

President Barack Obama  
1600 Pennsylvania Ave NW  
Washington, DC 20500

March 27, 2011

**RE: Proposed issuance of a Special Coral Reef Ecosystem Fishing Permit to Kona Blue Water Farms for the purpose of an open ocean aquaculture operation in federal waters off the leeward coast of the Island of Hawai`i, Hawai`i**

Dear President Obama,

We, the undersigned organizations, oppose the National Oceanic and Atmospheric Administration (NOAA) Pacific Island Regional Office's (PIRO) proposal to award Kona Blue Water Farms (Kona Blue) a Special Coral Reef Ecosystem Fishing Permit (Permit) for the purpose of establishing the first open ocean aquaculture (OOA) operation in federal waters.

This type of Permit is typically awarded for fishing and contains no safeguards against the known risks of OOA. Should this Permit be approved, it would pave the way for development of the OOA industry in U.S. waters nationwide, without protections for our oceans, coastal communities and consumers. This back-door process evades public input, sets a dangerous precedent, and is legally very questionable.

**Given NOAA's clear bias toward rapid industry expansion and in the absence of a Secretary of Commerce, we urge you to step in and halt the irresponsible fast tracking of OOA development in our federal waters.**

**BACKGROUND**

The Permit would allow Kona Blue to operate an unmoored fish farm attached to an 80ft vessel for one year. The vessel and attached cages would largely drift with currents within a 7,200 square mile area of federal waters off the leeward coast of the Island of Hawai`i, Hawai`i. The company would raise 20,000lbs of *Seriola rivoliana*, marketed as Kona Kampachi, for commercial distribution.

The Permit is being sought on the assumption that the cages are a gear-type attached to a vessel fishing for a species managed under the Fishery Ecosystem Plan for the Hawai`i Archipelago. PIRO has prepared a Draft Environmental Assessment (EA), "Issuance of a Permit to Authorize the Culture and Harvest of a Managed Coral Reef Fish Species (*Seriola rivoliana*) in Federal Waters off the Leeward Coast of the Island of Hawai`i, State of Hawai`i", because cages are considered an unlisted gear type whose environmental impacts have not previously been considered. This Draft EA is strictly limited to the parameters of the proposed operation and in no way takes into consideration the potential impacts this decision would have nationwide. A mere ten-day comment period on the Draft EA comment period was announced March 17, 2011 and ended March 27, 2011.

## **DANGEROUS PRECEDENT**

The Draft EA fails to identify that Kona Blue would be the first OOA venture in federal waters, as well as the first time a “fishing” permit would be given for that purpose. If awarded, this action would pave the way for subsequent permits to be awarded for growing any managed species in federal waters around the U.S. This is both reckless and an extremely dangerous precedent.

Issuing a simple fishing permit is a backdoor way to circumvent meaningful public input on development of OOA in federal waters. It is ridiculous to equate OOA with fishing. The Gulf of Mexico Fishery Management Council developed and finalized a permitting structure for OOA in its region. While the legality of such a plan remains in question, the process took several years and included opportunities for public comment. PIRO is proposing to issue a permit after only ten days of public comment on a Draft EA. This is contrary to the intent of a number of federal laws.

## **RISKS AND CONCERNS WITH OPEN OCEAN AQUACULTURE**

Farming of carnivorous finfish in open waters presents many known risks, including: disease transfer between wild and farmed fish populations; depletion of wild fish stocks to feed farmed fish; pollution from fish wastes and excess feed; fish escapes that can alter and weaken wild fish populations through intermixing or competition for resources; as well as social and economic impacts to coastal communities, fishermen and indigenous peoples. There are no safeguards in place to protect our natural resources and coastal communities from negative consequences. Allowing OOA in our federal waters via a fishing permit circumvents any rigorous analysis of potential impacts and the establishment of protections against them.

## **LEGALLY QUESTIONABLE**

PIRO’s proposal to issue a Permit for the purpose of OOA is legally questionable. The Magnuson Stevens Fishery Management and Conservation Act requires that fishery management plans, such as the Fishery Ecosystem Plan for the Hawai`i Archipelago (FEP), establish provisions for the management of species, including the issuance of fishing permits.<sup>i</sup> The FEP and its corresponding implementing rules, however, do not provide for the permitting of aquaculture facilities. Furthermore, aquaculture activities are classified in the FEP as a “nonfishing” activity.<sup>ii</sup> If PIRO intends to treat and define aquaculture facilities as fishing, it must also comply with 5 U.S.C. § 553 (2006), which requires public notice in the federal register and a rulemaking process. As it stands, awarding Kona Blue a permit for aquaculture as a fishing activity would likely not be in compliance with these laws.

## **CONCLUSION**

We strongly oppose PIRO issuing Kona Blue a Permit for the purpose of OOA in U.S. federal waters.

PIRO's serious consideration of Kona Blue's application is in and of itself reckless. It circumvents public participation in decision-making about public resources and sets a dangerous precedent for permitting factory fish farming in federal waters. In addition to risking our natural resources for the sake of industry promotion, this approach is legally very questionable.

In light of the far-reaching consequences approval of Kona Blue's application would have, we urge you to intervene and ask PIRO to deny this permit.

Sincerely,

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CC:

Michael Tosatto, Regional Administrator Pacific Islands Regional Office, National Oceanic and Atmospheric Administration as comment for the public record regarding the Draft Environmental Assessment for "Issuance of a Permit to Authorize the Culture and Harvest of a Managed Coral Reef Fish Species (*Seriola rivoliana*) in Federal Waters off the Leeward Coast of the Island of Hawaii, State of Hawaii."

Dr. Jane Lubchenco, Administrator of National Oceanic and Atmospheric Administration

Members of the Western Pacific Fishery Management Council

Members of the 112<sup>th</sup> United States Congress

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<sup>i</sup> 16 USC 1853(a)-(b)

<sup>ii</sup> Western Pacific Fishery Management Council. "Fishery Ecosystem Plan for the Hawaii Archipelago" September

<sup>ii</sup> Western Pacific Fishery Management Council. "Fishery Ecosystem Plan for the Hawaii Archipelago" September 24, 2009 at 207