

## U.S. Customs Revises Jones Act Guidance for Offshore Wind Turbine Foundation Installation

SEPTEMBER 18, 2023

U.S. Customs and Border Protection modified earlier Jones Act guidance on the installation of foundations for offshore wind turbines on September 14. 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 in response to an August 18, 2023, request for revocation filed on behalf of the American Maritime Partnership. CBP did not disclose in its September 14 ruling what arguments AMP made and AMP has not made its arguments public.

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.” Therefore, a foreign vessel could load MPs in a U.S. port and deliver them to such a site.

CBP noted further that the anchoring of the installation vessel would not affect this result provided the vessel was no longer anchored when it installed the MP.

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.” This September ruling, like the July ruling, can be altered or revoked by CBP without 60 days of issuance without the need to engage in public comment.

2 Min Read

---

## Author

Charlie Papavizas

---

## Related Topics

Jones Act

Offshore Wind

## Related Capabilities

Maritime & Admiralty

Energy

## Related Professionals

---



Charlie Papavizas

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*