

U.S. Customs Clarifies Foreign Vessel Scope For Offshore Wind Cable Installation



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U.S. Customs and Border Protection clarified further the permissible foreign vessel scope of work for offshore wind cable installation in rulings issued on [June 30, 2022](#) and [September 2, 2022](#). In two instances – installation of cable protection and transportation of excess cable – CBP has narrowed permissive prior rulings.

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.” What constitutes a U.S. “point” offshore is the subject of several CBP rulings. 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.”

CBP has also long held that a foreign vessel can bury cable with a sled, tracked remotely operated vehicle or other device and it does not constitute “dredging” if the device utilizes water jets alone or in combination with a chain or disc cutter. “Dredging” in U.S. waters is reserved to qualified U.S.-flag vessels. “Dredging” generally means “excavation” which in turn CBP defines to mean “hollow out” or “to remove soil by digging, scooping out or other means.”

Both the June 30 and September 2 rulings reaffirm these long-standing principles but add two new wrinkles. With respect to the installation of cable protection such as concrete mattresses or rock bags, CBP determined that a foreign vessel is not permitted to pick up such a device in a U.S. port and place it on already laid cable. The theory is that the already laid cable, regardless of distance from an offshore substation, shore, or an offshore tower, is itself a “point in the United States.” Previously, CBP had indicated that cable or pipe laid on the seabed is not “attached,” which is a requirement to create a U.S. point beyond the 3 nautical mile limit.

With respect to excess cable, CBP had previously determined that a cable lay vessel could return to a U.S. port a *de minimis* amount of excess cable it had loaded at a different U.S. port. On September 2, CBP indicated that its 2019 guidance on what constitutes “vessel equipment” – which is an exception from the Jones Act – eliminated the *de minimis* excess cable determination. CBP reasoned that the 2019 guidance, which did away with prior *de minimis* reasoning in the context of vessel equipment, also did away with the excess cable ruling reasoning which was not based on the vessel equipment exception.

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