

Before the
NATIONAL OCEAN COUNCIL
Washington, D.C.

In the Matter of

National Ocean Policy
Draft Implementation Plan

Executive Order 13,547

**COMMENTS OF
THE NORTH AMERICAN SUBMARINE CABLE ASSOCIATION**

To achieve an effective National Ocean Policy, the National Ocean Council's Draft Implementation Plan must account for the extensive presence, critical importance, and unique legal status of undersea fiber-optic telecommunications cables. Undersea cables carry more than 95 percent of the international voice, data, and Internet traffic of the United States, a percentage that is expected to continue to increase. Without undersea cable infrastructure, the global Internet would not function. Customary international law and various international treaties grant to undersea cables unique rights and freedoms not granted to any other activities in the marine environment. Undersea cable operators have also developed a set of private coordination and cooperation mechanisms permitting shared – and sometimes cooperative – use of important coastal and marine regions, to the mutual benefit of all parties.

Unfortunately, the Draft Implementation Plan fails to account for the presence, importance, or unique legal characteristics of undersea cables. This may be due in part to a

decision by the National Ocean Council not to consult with the telecommunications industry as part of its industry roundtables or to identify undersea cable operators and suppliers as critically important stakeholders. It might also reflect the fact that many of the federal agencies involved in regulating undersea cables have also not been directly involved in the development of the Draft Implementation Plan. In these comments, NASCA provides background and recommendations to remedy these oversights.

NASCA is a nonprofit association of the principal undersea-cable owners, undersea-cable maintenance authorities, and prime contractors for undersea-cable systems operating in North America.¹ NASCA members' cables land in 14 U.S. states and territories. NASCA seeks to ensure efficient government regulation of cable installation and maintenance, coordinate with other marine industries, and educate the public regarding the importance of undersea cables. For decades, NASCA's members have worked with federal, state, and local government agencies, as well as other concerned parties—such as commercial fishermen and private environmental organizations—to ensure that undersea cables do not harm the marine environment or unreasonably constrain the operations of others in that environment. NASCA's members have been practicing coastal and marine spatial planning for more than 150 years.

These comments are divided into two parts. First, NASCA provides background on undersea cables, explaining their presence in marine areas, their critical economic and national-security importance, their unique legal status, and existing mechanisms used by undersea cable operators, suppliers, and maintenance providers to coordinate with other marine activities.

¹ NASCA's members are: Alaska Communications System; Alaska United Fiber System Partnership; Alcatel-Lucent Submarine Networks; AT&T Corp.; Brasil Telecom of America, Inc. / Globenet; Columbus Networks; Global Marine Systems Ltd.; Hibernia Atlantic; Level 3 Communications, LLC; Reliance GlobalCom; Southern Cross Cable Network; Sprint Communications Corporation; Tata Communications; Tyco Electronics Subsea Communications LLC; and Verizon Business.

Second, NASCA proposes specific modifications to the Draft Implementation Plan to address undersea cable operators, suppliers, and maintenance providers as critically important stakeholders in order to achieve a more effective National Ocean Policy.

I. BACKGROUND ON UNDERSEA CABLES

A. Undersea Cables Are Critically Important to the U.S. Economy and U.S. National Security

Contrary to popular perception, more than 95 percent of U.S. international voice, data, and Internet traffic travels by undersea cable—a percentage that has increased consistently over time.² Undersea cables provide higher-quality, more reliable and secure, and less expensive communications than do communications satellites. Undersea cables also provide the principal connectivity between the contiguous United States and Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands, and also significant connectivity within Alaska, Hawaii, and the U.S. Virgin Islands.

Undersea cables play a critical role both in ensuring that the United States can communicate with itself and the world and in supporting the commercial and national security endeavors of the United States and its citizens. Undersea cables support U.S.-based commerce abroad and provide access to Internet-based content, a substantial proportion of which is located in the United States, as evidenced by international bandwidth build-out. They also carry the vast majority of civilian and military U.S. Government traffic, as the U.S. Government does not generally own or operate undersea cable systems.³

² See *Submarine Cables and the Oceans: Connecting the World*, UNEP-WCMC Biodiversity Series No. 31, U.N. Environment Programme World Climate Monitoring Centre and International Cable Protection Committee, 2009, at 8 (“ICPC-UNEP Report”).

³ See, e.g., John Cummings, *Contract Awarded for Kwajalein Cable System*, U.S. ARMY NEWS, June 13, 2008, <http://www.army.mil/-news/2008/06/13/9972-contract-awarded-for-kwajalein-cable-system-kcs/> (describing Defense Information Systems Agency’s contract for

Undersea cables—which typically have the diameter of a garden hose—are laid and repaired by cable ships built specifically for cable-related operations and designed for covering vast distances and multi-month deployments. Cable ships are crewed by highly trained and experienced merchant mariners, submersible engineers, and cable operations staff. These ships use a variety of remotely-operated vehicles (“ROVs”), sea plows, lines, and grapnels for manipulating cable and repeaters beyond the ship.

Although damage to undersea cables is rare, it most often caused by commercial fishermen (whose nets and clam dredges ensnare cables), vessel anchors, hurricanes, underwater landslides, and seismic events such as earthquakes and tsunamis resulting therefrom.⁴ Timely repairs are critical given the economic and national-security significance of traffic carried by these cables. Consequently, maintenance providers and cable ships must be prepared to respond rapidly, with continuously-qualified personnel, vessels on stand-by, and appropriate equipment. Recent damage to undersea cables following the Tohoku earthquake in 2011, and in east Asia, south Asia, and western Africa in July and August of 2009, only underscores the importance of such maintenance operations.⁵

service on the privately-owned HANTRU1 system, which will connect Guam with the U.S. Army Kwajalein Atoll/Reagan Test Site in the Republic of the Marshall Islands); Naval Facilities Engineering Command, *Capabilities*, https://portal.navfac.navy.mil/portal/page/portal/navfac/navfac_ww_pp/navfac_hq_pp/navfac_che_pp/navfac_che_ocean/tab4000467.

⁴ See ICPC-UNEP Report at 43-48 (citing statistics showing that fishing accounted for 44.4 percent of faults (cable damage incidents severe enough to affect transmission) and that anchoring accounted for 14.6 percent of faults).

⁵ See Owen Fletcher and Juro Osawa, *Rush to Fix Quake-Damaged Undersea Cables*, WALL ST. J., Mar. 15, 2011, <http://online.wsj.com/article/SB10001424052748704893604576199952421569210.html>; *Typhoon disrupts Asia Internet, phone service*, Assoc. Press, Aug. 14, 2009, http://www.msnbc.msn.com/id/32419348/ns/tech_and_science-tech_and_gadgets/t/typhoon-disrupts-asia-internet-phone-service (describing damage likely caused by Typhoon Morakot off the Taiwanese coast); Jayanta Gupta, *16-hr link failure spurs Bangladesh coup fears*,

Cable maintenance providers contract with individual owners of undersea cable systems and with regional maintenance authorities for the provision of long-term maintenance services. They also occasionally contract with system owners for one-off maintenance operations. Cable and repeaters for repairs are typically manufactured on a system-specific basis and kept on hand for immediate use by the maintenance provider.

B. Numerous Federal Agencies Regulate Undersea Cables

Undersea cables landing in the United States and/or its territories are regulated by a significant number of federal, state, and local government agencies. At the federal level, the principal licensing and permitting requirements involve the following agencies:

- Federal Communications Commission (“FCC”): An undersea cable operator must be granted a cable landing license for the installation and operation of any undersea cable in U.S. territory pursuant to the Cable Landing License Act.⁶ Before granting any cable landing license, the FCC must seek the views of the U.S. Department of State (acting through its Office of International Communications and Information Policy), the U.S. Department of Commerce’s National Telecommunications and Information Administration, and the Defense Information Systems Agency.⁷

TIMES OF INDIA, Aug. 15, 2009, <http://timesofindia.indiatimes.com/news/world/south-asia/16-hr-link-failure-sparks-Bangladesh-coup-fear/articleshow/4895302.cms> (noting that disruption of the SEA-ME-WE-4 undersea cable serving Bangladesh had provoked coup fears among other governments and intelligence agencies); *Cable Fault Cuts off West Africa*, BBC NEWS, July 30, 2009, <http://news.bbc.co.uk/2/hi/8176014.stm> (describing damage to SAT-3 cable system serving western Africa).

⁶ 47 U.S.C. §§ 34-39; 47 C.F.R. § 1.767.

⁷ Executive Order No. 10,530, *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § 301 app. (1988); 47 C.F.R. § 1.767(j); U.S. Department of State, Media Note, Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests (Dec. 20, 2001).

- “Team Telecom”: For undersea cables connecting the United States with foreign points or with significant foreign ownership, the U.S. Departments of Defense, Homeland Security, and Justice and the Federal Bureau of Investigation (collectively known as “Team Telecom” in this context) review and often require the FCC to impose security-related conditions in the cable landing license in order to assure both infrastructure security and information security.⁸
- Army Corps of Engineers (“ACOE”): The ACOE must authorize the installation of any undersea cable in U.S. waters pursuant to the Rivers and Harbors Act of 1899, as well as the installation of any undersea cable in an estuary pursuant to the Clean Water Act.⁹ These cables are sometimes authorized under the ACOE’s Nationwide Permit Program. In other cases, they involve the issuance of individual permits following the submission and review of draft environmental impact statements.
- National Oceanic and Atmospheric Administration (“NOAA”): For any commercial undersea cable transiting a national marine sanctuary, NOAA requires a special use permit for the installation of any undersea cable in a national marine sanctuary pursuant to the National Marine Sanctuaries Act.¹⁰

⁸ The Team Telecom review process is not governed by any particular law, and the member agencies have not, individually or collectively, promulgated any regulations to govern their process. Instead, they rely on assertions of the President’s foreign affairs powers and the willingness of the FCC to defer to them on national security, law enforcement, and public safety issues. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,919 ¶ 63 (1997) (stating that the FCC “will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us”).

⁹ 33 U.S.C. § 403 *et seq.*

¹⁰ 16 U.S.C. §§ 1431-1439.

All of these federal licenses and permits are subject to the consistency certification requirements of the Coastal Zone Management Act to ensure consistency with state coastal zone management plans approved by the Secretary of Commerce.¹¹ NASCA notes that most of these agencies are not identified as stakeholders in the Draft Implementation Plan.

C. Undersea Cables Enjoy Unique Treaty Rights and Protections Granted to No Other Activity in the Marine Environment

U.S. and international law recognize unique freedoms for the installation and maintenance of submarine cables. These rights and freedoms are not accorded to energy-related activities, commercial fishing, or marine transport, and sometimes these rights and freedoms can trump those of other marine activities. Consequently, it is critical that the National Ocean Policy's Draft Implementation Plan recognize that different marine activities have different legal rights and freedoms.

Various international treaties dating back to 1884 guarantee unique freedoms to lay, maintain, and repair submarine cables—freedoms not granted for any other marine activities—and restrict the ability of coastal states (*i.e.*, countries) to regulate them.¹² Principles articulated in these treaties have since been recognized as customary international law.

¹¹ 16 U.S.C. § 1451 *et seq.*

¹² *See* Convention for the Protection of Submarine Telegraph Cables, Mar. 14, 1884, 24 Stat. 989, 25 Stat. 1424, T.S. 380, (entered into force definitively for the United States on May 1, 1888) (“1884 Convention”); Geneva Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 (entered into force definitively for the United States on Sept. 30, 1962) (“High Seas Convention”); Geneva Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311 (entered into force definitively for the United States on June 10, 1964) (“Continental Shelf Convention”); Law of the Sea Convention, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force on Nov. 16, 1994) (“LOS Convention”).

Specifically, these treaties guarantee:

- The freedom to install submarine cables on the high seas beyond the continental shelf and to repair existing cables without impediment or prejudice;¹³
- The freedom to install and maintain submarine cables on the continental shelf,¹⁴ subject to reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources;¹⁵

¹³ High Seas Convention, arts. 2 (“Freedom of the high seas is exercised under the conditions laid down by these Articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States: . . . Freedom to lay submarine cables and pipelines.”), 26(1) (“All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas”), 26(3) (“When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.”); LOS Convention art. 112(1) (“All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.”).

¹⁴ LOS Convention arts. 79(1) (“All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article”), 79(5) (“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.”). *See also* LOS Convention, art. 78(2) (“The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.”).

¹⁵ Continental Shelf Convention, art. 4 (“Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.”); LOS Convention, art. 79(2) (“Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines”); *id.*, art. 79(4) (“Nothing in this Part affects the . . . [coastal state’s] jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.”). The course of a pipeline on the continental shelf is subject to coastal-state consent, while the course of a submarine cable is not. *See id.*, art. 79(3) (“The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.”).

- The freedom to install and maintain submarine cables in the exclusive economic zone of all states;¹⁶
- The ability to install submarine cables in a state’s territory or territorial sea subject to conditions and exercise of national jurisdiction;¹⁷ and
- The freedom to maintain existing submarine cables passing through the waters of an archipelagic state without making landfall.¹⁸

These treaty obligations are now treated as customary international law,¹⁹ even by states that have not ratified them.²⁰

For purposes of the EEZ and the continental shelf, submarine cables are distinguished from (1) artificial islands, (2) structures and installations used for exploration or exploitation of living or nonliving natural resources or for “other economic purposes,” and (3) installations and structures which may interfere with the exercise of the rights of the coastal state in the EEZ or on the continental shelf.²¹ Although these treaties permit coastal states to take reasonable measures

¹⁶ *Id.*, art. 58(1) (“In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines.”).

¹⁷ *Id.*, art. 79(4) (“Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea”).

¹⁸ *Id.*, art. 51(2).

¹⁹ *Delimitation of the Maritime Boundary of the Gulf of Maine (Can. v. U.S.)*, 1984 I.C.J Rep. 246, 294 ¶ 94 (Oct. 12).

²⁰ The United States recognized these freedoms starting in 1983, even though the United States has never ratified the LOS Convention (it signed only in 1994) and even though the Convention did not enter into force for those states that had ratified it until 1994. Presidential proclamations by two different U.S. presidents expressly stated that the establishments of an EEZ and a contiguous zone, respectively, did not infringe on the high-seas freedoms to lay and repair submarine cables. *See* Presidential Proclamation No. 5030, 48 Fed. Reg. 10,605 (Mar. 10, 1983) (establishing the U.S. EEZ); Presidential Proclamation No. 7219, 64 Fed. Reg. 48,701 (Aug. 2, 1999) (establishing the U.S. contiguous zone).

²¹ LOS Convention, arts. 56, 60(1), 80.

respecting natural resource exploitation on the Continental Shelf, they bar states from taking such measures with respect to submarine cables, the construction and repair of which are not undertaken for natural resource exploration or exploitation.²² These treaty provisions are reflected in the official position of the United Nations' Office of Legal Affairs of the Division for Ocean Affairs and the Law of the Sea, which states that:

[B]eyond the outer limits of the 12 nm territorial sea, the coastal State may not (and should not) impede the laying or maintenance of cables, even though the delineation of the course for the laying of such pipelines [but not submarine cables] on the continental shelf is subject to its consent. The coastal State has jurisdiction only over cables constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.²³

Thus, a coastal nation must forbear from imposing any restrictions on the installation or maintenance of submarine cables unless those submarine cables themselves are used for natural resource exploration or exploitation.

Coastal states also have obligations to prevent willful or negligent damage to cables.²⁴

And all states "shall have due regard to cables or pipelines already in position."²⁵ Submarine

²² *Id.*, art. 79(2); Continental Shelf Convention, art. 4.

²³ *Maritime Space: Maritime Zones and Maritime Delimitations—Frequently Asked Questions*, United Nations Department of Oceans and Law of the Sea, Office of Legal Affairs (responding to Question #7, "What regime applies to the cables and pipelines?"), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently_asked_questions.htm.

²⁴ LOS Convention, art. 113 ("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 willfully 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. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.").

cables are thus afforded a great degree of protection from regulation or interference by coastal states, reflecting the vital role that submarine cables play in facilitating communications, commerce, and government. Nevertheless, as described below, it is the submarine cable operators themselves who have developed industry standards and private contractual arrangements for managing marine spatial conflicts, including cable-crossing agreements and minimum separation distances between cables.²⁶

D. Undersea Cable Operators Already Use a Variety of Coordination and Cooperation Mechanisms

Undersea cable operators already use a variety of coordination and cooperation mechanisms to minimize conflicts with other marine activities. First and foremost, undersea cable operators engage in coastal and marine spatial planning. At the outset of a cable project, a cable operator, working with its supplier, chooses an appropriate route. This process requires extensive “desktop studies” to gather data about potential routes and landing points and a “route survey,” which uses state-of-the-art electronic survey equipment to map details of the route, including the nature and depth of sediment (rock/mud/coral, etc.), as well as detailed depth contours. It also identifies and avoids areas where existing activities may cause damage to a

²⁵ *Id.*, art. 79(5).

²⁶ Industry standards have been developed over many decades to facilitate cable installation, retrieval, and repair operations above and below the ocean surface. These standards minimize the risk of damage to neighboring cables during installation and maintenance operations and ensure access to a damaged cable with both a cable ship and other equipment to be used on the sea floor. *See, e.g.*, International Cable Protection Committee Recommendation No. 2, at 5 (providing that when cables must cross, they should do so at 90-degree angles in order to minimize the length of cable that is immediately adjacent to another cable), 10 (providing that two parallel cables are to be separated by a distance equal to the lesser of three (3) times the depth of water or nine (9) kilometers, and that if both operators of parallel cables agree, those two cables may be separated by a distance equal to the lesser of two (2) times the depth of water, or six (6) kilometers—and in shallow waters a minimum separation such as 500 meters may be specified), available from the International Cable Protection Committee at www.iscpc.org.

cable (fishing areas, anchorages, etc.). If such risks are unavoidable, cable operators must mitigate them in coordination with other marine activities.

As with crossings between cables, cable owners enter into crossing agreements with pipeline owners to minimize conflict and maximize access for maintenance purposes.²⁷ Cable owners and suppliers have also established collaborative mechanisms with commercial fisherman, including mechanisms for compensating fishermen for sacrificing gear snagged on cables (rather than have fisherman try to free such gear, with potential damage to the cable).²⁸

II. SPECIFIC COMMENTS ON, AND RECOMMENDED REVISIONS TO, THE NATIONAL OCEAN POLICY DRAFT IMPLEMENTATION PLAN

NASCA offers the following comments on, and recommended revisions to, the Draft Implementation Plan. The comments and recommended revisions are organized according to the sections of the Draft Implementation Plan, as identified in the headers below.

A. Inform Decisions and Improve Understanding

The National Ocean Council should revise Actions 1 through 4²⁹ to note the key role played by undersea cables and the need to include undersea cable operators, suppliers, maintenance providers, and regulators as necessary stakeholders. Otherwise, the National Ocean Council will lack key data necessary to make informed decisions about the nation's ocean policy. As noted in part I.A above, undersea cables power the Internet, and the communications and economic activity that the Internet enables. Undersea cables play a crucial role in the nation's economic and national security framework.

²⁷ See, e.g., International Cable Protection Committee Recommendation No. 3, available from the International Cable Protection Committee at www.iscpc.org.

²⁸ See, e.g., Oregon Fishermen's Cable Committee, <http://www.ofcc.com>.

²⁹ Draft Implementation Plan at 19-23.

B. Coordination and Support

The National Ocean Council should revise Actions 1 through 3³⁰ to include undersea cables in any alignment between a national coastal/marine spatial plan (“CMSP”) and regional plans/activities. As noted in NASCA’s earlier comments,³¹ NASCA members have long engaged in coastal and marine spatial planning. The National Ocean Council should also revise Action 1³² to ensure inclusion of undersea cables and the telecommunications industry in any assessment of the impact of coordination and support on “economic health.”

NASCA strongly supports the Draft Implementation Plan’s call for “permitting efficiency” but urges the National Ocean Council to revise Actions 5 and 6³³ to include undersea cables and their regulators in the calls for reducing redundancy, administrative burdens, and delay in the permitting process and for better international coordination.

C. Regional Ecosystem Protection and Restoration

The National Ocean Council should revise Actions 4 and 6 to ensure that proposals for marine protected areas are consistent with U.S. law and treaty obligations as they pertain to activities within or beyond the EEZ. As noted in part I.C above, undersea cable installation and maintenance are subject to rights and freedoms unavailable to other marine activities, and are protected by various treaty freedoms.

³⁰ Draft Implementation Plan at 36-39.

³¹ See NASCA, Comments on Development of Strategic Action Plans for the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes, (Apr. 29, 2011), 38-39, http://www.whitehouse.gov/sites/default/files/microsites/ceq/cmsp_comments_and_attachments_1.24.11-4.29.11.pdf (“NASCA CMSP Comments”).

³² Draft Implementation Plan at 36.

³³ Draft Implementation Plan at 40-42.

D. Water Quality and Sustainable Practices on Land

The National Ocean Council should modify Action 6³⁴ to consider the impact of marine debris and trash on other marine activities, including undersea cables. “Ghost fishing” by abandoned nets may increase the risk to undersea cables due to a greater possibility of additional fishing gear snags.³⁵ Any attempts to recover ghost fishing gear must also consider potential impacts on undersea cables from grapnels and other equipment used to recover such gear.

E. Changing Conditions in the Arctic

The National Ocean Council should revise Action 4 to account for undersea cables and the agencies that regulate undersea cables, particularly the FCC. As currently drafted, the Draft Implementation Plan discusses only satellite and terrestrial mobile connectivity (the latter of which must depend either on undersea cables or satellites for backhaul).³⁶ There are currently two proposed trans-Arctic undersea cable projects, and more are likely to be developed.³⁷ The National Ocean Council should also modify Action 1³⁸ to include the FCC in efforts to coordinate a response to Arctic resource management, including communications infrastructure and access issues.

³⁴ Draft Implementation Plan at 72-73.

³⁵ See generally Andrew Smith, Issues Fact Sheet: Ghost Fishing, FAO Fisheries and Aquaculture Dep’t, U.N. Food and Agriculture Org., May 27, 2005, <http://www.fao.org/fishery/topic/14798/en>.

³⁶ Draft Implementation Plan at 79-83.

³⁷ See Arctic Fibre, <http://www.arcticfibre.com>; Polarnet, <http://www.polarnetproject.ru> (in Russian); Zao ‘Polarnet Project’ Invites Tenders For Russian Optical Trans Arctic Submarine Cable System, SUBTEL FORUM, Jan. 17, 2012, <http://www.subtelforum.com/articles/2012/zao-polarnet-project-invites-tenders-for-russian-optical-trans-arctic-submarine-cable-system>.

³⁸ Draft Implementation Plan at 78-79.

F. Coastal and Marine Spatial Planning

With respect to Actions 2 and 3,³⁹ and consistent with NASCA's earlier comments,⁴⁰ the National Ocean Plan should explicitly identify telecommunications and undersea cables among the specific industry sectors and infrastructure operating in the marine environment. Failure to do so risks leaving such a key sector and infrastructure out of planning activities.

The National Ocean Council also should revise National Objective 1 to identify communications regulation within the scope of efforts to promote regulatory efficiency. At present, this discussion makes no mention of communications regulation or the agencies that regulate undersea cables.⁴¹ Finally, with respect to Actions 4 and 5,⁴² undersea cable operators and the FCC should be included in the regional planning bodies to be tasked with collaborative CMSP.

³⁹ Draft Implementation Plan at 89-91.

⁴⁰ See NASCA CMSP Comments.

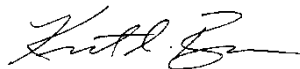
⁴¹ Draft Implementation Plan at 87-88.

⁴² Draft Implementation Plan at 91-92.

CONCLUSION

For the reasons stated above, NASCA urges the National Ocean Council to revise its National Ocean Policy Draft Implementation Plan to account for the extensive presence, critical importance, and unique legal status of undersea fiber-optic telecommunications cables and thereby ensure a more effective National Ocean Policy.

Respectfully submitted,



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