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

September 10, 2024

Atlantic Shores South Project – Section 408

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.

BOEM submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for 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). This is BOEM's fifth request to extend various completion dates on the Project's permitting timetable, with three of those five requests including the final Section 408 completion date.¹

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

¹ The previous four 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/2023-10/2023-10-19%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://cms.permits.performance.gov/sites/permits.dot.gov/files/2024-02/2024-2-23%20Atlantic%20Shores%20South%20ED%20Determination.pdf>.

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 date shown in the table immediately below.

| Action Agency | Action | Milestone | Original Date | Currently Posted Date | Requested Date |
|---------------|-------------|----------------------------------|---------------|-----------------------|----------------|
| USACE | Section 408 | Section 408 Issuance of Decision | 12/22/2023 | 10/29/2024 | 12/16/2024 |

BOEM’s justification for this permitting timetable extension is based on the timing of the Project Sponsor’s submission of an updated Section 408 application containing sufficient information to complete the Section 408 review. USACE considered the updated application complete as of August 16, 2024, and USACE asks for a 120-day review period for the Section 408 application for this Project because the authorization will be issued at the USACE Division level rather than a USACE District level. Accordingly, BOEM requests that the final Section 408 completion date be extended to December 16, 2024.²

² USACE has established an alternative completion date and is adhering to the statutory procedures required by
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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 extension 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), and the Executive Director has confirmed the Project Sponsor does not object to the requested permitting timetable modification.

IV. DISCUSSION

The extension of the Section 408 final completion date here reflects a commonly recurring tension for large-scale infrastructure project permitting. That tension lies between the entirely appropriate and ordinary process of project design refinement—which may occur both due to a project sponsor’s internal business considerations and as a result of federal, state, or local permitting authorities’ reviews—and the level of project design detail that those same permitting authorities need to analyze before rendering a decision. In this instance, the Project Sponsor and USACE have been working closely and cooperatively, and the Project Sponsor is not objecting to the permitting timetable modification. Given these circumstances, the Executive Director concludes that the requested extension is warranted.

V. DETERMINATION

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



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council

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.