

U.S. Customs Issues Cable Operation Ruling Helpful to Offshore Wind



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On November 9, 2021, U.S. Customs and Border Protection made public [a ruling](#) dated November 2 regarding the laying and burial by a foreign vessel of fiber optic cable in U.S. waters and the transportation of technicians by that vessel. The ruling would apply equally to the laying and burial of power cable and furthers substantially the understanding of what operations a foreign vessel may undertake in U.S. waters.

CBP has long held that a foreign vessel may pick up pipe or cable in a U.S. port and lay it from that point to another point in the United States or otherwise between two U.S. points. The rationale is that the laying of pipe or cable is not the “transportation” of “merchandise” between two U.S. points which is proscribed by U.S. coastwise law known as the “[Jones Act](#).” This holding was affirmed in the November 2 ruling.

More importantly, U.S. law also restricts “dredging” in U.S. waters to qualified U.S.-flag vessels. “Dredging” generally means “excavation” which is turn CBP defines to mean “hollow out” or “to remove soil by digging, scooping out or other means.” U.S. waters means U.S. territorial waters which extend three nautical miles from the U.S. coast and beyond on the U.S. outer continental shelf if the laying of cable or pipe is related to the exploration, development, or production of “resources” which includes renewable energy resources (as of January 1, 2021).

The requester proposed utilizing a proprietary self-propelled cable burial tool to simultaneously lay the cable and bury it in a narrow trench in U.S. territorial waters. The tool is equipped with water jets and jetting nozzles to fluidize the soil and utilizes a cutting wheel or digging chain to cut through hard sediment and rock. Consistent with a few prior rulings, CBP ruled that the use of this cable burial tool did not constitute “dredging” within the meaning of the law because it would not use a mechanical hoe or plow.

The requester also asked CBP to confirm that the foreign vessel could pick up a few technicians in a U.S. port and either return them to the same U.S. port or to a Canadian port at the end of the vessel’s operational program. U.S. law restricts the transportation of “passengers” between two U.S. points to qualified U.S.-flag vessels. CBP determined on November 2 that the technicians were not “passengers” in that “they are required to be onboard to contribute to the accomplishment of the operation or navigation of the vessel during the voyage or are onboard because of a necessary vessel ownership or business interest during the voyage.” Therefore, the foreign vessel could lawfully take on the technicians at one U.S. port and later deliver them to a different U.S. port.

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