



PERMITTING COUNCIL

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

March 25, 2024

Kitty Hawk Wind North Project

I. Summary

The Kitty Hawk Wind North Project (Project), sponsored by Avangrid Renewables, 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 an environmental review for 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.

BOEM submitted a request to the Permitting Council Executive Director (Executive Director) to extend completion dates for multiple Federal actions on the Project's permitting timetable.¹ Specifically, BOEM is requesting modifications for the following actions:

- BOEM's environmental review under NEPA;
- BOEM's Construction and Operations Plan (COP) decision;
- BOEM's consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108;
- A United States Army Corps of Engineers' (USACE), Norfolk District permit decision under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (together, Section 10/404);
- A USACE, Norfolk District permit decision under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (Section 408);
- A USACE, Wilmington District permit decision under Section 10; and

¹ Several other Federal actions on the permitting timetable have alternative completion dates, per 42 U.S.C. § 4370m-2(c)(2)(F), and therefore are not included in BOEM's request. This applies to BOEM's consultation under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 with both the United States Department of the Interior, Fish and Wildlife Service (FWS) and the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS). It also applies to BOEM's essential fish habitat (EFH) consultation with NMFS pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801, and the Project Sponsor's incidental take authorization from NMFS under the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361.

- 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.

This is BOEM’s second request to extend completion dates on the Project’s permitting timetable.² 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 modify the completion dates shown in the table immediately below.

² The previous Executive Director Determination for the Project is available here: <https://www.permits.performance.gov/fpisc-content/kitty-hawk-wind-north-project-nepa-boem-cop-boem-section-106-boem-section-10404408>.

Action Agency	Action	Milestone	Original Date	Current Date	Requested Date
BOEM	NEPA	Official Notice of Availability of a Draft Environmental Impact Statement (EIS) published in the Federal Register	9/30/2022	4/26/2024	7/11/2025
		Official Notice of Availability of a Final EIS published in the Federal Register	6/23/2023	1/17/2025	4/3/2026
		Issuance of Lead Agency Record of Decision (ROD)	8/3/2023	3/3/2025	5/18/2026
	COP	Issuance of decision for permit/approval	11/1/2023	6/2/2025	8/17/2026
	Section 106	Section 106 Consultation Concluded	8/3/2023	3/3/2025	5/18/2026
USACE - Norfolk District	Section 10/404	Section 10/404 Pre-Construction Notification (PCN)/Form ENG 4345/Joint Application Form Received	9/1/2022	3/27/2024	6/11/2025
		Section 10/404 Complete Pre-Construction Notification (PCN)/Application Received	9/15/2022	4/11/2024	6/26/2025
		Section 10/404 Publication of Public Notice	9/30/2022	4/26/2024	7/11/2025
		Section 10/404 Final Verification/Permit Decision Rendered	11/1/2023	7/1/2025	9/15/2026

	Section 408	Section 408 Initial application submitted	9/1/2022	3/27/2024	6/11/2025
		Section 408 Completeness Determination	9/15/2022	4/26/2024	7/11/2025
		Section 408 Complete application submitted	9/30/2022	6/25/2024	9/9/2025
		Section 408 Issuance of Decision	11/1/2023	7/1/2025	9/15/2026
USACE - Wilmington District	Section 10	Section 10 Pre-construction Notification (PCN)/Form ENG 4345/Joint Application Form Received	9/1/2022	3/27/2024	6/11/2025
		Section 10 Complete Pre-Construction Notification (PCN)/Application Received	9/15/2022	4/11/2024	6/26/2025
		Section 10 Publication of Public Notice	9/30/2022	4/26/2024	7/11/2025
		Section 10 Final Verification/Permit Decision Rendered	11/1/2023	7/1/2025	9/15/2026
EPA	OCS air permit	Notice of Intent to apply for air permit submitted	4/7/2023	9/29/2023	5/15/2024
		OCS air permit application submitted	4/8/2023	5/30/2024	11/11/2025
		OCS air permit application complete	5/22/2023	11/30/2024	8/11/2026
		Issuance of final decision for permit/approval	12/16/2024	1/2/2026	8/11/2027

The overall shift in completion dates on the permitting timetable is due to the timing of NMFS' review of incidental take authorization (ITA) under the Marine Mammal Protection Act (MMPA). The MMPA process is taking longer than originally anticipated because the Project Sponsor is updating its Project Design Envelope (PDE), in response to agency concerns regarding the size of the exclusion zone around each foundation, and correspondingly updating the acoustic modeling/animal movement (animat) modeling information related to its ITA application. The Project Sponsor has estimated it will take approximately 14 months to update the modeling information.

The schedule shift for the MMPA process impacts the initiation of BOEM's ESA consultation with NMFS because BOEM uses the information in the Project Sponsor's complete MMPA application to prepare and submit the ESA biological assessment to NMFS. The NEPA process is dependent on the timing of the ESA consultation because the draft and final environmental impact statements typically incorporate measures resulting from that consultation.

The completion dates for the COP, Section 106, USACE Norfolk District's Section 10/404 and Section 408 permit decisions, USACE Wilmington District's Section 10 permit decision, and EPA's OCS air permit are all dependent on the final completion date for the NEPA action.

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) and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

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

While the overall shift to the environmental review and Federal authorization schedule is significant, it will not impact the Project Sponsor's intended construction start date, which is in 2029.

V. Determination

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



Eric B. Beightel
Executive Director, Permitting Council