



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

September 26, 2025

### Graphite Creek

#### I. Summary

The Graphite Creek Mining Project, sponsored by Graphite One Inc., 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 U.S. Army Corps of Engineers (USACE), has principal responsibility for 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 the intermediate and final milestones for USACE’s essential fish habitat (EFH) consultation with the National Marine Fisheries Service (NMFS), pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801. NMFS is an office of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. This is USACE’s first request to extend completion dates on the Project’s permitting timetable.

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 modify the completion dates shown in the table immediately below. The initiation date for EFH consultation with NMFS would be moved from October 31, 2025 to March 4, 2026, and all subsequent EFH milestones would be shifted accordingly. The completion date for EFH consultation would be moved from March 20, 2026 to August 16, 2026. The movement of these milestone dates would not affect deadlines for other agency actions and would not extend the overall project review time for the Environmental Assessment.

Action Agency	Milestone	Current Date	Requested Date
NOAA (NMFS)	EFH Consultation Request Submitted (Agency Action)	October 31, 2025	March 4, 2026
	NOAA requests additional information (Agency Action)	November 14, 2025	April 1, 2026
	Lead Agency Responds to Additional Information Request (Agency Action)	November 28, 2025	May 4, 2026
	NOAA Determines EFH Assessment is Complete (Agency Action)	December 19, 2025	June 3, 2026
	NOAA Issues Any EFH Conservation Recommendations (Agency Action)	March 20, 2026	August 16, 2026

USACE is requesting these date modifications for two reasons. First, the Project Sponsor has not initiated work on an EFH assessment. After consulting with the Project Sponsor, it was determined that additional time will be needed to adequately prepare an EFH assessment for the scope of the project. The second reason is to align the EFH milestone dates with the Endangered Species Act (ESA) consultation milestone dates. Based on USACE experience, the EFH and ESA analyses often evaluate similar biological, chemical, and physical factors so aligning the consultations in this case is expected to result in a more efficient process. The newly proposed



EFH milestone dates will provide sufficient time for the Project Sponsor to prepare the EFH assessment in time for the ESA consultation which is scheduled to be initiated by March 4, 2026. The Project Sponsor plans to start the process of preparing a draft EFH assessment and will work with USACE in the coming weeks to finalize the assessment. As mentioned above, the proposed changes would not affect the overall project completion date.

#### Consultation with Project Sponsor on Extension Requests

USACE consulted with NMFS about moving the milestone dates for EFH consultation, and NMFS agreed with USACE regarding the need to move the EFH dates. USACE consulted with all other cooperating agencies and no cooperating agencies objected to or had concerns about moving the EFH consultation milestones.

Prior to submitting an 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 accepts the proposed permitting timetable extension, provided these changes did not increase the overall review time for the project. USACE confirmed with the Project Sponsor that moving the EFH milestones dates will not increase the overall review time for the project.

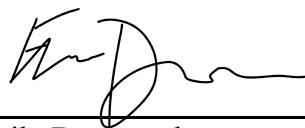
The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and similarly found that the Project Sponsor does not object to the requested permitting timetable modification, as long as these changes did not increase the overall review time for the project.

#### **IV. Discussion**

The primary driver of the timetable modification for this Project is to provide the Project Sponsor additional time to conduct the EFH assessment. All proposed date shifts were mutually agreed upon by all impacted agencies and the Project Sponsor after coordination. Given these circumstances, extending the completion dates addressed in this Executive Director Determination is warranted.

#### **V. Determination**

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



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Emily Domenech  
Executive Director  
Federal Permitting Improvement Steering Council

