



Billing Code 3510-022-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF431

Endangered Species; File No. 21516

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, NMFS, have received an application from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) for an incidental take permit, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for activities associated with the otherwise lawful continued operation and maintenance of the Dominion Chesterfield Power Station (CPS) in Chesterfield, VA. We are considering issuing a 10-year permit to the applicant that would authorize take of ESA-listed Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Chesapeake Bay Distinct Population Segment (DPS) incidental to otherwise lawful activities associated with the withdrawal of cooling water from the James River and entrainment and impingement sampling required by the Clean Water Act. Pursuant to the ESA and the National Environmental Policy Act (NEPA), we announce the availability of Dominion's ITP application and draft habitat conservation plan (HCP), as well as our draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: To allow for timely processing of the permit application, we must receive your comments no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm* under the section heading ESA section 10(a)(1)(B) Permits and Applications and at *http://www.regulations.gov*. The application is also available upon written request or by appointment in the following office: Protected Resources Division, NMFS Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328.

Submit your comments by including NOAA–NMFS–2017-0051, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov!/docketDetail;D=NOAA–NMFS–2017-0051*,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

- *Mail:* Submit written information to Julie Crocker, NMFS, Greater Atlantic Regional Fisheries Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: We may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the specified

period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender is publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). We will accept attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats, only.

FOR FURTHER INFORMATION CONTACT: Julie Crocker, (978) 282-8480.

SUPPLEMENTARY INFORMATION:

We received an initial draft application from Dominion in December 2016 and a complete application on April 10, 2017, for an ITP to take federally listed Atlantic sturgeon over a 10-year period. The ITP would authorize take resulting from continued operations of the facility, including impingement and entrainment in the cooling water intake system and collection during studies and sampling required by section 316(b) of the Clean Water Act. A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by Dominion as described in the draft HCP.

To comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA), we prepared an EA that describes the proposed action, issuance of an ITP to Dominion, and possible alternatives and analyzes the effects of the proposed action and alternatives on the human environment. We will evaluate whether the EA's analysis is adequate to support a Finding of No Significant Impact.

Background

Section 9 of the ESA and Federal regulations prohibit the “take” of species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(2)(A) of the ESA requires an ITP applicant to submit an HCP that specifies the steps the applicant will take to minimize and mitigate the impacts of the taking. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 222.307.

The CPS is a coal-fueled power station in Chesterfield, Virginia in the upper tidal portion, approximately river mile 82 (river kilometer, rkm, 132), of the James River. It has been in operation since 1945. It operates pursuant to a permit issued by the Virginia Department of Environmental Quality under section 402 of the Clean Water Act (the National Pollutant Discharge Elimination System program). CPS has a design intake flow of approximately 1,090 million gallons per day (MGD), at least 25 percent of which is used exclusively for cooling purposes, and is therefore subject to the Clean Water Act section 316(b) existing facility rule (79 FR 48300, August 15, 2014).

Dominion is seeking a permit for the incidental take of Atlantic sturgeon for a term of 10-years. Incidental take may occur as a result of operation of the cooling water intakes and performance of studies required to comply with Clean Water Act 316(b). Additional activities considered, but for which take is not expected include, dredging, constituent discharge, thermal discharge, vessel movements, and shoreline and structure

maintenance. The permit application includes Dominion's consideration of the potential effects to shortnose sturgeon (*Acipenser brevirostrum*). However, Dominion does not anticipate incidental take of shortnose sturgeon because shortnose sturgeon rarely occur in the James River.

Dominion estimates the take of up to 846 Atlantic sturgeon larvae per year from the Chesapeake Bay DPS due to entrainment in the Dominion CPS cooling water intakes. Dominion estimates the take of up to two juvenile, subadult or adult Atlantic sturgeon from the Chesapeake Bay DPS over a ten-year period as a result of impingement at the Dominion CPS intakes.

Conservation Plan

Section 10(a)(1)(B) of the ESA specifies that no permit may be issued unless an applicant submits an adequate HCP. Dominion's proposed HCP describes measures designed to minimize, monitor, and mitigate the incidental take of Atlantic sturgeon. Dominion's proposed HCP includes support for two research initiatives to increase knowledge of Atlantic sturgeon in the James River. The first would build on the existing knowledge of the genetic structure of cohorts spawning in the James River. The second would characterize Atlantic sturgeon spatial and temporal use of the upper tidal portion of the James River. The HCP also includes monitoring of incidental take. Other monitoring and mitigation actions will be undertaken as required.

The proposed action is the issuance of an ITP and implementation of the proposed HCP. Dominion considered two alternatives to the proposed action in its HCP: (1) No change to existing operations, studies and maintenance at CPS, and (2) avoiding and minimizing permitted activities (e.g., modifying water withdrawals; modifying the

cooling water intake structure; not conducting or not continuing the planned CWA 316(b) studies; not dredging and/or dredging less frequently; not using barges or vessels for the shipment or delivery of bulk materials; not performing or reducing shoreline and structure maintenance activities at CPS).

National Environmental Policy Act

In compliance with NEPA, we analyzed the impacts of the proposed issuance of an ITP and implementation of the HCP, and alternatives. Based on this analysis and any new information resulting from public comment, we will determine if there are any significant impacts caused by the proposed action. We have prepared a draft EA on the proposed action and have made it available for public inspection online or in person at the Greater Atlantic Regional Fisheries Office (see Availability of Documents).

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act regulations (40 CFR 1506.6). We will evaluate the application, associated documents, and submitted comments received to determine whether the application meets the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

We will publish a record of our final action in the *Federal Register*.

Authority: This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 9, 2017.

Angela Somma,
Chief, Endangered Species Division,
Office of Protected Resources,
National Marine Fisheries Service.

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