



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, California 93940

October 5, 2001

Helen Golde, Chief
Conservation Policy and Planning Branch
Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

RE: Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries

Dear Ms. Golde:

The Advisory Council for the Monterey Bay National Marine Sanctuary appreciates the opportunity to provide comments on the August 2001 Fair Market Value Analysis for submerged fiber optic cables in national marine sanctuaries. The Monterey Bay National Marine Sanctuary is our country's largest national marine sanctuary and this Advisory Council is comprised of 20 representatives of the central California community, including user groups and government agencies.

The Advisory Council has been integrally involved in commenting on past policy initiatives related to submerged fiber optic cables. We submitted comments regarding the Department of Commerce's proposed rule on "Installing and Maintaining Commercial Submarine Cables in the National Marine Sanctuaries" in an October 23, 2000 letter submitted to Debra Malek of the National Marine Sanctuary Program (NMSP). We also submitted comments on the December 2000 version of the Fair Market Value Analysis in a letter dated March 23, 2001 to Dan Basta, Director of the NMSP. It is our understanding that our March 23, 2001 letter was not considered part of the official record. We hereby resubmit that letter as an attachment and ask that it be entered into the record at this time.

As an initial matter, we are concerned with the Department of Commerce's (DOC) failure to adopt policy guidance regarding the fiber optic cables in sanctuaries since issuing a proposed rule on the subject in August of 2000. We urge the DOC and the NMSP to move forward and adopt sound policies governing any future proposals for fiber optic cable installations in marine sanctuaries. At a minimum, the Advisory Council believes that a cable proponent must show there is no practical alternative to a sanctuary route and must prove actual demand for the additional cable capacity.¹

¹ According to an August 26, 2001 article in the Anchorage Daily News regarding a capacity glut in the fiber optic cable industry, "analysts estimate that less than 3 percent of the nation's fiber capacity is actually being used." Tony Hopfinger "Gamble on undersea highway fails", Anchorage Daily News, August 26, 2001.



The Advisory Council is concerned that the August 2001 Fair Market Analysis does not specifically acknowledge the special protected status of national marine sanctuaries. We urge the Department of Commerce and the Sanctuary Program to ensure that fees for potential cable projects are set at a level that clearly reflects the value of the special resources protected by the Sanctuary. As noted in our October 2000 letter, installations of fiber optic cables (and all forms of commercial development of the seabed) are generally incompatible with the National Marine Sanctuaries Act. We do believe that NOAA should recognize a distinction between cables laid for commercial purposes and those for research designed to further understanding of sanctuary resources and conducted in a manner that protects sanctuary resources. The second category of cable can be permitted in sanctuaries with conventional permit authority. Payment of fair market value fees is not appropriate in the case of cables installed for purely research purposes.

The Advisory Council is also concerned that the August 2001 version of the Fair Market Value Analysis continues to exclude data from submerged fiber optic cable projects in California from the trend analysis and calculation of average fees for historical transactions. According to the Report, these data were "excluded for the sake of keeping overland rights of way separate from undersea routes." However, because national marine sanctuaries are, by definition, undersea, we believe that data points for submerged cable routes are particularly relevant to any fair market value analysis and should be included. Excluding these timely and coastal data points unreasonably skews the average fee towards a smaller value.

Our comments on the Fair Market Value analysis assume cable companies will receive other permit conditions that require them to conduct or fund monitoring as to the effects of cable construction. Also, we are assuming that the Department of Commerce will separately require important surveys as to whether or not the cable stays buried, and to mitigate any damage done. If these assumptions are not correct, and if the fees charged for the Fair Market Value will pay for those costs, we believe you must factor those into the ultimate fee assessment so that the individual sanctuary site does not have to pay those costs from its limited operating budget.

We also believe the Department of Commerce should commit to use fiber optic cable fair market value fees exclusively for the national marine sanctuary program. More importantly, we believe at least 50% of the assessed fees must remain at the sanctuary site that hosts the submerged commercial cable to support resource management, education, and protection of the host Sanctuary. The remainder of the assessed fees should go solely to the national program and be exclusively used to fund the extensive policy and planning work promised by the Department of Commerce in the August 2000 proposed rule on cable installations in marine sanctuaries. Specifically, funds should be used for research and implementation of cable corridors and mapping of critical habitat areas, locations of submerged cultural resources, and other areas to be avoided.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Harlan". The signature is written in black ink and is positioned below the word "Sincerely,".

Stephanie Harlan, Chair
Sanctuary Advisory Council

Sanctuary Advisory Council
Monterey Bay National Marine Sanctuary
299 Foam Street
Monterey, CA 93940
(831) 647-4201

March 23, 2001

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Mr. Dan Basta
Director
Office of National Marine Sanctuaries
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring, MD 20910

RE: Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries

Dear Mr. Basta:

Thank you for giving the Monterey Bay National Marine Sanctuary Advisory Council an opportunity to review and comment on the Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries report.

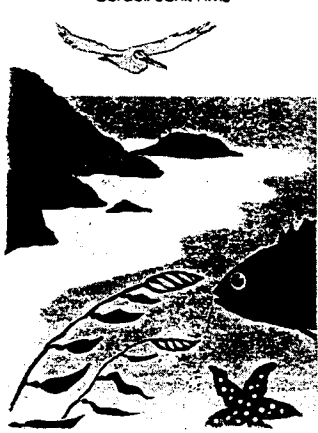
The Monterey Bay National Marine Sanctuary Advisory Council serves as an advisory body to the National Oceanic and Atmospheric Administration on matters pertaining to the Monterey Bay National Marine Sanctuary. The Advisory Council assists the national marine sanctuary program by representing the interests of the public at large, agriculture, the Association of Monterey Bay Governments, business and industry, the California Coastal Commission, the California Environmental Protection Agency, the California Resources Agency, conservation, diving, education, enforcement, fishing, ports and harbors, recreation, research, tourism, and the U.S. Coast Guard.

The Advisory Council believes that the conclusions of the Fair Market Value Analysis report are premature, lack special consideration for the unique and protected status of sanctuaries, and are based on too narrow a sample of case studies by relying on a survey of easements. The Advisory Council would like to see another analysis that takes these factors into consideration.

In particular, the Advisory Council urges NOAA to consider the following factors in assessing the fair market value of the fiber optic cable easement:

- Consideration of additional data in determining "fair market value", including:
- Data for submerged cables off of Morro Bay (State Lands Commission data should at least be included as one data point).

The Sanctuary Advisory Council is composed of 19 federally appointed representatives from government agencies, local institutions, and user groups concerned with the resources of the Monterey Bay National Marine Sanctuary. The Council advises the Sanctuary Superintendent on matters of policy and provides a link between the community and Sanctuary management.



Thank you again giving the Monterey Bay National Marine Sanctuary Advisory Council an opportunity to review and comment on the Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries report. We look forward to reviewing more information on the subject.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Harlan".

Stephanie Harlan, Chair