

Jones Act Organization Alleges Offshore Wind Survey Violations

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On November 15, 2021, the Offshore Marine Service Association (OMSA) made public allegations that a foreign vessel had violated U.S. coastwise law (popularly referred to as the “Jones Act”) and offshore manning laws (and also safety and pollution laws) in the conduct of offshore wind-related survey work.

The Jones Act generally restricts the “transportation” of “merchandise” between two “points in the United States” to qualified U.S.-flag vessels. U.S. Customs and Border Protection, on March 25, 2021, affirmed its long-standing interpretation of the Outer Continental Shelf Lands Act (OCSLA) that the pristine seabed on the U.S. outer continental shelf has no “points in the United States” until an “installation or other device” is permanently or temporarily “attached” to the seabed for specified purposes.

OMSA disagrees with CBP’s OCSLA interpretation and argues that the entire pristine OCS seabed is a “point in the United States.” With respect to the wind survey activity, OMSA alleges that the act of taking soil samples is an “installation or other device” that is “attached” to the seabed by virtue of a prior oil and gas ruling relating to a well site. Therefore, under OMSA’s interpretation, the foreign vessel picked up soil samples, which OMSA argues are “merchandise,” at a “point in the United States” and unlawfully returned them to a U.S. port.

CBP has for decades held that a vessel engaged in oceanographic research is not engaged in activities encompassed by the Jones Act. As early as 1965, Congress enacted a law (46 U.S.C. § 50503) which provides that “an oceanographic research vessel . . . is deemed not to be engaged in trade or commerce.” The U.S. Code also defines “oceanographic research vessel” to include a vessel the Coast Guard finds is employed only in “oceanographic research” including “marine geophysical surveys.”

CBP has also long determined that that “marine specimens or samples . . . collected and transported from any research site along the ocean bottom” are not considered “merchandise” and can be transported by a foreign vessel. (e.g., CBP Ruling HQ 116602 (Jan. 30, 2006). OMSA argues that the foreign vessel at issue could not unilaterally declare itself a research vessel and that the vessel is in fact an “offshore supply vessel.”

OMSA also alleges that the U.S. Coast Guard has misinterpreted existing law to permit foreign vessels to operate on the U.S. OCS with crews who are not nationals of the country which registered the vessel, and not to require periodic renewal of Coast Guard manning exemption letters. The U.S. Coast Guard issues life of vessel exemptions under its interpretation of OCSLA based on foreign vessel ownership.

CBP and the Coast Guard will now make their own determinations of what violations may have occurred and what to pursue.

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