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October 11, 2014

Dan Hull, Chairman  
North Pacific Fishery Management Council  
605 West Fourth Avenue, Suite 306  
Anchorage, Alaska 99501

Re: Aleutia / Port Moller ROFR

Dear Chairman Hull:

This law firm represents the Aleutian Pribilof Island Community Development Association (APICDA), which has asked me to set out the position of APICDA Joint Ventures, Inc., with regard to the final action before the North Pacific Fisheries Management Council on the allocation of processor quota share to Aleutia.

As discussed below, there remain a significant number of unanswered questions and complexities with this issue that make Alternative 2 of the Regulatory Impact Review problematic. In short, Alternative 2 would attempt to right a perceived wrong by giving Aleutia a windfall in the form of free PQS while punishing all the other Bristol Bay red king crab PQS holders in the region, circumventing the clear requirement that Aleutia take up the matter civilly with the party it claims injured it.

It is quite probable the ROFR associated with Port Moller had lapsed before APICDA Joint Ventures bought the PQS from SnoPac in 2008. Under the regulations in effect when the shares transferred, Aleutia's ROFR with SnoPac would have lapsed after the first three years of the crab rationalization program if the shares were processed outside Port Moller during this period. In spite of our repeated requests that Aleutia provide evidence of processing activity in Port Moller, none has been provided. This absence of documentation leads AJV to believe the ROFR lapsed before the transfer, in which case the sale occurred within the regulatory bounds.

In the event Aleutia supplies *conclusive* evidence that the PQS was processed in Port Moller during the first three years of the program, AJV will be open to the possibility of sale to Aleutia, if the parties can come to terms. No

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such talks have occurred yet, because Aleutia has not backed up its claims with facts that show the ROFR had not lapsed.

As the staff analysis highlights, the transfer at question included not only the quota associated with Aleutia but also – and primarily – a large amount of quota earned in St. George for which APICDA was the designated ECC. Under the regulations then in effect, in the instance of a transfer, the quota and all associated assets would have been sold as a package. No regulatory mechanism explicitly allowed for negotiations, and nothing compelled SnoPac to negotiate with each ROFR holder separately. If it had an active ROFR, Aleutia might have had to purchase the entire quota as part of a package. Aleutia has not asserted it could have paid for the entire quota.

The staff analysis advocates Alternative 2 based solely on an aim of fairness to Aleutia. If fairness is the consideration, we urge the Council to analyze fairness as a balancing of the equities for all affected parties. NOAA has treated Aleutia fairly, in pointing out that the Contract Terms for Right of First Refusal based on Public Law 108-199 require: “All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.” There is no information in the record that Aleutia has made any effort to resolve the matter through civil contract law. Instead, Aleutia asks the Council to be its court of first resort. Rather than go to negotiations and court against SnoPac, Aleutia is spending the Council’s, the processors’, and others’ time on this issue in an effort to get far more than any court would award.

No argument can be made that it is fair to the other holders of BBRK PQS to dilute their shares without consideration, by handing PQS to Aleutia at no cost.

Since the transfer to APICDA Joint Ventures, with the exception of the very first year following the transfer, when SnoPac had already leased the PQS to a company in Unalaska, the shares have been processed in the Aleutians East Borough (AEB), keeping them within the region. In addition, APICDA has offered repeatedly to enter into a new ROFR agreement with Aleutia to ensure that the Aleutians East Borough’s historic crab remains within the region. This latter point is important to the spirit of the ROFR program – processing in Akutan has kept the economic benefit of the IPQ in the community and the region. It also means Aleutia, which serves the region, has suffered no economic harm.

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On balance, then, if Aleutia has been wronged, Alternative 2 would not make it whole – if would do so much more than that. This approach would leave Aleutia with a valuable windfall, taken from other PQS holders.

APICDA has tried to negotiate the matter with Aleutia over the past several years, to no avail. Having failed to achieve APICDA's capitulation to its terms, Aleutia has once again brought its argument to the Council, this time seeking to take quota shares from all other holders.

We have not seen Aleutia assume any responsibility for this situation. Before the regulatory amendments, as the staff analysis notes, ROFR holders often negotiated changes in the ROFR terms to extend the three-year expiration period. Aleutia could have negotiated with SnoPac to extend the ROFR before it expired, but it did not.

As you know, APICDA is a nonprofit CDQ entity that exists to benefit small communities in Western Alaska. APICDA is not in the business of injuring any such community, regardless of whether it is one of APICDA's own six villages. However, it cannot support Aleutia's efforts to persuade the Council to redistribute quota shares illegitimately to Aleutia from other holders. Punishing all Port Moller's neighbors for an imagined wrong will not help the region.

The Council took these circumstances into account when it acted to amend the regulations prospectively. Lacking a way to instate Aleutia's claimed ROFR, it has always urged Aleutia to work out this matter privately with APICDA. Nothing Aleutia has brought back to the Council here should change that approach.

APICDA appreciates the Council's consideration of this letter and its position, and hopes this issue will be put to rest so the Council, APICDA, and the region may focus on other matters.

Sincerely,

LONGENBAUGH LAW FIRM, LLC

cc: APICDA Joint Ventures, Inc.