



PERMITTING COUNCIL

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

January 31, 2023

Ocean Wind 1 Project; Construction and Operations Plan, Environmental Impact Statement, and Section 106

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 also the lead agency coordinating the review and consultations required by Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108.

BOEM submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council (Executive Director) to modify the Project’s permitting timetable on the Federal Permitting Dashboard by extending the following completion dates:¹

¹ BOEM has indicated that, because certain cooperating agency actions are dependent upon the EIS, COP, and Section 106 actions for which BOEM now seeks to extend the completion dates, cooperating agencies subsequently may seek permitting timetable modifications for their own actions. If BOEM, on behalf of itself or a cooperating agency, requests a future modification that necessitates an extension of a final completion date by more than 30 days, the Executive Director will make a decision on the request in a separate Executive Director Determination on the Record.

	Current Completion Date	Requested Completion Date
Notice of Availability (NOA) of Final Environmental Impact Statement (FEIS) (<i>i.e.</i> , the “FEIS NOA completion date”)	March 3, 2023	May 26, 2023
Environmental Impact Statement - Record of Decision (ROD) (<i>i.e.</i> , the “ROD final completion date”)	April 14, 2023	July 7, 2023
Construction and Operations Plan (COP) - Final decision/agency action (<i>i.e.</i> , the “COP final completion date”)	June 29, 2023	September 21, 2023
Section 106 consultation concluded (<i>i.e.</i> , the “Section 106 final completion date”)	April 14, 2023	May 26, 2023

BOEM requests this extension because the FEIS, ROD, and COP are dependent upon completion of a federal consistency determination under the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 *et seq.*, and the Project’s federal consistency determination is delayed due to the Project Sponsor’s delayed submission of various state permit application materials. 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

FEIS, ROD, and COP

BOEM incorporates any federal consistency conditions resulting from a CZMA federal consistency review not only into the ROD and COP decisions but also, ideally, into the FEIS. Thus, when establishing a permitting timetable, BOEM typically schedules issuance of the ROD approximately 90 days following issuance of a state’s federal consistency decision.

Here, the New Jersey Department of Environmental Protection (NJDEP) is the entity conducting the coastal zone consistency review, which is a review to ensure that activities in or affecting the state’s coastal zone are consistent with the enforceable coastal zone management rules of the applicable state. NJDEP anticipated issuing a consistency determination no later than October 28, 2022, but that was dependent upon the Project Sponsor submitting state permit application materials by January 24, 2022. Instead, the Project Sponsor submitted its state permit applications on August 3, 2022, with a supplemental filing submitted on October 14, 2022. The Project Sponsor submitted the materials later than originally expected due to additional time required to include information on an alternative BL England substation location proposed by Upper Township municipality during the Draft EIS public hearing. Based on the timing of the Project Sponsor’s submissions and NJDEP’s review timeframes for consistency determinations, it is now anticipated that NJDEP will issue the state permits and federal consistency decisions by April 27, 2023. Because this date falls after the dates that BOEM had

planned to issue the FEIS Notice of Availability and ROD, BOEM is requesting that the FEIS NOA completion date, ROD final completion date, and COP final completion date be extended to allow time for BOEM to incorporate any federal consistency conditions into the FEIS, ROD, and COP.

Section 106

On November 11, 2022, BOEM distributed revised Section 106 technical reports, a revised Finding of Effect, and a revised draft Memorandum of Agreement (MOA) to consulting parties for a 30-day review. On December 12, 2022, BOEM received comments that require additional revisions to the Finding of Effect and MOA and subsequent consulting party review of those documents. Thus, BOEM is requesting a modification of the Section 106 final completion date from April 14, 2023, to May 26, 2023, to accommodate an additional consulting party review period for the revised Finding of Effect and revised MOA.

Consultation on Modifications

BOEM consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) regarding the requested permitting timetable modifications 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 changes.

IV. Discussion

The reasons underlying BOEM's request to extend the FEIS NOA completion date, ROD final completion date, and COP final completion date are outside BOEM's control. BOEM's actions are dependent upon NJDEP's issuance of state permit decisions and a federal consistency determination, and NJDEP has been delayed in rendering those decisions because the Project Sponsor was delayed in its submissions to NJDEP. Therefore, the Executive Director concludes that extensions of the FEIS NOA completion date, ROD final completion date, and COP final completion date are warranted.

With respect to Section 106, BOEM represents that more time is needed to adequately address the potential impacts of the Project on historic resources and allow for coordination with the consulting parties. The Executive Director appreciates BOEM's comprehensive coordination with all stakeholders on the Section 106 consultation process and the need to update the Finding of Effect and MOA to account for consulting party comments. Given these facts, the Executive Director concludes that an extension of the Section 106 final completion date 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