



## PERMITTING COUNCIL

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

**November 28, 2023**

#### **Kitty Hawk Wind South Project—All Actions**

##### **I. Summary**

The Kitty Hawk Wind South 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.

On November 8, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend completion dates for all Federal actions on the Project's permitting timetable. Namely, BOEM's request includes extensions for its NEPA action, Construction and Operations Plan (COP) decision; and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. BOEM also asks to extend consultation with the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531; consultation with NMFS on essential fish habitat (EFH) pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801; and incidental take authorization (ITA) from NMFS under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361. BOEM additionally asks to extend consultation with the United States Department of the Interior, Fish and Wildlife Service (FWS) under the ESA. BOEM requests an extension for 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. Finally, BOEM requests an extension of 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; Section 404 of the Clean Water Act, 33 U.S.C. § 1344; Section 103 Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1413; and Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (together, Sections 10/404/103/408).

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

The Project Sponsor requested that BOEM extend the Project permitting timetable due to internal business justifications and to allow additional time to complete surveys and refine export cable routes. Consistent with the Project Sponsor’s request, BOEM seeks authorization to modify the interim and final completion dates as shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Requested Date
BOEM	EIS	Issuance of Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS)	1/12/2024	12/15/2025
		Scoping	1/29/2024	2/18/2026
		Notice of Availability of a Draft EIS published in the Federal Register	12/29/2024	2/15/2027
		Official Notice of Availability of a Final EIS published in the Federal Register	9/12/2025	10/29/2027
		Issuance of Record of Decision (ROD)	10/31/2025	12/16/2027
BOEM	COP	Agency Determines Application is Consistent with the NOI Checklist	N/A (new milestone)	12/15/2025
		Issuance of decision for permit/approval	1/28/2026	4/14/2028
BOEM	Section 106	Consultation Initiated with State Historic Preservation Officer/Tribal Historic Preservation Officer	1/3/2024	2/18/2026
		Section 106 Consultation Concluded	10/1/2025	12/16/2027
NMFS	ESA	ESA Consultation Request Package Submitted	8/29/2024	10/15/2026
		Consultation Package Deemed Complete	2/27/2025	4/15/2027
		Conclusion of ESA Consultation	7/29/2025	9/14/2027

NMFS	EFH	EFH Consultation Request Submitted – EFH Assessment	8/29/2024	10/15/2026
		NOAA determines EFH Assessment is Complete	2/27/2025	4/15/2027
		NOAA Issues any EFH Conservation Recommendations	7/29/2025	9/14/2027
NMFS	MMPA	ITA Application Submitted	2/29/2024	04/16/2026
		NOAA Determines ITA Application is Complete	8/29/2024	10/15/2026
		Publish Notice of Receipt in Federal Register (LOA Only)	9/30/2024	11/16/2026
		Publish Proposed ITA in Federal Register	2/27/2025	04/15/2027
		Publish Final ITA Regulations in Federal Register (LOA Only)	12/30/2025	2/15/2028
		ITA Decision Rendered	1/29/2026	3/16/2028
FWS	ESA	Consultation Package Submitted	1/20/2025	2/15/2027
		Consultation Package Deemed Complete	2/3/2025	5/6/2027
		Conclusion of ESA Consultation	7/14/2025	9/20/2027
EPA	OCS Air Permit	NOI to apply for Air Permit submitted	12/29/2023	2/13/2026
		OCS Air Permit application submitted	10/1/2024	9/15/2026
		OCS Air Permit application complete	12/30/2024	3/15/2027
		Issuance of final decision/permit approval	12/30/2025	3/15/2028
USACE	Section 10/404 /103	Pre-construction Notification (PCN)/Form ENG 4345/Joint Application Form Received	11/29/2024	1/15/2027
		Complete Pre-Construction Notification (PCN)/Application Received	12/14/2024	2/2/2027

		Publication of Public Notice	12/29/2024	2/16/2027
		Final Verification/Permit Decision Rendered	2/27/2026	4/14/2028
USACE	Section 408	Initial Application Submitted	1/21/2026	1/15/2027
		Completeness Determination	2/20/2026	2/16/2027
		Complete Application Submitted	4/22/2026	4/16/2027
		Issuance of final decision for permit/approval	2/27/2026	4/14/2028

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, not only does the Project Sponsor have no objection to the proposed permitting timetable extension but, in fact, BOEM is requesting the proposed modifications at the Project Sponsor’s behest.

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**

The Project Sponsor requested that BOEM extend the Project permitting timetable to allow the Project Sponsor additional time to explore options for paths to market. Namely, the Project Sponsor submitted the COP to BOEM in April 2022 with options for interconnection into Virginia and/or North Carolina. The Project Sponsor continues to pursue market options for both its Kitty Hawk North and Kitty Hawk South Projects. For this Project (Kitty Hawk South), an interconnection into North Carolina allows for more optionality. In August 2023, Duke Energy issued the Carbon Plan Integrated Resource Plan (CPIRP) without the inclusion of offshore wind as a priority resource. The results of the CPIRP, with three core energy portfolios for the North Carolina Utilities Commission to review and ensure a pathway to carbon reduction, lessened the likelihood of immediate market entry in North Carolina. Interconnection in North Carolina still remains an option for Kitty Hawk South; however, at this time, the Project Sponsor is delaying the procurement of multi-million dollar offshore surveys of the export cable route(s) until there is more certainty of a path to market. The Project Sponsor will continue its efforts throughout 2024 to secure market access while refining the routes into North Carolina. The Project Sponsor plans to

undertake surveys in 2025 so that it can submit information consistent with the BOEM NOI in time for the NOI to be issued in December 2025.

**V. Determination**

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



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Eric B. Beightel  
Executive Director  
Federal Permitting Improvement Steering Council