



## PERMITTING COUNCIL

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

**February 1, 2024**

#### **Sunrise Wind Farm — COP; NPS Permit; Section 10/404; Section 408; OCS Air Permit; NPDES permit**

#### **I. Summary**

The Sunrise Wind Farm Project (Project), sponsored by Orsted North America, Inc. and Eversource Investment, LLC on behalf of Sunrise 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 of the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, which makes BOEM the lead agency for both NEPA and FAST-41.

On January 19, 2024, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend final completion dates for multiple Federal actions on the Project's permitting timetable. BOEM's request includes an extension for its Construction and Operations Plan (COP) decision and for a permit from the Department of the Interior, National Park Service (NPS permit). BOEM also requests an extension of the final completion date for all authorizations from the United States Army Corps of Engineers (USACE). 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") (together, Sections 10/404); and Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (often referred to as "Section 408"). Finally, BOEM requests extensions of two actions by the Environmental Protection Agency (EPA), including an Outer Continental Shelf (OCS) air permit decision under Section 328 of the Clean Air Act, 42 U.S.C. § 7627, and a National Pollutant Discharge Elimination System (NPDES) permit decision under Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

This is the third Executive Director Determination on a request to extend completion dates on the Project's permitting timetable.<sup>1</sup>

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<sup>1</sup> The first Executive Director Determination for the Project, signed November 16, 2021, extended the Construction and Operations Plan completion date because the original completion date was entered in error. *See* <https://www.permits.performance.gov/fpisc-content/executive-director-determination-re-extending-date-sunrise-wind-f>

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 dates shown in the table immediately below.

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[arm](https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-06%20Sunrise%20Wind%20ED%20Determination_FINAL%20signed.pdf). The second Executive Director Determination for the Project, signed June 6, 2023, extended the majority of the completion dates on the Project permitting timetable. *See* [https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-06%20Sunrise%20Wind%20ED%20Determination\\_FINAL%20signed.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-06%20Sunrise%20Wind%20ED%20Determination_FINAL%20signed.pdf)

Action Agency	Action	Milestone	Original Date	Currently Posted Date	Requested Date
BOEM	COP	Issuance of decision for permit/approval	8/20/2023	3/4/2024	6/21/2024
NPS	NPS permit	Final decision/agency action	10/21/2023	3/4/2024	5/22/2024
USACE	Section 10/404	Section 10/404 Final Verification/Permit Decision Rendered	11/20/2023	3/4/2024	6/21/2024
USACE	Section 408	Issuance of Decision	11/15/2023	3/4/2024	6/21/2024
EPA	OCS air permit	Issuance of Final Decision for Permit/Approval	11/19/2023	3/21/2024	5/22/2024
EPA	NPDES permit	EPA authorizes discharge under Individual permit	9/29/2023	3/4/2024	6/21/2024

The completion dates for the COP, NPS Permit, Section 10/404, Section 408, OCS air permit, and NPDES permit are dependent on the timing of issuance of the NEPA Record of Decision (ROD). Although the NEPA action is not part of this Executive Director Determination, BOEM has established alternative completion dates that extend the issuance of the ROD from February 29, 2024, to March 22, 2024.<sup>2</sup> The shift in the NEPA schedule, in turn, is due to modification of the schedule for consultation under Section 106 of the National Historic Preservation Act, as detailed below.

On June 26, 2023, the Project Sponsor provided BOEM with a notice of its intent to commence construction related to onshore activities. The notice indicated that the Project Sponsor

<sup>2</sup> BOEM neither timely modified nor met the posted completion dates for the NEPA action, and therefore BOEM has established an alternative completion date and is adhering to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F).

intended to commence construction around July 10, 2023, of Phase 1A onshore activities, including an onshore converter station and laydown yards, and commence construction around September 2023 of Phase 1B onshore activities, including installation of splice vaults and duct banks and the expansion of an existing substation.

While BOEM does not have authority over the onshore activities, BOEM has a responsibility to analyze impacts from all the proposed onshore activities included within the scope of a project as connected actions under NEPA and Section 106. The Project Sponsor's COP submission, however, did not include adequate detail regarding the onshore activities required for BOEM's analysis. Accordingly, in an August 8, 2023, letter, BOEM informed the Project Sponsor of the risks associated with initiating onshore construction prior to the NEPA and Section 106 analyses of the onshore Phase 1A and 1B activities and asked the Project Sponsor to provide an updated COP that included more details about those activities to enable BOEM to undertake the analyses. The project sponsor responded with the requested information within the requested time frame.

In addition to BOEM's communication to the Project Sponsor, BOEM also notified Tribal nations, cooperating agencies, Section 106 consulting parties, and the Project Sponsor that BOEM did not have authority over these activities, and that the Project Sponsor could choose to move forward with onshore construction activities despite the risks and the need for an updated COP.

The Project Sponsor proceeded with the onshore construction activities but also, on September 29, 2023, submitted an updated COP to BOEM.

Because BOEM needed information from the updated COP to hold Section 106 consulting party meetings and revise Section 106 documents, BOEM has extended the final completion date for Section 106 from December 4, 2023, to March 21, 2024, to accommodate the schedule delays.<sup>3</sup> The need to extend the Section 106 consultation schedule stems from complication in BOEM's review of the potential effects as a result of the Project Sponsor's commencement of onshore construction prior to completion of NEPA and Section 106 analyses on those activities. The length of the extension takes into account the following:

- Ongoing consultation regarding requested changes to the Section 106 Memorandum of Agreement that BOEM is developing;
- The need for additional consultation meetings, including one to review any changes to the Memorandum of Agreement resulting from recent consultations;
- The Project Sponsor is consulting with municipalities, including the Town of New Shoreham and the City of Newport, on further mitigation measures;
- The Project Sponsor may be meeting with federally recognized Tribes; and

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<sup>3</sup> Like the NEPA action, BOEM neither timely modified nor met the posted completion dates for the Section 106 action, and therefore BOEM has established an alternative completion date and is adhering to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F).

- Both the Advisory Council on Historic Preservation and State Historic Preservation Officers are actively engaged in the consultation process.

BOEM is meeting its Section 106 consultation obligations through the Section 106 NEPA substitution process, as provided in 36 C.F.R. § 800.8(c), and the Section 106 consultation must conclude prior to or simultaneously with issuance of the NEPA ROD. Accordingly, the extension of the Section 106 consultation process requires a proportional extension of the NEPA process.

The completion dates for the COP, NPS permit, Section 10/404, Section 408, OCS air permit, and NPDES permit all are dependent on the final completion date of the NEPA action. Specifically, BOEM is requesting an extension of 91 days beyond issuance of the ROD for its COP decision, EPA's NPDES permit decision, and USACE's Section 10/404 and Section 408 decisions. BOEM is requesting an extension of 61 days beyond issuance of the ROD for the NPS permit decision and EPA's OCS air permit decision.

#### 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 accepts 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**

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. Here, BOEM has represented that more time is needed to adequately address the potential impacts of the Project on historic resources, including within the area affected by onshore construction activities, as the Project Sponsor did not include information on those locations in its original submissions to BOEM. The Executive Director appreciates BOEM's comprehensive coordination with consulting parties and the Project Sponsor on the Section 106 process. Given these circumstances, extending the permitting timetable is warranted.

**V. Determination**

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



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Eric B. Beightel  
Executive Director  
Federal Permitting Improvement Steering Council