



# PERMITTING COUNCIL

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## Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

October 12, 2021

### South Fork Wind Farm; OCS Air Permit

#### I. Summary

On September 19, 2021, the Bureau of Ocean Energy Management (BOEM), the lead agency for the South Fork Wind Farm and South Fork Export Cable project—a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*—submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for the Environmental Protection Agency (EPA) action, “issuance of a final decision for permit approval” for the “Outer Continental Shelf (OCS) air permit,” from October 31, 2021, to January 18, 2022, for the purpose of accommodating public comment on EPA’s revised proposed OCS air permit conditions. For the reasons stated below, the extension request is **GRANTED**, and the completion date for the EPA action “issuance of the final decision for permit approval” for the OCS air permit has been extended to January 18, 2022.

#### II. Legal Standard

Pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III), a lead agency may extend a final completion date under a FAST-41 permitting timetable to a date more than 30 days after that final completion date originally established in the permitting timetable only after requesting and obtaining Executive Director approval. Upon receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a “determination on the record” to approve or deny the request based on the following factors:

- (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.

*Id.* Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).



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## III. Determination

The EPA issues air permits for OCS wind energy projects pursuant to Section 328 of the Clean Air Act, 42 U.S.C. § 7627, and implementing regulations at 40 C.F.R. part 55, which provide for public comment on EPA proposed OCS air permit conditions prior to permit issuance. On June 24, 2021, EPA published a notice on its website<sup>1</sup> and in the Boston Globe, New Bedford Times, and Providence Journal newspapers seeking public comment on proposed OCS air permit conditions for the South Fork Wind Farm project, which included proposed requirements for the developer to secure emission offsets for construction-based and operations-based emissions. The EPA has since revised its proposed permit to require offsets only for operations-based emissions. The EPA intends to publish a second notice on its website and in the Boston Globe, New Bedford Times, and Providence Journal newspapers on October 20, 2021, for a 45-day comment period on its proposed revised permit conditions. The notice also will explain that the EPA intends to hold a virtual public hearing on the proposed revised permit conditions on Thursday, December 2, 2021, at 7:00 PM ET. The public comment period will close on Saturday, December 4, 2021. The EPA anticipates deciding on the issuance of the OCS air permit on the South Fork Wind Farm and South Fork Export Cable Project by January 18, 2022.

The size and complexity of the project warranted Executive Director approval of BOEM's request to extend the final completion date for EPA's OCS air permit. Like the other OCS wind projects currently under Federal agency review, the South Fork Wind Farm is a first-of-its-kind project, and without administrative or operational precedent in the United States. To date, only two similar commercial OCS wind projects have completed Federal review. The first project, Cape Wind, was approved in 2010 under special administrative circumstances and was abandoned before construction began. The second project, Vineyard Wind, was approved by BOEM in February 2021, and construction has not yet begun.<sup>2</sup> Federal agencies are still determining how best to apply their regulatory and permitting regimes to these novel projects, and EPA's decision to propose refinements to the OCS air permit conditions for construction and operation of the South Fork Wind Farm and South Fork Export Cable—and to seek additional public input on the merits of EPA's proposed refinements—reflect an earnest effort to adapt an established regulatory regime to this new permitting environment. It is appropriate to modify the permitting timetable to accommodate the additional time needed to solicit public comment on EPA's revised OCS air permit conditions such that EPA, to the extent possible, will apply OCS air permit conditions consistently to other OCS wind projects to help ensure a more predictable permitting process for future OCS wind projects.

The Office of the Executive Director has consulted the project sponsor on BOEM's extension request, and the project sponsor does not object to the permitting timetable modification to accommodate public comment on EPA's proposed changes to the permit

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<sup>1</sup> <https://www.epa.gov/caa-permitting/caa-public-comment-opportunities-region-1>.

<sup>2</sup> The project will not be authorized for construction and operation until the project sponsor submits to BOEM a satisfactory Facility Design Report and Facility Installation Report. *See* 30 C.F.R. § 585.700.



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conditions. The project sponsor requests that EPA share with the project sponsor the specifics of the revised permit conditions and the rationale for their implementation prior to publication to ensure that the conditions can be faithfully implemented and to minimize uncertainty risk.

BOEM's extension request is **GRANTED**, and the revised completion date for EPA's issuance of the final decision for permit approval for the OCS air permit is January 18, 2022. The South Fork Wind Farm and South Fork Export Cable project page on the Permitting Dashboard have been revised to reflect this change.

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Steering Council