



## PERMITTING COUNCIL

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

February 23, 2024

#### Atlantic Shores South Project – COP; Section 106; Section 408; OCS Air Permit

#### I. SUMMARY

The Atlantic Shores South Project (Project), sponsored by Atlantic Shores Offshore 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 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.

On January 26, 2024, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend final completion dates for various Federal actions on the Project's permitting timetable. BOEM's request includes extensions for its 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 requests an extension of the United States Army Corps of Engineers (USACE) authorization under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (Section 408). Finally, BOEM requests an extension of 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. This is BOEM's fourth request to extend completion dates on the Project's permitting timetable.<sup>1</sup>

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

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<sup>1</sup> The previous three Executive Director Determinations for the Project are available here:  
[https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-15%20Atlantic%20Shores%20South%20ED%20Determination\\_Final%20signed.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-06/2023-06-15%20Atlantic%20Shores%20South%20ED%20Determination_Final%20signed.pdf);  
[https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-10/2023-10-19%20Atlantic%20Shores%20South%20ED%20Determination\\_Final%20%28signed%29.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-10/2023-10-19%20Atlantic%20Shores%20South%20ED%20Determination_Final%20%28signed%29.pdf);  
[https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-11/2023-11-29%20Atlantic%20Shores%20South%20ED%20Determination\\_FINAL.pdf](https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-11/2023-11-29%20Atlantic%20Shores%20South%20ED%20Determination_FINAL.pdf).

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 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	Currently Posted Date	Requested Date
BOEM	COP	Issuance of decision for permit/approval	12/22/2023	6/24/2024	9/30/2024
BOEM	Section 106	Section 106 Consultation Concluded	9/26/2023	3/25/2024	7/1/2024
USACE	Section 408	Section 408 Issuance of Decision	12/22/2023	7/23/2024	10/29/2024

EPA	OCS air permit	Issuance of final decision/permit approval	12/27/2021	8/21/2024	9/30/2024
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BOEM requests this permitting timetable extension because the federal actions are dependent on the timing of the State of New Jersey’s completion of a federal consistency determination under the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451. The Project’s federal consistency determination is delayed as a result of the timing of the Project Sponsor’s submission of state permit application materials.

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 not only into the NEPA Record of Decision (ROD) and COP decision but also, ideally, into the Final Environmental Impact Statement (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 and issuance of the COP approximately 90 days following the ROD.

Here, the Project Sponsor submitted its CZMA-related state permit application to the New Jersey Department of Environmental Review (NJDEP) on January 31, 2024 rather than in May 2023 as originally planned. Based on the timing of the Project Sponsor’s application submission, NJDEP intends to issue a CZMA conditional concurrence by April 1, 2024. BOEM used the anticipated timing of NJDEP’s federal consistency decision to establish alternative completion dates of May 31, 2024 and July 1, 2024, for the FEIS and ROD, respectively.<sup>2</sup>

BOEM therefore requests that the COP final completion date be proportionately extended to September 30, 2024. The timing of the conclusion of Section 106 consultation, and the Section 408 and OCS air permit final decision also are dependent on the timing of BOEM’s issuance of the ROD. Thus, BOEM requests to extend the completion date for Section 106 consultation to be simultaneous with issuance of the ROD. BOEM also requests an extension of 120 days beyond issuance of the ROD for USACE’s Section 408 decision<sup>3</sup> and an extension of 91 days beyond the ROD for EPA’s OCS air permit decision.<sup>4</sup>

<sup>2</sup> BOEM neither timely modified nor met the posted completion dates for the NEPA action, and therefore BOEM has established an alternative completion date and is adhering to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F) for all NEPA-related completion dates.

<sup>3</sup> USACE has established an alternative completion date and is adhering to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F) for its permit decision under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

<sup>4</sup> It is typical for USACE to issue permit decisions approximately 90-120 days after ROD issuance, and it is similarly typical for EPA to OCS air permit decisions approximately 90 days after ROD issuance.

## 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 has indicated that the Project Sponsor understood the need for the requested completion date extensions and did not object.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The Project Sponsor feels the completion date for the OCS air permit should be earlier than the requested date but does not object to the other requested permitting timetable modifications.

### **IV. DISCUSSION**

The reasons underlying BOEM's request to extend the federal permitting timetable are outside BOEM's control. BOEM's actions are dependent upon NJDEP's issuance of a federal consistency determination under the CZMA, and NJDEP has been delayed in rendering that decision due to the timing of the Project Sponsor's submissions to NJDEP. Given these circumstances, the Executive Director concludes that the requested extensions are warranted.

### **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  
Federal Permitting Improvement Steering Council