Comment 15: The ENGOs expressed concern about past instances where NMFS has modified issued IHAs in response to preliminary monitoring data indicating that certain species of marine mammal were being encountered more frequently than anticipated.

Response: No modifications are included as part of this action and, therefore, this comment is not relevant to this IHA.

Determinations

The survey activities proposed by Atlantic Shores are identical to (and a subset of) those analyzed in the initial IHA, as are the method of taking and the effects of the action. The mitigation measures and monitoring and reporting requirements as described above are also identical to the initial IHA. The planned number of days of activity will be reduced given the completion of a small portion of the originally planned work. Therefore, the amount of take authorized is equal to or less than that authorized in the initial IHA. The potential effect of Atlantic Shores' activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that Atlantic Shores' activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shore'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.

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 evaluate our proposed action (*i.e.,* issuance of incidental harassment authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

On April 13, 2020, GARFO determined that the 2013 Biological Opinion remained valid for issuance of Atlantic Shores' initial IHA and that the proposed MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the Opinion. Similarly, on March 3, 2021, GARFO concluded the same for issuance of the Renewal IHA to Atlantic Shores. Therefore, the 2013 Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 for our proposed action to issue an IHA under the MMPA, and no further consultation is required. The 2013 Biological Opinion and amended ITS can be found at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Renewal

NMFS has issued a Renewal IHA to Atlantic Shores for the take of marine mammals incidental to conducting marine site characterization surveys off New York and New Jersey for one year from date of issuance.

Dated: April 19, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB020]

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: Issuance of a modified incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a modified incidental harassment authorization (IHA) to Dominion Energy Virginia (Dominion) to incidentally harass marine mammals 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.

DATES: This modified IHA is valid from April 12, 2021 until through August 27, 2021.

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 includes high-resolution geophysical (HRG) survey activities. 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. NMFS authorized 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 had 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. Therefore, NMFS published a notice of proposed IHA modification that included a 15-day public comment period (85 FR 71881; November 12, 2020). NMFS subsequently issued a modified IHA to Dominion that increased authorized take of spotted dolphin by Level B harassment (85 FR 81879; December 12, 2020). The mitigation, monitoring, and reporting measures remained the same as prescribed in the initial IHA. The expiration date of the IHA remained the same (August 27, 2021) as in the initial IHA.

On February 5, 2021, NMFS received a request from Dominion for a second modification to the IHA that had previously been modified and issued (85 FR 81879; December 12, 2020). Dominion informed NMFS that they were recording take of common dolphin (*Delphinus Delphis*) by Level B harassment at a rate that would exceed the authorized limit for this species. Therefore, NMFS published the notice of the proposed IHA modification in the **Federal Register** on March 10, 2021 (86 FR 13695). The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA and recently issued modified IHA. No additional take was requested for other species. Moreover, the IHA would still expire on August 27, 2021.

Description of the Specified Activity and Anticipated Impacts

The modified IHA covers the same HRG surveys in the same locations that were described in the initial IHA and recently modified IHA. The mitigation, monitoring, and reporting measures remain the same. 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). Additional information may be found in the notice of issuance of the recently modified IHA (85 FR 81879; December 12, 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.

Public Comments

A notice of proposed IHA modification was published in the **Federal Register** on March 10, 2021, (86 FR 13695). During the 15-day public comment period, NMFS received comments from the Southern Environmental Law Center (SELC), which submitted comments on behalf on behalf of the Conservation Law Foundation, Defenders of Wildlife, National Wildlife Federation, Natural Resources Defense Council, Whale and Dolphin Conservation, Surfrider Foundation, Sierra Club Virginia Chapter, Mass Audubon, Assateague Coastal Trust, Inland Ocean Coalition, the International Marine Mammal Project of Earth Island Institute, and NY4WHALES as well as from the Responsible Offshore Development Alliance (RODA).

NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* A summary of the comments as well as NMFS' responses are below.

Comment 1: SELC indicated that NMFS's interpretation of small numbers is contrary to the purpose of the MMPA and that the agency failed to consider the unique conservation status of individual populations. Instead of applying a 30 percent ceiling for all species, SELC recommended that NMFS revisit its small numbers interpretation to consider whether the specific take percentage for common dolphin will ensure that population levels are maintained at or restored to healthy population numbers.

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response

remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 2: SELC stated that NMFS' updated negligible impact analysis underestimates the potential impacts of HRG surveys on small cetaceans like the common dolphin. SELC stated that NMFS' negligible impact analysis is inadequate given the increased level of take that the agency proposed. SELC referenced several scientific research papers which indicated that common dolphin is a particularly acoustically sensitive species, has the potential to be displaced, shift their behavioral state and stop or alter in response to a variety of anthropogenic noises, with potentially adverse energetic effects even from minor changes.

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 3: SELC reiterated that NMFS's use of the 160 decibel (dB) threshold for behavioral harassment is not supported by the best available scientific information and results in an inaccurate negligible impact analysis. Note that NMFS addressed this comment in the **Federal Register** notice of issue of the initial IHA (85 FR 55415; September 8, 2020).

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 4: SELC recommended that a standard 500-meter (m) exclusion zone (EZ) be established for all marine mammal species around survey vessels.

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 5: SELC recommended that HRG surveys should commence, with ramp-up, during daylight hours.

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 6: SELC recommended that passive acoustic monitoring (PAM) should be employed to monitor marine mammals

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 7: SELC recommended that for efforts that continue into the nighttime, night-vision or infrared monitoring should also be used.

Response: NMFS has included in the IHA a requirement that night-vision equipment (*i.e.,* night-vision goggles and infrared technology) must be available for use by Protected Species Observers (PSOs) during night operations.

Comment 8: SELC recommended that NMFS impose a seasonal restriction on HRG surveys that have the potential to injure or harass the North Atlantic right whale, extending from November 1 through April 30.

Response: NMFS is concerned about the status of the North Atlantic right whale population given that a Unusual Mortality Event (UME) has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. NMFS appreciates the value of seasonal restrictions under certain circumstances. However, in this case, we have determined seasonal restrictions are not warranted. Given the density of right whales in this area, the nature of the proposed activities, and the required mitigation, zero takes of North Atlantic right whales are predicted or authorized and, therefore, additional mitigation is not warranted especially given the impracticability for the applicant of significantly shortening their work season. Additionally, Dominion is required to comply with restrictions associated with identified SMAs and they must comply with DMA restrictions, if any DMAs are established near the Project Area. See the North Atlantic right whale vessel speed regulations (50 CFR 224.105).

Comment 9: SELC recommended that NMFS establish an extended 1,000-m EZ for North Atlantic right whales around survey vessels.

Response: NMFS addressed this comment in the notice of issuance of the initial IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 55415; September 8, 2020). Please refer to that notice.

Comment 10: SELC recommended that all vessels traveling to and from the project area maintain a speed of 10 knots (18.5 kilometer/hour) or less throughout the survey period.

Response: NMFS addressed this comment in the response to Comment 8 above.

Comment 11: SELC recommended that NMFS require activating Dynamic Management Areas (DMAs) whenever a single North Atlantic right whale is sighted or acoustically detected neat the project area, not just an aggregation of three or more whales.

Response: NMFS addressed this comment in the notice of issuance of the first modified IHA and our response remains applicable in the context of the modifications in this IHA (85 FR 81879; December 17, 2020). Please refer to that notice.

Comment 12: RODA expressed concern that there are no backstops or accountability measures for when authorized take exceeds a given threshold established by NMFS. They additionally expressed concern that developers could ''simply apply for modifications of existing IHAs,'' increasing the take every few months.

Response: NMFS' IHA includes a prohibition on unauthorized take and indicates that the IHA may be modified, suspended or revoked if take exceeds that authorized. Further, the IHA requires the IHA holder to both monitor and report marine mammals observed within zones associated with NMFS' harassment thresholds. The information collected and reported is used by NMFS to inform future analyses and decisions.

Regarding the modifications, we note that both modifications were made following a 15-day comment period and NMFS analysis and confirmation that the modified total take met the standards required for issuance of an IHA. In the interim, for this modification, the applicants ceased all survey activity to ensure no unauthorized take of common dolphins occurs.

Comment 13: RODA also asked about accountability for impacts from offshore wind development activities and how to ensure that any such impacts were not erroneously assigned to fishermen.

Response: The commenter appears to misunderstand the nature of the take that is authorized for this IHA, which is Level B harassment only, with no anticipated impacts to the reproduction or survival of any individual marine mammals. Regarding take being erroneously ''assigned'' to fishermen, the take considered in commercial fisheries is serious injury or mortality. Since neither of those types of take is anticipated or authorized for this activity, there is no possibility that any such take will result and be misattributed to fishing activities.

Comment 14: RODA also expressed concern regarding the ''one-off'' nature of the IHA process and the lack of a cumulative assessment of the fifteen plus offshore wind sites along the East Coast.

Response: The MMPA includes an exception to its general take prohibition for incidental take from a ''specified activity.'' 16 U.S.C. 1371(a)(5)(D). The specified activity for which we issued Dominion's IHA is that company's site characterization surveys and establishment of a cable corridor. Cumulative impacts (also referred to as cumulative effects) is a term that appears in the context of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), but it is defined differently in those contexts. Neither the MMPA nor NMFS' codified implementing regulations address consideration of other unrelated activities and their impacts on populations. However, the preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Accordingly, NMFS here has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors).

The reasonably foreseeable cumulative effects to ESA-listed species, including impacts to large whales, from other activities were considered in the analyses conducted by NMFS' Greater Atlantic Regional Fisheries Office (GARFO) as part of the ESA Section 7 Consultation regarding Dominion's site characterization surveys offshore Virginia. On July 30, 2020, GARFO determined that the effects to species listed under the ESA would be insignificant or discountable and therefore, the proposed action was not likely to adversely affect any ESA-listed species.

Cumulative impacts have been adequately addressed under NEPA in prior environmental analyses that form the basis for NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. Regarding activities in the Mid- and South Atlantic region, in 2018 NMFS signed a Record of Decision that (1) adopted the Bureau of Ocean Energy Management's 2014 Final Programmatic Environmental Impact Statement that evaluated the direct, indirect, and cumulative impacts of geological and geophysical survey activities on the Mid- and South Atlantic Outer Continental Shelf to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to sections 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216), and (2) in accordance with 40 CFR 1505.2, announced and explained the basis for our decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate. Separately, NMFS has previously written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* 2019 Orsted EA for survey activities offshore southern New England; 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island.

We have determined that our IHA for Dominion's site characterization activities qualifies for a categorical exclusion under the NEPA in that it will not individually or cumulatively have a significant effect on the human environment. We are not aware of any past, present or reasonably foreseeable actions within the region of influence of the proposed action causing environmental impacts that would interact with the impacts of the site characterization activities such that the combined effect would be significant. The Bureau of Ocean Energy Management (BOEM) is developing Environmental Impact Statements (EISs) to address the effects of the construction of offshore wind farms in support of decisions of whether to permit that construction and operation, and those EISs will analyze the cumulative impacts when the impacts of proposed construction an operation are combined with other past, present and reasonably foreseeable future actions. Each EIS, therefore, will account for the impacts of these site characterization activities and any other activities that may occur in the same region of influence to ensure that cumulative impacts over time are properly evaluated, documented, considered and disclosed.

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 Stock Assessment Reports, information on relevant UMEs, 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) notice of IHA for the first modified IHA (85 FR 81879; December 17, 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 number of authorized takes is also identical with the exception of common dolphin.

NMFS had authorized 68 takes of common dolphin by Level B harassment in the initial IHA (85 FR 55415; September 8, 2020) and recently modified IHA (85 FR 81879; December 12, 2020). Since January 17, 2021, Dominion has recorded a total of 65 common dolphins within the Level B harassment zone. Sighting events have ranged from a single dolphin to a group of up to 42 individuals. It appears that the sudden increase in Level B take for common dolphins is due to the animals' approach to the vessel for both bow riding and swimming alongside vessels. The duration of these events has varied from several minutes to many hours. Their behavior may be due to curiosity and perhaps an enhanced feeding opportunity provided (after dusk) by the lighted vessels. The increase in common dolphins appears to be seasonal, with most (62) of the Level B harassment takes occurring between January 17 and January 27, 2021, as well as three additional takes recorded in February. There was no observed take of common dolphin during the preceding phases of the survey in the summer and fall of 2020. Dominion has directed vessels to shut-down at night, during periods of low visibility, or whenever common dolphins are sighted to avoid further accumulation of take. The need for frequent, lengthy shut-downs has the

potential to severely impact the overall project schedule. That would result in the need for additional survey days on the water as well as increased cost and risks associated with extending the project schedule.

Dominion observed common dolphins over 8 operational survey days as shown in Table 1. Note that many of these animals were sighted outside of the Level B harassment zone and, therefore, were not recorded as takes. The 62 takes over eight days averages out to just under eight takes per day. Given this information, Dominion has conservatively requested the take of one pod of 10 animals every day for the remaining 60 survey days. NMFS concurs and is authorizing 600 additional takes of common dolphin by Level B harassment beyond the 68 takes authorized in the initial IHA and recently modified IHA. The expiration date of the IHA would remain unchanged as August 27, 2021.

TABLE 1—COMMON DOLPHIN DETECTION EVENTS DURING DOMINION ENERGY HRG SURVEY ACTIVITIES

Vessel name	Number of common dolphin detection events	Number of events that resulted in Level B harassment takes	Total number of Level B harassment takes	Min pod size	Max pod size
R/V Minerva	2	0	0	7	15
R/V Minerva	4	2	14	6	12
R/V Minerva	4	0	0	6	12
R/V Minerva	3	1	10	1	10
R/V Minerva	4	2	15	4	10
R/V Minerva	2	2	19	7	42
R/V Minerva	3	1	4	1	6
R/V Minerva	2	0	0	4	15

The total number of incidental takes by Level B harassment authorized, including modified common dolphin takes, are shown in Table 2. The authorized take represents 0.39 percent of the western North Atlantic stock of common dolphin. Take by Level A harassment was not requested, nor does NMFS anticipate it. NMFS did not authorize Level A harassment in the initial or recently modified IHA and is not doing so as part of this modification.

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 [1]
Short-finned pilot whale	12	0.06
Bottlenose dolphin (Offshore)	511	0.81
Bottlenose dolphin (Southern Migratory Coastal)	224	6.5
Common dolphin	668	0.39
Atlantic white-sided dolphin	44	0.12
Spotted dolphin	2,427	4.38
Risso's dolphin	6	0.08
Harbor porpoise	39	0.09
Harbor seal [2]	35	0.02
Gray Seal [2]	0.06	

[1] 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 Stock assessment reports (Hayes *et al.* 2019).

[2] Pinniped density values reported as "seals" and not species-specific.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included in this modified IHA 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 EZs—Marine mammal EZs must be established around the HRG survey equipment and monitored by 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; a 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,* 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. See the North Atlantic right whale vessel speed regulations (50 CFR 224.105).

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) (50 CFR 224.105). 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 common dolphins, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on common dolphins and their habitat.

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 common dolphin take. Specifically, the Level B harassment authorized for common 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 60 survey days remaining, NMFS is authorizing increased common dolphin take by Level B harassment to 668 from 68. 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 authorized take amount of common dolphin still would be of small numbers of common dolphins relative to the population size (less than one 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 common dolphins should change.

Based on the information contained here and in the referenced documents, NMFS has 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 authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (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

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 determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued a modified 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 from the date of issuance until August 27, 2021.

Dated: April 16, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and