



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA183]

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: NMFS has received a revised application from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power for an incidental take permit, pursuant to the Endangered Species Act for activities associated with the otherwise lawful continued operation and maintenance of the Dominion Chesterfield Power Station in Chesterfield, VA. We are publishing this notice to inform the public that we are considering issuing a 5-year permit to the applicant that would authorize take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Chesapeake Bay.

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 request by emailing nmfs.gar.dominionitp@noaa.gov.

Submit your comments by including NOAA-NMFS-2017-0051-0001, 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/document?D=NOAA-NMFS-2017-0051-0001.
2. Click the “Comment Now!” icon, complete the required fields.
3. Enter or attach your comments.

- *Email:* Submit information to nmfs.gar.dominionitp@noaa.gov.

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).

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

SUPPLEMENTARY INFORMATION: We, NMFS, published notice in the *Federal Register* on August 14, 2017 (82 FR 37849), of an application from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) for an incidental take permit (ITP) to take federally listed Atlantic sturgeon belonging to the Chesapeake Bay Distinct Population Segment (Chesapeake Bay DPS) over a 10-year period as a result of impingement and entrainment in the Chesterfield Power Station (CPS) cooling water intake system and collection during sampling required by section 316(b) of the Clean Water Act (CWA). Dominion provided a draft Habitat Conservation Plan (HCP) that described the conservation program they would implement to minimize and mitigate the impacts of the incidental take. We received 37 comments during the public comment period. In addition, new information became available regarding dispersal of Atlantic sturgeon offspring in the James River, the risk of impingement for adult Atlantic sturgeon at CPS, and operation of the generating units at CPS. Dominion has revised and resubmitted their application and draft HCP to us in response to the public comments received and this new information.

To comply with the National Environmental Policy Act (NEPA)(42 U.S.C. 4321 *et seq.*), we prepared an Environmental Assessment (EA) that describes our proposed action 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 Endangered Species Act (ESA) and Federal regulations prohibit the “take” of Atlantic sturgeon belonging to the Chesapeake Bay DPS. 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. “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 of the James River. It operates pursuant to a permit issued by the Virginia Department of Environmental Quality under section 402 of the CWA (the National Pollutant Discharge Elimination System program). CPS is subject to the CWA section 316(b) existing facility rule (79 FR 48300, August 15, 2014).

The revisions to Dominion’s ITP application are: a permit for a term of 5-years instead of 10-years; new estimates for take of Atlantic sturgeon larvae by entrainment; and, removing anticipated take by impingement. Based on Dominion’s revised approach for estimating take, Dominion anticipates an average annual take of 10,949 (range 1,820-33,789) Atlantic sturgeon larvae from the Chesapeake Bay DPS due to entrainment in the Dominion CPS cooling water intakes. Dominion anticipates the take of no more than one

Atlantic sturgeon larvae in water samples needed to complete their required CWA 316(b) studies.

Dominion no longer anticipates take by impingement. Modifications and repairs were made to the intake guards following impingement of four adult Atlantic sturgeon in October 2018. Dominion subsequently determined that through-rack water velocities for the intake guards, trash racks, and traveling screens were less than 2 feet per second (fps) and concluded that healthy adult Atlantic sturgeon are capable of maneuvering against the intake velocity. Juvenile and subadult Atlantic sturgeon are not expected to occur in the vicinity of CPS given their life history attributes. Therefore, Dominion does not anticipate that take by impingement will occur and is not requesting such take in their ITP application.

Dominion does not anticipate and is not requesting take of Atlantic sturgeon at CPS as a result of dredging, constituent discharge, thermal discharge, vessel movements, and shoreline and structure maintenance associated with operation of CPS. Dominion included consideration of the potential effects of CPS operation to shortnose sturgeon (*Acipenser brevirostrum*) in the ITP application but are not requesting take of shortnose sturgeon.

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 has revised its proposed HCP which describes measures designed to minimize, monitor, and mitigate the incidental take of Atlantic sturgeon. Following the impingement of four adult Atlantic sturgeon in September 2018, Dominion completed a survey of the intake guards, repaired those that

were degraded, and replaced a missing guard. Grid openings of the guards were reduced to prevent the smallest adult Atlantic sturgeon in the James River from entering the intake structure. In addition, the intake opening for each of two of the intake units was expanded to reduce water velocity. Based on these changes, Dominion anticipates the risk of impingement for adult Atlantic sturgeon has been minimized to the extent that take is not likely to occur. Dominion will monitor for impingement at the trash racks and at the traveling screens to confirm that take is not occurring.

Dominion proposes to partner with Virginia Commonwealth University (VCU) which will provide Dominion access to VCU's tracking data for acoustically-tagged sturgeon that move upriver of CPS to spawn. In addition, Dominion will contract with VCU to deploy and maintain additional, new, receivers downstream of CPS to better inform when spawning Atlantic sturgeon are in the vicinity of CPS. The information acquired is expected to help inform when sturgeon larvae may be present in the vicinity of CPS. The information can be used by Dominion for timing its remaining sampling to complete the required CWA 316(b) studies. Knowing when spawning adults move past CPS or how long they are present in the vicinity of CPS will provide information necessary to better assess the risk of CPS operations (*e.g.*, intake flows), and to develop site-specific management actions to minimize take (*e.g.*, planning and implementing routine maintenance outages, when practicable, to coincide with peak spawning movements).

Dominion is also proposing to implement a pilot study that tests a new approach for identifying and counting Atlantic sturgeon larvae at CPS. If effective, this approach would provide information to inform minimization measures for Atlantic sturgeon larvae.

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 previously prepared a draft EA and have revised it based on the new information provided by Dominion in their revised ITP application and HCP. We have made the draft, revised, EA available for public inspection online (see ADDRESSES).

This notice is provided pursuant to section 10(c) of the ESA and to the NEPA 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: June 12, 2020.

Angela Somma,

Chief, Endangered Species Division,

Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2020-13041 Filed: 6/16/2020 8:45 am; Publication Date: 6/17/2020]