



OFFICE DES POSTES  
ET TELECOMMUNICATIONS

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Le président-directeur général

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POLYNESIE FRANÇAISE

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Papeete, le 19 DEC. 2017  
N° CS/OPT/PDG/2017/ 00120

à

International Seabed Authority

14-20 Port Royal Street

Kingston, Jamaica

consultations@isa.org.jm

**Subject** : Comments of OPT French Polynesia on Draft Exploitation Regulations.

To the Secretariat and the Legal and Technical Commission,

By this letter, l'Office des postes et télécommunications de Polynésie française ("OPT French Polynesia") respectfully submits its comments on the Draft Regulations on Exploitation of Mineral Resources in the Area ("Draft Exploitation Regulations"), as developed by the Secretariat of the International Seabed Authority ("ISA") and issued by the ISA's Legal and Technical Commission ("LTC") for public review and comment.<sup>1</sup> As the operator of a submarine fiber-optic telecommunications cable system—known as Honotua—that traverses a Contract Area authorized by the ISA long after Honotua entered into commercial service, OPT French Polynesia remains concerned about the threat of damage from deep seabed mining and the economic and security benefits it provides to French Polynesia.

OPT French Polynesia commends the ISA for raising the issue of submarine cable protection in the Draft Exploitation Regulations. OPT French Polynesia believes, however, that the ISA should further revise the Draft Exploitation Regulations, both to ensure consistency with the United Nations Convention on the Law of the Sea ("UNCLOS") and to ensure that they are sufficiently specific so that they may be operationalized and more easily applied in a practical manner.

Below, OPT French Polynesia explains its stakeholder interests in this proceeding as the owner of a submarine cable system that could be damaged by exploitation activities and recommends changes to the Draft Exploitation Regulations in order to ensure their conformance to UNCLOS and to maximize their practical utility in mitigating potential conflicts between submarine cables and pipelines on one hand and deep seabed mining exploitation activities on the other. OPT

<sup>1</sup> ISBA/23/LTC/CRP.3\* (8 Aug. 2017) ("Draft Exploitation Regulations"). *See also* Note by the Secretariat, Draft regulations on exploitation of mineral resources in the Area, ISBA/23/C/12 (10 Aug. 2017) (seeking comment on the Draft Exploitation Regulations and posing general and specific questions for comment); Announcement from the Secretariat, Draft Regulations on Exploitation of Mineral Resources in the Area (25 Aug. 2017) (establishing a 20 December 2017 comment deadline), available at <https://www.isa.org.jm/news/draft-regulations-exploitation-mineral-resources-area>.

French Polynesia also endorses the earlier-filed comments of the International Cable Protection Committee ("ICPC"), of which OPT French Polynesia has long been a member.<sup>2</sup>

**I. Statement of Stakeholder Interest**

**A. OPT French Polynesia's Economy and Security Depend on a Submarine Cable System Traversing the Area**

OPT French Polynesia is the principal provider of domestic and international telecommunications (both fixed and mobile), Internet access, video programming, and postal services in French Polynesia, an overseas country of France in the central South Pacific Ocean. It is wholly owned by the Government of French Polynesia. OPT French Polynesia owns and operates the Honotua submarine cable network, 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 system represents a significant infrastructure investment by the Government of French Polynesia and is vitally important to the economic and security interests of French Polynesia and of France.

A material portion of Honotua's Tahiti-Hawaii segment traverses the Area, including the A-5 Area in which China Minmetals is currently authorized to engage in exploration activities. See Attachment A to this letter. The Honotua infrastructure in the A-5 Area includes approximately 63 kilometers of submarine cable and one repeater (number R1038), highly sensitive equipment that regenerates the optical signal using laser pumps to address the fact that the optical signal on a fiber-optic cable otherwise fades over distance. A second repeater (number R1039) is located approximately 14 kilometers west of the A-5 Area. Another 62 kilometers of cable is located within 15 kilometers of the boundaries of the A-5 Area. All of this Honotua infrastructure is located at water depths of approximately 5,000 meters.

Over the last three years, OPT French Polynesia has become increasingly concerned about potential damage to Honotua from deep seabed mining. OPT French Polynesia therefore initiated discussions with the ISA Secretariat to share its concerns, submitted comments in the 2015 ISA consultation regarding the development of exploitation regulations, and expressed concern to the LTC in advance of the execution of the contract with China Minmetals.<sup>3</sup> OPT French Polynesia has also entered into bilateral discussions with China Minmetals.

**B. Risks of Damage to Honotua from Proximate Exploitation Activities**

As with deep seabed minerals exploration activities, deep seabed exploitation of polymetallic nodules on the deep seabed 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.

<sup>2</sup> International Cable Protection Committee's Comments On International Seabed Authority's Draft Regulations On Exploitation Of Mineral Resources In The Area (filed 17 Nov. 2017).

<sup>3</sup> Comments of OPT French Polynesia, 2015 Exploitation Framework Survey, ISBA/Cons/2015/1 (submitted 15 May 2015); Letter from Kent Bressie, Harris, Wiltshire & Grannis LLP as counsel to OPT French Polynesia, to Dr. Christian Reichert, LTC Chair (2 May 2017).

- **Direct Physical Disturbance.** Exploitation activities have the potential to cause direct physical disturbance of submarine cables by exploration tools, apparatus, and anchors. Submarine cables deployed in the deep ocean rest on the surface of the seabed. They have the diameter of a garden hose.
- **Disturbance of Sediment and the Seabed.** Even if not in direct contact with submarine cables, the tools, apparatus, and anchors of deep seabed mining pose a risk of cable damage from abrasion due to erosion. In destabilizing the seabed, these activities could result in the exposure or suspension of submarine cables above the sea floor, thereby subjecting them to a heightened risk of contact with or snagging by mining equipment, as well as the risk of debris accumulating on submarine cables.
- **Disturbance of Out-of-Service Submarine Cables.** Exploitation activities can also cause damage to operational submarine cables by disturbing out-of-service ("OOS") submarine cables. In the case of the A-5 Area, Honotua crosses the Pacific Cable, an out-of-service submarine telegraph cable between Vancouver, Canada, and Fanning Island in Kiribati (from which it connects on to Fiji, Norfolk Island, New Zealand, and Australia). As Honotua rests on top of the Pacific Cable, disturbance of the Pacific Cable could disturb or damage Honotua.

Any damage to Honotua by deep seabed mining activities would have serious consequences for OPT French Polynesia, the people of French Polynesia, and the Governments of French Polynesia and France. 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.

Finally, OPT French Polynesia notes that it is in the interest of Contractors themselves to avoid conflicts with submarine cables and pipelines. Not only could they be liable for damage to submarine cables,<sup>4</sup> but contact between a submarine cable and mining equipment could potentially entangle mining equipment with a submarine cable and damage the mining equipment.

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<sup>4</sup> See, e.g., Convention for the Protection of Submarine Telegraph Cables, art. II (Paris, 14 March 1884) (establishing that "it is a punishable offence to break or injure a submarine cable, wilfully or by culpable negligence, in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially, such punishment being without prejudice to any civil action for damages."); UNCLOS art. 113 (providing that "every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence.").

### C. Submarine Cable Protection Through Spatial Separation

For the “reasonable regard” obligations of UNCLOS article 147(1) to have meaning, OPT French Polynesia believes that the ISA must account for the spatial requirements of submarine cable operation and maintenance. In April 2017, the International Hydrographic Organization (“IHO”) adopted revisions to IHO Resolution 4/1967 (Submarine Cables) calling for physical separation of vessel activities from submarine cables:

In view of the serious consequences resulting from damage to submarine cables, vessel operators should take special care when anchoring, fishing, mining, dredging, or engaging in underwater operations near areas where these cables may exist or have been reported to exist. In order to minimize the risk of such damage as much as possible, vessels should avoid any such activity at a minimum distance of 0.25-nautical mile on either side of submarine cables.<sup>5</sup>

Cable repairs—although comparatively rare in the deep ocean—require even greater spatial separation from other marine activities, including 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 cable ships and tools establish the spatial requirements for submarine cable repair activities.

- 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 bring up and buoy one end of the cable, and a third to bring up and bring onboard the second end. Proximate equipment on the seafloor and in the water column can become entangled with such grapnels and lines.
- 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.

Various standards and recommendations<sup>6</sup> recommend proximity distances or default separation distances between submarine cables and between submarine cables and other marine

<sup>5</sup> List of Decisions, 1st Session of the IHO Assembly (24-28 April 2017), available at [https://www.iho.int/mtg\\_docs/council/C1/EN-List%20of%20Decisions%20A1\\_Final.pdf](https://www.iho.int/mtg_docs/council/C1/EN-List%20of%20Decisions%20A1_Final.pdf).

<sup>6</sup> See, e.g., ICPC Recommendation 2 No. 11, Recommended Routing and Reporting Criteria for Cables in Proximity to Others (3 Nov. 2015); U.S. Federal Communications Commission, Communications Security, Reliability, and Interoperability Council, Final Report – Protection of

infrastructure and activities. These standards and recommendations recognize that ideal separation is often not achievable, particularly in crowded ocean areas and where seafloor topography is unfavorable. These standards and recommendations are therefore flexible and encourage coordination among marine activities at the earliest stages of project activity in order to minimize risks of damage to submarine cables and equipment used in other marine activities.

Unlike other marine activities, submarine cables are long-term infrastructure that is not easily moved. 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. Moreover, nowhere does UNCLOS require an operator to move a submarine cable to accommodate deep seabed mining activities.

#### **D. Honotua and the China Minmetals' Contract for Exploration Activities**

OPT French Polynesia's views on the Draft Exploitation Regulations are informed by its experience with the ISA's licensing of exploration activities by China Minmetals along the Honotua route. Despite the fact that Honotua was installed in 2009-2010, commenced commercial carriage of telecommunications traffic in 2010, and was documented (as of 2010) on nautical charts for its entire length (regardless of ocean depths)<sup>7</sup> and otherwise noted in other publicly-available resources such as TeleGeography's well-known submarine cable maps,<sup>8</sup> neither the ISA nor its prospective Contractor identified or accounted for Honotua—or contacted OPT French Polynesia or ICPC—in the process leading to China Minmetals' contract to conduct exploration activities in five portions of ISA reserve areas, including the A-5 Area overlapping significantly with Honotua's Tahiti-Hawaii segment.<sup>9</sup> The 2015 LTC report recommending grant of the application simply noted that "the applicant also informed the Commission that it had considered the possible existence of submarine cables or pipelines in the area under application."<sup>10</sup> By the date of that report, however, Honotua had already been installed and operating for almost five years—a fact that was easily ascertainable.

OPT French Polynesia believes that issues in the process for licensing China Minmetals' exploration activities along the Honotua route are instructive for the ISA as it considers submarine cable protection within the Draft Exploitation Regulations. The Exploration Regulations and ISA processes for authorizing exploration in Reserve Areas do not require any identification of proximate submarine cables and pipeline infrastructure by the applicant, or require the LTC to verify the presence or absence of such proximate infrastructure using publicly-available resources. The Exploration Regulations also lack a mechanism for notification to or consultation with submarine

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Submarine Cables Through Spatial Separation (Dec. 2014),  
[https://transition.fcc.gov/pshs/advisory/csric4/CSRIC\\_IV\\_WG8\\_Report1\\_3Dec2014.pdf](https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG8_Report1_3Dec2014.pdf).

<sup>7</sup> See, e.g., National Oceanic and Atmospheric Administration Chart 540, available at <http://www.charts.noaa.gov/OnLineViewer/540.shtml>.

<sup>8</sup> TeleGeography, Submarine Cable Map, <https://www.submarinecablemap.com>.

<sup>9</sup> Application for approval of a plan of work for exploration for polymetallic nodules in the Area by China Minmetals Corporation, Executive Summary, ISBA/21/LTC/5 (19 Jan. 2015); Report and recommendations of the Legal and Technical Commission to the Council of the International Seabed Authority relating to an application for the approval of a plan of work for exploration for polymetallic nodules by China Minmetals Corporation, ISBA/21/C/2 (5 Mar. 2015).

<sup>10</sup> *Id.* ¶ 17 (emphasis added).

cable and pipeline owners as affected stakeholders. Finally, they lack any rules or principles for minimizing operational conflicts between submarine cable and pipeline owners on one hand and Contractors on the other. Consequently, the ISA's regulatory framework for exploration does not mitigate the risks of damage to submarine cables and pipelines. By establishing such obligations and processes in the Exploration Regulations, the ISA would help to mitigate the risk of spatial conflicts between submarine cables and deep seabed mining exploitation and of damage to submarine cables—and to mining equipment.

## II. Specific Comments on Draft Exploitation Regulations

### A. The Exploitation Regulations Should State Clearly that They Will Not Restrict Any High-Seas Freedom, Including the Freedom to Install Submarine Cables and Pipelines

UNCLOS article 87 states:

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
  - (a) freedom of navigation;
  - (b) freedom of overflight;
  - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
  - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
  - (e) freedom of fishing, subject to the conditions laid down in section 2;
  - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms 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.

Marine scientific research ("MSR") is treated no differently from other high-seas freedoms enumerated in UNCLOS article 87.

Draft Regulation 1(4), however, makes a selective reference to the freedom to conduct MSR and only later makes reference to the general principle in UNCLOS article 87. This could be read to suggest that UNCLOS privileges MSR alone or to a greater degree than other high-seas freedoms, when in fact it does not.

The Draft Exploitation Regulations also neglect to reference UNCLOS article 112, which provides that:

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.<sup>11</sup>

<sup>11</sup> UNCLOS article 79(5) provides that "when laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced."

To ensure completeness and avoid misinterpretation, OPT French Polynesia recommends that the ISA revise the text of Draft Regulation 1(4) to state:

“Nothing in these Regulations shall be construed in such a way as to restrict the exercise by States of the freedoms of the high seas as reflected in Articles 87, 112, 143, and 256 of the Convention, including the freedom of navigation, the freedom of overflight, the freedom to lay submarine cables and pipelines, the freedom to construct artificial islands and other installations permitted under international law, the freedom of fishing, and the freedom of marine scientific research.”

**B. The Exploitation Regulations Should Include Specific Provisions for Evaluating and Mitigating the Potential Risks of Exploitation Activities on Proximate Submarine Cables and Pipelines**

Unlike the exercise of high-seas freedoms such as navigation, overflight, and fishing, exercise of the UNCLOS article 87 high-seas freedoms to install submarine cables and pipelines results in the presence of long-term infrastructure in the marine environment. For the freedoms of UNCLOS articles 87 and 112 and the article 147(1) “reasonable regard” obligation to have meaning, the Exploitation Regulations need to address the protection of such infrastructure in specific and practical ways.

**1. An Applicant Should Conduct Specific Diligence on Existing and Planned Submarine Cables and Pipelines and Develop a Plan of Work to Mitigate the Risks of Damage to Submarine Cables and Pipelines**

As currently drafted, the Draft Exploitation Regulations and associated application and contracting documents contain only general statements regarding an applicant’s obligations to protect submarine cables and pipelines. Draft Regulation 26 states that “each Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.” Sections 6.2.6 of the Environmental Impact Statement Template (Annex V) asks the applicant to identify other uses of the contract area, including “telecommunications cables [sic],”<sup>12</sup> while Section 9.2.1.6 asks the applicant to assess proposed impacts and mitigation on such uses—in each case, under a catch-all provision titled “other.”

Such provisions would provide insufficient practical guidance to applicants and result in the omission of key information to the LTC. Use of a catch-all “other” category could also be read to suggest that submarine cable and pipeline protection is a lesser concern, contrary to UNCLOS articles 87 and 112. Finally, these provisions also run the risk of being ineffective, as vague obligations are more easily disregarded, in which case they would put submarine cables and pipelines at risk.

To remedy these concerns, OPT French Polynesia recommends that the ISA revise the Environmental Scoping Report (Annex IV) to include a new subsection:

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<sup>12</sup> Any reference to “telecommunications cables” in the Draft Exploitation Regulations and associated contracting documents should be revised to reflect the UNCLOS term of “submarine cables and pipelines.”

“( ) Identification of any existing or planned submarine cable or pipeline that traverses, is likely to traverse, is located adjacent to, or is likely to be located adjacent to a proposed Contract Area.”

Annex IV should be retitled “Environmental and Infrastructure Scoping Report” to reflect more accurately its scope and content.

OPT French Polynesia recommends that the ISA revise Section 6.2.6 of the Environmental Impact Statement Template (Annex V) to read as follows:

**“6.2.6 Submarine Cables and Pipelines**

Describe whether any existing or planned submarine cable or pipeline traverses, is likely to traverse, is located adjacent to, or is likely to be located adjacent to a proposed Contract Area, exercising due diligence by consulting nautical charts and other publicly-available information.”

The remaining text of the current Section 6.2.6 should be moved to a new Section 6.2.7:

**“6.2.7 Other**

List other uses of the project area that are not related to the above (e.g. other mineral Exploration or Exploitation projects, bioprospecting, etc.).”

OPT French Polynesia recommends that the ISA revise Section 9.2.1.6 of the Environmental Impact Statement Template (Annex V) to read as follows:

**“9.2.1.6 Submarine Cables and Pipelines**

Describe the potential impact on any existing or planned submarine cable or pipeline that traverses, is likely to traverse, is located adjacent to, or is likely to be located adjacent to a proposed Contract Area, along with a proposed plan for mitigating any risk of damage to such a submarine cable or pipeline, including physical separation distances; use of equipment locating devices such as acoustic beacons; and other measures based on current technology and operating practices.”

The remaining text of the current Section 9.2.1.6 should be moved to a new Section 9.2.1.7:

**“9.2.1.7 Other**

List other impacts that are not related to the above (e.g. other mineral Exploration or Exploitation projects, bioprospecting, etc.).”

OPT French Polynesia recommends that the ISA revise Section 13.2 of the Environmental Impact Assessment Template (Annex V) to read as follows:

**“13.2 Stakeholders**

This section lists any relevant stakeholders or other interested parties (including any submarine cable or pipeline owners identified in Section 6.2.6 and 9.2.1.6) that have been consulted and explains the process by which stakeholders were identified.”

Annex V should be retitled “Environmental and Infrastructure Impact Statement” to reflect more accurately its scope and content. Similarly, Annex VII should be retitled “Environmental Management, Monitoring, and Infrastructure Protection Plan” to reflect more accurately its scope and content.

OPT French Polynesia recommends that the ISA revise Draft Regulation 4(3) to require an applicant to submit a specific mitigation plan for protection of submarine cables and pipelines as part of the Environmental Management and Monitoring Plan (Annex VII), which should be retitled “Environmental Management, Monitoring, and Infrastructure Protection Plan”.

The ISA should also revise Annex X, Section 3.3, to require that the Contractor comply with any submarine cable and pipeline mitigation measures submitted as part of a Plan of Work approved by the Council.

**2. The LTC Should Evaluate the Potential Impact of a Plan of Work on Existing and Planned Submarine Cables and Pipelines and Decline to Recommend Council Approval for Any Plan of Work that Fails to Include an Effective Submarine Cable and Pipeline Protection Plan**

To operationalize the rights and duties of UNCLOS articles 87, 112, and 147, the ISA should revise the Draft Exploitation Regulations to require that the LTC assess protection of submarine cables and pipelines in any Plan of Work before making a recommendation to the Council.

**Draft Regulation 7(4).** The ISA should revise Draft Regulation 7(4) to state in new subsections that the LTC will determine if the proposed Plan of Work:

- “involves a Contract Area that is traversed by, is likely to be traversed by, is located adjacent to, or is likely to be located adjacent to, an existing submarine cable or pipeline, as identified by the applicant, the Commission, or a third party”;
- “in the event a Contract Area involves such a submarine cable or pipeline, includes a submarine cable and pipeline protection measures”; and
- “poses an unmitigated risk of damage to any existing or planned submarine cables and pipelines.”

**Draft Regulation 10(3).** The ISA should revise Draft Regulation 10(3) to provide that the LTC should decline to recommend Council approval of a Plan of Work:

- “if the Plan of Work fails to account for a proximate submarine cable or pipeline” or
- “if the Plan of Work, including any submarine cable and pipeline protection measures, would pose an unmitigated risk of damage to any existing or planned submarine cable or pipeline.”

**C. The Exploitation Regulations Should Use a Performance Guarantee to Ensure Protection of Submarine Cables and Pipelines**

Draft Regulation 9 provides for the possibility of a performance guarantee from the Contractor “in respect of the performance of its obligations, undertakings or conditions in a Plan of Work or proposed exploitation contract.” OPT French Polynesia recommends that the ISA revise that regulation to provide for the use of a performance guarantee for Contractor activities conducted in proximity to an existing submarine cable or pipeline and the withholding of repayment or release of the Performance Guarantee in the event the Contractor damages a submarine cable or pipeline.

**D. The ISA Should Broaden and Clarify the Draft Exploitation Regulations’ Notification and Consultation Mechanisms for Suspected Contact by a Contractor with a Submarine Cable or Pipeline**

As currently structured, Draft Regulation 41 and Appendix I contemplate only that the Contractor will notify the Secretary-General of suspected physical contact with a submarine cable or pipeline. Nevertheless, it is the submarine cable or pipeline operator—rather than the Contractor—that is most likely to learn of such contact well before the Contractor does. Submarine cable operators continuously monitor their systems and are able to detect immediately any disruption in the continuity of communications and any electrical anomaly in the system suggestive of cable damage. To enforce and operationalize the “reasonable regard” obligation in UNCLOS article 147(1), the ISA should make the notification and consultation processes mutual, not just one-way.

First, the ISA should revise Draft Regulation 41 to provide for notification by the submarine cable or pipeline operator to the Secretariat, in addition to notifications by the Contractor. Such a mechanism will ensure that the ISA receives more timely notice of potential damage to submarine cables and pipelines. It will also address the risk that a Contractor may be unaware—or fail to notify the ISA—of contact with a submarine cable or pipeline.

Second, the ISA should revise Draft Regulation 41(3) to provide for ISA consultation not just with “other regulatory authorities,” but also with submarine cable and pipeline operators and affected coastal states. There is no “regulatory authority” for submarine cables or pipelines on the high seas, but that does not mean that ISA should forego consultation about physical contact with any particular submarine cable.

**E. The Exploitation Regulations Should Address Protection of Future Submarine Cables and Pipelines**

**1. The Exploitation Regulations Should Establish a Mechanism for Updating Plans of Work and its Environmental Management, Monitoring, and Infrastructure Protection Plan**

Draft Regulation 13 provides for an initial 30-year term for an exploitation contract. Given this lengthy term, OPT French Polynesia believes it critical for the ISA to adopt a mechanism for updating a Plan of Work to address submarine cable and pipeline protection for submarine cables and pipelines that might be planned and installed after the adoption of a Plan of Work (not to mention other changes in the marine environment). OPT French Polynesia believes that such a mechanism would take the form of an obligation to update the Environmental Management,

Monitoring, and Infrastructure Protection Plan (Annex VII) periodically and also in response to occurrences such as the subsequent installation of new infrastructure.

## **2. The Exploitation Regulations Should Guard Against Route Foreclosure**

The Exploitation Regulations should interpret the “reasonable regard” requirement of UNCLOS article 147(1) and the high-seas freedoms of Articles 87 and 112 to accommodate routes for future submarine cables and pipelines. Draft Regulation 10(3) should be revised to provide that the LTC should decline to recommend Council approval of a Plan of Work if the Plan of Work would result in an excessively large area of contiguous Contract Areas that could impair the installation of new submarine cables and pipelines on particular service routes.

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Thank you again for the opportunity to comment on the Draft Exploitation Regulations and for your consideration of the comments and recommendations contained in this letter.

Respectfully submitted,



Jean-François MARTIN

### **Attachment**

cc    His Excellency Édouard Fritch (Government of French Polynesia)  
      His Excellency the Minister of Europe and Foreign Affairs  
      His Excellency Michael Lodge (ISA Secretariat)  
      Dr. Christian Reichert (ISA LTC)  
      Mr. Graham Evans (International Cable Protection Committee)  
      Mr. Keith Schofield (International Cable Protection Committee)  
      Mr. Kent Bressie (Harris, Wiltshire & Grannis LLP, counsel for OPT French Polynesia)