



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

May 20, 2026

Hell's Kitchen Critical Minerals and Power—Endangered Species Act (FWS)

I. Summary

The Hell's Kitchen Critical Minerals & Power Project (Hell's Kitchen), sponsored by Controlled Thermal Resources (the Applicant or Project Sponsor), is a covered project under Title 41 of the Fixing America's Surface Transportation Act (FAST-41), 42 U.S.C. § 4370m *et seq.* The U.S. Army Corps of Engineers (USACE), has principal responsibility for environmental review of the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, which makes USACE the lead agency for both NEPA and FAST-41.

USACE submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for the Endangered Species Act (ESA) consultation on the project's permitting timetable. This is USACE's second request for modification of the project's permitting timetable.¹

For the following reasons, USACE'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

¹ The previous Executive Director Determination approving permitting timetable modifications is available here: <https://cms.permits.performance.gov/permitting-projects/hells-kitchen-executive-director-determination10-10-2025>





- (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

USACE seeks authorization to modify the completion date shown in the table below.

Action Agency	Action	Milestone	Original Date	Current Date	Requested Date
FWS	ESA	ESA Consultation Concludes	4/30/2026	6/30/2026	9/25/2026

USACE requested to move the U.S. Fish and Wildlife Service (FWS) ESA final milestone date. The movement of this milestone would not affect other deadlines and would not extend the overall project review time for the Environmental Assessment (EA).

Based on recent revisions to the project design, the Project Sponsor needed more time to prepare additional technical information including finalizing conservation designs, preparing grading plans, and hydrologic modeling that were not addressed in earlier submittals of the Biological Assessment (BA). The Project Sponsor needed to evaluate portions of the project that were not included in the initial BA including a substantive redesign of the project, including updated well pad configurations and refinements to elements associated with their conservation package, which was analyzed as part of the proposed action area. This information is essential for accurately assessing potential effects on listed species and critical habitat.

USFWS received an updated Biological Assessment (BA) on April 13, 2026, concurrent with the USACE receipt of the document. In compliance with FWS regulations (50 CFR § 402.14), USFWS has 30 days to review the BA for completeness, which would only give a little more than 45 days to complete the formal consultation as currently scheduled. This would be substantially less than the 135 days allowed by FWS regulations. Though FWS intends to complete the formal consultation as soon as possible, the agencies are proposing to update the permitting timetable to reflect the full 135 day time for completion of the final Biological Opinion (BO). It is also notable that the original project schedule shows the ESA consultation as





informal. However, based on a more current assessment of impacts, the resulting consultation will be completed as formal and the Permitting Dashboard will be updated accordingly.

Consultation with Project Sponsor on Permitting Timetable Modifications

Prior to submitting its extension request to the Executive Director, USACE and FWS consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represent that the Project Sponsor has no objection to the proposed permitting timetable extension.

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 that the Project Sponsor does not object to these permitting timetable modifications.

IV. Discussion

The primary driver of this timetable modification was to respond to the additional time requirement by the Project Sponsor to compile the necessary information for the BA to support the appropriate ESA consultation. Two of the relevant factors to consider for modifications under the FAST Act are the size and complexity of the project and the sensitivity of the natural or historic resources that may be affected by the project. Due to the size and complexity of the project, as well as the sensitivity of the ESA-listed species in the project area, it was necessary for the project sponsor to be as complete as possible with the project's technical details. That required additional time to properly inform the USACE ESA determination and request for consultation and FWS's forthcoming BO. Given these circumstances, and considering that the additional time for the ESA consultation will not delay the final EA or the final USACE permit, the requested ESA completion date modification is warranted.

V. Determination

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

Emily Domenech
Executive Director
Permitting Council

