

HELP NEEDED TO PROTECT PRIBILOF ALEUT FISHING RIGHTS

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When Alaska was acquired from Russia by the Treaty of Cession, in 1867, the Pribilof Islands were recognized for their great value because of the Aleuts' participation in the fur trade. The United States declared the Islands of St. Paul and St. George to be a "reservation" in 1869 and in 1870 directed federal officials to manage the fur seal population "having due regard to the interests of the government, the native inhabitants, the parties heretofore engaged in trade, and the protection of the seal fisheries." Act of July 1, 1870, 16 Stat. 180. Throughout the changes of the intervening 150 years, the federal government has generally "recognized the dependence of the [Aleuts] upon fishing and seal hunting for their continued existence." *Aleut Community of St. Paul Island v. United States*, 480 Fed. 2d 831, 839 (Ct. Cl. 1973). The Pribilof Islands Aleut Communities of St. Paul and St. George Islands, federally recognized tribes, have no choice but to subsist on marine resources surrounding the Islands but they find themselves locked out of the fishery by current federal management. Now, urgent action is required to protect the Tribes' right to subsistence.

On January 19, 2017, Ann Downes, a Deputy Assistant Secretary of Interior at the end of the Obama Administration, sent a letter to the presidents of the St. Paul and St. George communities, refusing to aid the Pribilofs. See <http://bit.ly/2oQyZRu>. The letter made no reference to the historical and legal research supporting a federal right to take fish that was submitted by the tribes but it acknowledged that the United States' "treatment of the Pribilof Island Aleuts has been both tragic and shameful." The January 19 letter should be withdrawn and rewritten to a conclusion affirming that tribal rights are protected by federal law.

The tribes believe that the special federal reservation established around the Pribilof Islands in 1869 included a set-aside of fishing rights which still exists today. Thus the Aleuts have requested that the Interior Solicitor prepare an opinion concerning those rights similar to the 1993 opinion regarding the implied reserved fishing rights of the Hoopa Valley and Yurok Tribes in California. See <http://bit.ly/2tK6tVV>. That 1993 opinion led to judicial affirmation of a tribal fish harvest allocation in *Parravano v. Babbitt* (9th Cir. 1995). See <http://bit.ly/2t52nZU>.

The Aleut Communities' request for Interior Department assistance was passed from one attorney to another in the Solicitor's office for over 20 years. It has generated many questions but no analysis or solution for tribal fishermen thus far.

The Tribes' submissions include the 1996 summary of the legal right to an allocation of Bering Sea fisheries, available at <http://bit.ly/2bHtC4L>. This is the best statement of the tribe's rights that arose when the special reservation was established. That summary is supported by a 1997 historians' report on federal responses to Pribilof Aleut dependence on fisheries, available at <http://bit.ly/2bI9xeL>. The Tribes' claim and the conclusion of the historians is strongly supported by the ruling in *Aleut Comm. of St. Paul Island v. United States*, 480 F.2d 831 (Ct. Cl. 1973) (<http://bit.ly/2oWO46l>).

After submitting the 1996 and 1997 materials, the Aleuts prepared detailed responses to a series of questions from federal officials, including a 1999 analysis of the community development quota (CDQ) program, established by the Magnusson-Stevens Act, available at

<http://bit.ly/2bBfd93>, the 2009 analysis of administration options for protecting Pribilof Aleut reserved rights, available at <http://bit.ly/2b4ZrAD> the 2015 memorandum concerning the inapplicability of a *Native Village of Eyak* aboriginal claim ruling, available at <http://bit.ly/2bHsYnZ>, and a 2016 memo on the irrelevant Pribilof Islands Transition Act of 2000 (PITA).

The 2016 memo on PITA explains that the 1983 Fur Seal Act Amendments (FSAA) were not the source of the Pribilof Aleuts' reserved fishing rights (instead it was the 1869 Act, 15 Stat. 348).¹ NOAA General Counsel similarly argued that the 1983 Fur Seal Act Amendment was not the source of a reserved right in a 1996 opinion. Specifically, that May 29, 1996 opinion explains that NOAA believed that the FSAA created no fishing rights; it said at page 3:

Through the [FSAA], Congress amended the Fur Seal Act of 1966 to terminate Federal involvement as the manager and employer of the residents in carrying out sealing activities by setting up a trust fund to be used by Pribilof residents to establish a self sufficient local economy not dependent on sealing The language of the 1966 and 1983 Acts is silent regarding the creation of any fishing rights for residents of the Pribilof Islands.

It is ironic that some observers think that PITA language relieving Commerce of duties created in the FSAA had the effect of terminating tribal rights that NOAA agrees were not covered by the FSAA in the first place.

The Interior Department and NOAA have never addressed 1869 and the 1870 Acts or other Acts described in the Aleuts' 1996 summary. Most recently, NOAA raised questions about (1) the relevance of a possible St. George Island marine sanctuary and also (2) possibly changing the CDQ shares. Briefly, (1) The sanctuary is only proposed to encompass St. George Island and to provide more comprehensive management of resources, including subsistence fisheries; it but does not provide for commercial fishing quotas to St. George or St. Paul Island. Here is the proposal: <http://www.nominate.noaa.gov/nominations/st-george-unangan-nomination.pdf>.

(2) The Pribilof Islands tribal groups have consistently been fighting to retain or increase the CDQ halibut quotas. But a CDQ quota benefits not the tribe but an entirely different entity, created under state law, the Central Bering Sea Fishermens' Association (CBSFA). The Tribes have not reached a determination of how recognizing a reserved right would affect CBSFA - whether the Tribe would lease rights to CBSFA, or use the right to "protect" CBSFA's quotas.

The St. Paul Island Tribal Council has diligently, and at a great financial expense, worked with the International Pacific Halibut Commission, and the North Pacific Fisheries Management Council on issues regarding the insufficient volume of fish, particularly halibut, available to

¹ That is one reason why language in sec. 105 of PITA saying that "The Secretary of Commerce shall not be considered to have any obligation to promote or otherwise provide for the development of any form of an economy not dependent on sealing on the Pribilof Islands, Alaska, including any obligation under [the \$20 million trust provision of the 1983 FSAA] or [a report per Pub. L. 104-91]" has no effect on the Pribilof Aleuts' rights.

Aleut people. Little halibut remains for tribal fishermen principally because of bycatch by other fisheries. Every year Aleuts struggle to get a little quota to sustain the community. But there are no guarantees and it may take years to apply abundance-based halibut management, where the IPHC and the Council have a management plan that manages the entire halibut population, instead of creating direct take and bycatch quotas separately.

Surrounded by the Bering Sea, the Pribilof Aleut people have only marine sources to rely upon. Action is urgently required to withdraw the Interior Department's superficial letter and to vindicate the United States' obligation to protect the Aleut people in securing their maintenance and protection.