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BEFORE THE

Federal Communications Commission
WASHINGTON, D.C.

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AND THE

Council for Environmental Quality
WASHINGTON, D.C.

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In the Matter of)
Public Employees for Environmental Responsibility)
Request for Amendment of the Commission's)
Environmental Rules) RM-9913 /
Regarding NEPA and NHPA)

To the Secretary, Federal Communications Commission:

**Petition for Reconsideration
First Evidentiary Supplement**

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March 29, 2002

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INTRODUCTION

Pursuant to Sections 1.106 of the Commission's rules and Section 1507.3 of the Council's rules, Public Employees for Environmental Responsibility ("PEER") hereby supplements its petition for reconsideration (filed January 3, 2002) of the Commission's PEER Order, released December 5, 2001. See In the Matter of Public Employees for Environmental Responsibility ("PEER"), Request for Amendment of the Commission's Environmental Rules Regarding NEPA and NHPA, Order (FCC Dkt. No. RM-9913) (Dec. 5, 2001). Compare 47 C.F.R. § 1.106 with 40 C.F.R. § 1507.3.

The Petition for Reconsideration dated January 3, 2002, seeks a revision of the Commission's environmental rules to:

(1) Revise Rule 1.1307 to ensure that subjective, essential government functions required to ensure compliance with the Endangered Species Act of 1973 are not unlawfully delegated to non-government entities such as telecommunications carriers and fiber-optic cable laying companies, 47 C.F.R. § 1.1307(a)(3);

(2) Revise Rule 1.1307 to ensure that subjective, essential government functions required to ensure compliance with the National Historic Preservation Act of 1966 are not unlawfully delegated to non-government entities such as telecommunications carriers and fiber-optic cable laying companies, 47 C.F.R. § 1.1307(a)(4);

(3) Revise all Rules to remove the categorical exemption now granted for the federal action known as "wireless and broadcast spectrum auctions", and to subject the same to environmental review;

(4) Revise all Rules to remove the categorical exemption now granted for the federal action known as "Communications Antennae Registration", and to subject the same to environmental review;

(5) Revise all Rules to remove the categorical exemption now granted for the federal action known as "Section 214 Authority", and to subject the same to environmental review;

(6) Revise all Orders to remove the categorical exemption now granted for the federal action known as "cable laying", and to subject the same to environmental review;

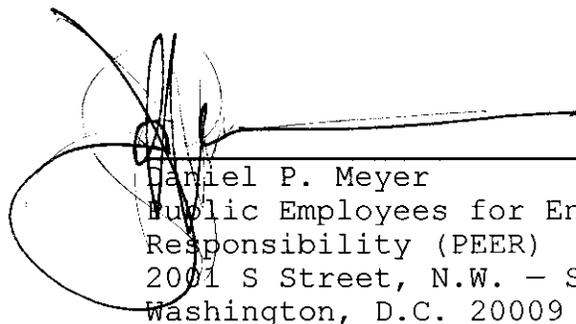
Statement of Evidence

The Commission has cited lack of a filed evidentiary basis as the grounds for the initial rejection of the PEER Petition. PEER then filed for Reconsideration, requesting, in part, a statement of the standard of review for such a rejection and the application of that standard to the facts in this case. PEER now files the attached supplemental evidence as proof that a resource protected by the National Environmental Policy Act of 1969 is being systematically degraded and significantly impacted by major federal actions of the Commission:

- 1) Photographic evidence of fiber optic cable damage already impacting nearshore coral reefs off Broward County, Florida. See Photographs, attached as Exhibit A.
- 2) Photographic evidence of significant environmental resources which may be damaged by cable shift, and which therefore present a significant risk of impact. See Photographs, attached as Exhibit A.
- 3) Video evidence of the habitat transgressed by fiber optic cabling along the littoral regions of the Florida peninsula; direct evidence of an environmental resource which will be, or currently is being, damaged. See Birkitt Environmental Services, Inc., Calypso Habitats (Annotated)(2001), attached as Exhibit B (copies sent to Commission and ITS, only).
- 4) Video evidence of the direct threat fiber optic cabling poses to nearshore coral reefs off Broward County, Florida. See Dan Clark, Cry the Water, Reefs Threatened by Fiber Optic Cable Laying, (2001), attached as Exhibit C (copies sent to Commission and ITS, only).

- 5) Video evidence of the direct threat dredging poses to the health of coral reefs. Subjected to EAs and EISs, the submarine cable landing license could be an avenue to redress the over impact of federal actions on the reefs. As borrow pit digging and cable-laying are seen as mutually exclusive, the FCC could sponsor proactive efforts to save the reefs through environmental review of its activities. See Dan Clark, Cry the Water, Reefs Threatened by Dredging, (2001), attached as Exhibit D (copies sent to Commission and ITS, only).
- 6) Evidence, proof positive, of State environmental concern over a degrading activity which the FCC manifestly denies is occurring and for which the FCC is required to do federal environmental review. See REEF Gap Proposal - Preserving Our Treasures (2001), attached as Exhibit E (copies sent to Commission and ITS, only).

The materials are hereby filed as evidence of environmental impact occurring due to the FCC's failure to conduct environmental assessment and review. PEER renews its Petition for Reconsideration, and requests the FCC conduct rulemaking, as described supra, immediately. PEER further requests that the Council for Environmental Quality order environmental review by the FCC, in order to ensure lawful compliance with the will of the Congress.



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Exhibit A:

Photographic evidence of fiber optic cable damage already impacting nearshore coral reefs off Broward County, Florida.

The damage is significant, it is impacting the human environment, and it has not been subjected to an EA or EIS by the Federal Communications Commission.

Impacted Resource – FCC Action/No EA or EIS



1 of A.1

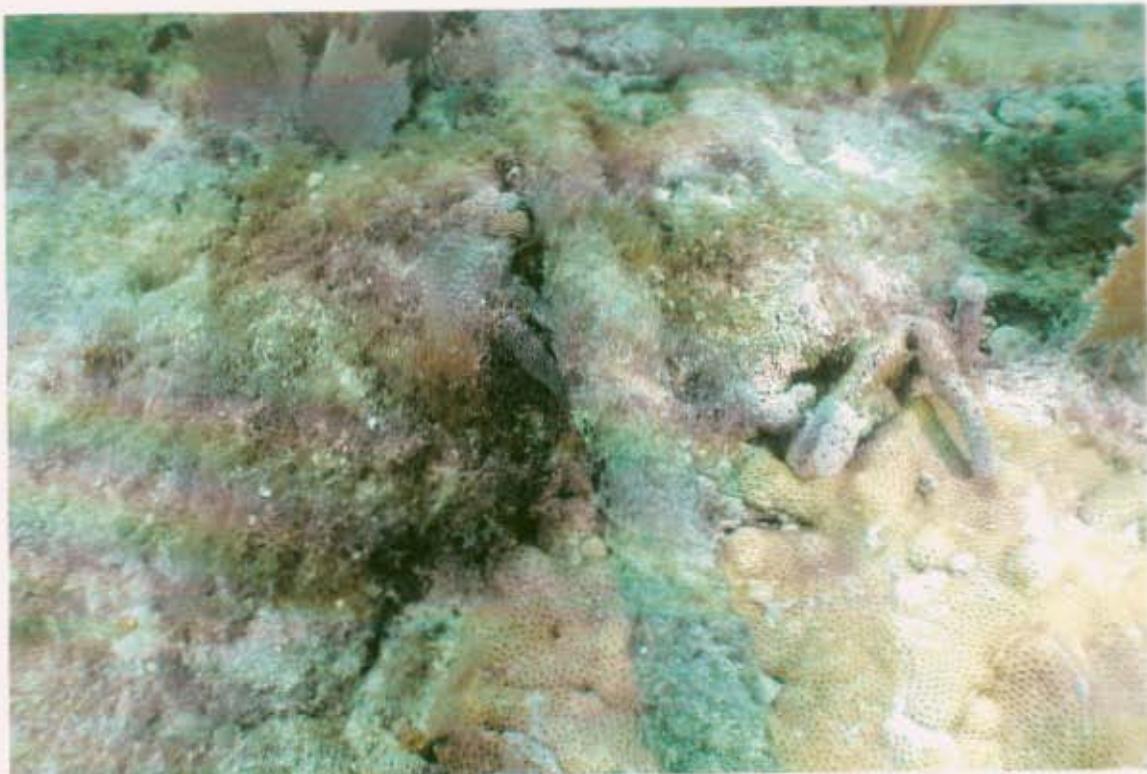


2 of A.1

Team Finds Product of FCC Action



3 of A.1



4 of A.1

Fiber Optic Cable Causing Significant, Adverse Impact

FOC Causing Direct Damage



1 of A.2



2 of A.2

Coral Copse Threatened By Movement

Corals Threatened by FOC Movement
3 through 9 of A.2



3 of A.2



4 of A.2



5 of A.2



6 of A.2

7 of A.2



8 of A.2





9 of A.2

EXHIBIT A.3



Brain Coral Directly Damaged By FOC
1 through 12 of A.3

1 of A.3



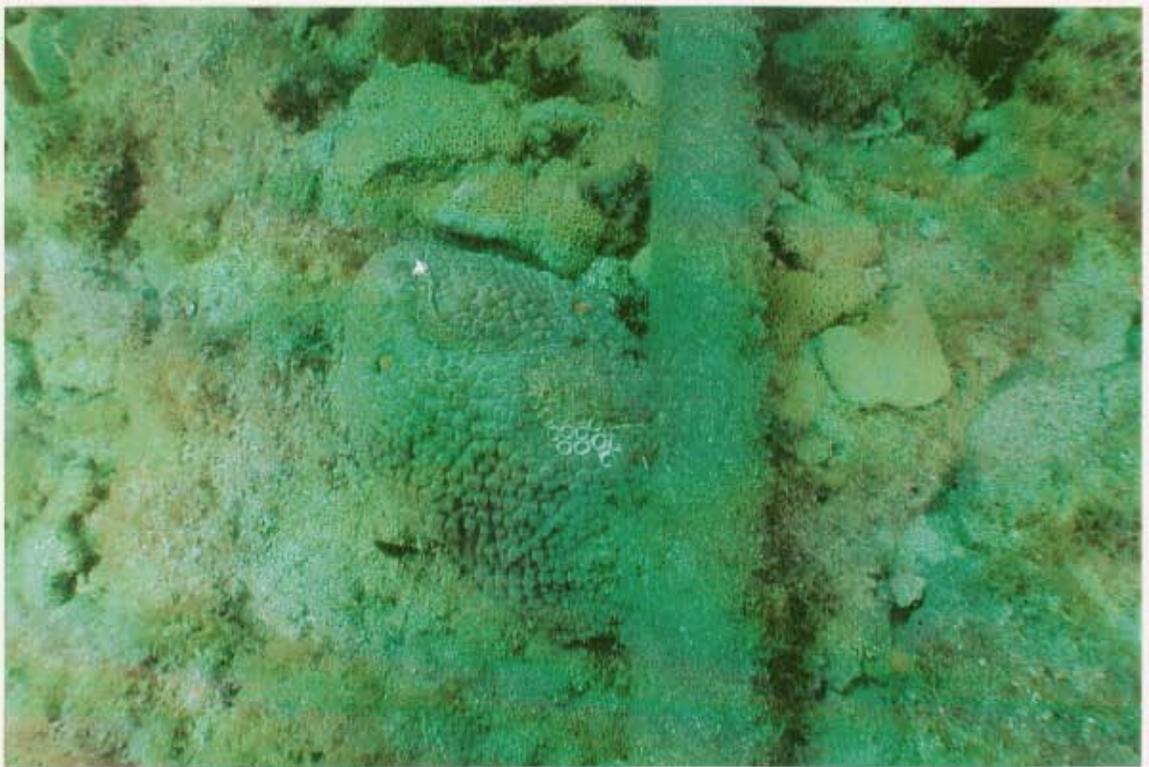
2 of A.3



3 of A.3



4 of A.3

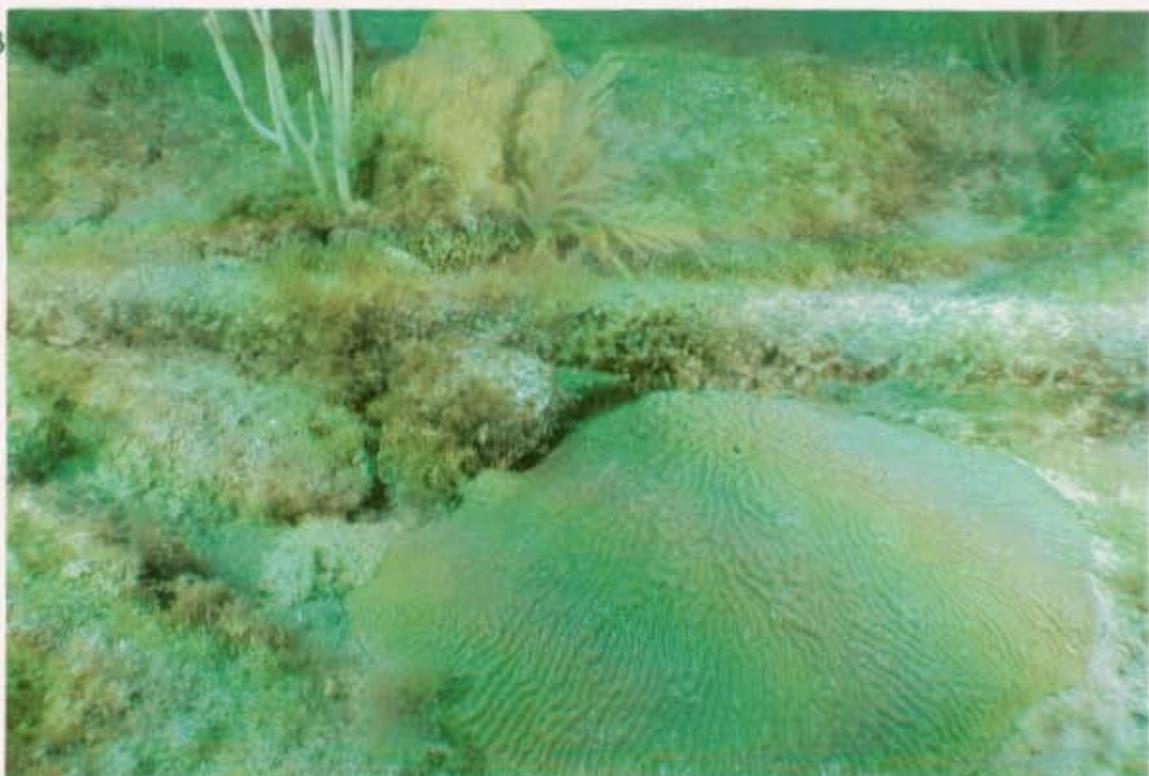


5 of A.3

6 of A.3



7 of A.3





8 of A.3



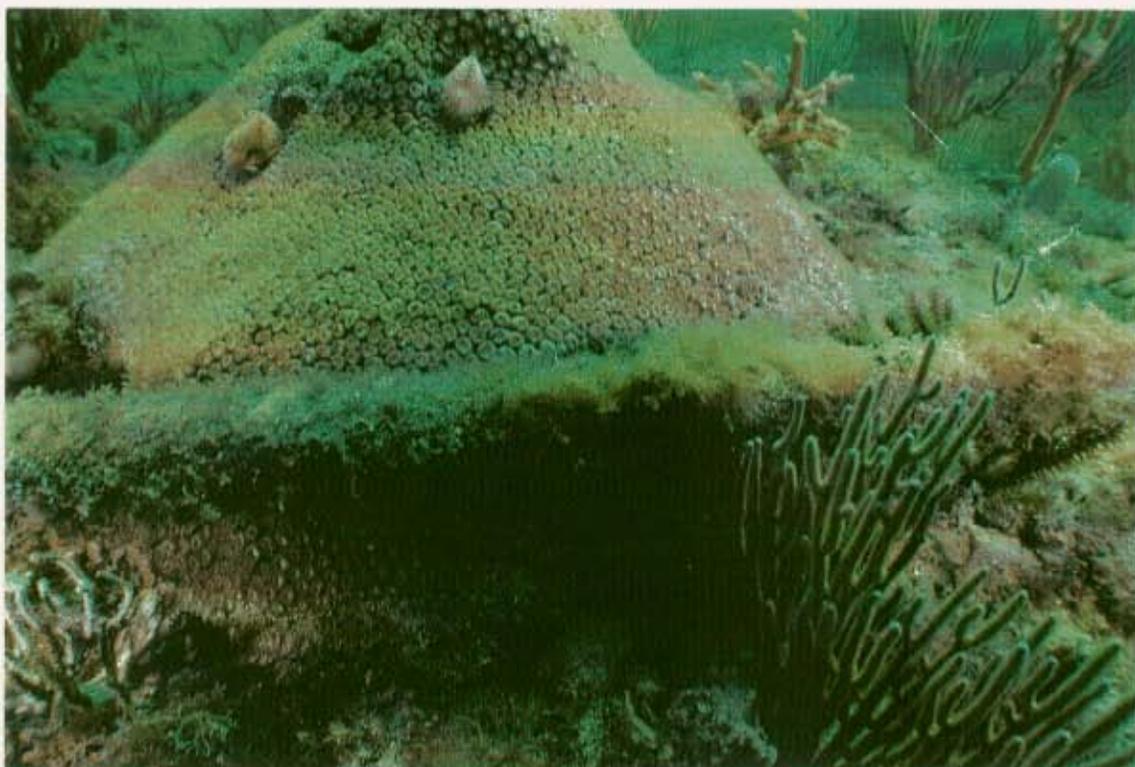
9 of A.3



10 of A.3



11 of A.3



12 of A.3

Exhibit B:

Birkitt Environmental Services, Inc., *Calypso Habitats* (Annotated)(2001)

Public Copy filed with ITS.



Exhibit C:

**Dan Clark, Cry the Water, Reefs Threatened by Fiber Optic Cable Laying
(2001)**

Public Copy filed with ITS.



Exhibit D:

Dan Clark, Cry the Water, *Reefs Threatened by Dredging* (2001)

Public Copy filed with ITS.

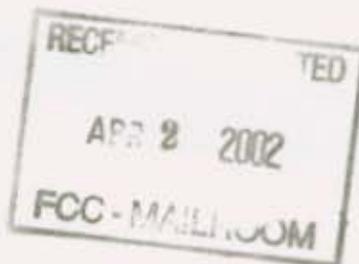


Exhibit E:

**McAllister, Raymond, Phd, Florida Atlantic University, REEF GAP
Proposal – Preserving Our Treasures (2001)**



DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

- o Microfilm, microform, certain photographs or videotape.

- Other materials which, for one reason or another, could not be scanned into the ECFS system.

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