



## PERMITTING COUNCIL

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

September 6, 2023

#### Empire Wind Energy Project — OCS Air Permit

##### I. Summary

The Empire Wind Energy Project (Project), sponsored by Equinor Wind US, 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 July 18, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend 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.

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).

### III. Background

BOEM submitted a request to change the final completion date for EPA’s OCS air permit decision from January 22, 2024, to April 22, 2024. The requested date accounts for a one-year statutory deadline that the Clean Air Act gives EPA to reach an OCS air permitting decision following EPA’s determination that a project sponsor has submitted a complete application.

EPA deemed the Project Sponsor’s OCS air permit application complete on April 21, 2023, after spending about eight months engaging with the Project Sponsor on deficiencies EPA found in the Project Sponsor’s initial application submission. The Project Sponsor submitted revised applications four times between its initial submission in August 2022 and the submission EPA deemed complete in April 2023. The deficiencies EPA identified in the Project Sponsor’s submissions included, among other things, omission of air quality impact analyses of the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration (PSD) Class I and Class II increments, Class I air quality related values analysis, ambient air monitoring requirements, and additional impact analyses such as visibility, soils and vegetation, and growth.

EPA has indicated that, based on the proximity of this Project to a Class 1 Wilderness Area as defined by the Clean Air Act and the expected construction emissions from the Project, the PSD regulations require more extensive modeling than has been conducted for some of the other offshore wind projects that either have undergone or are currently undergoing Federal review.<sup>1</sup> EPA coordinated extensively with the Project Sponsor to ensure the application

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<sup>1</sup> The location of this Project is relatively near the Ocean Wind I Project, and there are similarities in the OCS air permitting process for the two projects. See Executive Director Determination for the Ocean Wind I Project, dated April 21, 2023, available at: <https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-04/2023-04-21Ocean%20Wind%20I%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106-FINAL.pdf>

contained a sound air quality analysis that met EPA's requirements.

Consultation with Project Sponsor on Extension Requests

Prior to submitting an 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 consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and the Executive Director confirmed the Project Sponsor does not object to the requested permitting timetable modification.

**IV. Discussion**

As noted in previous Executive Director Determinations, as OCS air permitting of offshore wind projects is relatively new, EPA and the offshore wind industry are working together to identify appropriate methodologies and modeling tools to provide data EPA finds sufficient to meet its statutory requirements. The Executive Director encourages EPA to continue to explore opportunities for efficiencies in the period between initial application submittal and the application being deemed complete and the period between the application being deemed complete and a final decision being made.

**V. Determination**

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