



PERMITTING COUNCIL

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

September 23, 2022

Ocean Wind 1 Project; Endangered Species Act Consultation

I. Summary

The Ocean Wind 1 Project (Project), sponsored by Ocean 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.* 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 NEPA lead agency and also the lead agency for FAST-41. BOEM is responsible for undertaking consultation with the Department of the Interior, Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* On August 31, 2022, BOEM submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council to modify the Project’s permitting timetable on the Federal Permitting Dashboard by extending the final completion date by which FWS will conclude ESA consultation with BOEM from October 24, 2022, to January 5, 2023. BOEM requests this extension because, after BOEM submitted its initial request for consultation, FWS required BOEM to submit additional information to enable FWS to make a determination under the ESA. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

A lead agency may modify a permitting timetable only after: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, after consulting with the participating agencies, the Executive Director, and the project sponsor; and (3) providing a written justification for the modification. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(I-III).

If the proposed modification entails extending a final completion date by more than 30 days beyond the original final completion date, the lead agency additionally must submit a request to the Executive Director. The Executive Director then must consult with the project sponsor and make a determination on the record, based on consideration of relevant factors, whether to grant the modification. 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The “relevant factors”

that the Executive Director considers include, but are 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). Executive Director determinations to extend permitting timetables by more than 30 days beyond an original final completion date are not subject to judicial review.
42 U.S.C. § 370m-2(c)(2)(D)(iv)(I).

III. Background

BOEM initiated ESA consultation with FWS on May 27, 2022, by submitting an ESA consultation request package to FWS. At that time, the target date for the next interim milestone on the Federal Permitting Dashboard — “Consultation Package Deemed Complete-Formal”— was August 10, 2022. On July 1, 2022, FWS requested that BOEM provide additional information. Shortly thereafter, the two agencies met to discuss the requested additional information and a new target date for FWS’ determination that the consultation package was complete. From July through early September, BOEM and FWS regularly communicated about the additional information FWS was asking BOEM to provide and the interim and final milestone dates for the ESA consultation action.

BOEM and FWS moved the interim milestone date (the “Consultation Package Deemed Complete - Formal” milestone) several times during this time period to accommodate the length of time needed by BOEM to coordinate with the Project Sponsor to get the additional information requested by FWS, internally review the information, and provide the information to FWS. As a result, BOEM moved the interim milestone date to October 7, 2022.

Despite moving the interim milestone date, BOEM and FWS agreed not to adjust the final completion date for the ESA consultation action at that time. The agencies reasoned that it would be more accurate and efficient to identify the final ESA consultation completion date once FWS had determined whether the consultation package was complete.

BOEM provided the requested information in the format in which FWS had requested it by August 23, 2022. While FWS has not completed its review of the full consultation package, including the additional information provided, the agencies now believe they are in a better position to identify a new final completion date for the ESA consultation action. Therefore, BOEM and FWS are requesting that the final milestone be extended from October 24, 2022, to January 5, 2023, to account for the updates made to the interim milestone timeline and reflect ESA formal consultation regulatory timeframes, if needed.

BOEM represents that changing the date for conclusion of ESA consultation will not affect any other completion dates in the Project permitting timetable.

In addition to having regular communications with FWS throughout the July-September time period, BOEM also had regular discussions with the Project Sponsor to compile the information responsive to FWS' requests and to discuss movement of the interim milestone date for the ESA consultation action. BOEM also consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) regarding change of the final ESA consultation completion date to January 5, 2023, and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director similarly consulted with the Project Sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) and confirms the Project Sponsor does not object to the requested date change.

IV. Discussion

The Executive Director appreciates BOEM's comprehensive coordination with FWS and the Project Sponsor on the ESA consultation process. This type of cooperation among all stakeholders furthers FAST-41's objective of providing transparency and predictability in the Federal permitting process. Additionally, the Executive Director finds it significant that extending the completion date for ESA consultation will not extend the overall Project permitting timetable. Given these circumstances, extending the completion date for ESA consultation is warranted.

V. Determination

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



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council