



May 10, 2005

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California State Lands Commission
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Sacramento, CA 95825-8202

Deirdre Hall
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940

RE: Response to Alliance of Communities for Sustainable Fisheries comments
on Draft MARS EIR/EIS

Dear Ms. Brown and Ms. Hall:

This letter responds to various arguments made by ACSF in its letter dated April 25, 2005. First, it discusses the attempts MBARI has made to reach agreement with the local fishing community and the willingness of MBARI to accommodate the legitimate concerns of that community. Second, it discusses the claim that MBARI is in some way promoting the Monterey Bay Aquarium's "agenda." Third, it addresses the claim that the proposed MARS research cable should be treated the same way commercial cables have been treated along the West Coast. Finally, it addresses the claim that trenching operations would injure the seafloor of the Marine Sanctuary.

1. MBARI's efforts to reach accommodation with the Monterey area fishing community.

MBARI has attempted for over a year to reach agreement with the ACSF by direct negotiations with Kathy Fosmark. Several face to face meetings have taken place over that time. MBARI's goal has been to address the legitimate concerns of the fishing community by making both verbal and written proposals to that community. MBARI recognizes that the fishing community needs assurance that if its members damage the MARS cable, MBARI will not pursue its claims for damage to the cable, provided certain reasonable precautions are taken by the fishermen to prevent the damage. Second, MBARI has repeatedly

stated that it will make prompt and reasonable reimbursement to any fisherman who loses equipment or fish, if the fisherman drops his gear to protect the cable. The focus of discussions of any agreement is how, not if, the fishing community's concerns should be addressed.

Only 5 or 6 trawlers are presently licensed to fish in the proposed project area, according to ACSF's counsel. The MARS cable is not intended to interfere in any substantive way with traditional fishing activities. This is almost certainly the reason the DEIR/EIS¹ concluded that the MARS cable's impact on the fishing community fails to pass the threshold of a significant impact².

A draft agreement addressing the legitimate concerns of the fishing community was presented to ACSF months ago. MBARI can provide copies of all correspondence documenting MBARI's attempts to negotiate with the fishing community. I directly copied most of the later correspondence to the lead State and Federal agencies when it became apparent that the ACSF was not being responsive to our efforts to reach agreement. In fact, at one point, ACSF refused to continue negotiations unless MBARI made payments to establish a fund that the fishing community could use for lobbying and legal expenses. MBARI, after consulting with its funder, NSF, advised ACSF that such payments would be illegal – federal funds cannot be used for lobbying the federal government.

MBARI has continued its efforts to obtain an agreement with ACSF, and has engaged counsel to attempt to finalize the agreement. Although it appears that ACSF would not negotiate until it appeared possible that a permit would be issued without an agreement in place, negotiations between ACSF's counsel and MBARI's counsel continue at this time.

Because the DEIS/EIR (prepared by an independent contractor to the State Lands Commission) finds that the MARS cable's impact on coastal fishing is minimal and not significant, MBARI's position is that no formal agreement with the ACSF should be required as a condition of permitting. While MBARI will continue in good faith to negotiate for a written agreement, the MARS cable should not be held hostage if ACSF refuses to negotiate or makes unreasonable financial or other demands.

¹ The ACSF letter implies that MBARI was in some way involved in the preparation of the draft EIR/EIS. To the contrary, the DEIR/EIS was prepared by an independent firm selected by and under contract to the California State Lands Commission.

² The ACSF letter implies that the criteria used for determining the impact of the MARS cable are too lenient. Note that the significance level was set based on that used for all other cable projects that have been permitted by the State Lands Commission.

2. ACSF's claims that MBARI is pushing Monterey Bay Aquarium's agenda are simply wrong.

Ms. Fosmark's letter argues that MBARI is somehow aligned with and pushing the Monterey Bay Aquarium's "agenda" and that this somehow relates to the proposed MARS cable application. This claim is not based in fact, is an attempt to cloud the issues, and is nothing but a smoke screen.

MBARI has no formal affiliation with the Monterey Bay Aquarium. The two institutions have completely independent Boards of Directors, management, and funding structures. The Monterey Bay Aquarium is a non-profit 501 (c)(3) whose mission is to "inspire conservation of the oceans."

MBARI does not promote any environmental policies. MBARI simply lets the scientific evidence speak for itself, regardless of the political consequences. MBARI's research on the effect of decadal climate fluctuations on boom/bust cycles in fisheries is widely regarded as critical new information for decision making to promote sustainable fisheries, which supports the coastal fishing industry in California.

While I do sit on the Aquarium's Board of Directors, I am but one of 19 Trustees and serve only in my capacity as an expert in marine science and education. The Aquarium's Board includes many prominent members of the community, including Leon Panetta, who led the effort to establish the National Marine Sanctuary in Monterey Bay.

The Monterey Bay Aquarium, or any other organization, is free to advocate to the public perfectly legal actions in keeping with its own analysis of what is in the public's best interests. I am sure that the ACSF has similar programs advocating the consumption of seafood as a safe, low-fat, healthy source of protein. Information from the MARS cable may well be the fishermen's best hope of getting rockfish moved from the red column to the green column in the Seafood Watch list, an action that would be welcomed by all.

MBARI has no involvement in the Aquarium's Seafood Watch program and has not been consulted on any of the recommendations in it. MBARI makes no requirement of its staff to observe the recommendations on the card.

3. MBARI has consistently supported the fishing community's goals and objectives, and the MARS cable project will continue that support.

MBARI's actions since its founding have shown support toward the fishing community, not antagonism. For many years Phil's Fish Market in Moss Landing has been a tenant in MBARI's buildings. Phil's is one of the major

outlets for the fish caught by Moss Landing fishermen, including rockfish. If MBARI had any intention of using its activities to publicly promote the Seafood Watch program, putting pressure on this major outlet would be a more direct route to promoting an "agenda."

Over the same time period, MBARI has always let the fishermen use its docks for spreading out their nets, and other activities, whenever there was space. Why would MBARI be accommodating to the fishing community if MBARI were trying to put that group out of business? At MBARI, we view the ocean as a common resource to be shared by fishermen, scientists, recreational users, and other stakeholders. We are doing our best to minimize any interference of our legitimate use of the ocean with that of other groups.

The research product from the MARS cable will also support the fishing community. Moreover, the goals of the MARS project are well aligned with ACSF's stated interests in promoting a healthy environment in Monterey Bay. Currently, information on the health of the marine environment in the Monterey Bay National Marine Sanctuary is confined to the uppermost ocean where moorings can gather data and relay it back to shore. The addition of the MARS cable will extend that data gathering to the deep sea on a full-time basis for the first time. Information from the MARS cable would be the most direct and forceful way to demonstrate a rebound in the groundfish stocks which, if demonstrated, would lead to a lessening of the restrictions and an increase in quotas.

4. The MARS research cable will have minimal impact on the Sanctuary and the Bay.

ACSF argues that the proposed MARS research cable will adversely impact the Marine Sanctuary and Monterey Bay. Those arguments lack real factual foundation.

a. The MARS cable is a proper use of the Sanctuary.

The ACSF claims that cables are not permitted in the Marine Sanctuary. Earlier discussions at NOAA about limitations on cables in the Marine Sanctuary have focused on and distinguished between commercial and research cables. For instance, NOAA has requested input on commercial cables in National Marine Sanctuaries in an advance notice of proposed rulemaking:

"Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries

" Notice is hereby given that NOAA is evaluating whether changes to existing National Marine Sanctuary (NMS) regulations or some form of

policy guidance is necessary to clarify NOAA's decision-making process regarding the installation and maintenance of *commercial* submarine cables within NMSs. If changes or additional guidance are appropriate, this notice requests comments on what the changes or guidance should contain. This notice also requests comments on proposed principles on the installation of *commercial* submarine cables within the marine and coastal environment as a whole." 65 FR 43135-01, 2001 WL 929550. [emphasis added].

NOAA's communication with MBARI about this issue focused on the clear difference between a commercial and a research cable. A research cable is installed using public funds for the public good. It returns no revenue to the owner. A research cable benefits everyone, including the fishing community. In recognition of the value of research cables, the Monterey Bay National Marine Sanctuary took ownership of the Pioneer cable so as to provide for its continued use for research. In contrast to a research cable, a commercial cable is installed for the primary purpose of providing revenue to the company that owns it. Commercial cables in the Bay and the Sanctuary would provide no information on the Sanctuary and would use the Bay and Sanctuary as a mere "pass through" on the way to more highly populated areas.

b. The MARS cable will be owned by MBARI.

We understand that the usual practice when the National Science Foundation funds a capital project is to place ownership of the capital improvements in the hands of the NSF grantee. Here, NSF is providing the majority of the funding for the MARS cable. MBARI as grantee will take ownership of the cable and maintain and operate it. MBARI will also have the right to seek compensation from anyone who damages the cable (absent agreement shifting liability to MBARI).

c. The MARS cable does not pose an unreasonable hazard to the local fishing community.

ACSF argues that the MARS cable will interfere with its constituents' commercial fishing operations in the Marine Sanctuary because it's laid, in part on the ocean floor and isn't buried. This argument isn't supported by the facts. First, the small number of licensed trawlers reduces substantially the likelihood that the cable will be injured by fishermen lawfully in the Sanctuary. Second, the cable will be buried for much of its length, further protecting it from damage. Third, MBARI will make the exact location of the cable widely known in a Notice to Mariners, just as it has done for any of its scientific infrastructure which has the potential to impact vessel navigation or other legitimate maritime activities. Fourth, MBARI has attempted through early cooperation with the

fishing community to mitigate the risk of damage to the cable and any limitation of fishing activity in the Sanctuary.

MBARI held a meeting early on with members of the fishing community to discuss the route of the MARS cable before it was selected. The fishermen in attendance explained that on account of the rocky outcrops along the neck to Smooth Ridge, they must fly their trawlers further off the bottom than they otherwise would in order to avoid getting hung up. These same rocky outcrops prevent MBARI from burying the cable. Of course, every attempt will be to leave the cable below the highest outcrops, which should afford some protection from the trawl nets.

The likelihood of snagging the cable is minimal. The frequency of snags for the Pioneer cable cannot be compared with what would be expected for MARS because the Pioneer cable was not buried at all along its entire length³. Even at that, there is only one documented incident of an interaction with a trawler in the more than 10 years that the cable has been deployed on the central California shelf near Monterey Bay. In the one documented case (the first break), the fisherman sought and received compensation. The second break either was not caused by trawling or did not impact the trawler as no fisherman sought to recoup any losses.

Moreover the statistical probability of damage to the MARS cable is over its lifetime is easily quantified and does not meet the level necessary to be regarded as a significant impact to the fishing community. The ACSF letter speaks of "2 cable snags per month" globally, or about 24 per year. There are currently more than 1000 shore landings for cables crossing the continental shelves where they are susceptible to trawl damage. Twenty-four snags per year is therefore equivalent to 0.024 snags/cable/year. We would thus expect for the MARS cable that it would be snagged once in 40 years, on average.

Thus, given the small number of licensed trawlers in the region and the small likelihood of their snagging the cable, there is no need for an elaborate and complex system of collaboration and compensation.

d. MBARI's proposed trenching to bury the cable will have minimal impact on the ocean floor in the Marine Sanctuary, and the impact is far less than damage caused by commercial trawlers.

³ The ACSF questions why more use was not made in the DEIR/EIS of the report on the current state of the Pioneer cable that was prepared using survey data from MBARI's vessel. This report was supplied to the contractor by MBARI to use or not use as the contractor saw fit. The lack of burial of the Pioneer cable is likely the reason why this information was not deemed relevant.

The ACSF complains that MBARI's trenching to bury the MARS cable will adversely impact the Marine Sanctuary's ocean floor. In fact, the impact of the trenching as a one-time disturbance of the seafloor is well documented and is considered a preferred alternative to laying the cable on the seafloor.

By contrast, MBARI has in its video archives many images of trenches dug into the seafloor by fishing trawls. The trawl marks are not as deep as the trench intended for the MARS cable, but are repeatedly created each time a trawler gouges out the bottom of the bay. It seems disingenuous for trawlers to express concern about grooves in the bottom of the seafloor created for the MARS cable.

Please let us know if you have additional question or if you wish MBARI to address other parts of or issues raised by Ms. Fosmark's letter.

Best regards,



Marcia McNutt
President and CEO

cc: Governor Arnold Schwarzenegger
Senator Dianne Feinstein
Senator Barbara Boxer
Senator Ted Stevens
Congressman Sam Farr
Congressman Richard Pombo
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