



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC228]

Endangered Species; File No. 21516

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

ACTION: Notice: Receipt of application for permit modification and request for public comments.

SUMMARY: NMFS received a request from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power for modification of 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 re-issuing the permit to authorize additional take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Chesapeake Bay Distinct Population Segment.

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 <https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits> and at <http://www.regulations.gov>. The application is also available upon request by emailing Lynn.Lankshear@noaa.gov.

Submit your comments by including NOAA-NMFS-2022-0077, 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* and enter NOAA-NMFS-2022-0077 in the Search box.
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

• *Email:* Submit information to *Lynn.Lankshear@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: Lynn Lankshear, (978) 282-8473.

SUPPLEMENTARY INFORMATION: We, NMFS, published notice in the **Federal Register** on January 11, 2021 (86 FR 1945), that we had issued an Incidental Take Permit (ITP) (No. 21516) to Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of Atlantic sturgeon larvae (*Acipenser oxyrinchus oxyrinchus*) associated with the otherwise lawful operation of the Dominion Chesterfield Power Station (CPS) in Chesterfield, VA. All of the larvae would belong to the Chesapeake Bay Distinct Population Segment of Atlantic sturgeon (Chesapeake Bay DPS) based on where CPS is located. The permit was issued for a duration of 5 years.

In September 2021, Dominion captured three Atlantic sturgeon eggs belonging to the Chesapeake Bay DPS while it was carrying out required entrainment monitoring at CPS. The best available information supports that all free-floating sturgeon eggs are non-viable. However, take of Atlantic sturgeon eggs was not anticipated or authorized in the permit. Therefore, Dominion is requesting modification of their permit to authorize the incidental take of up to 36,985 Atlantic sturgeon eggs belonging to the Chesapeake Bay DPS for the duration of the permit (*i.e.*, through December 30, 2025). Dominion has also requested several changes to the permit conditions based on new information and changes to the cooling water intake operations at CPS.

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. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 222.307.

Dominion is requesting authorization to: (1) Allow for the incidental take of up to 36,985 Atlantic sturgeon eggs from the Chesapeake Bay DPS through December 30, 2025, based on an average take of 12,328 (range 3,066 - 31,968) eggs per high flow event and assuming three high-flow events over the remainder of the permit; (2) allow entrainment sampling for monitoring to occur at the furthest upriver cooling water intake structure that is operational at CPS at the time monitoring occurs; (3) allow entrainment sampling for monitoring to be paused on the rare occasion that all CPS river circulating pumps are not operating; (4) require visual inspections of the CWIS trash racks only from

September through October; (5) require Dominion to annually inspect (*i.e.*, by diver(s)) the intake guards at potentially operating CPS cooling water intake structures to confirm that the guards are intact and capable of excluding any adult Atlantic sturgeon as designed and, as needed based on the dive inspection, make repairs to the guards in advance of the fall Atlantic sturgeon spawning season; (6) require Dominion to clean the trash racks only as operationally necessary or, in the event a unit specific intake guard is found to be in jeopardy of not functioning as designed, require trash raking at the specific intake unit twice per day (once per 12-hour shift during daylight hours) during the fall sturgeon spawning window as identified by the real-time telemetry system; (7) retain the previously identified studies for mitigation but revise those, as needed, to include consideration for the possible seasonal presence of unattached Atlantic sturgeon eggs in the river as it flows past CPS; (8) revise the monitoring and reporting requirements to include Atlantic sturgeon eggs; and (9) correct the current permit condition IV.C.4.g. to reflect the 8-week time period (*i.e.*, September 1 through October 31) that Dominion conducts entrainment monitoring for Atlantic sturgeon at CPS.

Conservation Plan

Dominion is proposing to mitigate for the take of Atlantic sturgeon eggs with the same studies that serve as the mitigation for the take of Atlantic sturgeon larvae, “Sturgeon Research Movement” and “Digital Holography,” with revisions to the studies as needed.

National Environmental Policy Act

In compliance with NEPA, we analyzed the impacts of the proposed modifications of the ITP and the HCP. We prepared a draft Supplemental Information Report (SIR) that describes why there is no need to supplement the 2020 EA and FONSI. We have made the draft SIR available for public inspection online (see ADDRESSES).

We will also evaluate whether modification of the 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. If the requirements are met, we will issue the modified 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: July 27, 2022.

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

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