

15 May 2015

BY ELECTRONIC MAIL

Report to Stakeholders (ISBA/Cons/2015/1)
International Seabed Authority
14-20 Port Royal Street
Kingston
Jamaica

Re: ISA Consultation 2015/1, Stakeholder Submission by OPT French Polynesia

To the Authority:

Through its counsel, l'Office des postes et télécommunications de Polynésie française ("OPT French Polynesia") welcomes the invitation by the International Seabed Authority (the "ISA") to comment on the ISA's report titled *Developing a Regulatory Framework for Mineral Exploitation in the Area*. As the owner and operator of one of only two submarine telecommunications cables that currently traverses an area licensed for exploration or identified as a reserve area, OPT French Polynesia has significant interests at stake in the development of a regulatory framework for mineral exploitation in the Area. OPT French Polynesia therefore seeks to work with the ISA, mining companies, industry organizations, and other governments to ensure timely development of the ISA's exploitation regulations while ensuring that they protect installed submarine cable infrastructure.

1. Statement of Interest

OPT French Polynesia is the principal provider of fixed and mobile telecommunications, Internet access, video programming, and postal services in French Polynesia and is wholly owned by the French Polynesia Government. OPT French Polynesia owns and operates the Honotua submarine cable system, which provides French Polynesia's principal telecommunications, data, video, and Internet connectivity to the rest of the world. Honotua's international segment connects the island of Oahu in the U.S. state of Hawaii with the island of Tahiti in French Polynesia. Honotua's domestic segments connect Tahiti to the other Society Islands, including Moorea, Huahine, Raiatea, and Bora Bora. This submarine cable represents a significant infrastructure investment by the French Polynesia Government and is vitally important to the economic and security interests of French Polynesia.

A significant portion of Honotua's Tahiti-Hawaii segment traverses the Area. As noted above, Honotua is one of only two existing submarine cable systems that traverses existing exploration areas or reserve areas within the Area. Specifically, Honotua crosses the reserve area associated with the exploration area licensed to the China Ocean Mineral Resources Research

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and Development Association (“COMRA”). The Honotua infrastructure in this reserve area includes approximately 224 kilometers of submarine cable and two repeaters (numbers R1038 and R1039), which regenerate the optical signal using laser pumps, as the optical signal on a fiber-optic cable otherwise degrades over distance. A third repeater (number R1040) is located approximately 10 kilometers north of the reserve area. This infrastructure is located at water depths of approximately 5,000 meters.

Deep seabed mining activities to explore and exploit polymetallic nodules, cobalt-rich manganese crusts, and sea floor massive sulfides can pose significant threats to submarine cables such as Honotua if conducted in an uncoordinated manner with, or in excessively close proximity to, installed submarine cable infrastructure. These deep seabed mining activities have the potential to cause direct physical disturbance of the seabed, threatening operation of submarine cables by anchoring of production support vessels and platforms and additional equipment on the sea floor. Minerals mining operations present a threat of erosion and abrasion due to sea floor scouring resulting from equipment sitting on the seabed; destabilization of the sea floor; and redeposited sediments. All of these activities may result in the exposure or suspension of submarine cables above the sea floor, thereby subjecting them to a heightened risk of damage from other marine activities, as well as the risk of debris accumulating on submarine cables. Finally, mining operations can impede access to submarine cables. It is therefore paramount that deep seabed mining activities be coordinated closely at the earliest possible project stages with submarine cable operators.

Any damage to Honotua by deep seabed mining activities would have serious consequences for OPT French Polynesia and the government and people of French Polynesia. In the event of damage, OPT French Polynesia would be forced to rely on satellite capacity, which is more expensive, less secure, and of lesser quality than communications via submarine cable. Moreover, satellite capacity could not replace in full the capacity of Honotua. Many communications and related economic activity would necessarily be curtailed until Honotua was repaired, a process that could take weeks or months, depending on the nature of the damage, the location, the time of year (and type of weather), and other factors. Such a situation would harm French Polynesia’s economy and its national interests. Given these consequences, OPT French Polynesia therefore asks that the ISA account for the vital importance of submarine cables as it develops exploitation regulations.

2. Comments on and Suggestions for the Report and on the Development of a Regulatory Framework

OPT French Polynesia offers the following comments on the Report, with a view toward the development of a regulatory framework for exploration activities in the Area.

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First, with respect to submarine cables in the Area, the ISA should base the regulatory framework on the principles articulated in the United Nations Convention on the Law of the Sea (the “Convention”). Article 87(2) of the Convention establishes that the high-seas freedoms identified in article 87(1), including the freedom to lay submarine cables and pipelines, “shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.” Consequently, submarine cable operators and mining companies must have due regard for each other.

Second, the ISA should distinguish between submarine cables that have already been installed and are in operation and those that might be installed and operating at a future time. As drafted, the Report does not make this distinction. To give appropriate meaning to the Convention’s “due regard” provisions and develop an appropriate and effective regulatory framework, OPT French Polynesia believes that the ISA should make such a distinction going forward. The “regard” due from mining companies proposing exploitation activities should afford greater deference to the technical and operational requirements of installed submarine cables than for submarine cables that are only in the planning stage. Once a submarine cable system is installed, it can be recovered and reinstalled—if at all—only at great expense, and only then with a risk of degrading system performance and/or damaging the system during the recovery or reinstallation process. By contrast, the developer of a proposed submarine cable may have greater flexibility in coordinating with a mining company where both seek to operate in the same portion of the Area. In general, submarine cable operators seek to avoid areas with marine activities that might threaten damage to a submarine cable, and work to identify such areas and activities in desktop studies and marine surveys before construction ever commences.

Third, the ISA should recognize in its exploitation regulations and guidance for mining companies the spatial requirements for protection and maintenance of submarine cable systems. To install and maintain submarine cables and minimize outage time in connection with repairs, OPT French Polynesia—like any other submarine cable operator—needs unfettered access to the ocean surface, water column, and seabed around a submarine cable by a cable ship and associated equipment. The physical characteristics of submarine cables and the mechanical characteristics of the installation vessels and tools establish the spatial requirements for submarine cable repair activities. Numerous standards and recommendations—first and foremost the recommendations of the International Cable Protection Committee, of which OPT French Polynesia is a member and of which its counsel Harris, Wiltshire & Grannis LLP is an associate member—establish recommended proximity distances between submarine cables and between submarine cables and other marine infrastructure and activities. In general, these recommendations provide for spacing of three times the depth of water. A damaged submarine cable must be repaired onboard a cable ship, but a cable that is resting on the seabed will lack sufficient slack to reach the surface for repair. Unless a cable is already severed, therefore, it must first be cut in order to be brought to the surface. This retrieval operation takes at least three passes with a grapnel at a direction perpendicular to the cable—one to cut the cable, a second to

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bring up and buoy one end of the cable, and a third to bring up and bring onboard the second end. After the ends are repaired and tested, a section of cable must be spliced in between the two ends in order to have them meet at the surface and restore connectivity. This additional section is typically two-and-a-half times the depth of water in length. This length permits a cable that was previously lying flat on the sea floor to reach up to the cable ship, provide length for manipulation and repair activities on board, and reach back down to the sea floor. This final configuration must be carefully placed back on the seabed in a direction perpendicular to the line of the original cable so that the cable lies flat on the sea floor and does not throw loops. These operational requirements demonstrate the need for sufficient distance on either side of the submarine cable from other marine activities and infrastructure, in order to ensure access for repairs and to avoid potential accidents and equipment damage. They also mean that activities within a licensed mining area could affect submarine cable infrastructure well beyond the borders of the licensed area. For Honotua at 5,000-meter water depths within the reserve area, OPT French Polynesia would therefore need separation of at least 15 kilometers from mining activities.

Fourth, the ISA should adopt notification and consultation mechanisms to (1) apprise operators of existing submarine cable systems of exploitation license applications for areas traversed by or adjacent to those submarine cable systems and (2) permit direct contact and coordination between submarine cable operators and mining companies.

Fifth, the ISA should establish mechanisms for charting existing, planned, and out-of-service submarine cables located in and adjacent to mining concession and reserve areas and for exchanging route position list (“RPL”) data for installed submarine cables. With better data, the ISA would ensure more effective functioning of notification and consultation mechanisms. OPT French Polynesia notes the particular challenge of identifying out-of-service cables, as well as the particular need. Although damage to an out-of-service submarine cable itself does not threaten continuity of communications on that cable, as it is out of service, displacement of such a cable can disturb and damage other in-service cables. For example, within the reserve area noted above, Honotua crosses the Pacific Cable, an out-of-service submarine telegraph cable connecting between Vancouver, Canada, and Fanning Island in Kiribati (from which it connected on to Fiji, Norfolk Island, New Zealand, and Australia). The Pacific Cable also extends into the COMRA concession itself. As Honotua rests on top of the Pacific Cable, disturbance of the Pacific Cable could disturb or damage Honotua.

Sixth, with respect to proposed and potential future submarine cable systems, the ISA should ensure that the exploitation activities do not foreclose particular geographic routes for submarine cables. Although OPT French Polynesia has focused its comments on concerns about installed submarine cable infrastructure, it has not meant to minimize the concerns of, or need for “due regard” of, planned submarine cables. Although submarine cable operators avoid other potentially damaging marine activities where possible, absent sufficient planning they may be forced to cluster together in order to avoid such activities. For submarine cable operators,

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geographic diversity of routes remains a key strategy for ensuring continuity of communications in the event that a natural or manmade event causes damage to cables in one specific geographic area. In the case of the Clarion Clipperton Fracture Zone, extending thousands of kilometers across the eastern Pacific Ocean, development of contiguous mining concessions and reserve areas without regard for the need of submarine cables to traverse the zone (and in diverse locations) could impair connectivity between the South Pacific islands, Australia, and New Zealand with the United States.

3. List of Supporting Documentation

OPT French Polynesia attaches to this letter a map showing the location of Honotua and its repeaters in and adjacent to the reserve area associated with the COMRA exploration area. OPT French Polynesia would also be pleased to provide the ISA with RPL data showing more precise location data for Honotua, although OPT French Polynesia would first like to understand how the data might be used and maintained by the ISA.

4. Consent to Make Personal Details and This Submission Public

OPT French Polynesia consents to make public this submission and any personal details contained herein.

5. Expression of Interest in Future Contact by the ISA

OPT French Polynesia wishes to maintain contact with the ISA going forward. OPT French Polynesia is particularly interested to remain in contact with the ISA regarding the development of a regulatory framework for exploitation activities in the Area, principles and procedures governing the exploitation of reserve areas, and any and all applications and proposed actions regarding the use of the reserve area that Honotua traverses.

6. Contact Details

OPT French Polynesia asks that the ISA use its outside counsel as its principal contact:

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For official notifications, the ISA should, in addition to its outside counsel, contact:

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Thank you for considering these comments in the development of a regulatory framework for exploitation activities in the Area. OPT French Polynesia looks forward to working with the ISA to ensure protection of submarine cable infrastructure in the Area.

Respectfully submitted,



Kent Bressie

*Counsel to l'Office des postes et
télécommunications de Polynésie française*

APPENDIX: HONOTUA IN RESERVE AREA

