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VIA ELECTRONIC FILING

Ms. Brittany Petersen
Marine Monument Superintendent
Northeast Canyons and Seamounts Marine National Monument
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, Massachusetts 01035

*Re: In the Matter of Northeast Canyons and Seamounts Marine National Monument;
Proposed Joint Monument Management Plan, Docket No. FWS-R5-NWRS-2023-
0154*

Dear Ms. Petersen:

On behalf of the North American Submarine Cable Association (“NASCA”), we urge the U.S. Fish and Wildlife Service (“FWS”) and the National Oceanic and Atmospheric Administration (“NOAA”) to revise the draft monument management plan and environmental assessment (together, the “Draft Management Plan”) for the Northeast Canyons and Seamounts Marine National Monument (“Monument”)¹ to more accurately reflect applicable international law—which clearly provides for the freedom to lay submarine cables on the continental shelf, in addition to the freedoms of navigation and overflight—and to expressly recognize the evidence in the record that submarine telecommunications cables are a sustainable use of the oceans, compatible with the environmental goals and key principles established in Proclamation 9496, as updated by Proclamation 10,287.² Accordingly, rather than deferring any discussion of submarine cable activity because it is “outside the scope of this draft management plan and environmental assessment,”³ FWS and NOAA should expressly provide for the continued installation of submarine telecommunications infrastructure (and conduct of any related repair

¹ Northeast Canyons and Seamounts Marine National Monument, Draft Management Plan and Environmental Assessment (Sept. 12, 2023), <https://www.fws.gov/project/monument-management-plan>.

² *See generally* Northeast Canyons and Seamounts Marine National Monument; Proposed Joint Monument Management Plan, 87 Fed. Reg. 79,901 (Dec. 28, 2022); Proclamation No. 9496, 81 Fed. Reg. 65,159 (Sept. 15, 2016) (“Proclamation 9496”); Proclamation No. 10,287, 86 Fed. Reg. 57,349 (Oct. 15, 2021) (“Proclamation 10,287”).

³ Draft Management Plan at 22.

and maintenance activities with respect to that infrastructure) within the monument boundaries, consistent with existing use, pursuant to existing, manifold regulatory authorities and permitting processes.

NASCA believes that there is no need to “improve understanding of submarine (undersea) cable maintenance and installation activities by partnering with the Department of State to conduct outreach to the undersea cable industry.”⁴ That industry—represented by NASCA—has repeatedly participated in FWS and NOAA proceedings, including this one, and has demonstrated unequivocally that submarine telecommunications cables, which serve vital environmental, social, and national security interests, have a neutral to benign impact on the marine environment and pose no risk to environmental, archeological, or cultural resources within Monument boundaries.⁵ Moreover, FWS and NOAA have failed to explain how outreach led by the Department of State would further Proclamations 9496 and 10,287 and the purposes of the Antiquities Act. NASCA suggests that FWS and NOAA should confer further with the Department of State regarding longstanding U.S. interpretations of UNCLOS and customary international law as they pertain to submarine cable installation and repair. In short, submarine telecommunications cables are a “complementary and reinforcing” priority,⁶ protected by international law, that contribute to “the well-being of the United States, [and] the prosperity of its citizens.”⁷ NASCA strongly urges NOAA and FWS to issue a final Management Plan that reflects these key attributes.

A. NASCA Represents Significant Submarine Cable Infrastructure Landing on the Atlantic Coast, Including Within the Monument Boundaries

NASCA is a nonprofit association of the principal submarine cable owners, submarine cable maintenance authorities, and prime contractors for submarine cable systems operating in North America.⁸ NASCA members’ cables land in seventeen U.S. states and territories, with

⁴ Draft Management Plan at 26.

⁵ See e.g., Comments of the North American Submarine Cable Association, Docket No. FWS-R5-NWRS-2022-N062 (filed Jan. 27, 2023) (“NASCA MNM Comments”); Comments of North American Submarine Cable Association, Docket No. NOAA-NOS-2021-0080 (filed Feb. 1, 2022) (“Chumash NMS Comments”); Comments of the North American Submarine Cable Association, Docket No. NOAA-NOS-2022-0053 (filed Aug. 8, 2022) (“NASCA Hudson Canyon Comments”); Comments of North American Submarine Cable Association, Docket No. 230807-0815 (filed Oct. 25, 2023) (“NASCA Chumash DEIS Comments”), all of which are incorporated herein by reference.

⁶ Proclamation 9496 at 65,163.

⁷ *Id.*

⁸ NASCA’s members include Alaska Communications System; Alaska United Fiber System Partnership; Alcatel Submarine Networks; AquaComms; AT&T Corp.; C&W Networks;

thousands of kilometers of installed cable traversing the Outer Continental Shelf (“OCS”) on both coasts, and many more under construction or in the planning stage. Notably, NASCA’s members currently own and operate trans-Atlantic submarine cables terminating on the East Coast, two of which are deployed within the monument boundaries:

- ***Atlantic Crossing 1 (Segments A and C)***: connecting Germany, the Netherlands, the United Kingdom, and the United States; and
- ***FLAG Atlantic-1 (North and South)***: connecting France, the United Kingdom, and the United States

Please refer to Exhibit A for a depiction of these cables within the monument boundaries. As Exhibit A demonstrates, each of these cables transit *around* the Bear, Physalia, Retriever, and Mytilus seamounts. This is consistent with submarine cable routing priorities, which seek to avoid uneven and rough seabed terrain that can increase the risk of cable damage due to cable suspensions and abrasion. These submarine telecommunications cables are critical infrastructure, providing vital connectivity to the Eastern Seaboard and beyond.

B. Submarine Cables are Vital for the U.S. Economy, Society, and National Security⁹

Submarine cables, which carry approximately 99 percent of the world’s Internet, voice, and data traffic,¹⁰ provide higher-quality, more reliable and secure, and less expensive communications than do communications satellites. Demand for submarine cable capacity has increased considerably in recent years and continues to increase alongside the myriad activities it supports, including from global payment and financial transactions, to remote work and video conferencing, distance education, telemedicine, and government and military communications—not to mention essential social connectivity.¹¹ The global nature of the Internet and the networks

Edge Network Services; EXA Infrastructure; Global Cloud Xchange; Global Marine Systems Ltd.; GlobeNet; Lumen Technologies UK, Ltd; OPT French Polynesia; PC Landing Corporation; Rogers Communications; Seaborn Networks; Southern Caribbean Fiber; Southern Cross Cable Network; Tampnet Group; Tata Communications (Americas); SubCom; Verizon; Vodafone; and Zayo Group Ltd. See Member Companies, North American Submarine Cable Association, <https://www.n-a-s-c-a.org/member-companies/>.

⁹ See also NASCA MNM Comments at 3-5.

¹⁰ Doug Brake, *Submarine Cables: Critical Infrastructure for Global Communications*, Info. Tech. & Innovation Found., at 1 (Apr. 2019), <https://www2.itif.org/2019-submarine-cables.pdf>.

¹¹ See e.g., Peter Neff *et al.*, *Antarctic Subsea Cable Workshop Report: High-Speed Connectivity Needs to Advance US Antarctic Science* 4–8 (Oct. 21, 2021), <https://drive.google.com/file/d/1Ao4Hz6-bBheFMpGSR4nMvSZJ9kHpjj0o/view>;

that operate over it mean that even communications within a domestic or local area (such as communications up and down the Eastern Seaboard) rely on submarine cable infrastructure to deliver communications and services. The mid-Atlantic and Northeast regions, moreover, serve as a vital communications hub, originating and terminating submarine cable traffic to and from more distant locations. Increased digital communications contribute to our national environmental goals, as video conferencing and work from home arrangements reduce travel and commuting distances.

Damage to submarine cables can pose grave risks to U.S. national security and the U.S. economy, given (a) the U.S. Government's reliance on such cables to communicate with its civilian and military personnel worldwide and with other governments and to deliver services to U.S. residents; and (b) the dollar-value of commerce conducted using submarine cables. Timely repairs are therefore critical, and maintenance providers and cable ships must be prepared to respond rapidly, with vessels on standby with qualified personnel and appropriate equipment.¹² Because of the importance of submarine cables to U.S. commercial and national security interests, submarine cables have long been designated as critical infrastructure by the U.S. Government.¹³

Given the importance of submarine telecommunications cables to vital U.S. interests and their benign environmental impact in the marine environment (as discussed in part D below), NASCA believes that NOAA should factor submarine cable installation and repair into its strategy for a "New Blue Economy."¹⁴ A "Blue Economy" is one built on a long-term strategy

International Cable Protection Committee, *ICPC Calls on Governments and Industry to Facilitate and Expedite Submarine Cable Installation and Repair During the COVID-19 Pandemic in Order to Protect Internet Connectivity and Critical Communications* 1 (Apr. 3, 2020), <https://www.iscpc.org/documents/?id=3299>.

¹² See Kent Bressie *et al.*, Working Group 4A, Communications Security, Reliability, and Interoperability Council, Federal Communications Commission, Final Report – Protection of Submarine Cables Through Spatial Separation, at 1–2 (2014) ("CSRIC Spatial Separation Report").

¹³ Presidential Policy Directive – Critical Infrastructure Security and Resilience, PPD-21 (Feb. 12, 2013), <http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>; see Department of Homeland Security, Communications Sector-Specific Plan 12–14 (2010), <http://www.dhs.gov/xlibrary/assets/nipp-ssp-communications-2010.pdf>. See also Michael Matis, *The Protection of Undersea Cables: A Global Security Threat* (Jul. 3, 2012) (M.S.S. Strategy Paper, U.S. Army War College: Carlisle, PA), <https://apps.dtic.mil/sti/pdfs/ADA561426.pdf>.

¹⁴ See <https://www.noaa.gov/blue-economy>.

aimed at supporting sustainable economic growth,¹⁵ and is consistent with the Proclamation’s key principles. Submarine telecommunications cables factor squarely into such a sustainable economic model.

C. The Freedom to Install and Repair Submarine Cables in the EEZ and on the Continental Shelf Is Well-Established Under International Law

The freedoms to install and maintain submarine cables are well-established by treaty and customary international law and are protected under U.S. law. The freedoms to install and maintain submarine cables clearly fall within the “rights, freedoms, and lawful uses of the sea” afforded under the law of the sea, as recognized in Proclamation 9496, and should have been mentioned expressly by FWS and NOAA.¹⁶

Various international treaties dating back to 1884 guarantee unique freedoms to lay, maintain, and repair submarine cables—freedoms not granted for any other marine activities—and restrict the ability of coastal states (*i.e.*, countries) to regulate them.¹⁷ Principles articulated in these treaties have since been recognized as customary international law. Specifically, these treaties guarantee:

- The freedom to install submarine cables on the high seas beyond the continental shelf¹⁸

¹⁵ See <https://www.un.org/en/desa/exploring-potential-blue-economy#:~:text=%E2%80%9CA%20blue%20economy%20is%20a,the%20environment%2C%E2%80%9D%20he%20said.>

¹⁶ Proclamation 9496 at 65,163.

¹⁷ See Convention for the Protection of Submarine Telegraph Cables, Mar. 14, 1884, 24 Stat. 989, 25 Stat. 1424, T.S. 380, (entered into force definitively for the United States on May 1, 1888) (“1884 Convention”); Geneva Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 (entered into force definitively for the United States on Sept. 30, 1962) (“High Seas Convention”); Geneva Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311 (entered into force definitively for the United States on June 10, 1964) (“Continental Shelf Convention”); Law of the Sea Convention, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force on Nov. 16, 1994) (“UNCLOS”).

¹⁸ As used here, the continental shelf generally refers to the juridical continental shelf of a coastal state (rather than the geological continental shelf), and comprises “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is

- and to repair existing cables without impediment or prejudice;¹⁹
- The freedom to install and maintain submarine cables in the exclusive economic zone (“EEZ”) of all states; and²⁰
- The ability to install submarine cables in a state’s territory or territorial sea subject to conditions and exercise of national jurisdiction.²¹

These treaty obligations are now treated as customary international law,²² in particular by the United States.²³

measured where the outer edge of the continental margin does not extend up to that distance.” UNCLOS art. 76(1).

¹⁹ High Seas Convention arts. 2 (“Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States: . . . Freedom to lay submarine cables and pipelines.”), 26(1) (“All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.”), 26(3) (“When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.”); UNCLOS art. 112(1) (“All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.”).

²⁰ UNCLOS art. 58(1) (providing that “[i]n the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines”).

²¹ *Id.* art. 79(4) (providing that “[n]othing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea”).

²² *See* *Delimitation of Maritime Boundary in Gulf of Maine Area (Can. v. U.S.)*, 1984 I.C.J. Rep. 246, 294 ¶ 94 (Oct. 12).

²³ The United States recognized these freedoms starting in 1983, even though the United States has never ratified the UNCLOS (it signed only in 1994) and even though the Convention did not enter into force for those states that had ratified it until 1994. Presidential proclamations by two different U.S. presidents expressly stated that the establishments of an Exclusive Economic Zone (“EEZ”) and a contiguous zone, respectively, did not infringe on the high-seas freedoms to lay and repair submarine cables. *See* Presidential Proclamation No. 5030, Exclusive Economic Zone of the United States of America, 48 Fed. Reg. 10,605 (Mar. 10, 1983) (“Pres. Proc. No. 5030”) (establishing the U.S. EEZ); Presidential Proclamation No. 7219, Contiguous Zone of the United States, 64 Fed. Reg. 48,701 (Aug. 2, 1999) (establishing the U.S. contiguous zone).

For purposes of the EEZ and the continental shelf, submarine cables are distinguished from (1) artificial islands, (2) structures and installations used for exploration or exploitation of living or nonliving natural resources or for “other economic purposes,” and (3) installations and structures which may interfere with the exercise of the rights of the coastal state in the EEZ or on the continental shelf.²⁴ Although the relevant treaty provisions permit coastal states to take reasonable measures respecting natural resource exploitation on the continental shelf, they bar states from taking such measures with respect to submarine cables, the construction and repair of which are not undertaken for natural resource exploration or exploitation.²⁵ These treaty provisions are reflected in the official position of the United Nations’ Office of Legal Affairs of the Division for Ocean Affairs and the Law of the Sea, which states that:

[B]eyond the outer limits of the 12 nm territorial sea, the coastal State may not (and should not) impede the laying or maintenance of cables, even though the delineation of the course for the laying of such pipelines [but not submarine cables] on the continental shelf is subject to its consent. The coastal State has jurisdiction only over cables constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations, and structures under its jurisdiction.²⁶

Thus, a coastal nation must forbear from imposing any restrictions on the installation or maintenance of submarine cables unless those submarine cables themselves are used for natural resource exploration or exploitation.

Notably, UNCLOS does not grant coastal states general jurisdiction over environmental matters in the EEZ or on the continental shelf. Instead, UNCLOS provides that states shall take all measures consistent with the treaty to prevent, reduce and control pollution of the marine environment from any source (including those to protect and preserve rare or fragile ecosystems) and to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment.²⁷ States may conduct environmental assessments of activities within the coastal state’s jurisdiction or control that threaten substantial

²⁴ UNCLOS, arts. 56, 60(1), 80.

²⁵ *Id.* art. 79(2); Continental Shelf Convention, art. 4.

²⁶ *Maritime Space: Maritime Zones and Maritime Delimitations—Frequently Asked Questions*, United Nations Department of Oceans and Law of the Sea, Office of Legal Affairs (responding to Question #7, “What regime applies to the cables and pipelines?”), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently_asked_questions.htm.

²⁷ UNCLOS art. 194.

pollution or significant and harmful changes to the marine environment.²⁸ As noted in part D below, submarine cable installation and repair do not cause pollution in the marine environment and do not threaten substantial pollution or significant and harmful changes to the marine environment.

Consistent with Proclamation 9646, the Draft Management Plan states that the “Monument shall be managed in accordance with international law, and NOAA and the Service shall coordinate with the Department of State to that end.” The Draft Management Plan, however, does not recognize that international law protects the freedom to lay submarine cables, along with the freedoms of oversight and navigation.²⁹ Any final Management Plan should remedy this oversight, and any provisions regulating submarine cable activities within the Monument should reflect submarine cable activities’ protected status under international law, as well as their compatibility with the Proclamation’s environmental and cultural protection goals.

D. Submarine Cables are a Sustainable Ocean Use and are Neutral to Benign in the Marine Environment

As NASCA has repeatedly demonstrated, submarine telecommunications cables are a sustainable use of the oceans that are neutral to benign in the marine environment—and should be acknowledged as such by FWS and NOAA.³⁰ As demonstrated through extensive peer-reviewed scientific research, submarine cable materials and installation and repair methods are environmentally benign and do not pose a threat to the flora and fauna of the Monument. The submarine cable industry also has a long history of working to protect underwater cultural resources and of identifying and avoiding sensitive sites (particularly as such sites pose a risk of damage to the cables themselves), consistent with the National Historic Preservation Act.³¹ This includes environmentally sensitive areas, like the seamounts and canyons themselves, as is evident from the deployment of existing submarine telecommunications cables within the Monument boundaries.

Peer-reviewed scientific research conducted by leading academic and government scientists confirms that submarine cables are neutral to benign in the marine environment with small-scale spatial and temporal effects. Key overview reports have consistently concluded that the environmental impact of cables is very limited and outweighed by the economic, societal, and governmental benefits they provide:

²⁸ *Id.* art. 206.

²⁹ Draft Management Plan at 21.

³⁰ *See e.g.*, NASCA MNM Comments at 5-10; NASCA Chumash Comments at 8-13; and NASCA Hudson Canyon Comments at 10-14.

³¹ *See generally* 54 U.S.C. § 300101.

- **UNEP-WCMC-ICPC Report 2009:** “The weight of evidence shows the environmental impact of fibre-optic cables is neutral to minor.”³²
- **U.N. Secretary General’s UNCLOS Report 2015:** “Submarine cables themselves are considered to have a low-carbon footprint and a small relative impact on the environment”³³
- **U.N. World Ocean Assessment 2016:** Submarine telecommunications cables “have very limited environmental impacts.”³⁴ “A large body of knowledge already exists about the construction and operation of submarine communication cables, including how to survey environmentally acceptable routes and allow for the submarine geology.”³⁵

Ocean observatories—such as NOAA’s own MARS system, Oregon’s Ocean Observing Initiative, and Neptune in Canada—use submarine cables made from the same materials and installed using the same methods as commercial submarine telecommunications cables.³⁶ Most recently, a 2020 study conducted by the Monterey Bay Aquarium Research Institute concluded that the MARS cable system in Monterey Bay “has had little detectable impact on seabed

³² L. Carter *et al.*, *Submarine Cables and the Oceans—Connecting the World*, 30 UNEP-WCMC Biodiversity Series, ICPC and the United Nations Environment Program-World Climate Monitoring Centre at 54 (2009), https://www.unep-wcmc.org/system/dataset_file_fields/files/000/000/118/original/ICPC_UNEP_Cables.pdf?1398680911.

³³ U.N. Secretary-General, *Oceans and the Law of the Sea, Seventieth Session*, ¶¶ 53–55, U.N. Doc. A/70/74 (2015), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/093/76/PDF/N1509376.pdf?OpenElement>.

³⁴ U.N. Group of Experts on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, *World Ocean Assessment I: The First Global Integrated Marine Assessment*, pt. V, ch. 19 at 3–4 (2016) (“World Ocean Assessment I”), https://www.un.org/depts/los/global_reporting/WOA_RPROC/Chapter_19.pdf.

³⁵ *Id.* at 6.

³⁶ See e.g. *Sustainable Development: Submarine Cables In The Marine Environment*, ECO Mag. (January 19, 2017), <https://www.ecomagazine.com/in-depth/featured-stories/sustainable-development-submarine-cables-in-the-marine-environment>; World Ocean Assessment I, pt. V, ch. 19 1–2; Int’l Seabed Authority (“ISA”), *Submarine Cables and Deep Seabed Mining*, 14 ISA Technical Study, 47–49 (2015), https://isa.org.jm/files/files/documents/techstudy14_web_27july.pdf.

geomorphology, sediment qualities, or biological assemblages.”³⁷

Other research into the specific characteristics of submarine cables and related activities confirms that submarine cables have only a *negligible and transient* impact on the marine environment, including the seafloor, and are compatible with environmental protection goals. Key characteristics include:

- ***Small footprint; inert materials:*** Submarine telecommunications cables—which typically have the diameter of a garden hose—are made from chemically inert materials, including glass fibers, a copper core for conducting power, high-grade polyethylene sheathing, and steel wire rod for armoring in shallow-water areas. In deep-sea areas, such as the Monument, submarine cables rest on the surface of the sea floor.³⁸ When a cable is damaged or breaks, no polluting material is released, as the cable is transmitting light on the fiber.³⁹ The electrical fields of submarine telecommunications cables are shielded, emitting a smaller electromagnetic field than that of a laptop computer, and do not cause disturbance to marine fauna.⁴⁰
- ***Minimal impact on seabed and marine fauna:*** In deep-sea areas, such as within the Monument boundaries, submarine cables rest on the surface of the sea floor. Scientific studies of submarine telecommunications cables on the continental shelf and slope have shown that there is no difference in faunal abundance and diversity near and distant from cables.⁴¹ The frequencies of acoustic instruments used during submarine cable route

³⁷ L.A. Kuhn et al., *MARS Biological Survey Report: Potential Impacts of the Monterey Accelerated Research System (MARS) Cable on the Seabed and Benthic Faunal Assemblages*, Monterey Bay Aquarium Rsch. Inst., at i (2020), <http://dx.doi.org/10.13140/RG.2.2.12907.57122>.

³⁸ The Draft Management Plan flags submarine telecommunications as potential “marine debris.” Draft Management Plan at 69. NASCA notes that the removal of an out-of-service cable would, like the cable’s initial installation, have only a minimal, transitory impact on the seabed, as the cable would simply be winched and loaded onto the cable vessel.

³⁹ See, e.g., Lionel Carter *et al.*, Chemical and Physical Stability of Submarine Fibre-Optic Cables in the Area Beyond National Jurisdiction (ABNJ), Presentation at SubOptic 2019 (Mar. 3, 2019).

⁴⁰ See, e.g., Luana Albert *et al.*, *A current synthesis on the effects of electric and magnetic fields emitted by submarine power cables on invertebrates*, 159 *Marine Env’t Rsch.* 104,958, 104,962 (2020).

⁴¹ See, e.g., Lionel Carter *et al.*, Chemical and Physical Stability of Submarine Fibre-Optic Cables in the Area Beyond National Jurisdiction (ABNJ), Presentation at SubOptic 2019 (Mar. 3, 2019); Christoph Kraus and Lionel Carter, *Seabed recovery following protective*

surveys are directional and/or low energy,⁴² and the frequency and acoustic output of instruments used for surveying in deep water are all-directional and above the hearing range of most animals. Additionally, sound from such instruments naturally attenuates over modest distances. Animals that can hear these sounds (particularly *Odontoceti*) have highly directional hearing.

- ***Low maintenance***: Once a cable is installed, a cable operator rarely needs to access it, except in the event of a repair. The capacities of existing cables are increased by changing the electronics on shore, rather than with any new marine construction. *Nevertheless, when maintenance is required, rapid access is essential to restoring connectivity.*
- ***Designed to Avoid Sensitive Ecosystems***: Submarine telecommunications cable operators prefer to install cables on flat sandy featureless seabed and avoid natural and archaeological features that might entangle, abrade, or suspend cables or expose them to great heat and thereby increase the risk of damage.

Yet despite the exhaustive studies conducted to date and the unique, environmentally compatible characteristics of submarine cables—none of which have ever been refuted by any agency or third party in this or any other proceeding—the Draft Management Plan simply defers any decisions with respect to the regulation of submarine cable activities within the Monument boundaries: “While listed as a regulated activity in the establishing proclamation, regulation of and analyzing the effects of submarine cable installation and maintenance are outside the scope of this draft management plan and environmental assessment.”⁴³ While NASCA will not argue that NOAA and FWS should “improve [their] understanding of submarine (undersea) cable maintenance activities,”⁴⁴ there is no need to do so by “partnering with the Department of State to conduct outreach to the undersea cable industry” in order to do so,⁴⁵ although NASCA and its member are always willing to engage with the agencies. In short, the record in this proceeding is more than sufficient for FWS and

burial of subsea cables - Observations from the continental margin, 157 *Ocean Engineering* 251 (2018), <https://doi.org/10.1016/j.oceaneng.2018.03.037>.

⁴² Richard Hale, Director, EGS Survey Group, Sounds from Submarine Cable & Pipeline Operations, Presentation before the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (Mar. 13, 2020), https://www.un.org/depts/los/consultative_process/icp19_presentations/2.Richard%20Hale.pdf.

⁴³ Draft Management Plan at 22.

⁴⁴ Draft Management Plan at 26.

⁴⁵ *Id.*

NOAA to address submarine telecommunications cables in the Management Plan, and in a manner that reflects their compatibility with the agencies' and Proclamation's environmental goals and their status under international law. Any final Management Plan should also reflect the existing regulatory regime governing submarine telecommunications cable activities.

E. Submarine Telecommunications Cable and Related Activities Are Already Regulated, and Any Management Plan Should Facilitate Submarine Telecommunications Activities Compatible with Environmental Goals

Submarine telecommunications cables are subject to numerous federal statutes and permitting processes that ensure they are surveyed, installed, operated, repaired, and maintained consistent with environmentally sound practices.⁴⁶ Therefore, there is no need for the final Management Plan adopted for the Monument to impose burdensome restrictions on the submarine cable industry—and indeed, as noted above, such restrictions would be inconsistent with the freedoms afforded under international law, confirmed by Proclamation 9496 itself. Accordingly, any regulations adopted in a final Management Plan pertaining to submarine cable activities should facilitate those activities consistent with Proclamation 9496's environmental goals.

A comprehensive network of federal laws operate today to protect the Atlantic Ocean's marine environment, in particular laws such as the Endangered Species Act, the Fisheries Conservation and Management Act (the "Magnuson-Stevens Act"), the Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Rivers and Harbors Act (as amended by the Outer Continental Shelf Lands Act), the National Environmental Policy Act, the National Historic Preservation Act, as well as the Antiquities Act itself.⁴⁷

Submarine cable owners and operators must install and repair submarine cables in compliance with these laws. Moreover, a number of these laws are implicated in submarine cable permitting processes. Such laws and processes ensure that submarine cable projects mitigate any potential impacts on fish and wildlife resources, marine mammals, endangered

⁴⁶ See also NASCA MNM Comments at 8; NASCA Chumash Comments at 15-18; NASCA Hudson Canyon Comments at 17.

⁴⁷ Fishery Conservation and Management Act, 16 U.S.C. §§ 1801–1891(d); Marine Mammal Protection Act of 1972, Pub. L. No. 92-522, 86 Stat. 1027 (codified as amended in scattered sections of 16 U.S.C.); Migratory Bird Treaty Act, 16 U.S.C. §§ 703–708, 711–712; Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. § 403 (amended by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1333(e)) ("Rivers and Harbors Act"); National Environmental Policy Act, 42 U.S.C. §§ 4321–4347 ("NEPA"); Antiquities Act, 54 U.S.C. §§ 320301–320303.

species, the benthic environment, cultural and archeological sites, water quality, air quality, navigation, shoreline erosion and accretion, and water supply, among other considerations. In fact, submarine cable projects are routinely authorized under these laws and regulations.

In short, submarine cable installation and repair procedures are already subject to extensive regulation and oversight, notwithstanding the fact that peer-reviewed scientific research indicates that there is little environmental impact to regulate. Consequently, NASCA believes that any Monument-specific regulation should be targeted to identifying gaps in existing regulation that may be needed for the protection of specific Monument features and resources. Any such regulation, however, must be necessary and appropriately reflect submarine telecommunications cables' status under international law and their compatibility with the Proclamation's environmental goals. Any additional regulation should also reflect submarine telecommunications cables' role in serving key national interests, including its role in supporting a "sustainable, inclusive and growing economy"—a stated NOAA goal.⁴⁸ Unwarranted regulation could deter the deployment of new submarine telecommunications cables, forcing submarine cable owners and operators to lay cables along crowded routes, as more and more areas of the OCS are designated for national marine sanctuaries (e.g., Hudson Canyon) and offshore renewable energy development, or other competing uses. Such cable clustering increases the risk that an incident damaging one cable—such as a cargo ship dragging an anchor, an underwater landslide triggered by an earthquake, or a malicious attack—would very likely damage multiple cables. This, of course, increases the amount of repair activity conducted in the marine environment.

For the foregoing reasons, NASCA strongly urges FWS and NOAA to propose a final Management Plan for the Monument that recognizes the freedoms afforded to submarine cable installation and maintenance activities under international law, reflects the unique, environmentally compatible attributes of such activities, as well as the role that submarine cables play in supporting vital U.S. economic, social, and national security interests.

Yours sincerely,



Kent Bressie
Colleen Sechrest
*Counsel for the North American Submarine Cable
Association*

Attachment

⁴⁸ Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere & NOAA Administrator, *NOAA FY22-26 Strategic Plan: Building a Climate Ready Nation* at 2 (“NOAA Strategic Plan”).

EXHIBIT A:

MNM Subsea Cable Overlap

