

US Customs and Border Protection (CBP) recently held that a foreign flagged vessel could install electric transmission cables without violating the coastwise laws. This decision reflects a growing body of CBP rulings that address whether a Jones Act compliant vessel is required for specific aspects of an offshore wind project.

Certain offshore activities require a Jones Act qualified vessel, which means that the vessel must meet stringent US-built, US-ownership and crewing requirements that are required to receive a coastwise endorsement from the US Coast Guard. CBP's Headquarters Ruling H329630 (March 9, 2023) addressed whether a non-coastwise-qualified cable-lay vessel (CLV) and a non-coastwise-qualified trencher support vessel (TSV) could be used to lay and bury electrical transmission cables on the seabed of US territorial waters and the Outer Continental Shelf (OCS) that would connect wind turbines on the OCS and offshore substations.

The proposed project involved deploying the CLV and TSV as follows:

- The CLV will pay out and lower cable onto the seabed along existing cable routes between wind turbine foundations and/or offshore substation foundations. At each foundation, a cable protection system composed of tubular formed stiffening/protection elements would be attached onto the cable-ends onboard the CLV.
- The TSV uses a submersible tracked cable-burial jetting tool, which is used to bury the cable. The cable-burial jetting tool is an electrically powered, tracked trencher that contains jetting "swords" with jetting nozzles distributed over the length of the swords. The nozzles fluidize the seabed soil in front of the trencher to reduce friction and allow the cable to be submerged into the fluidized soil/water mix. This allows the cable to be buried to its required depth.

CBP held that the proposed use of the CLV and TSV did not violate the coastwise laws. In the ruling, CBP stated that its prior decisions differentiated between "dredging," which is subject to the coastwise laws, and "jetting" which is not. CBP held that TSV could create the cable pathway without violating the coastwise law because the proposed jetting, which temporarily lifts a "narrow slice" of seabed, did not rise to the level of dredging, which requires digging into the seabed.¹

CBP further held the cable laying did not constitute coastwise transportation under the Jones Act as the cable is not landed as cargo but is paid out during installation.² Accordingly, the electrical cable installation did not constitute coastwise transportation under the Jones Act.

CBP's Headquarters Ruling H329630³ is consistent with prior rulings, many of which originated in the context of pipeline installation in the oil and gas industry. While Headquarters Ruling H329630 is instructive, each Headquarters Ruling is highly fact specific. Offshore wind stakeholders should consider the potential application of the Jones Act based on the realities of their own projects with the assistance of experienced counsel.

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¹ 46 U.S.C. § 55109

² 46 U.S.C. § 55102

³ In Headquarters Ruling H329630, CBP also held that the project installation crew on both vessels were crew members and not passengers under the Passenger Vessel Services Act. 46 U.S.C. § 55102.