



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA605]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off of Coastal Virginia**

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

**ACTION:** Notice; modification of an incidental harassment authorization; request for comments.

**SUMMARY:** NMFS received a request from Dominion Energy Virginia (Dominion) on September 29, 2020, for a modification to the incidental harassment authorization (IHA) that was issued on August 28, 2020. This initial IHA allowed Dominion to take nine species of marine mammals, by Level B harassment, incidental to marine site characterization surveys conducted in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established in support of the Coastal Virginia Offshore Wind Commercial (CVOW Commercial) Project. Dominion was recording take of Atlantic spotted dolphin (*Stenella frontalis*) by Level B harassment at a rate that would exceed the authorized limit on this species and therefore, NMFS is proposing to modify the IHA to increase authorized take by Level B harassment of spotted dolphin. The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA and no additional take was requested for other species. NMFS will consider public comments

on the requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than [*insert date 15 days after date of publication in the **FEDERAL REGISTER***].

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.pauline@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

## **History of Request**

On February 7, 2020, NMFS received a request from Dominion for an IHA to take marine mammals incidental to marine site characterization surveys in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established in support of the offshore wind project. Dominion’s planned marine site characterization surveys include high-resolution

geophysical (HRG) and geotechnical survey activities. Geophysical and shallow geotechnical survey activities are anticipated to be supported by up to four vessels. The vessels will transit a combined estimated total of 121.54 kilometers (km) of survey lines per day. Dominion's request was for incidental take of a small number of nine marine mammal species by Level B harassment only. The application was deemed adequate and complete on May 12, 2020. We published a notice of proposed IHA and request for comments in the **Federal Register** on June 17, 2020 (85 FR 36562). We subsequently published the final notice of our issuance of the IHA in the **Federal Register** on September 8, 2020 (85 FR 55415), with effective dates from August 28, 2020, to August 27, 2021. The specified activities were expected to result in the take by Level B harassment of 9 species (10 stocks) of marine mammals including bottlenose dolphin (*Tursiops truncatus*), pilot whale (*Globicephala spp.*), common dolphin (*Delphinus delphis*), Atlantic white sided dolphin (*Lagenorhynchus acutus*), Atlantic spotted dolphin (*Stenella frontalis*), Risso's dolphin (*Grampus griseus*), harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), and gray seal (*Halichoerus grypus*),

On September 29, 2020, NMFS received a request from Dominion for a modification to the IHA that was issued on August 28, 2020 (85 FR 55415; September 8, 2020). Since the issuance of the initial IHA, Dominion has been recording large pods of Atlantic spotted dolphin within the Level B harassment zone such that they were approaching the authorized take limit for this species. Dominion felt that without an increase in authorized take of spotted dolphins they would be forced to repeatedly shut down whenever animals entered into specified Level B harassment zones. This would likely prolong the duration of survey and add increased costs to the project. Therefore, Dominion is requesting, and NMFS is proposing to modify the IHA to increase authorized take of spotted dolphin by Level B harassment. The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA and no additional

take is requested or proposed for species other than spotted dolphin. Moreover, the IHA would still expire on August 27, 2021.

### **Description of the Proposed Activity and Anticipated Impacts**

The modified IHA would include the same HRG and geotechnical surveys in the same locations that were described in the initial IHA. The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA. NMFS refers the reader to the documents related to the initial IHA issued on August 28, 2020, for more detailed description of the project activities. These previous documents include the notice of proposed IHA and request for comments (85 FR 36562; June 17, 2020) and notice of our issuance of the IHA in the **Federal Register** (85 FR 55415; September 8, 2020).

#### *Detailed Description of the Action*

A detailed description of the survey activities is found in these previous documents. The location, timing, and nature of the activities, including the types of HRG equipment planned for use, daily trackline distances and number of survey vessels (four) are identical to those described in the previous notices.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA.

#### *Potential Effects of Specified Activities on Marine Mammals and their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the initial IHA, which remains applicable to the issuance of this modified IHA. There is no new information on potential effects.

### *Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of IHA for the initial authorization (85 FR 55415; September 8, 2020). The HRG equipment that may result in take, as well as the source levels, marine mammal stocks taken, marine mammal density data and the methods of take estimation applicable to this authorization remain unchanged from the previously issued IHA. The proposed number of authorized takes is also identical with the exception of spotted dolphin.

During the one month period from the effective date of the initial IHA (August 28, 2020) through September 29, 2020, a total of 19 spotted dolphins had been observed within the Level B harassment zone distances and recorded as takes. This was largely due to a single pod of 15 dolphins sighted in the zone. Another 24 dolphins were observed over three survey days but they were not located in the Level B harassment zone. Prior to the issuance of the initial IHA, Dominion operated only during daylight hours under a Letter of Concurrence (LoC) issued by NMFS. As such, Dominion committed to shutting down whenever a marine mammal approached or entered a Level B harassment zone in order to avoid all incidental take. In the weeks prior to the issuance of the initial IHA, Dominion had observed pods containing up to 17 individuals in the Level B harassment zone. However, these pods were not recorded as incidental takes since mitigation measures were employed, *i.e.*, the acoustic source was shut down and the animals were not exposed to source levels associated with harassment. The estimated take in the initial IHA was based on the best available density data from Roberts *et al.* (2016, 2017, 2018), however, the multiple occurrences of the large pod in the vicinity of the survey was unexpected and not reflected in the take estimate. Table 1 shows spotted dolphin detection events when Dominion was operating under both the LoC (before August 28, 2020) as well as the initial IHA (on or after August 28, 2020).

**Table 1—Atlantic Spotted Dolphin Observations During Dominion Energy HRG Survey Activities**

Vessel Name	Date of Detection	Number of animals observed in the group	Level B Takes Accumulated
Sarah Bordelon	9/16/2020	15	15
Marcelle Bordelon	9/9/2020	4	4
Marcelle Bordelon	9/7/2020	6	-
Sarah Bordelon	9/4/2020	7	-
Sarah Bordelon	9/4/2020	11	-
Marcelle Bordelon	8/23/2020	5	-
Sarah Bordelon	8/17/2020	17	-

Given that large pods of spotted dolphin were recorded on multiple occasions, Dominion became concerned that the authorized number of takes by Level B harassment would be exceeded, necessitating the frequent shutdown of HRG survey equipment to avoid additional take of this species. On October 3, 2020, Dominion reached the authorized take amount for spotted dolphins. Since that time, they have been shutting down whenever spotted dolphins are sighted approaching or entering the harassment zone. Dominion now requests that NMFS authorize additional take of this species to conservatively allow 20 authorized takes per day. NMFS concurs that this take amount is reasonable in case observed dolphin pods are larger than what has been recorded to date. While NMFS does not expect that larger spotted dolphin pods would occur every day, it cannot be ruled out. With approximately 120 survey days remaining, NMFS is proposing to increase authorized spotted dolphin take by Level B harassment from 27 to 2,427 ((20 animals/day \* 120 survey days) + initial 27 authorized takes). This represents 4.38 percent of the western North Atlantic stock of spotted dolphin. Take by Level A harassment was not requested, nor does NMFS anticipate it. NMFS did not authorize Level A harassment in the initial IHA and is not proposing to do so in this modified IHA.

The total numbers of incidental takes by Level B harassment, including proposed updated spotted dolphin takes, and as a percentage of population, is shown in Table 2

below.

**Table 2 —Total Numbers of Authorized Takes by Level B Harassment and as a Percentage of Population**

Species	Totals	
	Take Authorization (No.)	Instances of Take as Percentage of Population <sup>1</sup>
Short-finned pilot whale	12	0.06
Bottlenose dolphin (Offshore)	511	0.81
Bottlenose dolphin (Southern Migratory Coastal)	224	6.5
Common dolphin	68	0.08
Atlantic white-sided dolphin	44	0.12
Spotted dolphin (adjusted)	2,427	4.38
Risso's dolphin	6	0.08
Harbor porpoise	39	0.09
Harbor seal <sup>2</sup>	35	0.02
Gray Seal <sup>2</sup>		0.06

<sup>1</sup> Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2 in **Federal Register** final notice of issuance of the IHA (85 FR 55415; September 8, 2020). In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For bottlenose dolphins, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins are derived from NMFS SARs (Hayes *et al.* 2019).

<sup>2</sup> Pinniped density values reported as "seals" and not species-specific.

### *Description of Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial IHA and the discussion of the least practicable adverse impact included in that document remains accurate (85 FR 55415; September 8, 2020).

*Establishment of Exclusion Zones (EZs)* — Marine mammal EZs must be established around the HRG survey equipment and monitored by protected species observers (PSOs) during HRG surveys as follows:

- 500-m EZ is required for North Atlantic right whales;
- During use of the GeoMarine Dual 400 Sparker 800J, a 100-m EZ is

required for all other marine mammals except delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops* and seals; and

- When only the Triple Plate Boomer 1000J is in use, a 25-m EZ is required for all other marine mammals except delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops* and seals; 200-m buffer zone is required for all marine mammals except those species otherwise excluded (*i.e.* North Atlantic right whale).

If a marine mammal is detected approaching or entering the EZs during the survey, the vessel operator must adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs must visually monitor a 200-m buffer zone for the purposes of pre-clearance. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the EZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The buffer zone is not applicable when the EZ is greater than 100 m. PSOs are also required to observe a 500-m monitoring zone and record the presence of all marine mammals within this zone.

*Visual Monitoring* — Monitoring must be conducted by qualified protected PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the initial IHA (85 FR 55415; September 8, 2020). Dominion must have one PSO on duty during the day and has committed that a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. PSOs must coordinate to ensure 360° visual

coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

*Pre-Clearance of the Exclusion Zones* — Prior to initiating HRG survey activities, Dominion must implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.*, before ramp-up of HRG equipment begins), the Buffer Zone also acts as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs must ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment must not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator must notify a designated PSO of the proposed start of HRG survey equipment as agreed upon with the lead PSO; the notification time must not be less than 30 minutes prior to the planned initiation of HRG equipment in order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance.

If a marine mammal is observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for porpoises, and 30 minutes for all other species). The pre-clearance requirement includes small delphinoids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

*Ramp-Up of Survey Equipment* — When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Survey Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment must be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment must be shut down (as described below).

*Shutdown Procedures* — If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment must only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.*, the animal is not required to fully exit the Buffer Zone where applicable) or,

following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.*, less than 30 minutes) for reasons other than mitigation (*e.g.*, mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella* (which includes *Atlantic spotted dolphins*), or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the EZ shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (100 m or 25 m), shutdown must occur.

*Vessel Strike Avoidance* — Dominion must comply with vessel strike avoidance measures as described in the **Federal Register** notice of the issuance of the initial IHA (85 FR 55415; September 8, 2020).

*Seasonal Operating Requirements* — Dominion will conduct HRG survey activities in the vicinity of the North Atlantic right whale Mid-Atlantic seasonal

management area (SMA) near Norfolk and the mouth of the Chesapeake Bay. Activities conducted prior to May 1 must comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Dominion must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the Lease Area or cable route corridor being surveyed, within 24 hours of the establishment of the DMA, Dominion is required to work with NMFS to shut down and/or alter activities to avoid the DMA.

*Training* — Project-specific training is required for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements must be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

*Reporting* — PSOs must record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the initial IHA (85 FR 55415; September 8, 2020). Within 90 days after completion of survey activities, Dominion must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Dominion must report the incident to the Office of Protected Resources, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notice of the issuance of the initial IHA (85 FR 55415; September 8, 2020).

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for spotted dolphins, NMFS has re-affirmed the determination

that the required mitigation measures provide the means effecting the least practicable impact on spotted dolphins and their habitat.

### **Preliminary Determinations**

Dominion's HRG survey activities and the mitigation, monitoring, and reporting requirements are unchanged from those covered in the initial IHA. The effects of the activity, taking into consideration the mitigation and related monitoring measures, remain unchanged from those stated in the initial IHA, notwithstanding the increase to the authorized amount of spotted dolphin take. Specifically, the Level B harassment authorized for spotted dolphins is expected to be of lower severity, predominantly in the form of avoidance of the sound source and potential occasional interruption of foraging. With approximately 120 survey days remaining, NMFS is proposing to increase authorized spotted dolphin take by Level B harassment to 2,427. Even in consideration of the increased estimated numbers of take by Level B harassment, the impacts of these lower severity exposures are not expected to accrue to the degree that the fitness of any individuals is impacted, and, therefore no impacts on annual rates of recruitment or survival will result. Further, and separately, the proposed take amount of spotted dolphin would be of small numbers of spotted dolphins relative to the population size (less than 5 percent), as take that is less than one third of the species or stock abundance is considered by NMFS to be small numbers. In conclusion, there is no new information suggesting that our effects analysis or negligible impact finding for Atlantic spotted dolphins should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily reaffirmed the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of

marine mammals relative to the affected stock abundances; (4) Dominion's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act (ESA)**

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the modification of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to modify the IHA to Dominion for conducting marine site characterization surveys in the areas of the

Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Offshore Virginia (Lease No. OCS-A-0483) as well as in coastal waters where an export cable corridor will be established in support of the CVOW Commercial Project effective until August 27, 2021. The only change is an increase in the authorized take of Atlantic spotted dolphins from 27 to 2,427. A draft of the proposed modified IHA can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

### **Request for Public Comments**

We request comment on our proposed modification of the IHA for Dominion's marine site characterization surveys. We also request comment on the potential for renewal of this modified IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization or subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond those described previously in this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 6, 2020.

Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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