



PERMITTING COUNCIL

Transparency • Efficiency • Accountability

Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

May 18, 2022

Revolution Wind Farm; Environmental Impact Statement (EIS) and Dependencies

I. Summary

The Revolution Wind Farm Project (Project), sponsored by Revolution 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.* On March 16, 2022, the Department of the Interior, Bureau of Ocean Energy Management (BOEM), the lead agency for the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for the BOEM action “Environmental Impact Statement (EIS): Issuance of Record of Decision or combined Final EIS / Record of Decision” from May 1, 2023, to July 7, 2023. BOEM also requests to extend the final completion date for other, dependent Federal agency action milestones, including: (i) “Construction and Operations Plan: Issuance of decision for permit / approval” from July 31, 2023, to October 6, 2023; and (ii) “Section 106 Consultation: Section 106 consultation concluded” from May 1, 2023, to July 7, 2023. BOEM requests these extensions for several reasons, including: (i) the project sponsor’s late delivery of multiple Construction and Operations Plan (COP) appendices, BOEM’s determination to include and analyze additional alternatives in response to scoping comments; (ii) the NEPA process taking longer than originally anticipated due to late-added alternatives; and (iii) the need for more time for the Section 106 consultation process to conclude. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable has been 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 under a FAST-41 covered project permitting timetable to a date more than 30 days after the final completion date originally established in the permitting timetable only if it consults with the project sponsor and requests and obtains Executive Director approval. After receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a determination on the record that approves or denies the request 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)(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. § 370m-2(c)(2)(D)(iv)(I).

III. Background

BOEM has indicated that there are four reasons the agency is requesting an extension of the completion dates on the Project's permitting timetable.

First, the project sponsor was late in submitting several COP appendices. On April 26, 2021, BOEM decided to utilize the NEPA substitution process to fulfill the agency's National Historic Preservation Act (NHPA) section 106 obligations for offshore wind project COPs, pursuant to 36 C.F.R. § 800.8. In BOEM's view, the NEPA substitution process increases efficiency by allowing for earlier and more direct input from consulting parties with respect to the presence of and impact to historic properties and values, and by allowing the agency to use this information to better inform alternative development and selection and the identification of potential mitigation measures. BOEM also uses the substitution process to help integrate stakeholder comments on NHPA-related issues and the agency's responses to those comments into the NEPA document, and to help facilitate government-to-government consultation with affected Tribes.

According to BOEM, the agency informed the project sponsor of the specific additional information that needed to be included in the COP appendices several times between May and October 2021. In December 2021, the project sponsor supplied the requested information as part of its revised COP submission. However, the project sponsor asserts that, between May and October 2021, BOEM made several distinct and evolving requests for information, and the project sponsor worked closely with BOEM during that time to clarify what information BOEM was seeking and how the information could be provided. In any event, the interactions between BOEM and the project sponsor with respect to additional information continued through December 2021, with the result that multiple COP appendices were deemed sufficient/complete 1-6 months after originally anticipated.

Second, the NEPA process—specifically preparation of the Draft EIS—took longer than BOEM originally anticipated because the agency was working to accommodate the development of NEPA alternatives that were proposed by cooperating Federal agencies and Tribes. These alternatives include: (i) a habitat impact minimization alternative proposed by the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), and other parties; (ii) a viewshed alternative to address concerns raised in Tribal consultations about the visual impacts of the project on Tribal and cultural resources; and (iii) a higher turbine capacity alternative that was proposed by cooperating agencies. According to BOEM, development of the habitat impact minimization alternative was delayed in part because the process for obtaining NOAA’s input and concurrence on habitat delineations and priority areas for potentially removing proposed turbine locations from the project area took significantly longer than anticipated. Development of a viewshed alternative to address concerns raised in Tribal consultations about the visual impacts of the project on Tribal and cultural resources was an unexpectedly late addition to the Draft EIS, and caused additional delay to incorporate. Including the higher turbine capacity alternative initially was the subject of debate, but BOEM ultimately added it after the scheduled alternatives development period had ended to respond to late comments from cooperating agencies that militated in favor of including the alternative in the Draft EIS. According to BOEM, developing the higher turbine capacity alternative required extensive discussions within the Department of the Interior and with the Council for Environmental Quality, ISO-New England, and the project sponsor to determine feasibility and content, and substantially delayed the issuance of the Draft EIS.

Third, the delay in alternative finalization had a cascading effect on the permitting timetable. According to BOEM, because identification and finalization of the project alternatives was delayed, BOEM had to defer its request to NMFS for fisheries data needed for alternatives analysis (NMFS requires a minimum of 4-6 weeks to respond to fisheries data requests), which, in turn, affected the timing of other dependent analyses, such as socioeconomic and environmental justice analyses.

Fourth, BOEM represents that the NHPA section 106 consultation process needs to be extended because the agency received more stakeholder comments related to onshore visual impacts than originally anticipated, and because the proximity of the lease area to many national historic landmarks in Rhode Island will require additional consultation under sections 106 and 110(f) of the NHPA. Additionally, after obtaining agreement from the project sponsor, BOEM elected to prepare a standalone Memorandum of Agreement (MOA) to fulfill its NHPA section 106 obligations for this project based on: (1) the substantial number of potentially affected properties identified through the initial reviews; and (2) lessons learned from the recently completed NHPA section 106 consultation for the South Fork Wind project. BOEM acknowledges that utilizing an MOA, rather than including the resolution of adverse effects measures as part of the Record of Decision, increases the level of preparation and review needed during the earlier stages of EIS development. However, BOEM maintains this approach

significantly reduces the risk of more substantial delays later in the NEPA and COP approval processes.

BOEM consulted with the project sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I). Based on the project sponsor's input, BOEM condensed the original proposal for timetable modification from 90 to 68 days by consolidating BOEM milestone actions to the maximum extent practicable. The Permitting Council Executive Director also consulted with the project sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). Although the project sponsor objects to BOEM's request to extend the permitting timetable, it expressed appreciation for BOEM's consideration of the project sponsor's proposed shorter alternative schedule and the agency's efforts to minimize delay.

IV. Discussion

The "size and complexity" (42 U.S.C. § 4370m-2(c)(2)(B)(1)) of the Project warrant Executive Director approval of BOEM's request to extend the final completion dates for the "EIS Record of Decision," "Construction and Operations Plan issuance of permit or approval," and "Section 106 consultation." Like other offshore wind projects currently under Federal agency review, the Revolution Wind Farm is a near first-of-its-kind project, with virtually no administrative or operational precedent in the United States. To date, only three commercial offshore wind projects have completed Federal review. The first project, Cape Wind, was approved in 2010 under special administrative circumstances, and was abandoned before construction began. The second project, Vineyard Wind, was approved by BOEM in February 2021. The third project, the South Fork Wind Farm, is a FAST-41 covered project, and was approved by BOEM in January 2022. Federal agencies, including BOEM and NOAA, are still determining how best to apply their regulatory and permitting regimes to these novel projects. The size, complexity, and unique operational considerations of the Project present new issues for the Federal lead and cooperating agencies. It is reasonable that, in grappling with these first-impression issues and obtaining input from various stakeholders, BOEM would find itself needing to add alternatives relatively late in the process, which, in turn, would have ripple effects on data requests and subsequent consultations with relevant expert agencies and affected parties.

However, it also appears that BOEM and the cooperating agencies are continuing to struggle to identify the preferred permitting path for these projects, and consequently have had difficulty communicating to project sponsors and each other in a timely and effective manner with respect to information and analytical needs. Likewise, agencies appear to have had difficulty coordinating with one another to ensure a uniform, predictable, and timely environmental review and authorization process for these projects. The agencies' collective inability to reach consensus on a reasonable range of alternatives for the Project within agency-established timeframes is an emblematic example of ongoing interagency coordination challenges, which can inject significant uncertainty into the permitting process. As the agencies are aware, the Permitting Council Office of the Executive Director has enlisted the assistance of the John A. Volpe National Transportation

Systems Center to help BOEM refine its criteria for screening reasonable alternatives for FAST-41 covered offshore wind projects to incorporate cooperating agencies' concerns and priorities. This effort is intended to help avoid similar future process challenges. BOEM and the cooperating agencies have committed to work together to identify and implement additional measures for improving interagency cooperation on common tasks to reduce schedule risk.

BOEM, NOAA, and the cooperating agencies are fully engaged in, and committed to, the environmental review and authorization process for the Project, the protocols for which appear to be under development even as they are applied in real time. BOEM and the cooperating agencies' leadership are aware of the internal procedural, interagency coordination, and project sponsor communication issues discussed above, and presently are working to resolve them as expeditiously as possible.

V. Determination

Although the project sponsor disagrees with the amount of time that BOEM asserts is necessary, all parties agree that more time is needed to perform important project-related analyses and processes, and to support sound Federal agency decision making for the Project. The affected agencies and their leadership are aware of the systemic process issues occasioned by novelty and complexity associated with environmental review and authorization of large commercial offshore wind projects, including this Project, and are committed at the highest levels of administration to resolving those issues as expeditiously as possible. Accordingly, BOEM's extension request is **GRANTED**, and the permitting timetable is revised as requested.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council