

Customs Confirms Offshore Wind Foundation Installation Rulings

AUGUST 27, 2024

U.S. Customs and Border Protection confirmed on August 21, 2024 its Jones Act interpretations relating to the installation of foundations for an offshore wind project which it issued last year. The “Jones Act” is a popular term for several laws which reserve U.S. domestic maritime trade to U.S.-flag vessels which must be built in the United States and be owned and operated by qualified U.S. citizens.

On July 17, 2023, CBP issued a ruling that a foreign vessel could load monopile foundations (MPs) in a U.S. port, transport them to an offshore work site where nothing had been previously attached to the seabed and install such MPs. The Jones Act applies to “transportation” of “merchandise” “between two points in the United States.” CBP had already determined that work sites on the U.S. outer continental shelf beyond 3 nautical miles from the U.S. coast do not constitute U.S. points. Therefore, CBP concluded in July that the transportation of MPs from a U.S. port to a place that is not a U.S. point can be undertaken with a foreign vessel.

Included in the July ruling was the possibility that the vessel would be a jack-up foundation installation vessel and that it would jack up upon arrival at the work site before installing the MP.

CBP modified this July ruling on September 14, 2023 in response to an August 18, 2023 American Maritime Partnership request for revocation. As modified, CBP confirmed that it considers that “the location for monopile installation to be a pristine site prior to the installation of the monopile.”

Where CBP made a change from the July ruling was with respect to an installation vessel which had arrived at the work site and then jacked up prior to installing the MP. CBP has long determined that a “point in the United States” is created on the U.S. outer continental shelf beyond 3 nautical miles from the U.S. coast if an “installation or other device” is “permanently or temporarily attached” to the seabed for the purpose of exploring for, developing, or producing resources.

CBP determined in the September modification that “the use of a foreign-flagged jack-up vessel to transport monopiles between a U.S. port and an installation site on the OCS would violate the Jones Act, because a second coastwise point is established once the jack-up vessel attaches itself to the seabed for the purposes of monopile installation.”

In its August 21, 2024 ruling, CBP addressed the wrinkle of whether a foreign installation vessel may transport MPs and transition pieces (TPs) together and then, while floating, first install one MP and then install the TP onto the MP without the vessel moving. CBP determined in this recent ruling that this sequence would violate the Jones Act unless the TP is transported to the work site by a coastwise qualified U.S.-flag vessel.

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