



Before the U.S. Coral Reef Task Force

July 17, 2000

Under Secretary D. James Baker
Administrator, National Oceanic and Atmospheric Administration (NOAA)
NOAA, Silver Spring Metro Center 3
1315 East West Highway; 5128 HCH
Silver Spring, MD 20910-3282

Dear Under Secretary Baker:

We—the undersigned—request that the U.S. Coral Reef Task Force (Task Force) address the United States Army Corps of Engineers’ (“USACE”) failure to comply with Section 5(c) of Executive Order 13089 at its regularly schedule meeting in August, 2000. See Section 5(c) of Executive Order 13089 (“Conservation, Mitigation, and Restoration”). This Petition is filed as an act of “public issue and identification requiring response”. U.S. Coral Reef Task Force, *Oversight of Agency Action Affecting Coral Reef Protection* (Nov. 3, 1999) at #2(b).

For projects that lay cable across coral reefs, the Department of Defense (“DoD”) is the lead federal agency for purposes of complying with the National Environmental Policy Act of 1969 (“NEPA”). The USACE, as administrator of both the Clean Water Act’s Section 404 permit program and the Rivers and Harbors Act Section 10 program, issues a program-wide Environmental Impact Statement (“EIS”) every five (5) years as it renews the Nationwide Permit (“NWP”) program. Certain unique areas—such as National Marine Sanctuaries—benefit from the specialized attention of other agencies, such as NOAA. But by limiting environmental assessment of general utility line construction to the NWP Program, the USACE has guaranteed that no effective, site-specific, review will be conducted prior to the damaging of a coral reef. Five years is simply too long an interval, and the NWP

provides too general a site focus, to protect America's reefs. Our reefs are currently being poisoned (with bentonite) and blasted (through "frak-outs") under these blanket environmental assessments.

Executive Order 13089 requires the Task Force to "seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation". See Section 5(c). Currently, fiber optic cable laying operations are degrading coral reefs beneath the navigable waters of the United States in the State of Florida. See attached, Public Employees for Environmental Responsibility (PEER), *Emergency Petition to Collect Fair Compensation For, And Protect the Environment From, Private Fiber Optic Cable Use of Sovereign Submerged Lands* (State of Florida Board of Trustees of the Internal Improvement Trust Fund)(May 22, 2000) at ¶ 15. Similar operations in the U.S. Territory of the Virgin Islands also degraded the reefs of St. Croix. See attached, In the Matter of the Complaint of the St. Croix Committee of the Virgin Islands Coastal Zone Commission v. AT&T of the Virgin Islands, Inc., *Notice of Violation* (Government of the Virgin Islands, Department of Planning and Natural Resources)(Dec. 30, 1998) at 40 (detailing habitat destruction resulting from fiber optic cable activities).

The Task Force's immediate attention to this matter is necessary for many reasons, the most significant being the continued inability of the telecommunications industry to establish and maintain environmentally-protective techniques for the laying of fiber optic cables in the marine environment. Just last month, MCI-World Com experienced a malfunction at a project off San Luis Obispo, California, resulting in an unpermitted release of bentonite. The USACE's legal obligation is to establish substantive reviews of these operations before the environment is compromised. This, in turn, taints the NEPA compliance of every federal agency—including the FCC—which relies on the USACE effort. The laying of cable across coral reefs under NWP 12 should not be authorized under a General Permit because these activities have been proven to result in greater than minimal adverse impacts, both individually and cumulatively (as we have seen in both Florida and the U.S. Virgin Islands).

The laying of fiber optic cables across coral reefs cannot proceed without the exercise of a federal action, namely the issuance of a *Submarine Cable Landing License* by the Federal Communications Commission ("FCC"). The FCC does not conduct environmental reviews of these activities. Instead, the FCC merely has the Applicant stipulate that no environmental impact is foreseen. Compare 47 C.F.R. § 1.1308(a)(1999) with 47 C.F.R. § 1307(a)(3)(1999)(For the breach of a coral

reef, it is the Applicant—not the International Bureau—which is tasked with the decision as to whether the environmental resource is protected, or not. Such self-regulation is an open invitation to industry abuse.) Despite the record of reef degradation now available, the undersigned have found no instance of a *site-specific* EIS being filed with an *Application for a Submarine Cable Landing License*.

¶The FCC therefore predicates this system of streamlined processing on the assumption that the Corps' Nationwide Permit 12 ("NWP 12")—and the process by which an Applicant complies with the conditions of NWP 12—ensures that NEPA is satisfied. In the Matter of Review of Commission Consideration of Applications under the Cable Landing License Act, *Notice of Proposed Rulemaking* (IB Dkt. No. 00-106)(June 22, 2000) at ¶6 (Note the imposition of a categorical exclusion to shield industry cable laying from environmental review by the FCC.). To remedy this failure, the USACE must change NWP 12 ("Utility Line Discharges") to exclude proposed activities that adversely impact coral reefs. Applicants should go through the more stringent Individual Permit application process.

Unfortunately, the record in Broward County, Florida and in St. Croix, U.S. Virgin Islands, indicates that the Corps is assuming that the substantive environmental review is being done somewhere else, perhaps at the FCC, or even by the State of Florida. See *Sunken land use fees may increase*, ST. PETERSBURG TIMES (July 10, 2000) at http://www.sptimes.com/News/071000/State/Sunken_land_use_fees_.shmtl. But the mandate of NEPA is clear. No major federal action may degrade the environment without the required review of the project prior to the activities which will damage the natural resource. 4 U.S.C. §§ 4332, 4333 (1999). In light of this joint FCC/USACE failure, the Task Force may also wish to consult with the President of the United States on the question of whether to require the the FCC to adopt environmentally-sensitive rules and to become a member of the Task Force, as well.

Accordingly, we—the undersigned—request a public hearing before the United States Coral Reef Task Force, at which the USACE will give an accounting of its management of the District Engineers' permitting process for those fiber optic cable activities which have, or will shortly, transverse the coral reefs submerged beneath the navigable waters of the United States.

For PEER,

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*Fiber Optic Cable Petition to the
U.S. Coral Reef Task Force
Two Added Signatories: August 7, 2000*

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