

**FISHERMEN'S AGREEMENT BETWEEN
ALLIANCE OF COMMUNITIES FOR SUSTAINABLE FISHERIES AND
MONTEREY BAY AQUARIUM RESEARCH INSTITUTE**

THIS AGREEMENT ("Agreement") dated this ____ day of _____, 2005, is made by and between Monterey Bay Aquarium Research Institute, a California non profit corporation (hereinafter "MBARI") and the Alliance of Communities for Sustainable Fisheries, a non profit trade association representing the interests of fishermen (hereinafter "ACSF") and those individual commercial fishermen licensed to fish in the Monterey Bay who agree to adhere to this Agreement (which together with ACSF are hereinafter collectively referred to as "ACSF" or "Fishermen") by entering into the Fisherman's Agreement in substantially the form set forth in Exhibit 1 (attached hereto).

WHEREAS, MBARI has applied for permission to construct and operate a submarine Cable (the "Cable") that would extend from the shore out into Monterey Bay and adjoining seabed areas to the west of Moss Landing, California;

WHEREAS, the construction of the Cable and the presence on the seabed of uncovered portions of the Cable create a potential obstruction to fishing operations by Fishermen duly licensed to engage in fishing by State and Federal authorities in the area of the cable;

WHEREAS, certain government authorities have conditioned, and others may condition, the issuance of any necessary permits for the Cable on the implementation of a Fishermen's Agreement to reduce the risk of cable impact during construction and operation of the Cable;

WHEREAS, ACSF and MBARI desire to establish a Fishermen's Agreement that will provide the on-going relationship and framework to reduce the risk of conflict between the Cable and legally-authorized fishing in the area and to provide for compensation in the event that fishing equipment or gear is lost due to a snag by fishing operations consistent with this Agreement..

NOW THEREFORE, in mutual consideration of the agreements contained herein, MBARI and the ACSF agree as follows:

1. Installation and Burial of MARS Cable.

MBARI has examined the seafloor and subsurface within reasonable proximity to the approved cable route to determine a cable route which minimizes above-ground exposure of the Cable due to hard ground, rock seabed or other features. The Cable shall be buried to the extent reasonably possible and shall remain buried, except in locations where, due to geophysical constraints, such burial not feasible. Any length of Cable or cable-crossing which cannot be completely buried shall be identified in "as-built" coordinates provided by MBARI to ACSF and other interested parties. In the course of any repair or maintenance, the Cable shall be reburied to the extent possible to the same depth as originally buried.

2. Broadcasts during Cable Installation

During the time when the Cable is being installed by MBARI, MBARI shall make daily radio broadcast announcements on the local fishermen's emergency radio frequency (or other appropriate frequencies) that provide the current Cable installation location and a toll-free number which can be called for additional information.

3. Notice to Fishermen.

ACSF shall use reasonable efforts to make all fishermen who fish in the area of the Cable of the terms of this Agreement and advise them of the need to enter into the Fishermen's Agreement set forth in Exhibit 1. ACSF shall also use reasonable efforts to provide MBARI with a list of fishermen, including their mailing addresses, who may be licensed to trawl in the area of the Cable so that MBARI may distribute the information required under the terms of this Agreement to the fishermen. ACSF shall also use reasonable efforts to provide MBARI with updated list of the fishermen annually thereafter.

4. Post-Installation Information.

Within ninety (90) days after its final acceptance of the Cable as completed, MBARI shall distribute to ACSF and to any fisherman licensed to trawl in the project area such written documentation indicating the "as built" Cable coordinates and the Cable's burial depths as is reasonably necessary to show the accurate position and depth of the Cable. Such documentation shall also be delivered by MBARI to the Office of the Moss Landing Harbor Master, the Monterey Bay National Marine Sanctuary office in Monterey, California, and the California Department of Fish and Game's Marine Regional Headquarters in Monterey, California. MBARI shall also maintain copies of such documentation at its office in Moss Landing, California, and shall make such documents available for inspection during its regular business hours.

4. Notice to NOAA and USCG.

Within ninety (90) days after its final acceptance of the Project as completed, MBARI shall provide such information as is reasonably necessary to NOAA to permit NOAA to show accurately the location and depth of the MARS Cable on navigational charts. However, because such navigation charts are not always updated regularly, MBARI shall also provide such information to the United States Coast Guard by a Local Notice to Mariners so that accurate information about the location of the Cable can be published in the appropriate manner.

5. 24-Hour Telephone Hotline

MBARI shall maintain its existing fully-staffed 24-hour, toll-free telephone hotline and shall provide the hotline telephone number which is 866-830-0169, in writing, to any fisherman licensed to trawl in the area of the Cable and to any other party who requests the number. MBARI shall also provide its hotline number to NOAA for inclusion on navigational charts, and to the U.S. Coast Guard for inclusion in a Local Notice to Mariners. Should MBARI's hotline number change, MBARI shall notify all who have received the number as herein provided.

[What about a radio if the fishermen does not have a cell phone?]

There shall be a representative of MBARI on duty at all times who has the authority, background, and experience to advise fishermen whether their reported position is in the vicinity of the Cable.

6. Notice to MBARI

If a fisherman believes he or she has snagged his or her fishing gear on the MARS Cable or in any way damaged the MARS Cable, he or she shall immediately notify MBARI on the MBARI hotline. Notification shall include advice as to the location of his or her vessel by GPS coordinates at the time of the probable snag or damage. If, due to serious adverse weather conditions or other emergency conditions, the fisherman is unable immediately to contact MBARI on its hotline, the fisherman shall note the date, time and location of the actual or suspected snag or damage, and shall thereafter immediately provide notice to MBARI of the actual or suspected snag or injury, as soon as emergency conditions have abated.

7. Gear Replacement Costs/Claims

After notice by any fisherman who enters into the Fishermen's Agreement to MBARI on MBARI's hotline, or otherwise any fisherman gives actual notice, of a snag which he or she reasonably believe is caused by the Cable, or if, at MBARI's direction, the fishermen immediately sacrifices trawling gear which has snagged or damaged the MARS Cable and if the Fisherman has followed the protocol for operating in the proximity of the Cable set forth in Exhibit A, MBARI agree to pay reasonable compensation to such fishermen for any damage or injury to a vessel or its gear.

The amount of compensation shall include (a) the actual reasonable retail replacement cost of gear comparable to the sacrificed gear, or the reasonable cost to repair any damaged gear; and (b) the value of the lost fishing time caused by the snag or injury. Under no circumstances will MBARI pay the replacement costs or reimbursement costs provided in this paragraph unless the fisherman has informed MBARI on its hotline of a snagging of or damage to the Cable or otherwise gives actual notice to MBARI within 24-hours of any actual or suspected Cable snag or damage.

8. Claims Reimbursement

MBARI's payment for damaged or sacrificed gear and lost catch shall be made no later than ten (10) days after MBARI has been provided with either (a) acceptable written documentation from the claimant, including a written claim form in substantially the form attached hereto as Exhibit B, with invoices or bids for replacement cost of the gear or the reasonable cost to repair the gear, with certification on the claim form (in the form attached) that the claim for payment is being made by the owner of the sacrificed or damaged gear; or (b) the final claims decision of an individual who investigated a claim in accordance with this Section 8, as appropriate in each case and such decision is accepted by the Committee formed under Section 10.

If MBARI and the individual fisherman involved have a dispute over any of the issues relating to a claim, the claim shall be investigated by an individual who is employed by any other cable committee operating in California and Oregon, selected by MBARI and ACSF. The

recommendation of that individual with respect to compensation shall be presented to the Committee formed under Section 10.

MBARI's President and CEO shall, by Resolution of its Board of Directors, have the authority to authorize the payment of any single fisherman's claim up to \$100,000.00.

9. Cable Damage Claims/Release of Liability

MBARI agrees to release any claims for Cable damage which it might otherwise have, either individually, or collectively, against any Fisherman who is a signatory to this Agreement who, while using reasonable care, and following the protocol set forth in Exhibit A, snags the Cable, if the Fisherman immediately notifies MBARI of the snag or other contact with the Cable on MBARI's hotline or otherwise gives actual notice and cuts loose his or her gear, as directed by MBARI, to prevent further damage to the Cable. MBARI will also refrain from taking any administrative, legal, or other action to sanction and/or recover damages against any Fisherman who notifies MBARI of a probable snag or damages on MBARI's hotline or otherwise gives actual notice and who is directed by MBARI to cut loose his or her gear to prevent further damage to the Cable. Under no circumstances will MBARI release claims for Cable damage or refrain from taking administrative or legal actions against a Fisherman who damages the Cable, unless MBARI is notified on its hotline number (or through actual notice) by the Fisherman within 24-hours of any actual or suspected snag or damage. Nothing herein shall be construed to require that or indicate that MBARI waives any claim against any third-party who damages or otherwise interferes with the Cable, it being MBARI's intent to retain fully any and all rights to recover damages and to take any legal or administrative action of any kind and character, except as expressly relinquished herein.

10. ACSF/MBARI Committee and Meetings

Representatives from ACSF and MBARI shall form a committee, not to exceed three people in size, which shall meet up to four (4) times in the first year after MBARI's final acceptance of the Project. The Committee shall be composed of one (1) person selected by ACSF; one (1) person selected by MBARI; and one (1) person selected by a neutral third-party. The Committee meetings shall be in Monterey County at a location selected by ACSF. The meetings in the first year after Project acceptance shall focus on an exchange of information and address any administrative or other issues which have arisen in connection with the Cable. During the second year after final acceptance of the Project, the Committee shall meet not more often than every 6 months, on request by either MBARI or ACSF; and each year thereafter, not more often than annually, on request by MBARI or ACSF. The Committee may also meet, if needed, to review any claims that are not otherwise resolved after direct negotiation between MBARI and any signatory to the Agreement. MBARI shall pay an honorarium of not more than \$____.00 per meeting to the ACSF representative for any such meeting attended.

11. Dispute Resolution

The parties agree to submit any dispute that is not resolved in the Committee over reimbursement for lost gear, or damage to the MARS Cable, to mediation by a mediator mutually selected by the parties, no later than 30 days after such dispute arises. If the dispute is

not resolved by mediation within 30 days after submission to the mediator, then the parties shall submit the dispute to binding arbitration before a single arbitrator selected by mutual agreement of the parties, or if the parties cannot agree, then selected in accordance with the California Arbitration Act then in effect (presently embodied in Code Civ. Proc. § 1280 et seq.) with said arbitration to occur no later than 60 days after the dispute arose. Each party agrees to pay one half the cost of any mediation conducted hereunder. Each party agrees that the arbitrator is authorized to award any arbitration costs and attorneys' fees incurred in the arbitration to the party prevailing (as defined by California law then in effect) in the arbitration as a part of the arbitrator's award.

12. Governing Law

This Agreement and the rights and duties of the parties arising hereunder shall be governed by and construed in accordance with the laws of the State of California except for provisions of California law referring governance or construction to the law of another jurisdiction.

13. Amendment

An amendment or modification of this Agreement shall be effective or binding on a party only if it is in writing and signed by each of the parties.

14. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one Agreement.

15. No Partnership or Joint Venture

Nothing in this Agreement shall be construed to create or constitute a partnership, agency, joint venture or similar relationship or to create joint or several liability on the part of any of the parties.

16. Correspondence

All correspondence should be directed to the addressees and individuals indicated next to the signature of each party, or to such other address or individuals as a party may request in writing from time to time.

17. Termination

This agreement shall terminate as to MBARI or its successors or assignees at such time as it ceases to operate the MARS Cable within the Project Area or if MBARI does not place a cable in service before December 31, 2008. This agreement shall also be suspended if there are no trawlers licensed to fish in the Project Area.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the day and year shown at the beginning of this Agreement.

MBARI

Dated: _____, 2005

By: _____
Authorized Officer

Address:

ACSF

Dated: _____, 2005

By: _____
Authorized Officer

Address:

PROCEDURES TO FOLLOW WHILE OPERATING NEAR THE MARS CABLE IN MONTEREY BAY

PURPOSE OF THESE PROCEDURES

These procedures have been jointly developed by the a committee of representatives of the local fishing industry and the Monterey Bay Aquarium Research Institute (MBARI) to use as a guide to responsible conduct in the vicinity of the cable to be placed in Monterey Bay. They are intended to protect the cable from being damaged by contact with trawl or other fishing gear. Fishermen who sign agreements with MBARI can be protected from liability for damaging the cable by complying with these procedures. Compliance will also facilitate compensation for gear sacrificed to avoid damage to the cable.

SAFETY FIRST

These procedures define how vessels should operate when fishing in the vicinity of cables. These procedures do not change the vessel operator's authority and responsibility to care for the safety of crewmembers, passengers and the vessel, taking all relevant factors into account. No step in these procedures should be followed if doing so would be unsafe.

PROCEDURES WHEN OPERATING NEAR THE CABLE

For purposes of these procedures, a vessel is considered "near" a cable if the distance from the vessel to the charted position of the cable is equal to or less than:

- 3 times the depth of water, in depths of 150 fathoms (300 meters) or more, or
- 4 times the depth of water, in depths of less than 150 fathoms (300 meters).

A vessel relying on Loran C instead of GPS or DGPS should assume a potential error of 1/2mile in the vessel's position, and should consider itself "near" a cable if it is within Y2mile plus three times the depth of water of the charted position of the cable.

WHENEVER OPERATING "NEAR" A CABLE, A VESSEL MUST COMPLY WITH ALL OF THE FOLLOWING STEPS, A THROUGH G:

A. The vessel shall have on board in useable form the most current nautical chart information, including:

1. The latest NOAA chart;
2. Any updates from Local Notices to Mariners; and
3. Any updates made available by the MBARI/fishermen liaison committee (the "Committee"), such as regarding cable burial status.

B. Anyone acting as helmsman "near" a cable must understand and be able to implement these procedures.

- C. If a vessel has an electronic or video chart plotter, the route of the cable shall be displayed on the plotter screen or display. If the vessel has gear on the bottom "near" a cable, the plotter shall be recording the tow.
- D. When operating "near" a cable, special care should be observed. Gear should not be set or hauled up. No turns of more than 90 degrees should be executed and no activity that lays a door over should be executed.
- E. No clam or scallop dredge, anchor, grapple, or other gear designed to significantly penetrate the surface of the seabed should be used "near" a cable. All trawl gear should be in good condition, and free of elements that could snag cables.
- F. Gear should not be in contact with the bottom over any location where a cable is reported or known to be unburied.
- G. The helmsman should closely monitor the groundspeed by the most accurate means available when "near" a cable, and monitor the video plotter display for any sign of possible cable contact.

PROCEDURES IN CASE OF POSSIBLE CABLE CONTACT

1. In case of any deviation from normal towing conditions, the helmsman, if other than the master, should summon the master to the bridge. The master of the vessel shall take all appropriate action to keep the vessel safe and protect the cable.
2. If conditions (such as reduced speed or course deviation near a cable) suggest possible cable contact, the operator should take the vessel out of gear.
3. Do not attempt to free the gear by hauling up gear or by powering up the vessel.
4. The Master will call MBARI on the hot-line [] designated for this purpose and supply all information requested.
5. Vessel will cut away gear if advised by MBARI that the location given indicates a possible cable contact. The Master should call the Committee for the provision of replacement gear.
6. In any case of a possible or known cable contact, the master and helmsmen should file a report with the Committee immediately upon returning to port; preserve all related records (including tow records); and cooperate with any investigation by the Committee and/or MBARI.

Revised []

If you have any questions, please call: