

included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 96-AE003." The Rice Millers' Association's ("RMA") original Certificate was issued on August 16, 1996 (61 FR 43733, August 26, 1996). A summary of the application for an amendment is as follows.

Summary of the Application

Applicant: Rice Millers' Association, 4301 North Fairfax Drive, Suite 305, Arlington, Virginia 22203-1616.

Contact: Cynthia H. Tough, Vice President of International Affairs for the USA Rice Federation, Telephone: (703) 351-8161.

Application No.: 96-AE003.

Date Deemed Submitted: March 31, 1997.

Proposed Amendment: RMA seeks to amend its Certificate to expand the eligibility for membership in the RMA Certificate to include both mill members and associate members. Associate members include a broad range of companies with an interest in the rice industry, including bag manufacturers, brokers, equipment manufacturers/suppliers, exporters, food processing companies, freight forwarders, grain elevators, grain merchandisers, industry associations, inspection companies, management companies, port authorities, and stevedoring/shipping companies. Any proprietor, partnership, or corporation, whether or not engaged in rice milling in the United States, which is not a member of RMA and which wishes to participate in the activities covered by the Certificate, may join the ETCR upon meeting the qualifications for membership in RMA.

Therefore, the definition of "Member" in RMA's Certificate would be amended to read as follows: "Member" means a member of the Rice Millers' Association which has been certified as a "Member" within the meaning of Section 325.2(l)

of the Regulations and is listed in Attachment I. Members must sign the Operating Agreement of the Rice Millers' Association Export Trade Certificate of Review in order to participate in the certified activities. Any RMA member, including any mill member or associate member, which is not a Member listed in Attachment I may join RMA's Export Trade Certificate of Review by requesting that RMA file for an amended certificate and by signing the Operating Agreement. Any proprietor, partnership, or corporation either engaged in rice milling in the United States or not engaged in rice milling in the United States, which is not a member of RMA and which wishes to participate in the activities covered by this certificate, may join RMA's membership upon meeting the qualifications for membership and then request that RMA file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to RMA, a copy of which RMA will promptly transmit to the Secretary of Commerce and the Attorney General."

Dated: April 9, 1997.

W. Dawn Busby,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 97-9617 Filed 4-14-97; 8:45 am]

BILLING CODE 3510-DR-1

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040997A]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Notice of receipt of an experimental fishing permit.

SUMMARY: This notice announces receipt of an application from John Gauvin, Groundfish Forum, Inc., for an Experimental Fishing Permit (EFP). If awarded, this permit would be used to systematically test the effects of a different trawl net design on species and size composition of catch in trawls targeting flatfish. It is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

ADDRESSES: Copies of the EFP application are available from Steven

Pennoyer, Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. NMFS received a request from the applicant on March 14, 1997, that, if approved, would be used to systematically test the effects of a different trawl net design on species and size composition of catch in trawls targeting flatfish. Information from this experiment could be used by the fishing industry to reduce catches of non-target species (e.g., pollock and cod) while fishing for flatfish, thereby reducing waste and discard of those species.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the North Pacific Fishery Management Council (Council) by forwarding the application to the Council. The Council will consider the EFP application during its April 15-19, 1997, meeting and has invited the applicant to appear in support of the application if he so desires.

A copy of the application is available for review from the NMFS Regional Administrator (see ADDRESSES).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-9630 Filed 4-14-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033197C]

Secretary's Report to Congress on the Pribilof Islands as Required Under Public Law 104-91

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of submission of report to Congress.

SUMMARY: Public Law 104-91, section 3(c) requires the Secretary of Commerce to prepare and submit a report on necessary actions to resolve Federal

responsibility on the Pribilof Islands. The Report was prepared by the National Oceanic and Atmospheric Administration and was signed by the Secretary of Commerce on March 17, 1997. This Notice is intended to publish the main text of the Report and provide information regarding its availability.

FOR FURTHER INFORMATION CONTACT: Nancy Briscoe in the Office of General Counsel, National Oceanic and Atmospheric Administration, 301-713-1393.

SUPPLEMENTARY INFORMATION: On January 6, 1996, President Clinton signed Public Law 104-91. Under Section 3 of the law the Secretary of Commerce was directed to undertake certain activities with regard to the Pribilof Islands, Alaska. Section 3(c) directed the Secretary to prepare a report for Congress which proposed necessary actions by the Secretary and Congress to resolve all federal responsibilities on the Islands.

The Report to Congress on the Pribilof Islands was signed by the Secretary of Commerce on March 17, 1997. The text of the Secretary's Report is attached to this Notice. Full copies of the Exhibits to the Report consist of thousands of pages of documents submitted under the Report process by local entities and residents. Due to the volume of the Exhibits, it was not possible to publish them with this Notice. Full copies of all Exhibits are available at the City Office on St. Paul (907-546-2331), at the City Office on St. George (907-859-2263), at the Regional Archives facility of the National Archives in Anchorage, 645 West 3rd Avenue, Anchorage AK, 99501 (907-463-2408), and at the Office of General Counsel, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 #301-713-1393.

Secretary's Report on the Pribilof Islands as Required by Public Law 104-91

Prepared By: The National Oceanic and Atmospheric Administration for the Department of Commerce

Final, March 17, 1997.

I. Introduction

The Pribilof Islands of St. Paul and St. George are islands of volcanic origin that lie 800 miles west-south west of Anchorage, Alaska in the Bering Sea. Each island has an approximate land area of 44 square miles generally contained by precipitous cliffs. St. Paul, the larger of the two islands, has a current population of approximately 780 people. The population of St. George is approximately 120 people.

The Pribilof Islands were discovered by Russian navigators in 1786 as a result

of their search for the breeding grounds of the North Pacific Fur Seal ("the fur seal"). The next one hundred years were marked by intense harvest of the fur seals to exploit Chinese, Russian and European markets. To harvest the commercially valuable species on the Islands, the Russians enslaved and relocated Aleuts from the southeast who were proficient at killing the seals.

When the United States purchased the Territory of Alaska from the Russians in 1867, responsibility for the welfare of the Pribilofian Aleuts fell to the Federal Government. Since 1867, the United States Government has worked to promote the autonomy and self-governance of the Pribilofian people, and thereby fulfill its obligations to them. Following decades of progressive change in the Federal Government's administration of the Islands, Congress in 1983 enacted legislation to terminate Federal management of the Pribilof Islands.

On January 6, 1996, President Clinton signed Public Law 104-91 ("P.L. 104-91"). Section 3(c) of the law, entitled "Resolution of Federal Responsibilities," requires the Secretary of Commerce to submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives

* * * a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

- (a) Title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 *et seq.*);
- (b) The land conveyance entitlement of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*);
- (c) the provisions of this section; and
- (d) any other matters which the Secretary deems appropriate."

This is the Report of the Secretary of Commerce ("Secretary") as required under P.L.-104-91.

This Report examines the historical and contemporary relationship of the United States government to the Pribilofian people to afford the context for evaluating current circumstances and Federal responsibilities. The Report is organized as follows: Section II examines historical Federal involvement; Section III describes the current economies on the Islands of St. George and St. Paul and the relationship of the Pribilofian people to the Federal Government; Section IV describes and categorizes the claims asserted against the United States by local entities and residents and, where applicable, provides recommendations for

additional Federal action; Section V sets forth the position of the Department of Commerce ("the Department") and its recommendations for resolution of Federal responsibility on the Pribilof Islands.

II. A History of Federal Involvement on the Pribilof Islands

This Report cannot fully chronicle the complex history of the Pribilof Islands.¹ It is the aim of this Section to provide an historical overview of Federal involvement with the Pribilof Islands as they have evolved into independent, self-sustaining American communities.

A. Origins

The U.S. Government first became directly involved with the Pribilof Islands and the Pribilofian people in 1867 when the islands were acquired with the Territory of Alaska. Immediately thereafter, in 1868, the Islands were declared to be a special Federal reserve for purposes of management and preservation of fur seals and other fur bearing species.

In the first 40 years of Federal ownership of the Pribilof Islands, the lives of the Pribilofians were directed by the companies harvesting the seals under contract with the U.S. Government. During this period, the Pribilofian people derived their livelihood through employment with the fur sealing companies and their lives were subject to the dictates of those companies.

Largely unregulated, the effects of the private, commercial harvest were devastating on the fur seal population. By 1890, the effects of over-harvest and pelagic sealing² brought the population close to extinction. At the close of the last private contract in 1909, it was estimated that only 300,000 fur seals remained worldwide.

As a result of the decline in the fur seal population, Federal attention paid to the Islands increased. Although the Government's focus remained primarily on management of the fur seal harvest, the Federal response ensured greater engagement by the United States with the lives of the Pribilofian people.

¹ *A Century of Servitude* (Jones, Dorothy Knee, University Press of America, Library of Congress card no. 80-1407—currently out of print) and *Slaves of the Harvest*, published by the Pribilof Island School District—no additional citation available) have been recommended by the Pribilofian people as guides providing a full accounting of the Islands from Aleutian discovery to the people's recent struggle with autonomy.

² Pelagic sealing is the practice of killing seals at sea. It is less selective and less productive than taking seals on land where surplus adult males can be identified and females and pups may be protected.

Pelagic sealing and mass, commercial-contract sealing in the United States was curbed in 1910 when the Sixty-First Congress passed "An Act to protect the seal fisheries of Alaska, and for other purposes" ("the 1910 Act").³ The effect of the 1910 Act was to abolish the lease/permit system of seal harvest open to the general trading public and to replace it with a broader government authority vested in the Secretary of Commerce and Labor to manage and protect the seal population. To promote conservation of the fur seal, the 1910 Act prohibited the killing of seals by anyone other than an officer, agent or employee of the Federal Government.

The 1910 Act further directed that whenever seals were killed or sealskins taken the Pribilovians were to be employed and were to receive fair compensation for their labor. To administer the program, the 1910 Act specified that the Secretary had:

* * * the authority to furnish food, shelter, fuel, clothing, and other necessities of life to the native inhabitants of the Pribilof Islands and to provide for their comfort, maintenance, education and protection.

Notwithstanding relatively minor amendments made in 1912 to give effect to the Fur Seal Treaty of July 7, 1911 between the United States, Great Britain, Japan and Russia, the 1910 Act remained in force until repealed by the Fur Seal Act of February 26, 1944 ("the 1944 Act").⁴ The 1944 Act served primarily to vest control over the fur seals, salmon, and other fisheries in Alaska in the Department of the Interior ("DOI"), which administered the program through the Bureau of Commercial Fisheries ("BCF"). It came on the heels of Japan's abrogation of the 1911 treaty on October 23, 1941 and completion of a provisional fur seal conservation agreement between Canada and the United States which followed in 1942.

War between the United States and Japan was declared in 1941 and in 1942, the Japanese launched a surprise attack on Dutch Harbor, Unalaska. The attack on the Aleutian Chain dramatically exposed the United States' vulnerability in the Bering Sea and thrust the Pribilof Islands directly into the war zone. Because of the threat of attack, the Pribilovians were evacuated from their homes and interned at Funtner Bay on Admiralty Island, Alaska. Their internment lasted two years and they returned to the Pribilofs at the close of the war in May, 1944.

B. The Late 1940s: The Post-War Era

Internment at Funtner Bay led to familiarity with other Alaskan natives and in 1948 the Pribilovians joined the Alaska Native Brotherhood ("ANB"). As a result of the efforts of the ANB on behalf of the Pribilof Aleuts, the Secretary of the Interior in 1949 designated a group to study living conditions of native communities around the Bering Sea.⁵

The DOI study found that living standards on the Pribilof Islands were on par with the highest income groups of any native people in Alaska and that living conditions there were exemplary. The survey group recognized, however, that the role of the Federal Government as guardian of their welfare limited the Pribilovian's sense of liberty and was inconsistent with the status of wage earning natives elsewhere in the Alaska Territory. To temper this disparity, recommendations were made to restructure certain operational functions on the Islands. As a result of the recommendations, a job classification and cash compensation wage plan was instituted. The plan included annual and sick leave, retirement benefits and disability insurance. Food, housing, clothing, health, education and recreation costs continued to be paid by the government.

Although Pribilovian monetary compensation under the new system remained below that of their neighbors, a relatively high standard of living was ensured by the offsets provided through the in-kind compensation they continued to receive. As demonstrated by the study, the result was that during this period the Pribilovians enjoyed greater health, recreational, educational and medical benefits than any other Alaskan native group.

The survey group also recommended that the St. Paul community receive a charter, constitution and bylaws in compliance with the 1934 Indian Reorganization Act ("IRA").⁶ The St. Paul charter was established in 1950 and with it the Pribilovian communities of St. Paul and St. George found a voice in Federal and territorial government decision-making. They were also given responsibility for handling all economic affairs of the community and for safeguarding the peace, safety and morals of the village.

In 1951, the St. Paul IRA council exercised its new rights by filing a claim

for native land rights and compensation for past injustices. The land rights were ultimately resolved in 1971 under the Alaska Native Claims Settlement Act ("ANCSA"), discussed below. The claim for past injustices was ultimately brought under the Fair and Honorable Dealings Act, and was settled in 1976.⁷

Additional changes that marked the post-war era included the establishment of a voting precinct on the Islands and the agreement of the Territory of Alaska's Department of Health and Education to provide technical guidance to the Federal Government on medical and educational services. In 1948, a fourth class post office was established on St. Paul and regular mail service connecting St. Paul to the outside world was instituted by Reeve Aleutian Airways. In 1949 the first tourists were welcomed to the Islands and regular commercial flights were instituted. These flights enabled the Pribilovians to travel beyond the confines of their Islands. In the early 50's, large electrical generators were installed which were capable of providing electricity beyond the standard 11:00 p.m. curfew. In short order, modern electrical appliances became household fixtures on the Pribilof Islands.

The introduction of modern conveniences, wages and buying power and the possibility of travel to the outside world, together with the support services still provided by the government, brought them to a socio-economic level on par with, if not surpassing, many other communities in Alaska and the United States (See *A Century of Servitude* for a good description of this period). In light of these changes, DOI began to re-evaluate the role of the Pribilof Island program.

C. The 1950s: Federal Attrition and the Beginning of Autonomy

From 1942 until 1957, the Pribilof fur seals were protected by the interim treaty executed in 1942. In 1957, the Interim North Pacific Fur Seal Convention between Canada, Japan, the Union of Soviet Republics, and the United States was enacted. It established a Fur Seal Commission comprised of representatives of the four governments to coordinate research and management of the fur seal resource.

As the United States' international policy regarding fur seals on the

⁷ On August 10, 1988, the President signed legislation authorizing a \$21.4 million trust fund for residents of the Aleutian and Pribilof Islands. The legislation was intended as compensation for Aleuts who were evacuated from their homes during World War II. The compensation is part of a larger reparations of \$1.3 billion paid Japanese-Americans interned during the War.

⁵ As cited in *Slaves, Ibid.* at 143.

⁶ The IRA was developed to help native Americans retain their identity through the establishment of tribal self-government, the preservation of religious and cultural freedom, and the prevention of economic exploitation.

³ See Act of April 21, 1910, 36 Stat. 326.

⁴ See 16 U.S.C. §§ 631a-631q, 58 Stat. 104.

Pribilofs continued to evolve toward conservation, BCF realized that their role and presence on the Islands would diminish. In 1959, BCF announced that the Pribilof fur seal harvest would, over time, become a seasonal operation. BCF recognized that this change in policy would significantly affect the Pribilovian people. They acknowledged that the local people would need job training and, given the remoteness of the Pribilofs, recommended off-island relocation.

Preparing for the radical changes that would result from a reduced Federal harvest, BCF arranged for general skills training in Anchorage through the Bureau of Indian Affairs (BIA). To encourage participation, individuals were paid to attend the training. Despite this incentive, enrollment was low.

While the BCF training initiative was largely ignored, their off-island relocation suggestions were met with intense and vociferous opposition. As a result, and recognizing the relative inaccessibility and geographic inhospitability of St. George, BCF revised its relocation plan to accommodate habitation on St. Paul only. It was the opinion of BCF that with the decline in the Federal seal harvest program, particularly on St. George, the number of houses ultimately needed for employees should be held in check. In the years that ensued, the Bureau encouraged the voluntary relocation of St. George residents to St. Paul by providing new homes on St. Paul to St. George residents who moved there. In further support of this policy, new home building on St. George ceased, and all vacant homes there were destroyed.

BCF dropped its outward relocation efforts after disapproval voiced during Committee on Commerce hearings conducted in 1965. The belief that the St. George Pribilovians should be relocated, however, would survive, and would be reintroduced in the next amendments to the Fur Seal Act.

D. The 1960s: Self-Autonomy

(1) The Federal Wage System

In 1960, BCF appointed Howard Baltzo as the new director of the Pribilof Island Program. Mr. Baltzo's primary mandate was to improve the overall living conditions of the Pribilof people in light of impending program changes. The changes Mr. Baltzo made to the program are set forth in his May 1963 report entitled *Program for Administration of the Pribilof Island Federal Reservation Embracing Management of the Fur Seal Resource and Development of the Resident Aleut*

Inhabitants. As result of Mr. Baltzo's work, the Federal Civil Service wage scale was introduced in 1962 for all people on the Islands working for the Federal Government. With this change, Pribilovian wages were brought into parity with the rest of the Federal workforce. In turn, in kind compensation such as free rent and food were substantially reduced, being provided only to those with insufficient wages to cover necessities. The Federal Government did, however, continue to maintain and administer the stores, laundries, houses, streets, and all public buildings and to fund educational and medical services for all Pribilovians on both Islands. To preserve Federal jobs, Pribilovian residents continued to be employed in these services.

While in many ways a boon, the Federal wage-scale system brought with it the realities of unemployment. Based on civil service job definitions, many people were newly classified as temporary or part-time employees. Still others lost their jobs. Although they now had autonomy and full wages, without the security of in-kind benefits, many people were caught in the unfortunate position of not being able to pay their bills. Individual indebtedness to the Federal Government for rent, food, clothing and fuel began to mount.⁸ Some Islanders left to seek work on mainland Alaska. Most, however, stayed.

(2) The Fur Seal Act Amendments of 1966

In 1965, Senate hearings were held regarding the role of the Federal Government on the Pribilof Islands ("the Bartlett Hearings"). At these hearings, the Pribilovians testified that they would feel more secure owning their own homes and managing the affairs of their villages as self-governed municipalities.

The product of the Bartlett Hearings was the Fur Seal Act Amendment of 1966 ("the 1966 Act").⁹ Amendments to Title I of the 1966 Act incorporated changes that ensured implementation of the Interim Convention on the Conservation of North Pacific Fur Seals signed February 9, 1957, and amended by protocol dated October 8, 1963. Amendments to Title II of the 1966 Act were designed to foster self-sufficiency and self-governance among the native inhabitants of the Pribilof Islands.

Recognizing the significant positive changes brought about on the Islands

⁸ Many of these debts were ultimately forgiven. In 1995, outstanding municipal debts for fuel and services were settled through an agreement for in-kind services.

⁹ P.L. 89-702, 80 Stat. 1091.

since 1950, the Committee on Merchant Marine and Fisheries reported in House Report No. 2154:

During the past 16 years progress has been made in placing the resident Aleuts on the same basis as other citizens and other Federal employees. They are now compensated on a wage rate basis comparable to that in other Alaska communities. They are charged reasonable rates for housing, household supplies, and community services provided by the Government. A locally elected community council manages certain affairs of the community, including the implementation of local ordinances. The St. Paul Island Community Council operates a cooperative canteen-store facility, and members of the Aleut community serve as deputy magistrate, postmaster, and local law-enforcement officers. A small number of home-operated restaurants and theater enterprises also have developed.

The Department of Interior and your committee wants to encourage the development of the Aleut community still further, and significantly reduce Federal expenditures for the fur seal industry operation. Accordingly, the Department now plans three gradual changes in its program for administration of the islands. These involve: first, the transfer to the Aleut community on St. Paul of greater responsibility for the administration and management of the village coupled with increased opportunities for development of new economic activity within the expanded community; second, the consolidation of the St. George Island community with that on St. Paul Island on a voluntary basis -as housing and other facilities on St. Paul increase; and third, transition from year-round to seasonal fur seal industry operations by the Bureau of Commercial Fisheries.¹⁰

To accomplish these objectives and give effect to the desires of the Pribilovian people, section 206 of the 1966 Act authorized the Secretary of the Interior to set apart land on St. Paul Island for the establishment of a townsite. The townsite was to be surveyed into lots, blocks, streets and alleys and the Secretary was to issue a patent for the townsite to a trustee appointed by him. It was the duty of the trustee to convey to all individual natives of both islands title to improved or unimproved surveyed lots or tracts of land within the townsite. These tracts included plots with government homes on them.

Conveyance was contingent on payment for the property to the Secretary. Before issuance of the patent

¹⁰ House Report, *Merchant Marine and Fisheries Commission*, House Report No. 2154, Cong. News, Sept. 29, 1966, p. 3630.

and any conveyance, the Secretary was required to make a determination that a self-governing community on St. Paul was in existence, or was likely to be imminently and successfully established. Adhering to their policy of consolidation of the Pribilovians on St. Paul Island, no townsite set-aside was authorized for St. George.

Proceeds from the sale of the lands, together with other available funds such as tax revenues, were to be given to the established local governing body on St. Paul to enable it to provide needed municipal services. In addition, section 206 provided for a sliding-scale 5 year payment to the community to fund municipal services. The first payment was in the sum of \$50,000.00. At the close of each succeeding 4 fiscal years, the payments would be \$40,000.00, \$30,000.00, \$20,000.00, and \$10,000.00, respectively. Finally, all unsold property remaining after 5 years and no longer required by the Government was to be conveyed to the incorporated municipality, together with all surveyed streets and alleys.

In 1967, just one year after passage of the 1966 Act, a team of researchers from the University of Alaska came to the islands to study St. Paul's economy in light of their emerging self-governance. Based upon available information, the researchers estimated that the average household income on St. Paul was approximately \$9,830, while the expenditure for living expenses was \$1000 less. They concluded that there was an income and savings base with potential to provide economic self-sufficiency through responsible local leadership.

The report concluded:

The future of St. Paul rests with the people of the community regardless of what determinations are made by others or what development plans may be prepared. It will be up to the local people to decide whether or not to incorporate as a municipality, and without a positive vote, the town-site provisions of the Fur Seal Act will not apply. Likewise, the carrying out of the development programs, the broadening of the economic base, and other potentials that exist are all dependant on support by the local population * * * St. Paul has the potential for emerging as a vital community. In the long run, however, the future of the Pribilofs rests to a large degree on the attitudes of the young people. How they see their future will determine the future of St. Paul.¹¹

Over the ensuing five years, the community failed to incorporate as a municipality. As a result, the Secretary

was unable to make the requisite determination of self-governance to permit the land transfers and the realization of the people's desire for home ownership was delayed.

Despite this delay, a number of positive changes were brought to bear on the Islands as a result of the 1966 Act. Effective in 1966, responsibility for some community services, including police and fire protection, were transferred to the local council. The first public tavern opened its doors on St. Paul the same year, and the community took over operation of the hotel that summer. Soon, the community equipped and was operating a maintenance and repair shop and a recreation hall. St. Paul established two movie houses, four refreshment stands, and a barber shop. In 1967, the U.S. Coast Guard Loran Station and the Weather Bureau began to train local residents for jobs. And for the first time, Pribilovian residents enjoyed private car ownership as vehicles were sold by departing Federal employees and construction contractors.

The 1966 Act also served to enhance the retirement benefits of the Pribilovian people. Under a 1951 ruling, the Civil Service Commission had advised the Secretary of the Interior that the resident Aleuts performing services for the Government were considered Federal employees only as of 1950 when they received compensation in the form of wages. Under that ruling, elder Aleuts of retirement age would not receive credit service before 1950. Section 208 of the 1966 Act changed the administrative ruling of the Civil Service Commission by extending retirement credit for service prior to 1950. It also eliminated deposit requirements by those individuals for the accrual of benefits.

E. The 1970s: Self Governance

Effective October 30, 1970, "Reorganization Plan No. 4 of 1970" (35 F.R. 15627; 84 Stat. 2090) transferred the functions of BCF to the Secretary of Commerce. As a result, the responsibilities of the Federal Government for continued administration of the Pribilof Island Program were assumed by the National Marine Fisheries Service ("NMFS") of the newly organized National Oceanic and Atmospheric Administration ("NOAA").

In 1971, a resolution to accept a charter to incorporate St. Paul was finally passed. On June 29, 1971, the village of St. Paul became a fourth class Alaskan city and assumed all responsibility to provide public services to its residents. Meanwhile, the voices of combined Alaskan native groups had

succeeded in bringing about reforms regarding the status of land ownership throughout the State. On December 18, 1971, Congress moved to resolve all Alaskan aboriginal land claims by enacting the Alaska Native Claims Settlement Act ("ANCSA").¹²

In 1973, the Fur Seal Commission adopted the United States' recommendation to establish a major research program for fur seals by setting aside St. George Island as a research reserve. The goal of the research was to compare population dynamics and behavior between the harvested population on St. Paul and an unharvested population on St. George. As a result, the commercial harvest of seals ceased on St. George after 1972. Economically, the effect was to further diminish Federal employment on St. George. The decision was within the Secretary's authority and lent further support to the administration's declared policy of relocating the St. George islanders because of the relative inability of that remote island to support any kind of economy.

ANCSA required the establishment of Regional and Village native corporations through which the claims of all entitled natives, including the Pribilovians, would be settled. The settlement included the distribution of 40 million acres of land throughout the State and the payment of \$962,500,000.00 over an eleven-year period. Transfer of title for all ANCSA conveyances was made through the Department of the Interior, Bureau of Land Management ("BLM").

To comply with the village corporation provisions of ANCSA, the people of St. Paul established the Tanadgusix Corporation ("TDX") while the people of St. George established the Tanaq Corporation. TDX received the right to select 138,240 acres of land in the Aleutians, Alaska Peninsula, and St. Paul. Ultimately, 113,000 acres conveyed to TDX. Tanaq received the right to select 115,200 acres. 106,000 acres were ultimately conveyed. A full discussion of remaining ANCSA land entitlements to be resolved is included in the statement and comments from the Department of Interior at Exhibit A.

Under sections 1610(b), 1611(a) and 1613(a) of the ANCSA, conveyances to the native corporations were to include surface rights to the core township lands where each village was located. ANCSA also directed that subsurface rights be transferred to the regional corporations.¹³ On the Pribilof Islands,

¹¹ Foote, Dan C., V. Fischer, George W. Rogers. *St. Paul Community Study*, Institute of Social, Economic and Government Research, University of Alaska, Fairbanks, Alaska, 1968, p. 72, as cited in *Slaves, ibid.* At 159.

¹² 43 U.S.C. 1601, *et seq.* 85 Stat. 688, Pub.L. 92-203.

¹³ The regional corporation for both villages is the Aleut Corporation, currently ranked as the 32nd largest revenue generator in the State.

these provisions created an immediate impasse to the pending transfer of the townsite under the 1966 Act. Under section 206 of the 1966 Act, the Federal Government was obligated to sell tracts of Federal property to Pribilovian individuals as part of the townsite concept. Under ANCSA, the Federal Government was directed to convey interim title to the townships and other lands to the native corporations at no cost. The corporations, in turn, were to transfer title to their shareholders. In both instances, the property to be transferred included government housing.

Faced with a choice of having residents purchase their own land and homes under the 1966 Act or receiving them at no cost under ANCSA, the City of St. Paul voted to take the property and houses through the ANCSA process. Meanwhile, the Department of Interior ruled that the townsite provisions of section 206 of the 1966 Act were preempted by the conveyance provisions of ANCSA.¹⁴

Having resolved ANCSA as the appropriate mechanism for transfer, NMFS released the majority of property on St. George and St. Paul for corporate selection. Under section (3)(e) of ANCSA, the Federal Government was allowed to retain certain property necessary for its public mission. Accordingly, the Federal Government retained the fur seal rookeries and a number of facilities required for the continued administration of the Islands as a special reserve.

Viewing ANCSA as a guarantee for a more prosperous and secure future on the Islands, the people found renewed vigor and support for their desire to remain on St. George and St. Paul. Recognizing the economic limitations of the ANCSA settlement, the Federal Government continued to encourage the voluntary relocation of St. Georgians to St. Paul and the voluntary migration of unemployed Pribilovians to mainland Alaska and the rest of the United States.

The practical effect of ANCSA and its interplay with the 1966 Act was to establish six entities competing for limited resources on two remote islands. While opportunities for economic growth and self-governance were promoted under both acts, the underlying tensions between the entities arising in subsequent disputes over money, facilities, land and land use would create as many problems as it resolved. That tension would prove to

divide the community in enduring fashion, fostering attitudes that would ultimately diminish the bright prospect envisioned by the University of Alaska researchers in 1967. Ultimately, these tensions have affected the ability of the islands to self-govern efficiently and cooperatively.

F. The 1980s: Termination of Federal Responsibility

(1) The Fur Seal Act Amendments of 1983

With the mechanisms for the transfer of land in place and operational under ANCSA, and systems of self-government established commensurate with ANCSA and the 1966 Act, the attention of Congress in the early eighties turned to the promotion of a self-sufficient and self-sustaining economy on the Pribilof Islands.

Despite the programmatic decline of Federal involvement on the Islands, annual funding for the Pribilof program had doubled between 1970 and 1982 to \$6.3 million annually. Approximately 95 per cent of each year's funds were spent in support of social welfare programs. Recognizing the autonomy of the Pribilovian people and faced with tight budget constraints and an increasing national deficit, the Administration's 1983 budget proposed to phase-out Federal support on the Pribilofs over four years at a cost of \$15.8 million.

In a joint effort to derive a better solution than a slow phase-out, the Secretary of Commerce and the Governor of Alaska formed a working group composed of State, Island and Federal representatives. At the first meeting of the work group, State and Island positions advocated that the Federal Government provide annual appropriations for 5 more years at current levels. Recognizing that continued Federal appropriations for social welfare programs would do nothing to create a stable and self-sustaining economy on the Islands, the Administration proposed that one answer was to build upon the Pribilof's location in the midst of the Bering Sea fisheries. To capture this potential, the Secretary suggested the creation of a one-time \$20 million trust to replace the annual appropriations for social welfare and support. Combined with a commitment by the State to construct harbors on both Islands, the trust would give the Pribilovians the resources needed to make the transition to a self-sustaining economy. In addition, the

Secretary proposed the transfer of previously exempt ANCSA properties.¹⁵

During subsequent meetings, the Administration advanced its proposal. The State responded by supporting harbor construction on both Islands. The State also expressed its willingness to assume normal State functions related to transportation and community services, including the provision of schools and educational services and responsibility for airport services. (The State's commitments along these lines are articulated in correspondence dated May 11, 1982 and September 28, 1982 from Governor Hammond to Administrator Calio, and in a Memorandum of Understanding signed by the State dated February 10, 1984. All of these documents are attached at Exhibit 2.)

Over the course of the next several months, the Administration worked with State and Island leaders to develop a Memorandum of Intent ("MOI") describing the concept of a phase-out linked to the Federal trust appropriation, the transfer of Federal property and State assistance for the construction of a harbor on each Island. Under the MOI, all parties acknowledged that the United States desired to terminate Federal program funding on the Pribilofs under Title II of the Fur Seal Act ("FSA") while at the same time maintaining its Treaty obligations under Title I. (A copy of the MOI is attached as Exhibit 3.) To ensure that there was no misunderstanding about the intent of the United States to terminate all Title II Federal responsibility on the Islands, the MOI and a letter carefully explaining the Administration's position were sent to every household on the islands. (A copy of the letter is attached as Exhibit 4).

As a result of negotiations and consultation conducted within the framework of the MOI, the Administration set forth in draft legislation its proposal to provide for the orderly termination of Federal management of the Islands. The bill, H.R. 2840, was based on legislation presented in the House of Representatives on April 28, 1983. It was supported by all of the parties affected by it.

Recognizing the need to bifurcate responsibility for the provision of socio-economic welfare development under Title II of the Act from NOAA's responsibility for protection and conservation of the fur seal under Title

¹⁴ See *Alaska District Council of the Assemblies of God, Inc.*, 8 IBLA 153, 155 (Nov. 22, 1972), and opinion of February 5, 1975 from the Regional Solicitor to the BLM State Director (attached as Exhibit 1).

¹⁵ Under the proposal, responsibility for commercial harvest of the fur seal remained with the Federal government; subsistence harvest, however, would continue to be allowed.

I, then NOAA Deputy Administrator Anthony Calio testified to the Committee on Merchant Marine and Fisheries that:

The principal purpose of amending the Fur Seal Act is to end Federal administration, as you have indicated, in the Pribilof Islands, while continuing to fulfill the obligation of the United States under the Interim Convention on the Conservation of North Pacific Fur Seals * * * I believe that the conceptual basis of these amendments is sound and that the time is ripe for the islands to become independent of Federal control * * * If the funds are appropriated, the Department of Commerce will seek no further funds for the Pribilofs other than those needed to maintain an adequate research and conservation program and to implement the Fur Seal Convention.¹⁶

From the outset, it was the Administration's position that the one-time trust appropriation be used solely to replace social welfare and support services on the Islands and that the success of the proposal was contingent on the commitment by the State for harbor development. This position was shared by all negotiating entities. The ANCSA village corporations and the governing entities of both Islands, together with the Department of Commerce, agreed in the 1983 MOI that:

* * * the State of Alaska's appropriation of the monies necessary to construct boat harbors on St. Paul and St. George Islands and the State's assumption of the responsibilities for airports, roads, and other facilities upon the Islands in accordance with applicable laws and regulations is an indispensable contribution to achieving the goal of self-sufficiency on the Pribilofs.

And, as stated by NOAA during Congressional hearings on the proposed 1983 amendments:

* * * \$20 million was proposed in addition to the \$6.5 million available for fiscal year 1983. We estimate that \$4 million is needed annually to provide for basic community needs on both Islands during the transition to a self-reliant economy. Assuming that the \$20 million is placed in an interest bearing account, the appropriation should last 5-7 years. We thought this would be ample time to develop a new economic base.¹⁷

In response to questions raised during those hearings about whether the \$20 million would be used for the development of the harbor facilities, former NOAA Administrator Anthony Calio stated that:

The purpose of the \$20 million was to try to provide some sort of independence for the

islanders, to provide them with some capital to pay their current expenses and for future development. We would not try to constrain the use of those funds in any way as far as the executive branch is concerned. It is essentially a capital fund for their own use. If they feel that in their best interest that is the way to utilize that money, we would not put a constraint on it. We feel that this should not be done, however.¹⁸

Legal counsel for St. Paul Island concurred with this position. Responding to a question concerning use of the trust money for the harbor during the hearings, Attorney Tony Smith stated:

It is our expectation that the \$20 million will be used in other areas, not for the harbor. We have done a careful analysis of just maintaining the utilities on the island, and on St. Paul it is going to cost, as best we can determine, about \$2.9 million a year during the transition to maintain the sewer, water, light, power, and essentially the airport, the roads, the infrastructure. Our analysis indicates \$4.1 million on both islands * * * [The Bill] does not preclude it [use of the trust for harbor construction], but one of our concerns * * * is that the infrastructure and the harbor both need to proceed down parallel tracks. I am very concerned about an effort to take part of the \$20 million to construct the harbor * * *

St. Paul's intention is to maintain the infrastructure and get the harbor completed, and we have figured out how to do that with a State appropriation and to have those two run parallel. And hopefully 3 to 4 years down the road we will have a viable, robust entrepreneurial endeavor.¹⁹

As pointed out by the State during the hearings, development of the harbors was decidedly in the best interests of the State. As stated by the Deputy Director of the Alaska's Division of Community Planning:

This is an internationally significant fishery, as you know, and studies done by the State Department of Commerce confirm that those two harbors could have the linchpin [sic] of a very successful fishing industry in the Bering Sea.²⁰

As conceived by engineering firms hired by the islands to consult on the project, construction of the harbors was to be accomplished in three phases. Phase I consisted of the building of breakwaters and a wharf on each island. Phase II consisted of the development of on-shore processors. Phase III consisted of on-going harbor improvements. Estimates of the amount of time to complete the projects ranged from the conservative (8 years) to the optimistic (3-4 years).

As initially presented, the consultants' estimates for construction

of the two harbors was in the range of \$24 to \$30 million. By the time of the hearings, the State had already appropriated and committed \$7 million. That money was used to start construction of the Phase I breakwaters. In addition, the State, through the subsequent administration, had submitted a budget request for an additional \$10.4 million.

During the hearings, it was the State's position that any shortfall between the money they were able to obtain and what was needed would have to be borne by Federal or private sources. Responding to the State's position, John Phillips, Special Assistant to Administrator Calio, stated that when the engineering firms learned of the State funding limit, their plans had been modified and that even at the \$17 million level, harbor completion to Phase I was obtainable. The harbor consultants also expressed their opinion that once the Phase I breakwaters were built, private investors would be drawn to the islands and would prove to be a ready source of private funding for Phase II and Phase III on-shore development and improvements. In support of this assumption, they cited private willingness to invest in the development of fisheries resources which had been achieved at Dutch Harbor and Akutan, areas considerably more limited in terms of resource proximity.

Satisfied that the State's initial commitment and emerging private investment would support harbor development, and that the one-time federally funded trust would be used for infrastructure, the Fur Seal Act Amendments of 1983 ("the 1983 Act")²¹ was enacted. Under the 1983 Act, the Department of Commerce's responsibilities with regard to the Islands were limited to (1) Establishing the one-time trust ("the Trust") to be administered by a non-government trustee in order to promote the development of a stable, self-sufficient, enduring and diversified economy not dependent on sealing (section 1166); (2) transferring formerly withheld Federal property to Island entities under a Transfer of Property Agreement ("TOPA") (section 1165); (3) continuing to administer retirement benefits (section 1168), and (4) continuing management of the rookeries to ensure compliance with the Fur Seal Convention (Title I and section 1161). The State was given responsibility for providing standard educational needs (section 1163) and the Secretary of Health and Human Services was given

¹⁶ *Hearings Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries—Pribilof Islands, H.R. 2840, 98th Congress, House of Representatives, May 19, 1983, pp. 260-263.*

¹⁷ *Ibid.* At 290.

¹⁸ *Ibid.* at 273.

¹⁹ *Ibid.* at 335.

²⁰ *Ibid.* at 299.

²¹ 16 U.S.C. 1161 *et seq.*

responsibility for providing medical and dental services (section 1164).

A Master Trust Agreement under the 1983 Act was signed on November 21, 1983. Separate trusts for St. Paul and St. George were established on March 14, 1984 and March 27, 1984, respectively. In accordance with his authority, and at the request of people of St. George, the Trust was divided into two portions. Using a formula devised by the Secretary, \$12 million was allotted St. Paul, \$8 million to St. George.

Faced with declining oil revenues in 1985, the Sheffield administration was ultimately unable to secure the requested \$10.4 million it sought to finish the harbors. As a result, despite previous commitments, no more than the original \$7 million was invested by the State in harbor development in the first five critical years of the final phase-out.

(2) Harbor Development and Emerging Economies

(a) *St. Paul.* Using a significant portion of the \$7 million appropriated by the State, St. Paul was able to complete their Phase I project. The result was construction of a 750 foot breakwater and 200 foot dock by 1986. Over time, the breakwater was susceptible to damage from overtopping during winter storms. With no available State funding for harbor improvements, the City turned to the Army Corps of Engineers. Taking advantage of the newly enacted Water Resources Development Act (WRDA),²² the City in 1986 applied for authorization to construct a larger harbor. Their request relied on a 1979 Corps navigability feasibility study that recommended an 1800 foot breakwater, a 900 foot dock, and a channel dredged to 23 feet below mean low water. Once completed, the harbor would accommodate nine to ten 100-foot crab vessels.

The City's request for the harbor was approved under section 204(e) of WRDA in June of 1988. Following minor modifications to the General Design Memorandum, the total Federal share for the project in 1989 was \$19,635,200. The City of St. Paul was able to secure matching funds through State appropriations and local investment. Meanwhile, in 1986, St. Paul's trustee had begun Phase II processing initiatives by contacting major seafood processors and seeking their investment in a diversified fish processing capability. As a result of the trustee's efforts, St. Paul had drawn four seafood processors to its shores by 1994.

In addition to ensuring the harbor project under WRDA, the City undertook maintenance of infrastructure needs of St. Paul as envisioned by the 1983 Act. They also assumed responsibility for a number of other, non-traditional municipal roles including providing utilities, selling bulk and marine fuel, and operating a snack and gift shop. In the late eighties, as a result of committing trust funds to harbor development following the State's inability to appropriate monies, St. Paul requested supplemental trust appropriations totaling approximately \$3 million. These funds were used to support City infrastructure needs.

While the City solidified its responsibilities for trust-related municipal ventures, TDX was able to expand their investments with outside companies. As a result, TDX built their own 300 foot dock, leased facilities and land to the processors, and developed a crab-pot storage facility. They also pursued numerous off-island ventures including development of hotels in Anchorage and Seattle.

The Corps of Engineers Harbor project was completed in 1990. By 1995, St. Paul had grown to become the number two fishing port in Alaska. As reflected in shared fisheries and fisheries landing taxes and fees in the State, St. Paul is second only to Unalaska in generating revenues. It is also the primary crab processing location in the Bering Sea.

(b) *St. George.* With ANCSA and the 1983 Act bolstering their intent to sustain a foothold in the Bering Sea, the City of St. George incorporated as a second class city on September 13, 1983. Acting expeditiously, they obtained State approval and initial funding to construct a State harbor in 1984. Despite their ambition, they ultimately received little State support. In 1985, their State grant of \$3 million for harbor development was reduced to \$1 million as a result of budget cuts. To meet ongoing dredging demands, the City of St. George followed St. Paul's lead and immediately requested assistance from the Army Corps of Engineers. Because the City of St. George was unable to raise local or state matching funds, no Army Corps projects could commence. In 1986, unanticipated site conditions led to the default of a State recommended harbor contractor and the City had to take over as general contractor. By 1987, the breakwaters were still not complete and winter storms threatened much of the existing structure. That same year the State notified the City that no further State funding would be appropriated before 1989.

In 1988, Army Corps of Engineers dredging assistance of \$4 million was finally approved. To raise matching funds, the City issued general obligation bonds in the amount of \$3 million, sold \$1.2 million of municipal and construction equipment and borrowed \$700,000 from the Tanaq Corporation. In 1989, with dredging underway, All Alaska Seafoods Company committed to process on a floating fish-processing plant in the harbor when dredging was completed. Ultimately, dredging delays in the narrow channel prevented startup. Meanwhile, local fisheries-related businesses failed as a result of limited markets and lack of fisheries infrastructure.

With its Trust nearly depleted, the City of St. George in 1988 requested a \$3.7 million authorization from Congress for basic human needs assistance. They received \$1.1 million. In 1990, they requested \$2.6 million. As they requested the second appropriation, the City was contemplating permanent closure based on significant debt. Their request explained that their harbor was set to support self-sufficiency by 1992. Today, the inhospitable shoreline and inclement weather of the island continues to contribute to the inability of St. George to complete their harbor.

By 1990, the St. George Trust was nearly depleted. Efforts to attract private industry to the remote island had failed, and the City has since survived solely through ongoing funding through State and Federal construction projects. As stated by Peter Hocson, the trustee for the St. George trust, in his 1988 annual report to former Administrator Calio:

The single obstacle standing in the way of a self-sustaining economy, as envisioned by the Fur Seal Amendment Act of 1983, is the lack of the State of Alaska's funding to complete the boat harbor.

In 1993, the Army Corps of Engineers contributed an additional \$3 million to conduct in-blasting and dredging operations designed to secure the harbor. Together with the \$8 million trust allocation, the \$3 million supplemental needs trust appropriations, the initial Army Corps of Engineers investment of \$4 million and a \$1 million facilities upgrade appropriation, a conservative estimate of the Federal Government's contribution to St. George's economy since 1983 totals \$19 million.

III. The Cities Today

(A) *St. Paul*

As the continued growth of the harbor brought increasing prosperity to St. Paul, it also made the resources required

²² Public Law 99-662, enacted November 17, 1986.

for a sustained economy more scarce and valuable. The unfortunate result was that the relationship between the City of St. Paul and TDX Corporation grew increasingly adversarial. Having assumed responsibility for so many daily activities through administration of trust related activities, the City's need for land, particularly harbor-side, grew. Under ANCSA, ownership and control of available lands vested with TDX. Frustrated by their inability to obtain lands from TDX, the City brought a law suit against TDX in 1985 challenging the distribution of property under section 14(c) of ANCSA. Settlement was achieved in three years.²³

Continually deadlocked in similar disputes over terms and conditions of land use, TDX and the City have historically blocked each other from or delayed each other's goals. Today, the continued and heightened inability of island leaders to share their island's resources and to work cooperatively has created an atmosphere of mistrust and divisiveness. During testimony taken on St. Paul in preparation for this Report, St. Paul citizens repeatedly informed Commerce personnel that the City's single-minded focus on harbor construction, TDX's unwillingness to make land and property available to its shareholders, and the two entities inability to get along as the source of much resentment and frustration.

In oral statements made for purposes of this Report, St. Paul citizens and shareholders of TDX referred to incidents of intimidation, bullying and coercion by TDX officers to influence land dispute settlement and shareholder proxy votes. Several local citizens and one TDX representative stated that TDX would not sell any land to local citizens, and that land use and business development was available only through leases with TDX. The leases set rental rates on par with those of industrial properties surrounding the Anchorage Airport. They also included provisions for mandatory building development and improvements to be relinquished without compensation at expiration of the lease. Faced with these terms, local entrepreneurs wait for more reasonable leases of limited government properties. As a result, the local, small business economy is effectively chilled by the citizen's own village corporation.

²³ The City filed suit on November 21, 1996 against the Secretary of Commerce and Under Secretary of NOAA to abrogate that agreement, as well as transfer decisions reached under the 1983 ACT TOPA. TDX joined the dispute in a parallel proceeding against the Secretary and Under Secretary filed December 20, 1996. Copies of the Complaints in each case are attached as Exhibits 5(a) and 5(b).

Without these opportunities, unemployment persists and the costs of goods and services from off-island remain high.²⁴

Finally, St. Paul is also experiencing the effects of imported labor within its local infrastructure. Local residents allege that they were promised management positions and as a result have refused to work any front line positions. As a result, vacancies at the processing facilities have been filled by workers from Asia and the Phillipines. This foreign labor pool is housed and fed aboard the processors. Overall, they contribute relatively little to the economy.

Despite these difficulties, evidence of St. Paul's commercial success is readily apparent. The City's annual operating budget is roughly \$18 million. According to 1990 Census Bureau information, the median income per family is \$49,900.00. The average income as of 1994 was \$34,000.00. In the words of St. Paul's former City Manager, success has outstripped all expectations. In a letter to Trustee Jay Gage at the termination of the St. Paul Trust, the City Manager and Trust Advisor wrote:

* * * [W]e wish to * * * put in the record our acknowledgment and gratitude for your service to St. Paul. In retrospect, had it not been for your foresight and fortitude in administering the St. Paul Trust, we may not have the robust economy we have today. Through your wisdom, you directed most of the Trust funds towards establishing a port on St. Paul while assuring that our people did not endure undue economic hardship.

In short, you have accomplished your mission to assist St. Paul Aleuts achieve [sic] economic independence and diversification away from seal harvesting above and beyond anyone's expectations. Indeed, what you have accomplished is nothing short of an economic miracle, considering that this was all done in less than half a generation under very adverse circumstances.

(A copy of the City Manager's letter is attached as Exhibit 7)

Increased activity in the harbor and the expanse of the Bering Sea fishery has prompted the City to explore additional international markets. They now seek to establish a Free Trade Zone, and look forward to continued harbor improvements through the Army Corp of Engineers. Toward this end, and as a result of unprecedented growth, a second Corps feasibility study was commissioned in 1995. That report caused Congress in September, 1996 to authorize an additional \$18.9 million to modify and improve the harbor.

²⁴ Evidence of these attitudes is reflected in the TDX newsletter attached as Exhibit 6 which was distributed to all shareholders and ultimately dispersed across the small island.

Together with the previous \$19 million commitment, the \$12 million trust portion under the 1983 Act, the \$1 million share of funding for facilities improvements in 1984, and the \$3 million in supplemental needs appropriations granted the trust in the mid-eighties, a conservative estimate of the total Federal contribution to St. Paul's economy since 1983 totals nearly \$55 million.

While the last five years have seen a growth in the economy of St. Paul, they have also seen a decline in fur seals, harbor seals, sea lions and several species of sea birds throughout the Pribilofs.²⁵ These declines are particularly alarming on St. Paul because of the possibility of cumulative effects brought to bear by rigorous weather conditions, increased opportunity for oil spills, general marine disturbance, rodent introduction, and effluent discharges of fish processing wastes. The fur seals are currently listed as a depleted species under the Marine Mammal Protection Act ("MMPA") and the red-legged kittiwake, whose population has declined to 40-50 per cent of its 1970 level and is being considered for listing under the Endangered Species Act ("ESA"). Roughly 80 per cent of the world's population of each of these species make their home on the Pribilof Islands. Together with the myriad of other wildlife species that inhabit the Islands, they are the primary reason the Islands are referred to as "the Galapagos of the North."

(B) St. George

While St. Paul has grown and prospered, St. George has struggled. The Island's rugged topography and foggy climate have effectively frustrated the provision of goods and services since Russian occupation. Possessing no natural geography to accommodate a harbor, shipments by sea have traditionally been limited. Mail service by air proved equally confounding, and in the 50s and 60s was limited to air drops due to the risks associated with aircraft landing. Modern technology has brought only minor advances and treacherous island conditions continue to contribute to the difficulties of establishing an independent economy. In November, 1996, after a \$6 million State investment in runway expansion, the FAA ruled the Island's airstrip too dangerous to permit any plane larger than a six-seater Piper Navajo to land.

²⁵ See *Final Conservation Plan for the northern fur seal (Callorhinus ursinus)*, prepared by the National Marine Mammal Laboratory/Alaska Fisheries Science Center for the National Marine Fisheries Service, 1993.

With no protective shoreline, St. George's harbor continuously requires major dredging and expansion to fend off the inhospitable and over-powering Bering Sea. Despite assurances that their harbor would reach sufficiency and provide a self-sustaining economy by 1992, the ongoing need for harbor dredging and improvement has instead compounded existing debt. To complete 1994 dredging and harbor improvements, the City sold revenue bonds in the amount of \$865,000.00. In addition, the City was forced to draw down its surplus cash, thereby resulting in a working capital deficiency. To meet their debts, the City has budgeted reductions in its work force, deferred building maintenance, and reduced engineering, legal and travel expenses.²⁶

Having significantly extended its debt, St. George faces an uncertain economic future. Faced with the need for substantial ongoing, sustained improvements the St. George harbor remains effectively unfinished and without significant draw to shore-side fish processors. As a result, the City continues to need supplemental infrastructure and human needs assistance.

At the close of 1994, the City's long-term debt was assessed at \$3,081,039. By the start of the year 2000, it is estimated that \$2,802,877 will still be required to clear the City's debt. As stated in an independent auditor's report dated May 18, 1995:

* * * the City experienced significant costs in excess of grant revenues in the construction of its harbor dredging and improvement project in prior years causing a working capital deficiency, which raises substantial doubt about its ability to continue as a going concern.²⁷

IV. The Claims Asserted

The Statements of the State of Alaska and the Department of Interior required under Public Law 104-91 are attached at Exhibit A. In addition, the Department of Interior has included its request for resolution of the Terms and Conditions of its agreement with the Islands under the Migratory Bird Treaty Act. That claim is included as part of Interior's submission at Exhibit A.

²⁶ Additional liabilities associated with the harbor's development include delays from inclement weather and unforeseen site conditions. In the late eighties, the City was named a third party defendant in a law suit brought by a dredging contractor against the Army Corps for increased costs associated with unforeseen site conditions. The contractor prevailed and was granted a judgement of \$1,095,187 for which the Corps now seeks contribution from the City.

²⁷ *Independent Auditor's Report: City of St. George* prepared by Mikunda, Cottrell & Co., C.P.A., May 18, 1995.

A copy of all local entity and resident statements of claims is attached as Exhibit B. The process for collecting the statements is described in section (I) below. The essence of the information submitted as claims by local entities and residents may not necessarily be rights that are enforceable in court but, in some instances can be more appropriately described as assertions that are inherently equitable and arise out of the past intergovernmental relationship. The claims are what the Pribilovians expect from the Federal Government to resolve alleged harms caused as a result of the United States history with the Pribilovian people.

We do not interpret P.L. 104-91 as raising a claims process of potential lawsuits against the United States. Nevertheless, this is the tenor that was created throughout the process based on the nature and form of claims submitted. Accordingly, what follows is a general outline of the types of claims raised by the Pribilovians and the Department's response. In some cases, the Department has determined that no further action is necessary and in others, the Department makes specific recommendations.

Given the magnitude and nature of submissions, an individual response to each of the over 85 claims was not possible. To focus and present the Report, local entity and resident claims have been categorized according to eight broad areas of concern. A summary of the statement of claims is attached as Exhibit 8. The categories of claims are: continued economic growth, failed transition, real property, trust issues, fisheries issues, retirement issues, seals/rookeries issues, environmental cleanup issues, and P.L. 104-91 process issues. Submissions were also received regarding health care and the settlement reached under the Fair and Honorable Dealings Act case for past injustices. Because these areas are outside of the Secretary's authority, these issues are not addressed in this Report, but have been referred to the appropriate agency for their review.

Some of the claims submitted seek specific performance; the majority seek monetary damages. Conservative estimates of the total claims is roughly \$500 million. During an October, 1996 public meeting to summarize the claims, Island spokespersons indicated that "amount to be determined claims" would likely bring the total to \$1 billion.

In the sections below, each category of claim is generally described, followed by a description of federal activities related to the claims and the Secretary's response and recommendations. Where

applicable, relevant and applicable laws and regulations are provided, together with a discussion of the Agency's implementation of the law.

(A) Continued Economic Growth

These claims relate to assertions that the U.S. Government has an ongoing obligation to ensure the sustained and economic growth of the Pribilovian people. They include claims for past expenses incurred as their economy grew (building renovations, upgrades and construction, housing repairs), as well claims for current costs of maintaining homes and the municipal infrastructure.

The Secretary has undertaken an analyses of his responsibilities under Title II of the 1983 Act and has concluded that no ongoing obligations of the Secretary exist which would direct the Secretary to seek appropriations for these collective claims. As discussed in Section III, the \$20 million trust established under the 1983 Act was a one-time payment to "promote," not guarantee, an independent economy on the Pribilof Islands. The trust funds were to be used to cover infrastructure expenses (income maintenance, human needs and municipal services) for approximately 5-7 years as harbor development was pursued by the State. Accordingly, it is the opinion of the Secretary that requests for reimbursement of costs associated with successful municipal growth are without merit.

Because housing repair and municipal infrastructure costs account for the majority of the "Continued Economic Growth" claims asserted, they are discussed in greater detail below.

(1) Housing

These claims raise the assertion that the U.S. Government promised to repair, or has an inherent obligation to repair, all homes conveyed to the Pribilovian people under ANCSA and the 1983 Act.

Under the 1966 Act, townsite properties on St. Paul were to be purchased by local residents according to a patent issued by the Secretary (see section III(E)). During discussions with the City of St. Paul regarding the transfers in 1971, NOAA stated its policy that it would be incumbent upon the Aleut residents purchasing the homes to provide for their continued repair and maintenance. NOAA's policy reflected the intent of Congress that the autonomy of the Pribilovian people include paying for goods and services previously provided by the government. The City's "Community Development Plan of 1971" prepared and distributed

later that year includes a statement articulating NOAA's position.

Ultimately, the transfer of homes was accomplished under the terms of ANCSA. During negotiations with the TDX and Tanaq Corporations in 1974 regarding the transfer of property under ANCSA, NOAA agreed to make major repairs to five houses on St. Paul and three on St. George. Additionally, NOAA agreed to make minor repairs to all houses on both islands on a priority basis. The provisions for minor repair are contained in a December 22, 1976, Memorandum of Understanding ("MOU") between TDX, Tanaq and the Department of Commerce/NOAA. (A copy of the MOU is attached as Exhibit 9).

Pursuant to the agreement, NOAA agreed to be responsible for exterior water leaks, storm windows, means of ingress and egress in the event of fire, broken or leaky fixtures, the satisfactory operation of heating units, ventilation, electrical outlets, structural integrity, cabinetry, and insulation. Areas outside NOAA's responsibility included remodeling, additions, floor coverings, painting, tile repair and the finishing of basements. Repair of houses pursuant to the MOU was completed in 1977.

The policy of Pribilovian responsibility for home repair and maintenance was announced again by NOAA in a letter to island leaders on April 22, 1976. (A copy of the letter is attached as Exhibit 10). Citing the MOU, the letter states that:

The Government will not be responsible for repairs and maintenance on the houses and other quarters except as noted above after interim title is granted. In the future there will be a need and desire to repair, remodel and build homes. The Government does not intend to act as wholesale or retail supplier nor as contractor for construction and repair of private homes. We are suggesting that these functions would be better handled by some individuals or the Corporations who may wish to set up home construction and building-supply businesses such as are available in most other communities. We believe this would be the best way to meet this future need for both communities.

(2) Code Compliance and Facilities Upgrades

During the State, Federal and local working group meetings held in 1983 to formulate a plan for phase-out under the 1983 Act, NOAA and the State discussed the need to bring Federal facilities up to code prior to transfer. Based on requirements set out in a facilities report prepared by the State in 1982, NOAA spent 1983 Pribilof Island Program funds to correct minor fire and

safety deficiencies which brought the facilities up to code.

On August 22, 1984, President Reagan signed H.R. 6040, the Supplemental Appropriations Bill for fiscal year 1984. The bill appropriated \$2 million to NOAA to upgrade Federal property prior to transfer under the 1983 Act. In the interests of equity, Administrator Calio decided that the \$2 million would be split equally between the two islands. During subsequent discussions with State and local entities regarding funding of future upgrades, all entities agreed that it was incumbent on the State and local government to seek additional funding to upgrade facilities. The State's commitment is reflected in a report to then Governor Sheffield summarizing discussions about use of the \$2 million appropriation²⁸ Department of Transportation estimates of required funding to upgrade facilities on St. Paul and St. George at that time were \$6.5 million and \$4.8 million, respectively.

To make the best use of the immediately available Federal funds, the Cities of St. George and St. Paul were asked to prepare priority lists of upgrade projects. These lists were submitted to NOAA in early October, 1984. St. Paul's initial list reflected long-term capital improvements designed to accommodate the Cities impending growth. Its upgrades list included improvements to the airport and the expansion of existing sewer, electrical and water distribution systems. The accompanying report included an analysis of multiple funding sources including grants, loans and private investment. The City's estimate of total expenditures required approximated \$50 million. St. George's original upgrades list reflected improvements to existing structures based on current needs. The St. George project list totaled approximately \$2 million.

During meetings over the following two weeks, priority projects obligating \$1 million per island were chosen for funding through cooperative agreements. Financial assistance awards under the agreements were issued October 26, 1984.

It is the Secretary's position that the 1983 Act trust and transfer of property constituted the entirety of the Federal government's responsibility to promote and foster an enduring economy on the Pribilof Islands under the Fur Seal Act. The Secretary finds no additional law, regulation, agreement or implied duty to continue the repair and maintenance of

homes or facilities on the Pribilof Islands.

(B) Failed Transition

These claims assert that the transition from a sealing-based economy to one independent of sealing has failed as a result of improper or insufficient government support during phase-out. Examples of claims include assertions that the Federal Government defaulted on harbor construction, that the government caused undue economic and social hardship by infringing on Pribilovian rights to engage in commercial harvest of seals during transition, that the government failed to provide income maintenance through the period of transition, and that the Department failed to properly administer the transition.

It is the opinion of the Secretary that the trust served its purpose to St. Paul most effectively. Accordingly, it is the opinion of the Secretary that the transition of the City of St. Paul to an independent economy has been successful and that any claims to the contrary are without sufficient basis.

Section 1166(d) of the 1983 Act provided that the trust authorized could be divided based on the goals and objectives of the Pribilovian people. That split was not mandatory, but was chosen by the people of St. George despite practical realities and evidence that a self-sustained existence was practically impossible given the island's harsh climate and inhospitable geography.

Evidence indicates that the establishment of a self-sustaining economy on St. George is an unrealistic venture. It is the Secretary's opinion that an in-depth evaluation of the possibility of achieving self-sufficiency is warranted with regard to the Island, but is beyond the scope of this Report. Accordingly, the Secretary recommends that an independent economic and cost analysis be undertaken to assess the viability of continued public support.

(C) Real Property Claims

These claims relate to the distribution of real property under ANCSA, the 1983 Act and accompanying TOPA and subsequent private agreements between entities redistributing their allotments. In sum, the claims collectively seek a complete redistribution of property amounting to a total abrogation of all that has been accomplished under pre-existing legislation and associated agreements. It is the Secretary's opinion that the real property transfers required have been, or are being, fulfilled in accordance with law and that the real property claims are without merit. The

²⁸ The report is attached as Exhibit 11.

history and status of land transfers on the Pribilof Islands by the federal government follows.

A Memorandum of Understanding (MOU) dated December 22, 1976, by and among NOAA, on behalf of the Department of Commerce, St. George Tanaq Corporation, and Tanadgusix Corporation, was instituted to resolve conflicts concerning land ownership on the Pribilof Islands, under ANCSA. The MOU identified 47 tracts of land to be retained in federal ownership by the Department on the islands of St. Paul and St. George. Page 3, paragraph (1) of the MOU identified these tracts as "* * * land and any improvements thereon to be retained in fee simple by the Federal Government as the smallest practicable tracts enclosing land actually used in connection with the administration of a Federal installation, within the meaning of Sec. 3(e)(1) of ANCSA, 43 U.S.C. 1602(e)(1)." The MOU thereby constituted a Section 3(e) determination of the Department of Interior, as defined by ANCSA, designating federal lands withdrawn from selection under ANCSA, to be retained by the Department of the Commerce.

Section 205(a) of the 1983 Act authorizes the Secretary of Commerce to transfer real and personal property held by the Department of Commerce on the Pribilof Islands, "[p]rovided, [t]hat such property is specified in a document entitled 'Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions,'" (Emphasis in original.) Section 205(b) further sets forth the contents of the TOPA.

Under authority of the 1983 Act, negotiations were conducted and agreement was reached between the Department of Commerce, the Tanadgusix and St. George Tanaq Corporations, the City of St. Paul, the City of St. George, the Aleut Community of St. Paul, the Aleut Community of St. George and the State of Alaska on properties previously retained by the Department of Commerce under ANCSA to be transferred by the Secretary to the other parties. The TOPA was executed on February 10, 1984.

To date, nearly all of the transfers specified in the TOPA for properties on the Island of St. George have taken place. Actual transfer of title to the properties was performed through the Department of the Interior's Bureau of Land Management (BLM). The transfers were effected through BLM based on that agency's experience in conveying Federal lands under ANCSA and its resources, including surveying, available for the job.

Most of the parcels on the Island of St. Paul to be transferred under the TOPA were surveyed by the BLM in 1983.

Additional survey work was conducted by BLM in 1993 and 1994. However, the legal descriptions of some of the properties are not yet adequate for transfer to occur and some additional survey work may be required in 1997 to complete the descriptions.

The Department will continue to work with the Alaska office of BLM in Anchorage in order to effect the conveyance of title to the native, municipal and state entities on St. Paul as expeditiously as possible, in fulfillment of the TOPA.

Section 205(d) of the 1983 Act requires that, within sixty (60) days of the transfer of property under TOPA, the Secretary transmit a report to the appropriate Senate and House committees stating the fair market value of the real and personal property conveyed, as of the date of conveyance. The Department will timely request that the General Services Administration, or a contractor qualified to provide property appraisals, perform a property valuation survey of the St. Paul property to be transferred, to ensure that the fair market value report will be ready for transmittal to the Congressional committees within the 60-day deadline.

(D) The Trust

These claims relate to assertions that the 1983 Act trust was insufficient, improperly administered, misused or generally misunderstood. It is the opinion of the Secretary that the trust responsibilities set forth in the 1983 Act were properly executed by NOAA, that the trust purposes were effectively met with the funds appropriated, and that all steps were taken to ensure that the trust was fully understood by the Pribilovian communities. Accordingly, it is the opinion of the Secretary that all allegations suggesting that the trust was misused or poorly administered by the government are without merit.

The 1983 Act created a \$20 million trust ("the Trust") to "— promote the development of a stable, self-sufficient enduring and diversified economy" on the Pribilof Islands. 16 USC section 1166(a)(1). The objective of the Trust, as stated throughout Congressional hearings on the topic, was to end Federal administration of the Pribilof Islands. It was a logical and sequential step following the 1966 Act which took the initial step toward Federal phase-out by promoting municipal self-governance by the Pribilovian people.

Under the 1983 Act, responsibility for establishing and administering the Trust was given to the Secretary of Commerce.

16 USC 1166(a). To effectuate trust responsibilities, Congress directed that at least one trust instrument be established by the Secretary to address matters relating to standards and procedures associated with the Trust. 16 USC 1166(c). Additionally, Congress provided that the trust appropriation could be divided between the two Islands and that two separate trust portions could be set up under the original trust instrument to reflect individual Island goals and objectives. 16 USC 1166(d). To effectuate St. George's desire for autonomy, the Trust was bifurcated and two additional documents were created, the St. Paul Trust Agreement and the St. George Trust Agreement. These documents governed the duties, obligations and rights of the Trustor, the St. Paul and St. George Trustees, and all beneficiaries under the respective trusts.

The primary trust instrument (hereinafter "the Master Trust Agreement") was signed on November 21, 1983. As stated in Article II, the purpose of the Master Trust was:

"—to promote and foster the transition on the Pribilof Islands of St. Paul and St. George from welfare and sealing economies to stable, self-sufficient, enduring and diversified economies. Such purpose includes but is not limited to the provision of basic and essential human services * * *"

The St. Paul Trust Agreement was signed March 14, 1984. The designated Trustee was Mr. Jay Gage. The St. George Trust Agreement was signed March 27, 1984. Peter D. Hocson was designated Trustee on July 18, 1984.

Varying only in minor detail, both Trust Agreements established the appointment of a Trust Advisor responsible for recommending distributions from the Trust. The Advisor was to be appointed by the Secretary and was to be an entity located and functioning on the Islands, which, in the opinion of the Trustor, was knowledgeable concerning the Islands' economies and needs, and which could adequately represent the interests of the Pribilovians. It was the duty of the Advisor to provide written recommendations to the Trustee specifying the projects or uses to which distributions from the trusts should be made.

Throughout the administration of the Trusts, both Islands had local representatives as Advisors. The Advisors chosen were, for St. Paul, the City Manager and for St. George, the Mayor and their respective staffs. These entities were chosen based on their status as City leaders and their understanding of the needs of their people.

The Trustee's obligations under both trust agreements were to invest the Trust and to direct disbursements. Unless the Trustee was qualified at investment functions, an Investment Advisor was to be consulted prior to Trust investments. With regard to disbursements, the Trustees were responsible for evaluating each Advisor's recommendations. The Trustees were to approve the Advisor's disbursement recommendations unless they determined that the projects or uses set forth in the Advisor's Recommendation were not consistent with the purposes of the Trust or would not best achieve the goal of furthering the trust purposes. In determining that the proposed use was not in the best interest of the purposes of the trust, the Trustees were granted sole discretion as the ultimate fiduciaries of the trusts. The Trustees were also responsible for providing annual reports to the Secretary and Congress regarding the use of the Trusts and progress being made.

As Trustor, the Secretary's roles and responsibilities were limited to establishment and oversight of the Trust, including the authority to remove the Trustee if warranted, and selection of the Trust Advisors.

Both the St. Paul and St. George Trust Agreements contained automatic termination clauses effective 10 years after initiation unless extended by consent of all parties. The St. George Trust was terminated in the Spring of 1994. At termination, the trust corpus had been fully distributed. The St. Paul Trust was terminated in the Spring of 1994, with the exception of the distribution of final assets from the sale of an interest in the fishing vessel Northern Eagle consummated in December 1996.

It is the opinion of the Secretary that the Federal Government's responsibilities under the 1983 Act to establish and oversee the Trust have been completed in accordance with law. Accordingly, it is the Secretary's opinion that the claims asserted regarding administration of the trust are without merit. With regard to the sufficiency of the Trust, it is the opinion of the Secretary that the success of St. Paul evidences that sufficiency.

(E) Fisheries Issues

The communities of St. George and St. Paul have expressed the opinion that the fishery resources surrounding the Pribilof Islands should be set aside for their exclusive use, and that NMFS inappropriately allocated fisheries resources surrounding the Pribilof Islands to offshore fleets through the

Inshore-Offshore program and to other Community Development Quota ("CDQ") communities through the CDQ programs.

In a May 29, 1996 legal opinion, NOAA General Counsel concluded that the 1983 Act did not create any specific fishing privileges for the residents of St. George or St. Paul, and that the North Pacific Fishery Management Council ("the Council") and Secretary have provided fishing opportunities to the Pribilovians through the CDQ programs. The NOAA General Counsel legal opinion regarding these issues can be found at Exhibit 12. In essence, the CDQ programs have been administered by NOAA without privilege or prejudice to any native entity or tribe. The Pribilovians are no exception to this rule. The fisheries program in the Bering Sea is administered as follows.

The U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) are managed by the Secretary pursuant to the Fishery Management Plan (FMP) for groundfish in the BSAI. The FMP was prepared by the Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 16 U.S.C. 1801, *et seq.*, and is implemented by Federal regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

(1) Pollock CDQ Program

The pollock CDQ program was developed by the Council as part of Amendment 18 to the BSAI FMP (the Inshore-Offshore program). The final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated seven and one-half percent of the Bering Sea pollock Total Allowable Catch (TAC) to a Bering Sea pollock CDQ reserve, plus seven and one-half percent of the Aleutian Islands pollock TAC to an Aleutian Islands CDQ reserve. Eligible Western Alaska communities could apply for CDQ allocations from the pollock CDQ reserves by submitting a Community Development Plan (CDP) to NMFS. Regulations (57 FR 54936, November 23, 1992) implemented the pollock CDQ program for 1992 and 1993 by specifying the process for applying for a CDQ allocation and the required contents of the Community Development Plans (CDPs). A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented

the pollock CDQ program for 1994 and 1995.

The Council recommended re-authorizing the pollock CDQ program in the BSAI for an additional 3 years as part of Amendment 38 to the BSAI FMP, and NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996 through 1998, were published on December 12, 1995 (60 FR 63654, corrected 61 FR 20, January 2, 1996).

The CDQ program was developed to provide the eligible CDQ communities with a means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, commercial fisheries-related economy. Both St. George and St. Paul are eligible communities under the pollock CDQ program, and have participated and benefited from the CDQ program since its establishment in 1992. St. George is a member of a CDQ group named the Aleutian Pribilof Island Community Development Association (APICDA), which includes the communities of Atka, False Pass, Nelson Lagoon, Nikolski, and St. George. APICDA was allocated 18 percent of the pollock CDQ reserves for 1992 through 1998.

St. Paul is the sole member of the CDQ group named the Central Bering Sea Fishermen's Association (CBSFA). CBSFA was allocated ten percent of the pollock CDQ reserves for 1992 and 1993, eight percent of the reserves for 1994 and 1995, and four percent for 1996 through 1998. A description of the CDQ projects that benefit St. George and St. Paul through APICDA and CBSFA activities can be found at Exhibit 13.

(2) Halibut and Sablefish CDQ Program

St. George and St. Paul also participate in the halibut and sablefish CDQ program. However, the Council's authority to manage halibut is not derived from an FMP as is the case with pollock and sablefish. The domestic fishery for halibut in the BSAI is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation for the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), and the Halibut Act. The Convention and the Halibut Act authorize the Council to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary of Commerce, limited-access policies for the Pacific halibut fishery in the BSAI.

The Council proposed adding the halibut and fixed gear sablefish (H/S) fisheries to the CDQ program beginning in 1995, as part of the Individual Fishery Quota (IFQ) program. The IFQ final rule (58 FR 59375, November 9, 1993) implemented the H/S CDQ program with no expiration date. St. George and St. Paul are the sole participants in the CDQ group named Pribilof Island Fishermen (PIF), for the purpose of harvesting a halibut CDQ allocation. For 1995 through 1997, PIF has been allocated 50 percent of the halibut that is available in IPHC area 4C. For 1995, this amounted to 385,000 pounds of halibut. Halibut CDQ harvest in St. George and St. Paul is accomplished by the small local fishing fleet, and the halibut are sold to local shoreside processors. Therefore, the benefits from the halibut CDQ fishery in the Pribilof Islands accrues directly to the local residents.

The community of St. George participates in the sablefish CDQ program through APICDA. APICDA has been allocated 10 percent of the Aleutian Islands sablefish CDQ reserve for 1995 through 1997. The benefits to St. George resulting from participation in the sablefish CDQ program are described in APICDA's H/S CDP, which is available from the NMFS Alaska Regional Office (907-586-7228).

It is the opinion of the Secretary that no special or exclusive fisheries rights have been created for the Pribilofian people under the 1983 Act, the Magnuson-Stevens Act, or any other law or regulation. It is the further opinion of the Secretary that the Federal government has properly and legally implemented the requirements of the Magnuson-Stevens Act, the 1983 Act and all applicable and associated regulations. Accordingly, the Secretary finds the communities' requests for specific performance and monetary damages without merit.

(F) Seals and Rookeries

These claims involve complaints and requests regarding subsistence fur seal harvest and the continued management of the fur seal rookeries by NOAA, and suggestions from the St. Paul Stewardship Program for the overall protection of the ecosystems of the Pribilof Islands in a balanced and integrated fashion.

The Pribilof Islands are a world-class special reserve established to ensure the conservation and protection of the northern Pacific fur seal and other wildlife species. Perhaps the single most important aspect of the Islands is their use as the primary breeding and pup rearing habitat of the northern fur seal.

The Fur Seal Act ("the 1983 Act"), Marine Mammal Protection Act, ("MMPA")²⁹ and the Endangered Species Act ("ESA"),³⁰ and their implementing regulations all require a significant commitment from NOAA for the protection, conservation and management of marine mammal species dependent on the Pribilof region.

On June 17, 1988, NMFS declared the Pribilof Island's stock of northern fur seals depleted under the MMPA. Amendments to the MMPA enacted November 23, 1988 (Public Law 100-711) directed the Secretary of Commerce to develop a conservation plan on northern fur seals "conserving and restoring the species or stock to its optimum sustainable population" ("the Plan"). The Plan was finalized and approved by the Assistant Administrator for Fisheries in June, 1993. It serves as the guide for those activities believed necessary to restore the northern fur seal to pre-depleted levels.

The broad-based objectives of the Plan in achieving pre-depletion goals are (1) to conduct extensive research on the health, mortality, physiology, sociology, and habits of the seals and the effects of disturbances to their habitat and the Pribilof ecosystem; (2) to assess and avoid or mitigate possible adverse effects of human-related activities on or near the Pribilof Islands and on other habitat, and (3) to enforce existing regulations.

Under the Plan, the efforts of the Agency must be coordinated with the Aleut communities and other resource management agencies and user groups on each island. Conversely, whenever any significant activity is proposed, planned or contemplated by the community or any other group, NMFS input should be obtained to ensure that the actions will not jeopardize the seals or damage their habitat.

Examples of NMFS coordinated efforts to prevent negative impacts on the Pribilof fur seal herd and the Bering Sea ecosystem include working with EPA to develop Clean Water Act Section 402 discharge permits that will reduce the impact of seafood processing wastes in local waters; working with the Coast Guard to promote their presence during heavy fishing seasons, and assisting the Department of Interior with its rat control program. With regard to coordination with the local community, NMFS has hired local residents to patrol the rookeries to minimize disturbance, encouraged the establishment of co-management bodies such as the Aleut

Fur Seal Commission, and participated in St. Paul's Interagency Work Group established to coordinate economic growth and development and joint use of island property.

In the path of overwhelming growth on St. Paul Island resulting from the mandates of Title II of 1983 Act, NMFS' mission of protecting the Island's resources under Title I of the Act and the MMPA is growing increasingly difficult. With limited resources, the program faces the potential inability to effectively monitor and provide input and guidance on the multitude of plans for development on the Island. The difficulty that NMFS faces in carrying out the directives of the Plan are exacerbated by the demands of the local leadership to support continued growth under the alleged 1983 Act authorities of Title II. That the tenor of these requests is adversarial further restrains the Agency's goals of effective coordination among Island entities. Ironically, the insistence of the Pribilofian people for NOAA's ongoing commitment to provide economic growth ultimately stands to effectively impede and interfere with the Agency's statutory responsibilities to manage the fur seal reserves.

NOAA values the environmental knowledge of the indigenous people of the Islands and is committed to continued coordination and the sharing of experience that will help to achieve a balance in the use of the Islands' natural resources. Toward this end, the Agency appreciates the Stewardship Program's comments and supports many of the concepts presented. NOAA looks forward to resolution of the issues underlying this Report so that viable coordination amongst all entities can be achieved.

With regard to claims that the fur seal subsistence harvest is improperly or unfairly administered, it is the opinion of the Secretary that the program is being conducted properly and legally under the regulations implemented under section 105(a) of the 1983 Act.

(G) Retirement Benefits

The Pribilofian people have asserted that the Federal Government has failed to provide sufficient retirement benefits, has improperly credited those benefits, or has otherwise failed to inform the people of their benefits.

The first Federal retirement benefits were granted the Pribilofians in 1950 under the cash compensation and wage plan instituted by the Department of Interior. Under that system, full time Federal employees engaged in the commercial fur seal harvest or in support services received retirement

²⁹ 16 U.S.C. 1361 *et seq.*

³⁰ 16 U.S.C. 1531 *et seq.*

benefits for work conducted from 1950 forward. Under the Bartlett Act of 1966, the retirement benefits bestowed in 1950 were expanded to include compensation for work performed prior to 1950. Deposit requirements to accrue pre-1950 benefits were not required.

The provisions of the 1983 Act significantly enhanced and expanded retirement benefits to the Pribilofian people by extending benefits to all Pribilofians who had worked for the Federal Government, regardless of whether they had previous coverage under the Civil Service Retirement System ("CSRS") (e.g., temporary or seasonal). These benefits were granted only to those employees who were on the rolls of the Federal government on October 28, 1983, and who transferred without a break in service to one of the six Island entities (The Cities of St. Paul and St. George, the village corporations, and the IRA councils). The intent of the Act was to provide continuity of retirement benefits to those Pribilofians who met this criteria.

For entity employees to be eligible for extended, full-time benefits, Pribilofian individuals only had to have worked one day in any calendar year to receive retirement credit for the entire year. This one day system is both unique and generous. To balance the inequities posed to pre-1983 retirees with part-time, seasonal, and temporary service, their benefits were recalculated to give them full-time credit to enhance their annuities.

In September, 1983, representatives from the NOAA's Western Administrative Support Center's Human Resources Division ("HRD"), the Pribilof Program Office of NMFS and participating island entities negotiated a memorandum of understanding ("MOU") explaining the Act and establishing the process by which the program would be administered. (A copy of the MOU is attached as Exhibit 14.) Under the MOU, the entities agreed to maintain pay records of each employee entitled to the transfer of federal employee benefits and to forward this information to HRD together with a check for the amounts withheld from the employees' pay. The entities also agreed to provide matching funds for benefits. HRD agreed to maintain all records of the employees, to annually certify a master list of eligible employees, to serve as the liaison between the entities and the Office of Personnel Management ("OPM"), and to serve as the point of contact regarding all Federal personnel issues.

In October 1983, HRD and NMFS representatives spent several weeks on

the Islands explaining the new provisions and their impacts to participating employers. They also assisted the entities in setting up their reporting systems to ensure that they would comply with and implement the Act.

In 1984 HRD staff and a retirement program manager from OPM returned to the Islands to explain the provisions of the Act and the process for implementing it to the general public. Meetings were held with residents on both islands. Teleconferences were conducted to inform off-island recipients.

At OPM's request, HRD returned to the Islands in 1985 to work with the entities to ensure that all annuity and survivor paperwork was correctly completed and submitted for recomputation purposes. Since that time, the MOU continues to work effectively as written.

During NOAA's visit to the Islands in June, 1996, many individuals questioned the Agency's calculation and crediting of benefits. A list of individual complaints was subsequently investigated by HRD. HRD found no instances of improper crediting of retirement service nor any errors in other benefits calculations. To alleviate specific concerns, HRD contacted all individuals with specific questions by telephone.

HRD is scheduling a trip to the Islands in the Spring of 1997 to re-explain the retirement benefits. In the meantime, HRD continues to resolve benefits issues on an individual, needs-based basis.

(H) Environmental Clean-up

Public Law 104-91 section 3(a) directs that the Secretary " * * * clean up landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants * * *" on lands previously owned and administered by NOAA. In addition, the Secretary is responsible under section 120 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for the assessment and remediation of hazardous wastes on any property to be transferred.

In the summer of 1989, the Alaska Department of Environmental Conservation ("ADEC") issued a Notice of Violation against NOAA as a result of a small oil spill at the Salt Lagoon on St. Paul Island. Investigations ensued, the site was boomed, and, over time, the seep was abated. As a result of the incident, TDX notified NOAA that it was concerned about potential environmental compliance issues on

property being transferred to them under the TOPA. Initial concern surrounded the underground storage tanks at the gas station and at the power plant. General concern was later expressed about leaking drums and potentially contaminated soil. Although all property transfers had been completed on St. George, public leaders there voiced similar concerns about property on their island.

In 1992, the United States Environmental Protection Agency ("EPA") undertook a preliminary investigation of St. Paul and St. George to assess potential contamination and liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"). EPA determined that site conditions on St. George warranted no further action and proceeded with an expanded site investigation on St. Paul. In November, 1994, EPA issued its finding that no contamination posing a risk to human health or the environment under Federal law existed on St. Paul. Accordingly, the Agency issued a second "no further action" determination.

Despite the EPA's findings, island entities continued to allege that the United States government had caused and created island-wide hazardous waste contamination. In response to these ongoing allegations, NOAA approached ADEC to negotiate a Two-Party Agreement which would address cleanup of all potential contamination on the island. The Two-Party Agreement was signed on January 26, 1996. (A copy of the Two-Party Agreement is attached as Exhibit 15.) Its four corners effectively establish the basic framework, cleanup objectives and time lines for NOAA's environmental cleanup of the islands. To date, no ongoing sampling has revealed contamination posing a threat to human health or the environment. The majority of work under the Agreement focuses on the removal of solid waste and debris, and on the closure of existing landfills.

P.L. 104-91 defines cleanup activities to be achieved under section 3(a) to mean the planning and execution of remediation actions for land described under the law and the redevelopment of landfills to meet statutory requirements.³¹ With the exception of the sealing plant stabilization, the

³¹ In the Department of Commerce and Related Agencies Appropriations Act, 1996, Public Law 104-134, a portion of the Department's 1996 \$10 million appropriation for cleanup was intended for stabilization of the historic sealing plant on St. George (see H. Rep. No. 104-378, explanatory statement at p. 132).

cleanup obligations of section 3(a), including activities related to the landfills are being met under the terms of the Two-Party Agreement.

In response to the directives of section 3(d) of Public Law 104-91 requiring, to the maximum extent practicable, the use of local hire to effect cleanup, the Department published a notice of availability for Federal assistance in the **Federal Register** on May 22, 1996. The notice solicited applications from local entities and residents and explained the selection process.³² Priority was given to those projects that were defined in the Two-Party Agreement. To assist the Pribilovians, the Department also held meetings on the Islands to explain the grants process. The Department also held a workshop in Anchorage, Alaska, to provide instruction to interested parties on preparing the required Federal forms.

As a result of the solicitation, two cooperative agreements were implemented with local entities to promote the use of local hire in achieving cleanup as directed by section 3(d) of PL-104-91. The agreements, totaling over \$5 million, were executed between NOAA and Tanaq on St. George and the joint venture of Bering Sea Ecotech (a TDX subsidiary) and Bristol Environmental Corporation on St. Paul. Both agreements require the removal of surface debris (vehicle hulks and other assorted solid waste) and the excavation of abandoned underground fuel storage tanks ("USTs") and associated petroleum contaminated soils. Work under the cooperative agreements is being conducted pursuant to the Two-Party Agreement and is expected to be completed by June, 1997 on St. George and September, 1997 on St. Paul. All field work under the Two-Party Agreement is expected to be completed by the close of FY 1998. The Department also intends to fund an award to stabilize the sealing plant on St. George Island upon receipt of an acceptable proposal from any local entity or resident of the Islands. Other cooperative agreements may also be executed for additional projects identified in the Two-Party Agreement and other projects authorized under P.L. 104-91, as the Secretary determines necessary.

The State of Alaska has agreed that satisfaction of the terms of the Two-Party Agreement will entitle NOAA to certification from ADEC that all necessary and required work to ensure compliance with environmental laws has been met. Moreover, completion of work associated with the landfills and

stabilization of the sealing plant will result in satisfaction of the Secretary's obligations under P.L. 104-91.

Section 3(c)(2) of P.L. 104-91 requires the Secretary to include in this Report the estimated costs for conducting necessary actions to resolve Federal responsibility on the Islands. Congress has appropriated \$20.1 million for Pribilof Island activities. Total project costs under the Two-Party Agreement are estimated to range from \$21.1 to \$25.5 million (which includes up to \$3.4 million contingency to accommodate uncertainties associated with unforeseen site conditions during remediation, variable work seasons based on weather conditions, and the availability of skilled workers). The FY 1998 budget request includes no new funds for the Pribilof Islands cleanup. Any requirements above currently available funds would be accommodated with funds requested for NOAA in the President's FY 1998 budget.

Further, based on guidance provided by Congress, at least \$2.7 million is needed for stabilization of the sealing plant and activities related to landfills under P.L. 104-91. Should additional projects be required under P.L. 104-91, or as a result of this Report, funds above \$2.7 million will be required. Funding for P.L. 104-91 projects is not included in the \$20.1 million appropriated for Pribilof Island activities to date.

With the exception of ongoing administrative costs associated with processing retirement benefits and completing property transfers under the TOPA, these costs constitute the entirety of funds required to finalize current Federal responsibilities on the Islands.

(I) Public Law 104-91 Process

Representatives of the Pribilovians have alleged that the process for input to this Report has been unfair in that inadequate notice and funding was provided to permit a timely response.

Section 3(c) of Pub. Law 104-91 directs the Secretary of Commerce to prepare this Report proposing necessary final actions to resolve Federal responsibility on the islands and to include the "statements of claims of local entities and residents." A description of the Report purpose and process were set forth in explicit detail, including an approved form for submission of statements, in the **Federal Register** on April 30, 1996. A copy of the **Federal Register** Notice together with a letter explaining the notice was sent to every resident of the islands on April 29, 1996. (The letter and **Federal**

Register notice are included as Exhibits 15 and 16.)

As set forth in the **Federal Register** notice, local entities and residents were initially given three months to submit their statements. In April, 1996, local entities and residents sought and obtained an extension for preparation of the Report and for their submission of claims. As a result, the deadline for submission of statements was extended from July 6, 1996 to October 6, 1996 and final Report submission was moved to January 6, 1997. Notice of the extension was provided through a televised public meeting on the Islands in May, 1996. To accommodate an extremely tight turn around and the practical difficulties of coordinating the Report through several agencies over the holiday season, NOAA requested and obtained two additional 30 day extensions for the Report. Notice of these extensions were provided counsel to the local entities and in no way prejudiced the rights of local entities or residents.

In the course of preparing the Report, NOAA personnel conducted five public meetings on the Islands. In addition, NOAA personnel conducted informal meetings at the Community Elder Center and at the TDX annual shareholder's meeting. NOAA also conducted several impromptu meetings during their visits at the request of island leaders. Written notice of the formal meetings were provided to all residents. The first formal meetings, conducted in May, 1996, explained the Report purpose and process. The second formal meetings, in June, 1996, provided for the taking of oral statements of local residents. The final formal meeting in October, 1996, summarized the submissions made by local entities and residents.

It is the opinion of the Secretary that the Department provided timely notice and opportunity to submit statements and that the P.L. 104-91 process was executed in compliance with all applicable principles of due process.

V. Summary and Final Recommendations

The legislation directing this Report resulted from ongoing discussion between NOAA and representatives of the Islands regarding the responsibility of the Federal Government to continue to provide for and guarantee the future of the Pribilovian people. Unable to articulate specific legal claims or otherwise establish a basis for continued appropriations through negotiations with NOAA in 1996, this report mechanism was introduced by the Pribilovian representatives to give voice to those issues perceived to be

³² 61 Fed. Reg. 25632 (May 22, 1996).

inhibiting the Pribilovians' ability to arrive at a self-sustaining economy.

It is the opinion of some of the Pribilovian people that the Federal Government has not concluded its obligations to the Pribilovian people. It is the Secretary's opinion that the Federal Government has fulfilled, or is in the final stages of fulfilling, all obligations to the Pribilovian people as directed by Congress through legislation enacted over the last 50 years.

At least one-third of the claims submitted for this Report express dissatisfaction with the way land or the 1983 Act trust has been controlled, used or distributed by a competing island entity. An equal number of claims allege the past or present failure or unwillingness of the Federal Government to act to resolve these disputes. As this Report is being written, both TDX and the City of St. Paul have initiated separate lawsuits against the Secretary of Commerce and the Under Secretary of NOAA to resolve a land dispute previously resolved in two distinct settlement agreements. (A copy of the complaints filed are attached as Exhibits 5(a) and 5(b)).

After several visits to the Islands by NOAA and Department personnel, including meetings for the taking of the statements of the local people, and as a result of an analysis of the claims submitted, it is the opinion of the Secretary that these claims are without adequate foundation in law, or under any existing policy or agreement.

The debate over administration of ongoing Federal obligations is also detracting from the Department's ability to meet its responsibilities under Title II of the 1983 Act. As the Federal agency responsible for protecting the welfare and habitat of the fur seal under Title I of the 1983 Act, a role as provider of indefinite and ongoing support for economic (e.g., commercial) development under Title II creates an internal paradox. Any interpretation that Title II of the 1983 Act guaranteed the Pribilovian people an unrestrained and indefinite economy administered through the Department is at odds with the clear intent of the Act and places the Department in an untenable and incommensurable position. The depleted status of the fur seal demands that the Department be permitted to pursue statutory obligations goals unfettered.

Conditions on St. George are widely divergent from those on St. Paul and the Secretary recognizes the difficulty of assessing the struggles of one entity in the shadow of another's success. To ensure that due consideration is given to the entirety of the Pribilovian question,

the Secretary recommends that Congress authorize and direct an independent economic assessment of the practical realities facing the Island of St. George. The Secretary further suggests that such analysis be undertaken within the parameters of a clearly articulated economic objective. The Department is unable to estimate the costs of this analysis.

The Secretary also recognizes that the opinions and positions presented in this Report will not be widely accepted by those entities and residents who submitted statements. We do not believe that it was Congress' intent that the P.L. 104-91 process be used as a claims process representing potential lawsuits against the United States government. As set out in the **Federal Register** notice commencing this process (attached as Exhibit 17), it was not the intent of the Secretary that this Report serve as a claims process. Despite repeated attempts to dissuade the claims concept, the Pribilovian people adhered to it. It is the Secretary's view that section 3(c) is best understood as encompassing "claims" associated with Pribilof Island land transfers and grants and cooperative agreements to promote environmental cleanup. It seems clear that, regardless of Congressional intent, the larger, well-supported Island entities will persist in pursuing claims against the United States and the Department. To minimize the extensive and consuming administrative and transactional costs associated with the defense of these potential claims, the Secretary recommends that Congress establish a claims process to be administered through the United States Court of Federal Claims.

The Department is unable to predict how many of the 85 potential claims that have been raised under the P.L. 104-91 process will be actively pursued by Pribilovian representatives in a formal, adjudicative setting. The Department is therefore unable to estimate the costs of this recommendation.

This Report was signed by the Secretary of Commerce on March 17, 1997.

Dated: April 1, 1997.

Terry Garcia,

Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 97-9586 Filed 4-14-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), an open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The meeting will be held from 10:00 a.m. until 4:00 p.m. on Monday, May 19, 1997.

ADDRESSES: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

FOR MORE INFORMATION CONTACT: David E. Bucher, Deputy Assistant Commissioner for Trademark Policy and Projects, by mail marked to his attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202-3513; by telephone at (703) 308-9100, ext. 20; by fax at (703) 308-9099; or by e-mail to dave.bucher@uspto.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

- (1) Opening remarks
- (2) Financial Report
- (3) Trademark Trial and Appeal Board Report
- (4) Business Process Reengineering Report
- (5) Report on Service and Examination Activities
- (6) Discussion of Policy Issues in Examination
- (7) Legislation and International Affairs Report
- (8) Discussion of Trademark/Domain name issues
- (9) Discussion of prospective hearings on Intent-to-Use

Dated: April 10, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97-9681 Filed 4-14-97; 8:45 am]

BILLING CODE 3510-16-P