



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD548]

Endangered Species; File No. 21516

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

ACTION: Issuance of permit modification

SUMMARY: Notice is hereby given that NMFS has issued a modification to 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 of 1973 (ESA), as amended, for the incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) associated with the otherwise lawful operation of the Dominion Chesterfield Power Station (CPS) in Chesterfield, VA.

ADDRESSES: The modified incidental take permit and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits>.

FOR FURTHER INFORMATION CONTACT: Lynn Lankshear, (978) 282-8473, Lynn.Lankshear@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits the “taking” of a 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. NMFS may issue permits, under limited circumstances to take listed species when the take is incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing

incidental take of listed species. The regulations for modifying permits and issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.306 and at 50 CFR 222.307.

Background

NMFS issued Permit No. 21516 to Dominion on December 10, 2020 (86 FR 1945). NMFS published notice in the **Federal Register** on August 2, 2022 (87 FR 47190), that Dominion had requested modification of their ITP to allow for the incidental take of Atlantic sturgeon eggs from the Chesapeake Bay Distinct Population Segment through December 30, 2025, and to modify permit conditions based on anticipated operational changes at the CPS. However, new information regarding take of Atlantic sturgeon eggs at CPS was received after the close of the public comment period. Therefore, Dominion's request for modification of the ITP to allow for the incidental take of Atlantic sturgeon eggs remains in progress.

In the interim, based on the information provided by Dominion and the public comment received, NMFS has modified Permit No. 21516 to: 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; allow entrainment sampling for monitoring to be paused on the rare occasion that all CPS river circulating pumps are not operating provided that NMFS is notified within 24 hours of Dominion shutting down all water intake at the circulating water pumps, and provided the notification includes information describing the reason(s) for the shutdown and the expected duration of the shutdown; require visual inspections of the cooling water intake structure trash racks (and the immediate area upstream) from September 1 through October 31; require Dominion to annually inspect (*i.e.*, by divers) the intake guards at CPS cooling water intake structures no earlier than March 1 and no later than August 15 to confirm that the guards are intact and capable of excluding any adult Atlantic sturgeon as

designed, and make repairs to the guards, as needed, prior to September 1; and require Dominion to clean the trash racks via a mechanical trash rake only as operationally necessary or, in the event a specific intake guard is found to be in jeopardy of not functioning as designed, the trash racks associated with that intact guard must be cleaned via a mechanical trash rake twice per day (once per 12-hour shift during daylight hours) during the fall sturgeon spawning window of September 1 through October 31. Prior to September 1, trash raking must occur at a specific intake guard if it is found to be at risk of not functioning as designed and adult Atlantic sturgeon are present in the vicinity of CPS as indicated by the real-time telemetry system. Permit condition IV.C.4.g. has also been corrected to reflect the 8-week period from September through October for each year of the permit.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6A, Compliance with the National Environmental Policy Act (2016). NMFS prepared a Supplemental Information Report explaining why the potential impacts to sturgeon and other resources fall within the scope of the 2020 Environmental Assessment (EA) and Finding of No Significant Impact developed in support of the original permit. We concluded that there would be little change in the impacts from this action, relative to those described in the original EA. Further, we concluded that there are no significant new circumstances or information that would result in changes to the impacts of the permit requirements as considered in the previous analyses.

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: November 20, 2023.

Angela Somma,

Chief, Endangered Species Division,

Office of Protected Resources, National Marine Fisheries Service.

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