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March 30, 2005

By Facsimile (831/775-1620); Original by Mail

Ms. Marcia McNutt
President and CEO
Monterey Bay Aquarium Research Institute
770 Sandholdt Road
Moss Landing, CA 95039-9644

Re: The MARS Project; Resolution of Conflicts with Fishing Activity

Dear Ms. McNutt:

Our firm has been retained by the Alliance of Communities for Sustainable Fisheries ("ACSF") in connection with the proposed MARS Undersea Cable Project, which is just beginning the permitting process. We have been tasked with addressing the potential conflicts between the Project and the fishing community in Monterey Bay. Although the MARS Project is funded by the National Science Foundation, we understand that your private organization, the Monterey Bay Aquarium Research Institute ("MBARI"), has been designed as the entity responsible for the permit process. In addition, I have been advised by Kathy Fosmark that you and she had discussions last year on the subject of dealing with conflicts, but that no resolution resulted. Finally, we note that the Draft Environmental Impact Statement refers to "implementation of a Fishermen's Agreement" to provide a mechanism "to compensate fishermen for gear losses" and reduce "adverse impact" that is likely to result. To date, we understand that nothing satisfactory has been worked out, even in the most general terms.

I have two purposes for my writing. First, I want to make sure that you are the appropriate person (and MBARI the appropriate entity) to contact with regard to these issues. It seems unusual to me that a private research institution would take the lead on permitting and stakeholder matters involving a major National Science Foundation ("NSF") research project, particularly where there are sensitive and important questions of Federal environmental law and policy at stake, such as there are here. Because of that concern, I am also sending a copy of this

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letter to Deidre Hall, an official with the Monterey Bay National Sanctuary, and to the General Counsel at NSF. The NOAA Sanctuary is acting as the Federal regulatory agency in this situation, given the need to get a permit for the cable-laying activity in the Sanctuary itself; NSF, it would appear, is the action agency. Perhaps you or she, or NSF, will be able to clarify just exactly who is doing what with regard to this Federal project.

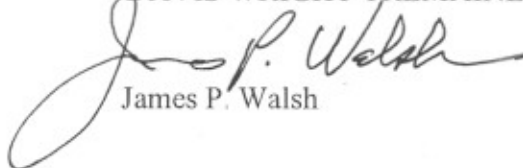
Second, we would like to meet with you, if you are the person who would be responsible on behalf of the funding Federal agency, to discuss the inevitable conflicts with the fishing industry that will occur during the construction and operation of the MARS Project as currently configured. ACSF has adopted a resolution outlining their key concerns and we would like to discuss how to best resolve them with the appropriate individual and/or entity in the context of the permitting process.

ACSF will also be providing comments as part of the Draft Environmental Impact/Environmental Impact Statement process that will go into detail about the issues and their concerns. At this point, given the lack of clarity about resolving the fishing conflicts, which have been well known to everyone for years,¹ we believe it would be inappropriate for any permits to be issued for the Project. In addition, we see no legal distinction created by claiming that this undersea cable project is for "research" as opposed to "commercial" purposes. All past analysis as to undersea cables makes clear that the environmental and fishing impacts occur in more or less the same manner regardless of who builds them or why.

Please let me know whether a meeting with you is possible in the near future. Mr. Mike Stiller of ACSF will be accompanying me at the meeting.

Very truly yours,

DAVIS WRIGHT TREMAINE LLP



James P. Walsh

cc: Kathy Fosmark
Mike Stiller
Deidre Hall, Monterey Bay National Marine Sanctuary
Lawrence Rudolph, General Counsel, National Science Foundation
Michelle Brown, California State Lands Commission

¹ See Tracy Lynne Holman, "Multiple Uses of the Seabed off the Oregon Coast: An Analysis of Recent Interactions Between the Fishing Industry and the Submarine Cable Industry," University of Washington (2000) (referred to as a contribution to the NEPTUNE Project); 67 Fed.Reg. 35,501-3 (May 20, 2002) (Notice of Applicability of Special Use Permit Requirements to Certain Categories of Activities Conducted Within the National Marine Sanctuary System).