



## PERMITTING COUNCIL

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

November 30, 2023

#### Ocean Wind 1 Project—OCS air permit

##### 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. 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 16, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend the final completion date 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. Since September 2022, the Executive Director has granted BOEM authority to extend various actions on the Project's permitting timetable six times,<sup>1</sup> including an April 21, 2023, authorization to extend the OCS air permit completion dates that are the subject of this request.<sup>2</sup>

For the following reasons, BOEM's extension request is **GRANTED**.

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<sup>1</sup> The previous six Executive Director Determinations for the Project are available here:

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-09/2022-09-23%20final%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20Signed.pdf>

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-11/2022-11-18%20FINAL%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20signed.pdf>

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2022-12/2022-12-16%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20FWS%20ESA%202nd%20request%20%281%29.pdf>

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-01/2023-1-31%20final%20Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106%20signed%20%282%29.pdf>

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-04/2023-04-21Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106-FINAL.pdf>

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-08/2023-08-02%20Ocean%20Wind%201%20Exec%20Dir%20Determination.pdf>

<sup>2</sup> See Executive Director Determination dated April 21, 2023, available at:

<https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-04/2023-04-21Ocean%20Wind%201%20ED%20Determination%20on%20the%20Record%20-%20COP%20ROD%20s106-FINAL.pdf>

## 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). 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 seeks to modify the OCS air permit final completion date as shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Currently Posted Date	Requested Date
EPA	OCS Air Permit	Issuance of Final Decision/Permit Approval	6/29/2023	1/4/2024	12/13/2024

As seen in the table, BOEM and EPA previously extended the OCS air permit final completion date by 189 days and now request an additional 344-day extension. The current request, if approved, will extend the OCS air permit final completion date by a total of 533 days, or approximately 1.5 years, beyond the original final completion date.

EPA deemed the Project Sponsor's March 29, 2022, OCS air permit application complete on January 4, 2023. Upon commencing technical review of the modeling analyses on January 25, 2023, EPA recognized that the magnitude of the air quality impacts was in violation of the Prevention of Significant Deterioration of Air Quality (PSD) increment standard and in potential violation of the National Ambient Air Quality Standards (NAAQS), which rendered the application as submitted unapprovable. Instead of taking action to disapprove the OCS permit application, EPA paused review of the application and allowed the Project Sponsor to revise the application and/or the modeling analyses to correct any PSD increment or potential NAAQS violations.

On August 23, 2023, the Project Sponsor submitted a revised application containing new information on many of the engines in the vessels anticipated to be used during Project construction and an accompanying modeling analysis. Subsequently, in September 2023, EPA notified the Project Sponsor that the revised application superseded the original application and was incomplete. The Project Sponsor provided supplemental submittals in October 2023 and additional revised modeling on November 13, 2023. Under relevant regulations, EPA has 30 days from the modeling submittal date (*i.e.*, until December 13, 2023) to determine whether the revised application is complete based on the supplemental information submitted in October and November.

Meanwhile, on October 31, 2023, the Project Sponsor announced it is ceasing development of the Ocean Wind 1 and 2 Projects (<https://oceanwindone.com/>). Nonetheless, the Project Sponsor informed EPA that it intends to retain the lease and assets (permit actions) and will continue to pursue an OCS air permit.

EPA is in the process of reviewing the Project Sponsor's November 13, 2023, submittal for completeness. If EPA determines on December 13, 2023, that the August 2023 permit application is complete, the Clean Air Act gives EPA one year from the completeness determination to issue a final permit decision. Therefore, BOEM and EPA request that the OCS air permit final completion date be changed from January 4, 2024, to December 13, 2024, based on the assumption that completeness is achieved on December 13, 2023.

### Consultation on Modifications

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 extensions.

After BOEM submitted this extension request to the Executive Director, the Project Sponsor asked BOEM and EPA via email for a final completion date in October 2024, which is earlier than the 12-month duration afforded under EPA's regulation.

The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The Project Sponsor expressed that it would like EPA to render a final decision by October 2024 but is not objecting to the requested date.

#### **IV. Discussion**

The Executive Director is actively working with the EPA to look programmatically at the OCS air permit program for offshore wind with the intent of identifying and implementing solutions to increase predictability in the process and set clear expectations for applicants. The Executive Director understands that the modeling components of the OCS air permit application for this Project were particularly challenging due to the Project's proximity to an onshore Class 1 Wilderness Area as defined by the Clean Air Act. While a 1.5 year extension is significant, the Executive Director also finds it material that the Project Sponsor announced it is ceasing development of the Project, thereby lessening the time pressure for the federal OCS air permitting action. Given these circumstances, extending the final completion date as requested is acceptable.

#### **V. Determination**

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



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Eric B. Beightel  
Executive Director  
Federal Permitting Improvement Steering Council