



## PERMITTING COUNCIL

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

August 2, 2023

#### Ocean Wind 1 Project—MMPA (NMFS)

##### I. Summary

The Ocean Wind 1 Project (Project), sponsored by Ocean Wind 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.

Pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), on July 25, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) for a permitting timetable modification. BOEM is requesting an 8-day extension for the incidental take authorization (ITA) under the Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361 *et seq.*, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), to allow for NMFS attorney review of the ITA documentation and decision.

Since September 2022, the Executive Director has granted BOEM authority to extend various actions on the Project’s permitting timetable five times,<sup>1</sup> including an April 21, 2023,

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<sup>1</sup> The previous five Executive Director Determinations for the Project are available here:

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-09/2022-09-23%20final%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20Signed.pdf>  
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-11/2022-11-18%20FINAL%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20signed.pdf>  
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-12/2022-12-16%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20FWS%20ESA%202nd%20request%20%281%29.pdf>  
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-01/2023-1-31%20final%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106%20signed%20%282%29.pdf>  
<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-04/2023-04-21Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106-FINAL.pdf>

authorization to extend the same MMPA completion dates that are the subject of this request.<sup>2</sup> In that instance, BOEM and NMFS extended the MMPA final completion date by 71 days. BOEM now requests an additional 8-day extension. The current request, if approved, will extend the final MMPA completion date by a total of 79 days beyond the original final completion date.<sup>3</sup>

For the following reasons, BOEM’s extension request is **GRANTED**.

## 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). 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

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<sup>2</sup> See Executive Director Determination dated April 21, 2023, available at: <https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-04/2023-04-21Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106-FINAL.pdf>

<sup>3</sup> See 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) (requiring the lead agency to submit requests to the Executive Director for any modification that “would necessitate an extension of a final completion date . . . to a date more than 30 days after the final completion date *originally established*.” (emphasis added)).

BOEM seeks to modify the interim and final MMPA completion dates shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Currently Posted Date	Requested Date
NMFS	MMPA	Publish Final ITA Regulations in Federal Register	6/27/2023	9/5/2023	9/13/2023
NMFS	MMPA	ITA Decision Rendered	7/27/2023	10/5/2023	10/13/2023

NMFS' MMPA actions are dependent upon the timing of BOEM's issuance of a Record of Decision (ROD) to conclude the NEPA review. NMFS has indicated that publishing final ITA regulations should occur no sooner than 60 days after ROD issuance and the final ITA decision should follow 30 days thereafter. Based on BOEM extending the ROD completion date to July 7, 2023,<sup>4</sup> BOEM and NMFS previously requested and were granted authority to extend the completion dates for publishing final ITA regulations and rendering the final ITA decision to September 5, 2023, and October 5, 2023, respectively.

NMFS has been working toward a September 5 completion date for publication of the final ITA regulations. However, NMFS recently determined that its internal review process is going to take longer than usual due to the complexity of the final rule. Thus, NMFS is requesting this 8-day extension to both remaining MMPA completion dates to accommodate time for internal legal review.

#### Consultation on Modifications

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 extensions.

The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The Project Sponsor confirmed it does not object to the

<sup>4</sup> See Executive Director Determination dated January 31, 2023, granting an extension of completion dates for the Construction and Operations Plan, NEPA, and Section 106 actions, available at <https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-01/2023-1-31%20final%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106%20signed%20%282%29.pdf>

requested permitting timetable modifications and indicated it can absorb the 8-day extension for the MMPA action without undue disruption to the Project construction schedule.

#### **IV. Discussion**

The Executive Director authorized an extension of the MMPA completion dates three months ago, in April 2023. At that time, BOEM and NMFS represented that they had fully coordinated the new completion dates. The Executive Director recommends that agencies, when considering completion date extensions, thoroughly determine the amount of time required to successfully complete each step of their internal process, including all levels of internal review, and actively manage those dates once modified. Agencies should exercise project management controls—particularly after seeking and obtaining approval for requested permitting timetable extensions—to ensure that the modified completion dates will not need to be further modified.

However, the Executive Director finds it significant that extending the interim and final completion dates for the MMPA action will not impact either the overall project timetable or the construction schedule for the Project, and that the Project Sponsor does not object to the extensions. Accordingly, the requested extensions are acceptable.

#### **V. Determination**

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



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Eric Beightel  
Executive Director  
Federal Permitting Improvement Steering Council