioners' Report,  
para. 44.

The statement made by the Commissioners as to reduced number of skins taken in 1875 is denied by the United States. In thus denying, they cite the British Commissioners' Report

(p. 132), where a Table is given showing the total killing in each year on the Pribyloff Islands. But on referring to this Table, it is found that the number killed in 1875 was, as stated by the Commissioners, less than that in 1872, 1873, and 1874 (over 6,000 less than in the last-mentioned year).

Page 76.

Reference is further made in this connection to vol. ii of the Appendix to the United States' Case, in contravention of the British Commissioners' statement, but the Tables there found (pp. 558-585) are those of salted seal-skins sold in London. Such sales do not correspond with the actual number of seals taken on the islands in the same year, as skins have often been held over from one year to the next in London; and a part of the skins taken in the autumn have almost invariably been held over till the next year in the Pribyloff Islands themselves.

The third reference given in support of the denial of this particular statement of the Commissioners, is to a Table on p. 427 of the United States' Counter-Case. It must be explained that the statistics of killings on the Pribyloff Islands to which the Commissioners were able to refer, were those which had been published by the United States. Therefore, when, as in this instance, the United States now produce new and more detailed figures, alleged to have been on file in the Treasury Department, no proof of unfairness or inaccuracy can justly be urged as against the Commissioners. Thus, in the Tables of killings heretofore accessible, it was impossible to apportion the number of "pups" killed for food in each particular year, for only the grand total for a number of years was given. But accepting the new Table here printed and referred to by the United States, the killing in 1875 is even there shown to have been more than 4,000 less than in 1874. A reference to the diagram given in the Commissioners' Report will show graphically the character of the change referred to by them as occurring in 1875.

Senate, 51st Cong.,  
2nd Sess., Ex. Doc  
No. 49, p. 29.

Diagram V.

On this page of the Counter-Case, the United States deny that any lowering of the standard weight of skins taken on the islands occurred till 1886, contrary to statements made in the British Commissioners' Report (para. 694, &c.), but in so doing the United States ignore the absolute evidence to this effect by one of their own principal

Page 77.

British Commis-  
sioners' Report,  
para. 696.

Page 77. witnesses (H. H. McIntyre), which carries the lowering of weight back to 1883. It is, however, admitted that a lowering of standard weights occurred in 1886. It is stated in the Case of the United States that a decrease became perceptible on the islands in 1884-85. The lowering of standards is referred to by the Commissioners merely as an index of the decrease on the islands, and the date of such lowering now fixed by the United States does not agree with that of admitted decrease as stated in the United States' Case.

As to this Table,  
see Appendix II,  
*post.*

Reference is next made by the United States to a new Table by Mr. Heilbronner, alleged to show the weights and prices of skins from the Pribyloff Islands from 1874 to 1889 (both inclusive). The prices given in this Table have no bearing on the present question, as these depend on many other circumstances besides the weight, quality, or size of skins offered for sale.

From the Table printed, the "twelve additional columns showing percentages" have been "omitted for the sake of brevity." Owing to this fact, the Table affords only a basis of computation, not any distinct evidence as to the conditions from year to year.

Further, as already stated, the weights of skins taken are referred to by the British Commissioners only as a rough index of the sizes and ages of the seals killed. No information is afforded as to the manner in which these weights have been determined in the Table now presented by the United States, nor as to whether they are those of skins as taken on the islands, or those of salted skins as sold. It would, however, appear from the classification by sizes adopted in the Table, that the latter are meant, as no such classification by sizes is made on the islands. The weights of skins spoken of by the British Commissioners are, on the contrary, those taken or estimated on the Pribyloff Islands. Messrs. Lampson state that the weights of salted skins are greater than those of skins in the raw state; so that if the weights given in Mr. Heilbronner's Table are those of salted skins, they do not compare in any satisfactory way with the weights referred to by the British Commissioners.

Fortunately, however, we are relieved from the ambiguities incident to the statement above made, by the facts disclosed in the detailed Table and analysis of skins sold, contained in the Appendix

British Counter-  
Case, Appendix,  
vol. II, p. 261.

*Ibid.*, p. 255.

to the British Counter-Case. Every skin there included has been *measured* with accuracy, and the Table includes practically every seal killed for market on the Pribyloff Islands from 1873 to 1892 (both inclusive). The subsidiary question of weight, and the doubt as to place of weighing and character of skin when weighed, may, therefore, be dismissed. The almost continuous decrease in *sizes* is the main point in question.

Page 77.

See British Counter-Case, p. 237.

Still further, in the statement made on the part of the United States, the *average* weight of skins is taken. This is little clue to the nature of the killing generally, for whereas in the earlier years a sufficient number of skins of medium weight (which are those of greatest value) may have been available, in later years the *average* may (lacking these) have been made up of extra large and extra small skins.

United States' Counter-Case, p. 77.

The denial of the United States as to the reduction in standard weights of skins is therefore shown to rest on unsound and incorrect evidences. More than this, it is wholly disproved by the disclosures of the detailed Tables last referred to.

Mr. Webster's evidence, with other evidence, is quoted by the British Commissioners (para. 677) in support of the statements of natives detailed in a preceding paragraph, respecting the decreasing number of seals taken at North-east Point. An attempt is made on the part of the United States to traverse Webster's evidence alone. But on referring to the paragraph of the Commissioners' Report here cited, it will be found that the statement made in the Counter-Case of the United States is erroneous. Both Mr. Webster and Mr. Fowler are quoted as authorities for the figures given by the British Commissioners. Further, on referring to the Table specially compiled to rebut this evidence, and printed in the Appendix to the United States' Counter-Case, it will be found that both these gentlemen are fully justified in the statements made by them to the Commissioners. It is to be presumed that both spoke from memory, and not by the book, and precision to units is therefore not to be looked for. Webster said that in 1874 and 1875, 35,000 to 36,000 skins were taken each year at North-east Point. The Table shows in these two years respectively 34,526 and 35,113 skins. Fowler said that 29,000 and 18,000 skins were

Page 77. taken at North-east Point in 1879 and several succeeding years. The Table shows: 1879, 29,174; 1880, 25,862; 1881, 17,952; 1882, 23,303 skins.

Page 78. The Commissioners further give the skins taken in 1889 and 1890 as 15,076\* and 5,007 respectively, classing these as official figures. A printer's error has placed two asterisks (\*) in the text of this page of the Commissioners' Report, and has omitted the reference at the foot of the page to which one of them should apply. A brief examination would have shewn that the figures referred to were those in Mr. Goff's official Report on the Pribyloff Islands for 1890. The figures given by the Commissioners are identical with those of the Report in question. On examining the figures it will, however, be found that an error in addition has been made in the Congressional document referred to; the total number of skins derived from North-east Point in 1890 should read 6,592, instead of 5,007. This difference has, however, no bearing on the subject under discussion.

5 1st Cong., 2nd  
Sess., Senate Ex.  
Doc. No. 49.

Pages 78, 79. In respect to the question of the driving of seals in 1879 from the vicinity of rookeries previously reserved and exempted from driving.— Statements made on this subject (and with special reference to Zapadnic and Polavina rookeries) by the Commissioners are denied by the United States. In making these statements (though confirmation was obtained from other sources), reliance was evidently placed upon the official Reports of Mr. H. W. Elliott. In his Report bearing date 1880, Mr. Elliott, speaking of Zapadnic rookery and the hauling-grounds in its vicinity, says:—

Op. Cit., p. 55.

"The 'hollaschickie,' that sport here on the parade plateau, and, indeed, over all of the western extent of the English Bay hauling-grounds, have never been visited by the natives for the purpose of selecting killing drives since 1872, inasmuch as more seals than were wanted have always been procured from Zoltoi, Lukannon, and Lower Tolstoi points, which are all very close to the village."

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\* In a Table printed in the Appendix to the United States' Counter-Case (p. 422), the number of seals killed here in 1889 is given as 28,794. The difference between this statement and the official statement quoted by the British Commissioners is not explained.



Respecting Polavina he says in the same Pages 78, 79.  
Report :—

"For the reason cited in a similar example at Zapadnie, *Op. Cit.*, p. 56. no 'holluschickie' have been driven from this point since 1872, though it is one of the easiest worked. It was in the Russian times a pet sealing-ground with them."

Mr. Elliott investigated the circumstances in 1872-74, and revisited the islands in 1876. When he again revisited the islands in 1890, he states that he found that driving had been extended to Zapadnie and Polavina rookeries in 1879, as quoted by the British Commissioners.

*British Case, Appendix, vol. iii, Part III. "United States No. 2 (1891)," pp. 57-59.*

During all his stays upon and visits to the Pribyloff Islands, Mr. Elliott was specially engaged in an official capacity in investigating the conditions of seal life there for the United States. The Commissioners were thus fully justified in assuming that the statements made by him in official Reports were correct.

But the United States have, in the Appendix to their Case, published, for the first time, certain Tables by Mr. Max Heilbronner, Secretary of the Alaska Commercial Company, relating to the killing in each year from the various rookeries. These are now referred to as contradicting the statements quoted by the Commissioners. It may be that the Secretary of the Company has possessed fuller information in this case than the Government officials, but it is significant that the official annual Reports of the Government are not here referred to. In these Tables Polavina is designated "Half-way Point," and Zapadnie appears to be included under the general designation of "South-west Bay." As the numbers are not in all cases given separately for these two places, it is absolutely impossible to make a statement from the Tables of the actual number of seals taken in each in every year, but the number of recorded "drives" may be taken as an index of the increasing extent of driving from these places in later years. The number of drives as now stated by the United States is as follows :—

*Appendix, vol. ii, pp. 117-127, 167-172.*

*United States' Case, Appendix, vol. ii, pp. 117-127.*

Pages 78, 79.

Year.	South-west Bay (including Zapadnie).	Half-way Point (Polovina).
1871 .. ..	4	1
1872 .. ..	1	1
1873 .. ..	3	0
1874 .. ..	6	0
1875 .. ..	7	1
1876 .. ..	8	1
1877 .. ..	6	3
1878 .. ..	6	3
1879 .. ..	7	3
1880 .. ..	5	4
1881 .. ..	5	4
1882 .. ..	10	5
1883 .. ..	9	5
1884 .. ..	9	9
1885 .. ..	6	8
1886 .. ..	12	9
1887 .. ..	8	6
1888 .. ..	8	8
1889 .. ..	8	7

The substantial accuracy of the remarks made by the British Commissioners as to the increased area of driving in later years, irrespective of Mr. Elliott's very definite statements on the subject, is further shown by the evidence of Mr. H. H. McIntyre, appended to the United States' Case, though this evidence is intended for another purpose, *i.e.*, to explain away the alleged deficiency in number of killable seals which occurred in 1879. Mr. McIntyre says:—

United States' Case, Appendix, vol. ii, p. 50.

"In order that the selection should be made from as large a number as possible, and to satisfy the requirements of the Treasury Agents in charge, who demanded that all the rookeries be worked in regular rotation, *we commenced in 1879 or 1880 to 'drive' with greater frequency from the more distant and less accessible grounds. . . .* With this exception there was no change in the manner of conducting the business from 1870 to 1889."

United States' Case, Appendix, vol. i, pp. 407, 408.

Professor Allen also says:—

"During the last two or three years, however, and in consequence of the decline from the former status of the herd, it has been necessary to lower the age of seals selected for killing, and also to redrive portions of the herd."

Page 79.

The Counter-Case of the United States next states that "the question of over-driving and redriving has already been fully treated of in the Case of the United States." It is here passed over practically without remark, except that, "if any occurred," it was directly due to pelagic

sealing. This admission confirms the statement of the British Commissioners, to the effect that the "quota" to be taken on the Pribyloff Islands had become practically fixed, and that no regard to seal life was had in endeavouring to fill the "quota." Page 70.

If any rights exist to seal on the high seas, it is absurd to charge the pelagic sealers with the results of the over-driving practised to secure a "quota" on the islands. Even if no such right exists, it shows an entire absence of proper care, to have permitted damaging practices on the islands in the endeavour to secure a "quota," before the question of rights and protection had in any way been settled.

#### "PELAGIC SEALING."

It appears to be assumed by the United States, in dealing with pelagic sealing, that the statement that killing at sea is "indiscriminate"—i.e., that it includes both sexes—is sufficient in itself to condemn such sealing. The supposition that large numbers of males alone might be killed without any prejudicial effect on seal life, and which arose during the Russian régime, appears to have still a very firm hold; while the principles of "natural selection" which have come to be recognized during the past twenty or thirty years, with other scientific facts alluded to in the Report of the British Commissioners and in the Counter-Case of Her Britannic Majesty, appear to be disregarded in the Counter-Case of the United States. Further, the commonly recognized fact that, even in the case of *domestic* animals, as well as in that of wild animals artificially preserved, large numbers of females are usually and necessarily killed, is ignored. Page 80.

Care is further taken, in this first paragraph, to endeavour to prejudice the Court by characterizing the evidence quoted by the British Commissioners as "interested." It will be observed, however, that the British Commissioners have fully recognized and allowed for any motives of self-interest which may have affected the evidence obtained, and that in their endeavour to present the facts, they have not assumed as indubitably correct all the statements made to them.

United States' Case, p. 131.

British Commissioners' Report, paras. 627, 634.

Page 80.

It is next stated in the United States' Counter-Case that the "three propositions," forming the "apology" of the British Commissioners for pelagic sealing, will be treated "in the order of their importance as recognized in the Report."

No apology is offered or required for killing animals at large upon the ocean, in the absence of International Agreements prohibiting such killing. As to the order followed in the United States' Counter-Case, it appears to be based on that referred to in paragraph 77 of the British Commissioners' Report, where, however, two propositions, not three, are formulated, and these two are there stated to be the principal allegations of those opposed to pelagic sealing, not to represent the order of importance in fact. The actual order and wording of the headings found in the British Commissioners' Report under the chapter on pelagic sealing is as follows:—

Page 97 *et seq.*

- (a.) Origin and Development.
- (b.) Methods.
- (c.) Proportion of Seals lost.
- (d.) Composition of Catch.
- (e.) Future of the Industry.

The first subject selected for attempted rebuttal is thus expressed in the Counter-Case of the United States:—

*"1. That the percentage of female seals in the pelagic catch is not large."*

In the opening paragraph below this heading, is found one of numerous instances of insinuations as to motive on the part of the British Commissioners for which there is, in fact, no justification. Part of the evidence printed by the British Commissioners is characterized as—

"so-called 'evidence,' alleged to have been obtained from Indian hunters, . . . and in which there is a careful avoidance of names of informants."

Page 81.

But on the next page, the statement by the same Commissioners respecting the possible existence of self-interest in some of the witnesses examined by them, is endeavoured to be employed

as a means of minimizing the importance of that part of the evidence. Page 81.

It is scarcely necessary to state that the British Commissioners did not consider it their mission to procure sworn evidence on all subjects investigated by them. Their mission was purely scientific and practical, and on referring to the first part of their Report, it will be found that they fully recognized this fact. They write:—

British Commissioners' Report, para. 23.

"It may be observed further, that in obtaining evidence from persons of experience or knowledge of the subject, we adopted, in general, the informal plan of free interviews and independent conversation. In this way we acquired very distinct and trustworthy knowledge of their opinions and experiences."

In so doing, they followed the same plan with that adopted by their colleagues from the United States, who similarly write:—

"Although the testimony gathered by us on this and other points was not given under oath, its value, in our judgment, is not in the least lessened by that fact. . . . In short, the investigation was conducted precisely as it would have been had the question been one of scientific rather than diplomatic importance."

United States' Case, pp. 334, 335.

The only difference which must be noted between the procedure of the British and United States' Commissioners, is that indicated in the last-quoted remark, *i.e.*, that the United States' Commissioners appear to have regarded the questions examined by them rather as of diplomatic than as of scientific importance, though adopting a scientific method of investigation.

There can be no doubt that in both cases, if further particulars respecting the evidence collected should be required, these can be supplied by reference to the notes of interviews, &c., held by the respective Commissioners at the time; and it is submitted that statements made in good faith, and respecting matters of fact or evidence, should be accepted as true to the best of the knowledge and belief of the Commissioners specially appointed to investigate the subject, whether those of Great Britain or those of the United States.

It is perhaps unnecessary again to draw attention to the manner in which a few words,

Page 81. separated from their context and incorporated in a new sentence, may be made to convey a false impression; but another instance of this occurs in the particular page of the United States' Counter-Case here dealt with. The British Commissioners write:—

British Commissioners' Report, para. 674.

"And while it is *not maintained* that the evidence of such practical sealers is entirely untingered by motives of personal interest, it must be evident that these men know more on the subject than any others."

This statement is employed in the following manner in the Counter-Case of the United States:—

United States' Counter-Case, p. 81.

"The second class of testimony presented to *sustain the position of the Report* is obtained from sworn statements of Canadian sealers, which the Commissioners admit are not 'entirely untingered by motives of personal interest.'"

On the next page we find the evidence cited by the British Commissioners further characterized as *admittedly untrustworthy*.

Referring to the proportion of females taken in the pelagic catch, and evidence on this point presented by the British Commissioners, objection is made on the part of the United States that this evidence varies greatly in different cases. The British Commissioners, however, particularly note this very point, writing:—

British Commissioners' Report, para. 634.  
See also para. 648.

"It is only natural, and is entirely in accord with what might be expected, that the proportions of seals by sexes and ages should be found to differ very considerably in different instances, even in a single year, in conformity with the dates or places in which the greater proportion of any particular catch was secured, and the kind of seals in each case fallen in with."

And add:—

"The very fact that these statements, though taken at different times, and while varying considerably from the point of view of numerical proportions, tally very well in the main, one with another, is an inherent proof of their credibility."

Pages 81, 82. The ensuing argument, directed against this evidence, and in which it is endeavoured to contrast it with the statement that the methods and practices on the Pribyloff Islands have resulted in the existence of a large surplus of females, is based

on various assumptions, and is difficult to follow, as these assumptions are not set out. The most important of them, however, appears to be;—that the proportion between males and females in the catch of any vessel should represent the average proportion of males and females existing everywhere, or at the least that a mean of the catches should represent such average. The explanations given in the British Commissioners' Report (some of which have just been quoted), are, however, sufficient to show that the first is not a reasonable hypothesis; while, as to the second, it is quite conceivable that pelagic sealing might, as a whole, be carried on at such times or in such places as to include a relatively very great proportion of any particular age or sex of seals.

The further statement made by the British Commissioners, to the effect that an abnormal abundance of females obtains at the present time, is characterized as not substantiated by facts advanced by the Commissioners. The facts relied upon are, it is true, not recapitulated in this particular part of the Report, but in Chapter IV (p. 114 *et seq.*) ample details on this subject will be found.

But this is still more clearly shown by a comparison of the possible number of skins of bearing females contained in the whole North-west catch for twenty years, as included in the British Counter-Case. This possible proportion is much lower than that given in the statements of sealers quoted by the British Commissioners, which statements refer to the past few years only.

British Counter-Case, p. 200, and *post*, p. 110.

In addition, in the Counter-Case presented by the British Government, notice is taken of the great number of barren females now found at sea, a fact directly bearing out the evidence of other kinds already obtained on this subject.

*Ibid.*, p. 251 *et seq.*

As to the nature of the "proof" offered in the Case of the United States respecting the number of female skins contained in the pelagic catch, remarks have already been made in the British Counter-Case such as to show that this is entirely inconclusive and untrustworthy.

Pages 82, 83.

British Counter-Case, p. 138 *et seq.*

To corroborate the assertions made in the Case of the United States, Captain Hooper, M. Malonavonski, Mr. Grebnitsky, and Messrs. C. W. Martin and Sons are now further adduced.

The United States' revenue-cutter "Corwin,"



Pages 82, 83. Captain Hooper, was occupied for twenty-six days in hunting seals during the summer of 1802. The whole number of seals killed, however, appears to have been forty-one, a result so small as to evidence either inexperienced or incompetent hunters. Of this number, twenty-nine are stated to have been females, a proportion which does not differ very largely from that given by several of the pelagic sealers, but which upon so small a total number means little as compared with the experience embodied in their statements.

United States' Counter-Case, Appendix, p. 217.

It will further be observed, on turning to the Table prepared by Captain Hooper, that nearly half (nineteen) of the seals taken were obtained within 20 miles of the Pribyloff Islands, and that no data are given as to the time occupied in the capture of seals at different distances from the islands, such as to show what the respective proportions of males and females might have been in the case of commercial sealing. Neither is any statement made to the effect that seals were taken impartially, as met with.

Page 83.

M. Malonavonski is next quoted as affirming that over 90 per cent. of 2,700 skins taken from vessels seized in the vicinity of the Commander Islands were those of females. His evidence on this subject will, however, be found to be of the most indefinite character.

Ibid., p. 374.

Mr. Grebnitsky is next quoted as affirming that 96 per cent. of the seals taken at sea are females! This gentleman has had long experience as Superintendent of the Commander Islands, and any statement made by him must be received with respect, but we may be pardoned for doubting such a statement as that here attributed to him, particularly as it is unsupported by any details of fact, and is entirely in opposition to other evidence.

Respecting whose connection with the sealing industry, see British Counter-Case, Appendix, vol. ii, p. 233; and United States' Case, p. 267.

British Counter-Case, p. 308.

Messrs. C. W. Martin and Sons are next referred to respecting the sex of a lot of 1,025 skins supposed by them to have been taken at sea, and received from Petropaulovski. It is stated that these were part of the 2,700 skins seized by Russian cruizers on the Asiatic side of the Pacific, and upon which Messrs. Malonavonski and Grebnitsky based their statements. Messrs. Martin and Sons, however, give the percentage of females at 83.76; of males, 1.66; and doubtful, 14.58, though M. Malonavonski had affirmed that

an expert found *no difficulty* in separating the male and female skins in the original lot of 2,700.

Page 83.

Lastly, certain depositions of a Mr. Behlow are referred to in this connection, in which he professes to separate male and female skins contained in certain relatively small catches brought to San Francisco in 1892.

It will subsequently be shown that the statements and depositions of this witness are wholly untrustworthy. See Appendix II, post.

Page 84.

Reviewing the evidence brought forward on the part of the United States in their Counter-Case on the subject of the proportion of females in the pelagic catch, we may, at the least, set the statements of the few witnesses cited, against those of a like number of witnesses representing a similar number of seals among the numerous witnesses cited by Great Britain. The whole number of seals spoken of by Captain Hooper is too small to enable any just deduction to be arrived at; while the other witnesses referred to by the United States are, without exception, interested in the industry of sealing upon the breeding-islands, and, therefore, it may reasonably be supposed, likewise interested in decrying all sealing at sea.

It has already been stated (p. 104) that the killing of females *per se* is not admitted to be reprehensible, while the complete analysis of the skins resulting from the pelagic catch during the past twenty years, shows conclusively that not over 38 per cent. of these could by any possibility have been bearing females.\* It has further been stated that one of the most important objects of any regulations which may be proposed is that of eliminating the last-mentioned element from the pelagic catch.

British Commissioners' Report, para. 80.

Under the circumstances mentioned, it can be of little utility to pursue in detail any controversy respecting the composition of various individual small lots of skins such as there cited on the part of the United States, even if the sexes in-

\* At p. 200 of the British Counter-Case this figure is given at 50 per cent., but the calculation there given is based upon the assumption of only 15 per cent. of the catch being males, and this percentage occurring uniformly throughout the whole bulk. As a matter of fact, there are 20 per cent. of the catch which are too large to be the skins of females. The figure above given is based on a recalculation admitting this correction.

Page 84. eluded in them had been correctly determined, and the subject may rightly be dismissed here.

The second proposition formulated for denial by the United States is in their Counter-Case presented as follows:—

"2. That pelagic sealing in Behring Sea is not so destructive to seal life as pelagic sealing in the North Pacific."

British Commissioners' Report, paras. 138, 648.

The statement here attributed by the United States' to the British Commissioners was not, however, made by them. They have stated that the spring catch was more destructive than any other in proportion to the number of skins obtained; but the spring catch is not the equivalent of the entire catch made to the south of Behring Sea, which embraces much of the summer, and lasts till about the end of June. The statement actually made by the British Commissioners, as employed as a basis of argument in the United States' Case, is therefore not only inverted, but substantially changed.

British Commissioners' Report, paras. 645-647. British Counter-Case, Appendix, vol. ii, pp. 14-20.

The circumstance that practically no gravid females are taken by pelagic sealers in Behring Sea is characterized as an "assumption" of the British Commissioners, though it rests on ample evidence.

The question as to the killing of females in milk in Behring Sea, and the effect of this upon pups on shore, next alluded to in the United States' Counter-Case, will be discussed; in connection with the more detailed treatment of this subject found in following pages of the Counter-Case of the United States.

Page 85.

The argument advanced in this page of the United States' Counter-Case against the general proposition at the head of this Chapter, depends on a series of assumptions, to discuss which is unnecessary, because they have elsewhere been treated at length. The fallacy that the killing of females is in itself reprehensible appears to underlie the statements, but it is in addition apparently assumed that all females met with at sea are fertile, *i.e.*, that there are no virgin or barren females; that in stating the period of gestation of the fur-seal as nearly twelve months, full twelve months is meant; that, for instance, eleven months would

British Counter-Case, pp. 198, 251-257, 145.

not be "nearly twelve months," that all females are covered on land, and that a female just fertilized may be described as a "gravid female," the injury to seal life being equally great in the killing of each class.

It is next asserted that the "designed implication" of certain statements made by the British Commissioners is to show that "very few nursing females are taken by pelagic sealers," and is based on "pure assumption," a reference being given to para. 649 of their Report. But in the immediately preceding paragraphs of the Report, proof has been adduced to this effect, and further proof is brought forward and discussed in the Counter-Case of Great Britain and its Appendices to the same effect, and to the effect that such few females in milk as may be killed in Behring Sea are often "running dry." It is also shown that their presence at sea may be accounted for by various causes of disturbance upon the breeding-islands, in most, if not in all cases. The evidence of Captain Hooper, referred to in this connection by the United States (on the strength of the forty-one seals killed by him), in showing that a considerable proportion of seals in milk killed were 200 miles from the Pribiloff Islands, goes far to prove that at least this proportion of such seals could no longer have had any interest in or regular connection with those islands, and tends to substantiate the remarks made by the British Commissioners, and those in the Counter-Case of Great Britain, on this subject.

On this and following pages of the United States' Counter-Case (to p. 93), an extended notice is given to the investigations of the British Commissioners on the subject of the mortality of young seals in 1891. Care is, however, first taken to describe these examinations as "cursory." The Commissioners are represented as endeavouring to "support a position," and it is added:—

"It is evident, from the efforts made and the theories advanced to explain this mortality that the Commissioners considered the presence of these bodies *prima facie* evidence of the fact they endeavour to disprove."

Introductory remarks of the above character scarcely lead to the belief that any impartial discussion of the facts noted and commented on by the British Commissioners is intended.

Page 85.

British Counter-Case, pp. 218, 219.

Ibid., Appendix, vol. ii, pp. 22, 23.

United States' Counter-Case, Appendix, p. 217.

British Commissioners' Report, para. 314.  
British Counter-Case, pp. 218, 219.

Page 86.

**Page 86.** This is fully borne out by what follows. It is stated :—

"These officials [the Commissioners] have, through some strange circumstance, been led into the belief that they were the first to observe this mortality among the pups on the rookeries, from which belief they draw the inference that 'the death of so many young seals on the islands in 1891 was wholly exceptional and unprecedented.'"

The explanation given in para. 346 of the British Commissioners' Report is sufficient to show that, in so far as they could ascertain by inquiry upon the islands in 1891, they *were* the first to observe and comment on the mortality in question. But if further evidence be required, it will be found that Mr. J. Stanley-Brown says :—

United States' Case, Appendix, vol. ii, p. 19.

"By the time the British Commissioners arrived [28th July] the dead pups were in sufficient abundance to attract their attention, and they are, I believe, under the impression that they first discovered them."

In a foregoing part of the same paragraph, however, Mr. Stanley-Brown had said :—

"*In the latter part of July 1891 my attention was called to a source of waste, the efficiency [sic] of which was most startlingly illustrated.*"

Ibid., p. 101.

But Mr. Milton Barnes, special employé of the United States' Treasury on St. Paul Island, is (except in regard to date) even more definite on this point. In a deposition furnished by him, and included in the Appendix to the United States' Case, he says :—

"One day, during the latter part of August or fore part of September last (exact date forgotten), Colonel Joseph Murray, one of the Treasury Agents, and myself, in company with the British Commissioners, Sir George Baden-Powell and Dr. Dawson, by boat visited one of the seal rookeries of that island, known as Tolstoi or English Bay. On arriving there our attention was at once attracted by the excessive number of dead seal pups, whose carcasses lay scattered profusely over the breeding-ground or sand beach bordering the rookery proper, and extending into the border of the rookery itself. *The strange sight occasioned much surmise at the time as to the probable cause of it.*"

Mr. Barnes then states that some days afterwards he went with Mr. Fowler to Polavina

rookery, where he found similar conditions with respect to mortality of young to prevail. He adds :— Page 86.

“This condition of the rookeries in this regard was for some time a common topic of conversation in the village by all parties, including the more intelligent ones among the natives,” &c. United States' Case, Appendix, vol. ii, p. 102.

The evidence referred to on this page of the United States' Counter-Case to endeavour to show the occurrence of an annually increasing number of dead pups since 1885, has already been treated in the Counter-Case of Great Britain, p. 208 *et seq.*, and has been there shown to be wholly inconclusive in that respect, and to rest on erroneous statements. Page 87.

The extracts above given are alone sufficient to show that the mortality in 1891 was unprecedented, as stated by the British Commissioners; and that it had not existed, as affirmed by the United States, for “several years.”

The statement as to the existence of the opinion on the islands that pups had died in former years because of the killing females at sea, is endeavoured to be supported by the retrospective affidavits already dealt with in that part of the British Counter-Case above referred to.

Much stress is here laid on the discovery of two passages in previous Reports, in which H. H. McIntyre and J. H. Moulton have made general statements to the effect that killing females at sea resulted in death of pups on the islands. No facts or instances are cited in support of these statements, to which no importance was attached at the time, and to which attention has only now been drawn. They are now brought prominently forward for the purpose of maintaining that the cause of the mortality of pups in 1891 alleged by the United States had long been recognized. It is there said :— Pages 88, 89.

“This explanation [death of mothers] of the cause of death of pup seals is not recognized by the Report except to contradict it.” Page 89.

As a matter of fact, the explanation referred to is discussed in some detail, and is found to be untenable by reason of the date of the mortality, and on other rational and fully explained grounds. British Commissioners' Report, para. 355.

Respecting the causes of death of young suggested as probable by the British Commissioners :

(a.) This is described in the United States'

Page 89. Counter-Case as "driving and killing of mothers." But while the British Commissioners state that it is quite possible that females were driven from their young, and—

"though turned away from the killing-grounds . . . never afterwards found their way back to their original breeding-places, but either went off to sea or landed elsewhere,"

they do not allege that the females so driven were *killed*. Messrs. J. Stanley-Brown and W. H. Williams are referred to as stating that no drives were made (in 1891) nearer to one of the rookeries (Tolstoi) on and about which dead pups were specially observed by the British Commissioners (in 1891) than an estimated distance of *a quarter of a mile*. No evidence is given to show that the collection of the drives was limited to this distance from the rookery, nor is it stated that either of these gentlemen ever saw one of the drives of 1891 collected. Although the drives taken from the vicinity of Tolstoi are recorded as drives from "Middle Hill," it must be remembered that the slopes of Middle Hill and Tolstoi are continuous, and the drivers doubtless go where the seals they were instructed to procure could be obtained.

United States' Case, p. 216.

(b.) *Epidemic Disease*.—This, it is stated, is treated of in the United States' Case. It is, however, in the place cited, merely stated that no sickness had been previously observed among the seals on the Pribyloff Islands, and that no dead adults were found. The British Commissioners themselves make a statement identical with the first (para. 32). As to the second, it does not necessarily follow that an epidemic fatal to young animals should be equally fatal in the case of adults.

Page 90.

British Commissioners' Report, paras. 331-333.

(c.) *Crushing of Pups in Stampedes*.—The assertion made by the United States that no evidence is given by the British Commissioners under this head is incorrect. The Commissioners quote statements from Bryant (Allen's Monograph) and Baron Nordenskjöld as to the facility with which stampedes may be caused, and their results. If further evidence as to the general timidity of the animals is required, this will be found in the British Counter-Case.

British Counter-Case, p. 113.

Pages 90, 91.

(d.) *Raids*.—The possibility of the occurrence of raids is not directly denied by the United States, though statements are made for the



purpose of minimizing their probability. It is further asserted that as the dead pups were found at several rookeries, several distinct raids would be required to account for their occurrence. It will be found, however, that large numbers of dead pups were discovered upon two rookeries only, both on St Paul Island, as explained by the British Commissioners.

Pages 90, 91.

British Commissioners' Report, paras. 346, 347.

The facility with which raids might be made without any knowledge on the part of the guardians of the islands is illustrated, however, by the following facts referring to raids made in 1890 and 1891, when more than ordinary precautions against raids were taken.

The master of the "Challenger" and two of his crew describe at length a raid on St. George Island, of which nothing was known at the time it was made.

British Counter-Case, Appendix, vol. ii, pp. 182, 184

One of the crew of the "Borealis" gives an account of the raid of that vessel on Zapadni Rookery, St. Paul Island, while a cutter, whose lights could be seen, was anchored within 2 miles of them. The raid was successfully made without anything being known of it on the islands. The same rookery was raided in the autumn of 1890 by the "Adele," and nothing was known of the raid by those on the islands.

Ibid., p. 182.

Colonel Murray, in an affidavit, refers to the two first-mentioned raids as if the people on the islands had been cognizant of them at the time, and as if one vessel had been at once seized, and the other but a short time afterwards, but a reference to the passages cited will show that the raids mentioned only became known to the authorities, indirectly, months after their occurrence.

United States' Counter-Case, Appendix, p. 379.  
British Counter-Case, Appendix, vol. ii, pp. 182-184.  
See also United States' Case, Appendix, vol. i, p. 503.

The bodies of pups examined by Dr. Ackerly were, as he admitted, too much decomposed for a correct autopsy. They were, further, those of pups which had died in September 1891 when no sealing-vessels remained in Behring Sea.

Page 91.

British Commissioners' Report, paras. 352, 353.

The body of a pup found dead by the British Commissioners was examined by Dr. Günther. This was in good condition, preserved in alcohol. Dr. Günther was unable to decide whether the absence of food or the condition of respiratory organs was the primary cause leading to death.

Ibid., paras. 353, 354.

Though it was at the request of Mr. Stanley-Brown that Dr. Ackerly's examination of the dead pups was made in 1891—and he was the Treasury Agent in charge of the Pribyloff Islands in 1892, and admits that in that year the number of dead

United States' Case, Appendix, vol. ii, p. 19.

Page 91.

United States'  
Counter-Case,  
p. 388.

pups on Tolstoi rookery was beyond the normal—no record is found in his affidavit of an examination in 1892 of any of the dead pups by any authority. He seeks, however, to account for the unusual mortality in 1892 by an entirely novel explanation, in which he states that the pups in learning to swim had become exhausted, and, wandering off and lying down to rest, were overlooked by their mothers. A comparison of the 1892 photographs of Tolstoi rookery with those of 1891, show that the dead pups covered approximately the same area in both years, and were the explanation now offered by Mr. Stanley-Brown the true one, it would also account for the mortality among the young seals in 1891. Mr. Stanley-Brown, however, states that—

Ibid., p. 389.

"the location and topographic character of this rookery have no counter-part elsewhere on the island;"

British Counter-  
Case, Appendix,  
vol. i, p. 146.

but as dead pups were reported to have been found in large numbers on another rookery on St. Paul in 1891, and Mr. Macoun reports as many on Polovina rookery as on Tolstoi in 1892, Mr. Stanley-Brown's explanation can hardly be the true one.

A glance at the photographs which accompany the British Counter-Case, will show that the ground on which dead pups are to be seen on Tolstoi rookery extends along practically the whole front of that rookery, and at the time the photographs were taken nearly all the living seals, old and young, were behind this area, so that Mr. Stanley-Brown's statement that he has—

"seen mother seals go up the entire slope seeking their pups"

may be taken as strictly true; but as they must have gone up this slope in any case, it can hardly be taken as evidence that the young ones had wandered away and so been lost. But if it be true that the pups on this part of the rookery-ground, which *must* be passed over by all seals going to any other part of it—

"lie down to rest, and sleep and are overlooked by their mothers returning from the sea,"

no better explanation could be given of the cause of the mortality among young seals on those parts of the rookeries, on some of which it is not as in this case necessary for the mothers to cross the ground upon which the dead pups occurred.

The statements as to a great decrease in the number of dead pups in 1892, as compared with 1891, made by United States, are in direct conflict with the observations of Mr. Macoun, and are contradicted also by the photographs taken in 1892 when compared with those of 1891.

Mr. Stanley-Brown is quoted on this page of the United States' Counter-Case as saying:—

“Dead pups were as conspicuous by their infrequency in 1892 as by their numerousness in 1891.”

This gentleman, however, left the Pribyloff Islands on the 14th August, 1892.

Dead pups were first observed to be numerous and photographed on Tolstoi by Mr. Macoun 19th August; though photographs taken 8th August by Mr. Maynard show that large numbers of dead pups were lying on that rookery at that date.

Mr. Stanley-Brown admits that in 1892 the number of dead pups on this rookery was “beyond the normal.” He devotes more than a page of his affidavit appended to the United States' Counter-Case to endeavouring to explain it, in the manner already noticed.

Colonel Murray, next quoted in the United States' Counter-Case, says:—

“I went over the rookeries carefully looking for dead pups. The largest number on any rookery occurred on Tolstoi, but here, as on the rookeries generally, but few of them were to be seen as compared with last year. This was the first time in my four seasons' residence on the islands that the number of dead pups was not greater than could be accounted for by natural causes.”

Colonel Murray gives no date. That his visit to Tolstoi was before the date of the departure of Mr. Stanley-Brown from the islands is evident, as Mr. Stanley-Brown, as above noted, describes the mortality as beyond the normal.

Mr. A. W. Lavender's statement as to the practical absence of dead pups on St. George in 1892 coincides with Mr. Macoun's observations. The same circumstance was particularly observed in the case of the similar mortality in 1891. And such mortality is referred to in none of the affidavits in Appendix to United States' Case which refer to St. George Island in that year. This circumstance, in fact, strongly supports the belief that the mortality in neither year could have been due to the killing of mothers at sea.

Page 91.

British Counter-Case, p. 213.  
Ibid., Appendix, vol. i, p. 146.

United States' Counter-Case, p. 385.

British Counter-Case, Appendix, vol. i, p. 146.

United States' Counter-Case, p. 388.

Ibid., p. 378.

Page 92.

British Counter-Case, Appendix, vol. i, p. 146.

British Counter-Case, p. 213.

British Commissioners' Report, para. 346 *et seq.*

Page 92.  
British Counter-  
Case, Appendix,  
vol. i, p. 145.

Professor Evermann's statement, next quoted in the United States' Counter-Case, as to the number of dead pups on Polavina rookery, refers to a visit made by him to that rookery early in the season (22nd July), in company with Mr. Macoun. His statement of number *seen at that time* practically agrees with that given by Mr. Macoun, who says—

Ibid., p. 146.

"Professor Evermann, . . . who was with me at this time, and who counted 129 dead pups, thought, with me that, if so many were to be seen at the outer edge of the rookery-ground, the whole number must be very great, and about a month later (20th August) I had ample proof that this was the case."

Ibid.

Mr. Macoun, however, further says that later in the season there were nearly or quite as many dead pups on Polavina rookery as on Tolstoi; and a native who was with him at the time of his visit told him that there were then more dead pups on Polavina than were on Tolstoi in 1891.

United States'  
Counter-Case,  
pp. 264-271.

Professor Evermann made but this one visit to Polavina (22nd July). He visited Tolstoi rookery the following day (23rd July), and finally left St. Paul Island (24th July) more than two weeks before the time dead pups in considerable number were first noted on Tolstoi rookery.

Page 93.

The statement made in the United States' Counter-Case to the effect that sealing-vessels were not present in Behring Sea in 1892, coincides with that specially adverted to in the British Counter-Case (p. 213); but it is maintained that the recurrence of a like mortality of pups in that year, absolutely confirms the deduction arrived at by the British Commissioners in 1891, that this could in no way be connected with pelagic sealing; and that it therefore cannot be interpreted in the manner now endeavoured to be done in the Counter-Case of the United States.

The alleged increase, next affirmed in the United States' Counter-Case, in number of dead pups on the Commander Islands in late years, is not confirmed by Mr. Macoun's inquiries on these islands made in 1892. No such increase was admitted, by those on the islands, to have occurred, though pelagic sealing had then for the first time been practised to a considerable extent in the vicinity of these islands

British Counter-  
Case, Appendix,  
vol. i, p. 148.

It is next stated in the United States' Counter-Case that—

“the destructiveness of the Behring Sea catch, as compared with that in the North Pacific, is further shown by the relative sizes of such catches.”

With the object of endeavouring to prove the assertion just quoted, attention is drawn to certain Tables contained in the Appendix to the United States' Counter-Case, compiled from statistics given in the British Commissioners' Report. In these Tables the annual totals of skins are correct, and the proportions taken within and without Behring Sea are also correct, — the number of vessels is correctly given in one instance; but, as the average catch per vessel and per day for the total number of years has apparently been obtained by the erroneous method of averaging the annual averages given by the Commissioners, none of these figures are correct. The following corrected Tables are therefore presented to take the place of those given in the United States' Counter-Case :—

United States'  
Counter-Case,  
Appendix, p. 411.

#### TABLES OF CATCHES.

##### Spring and Coast Catches.

Year.	Number of Vessels.	Number of Skins.	Average Number per Vessel.	Average Number per Day.
1889 .. .. .	22	12,371	562	4·3
1890 .. .. .	29	21,390	737	5·4
1891 .. .. .	42	20,727	493	3·6
Totals and averages for three years	93	54,488	586	4·3

##### Behring Sea Catches.

Year.	Number of Vessels.	Number of Skins.	Average Number per Vessel.	Average Number per Day.
1889 .. .. .	16	15,497	968	16·1
1890 .. .. .	23	18,165	789	13·1
1891 .. .. .	44	28,888	656	10·9
Totals and averages for three years	83	62,550	753	12·5

Pages 93, 94. But when it is attempted to deduce an average take per diem for each vessel from these figures, several important considerations are lost sight of. It is particularly to be noted that the conditions are such that the sealing voyages made to the south of the Strait of Fuca in the winter and early spring would not in themselves be remunerative. They are made because no other occupation offers for the sealing-vessels, while a certain advantage is to be gained by going early to sea, and thus securing the pick of the pelagic hunters. The diagram facing p. 22 of the British Commissioners' Report illustrates this very clearly. The circumstances are further explained in para. 583, and in para. 132 of the same Report, where it is shown that only the months of May and June are those in which large numbers of skins have so far usually been taken outside Behring Sea. Thus, a daily average based on the whole time during which a sealing-vessel is at sea, of which time some months are, as a rule, barely remunerative, does not afford any fair comparison of the number of seals taken in a given number of days without and within Behring Sea, nor of the "destructiveness" of the catch in the two areas. Unfortunately, the methods of conducting the industry have not enabled data to be obtained upon which a comparative Table of monthly catches of seals at sea can be drawn up.

United States' Counter-Case, Appendix, pp. 246, 247.

Page 94. The third proposition formulated by the United States for rebuttal is:—

*"3. That the waste of seal life resulting from pelagic sealing is insignificant."*

Pages 94, 95. Statements collected by the British Commissioners, and here referred to, which assert the enormous loss of seals by pelagic hunters, form part of a general discussion of losses. The British Commissioners explain that they have been at pains to collect and examine all the statements upon which a theory of great losses at sea have been based up to the date at which their Report was written. They have summarized these in para. 614 of their Report, thinking it better to trace such assertions back to their sources, rather than to depend on the rhetorical expressions of newspapers, &c., which afforded at the time the only other basis for the allegations of extraordinary losses at sea.

British Commissioners' Report, pp. 62, 614.

average  
number per  
day.

4.3  
5.4  
3.6

4.3

average  
number per  
day.

6.1  
3.1  
0.9

2.5

In proceeding to set out the testimony of persons who have actually engaged in pelagic sealing, the Commissioners point out that the interest of such persons is a factor to be allowed for; but they also point out that the statements are given over the signatures of those making them, in a formal way, and are to be considered of "a much higher order of accuracy" than those before referred to. Advantage is, however, taken, in the Counter-Case presented by the United States, of this critical remark on the part of the British Commissioners, to designate the evidence as that of "interested parties."

Page 95.

British Commissioners' Report, paras. 615-625.

The assertion is next made in the United States' Counter-Case that—

"the Commissioners then present [on the subject of losses of seals at sea] a number of statements collected from inexperienced individuals."

A reference to the paragraphs of the Commissioners' Report thus alluded to by the United States will show how entirely incorrect the assertion as to "inexperience" is.

It is scarcely necessary to pursue in detail the discussion of the facts respecting losses at sea, on this page of the United States' Counter-Case. A few observations may, however, be made upon it.

Page 96.

In introducing their Table, showing the actual numerical losses of seals by a number of sealers, the British Commissioners do not say—

"an endeavour was *then* made to 'elucidate the question,'" &c.

The statement made is as follows:—

"It has been endeavoured, however, *still further* to elucidate the question here considered by tabulating all the well-authenticated statements referring to the actual number of fur-seals shot, and the proportion lost."

British Commissioners' Report, para. 627.

Again, the white hunters do not—

"affirm that they lose but 4 per cent. of the seals they kill."

This percentage is a calculation based on the numbers of seals shot and lost, or shot and recovered, as stated by the hunters.

The affirmations as to the *proportion* lost are contained in the preceding statements, with respect to the value of which a remark made in the opening lines of para. 627 refers. The numerical statements here combined and tabulated represent nearly 10,000 seals, and no



Page 96.

British Counter-  
Case, Appendix,  
vol. ii, pp. 4, 5, 6.

criterion of similar accuracy had heretofore been offered on the subject under discussion. If any doubt remained, in view of this Table, as to the small percentage of seals actually lost, it is entirely removed by the still more extended Table of the same kind printed in the Appendix of the British Counter-Case.

It is here further stated in the United States' Counter-Case that—

"the Table entitled 'White Hunters' is averaged, while the Table entitled 'Indian Hunters' is not, for the obvious reason that these Indians appear to have lost twice as many seals as the whites, which is in direct contradiction of the statements quoted in the Report," &c.

The suggestion as to the reason why the Table entitled "Indian Hunters" is not averaged is wholly incorrect. In the first place, it includes but 389 seals in all, being a number too small to afford an average of much value; while, of this number, 184 (taken by three witnesses) are stated to have been secured without any loss. But as a matter of fact, if a correct percentage be struck from this small Table, it will be found that in taking 389 seals not more than 14, or 3.6 per cent., were lost by sinking. The statement made in the United States' Counter-Case that these Indians lost 8 out of every 100 has evidently been arrived at by adding together the few percentages that are given and dividing the total by the number of hunters, a method clearly erroneous.

Building upon this error, it is next attempted to show, that if Indians lose 8 (3.6) per cent. of the seals they kill, the white hunters lose five times as many, or 40 per cent. of the seals they kill. In support of this Captains Warren, Petit, and others, who say that Indians lose less than 1 per cent. while white hunters lose about 5 per cent., are quoted; but on referring to the affidavits made by these gentlemen, it will be seen that the loss by Indians mentioned by them, refers to seals killed with the spear, and such losses are not properly comparable with those resulting from the use of the gun. The Table of losses by Indians presented by the British Commissioners shows their loss when using shot-guns.

British Case  
Appendix, vol. iii,  
"United States  
No. 2 (1890),"  
p. 355; British  
Commissioners'  
Report, Appendix,  
p. 221.

Page 97.

Attention is then called by the United States, on the next page of their Counter-Case, to the circumstance that it is not definitely stated in each case by the British Commissioners whether the seals lost are those lost by sinking

before recovery, when killed, or whether such as may have escaped after having been wounded are included. The available data were unfortunately not sufficient to determine this with accuracy in all cases, but in view of the statement advanced in the Case of the United States, to the effect that 66 per cent. of all seals killed are lost by sinking before recovery, the element of uncertainty thus introduced is too minute to be of importance. As it stands, the Table is sufficient to show that the statement made on this subject in the case of the United States is wholly incorrect.

Page 97.

United States' Case, p. 196.

In later statements of sealers care has, however, been taken to separate the two sources of loss above alluded to, and in eliminating the loss due to the escape of wounded seals, that resulting from sinking alone becomes reduced (on a much larger number of seals) to about 3.1 per cent.

British Counter-Case, Appendix, vol. ii, p. 6.

A further reference is then made by the United States to the omission by the British Commissioners of any statistics respecting the loss of wounded seals which may escape capture. This is a subject upon which it is evidently impossible to obtain precise figures. The Commissioners' reference in this connection to the number of shots found in seals killed upon the Pribyloff Islands is next criticized. It is said:—

See remarks in British Counter-Case, p. 191.]

“The notion that the carcass of every seal killed on the islands is searched for encysted bullets is sufficiently absurd, but it seems to be assumed in the reasoning of the Commissioners.”

Page 98.

It will, however, be found, on referring to this allusion by the Commissioners, that allowance was made for the causes referred to by the United States.

British Commissioners' Report, para. 628.

In later statements published in connection with the British Counter-Case, care has been taken to obtain all information possible on the subject of seals shot and wounded, and which escape; and though, as above noted, it is a subject not susceptible of accurate numerical treatment, the number so lost is found to be exceedingly small.

British Counter-Case, pp. 192, 193.

Ibid., Appendix, vol. ii, pp. 11-13.

Still further, as stated in the British Counter-Case, it is not known that the loss of a certain proportion of wounded wild animals has ever previously been advanced as a reason for the disuse of the gun as a means of taking such animals.

British Counter-Case, p. 191.

Page 98.  
United States'  
Counter-Case,  
Appendix,  
pp. 394, 210.

Mr. Townsend, who was attached to the steamer "Corwin" during the summer of 1892, volunteered to act as seal-hunter, and is quoted in support of the assertion made by the United States, that the number of seals lost by wounding is great. His experiments as a "pelagic sealer" are too few and too unskilled to afford any useful evidence on the subject.

Ibid., p. 398.

A part, at least, of Mr. Townsend's loss by wounding is accounted for when he says, referring to the wounded seals which escaped:—

"At first I blamed the ineffectual firing of the cartridges, but the cartridges proved all right as soon as I learned to aim at the head, and not at the animal as a whole."

Ibid., p. 208 *et seq.*

An analysis of Captain Hooper's Report, and the Table accompanying it, shows that between the 27th July and the 10th August, when one of the seal-hunters carried by the "Corwin" was in Unalaska, and the other was unwell, Mr. Townsend and a quartermaster acted as hunters and took eighteen seals, losing four by sinking. These four were killed from the dingy, a small, clumsy ship's boat, in no way adapted for seal-hunting, in charge of a man with one day's experience as a seal-hunter.

See British Counter-Case, Appendix, vol. 1, p. 155.

British Counter-Case, Appendix, vol. ii, p. 134.

Between the 10th August and the 21st August eighteen seals were captured by Hodgson the seal-hunter; in taking these he lost but one by sinking, of which he says: "That one I shot at a long distance, from 45 to 50 yards." Five other seals were taken during this time, but by whom is not stated, presumably by Mr. Townsend or the "quartermaster," and one was lost by sinking. Captain Hooper then says: "Our total loss by sinking and wounding was 36 per cent." But in what way a knowledge was gained that any seals were seriously wounded, or wounded at all, and so *lost*, is not stated. No reference is made in the United States' Counter-Case to the sealing operations carried on by the United States' ship "Rush" during the month of August, which resulted in the taking of seven seals, with none lost by sinking, though five were reported to have been wounded; how this was known is not stated.

United States'  
Counter-Case,  
Appendix, p. 234.

Page 99.

In view of such statements as those above noticed, the United States here sum up by denying—(1) that the percentage of female seals in the pelagic catch is not large; (2) that pelagic sealing in Behring Sea is not as destructive to

seal life as in the North Pacific; and (3) that the waste of life resulting from pelagic sealing is insignificant.

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"SECOND."

"MATTERS UPON WHICH THE REPORT RELIES TO ESTABLISH CONCLUSIONS ADVANCED THEREIN, AND TO FORMULATE THE REGULATIONS RECOMMENDED, WHICH MATTERS HAVE NOT BEEN DEALT WITH IN THE CASE OF THE UNITED STATES."

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"HABITS OF THE FUR-SEALS."

"1. *That the Alaskan Seal-herd has a definite winter habitat.*"

The title above quoted, given to this section of the United States' Counter-Case, which is stated to be in discussion of a proposition conveyed in the Report of the British Commissioners, contains the expression "Alaskan seal-herd," which it has been pointed out in the British Counter-Case is in its terms wholly misleading, and is not admitted as an appropriate name for the fursals of the eastern part of the North Pacific.

Page 100.

British Counter-Case, p. 119.

It is to be noted that the migration chart (No. 3) originally presented with the United States' Case is incorrect, as is shown by the changes introduced in the new chart now substituted for the first in the Counter-Case of the United States. This latter chart approximates more nearly to that originally presented by the British Commissioners, but in the light of evidence obtained by these Commissioners and that afforded by additional facts set forth in the British Counter-Case, it still requires further correction.

It is particularly to be noted, that neither the migration charts produced by the United States is vouched for by any scientific or expert authority. They are said merely to be "compilations based on evidence," &c. Though both charts (with other maps contained in the United States' Case and Counter-Case) bear the signature of T. C. Mendenhall, Superintendent of the United States' Coast and Geodetic Survey, this is purely formal and is attached as a matter of

Page 100. routine to maps issued from the Department in question, and not as in any way vouching the accuracy of the data from which the maps are compiled.

In this respect, the map prepared and presented by the British Commissioners differs widely. It is explained and adopted by them in their Report as correct to the best of their knowledge and belief. As the British Commissioners make themselves thus personally responsible for their map, the remarks made in the United States' Counter-Case as to the absence of detailed evidence upon which the map is based are not justified.

Page 101. The peculiar method of argument employed in the United States' Counter-Case, by which any deduction arrived at by the British Commissioners is characterized as a "theoretical proposition" or "position," and is discussed before the facts obtained are noticed, is again well exemplified on this page.

It is thus under this head, in the first place, asserted by the United States that—

"the *theoretical proposition* of an animal possessing two homes is contrary to what has been observed in respect to the habits of animals in general."

British Counter-Case, p. 152.

As to this proposition, it is only necessary to refer to the interesting statement on this subject made by Dr. Merriam, one of the United States' Commissioners, writing as a naturalist; and it is confidently affirmed that no unprejudiced naturalist will be found to deny the existence of two "homes" in the case of a regularly migratory animal.

"Forum," November 1889.

Dr. Merriam's remarks, here particularly referred to, relate to migratory birds, the analogy between which and the fur-seal has been clearly pointed out by Professor Angell. If the "home" of any animal be merely its breeding resort, any rights which may be supposed to flow from the possession of such "home" would rest in the case of many of the migratory birds, (and particularly of the economically important water-fowl) of North America, exclusively in Canada.

If, again, the term "home" be considered as equivalent to that of "habitat," as technically employed by naturalists, it will be found that the most trustworthy and eminent authorities are united in defining the habitat of a migratory

animal as including the whole of the area over which it normally ranges. Page 101.

The statement made by the British Commissioners, as the result of their investigations, in respect to the summer and winter "homes" of the fur-seal, is next found fault with because the names of their informants are not specifically detailed. A reference to the British Commissioners' Report will show that they have given, in what is believed to be sufficiently great detail, an account of the evidence upon which the "winter home" of the fur-seals has been defined by them. It is not true that the names of their informants are not given. A number of these informants are named, and the detailed statements of some of them are included in the Appendix to the Report. The facts, ascertained in interviews with natives along the coast, are given in abstract.

British Commissioners' Report, paras. 175-187.

On the part of Great Britain, no such imputations are made respecting the basis of the migration-maps offered in the Case and Counter-Case of the United States. It is in fact believed that the errors occurring in the first, and those which still remain in the second, editions of this map are due merely to imperfect information, and a reference to the data upon which these maps are constructed fully bears out this belief.

How the statement can be made on this page of the United States' Counter-Case, that the British Commissioners "entirely overlooked" the important fact that full-grown bull seals are not found to the south of the 50th parallel, is inexplicable. This fact was ascertained as the result of their own investigations. It is clearly set forth in para. 193 of their Report, and characterized there as a "noteworthy and interesting fact."

The further statement that the Commissioners do not anywhere state—

"that they ever heard of a full-grown male below the 56th parallel, the assumed northern limit of the winter habitat which they have created,"

is broadly incorrect, as a reference to the Report will show.

British Commissioners' Report, paras. 172-180.

Page 102.

As the line drawn on the new migration-chart now offered by the United States to represent the southern limit of the range of full-grown males is not supported by any evidence, it appears unnecessary to follow the argument based on this, and on the erroneous statement just referred to; but it may be pointed out, that even on the

Page 102. incorrect assumption made, i.e., that full-grown bulls are seldom seen south of Baranoff Island, and that the "winter home," referred to by the British Commissioners, is therefore not that of the full-grown males:—

1. That this does not assist the further assertion made to depend on it that such males have no "home" but the Pribyloff Islands; and

2. That whatever rights may flow from position, proximity of territory, or food consumed by the fur-seals, may be held equally on animals of either sex or any age, the number being the principal consideration, particularly in respect to the consumption of food fishes.

Pages 102,  
103.

Stress is laid in the United States' Counter-Case on the fact that sealing is conducted to a certain extent southward along the North American coast, as far as California, and it appears to be considered that this fact invalidates the migration-map printed in the British Commissioners' Report. An examination of this map and of the Report will, however, show that it has been fully recognized, and was considered and particularly mentioned by the Commissioners. It was very clearly not the purpose of the Commissioners in this map to indicate the whole vast region of ocean which might at any time be resorted to by any fur-seals, but to distinguish and make plain, as the facts obtained by them enabled them to do, the principal resorts of the fur-seal at various seasons, and the main routes covered during its migration. Further evidence since obtained tends fully to confirm these main facts as represented in the migration-map of the British Commissioners.

British Commissioners' Report, Map No. II, and paras. 562, 596.

British Counter-Case, Appendix, vol. II, pp. 43-139.  
United States' Case, p. 129.

It will further be remembered, that in the Case of the United States, evidence is brought forward to show that the Californian fur-seal is an animal wholly different from the northern fur-seal proper; while the British Commissioners, though not aware of the conclusions at which Professor Allen was about to arrive on this subject, have themselves independently recorded their belief that the fur-seals noted as breeding on the Californian coast could not well have taken part in the main migration.

Ibid., Appendix, vol. I, p. 406

British Commissioners' Report, paras. 190, 191

Page 104.

The statement made on this page of the United States' Counter-Case, and based on evidence quoted by the British Commissioners, that Captains Kelly and Petit have followed the seals "along" the British Columbian coast, has nothing



to do with the subject under discussion, for it is fully understood and explained in the British Commissioners' Report that a northward movement sets in among the seals in the spring.

The further statement that—

"the distribution of the Alaskan seal-herd is much more scattered during the winter months than is implied by the Report, and the range of position of the herd is much further south and west than appears on the Commissioners' chart of migration,"

shows merely a misconception of the nature of these statements and of that chart. No chart, map, or diagram showing the result of observations of natural phenomena, such as those of migration, winds, rainfall, &c., in a general way, is so framed as to include all exceptional cases.

It is of interest to note, by the statements made on this page of the Counter-Case, that the United States—twenty-five years after having come into possession of Alaska—have in 1892 for the first time taken some measures to ascertain the migration-routes of the fur-seal; and though the investigations thus carried out by Captain Hooper, in a single vessel, do not afford evidence of a character comparable with that obtained by the British Commissioners from the numerous pelagic sealers and the native peoples inhabiting the coasts, they, nevertheless, possess some points of interest.

These investigations are referred to in a footnote to this page of the United States' Counter-Case, and it will be found on consulting Captain Hooper's Report, in the Appendix, that wherever he speaks of actual observations, his statements are in accord with those of the British Commissioners. He thus writes :—

"But a *small part* of the entire herd goes to the coasts of California and Oregon. *Many seals reach the coast further north*, some of them coming out through the passes, but going no doubt direct to the coast of Washington, and even further north. In 1886, during a passage in the United States' revenue-steamer "Rush," from Puget Sound to Unalaska, where we arrived on the 19th January, I saw fur-seals nearly every day, the vessel having passed through the herd then on its migration from the passes to the coast, and extending entirely across the Pacific Ocean."

United States'  
Counter-Case,  
Appendix, pp. 232,  
370.

Captain Hooper does not state whether the voyage referred to was made outside or inside Vancouver and the Queen Charlotte Islands, but

Page 104. in either case his observations accord perfectly with those depended on by the British Commissioners.

United States' Counter-Case, Appendix, pp. 232, 370.

British Commissioners' Report, paras. 209, 224, 228.

British Counter-Case, p. 152.

He further states, in two places, that the arrival (or appearance) of seals upon the coast is directly related to that of the coming of the smelts, herring, and idachan. This statement may be compared with those made in the British Commissioners' Report and in the British Counter-Case, with which it fully accords.

As the statements made by Captain Hooper appear to be relied upon by the United States in connection with that part of the migration-route of the fur-seal which lies to the south of the Aleutian Islands, and to have been employed in the construction of the revised migration-map presented with their Counter-Case, it may be interesting to note that Captain Hooper in 1892 left Unalaska on the 10th November, and arrived in San Francisco some time before the 21st November, when his Report was made. On the passage he saw but two seals.

United States' Counter-Case, Appendix, pp. 228, 233.

Page 105.

Captain Ferguson is, however, also quoted to express his belief that there must be an "immense feeding-ground" of fur-seals between latitude  $40^{\circ}$  and  $42^{\circ}$  north and longitude  $172^{\circ}$  and  $135^{\circ}$  west. He saw no fur-seals there himself, but quotes the reports of vessels (not named) which are stated to have seen seals in this region. From the evidence printed in the British Counter-Case, it is very probable that Captain Ferguson may be correct in his conjecture that a certain or even a considerable number of fur-seals may often be found in the region specified, but this in no way affects the general facts as to the migration of the main bodies of the seals of the North Pacific. So far as it goes, it assists to bear out the evidence relating to the intermingling of the seals of both sides of that ocean during the winter months, and also the statements as to the essentially pelagic habits of the seals.

British Counter-Case, pp. 137, 178.

The "data collected and mentioned above" are those just referred to, and their extremely scanty character fully justifies the doubts expressed as to the trustworthiness of some of the indications of the new version of a migration-map presented with the Counter-Case of the United States.

It must be explained, that the criticism thus made is not directed to all the indications of the

map; but it is confidently maintained that no substantial evidence has been adduced to verify that part of these indications which shows the fur-seals, after having left the territory of the United States on the Pribyloff Islands, navigating in a body directly to that part of the west coast of North America which is comprised in the territory of the same Power to the south of the Canadian coast.

Page 105.

It may also be noted, that no attempt is made on the map in question to show the general distribution of the seals in Behring Sea and along the Aleutian chain during the summer months.

In this connection it is further important to observe, that on another map, which purports to give details respecting seals observed by cruizers in Behring Sea in 1802, an important error has occurred, in consequence of which seals seen in three places *west* of the 180th meridian have been placed at corresponding distances *east* of that meridian (or in west instead of east longitude). The error is more important having regard to the small number of cruises made to the west of this meridian. The observations referred to are those of the "Yorktown." No notes are given respecting cruises made to the west of the 180th meridian in the same year by two other United States' vessels, the "Ranger" and the "Mohican."

The logs given in the Appendix (pp. 400-408) cover but a small part of the cruises shown on Chart IV of the United States' Counter-Case.

The eighty affidavits of natives collected by Captain Hooper in the Aleutian Islands, while engaged in investigating the range of the fur-seal, though these would be of material interest, have not been produced by the United States.

United States'  
Counter-Case,  
Appendix, p. 228.

*"2. That the Alaskan Seal-herd has changed its habits as a result of disturbance on the breeding-islands and of pelagic sealing."*

As in previous cases, the discussion of the evidence and conclusions of the British Commissioners given under this head is introduced by imputing a motive to the Commissioners. They are represented as assuming a position, and thereafter endeavouring to support it. The evidence and facts adduced by them are, however, fortunately, not thus affected.

Page 106.

Page 106.

In dealing with the subject described in the heading above quoted, which nearly corresponds with that discussed by the British Commissioners under their chapter, "(O.) *Changes in Habits of the Fur-seal in recent years,*" a selection is made of some of the points taken up in that chapter, for reply, while others are passed over without notice.

The subject is further subdivided in the United States' Counter-Case into two subordinate sections, denoted (a) and (b) respectively. The first of these includes mention of the Table of catches per man and boat given on p. 74 of the Commissioners' Report, of the degree of connection of seals found in Behring Sea with the breeding-islands, of the increased pelagic nature of the seals owing to disturbance, and, singularly enough, of the question of the taking of "stagey" seals at sea, which is referred to in another part of the British Commissioners' Report.

British Commissioners' Report, para. 281.

The Table just referred to, constitutes only a part of the evidence showing that no decrease in seals has been observed at sea in late years. In paras. 403-405 of the British Commissioners' Report, abstracts of statements covering much experience, and a considerable number of years, are given. Neither is any mention made by the United States of the relative effects of the increasing wariness of the seals and growing experience of the hunters. On both these subjects much additional evidence is now available, and this is entirely confirmatory of the general statements made by the Commissioners.

British Counter-Case, p. 173; and Appendix, vol. ii, pp. 29-32, 42-166.

In respect to the Table, the complaint is made that it includes but five years—1857-91. But, for all practical purposes, these later years are the most important, and offer the best test of the matter under discussion. Apart from the changes introduced by increasing wariness of seals and growing skill of hunters, other important changes in methods have occurred concurrently with the growth of pelagic sealing. The number of vessels in these years was also larger; and for this reason, and those above alluded to, the years in question appear to afford data of a more nearly comparable character. Neither could it be known to the Commissioners that the United States would in their Case fix on the year 1885 as being that of the beginning of a decrease in the number of seals. As the data,

so far as they exist, for the whole period of pelagic sealing, are given in the Appendix to the Report, the suggestion of a wish to conceal the facts for 1885 and 1886 has no validity.

Page 106.

As the number of boats engaged in the fishing in 1885 is not known, it was naturally impossible to present the average number of seals per boat taken in that year, while in 1886 several of the sealing-vessels were seized in Behring Sea, and as there was no record of the number of seals taken by such vessels there, and any averages based on the total catch of the fleet must be inaccurate, they were omitted.

Page 107.

British Commissioners' Report, Appendix, p. 202.

A singular train of reasoning is next entered into in the United States' Counter-Case to justify the production of new Tables, based on the British Commissioners' figures; but in which these figures are separated and so manipulated as to show a decreasing "coast catch," with an increasing catch in Behring Sea. If the statements urged in the above argument—to the effect that the sealers only in later years became conversant with all the resorts of the seals—are correct, they afford an excellent reason for the restriction of the Commissioners' Table to these later years.

Page 108.

In the Table printed on p. 411 of the United States' Counter-Case, 3,565 is given as the number of skins taken on the "coast" in 1801, and this is made to correspond with the "spring" catch of earlier years. The fact that fourteen vessels are shown in the British Commissioners' Table to have transhipped their skins at Sand Point, but to have made no return for the coast catch, is ignored in the preparation of the Table in the United States' Counter-Case. These vessels had taken 6,364 skins before they reached Sand Point, a great many of which were taken on the "lower" or southern coast, and if this number were determinable it should be added to the number, 3,565, used in the Table appended to the United States' Counter-Case. The fact is that many sealing-vessels, after a short cruise to the southward of Cape Flattery, return to Victoria to refit, and there discharge their skins. These vessels continue sealing along the British Columbia coast, and that part of their catch taken on this portion of the coast should also be included under the heading "spring catch" or "lower coast" catch in the Table referred to. It is thus evident

British Commissioners' Report, p. 203.

Page 108. that no proximately accurate separation can be made of the "coast" and "spring" catches, and that any Table prepared for the purpose of showing the average catch per vessel or per boat, should include all the seals known to have been taken south of the Aleutian Islands. This has been done in the Table given below. Accuracy is claimed for the years 1889, 1890, and 1891 only, but in order to show how misleading the Table printed in the United States' Case is, the years 1886, 1887, and 1888 have also been included in the Table.

The explanation offered for the inclusion of but one part of the "coast catch" in the Table presented in the United States' Counter-Case (p. 411) is that "prior to 1889 the so-called 'coast catch' did not include skins taken north of Vancouver Island, and it therefore corresponds to the 'spring catch' in the Table for 1889, and following years." The British Commissioners are quoted as the authority for this statement; but on turning to their Report (p. 211), it will be found that what they really say is very different from what is attributed to them:—

"The Behring Sea catch for this [1888] and previous years includes a certain number of skins taken on the coast of British Columbia, to the north of Vancouver Island, the schooners having no opportunity of landing the skins before entering Behring Sea."

It is thus evident that the exact number of skins taken on the "coast" prior to 1889 cannot be determined, but an approximate estimate may be obtained by adding together the total of the catches made on the coast in 1889, 1890, and 1891, and ascertaining what proportion they represent of the total catch for these years. It is by this means found that the number of seals taken on the "coast" represents 46.6 of the total number taken in 1889, 1890, and 1891.

In the Table given below 46.6 per cent. of the total catch for each of the years preceding 1889 is assumed to have been taken on the coast, this being the best available means of forming an estimate for these years:—

Year.	Number of Vessels.	Total Catch.	Const. Catch.	Average per Vessel.	Number of Boats and Canoes.	Average per Boat or Canoe.
1886	16	21,314	11,344	709	101	113.3
1887	17	20,206	9,414	555	123	76.8
1888	20	24,329	11,338	567	165	68.7
1889	22	27,898	12,371	562	179	69.1
1890	30	39,547	21,390	713	246	86.9
1891	43	49,615	20,727	482	327	63.4

The statement is made on this page of the United States' Counter-Case, that the British Commissioners-- Page 109.

"assert that the seals found in Behring Sea are not seals which have temporarily left the rookeries to feed, but are practically independent pelagic herds."

On reading the paragraph of the British Commissioners' Report referred to (para. 219), it will be found that the Commissioners' statement is not intended to apply to *all* the seals in Behring Sea, and further that the concluding expression is not that employed above, but—

Compare also para. 214.

"practically independent pelagic schools of a diffuse kind," an expression conveying a different meaning.

Moreover, the mention made in this particular paragraph of the Commissioners' Report, is one only incidental to a discussion of the possible bearings of the direction and force of the wind on the direction of travel of the seals in the eastern part of Behring Sea.

Neither is it true, as is next asserted, that the results of these observations are the only evidence offered on the independence of a large number of the seals in Behring Sea of the breeding-islands, as a perusal of paras. 209-222 of the Commissioners' Report will show.\* Additional facts, with the same meaning, have subsequently been observed by Mr. Maconn.

British Counter-Case, Appendix, vol. i, p. 145.

It is further stated in the United States' Counter-Case, that the "alleged observations" of the direction of the wind "*are not given, and, even if true, are quite too slender to furnish a foundation for any conclusion.*" It is true that the detailed logs transmitted to the Meteorological Department of Canada for analysis are not

\* See also Captain Bryant, in "Monograph of North American Pinnipeds," p. 411, quoted in British Counter-Case, Appendix, vol. i, p. 126; and Veniaminov in Elliott, Census Report, p. 141.



Page 109.

British Commissioners' Report, Maps III and IV.

printed in full in the Report, but synopses of the results obtained by such analysis are given on the face of the maps to which they refer. If the United States seriously entertain doubts as to the existence of the observations, they can be submitted for their inspection.

The assertion next made, that the British Commissioners advance no proof of the increased pelagic nature of the seal, is incorrect, as will be found on examining paras. 397, 412, 424, 183-185, 205-207 of their Report. The fact, stated by them (para. 402), that no decrease has been noted in the number of seals at sea, though the number frequenting the islands has decreased, is of itself sufficient proof of the increased pelagic nature of the seal.

Pages 106, 107.

British Counter-Case, Appendix, vol. ii, p. 43 *et seq.*

As to the non-occurrence of "stagey" or "shedding" seals at sea, the Commissioners may be assumed to have based their statement on the best evidence available to them. Its nature is explained in paras. 281, 631, 632 of their Report. More complete evidence will be found on this point in the statements appended to the British Counter-Case.

It is a fact generally recognized, that fur-bearing animals living much in the water, such for instance as the otter and beaver, shed their pelage by degrees, and not so markedly at any one time as to seriously affect the value of their skins. The same fact is believed to explain the absence of "stagey" fur-seals at sea, while the creation of a markedly "stagey" condition is supposed by the British Commissioners to occur during, and in consequence of, the continued resort of a portion of the seals to the land. It is gratifying to observe that in this one instance the explanation offered by the British Commissioners is accepted as correct; but the ensuing deduction, that "a seal must, therefore, of necessity be on the islands each year at some period," is a *non sequitur* of the most apparent kind. The proof is, in fact, exactly to the opposite effect, for if all the seals must resort to the islands, and must remain there during the "stagey" season, then no seals should be found at sea during that season. The "stagey" season begins about the middle of August and lasts for some six weeks. Thus, according to the argument advanced by the United States, no seals should be found at sea from the middle of August up to and after the 15th September.

British Commissioners' Report, para. 131.

British Commissioners' Report, para. 281.

Elliott, Census Report, p. 46.

Bryant in "Monograph of North American Pinnipeds," p. 410.

This is, however, wholly negated by the known facts relating to pelagic sealing.

Pages 106,  
107.

But not content with the clearly cut position just outlined, the United States further endeavour (and in opposition to it), to prove that "stagey" skins in large quantity *are* taken at sea. Affidavits on this subject are produced from Messrs. C. Behlow, W. Preiss, and W. E. Martin. Messrs. Behlow and Preiss say that all skins taken in Behring Sea after about the 10th August are "stagey" and "almost unmerchanta-ble." The statement thus made is so sweeping and so entirely in opposition to other evidence as to defeat its object. Sealers would not remain in Behring Sea after the 10th August for the purpose of obtaining, at much cost and labour, skins "almost unmerchanta-ble." Mr. Martin is more judicious; he speaks only of a certain percentage of "stagey" skins, without stating any amount.

See United States' Counter-Case, Appendix, pp. 337, 376, 384.

The second section (b) of this part of the argument in the United States' Counter-Case is devoted to the denunciation of a heresy expressed as follows in that Counter-Case, and attributed to the British Commissioners:—

Page 109.

"That the location of the breeding rookeries is dependent solely upon the fact that the seals while there are not disturbed by man."

It will be found, however, on referring to the British Commissioners' Report, that the statement here made is not theirs, but one embodied for the purposes of attack in the United States' Counter-Case itself.

The Commissioners believe the freedom from disturbance and attack to be the principal or ruling cause, but not the *sole* cause, of the resort of seals to any particular place at the breeding season. The subject is, moreover, further treated in the British Counter-Case.

British Commissioners' Report, paras. 31, 247-248, 400.  
British Counter-Case, p. 146

It is not, however, in the Counter-Case of the United States attempted directly to controvert the above statement, even in the form in which it is presented in that document; but in discussing it, attention is turned to the records which exist of former breeding-places of the fur-seals in the vicinity of the North American coast

United States' Counter-Case, pp. 145-148.

Page 109.

British Commissioners' Report, paras. 417-419, 523, 524. See also para. 424.

British Counter-Case, Appendix, vol. I, pp. 135, 136.

to the south of the Aleutian Islands. Reference is made to some of the statements on this subject contained in the Report of the British Commissioners, and it is then stated that the Commissioners have failed to authenticate these. This alleged "failure" must of course remain a matter for decision on the evidence produced, but the additional information obtained in 1892 respecting Haycock and other islands and rocks, with that relating to the taking of female seals in milk off various parts of the British Columbian and Alaskan coasts to the south of the Aleutian Islands, go far to reinforce the already strong body of evidence on this point adduced by the British Commissioners.

Page 110.

United States' Counter-Case, Appendix, p. 376.

Attention is then, in the United States' Counter-Case, directed to the statement made by the British Commissioners, on the basis of information gained by them on the Commander Islands and at Petropavlovsky, as to the formation or attempted formation of new rookeries at various places on the Asiatic coast. Mr. Malonavonski is quoted as having visited one such reported rookery on the Kamtschatka coast, and as having found the animals there to be sealions and not fur-seals. Upon this single inconclusive statement the following remark is made:—

"If all the incipient breeding rookeries alleged to exist on the Asiatic coast were examined, doubtless they would be found to be similar to the one above noted."

Ibid., p. 363.

Ibid., p. 362.

British Commissioners' Report, para. 519.

Mr. Grebnitzky is cited to the effect that he thinks it to be wholly improbable that the Commander Island seals visit any other land, but it will be observed that though the United States took pains to obtain a written statement from this gentleman, for the purpose of counteracting his statements as quoted in the British Commissioners' Report, he has not in this document contradicted his specific reference to the formation of a new fur-seal rookery on the Kamtschatka coast.

The great importance evidently attached by the United States to the denial of the evidence showing that the fur-seal on the Asiatic coasts has sought and found new breeding-places, evidently depends on the circumstance that this evidence tends to substantiate the less complete

details respecting the existence of such breeding-places (other than the Pribyloff Islands) on the coast of North America.

Page 110.

On the strength of the above imperfect discussion, and the inconclusive negations above outlined, it is then denied on the part of the United States that the—

"Alaskan seals have any other home than the Pribyloff Islands, and that, even if constantly disturbed by man while on the rookeries they would seek a new habitation."

The denial above summarized is not only contrary to all natural facts, but bristles with ambiguities. If the term "Alaskan seals" means only the seals breeding on the Pribyloff Islands, it may readily be admitted that they have no other breeding-place. If the breeding-place is the only "home" of such seals, it of course follows that this "home" must be on the Pribyloff Islands. But the use made of the term "home" is a purely conventional one, and thus, if the territorial possession of the "home" is supposed to imply some proprietary right in the seals themselves, it is a wholly misleading one. What "habitation," as distinguished from "home," may imply is not explained.

The reference next made on this page of the United States' Counter-Case to Robben Island and its rookeries, renders it appropriate to point out that in the very years in which this island was being continuously harassed by raids, the seals began to form new rookeries in other suitable places. It is of course impossible to state that they were actually the same fur-seals which had formerly resorted to Robben Island, but the presumption is in favour of that belief.

Page 111

British Counter-Case, Appendix, vol. ii, pp. 89, 113.

In 1892, evidence of the most conclusive kind possible has been obtained on this particular subject, relating to the formation or attempted formation of new rookeries on Moo-shir Rocks, Raikoke Island, and Shed-noi Island of the Kurile group, Bittern Rocks off the north-west coast of Nipon Island, and on the Island of St. Iona in Okhotsk Sea. It is thus no longer necessary to deal with the discussion of abstract propositions on this subject of the change of breeding-places, to which we are invited in the Counter-Case of the United States.

Id., pp. 34, 35.

Occasion is next taken on this page of the

Page 111. United States' Counter-Case, to contradict or modify the evidence of one witness out of three quoted in para. 422 of the British Commissioners' Report, in which it is stated that, concurrently with the beginning of the United States' control of the Pribyloff Islands (and presumably because of the excessive slaughter occurring at that time), fur-seals were found in more than usual abundance on the coast of British Columbia; the evidence adduced being such as to show the injurious effect of disturbance on the breeding-islands.

United States' Counter-Case, Appendix, p. 413.

British Commissioners' Report, Diagram No. IV. See also paras. 44, 809.

The matter has been considered to be of so great importance by the United States, that Professor J. A. Allen has written a special letter to the United States' Secretary of State, to say that the year should have been 1870, and not 1869 (as stated in his Monograph), in which seals were specially abundant on this coast. Instead of weakening the force of the Commissioners' statement on this point, the correction given strengthens it, and fully accords with the evidence obtained by the Commissioners from other sources. There is no reason to suppose that the excessive disturbance on the breeding-islands, which reached its maximum in 1868, was confined in its effect to the next year. The diagram given by the Commissioners, in fact shows that the greatly increased Indian catches along the British Columbian coast actually occurred in 1870 and 1871.

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APPENDIX TO ARGUMENT.

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No. 2.

*Remarks on the United States' Evidence.*

ANY detailed criticism on the United States' evidence must, of necessity, be reserved for oral argument, but there are some observations bearing upon the character and reliability of such evidence which it is deemed proper here to put before the Arbitrators.

In the first place, it must be pointed out that the assertions made in respect to seal life and other connected subjects in the United States' Case, are entirely based on very recent affidavits, or on papers which have been specially obtained or prepared in connection with the present discussion, and which are now produced for the first time. Further, that many of these are derived from persons who formerly occupied official positions in connection with the management or supervision of the Pribyloff Islands under the United States' Government control, and who were the authors of official Reports and other writings on the condition of the islands; but that such earlier and public official Reports are not now referred to in the United States' Case. The following Table shows the names of the Agents and Officials whose sworn evidence appears in the United States' Appendices, and which also shows their previous Reports and writings:—



Names of Witnesses.	Reports, Evidence, or published Writings, formerly made by Witnesses.	Where Reports referred to in United States' Case.	Date of last Visit to Pribyloff Islands
Ch. Bryant .. ..	Sen., 41st Cong., 2nd Sess., Ex. Doc. No. 32; H. R., 41st Cong., 3rd Sess., Ex. Doc. No. 122; H. R., 42nd Cong., 2nd Sess., Ex. Doc. No. 20; H. R., 44th Cong., 1st Sess., Ex. Doc. No. 83; "Monograph of North American Pinnipeds," p. 381 <i>et seq.</i> ; "On Eared Seals," p. 381		1877
Stephen N. Buynitsky	H. R., 41st Cong., 3rd Sess., Ex. Doc. No. 122, p. 5; H. R., Ex. Doc., 44th Cong., 1st Sess., No. 83; H. R., 50th Cong., 2nd Sess., Rep. No. 3883, p. 1		1872
William H. Dall ..	"Alaska and its Resources," Chap. VI		1860
Captain M. A. Henly..	.. .. .		1891
John A. Henriquez ..	.. .. .		1869
Abial P. Loud ..	.. .. .		1889
H. H. McIntyre ..	Sen., 41st Cong., 2nd Sess., Ex. Doc. No. 36; H. R., 50th Cong., 2nd Sess., Rep. No. 3883, p. 116		1889
John M. Morton ..	.. .. .		1878
Jacob H. Moulton ..	H. R., 50th Cong., 2nd Sess., Rep. No. 3883, p. 260		1884
Joseph Murray ..	Sen., 51st Cong., 2nd Sess., Ex. Doc. No. 49		1891
S. H. Nettleton ..	Sen., 51st Cong., 2nd Sess., Ex. Doc. No. 49		1891
H. G. Otis ..	.. .. .		1881
Benjamin F. Scribner	.. .. .		1880
William H. Williams..	.. .. .		1891
Milton Barnes ..	.. .. .		
Henry A. Glidden ..	H. R., 50th Cong., 2nd Sess., Rep. No. 3883, p. 17		1885
Ch. J. Goff ..	Sen., 51st Cong., 2nd Sess., Ex. Doc. No. 49; letter to Mr. Windom, British Counter-Case, App., vol. i, pp. 84, 85	United States' Case, p. 153	1850
S. Falconer ..	H. R., 42nd Cong., 2nd Sess., Ex. Doc. No. 20, p. 2; H. R., 44th Cong., 1st Sess., Ex. Doc. No. 83		1876
Louis Kimmel ..	H. R., 50th Cong., 2nd Sess., Rep. No. 3883, p. 267		1883
T. F. Ryan ..	Ibid., p. 211 .. .. .		1886
W. B. Taylor ..	Ibid., p. 41 .. .. .		1881
George Wardman ..	Ibid., p. 29 .. .. .		1885

It is also to be remarked that although the above-named gentlemen had not since the dates above mentioned (in some cases fifteen to twenty years ago) visited the Pribyloff Islands, and had not, therefore, any further personal information on the subject, yet the opinions expressed in the testimony now put forward in many instances differ materially from that formerly expressed by them in their official Reports, as the following few examples will show.

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Stephen N. Buynitsky.—As to the existence of fish near the Pribyloffs:—

"They (the natives) subsist mostly on cod and halibut, and every description of fish they can find. They dry and preserve it for winter."—(H. R., 50th Congress, 2nd Session, Report No. 3383, p. 12.)

"At the time I was on the islands I do not think there were any fish at all within 3 miles of the islands, and that the seals to feed had to go farther than that from land. The belief is founded on statements made me by natives on the islands, and also from the fact that fresh fish were seldom eaten upon the islands."—(United States' Case, Appendix II, p. 21.)

H. H. McIntyre.—As to the movements of seals while on the islands:—

"The fact is that the bachelor seals may be found to-day upon a certain rookery, and at another time upon another place. The result is the same animals, in many instances, have been counted two or three times."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 116.)

"Yet their (the seals') habits are so well defined and unvarying that it is an easy matter to determine whether they increase or decrease from year to year, because they always occupy the same portions of certain beaches, and simply expand or contract the boundaries of the rookeries as they become more or less numerous."—(United States' Case, vol. ii, p. 48.)

As to the scarcity of bulls:—

"There are at present (1883), in my opinion, too few bull seals to keep the rookeries up to their best condition."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 117.)

"While I was located upon the said islands there was at all times a greater number of adult male seals than was necessary to fertilize the females who hauled up on said rookeries, and there was no time when there were not vigorous bulls on the rookeries who were unable to obtain female consorts."—(United States' Case, vol. ii, p. 45.)

"When we are left only exactly the number of bulls we need, and a few even of these are killed, it completely upsets our calculations, with the result of leaving too few of this class of animals to secure the full productiveness of the rookeries."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 130.)

Henry A. Glidden.—As to raids and sales of skins:—

"Q. I would ask whether there are not trading-vessels which buy skins?—A. Yes, Sir, and steal skins; that is the great trouble we had, to watch marauders. That was more trouble than anything else."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 26.)

"Raids on the rookeries by marauders did not, while I was on the islands, amount to anything, and certainly seal life here was not affected to any extent by such incursions. I only knew of one raid upon St. Paul Island while I was there."—(United States' Case, Appendix, vol. ii, p. 111.)

J. H. Moulton.—As to the increase of seals on islands:—

"I think during the first five years (1877-82) I was there there was an increase, and during the last three years (1883-85) there was no increase."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 255.)

"While on St. Paul Island (1881-84) I do not think the number of seals increased, and in the last year (1884) I think there was a slight decrease."—(United States' Case, Appendix, vol. ii, p. 71.)

Charles A. Goff.—As to driving:—

"We closed the season by turning away 86 per cent. [of the seals driven], a fact which proves to every impartial mind that we were redriving the yearlings, and, considering the number of skins obtained, that it was impossible to secure the number allowed by the lease; that we were merely torturing the young seals, injuring the future life and vitality of the breeding rookeries, to the detriment of the lessees, natives, and the Government."—(Senate, 50th Congress, 2nd Session, Ex. Doc. No. 90, p. 5.)

"A few seals are injured by redriving (often conflicted with over-driving, and sometimes so called), but the number so injured is inconsiderable, and could have no appreciable effect upon seal life through destroying the virility of the male."—(United States' Case, Appendix, vol. ii, p. 113.)

## As to causes of decrease:—

"It is evident that the many preying evils upon seal life, the killing of the seals in the Pacific Ocean along the Aleutian Islands, and as they come through the passes to the Behring Sea, by pirates in these waters, and the indiscriminate slaughter upon the islands, regardless of the future life of the breeding rookeries, have at last, with their combined destructive power, reduced these rookeries to their present impoverished condition."—(Senate, 50th Congress, 2nd Session, Ex. Doc. No. 90, p. 5.)

"The prosperity of these world-renowned rookeries is fast fading away under the present annual catch allowed by law, and this indiscriminate slaughter now being waged in these waters will only hasten the end of the fur-seals of the Pribyloff Islands."—(Letter from Mr. Goff to Mr. Windom, dated St. Paul Island, Alaska, 31st July, 1889.)

"I believe that the sole cause of the decrease is pelagic sealing, which, from reliable information, I understand to have increased greatly since 1884 or 1885."—(United States' Case, Appendix, vol. ii, p. 112.)

## W. B. Taylor.—As to raids:—

"These vessels will take occasion to hang around the islands, and when there is a heavy fog to go to the rookeries very often. . . . As it is to-day, these vessels come and kill 5,000, 10,000, and 15,000 seals every year."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 54.)

"There was but one raid on the rookeries while I was there, and that took place on Otter Island."—(United States' Case, vol. ii, p. 177.)

## George Wardman.—As to increase in number of seals:—

"After having told the Committee in 1888 that he had measured all the rookeries carefully, Wardman was asked—

"Q. Do you put it [the number of seals] at the same numbers annually?—A. About. I think the breeding seals on the rookeries come in about the same numbers."—(H. R., 50th Congress, 2nd Session, Report No. 3883, p. 39.)

"I made careful examination of the rookeries each year, and after the first year I compared my yearly observations, so that I might arrive at some conclusion as to whether it was possible and expedient to increase our portion of the quota of skins to be taken on St. George Island without injuriously affecting seal life there. I am satisfied, from my observations, that the breeding-grounds on St. George covered greater areas in 1884 than in 1881, and that seal life materially increased between those dates."—(United States' Case, Appendix, vol. ii, p. 178.)

## Charles Bryant.—As to the date of cows leaving their pups:—

"The females go into the water to feed when the pups are some six weeks old."—(Senate, 41st Congress, 2nd Session, Ex. Doc. No. 32, p. 5.)

"The pup is nursed by its mother from its birth as long as it remains on the islands, the mother leaving the islands at different intervals of time after the pup is *three or four days* old."—(United States' Case, Appendix, vol. ii, p. 5.)

## As to time spent by pup on land:—

"When once in the water the young seals soon appear to delight in it, *spending most of their time there in play, tumbling over each other like shoals of fish.*"—"Monograph of North American Pinnipeds," p. 387.)

"By the 1st September nearly all the pups have learned to swim, and until the time of their departure from the islands spend their time both on land and in the water, but by far the *greater portion of their time is spent on land.*"—(United States' Case, Appendix, vol. ii, p. 5.)

## to slaughter of pups in 1870 :—

during the season of 1870 the natives, for supplies and for their own food, killed mostly 1- and 2-year-old seals."—("Monograph of North American Pinnipeds," p. 398.)

"In 1869 about 85,000 seals were taken by the natives. I never stated that any such number were taken in 1870. The full number taken in 1870 was less than 25,000."—(United States Counter-Case, Appendix, p. 414.)

## to relation of fur-seals to the breeding islands :—

Fur-seals resort to the Pribyloff Islands during the summer months for the sole purpose of lactation. Those sharing in these duties remain on or near the shore until they are able to take to the water. During this period the old seals are not known to leave the islands for food."—("On Eared Seals," p. 95.)

"Providing the conditions were the same on the islands the year round as they are in the summer, and providing the food supply was sufficient in the immediate vicinity of the islands, I think the seals would remain on or about the islands during the entire year. The seals evidently consider these islands their home, and only leave them by reason of lack of food and inclement weather."—(United States' Case, Appendix, vol. ii, p. 5.)

## to date of fertilization of cows :—

At this stage they [the female pups] leave the islands for the winter, and very few appear to return to the island until they are 3 years old, at which time they seek the males for sexual intercourse."—("Monograph of North American Pinnipeds," p. 101.)

"It is probable that the females of this age (2 years) are fertilized by the bulls, and leave the islands in the fall pregnant."—(United States' Case, Appendix, vol. ii, p. 6.)

## to supply of breeding bulls :—

The absence of seven successive seasons on the islands in charge of these animals has furnished with the desired opportunity for determining the surplus product by actual study of the seals and requirements, and the result is that the number of 100,000 per annum does not leave a sufficient number of males to mature for the increase in the number of females."—(H. R., 44th Congress, 1st Session, Ex. Doc. No. 175.)

"The whole time I was there there was an ample supply of full-grown vigorous males sufficient for serving all the females on the islands, and every year a surplus of vigorous bulls could always be found about the rookeries awaiting an opportunity to usurp the place of some old or wounded bull unable longer to maintain his place on the breeding-grounds."—(United States' Case, Appendix, vol. ii, p. 7.)

The stock of breeding bulls has decreased during the past year from age and other causes so much faster than it has been young seals grown to replace them that its present condition is only equal to the present demand, and the stock of half-bulls, which will mature in the next two years, is not sufficient to meet the wants of the increase in the number of females. Under these circumstances I feel it my duty to recommend that for the next two years the number of seals to be taken for their skins be limited to 85,000 per annum."—(H. R., 44th Congress, 1st Session, Ex. Doc. No. 83, p. 178.)

Besides the above, there are a considerable number of United States' officials who, during their official posts allowing special opportunities for studying seal life, have from time to time frequently reported and written on the subject to their Governments. None of these reports, however, either their testimony nor previous Reports are in any way referred to in the United States' Case. Of these, Mr. H. W. Elliott, Mr. Washburn Maynard, Mr. J. McIntyre, and Mr. George R. Tingle are the more important.

The absence of all reference to the writings or opinions of Mr. H. W. Elliott is a particularly noticeable omission.

From a date not long subsequent to the acquisition of Alaska by the United States, Mr. Elliott has been known as the principal exponent and official and unofficial authority on the subject of the Pribyloff Islands and the seals resorting to them.

As to Mr. Elliott is, is best told in the words of his testimony given before the Select Committee :—

My experience covers three seasons on the Seal Islands. In the winter of 1872-73 a Bill was introduced before Congress, framed by Mr. Boutwell, providing for the establishment of four Seal Islands. Professor Baird, of the Smithsonian Institute, was very desirous that the Bill should be passed. [311]

44th Cong.,  
1st Sess.,  
H. R. 623, p. 76.

some one should be sent from the Smithsonian to study the life and habits of the seals. He Mr. Bontwell, and obtained from him permission to nominate a man whom he should appoint as one of the Assistant Agents. Professor Baird selected me. I received the appointment from Mr. Bontwell, and landed on the Island of St. George, 28th April, 1872. I went up there with special charge of studying the life and habits of the seals. The question was an exceedingly interesting one, about which scientific men had no special data, and therefore Professor Baird had a great interest in it. I immediately went to work on the grounds from the date of my landing, and I found that the subject was one which could not be settled, as I thought it could, satisfactorily to myself, in one season. I accordingly remained over, and spent the season of 1873 on the seal grounds on the Island of St. George in order to compare my observations of that season with those of the season previous. I at once saw that whatever I stated in regard to this matter would be subject to criticism, and I thought it necessary to be very thorough in my examination of the subject before I made a report upon it. . . . In the winter of 1873 I expressed to Mr. Richardson and my friends here a great desire to go to the coast of Asia to visit the Russian Seal Islands in order to complete and extend my work begun on our own islands. Mr. Richardson said that he had no authority to send me; that I could go only by authority of Congress. Accordingly I drew up a Bill authorizing the Secretary of the Treasury to gather authentic information on that subject, and it was introduced by my friends, was referred to this Committee, before which I appeared (Mr. Dawes being the Chairman at the time), and referred also to the Committee on Commerce, before which also I appeared, was reported favourably to the House, and approved on the 22nd April, 1874. I immediately received my commission, and set out in May with an associate, provided for by an amendment in the Bill, the Secretary of the Treasury putting the revenue-cutter 'Reliance' at our joint disposal. We, in visiting other places, paid special attention to the Seal Islands again that year. I especially wanted to visit them at the height of the breeding season. We were there twenty-eight days, until Lieutenant Maynard having expressed himself thoroughly satisfied with his investigation on the subject, we set sail for St. Matthew's Island, and, after exploring that and St. Lawrence Island, we returned by way of Oonulaska to San Francisco, and submitted our Reports to Secretary Bristow. A few days after mine was submitted, Lieutenant Maynard submitted his Report, the contents of which I knew nothing of until lately, when it was sent to Congress, in obedience to the order of the House. . . ."

51st Cong.,  
2nd Sess.,  
H. R. 7903.

It should be added that as late as 1890 this gentleman again visited and investigated the breeding resorts on the Pribyloff Islands as the trusted Agent of the United States, and again under the mandate of a special Act of Congress, but that the Report known to have been made on the results of that examination has not been published or produced to Great Britain, although the British Agent made a special demand for its production, and is not anywhere found among the documents cited in or appended to the Case of the United States.

The following is a list of some of Mr. Elliott's Reports and writings on the subject of seal life:—

1. Report on the Pribyloff group or Seal Islands of Alaska.—(Washington Government Printing Office, 1873.)
2. Report to Secretary of the Treasury concerning the waste of seal oil, and the "native" of the Pribyloff Islands, and the brewing of quass.—(H. R., 44th Congress, 1st Session, Ex. Doc. No. 103 and 104.)
3. Report upon the condition of affairs in the Territory of Alaska.—(Washington Government Printing Office, 1875.)
4. "Ten years' acquaintance with Alaska, 1867-77."—(New York, Harpers Brothers, vol. iv, No. 330.)
5. "The Seal Islands of Alaska."—(Washington Government Printing Office, 1881.)
6. Report on the Seal Islands of Alaska.—(Washington Government Printing Office, 1884.)
7. "Our Arctic Province."

It is to be noted that five out of the above seven publications were printed and circulated by the United States' Government, and that besides the above Mr. Elliott has contributed to newspapers and magazines many articles and papers numerous to give a list of.

Mr. Elliott has, without doubt, always been considered the leading authority on the fur-seal question.

While it is conceivable that some of the Reports of Agents appointed by the United States to control the Pribyloff Islands may, for many reasons, have been considered by the advisers of the United States as undesirable subjects for publication, it is difficult to understand on what grounds all of the Reports have been ignored, particularly why the principal official investigator of the natural history of the fur-seal should not be even referred to, and his Report, made in pursuance to a special order of Congress, should be suppressed.

Another noteworthy circumstance connected with the evidence put forward by the United States is as to the declarations which purport to have been made by one "A. W. Lavender." These are very numerous, some being taken at Sitka,

Mr. A. W.  
Lavender.

Washington, others at Kadiak, Nicholas Bay, Dixon Entrance, Victoria, San Francisco, and Lynn Canal.

On reference to the declarations it will be found that this gentleman purports to attest declarations at these various places all on the same day. Thus, on the 13th April he attests the declaration of three Indians in or near Lynn Canal or Whalum Sound, and also the evidence of J. Johnson at Victoria, British Columbia; and on the very same date he purports to attest the declaration of Martin Benson and James Griffin at San Francisco.

Other examples may be found, as to the 26th April, at pp. 257, 357, and 366; as to the 30th April at pp. 256 and 485; as to the 3rd May at pp. 323, 349, 368, and 445; and as to the 12th May at pp. 269 and 283 of the same Appendix.

Mr. Joseph Murray, another United States' Agent, appears to have been able to attest affidavits in two places at once. For instance, on the 13th April he attested the declaration of Isaac Leonard at Kadiak, and on the same day the declaration of W. Littlejohn at San Francisco, the distance between the two places being not less than 1,680 miles by sea. (See pp. 217 and 457, United States' Appendix, vol. ii.)

No less than twenty-three affidavits from various Makah Indians who inhabit Neah Bay and district appear in the United States' Appendix. None of these affidavits have been seen on behalf of Great Britain, nor has their evidence been subject to the test of local inquiry, for the reasons stated in the declaration of Arthur Neah (see British Counter-Case, Appendix, vol. ii, p. 176), from which it will be seen that in November 1892 he visited Neah Bay, with a view to making the necessary inquiries, but although the Indians were perfectly willing to talk to him and give evidence to him, the United States' Government Agent, one John P. McGlenn (who it will be noticed has witnessed nearly every single deposition taken amongst these people), refused to allow him to examine any of the witnesses, although he offered to do so in the presence of the said John P. McGlenn.

Mr. Belyea, however, saw the natives, and tried to get them to give evidence in the presence of Mr. McGlenn, but he was told by them that they dare not disobey this Agent, and that he had forbidden them to talk about seals to any stranger who came there without his permission. Whilst he was making these inquiries he was followed by a Cree Indian under the orders of McGlenn, and, as he believed, for the purpose of preventing the Indians from talking to him.

The policeman actually followed him into the house of one of the Indians, and threatened language to the Indian, which caused him to cease speaking to Mr. Belyea. He, however, got hold of one Indian named Jackson, who made a statement to him, which appears in the British Counter-Case, Appendix, vol. ii, p. 178. This witness, amongst other things, told him that Mr. McGlenn would issue an order that would send any one to gaol who gave evidence to Mr. Belyea.

The United States' evidence comprises some eight declarations by one Charles J. Behlow as to accurate examinations purporting to be made by him of certain cargoes of seal-skins taken from pelagic sealers.

In these depositions he professes to give the result of the examinations, reporting in each case an extremely small number of male skins, and also reporting that the female skins showed that almost all of them were in pup when taken. Inquiries lead to the discovery, however, that Mr. Behlow's inspection of the cargoes in question was slight as practically to amount to no inspection at all. One example will suffice to show Mr. Behlow's method. In the case of the "Emma Louise," Mr. Behlow reports (United States' Case, Appendix, vol. ii, p. 402) that he examined 1,312 skins from this cargo, and he purports to give an accurate result of his investigation, showing 4 bulls, 3 females, 98 pups, and 1,112 cows. It will be seen from the affidavits of Charles J. Barber, Charles D. Ladd, and J. A. Belodo (British Counter-Case, vol. ii, pp. 73 *et seq.*) that the examination of this large number of skins, which in ordinary cases would take a great many hours to examine, did not occupy Mr. Behlow more than five minutes, and that he stated to them that it did not pay to inspect them, as he would only be paid 5 dollars a-day for doing it.

The skins were subsequently forwarded to London—to Messrs. Lampson—and their Report on them will be found on p. 112, vol. ii, British Counter-Case, Appendix. This Report shows that no less than 563 skins were too light to be those of bearing seals, and 306 of them are too heavy to be females at all, leaving a balance only of 443 which could have been bearing females.

The various statistical Tables used throughout the United States' Case and British Counter-Case contain many regrettable errors, which will at the proper time be pointed out. It is sufficient here, as an example of these errors, to draw

United States' Case, Appendix, vol. ii, pp. 241, 247. Ibid, p. 382. Ibid., pp. 406, 434.

Mr. Joseph Murray.

The Makah Indians.

Mr. Charles Behlow.

United States' Tables.

See British Counter-Case, Appendix, vol. ii, p. 263.

Contradictory declarations.

attention to the now admitted serious inaccuracies in Messrs. Lampion's Table (United States' Case, Appendix, vol. ii, p. 582), and to the extraordinary Table appearing at p. 369 of the United States' Counter-Case Appendix. This latter Table has been examined by an actuary, with the result that he reports that every similar calculation of averages shown thereon is erroneous. This Table is particularly relied upon in the United States' Counter-Case (p. 77), on the question of the average weight of seal-skins in various years.

In a great number of cases deponents giving evidence for the United States have been seen with reference to their affidavits, and almost invariably it has been found that the statements made in the original deposition were capable of considerable modification and explanation not contained in the original affidavit. Fresh affidavits have been obtained from some of these deponents. In many cases the witnesses directly contradict their former statements, and others even deny that they made them. The following few examples will show with what caution the evidence put forward for the United States should be received:—

*Statements in Depositions taken on behalf of the United States.*      *Statements of same Witnesses in Depositions taken on behalf of Great Britain.*

**Thorwal Mathason.**—As to number of females in coast catch:—

"We caught over 1,000 seals off the coast; most all females, and a great number of them had young pups in them."—(United States' Case, Appendix, vol. ii, p. 339.)

"I told him [the United States' Agent] that three out of five were females."—(British Counter-Case, Appendix, vol. ii, p. 167.)

**As to number of seals lost:—**

"It takes anywhere from one to twenty shots on the average to secure a seal, and I think we got about three out of five that we killed."—(United States' Case, Appendix, vol. ii, p. 339.)

"He [the United States' Agent] did not ask how many seals were lost by sinking, but if I had I would have told him very few were lost. Last year, out of 243 seals taken by the boat I had, 5 were lost by sinking; this, 142 were taken, and 3 were lost by sinking. This is about the usual percentage lost. . . . The first shot kills a sleeping seal if the hunter is any good."—(British Counter-Case, Appendix, vol. ii, p. 167.)

**Henry Brown:—**

A long deposition on sealing matters purporting to be made by this witness appears in the United States' Case, Appendix, vol. ii, p. 317, in which he states he was employed on the schooner "Minnie," 1890, the "Mascotte," 1891, and the "May Belle," 1892.

"In 1890 I was a seaman on the 'Minnie,' 1891 a seaman on the 'Mascotte,' In 1892 I was a seaman on the 'May Belle' until the 1st of April.

"I have never given any statement to the person on sealing matters either at Victoria or any other place. I am positive that I was not at Victoria in the month of April last, and did not then or at any other time or place make any statement to any person about sealing."—(British Counter-Case, Appendix, vol. ii, p. 171.)

**Alfred Dardcau.**—As to proportion of females:

"Of the seals that were caught off the coast, fully 90 out of every 100 had young pups in them. . . . [In Behring Sea] most all of them were females that had given birth to their young on the islands."—(United States' Case, Appendix, vol. ii, p. 322.)

"I consider half the seals caught by the schooner 'E. B. Marvin' [the only sealing schooner he was ever on] during the time I was aboard her were females, and a large proportion of the female seals were barren."—(British Counter-Case, Appendix, vol. ii, p. 181.)

**William Short.**—As to proportion of females:—

"When cruising along the coast our principal catch was female seals in pup. . . . Fully 90 per cent. of seals obtained by us in Behring Sea were cows in milk."—(United States' Case, Appendix, vol. ii, p. 348.)

"I told him that in some places we got most males, and in others most females."—(British Counter-Case Appendix, vol. ii, p. 182.)



## George Dishow.—As to number of females :—

"A large proportion of all the seals taken are females in pup."—(United States' Case, Appendix, vol. ii, p. 323.)

"Sometimes I got more males than females, and sometimes more females than males. Taking the years together, I think the catch was about half and half."—(British Counter-Case, Appendix, vol. ii, p. 57.)

## As to nursing cows in Behring Sea :—

"Most of the seals taken in Behring Sea are females. Have taken them 70 miles from the islands, that were full of milk."—(United States' Case, Appendix, vol. ii, p. 323.)

"A few cows there [in Behring Sea] would be in milk."—(British Counter-Case, Appendix, vol. ii, p. 57.)

## As to close season :—

"I think a closed season should be established for breeding seals from the 1st January to the 15th August, in the North Pacific Ocean and Behring Sea."—(United States' Case, Appendix, vol. ii, p. 323.)

"I told him [United States' Agent] I thought the Sea ought to be closed till about end of July, and then let us go in."—(British Counter-Case, vol. ii, p. 57.)

## Niels Bønde.—As to proportion of females :—

"The seals caught along the coast after the 1st April are mostly pregnant females, and those caught in Behring Sea were females that had given birth to their young."—(United States' Case, Appendix, vol. ii, p. 316.)

"I would say that about 60 per cent. on the coast were females, and about 50 per cent. females in Behring Sea."—(British Counter-Case, Appendix, vol. ii, p. 94.)

## As to number of seals lost :—

"A green hunter will not get more than one out of five; and I have known one hunter on our vessel who shot eighty shots and got only four seals."—(United States' Case, Appendix, vol. ii, p. 316.)

"The poor hunter missed about half of those he fired at; he wounded a few, which escaped; he sunk a few."—(British Counter-Case, Appendix, vol. ii, p. 94.)

## John Morris.—As to scarcity of seals :—

"Seals are scarcer now than in former years. . . . The seal herd will soon become exterminated."—(United States' Case, Appendix, vol. ii, p. 340.)

"Each year I have found the seals on the coast about in the same numbers; . . . taking it one year with another they don't change much, if at all."—(British Counter-Case, Appendix, vol. ii, p. 170.)

## As to the proportion of females :—

"We began sealing off Cape Flattery, . . . and captured about 800 seals along the coast. There were not over 10 males in the whole lot. . . . About the last of April 1883 I sailed from Victoria, on a sealing voyage, on the 'Onward,' Morris, master, . . . and captured about 400 seals while I was on her. They were all females with pup excepting the yearlings, which were about one-half male and one-half female. In February 1885 I sailed from Victoria, British Columbia, in the schooner '76,' Potts, master, . . . and caught about 20 seals, all of which were pregnant females."—(United States' Case, Appendix, vol. ii, p. 240.)

"There is no getting out of the fact that there are more males taken than females. If any one says that I ever told him that more females were taken than males he says what is not true."—(British Counter-Case, Appendix, vol. ii, p. 170.)

## James Robert Jamieson.—As to number of seals lost :—

"The ordinary white hunter will, on an average, lose over half that he kills and wounds."—(United States' Case, Appendix, vol. ii, p. 331.)

"I think the average hunter would miss one-third the seals shot at. . . . Not over one seal in twenty escapes after being shot by the hunter."—(British Counter-Case, Appendix, vol. ii, p. 180.)

**As to proportion of females and pregnancy :—**

"In hunting along the coast, I think about 80 per cent. of those we caught were females, and most of them were carrying their young."—(United States' Case, Appendix, vol. ii, p. 330.)

"Not over one in forty of the females caught on the coast *en route* to Behring Sea were with pup inside."—British Counter-Case, Appendix, vol. ii, p. 180.)

**Herbert Shelley Bevington.—As to prohibition of pelagic sealing :—**

"The deponent further said that . . . the continual supply of fur-seal skin, which it is important should be constant and regular in supply, is absolutely necessary to the maintenance of this industry. . . ."

"He has no hesitation in saying that the best way to accomplish that object would be to prohibit absolutely the killing of all seals except upon the islands, and furthermore to limit the killing of seals in the islands to the male species at particular times, and to limit the number of the males to be so killed. If, however, the rights of individuals are to be considered, and sealing in the open sea is to be allowed, then deponent thinks that the number of vessels to be sent out by each country ought to be limited, and the number of seals which may be caught by each vessel should be specified."—(United States' Case, Appendix, vol. ii, p. 553.)

"I am not in favour of its [North-west catch] total suppression.

"I am of opinion that the North-west catch is a useful element in the market, and I think the trade would object to its disappearance. Its total suppression, in my opinion, would tend to create a monopoly, and would place the whole business in the hands of the persons for the time being owning the islands, and this I should object to."—(British Counter-Case, Appendix, vol. ii, p. 219.)

**Herbert Shelley Bevington.—As to intermingling :—**

"That the differences between the three several sorts of skins last mentioned [Alaska, Copper, and North-west] are so marked as to enable any person skilled in the business, or accustomed to handle the same, to readily distinguish the skins of one catch from those of another, especially in bulk, and it is a fact that when they reach the market the skins of each class come separately and are not found mingled with those belonging to the other classes."—(United States' Case, Appendix, vol. ii, p. 551.)

"In my opinion, at least 25 per cent. of the skins found amongst Copper Island skins are undistinguishable from Aluskas, and in the same way at least 25 per cent. of the skins found amongst Aluskas are undistinguishable from Coppers. In both consignments I have noticed also a considerable quantity of skins which in a less marked manner resembled the other class, but I consider the bulk can be distinguished."—(British Counter-Case, Appendix, vol. ii, p. 219.)

**Léon Révillon, member of the firm of Révillon Frères, of Paris.—As to prohibition of pelagic sealing :—**

"We firmly believe that if the slaughter of the North-west coast fur-seals is not stopped *or regulated*, the Alaska fur-seals will disappear entirely."

[The marginal note to this paragraph is: "If pelagic sealing is not stopped, Alaska fur-seals will disappear."—(United States' Case, Appendix, vol. ii, p. 590.)

"5. Q. The next point, M. Révillon, is as to the last paragraph of your deposition, of which the marginal note reads: 'If pelagic sealing is not stopped, Alaska fur-seals will disappear.' Does that marginal note fairly represent what you meant to convey?—A. No; I do not think it does. I did not intend to convey that I was in favour of any particular way of regulating the question. All that I meant was that if what I heard was true, I thought some sort of Regulation was necessary for the protection of the seals.

"6. Q. Would not the total suppression of all pelagic sealing have the effect of giving the Company leasing the islands an absolute monopoly of the business in this class of seals?—A. This might be so; I do not know.

"7. Q. Well, assuming that it would be so, do you think it would be a result that would be beneficial to the fur-seal business?—A. It depends upon how the monopoly is managed, but, speaking generally, I am against monopolies, and in favour of a free market. I think monopolies injure the progress of business."—(British Counter-Case, Appendix, vol. ii, p. 230.)

**H. Poland.—As to intermingling :—**

"That the three classes of skins above mentioned [Alaska, Copper, and North-west] are easily distinguishable from each other by any

"I admit that amongst the Copper Island catch there is a certain percentage of skins which are for the most part undistinguishable from the

person skilled in the business or accustomed to handling skins in the raw state.

"That the deponent has personally handled samples of the skins dealt in by this firm, and would himself have no difficulty in distinguishing the skin of the Copper Island catch from the skin of the Alaska and North-west catch."—(United States' Case, Appendix, vol. ii, p. 571.)

#### William Charles Blatspiel Stamp.—As to intermingling:—

"That skins of these several catches [Alaska, Copper, and North-west] are readily distinguished from each other. . . .

"The differences between Copper and Alaska seals are difficult to describe so that they can be understood by any person who has no practical knowledge of furs, but to any one skilled in the business there are apparent differences in colour between the Copper and Alaska skins, and a difference in the length and quality of the hairs which compose the fur, and there are also apparent slight differences in the shape of the skin. The difference between the skins of the three catches are so marked, that they have always been expressed in the different prices obtained for the skins."—(United States' Case, Appendix, vol. ii, p. 575.)

#### William Charles Blatspiel Stamp.—As to prohibition of pelagic sealing:—

"That the continued existence of the fur-seal business is dependent, in deponent's judgment, upon the preservation of the seal herds frequenting the North Pacific region, and is also a most important element in the industry, that the supply of seal-skins coming into the market each year should be regular and constant.

"That some Regulations are necessary for the preservation of the seal herds frequenting the Northern Pacific region."—(United States' Case, Appendix, vol. ii, p. 574.)

#### Emile Hertz, member of the firm of Emile Hertz and Co., Paris.—As to intermingling:—

"That the said firm can distinguish very readily the source of production of the skins when the latter are in their undressed state."—(United States' Appendix, vol. ii, p. 588.)

#### Norman Hodgson.—As to sorting male from female skins:—

"I have handled a great many seal-skins, and can, upon examination of the pelt, distinguish the sex of the animal, except in the case of animals under 2 years of age; these cannot always be distinguished. I examined carefully this day 420 seal-skins on board the British sealing-schooner 'Henrietta,' which skins, according to log and sealing-book of said vessel, were taken in Bering

Alaska (or Pribyloff Island) catch, although that percentage would be difficult to ascertain. At a guess I should say that it was not more than 30 per cent., but of course the fur of some of these would be less dense. I have also noticed in the Alaska catch that there are in some particular years skins which are undistinguishable from Copper Island skins."—(British Counter-Case, Appendix, vol. ii, p. 250.)

"In my opinion, there is no absolute line of demarcation between the Copper Island skins and Alaskas, and in inspecting the consignments made each year from the Pribyloff Islands, through Messrs. Lampon and Co., I have found a certain percentage of skins which were *facsimiles* of Copper Island skins, and in the same way, inspecting consignments of Copper Island skins, I have seen skins which had I seen them elsewhere, I should have classed as Alaskas, and also a certain number of the intermediate degrees of similarity."—(British Counter-Case, Appendix, vol. ii, p. 245.)

"I am not in favour of the suppression of the North-west catch. In my opinion it would be neither just nor practicable. It would not be just, because I consider that the Canadians have a right to catch the seals frequenting the sea adjoining their own shores, and which feed to a large extent on the food there found, provided they do so in a proper manner.

"I think it would be impracticable, because the only effect of entire prohibition would probably be to cause the Canadian schooners to register under the flags of other nations. I am of opinion also that the North-west catch is a very important element in the market in keeping the price of the articles within the reach of the ordinary consumer."—(British Counter-Case, Appendix, vol. ii, p. 245.)

"I have from time to time seen among the consignments of Alaska seals offered for public sale by Messrs. Lampon and Co., of London, skins resembling Copper Island skins, and among the consignments of this latter sort skins resembling the Alaska kind, but I believe it to be impossible to affirm absolutely that these doubtful skins belong to one or other of these two localities."—(British Counter-Case, Appendix, vol. ii, p. 242.)

"At Unalaska I was placed on board the seized vessel 'Henrietta' with Lieutenant Johnson, of the 'Corwin,' to proceed with her to Sitka. She had at the time of seizure about 400 skins, and on our arrival at Sitka I was asked to inspect these to determine the sex of the seals from which they had been taken. Captain C. H. Hooper, of the 'Corwin,' asked me to do this. I told him it

Sea during the month of August 1892; and find, to the best of my knowledge and belief, the proportion of the sexes to be as follows:—Females, 361; males, 33; young, the sex of which could not be distinguished, 26.

(Signed) "N. HODGSON.

"Subscribed and sworn to before me at Sitka, Alaska, this 21st day of September, 1892.

(Signed) "C. L. HOOPER,  
"Notary Public, District of Alaska."

—(United States' Counter-Case, p. 309.)

#### As to seals sinking:—

"The white hunter secures on an average about 60 or 65 per cent. of all fur-seals shot in the season."—(United States' Case, Appendix ii, p. 367.)

#### Charles Campbell:—

"Experienced hunters lose very few seals that are shot, but beginners lose a great number."—(United States' Case, Appendix, vol. ii, p. 256.)

"Majority of seals taken are females with young."—(United States' Case, Appendix, vol. ii, p. 256.)

#### Clat-ka-koi.—As to hunting on coast:—

"He does not hunt seal in schooners."

"This season this village got 86 seals, and four canoes were manned from this village."

"Sometimes a few seals follow schools of herring into [Barclay] Sound and go out hurriedly. On such occasions a few are killed."—(United States' Case, p. 305.)

Other questions referring to numbers of seals lost by sinking, composition of catch, &c., were asked Clat-ka-koi by the United States' Agent, but his replies do not appear in the United States' Case.—(See British Counter-Case.)

#### "Dick," or Ehenchesut.—As to hunting on coast:—

"To his knowledge, no seals ever came inside Barclay Sound, and that he never caught any inside, and, moreover, he and his friends never heard of any entering these waters."

was impossible to ascertain this with any degree of accuracy, but he said to go on anyway and do my best, and I did so. I gave him a statement of what I thought they were; he wished me to swear to it, but I told him I could not do so, but the statement I had given him was to the best of my knowledge. After the skins are salted, I consider it impossible to define the sex of the smaller skins up to 3 years. With the old cows and old bulls, of course, an expert can tell, but I consider it quite impossible for any one to say, after skins have been salted, that any particular skin was that of one that had been carrying young and from which the pup had been cut."—(British Counter-Case, Appendix, vol. ii, p. 134.)

"Lose very few seals by sinking; from 5 to 10 per cent. will cover my total loss in that respect."—(British Counter-Case, Appendix, vol. ii, p. 134.)

"I am no hunter, but this year I killed 15 seals, and lost 1 only."—(British Counter-Case, Appendix, vol. ii, p. 77.)

"The principal part of my catch was young males; there were more of them than females."—(British Counter-Case, Appendix, vol. ii, p. 77.)

"I have hunted both from shore and from schooner."

"I told him [United States' Agent] that this year our tribe had got 750 seals with nineteen canoes fishing from the shore, and that we had got more last year. I told him that one canoe owned by a man named Kennedy, of the same tribe as I am, had got 86 seals from the shore [in 1891] last year."

"I told him [United States' Agent] I had seen seals inside of Barclay Sound, and have killed them as far up as "Turn Point," and even farther up the canal. I told him that when the bait would come in sometimes I would go out and get three seals in a little while, and have gone a mile and a half outside of Village Island, when the herring have been plenty, and seen lots, and that I have seen a canoe get from 15 to 20 a-day there . . . Seals come into Barclay Sound every year, sometimes more than others; the more fish that come in the more seals come."—(British Counter-Case, Appendix, vol. ii, p. 150.)

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"He states that during the last five months twenty-five canoes belonging to the village, manned by fifty men, have been engaged in sealing off the coast of Vancouver Island. They obtained in this time 10 skins *per capita*, in all, 500 skins. . . . The fifty men who went out from this village joined schooners, two in number, and the seals were caught about 20 miles to southward and westward of Cape Flattery. Of the number caught, 300 were caught and killed by the natives of this village."—(United States' Case, pp. 306, 307.)

Ehenehesut further testifies as to no decrease in the number of seals, composition of catch, &c., and that questions were asked him on these points by the United States' Agents, but no reference to them appears in the United States' Case. He is stated in the United States' Case to be a Chief, but testifies that he never was one, and never said he was. He was paid 5 dollars for his evidence by the United States' Agent, and each of the men with him 1 dollar.

#### Imihap.—As to hunting on coast :—

Certifies as to evidence given by Ehenehesut to United States being true.—(United States' Case, p. 308.)

Certifies to evidence given by Ehenehesut to Great Britain being true.—(British Counter-Case, Appendix, vol. ii, p. 156.)

#### Chileta.—As to hunting on coast :—

Certifies as to evidence given by Ehenehesut being true.—(United States' Case, p. 308.)

Told the United States' Agent that in a season a canoe would get about 100 seals. He told him that about 300 seals had been taken by sealing off shore. "I never told the old man that seals did not come in to Barclay Sound, for we kill them every year away up, as far as Bird Rocks."—(British Counter-Case, Appendix, vol. ii, p. 145.)

#### John Margatke (Margotich).—As to seals in Barclay Sound :—

"States that fur-seals are rarely seen in Barclay Sound, and are usually found off the coast at a distance of from 5 to 15 miles. They are found in clear water, and never close to the land."

"I told him [United States' Agent] that the seals came in every year amongst the islands, and were also found off the coast every year. I said young pups were caught about the Sound and coast every year; some years more and some years less. . . . I could not have told the captain that seals never came into the Sound, for I have been twenty-five years on this coast, and have always seen the seals come into the Sound every year."

"He is also agent for five sealing-vessels owned in Victoria."—(United States' Case, pp. 308, 309.)

"Never said I was agent for five sealing-vessels, because I am not agent for any."—(British Counter-Case, Appendix, vol. ii, p. 154.)

#### Waekenunesch.—As to seals in Barclay Sound :—

"States that seals do not come in close to shore in this locality [Barclay Sound]. Seals are caught off the coast at from 5 to 20 miles. Formerly Indians hunted them for food, but now—always white men and Indians hunt them for their fur, and they are rapidly diminishing in number. Last year there were fewer than ever before. This year the natives caught about one-half as many as last. In his opinion the seals will soon be exterminated, and in three years there will be no more sealing."—(United States' Case, p. 311.)

"I was asked [by United States' Agent] many questions, and said there were not many seals in the Sound and along the coast this year, but last year (1891) there were plenty. Said the reason was that this year white men had come in and hunted them away with guns and made them wild. . . . He told me that the Indians formerly hunted the seals for their food, but now they hunted them for their skins. White man asked me how long I thought it would be before there would be no skins, and I said that would be impossible; there would always be lots of skins, but they would be harder to get, because the seals were wilder."—(British Counter-Case, Appendix, vol. ii, p. 158.)

**Charlie Hayuks.—As to hunting on coast:—**

Certifies to truth of what Wackennesch said.  
—(United States' Case, p. 312.)

"A year ago last spring . . . we took over 1,000 seals at Barclay Sound from the shore. None of us Indians think the seals are any fewer."  
—(British Counter-Case, Appendix, vol. ii, p. 116.)

**William Bondt.—As to decrease, protection, &c.:—**

In Appendix to United States' Case, vol. ii, pp. 404, 405, testifies as to decrease in number of seals, protection necessary, &c.

"I have never been out seal-hunting myself, and personally know nothing whatever about the loss through sinkage of seals that are shot, nor have I any knowledge personally as to whether the seals are decreasing or where they are caught."  
—(British Counter-Case, vol. ii, p. 146.)

**William Hermann.—As to seal hunting:—**

"One seal secured to two lost."  
—(United States' Case, Appendix, vol. ii, p. 445.)

"I would not lose more than 5 seals in 100 that I would hit."  
—(British Counter-Case, Appendix, vol. ii, p. 118.)

**G. Miner.—As to loss hunting:—**

"33 per cent. of the seals shot with the shot-gun are lost."  
—(United States' Case, Appendix, vol. ii, p. 466.)

"He asked me the average number of seals destroyed. I replied, 'Not more than 10 per cent.' In this I included those that I know were killed and would sink, and those that were badly wounded and I thought would die afterwards."

"The actual number I see sink is much smaller than that. Last year not more than one of nine sank. This year I got 384 skins, and 50 seals sank and were lost."  
—(British Counter-Case, Appendix, vol. ii, p. 97.)

**As to proportion of females:—**

"A large majority of the seals killed in the North Pacific are cows with pups, and in Behring Sea cows with milk."  
—(United States' Case, Appendix, vol. ii, p. 466.)

"There is a majority of females as a rule, both on the coast and in Behring Sea, but this year our catch did not contain more than 10 per cent. of females, I think. I took about 10 per cent. of females."  
—(British Counter-Case, Appendix, vol. ii, p. 97.)

**Charles Lutjens.—As to loss hunting:—**

"We get 80 per cent. of those we shoot."  
—(United States' Appendix, vol. ii, p. 458.)

"In my opinion, 5 per cent. will cover the lost seals by sinking after being shot. . . . Of course a poor hunter will not do so well."  
—(British Counter-Case, Appendix, vol. ii, p. 122.)

**Frank Moreau.—As to loss hunting:—**

"We lose about 25 per cent. of those we shoot."  
—(United States' Case, Appendix, vol. ii, p. 467.)

"The loss from sinkage through being killed or mortally wounded would not be greater than 8 per cent., which would cover the whole loss."  
—(British Counter-Case, Appendix, vol. ii, p. 135.)

**As to proportion of females:—**

90 per cent. of skins taken were cows, and 75 per cent. of cows taken were with pup.  
—(United States' Case, Appendix, vol. ii, p. 467.)

States that 80 per cent. are females, of which 75 per cent. are in pup, and in Behring Sea about the same percentage in milk.  
—(British Counter-Case, Appendix, vol. ii, p. 135.)

**James Cartheut.—As to loss hunting:—**

"I think on the average I got one out of every three killed, but some of my hunters did not do as well."  
—(United States' Case, Appendix, vol. ii, p. 469.)

"I never was out in a boat with a seal-hunter, but I have seen hunters killing near the vessel, and know that hunters do not lose many by sinking and a really good hunter loses very few, not over 5 in 100."  
—(British Counter-Case, Appendix, vol. ii, p. 138.)

## As to decrease of seals:—

"Seals were not nearly so numerous in 1887 as they were in 1877. . . . I do not think it possible for seals to exist for any length of time if the present slaughter continues."—(United States' Case, Appendix, vol. ii, p. 409.)

"Always sealed along the coast and in Behring Sea, and noticed no difference in the number of seals from the first to the last year."—(British Counter-Case, Appendix, vol. ii, p. 138.)

States that he first went sealing in 1883.—(British Counter-Case, Appendix, vol. ii, p. 138.)

## As to proportion of females:—

"85 per cent. of my catch of seals along the coast of the North Pacific Ocean were females."—(United States' Case, Appendix, vol. ii, p. 409.)

"About 60 per cent. I think would be about the average run of females, and it would run about the same in Behring Sea."—(British Counter-Case, Appendix, vol. ii, p. 139.)

It is unnecessary to give any further examples, although if this should be required the above could be easily multiplied.

Sufficient examples have been given to show the unreliable character of a great proportion of the evidence produced by the United States, and with what caution it ought to be received.



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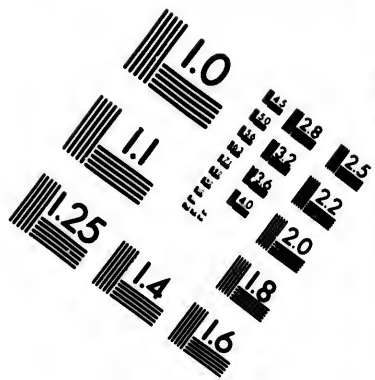
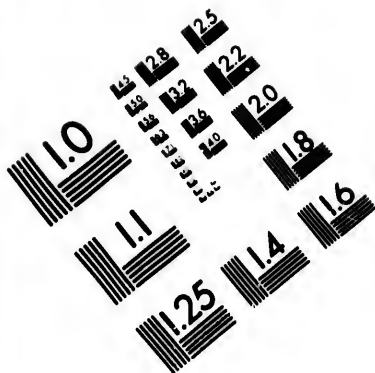
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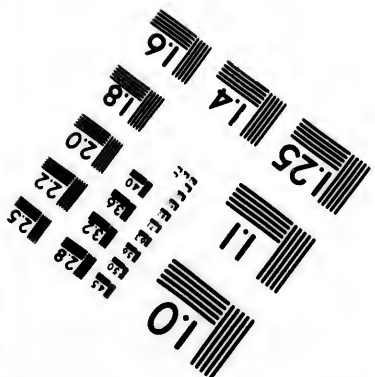
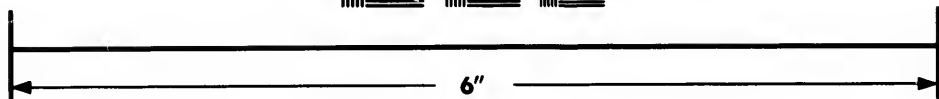
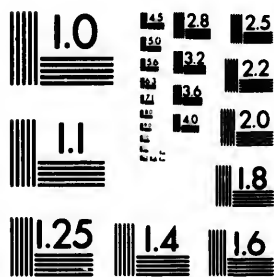
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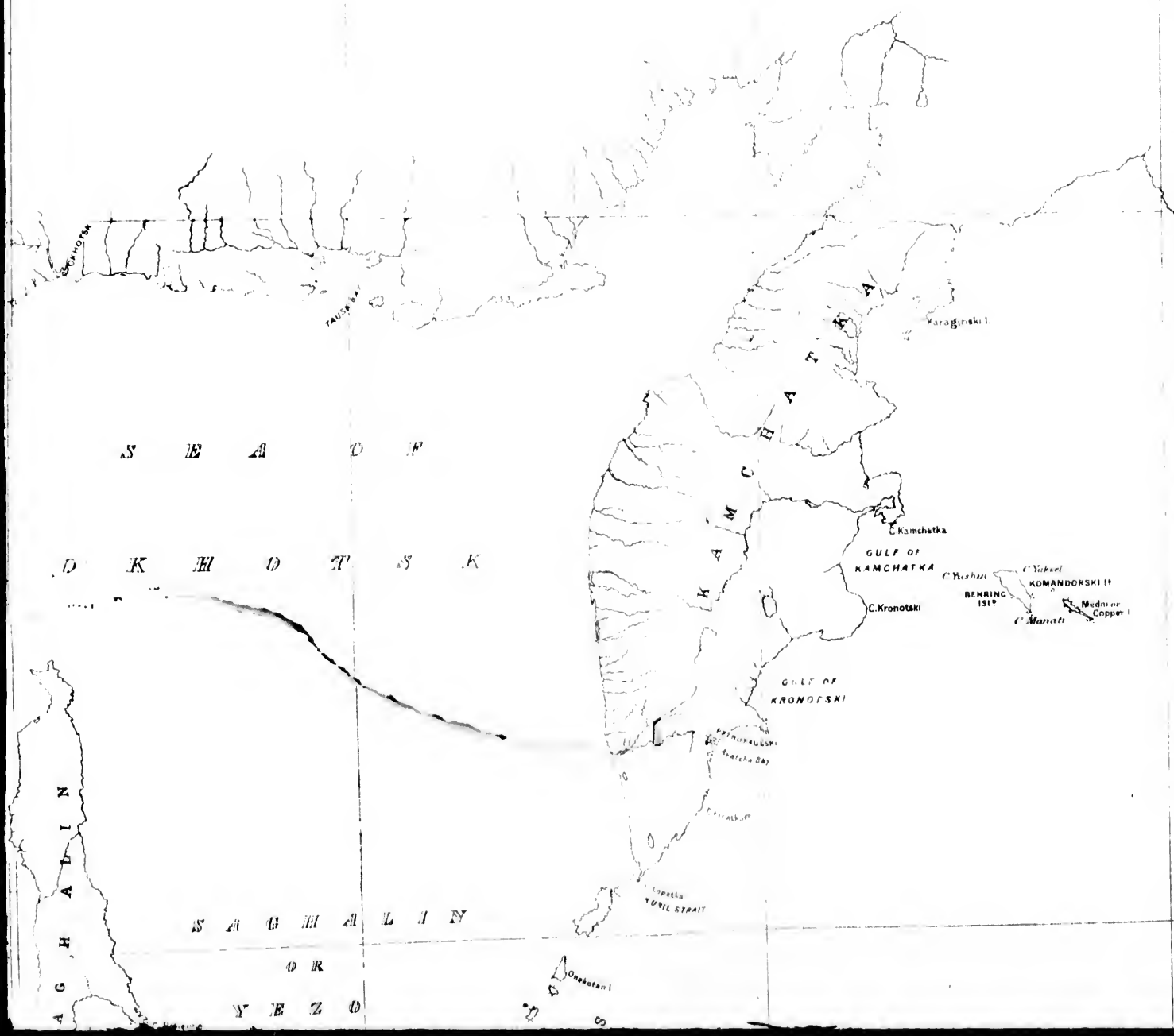
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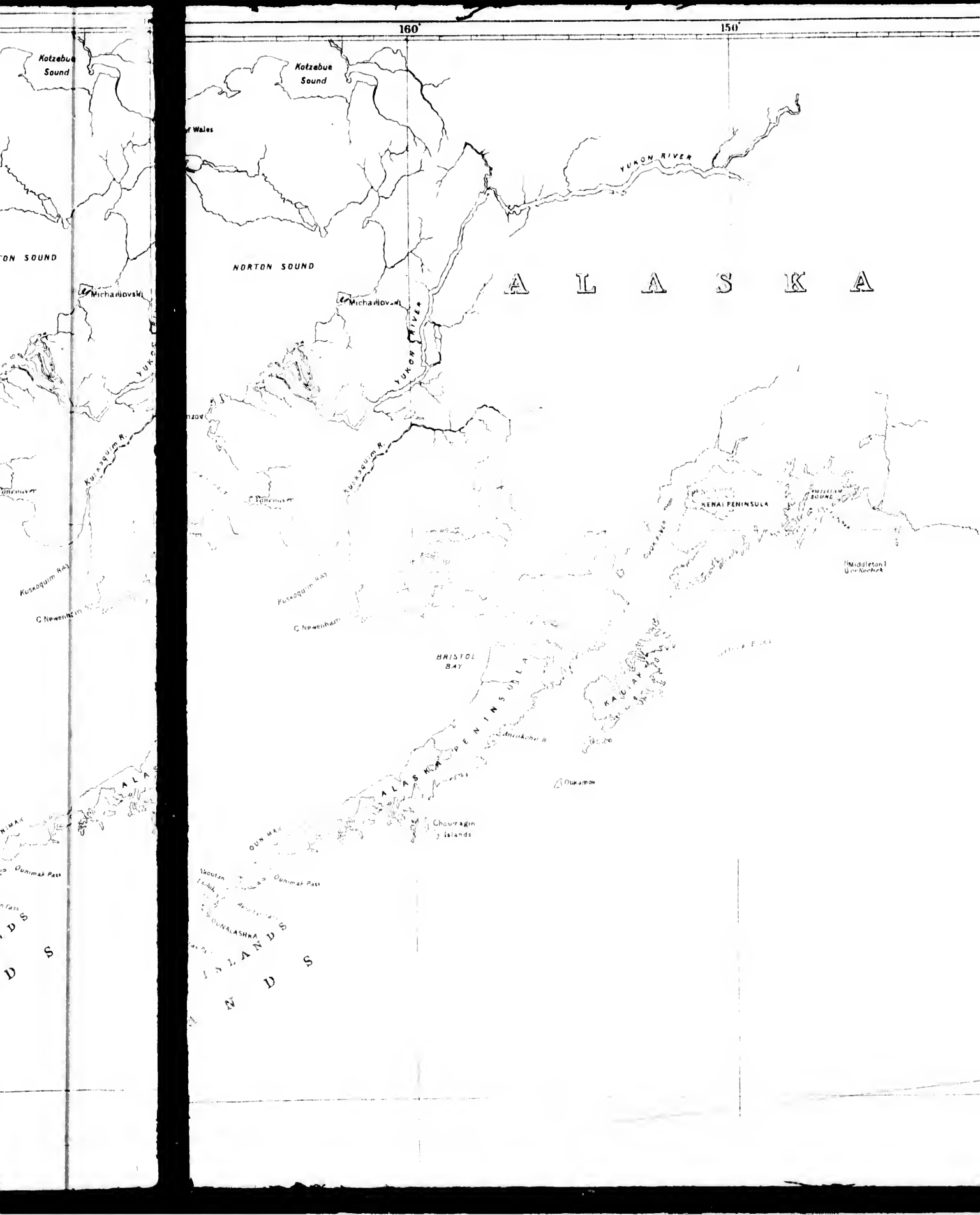
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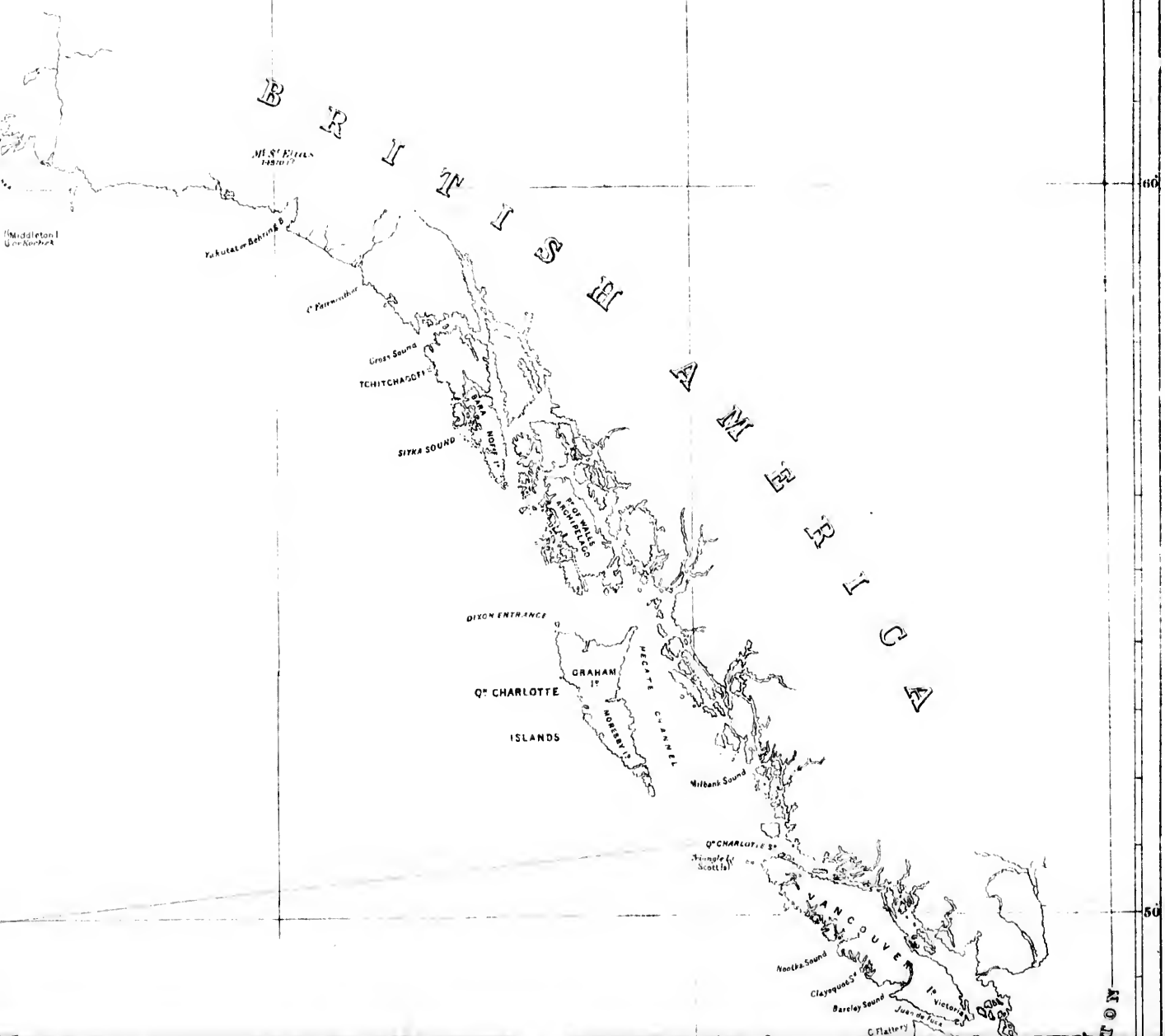
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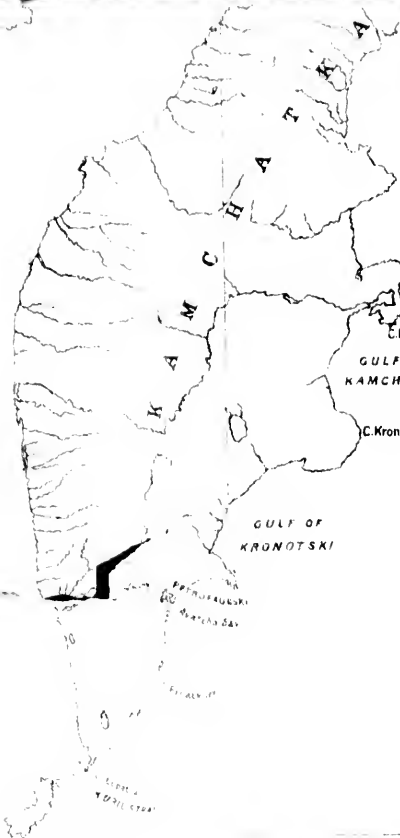
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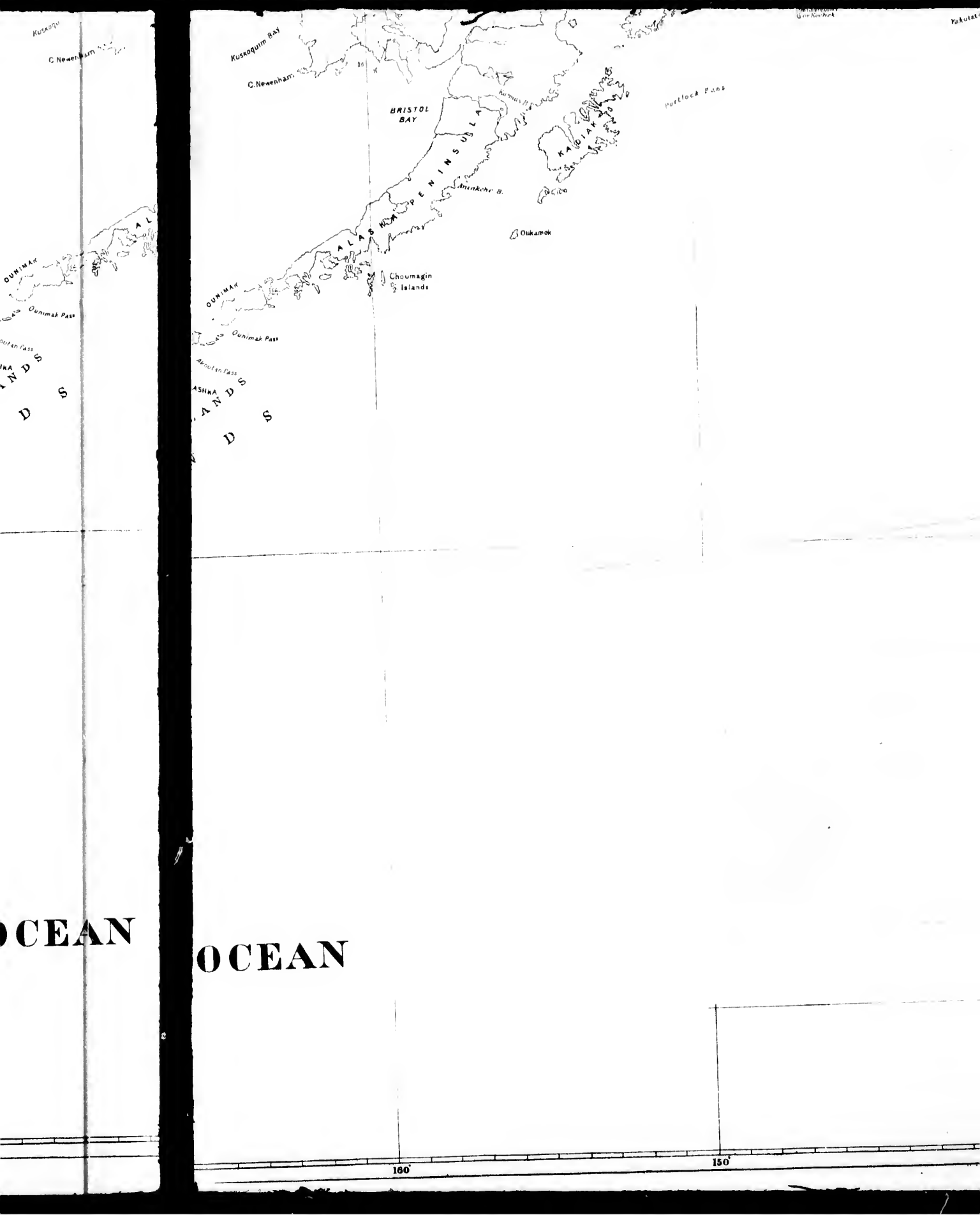
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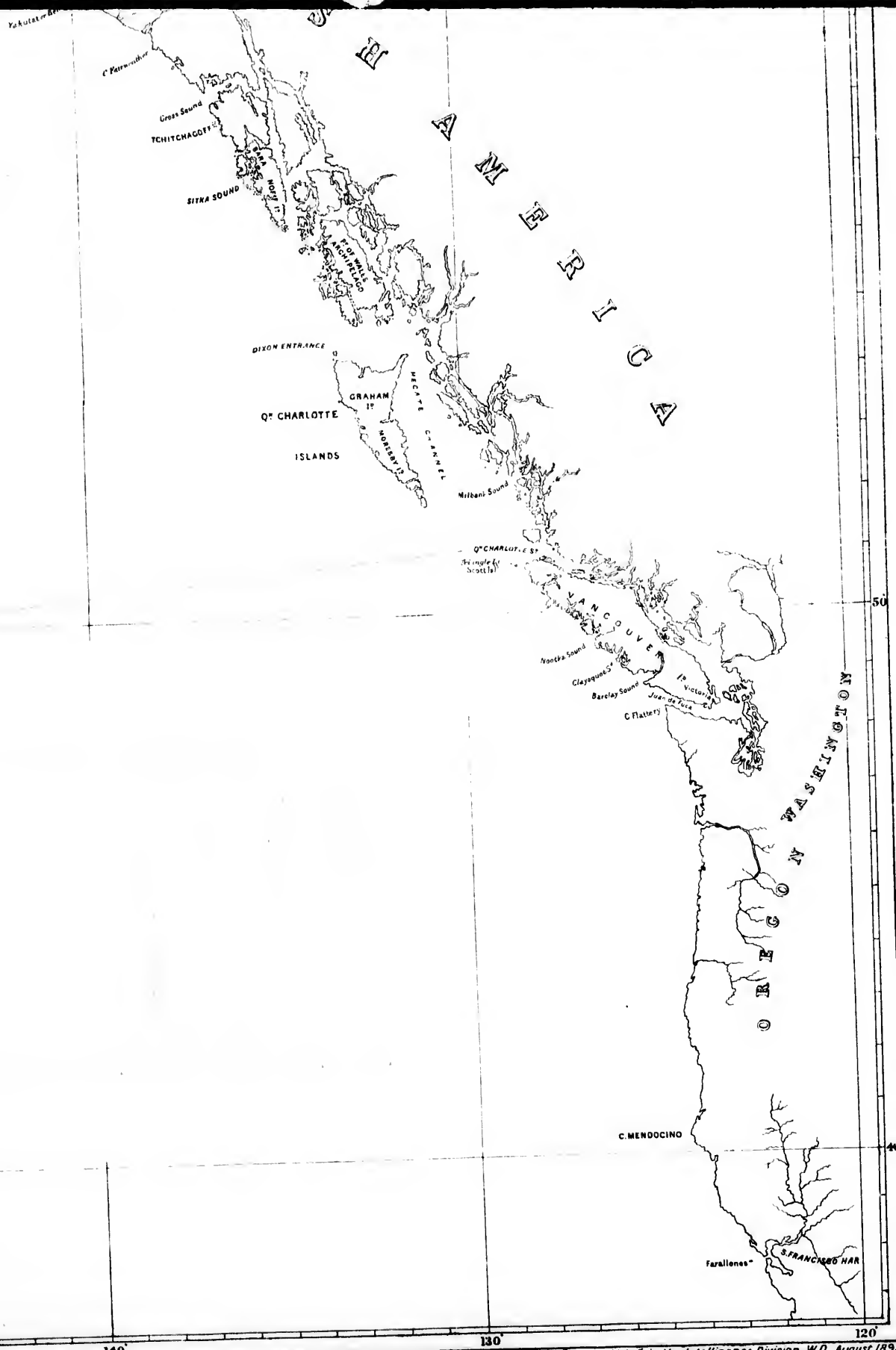


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Litho<sup>d</sup> in the Intelligence Division, W.D. August 1892.

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UNITED STATES. No. 10 (1893).

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BEHRING SEA ARBITRATION.

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A W A R D

OF THE

TRIBUNAL OF ARBITRATION,

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED AT  
WASHINGTON ON THE 29th FEBRUARY, 1892, BETWEEN HER  
BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

---

*Presented to both Houses of Parliament by Command of Her Majesty.  
August 1893.*

---

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## BEHRING SEA ARBITRATION.

Award of the Tribunal of Arbitration, constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

*Mr. Tupper to the Earl of Rosebery.—(Received August 16.)*

My Lord,

Paris, August 5, 1893.

I HAVE the honour to transmit to your Lordship the decision of the Behring Sea Tribunal of Arbitrators, which has been delivered to me this day in accordance with Article XI of the Treaty of the 29th February, 1892.

I have, &c.

(Signed) CHARLES H. TUPPER.

### Inclosure I.

*Sentence du Tribunal d'Arbitrage constitué en vertu du Traité conclu à Washington, le 29 Février, 1892, entre les États-Unis d'Amérique et Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne et d'Irlande.*

ATTENDU que, par un Traité entre les États-Unis d'Amérique et la Grande-Bretagne, signé à Washington le 29 Février, 1892, et dont les ratifications par les Gouvernements des deux pays ont été échangées à Londres le 7 Mai, 1892, il a été, entre autres stipulations, convenu et réglé que les différends qui avaient surgi entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de Sa Majesté Britannique, au sujet des droits de juridiction des États-Unis dans les eaux de la Mer de Behring, et aussi relativement à la préservation des phoques à fourrure habitant ou fréquentant ladite mer et aux droits des citoyens et des sujets des deux pays en ce qui concerne la capture des phoques à fourrure se trouvant dans les dites eaux ou les fréquentant, seraient soumis à un Tribunal d'Arbitrage composé de sept Arbitres, qui seraient nommés de la manière suivante, savoir : deux Arbitres seraient désignés par le Président des États-Unis ; deux Arbitres seraient désignés par Sa Majesté Britannique ; son Excellence le Président de la République Française serait prié, d'un commun accord, par les Hautes Parties Contractantes de désigner un Arbitre ; Sa Majesté le Roi d'Italie serait prié de la même manière de désigner un Arbitre ; Sa Majesté le Roi de Suède et de Norvège serait prié de la même manière de désigner un Arbitre ; les sept Arbitres ainsi nommés devant être des juristes d'une réputation distinguée dans leurs pays respectifs, et les Puissances auxquelles leur désignation serait remise devant être priées de choisir, autant que possible, des juriscultes sachant la langue Anglaise ;

Et attendu qu'il a été pareillement convenu, par l'Article II du dit Traité, que les Arbitres se réuniraient à Paris dans les vingt jours qui suivraient la remise des Contre-Mémoires mentionnés à l'Article IV, qu'ils examineraient et décideraient avec impartialité et soin les questions qui leur étaient ou qui leur seraient soumises dans les conditions prévues par ledit Traité, de la part des Gouvernements des États-Unis et de Sa Majesté Britannique respectivement, et que toutes les questions examinées par le Tribunal, y compris la sentence finale, seraient décidées par les Arbitres à la majorité absolue des voix ;

Et attendu que, par l'Article VI du dit Traité, il a été pareillement convenu ce qui suit :—

"En vue de la décision des questions soumises aux Arbitres, il est entendu que les cinq points suivants leur seront soumis, afin que leur sentence comprenne une décision distincte sur chacun desdits cinq points, savoir :—

"1. Quelle juridiction exclusive dans la mer aujourd'hui connue sous le nom de Mer de Behring et quels droits exclusifs sur les pêcheries de phoques dans cette mer la Russie a-t-elle affirmés et exercés avant et jusqu'à l'époque de la cession de l'Alaska aux États-Unis ?

"2. Jusqu'à quel point la revendication de ces droits de juridiction en ce qui concerne les pêcheries de phoques a-t-elle été reconnue et concédée par la Grande-Bretagne ?

"3. L'espace de mer aujourd'hui connu sous le nom de Mer de Behring était-il compris dans l'expression 'Océan Pacifique,' telle qu'elle a été employée dans le texte du Traité conclu en 1825 entre la Grande-Bretagne et la Russie, et quels droits, si droits il y avait, la Russie a-t-elle possédés et exclusivement exercés dans la Mer de Behring, après ledit Traité ?

"4. Tous les droits de la Russie, en ce qui concerne la juridiction et en ce qui concerne les pêcheries de phoques, dans la partie de la Mer de Behring qui s'étend à l'est de la limite maritime déterminée par le Traité du 30 Mars, 1867, entre les États-Unis et la Russie, ne sont-ils pas intégralement passés aux États-Unis en vertu de ce même Traité ?

"5. Les États-Unis ont-ils quelque droit, et, en cas d'affirmative, quel droit ont-ils, soit à la protection, soit à la propriété des phoques à fourrure qui fréquentent les îles appartenant aux États-Unis dans la Mer de Behring, quand ces phoques se trouvent en dehors de la limite ordinaire de 3 milles ?"

Et attendu que, par l'Article VII dudit Traité, il a été pareillement convenu ce qui suit :—

"Si la décision des questions qui précèdent, en ce qui concerne la juridiction exclusive des États-Unis, laisse les choses en tel état que le concours de la Grande-Bretagne soit nécessaire pour l'établissement de Règlements en vue de la protection et de la préservation convenables des phoques à fourrure habitant ou fréquentant la Mer de Behring, les Arbitres auront à déterminer quels Règlements communs sont nécessaires, en dehors des limites de la juridiction des Gouvernements respectifs, et sur quelles eaux ces Règlements devraient s'appliquer. . . .

"Les Hautes Parties Contractantes s'engagent en outre à unir leurs efforts pour obtenir l'adhésion d'autres Puissances à ces Règlements ;"

Et attendu que, par l'Article VIII dudit Traité, après avoir exposé que les Hautes Parties Contractantes n'avaient pu s'entendre sur une formule qui comprît la question des responsabilités à la charge de l'une d'elles, à raison des préjudices allégués avoir été causés à l'autre, ou aux citoyens de l'autre, à l'occasion des réclamations présentées et soutenues par ladite partie, et qu'elles "désiraient que cette question secondaire ne suspendît ou ne retardât pas plus longtemps la production et la décision des questions principales," les Hautes Parties Contractantes sont convenues que "chaque d'elles pourrait soumettre aux Arbitres toute question de fait impliquée dans lesdites réclamations et demander une décision à cet égard, après quoi la question de la responsabilité de chacun des deux Gouvernements à raison des faits établis serait matière à négociations ultérieures ;"

Et attendu que le Président des États-Unis d'Amérique a désigné l'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis, et l'Honorable John T. Morgan, Sénateur des États-Unis, pour être deux desdits Arbitres ; que Sa Majesté Britannique a désigné le Très Honorable Lord Hannen et l'Honorable Sir John Thompson, Ministre de la Justice et Attorney-Général pour le Canada, pour être deux desdits Arbitres ; que son Excellence le Président de la République Française a désigné le Baron Alphonse de Courcel, Sénateur, Ambassadeur de France, pour être un desdits Arbitres ; que Sa Majesté le Roi d'Italie a désigné le Marquis Emilio Visconti Venosta, ancien Ministre des Affaires Étrangères et Sénateur du Royaume d'Italie, pour être un desdits Arbitres ; et que Sa Majesté le Roi de Suède et de Norvège a désigné M. Gregers Gram, Ministre d'État, pour être un desdits Arbitres ;

Et attendu que nous susnommés, Arbitres désignés et investis de la manière qui vient d'être relatée, ayant accepté de prendre la charge de cet Arbitrage, et nous étant dûment réunis à Paris, avons procédé avec impartialité et soin à l'examen et à la décision de toutes les questions qui ont été soumises à nous, Arbitres susnommés, en vertu du dit Traité, ou à nous présentées, au nom des Gouvernements des États-Unis et de Sa Majesté Britannique respectivement, de la manière prévue par ledit Traité ;

Nous Arbitres susnommés, ayant examiné avec impartialité et soin lesdites questions,  
[623] B 2



décidons et prononçons de même, sur lesdites questions, par notre présente sentence, de la manière qui suit, à savoir :—

En ce qui concerne les cinq points mentionnés dans l'Article VI et sur chacun desquels notre jugement doit comprendre une décision distincte, nous décidons et prononçons ce qui suit :—

Sur le premier des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons ce qui suit :

Par l'Ukase de 1821 la Russie a revendiqué des droits de juridiction, dans la mer connue aujourd'hui sous le nom de Mer de Behring, jusqu'à la distance de 100 milles Italiens au large des côtes et îles lui appartenant ; mais, au cours des négociations qui ont abouti à la conclusion des Traités de 1824 avec les États-Unis et de 1825 avec la Grande-Bretagne, elle a admis que sa juridiction dans ladite mer serait limitée à une portée de canon de la côte ; et il apparaît que, depuis cette époque jusqu'à l'époque de la cession de l'Alaska aux États-Unis, elle n'a jamais affirmé en fait ni exercé aucune juridiction exclusive dans la Mer de Behring, ni aucun droit exclusif sur les pêcheries de phoques à fourrure dans ladite mer, au delà des limites ordinaires des eaux territoriales.

Sur le second des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que la Grande-Bretagne n'a reconnu ni concédé à la Russie aucun droit à une juridiction exclusive sur les pêcheries de phoques dans la Mer de Behring, en dehors des eaux territoriales ordinaires.

Sur le troisième des cinq points susdits, et quant à la partie dudit troisième point où nous est soumise la question de savoir si l'espace de mer aujourd'hui connu sous le nom de Mer de Behring était compris dans l'expression "Océan Pacifique" telle qu'elle a été employée dans le texte du Traité de 1825 entre la Grande-Bretagne et la Russie, nous, Arbitres susnommés, décidons et prononçons à l'unanimité que l'espace de mer aujourd'hui connu sous le nom de Mer de Behring était compris dans l'expression "Océan Pacifique" telle qu'elle a été employée dans ledit Traité.

Et quant à la partie dudit troisième point d'après laquelle nous avons à décider quels droits, si droits il y avait, la Russie a possédés et exclusivement exercés après ledit Traité de 1825, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que la Russie n'a possédé ni exercé, après le Traité de 1825, aucun droit exclusif de juridiction dans la Mer de Behring ni aucun droit exclusif sur les pêcheries de phoques dans cette mer, au delà de la limite ordinaire des eaux territoriales.

Sur le quatrième des cinq points susdits, nous, Arbitres susnommés, décidons et prononçons à l'unanimité que tous les droits de la Russie, en ce qui concerne la juridiction et en ce qui concerne les pêcheries de phoques, dans la partie de la Mer de Behring qui s'étend à l'est de la limite maritime déterminée par le Traité du 30 Mars, 1867, entre les États-Unis et la Russie, sont intégralement passés aux États-Unis en vertu de ce même Traité.

Sur le cinquième des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que les États-Unis n'ont aucun droit de protection ou de propriété sur les phoques à fourrure qui fréquentent les îles appartenant aux États-Unis dans la Mer de Behring, quand ces phoques se trouvent en dehors de la limite ordinaire de 3 milles.

Et attendu que les décisions ci-dessus relatées, sur les questions concernant la juridiction exclusive des États-Unis mentionnées dans l'Article VI, laissent les choses en état tel que le concours de la Grande-Bretagne est nécessaire pour l'établissement de Règlements en vue de la protection et de la préservation convenables des phoques à fourrure habitant ou fréquentant la Mer de Behring, le Tribunal ayant décidé à la majorité absolue des voix sur chacun des Articles des Règlements qui suivent, nous, Arbitres susnommés, le Baron de Courcel, Lord Hannen, le Marquis Visconti Venosta, et M. Gregers Gram, donnant notre assentiment à l'ensemble des Articles des Règlements qui suivent, et constituant la majorité absolue des Arbitres, décidons et prononçons, d'après le mode prescrit par le Traité, que les Règlements communs qui suivent, applicables en dehors des limites de la juridiction des Gouvernements respectifs, sont nécessaires, et qu'ils doivent s'étendre sur les eaux ci-après déterminées :—

Article 1. Les Gouvernements des États-Unis et de la Grande-Bretagne interdiront à leurs citoyens et sujets respectifs de tuer, prendre ou poursuivre, en tout temps et de quelque manière que ce soit, les animaux communément appelés phoques à fourrure, dans une zone de 60 milles autour des Îles Pribyloff, en y comprenant les eaux territoriales.

Les milles mentionnés dans le paragraphe précédent sont des milles géographiques de 60 au degré de latitude.

Article 2. Les deux Gouvernements interdiront à leurs citoyens et sujets respectifs de tuer, prendre ou poursuivre les phoques à fourrure, de quelque manière que ce soit, pendant la saison s'étendant chaque année du 1<sup>er</sup> Mni au 31 Juillet inclusivement, sur la haute mer, dans la partie de l'Océan Pacifique, en y comprenant la Mer de Behring, qui est sise au nord du 35<sup>e</sup> degré de latitude nord, et à l'est du 180<sup>e</sup> degré de longitude de Greenwich jusqu'à sa rencontre avec la limite maritime décrite dans l'Article 1<sup>er</sup> du Traité de 1867 entre les États-Unis et la Russie, et ensuite à l'est de cette ligne jusqu'au Détroit de Behring.

Article 3. Pendant la période de temps et dans les eaux où la pêche des phoques à fourrure demeurera permise, les navires à voiles seront seuls admis à l'exercer ou à s'associer aux opérations de cette pêche. Ils auront cependant la faculté de se faire assister par des pirogues ou autres embarcations non pontées, mues par des pagaies, des rames ou des voiles, du genre de celles qui sont communément employées comme bateaux de pêche.

Article 4. Tout navire à voiles autorisé à se livrer à la pêche des phoques à fourrure devra être muni d'une licence spéciale délivrée à cet effet par son Gouvernement et devra porter un pavillon distinctif qui sera déterminé par ledit Gouvernement.

Article 5. Les patrons des navires engagés dans la pêche des phoques à fourrure devront mentionner exactement sur leurs livres de bord la date et le lieu de chaque opération de pêche des phoques à fourrure, ainsi que le nombre et le sexe des phoques capturés chaque jour. Ces mentions devront être communiquées par chacun des deux Gouvernements à l'autre à la fin de chaque saison de pêche.

Article 6. L'emploi des filets, des armes à feu et des explosifs sera interdit dans la pêche des phoques à fourrure. Cette restriction ne s'appliquera pas aux fusils de chasse, quand cette pêche sera pratiquée en dehors de la Mer de Behring et pendant la saison où elle pourra être légitimement exercée.

Article 7. Les deux Gouvernements prendront des mesures en vue de contrôler l'aptitude des hommes autorisés à exercer la pêche des phoques à fourrure; ces hommes devront être reconnus aptes à manier avec une habileté suffisante les armes au moyen desquelles cette pêche pourra être faite.

Article 8. Les Règlements contenus dans les précédents Articles ne s'appliqueront pas aux Indiens habitant sur les côtes du territoire des États-Unis ou de la Grande-Bretagne et pratiquant la pêche des phoques à fourrure dans des pirogues ou embarcations non pontées, non transportées par d'autres navires, ni employées à l'usage de ceux-ci, mues exclusivement à l'aide de pagaies, d'avirons ou de voiles, et manœuvrées chacune par cinq personnes au plus, de la manière jusqu'à présent usitée par les Indiens; pourvu que ceux-ci ne soient pas engagés au service d'autres personnes, et qu'alors qu'ils chassent ainsi dans des pirogues ou embarcations non pontées, ils ne poursuivent pas les phoques à fourrure, en dehors des eaux territoriales, en vertu d'engagements contractés pour la livraison des peaux à une personne quelconque.

Cette exception n'aura pas pour effet de porter atteinte à la législation nationale de l'un ou de l'autre des deux pays; elle ne s'étendra pas aux eaux de la Mer de Behring, ni aux eaux des passes Aléoutiennes.

Aucune des dispositions qui précèdent n'a pour objet de s'opposer à ce que les Indiens soient employés, comme chasseurs ou à tout autre titre, ainsi qu'ils l'ont été jusqu'à présent, sur des navires se livrant à la poursuite des phoques à fourrure.

Article 9. Les Règlements communs établis par les Articles précédents, en vue de la protection et de la préservation des phoques à fourrure, demeureront en vigueur jusqu'à ce qu'ils aient été en tout ou partie abolis ou modifiés par un accord entre les Gouvernements des États-Unis et de la Grande-Bretagne.

Lesdits Règlements communs seront soumis tous les cinq ans à un nouvel examen, pour que les deux Gouvernements intéressés se trouvent en mesure d'apprécier, à la lumière de l'expérience acquise, s'il y a lieu d'y apporter quelque modification.

Et attendu que le Gouvernement de Sa Majesté Britannique a soumis au Tribunal d'Arbitrage, par application de l'Article VIII dudit Traité, certaines questions de fait impliquées dans les réclamations dont il est fait mention audit Article VIII, et a soumis également à nous, formant ledit Tribunal, un exposé des faits dans les termes suivants :—

*" Conclusions de fait proposées par l'Agent de la Grande-Bretagne, acceptées par l'Agent des États-Unis, qui en admet l'exactitude, et soumises à l'examen du Tribunal d'Arbitrage.*

" 1. Que les diverses visites et saisies de navires ou de marchandises et les diverses arrestations de patrons et d'équipages, mentionnées dans l'Annexe au Mémoire Britannique (pages 1 à 60 inclusivement), ont été faites par autorité du Gouvernement des États-Unis; les questions se rapportant à la valeur desdits navires ou de leur contenu, ensemble ou séparément, et la question de savoir si les navires désignés dans l'Annexe au Mémoire Britannique, ou certains d'entre eux, étaient, en totalité ou en partie, la propriété de citoyens des États-Unis, ont été retirées et n'ont pas été l'objet de l'examen du Tribunal, sous cette réserve que les États-Unis gardent le droit de soulever ces questions ou quelqu'une d'entre elles, s'ils le jugent à propos, dans toute négociation ultérieure pouvant engager la responsabilité du Gouvernement des États-Unis, en ce qui touche le payement des sommes mentionnées dans l'Annexe au Mémoire Britannique.

" 2. Que les susdites saisies, sauf en ce qui concerne le 'Pathfinder,' saisi à Neah Bay, ont été effectuées dans la Mer de Behring, aux distances de la côte mentionnées au Tableau ci-annexé, sous la lettre (C).

" 3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avaient reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après, Annexe (A), les autres exemplaires desdites instructions étant conformes à ce modèle sur les points essentiels; que, dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont un modèle est annexé ci-dessous, Annexe (B), les actes d'accusation déposés dans les autres procédures étant, en tous points essentiels, semblables à ce modèle; que les actes ou délits, allégués comme motifs de ces visites et saisies, ont été accomplis ou commis dans la Mer de Behring, aux distances de la côte déjà indiquées; que, dans tous les cas où une condamnation a été prononcée, excepté ceux où les navires ont été relâchés après condamnation, la saisie a été approuvée par le Gouvernement des États-Unis, et que, dans les cas où les navires ont été relâchés, la saisie avait été opérée par autorité du Gouvernement des États-Unis; que les amendes et emprisonnements susdits ont été prononcés à raison d'infractions aux lois nationales des États-Unis—infractions toutes commises dans la Mer de Behring, aux distances de la côte déjà indiquées.

" 4. Que les différents ordres mentionnés dans l'Annexe ci-jointe sous la lettre (C) enjoignant à certains navires de quitter la Mer de Behring, ou de ne pas y entrer, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient toutes les fois qu'ils ont donné ces ordres, des instructions conformes à celles mentionnées ci-dessus sous le No. 3, et que les navires qui ont reçu ces injonctions étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse; et que cette façon de procéder a été sanctionnée par le Gouvernement des États-Unis.

" 5. Que les Cours de District des États-Unis, devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires saisis, dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne (pages 1 à 60 inclusivement), avaient tous droits de juridiction et pouvoirs appartenant au Cour d'Amirauté, y compris la juridiction de Tribunaux de Prises, mais que, dans chaque cas particulier, la sentence prononcée par la Cour s'appuyait sur les causes mentionnées dans l'acte d'accusation.

#### " Annexe (A).

" (Traduction.)

" Monsieur,

" Comme suite à une lettre du Département, en date de ce jour, vous enjoignant de vous diriger avec le vapeur du Service des Douanes 'Bear,' placé sous votre commandement, vers les îles aux phoques, vous êtes par les présentes investi de tous les pouvoirs nécessaires pour assurer l'exécution de la Loi dont les termes sont contenus dans la Section 1956 des Statuts Révisés des États-Unis, et ordre vous est donné de saisir tout navire et d'arrêter et livrer aux autorités compétentes tout individu ou toutes personnes que vous trouveriez agissant en violation de la Loi susmentionnée, après qu'un avertissement suffisant leur aura été donné.

" Vous saisirez également tous spiritueux et armes à feu que l'on chercherait à introduire dans le

" Département du Trésor, Cabinet du Secrétaire, Washington,

" 21 Avril, 1886.

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pays sans une permission en règle, en exécution de la Section 1955 des Statuts Révisés et de la Proclamation du Président en date du 4 Février, 1870.

" Respectueusement à vous,

(Signé)

" C. S. FAIRCHILD,

" Secrétaire *par intérim*.

" Au Capitaine M. A. Healy,

" Commandant le vapeur du Service des Douanes ' Bear,'

" à San Francisco (Californie).

### " Annexe (B).

" Devant la Cour de District des États-Unis pour le District d'Alaska.

" Session (*Special Term*) d'Août 1886.

" (Traduction.)

" A l'Honorable Lafayette Dawson, Juge de ladite Cour de District.

" Le réquisitoire à fin d'information par lequel M. D. Ball, Attorney des États-Unis pour le District d'Alaska, poursuivant au nom des États-Unis et présent ici devant la Cour, en sa personne, comme Représentant des États-Unis et en leur nom, contre la goëlette 'Thornton,' ses agrès, apparaux, embarcations, cargaison et matériel, et contre toutes personnes intervenant comme ayant des intérêts engagés dans ce navire, en poursuite à fin de confiscation, présente les allégations et déclarations suivantes :—

" Que Charles A. Abbey, officier du Service des Douanes Maritimes des États-Unis, chargé d'une mission spéciale dans les eaux du District d'Alaska, antérieurement au présent jour, à savoir le 1<sup>er</sup> Août, 1886, dans les limites du territoire d'Alaska et dans ses eaux, et dans les limites du district civil et judiciaire d'Alaska, à savoir dans l'étendue des eaux de cette partie de la Mer de Behring qui appartient audit district, dans des eaux navigables pour des navires venant de la haute mer et jaugeant 10 tonneaux ou au-dessus, a saisi le vaisseau ou navire communément dénommé goëlette, le 'Thornton,' ses agrès, apparaux, embarcations, cargaison et matériel, lesquels étaient la propriété d'une ou de plusieurs personnes inconnues dudit attorney, et les a confisqués au profit des États-Unis pour les causes ci-après :

" Que ledit navire ou goëlette a été trouvé se dirigeant à la destruction des phoques à fourrure, dans les limites du territoire d'Alaska et de ses eaux, en violation des dispositions de la Section 1956 des Statuts Révisés des États-Unis ;

" Et ledit attorney déclare que toutes les propositions ci-dessus énoncées et chacune d'elles sont et étaient vraies, et qu'elles tombent sous la juridiction maritime et d'amirauté de cette Cour, et que, pour cette raison, et en exécution des Statuts des États-Unis établis et édictés pour de tels cas, le navire ou la goëlette mentionnée et décrite ci-dessus, jaugeant plus de 20 tonneaux, ses agrès, apparaux, embarcations, cargaison et matériel ont été et sont confisqués au profit des États-Unis, et que ladite goëlette se trouve maintenant dans le district susdit.

" Ce pourquoi ledit attorney demande que l'honorable Cour de Justice procède et avise comme d'usage en cette affaire, et que toutes personnes ayant un intérêt dans ladite goëlette ou navire soient citées par voie d'assignation générale ou spéciale, afin de répondre aux propositions susénoncées, et que, à la suite de la procédure à ce nécessaire, ledit navire ou goëlette, ses agrès, apparaux, embarcations, cargaison et matériel soient condamnés pour ladite cause ou tout autre qu'il apparaîtrait juste, par arrêt formel et décret de cette honorable Cour, et confisqués au profit desdits États-Unis, selon la forme des Statuts desdits États-Unis, établis et édictés pour de tels cas.

(Signé)

" M. D. BALL,

" Attorney des États-Unis pour le district d'Alaska.

### " Annexe (C).

" La Table ci-dessous contient les noms des navires Britanniques employés à la chasse des phoques qui ont été saisis ou avertis par les croiseurs du Service des Douanes des États-Unis, de 1886 à 1890 et la distance approximative de la terre où ces saisis ont eu lieu. Ces distances sont indiquées, en ce qui concerne les navires 'Carolem,' 'Thornton,' et 'Onward,' d'après le témoignage du Commandant Abbey, de la Marine des États-Unis (voir 50<sup>e</sup> Congrès, 2<sup>e</sup> Session, Sémit, Documents Exécutifs, No. 106, pp. 20, 30, et 40). Elles sont indiquées, en ce qui concerne les navires 'Anna Beck,' 'W. P. Sayward,' 'Dolphin,' et 'Grace,' d'après le témoignage du Capitaine Shepard, de la Marine du Trésor des États-Unis (Livre Bleu, États-Unis, No. 2, 1890, pp. 80-82 (voir 'Appendice au Mémoire Britannique,' vol. 1<sup>er</sup>.)"

Nom du Navire.	Date de la Seizé.	Distance approximative de Terre au moment de la Seizé.	Navire des États-Unis qui a fait la Seizé.
Carolena .. .. .	1 <sup>er</sup> Août, 1886	75 milles .. .. .	Corwin. "
Thornion .. .. .	1 <sup>er</sup> " 1886	70 milles .. .. .	Idem.
Onward .. .. .	2 " 1886	115 milles .. .. .	Idem.
Favourite .. .. .	2 " 1886	Averti par le "Corwin," à peu près dans la même position que "l'Onward."	
Anna Beck .. .. .	2 Juillet, 1887	66 milles .. .. .	Rush.
W. P. Sayward .. .. .	9 " 1887	59 milles .. .. .	Idem.
Dolphin .. .. .	12 " 1887	40 milles .. .. .	Idem.
Grace .. .. .	17 " 1887	96 milles .. .. .	Idem.
Alfred Adams .. .. .	10 Août, 1887	62 milles .. .. .	Idem.
Ada .. .. .	25 " 1887	15 milles .. .. .	Bear.
Triumph .. .. .	4 " 1887	Averti par le "Rush" de ne pas entrer dans la Mer de Behring.	
Junita .. .. .	31 Juillet, 1889	66 milles .. .. .	Rush.
Pathfinder .. .. .	29 " 1889	50 milles .. .. .	Idem.
Triumph .. .. .	11 " 1889	Averti par le "Rush" d'avoir à quitter la Mer de Behring. Position au moment de l'avertissement (?).	
Black Diamond .. .. .	11 " 1889	35 milles .. .. .	Idem.
Lily .. .. .	6 Août, 1889	66 milles .. .. .	Idem.
Arial .. .. .	30 Juillet, 1889	Averti par le "Rush" d'avoir à quitter la Mer de Behring	
Kate .. .. .	13 Août, 1889	Idem.	
Minnie .. .. .	15 Juillet, 1889	65 milles .. .. .	Idem.
Pathfinder .. .. .	27 Mars, 1890	Seizé dans la Baie de Neah*	Corwio.

Et attendu que le Gouvernement de Sa Majesté Britannique a demandé à nous, Arbitres susnommés, de décider sur lesdites questions de fait, telles qu'elles résultent de l'exposé susmentionné; que l'Agent et les Conseils du Gouvernement des États-Unis ont, en notre présence et s'adressant à nous, déclaré que ledit exposé des faits était confirmé par les dépositions des témoins, et qu'ils s'étaient mis d'accord avec l'Agent et les Conseils de Sa Majesté Britannique pour s'en remettre à nos Arbitres de dire et prononcer véritable, en tant que nous le jugerions à propos, ledit exposé des faits.

Nous, Arbitres susnommés, disons et prononçons à l'unanimité que lesdits faits, tels qu'ils se trouvent dans ledit exposé, sont véritables.

Et attendu que toutes et chacune des questions qui ont été examinées par le Tribunal ont été décidées à la majorité absolue des voix,

Nous, le Baron de Courcel, Lord Hannen, le Juge Harlan, Sir John Thompson, le Sénateur Morgan, le Marquis Visconti Venosta, et M. Gregers Gram, étant entendu que les Arbitres qui se sont trouvés en minorité sur certaines questions, ne retirent pas leurs votes, déclarons que le présent acte contient la décision finale et la sentence écrite du Tribunal, conformément aux prescriptions du Traité.

Fait en double à Paris, et signé par nous, le 15<sup>e</sup> jour d'Août de l'année 1893.

(Signé)

ALPH. DE COURCEL.

JOHN M. HARLAN.

JOHN T. MORGAN.

HANNEN.

JNO. S. D. THOMPSON.

VISCONTI VENOSTA.

G. GRAM.

[English Version.]

*Award of the Tribunal of Arbitration constituted under the Treaty concluded at Washington, February 29, 1892, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland.*

WHEREAS by a Treaty between the United States of America and Great Britain, signed at Washington the 29th February, 1892, the ratifications of which by the Governments of the two countries were exchanged at London on the 7th May, 1892, it was, amongst other things, agreed and concluded that the questions which had arisen between the Government of the United States of America and the Government of Her Britannic

\* La Baie de Neah est située dans l'État de Washington, et le "Pathfinder" y a été saisi, du chef de délits commis par lui dans la Mer de Behring l'année précédente. Ce bâtiment fut relâché deux jours plus tard.

Majesty, concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters, should be submitted to a Tribunal of Arbitration to be composed of seven Arbitrators, who should be appointed in the following manner, that is to say: two should be named by the President of the United States; two should be named by Her Britannic Majesty; his Excellency the President of the French Republic should be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy should be so requested to name one; His Majesty the King of Sweden and Norway should be so requested to name one; the seven Arbitrators to be so named should be jurists of distinguished reputation in their respective countries, and the selecting Powers should be requested to choose, if possible, jurists who are acquainted with the English language;

And whereas it was further agreed by Article II of the said Treaty that the Arbitrators should meet at Paris within twenty days after the delivery of the Counter-Cases mentioned in Article IV, and should proceed impartially and carefully to examine and decide the questions which had been or should be laid before them as in the said Treaty provided on the part of the Governments of the United States and of Her Britannic Majesty respectively, and that all questions considered by the Tribunal, including the final decision, should be determined by a majority of all the Arbitrators;

And whereas by Article VI of the said Treaty, it was further provided as follows:—

“In deciding the matters submitted to the said Arbitrators, it is agreed that the following five points shall be submitted to them in order that their Award shall embrace a distinct decision upon each of said five points, to wit:

“1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

“2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

“3. Was the body of water now known as the Behring Sea included in the phrase “Pacific Ocean,” as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty?

“4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

“5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?”

And whereas by Article VII of the said Treaty it was further agreed as follows:—

“If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations, outside the jurisdictional limits of the respective Governments, are necessary, and over what waters such Regulations should extend;

“The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations.”

And whereas, by Article VIII of the said Treaty, after reciting that the High Contracting Parties had found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens in connection with the claims presented and urged by it, and that “they were solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions,” the High Contracting Parties agreed that “either of them might submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found, to be the subject of further negotiation;”

And whereas the President of the United States of America named the Honourable John M. Harlan, Justice of the Supreme Court of the United States, and the Honourable John T. Morgan, Senator of the United States, to be two of the said Arbitrators; and Her Britannic Majesty named the Right Honourable Lord Hannen and the Honourable Sir John Thompson, Minister of Justice and Attorney-General for Canada, to be two of



the said Arbitrators; and his Excellency the President of the French Republic, named the Baron de Courcel, Senator, Ambassador of France, to be one of the said Arbitrators; and His Majesty the King of Italy named the Marquis Emilio Visconti Venosta, former Minister of Foreign Affairs and Senator of the Kingdom of Italy, to be one of the said Arbitrators; and His Majesty the King of Sweden and Norway named Mr. Gregers Gram, Minister of State, to be one of the said Arbitrators;

And whereas we, the said Arbitrators, so named and appointed, having taken upon ourselves the burden of the said Arbitration, and having duly met at Paris, proceeded impartially and carefully to examine and decide all the questions submitted to us the said Arbitrators, under the said Treaty, or laid before us as provided in the said Treaty on the part of the Governments of Her Britannic Majesty and the United States respectively.

Now we, the said Arbitrators, having impartially and carefully examined the said questions, do in like manner by this our Award decide and determine the said questions in manner following, that is to say, we decide and determine as to the five points mentioned in Article VI, as to which our Award is to embrace a distinct decision upon each of them;

As to the first of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine as follows:—

By the Ukase of 1821, Russia claimed jurisdiction in the sea now known as the Behring's Sea, to the extent of 100 Italian miles from the coasts and islands belonging to her, but, in the course of the negotiations which led to the conclusion of the Treaties of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that Her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Behring's Sea, or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

As to the second of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that Great Britain did not recognize or concede any claim, upon the part of Russia to exclusive jurisdiction as to the seal-fisheries in Behring's Sea, outside of ordinary territorial waters.

As to the third of the said five points, as to so much thereof as requires us to decide whether the body of water now known as the Behring Sea was included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia, we, the said Arbitrators, do unanimously decide and determine, that the body of water now known as the Behring Sea, was included in the phrase "Pacific Ocean" as used in the said Treaty.

And as to so much of the said third point as requires us to decide what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after the said Treaty of 1825, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that no exclusive rights of jurisdiction in Behring Sea and no exclusive rights as to the seal fisheries therein, were held or exercised by Russia outside of ordinary territorial waters after the Treaty of 1825.

As to the fourth of the said five points, we, the said Arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea, east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, did pass unimpaired to the United States under the said Treaty.

As to the fifth of the said five points, we, the said Baron de Courcel, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram being a majority of the said Arbitrators, do decide and determine that the United States has not any right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea, the Tribunal having decided by a majority as to each Article of the following Regulations, we, the said Baron de Courcel, Lord Hannen, Marquis Visconti

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Venosta, and Mr. Gregers Gram, assenting to the whole of the nine Articles of the following Regulations, and being a majority of the said Arbitrators, do decide and determine in the mode provided by the Treaty, that the following concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and that they should extend over the waters hereinafter mentioned, that is to say :

**Article 1.** The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively, to kill, capture, or pursue at any time and in any manner whatever, the animals commonly called fur-seals, within a zone of 60 miles around the Pribiloff Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of 60 to a degree of latitude.

**Article 2.** The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from the 1st May to the 31st July, both inclusive, the fur-seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of north latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

**Article 3.** During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing-vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

**Article 4.** Each sailing vessel authorized to fish for fur-seals must be provided with a special licence issued for that purpose by its Government, and shall be required to carry a distinguishing flag to be prescribed by its Government.

**Article 5.** The masters of the vessels engaged in fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

**Article 6.** The use of nets, fire-arms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shot guns when such fishing takes place outside of Behring's Sea during the season when it may be lawfully carried on.

**Article 7.** The two Governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing. These men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

**Article 8.** The Regulations contained in the preceding Articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur-seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea, or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur-sealing vessels as heretofore.

**Article 9.** The concurrent Regulations hereby determined with a view to the protection and preservation of the fur-seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent Regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

And whereas the Government of Her Britannic Majesty did submit to the Tribunal of Arbitration by Article VIII of the said Treaty certain questions of fact involved in the claims referred to in the said Article VIII, and did also submit to us, the said Tribunal, a statement of the said facts, as follows, that is to say :—

*Findings of fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pp. 1 to 60 inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from, and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

"2. That the seizures aforesaid, with the exception of the 'Pathfinder,' seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto marked (C).

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto marked (A), and that the others were, in all substantial respects, the same. That in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B), and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid;

"4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States;

"5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

"Annex (A).

"Treasury Department, Office of the Secretary, Washington,  
April 21, 1886.

"Sir,

"Referring to Department letter of this date, directing you to proceed with the revenue-steamer 'Bear,' under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the Law contained in the provisions of Section 1956 of the United States' Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the Law referred to, after due notice shall have been given.

"You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President dated the 4th February, 1870.

"Respectfully yours,  
(Signed) "C. S. FAIRCHILD,  
"Acting Secretary.

"Captain M. A. Healy,  
"Commanding revenue-steamer 'Bear,'  
"San Francisco, California."

## "Annex (B).

"In the District Court of the United States for the District of Alaska.

"August Special Term, 1886.

"To the Honourable Lafayette Dawson, Judge of said District Court,

"The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner 'Thornton,' her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:—

"That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the 'Thornton,' her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

"That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

"And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and Maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

"Wherefore the said Attorney prays the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture, may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States, according to the form of the Statute of the said United States in such cases made and provided.

(Signed) "M. D. BALL,

"United States' District Attorney for the District of Alaska."

## "Annex (C).

"The following Table shows the names of the British sealing-vessels seized or warned by United States' revenue-cruisers, 1886-1890, and the approximate distance from land when seized. The distances assigned in the cases of the 'Carolina,' 'Thornton,' and 'Onward,' are on the authority of United States' Naval Commander Abbey (see 50th Congress, 2nd Session, Senate Executive Documents No. 106, pp. 20, 30, 40). The distances assigned in the cases of the 'Anna Beck,' 'W. P. Sayward,' 'Dolphin,' and 'Grace' are on the authority of Captain Shepard, United States' Royal Marine (Blue Book, United States, No. 2, 1890, pp. 80-82. See Appendix, vol. iii)."

Name of Vessel.	Date of Seizure.	Approximate Distance from Land when seized.	United States' Vessel making Seizures.
Carolina .. .. .	August 1, 1886	75 miles .. .. .	Corwin.
Thornton .. .. .	" 1, 1886	70 miles .. .. .	Ditto.
Onward .. .. .	" 2, 1886	115 miles .. .. .	Ditto.
Favourite .. .. .	" 2, 1886	Warned by "Corwin" in about same position as "Onward."	
Anna Beck .. .. .	July 2, 1887	66 miles .. .. .	Rush.
W. P. Sayward .. .. .	" 9, 1887	59 miles .. .. .	Ditto.
Dolphin .. .. .	" 12, 1887	40 miles .. .. .	Ditto.
Grace .. .. .	" 17, 1887	96 miles .. .. .	Ditto.
Alfred Adams .. .. .	August 10, 1887	62 miles .. .. .	Ditto.
Ada .. .. .	" 25, 1887	15 miles .. .. .	Bear.
Triumph .. .. .	" 4, 1887	Warned by "Rush" not to enter Behring Sea.	
Junita .. .. .	July 31, 1889	66 miles .. .. .	Rush.
Pathfinder .. .. .	" 29, 1889	30 miles .. .. .	Ditto.
Triumph .. .. .	" 11, 1889	Ordered out of Behring Sea by "Rush" (?). As to position when warned.	
Black Diamond .. .. .	" 11, 1889	35 miles .. .. .	Ditto.
Lily .. .. .	August 6, 1889	66 miles .. .. .	Ditto.
Ariel .. .. .	July 30, 1889	Ordered out of Behring Sea by "Rush."	
Kate .. .. .	August 13, 1889	Ditto.	
Minnie .. .. .	July 15, 1889	65 miles .. .. .	Ditto.
Pathfinder .. .. .	March 27, 1890	Seized in Neah Bay* .. .. .	Corwin.

\* Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

And whereas the Government of Her Britannic Majesty did ask the said Arbitrators to find the said facts as set forth in the said statement, and whereas the Agent and Counsel for the United States' Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the Agent and Counsel for Her Britannic Majesty that we, the Arbitrators, if we should think fit so to do might find the said statement of facts to be true.

Now, we, the said Arbitrators, do unanimously find the facts as set forth in the said statement to be true.

And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators ;

Now, we, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final decision and Award in writing of this Tribunal in accordance with the Treaty.

Made in duplicate at Paris, and signed by us the 15th day of August, in the year 1893.

And we do certify this English version thereof to be true and accurate.

(Signed) ALPH. DE COURCEL.  
JOHN M. HARLAN.  
JOHN T. MORGAN.  
HANNEN.  
JNO. S. D. THOMPSON.  
VISCONTI VENOSTA.  
G. GRAM.

#### Inclosure 2.

*Déclarations faites par le Tribunal d'Arbitrage et présentées aux Gouvernements des États-Unis et de la Grande-Bretagne pour être prises en considération par ces Gouvernements.*

1. LES Arbitres déclarent que les Règlements communs tels qu'ils sont établis par le Tribunal d'Arbitrage, en vertu de l'Article VII du Traité du 29 Février, 1892, n'étant applicables que sur la haute mer, devront, dans leur pensée, être complétés par d'autres Règlements applicables dans les limites de la souveraineté de chacune des deux Puissances intéressées et qui devront être fixés par elles d'un commun accord.

2. Vu l'état critique auquel il paraît constant que la race des phoques à fourrure se trouve actuellement réduite par suite de circonstances incomplètement éclaircies, les Arbitres croient devoir recommander aux deux Gouvernements de se concerter en vue d'interdire toute destruction des phoques à fourrure, tant sur terre que sur mer, pendant une période de deux ou trois ans, ou d'une année au moins, sauf telles exceptions que les deux Gouvernements pourraient trouver à propos d'admettre.

Si cette mesure donnait de bons résultats, elle pourrait être appliquée de nouveau, à certains intervalles, suivant les circonstances.

3. Les Arbitres déclarent en outre que, dans leur pensée, l'exécution des Règlements établis par le Tribunal d'Arbitrage devra être assurée par un ensemble de stipulations et de mesures qu'il appartiendra aux deux Puissances d'arrêter, et que le Tribunal doit s'en remettre en conséquence à ces deux Puissances pour rendre effectifs les Règlements établis par lui.

Fait et signé à Paris, le 15 Août, 1893.

(Signé) ALPH. DE COURCEL.  
JOHN M. HARLAN.  
JOHN T. MORGAN.

J'approuve les Déclarations 1 et 3.

HANNEN.

J'approuve les Déclarations 1 et 3.

JNO. S. D. THOMPSON.  
VISCONTI VENOSTA.  
G. GRAM.

## [English Version.]

*Declarations made by the Tribunal of Arbitration and referred to the Governments of the United States and Great Britain for their consideration.*

1. THE Arbitrators declare that the concurrent Regulations, as determined upon by the Tribunal of Arbitration, by virtue of Article VII of the Treaty of the 29th February, 1892, being applicable to the high sea only, should, in their opinion, be supplemented by other Regulations applicable within the limits of the sovereignty of each of the two Powers interested and to be settled by their common agreement.

2. In view of the critical condition to which it appears certain that the race of fur-seals is now reduced in consequence of circumstances not fully known, the Arbitrators think fit to recommend both Governments to come to an understanding in order to prohibit any killing of fur-seals, either on land or at sea, for a period of two or three years, or at least one year, subject to such exceptions as the two Governments might think proper to admit of.

Such a measure might be resorted to at occasional intervals if found beneficial.

3. The Arbitrators declare moreover that, in their opinion, the carrying out of the Regulations determined upon by the Tribunal of Arbitration should be assured by a system of stipulations and measures to be enacted by the two Powers; and that the Tribunal must, in consequence, leave it to the two Powers to decide upon the means for giving effect to the Regulations determined upon by it.

We do certify this English version to be true and accurate and have signed the same at Paris, this 15th day of August, 1893.

(Signed)

ALPH. DE COURCEL.  
JOHN M. HARLAN.  
JOHN T. MORGAN.

HANNEN.

JNO. S. D. THOMPSON.  
VISCONTI VENOSTA.  
G. GRAM.

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BEHRING SEA ARBITRATION.

Award of the Tribunal of Arbitration, constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

*Presented to both Houses of Parliament by Command of Her Majesty. August 1893.*

LONDON:  
PRINTED BY HARRISON AND SONS.

UNITED STATES. No. 11 (1893).

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BEHRING SEA ARBITRATION.

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PAPERS

RELATING TO THE

PROCEEDINGS OF THE TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER

ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON  
ON THE 29TH FEBRUARY, 1892, BETWEEN HER BRITANNIC MAJESTY  
AND THE UNITED STATES OF AMERICA.

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*Presented to both Houses of Parliament by Command of Her Majesty.  
September 1893.*

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Papers relating  
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Sir,  
THE first meeting for the 23rd instant, Her Majesty's son, Q.C., of Canada, Government, and will  
It will probably be previous to that date States' Agent, or will for the purpose of arbitration.  
You are aware, that it has been agreed States that the first part of Great Britain Arbitrators selected  
At this first meeting of the Tribunal to  
Argument would then application.

It has further been such action as may be tion of the Tribunal, Amongst the subject at the first meeting at 1. The question until its close, and Argument presented  
The matter seen Arbitrators. It would should be considered to be the same object nor of the Reports of only stipulates that t

## BEHRING SEA ARBITRATION.

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Papers relating to the Proceedings of the Tribunal of Arbitration constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

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No. 1.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, February 17, 1893.*  
THE first meeting of the Tribunal in the Behring Sea Arbitration having been fixed for the 23rd instant, I have to request you to proceed to Paris to attend it.

Her Majesty's Attorney-General, Sir Richard Webster, Q.C., and Mr. O. Robinson, Q.C., of Canada, will also attend the meeting as Counsel on behalf of Her Majesty's Government, and will be ready to give you their advice and support.

It will probably be convenient that you should be in Paris two or three days previous to that date in order to enter into informal communications with the United States' Agent, or with the gentleman whom he may have delegated to represent him, for the purpose of arranging the course of procedure to be adopted before the Tribunal.

You are aware, from the correspondence which has already been forwarded to you, that it has been agreed by the Governments of Her Britannic Majesty and the United States that the first meeting of the Tribunal shall be attended by one Arbitrator on the part of Great Britain, one on the part of the United States, and one of the three Arbitrators selected by the foreign Governments.

At this first meeting the Agent of the United States will apply for an adjournment of the Tribunal to the 23rd March, to which date the presentation of the printed Argument would thereby be postponed, and you are authorized to concur in the application.

It has further been agreed that all matters other than that of this adjournment, and such action as may be deemed by the Arbitrators present as necessary for the organization of the Tribunal, shall be postponed to the full meeting on the 23rd March.

Amongst the subjects which may be classed in the category of those to be discussed at the first meeting are the following:—

1. The question whether the proceedings before the Tribunal shall be kept secret until its close, and whether such secrecy shall apply to the Case, Counter-Case, and Argument presented on either side.

The matter seems to Her Majesty's Government to be one for the decision of the Arbitrators. It would probably be found convenient for them that the discussions should be considered as confidential while they are proceeding. There does not appear to be the same objection to the publication of the Cases, Counter-Cases, and Arguments, nor of the Reports of the Behring Sea Commissioners, respecting which latter the Treaty only stipulates that they shall not be made public until they shall have been submitted

to the Arbitrators. But in respect to these documents also, Her Majesty's Government are willing to follow the course which may appear most convenient to the Arbitrators.

2. The question of the appointment of a Secretary or of Joint-Secretaries to the Tribunal.

As the French Government will provide the place of meeting, and as the French Arbitrator has consented to attend the first sitting, he will no doubt be designated by the Arbitrators as President of the Tribunal, and he will probably have proposals to make as to the choice of a Secretary or Secretaries, and as to the arrangements for clerical assistance and the printing of the Protocols.

As soon as the business connected with the first meeting is completed you will be at liberty to return to London, in order to proceed with the preparation of the printed Argument.

I have to request you to furnish me with Reports of each meeting of the Tribunal, both on the first occasion and subsequently when the full meetings take place, in a numbered series of despatches according to the forms in use in this Office.

You will refer to me, by telegraph, for instructions on any doubtful points which may call for immediate decision.

I am, &c.  
(Signed) ROSEBERY.

No. 2.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, February 17, 1893.*  
WITH reference to my preceding despatch of this day's date, I have to inform you that I have appointed Mr. R. P. Maxwell of this Office, and Mr. Ashley Froude, C.M.G., late Secretary of the Behring Sea Commission, to assist you in your work as British Agent in the Behring Sea Arbitration.

These gentlemen will accompany you to Paris for the first meeting of the Tribunal on the 23rd instant, and for the subsequent meetings which will commence on the 23rd proximo.

I am, &c.  
(Signed) ROSEBERY.

No. 3.

*Mr. Tupper to the Earl of Rosebery.—(Received February 22.)*

(Telegraphic.) *Paris, February 22, 1893.*

BEHRING SEA Arbitration.

The meeting of the Tribunal is fixed for 11 o'clock on Thursday morning.

Baron de Courcel has suggested to the United States' Acting Agent and myself that the adjournment shall extend to the 6th April instead of to the 23rd March, and that on 30th March the printed arguments shall be handed in to the Arbitrators.

The proposed adjournment would defer the second meeting till after Holy Week, and would enable the Tribunal to consider the argument without further adjournment, which would be necessary for that purpose were 23rd March to be date of the second meeting.

The United States' Acting Agent is telegraphing to his Government for instructions.

Sir Richard Webster and Mr. Robinson approve, subject to the views of Her Majesty's Attorney-General, who has not yet arrived here.

Does the proposal meet with your Lordship's approval?

No. 4.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.)

*Foreign Office, February 22, 1893.*

THE course proposed by Baron de Courcel seems to be convenient. I approve the arrangement as stated in your telegram of to-day.

No. 5.

*Mr. Tupper to the Earl of Rosebery.—(Received February 23.)*

My Lord,

*Paris, February 21, 1893.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatches of the 17th instant, containing instructions for my guidance at the first meeting of the Behring Sea Arbitration Tribunal, and informing me that Mr. R. P. Maxwell and Mr. Ashley Froude would accompany me to Paris.

I have the honour to inform your Lordship that, in accordance with your instructions, I left London yesterday, and arrived here the same evening, accompanied by the above-mentioned gentlemen and my Private Secretary, Mr. J. Pope.

I have, &amp;c.

(Signed)

CHARLES H. TUPPER.

No. 6.

*Mr. Tupper to the Earl of Rosebery.—(Received February 23.)*

My Lord,

*Paris, February 21, 1893.*

I HAVE the honour to inform your Lordship that I called this morning at Her Majesty's Embassy, accompanied by Mr. Maxwell, Mr. Froude, and my Secretary, Mr. Pope, and saw Mr. Austin Lee, from whom I obtained much useful information in connection with the meeting of the Tribunal of Arbitration.

Finding that Mr. William Williams, the Junior Counsel for the United States, was staying at the Hôtel Continental, I called upon him, and learned that he had been delegated to represent Mr. Foster, the Agent of the United States, pending the latter gentleman's arrival in Paris.

We then by arrangement made several official visits together, and endeavoured to see Baron de Courcel, in order to make an appointment for the meeting of the Tribunal on Thursday.

Having failed to find his Excellency at home, we have made an appointment to call on him together to-morrow morning, at 10 o'clock.

Lord Hannen and Mr. Justice Harlan have expressed their willingness to meet at any hour which may be agreeable to Baron de Courcel.

I am of opinion, if your Lordship should see no objection, that the agreement as to the secrecy of the Cases and Counter-Cases should not be prolonged beyond the 23rd instant; but that in regard to this question, as well as to that of opening the proceedings of the Tribunal to the public, it would be advisable to defer to whatever opinion the Arbitrators may express on the subject.

Mr. Williams has intimated to me that his Government desired the publication of the Cases and Counter-Cases, and he considered that the agreement as to secrecy would terminate on the 23rd instant.

I have, &amp;c.

(Signed)

CHARLES H. TUPPER.

No. 7.

*The Marquis of Dufferin to the Earl of Rosebery.—(Received February 23.)*

My Lord,

Paris, February 22, 1893.

I HAVE the honour to transmit herewith copy of a letter which I have received from the Minister of the United States in Paris, informing me that Mr. William Williams, Associate Counsel of the United States before the Tribunal of Arbitration convened to decide the questions of fur-seals, has been designated to act as Special Agent of the United States at the meeting of the Tribunal to be held on the 23rd instant.

I have, &amp;c.

(Signed) DUFFERIN AND AVA.

Inclosure in No. 7.

*Mr. Coolidge to the Marquis of Dufferin.*

My Lord,

Paris, February 21, 1893.

I HAVE the honour to inform your Excellency that Mr. William Williams, Associate Counsel of the United States before the Tribunal of Arbitration convened to decide the question of fur-seals, has been assigned to act as Special Agent of the United States at the meeting of the Tribunal on the 23rd instant.

I have, &amp;c.

(Signed) J. JEFFERSON COOLIDGE.

No. 8.

*Mr. Tupper to the Earl of Rosebery.—(Received February 23.)*

(Telegraphic.)

Paris, February 23, 1893, 6 P.M.

THE Tribunal has decided to adjourn until the 23rd March, the further adjournment referred to in my telegram of yesterday not having been agreed to by the Government of the United States.

With regard to the publication of the Cases and Counter-Cases, the Tribunal decided that the matter did not come under their consideration; and I understand that it is the intention of the United States' Government to publish these documents.

No. 9.

*The Marquis of Dufferin to the Earl of Rosebery.—(Received February 25.)*

My Lord,

Paris, February 24, 1893.

THE Behring Sea Arbitration Tribunal held its first meeting yesterday at the Ministry of Foreign Affairs. It was attended by Baron de Courcel, the French Arbitrator (who was requested by his colleagues to act as President for the occasion), by Lord Hannen, the British Arbitrator, and Mr. Justice Harlan, the United States' Arbitrator, as well as by the Honourable C. H. Tupper, the British Agent, and Mr. W. Williams, acting as Agent for the United States in the place of Mr. Foster, who has not yet arrived.



No Counsel were present on behalf of the United States, but Sir Charles Russell and Sir Richard Webster attended as Counsel on behalf of Great Britain.

On the proposal of the United States' Acting Agent, supported by the British Agent, the Tribunal adjourned till the 23rd March, and it was agreed that, pending a decision to be taken by the full Tribunal, the proceedings should be kept secret.

I took the opportunity of a ball at the Elysée in the evening to present Lord Hannen and Mr. Tupper to the President of the Republic.

I have, &c.

(Signed) DUFFERIN AND AVA.

No. 10.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord,

*Paris, February 23, 1893.*

AFTER a conversation yesterday with Baron de Courcel and Mr. Williams, the Acting Agent for the United States, I had the honour to inform your Lordship by telegraph that a suggestion had been made by the former to the effect that the Tribunal of Arbitration should be adjourned till the 6th April, and the presentation of the printed arguments postponed till the 30th March.

I duly received your Lordship's telegram of yesterday, informing me that you approved of this proposal.

Mr. Williams, however, stated to me this morning that his Government had instructed him to object to the proposed postponement beyond the 23rd March, though, he added, it was probable that after the meeting on that date an adjournment might be desirable for a few days.

No allusion was therefore made to the question of an extended adjournment at the meeting of the Tribunal to-day.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 11.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord,

*Paris, February 24, 1893.*

I HAVE the honour to transmit herewith to your Lordship a copy of the Protocol of the first meeting of the Behring Sea Tribunal of Arbitration, which was held at 11 o'clock yesterday morning at the French Ministry of Foreign Affairs.

This Protocol, which is drawn up in the French language, was finally approved and signed by the three Arbitrators at an informal meeting held this morning, and attended by the Agents of the two Governments in accordance with the request of the Tribunal.

An English version of the Protocol has been prepared, and will be signed to-morrow by Mr. Williams and myself.

I have, &c.

(Signed) CHARLES H. TUPPER.

## Inclosure in No. 11.

*Protocoles des Seances du Tribunal d'Arbitrage, constitué en vertu de la Convention du 29 Février, 1892, signée à Washington entre le Gouvernement des États-Unis et de Sa Majesté Britannique.*

*Protocole I.—Séance du 23 Février, 1893.*

LE Tribunal s'est réuni à Paris dans l'Hôtel du Ministère des Affaires Étrangères de France.

Les Arbitres présents étaient :—

L'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis, un des Arbitres désignés par les États-Unis ;

Son Excellence le Baron Alphonse de Courcel, Sénateur, Arbitre désigné par la France ;

Le Très Honorable Lord Hannen, Pair d'Angleterre, siéant à la Cour Suprême d'Appel, un des Arbitres désignés par la Grande-Bretagne ;

Lesquels se sont assurés que leurs pouvoirs respectifs étaient en bonne et valable forme.

M. le Baron de Courcel est invité par ses collègues à prendre place au fauteuil de la Présidence pour la présente séance.

Assistent à la séance :—

M. William Williams, en qualité d'Agent Spécial et Conseil Adjoint pour les États-Unis, et

L'Honorable Charles H. Tupper, en qualité d'Agent de Sa Majesté Britannique.

MM. Williams et Tupper ont déposé sur le bureau du Tribunal Arbitral les Commissions qui les accréditent devant le Tribunal.

Assistent également à la séance, en qualité de Conseils du Gouvernement Britannique :—

Sir Charles Russell, Conseil de la Reine, Membre du Parlement, Attorney-Général de Sa Majesté Britannique ;

Sir Richard Webster, Conseil de la Reine, Membre du Parlement ;

M. Christopher Robinson, Conseil de la Reine.

Le Président a invité M. Henry Feer, ancien Consul-Général de France, à rédiger le Protocole de la séance, avec le concours de MM. Williams et Tupper.

M. Williams, agissant au nom du Gouvernement des États-Unis, demande que le Tribunal s'ajourne au 23 Mars.

M. Tupper, au nom du Gouvernement Britannique, appuie la demande de M. Williams.

Sir Charles Russell, Principal Conseil de la Grande-Bretagne, déclare que les Conseils, quoique informés d'avance de la demande qui devait être présentée, ont tenu, par déférence pour le Tribunal Arbitral, à se présenter à cette première séance.

Le Tribunal Arbitral, faisant droit à la demande, qui lui est adressée au nom des deux parties, décide de s'ajourner au 23 Mars.

La question de la publication des Mémoires et Contre-Mémoires ayant été posée, les Arbitres déclarent qu'elle n'est pas de leur compétence.

Quant à la publication du Protocole de la présente séance, les Arbitres présents ne se trouvant pas en nombre suffisant pour prendre une décision de nature à lier pour l'avenir le Tribunal Arbitral, déclarent que jusqu'à nouvel ordre le Protocole de la séance du 23 Février demeurera secret.

Le Tribunal Arbitral s'ajourne au 23 Mars.

Ainsi fait à Paris, le 23 Février, 1893, et ont signé :

Le Président .. .. .	ALPH. DE COURCEL.
L'Agent Spécial des États-Unis ..	WILLIAM WILLIAMS.
L'Agent de la Grande-Bretagne ..	CHARLES H. TUPPER.
Le Secrétaire.. .. .	H. FEER.

[For translation, see Inclosure in No. 13.]

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord,

*Paris, February 24, 1893.*

TO supplement the report of the proceedings of yesterday's meeting of the Tribunal, contained in the Protocol which is inclosed in my immediately preceding despatch, I have the honour to furnish your Lordship with the following account of what took place.

Baron de Courcel, having taken the Chair as President, stated that the object of the Tribunal was to consider the propriety of commencing the proceedings if neither of the Agents had any objection.

If there were any objection or any proposal to make, such as the question of an adjournment, it should come from the Agents of the parties, and now was the time it should be made.

Mr. Williams thereupon made his proposal for an adjournment till the 23rd March, to which I assented, and to which the Tribunal agreed.

Sir Charles Russell then addressed the Tribunal as recorded in the Protocol.

The President next requested the Agents to inform their respective Governments, and to cause the four Arbitrators who were not present to be advised, of the decision of the Tribunal in regard to the adjournment. He added that the Arbitrators present did not feel able, in the absence of their colleagues, to arrange for the appointment of a Secretary or Secretaries, but that for the purposes of the present meeting the Protocol would be prepared by M. Feer, formerly in the French Consular Service, with the assistance of the Agents of both parties.

The Protocols, he said, would be drawn up in French and English, French being the language of the country in which the Tribunal was assembled, and English that of the two nations who were interested in the Arbitration.

Mr. Williams then stated that the documents in the Case had up to the present been kept secret, in accordance with an Agreement between the two Governments, but that as neither party saw any reason for further extending the injunction of secrecy, he proposed that the Cases and Counter-Cases should become public property forthwith unless the Arbitrators saw any objection.

The President inquired whether I agreed to this proposal, and I replied in the affirmative.

The President, after consultation with his colleagues, then announced that the publicity of the Cases, Counter-Cases, and Arguments was not a question on which the Tribunal had to enter. The Agents on either side should act in regard to it in whatever way they might judge to be the best.

As to the proceedings before the Tribunal, he stated that they belonged to the Tribunal itself, and that the Arbitrators present had no right to give them to the public. They must be kept secret until the next meeting, when the full Tribunal would decide as to the proper course to be pursued.

I have, &c.

(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord,

*Paris, February 25, 1893.*

WITH reference to my first despatch of yesterday, I have the honour to transmit to your Lordship a copy of the English version of the Protocol of the first meeting of the Behring Sea Arbitration Tribunal.

This document has been certified as an accurate translation of the French original by Mr. Williams and myself, in accordance with the request of the Arbitrators.

The original documents, as signed in both languages, remain for the present in the custody of Baron de Courcel's Secretary.

I have, &c.

(Signed) CHARLES H. TUPPER.

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## Inclosure in No. 13.

*Protocols of the Meetings of the Tribunal of Arbitration constituted under the Convention of February 29, 1892, signed at Washington between the Governments of the United States and Her Britannic Majesty.*

*Protocol I.—Meeting of February 23, 1893.*

THE Tribunal assembled at Paris at the French Ministry for Foreign Affairs.

The Arbitrators present were:—

The Honourable John M. Harlan, Justice of the Supreme Court of the United States, one of the Arbitrators named by the United States;

His Excellency Baron Alphonse de Courcel, Senator, the Arbitrator named by France;

The Right Honourable Lord Hannen, Lord of Appeal, one of the Arbitrators named by Great Britain;

Who, having assured themselves that their respective powers were in good and valid form,

Baron de Courcel was invited by his colleagues to take the chair as President for the present meeting.

There were present at the meeting:—

Mr. William Williams, as Special Agent and Associate Counsel of the United States;

The Honourable Charles H. Tupper, as Agent of Her Britannic Majesty.

Messrs. Williams and Tupper laid before the Tribunal of Arbitration the Commissions empowering them to act before the Tribunal.

There were also present at the meeting, as Counsel for Her Britannic Majesty's Government:—

Sir Charles Russell, Q.C., M.P., Her Britannic Majesty's Attorney-General;

Sir Richard Webster, Q.C., M.P., and

Mr. Christopher Robinson, Q.C.

The President invited M. Henri Feer, formerly a Consul-General of France, to draw up the Protocol of this meeting, with the assistance of Messrs. Williams and Tupper.

Mr. Williams, acting for the Government of the United States, asked that the Tribunal adjourn till the 23rd March.

Mr. Tupper, in the name of the British Government, supported the request of Mr. Williams.

Sir Charles Russell, the leading Counsel for Great Britain, stated that the Counsel, though previously aware of the request which would be made, thought it right to attend the first meeting out of respect for the Tribunal of Arbitration.

The Tribunal of Arbitration acceded to the request made in the name of the two parties, and agreed to adjourn to the 23rd March.

The question of the publication of the Cases and Counter-Cases having been mentioned, the Arbitrators stated that it was not a subject for their consideration.

In regard to the publication of the Protocol of this meeting, the Arbitrators present, finding themselves in insufficient number to give a decision which would bind the Tribunal of Arbitration for the future, announced that the Protocol of the meeting of the 23rd February should be kept secret until further orders.

The Tribunal of Arbitration adjourned till the 23rd March.

So done in Paris, the 23rd February, 1893, and have signed:

The President	.. .. .	ALPH. DE COURCEL.
The Special Agent for the United States.	.. .. .	WILLIAM WILLIAMS.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	H. FEER.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*  
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## No. 14.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord,

*Paris, February 25, 1893.*

I HAVE the honour to inform your Lordship that, the business connected with the first meeting of the Behring Sea Tribunal of Arbitration having been completed this afternoon, I purpose leaving Paris to-morrow on my return to London, accompanied by the gentlemen attached to the staff of the Agency.

I have, &c.

(Signed) CHARLES H. TUPPER

## No. 15.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

*Foreign Office, March 1, 1893.*

I HAVE received your despatch of the 24th ultimo, giving an account of what took place at the first meeting in Paris of the Behring Sea Arbitration Tribunal.

Your proceedings on that occasion are approved by Her Majesty's Government.

I am, &c.

(Signed) ROSEBERY.

## No. 16.

*Mr. Tupper to the Earl of Rosebery.—(Received March 3.)*

My Lord,

*Foreign Office, March 3, 1893.*

DURING my recent visit to Paris occasion was taken to arrange for the accommodation of the British Staff required for the presentation of the Case before the Tribunal of Arbitration.

In addition to the four gentlemen engaged as Counsel, viz., the Attorney-General, Sir R. Webster, Mr. C. Robinson, and Mr. Box, I respectfully suggest that the following should be attached to the Staff of the Agency:—Dr. G. M. Dawson, Mr. R. P. Maxwell, and Mr. G. F. Fairholme, of the Foreign Office; Mr. J. Anderson, of the Colonial Office; Mr. Ashley Froude; Mr. J. Pope, my Private Secretary; Mr. J. M. Macoun, Secretary to Dr. Dawson; and Mr. Charles Russell, the solicitor engaged in the case.

I have ventured to include the name of Dr. Dawson, as he is an officer in the service of the Canadian Government, and perhaps the only officer at the disposal of Her Majesty's Government who can be said to be conversant with the life and habits of the fur-seal. His presence at Paris I believe to be necessary, and I do not contemplate objection being taken on the part of the United States to our availing ourselves of his knowledge.

I do not propose, unless otherwise instructed by your Lordship, or unless occasion should arise after consultation with Counsel, to ask Sir G. Baden-Powell to attend.

In my opinion, his presence with Dr. Dawson might make it appear that the British Commissioners, who were appointed to make an impartial examination into seal life, were actively engaged in pressing the British Case before the Tribunal.

This I do not think desirable.

I learn that neither of the United States' Commissioners will be in Paris, though other officers of the United States familiar with seal life will be there.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 17.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

*Foreign Office, March 8, 1893.*

IN reply to your despatch of the 3rd instant, I have to inform you that I approve your recommendation that, in addition to the four gentlemen employed as Counsel, the following gentlemen should be attached to the Staff of the Agency for the presentation of the British Case before the Behring Sea Tribunal of Arbitration, viz., Dr. G. M. Dawson, Mr. R. P. Maxwell, Mr. Ashley Froude, Mr. J. Pope, Mr. J. M. Macoun, and Mr. Charles Russell.

With regard to your suggestion that Mr. G. F. Fairholme, of this Office, should also be included as a member of the Staff, I shall be happy to comply with it should you find, after your arrival in Paris, that his presence would be desirable for the purpose of examining any further Russian documents that may be produced on the part of the United States.

It has also been arranged, after consultation with the Colonial Office, that Mr. J. Anderson, of that Department, shall be detached for such time as you may consider that he can be usefully employed.

In conclusion, I concur with you in the opinion that, for the reasons stated by you, it will be unnecessary that Sir G. Baden-Powell should be asked to attend in Paris, unless circumstances should make his presence expedient hereafter.

I am, &c.  
(Signed) ROSEBERY.

No. 18.

*Mr. Tupper to the Earl of Rosebery.—(Received March 21.)*

My Lord,

*Paris, March 19, 1893.*

I HAVE the honour to report that I left London on the 17th instant, and arrived here on that day, accompanied by Mr. M. Box, Mr. R. P. Maxwell, and my Private Secretary, Mr. J. Pope.

Her Majesty's Attorney-General, Sir R. Webster, Mr. C. Robinson, Dr. G. M. Dawson, Mr. A. Froude, Mr. C. Russell, and Mr. J. M. Macoun arrived in Paris last night.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 19.

*Mr. Tupper to the Earl of Rosebery.—(Received March 23, 6:45 P.M.)*

(Telegraphic.)

*Paris, March 23, 1893, 5:10 P.M.*

THE Tribunal has adjourned till 4th April. It was decided that all proceedings should be public forthwith.

No. 20.

*Mr. Tupper to the Earl of Rosebery.—(Received March 27.)*

My Lord,

*Paris, March 25, 1893.*

IT will be within your Lordship's recollection that on the 10th February last a Notice was addressed, at my request, by Sir Julian Pauncefote to the Agent for the United States for copies of certain documents quoted in the United States' Counter-Case.

Among these documents the Report of Mr. H. W. Elliott for the year 1890 was included.

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Mr. Foster informed me, in his note of the 16th February, that the Government of the United States did not feel that they were bound by the Treaty to furnish a copy of the Report, and that he was therefore unable to comply with my request.

The matter appeared to me of so great importance, in consequence of the statements contained in the Report and of the prominent position occupied by Mr. Elliott on the question of seal life,\* that, after consultation with Her Majesty's Attorney-General and the other Counsel engaged in the case, I addressed a letter to Mr. Foster, a copy of which is inclosed herewith, pressing for the production of the Report.

I have not yet received any reply to this letter.

Should Mr. Foster's answer not prove satisfactory, I propose to instruct Counsel to apply to the Tribunal to order the document to be produced.

I have, &c.

(Signed) CHARLES H. TUPPER.

Inclosure in No. 20.

*Mr. Tupper to Mr. Foster.*

Sir,

*Paris, March 23, 1893.*

IN reference to your letter of the 16th February, 1893, in reply to my request for the production of the Report of Mr. H. W. Elliott, presented pursuant to Act of Congress, I desire to give you notice that the Government of Her Britannic Majesty will insist on their right to its production.

While desirous to avoid, as far as possible, contention on such matters before the Tribunal, I think it fair to give you notice that unless the Report, or a copy thereof, be produced, our Counsel will, on the 4th April, apply to the Tribunal to order its production.

In the event of your not having the Report, or a copy, in Paris, I give you this early intimation in order that you may communicate with the proper Department in Washington.

I am, &c.

(Signed) CHARLES H. TUPPER.

No. 21.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

*Foreign Office, March 28, 1893.*

I UNDERSTAND that, in consequence of the great mass of material which requires to be dealt with in the pleadings before the Tribunal of Arbitration, the Attorney-General and Sir R. Webster are desirous of having the services of Mr. F. T. Piggott, of the Middle Temple, who has already rendered considerable assistance in the preparation of the Argument presented on behalf of Her Majesty's Government.

I have therefore arranged with the Lords Commissioners of Her Majesty's Treasury that Mr. Piggott should proceed forthwith to Paris.

Mr. Piggott's position will be that of Secretary to the Attorney-General, from whom he will receive instructions as to the duties on which he shall be employed.

I am, &c.

(Signed) ROSEBERY.

No. 22.

*Mr. Tupper to the Earl of Rosebery.—(Received March 29.)*

My Lord,

*Paris, March 28, 1893.*

I HAVE the honour to transmit, for your Lordship's information, the accompanying copies of a correspondence which has passed between the United States' Agent

\* See British Argument, pp. 147 *et seq.*



and myself on the occasion of my having forwarded to the Arbitrators and to him copies of the Supplementary Report of the British Commissioners.\*

Finding that Mr. Foster has communicated to the Arbitrators a copy of his note to me protesting against the admission of the document, I have forwarded to them a copy of my reply.

I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclosure 1 in No. 22.

*Mr. Tupper to the Behring Sea Arbitrators and Mr. Foster.*

THE Undersigned, Agent of Her Britannic Majesty, appointed to attend the Tribunal of Arbitration, has the honour to transmit herewith to you copies, in duplicate, of the "Supplementary Report of the British Commissioners appointed to inquire into Seal Life in Behring Sea," referred to on p. 166 D of the Counter-Case presented on behalf of the Government of Her Britannic Majesty.

Duplicate copies of this document have been forwarded to the Agent of the United States [each of the Arbitrators].

The Undersigned has the honour to renew to you the assurance, &c.  
*Paris, March 25, 1893.*

Inclosure 2 in No. 22.

*Mr. Foster to Mr. Tupper.*

THE Undersigned, Agent of the United States before the Tribunal of Arbitration convened in accordance with the provisions of the Treaty between the United States and Great Britain of the 29th February, 1892, has the honour to acknowledge the receipt, at 4:45 P.M. on yesterday (Sunday), the 26th instant, from the Hon. Charles H. Tupper, Her Britannic Majesty's Agent, of a note, dated the 25th instant, stating that he transmits with said note copies, in duplicate, of the "Supplementary Report of the British Commissioners appointed to inquire into Seal Life in Behring Sea," and also stating that duplicate copies of the same document have been forwarded to each of the Arbitrators; and, further, to say that, in the envelope containing said note were found two unbound printed documents.

The Undersigned cannot refrain from expressing his surprise that Her Majesty's Agent has conceived himself authorized to lay a paper, presumably bearing on the merits of the controversy between the Governments of the United States and Great Britain, before the members of the Tribunal, at a time and in a manner not allowed by the Treaty.

If the documents referred to may be thus submitted, the Undersigned is unable to perceive that Her Majesty's Agent may not submit to the Tribunal, at his pleasure, at any time, any paper containing evidence or other matter bearing upon the merits of the controversy. He herewith returns the documents referred to without examination, and begs to apprise Her Majesty's Agent that he will immediately address the Arbitrators, protesting against the course Her Majesty's Agent has taken, and requesting them to disregard the document.

He further gives notice to Her Majesty's Agent that the Tribunal of Arbitration will be moved, at its next session, that the document referred to be dismissed from attention, and returned to Her Majesty's Agent.

The Undersigned, &c.

(Signed) JOHN W. FOSTER.

*Paris, March 26, 1893.*

\* Copies of this Report, with other papers laid before the Tribunal, will be deposited in the Library of each House of Parliament.

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## Inclosure 3 in No. 22.

*Mr. Tupper to Mr. Foster.*

THE Undersigned, Agent of Her Britannic Majesty appointed to attend the Tribunal of Arbitration convened under the provisions of the Treaty concluded at Washington on the 20th February, 1892, has the honour to acknowledge the receipt of the Hon. John W. Foster's communication of this day's date, and, in reply thereto, desires to state that it is the view of Her Majesty's Government that the mode of procedure contemplated by the Treaty has not been accurately followed.

While all the material bearing on the whole subject-matter in dispute intended to be used by either party was to be submitted to the other party, that part of such material which bore only on the question of Regulations—and particularly the Report or Reports, joint or several, of the Commissioners of the two countries—should have been, it is believed, kept distinct from that part which bore on the questions of right, and that the latter should alone, in the first instance, have been submitted to the Arbitrators, the former, namely, that part relating to Regulations, only when the contingency therefor arose, or, in other words, when the determination of the questions of exclusive right had been arrived at.

It was upon this principle that the original Case of Great Britain was framed, and this course would have been followed but for the objections raised by the United States, as stated in Mr. Foster's letter to Mr. Herbert of the 27th September, 1892.

In deference to those representations, and in order to facilitate the progress of the Arbitration, Her Majesty's Government, while maintaining the justice of their contention, furnished to the Government of the United States and to the Arbitrators the separate Report of the British Commissioners and its Appendices, reserving at the same time their rights, as stated in Lord Rosebery's despatch to Mr. Herbert of the 13th October, 1892.

The Government of the United States, in presenting to the Arbitrators with their original Case the separate Report of the United States' Commissioners, had, in the opinion of Her Majesty's Government, departed from the mode of procedure contemplated by the Treaty. It was in pursuance of the understanding contained in the correspondence above referred to that Her Majesty's Government furnished to the Agent of the United States and to the Arbitrators the Supplementary Report of the British Commissioners which was referred to on p. 106 p of the British Counter-Case.

At the proper time Her Majesty's Government will submit to the Arbitrators that they are entitled to use this Supplementary Report, and they are quite willing that copies should remain in the hands of the Representatives of the United States without prejudice to any objection they may desire to raise.

The Government of Her Britannic Majesty believe that the Arbitrators will desire to have at their disposal any trustworthy information which may assist them upon the questions referred to them for decision.

If, as the Undersigned understands, a communication on this subject has been addressed by Mr. Foster to the Arbitrators, Her Majesty's Government will forward to them a copy of Mr. Foster's note of the 27th instant, and of this reply thereto.

The Undersigned, &amp;c.

(Signed) CHARLES H. TUPPER.

*Paris, March 27, 1893.*

## Inclosure 4 in No. 22.

*Mr. Tupper to the Behring Sea Arbitrators.*

THE Undersigned, Agent of Her Britannic Majesty appointed to attend the Tribunal of Arbitration, has the honour to inclose, for the information of , a copy of a note which he has addressed to the Agent of the United States in reply to a protest received from him against the presentation of the Supplementary Report of the British Behring Sea Commissioners which was forwarded to on the 25th instant.

The Undersigned has the honour to renew to the

*Paris, March 27, 1893.*

No. 23.

*Mr. Tupper to the Earl of Rosebery.*—(Received March 30.)

My Lord,

Paris, March 28, 1893.

I HAVE the honour to transmit to your Lordship a copy of a note I have received this day from the Agent of the United States, informing me that a motion will be made on behalf of the United States' Government at the meeting of the Tribunal on the 4th proximo for the rejection of certain claims for damages specified in the Counter-Case of Her Majesty's Government.

I have acknowledged the receipt of Mr. Foster's communication.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

Inclosure in No. 23.

*Mr. Foster to Mr. Tupper.*

THE Undersigned, Agent of the United States before the Tribunal of Arbitration convened at Paris, has the honour to give notice to the Agent of Her Britannic Majesty, that, at the next meeting of the Tribunal of Arbitration, a motion will be made on the part of the United States to dismiss from the Arbitration so much of the demand of the Government of Great Britain as relates to the sum stated upon p. 315 of the Counter-Case of said Government to have been incurred on account of expenses in connection with proceedings before the Supreme Court of the United States;

And also to dismiss from said Arbitration the claim and request of the same Government, mentioned in said p. 315, that the Arbitrators find what catch or catches might have been taken by pelagic sealers in Behring Sea without undue diminution of the herd during the pendency of the Arbitration;

And also to dismiss from the Arbitration the claim of the same Government, mentioned on the same page, 315, to show payment by it to Canadian owners of sealing-schooners;

And that all proofs or evidences relating to the foregoing claims or matters, or either of them, be stricken from the British Counter-Case, and, in particular, those found on pp. 215 to 229, inclusive, of vol. ii of Appendix to said Counter-Case.

The ground of the foregoing motion or motions is that the claims and matters aforesaid are, and each of them is, presented for the first time in the Counter-Case of the Government of Great Britain, and that they are not, nor is either of them, pertinent or relevant by way of reply to the Case of the United States, or to anything contained therein, except so far as the same may tend to support claims for damages distinctly made in the original Case of the Government of Great Britain, and that, so far as they come under that head, the matters are irregular as being cumulative only.

The Undersigned, &amp;c.

(Signed) JOHN W. FOSTER.

Paris, March 28, 1893.

No. 24.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

Foreign Office, April 3, 1893.

I HAVE received your despatch of the 28th ultimo, inclosing correspondence which has passed between the United States' Agent and yourself, on the occasion of your having forwarded to him and to the Arbitrators, copies of the Supplementary Report of the British Commissioners.

The action taken by you in this matter is approved by Her Majesty's Government.

I am, &amp;c.

(Signed) ROSEBERY.

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*Mr. Tupper to the Earl of Rosebery.—(Received April 7.)*

My Lord,

*Paris, April 5, 1893.*

I HAVE the honour to report to your Lordship, that at the meeting of the Tribunal held yesterday the proceedings were opened by an application made by the Attorney-General, in the name of Her Majesty's Government, for the production of the Report by Mr. H. W. Elliott, on seal life.

Sir Richard Webster supported the application, and was followed on the side of the United States by Mr. Phelps and Mr. Carter.

The Representatives of the United States denied that Her Majesty's Government were entitled under the Treaty to any order by the Tribunal for the production of the document as a matter of right; but, they stated, they were willing to waive their right of objection, and to furnish a copy for such use, as evidence, as the Tribunal might allow.

The Tribunal finally directed that the document should be regarded as before the Tribunal, to be made such use of as the Tribunal should see fit.

The question of the rejection of certain claims for damages, put forward in the British Counter-Case, referred to in my despatch of the 28th ultimo, was then raised by the United States' Representatives, and the Tribunal decided that the matter should stand over for future consideration.

Mr. Phelps then proceeded to propose the rejection of the Supplementary Report of the British Commissioners in accordance with Mr. Foster's notice, of which I forwarded a copy to your Lordship in my despatch of the 28th ultimo. The argument of the United States' Counsel on this point had not concluded when the Tribunal adjourned.

I have the honour to transmit to your Lordship herewith a rough proof of the transcript of the short-hand notes of the proceedings, of which the above is a brief summary.\*

It has been arranged that these rough proofs, which are to be furnished on the morning after each meeting to both sides, as well as to the Tribunal, shall be corrected and issued in a final shape at the close of each week's proceedings.

It is believed that when the printers have had more experience, fewer errors will be found than in the document forwarded herewith, and steps have been taken to overcome the difficulties which are inevitable on the first occasion of a paper of this nature, being produced under great pressure, and in a foreign language.

I have, &c.

(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received April 8.)*

My Lord,

*Paris, April 6 1893.*

AT the meeting of the Tribunal held yesterday, the argument of the United States against the admission of the Supplementary Report of the British Commissioners was continued by Mr. Phelps.

The Attorney-General replied on behalf of Great Britain, and had not finished his speech when the Tribunal rose.

I have, &c.

(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received April 8.)*

My Lord,

*Paris, Ar 17, 1893.*

AT the meeting of the Tribunal yesterday, the discussion with regard to the admission of the Supplementary Report of the British Commissioners was continued by Sir Charles Russell, who, at the close of his speech, was complimented by the President on the lucid manner in which he had stated his argument.

\* Full sets of the corrected short-hand notes, which cover in all 2,336 pages (folio) of print, will be deposited in the Library of each House of Parliament.

Mr. Carter followed on the part of the United States, and had not concluded when the hour of adjournment arrived.

The discussion of this question will, in all probability, be terminated at the meeting to-morrow.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 28.

*Mr. Tupper to the Earl of Rosebery.—(Received April 11.)*

My Lord,

Paris, April 9, 1893.

AT the meeting of the Tribunal on the 7th instant, Mr. Carter concluded his argument with regard to the admission of the Supplementary Report of the British Commissioners, and after a discussion between Counsel on both sides as to the bearing of certain portions of the diplomatic correspondence on the interpretation of the Treaty, the Tribunal adjourned till Wednesday next, the 12th instant.

The President stated that the Arbitrators would hold a private meeting on Tuesday.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 29.

*Mr. Tupper to the Earl of Rosebery.—(Received April 13.)*

My Lord,

Paris, April 11, 1893.

SHORTLY after my arrival here Mr. Foster assented to a tentative arrangement that the proceedings before the Tribunal should be reported by a London firm of short-hand writers employed by both parties, and that printed copies of the transcript should be supplied on the morning after each meeting to each party and to the members of the Tribunal.

Your Lordship has been supplied with rough proofs of these reports, and notwithstanding the printer's errors, inevitable under the circumstances, it was considered by the British Counsel and myself that these proofs, which have shown considerable improvement since the beginning, were not wholly unsatisfactory.

The arrangement was made with the approval of the Tribunal, and the President stated, at a recent meeting, that the reports furnished had been found useful by the Arbitrators.

Mr. Foster, however, in a letter of which I have the honour to inclose a copy, has expressed his dissatisfaction at the working of the arrangement, and suggests that it should be terminated.

I have, after consultation with Counsel, addressed to Mr. Foster the reply, of which a copy is inclosed, and I trust that your Lordship will approve my action in the matter.

I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclosure 1 in No. 29.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper,

Paris, April 10, 1893.

I REGRET to have to inform you that the experience of the past week in the effort to produce a daily verbatim report of the proceedings of the Tribunal of Arbitration has not proved satisfactory. The main object had in view, namely, to lay before the Arbitrators the arguments of Counsel early on the day following their delivery, has in great measure failed. The Counsel of the United States find the reports of their arguments, as printed, so far from correct as to make it in great measure useless, and the burden imposed upon them of revision is an intolerable tax upon their time, and this of itself is a sufficient reason to make it desirable that the present arrangement be abandoned.

Up to the present writing we have not received from your side the first reading of the unrevised proof of either the first or any other succeeding day. After it is received we shall have numerous corrections of our own to make before it goes to the printer. It is therefore plain that the revised proof will not be ready to lay before the Arbitrators until they have considered in secret session, and possibly decided, the motion upon which the arguments have been made.

I do not wish to impute neglect or inefficiency to any one. I merely state that the system which we attempted with some misgivings has proved entirely unsatisfactory, and should be abandoned. I have, therefore, to propose that we at once give notice to the firm of short-hand reporters and the printers that the effort at further joint reporting come to an end; that we perfect and print the proceedings of the past week; that we settle with the short-hand firm and printers on mutually satisfactory terms; and that any further reporting will be left to each Agent to be done in such manner as he shall see fit for the convenience of the respective Counsel.

Very truly, &c.  
(Signed) JOHN W. FOSTER.

Inclosure 2 in No. 29.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster,

Paris, April 11, 1893.

I BEG to acknowledge the receipt of your letter of the 10th April.

I regret the determination you have reached respecting the daily reports of the Arbitration proceedings. I trust you will give this subject reconsideration.

I am glad to observe that you make no complaint regarding the actual short-hand writing. Messrs. Cherer, Bennet, and Co.'s reporting is, I believe, considered as perfect as it is possible to procure anywhere. Their transcripts, I am informed, are invariably used in all the English Law Courts. The correct printing of these transcripts is, therefore, alone concerned.

In my opinion, considering the difference of language and the very great pressure of time, the work already done does Messrs. Chamerot et Cie. credit.

These gentlemen cannot yet be said to have had a fair trial. From the marked improvement shown in each succeeding day, I am led to hope that in a very few days the reports will be quite satisfactory.

Touching the burden of the correction of proof, up to the present time it has not been found necessary to ask the British Counsel to revise their speeches at all. The corrections, which are principally typographical and grammatical, have been readily made by one of our staff who heard the argument.

If this work becomes too heavy to be executed in the short time available, the object in view would be well worth the expense of employing a special reader.

The British Government attach great importance to an accurate verbatim record of the actual arguments used, and, in view of their value to the Tribunal and their obvious utility, I trust you may yet see your way to continue the present arrangement.

Yours very truly,  
(Signed) CHARLES H. TUPPER.

No. 30.

*Mr. Tupper to the Earl of Rosebery.—(Received April 13.)*

My Lord,

Paris, April 12, 1893.

I HAVE the honour to report to your Lordship that at the meeting of the Tribunal this morning the President announced the decisions of the Arbitrators on the questions of the admission of the Supplementary Report of the British Commissioners, and of the consideration of the proposal of the United States that certain claims put forward in the Counter-Case of Great Britain should be struck out.

I have the honour to inclose copies of these decisions as delivered by the President in French. An English translation was afterwards read by him.

Your Lordship will observe that with regard to the Supplementary Report of the British Commissioners, the Tribunal has decided that it shall not be admitted for

the present. Full liberty is, however, reserved to the Representatives of Great Britain to make use of the document in oral argument should they see fit to do so.

The question of the admissibility of the Appendices to the Supplementary Report is reserved for further examination without prejudice to the rights of the parties to discuss the matter and to refer to the documents in the course of oral argument.

With regard to the proposal of the United States to strike out certain claims included in the British Counter-Case, the Tribunal has decided to postpone the consideration of the question until such time as it may see fit.

I have, &c.

(Signed) CHARLES H. TUPPER.

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Inclosure 1 in No. 30.

*Decision of Tribunal.*

LE Tribunal décide de ne pas recevoir, quant à présent, le document intitulé: "Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring," daté du 31 Janvier, 1893, et signé de George Baden-Powell et George M. Dawson, lequel a été remis aux Arbitres individuellement par l'Agent de la Grande-Bretagne le 25 Mars, 1893, et contient une critique des moyens de preuve produits dans les pièces et documents précédemment remis aux Arbitres, ou une argumentation portant sur les dits moyens de preuve. Toute liberté demeure néanmoins réservée aux Représentants de la partie intéressée de s'approprier le dit document, daté du 31 Janvier, 1893, pour l'incorporer à leur plaidoirie, s'ils le jugent convenable. La question de l'admissibilité des pièces, ou de quelque-une d'entre elles, formant Annexes au dit document du 31 Janvier, 1893, est réservée à un examen ultérieur, sans préjudice du droit pour les Représentants des deux parties de discuter la question dont il s'agit, ainsi que le contenu des dites Annexes au cours de leurs plaidoiries.

(Translation.)

IT is ordered that the document entitled a "Supplementary Report of the British Behring Sea Commissioners," dated the 31st January, 1893, and signed by George Baden-Powell and George M. Dawson, and delivered to the individual Arbitrators by the Agent of Her Britannic Majesty on the 25th day of March, 1893, and which contains a criticism of, or argument upon, the evidence in the documents and papers previously delivered to the Arbitrators, be not now received, with liberty, however, to Counsel to adopt such document, dated the 31st January, 1893, as part of their oral argument, if they deem proper. The question as to the admissibility of the documents, or any of them, constituting the Appendices attached to the said document of the 31st January, 1893, is reserved for further consideration, without prejudice of the right of Counsel, on either side, to discuss that question, or the contents of the Appendices, in the course of the oral argument.

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Inclosure 2 in No. 30.

*Decision of Tribunal.*

LE Tribunal décide qu'il différera, jusqu'à tel moment qui sera par lui ultérieurement indiqué, d'entendre plaider ou de prendre en considération la motion présentée le 4 Avril, 1893, par les Etats-Unis d'Amérique, tendant à la radiation de certains passages faisant partie du Contre-Mémoire et des moyens de preuve du Gouvernement de la Grande-Bretagne.

(Translation.)

IT is ordered that the argument and consideration of the motion made by the United States of America on the 4th day of April, 1893, to strike out certain parts of the Counter-Case and proofs of the Government of Great Britain, be postponed until such time as may be hereafter indicated by the Tribunal.

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## No. 31.

*Mr. Tupper to the Earl of Rosebery.--(Received April 14.)*

My Lord,

*Paris, April 12, 1893.*

WITH reference to my despatch of yesterday, I have the honour to transmit to your Lordship a copy of a letter from Mr. Foster, informing me that he adheres to his proposal for the abandonment of the joint shorthand reports of the proceedings before the Tribunal.

It appears very desirable that full reports of the speeches on both sides should exist.

I therefore propose, after consultation with Counsel, to continue to employ the shorthand writers and printers on behalf of Her Majesty's Government, and to supply the members of the Tribunal with copies as usual.

In forwarding these copies to the Arbitrators I shall explain to them that the United States' Agent has withdrawn from the arrangement, that the speeches of the British Counsel will be revised by the British Agent, and that in order as far as possible to insure the accuracy of the reports of the speeches of the United States' Counsel, they will be carefully read over against the original notes in shorthand.

I trust your Lordship will approve of my action in this matter.

I have, &c.

(Signed) CHARLES H. TUPPER.

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Inclosure in No. 31.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper,

*Paris, April 12, 1893.*

YOUR letter of the 11th instant respecting the shorthand reports has been received and duly considered.

After again submitting the subject to the Counsel of the United States and taking their views thereon, I regret to say that I am constrained to adhere to the proposal contained in my letter of the 10th instant.

Very truly,

(Signed) JOHN W. FOSTER.

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No. 32.

*Mr. Tupper to the Earl of Rosebery.--(Received April 14.)*

My Lord,

*Paris, April 13, 1893.*

AT the meeting of yesterday, the President opened the sitting by announcing the decisions of the Tribunal on the two questions which were brought before it last week. I have already forwarded copies of these decisions to your Lordship in my despatch of yesterday.\*

In accordance with the arrangement agreed upon between the Counsel on both sides, which was explained to the Tribunal by Sir Charles Russell, as reported at p. 195 of the shorthand notes, Mr. Carter proceeded to open the case on behalf of the United States' Government.

He commenced by stating that he would lay before the Tribunal a sketch of the controversy from the beginning, before entering upon a discussion of the particular questions which had arisen.

Mr. Carter had brought his exhaustive summary of the various steps of the controversy down to the negotiations in January 1890, when the hour of adjournment arrived.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 33.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, April 15, 1893.*  
 I HAVE received your despatches of the 11th and 12th instant, relative to the proposal made by Mr. Foster that the arrangements for joint shorthand reports of the proceedings before the Behring Sea Arbitration Tribunal shall be abandoned.

In reply, I have to express to you my approval of the view you have taken of this matter, and of the course you propose to pursue in continuing to employ the shorthand writers and printers on behalf of Her Majesty's Government.

I shall be glad to receive from you an estimate of the cost of the staff of reporters, and of printing the reports.

I am, &c.  
 (Signed) ROSEBERY.

No. 34.

*Mr. Tupper to the Earl of Rosebery.—(Received April 15.)*

My Lord, *Paris, April 14, 1893.*  
 AT the meeting of yesterday, Mr. Carter continued his preliminary sketch of the various steps in the negotiations, and brought this part of his address to a conclusion shortly before the hour of adjournment arrived.

While generally confining himself to a recital or summary of the various documents, he made some remarks and criticisms on the arguments contained in some of the more important despatches.

Having concluded his preliminary sketch, Mr. Carter then proceeded to address the Tribunal on the law which should govern it in its deliberations, and was only able to make slight progress in this branch of his subject before the Tribunal adjourned.

I have, &c.  
 (Signed) CHARLES H. TUPPER.

No. 35.

*Mr. Tupper to the Earl of Rosebery.—(Received April 17.)*

My Lord, *Paris, April 16, 1893.*  
 AT the meeting of the 14th instant, Mr. Carter continued his observations on the law which should govern the Tribunal in its decision. The knowledge of this law was, he said, to be derived from the actual practice and usages of nations and from the law of nature, which latter he argued was best illustrated by municipal law.

Having concluded this portion of his address, he entered upon the consideration of the rights claimed by Russia over the regions about Behring Sea, and the rights which the United States might have derived from the Act of Cession of the territory of Alaska.

The general purport of his argument was that Russia was intent on securing to her own subjects the valuable fur-seal industry, and that by the Ukase of 1821, she did not claim the waters of those regions as *mare clausum*, but merely enacted a protective regulation for the purpose of preserving that industry.

I have, &c.  
 (Signed) CHARLES H. TUPPER.

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No. 36.

*Mr. Tupper to the Earl of Rosebery.—(Received April 20.)*

My Lord,

Paris, April 18, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols of the first two meetings of the Arbitration Tribunal.

A copy of the first Protocol has already been forwarded to your Lordship in my despatch of the 24th February, but the original and the official printed copies have only been issued this day.

Some delay has occurred in the completion of these documents, owing to deficiencies in the organization of the Secretariat of the Tribunal.

The remaining Protocols will, however, be issued very shortly.

I have retained the two original signed Protocols, of which the copies are transmitted herewith.

I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclosure in No. 36.

*Protocole No. 2.—Séance du Jeudi, 23 Mars, 1893.*

LE Tribunal s'est réuni à Paris, comme il avait été convenu, dans l'Hôtel du Ministère des Affaires Étrangères de France.

Étaient présents les sept membres du Tribunal Arbitral :

L'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis,

Et l'Honorable John T. Morgan, Sénateur des États-Unis, Arbitres désignés par les États-Unis ;

Son Excellence le Baron Alphonse de Courcel, Sénateur Français, Arbitre désigné par la France ;

Le Très Honorable Lord Hannen, Pair d'Angleterre, siégeant à la Cour Suprême d'Appel,

Et Sir John Thompson, Ministre de la Justice du Dominion de Canada, Arbitres désignés par la Grande-Bretagne ;

Son Excellence le Marquis Emilio Visconti Venosta, Sénateur Italien, Arbitre désigné par l'Italie,

Et son Excellence M. Gregers Gram, Arbitre désigné par la Suède et Norvège.

L'Honorable John W. Foster et l'Honorable Charles H. Tupper, Ministre de la Marine et des Pêcheries du Dominion de Canada, assistent à la séance comme Agents des Gouvernements des États-Unis et de la Grande-Bretagne.

Les membres du Tribunal Arbitral s'assurent que leurs pouvoirs respectifs sont en bonne et valable forme.

Lord Hannen, l'un des Arbitres désignés par la Grande-Bretagne, se lève pour proposer que M. le Baron de Courcel, Arbitre désigné par la France, soit prié par ses collègues de prendre la Présidence du Tribunal.

L'Honorable J. Harlan, l'un des Arbitres désignés par les États-Unis, appuie la proposition de Lord Hannen.

Les autres membres du Tribunal Arbitral ayant acquiescé à la proposition, M. le Baron de Courcel prend place au fauteuil de la Présidence et prononce les paroles suivantes :

Messieurs,

Vous me faites bénéficier de l'usage courtois qui, dans les réunions d'un caractère international, attribue au Représentant du pays où elles siègent la Présidence de leurs travaux. Je vous en remercie pour mon pays et pour moi-même.

Lorsque les Gouvernements de la Grande-Bretagne et des États-Unis d'Amérique ont décidé de terminer par les voies amiables d'un arbitrage le litige déjà ancien des pêcheries de Behring, et lorsqu'ils ont choisi Paris pour siège du Tribunal Arbitral institué en vertu de leurs accords, ils ont fait à la France et à sa capitale un honneur insigne. J'ose dire que l'une et l'autre en étaient dignes.

Nulla part assurément vous ne sauriez trouver l'atmosphère d'un plus sincère, d'une plus chaleureuse sympathie pour l'œuvre grande et bonne que vous êtes chargés de poursuivre. A travers les chocs et les épreuves qu'inflige inévitablement à tous les hommes la dure réalité des choses, la France est demeurée une nation obstinément idéaliste; toute conception généreuse la touche et l'entraîne; elle est passionnée pour la cause du progrès dans l'humanité. Or quel but plus idéal quel progrès plus noble et plus digne de recherche que la disparition graduelle des recours à la force brutale entre les peuples de la terre? La procédure arbitrale y vise, et chaque arbitrage nouveau nous en rapproche, en fournissant une preuve de plus de la possibilité matérielle de ce qui, hier encore, n'apparaissait que comme un rêve.

Il y a quelques années, les Arbitres convoqués à Genève, par l'autorité pacifique d'une sentence que deux frères et puissantes nations s'étaient engagées d'avance à accepter, mettaient heureusement fin à une discussion qui semblait n'avoir d'autre issue possible que la guerre. L'arbitrage de l'Alabama fait époque dans l'histoire des relations internationales: on peut dire qu'il a réjuni l'antique droit des gens, et qu'il lui a ouvert une ère nouvelle, avec la perspective d'une action indéfiniment bienfaisante. Les deux nations qui se sont soumises au verdict de Genève, malgré des sacrifices qui, dans les premiers moments, ont pu coûter à l'une et à l'autre, ne se sont pas repenties à la longue de leur appel à la force purement morale, puisqu'elles-mêmes le renouvellent aujourd'hui, d'un commun accord, dans des circonstances analogues.

Le procès qui va se plaider devant vous n'est point de ceux, il est vrai, qui, selon l'apparence, pouvaient déchaîner le redoutable fléau de la guerre. Mais, en dehors de cette extrémité fatale, combien de maux ne causent point aux peuples un refroidissement durable et la persistance de sentiments amers! Comme les individus, les nations se doivent la charité; et lorsque, cédant aux conseils de l'orgueil, elles manquent à la loi providentielle, elles se condamnent elles-mêmes à bien des souffrances. Si les conciliations de l'arbitrage n'avaient d'autre effet que de les préserver de ce péril, elles feraient encore aux peuples un bien incalculable, et serviraient très utilement la fraternité humaine.

Votre présence dans cette salle, Messieurs, est le plus éloquent témoignage du prix qui s'attache à la décision attendue de vous. L'Angleterre, de tout temps si féconde en éminents juristes, les États-Unis, le Canada, qui continuent à leur tour, dans le nouveau monde, une tradition dont l'origine atavique doit être cherchée peut-être sur notre vieux sol Normand, ont député ici des personnages dont la science et la rare perspicacité ont été éprouvées dans les hautes et les plus délicates fonctions de la magistrature, ou dans les discussions d'assemblées politiques renommées pour leur prudence. A côté d'eux, je vois siéger un homme d'État, sage héritier de l'illustre Cavour, et dont la diplomatie Européenne, aux conseils de laquelle il manque n'a pas cessé de regretter la retraite prématurée et volontaire. Un autre de nos collègues, venu du Nord Scandinave, et que sa réputation a devancé ici, occupait naguère dans sa patrie, l'un des postes les plus élevés que puisse conférer la juste confiance du Souverain de deux Royaumes jumeaux, également jaloux de leur individualité.

A votre barre se présentent, au nom des deux Grandes Puissances qui vous ont remis le règlement de leur cause, des hommes politiques de premier ordre. L'un d'eux dirigeait hier les relations internationales de la grande République Américaine.

Ils sont assistés de Conseils habitués à briller au premier rang, tantôt au barreau, tantôt dans le Gouvernement de leur pays, et que l'admiration de leurs concitoyens, de chaque côté de l'Atlantique, salue du titre de princes de l'éloquence.

C'est un honneur qui suffit à illustrer une existence entière que d'être appelé à siéger près de pareils hommes. La responsabilité de les présider serait bien effrayante, si celui de leurs collègues qui'ils ont chargé de cette tâche ne devait compter sur leur indulgent et infailible appui.

Puisse la Divine Providence, de qui relèvent toutes les actions des hommes, nous donner la force et nous inspirer la sagesse nécessaire pour accomplir notre difficile mission, et pour marquer ainsi une étape vers la réalisation de la parole pleine de consolation et d'espoir de Celui qui a dit: "Bienheureux les pacifiques, car la terre leur appartiendra."

Messieurs, je crois être l'interprète de votre pensée à tous en vous proposant d'interrompre ici notre séance, afin de porter à M. le Président de la République Française, avec l'hommage de nos respects, l'expression de notre gratitude pour l'hospitalité que nous recevons de la France.

Sur la proposition du Président, M. A. Imbert, Ministre Plénipotentiaire de France, est désigné comme Secrétaire du Tribunal Arbitral. M. le Baron de Courcel invite ensuite les Arbitres Anglais et Américains à désigner, pour chacune des deux nationalités, un Secrétaire qui serait adjoint au Secrétaire du Tribunal. Il est convenu que cette désignation aura lieu à la prochaine séance.

Le Tribunal fixe les jours et heures de ses séances.

Conformément aux stipulations du Traité de Washington du 29 Février, 1892, les Agents des Gouvernements des États-Unis et de la Grande-Bretagne déposent devant le Tribunal les Arguments imprimés de leurs Gouvernements respectifs.

L'Agent des États-Unis ayant signalé que, par suite d'une erreur accidentelle commise à l'impression, il existait une omission dans les citations jointes en appendice à l'Argument des États-Unis, autorisation lui a été donnée de déposer ultérieurement, comme annexe à l'Argument, un supplément contenant les citations omises, sous réserve du droit pour le Gouvernement Britannique de présenter une réplique à ces citations, s'il le jugeait opportun.

Les Agents des deux Gouvernements ont annoncé qu'ils avaient pris, de commun accord, des arrangements pour faire sténographier chaque jour les débats du Tribunal.

Il est déclaré que le public sera admis aux débats, sur la présentation de cartes nominatives délivrées par le Secrétaire du Tribunal.

Ainsi fait à Paris, le 23 Mars, 1893, et ont signé :

Le Président . . . . .	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis .. ..	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. ..	.. ..	CHARLES H. TUPPER.
Le Secrétaire .. ..	.. ..	A. IMBERT.

[English version.]

*Protocol No. 3.—Meeting of Thursday, March 23, 1893.*

THE Tribunal assembled at Paris, as had been agreed, at the French Ministry for Foreign Affairs.

There were present the seven members of the Tribunal of Arbitration :

The Honourable John M. Harlan, Justice of the Supreme Court of the United States,

And the Honourable John T. Morgan, Senator of the United States, the Arbitrators named by the United States;

His Excellency the Baron Alphonse de Courcel, Senator of France, the Arbitrator named by France;

The Right Honourable Lord Hannen, Lord of Appeal,

And Sir John Thompson, Minister of Justice for the Dominion of Canada, the Arbitrators named by Great Britain;

His Excellency the Marquis E. Visconti Venosta, Senator of Italy, the Arbitrator named by Italy;

And his Excellency M. Gregers Gram, the Arbitrator named by Sweden and Norway;

The Honourable John W. Foster and the Honourable Charles H. Tupper, Minister of Marine and Fisheries for the Dominion of Canada, were present at the meeting as Agents for the Governments of the United States and Great Britain.

The members of the Tribunal of Arbitration assured themselves that their respective powers were in due and valid form.

Lord Hannen, one of the Arbitrators named by Great Britain, rose to propose that his Excellency the Baron de Courcel, the Arbitrator named by France, should be requested by his colleagues to assume the Presidency of the Tribunal.

The Honourable John M. Harlan, one of the Arbitrators named by the United States, supported the proposal of Lord Hannen.

The other members of the Tribunal of Arbitration having agreed to the proposal, Baron de Courcel took the chair as President, and delivered the following address :

Gentlemen,

You have been pleased to exercise in my favour that courteous usage which, in proceedings of an international character, confers the Presidency upon the Representative of the country in which the meeting is held.

The Governments of Great Britain and the United States of America have determined to end the long-standing dispute concerning the Behring fisheries by a friendly arbitration, and in choosing Paris for the seat of it, they have paid a distinguished compliment to France and to her capital city.

I venture to say that both are worthy of it.

Nowhere, be sure, would you have found yourselves surrounded by a more sincere and warm sympathy with the great and good work which you are charged to carry out. Through all the shocks and trials which the hard necessity of events inflicts upon mankind, France has remained steadfast to ideals. Every generous conception moves and captivates her. She has a passion for the cause of human progress. And what aim can be more ideal, what progress more noble and worthy of attainment than the gradual disappearance from among the people of the earth of a recourse to brute force.

This is the aim of procedure by arbitration, and each new recourse to it brings us nearer to that end, by furnishing another proof of the actual possibility of that which, even yesterday seemed but a dream.

Some years ago, by the peaceful authority of a decision which two proud and powerful nations had previously agreed to accept, the Arbitrators assembled at Geneva put a happy end to a dispute which it seemed at one time could only terminate in war.

The Geneva Arbitration was an epoch in international relations. It may be said to have revived the old law of nations, and opened to it a new era with a boundless prospect of beneficent consequences.

The two nations which submitted to the Geneva verdict, in spite of the sacrifices which at first it seemed to involve, have evidently not in the long run repented of their appeal to moral force, for to-day they renew that appeal by common consent, in analogous circumstances. It is true that the cause that is to be pleaded before us is not one which apparently would let loose the scourge of war; but, short of war, how many evils are caused to nations by lasting coldness and by the persistence of bitter sentiments. Like individuals, nations owe a duty to charity, and when yielding to pride they fail to obey the laws of Providence, they inflict upon themselves many sufferings.

If arbitrations had no other effect than to preserve them from this peril, they would be an incalculable blessing and service to the brotherhood of humanity.

Your presence in this room, Gentlemen, is the most eloquent evidence of the value which attaches to your expected decision.

England, from all time so rich in eminent jurists, America and Canada, who hand down in their turn, and in a new world, a tradition whose ancestral origin may, perhaps, be sought in our old Norman soil, have delegated men whose knowledge and rare penetration have been applied in the highest and most delicate functions in the magistracy or in the discussions of political assemblies whose prudence was renowned.

Beside them I see a politician, a wise heir of the illustrious Cavour, whose premature and voluntary retreat from European diplomacy has been the subject of deep regret.

Another of our colleagues from North Scandinavia, whose reputation has preceded him, has occupied one of the highest positions which could be conferred upon him by the just confidence of the Sovereign of two Twin Kingdoms, each equally jealous of its individuality.

At your bar, to represent the two great Powers who have confided their cause to you, appear politicians of the first order. One of them only lately guided the foreign relations of the great American Republic. They are assisted by Counsel accustomed to occupy the front rank, either at the bar, or in the government of their country, and whom the admiration of their countrymen on each side of the Atlantic hails as princes of eloquence.

It is an honour sufficient to dignify an entire life to be asked to sit with men like these, and the responsibility of presiding among them would be overwhelming if he whom his colleagues have charged with this duty could not count on their unvarying and indulgent support.

May Divine Providence, on whom depends all human action, give us the strength and inspire us with the wisdom necessary to fulfil our difficult mission, and thus to advance a stage nearer to the realization of the words of consolation and hope of Him who has said, "Blessed are the peacemakers, for they shall inherit the earth."

Gentlemen, I trust that I represent your wishes in proposing to you to break up our present meeting, in order to convey our respects to the President of the French Republic, together with an expression of our gratitude for the hospitality which we are receiving from France.

On the proposal of the President, M. A. Imbert, a Minister Plenipotentiary of France, was named Secretary to the Tribunal of Arbitration. Baron de Courcel then invited the English and American Arbitrators to name, for their respective nationalities, a Secretary to be associated with the Secretary of the Tribunal. It was agreed that this appointment should be made at the next meeting.

The Tribunal fixed the days and hours of its meetings.

In conformity with the stipulations of the Treaty of Washington of the 29th February, 1892, the Agents of the Governments of the United States and Great Britain laid before the Tribunal the printed Arguments of their respective Governments.

The Agent of the United States having intimated that, owing to an oversight in printing, there was an omission in the appendices of authorities cited in the Argument of the United States, he was authorized to present at a later date, as an appendix to the Argument, a supplement containing the citations omitted, with the reserve of the right, on the part of the British Government, to present a reply to the citations, should they deem it to be necessary.

The Agents of the respective Governments stated that they had agreed to arrange for taking shorthand reports of the daily proceedings.

It was announced that the proceedings were now public, and admission to the discussions would be upon the presentation of cards of admission to be issued by the Secretary of the Tribunal.

The Tribunal of Arbitration adjourned till the 4th April next.  
Done at Paris, the 23rd March, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	..	JOHN W. FOSTER.
The Agent for Great Britain	..	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

No. 37.

*Mr. Tupper to the Earl of Rosebery.—(Received April 20.)*

My Lord,

*Paris, April 18, 1893.*

WITH reference to your Lordship's despatch of the 15th instant and previous correspondence, I have the honour to transmit to your Lordship a copy of a statement handed to me to-day by Mr. Foster, containing an explanation of his reasons for withdrawing from the arrangement for a joint shorthand report of the proceedings before the Tribunal.

Mr. Foster said that his motives in declining, on the part of the United States, to be a party to the arrangement any longer, had been misrepresented in the London press, and that he had therefore laid this statement before the Members of the Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

Inclosure in No. 37.

*Statement by Mr. Foster.*

IN view of certain misleading statements in the London newspapers, the Agent of the United States desires to inform the Arbitrators of the reasons given by him to the British Agent for his action in withdrawing from the joint arrangement for a daily shorthand report of the proceedings of the Tribunal. Under date of the 10th instant, he informed the British Agent, in view of the experience then had, that the main object of the arrangement, namely, to lay before the Arbitrators the argument of Counsel early on the day following their delivery, had failed; that the Counsel of the United States had found the reports of the Arguments, as printed, so far from correct as to make them in great measure useless, and that the burden imposed on them of revision was an intolerable tax upon their time. The report of the first week's argument (April 4th to 7th) had not been revised and put into intelligible shape before the motion upon which they had been made had been definitely decided by the Tribunal; and they have not, in fact, up to this date been laid before the Tribunal.

As no change in the existing arrangements was proposed by the British Agent, the Agent and Counsel of the United States felt it their duty to withdraw therefrom. The question of expense did not enter into the consideration of the subject.

*April 18, 1893.*



## No. 38.

*Mr. Tupper to the Earl of Rosebery.—(Received April 21.)*

My Lord,

Paris, April 20, 1893.

AT the meeting of yesterday, Mr. Carter continued his argument on the question of the alleged property interest of the United States in the fur-seals.

His remarks were in the main directed to an examination of the question as to what constitutes property, and what are the rights and responsibilities of those in whom the property is vested. He had not concluded this portion of his argument when the Tribunal adjourned.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 39.

*Mr. Tupper to the Earl of Rosebery.—(Received April 22.)*

My Lord,

Paris, April 21, 1893.

AT yesterday's meeting, Mr. Carter continued his argument on the alleged property right of the United States in the fur-seals. He proceeded to apply the principles of property which he had enumerated on the previous day to the case of the seals, and for this purpose entered at some length into the question of their habits, their management by the United States on the islands, and their capture both on land and by pelagic sealing.

He criticised the Report of the British Commissioners at some length, and claimed that owing to its biased character, the opinions expressed by them should be discarded by the Tribunal.

He had not concluded this portion of his argument when the Tribunal adjourned.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 40.

*Mr. Tupper to the Earl of Rosebery.—(Received May 1.)*

My Lord,

Paris, April 24, 1893.

AT the meeting of the 21st instant, Mr. Carter continued his argument on the claim of the United States to property in the fur-seals.

He concluded the first head of this subject, which deals with the claim to property in the animals themselves, and then proceeded to argue that the United States had also a property interest in, and right of protection of, the industry carried on at the Seal Islands.

He had not finished his observations on this point when the Tribunal rose.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 41.

*Mr. Tupper to the Earl of Rosebery.—(Received May 1.)*

My Lord,

Paris, April 25, 1893.

I REGRET to inform your Lordship that, owing to an attack of influenza, Lord Hannen was unable to attend the Tribunal of Arbitration to-day.

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His Lordship's medical adviser is of opinion that he will be unable to resume his duties for some days.

It was therefore decided by the President, Baron de Courcel, that the Tribunal should adjourn until Tuesday, the 2nd May, by which date it is hoped that Lord Hannen will be sufficiently recovered to resume his attendance at the meetings.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 42.

*Mr. Tupper to the Earl of Rosebery.—(Received May 3.)*

My Lord,

Paris, May 2, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 3, 4, and 5 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclusure 1 in No. 42.

*Protocole No. 3.—Séance du Mardi, 4 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 45, tous les Arbitres étant présents.

Le Président annonce que le Tribunal a décidé la nomination de M. A. Bailly-Blanchard et de M. Cunyngame, comme Secrétaires du Tribunal, conjointement avec M. A. Imbert.

Et également celle de M. le Chevalier Bajnotti, de M. Henri Feer, et de M. le Vicomte de Manneville, comme Secrétaires Adjointes.

Le Président annonce que le Tribunal est prêt à entendre toute motion que pourrait présenter l'une ou l'autre des parties.

Sir Charles Russell prend la parole et termine sa plaidoirie en présentant la motion suivante :—

“ Que l'Agent des États-Unis soit invité à produire l'original ou une copie certifiée du Rapport fait par Henry W. Elliott au sujet des phoques à fourrure conformément à l'Acte du Congrès de 1890.”

Sir Richard Webster parle dans le même sens.

L'Honorable E. J. Phelps réplique et présente la réponse suivante à la motion :—

“ Le Gouvernement des États-Unis se refuse à admettre que le Gouvernement de Sa Majesté Britannique soit autorisé en droit, d'après les dispositions du Traité, à obtenir du Tribunal un ordre pour la production du document visé par la motion de Sir Charles Russell.

“ Toutefois, le Gouvernement des États-Unis est disposé, en ce qui le concerne, à ne pas user du droit qu'il aurait d'élever cette objection et à fournir à l'Agent du Gouvernement de Sa Majesté une copie du document en question, à telles fins de preuve que le Tribunal jugera à propos d'autoriser.

“ Néanmoins, cette façon de procéder n'implique pas, de la part du Gouvernement des États-Unis, l'acquiescement à ce qu'aucune des deux parties, à ce moment ou à toute autre époque de la procédure, ait le droit de présenter aucun autre moyen de preuve, quel qu'il soit, sur un sujet quelconque se rattachant à la controverse.

“ Le même Gouvernement stipule en outre que, s'il est fait un usage quelconque du document auquel se rapporte cette motion, comme moyen de preuve, chacune des deux parties aura un droit égal à l'utiliser en tous les points qu'il contient.”

Mr. Carter s'exprime ensuite dans le même sens.

Le Tribunal suspend alors sa séance.

A la reprise de la séance, le Président déclare ce qui suit :—

“ Le Tribunal ordonne que le susdit document sera considéré comme étant devant le Tribunal pour qu'il en soit fait tel usage que le Tribunal jugera convenable.

*L'Agent des États-Unis* donne alors lecture des motions suivantes :—

"1. L'Agent des États-Unis désire appeler l'attention du Tribunal d'Arbitrage sur le fait que l'Agent de Sa Majesté Britannique a porté à sa connaissance, par une lettre en date du 25 Mars dernier, qu'il avait envoyé à chacun des membres du Tribunal des copies en duplicata d'un 'Rapport Supplémentaire des Commissaires Britanniques désignés pour faire une enquête sur les phoques de la Mer de Behring.'

"L'Agent des États-Unis, en raison de cette information, demande à l'honorable Tribunal que le document dont il s'agit ne soit pas pris en considération et qu'il soit retourné à l'Agent de Sa Majesté, par le motif qu'il est présenté à un moment et dans une forme que n'autorise pas le Traité.

"2. L'Agent des États-Unis demande à l'honorable Tribunal d'exclure de l'Arbitrage ce qui, dans la demande du Gouvernement de la Grande-Bretagne, à trait à la soume mentionnée à la page 315 du Contre-Mémoire du dit Gouvernement, comme ayant été dépensée pour frais occasionnés par la procédure devant la Cour Suprême des États-Unis ;

"Et d'exclure aussi de l'Arbitrage la réclamation et requête du même Gouvernement qui figurent à la dite page 315, tendant à ce que les Arbitres établissent quelle prise ou quelles prises auraient pu être effectuées par les chasseurs pélagiques dans la Mer de Behring sans induire diminution du troupeau de phoques pendant la durée de cet Arbitrage ;

"Et, de plus, d'exclure de l'Arbitrage la réclamation du même Gouvernement, mentionnée à ladite page 315, en vue d'être autorisé à établir les payements faits par lui aux propriétaires Canadiens de bâtimens employés à la classe des phoques ;

"Et que toutes preuves ou tous témoignages ayant trait aux susdites réclamations ou questions, ou à l'une d'elles, soient rayés du Contre-Mémoire Britannique, et, en particulier, les preuves ou témoignages se trouvant aux pages 215 à 229 inclusive-ment du Tome II de l'Appendice audit Contre-Mémoire.

"Le fondement de la motion ou des motions qui précèdent est que les réclamations et questions susmentionnées sont, ensemble ou chacune d'elles en particulier, présentées pour la première fois dans le Contre-Mémoire du Gouvernement de la Grande-Bretagne et qu'aucune d'elles, ensemble ou en particulier, ne se rapporte, ni ne se réfère, par voie de réplique, soit au Mémoire des États-Unis, soit à quoi que ce soit qu'il contienne, si ce n'est en ce qu'elles tendent à soutenir des réclamations en dommages-intérêts présentées expressément dans le Mémoire original du Gouvernement de la Grande-Bretagne, et que, en tant qu'elles tombent sous cette définition, lesdites demandes sont irrégulières comme faisant double emploi."

Le *Président* ayant fait observer qu'il conviendrait d'examiner séparément les motions et de renvoyer à une période ultérieure de la procédure la discussion de la seconde motion présentée au nom des États-Unis,

L'honorable *E. J. Phelps* développe devant le Tribunal les arguments à l'appui de la première motion, celle qui est relative au Rapport Supplémentaire des Commissaires Britanniques.

À 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 4 Avril, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

Protocol No. 3.—Meeting of Tuesday, April 4, 1893.

At 11:45 the Tribunal assembled, all the Arbitrators being present.

The President announced that the Tribunal had decided to appoint Mr. A. Bailly-Blanchard and Mr. Cunyng'ame as co-Secretaries with M. Imbert.

Also, M. le Chevalier Bajnotti, M. Henri Feer, and M. le Vicomte de Manneville as Assistant Secretaries.

The President announced that the Tribunal was ready to hear any motion by either of the parties.

Sir Charles Russell then spoke, and at the close of his speech he submitted the following motion:—

"That the Agent of the United States be called upon to produce the original or a certified copy of the Report made by Henry W. Elliott on the subject of fur-seals pursuant to Act of Congress of 1800."

Sir Richard Webster supported the motion.

The Honourable E. J. Phelps replied and submitted the following answer to the motion:—

"The United States' Government denies that Her Britannic Majesty's Government is entitled, under the provisions of the Treaty, to any order by the Tribunal for the production of the document specified in the motion, as a matter of right.

"The United States' Government, however, is willing to waive (so far as it is concerned) its right of objection, and to furnish to the Agent of Her Majesty's Government a copy of the document referred to, for such use as evidence as the Tribunal may deem proper to allow.

Not conceding, however, in so doing, that either party at this or any subsequent stage of the proceedings has a right to introduce any further evidence whatever, upon any subject whatever, connected with the controversy.

"And further stipulating that if the document referred to in this motion shall be used in evidence at all, it shall be open to the use of both parties equally in all its points."

Mr. James C. Carter followed in support of the answer.

The Court adjourned for a short time.

On reassembling, the President said:—

"The Tribunal directs that the above-named document be regarded as before the Tribunal to be made such use of as the Tribunal thinks fit."

The Agent for the United States then read the following motions:—

"1. The Agent of the United States desires to bring to the attention of the Tribunal of Arbitration the fact that he has been informed by the Agent of Her Britannic Majesty, in a note dated the 25th ultimo, that he has sent to each of the members of the Tribunal copies in duplicate of a 'Supplementary Report of the British Commissioners appointed to inquire into seal life in Behring Sea.'

"The Agent of the United States, in view of this information, moves this honourable Tribunal that the document referred to be dismissed from consideration and be returned to Her Majesty's Agent, on the ground that it is submitted at a time and in a manner not allowed by the Treaty.

"2. The Agent of the United States moves this honourable Tribunal to dismiss from the Arbitration so much of the demand of the Government of Great Britain as relates to the sum stated upon p. 315 of the Counter-Case of the said Government to have been incurred on account of expenses in connection with proceedings before the Supreme Court of the United States;

"And, also, to dismiss from the Arbitration the claim and request of the same Government, mentioned on said p. 315, that the Arbitrators find what catch or catches might have been taken by pelagic sealers in Behring Sea without undue diminution of the seal herd during the pendency of this Arbitration;

"And, further, to dismiss from the Arbitration the claim of the same Government, mentioned on the said p. 315, to show payments by it to the Canadian owners of sealing-vessels;

"And that all proofs or evidence relating to the foregoing claims or matters, or either of them, be stricken from the British Counter-Case, and in particular those found on pp. 215 to 229 inclusive, of Vol. ii of the Appendix to said Counter-Case.

"The ground of the foregoing motion or motions is that the claims and matters aforesaid are, and each of them is, presented for the first time in the Counter-Case of the Government of Great Britain, and that they are not, nor is either of them, pertinent or relevant by way of reply to the Case of the United States or to anything contained therein, except so far as the same may tend to support claims for damages distinctly made in the original Case of the Government of Great Britain, and that so far as they come under that head the matters are irregular as being cumulative only."

The President having remarked that the motions should be considered separately, and that the discussion upon the second motion brought forward by the United States, should be postponed to a subsequent period of the proceedings, the Honourable E. J.

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Phelps addressed the Court in support of the first motion relative to the Supplementary Report of the British Commissioners.

At 4 p.m. the Tribunal adjourned to the next day, at 11:30.

Done at Paris, the 4th April, 1893, and signed :

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 2 in No. 42.

Protocole No. 4.—*Séance du Mercredi, 5 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 45, tous les membres étant présents.

L'Honorable E. J. Phelps continue et achève son argumentation de la veille.

Mr. James C. Carter déclare qu'il n'a aucune observation à ajouter.

Sir Charles Russell s'oppose à la motion en discussion, en se fondant sur les arguments suivants :—

“Que le Rapport Supplémentaire des Commissaires Britanniques, en date du 31 Janvier, 1893, n'est présenté qu'on ce qui concerne la question des Règlements, et que, d'après les dispositions du Traité d'Arbitrage du 29 Février, 1892, c'est avec raison qu'il est ainsi soumis au Tribunal, lequel aura à l'examiner à ce point de vue, au cas où il serait appelé à décider, en vertu de l'Article 7, la question de savoir s'il y a lieu de faire des Règlements communs, et, dans l'affirmative, quels devraient être ces Règlements.”

Le Tribunal suspend alors sa séance.

A la reprise, Sir Charles Russell continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 5 Avril, 1893, et ont signé :

Le Président	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.

[English version.]

Protocol No. 4.—*Meeting of Wednesday, April 5, 1893.*

At 11:45 A.M. the Tribunal assembled, all the Arbitrators being present.

The Honourable E. J. Phelps continued his speech of the previous day and concluded his argument.

Mr. James C. Carter announced that he had no additional remarks to offer.

Sir Charles Russell opposed the motion under discussion on the following grounds :—

“That the Supplementary Report of the British Commissioners, dated the 31st January, 1893, is presented solely with reference to the question of Regulations, and, under the provisions of the Treaty of Arbitration of the 29th February, 1892, is properly presented to the Tribunal, and so should be considered by them in the event of their being called upon to determine, pursuant to Article 7, what, if any, concurrent Regulations are necessary.”

The Tribunal adjourned for a short time.

On reassembling, Sir Charles Russell continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30.  
So done at Paris, the 5th April, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 3 in No. 42.

*Protocole No. 5.—Séance du Jeudi, 6 Avril, 1893.*

LE Tribunal s'est réuni à midi et demi, tous les Arbitres étant présents.

*Sir Charles Russell* reprend et achève son discours de la veille.

*Sir Richard Webster* déclare qu'il n'a rien à ajouter aux observations de *Sir Charles Russell*.

*Mr. James C. Carter* prend la parole pour soutenir la motion présentée au nom des États-Unis.

À 1 heure et demie le Tribunal suspend sa séance.

À la reprise, *Mr. James C. Carter* continue son argumentation.

À 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures et demie.

Ainsi fait à Paris, le 6 Avril, 1893, et ont signé :

Le Président..	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.

[English version.]

*Protocol No. 5.—Meeting of Thursday, April 6, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his speech of the previous day and concluded his argument.

*Sir Richard Webster* said that he had nothing to add to *Sir Charles Russell's* remarks.

*Mr. James C. Carter* replied in support of the motion made on behalf of the United States.

At 1:30 the Tribunal adjourned for a short time.

On reassembling, *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 6th April, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## No. 43.

*Mr. Tupper to the Earl of Rosebery.—(Received May 4.)*

My Lord,

Paris, May 3, 1893.

AT the meeting of the Tribunal yesterday, Mr. Carter continued his argument, claiming for the United States the right to employ force upon the high seas for the defence of its property interest in the fur-seals and in the industry of the seal islands.

Having brought his observations on this point to a close, Mr. Carter proceeded to discuss the question of regulations.

This course was followed in accordance with an arrangement arrived at by the Counsel on both sides, whereby each party should be at liberty to present its arguments on the legal questions and regulations separately.

A discussion arose on this question, which your Lordship will find reported on pp. 525-528 of the shorthand notes.

Mr. Carter maintained that the regulations to be made by the Tribunal should not be confined to Behring Sea, but should extend outside that area wherever necessity required them.

The United States, he said, had no regulations to propose save one, namely, the total prohibition of the killing of all seals anywhere on the high seas. After a detailed criticism of the scheme of regulations proposed by the British Commissioners, Mr. Carter brought his long speech to a conclusion shortly before the hour of adjournment.

Mr. Coudert is to follow Mr. Carter on behalf of the United States at the next meeting.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 44.

*Mr. Tupper to the Earl of Rosebery.—(Received May 5.)*

My Lord,

Paris, May 4, 1893.

AT the meeting of yesterday, Mr. Coudert opened his speech, on behalf of the United States, which he said would be mainly devoted to a statement of the facts on which the argument of Mr. Carter depended. But before proceeding to a recital of these facts, he wished to add something to what had been stated by Mr. Carter in regard to the "self-defence" of the sealing industry.

His opening observations were therefore directed to this question, and he had not concluded this portion of his subject when the Tribunal adjourned.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 45.

*Mr. Tupper to the Earl of Rosebery.—(Received May 6.)*

My Lord,

Paris, May 5, 1893.

AT the meeting of yesterday, Mr. Coudert continued his speech, and after some observations on the issues before the Tribunal proceeded to a detailed examination of the facts connected with seal life, which he had not concluded when the hour of adjournment arrived.

I have, &c.

(Signed) CHARLES H. TUPPER.



No. 46.

*Mr. Tupper to the Earl of Rosebery.—(Received May 8.)*

My Lord,

Paris, May 6, 1893.

I HAVE the honour to transmit for your Lordship copies of the official Protocols Nos. 6, 7, 8, and 9 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

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 Inclosure 1 in No. 46.
*Protocole No. 6.—Séance du Vendredi, 7 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

L'Honorable E. J. Phelps appelle l'attention du Tribunal sur certaines erreurs dans le compte rendu sténographique.

Le Président fait observer que les seuls comptes rendus officiels garantis par l'autorité du Tribunal sont les Protocoles; la responsabilité des notes des sténographes incombe exclusivement aux Agents des deux Gouvernements.

Mr. James C. Carter reprend alors son argumentation pour les États-Unis.

Le Tribunal suspend sa séance à 1 heure 30.

À la reprise, Mr. Carter continue et achève sa plaidoirie.

Les Conseils des deux parties échangent alors, avec l'autorisation du Président, quelques explications complémentaires sur des points se rattachant aux plaidoiries qui viennent d'avoir lieu.

L'Honorable E. J. Phelps ayant demandé ensuite que l'on procédât à l'examen de la seconde motion, le Tribunal déclare qu'il fera connaître ses intentions à ce sujet dans la prochaine séance.

À 3 heures 50 la séance est levée et le Tribunal s'ajourne à Mardi pour une réunion privée, la séance publique étant remise au Mercredi, 12 Avril, 1893.

Ainsi fait à Paris, le 7 Avril, 1893, et ont signé :

Le Président, . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire, . . . . .	A. IMBERT.

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 [English version.]
*Protocol No. 6.—Meeting of Friday, April 7, 1893.*

THE Tribunal assembled at 11:40 A.M., all the Arbitrators being present.

The Honourable E. J. Phelps called the attention of the Tribunal to certain errors in the shorthand notes.

The President stated that the only official Minutes which were specially under the authority of the Tribunal were the Protocols; the responsibility of the shorthand notes rested exclusively with the Agents of the two Governments.

Mr. James C. Carter then continued his argument on behalf of the United States.

At 1:30 the Tribunal adjourned for a short time.

On reassembling, Mr. Carter continued and concluded his argument.

The Counsel on both sides then exchanged, with the sanction of the President, some supplementary explanations on points relevant to the arguments which had previously taken place.

The Honourable E. J. Phelps having afterwards applied to have the second motion considered, the Tribunal declared that it would announce its intentions on this subject at the next meeting.

At 3:50 P.M. the Tribunal adjourned to Tuesday for a private meeting, the public meeting being postponed to Wednesday, the 12th April, 1893.

Done at Paris, the 7th April, 1893, and signed :

The President .. .. .	ALPH. DE COURCEL.
The Agent for the United States..	JOHN W. FOSTER.
The Agent for Great Britain ..	CHARLES H. TUPPER.
The Secretary .. .. .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

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Inclosure 2 in No. 46.

Protocole No. 7.—Séance du Mercredi, 12 Avril, 1893.

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

Le *Président* donne lecture d'une décision du Tribunal ayant trait au "Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring," Rapport daté du 31 Janvier, 1893, et dont l'admissibilité a fait l'objet de la discussion qui a occupé les précédentes séances.

Les termes de cette décision sont les suivants :—

"Le Tribunal décide de ne pas recevoir, quant à présent, le document intitulé: 'Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring,' daté du 31 Janvier, 1893, et signé de George Baden-Powell et George M. Dawson, lequel a été remis aux Arbitres individuellement par l'Agent de la Grande-Bretagne, le 25 Mars, 1893, et contient une critique des moyens de preuve produits dans les pièces et documents précédemment remis aux Arbitres, ou une argumentation portant sur lesdits moyens de preuve.

"Toute liberté demeure néanmoins réservée aux représentants de la partie intéressée de s'approprier ledit document, daté du 31 Janvier, 1893, pour l'incorporer à leurs plaidoiries, s'ils le jugent convenable.

"La question de l'admissibilité des pièces ou de quelques-unes d'entre elles formant annexes audit document du 31 Janvier, 1893, est réservée à un examen ultérieur, sans préjudice du droit pour les représentants des deux parties de discuter la question dont s'agit, ainsi que le contenu desdites annexes, au cours de leurs plaidoiries."

Le *Président* donne ensuite lecture d'une deuxième décision du Tribunal. Cette décision, qui se rapporte à la demande présentée par l'Honorable E. J. Phelps, à la fin de la précédente séance, relativement à l'examen de la seconde motion des États-Unis, est conçue en ces termes :—

"Le Tribunal décide qu'il différera, jusqu'à tel moment qui sera par lui ultérieurement indiqué, d'entendre plaider et de prendre en considération la motion présentée, le 4 Avril, 1893, par les États-Unis d'Amérique, tendant à la radiation de certains passages faisant partie du Contre-Mémoire et des moyens de preuve du Gouvernement de la Grande-Bretagne."

Le *Président* exprime le désir du Tribunal de ne pas s'attarder à des discussions de procédure et d'aborder le plus promptement possible le fond de la question.

Il invite, en conséquence, les Conseils à entrer immédiatement en matière.

*Sir Charles Russell* fait connaître l'ordre dans lequel il a été convenu que les Conseils présenteraient leur argumentation et ses indications sont confirmées par Mr. James C. Carter.

Le *Président* déclare que le Tribunal agréera la manière de procéder arrêtée entre les Conseils, mais il demande à ceux-ci de vouloir bien, autant que possible, dans leur argumentation, traiter séparément la discussion des points de droit et celle des Ruements éventuels à intervenir.

Mr. James C. Carter, après avoir remercié la France de son accueil hospitalier, commence son plaidoyer pour les États-Unis.

Le Tribunal suspend sa séance à 1 heure 30.

A la reprise, Mr. James C. Carter continue son exposé.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fut à Paris, le 12 Avril, 1893, et ont signé :

Le Président.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis .. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. ..	CHARLES H. TUPPER.
Le Secrétaire .. ..	A. IMBERT.

[English version.]

*Protocol No. 7.—Meeting of Wednesday, April 12, 1893.*

THE Tribunal assembled at 11:40 A.M., all the Arbitrators being present.

The President then read the decision of the Tribunal with reference to the "Supplementary Report of the British Behring Sea Commissioners," dated the 31st January, 1893, the admissibility of which was the subject of the debates which took place at the previous meetings.

The terms of the decision are as follows :—

"It is ordered that the document entitled a 'Supplementary Report of the British Behring Sea Commissioners,' dated the 31st January, 1893, and signed by George Baden-Powell and George M. Dawson, and delivered to the individual Arbitrators by the Agent of Her Britannic Majesty on the 25th day of March, 1893, and which contains a criticism of, or argument upon, the evidence in the documents and papers previously delivered to the Arbitrators, be not now received, with liberty, however, reserved to Counsel to adopt such document, dated the 31st January, 1893, as part of their oral argument, if they deem proper.

"The question as to the admissibility of the documents, or any of them, constituting the Appendices attached to said document of the 31st January, 1893, is reserved for further consideration, without prejudice to the right of Counsel on either side to discuss that question, or the contents of the Appendices, in the course of the oral argument."

The President then read a second decision of the Tribunal. This decision which relates to the application of the Honourable E. J. Phelps, presented at the close of the preceding meeting, and having reference to the consideration of the second motion of the United States, is worded in these terms :—

"It is ordered that the Argument and consideration of the motion made by the United States of America on the 4th April, 1893, to strike out certain parts of the Counter-Case and proofs of the Government of Great Britain, be postponed until such time as may be hereafter indicated by the Tribunal."

The President then expressed the desire of the Tribunal not to spend time in discussions on procedure, but to enter as soon as possible upon the main question.

He accordingly invited the Counsel to address themselves immediately to the matter at issue.

Sir Charles Russell indicated the order in which it had been agreed the Counsel would present their arguments, and his statement was confirmed by Mr. James C. Carter.

The President declared that the Tribunal would approve of the mode of proceeding agreed upon by the Counsel, but he requested them to be kind enough, as far as possible, in the arrangement of their arguments, to keep separate the discussion on the matters relating to right, and those relating to the Regulations which might eventually be proposed.

Mr. James C. Carter, after thanking France for her hospitable reception, began his argument in behalf of the United States.

At 1:30 the Tribunal adjourned for a short time.

On reassembling Mr. James C. Carter continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30

Done at Paris, the 12th April, 1893, and signed :

The President .. ..	ALPH. DE COURCEL.
The Agent for the United States.. ..	JOHN W. FOSTER.
The Agent for Great Britain .. ..	CHARLES H. TUPPER.
The Secretary .. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD, } Co-Secretaries.
	H. CUNYNGHAME, }

## Inclosure 3 in No. 46.

*Protocole No. 8.—Séance du Jeudi, 13 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.  
*Mr. James C. Carter* reprend son argumentation.  
 A 1 heure 30 la séance est suspendue.  
 A la reprise, *Mr. James C. Carter* continue sa plaidoirie.  
 A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 13 Avril, 1893, et ont signé :

Le Président.	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 8.—Meeting of Thursday, April, 13, 1893.*

THE Tribunal assembled at 11.40 A.M., all the Arbitrators being present.  
*Mr. James C. Carter* resumed his argument.  
 At 1.30 the Tribunal adjourned for a short time.  
 On reassembling, *Mr. James C. Carter* continued his argument.  
 At 4 P.M. the Tribunal adjourned to the next day at 11.30 A.M.  
 Done at Paris, the 13th April, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## Inclosure 4 in No. 46.

*Protocole No. 9.—Séance du Vendredi, 14 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.  
*Mr. James C. Carter* reprend son argumentation.  
 Le Tribunal suspend sa séance à 1 heure.  
 A la reprise, *Mr. James C. Carter* continue sa plaidoirie.  
 La séance est levée à 4 heures et le Tribunal s'ajourne au Mardi, 18 Avril, à 11 heures 30.

Ainsi fait à Paris, le 14 Avril, 1893, et ont signé :

Le Président.	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 9.—Meeting of Friday, April 14, 1893.*

THE Tribunal assembled at 11.40 A.M., all the Arbitrators being present.  
*Mr. James C. Carter* resumed his argument.  
 At 1 o'clock the Tribunal adjourned for a short time.  
 On reassembling, *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to Tuesday, the 18th April, at 11:30 A.M.  
Done at Paris, the 14th April, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States..		JOHN W. FOSTER.
The Agent for Great Britain ..		CHARLES H. TUPPER.
The Secretary .. ..		A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## No. 47.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord,

*Paris, May 8, 1893.*

I HAVE the honour to transmit herewith to your Lordship copies of the Report for 1890,\* on the condition of the fur-seal fisheries on the Pribyloff Islands, by Mr. Henry W. Elliott.

Your Lordship will remember that this Report was produced by the United States' Government on the application made by the British Counsel at the meeting of the Tribunal on the 23rd March. The conditions under which it was presented by the United States are set out on pp. 36 and 37, Part I, of the shorthand notes.

The document was furnished in the form of a type-written copy, and some delay has necessarily taken place in having it printed.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 48.

*Mr. Tupper to the Earl of Rosebery.—(Received May 9.)*

My Lord,

*Paris, May 8, 1893.*

ON the 5th instant, Mr. Coudert continued his observations on the causes of the decrease in the number of seals resorting to the Pribyloff Islands, urging that the facts conclusively proved this decrease to be due to pelagic sealing, and that it was in no way attributable to the method of taking the seals on the breeding islands.

Mr. Coudert expects to finish his argument at the next meeting of the Tribunal.

I have, &c.  
(Signed) CHARLES TUPPER.

## No. 49.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord,

*Paris, May 10, 1893.*

AT the meeting of yesterday, Mr. Coudert continued his argument against pelagic sealing, and, after a short reference to the question of damages, concluded his speech shortly before the hour of adjournment.

Sir Charles Russell will open the argument on behalf of Great Britain at the meeting of to-day.

I have, &c.  
(In the absence of Mr. Tupper),  
(Signed) R. P. MAXWELL.

\* Copies of this Report will be deposited in the Library of each House of Parliament.

No. 50.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord,

Paris, May 11, 1893.

AT the meeting of yesterday, the Attorney-General opened the argument for Great Britain with a summary of the position taken up by Her Majesty's Government.

He called attention to the various changes of front on the part of the United States which had taken place since the beginning of the diplomatic correspondence and to the novel propositions of law propounded by the United States' Counsel.

Sir Charles then proceeded to deal generally with the arguments in the speeches of Mr. Carter and Mr. Coudert, more especially with the attacks made upon the British Commissioners and upon pelagic sealing.

He had not concluded his preliminary statement when the Tribunal rose.

Sir Charles' opening speech was listened to with great interest by the largest audience of the public which has been present since the commencement of the sittings.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

No. 51.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord,

Paris, May 11, 1893.

I HAVE the honour to transmit to your Lordship, herewith, copies of the official Protocols of the Behring Sea Arbitration Tribunal, Nos. 10, 11, 12, 13, and 14.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

## Inclosure 1 in No. 51.

*Protocole No. 10.—Séance du Mardi, 18 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

Le Président, à l'ouverture de la séance, se référant à quelques paroles qu'il avait prononcées à la fin de la séance précédente, déclare que si, dans le cours des plaidoiries, les Arbitres sont amenés à présenter des observations ou à adresser des questions aux Conseils, ces observations ou ces questions ne doivent pas être considérées comme exprimant une opinion de la part de l'Arbitre qui les formule, et encore moins comme engageant le pays auquel il appartient. Elles sont simplement, pour le Tribunal, un moyen d'obtenir, des représentants des parties, un éclaircissement plus complet des points en discussion.

Sur l'invitation du Président, *Mr. James C. Carter* continue alors son plaidoyer.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* reprend son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 18 Avril, 1893, et ont signé :

Le Président..	..	..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	..	..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	..	..	..	CHARLES H. TUPPER.
Le Secrétaire..	..	..	..	A. IMBERT.

[English version.]

*Protocol No. 10.—Meeting of Tuesday, April 18, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The President*, at the opening of the meeting, referring to a few remarks which he had made at the end of the preceding sitting, announced that, if in the course of the arguments, the Arbitrators were lead to make observations or to address questions to Counsel, these observations or questions must not be considered as expressing any opinion on the part of the Arbitrator who makes them, and still less as binding the country to which he belongs. They are simply, so far as the Tribunal is concerned, the means of obtaining from the representatives of the parties a more complete elucidation of the points under discussion.

Upon the invitation of the President, *Mr. James C. Carter* then continued his argument.

At 1:30 P.M. the Tribunal took a recess.

On the reassembling of the Tribunal, *Mr. Carter* resumed his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11:30 A.M.

Done at Paris, the 18th April, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

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Inclosure 2 in No. 51.

*Protocole No. 11.—Séance du Mercredi, 19 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend son argumentation.

La séance est suspendue à 1 heures 30.

A la reprise, *Mr. Carter* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 19 Avril, 1893, et ont signé:

Le Président	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.

[English version.]

*Protocol No. 11.—Meeting of Wednesday, April 19, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1:30 the Tribunal took a recess.

On the reassembling, *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned till the next day, at 11:30 A.M.

Done at Paris, the 19th April, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	



## Inclosure 3 in No. 51.

*Protocole No. 12.—Séance du Jeudi, 20 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
L'Agent des États-Unis fait remettre au Tribunal un recueil de "Citations empruntées à des ouvrages de Jurisconsultes et d'Economistes comme Appendices à l'Argument des États-Unis."

*Mr. James C. Carter* reprend son argumentation de la veille.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* continue son plaidoyer.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 20 Avril, 1893, et ont signé :

Le Président.	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 12.—Meeting of Thursday, April 20, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
The Agent for the United States caused to be delivered to the Tribunal a collection of "Citations from the writings of Jurists and Economists as an Appendix to the Argument of the United States."

*Mr. James C. Carter* resumed his argument of the preceding day.

At 1:30 the Tribunal took a recess.

On reassembling *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 20th April, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## Inclosure 4 in No. 51.

*Protocole No. 13.—Séance du Vendredi, 21 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend sa plaidoirie.

A 1 heure 30 la séance est suspendue.

A la reprise *Mr. Carter* continue son argumentation.

La séance est levée à 4 heures.

Le Tribunal s'ajourne au Mardi, 25 Avril, à 11 heures 30.

Ainsi fait à Paris, le 21 Avril, 1893, et ont signé :

Le Président.	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 13.—Meeting of Friday, April 21, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned till Tuesday, the 25th April, at 11:30 A.M.

Done at Paris, the 21st April, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inelasure 5 in No. 51.

*Protocole No. 14.—Séance du Mardi, 25 Avril, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents, à l'exception de Lord Hannen, retenu chez lui pour cause de maladie.

*Sir Richard Webster* se lève pour déclarer que toute décision du Tribunal en vue d'une suspension de ses travaux, pendant le temps nécessaire pour assurer le complet rétablissement de Lord Hannen, serait conforme aux désirs des Conseils du Gouvernement Britannique.

*L'Honorable E. J. Phelps* s'exprime dans le même sens, au nom des Conseils du Gouvernement des États-Unis.

*Le Président* fait alors connaître que le Tribunal a décidé de s'ajourner jusqu'au Mardi, 2 Mai, à 11 heures 30.

Ainsi fait à Paris, le 25 Avril, 1893, et ont signé :

Le Président..	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 14.—Meeting of Tuesday, April 25, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present with the exception of Lord Hannen, confined to his house by illness.

*Sir Richard Webster* rose and stated that any decision of the Tribunal as to a suspension of its labours during the time necessary to insure the complete recovery of Lord Hannen, would be in accordance with the wishes of the Counsel of the British Government.

*The Honourable E. J. Phelps* expressed himself to the same effect in the name of the Counsel of the Government of the United States.

*The President* then announced that the Tribunal had decided to adjourn until Tuesday, the 2nd May, at 11:30 A.M.

Done at Paris, the 25th April, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## No. 52.

*Mr. Tupper to the Earl of Rosebery.—(Received May 17.)*

My Lord,

Paris, May 15, 1893.

ON the 11th instant the Attorney-General, after a further comment on the references made by the United States to the Report of the British Commissioners, discussed at some length the history of the seizures of British vessels in Behring Sea by the United States' Government, the grounds on which the vessels had been condemned, and the consequent liability of the United States in the event of the Arbitrators deciding that the seizures were not justifiable.

The Argument was continued on the following day, special reference being made to the Revised Statutes of the United States dealing with the territory of Alaska, and to the proceedings in the United States' District Court at Sitka in the case of the schooner "Thornton."

Sir Charles Russell went on to show that in the Case presented on behalf of the United States, great stress had been laid upon the jurisdiction over the waters of Behring Sea alleged to have been exercised by Russia for the protection of the seal fisheries, and that it was not until the delivery of the Counter-Case and Argument that this portion of the Case was declared to be of minor importance.

The Attorney-General further pointed out that now that the part of the United States' Case containing the erroneous translations of the Russian documents had been withdrawn no proof remained of any exercise of these rights of jurisdiction by Russia.

The Argument on this question had not concluded when the Tribunal adjourned.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 53.

*Mr. Tupper to the Earl of Rosebery.—(Received May 26.)*

My Lord,

Paris, May 23, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 15 to 18 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

## Inclosure 1 in No. 53.

*Protocole No. 15.—Séance du Mardi, 2 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend et achève son argumentation sur les points de droit. Au moment où il passe à l'examen de la question des Règlements, *Sir Charles Russell* fait observer que les Conseils de la Grande-Bretagne sépareront absolument dans la discussion les questions de droit de celles qui concernent la réglementation.

*Le Président* rappelle que le Tribunal a décidé, sans préjuger aucune question de droit, de laisser aux Conseils des deux parties, qui se sont mis d'accord à ce sujet, liberté entière de disposer leurs plaidoiries de la façon qui leur convenait, tout en traitant autant que possible séparément les questions de droit et celle des Règlements, et prend acte de ce que les deux parties ont décidé de déférer à cette demande.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* achève sa plaidoirie.

A 3 heures 30, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 2 Mai, 1893, et ont signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN. W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 15.—Meeting of Tuesday, May 2, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed and concluded his argument on the matters relating to right. As he was proceeding to deal with the question of Regulations, *Sir Charles Russell* observed that the Counsel of Great Britain would in the discussion keep absolutely separate matters relating to right, and those relating to Regulations.

*The President* recalled the fact that the Tribunal had decided, without prejudging the question of right, to give to Counsel on each side, who had agreed upon this point, full liberty to arrange their arguments in such manner as they thought most convenient, but always, as far as possible, so as to keep the questions of right distinct from the Regulations, and added that the Tribunal took note that both parties had decided to defer to this desire.

At 1:30 the Tribunal took a recess.

On reassembling *Mr. Carter* finished his argument.

At 3:30 P.M. the Tribunal adjourned till the next day at 11:30 A.M.

Done at Paris, the 2nd May, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 2 in No. 53.

*Protocole No. 16.—Séance du Mercredi, 3 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable John W. Foster* annonce qu'il sera très prochainement en mesure de faire distribuer aux membres du Tribunal le compte rendu sténographique, revu et corrigé, de l'argumentation qu'a terminée la veille *Mr. James C. Carter*.

Sur l'invitation du Président, *Mr. Frederick R. Coudert* commence alors sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Coudert* continue son argumentation.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 3, Mai, 1893, et ont signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 16.—Meeting of Wednesday, May 3, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The Honourable John W. Foster* announced that in a very short time he expected to be able to deliver to the members of the Tribunal, a shorthand report revised and corrected, of *Mr. James C. Carter's* argument as concluded the previous day.

Upon the invitation of the President, *Mr. Frederick R. Coudert* then began his argument.

At 1:30 the Tribunal took a recess.

On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.  
Done at Paris, the 3rd May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 3 in No. 23.

*Protocole No. 17.—Séance du Jeudi, 4 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Mr. Frederick R. Coudert* reprend sa plaidoirie de la veille.  
La séance est suspendue à 1 heure 30.  
A la reprise, *Mr. Coudert* continue son argumentation.  
A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 4 Mai, 1893, et ont signé:

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 17.—Meeting of Thursday, May 4, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
*Mr. Frederick R. Coudert* resumed his argument of the preceding day.  
At 1:30 the Tribunal took a recess.  
On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 4th May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 4 in No. 53.

*Protocole No. 18.—Séance du Vendredi, 5 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Mr. Frederick R. Coudert* reprend son argumentation.  
A 1 heure 30 la séance est suspendue.  
A la reprise, *Mr. Coudert* continue sa plaidoirie.  
A 4 heures, la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 9 Mai, à 11 heures 30.

Ainsi fait à Paris, le 5 Mai, 1893, et ont signé:

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 18.—Meeting of Friday, May 5, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Mr. Frederick R. Coudert* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 9th May, at 11:30 A.M.

Done at Paris, the 5th May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

## No. 54.

*Mr. Tupper to the Earl of Rosebery.—(Received May 26.)*

My Lord,

*Paris, May 24, 1893.*

AT the meeting of yesterday, Sir Charles Russell continued his argument on the 5th question of Article VI of the Treaty.

He contended that this question might be interpreted as referring to an exclusive right to take fur-seals in Behring Sea, but assumed for the purpose of argument that the wider meaning attached to it by the United States was correct. This interpretation is, as your Lordship is aware, the assertion of a right of property in the seal-herd, and the sealing industry.

Sir Charles proceeded to reply generally to Mr. Carter's arguments on this head, and entered into the questions of the alleged domestic character of the seals, the intermingling of the so-called herds, the length of their stay on the islands, and the possibility of identification.

He then commenced an examination of the propositions of law put forward by Mr. Carter in this connection, and had not concluded this portion of his subject when the Tribunal rose.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 55.

*Mr. Tupper to the Earl of Rosebery.—(Received May 26.)*

My Lord,

*Paris, May 25, 1893.*

AT the meeting of yesterday, Sir Charles Russell proceeded with his examinations of the legal propositions put forward by Mr. Carter, and dealt with the various authorities cited in the printed Argument of the United States, which, he argued, entirely supported the British contention with regard to the question of property in the fur-seals.

He supplemented these authorities by citing those quoted in the British Counter-Case and Argument, and, after alluding to the French laws on the subject of property in animals, concluded his observations for the day with an explanation of the bearings of natural and moral law on the principles of international jurisprudence.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 56.

*Mr. Tupper to the Earl of Rosebery.—(Received May 27.)*

My Lord,

Paris, May 26, 1893.

AT the meeting of yesterday, Sir Charles Russell, after briefly supplementing his remarks of the preceding day, proceeded to a detailed examination of the printed argument by Mr. Phelps, which appears on pp. 130-179 of the Argument of the United States. Your Lordship will remember that the subject dealt with therein is the claim of the United States to an interest, an industry, and a commerce in the produce of the seal-herd and to a right of protecting the same, irrespective of any distinct right of property in the seals.

Sir Charles had not concluded his criticism on Mr. Phelps' argument when the Tribunal rose for the day.

I have, &amp;c.

(Signed)

CHARLES H. TUPPER.

No. 57.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.)

Foreign Office, May 29, 1893.

IN view of what has passed in the arguments before the Tribunal respecting the effect of the *modus vivendi* of last year, I think it must be left entirely to your discretion to decide, in consultation with Counsel, whether any claim for compensation under Article V of the Treaty of the 18th April, 1892, shall be pressed on behalf of Her Majesty's Government.

No. 58.

*Mr. Tupper to the Earl of Rosebery.—(Received May 31.)*

My Lord,

Paris, May 30, 1893.

AT the meeting of the Tribunal on the 26th instant, Sir Charles Russell continued his examination of the illustrations and cases cited by Mr. Phelps in the printed Argument of the United States, and was dealing with the analogies sought to be drawn from legislation in British Colonies and various foreign countries in regard to seal fisheries, when the Tribunal adjourned for the day.

I have, &amp;c.

(Signed)

CHARLES H. TUPPER.

No. 59.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.)

Foreign Office, May 31, 1893.

YOU may authorize Counsel to state to the Tribunal that an arrangement has been concluded with the Russian Government for the prohibition of sealing within a zone of 10 miles from the Russian coasts in Behring Sea and other parts of the North Pacific Ocean, and of 30 miles round the Commander Islands and Robben Island; this arrangement to be a provisional one for the present year, and without prejudice to the rights or position of either Power. The correspondence will be laid before Parliament forthwith. It may also be stated that, although no official reply has been received on the subject of the seizures made by Russian cruisers last year, it is understood that these are justified on the ground that the vessels were seized for acts just committed in Russian territorial waters.

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*Foreign Office to Colonial Office.*

Sir,

*Foreign Office, May 31, 1893.*

I AM directed by the Earl of Rosebery to forward, for the information of the Marquis of Ripon, a paraphrase of a telegram\* which has been addressed to the British Agent for the Behring Sea Arbitration in regard to the possible claim of Her Majesty's Government for compensation under Article V of the Treaty of Washington of the 18th April, 1892.

That Article provides that if the decision of the Arbitrators should affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, then compensation should be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the Arbitration upon the basis of such a regulated and limited catch or catches as, in the opinion of the Arbitrators, might have been taken without an undue limitation of the seal herds. Further, the amount awarded, if any, shall be such as under all the circumstances is just and equitable.

As a matter of fact, however, it has been found that while the United States, under the *modus vivendi* of last year, were restricted to a catch of 7,500, the pelagic catch, although the sealing vessels kept outside the prohibited limits, was larger than in previous years. This fact has been strongly brought forward by the United States' Counsel before the Tribunal.

It is not probable that, under such circumstances, the Arbitrators would consider that the British sealers were, under any circumstances, entitled to compensation for a loss of catch during 1892, and it is possible that the British Case might be prejudiced by the claim being urged.

This view of the case was represented by Sir R. Webster, who was in England for two days on the 29th and 30th instant, and Lord Rosebery thought it was better at once to inform Mr. Tupper that the question whether the claim should be advanced must be left to his discretion in consultation with the British Counsel.

His Lordship has no doubt that Lord Ripon will concur in that view.

I am, &amp;c.

(Signed) T. H. SANDERSON.

## No. 61.

*Mr. Tupper to the Earl of Rosebery.—(Received June 1.)*

My Lord,

*Paris, May 31, 1893.*

AT the meeting of yesterday, Sir Charles Russell proceeded with his examination of the analogies sought to be drawn by the United States from colonial and foreign regulations in regard to seal fisheries. He then dealt with the United States' contentions that not only seal fisheries but also other fisheries, more especially those of pearl, coral, and herring, are protected by extra-territorial laws of other nations. He passed on to the consideration of the St. Helena Act, and certain cases quoted by the United States bearing on extra-territorial jurisdiction, and had just concluded this portion of his argument when the Tribunal adjourned. Sir Charles expects to finish his speech this morning.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

## No. 62.

*Mr. Tupper to the Earl of Rosebery.—(Received June 2.)*

My Lord,

*Paris, June 1, 1893.*

AT the meeting of yesterday, Sir Charles Russell, having concluded his examination of the various authorities cited by the United States, proceeded to sum up the various points in his argument, and to lay before the Tribunal the findings which he asked for in regard to the questions of fact involved in the claim for damages put forward in the British Case.

He stated that Great Britain would not ask from the Tribunal any finding for damages under Article 5 of the *modus vivendi* of 1892, and Mr. Phelps admitted that the United States had on their side abandoned any claims under this head.

Sir Charles then re-stated to the Tribunal the replies which Great Britain contends should be given to the five questions of Article VI of the Treaty, as set forth at pp. 26 and 63 of the British Argument, and after explaining that his argument had been only directed to the question of legal right, as distinct from regulations, concluded his speech with an eloquent appeal to the Tribunal for an award in conformity with the principles of law which would be a victory for peace.

Sir Charles, whose concluding words were listened to with deep interest by a large audience, was thanked by the President for the vigour and incisiveness of his argument.

Sir Richard Webster then opened his speech, and addressed himself to an examination of the first four questions of Article VI of the Treaty, which he had not concluded when the Tribunal adjourned.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 63.

*Mr. Tupper to the Earl of Rosebery.—(Received June 3.)*

My Lord,

Paris, June 2, 1893.

AT the meeting of yesterday, Sir Richard Webster continued his argument with regard to the first four questions under Article VI of the Treaty, and discussed the interpretation of the expressions "North-west Coast of America" and "Pacific Ocean," as illustrating the Treaties of 1824 and 1825 between Russia and the United States and Russia and Great Britain respectively.

Sir Richard had substantially concluded this part of his argument when the Tribunal adjourned for the day.

I have, &c.  
(Signed) CHARLES H. TUPPER.

No. 64.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord,

Paris, June 3, 1893.

WITH reference to my despatch of the 18th April, I have the honour to transmit to your Lordship copies of further correspondence which I have had with General Foster respecting the shorthand notes of the proceedings before the Tribunal of Arbitration.

I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclosure 1 in No. 64.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster,

Paris, May 16, 1893.

HAVING reference to your recent request for copies of the daily report of Sir Charles Russell's argument, as well as of the revised proof of it, when ready, it occurs to me that the experience gained by us both since the date of our correspondence on the subject of the shorthand notes, may enable us to resume the arrangement originally contemplated, whereby the expense of the work would fall equally upon the United States and Great Britain. If this is possible, I shall of course be happy to supply you with complete copies of all the shorthand notes, and will see that they are regularly supplied in future.

I laid upon your desk to-day three copies of the printed Report of Mr. Elliott. Mr. Stanley-Brown has also asked for and received a copy, and Mr. Williams, one of the Counsel for the United States, has expressed a desire for further copies.

I take it that the printing in the case of Mr. Elliott's Report may be fairly

considered a joint charge, and if you agree I shall be glad to supply you with copies equal in number to those received by us.

You were good enough to supply us with copies of Mr. Carter's argument as revised by him.

Of course, if we recur to the shorthanding as a joint charge, we shall be happy to bear half of the expense of the taking and printing of Mr. Carter's argument.

If, however, you do not feel inclined to bear half of the cost of the printing with us, I will send you copies of the Report of Sir Charles Russell's argument when revised.

Yours, &c.  
(Signed) CHARLES H. TUPPER.

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Inclosure 2 in No. 64.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper,

*Paris, May 17, 1893.*

ACKNOWLEDGING the receipt of your letter of the 16th instant, I beg to remind you that you have misapprehended the purport of my conversation to which you refer. Its object was to ascertain what further number of copies of Mr. Carter's argument you desired, and I incidentally inquired whether you would deliver to us Sir Charles Russell's argument by means of the daily reports or in the revised form. I expressly disavowed making any request on the subject.

I regret to have to say, in response to your suggestion, that the events since our last correspondence on the subject have not lead to any change of view on the part of the Representatives of the United States as to the practicability of the daily shorthand reports. Our Counsel regard them in the manner reproduced in the morning after each session, so far as they are concerned, as entirely unsatisfactory, and as not serving any useful purpose.

I am sorry not to be able to concur in your proposition respecting the printing and distribution of the Elliott Report. The United States does not propose to make it evidence in its behalf. It has been printed by the British Government without the knowledge or approval of the Representatives of the United States. If it is introduced as evidence by the British Government, and thereby made a part of its Case, it would seem to be a fair claim on the part of the United States to be supplied with the same number of copies of it as have been heretofore furnished of the other printed documentary evidence accompanying the Case and Counter-Case of Great Britain.

I hold myself ready to furnish you with such additional number of copies of Mr. Carter's argument as you may desire.

I am, &c.  
(Signed) JOHN W. FOSTER.

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No. 65.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord,

*Paris, June 3, 1893.*

I HAVE the honour to inclose, for your Lordship's information, copies of a letter which, with the approval of Counsel, I addressed to Mr. Foster, and of his reply with regard to the question of the ownership of sealing vessels engaged in the Behring Sea fishery

I have, &c.  
(Signed) CHARLES H. TUPPER.

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Inclosure 1 in No. 65.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster,

*Paris, May 26, 1893.*

REFERRING to the suggestion advanced on p. 130 of the United States' Counter-Case that some of the vessels for the seizuro of which damages are claimed by Her Majesty's Government, were owned by citizens of the United States, and to the promise made to the Tribunal by the Attorney-General on the 11th May, that, if

possible, the Arbitrators should not be troubled with the consideration of the subject, I now write to inquire whether we can agree upon the facts in dispute in order that the Attorney-General's suggestion should be made effective.

As regards Mr. Franks, I have not as yet complete evidence.

As regards Mr. Boscowitz, this gentleman denies that he is the owner of the vessels, and further denies that he is an American citizen. And as at present advised, I shall have to ask the Tribunal so to hold, unless of course it is possible, as I hope it may be, for me to come to an arrangement with you upon this matter.

Your suggestion being first made in your Counter-Case, it was not possible to produce in Court evidence on the point in the ordinary way, but Mr. Boscowitz happens at the present moment to be in Paris, and I would suggest that a fair way of eliciting the actual facts would be, that we should examine, and that you should cross-examine, Mr. Boscowitz in the presence of a shorthand writer. His evidence might then be laid before the Arbitrators as material for a decision if this should be thought necessary by either side.

I am, &c.  
(Signed) CHARLES H. TUPPER.

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Inclosure 2 in No. 65.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper,

*Paris, May 27, 1893.*

I HAVE the honour to acknowledge the receipt of your communication of the 26th instant, in which you inform me that a Mr. Boscowitz "happens at the present moment to be in Paris," and, in view of certain proofs adduced in behalf of the United States respecting him, you suggest that he be examined and cross-examined here for the purpose of submitting his evidence to the Arbitrators as material for a decision on their part.

An examination of the Treaty under which the pending Arbitration is constituted must satisfy you that I have no power or authority to accede to your request. The manner in which evidence is to be submitted to the Arbitrators is precisely fixed by the terms of the Treaty, and no opportunity or method for such submission is therein afforded to either party except through its respective Case and Counter-Case.

Besides, it would hardly seem reasonable to allow one party, after the Case, Counter-Case, and printed Argument had been submitted and while the oral argument was in progress and near its close, to examine an important witness on its behalf, when the witnesses of the other party, whose testimony might be material to refute his statements, were 6,000 miles away, and who could not be reached in time to submit their testimony to the Tribunal.

Referring to your inquiry as to whether we can agree upon the facts in dispute in order that the suggestion of Sir Charles Russell might be made effective, I have pleasure in saying that I am prepared to concur with you in any statement of facts proper to be considered by the Tribunal and warranted by the evidence now legitimately before that Body.

In closing I beg to remind you that the suggestion "... that some of the vessels for the seizure of which damages were claimed by Her Majesty's Government were owned by citizens of the United States," was not for the first time advanced by the United States in the Counter-Case, as will be seen by reference to the Case of the United States, Appendix, vol. II, p. 505.

I am, &c.  
(Signed) JOHN W. FOSTER.

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No. 66.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord,

*Paris, June 3, 1893.*

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 19 to 23 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## Inclosure 1 in No. 66.

*Protocole No. 19.—Séance du Mardi, 9 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. Frederick R. Coudert* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Mr. Coudert* achève sa plaidoirie.

*L'Honorable Edward J Phelps* se lève pour annoncer au Tribunal, avant que les Conseils de la Grande-Bretagne commencent leur augmentation, que, dans sa réplique, il s'appuiera sur toutes les citations et propositions contenues dans l'Argument des États-Unis, de la page 130 à la page 190.

*Le Président* donne acte à *l'Honorable Edward J Phelps* de cette déclaration.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 9 Mai, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English Version.]

*Protocol No. 19.—Meeting of Tuesday, May 9, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Mr. Frederick R. Coudert* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Mr. Coudert* concluded his argument.

*The Honourable Edward J. Phelps* rose to inform the Tribunal, before the Counsel of Great Britain commenced their argument, that in his reply he would rely upon all the authorities and points referred to between pages 130 and 190 of the printed Argument of the United States.

*The President* said that the Tribunal would take note of the Honourable Edward J. Phelps' declaration.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 9th May, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

## Inclosure 2 in No. 66.

*Protocole No. 20.—Séance du Mercredi, 10 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'Agent des États-Unis fait distribuer aux membres du Tribunal le compte rendu sténographique, revu et corrigé, de l'argumentation de *Mr. James C. Carter*.

Sur l'invitation du Président, *Sir Charles Russell* commence sa plaidoirie pour la Grande-Bretagne.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.

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A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 10 Mai, 1893, et ont signé :

Le Président . . . . .	..	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	..	CHARLES H. TUPPER.
Le Secrétaire . . . . .	..	A. IMBERT.

[English version.]

Protocol No. 20.—Meeting of Wednesday, May 10, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

The Agent of the United States caused to be delivered to the members of the Tribunal a shorthand report, revised and corrected, of *Mr. James C. Carter's* argument.

Upon the invitation of the President, *Sir Charles Russell* began his argument for Great Britain.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M., the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 10th May, 1893, and signed :

The President . . . . .	..	ALPH. DE COURCEL.
The Agent for the United States . . . . .	..	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	..	CHARLES H. TUPPER.
The Secretary . . . . .	..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 3 in No. 66.

Protocole No. 21.—Séance du Jeudi, 11 Mai, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation et annonce qu'il présentera, à une date ultérieure, au nom du Gouvernement de la Grande-Bretagne, une liste des questions de fait sur lesquelles il demande au Tribunal de se prononcer, en exécution de l'Article VIII du Traité d'Arbitrage.

*Le Président* fait remarquer que le Tribunal réserve son appréciation de ces questions, tout en laissant à *Sir Charles Russell* pleine liberté de traiter le sujet de la manière qui lui conviendra.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 11 Mai, 1893, et ont signé :

Le Président . . . . .	..	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	..	CHARLES H. TUPPER.
Le Secrétaire . . . . .	..	A. IMBERT.

[English version.]

Protocol No. 21.—Meeting of Thursday, May 11, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell*, in continuing his argument, announced that on a future day he would submit on the part of Great Britain a list of the findings of facts, which the Tribunal was requested to make under Article VIII of the Treaty of Arbitration.

*The President* remarked that these questions would be considered by the Tribunal with full liberty for *Sir Charles Russell* to deal with the matter as he thought proper. At 1:30 the Tribunal took a recess.

On reassembling *Sir Charles Russell* continued his argument.

The Tribunal adjourned at 4 P.M. till 11:30 the next day.

Done at Paris, the 11th May, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

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Inclosure 4 in No. 66.

*Protocole No. 22.—Séance du Vendredi, 12 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 16 Mai, à 11 heures 30.

Ainsi fait à Paris, le 12 Mai, 1893, et ont signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des Etats-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

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[English version.]

*Protocol No. 22.—Meeting of Friday, May 12, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 16th May, at 11:30 A.M.

Done at Paris, the 12th May, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

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Inclosure 5 in No. 66.

*Proctocole No. 23.—Séance du Mardi, 16 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.



A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 16 Mai, 1893, et ont signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

Protocol No. 23.—Meeting of Tuesday, May 16, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned till 11:30 A.M. the next day.

Done at Paris, the 16th May, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

No. 67.

*Mr. Tupper to the Earl of Rosebery.*—(Received June 8.)

My Lord,

Paris, June 6, 1893.

AT the meeting of the Tribunal held on the 2nd instant, *Sir R. Webster*, after referring to the question of the limits of territorial waters, went on to show how little value had been attached to the fur-seal fisheries at the time of the purchase of Alaska by the United States.

He was proceeding with the discussion of the 5th question of Article VI of the Treaty, when *Mr. Justice Harlan* stated that, before this portion of the argument was commenced, he would be glad to see the draft "Projet" which *Mr. George Canning* inclosed in his letter to *Mr. Stratford Canning* of the 8th December, 1824. This document, as your Lordship will remember, was not included among the correspondence printed in Volume II of the Appendix to the British Case, for the reason that no trace of it could be discovered, and a statement to this effect was made to the Tribunal by *Sir R. Webster*.

*Sir Richard* then reviewed at some length the various contentions by which the Government of the United States have endeavoured to establish their claim to property or a property interest in the fur-seals frequenting the *Pribiloff Islands*.

He had not concluded his remarks on this subject when the Tribunal adjourned until this morning.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 68.

*Mr. Tupper to the Earl of Rosebery.*—(Received June 8.)

My Lord,

Paris, June 7, 1893.

AT yesterday's meeting of the Tribunal, *M. Gram* opened the sitting with a statement as to the special rules concerning territorial waters which were necessitated by the natural conditions of Sweden and Norway.

He explained that the fords of those countries had been from time immemorial considered as "inner waters," and that this principle had been always maintained even as against foreign subjects. The 3-mile limit had never been recognized by either country, nor had they concluded or acceded to any Treaty consecrating that rule.

At the conclusion of M. Gram's remarks the President, while begging both parties to bear in mind the explanation they had just heard, wished to state very distinctly that the question of the definition of territorial waters was not before the Tribunal.

Sir Richard Webster then continued his argument on the question of property in the seals and the sealing industry, and criticized in detail the positions maintained by the United States' Counsel.

In the course of some observations directed to prove the intermingling of the seals in Behring Sea, Sir Richard read a passage from the Supplementary Report of the British Commissioners. This drew forth a protest from Mr. Phelps as to the use which was being made of the document quoted, and after some discussion (reported on pp. 1306-71 of the shorthand notes), it was arranged that the matter should be referred to at a later stage, when the question of Regulations was argued.

I beg to call your Lordship's special attention to a statement made by Mr. Phelps (as reported at p. 14C2 of the notes) in the course of a discussion in regard to Prize Courts initiated by Senator Morgan. Mr. Phelps' words were as follows:—

"I conceive that no question whatever in regard to the validity of the seizures, and no question whatever in respect of the right of the United States to seize any vessel hereafter, is submitted under this Treaty to the Tribunal so far as I am concerned."

If this statement accurately represents the position of the United States, it is difficult to understand how it can be reconciled with the circumstances which led to this Arbitration.

Sir Richard Webster had not concluded his argument at the close of the day's proceedings.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 69.

*Mr. Tupper to the Earl of Rosebery.—(Received June 9.)*

My Lord,

Paris, June 8, 1893.

AT the meeting of the Tribunal yesterday, Sir Richard Webster continued his argument, and commenced by referring to the remark made by Mr. Phelps, to which I called your Lordship's attention in my immediately preceding despatch, asserting that no question in respect to the validity of British vessels was submitted to the Tribunal.

After showing that the attitude thus assumed by Mr. Phelps was inconsistent with the suggestions made in the Case and Counter-Case of the United States respecting the proposed findings of the Tribunal, Sir Richard passed on to his main argument, which he shortly afterwards concluded with some telling references to the rights of all nations to participate in ocean fisheries.

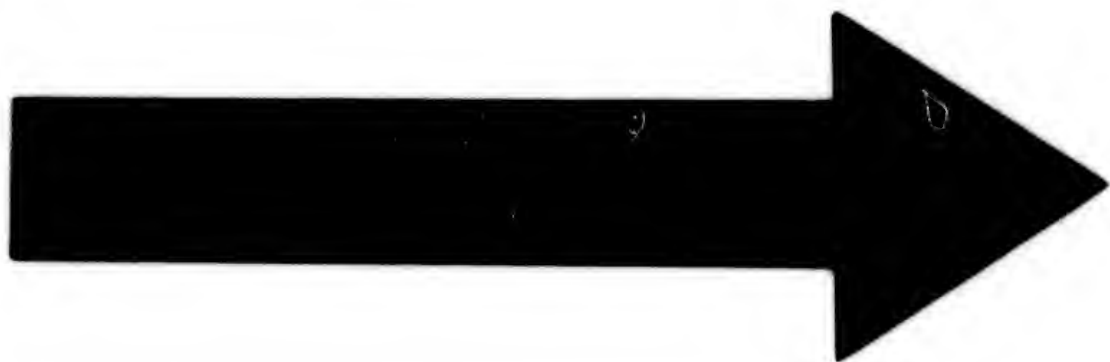
On the conclusion of his speech, Sir Richard Webster was complimented by the President on the substantial and useful observations with which he had supplemented the argument of the Attorney-General. Baron de Courcel added an expression of his admiration for the manner in which the Attorney-General of yesterday and to-day had worked together, and remarked on the enviable condition of a country where party spirit admitted of such brotherly association when the national interest was at stake.

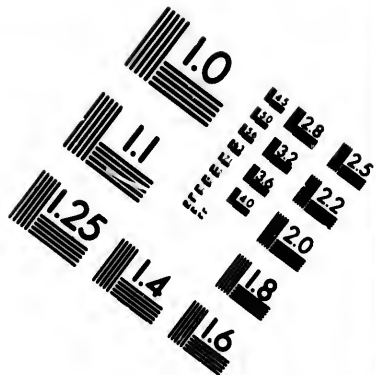
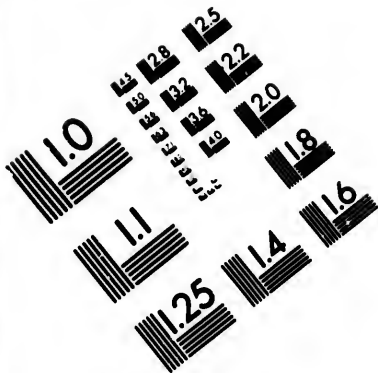
Mr. Robinson followed Sir Richard Webster. He dealt generally with the various questions of right which are at issue, and, after referring to the interpretation to be placed upon the terms "Pacific Ocean" and "North-West Coast," touched on the alleged domestic nature of the seals, and the claims founded by the United States on this contention. He concluded the proceedings for the day with an able and humorous criticism on the assumption by the United States of the position of Trustees of the industry.

Mr. Robinson expects to conclude his speech to-day.

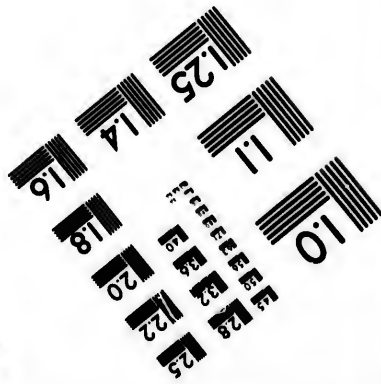
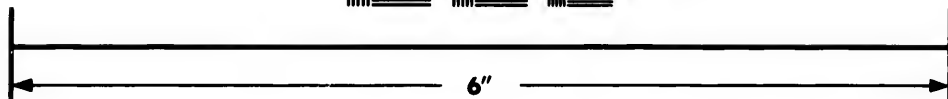
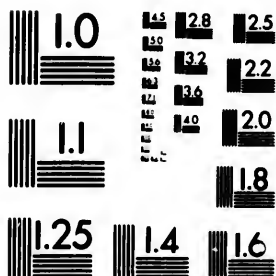
I have, &c.

(Signed) CHARLES H. TUPPER.





**IMAGE EVALUATION  
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WEBSTER, N.Y. 14580  
(716) 872-4503

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*Mr. Tupper to the Earl of Rosebery.—(Received June 10.)*

My Lord,

*Paris, June 9, 1893.*

AT the meeting of yesterday, Mr. Robinson continued his argument on the property claim alleged by the United States, and while contending that the cruelty of the methods had no bearing on the question of right, he briefly discussed the charges of this nature preferred against pelagic sealers. He quoted from the Report of Mr. Palmer, to show that whatever barbarity there might be in the methods of killing seals at sea, the manner in which the seals were driven and killed upon the islands was more barbarous than pelagic sealing.

At the close of Mr. Robinson's argument, Mr. Foster laid before the Tribunal a statement of the regulations which the Government of the United States submitted were necessary in the event of the questions described in Article VI of the Treaty being decided in such a manner that the concurrence of Great Britain should be necessary to the establishment of such regulations.

This statement appears at pp. 1476 and 1477 of the shorthand notes, and, as your Lordship will observe, it amounts to a demand by the United States for the total suppression of pelagic sealing in the North Pacific Ocean.

In the afternoon, the Attorney-General addressed the Tribunal on the principles which, in his opinion, should be borne in mind by the Tribunal when approaching the question of regulations.

He first dealt with the area over which the jurisdiction of the Tribunal extended. From the general language of the Treaty, he argued, that while it might be said that their jurisdiction extended to all the resorts of the fur-seal outside the territorial limits of either Power, from the diplomatic correspondence previous to the Treaty of Arbitration, it clearly appeared that all that was in the mind of the framers of that Treaty as the area in dispute was the eastern portion of Behring Sea.

Sir Charles Russell next proceeded to show that pelagic sealing had, at the worst, played but a secondary part in the diminution of the seal herd, and he was discussing this question when the Tribunal adjourned.

I have, &c.  
(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received June 14.)*

My Lord,

*Paris, June 13, 1893.*

AT the meeting of the 9th instant, Sir Charles Russell continued his argument to show that the decrease of the seals upon the Pribyloff Islands could not have been altogether due to pelagic sealing, but was mainly attributable to the methods employed on the breeding islands.

Sir Charles Russell then discussed the relative value of the sealing industries at sea and on the islands, the common interest in sealing, and the other considerations to which he claimed attention should be given in framing Regulations for the proper protection and preservation of the fur-seal.

The Attorney-General deferred to the next meeting of the Tribunal a consideration of the actual Regulations proposed by the Governments of Great Britain and the United States respectively.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 72.

*Mr. Tupper to the Earl of Rosebery.—(Received June 15)*

My Lord,

*Paris, June 14, 1893.*

AT yesterday's meeting, the Attorney-General continued his argument on the question of Regulations. He criticized in strong terms the proposal put forward by the United States, as reported on p. 1476 of the shorthand notes, for a total suppression of pelagic sealing from Behring Strait down to the 35th parallel of north latitude, east of the 180th meridian. He characterized this proposal as involving a wider, more reckless, and more unfounded assertion of jurisdiction than the Russian claims under the Ukases of 1799 and 1821.

He then explained the nature of the Regulations suggested by Great Britain, which are founded upon those put forward in the Report of the British Commissioners.

Sir Charles proceeded to refer to the recent agreement with Russia for a *modus vivendi* in regard to the seal fisheries. He asserted that on the part of Russia there had been no claim to property in the seals or the sealing industry, that a zone of 30 miles was considered sufficient for the protection of female seals, and that no seizures were asserted to be lawful but those of vessels whose boats had been fishing in territorial waters.

Some discussion arose as to the propriety of the reference to this subject, in regard to which I beg to call your Lordship's attention to pp. 1566-1570 and 1571-1585 of the shorthand notes.

The Attorney-General concluded his speech just before the midday adjournment, and was followed by Sir R. Webster when the Tribunal reassembled. Having referred to the question of the agreement with Russia, Sir Richard passed on to a consideration of the area over which the Regulations should extend, maintaining that it should be confined to Behring Sea.

He had just explained the arrangement he intended to follow in his detailed argument on seal life when the hour of adjournment arrived.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 73.

*Mr. Tupper to the Earl of Rosebery.—(Received June 16.)*

My Lord,

*Paris, June 15, 1893.*

AT yesterday's meeting of the Tribunal, Sir Richard Webster proceeded with his examination of the evidence on the various points enumerated by him at the close of his speech on the previous day, with the object of justifying the Regulations proposed by Great Britain.

In the course of his argument Sir Richard alluded to Mr. Elliott's Report, and was proceeding to read an extract from an official United States' publication, to show the confidence reposed in him at the time of his selection as United States' Agent in 1890, when the Counsel for the United States objected.

It was subsequently arranged between Counsel that no criticisms on Mr. Elliott should be made by either side other than could be gathered from the face of the Report itself.

Your Lordship will find an account of this incident at pp. 1622-24 of the shorthand notes.

Sir Richard Webster will continue his argument to-morrow.

I have, &c.

(Signed) CHARLES H. TUPPER.



No. 74.

*Mr. Tupper to the Earl of Rosebery.—(Received June 17.)*

My Lord,

Paris, June 16, 1893.

AT the meeting of the Tribunal yesterday, Sir Richard Webster continued his argument in support of the Regulations suggested by Great Britain, and examined in detail the evidence on both sides regarding various points connected with seal life.

Sir Richard expects to conclude his speech at the meeting of to-day.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

No. 75.

*Mr. Tupper to the Earl of Rosebery.—(Received June 19.)*

My Lord,

Paris, June 16, 1893.

AT the bottom of p. 343 of the Case presented on behalf of the United States, a quotation is made from a Report of Mr. Goff, who was Treasury Agent on the Pribyloff Islands in 1889.

The document from which this extract is taken is not included among the evidence presented by the United States, nor does it appear in the Report of Mr. Goff, which was produced by the Agent for the United States in compliance with the notice addressed to him by me on the 3rd October, 1892.

The Report of Mr. Goff produced refers to one of a Mr. Manchester. Desiring, if possible, to have all official Reports touching seal life before the Tribunal, I made a verbal request to the Agent for the United States for a copy of the documents in question.

A copy of the communication which I have received from Mr. Foster in reply is inclosed herewith, for your Lordship's information. It appears from this letter that Mr. Foster has no copy of the Reports in his possession in Paris, but that had this been the case, he was of opinion that, under the terms of the Treaty, he was not bound to comply with my request.

I do not think it will be deemed necessary for Counsel to call the attention of the Tribunal to this incident, but I may observe to your Lordship that the course adopted by the Agent for the United States does not indicate a desire on his part to lay before the Tribunal all the information respecting seal life which is in the possession of the United States' Government.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

Inclosure in No. 75.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper,

Agency of the United States, Paris, June 15, 1893.

REFERRING to your verbal request for copies of the Reports of Agents Manchester and Goff, I have to state that upon examination I find that we have already furnished you with the Goff Report cited in our Case (p. 153). The second reference in the Report of the United States' Commissioners (p. 343) appears to be another Report than the one furnished you.

In a search through the published Reports of the United States' Treasury Department in my possession, neither the Manchester nor second Goff Reports are found. It would therefore be necessary to apply to the Secretary of the Treasury for copies, should it be decided to accede to your request.

But, in consultation with the Counsel for my Government, it is not deemed proper by them that the terms of the Treaty as to evidence should be departed from at this late day in the proceedings, especially as neither of the Reports in question have been cited in either the Case or Counter-Case of the United States.

Very truly, &amp;c.

(Signed) JOHN W. FOSTER.

No. 76.

*Mr. Tupper to the Earl of Rosebery.—(Received June 21.)*

My Lord,

Paris, June 20, 1893.

AT the meeting of the Tribunal held on the 16th instant, Sir Richard Webster continued his speech on the subject of Regulations, and his argument was directed to prove that the recent decrease observed in seal life was due in a large measure to the insufficiency of breeding males on the Pribyloff Islands, brought about by the system of killing on land practised under the control of the United States.

Sir Richard was unable to conclude his speech before the hour of adjournment.

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

No. 77.

*Mr. Tupper to the Earl of Rosebery.—(Received June 22.)*

My Lord,

Paris, June 21, 1893.

SIR RICHARD WEBSTER, before the Tribunal yesterday, continued his argument with regard to the scarcity of male seals on the breeding-grounds, and dwelt upon the injurious effect of the system of driving, as practised on the islands.

He concluded by submitting to the Tribunal a draft Scheme of Regulations proposed by Great Britain.

I have the honour to inclose a separate copy of this document.

A discussion arose on these proposals, which will be found reported at pp. 1779-1796 of the shorthand notes.

At the conclusion of Sir Richard's speech I read to the Tribunal the document, of which a copy is inclosed, setting forth the findings of fact with regard to the seizures of British vessels, which both parties were prepared to agree to.

Your Lordship will remember that, as reported on p. 1209 of the notes of the proceedings of the 30th day, the Attorney-General submitted to the Tribunal a suggestion on the part of Great Britain as to what these findings of fact should be. An alternative proposal was subsequently put forward on behalf of the United States, as reported at p. 1477 of the proceedings of the 35th day.

A conference was shortly afterwards held between the Agent and Counsel of both parties, at which the terms of the findings to be suggested to the Tribunal were agreed upon.

At this conference, it was understood that there was no intention on the part of the United States to place obstacles in the way of further consideration of the amount of our claim for damages and the ownership of the vessels seized, and that while these subjects would not be pressed upon the Tribunal, our rights should not be in any way prejudiced.

A short discussion arose on this paper, which is reported at pp. 1799-1802 of the notes.

Mr. Robinson then continued the discussion on Regulations on behalf of Great Britain. He had not concluded his speech at the close of the day's proceedings.

I have, &amp;c.

(Signed) CHARLES H. TUPPER

Inclosure 1 in No. 77.

*Regulations.*

ALL vessels engaging in pelagic sealing shall be required to obtain licences at one or other of the following ports:—Victoria, in the Province of British Columbia; Vancouver, in the Province of British Columbia; Port Townsend, in Washington Territory in the United States; San Francisco, in the State of California in the United States.

2. Such licences shall only be granted to sailing-vessels.

3. A zone of 20 miles around the Pribyloff Islands shall be established, within which no seal hunting shall be permitted at any time.

4. A close season from the 15th September until the 1st July shall be established, during which no pelagic sealing shall be permitted in Behring Sea.
5. No rifles or nets shall be used in pelagic sealing.
6. All sealing vessels shall be required to carry a distinguishing flag.
7. The masters in charge of sealing vessels shall keep accurate logs as to the times and places of sealing, the number and sex of the seals captured, and shall enter an abstract thereof in their official logs.
8. Licences shall be subject to forfeiture for breach of above Regulations.

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Inclosure 2 in No. 77.

*Findings of Fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

THAT the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pp. 1 to 60, inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

2. That the seizures aforesaid, with the exception of the "Pathfinder," seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto, marked (C).

3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked (A), and that the others were, in all substantial respects, the same; that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B), and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offenses for which said several searches and seizures were made were in each case done or committed in Behring Sea, at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released, the seizure was made by the authority of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea, at the distances aforesaid from the shore.

4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea, were made by public armed vessels of the United States, the commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3 above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized, as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

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## Annex (A).

(See British Counter-Case, Appendix, Vol. I, p. 72.)

*Treasury Department, Office of the Secretary,  
Washington, April 21, 1886.*

Sir,

Referring to Department letter of this date, directing you to proceed with the revenue-steamer "Bear," under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the law contained in the provisions of Section 1,956 of the United States' Revised Statutes, and directed to seize all vessels, and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1,955 of the Revised Statutes, and the Proclamation of the President, dated the 4th February, 1870.

Respectfully yours,

C. S. FAIRCHILD,  
*Acting Secretary.*

Captain M. A. HEALY,  
*Commanding Revenue-steamer "Bear,"  
San Francisco, California.*

## Annex (B).

(See British Case, Appendix, Vol. III, "United States No. 2, 1890," p. 65.)

In the District Court of the United States for the District of Alaska.

August Special Term, 1886.

To the Honourable Lafayette Dawson,

Judge of said District Court:

The libel of information of M. D. Ball, Attorney for the United States for the district of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Thornton," her tackle, apparel, boats, cargo and furniture, and against all persons intervening for their interest therein, in a case of forfeiture, alleges and informs as follows:—

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel, commonly called a schooner, the "Thornton," her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:—

That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1,956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture became and forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore, the said Attorney prays that the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the case aforesaid, and others

appearing, be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States in such cases made and provided.

(Signed) M. D. BALL,  
United States' District Attorney for the District of Alaska.

## Annex (C).

The following Table shows the names of the British sealing-vessels seized or warned by United States' revenue cruisers, 1886-90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolena," "Thornton," and "Onward," are on the authority of U.S. Naval Commander Abbey (see 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, pp. 20, 40, 50). The distances assigned in the cases of the "Anna Beck," "W. P. Sayward," "Dolphin," and "Grace," are on the authority of Captain Shepard, "U.S.R.N. (Blue Book), United States, No. 3 (1890)," pp. 80-82. See Appendix, vol. iii. Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later:—

Name of Vessel.	Date of Seizure.	Approximate Distance from Land when seized.	United States' Vessel making Seizure.
Carolena .. ..	August 1, 1886 ..	75 miles .. ..	Corwin.
Thornton .. ..	1, ..	70 " .. ..	"
Onward .. ..	2, ..	115 " .. ..	"
Favourite .. ..	3, ..	Warned by "Corwin" in about the same position as "Onward."	"
Anna Beck .. ..	July 2, 1887 ..	66 miles .. ..	Rush.
W. P. Sayward .. ..	9, ..	59 " .. ..	"
Dolphin .. ..	12, ..	40 " .. ..	"
Grace .. ..	17, ..	96 " .. ..	"
Alfred Adams .. ..	August 10, ..	62 " .. ..	"
Ada .. ..	25, ..	15 " .. ..	Eear.
Triumph .. ..	4, ..	Warned by "Rush" not to enter Behring Sea.	"
Juanita .. ..	July 31, 1889 ..	66 miles .. ..	Rush.
Pathfinder .. ..	29, ..	50 " .. ..	"
Triumph .. ..	11, ..	Ordered out of Behring Sea by "Rush." (?) As to position when warned.	"
Black Diamond .. ..	11, ..	35 miles .. ..	"
Lily .. ..	August 6, ..	66 miles .. ..	"
Ariel .. ..	July 30, ..	Ordered out of Behring Sea by "Rush."	"
Kate .. ..	August 13, ..	" " " "	"
Minnie .. ..	July 13, ..	65 miles .. ..	"
Pathfinder .. ..	March 27, ..	Seized in Neah Bay .. ..	Corwin.

## No. 78.

Mr. Tupper to the Earl of Rosebery.—(Received June 23.)

My Lord,

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 24-29 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

Inclosure 1 in No. 78.

Protocole No. 24.—Séance du Mercredi, 17 Mai, 1893.

L'E Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

Sir Charles Russell reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Sir Charles Russell* continuo sa plaidoirie.  
La séance est levée à 3 heures 40 et le Tribunal s'ajourne jusqu'au Mardi,  
23 Mai, 1893, à 11 heures 30.

Ainsi fait à Paris, le 17 Mai, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

*Protocol No. 24.—Meeting of Wednesday, May 17, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 3:40 P.M. the Tribunal adjourned until Tuesday, the 23rd May, 1893, at 11:30 A.M.

Done at Paris, the 17th May, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 2 in No. 78.

*Protocole No. 25.—Séance du Mardi, Mai 23, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 23 Mai, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

*Protocol No. 25.—Meeting of Tuesday, May 23, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11:30 A.M.  
Done at Paris, the 23rd May, 1893, and signed :

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States.	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclusure 3 in No. 78.

*Protocole No. 26.—Séance du Mercredi, 24 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Sir Charles Russell* reprend son argumentation.  
La séance est suspendue à 1 heure 30.  
A la reprise, *Sir Charles Russell* continue sa plaidoirie.  
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 24 Mai, 1893, et ont signé :

Le Président.	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.

[ English version. ]

*Protocole No. 26.—Meeting of Wednesday, May 24, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
*Sir Charles Russell* resumed his argument.  
At 1:30 the Tribunal took a recess.  
On reassembling, *Sir Charles Russell* continued his argument.  
At 4 P.M. the Tribunal adjourned to the next day, at 11:30 A.M.  
Done at Paris, the 24th May, 1893, and signed :

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States.	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclusure 4 in No. 78.

*Protocole No. 27.—Séance du Jeudi, 25 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Sir Charles Russell* reprend sa plaidoirie.  
La séance est suspendue à 1 heure 30.  
A la reprise, *Sir Charles Russell* poursuit son argumentation.  
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 25 Mai, 1893, et ont signé :

Le Président.	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.



[English version.]

*Protocole No. 27.—Meeting of Thursday, May 25, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 25th May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*  
H. CUNYNGHAME, }

## Inclosure 5 in No. 78.

*Protocole No. 28.—Séance du Vendredi, 26 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 30 Mai, à 11 heures 30.

Ainsi fait à Paris, le 26 Mai, 1893, et ont signé:

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 28.—Meeting of Friday, May 26, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, May 30, at 11:30 A.M.

Done at Paris, the 26th May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*  
H. CUNYNGHAME, }

## Inclosure 6 in No. 78.

*Protocole No. 20.—Séance du Mardi, 30 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 30 Mai, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

*Protocole No. 20.—Meeting of Tuesday, May 30, 1893.*

The Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 30th May, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, }  
H. CUNYNGHAME, } *Co-Secretaries.*

No. 79.

*Mr. Tupper to the Earl of Rosebery.—(Received June 23.)*

My Lord,

Paris, June 22, 1893.

THE argument on the British side in the Behring Sea Arbitration having now concluded, I have deemed it my duty to consider whether some reduction cannot be made in the Staff of this Agency in accordance with what I know to be your Lordship's wish, that expense should, as far as possible, be spared.

With this object I have already dispensed with the services of Mr. J. M. Macoun, whose assistance I consider to be no longer necessary, and I have thought it right to inform Mr. Box, the Junior Counsel, that, as the oral argument of the British Counsel has terminated, he can now be relieved of his duties here.

I have great pleasure in expressing to your Lordship my appreciation of the ability and assiduity displayed by Mr. Box in the course of the preparation of the Counter-Case and written Argument of Great Britain, and of the valuable assistance he has rendered during the oral arguments of Counsel before the Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received June 23.)*

My Lord,

*Paris, June 22, 1893.*

AT the commencement of yesterday's proceedings, Sir Richard Webster handed in to the Tribunal copies of the correspondence just laid before Parliament containing the report of the Russian Commission respecting the seizures of British vessels off the Commander Islands. He was proceeding to read from this paper when the United States' Counsel objected to its reception if put forward as evidence. Some discussion ensued on this subject, and the President, after consultation with his colleagues, announced that the Tribunal would hear the document, but would reserve to themselves to consider whether it should be received as evidence or not.

Sir Richard thereupon read extracts from M. Chichkine's note to Sir R. Morier of the 20th May (10th June), 1893, showing the readiness of the Russian Government to proceed to the assessment of an indemnity to be paid to the owners of the two British vessels which were seized without proof of having fished in Russian territorial waters.

Mr. Robinson then continued his speech.

He argued at some length to prove that the area over which any Regulations to be made by the Tribunal should extend ought to be confined to Behring Sea, and had just concluded his address when the Tribunal adjourned for the day.

Mr Phelps is to commence his reply on behalf of the United States at to-day's meeting.

I have, &c.

(Signed) CHARLES H. TUPPER.

*Mr. Tupper to the Earl of Rosebery.—(Received June 24.)*

My Lord,

*Paris, June 23, 1893.*

AT the meeting of the Tribunal yesterday, Mr. Phelps commenced his reply on behalf of the United States by defining what he maintained had been the position of his Government throughout the controversy, namely, that the actual facts of seal life and the preservation of the species were the main objects of the Arbitration, and that all questions as to jurisdiction over Behring Sea and the title thereto derived by the United States from Russia were merely secondary considerations.

He attributed the firm attitude taken up by Mr. Blaine on the jurisdictional claim to the fact that he had been drawn away from the main subject of the controversy by the adroitness of the arguments put forward by Lord Salisbury.

Mr. Phelps then dwelt at some length on the negotiations for a close season which took place in 1888 between Lord Salisbury and himself, and maintained that a distinct agreement had then been arrived at, which, owing to the objections of Canada, had been subsequently renounced.

He next proceeded to criticise the attitude of Great Britain in the controversy, maintaining that, while at first she had been willing to join in Regulations necessary for the preservation of the seals, her present position was merely that of the champion of pelagic sealing.

He concluded his remarks for the day by a definition of the principles of international law, which he considered should guide the decision of the Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

No. 82.

*Mr. Tupper to the Earl of Rosebery.—(Received June 24.)*

My Lord,

Paris, June 23, 1893.

I HAVE the honour to call your Lordship's attention to the necessity which, in my opinion, exists for the presence of Her Majesty's Attorney-General here.

I am convinced after most careful observation that it is very desirable for him to be in Court during the reply of Mr. Phelps, and particularly when that gentleman deals with the subject of Regulations. It is impossible that Mr. Phelps will speak beyond Friday next, and he resumes his argument on Tuesday.

Sir Richard Webster, who proceeded to London to-day, will, I feel sure, confirm me in the opinion I have expressed.

I am, &c.  
(Signed) CHARLES H. TUPPER

No. 83.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

Foreign Office, June 27, 1893.

I HAVE received your despatch of the 22nd instant, reporting that the services of Mr. J. M. Macoun have been dispensed with, and that you have also informed Mr. Rex that he is no longer required to remain in Paris.

Whilst approving your action as above stated, I have to express to you my satisfaction at your report of the valuable assistance rendered by Mr. Rex in connection with the Behring Sea Arbitration.

I am, &c.  
(Signed) ROSEBERY.

No. 84.

*Mr. Tupper to the Earl of Rosebery.—(Received June 28.)*

My Lord,

Paris, June 27, 1893.

AT the meeting of the 23rd instant Mr. Phelps continued his argument, and, after dealing with the principles of international law, which, he held, should guide the decision of the Tribunal, proceeded to consider at length the question of property in the seals.

He had not concluded this portion of his speech at the end of the day's proceedings.

I am, &c.  
(Signed) CHARLES H. TUPPER.

No. 85.

*Mr. Tupper to the Earl of Rosebery.—(Received June 29.)*

My Lord,

Paris, June 28, 1893.

AT the meeting of the Tribunal yesterday, Mr. Phelps continued his speech, and, in connection with the United States' claim to property in the seals, dealt with the question of the intermingling of the Russian and American herds.

His argument on this subject occupied the greater part of the day, and was concluded shortly before the adjournment.

I have, &c.  
(Signed) CHARLES H. TUPPER.

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No. 80.

*Mr. Tupper to the Earl of Rosebery. (Received June 30.)*

My Lord, *Paris, June 30, 1893.*  
MR. PHELPS continued, before the Tribunal yesterday, his argument dealing with the property interest in the sealing industry claimed by the United States as a nation.

He examined at length the instances quoted in the United States' Case of regulations in various countries for the protection of pearl, coral, and oyster fisheries outside territorial limits, and was considering the existing laws regulating seal fisheries in different parts of the world when the Tribunal adjourned.

I have, &c.  
(Signed) CHARLES H. TUPPER.

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No. 87.

*Mr. Tupper to the Earl of Rosebery. (Received July 1.)*

My Lord, *Paris, July 3, 1893.*  
AT the meeting of the Tribunal held on the 29th June, Mr. Phelps continued his argument to show that the territorial rights of a nation were capable of extension for the purpose of protecting marine property.

He endeavoured to justify the statement in the United States' Argument, that Russia had asserted and exercised such extra-territorial jurisdiction, from the correspondence recently presented to Parliament on the subject of the seizures of British sealing-vessels by that Government in 1892.

Mr. Phelps further instanced the legislation enforced by the Government of Sweden and Norway for the protection of their fisheries.

The Tribunal having decided not to sit on the 30th June, it was arranged that Mr. Phelps should resume his argument this morning.

I have, &c.  
(Signed) CHARLES H. TUPPER.

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No. 88.

*Mr. Tupper to the Earl of Rosebery.—(Received July 5.)*

My Lord, *Paris, July 4, 1893.*  
MR. PHELPS resumed yesterday his argument by dealing with the first four questions under Article VI of the Treaty relating to the jurisdiction of Russia over Behring Sea, and the interpretation of the Treaties of 1824 and 1825.

He examined the language of the Treaty of 1824 between Russia and the United States, and endeavoured to show that Behring Sea was not included in the phrase "Pacific Ocean," as used in the first Article.

He criticized at some length the list of maps annexed to the Counter-Case of Great Britain, and maintained that the weight of the geographical evidence supported his interpretation of the Treaty.

Mr. Phelps had concluded his examination of the Treaty of 1824 when the Tribunal rose for the day, and will proceed this morning to deal with the British Treaty with Russia of 1825.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 89.

*Mr. Tupper to the Earl of Rosebery.—(Received July 6.)*

My Lord,

Paris, July 5, 1893.

MR. PHELPS continued, at the meeting of the Tribunal yesterday, his argument on the first four questions of Article VI of the Treaty of Arbitration.

He discussed the language of the Treaty of 1825 between Great Britain and Russia, and the negotiations which led up to it, his object being to show that Behring Sea was not understood by either party to be included in the phrase Pacific Ocean.

Having concluded his examination of the Treaties of 1824 and 1825, Mr. Phelps took leave of this part of his subject by referring the Tribunal to the answers to the first four questions of Article VI, suggested at p. 24 of the United States' Counter-Case.

He then dealt with the assertion of Great Britain, that the subject under discussion involved the question of the freedom of the sea, and had only time to make short progress in this portion of his argument before the adjournment.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 90.

*Mr. Tupper to the Earl of Rosebery.—(Received July 7.)*

My Lord,

Paris, July 5, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 30 to 39 of the proceedings of the Behring Sea Arbitration Tribunal.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## Inclosure 1 in No. 90.

*Protocole No. 30.—Séance du Mercredi, 31 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell*, au cours de sa plaidoirie, présente au Tribunal le document suivant :—

“ Le Gouvernement de la Grande-Bretagne, ayant soumis aux Arbitres certains points de fait compris dans les réclamations de dommages-intérêts présentées dans l'Annexe au Mémoire Britannique, pages 1 à 60 inclusivement, prie le Tribunal de décider comme suit à ce sujet :—

“ 1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de capitaines et d'équipages, mentionnés respectivement dans ladite Annexe, ont été faites par autorité du Gouvernement des États-Unis ;

“ 2. Qu'elles ont été effectuées dans des eaux non territoriales ;

“ 3. Que les diverses visites, saisies, condamnations et confiscation de navires ou de marchandises, les différentes arrestations et amendes, et les divers emprisonnements ont été motivés par de prétendues violations des lois nationales des États-Unis, lesquelles prétendues violations avaient toutes été commises en haute mer, en dehors des eaux territoriales des États-Unis ;

“ 4. Que les différents ordres mentionnés dans ladite Annexe, enjoignant à certains navires d'avoir à s'abstenir de poursuivre leurs voyages, ont été donnés en haute mer,

en dehors des eaux territoriales, en vertu de l'autorité du Gouvernement des États-Unis et en exécution des lois nationales des États-Unis; enfin :

"5. Que lesdites visites, saisies, condamnations, confiscations, amendes, n'ont été opérées ou imposées, que lesdits emprisonnements et ordres n'ont été infligés et donnés en vertu d'aucune prétention ou assertion de droit ou de juridiction, autre que celles qui sont soumises à la décision des Arbitres par les questions posées dans l'Article VI du Traité d'Arbitrage."

*Sir Charles Russell* déclare en outre que la Grande-Bretagne ne soumettra au Tribunal aucune conclusion tendant à des dommages-intérêts en vertu et par application de l'Article V de la Convention ou du *modus vivendi* du 18 Avril, 1892.

*L'Honorable E. J. Phelps* déclare que les États-Unis ne soumettront, de leur côté, au Tribunal aucune conclusion tendant à des dommages-intérêts en vertu et par application de l'Article V de la Convention ou du *modus vivendi* du 18 Avril, 1892.

*Sir Charles Russell* achève ensuite son argumentation.

*Sir Richard Webster* commence alors sa plaidoirie pour la Grande-Bretagne.

La séance est suspendue à 1 heure 30.

À la reprise, *Sir Richard Webster* continue sa plaidoirie.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 31 Mai, 1893, et ont signé :

Le Président..	..	..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	..	..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	..	..	..	CHARLES H. TUPPER.
Le Secrétaire	..	..	..	A. IMBERT.

[English version.]

Protocol No. 30.—Meeting of Wednesday, May 31, 1893.

THE Tribunal assembled at 11-30 A.M., all the Arbitrators being present.

*Sir Charles Russell*, in continuation of his argument, presented to the Tribunal the following paper:—

"The British Government having submitted to the Arbitrators certain questions of fact as involved in the claims for damage set forth in the Schedule to the British Case, pages 1 to 60 inclusive, ask for the following findings thereon, namely:—

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the said Schedule, were made by the authority of the United States' Government.

"2. That they were made in non-territorial waters.

"3. That the several searches, seizures, condemnations and confiscations, whether of ships or goods, and the several arrests, fines and imprisonments, were for alleged breaches of municipal laws of the United States, which alleged breaches were wholly committed on the high seas outside the territorial waters of the United States.

"4. That the several orders, mentioned in the said Schedule, whereby ships were prevented from pursuing their voyages, were given on the high seas outside territorial waters, under the authority of the United States' Government and in execution of the municipal laws of the United States, and

"5. That the said several searches, seizures, condemnations, confiscations, fines, imprisonments, and orders were not made, imposed or given under any claim or assertion of right or jurisdiction except such as is submitted to the decision of the Arbitrators by the questions in Article VI of the Treaty of Arbitration."

*Sir Charles Russell* further announced that Great Britain would not ask the Tribunal for any finding for damages upon and under Article V of the Convention or *modus vivendi* of the 18th April, 1892.

*The Honourable Edward J. Phelps* announced that the United States would not, on its behalf, ask the Tribunal for any finding for damages upon and under Article V of the Convention or *modus vivendi* of the 18th April, 1892.

*Sir Charles Russell* then concluded his argument.

*Sir Richard Webster* then commenced his argument on behalf of Great Britain.

At 1:30 the Tribunal took a recess.



On reassembling *Sir Richard Webster* continued his argument.  
At 4 P.M. the Tribunal adjourned till the next day, at 11:30 A.M.  
Done at Paris, the 31st May, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 2 in No. 90.

*Protocole No. 31.—Séance du Jeudi, 1<sup>er</sup> Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Sir Richard Webster* continue sa plaidoirie.  
La séance est suspendue à 1 heure 30.  
A la reprise, *Sir Richard Webster* poursuit son argumentation.  
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 1<sup>er</sup> Juin, 1893, et ont signé:

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 31.—Meeting of Thursday, June 1, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
*Sir Richard Webster* resumed his argument.  
At 1:30 the Tribunal took a recess.  
On reassembling, *Sir Richard Webster* continued his argument.  
At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.  
Done at Paris, the 1st June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 3 in No. 90.

*Protocole No. 32.—Séance au Vendredi, 2 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*Sir Richard Webster* reprend son argumentation.  
La séance est suspendue à 1 heure 30.  
A la reprise, *Sir Richard Webster* continue sa plaidoirie.  
A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 6 Juin, à 11 heures 30.

Ainsi fait à Paris, le 2 Juin, 1893, et ont signé:

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 32.—Meeting of Friday, June 2, 1893.*

THE Tribunal assembled at 11:30, all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 6th June, at 11:30 A.M.

Done at Paris, the 2nd June, 1893, and signed:

The President	.. .. .	..	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	..	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	..	CHARLES H. TUPPER.
The Secretary	.. .. .	..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 4 in No. 90.

*Protocole No. 33.—Séance du Mardi, 6 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Son Excellence M. Gram*, Arbitre désigné par la Suède et la Norvège, donne lecture de la déclaration suivante:—

“Le premier volume de l'Appendice au Mémoire des États-Unis donne le texte de la loi et des règlements concernant la protection des baleines sur la côte de Finmark.

“J'avais l'intention d'expliquer ultérieurement à mes collègues ces lois et règlements en indiquant les circonstances naturelles qui ont obligé la Norvège et le Suède à adopter une législation spéciale pour les eaux territoriales, et d'exprimer en même temps mon opinion sur la question de savoir si cette législation et les questions auxquelles elle se rapporte peuvent être considérées comme ayant quelque portée à l'égard des questions actuellement débattues.

“Comme, toutefois, on a fait allusion, à plusieurs reprises, pendant les dernières séances, à la législation Norvégienne sur la matière, j'estime qu'il y aurait présentement intérêt à donner un bref exposé des traits les plus saillants de cette législation.

“Le caractère particulier de la Loi Norvégienne citée par les Conseils des États-Unis consiste dans la détermination d'une saison fermée pour la pêche de la baleine. Quant à ses prescriptions au sujet des eaux intérieures et territoriales, elles ne sont, en somme, que l'application à un cas spécial des principes généraux établis par la législation Norvégienne en ce qui concerne les golfes et les eaux baignant les côtes. Un coup d'œil sur la carte suffira pour montrer le grand nombre de ces golfes—ou “fjörds” et leur importance pour les habitants de la Norvège. Certains de ces fjörds ont une étendue considérable, pénètrent très avant à l'intérieur du pays et ont une très large embouchure. Ils ont été, toutefois, depuis un temps immémorial, considérés comme des eaux intérieures, et ce principe a toujours été maintenu, même à l'égard des étrangers.

“Il y a plus de vingt ans, un Gouvernement étranger se plaignit de ce qu'on eût empêché un navire de sa nationalité de pêcher dans un des plus grands fjörds du nord de la Norvège. Les opérations de pêche qui ont lieu dans ces parages pendant les quatre premiers mois de l'année sont d'une très grande importance pour le pays: une trentaine de mille personnes s'y renouvellent chaque année, du Nord et du Sud, pour gagner leur vie. Le Gouvernement soumet à son inspection les opérations de pêche dans les eaux du fjörd, abrité par une rangée d'îles contre la violence de la mer. L'apparition dans ces eaux d'un navire étranger émettant la prétention de prendre part à cette pêche était un fait sans précédent, et, dans la correspondance diplomatique échangée à ce sujet, le Gouvernement Norvégien insista énergiquement sur le droit exclusif qu'avaient ses sujets, par suite d'un usage immémorial, de pratiquer cette industrie.

“La Suède et la Norvège n'ont, d'ailleurs, jamais reconnu la distance de 3 milles comme formant la délimitation de leurs eaux territoriales. Jamais ces deux pays n'ont conclu aucune Convention ni adhéré à aucun Traité consacrant cette règle.

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Leurs lois nationales ont généralement fixé la limite à 1 mille géographique ou à un quinzième de degré de latitude, soit 4 milles marins. Ils n'ont jamais admis aucune limite inférieure. En fait, relativement à la question des droits de pêche, si importants pour l'un et l'autre des deux Royaumes-Unis, lesdites limites ont semblé, dans beaucoup de cas, encore trop restreintes. Quant à cette question et à celles qui s'y rattachent, je désire me reporter aux communications faites par les membres Norvégiens et Suédois, au cours des séances de l'Institut de Droit International, en 1891 et 1892. Je tiens aussi, en ce qui touche le sujet que je viens de traiter sommairement, à me référer aux comptes rendus des travaux de la Conférence de La Haye en 1882 ('Nouveau Recueil Général de Martens, II<sup>e</sup> série, vol. ix'), où se trouvent exposées les raisons pour lesquelles la Suède et la Norvège n'ont pas adhéré au Traité de La Haye."

Le Président prie les Conseils des deux parties d'avoir présentes à l'esprit les observations de son Excellence M. Gram, au cas où ils auraient à citer l'exemple des eaux de la Norvège; mais il croit devoir rappeler que la question de la définition des eaux territoriales n'est pas soumise aux Arbitres et qu'il n'est pas dans les intentions du Tribunal d'exprimer une opinion en ce qui concerne cette définition.

*Sir Richard Webster* reprend alors son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 6 Juin, 1893, et ont signé :

Le Président..	..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	..	..	CHARLES H. TUPPER.
Le Secrétaire	..	..	A. IMBERT.

[English version.]

*Protocol No. 33.—Meeting of Tuesday, June 6, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*His Excellency M. Gram*, the Arbitrator designated by Sweden and Norway, read the following statement:—

"The Appendix, vol. I, to the United States' Case, gives the text of the Laws and Regulations relating to the protection of whales on the coast of Finnmarken. It was my intention later on to explain to my colleagues these Laws and Regulations, in supplying some information about the natural conditions of Norway and Sweden which have necessitated the establishment of special rules concerning the territorial waters, and to state at the same time my opinion as to whether those rules and their subject-matter may be considered as having any bearing on the present case. As, however, in the latest sittings reference has repeatedly been made to the Norwegian legislation concerning this matter, I think it might be of some use at the present juncture to give a very brief relation of the leading features of those rules.

"The peculiarity of the Norwegian Law quoted by the Counsel for the United States, consists in its providing for a close season for the whaling. As to its stipulations about inner and territorial waters, such stipulations are simply applications to a special case of the general principles laid down in the Norwegian legislation concerning the gulfs and the waters washing the coasts. A glance on the map will be sufficient to show the great number of gulfs or fiords, and their importance for the inhabitants of Norway. Some of these fiords have a considerable development, stretching themselves far into the country and being at their mouth very wide. Nevertheless they have been from time immemorial considered as inner waters, and this principle has always been maintained, even as against foreign subjects.

"More than twenty years ago, a foreign Government once complained that a vessel of their nationality had been prevented from fishing in one of the largest fiords of Norway, in the northern part of the country. The fishing carried on in that neighbourhood during the first four months of every year is of extraordinary importance to the country, some 30,000 people gathering there from south and north, in order to earn their living. A Government inspection controls the fishing going on in the waters of the fiord, sheltered by a range of islands against the violence of the sea. The appearance in these waters of a foreign vessel pretending to take its share of the fishing, was an unheard-of occurrence, and in the ensuing diplomatic correspondence the exclusive

right of Norwegian subjects to this industry was energetically insisted upon as founded in immemorial practice.

"Besides, Norway and Sweden have never recognized the 3-mile limit as the confines of their territorial waters. They have neither concluded nor acceded to any Treaty consecrating that rule. By their municipal laws the limit has generally been fixed at 1 geographical mile, or one-fifteenth part of a degree of latitude, or 4 marine miles; no narrower limit having ever been adopted. In fact, in regard to this question of the fishing rights, so important to both of the United Kingdoms, the said limits have in many instances been found to be even too narrow. As to this question and others therewith connected, I beg to refer to the communications presented by the Norwegian and Swedish members in the sittings of the 'Institut de Droit International' in 1891 and 1892. I wish also to refer, concerning the subject which I have now very briefly treated, to the proceedings of the Conference of the Hague in 1882 ('Martens' Nouveau Recueil Général, 11<sup>e</sup> série, vol. ix'), containing the reasons why Sweden and Norway have not adhered to the Treaty of the Hague."

The President requested that Counsel on both sides would bear in mind the observations of his Excellency M. Gram, in case they found it necessary to cite the example of the waters of Norway, but thought it his duty to remind them that the question of the definition of territorial waters was not submitted to the Arbitrators and that it was not the intention of the Tribunal to express any opinion with respect to that definition.

Sir Richard Webster then resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, Sir Richard Webster continued his argument.

At 4 p.m. the Tribunal adjourned to the next day, at 11:30 A.M.

Done at Paris, the 6th June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYGHAME,	

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Inclosure 5 in No. 90.

Protocole No. 34.—Séance du Mercredi, 7 Juin, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

Sir Richard Webster reprend et termine son argumentation.

M. Christopher Robinson commence ensuite son plaidoyer.

La séance est suspendue à 1 heure 30.

A la reprise, M. Robinson continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures.

Ainsi fait à Paris, le 7 Juin, 1893, et ont signé :

Le Président..	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

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[English version.]

Protocol No. 34.—Meeting of Wednesday, June 7, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

Sir Richard Webster resumed and concluded his argument.

Mr. Christopher Robinson then began his argument.

At 1:30 the Tribunal took a recess.

On reassembling, Mr. Robinson continued his argument.

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At 4 P.M. the Tribunal adjourned to the next day, at 11 o'clock.

Done at Paris, the 7th June, 1893, and signed .

The President	.. ..	ALPH. DE COURCEL
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPEH.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 6 in No. 90.

*Protocole No. 35.—Séance du Jeudi, 8 Juin, 1893.*

LE Tribunal s'est réuni en Chambre du Conseil, à 11 heures, tous les Arbitres étant présents.

La séance publique a commencé à midi.

*Mr. Christopher Robinson* continue et achève son argumentation.

L'Agent des États-Unis donne alors lecture de la déclaration suivante:—

“Le Gouvernement des États-Unis,—pour le cas où la solution donnée par le Haut Tribunal à certaines questions indiquées dans l'Article VII du *Traité* comme étant les ‘questions ci-dessus relatives à la juridiction exclusive des États-Unis’ serait, ainsi qu'il est énoncé dans ledit Article VII, ‘telles que le concours de la Grande-Bretagne soit nécessaire à l'institution de Règlements en vue de la protection efficace et de la conservation des phoques à fourrure habitant ou fréquentant habituellement la Mer de Behring,’—expose que les Règlements suivants sont nécessaires et devraient s'appliquer aux eaux dont il sera fait mention à cet effet ci-après:

“*Premièrement.*—Aucun citoyen ou sujet des États-Unis ou de la Grande-Bretagne ne pourra, de quelque façon que ce soit, tuer, capturer, ou poursuivre sur aucun point de la mer, dans les bornes et limites ci-après marquées pour la mise en vigueur du présent Règlement, aucun des animaux communément appelés ‘phoques à fourrure.’

“*Deuxièmement.*—Le Règlement qui précède s'appliquera et s'étendra à toutes les eaux de l'Océan Pacifique Septentrional ou de la Mer de Behring, au nord du 35° parallèle de latitude nord, et à l'est du 180° méridien de longitude ouest de Greenwich, en dehors des limites de la juridiction des nations ci-dessus mentionnées. Toutefois, il ne s'appliquera pas à la poursuite et à la capture desdits phoques par les Indiens résidant sur les côtes des territoires de la Grande-Bretagne ou des États-Unis, pour leur usage personnel, au moyen de harpons, dans des pirogues ou embarcations non pontées, non embarquées sur d'autres navires ou détachées de ceux-ci, manœuvrées uniquement à la pagaie, et qui ne soient pas montées par plus de deux hommes chacune, de la façon anciennement pratiquée par ces Indiens.

“*Troisièmement.*—Tout vaisseau, navire, bateau ou autre embarcation (en dehors des pirogues ou embarcations mentionnées et décrites dans le paragraphe précédent), appartenant aux citoyens ou sujets de l'une ou l'autre des nations susdites, qui serait trouvé détruisant, poursuivant ou capturant lesdits phoques, ou engagé dans un voyage ayant ce but, dans les eaux ci-dessus délimitées et décrites, pourra, avec ses agrès, apparaux, matériel, provisions et toutes les peaux de phoques qui se trouveraient à bord, être capturé et saisi comme prise par tout navire armé pour le service public de l'une ou l'autre des susdites nations; et dans le cas d'une telle capture, il pourra être amené dans tout port de la nation à laquelle appartiendrait le navire capteur et être condamné en suite d'une procédure devant tout Tribunal ayant juridiction compétente, laquelle procédure sera conduite, autant que faire se pourra, conformément aux usages et à la pratique des Cours d'Amirauté siégeant comme Tribunaux de Prises.”

L'Agent des États-Unis donne également lecture de la proposition suivante:—

“Le Gouvernement des États-Unis propose de substituer aux conclusions de fait présentées par le Gouvernement de la Grande-Bretagne les conclusions suivantes. Dire:

“1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de capitaines et d'équipages, mentionnées respectivement dans ladite Annexe ont été faites par autorité du Gouvernement des États-Unis. Sur la question de savoir quels navires et combien parmi les navires mentionnés dans cette Annexe étaient en

tout ou en partie la propriété de sujets Britanniques, et quels navires et combien parmi ces navires étaient en tout ou en partie la propriété de citoyens Américains, le Tribunal ne se prononce pas. Il ne détermine pas non plus la valeur de ces navires ou de leurs cargaisons, ensemble ou séparément.

"2. Que les susdites saisies ont été faites en mer à plus de 10 milles de toute côte.

"3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avait reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après (Annexe A), les autres exemplaires desdites instructions étant conformes à ce modèle sur tous les points essentiels; que dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont une copie est annexée ci-dessous (Annexe B), les actes d'accusation déposés dans les autres procédures étant, en tous points essentiels, semblable à ce modèle; que les actes ou délits allégués comme motifs de ces visites et saisies ont été accomplis ou commis en mer à plus de 10 milles de toute côte; et que, dans tous les cas où une condamnation a été prononcée, excepté dans les cas où le navire a été relâché après condamnation, la prise a été approuvée par le Gouvernement des États-Unis; que les amendes et emprisonnements susdits ont été prononcés à raison d'infractions aux lois nationales des États-Unis, infractions toutes commises en mer à plus de 10 milles de toute côte.

"4. Que les différents ordres, mentionnés dans ladite Annexe, enjoignant à certains navires de quitter la Mer de Behring, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient, toutes les fois qu'ils donnaient ces ordres, des instructions conformes à celles mentionnées ci-dessus sous le No. 3, et que les navires qui ont reçu ces sommations étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse.

"5. Que lesdites visites, saisies, condamnations, confiscations, amendes, n'ont été opérées ou imposées; que lesdits emprisonnements et ordres n'ont été infligés et donnés en vertu d'aucune prétention ou affirmation de droit ou de juridiction, autres que celles qui sont soumises à la décision des Arbitres par les questions posées dans l'Article VI du Traité d'Arbitrage.

"6. Que les Cours de District des États-Unis devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires susdits dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne, pages 1 à 60 inclusivement, avaient tous droits de juridiction et pouvoirs appartenant au Cours d'Amirauté, y compris la juridiction de Tribunaux de Prises."

Annexe (A).

(Voir: Contre-Mémoire Anglais, Appendice, vol. I, p. 72.)

(Traduction.)  
Monsieur,

*Département du Trésor, Cabinet du Secrétaire,*

*Washington, le 21 Avril, 1886.*

COMME suite à une lettre du Département, en date de ce jour, vous enjoignant de vous diriger avec le vapeur du service des Douanes "Bear," placé sous votre commandement, vers les îles aux phoques, vous êtes par les présentes investi de tous les pouvoirs nécessaires pour assurer l'exécution de la Loi dont les termes sont contenus dans la Section 1956 des Statuts Révisés des États-Unis, et ordre vous est donné de saisir tout navire, et d'arrêter et livrer aux autorités compétentes tout individu ou toutes personnes que vous trouveriez agissant en violation de la Loi susmentionnée, après qu'un avertissement suffisant leur aura été donné.

Vous saisirez également tous spiritueux et armes à feu que l'on chercherait à introduire dans le pays sans une permission en règle, en exécution de la Section 1955 des Statuts Révisés et de la Proclamation du Président en date du 4 Février, 1870.

Respectueusement à vous,

(Signé)

C. S. FAIRCHILD.

*Secrétaire par intérim.*

Au Capitaine M. A. Heldy,

Commandant le vapeur du service des Douanes "Bear," à San-Francisco (Californie).

## Annexe (B).

(Voir : Mémoire de la Grande-Bretagne, Appendice, vol. III, États-Unis, No. 2, 1890, p. 65.)

*Devant la Cour de District des États-Unis pour le District d'Alaska.*

Session (Special Term) d'Août 1886.

A l'Honorable Lafayette Dawson, Juge de ladite Cour de District.

Le réquisitoire à fin d'information par lequel M. D. Ball, Attorney des États-Unis pour le district d'Alaska, poursuivant au nom des États-Unis et présent ici devant la Cour, en sa personne, comme Représentant des États-Unis et en leur nom, contre la goélette "Thornton," ses agrès, appareils, embarcations, cargaisons et matériel et contre toutes personnes intervenant comme ayant des intérêts engagés dans ce navire, en poursuite à fin de confiscation, présente les allégations et déclarations suivantes :

Que Charles A. Abbey, officier du service des Douanes Maritimes des États-Unis, chargé d'une mission spéciale dans les eaux du district d'Alaska, antérieurement au présent jour, à savoir le 1<sup>er</sup> Août, 1886, dans les limites du territoire d'Alaska et dans ses eaux, et dans les limites du district civil et judiciaire d'Alaska, à savoir dans l'étendue des eaux de cette partie de la Mer de Behring qui appartient au dit district, dans des eaux navigables pour des navires venant de la haute mer et jaugeant 10 tonneaux ou au-dessus, a saisi le vaisseau ou navire communément dénommé goélette, le "Thornton," ses agrès, appareils, embarcations, cargaison et matériel, lesquels étaient la propriété d'une ou de plusieurs personnes inconnues dudit Attorney, et les a confisqués au profit des États-Unis pour les causes ci-après :

Que ledit navire ou goélette a été trouvé se livrant à la destruction des phoques à fourrure, dans les limites du territoire d'Alaska et de ses eaux, en violation des dispositions de la Section 1956 des Statuts Révisés des États-Unis.

Et ledit Attorney déclare que toutes les propositions ci-dessus énoncées et chacune d'elles sont et étaient vraies, et qu'elles tombent sous la juridiction maritime et d'Amirauté de cette Cour, et que, pour cette raison, et en exécution des Statuts des États-Unis établis et édictés pour de tels cas, le navire ou la goélette mentionnée et décrite ci-dessus, jaugeant plus de 20 tonneaux, ses agrès, appareils, embarcations, cargaison et matériel ont été et sont confisqués au profit des États-Unis, et que ladite goélette se trouve maintenant dans le district susdit.

Ce pourquoi ledit Attorney demande que l'honorable Cour de Justice procède et avise comme d'usage en cette affaire, et que toutes personnes ayant un intérêt dans ladite goélette ou navire soient citées par voie d'assignation générale ou spéciale, afin de répondre aux propositions susénoncées, et que, à la suite de la procédure à ce nécessaire, ledit navire ou goélette, ses agrès, appareils, embarcations, cargaison et matériel, soient condamnés pour ladite cause ou toute autre qu'il apparaitrait juste, par arrêt formel et décret de cette honorable Cour, et confisqués au profit desdits États-Unis, selon la forme des Statuts desdits États-Unis, établis et édictés pour de tels cas.

(Signé) M. D. BALL,

*Attorney des États-Unis pour le District d'Alaska.*

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* commence sa plaidoirie, pour le Gouvernement de la Grande-Bretagne, sur la question des Règlements prévus par l'Article VII du Traité d'Arbitrage.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 8 Juin, 1893, ayant signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocole No. 35.—Meeting of Thursday, June 8, 1893.*

THE Tribunal assembled in the Council Chamber at 11 o'clock, all the Arbitrators being present.

The public sitting commenced at noon.

*Mr. Christopher Robinson* continued and finished his address.

The United States' Agent then read the following statement :—

"The Government of the United States, in the event that the determination of the High Tribunal of certain questions described in the VIIth Article of the Treaty as



'the foregoing questions as to the exclusive jurisdiction of the United States' should, as mentioned in said VIIIth Article, 'leave the subject in such a condition that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur seal in, or habitually resorting to, Behring Sea,' submits that the following regulations are necessary, and that the same should extend over the waters hereinafter in that behalf mentioned.

"*Firstly*.—No citizen or subject of the United States or Great Britain shall in any manner kill, capture, or pursue anywhere upon the seas, within the limits and boundaries next hereinafter prescribed for the operation of this Regulation, any of the animals commonly called fur seals.

"*Secondly*.—The foregoing regulation shall apply to and extend over all those waters outside the jurisdictional limits of the above-mentioned nations of the North Pacific Ocean or Behring Sea, which are north of the 35th parallel of north latitude, and east of the 180th meridian of longitude west from Greenwich. Provided, however, that it shall not apply to such pursuit and capture of said seals as may be carried on by Indians dwelling on the coasts of the territory, either of Great Britain or the United States, for their own personal use, with spears, in open canoes or boats not transported by, or used in connection with other vessels, and propelled wholly by paddles, and manned by not more than two men each, in the way anciently practised by such Indians.

"*Thirdly*.—Any ship, vessel, boat, or other craft (other than the canoes or boats mentioned and described in the last foregoing paragraph) belonging to the citizens or subjects of either of the nations aforesaid, which may be found actually engaged in the killing, pursuit, or capture of said seals, or prosecuting a voyage for that purpose, within the waters above bounded and described, may, with her tackle, apparel, furniture, provisions, and any seal-skins on board, be captured and made prize of by any public armed vessel of either of the nations aforesaid; and, in case of any such capture may be taken into any port of the nation to which the capturing vessel belongs, and be condemned by proceedings in any Court of competent jurisdiction, which proceedings shall be conducted, so far as may be, in accordance with the course and practice of Courts of Admiralty when sitting as Prize Courts."

The Agent of the United States also read the following statement:

"Substitute proposed by the Government of the United States for findings of facts submitted by the Government of Great Britain:—

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the said Schedule, were made by the authority of the United States' Government. Which, and how many of the vessels mentioned in said Schedule were in whole, or in part, the actual property of British subjects, and which and how many where in whole, or in part, the actual property of American subjects, is a fact not passed upon by this Tribunal. Nor is the value of said vessels or contents, or either of them, determined.

"2. That the seizures aforesaid were made upon the sea more than 10 miles from any shore.

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked 'A,' and that the others were, in all substantial respects, the same; that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked 'B,' and that the libels in the other proceedings were, in all substantial respects, the same; that the alleged acts or offences for which said several searches and seizures were made, were, in each case, done or committed upon the seas more than 10 miles from any shore; and that in each case in which sentence of condemnation was had, except in those cases when the vessel was released after condemnation, the capture was adopted by the Government of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed upon the seas more than 10 miles from any shore.

"4. That the several orders mentioned in said Schedule warning vessels to leave Behring Sea were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose.

"5. That the said several searches, seizures, condemnations, confiscations, fines, imprisonments, and orders were not made, imposed, or given under any claim or assertion of right or jurisdiction, except such as is submitted to the decision of the Arbitrators by the questions in Article VI of the Treaty of Arbitration.

"6. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and power of Courts of Admiralty, including the prize jurisdiction."

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Annexe (A).

(See British Counter-Case, Appendix, vol. I, p. 72.)

Treasury Department, Office of the Secretary,  
Washington, April 21, 1886.

Sir,  
Referring to Department letter of this date, directing you to proceed with the revenue-steamer "Bear," under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the Law contained in the provisions of Section 1956 of the United States' Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the Law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President, dated the 4th February, 1870.

Respectfully yours,

(Signed) C. S. FAIRCHILD,  
Acting Secretary.

Captain M. A. Hooley,  
Commanding Revenue-steamer "Bear," San-Francisco, California.

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Annexe (B).

(See British Case, Appendix, vol. III, U.S. No. 2, 1890, p. 65.)

In the District Court of the United States for the District of Alaska.

August Special Term, 1886.

To the Honorable Lafayette Dawson, Judge of said District Court.

The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Thornton," her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the District of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory, and in the waters thereof, and within the civil and judicial District of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said District, on waters navigable from the sea by vessel of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the "Thornton," her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur seal within the limits of Alaska territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore the said Attorney prays the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree

of this honourable Court, as forfeited to the use of the said United States, according to the form of the Statute of the said United States in such cases made and provided.

(Signed) M. D. BALL,  
United States District Attorney for the District of Alaska.

At 1:30 the Tribunal took a recess.

On reassembling *Sir Charles Russell* began his argument on behalf of the Government of Great Britain on the question of Regulations as contemplated by Article VII of the Treaty of Arbitration.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 8th June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, }  
H. CUNYNGHAME, } Co-Secretaries.

Inclosure 7 in No. 90.

Protocole No. 36.—*Séance du Vendredi, 9 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation de la veille.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

La séance est levée à 4 heures et le Tribunal s'ajourne jusqu'au Mardi, 13 Juin, à 11 heures 30.

Ainsi fait à Paris, le 9 Juin, 1893, et ont signé :

Le Président	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

Protocol No. 36.—*Meeting of Friday, June 9, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument of the previous day.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 13th June, at 11:30 A.M.

Done at Paris, the 9th June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, }  
H. CUNYNGHAME, } Co-Secretaries.

Inclosure 8 in No. 90.

*Protocole No. 37.—Séance du Mardi, 13 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend et achève son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* commence sa plaidoirie pour la Grande-Bretagne sur la question des Règlements.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 13 Juin, 1893, et ont signé :

Le Président.	..	..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	..	..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	..	..	..	CHARLES H. TUPPER.
Le Secrétaire	..	..	..	A. IMBERT.

[English version.]

*Protocol No. 37.—Meeting of Tuesday, June 13, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed and concluded his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* began his argument on behalf of Great Britain on the question of Regulations.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 13th June, 1893, and signed :

The President	..	..	..	ALPH. DE COURCEL.
The Agent for the United States	..	..	..	JOHN W. FOSTER.
The Agent for Great Britain	..	..	..	CHARLES H. TUPPER.
The Secretary	..	..	..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 9 in No. 90.

*Protocole No. 38.—Séance du Mercredi, 14 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 14 Juin, 1893, et ont signé :

Le Président.	..	..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	..	..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	..	..	..	CHARLES H. TUPPER.
Le Secrétaire	..	..	..	A. IMBERT.

[English version.]

Protocol No. 38.—Meeting of Wednesday, June 14, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 13th June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 10 in No. 90.

Protocole No. 39.—Séance du Jeudi, 15 Juin, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures.

Ainsi fait à Paris, le 15 Juin, 1893, et ont signé:

Le Président..	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

Protocol No. 39.—Meeting of Thursday, June 15, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11 A.M.

Done at Paris, the 15th June, 1893, and signed:

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## No. 91.

*Mr. Tupper to the Earl of Rosebery.—(Received July 8.)*

My Lord,

*Paris, July 7, 1893.*

MR. PHELPS, in continuing his argument on the 5th instant, dealt with the question of the extent of the freedom of the sea. He then passed on to consider the facts to which the abstract rules propounded by him were to be applied. After a reference to the value of the sealing industry he proceeded to attack pelagic sealing, and for that purpose entered into an examination of the evidence submitted by both sides.

He first referred to the question of the number of female seals killed at sea, and did not finish his observations on this subject until yesterday.

He next discussed the evidence respecting the dead pups found on the islands, and concluded the day's proceedings with a reference to the criticisms made on the British side with regard to the management of the sealing industry on the islands by the United States' authorities.

Mr. Phelps announced that he hoped to be able to finish his speech to-day.

I have, &c.

(Signed) CHARLES H. TUPPER.

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## No. 92.

*Mr. Tupper to the Earl of Rosebery.—(Received July 12.)*

My Lord,

*Paris, July 11, 1893.*

IN his speech on the 7th instant Mr. Phelps concluded his argument against pelagic sealing, and after the luncheon interval proceeded to deal with the question of Regulations.

His remarks on this subject were directed to prove the inadequacy of the measures proposed on the British side to preserve the seals from extermination.

He was unable to close his address before the hour of adjournment, and it was arranged that the Tribunal should sit at 2 o'clock on the following day to enable him to conclude.

On the 8th instant Mr. Phelps finished his speech, and after an expression of thanks on both sides to the President and other Arbitrators, the public sittings of the Tribunal were brought to a close.

I have, &c.

(In the absence of Mr. Tupper),

(Signed) R. P. MAXWELL.

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## No. 93.

*Mr. Tupper to the Earl of Rosebery.—(Received July 19.)*

My Lord,

*Paris, July 18, 1893.*

I HAVE the honour to transmit to your Lordship copies of the official Protocols of the proceedings before the Tribunal of Arbitration, Nos. 40, 42, 43, 44, 45, 46, and 47.

Owing to the necessity of making some alterations in the text, the 41st Protocol has not yet been issued.

I have, &c.

(Signed) CHARLES H. TUPPER.

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## Inclosure 1 in No. 93.

*Protocole No. 40.—Séance du Vendredi, 16 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

En levant la séance, à 3 heures 30, *le Président* annonce que, pendant l'absence temporaire de *Mr. Cunynghame*, le Tribunal autorise *Mr. Henry Hannen*, avocat, à remplir ses fonctions.

Puis le Tribunal s'ajourne jusqu'au Mardi, 20 Juin, à 11 heures 30.

Ainsi fait à Paris, le 16 Juin, 1893, et ont signé :

Le Président..	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis ..	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne ..	.. ..	CHARLES H. TUPPER.
Le Secrétaire ..	.. ..	A. IMBERT.

[English version.]

*Protocol No. 40.—Meeting of Friday, June 16, 1893.*

THE Tribunal assembled at 11 o'clock, all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

*The President*, in adjourning, announced that during the temporary absence of *Mr. Cunynghame*, the Tribunal authorized *Mr. Henry Hannen*, Barrister-at-Law, to perform his duties.

At 3:30 P.M. the Tribunal adjourned until Tuesday, 20th June, at 11:30 A.M.

Done at Paris, the 16th June, 1893, and signed :

The President ..	.. ..	ALPH. DE COURCEL.
The Agent for the United States..	.. ..	JOHN W. FOSTER.
The Agent for Great Britain ..	.. ..	CHARLES H. TUPPER.
The Secretary ..	.. ..	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*  
H. CUNYNGHAME, }

## Inclosure 2 in No. 93.

*Protocole No. 42.—Séance du Mercredi, 21 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* présente et propose de lire au Tribunal certains documents qui viennent d'être distribués au Parlement Britannique et qui contiennent une correspondance entre la Grande-Bretagne et la Russie au sujet des saisies de navires Anglais par les croiseurs Russes dans la Mer de Behring.

*Mr. Carter* s'oppose à ce que ces documents soient considérés comme ayant été déposés devant le Tribunal.

Après avoir consulté ses collègues, *le Président* déclare que le Tribunal autorise la lecture de ses pièces, mais en se réservant de décider ultérieurement si elles seront admises ou non comme moyen de preuve.

*Sir Richard Webster* lit alors un extrait des documents en question.

*Mr. Christopher Robinson* reprend ensuite son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Robinson* continue et achève sa plaidoirie.



A 3 heures 50 la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 21 Juin, 1893, et ont signé :

Le Président .. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis .. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. .. .	CHARLES H. TUPPER.
Le Secrétaire .. .. .	A. IMBERT.

[English version.]

Protocol No. 42.—Meeting of Wednesday, June 21, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Richard Webster* produced, and proposed to read to the Tribunal certain documents recently presented to the Parliament of Great Britain containing correspondence between Great Britain and Russia on the subject of the seizure of British vessels by Russian cruisers in the Behring Sea.

*Mr. Carter* objected to these documents being regarded as before the Tribunal.

*The President*, after consultation with his colleagues, announced that the Tribunal would permit the documents to be read, but reserved to itself for further consideration the question of their admissibility as evidence.

*Sir Richard Webster* then read an extract from the documents in question.

*Mr. Christopher Robinson* then resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *Mr. Robinson* continued and concluded his argument.

At 3:50 P.M., the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 21st June, 1893, and signed :

The President .. .. .	ALPH. DE COURCEL.
The Agent for the United States.. .. .	JOHN W. FOSTER.
The Agent for Great Britain .. .. .	CHARLES H. TUPPER.
The Secretary .. .. .	A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary*.  
HENRY A. HANNEN, *Acting Co-Secretary*.

Inclosure 3 in No. 93.

Protocole No. 43.—Séance du Jeudi, 22 Juin, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'Honorable *Edward J. Phelps* commence sa plaidoirie pour les États-Unis.

La séance est suspendue à 1 heure 30.

A la reprise, l'Honorable *Edward J. Phelps* continue son argumentation.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 22 Juin, 1893, et ont signé :

Le Président .. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis .. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. .. .	CHAS. H. TUPPER.
Le Secrétaire .. .. .	A. IMBERT.

[English version.]

Protocol No. 43.—Meeting of Thursday, June 22, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* began his argument on behalf of the United States.

At 1:30 the Tribunal took a recess.

On reassembling, the *Honorable Edward J. Phelps* continued his argument.  
At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.  
Done at Paris, the 22nd June, 1893, and signed:

The President .. .. .	ALPH. DE COURCEL.
The Agent for the United States..	JOHN W. FOSTER.
The Agent for Great Britain ..	CHARLES H. TUPPER.
The Secretary .. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*  
HENRY A. HANNEN, *Acting Co-Secretary.*

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Inclosure 4 in No. 93.

*Protocole No. 44.—Séance du Vendredi, 23 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'*Honorable Edward J. Phelps* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, l'*Honorable Edward J. Phelps* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 27 Juin, à 11 heures 30.

Ainsi fait à Paris, le 23 Juin, 1893, et ont signé:

Le Président.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis .. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne ..	CHARLES H. TUPPER.
Le Secrétaire .. .. .	A. IMBERT.

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[English version.]

*Protocol No. 44.—Meeting of Friday, June 23, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

The *Honorable Edward J. Phelps* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling the *Honorable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 27th June, at 11:30 A.M.

Done at Paris, the 23rd June, 1893, and signed:

The President .. .. .	ALPH. DE COURCEL.
The Agent for the United States ..	JOHN W. FOSTER.
The Agent for Great Britain ..	CHARLES H. TUPPER.
The Secretary .. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*  
HENRY A. HANNEN, *Acting Co-Secretary.*

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Inclosure 5 in No. 93.

*Protocole No. 45.—Séance du Mardi, 27 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'*Honorable Edward J. Phelps* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, l'*Honorable Edward J. Phelps* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 27 Juin, 1893, et ont signé :

Le Président. . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

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[English version.]

*Protocol No. 45.—Meeting of Tuesday, June 27, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

The Honourable Edward J. Phelps resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling the Honourable Edward J. Phelps continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 27th June, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . .	JOHN W. FOSTER.
The Agent for Great Britain . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*  
HENRY A. HANNEN, *Acting Co-Secretary.*

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Inclosure 6 in No. 93.

*Protocole No. 46.—Séance du Mercredi, 28 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

Mr. H. Cunynghame reprend ses fonctions de Co-Secrétaire, qui avaient été exercées provisoirement par Mr. Henry Hannen.

L'Honorable Edward J. Phelps continue sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, l'Honorable Edward J. Phelps poursuit son argumentation.

La séance est levée à 4 heures et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 28 Juin, 1893, et ont signé :

Le Président. . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

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[English version.]

*Protocol No. 46.—Meeting of Wednesday, June 28, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

Mr. H. Cunynghame resumed his duties of Co-Secretary, which had been fulfilled temporarily by Mr. Henry Hannen.

The Honourable Edward J. Phelps continued his argument.

At 1:30 the Tribunal took a recess.

On reassembling, the Honourable Edward J. Phelps continued his argument.

At 4 p.m. the Tribunal adjourned to the next day at 11:30 A.M.  
Done at Paris, the 28th June, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 7 in No. 93.

*Protocole No. 47.—Séance du Jeudi, 29 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'Honorable Edward J. Phelps reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, l'Honorable Edward J. Phelps continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au Lundi, 3 Juillet, à 11 heures 30.

Ainsi fait à Paris, le 29 Juin, 1893, et ont signé:

Le Président.	.. .. .	ALPH. DE COURCEL.
L'Agent des États-Unis	.. .. .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. .. .	CHARLES H. TUPPER.
Le Secrétaire	.. .. .	A. IMBERT.

[English version.]

*Protocol No. 47.—Meeting of Thursday, June 29, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

The Honourable Edward J. Phelps resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling the Honourable Edward J. Phelps continued his argument.

At 4 p.m. the Tribunal adjourned until Monday, the 3rd July, at 11:30 A.M.

Done at Paris, the 29th June, 1893, and signed:

The President	.. .. .	ALPH. DE COURCEL.
The Agent for the United States	.. .. .	JOHN W. FOSTER.
The Agent for Great Britain	.. .. .	CHARLES H. TUPPER.
The Secretary	.. .. .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

No. 94.

*Mr. Tupper to the Earl of Rosebery.—(Received July 26.)*

My Lord,

Paris, July 25, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocol No. 41 of the proceedings before the Behring Sea Tribunal of Arbitration.

I have, &c.,

(Signed) CHARLES H. TUPPER.

Inclosure in No. 94.

*Protocole No. 41.—Séance du Mardi, 20 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

Sir Richard Webster continue son argumentation.

L'Agent de Sa Majesté Britannique dépose devant le Tribunal, au nom de son Gouvernement, un projet de Règlements dont le texte suit:—

[691]

N

" Règlements.

"1. Tout bâtiment employé à la chasse des phoques en mer devra se pourvoir de licences à l'un des ports indiqués ci-dessous :—

" Victoria, dans la Province de la Colombie Britannique ;

" Vancouver, dans la Province de la Colombie Britannique ;

" Port Townsend, dans le Territoire de Washington, États-Unis ;

" San-Francisco, dans l'État de Californie, États-Unis.

" 2. Ces licences ne seront accordées qu'à des bâtiments à voiles.

" 3. Il sera établi autour des Iles Pribiloff une zone de 20 milles à l'intérieur de laquelle la chasse des phoques sera interdite en toute saison.

" 4. Il y aura, du 15 Septembre au 1<sup>er</sup> Juillet, une saison de clôture, pendant laquelle la chasse des phoques ne sera point permise dans la Mer de Behring.

" 5. Il ne pourra être fait usage ni de carabines ni de filets pour la chasse des phoques en mer.

" 6. Tout bâtiment employé à la chasse des phoques devra porter un pavillon distinctif.

" 7. Les patrons des bâtiments employés à la chasse des phoques devront tenir un journal ou ils relèveront avec soin les époques et les emplacements de la chasse, le nombre et le sexe des phoques capturés ; ils devront tenir un journal ou ils relèveront avec soin les époques et les emplacements de la chasse, le nombre et le sexe des phoques capturés ; ils devront faire figurer un extrait dudit journal dans leur journal de bord.

" 8. Les licences tomberont en déchéance en cas d'infraction auxdits Règlements."

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* reprend et achève sa plaidoirie.

L'Agent de Sa Majesté Britannique dépose alors devant le Tribunal le document ci-dessous, qu'il présente, d'accord avec l'Agent des États-Unis, pour être substitué aux documents soumis antérieurement au Tribunal relativement aux Conclusions de fait :—

*" Conclusions de fait proposées par l'Agent de la Grande-Bretagne, acceptées par l'Agent des États-Unis, qui en admet l'exactitude, et soumises à l'examen du Tribunal d'Arbitrage.*

" 1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de patrons et d'équipages, mentionnées respectivement dans l'Annexe au Mémoire Britannique, pages 1 à 60 inclusivement, ont été faites par autorité du Gouvernement des États-Unis. Les questions se rapportant à la valeur desdits navires ou de leur contenu, ensemble ou séparément, et la question de savoir si les navires désignés dans l'Annexe au Mémoire Britannique, ou certains d'entre eux, étaient, en totalité ou en partie, la propriété de citoyens des États-Unis, ont été retirées et n'ont pas été l'objet de l'examen du Tribunal, sous cette réserve que les États-Unis garde le droit de soulever ces questions ou quelqu'une d'entre elles, s'ils le jugent à propos, dans toute négociation ultérieure pouvant engager la responsabilité du Gouvernement des États-Unis, en ce qui touche le paiement des sommes mentionnées dans l'Annexe au Mémoire Britannique.

" 2. Que les susdites saisies, sauf en ce qui concerne le "Pathfinder," saisi à Neah Bay, ont été effectuées dans la Mer de Behring, aux distances de la côte mentionnées au Tableau ci-annexé, sous la lettre (C).

" 3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avaient reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après (Annexe A), les autres exemplaires desdites instructions étant conformes à ce modèle sur tous les points essentiels ; que, dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont une copie est annexée ci-dessous (Annexe B), les actes d'accusation déposés dans les autres procédures étant semblables à ce modèle, en tous points essentiels ; que les actes ou délits, allégués comme motifs de ces visites et saisies, ont été accompli ou commis dans la Mer de Behring, aux distances de la côte ci-dessus indiquées ; et que dans tous les cas où une condamnation a été prononcée, excepté ceux où les navires ont été relâchés après condamnation, la saisie a été approuvée par le Gouvernement des États-Unis ; et que, dans les cas où les navires ont été relâchés, la saisie avait été opérée par autorité du Gouvernement des États-Unis, que les amendes et emprisonnements susdits ont été prononcés à raison d'infractions

aux lois nationales des États-Unis, infractions toutes commises dans la Mer de Behring aux distances de la côte ci-dessus indiquées.

"4. Que les différents ordres mentionnés dans l'Annexe ci-jointe sous la lettre (C), enjoignant à certains navires de quitter la Mer de Behring ou de ne pas y entrer, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient, toutes les fois qu'ils ont donné ces ordres, des instructions conformes à celles mentionnées ci-dessus, sous le No. 3, et que les navires qui ont reçu ces injonctions étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse, et que cette façon de procéder a été sanctionnée par le Gouvernement des États-Unis.

"5. Que les Cours de District des États-Unis devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires saisis dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne, pages 1 à 60 inclusivement, avaient tous droits de juridiction et pouvoirs appartenant aux Cours d'Amirauté, y compris la juridiction de Tribunaux de Prises, mais que, dans chaque cas particulier, la sentence prononcée par la Cour s'appuyait sur les causes mentionnées dans l'acte d'accusation."

#### Annexes (A) et (B).

(Pour le texte de ces Annexes, voir le Protocole 35, Annexes (A) et (B) aux Conclusions du fait présentées par l'Agent des États-Unis.)

#### Annexe (C).

La Table ci-dessous contient les noms des navires Britanniques employés à la chasse des phoques, qui ont été saisis ou avertis par les croiseurs du service des Douanes des États-Unis, de 1886 à 1890, et la distance approximative de la terre où ces saisis ont eu lieu. Ces distances sont indiquées, en ce qui concerne les navires "Carolena," "Thornton," et "Onward," d'après le témoignage du Commandant Abbey, de la Marine des États-Unis. (Voir 50<sup>e</sup> Congrès; 2<sup>e</sup> Session; Séant; Documents Exécutifs, No. 106, pp. 20, 30, et 40.) Elles sont indiquées, en ce qui concerne les navires "Anna Beck," "W. P. Sayward," "Dolphin," et "Grace," d'après le témoignage du Capitaine Shepard, de la Marine du Trésor des États-Unis. (Livre Blue, États-Unis, No. 2, 1890, pp. 80-82. Voir Appendice au Mémoire Britannique, vol. iii.)

Nom du Navire.	Date de la Saisie.	Distance approximative de Terre au moment de la Saisie.	Navire des États-Unis qui a fait la Saisie.
Carolena ..	1 <sup>er</sup> Août, 1886 ..	75 milles .. .. .	Corwin.
Thornton ..	1 <sup>er</sup> Août, 1886 ..	70 " .. .. .	Idem.
Onward ..	2 Août, 1886 ..	115 " .. .. .	Idem.
Favourite ..	2 Août, 1886 ..	Averti par le "Corwin," à peu près dans la même position que le "Onward."	
Anna Beck ..	2 Juillet, 1887 ..	66 milles .. .. .	Rush.
W. P. Seyward ..	9 Juillet, 1887 ..	59 " .. .. .	Idem.
Dolphin ..	12 Juillet, 1887 ..	40 " .. .. .	Idem.
Grace ..	17 Juillet, 1887 ..	96 " .. .. .	Idem.
Alfred Adams ..	10 Août, 1887 ..	62 " .. .. .	Idem.
Ada ..	25 Août, 1887 ..	15 " .. .. .	Bear.
Triumph ..	4 Août, 1887 ..	Averti par le "Rush" de ne pas entrer dans la Mer de Behring.	
Juanita ..	31 Juillet, 1889 ..	66 milles .. .. .	Rush.
Pathfinder ..	29 Juillet, 1889 ..	50 " .. .. .	Idem.
Triumph ..	11 Juillet, 1889 ..	Averti par le "Rush" d'avoir à quitter la Mer de Behring.—Position au moment de l'avertissement: (?)	
Black Diamond ..	11 Juillet, 1889 ..	35 milles .. .. .	Idem.
Lily ..	6 Août, 1889 ..	66 " .. .. .	Idem.
Ariel ..	30 Juillet, 1889 ..	Averti par le "Rush" d'avoir à quitter la Mer de Behring.	
Kate ..	13 Août, 1889 ..	Averti par le "Rush" d'avoir à quitter la Mer de Behring.	
Minnie..	15 Juillet, 1889 ..	65 milles .. .. .	Idem.
Pathfinder ..	27 Mars, 1890 ..	Saisi dans la Baie de Neah.*	

\* La Baie de Neah est située dans l'État de Washington, et le "Pathfinder" y a été saisi, du chef de délits commis par lui dans la Mer de Behring l'année précédente. Ce bâtiment fut relâché deux jours plus tard.

*Mr. Christopher Robinson* commence ensuite son argumentation sur la question des Règlements.

La séance est levée à 4 heures et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 20 Juin, 1892, et ont signé :

Le Président. . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

Protocol No. 41.—Meeting of Tuesday, June 20, 1893.

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*Sir Richard Webster* continued his argument.

The Agent of Her Britannic Majesty laid before the Tribunal a scheme of Regulations worded as follows :—

*“ Regulations.*

“ 1. All vessels engaging in pelagic sealing shall be required to obtain licences at one or other of the following ports :—

“ Victoria, in the Province of British Columbia.

“ Vancouver, in the Province of British Columbia.

“ Port Townsend, in Washington Territory, in the United States.

“ San Francisco, in the State of California, in the United States.

“ 2. Such licences shall only be granted to sailing-vessels.

“ 3. A zone of 20 miles around the Pribyloff Islands shall be established, within which no seal hunting shall be permitted at any time.

“ 4. A close season, from the 15th September to the 1st July, shall be established, during which no pelagic sealing shall be permitted in Behring Sea.

“ 5. No rifles or nets shall be used in pelagic sealing.

“ 6. All sealing-vessels shall be required to carry a distinguishing flag.

“ 7. The masters in charge of sealing-vessels shall keep accurate logs as to the times and places of sealing, the number and sex of the seals captured, and shall enter an abstract thereof in their official logs.

“ 8. Licences shall be subject to forfeiture for breach of above Regulations.”

At 1:30, the Tribunal took a recess.

On reassembling, *Sir Richard Webster* resumed and concluded his argument.

The Agent of Her Britannic Majesty then presented to the Tribunal the following paper, which by agreement with the Agent of the United States, was submitted as a substitute for the papers heretofore presented as to Findings of fact :—

*“ Findings of fact proposed by the Agent of Great Britain, and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

“ 1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, p. 1 to 60 inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from, and have not been considered by, the Tribunal, it being understood that it is open to the United States to raise these questions or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

“ 2. That the seizures aforesaid, with the exception of the “*Pathfinder*,” seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto, marked (C).

“ 3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were made, from the Executive Department of the Government of the



United States, instructions, a copy of one of which is annexed hereto, marked (A), and that the others were in all substantial respects the same: that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B) and that the libels in the other proceedings were in all substantial respects the same: that the alleged acts or offenses for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distance from shore aforesaid: and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released, the seizure was made by the authority of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid.

"4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea, were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3, above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

"5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60 inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the Prize Jurisdiction; but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel."

#### Annexes (A) and (B).

(For the text of these Annexes, see Protocol 33, Annexes (A) and (B) to the Findings of fact submitted by the Agent of the United States.)

#### Annex (C).

The following Table shows the names of the British sealing-vesse's seized or warned by United States revenue cruizers, 1886-90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolina," "Thornton," and "Onward" are on the authority of United States' Naval Commander Abbey. (See 50th Congress, 2nd Session, Senate Executive Documents, No. 106, pp. 20, 30, and 40.) The distances assigned in the cases of the "Anna Beck," "W. P. Sayward," "Dolphin," and "Grace" are on the authority of Captain Shepard, United States' Royal Marine. (Blue Book, United States, No. 2, 1890, pp. 80, 82. See Appendix, vol. iii.)

Name of Vessel.	Date of Seizure.	Approximate distance from Land when seized.	United States' Vessel making Seizure.
Carolina	August 1, 1886	75 miles	Corwin.
Thornton	August 1, 1886	70 "	Corwin.
Onward	August 2, 1886	115 "	Corwin.
Favourite	August 2, 1886	Warned by "Corwin" in about same position as "Onward,"	
Anna Beck	July 2, 1887	66 miles	Rush.
W. P. Sayward	July 9, 1887	59 "	Rush.
Dolphin	July 12, 1887	40 "	Rush.
Grace	July 17, 1887	96 "	Rush.
Alfred Adams	August 10, 1887	62 "	Rush.
Ada	August 25, 1887	15 "	Beur.
Triumph	August 4, 1887	Warned by "Rush" not to enter Behring Sea.	
Juanita	July 31, 1889	66 miles	Rush.
Pathfinder	July 29, 1889	50 "	Rush.
Triumph	July 11, 1889	Ordered out of Behring Sea by "Rush. (?) As to position when warned.	
Black Diamond	July 11, 1889	35 miles	Rush.
Lily	August 6, 1889	66 "	Rush.
Ariel	July 30, 1889	Ordered out of Behring Sea by "Rush."	
Kate	August 13, 1889	Ditto.	Rush.
Minnie	July 15, 1889	65 miles	Rush.
Pathfinder	March 27, 1890	Seized in Neah Bay*	Corwin.

\* Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

Mr. Christopher Robinson then began his argument on the question of Regulations. At 4 P.M. the Tribunal adjourned to the next day, at 11:30 A.M. Done at Paris, the 20th June, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States..	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*  
HENRY A. HANNEN, *Acting Co-Secretary.*

No. 95.

*Mr. Tupper to the Earl of Rosebery.—(Received July 26.)*

My Lord, Paris, July 25, 1893.  
I HAVE the honour to report that on the close of the United States' argument on the 8th instant, I took immediate steps for dispensing with the services of as many as possible of the staff employed here during this Arbitration.  
Mr. Piggott and Mr. Froude accordingly left on the 9th instant.  
In consequence, however, of the necessity of having in readiness further information on certain points connected with seal-life, I deemed it advisable to retain Dr. Dawson's services for a short period longer. I also thought it best that Mr. Charles Russell should remain for the purpose of assisting Dr. Dawson, and of finishing the revision of the shorthand notes.  
Dr. Dawson having completed his work left here on the 21st instant, and Mr. Russell took his departure on the following day.  
The only members of the staff now remaining here are Mr. Maxwell and Mr. Pope.

I have, &c.,  
(Signed) CHARLES H. TUPPER.

No. 96.

*Mr. Tupper to the Earl of Rosebery.—(Received August 5.)*

My Lord, Paris, August 4, 1893.  
I HAVE the honour to transmit copies of the official Protocols Nos. 48, 49, 50, 51, 52, and 53, recording the proceedings before the Behring Sea Arbitration Tribunal.  
I have, &c.  
(Signed) CHARLES H. TUPPER.

Inclure 1 in No. 96.

*Protocole No. 48.—Séance du Lundi, 3 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
L'Honorable Edward J. Phelps reprend sa plaidoirie.  
La séance est suspendue à 1 heure 30.  
A la reprise, l'Honorable Edward J. Phelps continue son argumentation.  
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.  
Ainsi fait à Paris, le 3 Juillet, 1893, et ont signé :

Le Président..	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 48.—Meeting of Monday, July 3, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
*The Honourable Edward J. Phelps* resumed his argument.  
 At 1:30 the Tribunal took a recess.  
 On reassembling, *the Honourable Edward J. Phelps* continued his argument.  
 At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.  
 Done at Paris, the 3rd July, 1893, and signed:

The President	.. ..	..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	..	CHARLES H. TUPPER.
The Secretary	.. ..	..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

Inclosure 2 in No. 96.

*Protocole No. 49.—Séance du Mardi, 4 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*L'Honorable Edward J. Phelps* reprend son argumentation.  
 La séance est suspendue à 1 heure 30.  
 A la reprise, *l'Honorable Edward J. Phelps* continue sa plaidoirie.  
 A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.  
 Ainsi fait à Paris, le 4 Juillet, 1893, et ont signé:

Le Président	.. ..	..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	..	A. IMBERT.

[English version.]

*Protocol No. 49.—Meeting of Tuesday, July 4, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.  
*The Honourable Edward J. Phelps* resumed his argument.  
 At 1:30 the Tribunal took a recess.  
 On reassembling, *the Honourable Edward J. Phelps* continued his argument.  
 At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.  
 Done at Paris, the 4th July, 1893, and signed:

The President	.. ..	..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	..	CHARLES H. TUPPER.
The Secretary	.. ..	..	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} <i>Co-Secretaries.</i>
	H. CUNYNGHAME,	

Inclosure 3 in No. 96.

*Protocole No. 50.—Séance du Mercredi, 5 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.  
*L'Honorable Edward J. Phelps* continue sa plaidoirie.  
 La séance est suspendue à 1 heure 30.  
 A la reprise, *l'Honorable Edward J. Phelps* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.  
Ainsi fait à Paris, le 5 Juillet, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

*Protocol No. 50.—Meeting of Wednesday, July 5, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *the Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 5th July, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

Inclosure 4 in No. 96.

*Protocole No. 51.—Séance du Jeudi, 6 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 6 Juillet, 1893, et ont signé :

Le Président . . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

*Protocol No. 51.—Meeting of Thursday, July 6, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *the Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11:30 A.M.

Done at Paris, the 6th July, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate:

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## Inclosure 5 in No. 96.

*Protocole No. 52.—Séance du Vendredi, 7 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *L'Honorable Edward J. Phelps* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 2 heures de l'après-midi.

Ainsi fait à Paris, le 7 Juillet, 1893, et ont signé :

Le Président.	.. ..	ALPH. DE COURCEL.
L'Agent des États-Unis	.. ..	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne	.. ..	CHARLES H. TUPPER.
Le Secrétaire	.. ..	A. IMBERT.

[English version.]

*Protocol No. 52.—Meeting of Friday, July 7, 1893.*

THE Tribunal assembled at 11:30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1:30 the Tribunal took a recess.

On reassembling, *the Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 2 P.M.

Done at Paris, the 7th July, 1893, and signed :

The President	.. ..	ALPH. DE COURCEL.
The Agent for the United States	.. ..	JOHN W. FOSTER.
The Agent for Great Britain	.. ..	CHARLES H. TUPPER.
The Secretary	.. ..	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

## Inclosure 6 in No. 96.

*Protocole No. 53.—Séance du Samedi, 8 Juillet, 1893.*

LE Tribunal s'est réuni à 2 heures, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend et achève sa plaidoirie.

*Sir Charles Russell*, au nom de ses collègues, remercie les membres du Tribunal de la bienveillante attention avec laquelle ils ont suivi ces longs débats. Il remercie également le Secrétaire, les Co-Secrétaires, et Secrétaires-Adjoints du Tribunal, ainsi que les Secrétaires particuliers des Arbitres de leur obligeant et utile concours.

*L'Honorable Edward J. Phelps* s'associe aux paroles de *Sir Charles Russell*, au nom des Conseils du Gouvernement des États-Unis. Il se fait l'interprète de tous ses collègues en rendant hommage à la compétence et à la courtoisie avec lesquelles le Président a dirigé les discussions et renouvelé l'expression de leur gratitude pour l'hospitalité de la France.

*Le Président* annonce alors que le Tribunal va prendre l'affaire en délibéré.

*Sir Charles Russell* et *L'Honorable Edward J. Phelps* témoignent le désir qu'au cas où le Tribunal, durant ses délibérations, croirait devoir s'adresser aux Conseils pour obtenir d'eux quelque éclaircissement, la demande et la réponse aient lieu par écrit.

*Le Président* répond que le Tribunal tiendra compte de ce désir dans la mesure du possible, sans renoncer toutefois au droit que lui donne le Traité de requérir toutes informations orales, écrites ou imprimées qu'il jugera utile.

L'Agent de Sa Majesté Britannique fait connaître qu'il restera à Paris, ainsi que l'Agent des États-Unis, à la disposition du Tribunal.

A 4 heures la séance est levée.

Ainsi fait à Paris, le 8 Juillet, 1893, et ont signé :

Le Président. . . . .	ALPH. DE COURCEL.
L'Agent des États-Unis . . . . .	JOHN W. FOSTER.
L'Agent de la Grande-Bretagne . . . . .	CHARLES H. TUPPER.
Le Secrétaire . . . . .	A. IMBERT.

[English version.]

Protocol No. 53.—Meeting of Saturday, July 8, 1893.

THE Tribunal assembled at 2 p.m., all the Arbitrators being present.

*The Honourable Edward J. Phelps* continued and concluded his argument.

*Sir Charles Russell*, in the name of his colleagues, thanked the members of the Tribunal for the kind attention with which they had followed the lengthy debates. He also thanked the Secretary, Co-Secretaries, and Assistant Secretaries of the Tribunal, as well as the Private Secretaries of the Arbitrators, for their obliging and useful assistance.

*The Honourable Edward J. Phelps* indorsed the remarks of *Sir Charles Russell* in the name of Counsel for the Government of the United States. He referred on behalf of all his colleagues, to the ability and courtesy with which the President had directed the discussions, and he renewed the expression of their gratitude for the hospitality of France.

*The President* thereupon announced that the Tribunal would take the case under consideration.

*Sir Charles Russell* and *the Honourable Edward J. Phelps* expressed their desire that in case the Tribunal, during its deliberations, should find it necessary to obtain from Counsel any further information, the request for such information and the answer thereto should be in writing.

The President replied that the Tribunal would take note of the request as far as possible, without however surrendering the right given it by the Treaty of requiring all such information, whether oral, written, or printed, as it might deem useful.

The Agent of Her Britannic Majesty announced that the Agent of the United States and he would remain in Paris at the disposition of the Tribunal.

At 4 p.m. the Tribunal adjourned.

Done at Paris, the 8th July, 1893, and signed :

The President . . . . .	ALPH. DE COURCEL.
The Agent for the United States . . . . .	JOHN W. FOSTER.
The Agent for Great Britain . . . . .	CHARLES H. TUPPER.
The Secretary . . . . .	A. IMBERT.

Translation certified to be accurate :

(Signed)	A. BAILLY-BLANCHARD,	} Co-Secretaries.
	H. CUNYNGHAME,	

No. 97.

*Mr. Tupper to the Earl of Rosebery.*—(Received August 14.)

(Extract.)

Paris August 12, 1893.

WITH reference to your Lordship's despatch of the 15th April last and previous correspondence, I have the honour to transmit herewith a copy of a letter which I addressed to Baron de Courcel on the subject of the withdrawal of the United States' Agent from the joint arrangement for preparing and printing short-hand notes of the proceedings before the Tribunal.

I communicated a copy of this letter to Mr. Foster.

It appeared to me that, as these reports had been of obvious utility to the Arbitrators, the cost of their production might fairly be included among the expenses which, under Article XII of the Treaty of Arbitration, are to be shared in equal

moieties by the two Governments, and, having failed to agree with the United States' Agent on the subject, I deemed it advisable to obtain an expression of opinion from the Tribunal itself.

Mr. Foster, on receiving copy of my letter to Baron de Courcel, wrote in his turn a note to his Excellency (which he communicated to me, and of which a copy is inclosed), setting forth his reasons for dissenting from my views on the subject.

Baron de Courcel has now replied, and I have the honour to inclose an extract from his letter, the rest of which deals with another subject. Your Lordship will observe that the Arbitrators establish the utility of these reports. At the same time they do not consider themselves competent to examine by whom, and in what manner, the expenses ought to be met.

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Inclosure 1 in No. 97.

*Mr. Tupper to Baron de Courcel.*

Dear Baron de Courcel,

*Paris, August 8, 1893.*

YOU will remember that shortly after the commencement of the proceedings before the Tribunal the United States' Government withdrew from the joint arrangement for preparing and printing short-hand notes of the oral arguments.

The correspondence which passed on this subject between the United States' Agent and myself, and a statement showing General Foster's reasons for withdrawing were laid before the Tribunal, and will be found on pp. 507 and 508 of Part III of the Reports of Proceedings.

Since the withdrawal of the United States' Government, which was finally announced on the 12th April, the reports have been continued under the supervision of the British staff, and at the sole expense of Her Majesty's Government.

In recommending this course to Lord Rosebery I was to a large extent influenced by the consideration that verbatim reports of the daily proceedings would be not only convenient, but necessary, for the members of the Tribunal. From some expressions used by yourself at the meeting of the 7th April (see Report of Proceedings, Part I, p. 148), I feel sure that you have appreciated their usefulness, and the constant reference which has been made to them by the other Arbitrators confirms my opinion as to their general utility to the Tribunal.

Under the circumstances, I venture to suggest through you that the Arbitrators should consider whether the cost of preparing these reports might not be fairly included as one of the expenses of the Tribunal. The XIIIth Article of the Treaty requires the Arbitrators "to keep an accurate record of their proceedings, and to employ the necessary officers to assist them," and in Article XII it is stated that after the payment by each Government of remuneration to their respective Agents and Counsel, and of the cost of preparing and submitting their several Cases, "All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties."

In case this suggestion should meet with the approval of the Arbitrators, it would of course be understood that Her Majesty's Government would bear their share of the expenses incurred by the United States in producing the reports of the speeches of their Counsel which they have presented to the Tribunal, in addition to those supplied by the British side.

I regret that I have been unable, as shown in the correspondence referred to above, to come to any agreement with the United States' Agent on the subject, and this must be my excuse for troubling you with this reference.

I have forwarded a copy of this letter to Mr. Foster.

I am, &c.  
(Signed) CHARLES H. TUPPER.



## Inclosure 2 in No. 97.

*Mr. Foster to Baron de Courcel.*

Dear Sir,

*Paris, August 9, 1893.*

I HAVE received from the Honourable C. H. Tupper, Agent of the British Government, a copy of a communication dated the 8th instant, and addressed by him to you, containing a request respecting the expenses incurred by him in preparing a report of the oral argument of Counsel before the Tribunal. This communication compels me to address you on the subject.

The suggestion of the Agent of the British Government seems to be that the Arbitrators should in some manner, directly or indirectly, by their own action, impose upon the Government of the United States a part of the expense incurred by him in printing a report of the proceedings before the Tribunal, including the arguments of Counsel. This seems to me to be very extraordinary, and I can in no manner assent to it.

If the expense had been incurred in pursuance of some agreement between the parties, there would have been no occasion to trouble the Tribunal with any suggestion concerning its payment. If it had been incurred in pursuance of some direction or authority of the Tribunal, it would be very proper for that body to consider it should be defrayed.

But it has been incurred in neither of these modes. This report has been made solely under the authority of the Agent of Great Britain without my authority or consent. It has never been subjected to any revision by me or any one under my authority, has never been furnished to me or to the Counsel of the United States, and is, so far as it has been made known to me by the use made of it in argument by the Counsel for the British Government erroneous and imperfect. I cannot therefore consent to its adoption as a report of the proceedings of, and arguments before, the Tribunal.

I was not unwilling at the outset of the sessions that a joint arrangement should be made, whereby an accurate report of the proceedings of, and arguments before, the Tribunal should be furnished for the use of the Arbitrators and Counsel, as well as for the purposes of a permanent record. It is not necessary here to enter upon any statement of the circumstances which led to a failure to make such an arrangement. It is enough to say that to call upon the United States to contribute to the expense incurred would imply that the Agent of Great Britain had the right, after failing to secure the assent of the United States to the plan of reporting proposed by him, to proceed and execute that plan without the assent of the United States, and without any supervision on its part, and that the United States was bound to contribute to the expense although it had received no copies of the full report.

It seems to me quite unnecessary to dwell upon the incorrectness of such a position.

I am, &c.  
(Signed) JOHN W. FOSTER.

## Inclosure 3 in No. 97.

*Baron de Courcel to Mr. Tupper.*

(Extract.)

*Paris, August 11, 1893.*

DURING a private meeting held by the members of the Tribunal of Arbitration I submitted to my colleagues the note which you were so kind as to address to me concerning the short-hand reports of the Tribunal's proceedings and the mode of defraying the expense necessary for getting up those reports.

My colleagues concurred with me that those reports had been practically very useful to all of us, and had helped us in our work, and that we were under real obligations to all the persons who had taken the trouble to prepare such reports. As to the question of the cost thereby incurred, the Arbitrators did not deem themselves competent to examine by whom, and in what manner, it ought to be met.

No. 98.

*Mr. Tupper to the Earl of Rosebery.—(Received August 16.)*

My Lord,

Paris, August 15, 1893.

I HAVE the honour to transmit to your Lordship the decision of the Behring Sea Tribunal of Arbitrators which has been delivered to me this day in accordance with Article XI of the Treaty of the 29th February, 1892.\*

I have, &amp;c.

(Signed) CHARLES H. TUPPER.

No. 99.

*Mr. Tupper to the Earl of Rosebery.—(Received August 16.)*

My Lord,

Paris, August 15, 1893.

THE final duty now devolves upon me as Her Majesty's Agent to record an official acknowledgment of the services of those gentlemen with whom I have been associated.

I esteem it a privilege to testify to the great value of the assistance which I have derived from the support and counsel of Sir Charles Russell, whose masterly argument will ever remain a monument of learning and forensic skill. His conduct of the case of the Government of the Queen left nothing to be desired.

The Attorney-General was ably supported by Sir Richard Webster. I may be permitted to indorse the sentiments so happily expressed by the President of the Tribunal at the close of Sir Richard's argument.

"Sir Richard," said Baron de Courcel, "we thank you for the very substantial and useful observations with which you have supplemented the argument of Sir Charles Russell. We knew how much we were indebted to you already for the elaborate study you have made of this case on behalf of Great Britain, and I, for one, have very much admired the unrestricted and friendly co-operation of yesterday's Attorney-General with to-day's Attorney-General. The country is indeed to be envied where party spirit admits of such brotherly association when the national interest is at stake."

Mr. Christopher Robinson assisted in a signal manner, and fully justified his special nomination by the Government of Canada.

Although I propose in this despatch to confine my observations chiefly to those who attended the Arbitration proceedings at Paris, I wish to refer to the late Honourable W. H. Cross, one of the Counsel originally employed on behalf of Her Majesty's Government. His untimely death is deeply to be deplored. Mr. Cross's ability I fully recognized and appreciated, while his genial disposition had endeared him to all his associates.

I have already alluded to the services of Mr. M. H. Box, and I have only to add that those of Mr. F. T. Piggott were equally valuable.

Sir George Baden-Powell and Dr. G. M. Dawson have been constantly consulted, and their advice has been of great value.

Dr. Dawson attended at Paris. It gives me pleasure to bear witness to his indefatigable industry, which was coupled with a complete mastery of the subject of seal life.

Mr. Maxwell, as Secretary of my Staff, made himself exceedingly useful in every way, and I gratefully acknowledge his kindly and ready assistance. His intimate acquaintance with the French language has been most convenient to me, as well as to the public advantage.

Mr. Charles Russell's services have also been of great benefit. In addition to the important work which came regularly under his attention as solicitor, he, with the assistance of Mr. Piggott, undertook the laborious task of revising and superintending the printing of the stenographic notes of the proceedings before the Tribunal.

Mr. Anderson, of the Colonial Office, who, as your Lordship is aware, was conversant with all the facts of this case, rendered material aid.

I have also to commend the diligence and zeal evinced by Mr. Ashley

\* For copy of the decision inclosed in this despatch see "United States No. 10 (1893)."

Froude, C.M.G., Mr. Joseph Pope, and Mr. James Macoun, and to express my appreciation of the readiness with which these gentlemen have at all times striven to facilitate the business of the Agency. In fact, the members of the General Staff have vied with one another in their endeavour to promote the common cause.

The services rendered by Mr. G. F. Fairholme, of the Foreign Office, in the matter of the Russian translations, call for special mention. I may also refer to the excellent work done by him, as well as by Mr. H. Farnall and Mr. E. A. Crowe, as French translators generally, which has evoked from the President of the Tribunal an expression of admiration.

In thus acknowledging the valuable aid which I have received from those more immediately connected with the Arbitration at Paris, I am not unmindful of the fact that there are others, whether serving under your Lordship or the Secretary of State for the Colonies, or in the employ of the Canadian Government, whose assistance in the laborious work of the preparation of this case merits recognition.

As Minister of Marine and Fisheries of Canada, it will be my pleasure and my duty to represent to his Excellency the Governor-General with more particularity my sense of the important services which have been rendered by officers of the Canadian Civil Service, whose names do not appear in this despatch. In the meantime, I content myself with this general allusion.

I cannot, however, close these observations without expressing to your Lordship my warm appreciation of the advantage which I have derived from association with Sir Thomas Sanderson, of whose knowledge and experience I have fully availed myself at every stage of the case. Indeed, I find a difficulty adequately to express my gratitude to him for the readiness he has ever shown to assist me in the performance of those honourable duties with which I have been charged.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 100.

*Mr. Tupper to the Earl of Rosebery.*—(Received August 16.)

My Lord, *Paris, August 15, 1893.*  
I HAVE the honour to report that the decision of the Tribunal having been delivered to me, I propose to leave Paris this day, and to sail for Canada on the 17th instant.

I have asked Mr. Maxwell to remain here for a few days to wind up the business of this Agency.

I have, &c.  
(Signed) CHARLES H. TUPPER.

## No. 101.

*The Earl of Rosebery to the Marquis of Dufferin.\**

My Lord, *Foreign Office, August 29, 1893.*  
THE Arbitrators appointed under the Treaty of Washington of the 29th February, 1892, for the examination of the various questions that had arisen in connection with the fur-seal fishing industry in parts of Behring Sea and the North Pacific Ocean, have pronounced and published their Award on the 15th instant.

I have now received the Queen's commands to request that your Excellency will convey to the President of the French Republic Her Majesty's acknowledgments of the great ability and unremitting attention displayed during the prolonged proceedings of the Tribunal by Baron de Courcel, the eminent Statesman nominated by the President as one of the Arbitrators on the Tribunal.

The examination of the voluminous documents laid before them, and the difficulties surrounding the questions on which they were occupied, have imposed on each one of the Arbitrators a considerable sacrifice of time and personal convenience and a large amount of personal labour.

\* Similar despatches were addressed to Her Majesty's Representatives at Rome, Stockholm, and Washington.

I request that you will submit to the President of the French Republic the hope of Her Majesty that her acknowledgements may be conveyed to Baron de Courcel for the valuable services which he has rendered on this occasion.

I am, &c.  
(Signed) ROSEBERY.

## No. 102.

*The Earl of Rosebery to the Marquis of Dufferin.*

My Lord,

*Foreign Office, August 29, 1893.*

IN addition to the obligations conferred on this country by the President of the French Republic in the selection of an eminent Statesman to act as one of the Arbitrators on the Behring Sea Seal Fisheries question, the President and the Government of the French Republic have shown a marked courtesy and magnificent hospitality to the members of the Tribunal and to the British and American gentlemen who have been engaged in the proceedings before it.

I request that you will take a fitting opportunity of conveying to the President and to M. Develle the best acknowledgments of Her Majesty's Government for the attention and kindness shown to the British members of the Court of Arbitration during the prolonged period over which its sittings have extended. The reception accorded to these gentlemen has been mentioned by them with the warmest expressions of gratitude, and has been a cause of sincere gratification to the Queen and her Government as an evidence of cordiality, no less than of the generosity with which the French nation always treats its guests.

I am, &c.  
(Signed) ROSEBERY.

## No. 103.

*The Earl of Rosebery to Mr. Tupper.*

Sir,

*Foreign Office, August 29, 1893.*

I HAVE to acknowledge the receipt of your despatch of the 15th instant, inclosing the Award delivered on that day by the Behring Sea Tribunal of Arbitration, and of your further despatch of the same date, in which you call attention to the services of the several gentlemen associated with you in the proceedings before the Tribunal.

I have received the Queen's commands to signify to you, and to those who have worked with you, Her Majesty's gracious approval of the zeal and ability with which you have maintained the interests of this country and of Her Majesty's subjects in the important matters which were submitted for decision.

I have conveyed to the Attorney-General and to Sir Richard Webster the cordial acknowledgments of Her Majesty's Government for the manner in which they have presented the Case of Her Majesty's Government before the Tribunal, and I must request you to offer the same acknowledgments on their behalf to Mr. C. Robinson, Q.C., of the Canadian Bar.

I note with entire sympathy and agreement the tribute which you pay to the ability of the late Mr. W. H. Cross, whose premature death was a subject of deep regret.

I have to request that you will assure Dr. Dawson of the great value attached by Her Majesty's Government to the assistance which he has rendered throughout the Arbitration, and their appreciation of the learning, ability, and patient industry which he has shown in collecting and placing at the disposal of those charged with the conduct of the British Case the information required for the elucidation of the various questions of geography and natural history involved in the argument.

I shall offer a similar acknowledgment to Sir G. Baden-Powell.

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It has afforded me sincere gratification to read the testimony you bear to the efficient aid received by you from the other gentlemen employed at Paris, and to the assistance which has been rendered to you by various members of this Department.

I am, &c.  
(Signed) ROSEBERRY.

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## No. 104.

*The Earl of Rosebery to Lord Hannen.\**

My Lord,

*Foreign Office, August 29, 1893.*

THE labours of the Tribunal of Arbitration appointed under the Treaty of Washington of the 29th February, 1892, having been now closed, and their Award delivered on the 15th instant, I have received the Queen's commands to convey to you Her Majesty's acknowledgments for your services as one of the Arbitrators, and her appreciation of the zeal and ability you have shown in that office.

Her Majesty recognizes that your duties, involving as they have done the closest attention during a prolonged period of time, were undertaken at considerable personal inconvenience and from a strong sense of public duty.

I have pleasure in asking you to accept also the sincere thanks of Her Majesty's Government for the valuable services you have rendered to the country on this important occasion.

I am, &c.  
(Signed) ROSEBERRY.

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## No. 105.

*The Earl of Rosebery to Sir C. Russell.†*

Sir,

*Foreign Office, August 29, 1893.*

THE proceedings of the Behring Sea Arbitration having now been concluded, and the Award having been delivered by the Arbitrators, I have much pleasure in offering to you the sincere thanks of Her Majesty's Government for the eminent services you have rendered in connection with the Arbitration, and in assuring you how greatly they appreciate the patience and industry shown in the preparation of the pleadings, and the signal ability with which the British Case has been argued by you as Her Majesty's Counsel before the Tribunal.

I am, &c.  
(Signed) ROSEBERRY.

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## No. 106.

*The Earl of Rosebery to Sir G. Baden-Powell.*

Sir,

*Foreign Office, August 29, 1893.*

THE proceedings of the Behring Sea Arbitration having now been concluded, and the Award having been delivered, I have much pleasure in offering to you the best thanks of Her Majesty's Government for the valuable assistance which you have rendered during the preparation of the pleadings, by placing at the disposal of those charged with the conduct of the British Case your exceptional and extensive knowledge of the habits of the fur-seal, and of the various questions connected with the seal fishery.

Her Majesty's Government are fully sensible of the zeal and public spirit which you have shown in the discharge of this task, which was voluntarily undertaken by you, and of the amount of labour which it has entailed.

I am, &c.  
(Signed) ROSEBERRY.

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\* Also to Sir J. Thompson.

† Also to Sir R. Webster.

## No. 107.

*Lord Hannen to the Earl of Rosebery.—(Received September 8.)*

My Lord,

19, Lancaster Gate, London, September 6, 1893.

I AM honoured by your Lordship's letter of the 29th ultimo, in which you inform me that you have received the Queen's commands to convey to me Her Majesty's acknowledgments for my services as one of the Arbitrators under the Treaty of the 29th February, 1892. I desire to express my respectful gratitude for the gracious terms of approval with which those acknowledgments are accompanied. They will remain for me a source of legitimate pride to the end of my life. It is also a subject of great satisfaction to me that my services have been deemed worthy of the thanks of Her Majesty's Government. I trust that the labours I have been engaged in will prove beneficial, not only to this country on the present occasion, but to the interests of peace throughout the world.

I have, &c.  
(Signed) HANNEN.

## No. 108.

*Sir C. Russell to the Earl of Rosebery.—(Received September 8.)*

My Lord,

Lincoln's Inn, London, September 8, 1893.

I BEG to acknowledge your Lordship's favour of the 28th ultimo, in which you are good enough to convey to me the thanks of Her Majesty's Government for my services in the Behring Sea Arbitration. I thank your Lordship; but I should like to be permitted to say how much the Counsel representing the interests of Great Britain were indebted to the gentlemen connected with the Foreign Office for most valuable help in their labours. I refer, I need scarcely say, in an especial manner to Sir Thomas Sanderson, whose wise counsel and criticism in the preparation of the Case, Counter-Case, and Argument we valued highly; but I refer also to the unremitting help and attention of Mr. R. P. Maxwell and of Mr. Ashley Froude.

I have, &c.  
(Signed) C. RUSSELL.

