



PERMITTING COUNCIL

Transparency • Efficiency • Accountability

Executive Director Determination on Request to Extend FAST-41 Final Completion Date by More Than 30 Days

March 30, 2023

Coastal Virginia Offshore Wind Commercial Project—NEPA (BOEM), COP (BOEM), Section 106 (BOEM), Section 10/404 (USACE), Section 408 (USACE), Real Estate Authorization and Certification (USACE), OCS Air Permit (EPA)

I. Summary

The Coastal Virginia Offshore Wind Commercial Project (Project), sponsored by Dominion Energy Virginia (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.* The Department of the Interior, Bureau of Ocean Energy Management (BOEM), has principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, which makes BOEM the lead agency for both NEPA and FAST-41.

On March 1, 2022, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend interim and final completion dates for multiple Federal actions on the Project’s permitting timetable. BOEM’s request includes extensions for its NEPA action; Construction and Operations Plan (COP) decision; and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108.¹

BOEM additionally requests an extension of the final completion date for all authorizations from the United States Army Corps of Engineers (USACE). This includes authorizations under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 (often

¹ This Executive Director Determination does not address modifications for three additional actions that BOEM included in its request because the Executive Director did not receive BOEM’s request with enough time to make a decision more than 30 days in advance of the completion dates for the three actions. *See* 42 U.S.C. § 4370m-2(c)(2)(D)(ii) (a completion date may not be modified within 30 days of the completion date). The actions to which this applies include consultation under the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, and consultation on essential fish habitat (EFH) pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.* If the agencies responsible for these actions are unable to meet the completion dates currently posted on the Federal Permitting Dashboard, they will need to establish alternative completion dates and adhere to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F) until they take final action on their respective ESA and EFH consultations.

referred to as “Section 10”); Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (often referred to as “Section 404”); and Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (often referred to as “Section 408”) (together, Sections 10/404/408). It also includes a USACE real estate outgrant, which is referenced on the Federal Permitting Dashboard entry for the Project as an “Authorization and Certification.”

Finally, BOEM seeks an extension of the final completion date for the Environmental Protection Agency’s (EPA) Outer Continental Shelf (OCS) air permit decision under Section 328 of the Clean Air Act, 42 U.S.C. § 7627.

For the following reasons, BOEM’s extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date by more than 30 days beyond the original final completion date only after consulting with the project sponsor and obtaining Executive Director approval. After receiving an extension request, the Executive Director must consult with the project sponsor and make a determination on the record whether to grant the requested date change. The Executive Director’s determination is 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.

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

III. Background

BOEM’s modification request included the interim and final completion dates shown in the table immediately below. BOEM’s justification for the modification requests are detailed thereafter.

Action Agency	Action	Milestone	Original Date	Requested Date
BOEM	EIS	Official Notice of Availability of a Final Environmental Impact Statement (EIS) published in the Federal Register	5/1/2023	9/29/2023
BOEM	EIS	Issuance of Record of Decision (ROD)	6/1/2023	10/30/2023
BOEM	COP	Final Decision/Agency Action	9/1/2023	1/29/2024
BOEM	Section 106	Section 106 Consultation Concluded	5/2/2023	10/30/2023
USACE	Section 10/404	Section 10/404 Final Verification/ Permit Decision Rendered	8/31/2023	1/29/2024
USACE	Section 408	Issuance of Decision	8/31/2023	1/29/2024
USACE	Authorization and Certification	Issuance of Decision for Permit/Approval	8/31/2023	1/29/2024
EPA	OCS Air Permit	Issuance of Final Decision/Permit Approval	9/15/2023	2/7/2024

NEPA (BOEM)

BOEM requests an extension of completion dates for its NEPA action based on the impact to the permitting timetable as a result of the Project Sponsor submitting its Marine Mammal Protection Act (MMPA) application to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) approximately 4 months later than originally scheduled. BOEM’s preparation of a draft

environmental impact statement (DEIS) was dependent on NMFS's receipt of a complete MMPA application from the Project Sponsor because the DEIS incorporates acoustic information contained in the Project Sponsor's MMPA application. Thus, the Project Sponsor's delay in completing acoustic modeling and submitting a complete MMPA application delayed BOEM's completion of the DEIS by 4 months.

The original anticipated date for the Project Sponsor's submission of the application was October 2021, and in early 2021, the Project Sponsor, BOEM, and NMFS engaged in discussions on the information to be included in the application. In August 2021, NMFS raised questions about the Project Sponsor's modeling approach. Subsequently, it took several months for the Project Sponsor and agencies to work through those questions. Additionally, in late 2021, the Project Sponsor made refinements to the Project, such as new monopile installation assumptions, that required integration with the modeling and information included in the MMPA application.

COP, Section 106, Sections 10/404/408, and Real Estate Authorization and Certification

The basis for BOEM's request to extend the final completion dates for the COP, Section 106, Sections 10/404/408, and Real Estate Authorization and Certification is that these actions are dependent upon the timing of BOEM's issuance of a Record of Decision (ROD) to conclude its NEPA review. BOEM requests that the COP final completion date be extended 90 days beyond the final completion date for a ROD. Additionally, because BOEM is meeting its Section 106 consultation obligations through the Section 106 NEPA substitution process, the Section 106 consultation will conclude simultaneously with issuance of the ROD for NEPA. USACE requests a review of 90 days between issuance of the ROD and issuance of USACE's decisions under Sections 10/404/408 and its Real Estate Authorization and Certification.

OCS Air Permit

BOEM requests an extension of the final completion date for the OCS air permit because EPA requests a review of 1 year between issuance of a final decision and receipt of a complete application. The Project Sponsor submitted a revised permit application on January 12, 2023, which EPA deemed complete on February 7, 2023. Therefore, the requested final completion date for the OCS air permit action is February 7, 2024.

Project Sponsor's Response to BOEM's Request for Modification of the Permitting Timetable

BOEM consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and has confirmed the Project Sponsor does not object to the requested permitting timetable modifications.

IV. Discussion

The value of the FAST-41 process is in the transparency and accountability it brings to the environmental review and authorization process. This request for revision of the completion dates for nearly the entire suite of actions for the Project highlights the interconnectedness of the various Federal review and authorization actions required for off-shore wind projects. It also provides a stark example of how one unresolved issue in the Federal permitting process may have a significant impact on timely and sound delivery of infrastructure projects. As project sponsors and the federal family work together to build a technically sound, legally defensible, and procedurally efficient permitting process for off-shore wind, we continue to learn and incorporate process improvements. Leading up to BOEM's request for a modification of this Project's permitting timetable, the lead agency (BOEM), its cooperating agencies (NMFS, USACE, and EPA), and the Project Sponsor did coordinate and collaborate, as directed by FAST-41. Nonetheless, a delay occurred.

The lesson made clear by the facts here is that the submission of a complete MMPA application in the context of off-shore wind projects is pivotal to the overall project timeline. As such, the Executive Director will work with the Permitting Council to identify and implement best practices and process improvements to more quickly elevate the potential for impacts to the permitting timetables for off-shore wind projects so that issues can be resolved in a more timely manner. To the extent that modifications to the permitting timetable are needed, those should be submitted to the Executive Director in a timely enough fashion to preserve the integrity and validity of the Permitting Dashboard.

V. Determination

BOEM's extension request is granted for the NEPA, COP, Section 106, Sections 10/404/408, Real Estate Authorization and Certification, and OCS air permit actions, and the permitting timetable shall be revised accordingly.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council