



PERMITTING COUNCIL

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

November 29, 2023

Atlantic Shores South Project — Section 106

I. SUMMARY

The Atlantic Shores South Project (Project), sponsored by Atlantic Shores Offshore 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. The Department of the Interior, Bureau of Ocean Energy Management (BOEM), has principal responsibility for environmental review for the Project under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, which makes BOEM the lead agency for both NEPA and FAST-41.

On November 6, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend the final completion date for consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. This is BOEM's third request to extend various completion dates, including the Section 106 final completion date, on the Project's permitting timetable.¹

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;

¹ The previous two Executive Director Determinations for the Project are available here:
https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-15%20Atlantic%20Shores%20South%20ED%20Determination_Final%20signed.pdf
https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-10/2023-10-19%20Atlantic%20Shores%20South%20ED%20Determination_Final%20%28signed%29.pdf

- (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

On November 6, 2023, BOEM submitted a request to change the final completion date for Section 106 consultation from January 10, 2024 to March 25, 2024. BOEM is requesting this modification due to the timing of Project Sponsor submissions in response to BOEM's information requests. Specifically, BOEM sent the Project Sponsor information requests on July 27, 2023, and August 1, 2023, and discussed the information needs during subsequent weekly calls with the Project Sponsor. The requested information is aimed at showing the progress BOEM and the Project Sponsor have made on the development of the Section 106 Memorandum of Agreement (MOA) and mitigation measures based on consulting party and public feedback since publication of the draft environmental impact statement. BOEM sought to have the information in hand prior to hosting a third Section 106 consulting parties meeting to further development of the MOA and mitigation measures. BOEM communicated to the Project Sponsor that if the information was not submitted by the requested deadline, the agency likely would not be able to meet the posted schedule. As of the date of this determination, the information has not yet been fully submitted.

Although the Project Sponsor has not yet provided all the requested information, BOEM and the Project Sponsor have worked cooperatively to identify a path forward to continue with consultation. This path forward entails BOEM extending the Section 106 final completion date to align with BOEM's issuance of a Record of Decision (ROD) under NEPA.

This is the second time that BOEM has requested an extension for the conclusion of Section 106 consultation based on the timing of submissions from the Project Sponsor. BOEM previously moved the Section 106 final completion date from September 26, 2023 to January

10, 2024.² This previous schedule change was necessary due to delay in receipt of sufficient assessments from the Project Sponsor that were necessary to initiate Section 106 consultation.

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).

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

The FAST-41 statute expressly identifies the sensitivity of the natural or historic resources that may be affected by the Project as a relevant factor to consider when modifying the permitting timetable. The Executive Director appreciates BOEM's comprehensive coordination with the Project Sponsor and consulting parties on the Section 106 process and finds it significant that extending the completion date for the Section 106 consultation will not extend the overall Project permitting timetable. Given these circumstances, extending the final completion date for the Section 106 consultation is warranted.

V. DETERMINATION

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



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council

²https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-15%20Atlantic%20Shores%20South%20ED%20Determination_Final%20signed.pdf