
Trump, Team Telecom, and Extraterritoriality

Regulatory Updates for PTC'17 Submarine Cable Workshop

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Overview

1. Team Telecom impacts of U.S. presidential election
2. Team Telecom dysfunction
3. Increasing conflicts over surveillance and law enforcement activities
4. FCC impacts of U.S. presidential election
5. New extraterritorial marine protected areas



Impact of Trump Administration on Team Telecom remains highly uncertain

- It remains to be seen how President-Elect Trump's nationalism and skepticism about foreign investment and trade will affect the day-to-day workings of Team Telecom.
- Hardliners and realists have long coexisted within Team Telecom agency staff.
 - Most infamously, the Defense Department opposed foreign investment in submarine cables in connection with the reorganization of Global Crossing in 2002-03.
 - Trump Administration could embolden hardliners to oppose or condition foreign ownership in submarine cables or revert to a reciprocity-based approach to market access—even though such measures are inconsistent with U.S. WTO commitments.
- The Trump Administration could also oppose more strongly FCC attempts to place limits on Team Telecom.



Team Telecom process has become even more dysfunctional

- Team Telecom reviews for new submarine cables now routinely last more than one year
 - DHS is increasingly the main cause of delay due to limited staff and internal disorganization.
 - DHS and DOJ consistently prioritize other work with statutory deadlines over Team Telecom reviews.
 - Requests for special temporary authority (“STA”) from the FCC have now become routine in order to permit construction to proceed on schedule.
- Team Telecom is also fragmenting, with agencies picking and choosing projects of interest.

Recent U.S. licensing times for new submarine cables

<i>System</i>	<i>Date FCC Application Filed</i>	<i>Date of Security Agreement or LOA</i>	<i>Date FCC License Granted</i>	<i>Total Licensing Time</i>
Hawaiki	Sept. 6, 2016	pending	pending	[131 days to date]
Marea	May 26, 2016	pending	pending	[235 days to date]
BRUSA	Mar. 30, 2016	pending	pending	[291 days to date]
Quintillion	Mar. 25, 2016	pending	pending	[298 days to date]
Atisa	Mar. 14, 2016	pending	pending	[309 days to date]
Seabras-1	Jan. 15, 2016	Nov. 7, 2016	Nov. 10, 2016	300 days
NCP	Nov. 3, 2015	Jan. 12, 2017	Jan. 12, 2017	436 days
FASTER	June 26, 2015	May 26, 2016	May 31, 2016	340 days
SEA-US	June 26, 2015	Jan. 12, 2017	Jan. 12, 2017	566 days
Monet	Apr. 8, 2015	Dec. 6, 2016	Dec. 9, 2016	613 days
AEConnect	Feb. 5, 2014	Oct. 1, 2014, LOA	Oct. 21, 2014	258 days
PCCS	Jan. 16, 2013	Jan. 14, 2014, LOA	Jan. 24, 2014	373 days



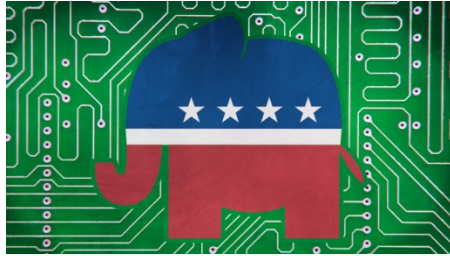
Team Telecom focus areas continue to evolve

- DHS focuses more on equipment, software, and contractors, whereas DOJ focuses on electronic surveillance and law enforcement process
- Both DHS and DOJ remain concerned about Chinese equipment suppliers and services and software developed in or provided remotely from Russia.
- DHS also increasingly focuses on consortia governance arrangements, including C&MAs and landing party agreements
- All agencies continue to conduct compliance and site inspections, even where security agreements require third-party audits



Disputes over surveillance and law enforcement activities are becoming more acute

- Tech companies continue to seek limits on government powers and to enhance transparency.
 - On July 14, 2016, the U.S. Court of Appeals for the 2d Circuit ruled in favor of Microsoft, finding that the Stored Communications Act did not require disclosure of communications stored outside the United States. The U.S. Department of Justice has now appealed.
 - Tech companies have expressed support for U.S. legislation known as the International Communications Privacy Act, which require warrants for surveillance and modernize the process for seeking information located outside the United States.
 - Recent Team Telecom security agreements include provisions permitting operators to disclose publicly any request to disconnect a submarine cable.
- Last November, the UK Investigatory Powers Act 2016 came into force, greatly expanding the UK Government's authority to conduct surveillance without a warrant and requiring providers to store users' web browsing records for 12 months and back doors around encryption. The legality of some provisions remains questionable after a ruling by the European Court of Human Rights.



Republican leadership at FCC will seek to roll-back certain Obama-era rules, perhaps to include outage reporting rules

- Republican FCC commissioners and the Trump transition team have made clear that they intend to reverse and rescind many of the policies and rules adopted by the FCC during the Obama Administration.
- It remains to be seen whether this will include rescission or scaling back of the FCC's ill-conceived submarine cable outage reporting requirements adopted in June 2016.
 - The North American Submarine Cable Association and others have petitioned the FCC to revise reporting thresholds, reduce reporting burdens, and lengthen the transition period before the requirements take effect.
 - Commissioners Pai and O'Rielly, who will continue to serve, have expressed skepticism about these rules.



FCC reform of Team Telecom review process could stall

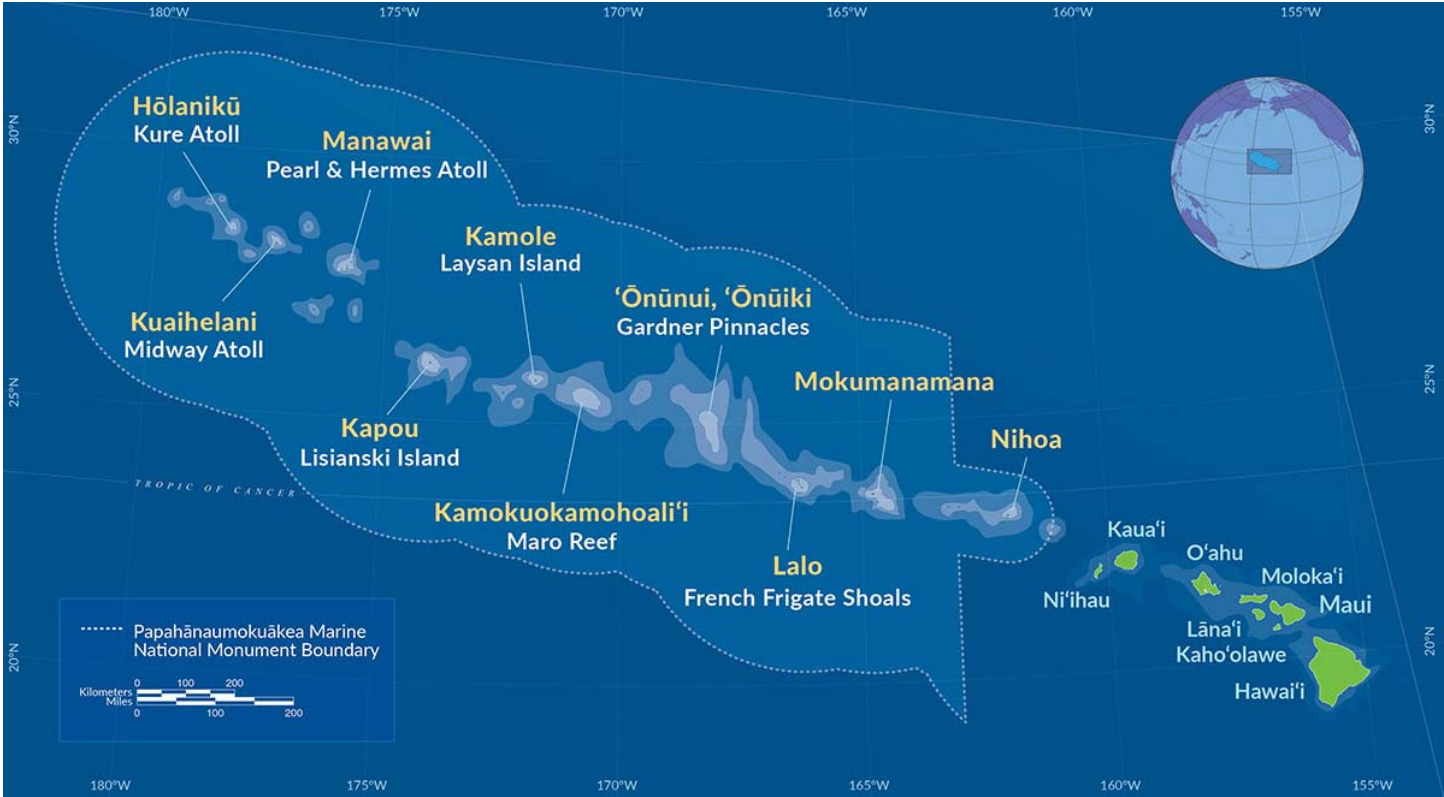
- In June 2016, the FCC initiated a rulemaking to reform the Team Telecom review process.
 - The FCC proposed review timeframes, standardized information collection, and greater transparency.
 - To date, there has been bipartisan support at the FCC for reform, with Commissioner O’Rielly offering scathing criticism of Team Telecom.
- Due to political infighting after the presidential election, the FCC suspended consideration of a draft report and order to be voted at the December 2016 meeting of the commissioners.
- Prospects for resumption of the proceeding and adoption of reforms remain uncertain and could be the subject of more robust opposition from Team Telecom.



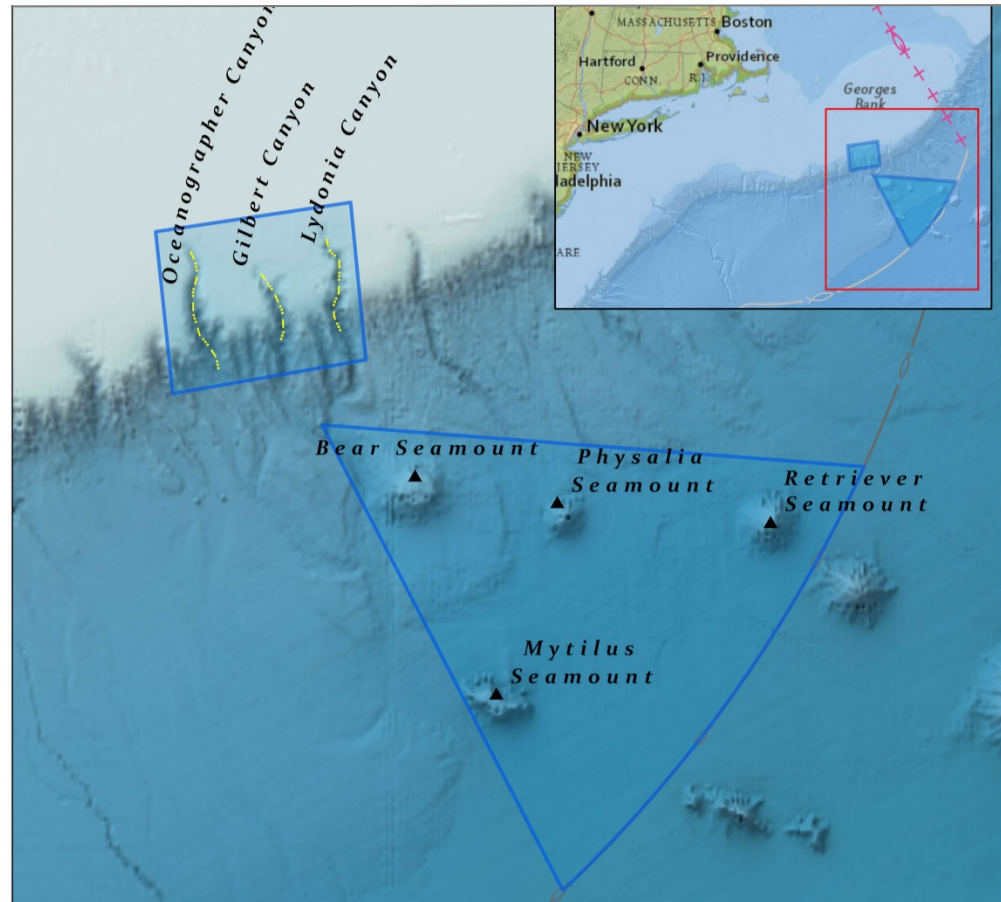
Governments continue to expand marine protected areas (“MPAs”) beyond their territorial seas

- North Americans are catching up with Europeans with extraterritorial MPAs:
 - USA: expanded Papahnaumokuakea Marine National Monument northwest of the main Hawaiian Islands, to be managed by NOAA as a national marine sanctuary
 - USA: new Northeast Canyons and Seamounts Marine National Monument
 - Canada: proposed MPA off the Nova Scotia coast
 - Mexico: three greatly expanded MPAs in both the Pacific Ocean and the Caribbean Sea
- As currently established or proposed, none of these new or proposed MPAs exempts submarine cable installation and maintenance activities from regulation or development restrictions.

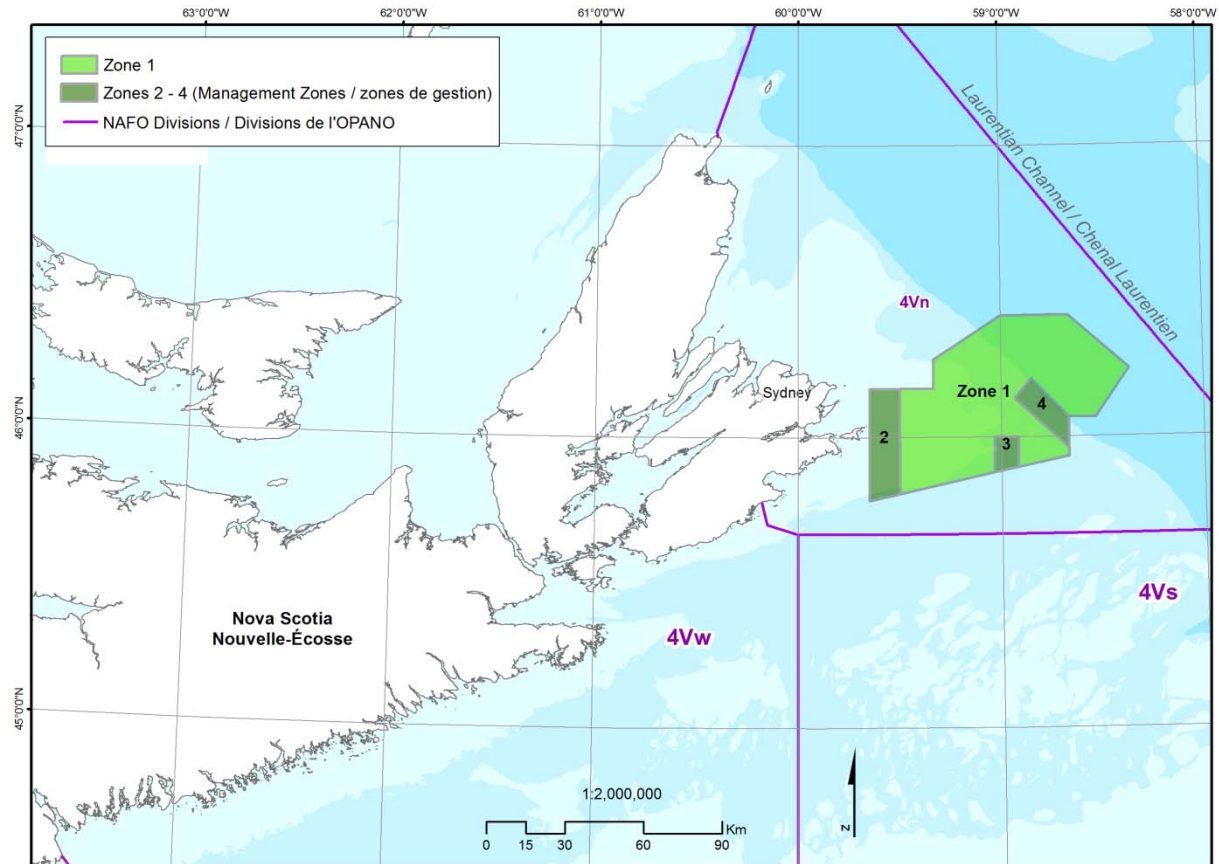
USA: expanded PMNM



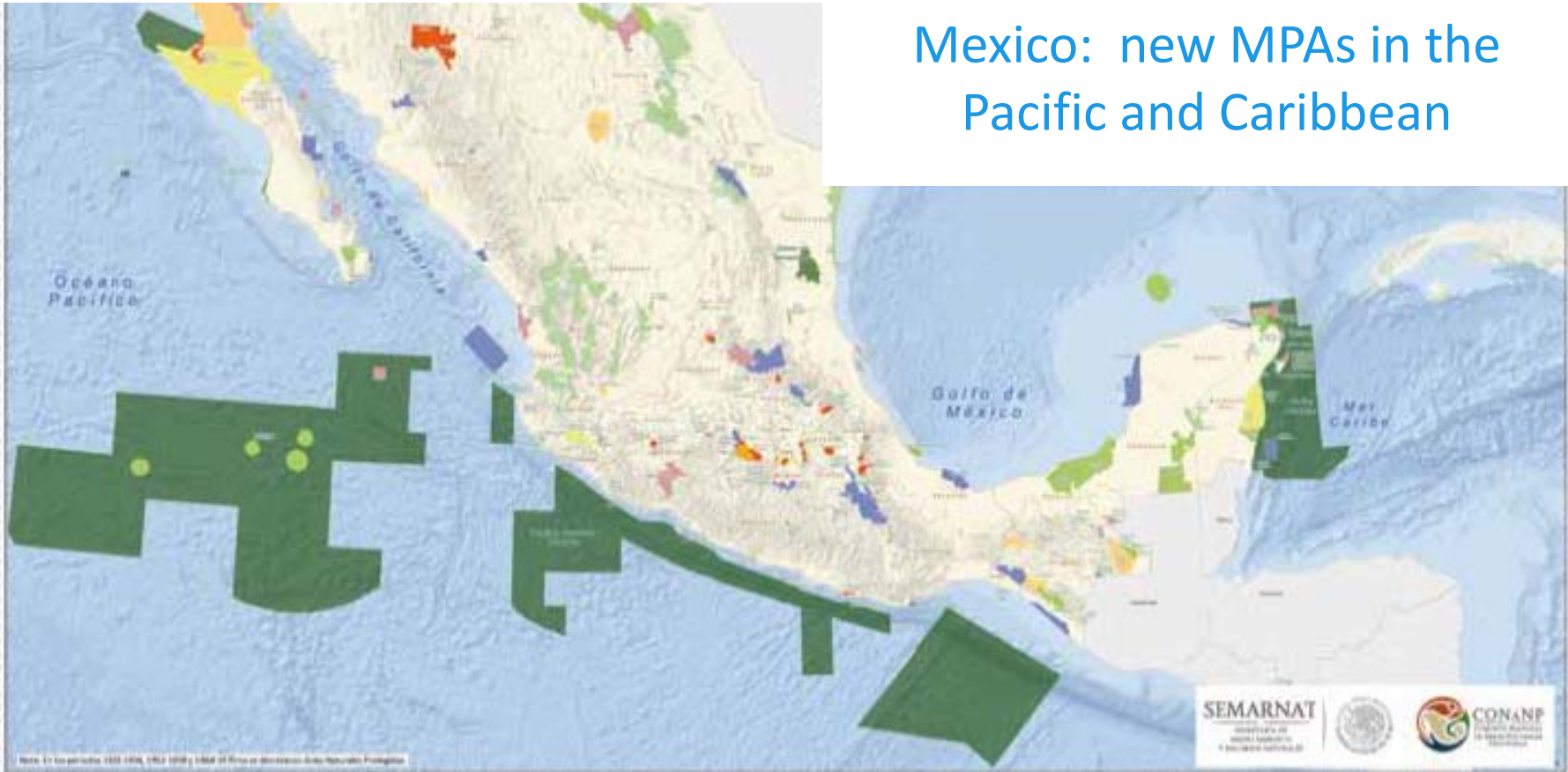
USA: Northeast
Canyons and Seamounts
Marine National
Monument



Canada: St. Anns Bank proposed MPA



Mexico: new MPAs in the Pacific and Caribbean



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