

## **CALIFORNIA COASTAL COMMISSION**

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# **W12b/13a**

**CDP 9-20-0275/CC-0002-20**

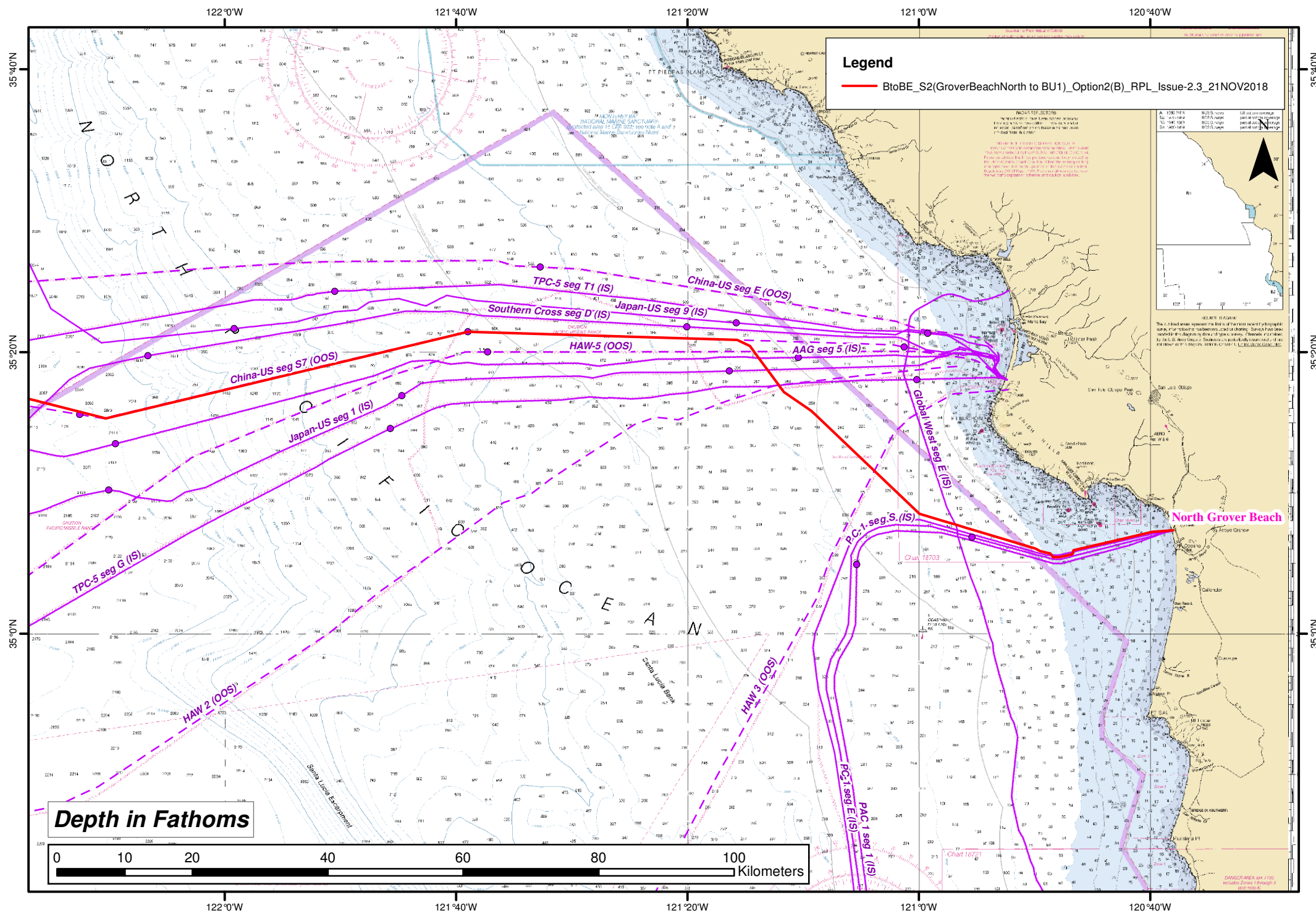
**July 24, 2020**

### **EXHIBITS**

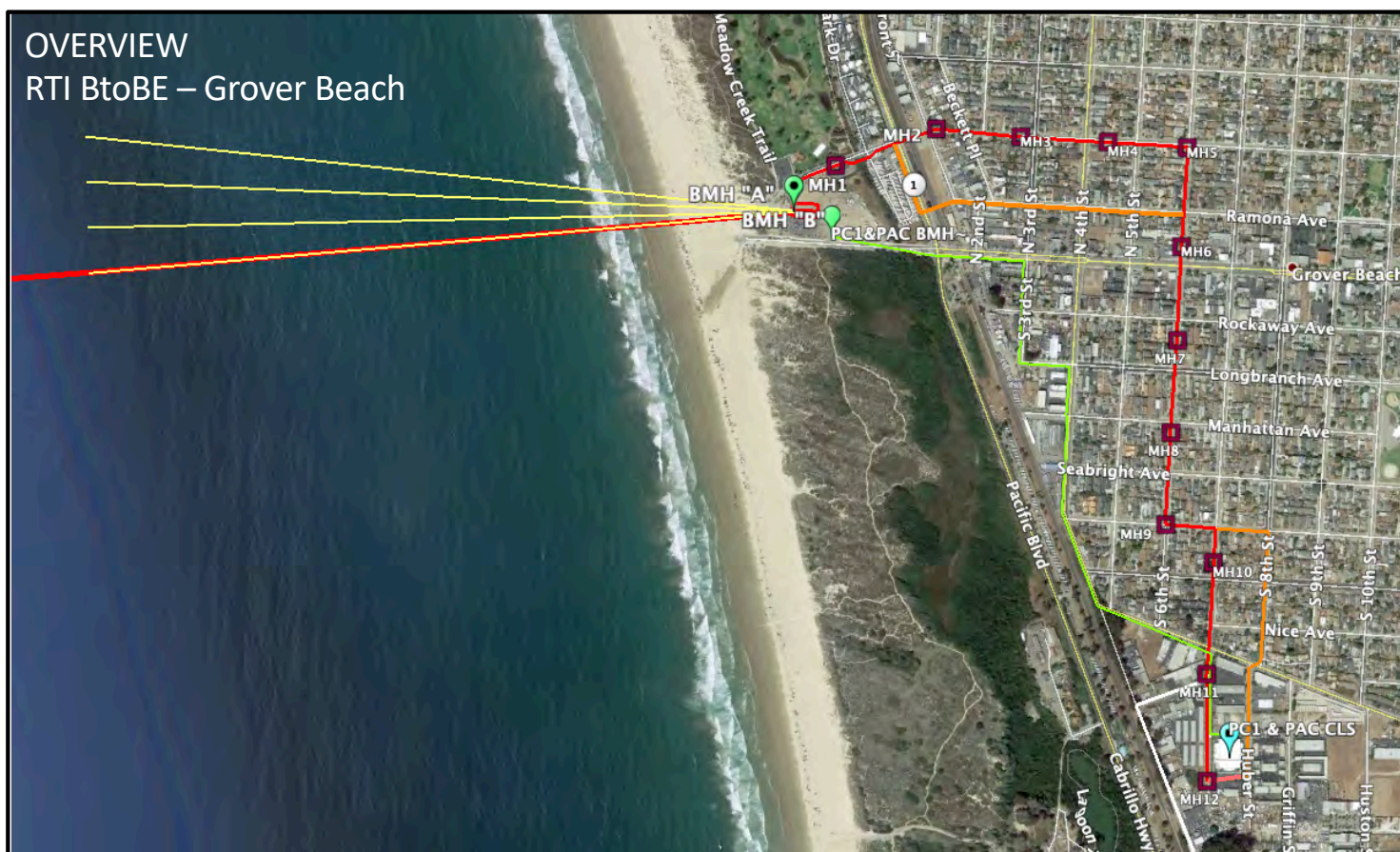
- Exhibit 1 – Project Overview
- Exhibit 2 – Proposed Cable Route
- Exhibit 3 – Locations of Proposed Bore Pipes
- Exhibit 4 – Marine Cable Route and Marine Protected Areas
- Exhibit 5 – Habitat Areas of Particular Concern (HAPC)
- Exhibit 6 – MND Mitigation Measures Incorporated into this CDP
- Exhibit 7 – Central California Joint Cable Fisheries Liaison Committee Agreement

Figure ES-1. Proposed Project Phases









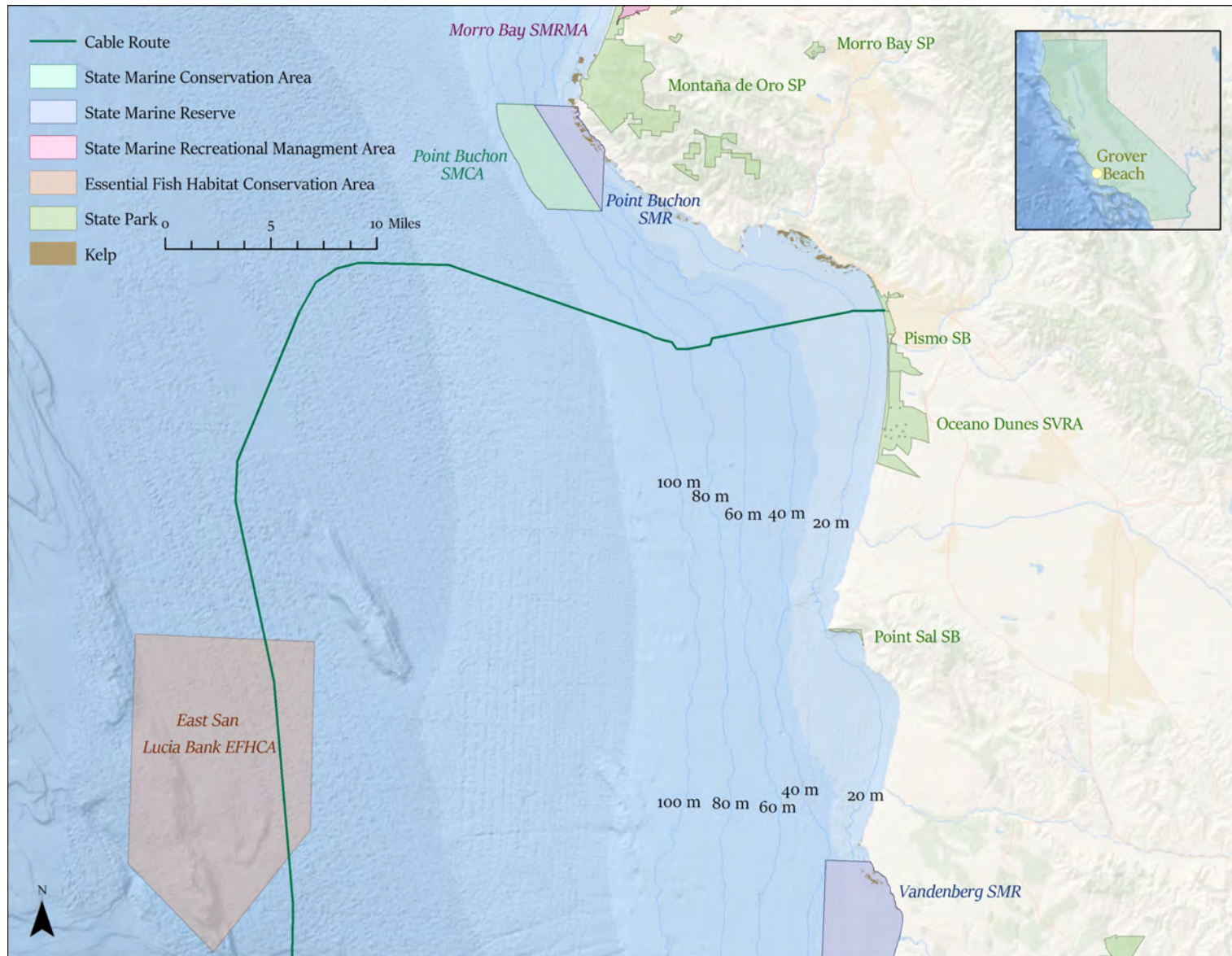
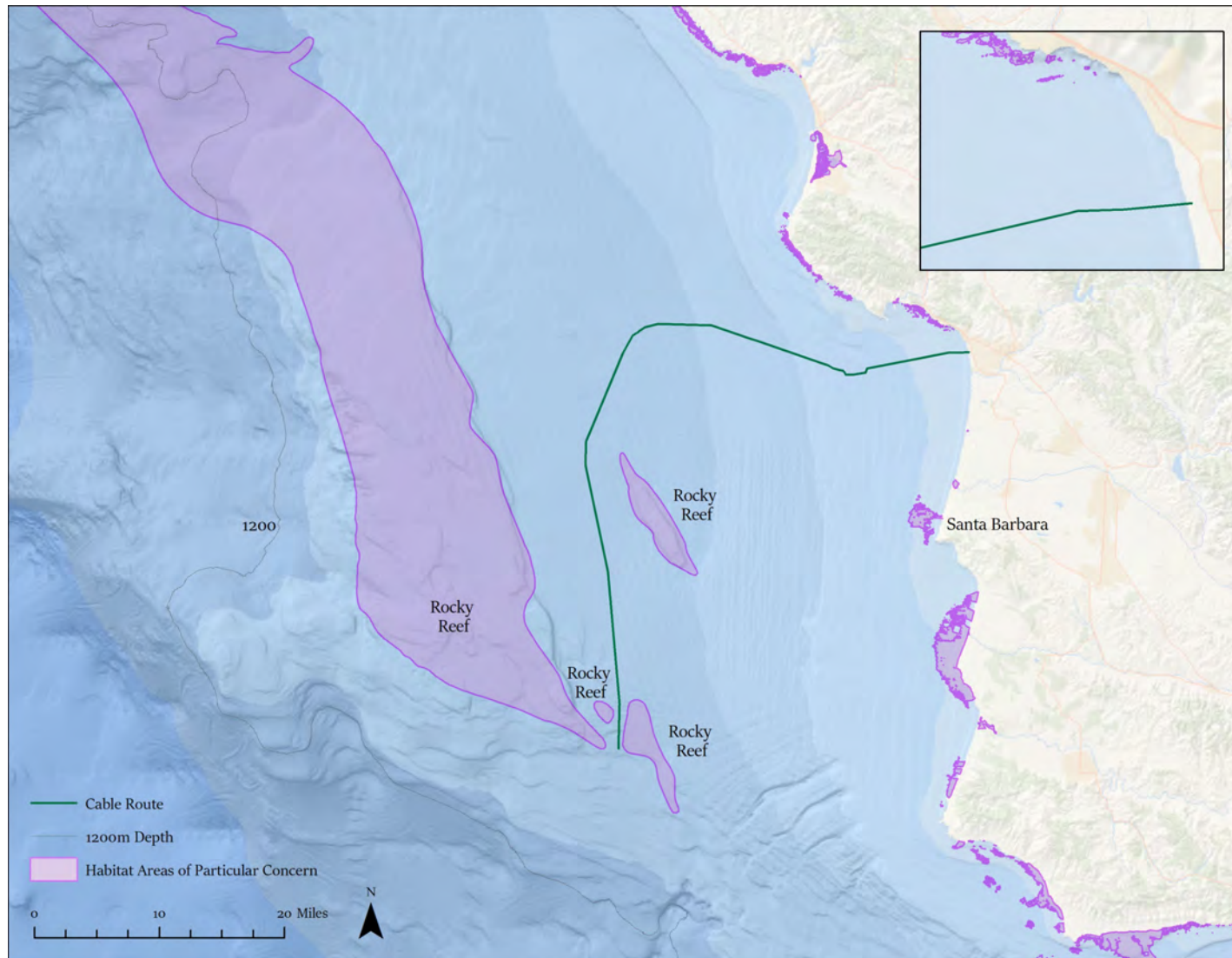


Figure 1: Marine Study Area Offshore Grover Beach California.





**Figure 9: Habitat Areas of Special Concern (HAPC) Offshore Brover Beach in Central California.**

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	fugitive dust emissions and enhance implementing measures as necessary to minimize dust complaints, reduce visible emissions below 20 percent opacity (cloudiness), and prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the SLOAPCD Compliance Division prior to the start of any grading, earthwork, or demolition.					
Expose sensitive receptors to substantial pollutant concentrations	Implement <b>MM AQ-1: Standard Control Measures for Construction Equipment</b> (see above) Implement <b>MM AQ-2: Best Available Control Technology</b> (see above) Implement <b>MM AQ-3: Fugitive Dust Mitigation</b> (see above)					
Biological Resources						
Impacts on special-status species and habitats	<b>MM BIO-1: Provide Worker Environmental Awareness Training.</b> The Applicant shall provide an environmental awareness training before starting construction activities for all construction personnel (including new personnel as they are added to the Project) working on the terrestrial and marine Project components. This training would be given by biological monitors and cultural monitors (approved by CSLC staff) to help the trainees understand the following: <ul style="list-style-type: none"><li>• Surrounding common and special-status species and their habitats</li><li>• Applicable regulatory requirements</li></ul>	Terrestrial Project area	Training materials approved by CSLC staff 30 days before start of construction  On-site monitor to submit list of trained personnel and training materials to CSLC after construction	Implementing MM will educate construction workers regarding special-status species and habitat	Applicant and CSLC	Before, during, and after construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<ul style="list-style-type: none"> <li>MMs designed to avoid or minimize impacts on sensitive resource areas</li> </ul> <p>The training materials shall be developed and approved by the CSLC staff at least 30 days before starting Project activities in the terrestrial and marine work areas. The biological monitors shall maintain a list of all contractors who have been trained and shall submit this list and the final training material to CSLC staff within 30 days after construction starts and after construction is completed.</p> <p>The lead environmental monitor shall be the main contact for reporting any special-status species observed in or near the Project area by any employee or contractor. The Applicant shall provide the contact information for the lead environmental monitor and the biological monitors to on-site construction workers, USFW, CDFW, and CSLC staff before construction starts.</p>					
<b>Impacts on Special-Status Species and Habitats (cont.)</b>	<b>MM BIO-2: Conduct Biological Surveying and Monitoring.</b> A biological monitor (typically with a college degree in a field of biology or environmental science, knowledge of species surveying for, and experience with pre-construction and construction monitoring), approved by CSLC staff, shall be present onsite to survey the work area for special-status wildlife species (e.g., California red-legged frog, western pond turtle, northern California legless lizard, Blainville's horned lizard, and two-striped garter snake) and nesting birds (as applicable)	Terrestrial Project area	<p>On-site monitor to verify</p> <p>Submit daily monitoring report for work within CSLC's jurisdiction and weekly report for work outside CSLC's jurisdiction</p>	Implementing MM will reduce the potential for impacts on special-status species and habitat	Applicant and CSLC	Before and during construction



Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>prior to starting work in the terrestrial work area to minimize potential impacts on any special-status species or other wildlife that may be present during Project construction.</p> <p>The biological monitor shall be onsite at all times during Project construction for all work west of the UPRR in and adjacent to natural habitats and not during work occurring east of the UPRR on city streets in developed areas. If at any time during Project construction, special-status species are observed in the Project area or within a predetermined radius surrounding the terrestrial Project components (as determined by the biological monitor), the biological monitor shall have the authority to stop all work, and the Applicant shall contact the appropriate agency, (i.e., CDFW or USFWS and CSLC staff) to discuss ways to protect the special-status species.</p> <p>Construction monitoring reports for work under CSLC's jurisdiction shall be submitted daily and for work outside of the CSLC's jurisdiction shall be submitted weekly.</p>					
<b>Impacts on Special-Status Species and Habitats (cont.)</b>	<p><b>MM BIO-3: Delineate Work Limits to Protect Sensitive Biological Resources.</b> Natural areas outside the construction work area shall not be disturbed. Before starting Project construction, the following areas shall be staked and flagged by the biological monitor (<b>MM BIO-2</b>), in coordination with the CSLC, and inspected throughout</p>	Terrestrial Project area	On-site monitor to verify in coordination with CSLC	Implementing MM will reduce the potential for impacts on special-status species and habitat	Applicant and CSLC	Before and during construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>construction to ensure that they are visible for construction personnel:</p> <ul style="list-style-type: none"> <li>Identify construction work area limits at the cable landing site.</li> <li>Delineate bore pits and staging area (for equipment and fueling), and site these areas at least 100 feet from Meadow Creek.</li> <li>Mark areas using stakes and flags to identify environmentally sensitive areas (Meadow Creek and associated wetland and riparian communities) that would remain marked during construction.</li> </ul>					
<b>Direct Impacts on Sensitive Biological Resources</b>	<p><b>MM BIO-4: Install Metal Covers or Some Kind of Escape Ramps in Open Trenches.</b> To prevent accidental entrapment of wildlife species during construction, all excavated holes and trenches that will be left open overnight shall have a metal cover or some kind of soil ramp installed, allowing wildlife an opportunity to exit. If escape ramps are installed, a biological monitor or the construction inspector (for work in developed areas east of the UPRR) shall inspect excavations before starting construction each day to confirm that no wildlife species are entrapped or to remove wildlife species that are unable to escape on their own. Any wildlife handling will be conducted under the biological monitor's applicable collection permit or as authorized by the appropriate wildlife agency. If a biological monitor is not present, the lead environmental monitor</p>	Terrestrial Project area	On-site monitor to inspect daily before starting construction	Implementing MM will reduce the potential for impacts on special-status species and habitat	Applicant and CSLC	During construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	for the Project would be contacted immediately to determine the appropriate course of action.					
<b>Impacts from Horizontal Directional Drilling Activities</b>	<p><b>MM BIO-5: Implement Best Management Practices for Horizontal Directional Drilling Activities.</b></p> <p>A. When using the large marine HDD equipment to install landing pipes, the following shall be submitted to CSLC staff for review at least 60 days before starting construction:</p> <ul style="list-style-type: none"> <li>• Engineering design drawings for construction certified by a California-registered Civil/Structural Engineer.</li> <li>• A site-specific geotechnical report certified (stamped, signed, and dated) by a California-registered Geotechnical Engineer, including boring logs and any geotechnical recommendations (including, but not limited to, identification of reasonably foreseeable risks during HDD installation and proposed risk mitigations) for safe HDD installation.</li> <li>• If HDD is under CSLC jurisdiction, a minimum depth of 35 feet is required unless a shallower depth is recommended by a California-registered Geotechnical Engineer.</li> </ul> <p>B. When using small HDD equipment to install the underground conduit system, do the following to reduce possible environmental impacts:</p> <ul style="list-style-type: none"> <li>• Engineering design drawings for the underground conduit system</li> </ul>	Terrestrial Project area	<p>Submit geotechnical report to CSLC 60 days before starting construction</p> <p>On-site monitor to verify BMPs during construction</p>	Implementing MM will reduce the potential for impacts on special-status species and habitat	Applicant and CSLC	Before and during construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>construction would be certified by a California registered Civil/Structural Engineer.</p> <ul style="list-style-type: none"> <li>Prevent the underground conduit from becoming exposed by natural scour of the streambed by boring a minimum of 5 feet below the streambed of Meadow Creek.</li> <li>Locate drill entry and exit points far enough from the banks of Meadow Creek to minimize impacts on the creek system.</li> <li>Avoid removal of riparian vegetation along Meadow Creek between bore entry and exit points in preparation of trenchless stream crossing operations.</li> </ul>					
<b>Accidental Release of Drilling Fluid (Special-Status Species, Habitats, and Water Quality)</b>	<p><b>MM BIO-6: Prepare and Implement an Inadvertent Return Contingency Plan.</b></p> <p>A Final Inadvertent Return Contingency Plan for the large and small HDD including the following objectives shall be submitted to CSLC staff for review at least 30 days before starting construction:</p> <ul style="list-style-type: none"> <li>Measures to stop work, maintain appropriate control materials onsite, contain and remove drilling mud before demobilization, prevent further migration of drilling mud into the stream or waterbody, and notify all applicable authorities.</li> <li>Control measures of constructing a dugout/ settling basin at the bore exit site to contain drilling mud to prevent sediment and other deleterious substances from entering waterbodies.</li> </ul>	Terrestrial Project area	<p>Submit Plan to CSLC 30 days before start of construction</p> <p>On-site monitor to verify during construction</p>	Implementing MM will reduce the potential for impacts on special-status species and habitat	Applicant and CSLC	Before and during construction



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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<ul style="list-style-type: none"> <li>Workers shall monitor the onshore and offshore to identify signs of an inadvertent release of drilling fluids.</li> <li>Any abandonment contingency plans in case the HDD operations are forced to be suspended and a partially completed bore hole abandoned.</li> <li>Complete list of the agencies (with telephone number) to be notified, including but not limited to the CSLC's 24-hour emergency notification number (562) 590-5201, and the California Governor's Office of Emergency Services (Cal OES) contact number (800) 852-7550.</li> </ul>					
<b>Impacts on Nesting Birds</b>	<p><b>MM BIO-7: Conduct Pre-Construction Nesting Bird Surveys and Implement Avoidance Measures.</b> If construction occurs during the nesting season (typically from February 1 to September 1), the following conditions (designed to protect both special-status and non-special-status birds) shall be implemented:</p> <ul style="list-style-type: none"> <li>Areas within the terrestrial BSA: No more than 1 week before starting Project-related construction, a biological monitor, approved by CSLC staff, shall survey the non-developed natural areas within the Project area to look for nesting activity.</li> <li>Areas outside the terrestrial BSA: Areas outside the BSA (but within the line-of-sight from active construction) would be surveyed using binoculars</li> </ul>	Terrestrial Project area	<p>If construction occurs during nesting season, conduct surveys 1 week before start of construction</p> <p>On-site monitor to verify; coordination with USFWS/ CDFW</p>	Implementing MM will reduce the potential for impacts on nesting birds	Applicant and CSLC	Before and during construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>and accessing within the public right-of-way.</p> <ul style="list-style-type: none"> <li>• If no active nests are detected during these surveys, no additional measures are required.</li> <li>• If an active nest is found, an appropriate avoidance buffer (based on the species as explained below) would be established around the nest site to avoid disturbance or destruction of the nest until the end of the breeding season (generally August 31) or until after biological monitor determines that the young have fledged and moved out of the area (this date varies by species). Suitable buffer distances may vary between species. The extent of these buffers will be determined by the biological monitor in coordination with the applicable wildlife agency (i.e., CDFW and/or USFWS), and will depend on the bird species, level of construction disturbance, line-of-sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. No disturbances shall occur within the protective buffer(s) until all young birds have fledged, as confirmed by the biological monitor.</li> <li>• A biological monitor shall be retained by the Applicant (<b>MM BIO-2</b>) and shall be onsite during construction activities in non-developed areas of the Project (west of the UPRR).</li> </ul>					

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
<b>Entanglement of Wildlife</b>	<b>MM BIO-8: Inspection and Burial of Cable.</b> The marine fiber optic cable shall be buried to the extent feasible in accordance with the following: <ul style="list-style-type: none"> <li>Bury the cable to the extent practicable in areas with soft bottom substrate and water depths of 5,904 feet or less.</li> <li>Submit a burial report after each Project phase with detailed descriptions of all buried and unburied sections and justification for any unburied sections.</li> </ul>	Marine Project area	Submit burial report after each Project phase	Implementing MM will reduce the potential for impacts on marine species	Applicant and CSLC	During and after construction
<b>Impacts on Marine Wildlife</b>	<b>MM BIO-9: Cable Entanglements and Gear Retrieval.</b> If fishers snag a cable and lose or cut gear, the Applicant shall use all feasible measures to retrieve the fishing gear or inanimate object. Retrieval shall occur no later than 42 days after discovering or receiving notice of the incident. If full removal of gear is not feasible, the Applicant shall remove as much gear as practicable to minimize harm to wildlife (e.g., fishes, birds, and marine mammals). Within 14 days of completing the recovery operation, the Applicant shall submit to CSLC staff a report describing the following: <ul style="list-style-type: none"> <li>Nature and location of the entanglement (with a map)</li> <li>Method used for removing the entangled gear or object, or the method used for minimizing harm to wildlife if gear retrieval proves infeasible.</li> </ul>	Marine Project area	Retrieval within 42 days of discovery  Submit recovery report within 14 days of recovery completion	Implementing MM will reduce the potential for impacts on marine species	Applicant and CSLC	During and after construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
Impacts on Marine Mammals and Sea Turtles	<p><b>MM BIO-10: Prepare and Implement a Marine Wildlife Monitoring and Contingency Plan.</b> The Applicant shall prepare and implement a Marine Wildlife Monitoring and Contingency Plan (MWMCP) for installing or repairing cables with the following elements, procedures, and response actions:</p> <ul style="list-style-type: none"> <li>• Awareness training for Project vessel crew that includes identification of common marine wildlife and avoidance procedures included in the MWMCP for Project activities.</li> <li>• Have two qualified shipboard marine mammal observers onboard all cable installation vessels during cable installation activities. The MWMCP shall establish the qualifications of and required equipment for the observers.</li> <li>• In consultation with the National Marine Fisheries Service, establish a safety work zone around all Project work vessels that defines the distance from each work vessel that marine mammals and sea turtles may approach before all operations must stop until the marine mammal or sea turtle has moved beyond.</li> <li>• Project-specific control measures for Project vessels (including support vessels) and actions to be undertaken when marine wildlife is present, such as reduced vessel speeds or suspended operations.</li> <li>• Reporting requirements and procedures for wildlife sightings and</li> </ul>	Marine Project area	<p>Submit Plan 60 days prior to the start of marine installation activities</p> <p>Qualified biologist to provide documentation</p>	Implementing MM will reduce the potential for impacts on marine wildlife	Applicant and CSLC	Before, during, and after construction



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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>contacts made to be reported in the post-installation reports. The MWMCP shall identify the resource agencies to be contacted in case of marine wildlife incidents and to receive reports at the conclusion of Project installation.</p> <ul style="list-style-type: none"> <li>The MWMCP shall be submitted to the CSLC and CCC for review at least 60 days before starting marine installation activities.</li> </ul>					
<b>Impacts on Hard Substrate Habitat Areas</b>	<p><b>MM BIO-11: Minimize Crossing of Hard Bottom Substrate.</b> At least 30 days before starting construction of Phase 1, a pre-construction seafloor survey shall be conducted and provided to CSLC covering the proposed cable lease area and the temporary construction corridor (including construction vessels anchoring areas and depicting seafloor contours, all significant bottom features, hard bottom areas, sensitive habitats, the presence of any existing wellheads, pipelines, and other existing utilities) to identify any hard bottom habitat, eelgrass, kelp, existing utilities (including but not limited to pipelines), and power cables. The proposed cable routes and anchoring locations shall be set to avoid hard bottom habitat (to the extent feasible), eelgrass, kelp, existing utilities (including but not limited to pipelines), and power cables, as identified in the seafloor survey.</p>	Marine Project area	Submit survey map at least 30 days before start of construction for Phase 1	Implementing MM will reduce the potential for impacts on hard substrate habitat areas	Applicant and CSLC	Before construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
<b>Impacts on Hard Substrate Organisms</b>	<p><b>MM BIO-12: Contribute Compensation to Hard Substrate Mitigation Fund.</b></p> <p>The following would be proposed if slow-growing hard substrate organisms are damaged:</p> <ul style="list-style-type: none"> <li>• CCC compensation fees (based on past projects) will be required to fund the U.C. Davis Wildlife Health Center's California Lost Fishing Gear Recovery Project or other conservation programs for impacts on high-relief hard substrate affected by the Project. The amount of the hard bottom mitigation fee shall be calculated by applying a 3:1 mitigation ratio to the total square footage of affected hard bottom and multiplying that square footage by a compensation rate of \$14.30 per square foot.</li> <li>• A final determination of the amount of high-relief hard substrate affected (used to calculate the total compensation fee) will be based on a review of the final burial report from the cable installation. The total assessment and methods used to calculate this figure will be provided to the CSLC and CCC for review and approval. Both the CSLC and CCC also will be provided documentation of the total amount of mitigation paid and the activities for which the funds will be used.</li> </ul>	Marine Project area	Applicant will provide retirement verification to the CSLC	Compensation fees will help reduce impacts on hard substrate	Applicant	Immediately after Project construction and after determination based on final burial report

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
Impacts on Native Species	<b>MM BIO-13: Control of Marine Invasive Species.</b> The Applicant shall ensure that the underwater surfaces of all Project vessels are clear of biofouling organisms prior to arrival in State waters. The determination of underwater surface cleanliness shall be made in consultation with CSLC staff. Regardless of vessel size, ballast water for all Project vessels must be managed consistent with CSLC's ballast management regulations, and Biofouling Removal and Hull Husbandry Reporting Forms shall be submitted to CSLC staff as required by regulation. No exchange of ballast water for Project vessels shall occur in waters shallower than the 5,904-foot isobath.	Marine Project area	On-site monitor to verify	Implementing MM will reduce the potential for impacts on marine native species	Applicant and CSLC	During construction
Impacts on Wetlands	Implement <b>MM BIO-5: Implement Best Management Practices for Horizontal Directional Drilling Activities</b> (see above) Implement <b>MM BIO-6: Prepare and Implement an Inadvertent Return Contingency Plan</b> (see above)					
Impacts on Environmentally Sensitive Areas	Implement <b>MM BIO-1</b> through <b>MM BIO-13</b> (see above)					
Cultural Resources						
Disturbance of shipwrecks, Archaeological Sites, Historic, Cultural, or Tribal Cultural Resources	<b>MM CUL-1/TCR-1: Discovery of Previously Unknown Cultural or Tribal Cultural Resources.</b> In the event that potential cultural or tribal resources are uncovered during Project implementation, all earth-disturbing work within 100 feet of the find shall be temporarily suspended or redirected until an approved archaeologist and tribal monitor, if retained, has evaluated the nature and significance of the discovery. In the event that a potentially significant	Marine and Terrestrial Project areas	Qualified archaeologist, tribal monitor, monitoring plan, and treatment plan if needed	Implementing MM will reduce potential impacts on archaeological resources	Applicant and CSLC	Prior to and throughout construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>cultural or tribal cultural resource is discovered, Applicant, CSLC and any local, state, or federal agency with approval or permitting authority over the Project that has requested/required notification shall be notified within 48 hours. The location of any such finds must be kept confidential and measures shall be taken to secure the area from site disturbance and potential vandalism. Impacts to previously unknown significant cultural or tribal cultural resources shall be avoided through preservation in place if feasible. Damaging effects to tribal cultural resources shall be avoided or minimized following the measures identified in Public Resources Code section 21084.3, subdivision (b), if feasible, unless other measures are mutually agreed to by the lead archaeologist and culturally affiliated tribal monitor that would be as or more effective.</p> <p>A treatment plan, if needed to address a find, shall be developed by the archaeologist and, for tribal cultural resources, the culturally affiliated tribal monitor, and submitted to CSLC staff for review and approval prior to implementation of the plan. If the archaeologist or tribe determines that damaging effects on the cultural or tribal cultural resource shall be avoided or minimized, then work in the area may resume.</p>					



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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>Title to all shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under CSLC jurisdiction. The final disposition of shipwrecks, archaeological, historical, and tribal cultural resources recovered on State lands under CSLC jurisdiction must be approved by the CSLC.</p>					
	<p><b>MM CUL-2/TCR-2: Cultural Resources Monitoring.</b> Prior to Phase 1 ground-disturbing activities, the Applicant shall prepare a Cultural Resources Monitoring Plan subject to CSLC approval. The Plan shall include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> <li>• The Applicant shall notify/invite a qualified archeologist and a representative of a California Native American tribe that is culturally affiliated to the Project site to monitor all ground disturbing activities in the Project site.</li> <li>• The Applicant shall provide a minimum 5-day notice to the archeologist and tribal monitor prior to all activities requiring monitoring.</li> <li>• The Applicant shall provide the archeologist and tribal monitor safe and reasonable access to the Project site.</li> <li>• Guidance on identification of potential cultural resources that may be encountered.</li> </ul> <p>The archeologist and Native American representative shall provide construction</p>					

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	personnel with an orientation on the requirements of the Plan, including the probability of exposing cultural resources, guidance on recognizing such resources, and direction on procedures if a find is encountered.					
<b>Disturbance of Marine Archaeological Resources</b>	<b>MM CUL-3: Conduct a Pre-Construction Offshore Archaeological Resources Survey.</b> Using results of an acoustic survey (e.g., a CHIRP [compressed high-intensity radiated pulse] system survey) for evidence of erosion/incision of natural channels; the nature of internal channel-fill reflectors; and overall geometry of the seabed, paleochannels, and the surrounding areas will be analyzed for their potential to contain intact remains of the past landscape with the potential to contain prehistoric archaeological deposits. The analysis would include core sampling in various areas, including but not limited to, paleochannels to verify the seismic data analysis. Based on the CHIRP survey and coring data, a Marine Archaeological Resources Assessment Report shall be produced by a qualified maritime archaeologist and reviewed by the California Coastal Commission or the State Historic Preservation Officer and the CSLC to document effects on potentially historic properties.	Marine Project area	Qualified archaeologist, Marine Archaeological Resources Assessment Report, if needed	Implementing MM will reduce potential impacts on marine archaeological resources	Applicant and CSLC	Before construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
<b>Disturbance of Archaeological Resources (Offshore Historic Shipwrecks)</b>	<p><b>MM CUL-4: Conduct a Pre-Construction Offshore Historic Shipwreck Survey.</b> A qualified maritime archaeologist, in consultation with the CSLC, shall conduct an archaeological survey of the proposed cable routes. The archaeological survey and analysis shall be conducted following current CSLC, Bureau of Ocean Energy Management (BOEM), and U.S. Army Corps of Engineers (San Francisco and Sacramento Districts) standard specifications for underwater/marine remote sensing archaeological surveys (Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR part 585).</p> <p>The archaeological analysis shall identify and analyze all magnetic and side-scan sonar anomalies that occur in each cable corridor, defined by a lateral distance of 0.5 kilometer on each side of the proposed cable route. This analysis shall not be limited to side-scan and magnetometer data, and may include shallow acoustic (subbottom) data as well as autonomous underwater vehicle and multibeam data that may have a bearing on identification of anomalies representative of potential historic properties. The analysis shall include evaluation to the extent possible of the potential significance of each anomaly that cannot be avoided within the cable corridor. If sufficient data are not available</p>	Marine Project area	Qualified maritime archaeologist	Implementing MM will reduce potential impacts on marine archaeological resources	Applicant and CSLC	Before construction

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Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>to identify the anomaly and make a recommendation of potential significance, the resource(s) shall be considered as potentially eligible for listing in the NRHP and CRHR, and treated as a historic property.</p> <p>If any cultural resources are discovered as the result of the marine remote sensing archaeological survey, the proposed cable route or installation procedures shall be modified to avoid the potentially historic property. BOEM administratively treats identified submerged potentially historic properties as eligible for inclusion in the NRHP under Criterion D, and requires project proponents to avoid them unless the proponent chooses to conduct additional investigations to confirm or refute their qualifying characteristics. BOEM typically determines a buffer (e.g., 50 meters) from the center point of any given find beyond which the project must be moved, in order to ensure that adverse effects on the potential historic property will be avoided during construction.</p>					
<b>Disturbance of Marine Archaeological Resources</b>	<p><b>MM CUL-5: Prepare and Implement an Avoidance Plan for Marine Archaeological Resources.</b> Pursuant to section 30106 and 30115 of the Coastal Act of 1976, "where developments would adversely impact archaeological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required" (Pub. Resources Code, § 30244). An</p>	Marine Project area	Qualified maritime archaeologist	Implementing MM will reduce potential impacts on marine archaeological resources	Applicant and CSLC	Before construction



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	avoidance plan, therefore, shall be developed and implemented to avoid all documented resources from the Marine Archaeological Resources Assessment Report and the Offshore Historic Shipwreck Survey Report, address discoveries of as yet unidentified resources encountered during the planned marine survey and construction, and provide mitigation monitoring if deemed necessary during construction to ensure compliance.					
<b>Disturbance of Human Remains</b>	<b>MM CUL-6/TCR-3: Unanticipated Discovery of Human Remains.</b> If human remains are encountered, all provisions provided in California Health and Safety Code section 7050.5 and California Public Resources Code section 5097.98 shall be followed. Work shall stop within 100 feet of the discovery, and both the archaeologist and CSLC staff must be contacted within 24 hours. The archaeologist shall consult with the County Coroner. If human remains are of Native American origin, the County Coroner shall notify the Native American Heritage Commission within 24 hours of this determination, and a Most Likely Descendent shall be identified. No work is to proceed in the discovery area until consultation is complete and procedures to avoid or recover the remains have been implemented.	Terrestrial Project area	Contact archaeologist and CSLC within 24 hours; archaeologist consults with County Coroner	Implementing MM will reduce potential impacts on human remains	Applicant and CSLC	Throughout construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
<b>Hazards and Hazardous Materials</b>						
<b>Accidental Release of Hazardous Materials</b>	<p><b>MM HAZ-1: Develop and Implement Spill Contingency and Hazardous Materials Management and Plans.</b> Prior to construction, the Applicant shall develop and implement Spill Contingency and Hazardous Materials Management Plans (Plans) for onshore and offshore operations. They shall include, but not be limited to, procedures to be implemented, specific designation of the on-site person who will have responsibility for implementing the plans, on-site spill response materials/tools/equipment, and spill notification protocol and procedures. These Plans shall be submitted to CSLC for review and approval 30 days before construction begins.</p> <p>A. Terrestrial Work: Measures for terrestrial operations shall include, but not be limited to, identification of appropriate fueling and maintenance areas for equipment, a daily equipment inspection schedule, and spill response procedures including maintaining spill response supplies onsite.</p> <p>The terrestrial Plan will identify the actions and notifications to occur if evidence of soil contamination is encountered during onshore excavation. The Applicant shall notify the County of San Luis Obispo County Environmental Health Services Division within 24 hours of discovery</p>	Terrestrial and marine Project areas	Submit Plans to CSLC 30 days prior to construction of the offshore and onshore Project components	Implementing MM will reduce potential for release of hazardous materials into the environment	Applicant; Applicant's Contractor	Before and during construction

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	<p>of contaminated materials encountered during Project construction activities. Work in the area suspected of contamination shall stop until the notified agencies, together with the Applicant, have determined the next steps.</p> <p>The Plans will identify, at a minimum, implementing the following BMPs related to using hazardous substances:</p> <ul style="list-style-type: none"> <li>• Follow manufacturer's recommendations on use, storage, and disposal of chemical products used in construction</li> <li>• Avoid overtopping construction equipment fuel gas tanks</li> <li>• During routine maintenance of construction equipment, properly contain and remove grease and oils</li> <li>• Conduct all fueling of equipment at least 100 feet from wetlands and other waterbodies</li> <li>• Properly dispose of discarded containers of fuels and other chemicals</li> <li>• Maintain a complete list of the agencies to be notified (with their telephone number), including but not limited to, the CSLC's 24-hour emergency notification number (562) 590-5201 and the California Governor's Office of Emergency Services (Cal OES) contact number (800) 852-7550.</li> </ul>					

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
	B. Offshore Work: For offshore activities involving work vessels, the primary work vessel (dive support vessel) will be required to carry on board a minimum 400 feet of sorbent boom, 5 bales of sorbent pads at least 18-inch by 18-inch square, and a small powered vessel for rapid deployment to contain and clean up any small spill or sheen on the water surface. The Plans shall provide for the immediate call out of additional spill containment and clean-up resources in the event of an incident that exceeds the rapid clean-up capability of the on-site work force.					
	Implement <b>MM BIO-1: Provide Environmental Awareness Training</b> (see above) Implement <b>MM BIO-3: Delineate Work Limits to Protect Sensitive Biological Resources</b> (see above) Implement <b>MM BIO-5: Implement Best Management Practices for Horizontal Directional Drilling Activities</b> (see above) Implement <b>MM BIO-6: Prepare and Implement an Inadvertent Return Contingency Plan</b> (see above)					
Hydrology and Water Quality						
Violation of Water Quality Standards	Implement <b>MM BIO-3: Delineate Work Limits to Protect Sensitive Biological Resources</b> (see above) Implement <b>MM BIO-5: Implement Best Management Practices for Horizontal Directional Drilling Activities</b> (see above) Implement <b>MM BIO-6: Prepare and Implement an Inadvertent Return Contingency Plan</b> (see above) Implement <b>MM HAZ-1: Develop and Implement Spill Contingency and Hazardous Materials Management Plans</b> (see above)					

Table 4-1. Mitigation Monitoring Program

Potential Impact	Mitigation Measure (MM)	Location	Monitoring/ Reporting Action	Effectiveness Criteria	Responsible Party	Timing
<b>Recreation</b>						
<b>Offshore Recreation</b>	<b>MM REC-1: Advanced Local Notice to Mariners.</b> All offshore operations shall be described in a Local Notice to Mariners to be submitted to the U.S. Coast Guard (USCG) at least 15 days before offshore cable laying activities or repair activities. A copy of the published notice shall be immediately provided to the CSLC. The notice shall include: <ul style="list-style-type: none"> <li>• Type of operation (i.e., dredging, diving operations, construction).</li> <li>• Specific location of operation or repair activities (including whether there is a possibility of exposed cable), including latitude and longitude and geographical position, if applicable</li> <li>• Estimated schedule of activities (operation or repair), including start and completion dates (if these dates change, the USCG needs to be notified)</li> <li>• Vessels involved in the operation</li> <li>• VHF-FM radio frequencies monitored by vessels on the scene.</li> <li>• Point of contact and 24-hour phone number</li> <li>• Chart Number for the area of operation</li> </ul>	Marine Project area	Local Notice to Mariners submitted to USCG 15 days before offshore cable laying activities  Published notice submitted to CSLC immediately	Implementing MM will reduce project impacts on offshore recreation	Applicant and CSLC	Before construction
<b>Transportation</b>						
<b>Marine Vessel Traffic</b>	Implement <b>MM REC-1: Advanced Local Notice to Mariners</b> (see above)					
	Implement <b>APM-2: Marine Anchor Plan</b> (see below)					

**DRAFT JOINDER AGREEMENT**

Reference is made to that certain Final Agreement (the “Original Agreement”) between Cable Companies and Fishermen dated the 30<sup>th</sup> of January 2002, by and among MFS Globenet, Inc., AT&T Corp, Global West Network, Inc., a wholly owned subsidiary of Global Photon Holding Co., individual Fishermen, the Morro Bay Commercial Fishermen’s Organization, and the Port San Luis Commercial Fishermen’s Association, (collectively, the “Parties”). The Original Agreement governs the Central California Joint Cable/Fisheries Liaison Committee (the “Committee”), a nonmember, trade organization qualified to do business under section 501 (c) (6) of the Internal Revenue Code. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Final Agreement. The Original Agreement is attached hereto as Exhibit “A”.

**WHEREAS**, the Cable Companies of the Original Agreement have each installed Cable Projects referred to and identified in the Agreement as Covered Cables; and

**WHEREAS**, pursuant to the Original Agreement, certain cable companies, fishermen associations, and individual fishermen are parties to the Original Agreement, participate in the Committee, and select Representatives who serve as voting Directors of the Committee; and

**WHEREAS**, RTI Infrastructure, Inc. (RTI-I), intends to construct, install, continue and maintain a telecommunications cable network along the California coast; and

**WHEREAS**, subject to the terms of this Joinder Agreement, the Cable Projects of RTI-I shall be deemed a Covered Cable within the Covered Area under the Original Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Committee, and RTI-I, as of this Choose an item. day of Choose an item., 2020, hereby enter this **JOINDER AGREEMENT**, and agree as follows:

1. RTI-I, as of the Effective Date of this Joinder Agreement, shall become a signatory and party to the Original Agreement. RTI-I agrees to be bound by the terms of the Original Agreement subject, however, to the terms of this Joinder Agreement.

2. RTI-I shall appoint one Cable Industry Director for purposes of ARTICLE I, Section 1.01(c) of the Original Agreement; such Director shall occupy a seat on the Board of Directors of the Committee allocated to a fifth cable company joining the Committee. The Committee shall take such actions as are reasonably necessary to ensure the availability of such seat.

3. RTI-I shall identify the location of their Cable Project by providing the cable as built installations, latitude and longitude in WGS 84 datum coordinates to the Committee. This data shall be provided to the Committee, in writing, electronically, and on navigational charts. RTI-I Cable Project, which is installed in the areas identified on Exhibit “B” attached hereto, shall be deemed a Covered Cable.

4. Within thirty (30) days of the effective date of this Joinder Agreement, RTI-I shall pay to the Committee \$50,000 for deposit into the Committee’s Liaison Office Fund. Such payment shall be made within thirty (30) days of their receipt of an invoice from the Committee, which invoice may be presented at any time following the Effective Date hereof. For 2020 and annually

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thereafter RTI-I or their successor(s), shall pay its share of the actual Committee Liaison Office Budget in accords with ARTICLE III, Section 3.02 of the Original Agreement, within thirty (30) days of their receipt of an invoice from the Committee.

5. Within 30 days of invoice, which invoice shall not be presented until after RTI-I receives final approval from all agencies of the State of California and all local agencies for its project and begins installation of the cable in the Covered Area, RTI-I shall pay to the Committee for deposit into the Committee's Commercial Fishing Industry Improvement Fund the amounts of: (a) for the first year, the prorated amount equating to \$100,000 per year (a daily rate of \$273.97) beginning the date cable installation begins in the Covered Area and ending on December 31<sup>st</sup> of the first year; (b) for subsequent years, the amount of \$100,000 annually.

6. Within thirty (30) days of the Effective Date of this Joinder Agreement, RTI-I, shall pay the one-time payment of \$500 for navigational and communication equipment under ARTICLE I, Section 1.11 of the Original Agreement to each commercial fisherman who is a party to the Original Agreement.

7. Within thirty (30) days of invoice, which invoice shall not be presented until after the Effective Date of this Joinder Agreement, RTI-I, shall pay the attorney's fees and fishermen negotiator fees incurred by the Committee in negotiating and executing this Joinder Agreement. Attorney fees shall be billed at the rate of \$ [REDACTED] per hour, which the Committee represents is the regular rates charged to the Committee for legal work performed by the Committee's outside attorney. Fishermen negotiator fees shall be charged at the rate of \$50 per hour.

8. RTI-I shall execute the Original Agreement, subject to this Joinder Agreement.

9. This Joinder Agreement shall be governed by the laws of the State of California; proper venue for any dispute arising out of this Agreement shall be the Superior Court of California for the County of San Luis Obispo, California.

10. This Joinder Agreement may be executed in one or more counterparts, all of which taken together shall constitute an original.

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**IN WITNESS WHEREOF**, the parties have entered into this **JOINDER AGREEMENT**, as of the day and year first above written and severally warrant that each is duly authorized to execute this Agreement.

FOR THE CENTRAL CALIFORNIA JOINT CABLE FISHERIES LIAISON COMMITTEE

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Name and Title: \_\_\_\_\_

FOR RTI Infrastructure, Inc.

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Name and Title: \_\_Brian Mass, Chief Financial Officer\_\_\_\_\_



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EXHIBIT 'A':

**AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN** (the "*Original Agreement*")

**THIS AGREEMENT** ("Agreement") dated as of this 30<sup>TH</sup> day of January, 2002, is made by and among MFS Globenet, Inc. ("MFS Globenet"), AT&T Corp. ("AT&T"), Global West Network, Inc., a wholly owned subsidiary of Global Photon Holding Co. (a.k.a. Global Photon Systems, Inc.) ("Global West") (each of MFS Globenet, AT&T, and Global West are hereinafter called "Cable Company" and collectively they are hereinafter called "Cable Companies"), individual trawl vessel owners and operators doing business in San Luis Obispo County who sign this Agreement and other commercial fishermen licensed to fish along the California coast who sign this Agreement (hereinafter collectively called the "Fishermen"), and the Morro Bay Commercial Fishermen's Organization, a California Mutual Benefit Corporation, the Port San Luis Commercial Fishermen's Association, a California Mutual Benefit Corporation, (collectively hereinafter called "the Associations"), with regard to the following facts:

**RECITALS**

**WHEREAS**, the Cable Companies have applied to and received from the California State Lands Commission, and to the United States Army Corp of Engineers, in addition to other governmental agencies having jurisdiction thereover (hereinafter "Governmental Agencies"), for approval to construct, install, continue and maintain telecommunications cable networks along the California coast (hereinafter "Cable Projects"), and

**WHEREAS**, the Governmental Agencies are responsible for preparing and certifying environmental review documents in compliance with the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), to assess the potential environmental impacts of the Cable Projects, the cumulative impacts of such projects, alternatives to such projects, and appropriate mitigation measures for such projects, and

**WHEREAS**, this Agreement is intended to identify, establish, and confirm certain mitigation measures and monitoring programs which are intended to facilitate environmental review of the Cable Projects, reduce potential conflicts between the installation, continuation, and maintenance of the Cable Projects and commercial fishing activities along the California coast; and

**WHEREAS**, this Agreement supercedes and replaces an Interim Agreement dated July 22, 1999 (as amended) among certain of the parties (the "July 22 Interim Agreement"), a copy of which is attached hereto as Exhibit "A"; and

**WHEREAS**, the parties acknowledge that commercial fishing activities are coastal dependent uses receiving the highest priority under the California Coastal Act, and the Federal Coastal Zone Management Act, the continuing viability of which is of critical importance to maintaining historic fishing activity along the California coast; and

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**WHEREAS**, MFS Globenet, Inc.'s Cable Project is installed in the areas identified on Exhibit "B" hereto; and

**WHEREAS**, AT&T's Cable Project is installed in the areas identified on Exhibit "C" hereto; and

**WHEREAS**, Global West Network's Cable Project is installed in the areas identified on Exhibit "D" hereto; and

**WHEREAS**, each of the cables depicted on Exhibit "B," Exhibit "C," and Exhibit "D" is a "Covered Cable"; and

**WHEREAS**, The "Covered Area" is the area within one nautical mile on either side of a "Covered Cable" in the area from Point Arguello, Latitude 34 Degrees 34' North to Point Piedras Blancas, Latitude 35 degrees 40'N and out to the 1000 fathom curve; and

**WHEREAS**, the parties acknowledge that the commercial fishing industry is subject to substantial economic pressures, is vulnerable from a variety of regulatory, economic, and market sources, and that its continuing viability is subject to cumulative impacts which these Cable Projects may have upon the commercial fishing industry; and

**WHEREAS**, it is the intent of this Agreement to provide an enforceable agreement, and the Cable Companies acknowledge that in entering into this Agreement, the Fishermen are relying upon the good faith and representations by the Cable Companies that the provisions of this Agreement are enforceable and will be implemented in conjunction with any approved Cable Projects; and

**WHEREAS**, as a result of the environmental review by the Governmental Agencies, the Cable Projects may be conditioned and modified in order to appropriately mitigate impacts upon the commercial fishing industry.

**NOW, THEREFORE**, the Cable Companies, the Associations and the Fishermen hereby agree as follows:

## **ARTICLE I. GENERAL PROVISIONS**

### **Section 1.01 Committee**

(a) Formation. A Committee has been formed, concurrently with the execution of the July 22 Interim Agreement, for the purposes described in this Agreement, and has been organized as a California non-profit Mutual Benefit Corporation.

(b) Name. The Committee is named the Central California Joint Cable/Fisheries Liaison Committee, Inc. (hereinafter "Committee").

(c) Representation. The Committee is governed by ten (10) voting Directors: four (4) Trawl Fishing Industry Representatives, four (4) Cable Company Representatives and two Association Representatives. The Trawl Fishing Industry Representatives shall be selected in the manner specified in the Bylaws. One Association Representative shall be

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appointed by the Morro Bay Commercial Fishermen's Organization and one shall be appointed by the Port San Luis Commercial Fishermen's Association (collectively "the Associations").

Each Cable Company shall appoint one Representative. The fourth Cable Company Representative shall be appointed in the manner specified in the Committee Bylaws.

The Committee shall adopt Bylaws to implement all aspects of this agreement. The Bylaws shall provide that in the event that the Directors of the Committee are deadlocked on any issue, then the deadlock shall be resolved by a designated mediator mutually agreeable to the parties, and appointed to serve as mediator within thirty (30) days of the date of the first deadlock being declared, and who shall continue serving as mediator until replaced by a majority vote of the Directors.

It is not the intent of this Agreement to create any liability of any kind or nature for any Directors of the Committee. The Committee shall obtain liability insurance naming the Committee as the primary insured and each individual Director as an additional insured.

(d) Committee Jurisdiction. The Committee activities shall relate to the Covered Cables within the Covered Area and the activities within the Covered Area of the Cable Companies and the Fishermen.

(e) Initial Trawl Fishing Industry Representatives. The initial Trawl Fishing Industry Representatives on the Committee were (1) John Doherty; (2) Joseph Giannini, Jr.; (3) "BJ" Johnson; and (4) Randy Larsen. The initial Trawl Fishing Industry alternates were: (1) Chris Kubiak and (2) Bill Ward.

(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001. Funds in excess of the amount reasonably needed to fund the annual office administrative expense shall be transferred to the Commercial Fishing Industry Improvement Fund unless otherwise directed by the Committee.

The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.01 (g) through (j). Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

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(g) Compensation for Committee Activities. Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred for approved committee activities, including attendance at Committee meetings. The rate of compensation shall be Fifty Dollars (\$50) per hour, capped at no more than Five Hundred Dollars (\$500) per day plus reasonable travel expense.

(h) Trawl Fishing Industry and Association Representatives' Compensation and Attorney's Fees for Negotiating Agreement. Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred to achieve execution of this Agreement at rates and in amounts approved by the Committee. The time charges and expenses reasonably incurred by an attorney or attorneys representing the Trawl Fishing Industry and/or the Associations in the preparation and review of this Agreement shall be paid by the Cable Companies.

(i) Committee Office. Office expenses reasonably incurred and approved by the Committee to carry out Committee activities shall be paid out of the Committee/Liaison Office Fund.

(j) Cable Committee Liaison Officer. The Committee shall develop procedures to select, hire and oversee a Committee Liaison Officer to carry out Committee activities and establish and run an office as necessary and approved by the Committee. The Committee Liaison Officer shall be paid out of the Committee/Liaison Office Fund at rates and in amounts approved by the Committee.

(k) Committee Procedures. The Committee shall establish policies and procedures, to review claims, to publicize and advance the goals of this Agreement and to conduct other activities consistent with the provisions of this Agreement.

(l) Fishing Vessel Operating Procedures. The Committee has established operating procedures, which shall be followed by Fishermen to guide operation of commercial fishing vessels in the vicinity of cables. The procedures address requirements for up-to-date charts and navigational aids, a prohibition of trawling over cables known to be exposed and procedures to follow if forward motion stops. The procedures include reasonable measures that the vessel operator may employ to avoid damage to the cable. A copy of the Operating Procedures adopted by the Committee is attached and incorporated as Exhibit E.

**Section 1.02 Cable Installations, Inspection and Information**

(a) Each Cable Company shall have its Covered Cables installed at a depth of 1.0 meters beneath the seabed where feasible. In shallow water areas close to shore, the Covered Cables will be installed in a conduit. Each Covered Cable is intended to be buried to the extent reasonably possible and to remain buried, except in locations where due to geophysical constraints that is infeasible. Each Cable Company shall examine the seafloor and subsurface within reasonable proximity to the intended cable route to

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determine routes that allow the Covered Cable to be completely buried to the extent reasonably possible and to remain buried, except in locations where, due to geophysical constraint, that is infeasible between three miles from shore and 1,000 fathom water depth. Each Cable Company shall consult with the Committee, pursuant to paragraph (g) regarding the timing and method of construction and installation of its cable project. Instruments on the plow shall be used to record the burial operation. This shall serve as evidence of burial and will also indicate if the need exists to carry out post lay burial operations using an ROV. In all instances, the most modern technology in general commercial use shall be utilized in the cable burial process including Remote Operated Vehicle ("ROV") inspected for problematic regions immediately following installation, and ROV post-lay burial as required. In all "crossings" of its Covered Cables over existing undersea cable or pipelines, each Cable Company shall employ the latest industry standard protection techniques, and ROV and/or diver inspection shall be utilized as required. If any length of cable or cable-crossing cannot be completely buried after the inspection and burial procedure, the precise location will be identified in "as-built" coordinates provided by the Cable Company to the Fishermen. In the course of any repair or maintenance, the Covered Cable shall be buried to the extent possible to the same depth as it originally was buried. It is the intent of the parties to achieve the Cable Projects' objectives with minimal impacts upon the viability of the commercial fishing industry and minimal effects upon the extent and historic areas in which the commercial fishing industry is able to operate, and the practices and procedures used by the commercial fishing industry.

(b) Installation Observation and Guard Ship Assignments.

(i) An observer selected by the Committee as described below shall be on board the Cable Company installation vessel to observe cable installation within the Covered Area. The observer's reasonable fees and expenses shall be paid by the Cable Company involved in the installation. The compensation shall be in addition to any funds provided in Sections 1.01(f) and 1.07 of this Agreement. The rate of compensation shall not exceed One Thousand Dollars (\$1,000.00) per day, plus reasonable travel expenses.

(ii) The Committee shall equip the observer with a laptop computer and GPS equipment or other portable devices that will permit the observer to record the approximate position of the cable being installed. Cable position information recorded by the observer shall be distributed to the commercial fishing industry by the Committee as quickly as reasonably possible. The Cable Company shall bear no responsibility for the accuracy of the information recorded by the observer. The Committee shall inform recipients of the position information that the information is not the responsibility of the Cable Company but is being provided by the Committee. Recipients shall be required to sign a release in which they agree to use the information at their own risk and to release the Committee, the observer and the Cable Company from any and all claims that may arise from the use of the information.

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(iii) The Committee shall obtain from the Cable Company the requirements applicable to any fisherman observer. The Committee shall compile a list of all bottom contact fishermen doing business in San Luis Obispo County who wish to be considered for observer duty and who meet the requirements of the Cable Company. The list shall indicate the range of water depth within which each individual has the greatest fishing experience. Names shall be listed in random order, except that all individuals with previous experience as an observer shall be listed randomly after all individuals without such prior experience. When a Cable Company is required by this Agreement to have a fisherman observer aboard a cable vessel, the Cable Company shall inform the Committee where and when an observer may board the cable ship. The Committee shall select an observer from the list compiled. Observer positions shall be offered to individuals experienced in the water depth range in which the cable ship will be working in the order in which they appear on the list. To the extent that it can do so without interfering with efficient operations of the cable ship, the Cable Company shall change observers when convenient to the cable ship operations if the work continues outside the depth range of the initial observer. If the Committee fails to select an observer or the individual selected is not available or for any reason cannot be available to meet the operation schedule of the cable ship (such operation schedule to be determined at the sole discretion of the master of the cable ship) then the Cable Company shall have the option to proceed without an observer.

(iv) Before the start of any cable project involving the use of guard vessels, the Committee shall provide the Cable Company's installation contractor with a list of commercial fishing vessels doing business in San Luis Obispo County that agree to be available for guard vessel duty. The list shall indicate the water depth range with which the vessel has the most fishing experience and shall include other information about the vessel's characteristics and operating status. The Cable Companies shall encourage their contractors to select guard vessels from the Committee list in the order listed, if the contractors elect to employ local vessels for guard duty. The Cable Companies shall encourage their contractors to change guard vessels from time to time and to employ vessels indicated by the Committee's list to be experienced in the depth range where the cable installation is to occur. Payment terms shall be negotiated between the contractors and the owners of the guard vessels employed.

(c) Post-Installation Information. Each Cable Company shall provide cable as built installations, latitude and longitude in WGS 84 datum coordinates to the Fishermen and the Committee as soon as reasonably possible after the Cable Companies' contractor for the installation of the cable delivers the information to Cable Companies. This data shall be provided in writing, electronically, and on navigational charts.

(d) Post-Installation Inspections. Each Cable Company shall conduct ROV Burial verification to determine whether any buried sections of its Covered Cables have become exposed if and as required by regulatory agencies through permits granted for the Cable Project. Copies of the relevant permits shall be provided to the Committee.

(e) Unforeseen Consequences. The economic and environmental impacts of the Cable Projects and the appropriate level of mitigation shall be reviewed by the Committee after each of the first two years following the completion of installation of each Cable Project and adjusted, if necessary, for unforeseen consequences arising from the installation, assignment, operation, use, repair, replacement, continuation, and maintenance of the Cable Projects.

(f) Continuing jurisdictions. The parties agree that all of the approving Governmental Agencies for the Cable Projects shall reserve jurisdiction to amend or modify the terms, conditions, and project mitigation measures over the useful life of the Cable Projects, and shall have jurisdiction to impose additional mitigation measures based upon the monitored actual impacts of the Cable Projects upon fisheries and/or the commercial fishing industry. Such jurisdiction, and the ongoing authority of the Committee, shall include modifications of the approved projects and this Agreement to address, consistent with the purposes of this Agreement, future fishery gear types which may be affected by the Cable Projects.

(g) Construction and installation. The timing and methods of construction and installation of the Cable Projects shall be determined in consultation with the Committee, with the goal of minimizing any adverse impacts upon the commercial fishing industry. The Cable Companies agree to compensate any segments of the commercial fishing industry which are damaged as a result of the acts of installing, repairing, replacing, or maintaining of the Cable Projects, or any incidental activities in connection therewith. The amount of such compensation, as well as those entitled to receive it, shall be determined by the Cable Company involved, implementing guidelines approved by the Committee. Such compensation shall be in addition to any funds provided in Sections 1.01(f) and 1.07 of this Agreement.

#### **Section 1.03 24-Hour Telephone Hotline**

Each Cable Company, either individually or in cooperation with other Cable Companies, shall provide and maintain a 24-hour, toll-free telephone hotline to receive calls from Fishermen who believe they have snagged their gear on a Covered Cable owned and/or operated by that Cable Company. Furthermore, the Cable Companies will endeavor to include all Covered Cables on one 24-hour toll-free hotline. There shall be a representative on duty at all times who has the authority, background, and experience to advise the Fisherman whether the reported position is in the vicinity of a Covered Cable owned and/or operated by that Cable Company. Reporting procedures when using the hotline shall be developed by the Committee.

#### **Section 1.04 Gear Replacement Costs/Claims**

Each Cable Company shall pay 100% of the costs of gear sacrificed by a fishing vessel as a result of being snagged on a Covered Cable owned and/or operated by that Cable Company, provided 1) the vessel has informed the 24-hour, toll-free telephone hotline of its situation at the time of, or immediately following being snagged and 2) the vessel's conduct was consistent with the Fishing Vessel Operating Procedures established pursuant to paragraph

1.01 (l). The sacrificed gear shall be marked by the fishing vessel (by buoy or float) where possible to allow recovery should the claim be determined unrelated to the presence of the cables. The Cable Company shall also pay a premium in the amount of 50% of the value of the sacrificed gear to settle claims for loss of business incurred by the vessel. The Cable Company shall be responsible for promptly disbursing payments for the gear replacement costs and claims. These guidelines shall require that the Fisherman take reasonable measures to minimize such loss and provide substantial evidence of the extent of such loss.

#### **Section 1.05 Cable Damage Claims/Release of Liability**

(a) The Cable Companies agree to release any claims they might otherwise have, either individually, or collectively, against individual fishermen and refrain from taking any administrative, legal, or other action to sanction and/or recover damages against Fishermen who comply with the Fishing Vessel Operating Procedures established by the Committee. The Cable Companies further agree to encourage all administrative, legal, judicial and other authorities to respect the terms and conditions of this Agreement, and the procedures established by the Committee for the resolution of any cable damage claims. The Cable Companies hereby agree to assume all liability, responsibility, and risk for any damage which may occur to their Cable Projects resulting from their inability to construct, maintain, place, and continue Covered Cables in a manner which does not interfere with fishing conducted in conformity with the Fishing Vessel Operating Procedures.

(b) A three-step procedure shall be provided for resolution of all disputes, including disputes concerning claims by a Cable Company for damage to its Cable Project ("cable damage claims") and disputes concerning the following claims of Fishermen: 1) claims regarding a Fisherman's entitlement to the compensation provided in Section 1.04 above for the sacrifice of fishing vessel gear to avoid injuring any Covered Cable or related facilities being constructed or operated by the Cable Companies; 2) claims arising from any incident involving conduct by any Cable Company that negligently damages the Fisherman's fishing gear and the fish contained in such gear, and 3) claims arising from any conduct by the Cable Company that removes or damages, or tampers with the Fisherman's fishing gear and the fish contained in such gear without authorization from the Fisherman. Pursuant to the procedure: (1) the parties shall meet with the Committee in an effort to settle the dispute; (2) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the Committee, the parties shall request the Committee to select an independent mediator to assist in the resolution of the dispute; (3) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the mediator, the parties shall submit to binding arbitration all disputes over Fishermen's claims and any dispute over cable damage claims that the parties mutually agree to submit to binding arbitration. With respect to disputes over cable damage claims, unless the parties agree within seven days of the end of mediation to submit the dispute to binding arbitration, the Cable Company shall be free to pursue any legal remedies available to it and the vessel owner and operator shall be free to assert any legal defenses available. Any arbitration shall be determined in San Luis Obispo County,



California. Each party to the arbitration shall appoint an independent arbitrator. If the two arbitrators so appointed cannot agree within 30 working days after their appointment, they shall select a third arbitrator. The decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties therein, who shall conform to and abide by said decision. If either party fails to appoint his arbitrator within seven days after notice in writing requiring him to do so, the arbitrator appointed by the other party shall act for both, his decision in writing shall be final and binding upon both parties, as if he had been appointed by consent, and both parties thereto shall conform to and comply therewith. The expenses for the process described in this paragraph (b) shall be paid by the Cable Company in addition to any other payments that are required under this Agreement. When a claim before the Committee involves a bottom trawl vessel, the Association representatives on the Committee shall not have a vote. When a claim before the Committee involves a vessel that is not a bottom trawl vessel, the Association representatives shall have a vote and the Trawl Fishing Industry representatives shall not have a vote.

#### **Section 1.06 Out-of-Service Cables**

(a) To the extent required by any governmental approvals, the Cable Companies agree to abandon and remove out-of-service Covered Cables as necessary so as not to interfere with commercial fishing activities in the areas where such cables were previously installed.

(b) AT&T agrees to use its best efforts to secure the removal of the existing HAW-3 cable between the three-mile limit and 1000 fathoms water depth.

#### **Section 1.07 Commercial Fishing Industry Improvement Fund**

Each Cable Company shall annually deposit One Hundred Thousand Dollars (\$100,000) per project in a special fund for enhancement of commercial fisheries and the commercial fishing industry and support facilities. This payment obligation shall commence and the first payment shall be due within thirty (30) days of the Cable Company receiving final approval from all agencies of the State of California and all local agencies for its project. Full payment shall be required for the calendar year in which final approval is received. Annually thereafter, each Cable Company shall deposit one hundred thousand dollars (\$100,000) to the Commercial Fishing Industry Improvement Fund, or as directed by the Committee, within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year.

Lease applications for projects in addition to those projects specified in paragraph 1.09 shall constitute new projects for the purpose of this paragraph. For each cable installed as part of a new project, the Cable Company shall annually contribute an additional \$100,000 to this fund.

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In the event that any mitigation intended for the commercial fishing industry is ordered by action of a governmental agency, the payment of such ordered mitigation shall offset funds required to be paid pursuant to this paragraph.

**Section 1.08 Parties**

This Agreement shall be by and between and for the benefit of the Cable Companies and the Fishermen, and any other licensed commercial fisherman operating in the Covered Area who signs this Agreement.

**Section 1.09 Covered Cables**

This Agreement shall cover the following telecommunications cable projects of the Cable Companies: (a) MFS Globenet – Southern Cross (one cable); Japan-US (one cable); (b) AT&T – China-U.S. (two cables); Japan-US Interlink (one cable); and (c) Global West – Global West (two cables). These cable projects are depicted in Exhibits B, C, and D attached hereto.

**Section 1.10 Assignment**

This Agreement shall be assignable to future successors, assigns and donees of a Cable Company, including their lenders as required, provided that such successor, assignee or donee agrees to be bound by the provisions of this Agreement.

**Section 1.11 Upgrading of Communications and Navigation Equipment**

A one-time payment of Five Hundred Dollars (\$500) shall be made by each Cable Company to each vessel engaged in trawl fishing in the Covered Area that is owned and operated by a Fisherman for use in upgrading communication and navigation equipment for such vessel.

**ARTICLE II.  
MISCELLANEOUS**

**Section 2.01 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 provisions of that law referring governance or construction to the law of another jurisdiction.

**Section 2.02 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.

**Section 2.03 Miscellaneous**

(a) Unless specifically agreed in writing, no party may commit the other parties to any agreement or undertaking.

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

(c) 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.

(d) This agreement shall terminate as to any Cable Company or its successors at such time as it ceases to operate commercial fiberoptic cables within the Covered Area or if the Cable Company does not place a cable in service before December 31, 2001.

(e) This agreement may be amended only by vote of the Board of Directors of the Committee.

**ARTICLE III.  
AMENDMENTS**

**Section 3.01 Amendment I**

**WHEREAS**, the Parties recognize that the broader economic environment has changed dramatically from the time when the Final Agreement was first entered; and

**WHEREAS**, the Parties recognize that the initial funding of the Committee/Liaison Office Fund was greater than required; and

**WHEREAS**, the Parties seek to rationalize the budgeting process and reduce the economic burden on the Cable Companies;

**NOW THEREFORE**, The Parties agree to amend the Final Agreement by striking Section 1.01 (f) and replacing that Section with the texts attached hereto as Exhibit 'A'.

**EXHIBIT 'A'**

Final Agreement, Section 1.01 (f), as amended:

(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001 or otherwise by action of the Board. Funds in excess of the amount reasonably needed to fund the annual office administrative expense shall be transferred to the Commercial Fishing Industry Improvement Fund unless otherwise directed by the Committee.

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The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.1(g) through (j). Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

For calendar year 2008 and beyond, pursuant to action by the Board, the fifty thousand dollar (\$50,000) annual assessment for each Cable Company shall cease and each Cable Company shall only be assessed its share of the actual budget for all Committee activities as determined by the Board. Excess funds remaining in the Committee/Liaison Office Fund as of January 1, 2008 may be transferred to the Improvement Fund by vote of the Board.

**Section 3.02 Amendment II**

**WHEREAS**, the Parties recognize that the broader economic environment has changed dramatically from the time when the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "Final Agreement") was first entered; and

**WHEREAS**, the Parties recognize that the initial funding of the Committee/Liaison Office Fund was greater than required; and

**WHEREAS**, the Parties seek to rationalize the budgeting process and reduce the economic burden on the Cable Companies;

**NOW THEREFORE**, The Parties agree to amend the Final Agreement by striking Section 1.01 (f) and replacing that section with the texts attached hereto as Exhibit 'A'.

EXHIBIT 'A'

Final Agreement, Section 1.01 (f), as amended:

(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001 or otherwise by action of the Board.

For calendar year 2008 and beyond, pursuant to action by the Board, the fifty thousand dollar (\$50,000) Committee/Liaison Office Fund annual assessment for each Cable Company shall cease and each Cable Company shall be assessed its share of the actual budget for all Committee activities as determined by the Board. Excess funds

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remaining in the Committee/Liaison Office Fund as of January 1, 2008 may be transferred to the Commercial Fishing Industry Improvement Fund by vote of the Board.

(i) The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.1(g) through (j).

Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

Pursuant to action by the Board, a five person Administrative Budget Committee consisting of two Cable Company Representatives, two Trawl Fishing Industry/Association Representatives and the Committee Liaison Officer, has been formed. The Administrative Budget Committee will meet prior to the fiscal year and will determine the amounts needed to fund the annual office administrative expenses (hereinafter called the "*Administrative Budget*"). The Budget Committee will present the Administrative Budget to the full Committee. If approved, fifty percent (50%) of the Approved Administrative Budget will be invoiced to the Cable Companies. At mid-year, the Administrative Budget Committee will meet again to affirm the Administrative Budget or recommend adjustments (either up or down) to the full Committee. If approved, the remainder of the Approved Adjusted Administrative Budget will be invoiced to the Cable Companies.

Beginning with the second Approved Administrative Budget assessment of calendar year 2009 and continuing thereafter, the Approved Administrative Budget assessment shall be apportioned to each Cable Company in a proportion equal to the proportion of each Cable Companies contribution to the Commercial Fishing Industry Improvement Fund described in section 1.07 of this Agreement.

### Section 3.03 **Amendment III**

**WHEREAS**, the Parties recognize that the broader economic environment has changed dramatically from the time when the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "*Final Agreement*") was first entered; and

**WHEREAS**, the Parties seek to rationalize the process for adding additional covered cables and reduce the economic burden on the Cable Companies;

**NOW THEREFORE**, The Parties agree to amend the Final Agreement by striking Section 1.07 and replacing that section with the texts attached hereto as Exhibit 'A'; and,

The parties agree to add section 1.12 to the Final Agreement. Section 1.12 is attached hereto as Exhibit 'B'.

#### EXHIBIT 'A'

Final Agreement, Section 1.07, as amended:

### Section 1.07 **Commercial Fishing Industry Improvement Fund**

Each Cable Company shall annually deposit One Hundred Thousand Dollars (\$100,000) per project in a special fund for enhancement of commercial fisheries and the

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commercial fishing industry and support facilities. This payment obligation shall commence and the first payment shall be due within thirty (30) days of the Cable Company receiving final approval from all agencies of the State of California and all local agencies for its project. Full payment shall be required for the calendar year in which final approval is received. Annually thereafter, each Cable Company shall deposit one hundred thousand dollars (\$100,000) to the Commercial Fishing Industry Improvement Fund, or as directed by the Committee, within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year.

Cable Companies that have deposited funds in the Commercial Fishing Industry Improvement Fund prior to March 1, 2009 shall be considered Current Member Cable Companies for the purpose of this paragraph. Lease applications for projects in addition to those projects specified in paragraph 1.09 shall constitute new projects for the purpose of this paragraph. For each cable installed as part of a new project by any Current Member Cable Company, the Current Member Cable Company shall annually contribute an additional \$50,000.00 to the Commercial Fishing Industry Improvement Fund. For each cable installed as part of a new project by any New Member Cable Company, the New Member Cable Company shall annually contribute \$100,000 to the Commercial Fishing Industry Improvement Fund.

In the event that any mitigation intended for the commercial fishing industry is ordered by action of a governmental agency, the payment of such ordered mitigation shall offset funds required to be paid pursuant to this paragraph.

EXHIBIT 'B'

**Section 1.12 Current Member Cable Company Additional Covered Cables**

This Agreement shall cover the following telecommunications cable projects of the Cable Companies: (a) AT&T – Asia America Gateway (one cable).

**Section 3.04 Amendment IV**

**WHEREAS**, the California State Lands Commission and the California Coastal Commission have changed the interval between periodic post-installation verification surveys applicable to Covered Cables from that originally required in each Cable Company's respective authorizations from those agencies (collectively, the "California governmental authorizations"); and

**WHEREAS**, the Parties seek to conform the interval for post-installation verification surveys specified in Section 1.2(d) of the Final Agreement with the interval required under the California governmental authorizations; now therefore,

**RESOLVED**, that the Parties agree to amend Section 1.2(d) of the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "*Final Agreement*") by striking from that section "at minimum of every 18 months and not to exceed 24 months", and replacing it with "at such interval as is required by the Cable Company's California governmental authorizations", and striking "videotapes", and replacing it with "electronic storage media".

Section 1.2(d), as amended, is attached hereto as Exhibit A.

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EXHIBIT 'A'

Final Agreement, Section 1.2 (d), as amended:

(d) Post-Installation Inspections. Each Cable Company shall conduct ROV Burial verification to determine whether any buried sections of its Covered Cables have become exposed at such interval as is required by the Cable Company's California governmental authorizations and after any events which may affect the Cable Project. Copies of electronic storage media recording the verification shall be provided to the Committee.