



PERMITTING COUNCIL

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

May 17, 2023

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 *et seq.* The United States Army Corps of Engineers (USACE), 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 USACE the lead agency for both NEPA and FAST-41. On April 2, 2023, USACE submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend all remaining interim and final completion dates on the Project’s permitting timetable. USACE requested this extension because the Project Sponsor changed the design of its preferred alternative from a 75,000 cubic feet per second (cfs) diversion channel to a 50,000 cfs diversion channel.

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

- (v) 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	Requested Date
USACE	EIS	Official Notice of Availability of a Draft Environmental Impact Statement (EIS) published in the Federal Register	8/7/2023	7/19/2024
USACE	EIS	Official Notice of Availability of a Final EIS published in the Federal Register	9/27/2024	9/26/2025
USACE	EIS	Issuance of Record of Decision (ROD)	11/13/2024	4/20/2026
USACE	Section 106	Section 106 Consultation Concluded	8/28/2024	4/20/2026
USACE	Section 10/404	Section 10/404 Final Verification/Permit Decision Rendered	11/13/2024	4/20/2026
USACE	Section 408	Application Completeness Determination	6/30/2023	4/15/2025
USACE	Section 408	Complete Application Submitted	5/30/2023	2/3/2026

USACE	Section 408	Issuance of Decision for Permit/Approval	11/13/2024	4/20/2026
FWS	ESA	Request for ESA Consultation Received	11/9/2023	10/3/2024
FWS	ESA	Consultation Package Deemed Complete - Formal	12/9/2023	12/17/2024
FWS	ESA	Conclusion of ESA Consultation	5/28/2024	5/19/2025
FWS	FWCA	Fish and Wildlife Coordination Act Review Concluded	11/13/2024	4/20/2026
NOAA	ESA	Request for ESA Consultation Received	6/26/2023	7/19/2024
NOAA	ESA	Consultation Package Deemed Complete - Formal	7/24/2023	8/20/2024
NOAA	ESA	Conclusion of ESA Consultation	5/28/2024	6/19/2025
NOAA	EFH	Lead Agency Requests EFH Consultation by Submitting an EFH Assessment	6/26/2023	7/19/2024
NOAA	EFH	NOAA Determines the EFH Assessment is Complete and Initiates Consultation	7/24/2023	8/20/2024
NOAA	EFH	NOAA Issues any EFH Conservation Recommendations	11/16/2023	12/13/2024

USACE requested this extension because the Project Sponsor changed the Project design from a 75,000 cfs diversion to a 50,000 cfs diversion. Due to the design change, the Project Sponsor must complete additional modeling and technical analysis for USACE and the cooperating agencies to evaluate and consider in the EIS and other Federal actions.

All remaining interim and final completion dates on the permitting timetable are impacted by the Project design change, with most completion dates being extended by approximately 12 months. USACE has requested additional time between the publication of the Notice of Availability of the Final EIS and the issuance of the Record of Decision (ROD), based on lessons learned from the preparation and finalization of the Draft EIS and Final EIS and the processing of USACE authorizations by the same Project Sponsor for the Mid-Barataria

Sediment Diversion. The proposed revisions to Final EIS and ROD dates provide sufficient time to allow for USACE's 30-day public review of the Final EIS and consideration of all public comments, as well as the production of the USACE decision documents, and the execution of the ROD at USACE district and division levels.

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 Project design change underlying USACE's request to extend the Project's permitting timetable is outside the control of any Federal agency. Indeed, the Project Sponsor acknowledged that the design change, which is a fairly significant change to the capacity of the diversion channel, requires the Project Sponsor to redo the modeling and analysis required for all Federal environmental reviews and authorizations. USACE, the cooperating agencies, and the Project Sponsor extensively coordinated on the Project schedule, and the Executive Director appreciates the cooperation among the parties.

V. Determination

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



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council