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10 Attorneys for United States of America

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 UNITED STATES OF AMERICA,)	Case No.: 5:16-cv-01479
)	
14 Plaintiff,)	
15 vs.)	VERIFIED COMPLAINT OF THE
)	UNITED STATES: CONVERSION OF
16 DANIEL SHERER, PATRICK)	UNITED STATES OWNED PROPERTY
17 ANDERSON, A&S FISHERIES, and DOE)	AND INJUNCTIVE RELIEF FOR
18 DEFENDANTS I – V,)	RETURN OF UNITED STATES OWNED
)	PROPERTY
19 Defendants.)	
)	

20
21 Plaintiff, the United States of America, alleges upon information and belief as follows:

22 **JURISDICTION AND VENUE**

23
24 1. The United States is authorized to bring this suit and the Court has jurisdiction
25 pursuant to, *inter alia*, 28 U.S.C. § 1345.

26 2. Venue is properly in this Court pursuant to, *inter alia*, 28 U.S.C. § 1391.

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DEFENDANTS

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2 3. Defendant Daniel Sherer is a California resident and was within this District and
3 within the jurisdiction of this Court at times relevant to this action concerning, *inter alia*, the
4 tortious conversion of property owned by the United States.

5
6 4. Defendant Patrick Anderson is a California resident and was within this District
7 and within the jurisdiction of this Court at times relevant to this action concerning, *inter alia*, the
8 tortious conversion of property owned by the United States.

9
10 5. Defendant A&S Fishing is, on information and belief, a business entity doing
11 business in California and was doing business within this District and within the jurisdiction of
12 this Court at times relevant to this action concerning, *inter alia*, the tortious conversion of
13 property owned by the United States.

14 6. At all times relevant hereto, Defendant A&S Fishing was, on information and
15 belief, an entity owned by Defendants Patrick Anderson and Daniel Sherer.

16
17 7. Defendant DOES I – V, are, on information and belief, persons and/or entities
18 domiciled and/or doing business in California and within this District and within the jurisdiction
19 of this Court at times relevant to this action concerning, *inter alia*, the tortious conversion of
20 property owned by the United States.

21 8. At all times relevant hereto, Defendants Daniel Sherer, Patrick Anderson, A&S
22 Fishing, and DOE Defendants I – V (hereafter collectively “Defendants”) were agents of each
23 other with respect to matters relevant to this action concerning, *inter alia*, the tortious conversion
24 of property owned by the United States.

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GENERAL ALLEGATIONS

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2 9. At all relevant times, the United States owned and owns Scientific Mooring MS1
3 (hereafter “Scientific Mooring MS1”).

4 10. Scientific Mooring MS1 was operated on behalf of the United States by the U.S.
5 Geological Survey (“USGS”). Scientific Mooring MS1 is an oceanographic mooring buoy and
6 includes, *inter alia*, instruments, stabilizing frames, flotation devices, and connecting chain, that
7 were attached to an anchor at approximately 300 meters water depth in Monterey submarine
8 Canyon, which lies offshore California in the vicinity of Moss Landing, California.

9
10 11. The USGS deployed Scientific Mooring MS1 on October 6, 2015, as part of a
11 collaborative scientific research study of sediment transport in Monterey Canyon, referred to as
12 the Coordinated Canyon Experiment (CCE). (Exh. A, Fig. 1) Scientific Mooring MS1 was
13 deployed from the Monterey Bay Aquarium Research Institute’s (MBARI) *R/V Rachel Carson*.
14 Five USGS scientists were onboard for deployment, in addition to the ship’s crew and scientists
15 from MBARI. (Exh. A, Fig. 2).

16
17 12. The over-arching goal of the CCE is to produce a step-change in the
18 understanding of submarine turbidity currents by, for the first time, (i) measuring their two key
19 features (synchronous velocity and concentration profiles) in detail, and (ii) documenting spatial
20 changes in their flow velocity from source-to-sink. Instruments on Scientific Mooring MS1 are
21 specially configured with the other CCE mooring instruments to record data on a common time
22 base at high sampling rates. The CCE is designed to provide the first high frequency
23 synchronous measurements of current velocity, sediment concentration, water temperature, and
24 salinity associated with the passage of turbidity currents.
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1 13. The CCE is an international collaboration among the National Oceanography
2 Centre at Southampton University (UK), University of Hull (UK), Monterey Bay Aquarium
3 Research Institute (MBARI; Moss Landing, CA), USGS (Santa Cruz, CA), and Ocean
4 University of China to comprehensively instrument Monterey Canyon from approximately 300
5 meters to 2000 meters water depth over 18 months (2015-2017) with an extensive array of
6 instrumentation. This collaborative international project provides an opportunity for USGS to
7 access an unprecedented dataset and achieve scientific results that USGS would never be able to
8 acquire alone. The USGS operational contribution to the CCE is the compilation and operational
9 support for two moorings (Scientific Moorings MS1 and MS2), as well as equipment, flotation,
10 and operational support for a third mooring (MS3). These moorings were placed at
11 approximately 300 meters, approximately 800 meters, and approximately 500 meters water
12 depth, respectively, in the Canyon.
13
14

15 14. Scientific Mooring MS1 was planned and deployed as the shallowest of seven
16 wireline moorings included in the CCE. Scientific Mooring MS1 was intended to provide data,
17 including current velocities, temperature, orientation of the mooring, sediment concentration in
18 the currents, and samples of sediment in the currents, from the uppermost position in the Canyon.
19 Instruments on Scientific Mooring MS1 were calibrated to collect data on the same intervals as
20 instruments on deeper CCE moorings for a comprehensive, coordinated dataset. Scientific
21 Mooring MS1's instruments were intended to have collected data throughout the El Niño winter
22 months between October 2015 and April 2016. MBARI also deployed instruments on Scientific
23 Mooring MS1 as part of CCE.
24
25

26 15. In December 2015 and January 2016, instruments on Scientific Mooring MS1
27 measured oceanographic data, including data for at least two sediment gravity flow events that
28

1 the CCE was planned to measure. MBARI instruments indicate that events occurred in early
2 December and in mid-January that should at least in part be recorded by the instruments on the
3 Scientific Mooring MS1.

4 16. Scientific Mooring MS1 was intended to remain attached to the seafloor until
5 planned recovery during the first week of April 2016. At that time, a signal would have been
6 sent to the acoustic release, and Scientific Mooring MS1 would detach from the anchor and float
7 to the surface, where it would be recovered immediately by skilled and experienced USGS
8 scientists and marine technicians. Within the first week of April 2016, Scientific Mooring MM1
9 was to be recovered, data downloaded, and then re-deployed into the same location in Monterey
10 Canyon for nearly continuous data collection into the summer of 2016 during phase two of the
11 CCE.
12
13

14 17. On or about January 15, 2016, during a storm, Scientific Mooring MS1 appears to
15 have detached from its anchor and floated to the surface.

16 18. On January 17, 2016, at 12:25 p.m. PST, the homing beacon on Scientific
17 Mooring MS1 sent a message to the USGS office, which indicated that the mooring was in the
18 Moss Landing Harbor, California. (Exh. A, Fig. 3.)
19

20 19. On or about January 19, 2016, defendant Daniel Sherer notified the USGC that he
21 had taken possession of Scientific Mooring MS1 and that it was on the vessel "IRISH" in Moss
22 Landing Harbor, California. (Exh. A, Fig. 4.)
23

24 20. On or about January 19, 2016, defendant Daniel Sherer informed the USGS and
25 others that Scientific Mooring MS1 would not be returned unless the United States paid money
26 for its return.
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1 21. Defendant Patrick Anderson subsequently also informed the USGS that Scientific
2 Mooring MS1 would not be returned unless the United States paid money for its return.

3 22. On or about January 19, 2016, in or near Moss Landing Harbor, a representative
4 of the United States met in person with Defendant Daniel Sherer and spoke via cell phone with
5 Defendant Patrick Anderson. The United States' representative requested the immediate return
6 of Scientific Mooring MS1. The request was refused and, instead, Defendants demanded
7 payment of money to Defendants.
8

9 23. On the morning of January 20, 2016, the beacon on Scientific Mooring MS1
10 signaled a new location on the west side of Moss Landing Harbor, where there is a
11 loading/unloading dock. (Exh. A, Fig. 3.) Subsequently, Scientific Mooring MS1 was taken
12 from Moss Landing Harbor in a white pickup truck. (Exh. A, Fig. 4.)
13

14 24. On February 19, 2016, Karen Glasgow, Esq., Assistant Field Solicitor at the U.S.
15 Department of the Interior, mailed a letter to David Sherer, Esq. David Sherer purported to be
16 the father of Defendant Daniel Sherer and the attorney for Defendant Daniel Sherer and
17 Defendant A&S Fishing. In the foregoing letter, the United States informed attorney Sherer,
18 *inter alia*, that the United States owns Scientific Mooring MS1 and, further, demanded the
19 immediate return of Scientific Mooring MS1 to the United States. (Exh. B)
20

21 25. On February 23, 2016, David Sherer, Esq., mailed a letter to Ms. Glasgow, stating
22 that Defendants "are the OWNERS of the equipment..." and offering to "SELL" it to the United
23 States for \$45,000.00. (Exh. C., caps in original letter; the letter erroneously lists its date as
24 March 23, 2016.)
25

26 26. Despite the requests of the United States for the immediate return of Scientific
27 Mooring MS1, Defendants have refused.
28

1 27. The United States expressly reserves the right to amend this Complaint to add
2 parties and/or causes of action, as may be necessary.

3
4 **AND AS FOR A FIRST CAUSE OF ACTION**

5 **CONVERSION**

6 28. Plaintiff, United States of America, refers to and incorporates by reference as
7 though fully set forth herein each and every foregoing paragraph of its complaint.

8 29. At all relevant times hereto, the United States did and currently does own
9 Scientific Mooring MS1.

10 30. At or about the time that Defendants took possession of Scientific Mooring MS1,
11 Defendants were aware that it was owned by the United States.

12 31. Subsequent to Defendants having taken possession of Scientific Mooring MS1,
13 and in addition to Defendants' prior knowledge of the United States' ownership, the United
14 States informed Defendants in writing that the United States is the owner of Scientific Mooring
15 MS1.
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18 32. The United States, as owner of Scientific Mooring MS1, has demanded that
19 Defendants return Scientific Mooring MS1 to the United States, and Defendants have refused.

20 33. Defendants are not now, nor have they ever been, owner(s) of Scientific Mooring
21 MS1. In violation of law, and contrary to the United States' rights of ownership, use, and
22 possession of Scientific Mooring MS1, Defendants have refused to return Scientific Mooring
23 MS1 to the United States and, further, Defendants responded to the United States' statement of
24 ownership and demand for return by asserting that Defendants "are the OWNERS of the
25 equipment and that does not change no matter how many times you [the United States'
26 representative] are ordered to say otherwise." (Caps in original, bracketed material added.)
27
28

1 34. Subsequent to having taken possession and claimed ownership of Scientific
2 Mooring MS1, and as a result of Defendants' negligence, gross negligence, willful misconduct,
3 and other acts and omissions with respect to its handling, care and preservation, Scientific
4 Mooring MS1, including, but not limited to, its scientific instruments, data, and samples, has
5 been damaged and/or destroyed, thereby causing damages and harm to the United States, as well
6 as irreparable harm to the scientific work previously performed by Scientific Mooring MS1, as
7 well as irreparable harm to scientific work that was not and will not be performed due to
8 Defendants' wrongful acts of possession and claimed ownership.
9

10 35. As a direct and proximate result of Defendants' wrongful claim of ownership of
11 Scientific Mooring MS1, which is adverse and hostile to the United States' ownership of
12 Scientific Mooring MS1, Defendants are liable for the tort of conversion.
13

14 36. As a direct and proximate result of Defendants' wrongful possession and
15 disposition of Scientific Mooring MS1, which is adverse and hostile to the United States' right of
16 use and possession of Scientific Mooring MS1, Defendants are liable for the tort of conversion.
17

18 37. As a direct and proximate result of Defendants' negligence, gross negligence,
19 willful misconduct, and other acts and omissions with respect to the handling, care and
20 preservation of Scientific Mooring MS1, including, but not limited to, the care and preservation
21 of its scientific instruments, data, and samples, Defendants are liable for the tort of conversion.
22

23 38. As a direct and proximate result of Defendants' conversion(s) as aforesaid,
24 Defendants are liable to the United States for damages to be established at trial, including, but
25 not limited to, damages potentially equaling or exceeding \$115,000, in addition to such other
26 damages as may be ascertained once Scientific Mooring MS1 is returned to the United States and
27 evaluated by trained scientists and marine technicians.
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AS AND FOR A SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF

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3 39. Plaintiff, United States of America, refers to and incorporates by reference as
4 though fully set forth herein each and every foregoing paragraph of its Complaint.

5 40. Despite the demand of the United States for immediate return of Scientific
6 Mooring MS1, Defendants have refused to return it.

7
8 41. Scientific Mooring MS1 has no inherent value or use by Defendants. In short, it
9 is a Scientific Mooring platform that contains instruments used to collect data for scientific
10 experiments and studies by USGS and other international science partners.

11 42. Conversely, USGS scientists have a critical and immediate need to download data
12 from Scientific Mooring MS1. For example, data recorded with other equipment by MBARI, in
13 collaboration with USGS, indicates that events occurred in early December 2015 and in mid-
14 January 2016 that should have been recorded by Scientific Mooring MS1. Without the latter
15 data, USGS and other marine science partners lack important data relevant to scientific work and
16 studies concerning important underwater events in upper Monterey Canyon.

17
18
19 43. Additionally, Scientific Mooring MS1 is a critical component of scientific work to
20 be performed with other international science partners pertaining to work which is scheduled to
21 begin no later than April 2016.

22 44. Additionally, the retrieval of Scientific Mooring MS1 by Defendants, instead of
23 by experienced scientists and marine technicians, has already harmed scientific research. Any
24 samples remaining after handling by Defendants may not be useable for scientific research
25 because of improper handling by such untrained persons.
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1 45. Additionally, the delay of returning Scientific Mooring MS1 to the United States
2 for handling by trained personnel has caused lost data from the 2015-2016 El Niño winter, such
3 data to have been used for many purposes, including work related to, *inter alia*, long term
4 oceanographic studies of international importance to the United States, other nations, and the
5 United States' science partners.

6 46. Additionally, Scientific Mooring MS1 itself and its data have been harmed and
7 damaged. Without proper immediate care and preservation of Scientific Mooring MS1, the
8 Mooring itself and any data that potentially may remain and be subject to retrieval by the United
9 States will continue to suffer damage and harm, ranging from partial loss to complete and
10 irreparable loss.
11

12 47. In order to determine the amount of damage already sustained by Scientific
13 Mooring MS1 as a result Defendants' actions, as well as to prevent future damages and losses
14 from occurring, it is critically necessary that the United States have immediate possession of
15 Scientific Mooring MS1.
16

17 48. The United States already has suffered irreparable harm and prejudice as a result
18 of Defendants' actions in actively damaging Scientific Mooring MS1 and its data, the dollar
19 amount of such damage to be determined at trial.
20

21 49. But as a result of Defendants' actions, the United States will continue to suffer
22 permanent and irreparable harm, *i.e.*, further damage to Scientific Mooring MS1 and its data,
23 plus the inability to deploy Scientific Mooring MS1 for collaborative scientific work to be
24 performed with other U.S. and international science partners, such work having been scheduled
25 to begin no later than April 2016. The only way to prevent such additional damage it to have it
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1 returned to the United States immediately for care, preservation, and handling by experienced
2 scientists and marine technicians.

3 50. As a result of the foregoing, and in order to care for, preserve, and prevent
4 additional irreparable damage to Scientific Mooring MS1 and its data, as well as to attempt
5 necessary repairs and take actions for the purpose of attempting to enable re-deployment of
6 Scientific Mooring MS1 for the collaborative scientific work set to begin in the very near future,
7 the Defendants should be enjoined from continued retention of Scientific Mooring MS1 and,
8 further, an injunction should issue by this Court, ordering the immediate return of Scientific
9 Mooring MS1 to the United States.
10

11
12 **WHEREFORE**, the United States of America prays as follows:

13 1. That United States of America be granted judgment against DANIEL SHERER,
14 PATRICK ANDERSON, A&S FISHERIES, and DOES I – V pursuant to the Verified
15 Complaint of the United States herein;
16

17 2. That damages be awarded to the United States according to losses proved at trial;

18 3. That the United States be granted immediate injunctive and other appropriate
19 relief, including an Order enjoining Defendants from continued retention of Scientific Mooring
20 MS1 and, further, an injunction ordering the immediate return of Scientific Mooring MS1 to the
21 United States; and
22

23 4. Such other relief as the Court deems just and proper.

24 Dated this 25th day of March, 2016.

Respectfully submitted,

25 BENJAMIN C. MIZER
26 Principal Deputy Assistant Attorney General

27 /s/ R. Michael Underhill
28 R. MICHAEL UNDERHILL

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Attorney in Charge
/s/ Frank J. Anders
FRANK J. ANDERS
Trial Attorney
U.S. Department of Justice, Civil Division,
Torts Branch, West Coast Office
450 Golden Gate Avenue, Room 75395
P.O. Box 36028
San Francisco, California 941023463
Telephone: (415) 436-6648

Attorneys for United States of America

VERIFICATION

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R. Michael Underhill says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: March 25, 2016.

s/ R. Michael Underhill
R. MICHAEL UNDERHILL

EXHIBIT A

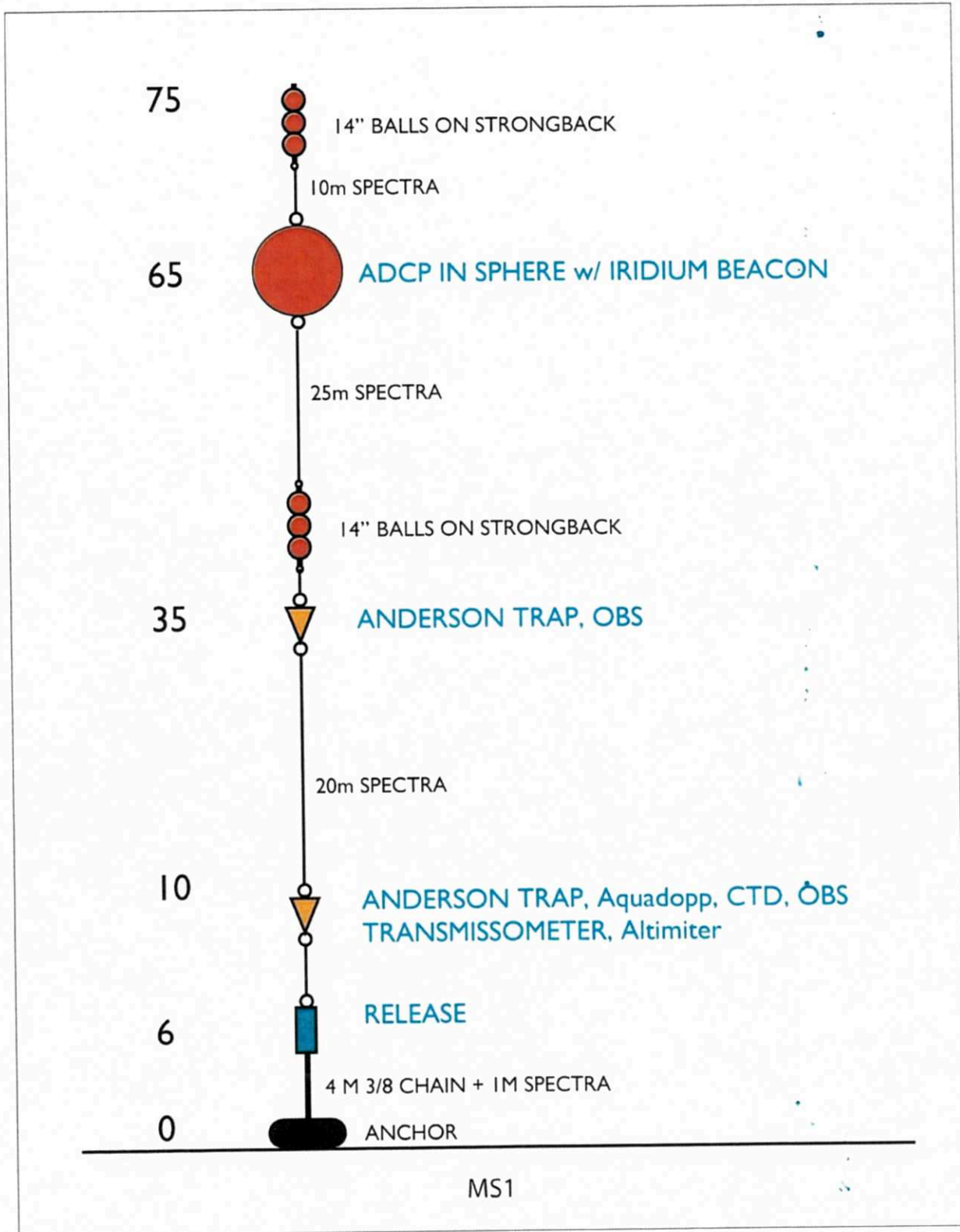


Figure 1. Diagram of U.S. Geological Survey mooring (referred to as MS1) in the Coordinated Canyon Experiment. This mooring, as shown, was deployed on October 5, 2015, in Monterey Canyon, offshore central California.

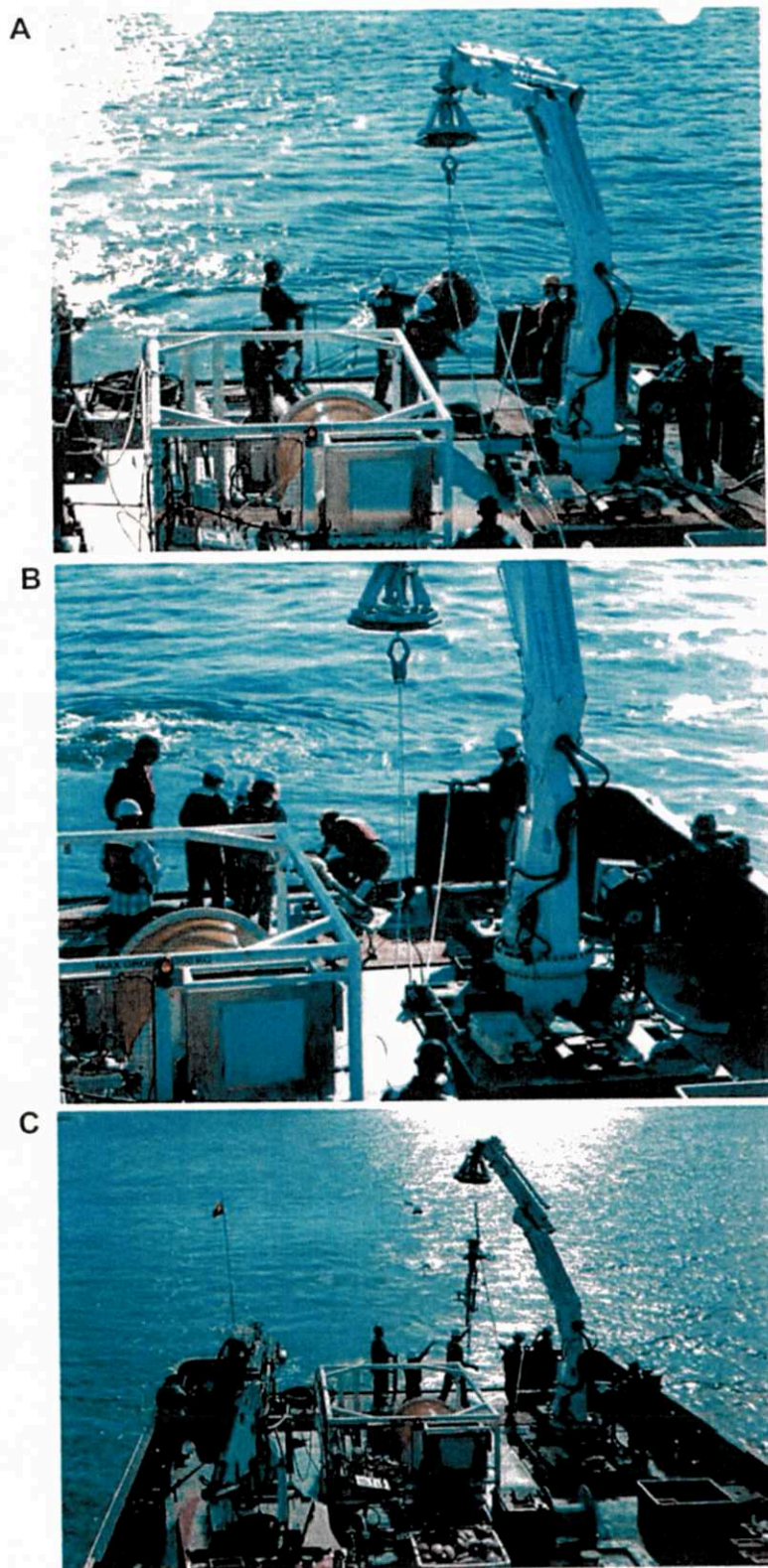


Figure 2. Photos from deployment of MM1 from R/V RACHEL CARSON on October 6, 2016. (A) Deployment of syntactic sphere (orange) containing acoustic doppler current profiler (ACDP) instrument. (B) Preparation on deck of second Anderson sediment trap, instrumentation, and strongback. (C) Deployment of Anderson sediment trap from Part B (photo above).



Figure 3. Maps of U.S. Geological Survey (USGS) mooring (MS1) beacon locations. A) The first beacon location (black dot in red marker) was sent in a message to USGS on January 17, 2016, at 12:25 PM local time. The beacon is located on the eastern side of Moss Landing Harbor. B) The final beacon location (black dot in red marker) was sent to USGS on Wednesday, January 20, 2016, at 10:01 AM local time. The beacon is located on the western side of Moss Landing Harbor where there is a loading/unloading dock.

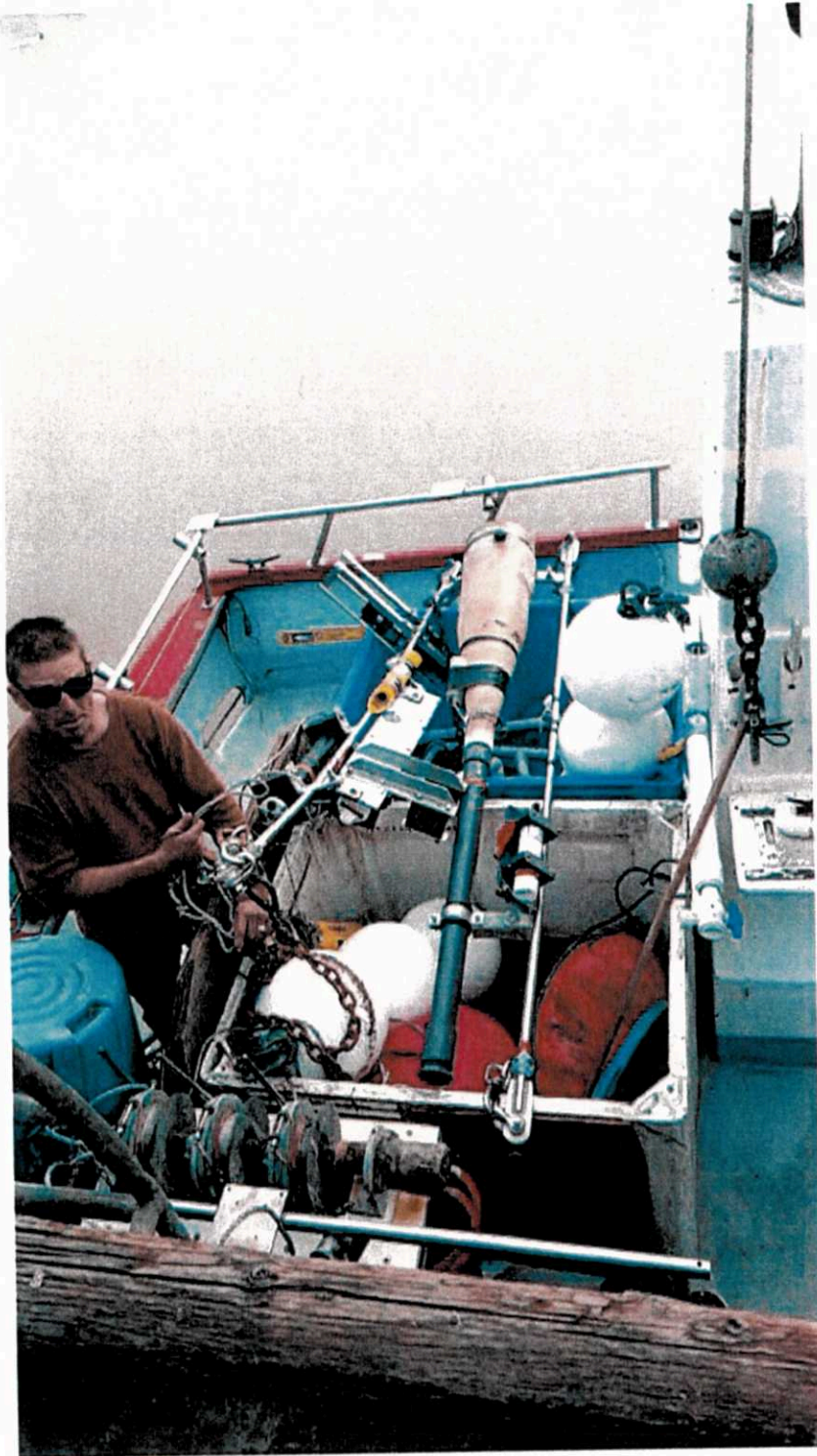


Figure 4. Defendant Daniel Sherer with MS1 in Moss Landing Harbor.

MS1 being taken
from Moss Landing
Harbor



Figure 5. USGS' MS1 being taken from Moss Landing Harbor in white truck on Wednesday, January 20, 2016.

EXHIBIT B



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region
San Francisco Field Office
333 Bush Street, Suite 775
San Francisco, CA 94104

February 19, 2016

David R. Sherer, Esq.
993 S. Santa Fe, Suite C-158
Vista, CA 92083

Re: United States property

Dear Mr. Sherer:

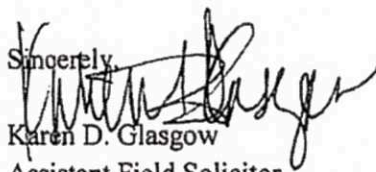
I am in receipt of your letter dated February 1, 2016, wherein you advised that your client, A&S Fishing, has possession of equipment belonging to the United States Geological Survey [USGS], an agency of the U.S. Department of the Interior. You suggest that your client would be willing to return the property to the USGS, but on the condition that the USGS remit monies to your client.

You have conflated two separate issues. The first is the right to possession of property that belongs to the United States government. Your client has no claim or right to possession of the said equipment and, indeed, your client's continued possession will cause damages to the United States. The United States therefore demands the immediate return of its equipment to the USGS.

The second issue is your belief that your client is entitled to some sort of remuneration for having taken possession of the equipment. We are not in a position to provide legal advice as to whether or not your client has a claim. Nevertheless, if you believe your client has some sort of legal claim for remuneration, we trust you will provide appropriate legal advice and that you (or your client) will act accordingly. We stress, however, that effectively holding the equipment as *de facto* hostage is not the appropriate course and may subject your client (or whomever has possession) to liability. If the equipment is not returned voluntarily, we reserve the right to seek return of the property by all legal means available and will refer the matter to the appropriate legal authorities within the Department of Justice.

Please contact to the undersigned at your earliest convenience to discuss the logistics by which the USGS can retrieve its property.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Glasgow", written over the word "Sincerely,".

Karen D. Glasgow

Assistant Field Solicitor

U.S. Department of the Interior

333 Bush Street, Suite 775

San Francisco, CA 94104

(415) 296-3381 (o)

(415) 296-3371 (f)

Karen.glasgow@sol.doi.gov

EXHIBIT C

DAVID R. SHERER

Attorney at Law
993 S. Santa Fe, Suite C-158
Vista, CA 92083
(805) 236-9083

March 23, 2016

Atty. Karen Glasgow
Department of Interior
333 Bush Street, Suite 775
San Francisco, CA 94104

Re: Salvage Bottom Instrument

Thanks for the position letter of Feb. 19th.

As an old trial dog I object to the first sentence on the grounds it assumes facts not in evidence.

The flavor of the thing says that the principal authorities you represent have a fixed position and I'll just have to deal with that. The only thing remaining is to make a specific demand to them and watch for a response, if any. Numbers are at the end of this letter.

I did ask that they let you furnish me with the approximate cost of the equipment and they gave no response. Thus I place our arbitrary figure of \$400,000.

I did ask that they furnish any legal authority contrary to the international laws of obstruction to navigation and salvage. They respond with nothing. Daniel and A&S are the OWNERS of the equipment and that does not change no matter how many times you are ordered to say otherwise.

On good days fishing they gross \$2,700. Taking the big and gouging thing onto the boat and having it there kept the boat out of action for nine days for a multiply of \$24,300. Twenty percent of value would be \$80,000. We offer to SELL (you can use any other word you like in an agreement) it to you for \$45,000.

Copies of this letter are being retained for use, if necessary, as an exhibit in any future litigation.



Very Truly Yours,

David Sherer
David Sherer