



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

July 1, 2024

### Maryland Offshore Wind Project; COP (BOEM), MMPA (NMFS); Section 10/404 (USACE); Section 408 (USACE)

#### I. SUMMARY

The Maryland Offshore Wind Project (Project), sponsored by US Wind, Inc. (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 environmental review for the Project under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, which makes BOEM the lead agency for both NEPA and FAST-41.

BOEM submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend interim and final completion dates for various Federal actions on the Project's permitting timetable. BOEM's request includes an extension for its Construction and Operations Plan (COP) decision. BOEM also seeks an extension for its incidental take authorization (ITA) decision under the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS). Finally, BOEM requests an extension of the final completion date for 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 (often referred to as "Section 10") and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (often referred to as "Section 404") (together, Sections 10/404). It also includes authorization under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (often referred to as "Section 408").<sup>1</sup>

For the following reasons, BOEM's extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

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<sup>1</sup> This Executive Director Determination does not address modification of certain other actions on the Project's FAST-41 permitting timetable because the Executive Director did not receive the request for date extensions with enough time to make a decision more than 30 days in advance of the completion date for the action. See 42 U.S.C. § 4370m-2(c)(2)(D)(ii) (a completion date may not be modified within 30 days of the completion date).

## 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

BOEM submitted a request to change the interim and final completion dates shown in the table immediately below. BOEM’s justification for the extension requests are detailed thereafter.

Action Agency	Action	Milestone	Original Date	Current Date	Requested Date
BOEM	COP	Issuance of decision for permit/approval	8/23/2024	9/27/2024	12/3/2024
NMFS	MMPA	Publish Final ITA Regulations in Federal Register	7/26/2024	9/30/2024	11/4/2024
		ITA Decision Rendered	8/26/2024	10/31/2024	12/4/2024



USACE	Section 10/404	Final Verification / Permit Decision Rendered	9/24/2024	11/29/2024	1/3/2025
USACE	Section 408	Issuance of Decision	9/24/2024	11/29/2024	1/3/2025

The completion dates for the COP, MMPA, Section 10/404, and Section 408 actions are dependent on the timing of issuance of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) under NEPA. While the NEPA action is not part of this Executive Director Determination,<sup>2</sup> BOEM has extended the NEPA alternative completion dates posted on the Permitting Dashboard.<sup>3</sup>

Two factors are driving the present shift in the NEPA schedule. First, BOEM needs time to conduct a final review of the most recent version of the COP, which the Project Sponsor submitted on May 10, 2024. Second, the NEPA schedule is dependent on the timing of the State of Delaware’s completion of a federal consistency determination under the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451, which likely will not be complete until July 9, 2024. States undertake a coastal zone consistency 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. BOEM incorporates any federal consistency conditions resulting from a CZMA federal consistency review into the NEPA Record of Decision (ROD) and COP decision.

BOEM requests that the COP final completion date be proportionately extended to December 3, 2024.

For the MMPA milestones, if supported by the administrative record, NMFS will publish the final incidental take authorization regulations approximately 60 days after issuance of the ROD to allow NMFS to ensure the final regulations are consistent with the ROD. The MMPA final completion date (ITA decision rendered) follows 30 days after publication of final incidental take regulations.

The Section 10/404 and Section 408 final completion dates are also dependent upon the final completion date of BOEM’s NEPA action. USACE requests a review of 120 days between issuance of the ROD and issuance of USACE’s decisions.

### **Consultation with Project Sponsor on Extension Requests**

Prior to submitting its extension request to the Executive Director, BOEM consulted

<sup>2</sup> See *supra*, n.1.

<sup>3</sup> See 42 U.S.C. § 4370m-2(c)(2)(F)(ii)(II) (requiring establishment of alternative completion dates).



with the project sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I). BOEM has indicated that the Project Sponsor objects to the requested modification of the permitting timetable.

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 confirmed the Project Sponsor objects to the requested modifications.

#### IV. DISCUSSION

BOEM's request to extend the federal permitting timetable is based on the timing of the state's issuance of a federal consistency determination under the CZMA, plus the time needed to review a revised application. Both of these factors are primarily driven by agency feedback on the Project proposal and subsequent information submitted by the Project Sponsor after the application was deemed complete. Complex, utility-scale, projects, such as the Maryland Wind Project, are often modified after an application has been deemed complete, which may require the submission of revised permit applications and more time. An intent of FAST-41 is to improve early coordination of agencies' schedules and synchronization of environmental reviews and authorizations. Ideally, the modifications to the Project, which were made to promote a more positive environmental outcome by significantly reducing the Project-associated dredging impacts, would have been agreed to and incorporated into the Project's design during early coordination. This would have negated the need for application revisions and changes to the Project's schedule. However, in this case, given the circumstances for this Project, the Executive Director concludes that the requested extensions are acceptable.

#### V. DETERMINATION

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



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Eric B. Beightel  
Executive Director  
Permitting Council

