

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

April 4, 2025

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 completion dates on the Project's permitting timetable. This includes an extension for USACE's NEPA action and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. It also includes USACE's authorizations under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (together, Section 10/404), and Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (often referred to as "Section 408"). USACE requests to extend consultation under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531, with both the United States Department of the Interior, Fish and Wildlife Service (FWS) and the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS). USACE similarly requests an extension of essential fish habitat (EFH) consultation with NMFS pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801. Finally, USACE requests an extension of consultation with FWS under the Fish and Wildlife Conservation Act (FWCA), 16 U.S.C. §§ 661.

This is the fourth extension request for completion dates on the Project's permitting timetable.¹

¹ The previous Executive Director Determinations approving permitting timetable modifications 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
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2024-06/2024-06-14%20Mid-Breton%20Executive%20Director%20Determination.pdf>

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 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 (FR)	11/9/2022	5/9/2025	11/7/2025

USACE	EIS	Official Notice of Availability of a Final EIS published in the FR	12/14/2023	1/29/2027	8/13/2027
		Issuance of Record of Decision	2/1/2024	9/2/2027	3/28/2028
	Section 106	Section 106 Consultation Concluded	2/1/2024	9/2/2027	3/28/2028
	Section 10/404	Final Verification/Permit Decision Rendered	2/1/2024	9/2/2027	3/28/2028
	Section 408	Application Completeness Determination	6/30/2023	8/28/2026	2/19/2027
		Complete Application Submitted	5/30/2023	6/4/2027	12/1/2027
		Issuance of Decision for Permit/Approval	11/13/2024	9/2/2027	3/28/2028
FWS	ESA	Request for ESA Consultation Received	5/29/2023	7/24/2025	1/22/2026
		Consultation Package Deemed Complete - Formal	6/28/2023	10/7/2025	4/7/2026
		Conclusion of ESA Consultation	8/11/2024	3/5/2026	10/8/2026
	FWCA	Fish and Wildlife Coordination Act Review Concluded	5/31/2024	9/2/2027	3/28/2028
NOAA	ESA	Request for ESA Consultation Received	5/12/2021	7/24/2025	1/22/2026
		Consultation Package Deemed Complete - Formal	3/21/2023	8/25/2025	2/23/2026
		Conclusion of ESA Consultation	8/11/2023	4/10/2026	10/8/2026
	EFH	Lead Agency Requests EFH Consultation by Submitting an EFH Assessment	5/11/2021	7/24/2025	1/22/2026

NOAA	EFH	NOAA Determines the EFH Assessment is Complete and Initiates Consultation	3/21/2023	8/25/2025	2/23/2026
		NOAA Issues any EFH Conservation Recommendations	5/21/2023	10/3/2025	4/1/2026

USACE is requesting this permitting timetable extension because the Project Sponsor modified the construction area to avoid an archaeological site of concern to the Chitimacha Tribe of Louisiana and the Choctaw Nation of Oklahoma. The Project Sponsor agreed to move a portion of the basin-side vessel access alignment, which required the Project Sponsor to work with the underlying landowner to identify an acceptable alternative vessel access route. The Project Sponsor's coordination with the landowner and identification of an alternative vessel access route delayed USACE's progress on environmental review for the Project, necessitating an extension of the NEPA completion dates.

The completion dates for decisions federal agencies are rendering under Section 106, Section 10/404, and Section 408 are all dependent on information included in the EIS and Record of Decision for NEPA. Therefore, the final completion dates for those actions are aligned to coincide with the release of the Record of Decision. Similarly, federal agency 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. All other remaining actions on the permitting timetable are dependent on the timing of the NEPA action. Therefore, USACE is requesting a corresponding modification of all other actions.

The proposed NEPA schedule extends beyond the 2-year timeframe established by Section 107(g) of NEPA, as amended by the Fiscal Responsibility Act of 2023, Pub. L. No. 118-5 (June 3, 2023).² However, the Project Sponsor approves of this extension. This is a very complex project whose schedule has been a product of intense coordination among the Project Sponsor, USACE, and all cooperating federal agencies.

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 concurs with 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

² See 42 U.S.C. § 4335a(h).

requested permitting timetable modifications.

IV. Discussion

The FAST-41 statute expressly identifies the sensitivity of the natural or historic resources that may be affected by the Project as a relevant factor to consider when modifying the permitting timetable. Here, the federal agency and Project Sponsor's meaningful engagement with Tribes and responsiveness to the Tribes' concerns resulted in successful identification and protection of natural, archeological, and cultural resources in the Project area. It is reasonable that the Project Sponsor's design change, which was made to accommodate the Tribes' concerns, has delayed the federal agencies' review and authorization process. Given these circumstances, the requested completion date modifications are warranted.

V. Determination

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



Manisha Patel
Executive Director (Acting)
Federal Permitting Improvement Steering Council