SMART Cable Systems
The Permitting Perspective

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Permitting & Impact on Project Programs & Planning - Overview

- Varying permit lead times can lead to project planning and implementation phase dislocation if not properly sequenced
- Identification of permit interdependency a critical factor in project planning
- Impact of variations in permit lead times on project planning:
  - Minimal when dealing with domestic national systems
  - Most complex for long haul international systems with highly variable national jurisdictional requirements
- Impact of route transits through non landing country jurisdictions:
  - Can lead to protracted negotiations when transits are through territorial waters and/or contiguous zones
  - Complexities when either jurisdictional agencies approached late or not at all; or when unpredicted changes or routing requirements imposed
  - Problems associated with conflicts with UNCLOS protocols for coastal states that have ratified UNCLOS

Survey Permits & Conditions

- Securing permissions to carry out survey operations vary from coastal state to coastal state and from straightforward to highly complex with lead-times measured in days to many months; associated conditions can include:
  - Requirement for all survey team members and vessel crew to undergo security checks
  - The imposition of restrictions on certain nationalities within the survey team and/or vessel crew; and even the country where the survey contractor's company is registered
  - Requirement for survey operations to be witnessed by security officers
  - Mandate for survey work be conducted by national research institutes to pre agreed hand over locations
  - Requirement for copies of survey data to be made available to the coastal state upon completion of the survey and/or copies of reports

UNCLOS & Cable Route Surveys

- Cable route surveys are part of the process of laying submarine cables
- UNCLOS articles govern the activities related to cables in the territorial sea, the EEZ, the continental shelf and the high seas
- The freedom to navigate and lay cables and the operations associated with ships exercising these freedoms are expressly provided for under these articles
- In reality, an increasing number of costal states are now insisting on permits; or the lesser, but no less program challenging, Letters of No Objection issued by the coastal state, for survey and cable installation within their EEZ
- The justification often given by coastal states imposing these permitting restrictions, is that the route survey constitutes Marine Scientific Research, the tools and methodology of which being similar

Cable Route Surveys

Why this activity is *not* Marine Scientific Research

- The fundamental objective of the cable route survey is to:
  - Prove and document the preliminary route developed during initial project planning stages
  - Identify and where practical, develop the pre survey route to avoid obstructions and hazards found during the survey
  - Determine final cable engineering and cable quantities
  - Confirm or amend preliminary cable protection strategies
  - Provide all data and documentation necessary to support cable installation
  - Provide the database framework for system maintenance

Cable Route Surveys

Why this activity is *not* Marine Scientific Research

- Marine Scientific Research is not defined in the Convention; however, it is clear that the scope of submarine cable route surveys cannot be construed as ***Scientific Research***
  - The route survey scope is not designed to perform systematic investigations into and study of the marine environment in order to establish facts and reach new conclusions about the marine environment, *nor*
  - To carry out exploration or exploitation of living or non living resources
  - Drill on the continental shelf
  - Use explosives or harmful substances
  - Construct, operate or use artificial islands, installations or structures

Permitting Smart Cables Program Impacts & Consequences

- Increasing requirement for marine operational permits in EEZs based on the assumption of MSR activity; including non landing countries in “apparent” contravention of UNCLOS provisions has already negatively impacted permit lead times and project progress
- Attaching sensors to new build systems will weaken/compromise the non MSR argument for activities associated with telecommunications cables
- Possibly little added impact in the case of jurisdictions currently imposing a regulatory framework based on a default assumption that activities associated with submarine telecommunications cables constitutes MSR

Final Thoughts, Considerations & Questions

- The type of sensors to be incorporated into Smart Cable Systems can be interpreted as potentially compromising national security of some nations
- Would confining “smart” sections of cable systems to the Area within the context of ABNJ thus avoiding the Continental Shelf, Territorial Seas and EEZ reduce the potential for exacerbating the already complex submarine telecommunications permitting environment
- The imposition of a mandate the incorporation of sensors to monitor marine environmental parameters will lead to adding complexity and delay in the permitting process particularly for cable systems traversing multiple regulatory jurisdictions; however,
- Potential routes connecting more benign jurisdictional regimes could offer less complex opportunities for Smart telecommunications systems