



PERMITTING COUNCIL

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

March 15, 2024

Beacon Wind Energy Project — NEPA; COP; Section 106; ESA-FWS; ESA-NMFS; EFH; MMPA; Section 10/404; Section 408; OCS air permit and NPDES permit

I. Summary

The Beacon Wind Energy Project (Project), sponsored by Beacon Wind Holdings, LLC (Project Sponsor), and a joint venture of Equinor and bp, 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 February 23, 2024, BOEM submitted a request to the Permitting Council Executive Director (Executive Director) to extend the majority of the intermediate and final completion dates on the Project's permitting timetable. This includes modifications for the following actions:

- BOEM's environmental review under NEPA;
- BOEM's Construction and Operations Plan (COP) decision; BOEM's consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108;
- BOEM's consultation under the Endangered Species Act (ESA), 16 U.S.C. §§ 1531 with both the United States Department of the Interior, Fish and Wildlife Service (FWS) and the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS);
- BOEM's essential fish habitat (EFH) consultation with NMFS pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801;
- the Project Sponsor's incidental take authorization under the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361, from NMFS;
- a permit decision by the United States Army Corps of Engineers (USACE) 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 (together, Section 10/404);
- a USACE permit decision under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (Section 408);
- 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; and,
- the National Pollutant Discharge Elimination System (NPDES) permit decision under Section 402 of the Clean Water Act.

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 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 modify the completion dates shown in the table immediately below.

Action Agency	Action	Milestone	Current Date	Requested Date
BOEM	NEPA	Draft environmental impact statement (EIS)	8/16/2024	11/15/2024

		published		
		Final EIS published	5/16/2025	8/15/2025
		Record of Decision (ROD) issued	7/1/2025	9/29/2025
BOEM	COP	Issuance of decision for permit/approval	9/29/2025	12/28/2025
BOEM	Section 106	Section 106 consultation concluded	7/1/2025	9/29/2025
NMFS	ESA	NMFS determines ESA package is complete	10/15/2024	3/4/2025
		ESA consultation concludes	4/7/2025	8/1/2025
NMFS	EFH	NMFS determines EFH assessment complete	10/15/2024	3/4/2025
		NMFS issues any EFH conditional requirements	1/13/2025	6/2/2025
NMFS	MMPA	NMFS determines ITA application complete	3/15/2024	7/2/2024
		Publish notice of receipt of ITA application in Federal Register	4/15/2024	8/2/2024
		Publish proposed ITA authorization in Federal Register	11/15/2024	3/4/2025
		Publish final ITA regulations in Federal Register	9/1/2025	11/4/2025
		ITA decision rendered	10/1/2025	12/4/2025
FWS	ESA	ESA consultation package is submitted	7/23/2024	11/15/2024
		FWS determines ESA package is complete	11/4/2024	2/13/2025
		ESA consultation concludes	4/7/2025	7/14/2025
USACE	Section 10/404	PCN/application received	7/1/2024	10/1/2024

		Complete PCN/application received	8/1/2024	10/31/2024
		Publication of public notice	8/16/2024	11/15/2024
		Final verification / permit decision	10/29/2025	1/27/2026
USACE	Section 408	Initial application submitted	7/1/2024	10/1/2024
		Completeness determination	7/31/2024	10/31/2024
		Complete application submitted	9/29/2024	12/30/2024
		Issuance of decision	10/29/2025	1/27/2026
EPA	OCS air permit	OCS air permit application submitted	3/29/2024	5/1/2024
		OCS air permit application complete	9/30/2024	12/30/2024
		Issuance of final decision for permit/approval	9/30/2025	12/30/2025
EPA	NPDES permit	EPA Authorizes Discharge Under Individual Permit	9/30/2025	12/29/2025

The overall shift in completion dates on the permitting timetable is due to the timing of NMFS’ review of incidental take authorization (ITA) under the Marine Mammal Protection Act (MMPA). The MMPA process is taking longer than originally anticipated because the Project Sponsor was delayed in providing NMFS with modeling information for several months. The Project Sponsor submitted an initial ITA application on September 15, 2023, but that application was missing modeling information and mitigation/monitoring measures. NMFS and the Project Sponsor agreed that the Project Sponsor would provide the missing model information as a draft on October 13, 2023, final model results on October 27, 2023, and a revised draft application with all missing information by December 1, 2023. The Project Sponsor did not provide the modeling information or revised application until February 9, 2024. Accordingly, BOEM, on behalf of NMFS, requests to move all subsequent MMPA completion dates proportional to the delay between NMFS’ anticipated and actual receipt of the modeling information.

As a result of the schedule shift for the MMPA process, the initiation of BOEM’s EFH and ESA consultations with NMFS is also delayed. BOEM uses the information in the Project Sponsor’s complete MMPA application to prepare and submit the EFH assessment and ESA biological assessment to NMFS. Additionally, it is necessary for NMFS to have all required

information prior to initiating the ESA consultation. NMFS initiates EFH consultation when a complete EFH assessment is provided by BOEM, which is set at the same time as ESA consultation initiation to help ensure consistency in the proposed action described in the ESA biological assessment and the EFH assessment.

The NEPA process is dependent on the timing of the ESA consultation because the draft and final environmental impact statements typically incorporate measures resulting from that consultation. Finally, the completion dates for FWS' ESA consultation, USACE's Section 10/404 and Section 408 permit decisions, and EPA's OCS air permit and NPDES permit are all dependent on the final completion date for the NEPA action.

Consultation with Project Sponsor on Extension Requests

Prior to submitting an 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 represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and the Executive Director confirmed the Project Sponsor does not object to the requested permitting timetable modification.

IV. Discussion

The driving factor underlying the permitting timetable modifications for the Project is the timing of the Project Sponsor's submission of required modeling information for the MMPA ITA application. Given these circumstances, extending the completion dates addressed in this Executive Director Determination are warranted.

V. Determination

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



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council