

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

June 14, 2024

Mid-Breton Sediment Diversion Project

I. Summary

The Mid-Breton Sediment Diversion Project (Project), sponsored by the Louisiana Coastal Protection and Restoration Authority (Project Sponsor), is a covered project under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m. The United States Army Corps of Engineers (USACE), has principal responsibility for an environmental review of the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, which makes USACE the lead agency for both NEPA and FAST-41.

USACE submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend all remaining interim and final completion dates on the Project's permitting timetable. This is the third extension request for completion dates on the Project's permitting timetable.¹

For the following reasons, USACE'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

¹ The previous Executive Director Determinations, dated October 19, 2021, and May 17, 2023, are available here:
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2021-10/2021-10-19%20Permitting%20Council%20ED%20Determination%20re%20Extension%20of%20Permitting%20Timetable%20for%20Mid-Breton%20Sediment%20Diversion%20Project%20Signed.pdf>
https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-05/2023-05-17%20Mid-Breton%20ED%20Determination_FINAL.pdf

- 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)(B) and 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

USACE submitted a request to change the interim and final completion dates shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Current Date	Requested Date
USACE	EIS	Official Notice of Availability of a Draft Environmental Impact Statement (EIS) published in the Federal Register	11/9/2022	7/19/2024	5/9/2025
		Official Notice of Availability of a Final EIS published in the Federal Register	12/14/2023	9/26/2025	1/29/2027
		Issuance of Record of Decision (ROD)	2/1/2024	4/20/2026	9/2/2027
USACE	Section 106	Section 106 Consultation Concluded	2/1/2024	4/20/2026	9/2/2027
USACE	Section 10/404	Section 10/404 Final Verification/Permit Decision Rendered	2/1/2024	4/20/2026	9/2/2027

USACE	Section 408	Initial Application Completeness Determination	6/30/2023	4/15/2025	8/28/2026
		Complete Application Submitted	5/30/2023	2/3/2026	6/4/2027
		Issuance of Decision for Permit/Approval	11/13/2024	4/20/2026	9/2/2027
FWS	ESA	Request for ESA Consultation Received	5/29/2023	10/3/2024	7/24/2025
		Consultation Package Deemed Complete - Formal	6/28/2023	12/17/2024	10/7/2025
		Conclusion of ESA Consultation	8/11/2024	5/19/2025	3/5/2026
FWS	FWCA	Fish and Wildlife Coordination Act Review Concluded	5/31/2024	4/20/2026	9/2/2027
NOAA	ESA	Request for ESA Consultation Received	5/12/2021	7/19/2024	7/24/2025
		Consultation Package Deemed Complete - Formal	3/21/2023	8/20/2024	8/25/2025
		Conclusion of ESA Consultation	8/11/2023	6/19/2025	4/10/2026
NOAA	EFH	Lead Agency Requests EFH Consultation by Submitting an EFH Assessment	5/11/2021	7/19/2024	7/24/2025
		NOAA Determines the EFH Assessment is Complete and Initiates Consultation	3/21/2023	8/20/2024	8/25/2025
		NOAA Issues any EFH Conservation Recommendations	5/21/2023	12/13/2024	10/3/2025

USACE is requesting this permitting timetable modification as additional time is needed for the environmental review because early work produced by the third-party contractor aiding in completion of the environmental review did not meet USACE's standards for adequacy and accuracy. USACE is adding a work quality assurance and technical review process to rectify this issue and ensure that the EIS is adequate and consistent with the requirements of NEPA. Namely, the following has been added, with corresponding impacts on the schedule: (1) weekly meetings of USACE, the Project Sponsor, and the third-party contractor to better track work activities and provide an informal forum for the third-party contractor to discuss issues; (2) additional third-party contractor staff to fill the various roles and responsibilities that have been missing or vacant; and (3) hiring supplemental contractors to conduct quality assurance and technical review of the third-party contractor's work products.

Consultation with Project Sponsor on Extension Requests

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

IV. Discussion

The permitting timetable modifications included in this request involve several timeline interdependencies. The milestones for decisions being rendered under Section 106, Section 10/404, and Section 408 are all dependent on information included in the EIS and ROD, and therefore the schedules are aligned to coincide with the release of the ROD. Similarly, reviews required under ESA, FWCA, and EFH rely on information in the EIS, and therefore the timing for final decisions will be subsequent to the release of the ROD.

V. Determination

For the reasons identified above, USACE's extension request is **GRANTED**, and the permitting timetable is revised as requested.



Eric B. Beightel
Executive Director
Permitting Council