



PERMITTING COUNCIL

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

May 12, 2023

Kitty Hawk Wind North Project—NEPA (BOEM), COP (BOEM), Section 106 (BOEM), Section 10/404/408 (USACE), OCS Air Permit (EPA)

I. Summary

The Kitty Hawk Wind North Project (Project), sponsored by Avangrid Renewables, LLC (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 April 11, 2023, 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. BOEM also 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. Finally, BOEM requests an extension of all authorizations from the United States Army Corps of Engineers (USACE), Wilmington and Norfolk Districts. This includes authorizations under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 (often 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).¹

¹ This Executive Director Determination does not address modifications for four additional actions referenced in BOEM’s 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 four 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 the following: consultation with the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA) under the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*; consultation with NOAA on essential fish habitat (EFH) pursuant to Section 305 of the Magnuson-

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)(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).

Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*; incidental take authorization (ITA) from NOAA under the Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*; and consultation with the United States Department of the Interior, Fish and Wildlife Service (FWS) under the ESA. 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 actions.

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III. Background

BOEM submitted a request to change the interim and final completion dates shown in the table immediately below. BOEM’s justification for the extension requests for each action 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	6/23/2023	1/17/2025
BOEM	EIS	Issuance of Lead Agency Record of Decision (ROD)	8/23/2023	3/3/2025
BOEM	COP	Issuance of decision for permit/approval	11/1/2023	6/1/2025
BOEM	Section 106	Section 106 Consultation Concluded	8/03/2023	3/3/2025
EPA	OCS Air Permit	Issuance of final decision/permit approval	12/16/2024	1/2/2026
USACE - Wilmington District	Section 10	Section 10 Pre-construction Notification (PCN)/Form ENG 4345/Joint Application Form Received	9/1/2022	3/27/2024
USACE - Wilmington District	Section 10	Section 10 Complete Pre-Construction Notification (PCN)/Application Received	9/15/2022	4/11/2024
USACE- Wilmington District	Section 10	Section 10 Publication of Public Notice	9/30/2022	4/26/2024

USACE- Wilmington District	Section 10	Section 10 Final Verification/Permit Decision Rendered	11/1/2023	7/1/2025
USACE - Norfolk District	Section 10/404	Section 10/404 Complete Pre-Construction Notification (PCN)/Application Received	9/1/2022	3/27/2024
USACE - Norfolk District	Section 10/404	Section 10/404 Complete Pre-Construction Notification (PCN)/Application Received	9/15/2022	4/11/2024
USACE - Norfolk District	Section 10/404	Section 10/404 Publication of Public Notice	9/30/2022	4/26/2024
USACE - Norfolk District	Section 10/404	Section 10/404 Final Verification/Permit Decision Rendered	11/1/2023	7/1/2025
USACE - Norfolk District	Section 408	Section 408 Initial application submitted	9/1/2022	3/27/2024
USACE - Norfolk District	Section 408	Section 408 Completeness Determination	9/15/2022	4/26/2024
USACE - Norfolk District	Section 408	Section 408 Complete application submitted	9/30/2022	6/25/2024
USACE - Norfolk District	Section 408	Section 408 Issuance of Decision	11/1/2023	7/1/2025

NEPA (action agency: BOEM)

The NEPA schedule is delayed primarily due to Project Sponsor delays in providing information necessary for BOEM’s development of the draft EIS and the ESA consultation package and a delay in the Project Sponsor’s submittal of its initial Marine Mammal Protection Act (MMPA) permit application to NMFS.² For a variety of reasons, some not within the Project Sponsor’s control, it took the Project Sponsor approximately 1.5 years longer than originally anticipated to provide the requested level of acoustic and exposure modeling data for the Federal agencies’ utilization in the NEPA, ESA, and MMPA processes.

COP and Section 106 (action agency: BOEM)

The COP final completion date and Section 106 completion dates are dependent upon the final completion date of BOEM’s NEPA action. BOEM requests that the COP final completion date be extended 90 days beyond the final completion date for a ROD. 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.

OCS Air Permit (action agency: EPA)

The Project Sponsor requested that EPA wait until early 2026 to complete the OCS air quality permit process to accommodate the Project Sponsor’s anticipated construction schedule, which is planned to commence more than a year after the ROD is issued.³ EPA has no objection to the Project Sponsor’s proposed timing, and based on the coordination and mutual agreement between the Project Sponsor and EPA, BOEM requests that the final completion date for the OCS air permit action be shifted to January 2, 2026.

Section 10/404/408 (action agency: USACE, Norfolk and Wilmington Districts)

The Section 10/404/408 final completion dates are dependent upon the final completion date of BOEM’s NEPA action. USACE requests a review of 120 days between issuance of the ROD and issuance of USACE’s Section 10/404/408 decisions.

As noted above, the Project Sponsor anticipates commencing construction more than a year after the ROD is issued, and the OCS air permit decision is planned for early 2026. Given

² Delays in the consultation and MMPA processes are relevant to the NEPA schedule because BOEM includes information from those processes in the NEPA documents. The Project Sponsor and NMFS have been discussing modeling inputs and the information required to be submitted for in the MMPA application since at least May 2022, and the Project Sponsor currently anticipates submitting an initial application on June 16, 2023.

³ The Project Sponsor’s construction schedule has shifted due to delays in getting interconnection agreements in place.

these circumstances, a 120-day period between issuance of the ROD and USACE's Section 10/404/408 decisions will not affect the Project Sponsor's construction schedule.

Consultation with Project Sponsor on Extension Requests

Prior to submitting its extension request to the Executive Director, 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 the Executive Director has confirmed the Project Sponsor does not object to the requested permitting timetable modifications.

IV. Discussion

While the overall shift to the environmental review and Federal authorization schedule is significant, it will not impact the Project Sponsor's intended construction start date. Moreover, there has been significant coordination among the interested parties, and all proposed date shifts are mutually agreed upon.

V. Determination

Given the facts as described above, extending all the completion dates addressed in this Executive Director Determination are warranted. BOEM's extension request is **GRANTED** for the NEPA, COP, Section 106, Section 10/404/408, and OCS air permit actions, and the permitting timetable shall be revised accordingly.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council