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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

October 21, 2021

Mid-Barataria Sediment Diversion Project; Fish and Wildlife Coordination Act Review

I. Summary

On October 15, 2021, the U.S. Army Corps of Engineers (Corps), the lead agency for the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) to support regulatory permitting decisions for the Louisiana Coastal Protection and Restoration Authority's (project sponsor) Mid-Barataria Sediment Diversion project—a “covered project” under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*—submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for the U.S. Fish and Wildlife Service (FWS) action “Fish and Wildlife Coordination Act review concluded” from November 18, 2021, to April 11, 2022, because the current date was entered into the Permitting Dashboard in error. For the reasons stated below, the extension request is **GRANTED**, and the permitting timetable has been revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III), a lead agency may extend a final completion date under a FAST-41 permitting timetable to a date more than 30 days after the final completion date originally established in the permitting timetable only after requesting and obtaining Executive Director approval. After receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a determination on the record that approves or denies the request based on consideration of “relevant factors,” including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.



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Id. Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

III. Background

The original completion date for the FWS action, “Fish and Wildlife Coordination Act review concluded,” was June 6, 2020. On March 6, 2020, the FWS revised the completion date to February 22, 2021. On March 31, 2020, the FWS again revised the completion date to the current completion date of November 18, 2021. On October 15, 2021, the Corps requested on FWS’ behalf that the Permitting Council Executive Director extend the completion date to April 11, 2022.

FWS represents that the November 18, 2021 completion date was entered in error, and that the completion date that should have been entered on March 31, 2020 was April 11, 2022. FWS represents that the completion date for this action always was intended to be coextensive with the overall project completion date, which also is April 11, 2022. The Permitting Dashboard history for this project supports FWS’ representation. The initial overall project completion date was June 6, 2020—the same as the initial completion date for FWS’ “Fish and Wildlife Coordination Act review concluded” action. Additionally, the current overall project completion date, and the completion dates for other Federal agency actions such as “Section 10 Rivers and Harbors Act of 1899 and Section 404 Clean Water Act,” “Environmental Impact Statement (EIS),” “Section 408 Permit,” are all April 11, 2022, which is the same date FWS seeks in its extension request. It therefore appears that the date entered on the Permitting Dashboard on March 31, 2020 was a clerical error, and that the date the FWS intended to enter—consistent with these other permitting timetable dates—was April 11, 2022.

Accordingly, the FWS and the Corps represent that extending the completion date as requested simply would maintain consistency and alignment in the project review and authorization process, and modifying the completion date would not affect any other completion date or agency effort with respect to the project. The Corps has consulted with the project sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I), and represents that the project sponsor has no objection to the extension request. The Permitting Council Executive Director consulted with the project sponsor and confirms that the project sponsor does not object to the extension request.

IV. Determination

Although 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) does not expressly identify clerical error as grounds for granting extension requests, in this circumstance, clerical error is a “relevant factor” for granting the request. Granting the request simply would allow correction of the timetable on the Permitting Dashboard to maintain accuracy, and to comport with the agencies’ and the project sponsor’s original intent to coordinate the completion dates for this and several other project-related actions with overall completion of the Federal review and authorization of



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process. The inaccuracy can be resolved with a simple date correction on the Permitting Dashboard, and the date correction does not affect any other aspect of the permitting timetable. Importantly, the project sponsor has no objection to the date correction.

However, the incorrect completion date for the FWS “Fish and Wildlife Coordination Act review concluded” action was allowed to remain on the public-facing Permitting Dashboard for over a year and a half before it was noticed by the agency. This undermines the FAST-41 objectives of transparency and predictability in the Federal environmental review and authorization process. Because FWS has committed to implementing internal process improvements to ensure that any incorrect information on the public-facing Permitting Dashboard will be identified and corrected within a reasonable time, and that the instant circumstance will not recur, the Corps’ extension request is **GRANTED**, and the completion date for the FWS “Fish and Wildlife Coordination Act review concluded” action has been revised accordingly.

Christine Harada
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